

Hyundai Mar. & Fire Ins. Co., Ltd. v Vallejo

2026 NY Slip Op 30122(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 150408/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

HYUNDAI MARINE & FIRE INSURANCE CO., LTD.,

Plaintiff,

- v -

FRANCISCO VALLEJO, CRISTINO VALLEJO, JOSE A.
VALLEJO-CABRERA (PERTAINING TO AN UNDERLYING
ACTION ENTITLED LUCRECIA PLACENCIO V.
FRANCISCO VALLEJO)

Defendant.

-----X

INDEX NO. 150408/2019

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81

were read on this motion to/for VACATE DEFAULT and DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 91, 92 were read on this motion to/for REVIEW ORDER REFEREE.

Motion Sequence Numbers 003 and 004 are consolidated for disposition. Plaintiff's motion (MS004) to confirm the referee's report is granted and defendants' motion to vacate their default (MS003) is therefore denied.

Background

In this declaratory judgment action, plaintiff seeks declaratory relief that it need not provide insurance to defendants in connection with an underlying personal injury action on the ground that the policy it issued required defendants to live at the insured property and its investigation revealed that they did not reside there.

The judge previously assigned to this matter granted a default judgment against defendants in a decision dated March 22, 2021 (NYSCEF Doc. No. 44). Defendants then moved on July 13, 2021 to vacate their default and dismiss on the ground that plaintiff never properly served them and, consequently, the Court lacked personal jurisdiction over them.

The prior judge referred the issue of whether service was proper to a special referee in a decision dated July 17, 2023. The docket reflects that this traverse hearing was held before special referee Hewitt on November 21, 2023 (NYSCEF Doc. No. 84). Special referee Hewitt eventually uploaded a decision on March 3, 2025 (NYSCEF Doc. No. 86). In his decision, the referee found that the credible testimony presented compelled the conclusion that plaintiff properly served defendants (*id.*).

Plaintiff now moves to confirm the report and defendants cross-move to reject the report. Plaintiff insists that after reviewing the witnesses' testimony, the special referee concluded that service was properly effectuated via a person of suitable age and discretion.

Defendants cross-move to reject the report on the ground that referee did not credit certain testimony from defendants about their specific abode and that they did not live in the subject apartment.

In reply, plaintiff contends that there is no reason to relitigate facts determined by the special referee after a hearing.

Discussion

The first issue raised by defendants is that plaintiff failed to make a timely motion to confirm the referee's report under CPLR 4403. While that is certainly true, defendants did not make a motion either (in their case to reject the report). "Recognizing that neither party might make a CPLR 4403 motion for whatever reason, the statute also vests the *court* with the

authority to take the initiative in confirming or rejecting a referee's report in whole or in part” (Hon. Mark C. Dillon, Practice Commentaries, C4403:2). Therefore, the Court is entitled to make a decision here, where both parties seek untimely relief from the report.

“The report of a referee should be confirmed if the findings therein are supported by the record. . . . Generally, New York courts will look with favor upon a Referee's report, inasmuch as the Referee, as trier of fact, is considered to be in the best position to determine the issues presented” (*Namer v 152-54-56 W. 15th St. Realty Corp.*, 108 AD2d 705, 705-06, 485 NYS2d 1013 [1st Dept 1985] [internal quotations and citations omitted]).

The Court grants plaintiff's motion to confirm the referee's report as he was in the best position to consider the credibility of the witnesses. It is not this Court's role in assessing such a motion to throw out a report merely because the loser disagrees. Here, the referee made a factual determination on the precise issue of service and defendants did not cite an adequate reason to disturb the finding.

Because defendants' motion to vacate was based on the ground that they were not properly served and there is now a finding that they were properly served, the Court therefore denies defendants' motion to vacate the default. Defendants no longer have a reasonable excuse for failing to appear and answer. The decision issued by the previous judge assigned to this matter is in full effect (NYSCEF Doc. No. 44).

Accordingly, it is hereby

ORDERED that defendants' motion to vacate (MS003) is denied; and it is further

ORDERED that plaintiff's motion (MS004) to confirm the referee's report is granted.

1/12/2026

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE