

**Walker-Diallo v Solanta Corp.**

2026 NY Slip Op 31633(U)

April 8, 2026

Supreme Court, New York County

Docket Number: Index No. 652317/2023

Judge: Matthew V. Grieco

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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. MATTHEW V. GRIECO PART 30M

Justice

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CAROLYN WALKER-DIALLO

Petitioner,

- v -

SOLANTA CORP. D/B/A SOLANTA,

Respondent.

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INDEX NO. 652317/2023

MOTION DATE 10/24/2025, 10/24/2025

MOTION SEQ. NO. 002 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, and for the reasons stated infra, the motion is granted.

On May 12, 2023, petitioner, Carolyn Walker-Diallo, commenced this Article 75 proceeding to confirm an arbitration award against respondent, Solanta Corp. d/b/a Solanta, in the amount of \$69,487.89, on a breach of contract claim arising out of a home project for installation of a pool, sunroom, and solar panels (NYSCEF Doc. No. 1).

By order entered December 22, 2023, the Court (Arthur F. Engoron, J.) granted the petition on default (NYSCEF Doc. No. 29), and judgment was entered on May 22, 2024 (NYSCEF Doc. No. 31).

On October 24, 2025, respondent moved pursuant to CPLR 317 and 5015(a)(4) to vacate the default judgment and dismiss the petition, contending that it had never received personal service (NYSCEF Doc. No. 32-55). Petitioner has not submitted any opposing papers.

CPLR 317 provides, in pertinent part: “A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment, but in no event more than five years after such entry, upon a finding of the court that he did not personally receive notice of the summons in time to defend and has a meritorious defense.” Thus, a movant seeking relief need not show a reasonable excuse, only a meritorious defense (*see Eugene Di Lorenzo, Inc. v A.C. Dutton Lumber Co., Inc.*, 67 NY2d 138, 141-142 [1986]).

Under CPLR 5015(a)(4), “[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of ... lack of jurisdiction to render the judgment or order.” There is no requirement of either a reasonable excuse or a meritorious defense, only a jurisdictional defect (*see One 56 St. Corp. v Fagan*, 235 AD3d 453 [1<sup>st</sup> Dept 2025]; *Wells Fargo Bank, N.A. v Jones*, 139 AD3d 520 [1<sup>st</sup> Dept 2016]).

The interplay of the two statutes is that if proper service was never effected and the court never acquired personal jurisdiction over the defendant, then the judgment should be vacated and the case dismissed pursuant to CPLR 5015(a)(4); if proper service was effected, but the defendant did not personally receive notice and has a meritorious defense, then the judgment should be vacated under CPLR 317 (*see Kasowitz, Benson, Torres & Friedman v Cao*, 105 AD3d 521 [1<sup>st</sup> Dept 2013]).

According to the affidavit of service for the petition, the process server went to 68 34<sup>th</sup> Street, Building 6, Floor 4, Suite B423, Brooklyn, New York, on June 15, 2023, at

12:42 p.m., and a person over the intercom stated that Solanta was not at that address (NYSCEF Doc. No. 26 at 1). About one hour later, the process server went to 141 Flushing Avenue, Brooklyn, New York, where “security for the premises” related that Solanta was not at that address (*id.* at 2). Previously, on June 2, 2023, the process server mailed the notice, petition, supporting affidavit, and exhibits to Solanta at the same two addresses (*id.* at 3-4).

Respondent has submitted license agreements, lease agreements, a Department of State Entity Information printout, and an affidavit of its principal, Dean Anthony Santa, indicating that the two locations the process server visited were former business addresses, and that its business address and address on file with the Secretary of State from December 2022 (six months before service was attempted) through the present has been 199 Tompkins Avenue, Brooklyn, New York (NYSCEF Doc. Nos. 34-38, 55).

Service upon a corporation is governed by CPLR 311(a)(1), which states that the papers must be delivered “to an officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service,” or served upon the Secretary of State as set forth in Business Corporation Law § 306(b)(1). Petitioner did not comply with either of those methods. Petitioner’s process server merely made inquiries at two locations, where individuals with no connection to respondent stated that respondent did not have a presence there, and then mailed the papers to those addresses. Respondent was never properly served, and the Court lacked personal jurisdiction over it (*see Mensah v Polytechnic Univ.*, 68 AD3d 411 [1<sup>st</sup> Dept 2009] [no personal jurisdiction over company where service was by mail]; *see also Emaar Rak F.Z.E. v Rak Tourism Inc. F.Z.C.*, 177 AD3d 538 [1<sup>st</sup> Dept 2019] [personally delivering to a Federal Express cashier a package addressed to the defendant company’s

general manager did not constitute service under CPLR 311(a)(1)], *lv denied* 35 NY3d 905 [2020]). Accordingly, the judgment is vacated and the petition is dismissed pursuant to CPLR 5015(a)(4).

In light of that ruling, the Court need not address CPLR 317 and whether respondent has a meritorious defense, although it is noted that respondent denies ever learning of the arbitration proceeding (or this Article 75 proceeding) until a marshal's notice of levy and sale was taped to the door of its (correct) 199 Tompkins Avenue address on November 21, 2024 (NYSCEF Doc. No. 54). The American Arbitration Association notice of a scheduled hearing was only mailed to the 141 Flushing Avenue address (NYSCEF Doc. No. 48).

It is therefore

ORDERED that respondent's motion pursuant to CPLR 5015(a)(4) to vacate the judgment in this proceeding entered on May 22, 2024 and the underlying order entered December 22, 2023 is granted; and it is further


ORDERED that the petition is dismissed with costs and disbursements to respondent as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that, within 30 days from entry of this order, movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office, who is hereby directed to reflect the vacatur of the prior order and judgment and the dismissal of the petition by appropriately marking the court's records; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the Court.

4/8/2026					
DATE			MATTHEW V. GRIECO, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE