

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Hillside Manor Rehabilitation and Extended Care Center, LLC v.
Maynard

2026 NY Slip Op 00496 (App. Div. 2d Dep't 2026) · No. 2023-08430 · Decided February 4, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendant's motion to vacate a default judgment entered in favor of a nursing home for unpaid services. The court held that the process server's affidavit established prima facie evidence of proper service, and that the defendant's alleged discrepancies and denial were insufficient to require a hearing. The defendant also failed to demonstrate fraud, mistake, inadvertence, surprise, or excusable neglect warranting vacatur in the interests of substantial justice.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	February 4, 2026
DOCKET	2023-08430
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of the Supreme Court, Queens County, denying that branch of her CPLR 5015(a) motion seeking to vacate a default judgment entered against her.
STANDARD OF REVIEW	The Appellate Division reviewed whether the Supreme Court properly denied vacatur of the judgment under CPLR 5015(a)(4) for lack of jurisdiction and whether the defendant established grounds for vacatur in the interests of substantial justice.
PRECEDENTIAL VALUE	published

PARTIES

Sharon Maynard, individually and as distributee of the decedent's estate v. Hillside Manor Rehabilitation and Extended Care Center, LLC

TOPICS

service of process

default judgment

civil procedure

contracts

nursing home liability

PRACTICE AREAS

civil procedure

appellate procedure

contracts

health law

QUESTIONS PRESENTED

1. Whether the default judgment should be vacated under CPLR 5015(a)(4) for lack of personal jurisdiction because service of process was allegedly defective.
2. Whether the defendant demonstrated fraud, mistake, inadvertence, surprise, or excusable neglect warranting vacatur of the judgment in the interests of substantial justice.

HOLDINGS

1. The judgment was not subject to vacatur for lack of jurisdiction because the process server's affidavit constituted prima facie evidence of proper service under CPLR 308, and the defendant failed to rebut that evidence with specific sworn facts or establish discrepancies sufficient to require an evidentiary hearing.
2. Vacatur was not warranted in the interests of substantial justice because the defendant failed to provide evidence of fraud, mistake, inadvertence, surprise, or excusable neglect.

KEY QUOTATIONS

“Service of process upon a natural person must be made in strict compliance with the statutory methods of service set forth in CPLR 308” ([*1])

“A process server's affidavit of service constitutes prima facie evidence of proper service” ([*1])

“Although a defendant's sworn denial of receipt of service generally rebuts the presumption of proper service established by a process server's affidavit and necessitates an evidentiary hearing, no hearing is required where the defendant fails to swear to specific facts to rebut the statements in the process server's affidavits” ([*1]-[*2])

“Minor discrepancies between the appearance of the person allegedly served and the description of the person served in the affidavit of service are generally insufficient to raise an issue of fact warranting a hearing” ([*2])

FACTUAL BACKGROUND

Hillside Manor, a skilled nursing home provider, sued Sharon Maynard, the daughter of a deceased former resident, individually and as distributee of the decedent's estate, to recover the balance for services provided to the decedent. Maynard did not appear or answer, and a default judgment was entered against her for \$27,192.08. In seeking vacatur, Maynard challenged service based on alleged discrepancies between her physical appearance and the process server's description, but she did not swear to specific facts rebutting the process server's affidavit.

PROCEDURAL HISTORY

Hillside Manor sued Maynard to recover the balance allegedly owed for skilled nursing home care provided to the decedent. Maynard failed to appear or answer, and the Supreme Court granted Hillside Manor's unopposed motion for leave to enter a default judgment; judgment was entered on July 8, 2015, for \$27,192.08. In August 2022, Maynard moved under CPLR 5015(a), among other grounds, to vacate the judgment. The Supreme Court denied the motion in an order dated June 12, 2023, and the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Globe Trade Capital, LLC v. Hoey, 199 A.D.3d 769, 771
- Citimortgage, Inc. v. Cardali, 230 A.D.3d 467, 468
- Taron Partners, LLC v. McCormick, 173 A.D.3d 927, 928
- Deutsche Bank Natl. Trust Co. v. Yurowitz, 181 A.D.3d 646, 648
- Flanagan v. Delaney, 194 A.D.3d 694, 696-697
- TD Bank, N.A. v. Turbo Group, Inc., 226 A.D.3d 1058, 1059
- HSBC Bank USA, N.A. v. Rahmanan, 194 A.D.3d 792, 794
- Wells Fargo Bank, N.A. v. Tricarico, 139 A.D.3d 722, 723
- Legal Servicing, LLC v. Gomez, 229 A.D.3d 785, 787
- CitiMortgage, Inc. v. Maldonado, 171 A.D.3d 1007, 1008-1009

OPINION

PER CURIAM.

Hillside Manor Rehabilitation & Extended Care Ctr., LLC v Maynard (2026 NY Slip Op 00496)
Hillside Manor Rehabilitation & Extended Care Ctr., LLC v Maynard 2026 NY Slip Op 00496
Decided on February 4, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 4, 2026 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department MARK C. DILLON, J.P. CHERYL E. CHAMBERS

LOURDES M. VENTURA JAMES P. MCCORMACK, JJ. 2023-08430 (Index No. 719328/22) [*1]Hillside Manor Rehabilitation and Extended Care Center, LLC, respondent, v Sharon Maynard, etc., appellant. Valerie A. Hawkins, Hempstead, NY, for appellant.

DECISION & ORDER In an action, inter alia, to recover damages for breach of contract, the defendant appeals from an order of the Supreme Court, Queens County (Timothy J. Dufficy, J.), dated June 12, 2023. The order, insofar as appealed from, denied that branch of the defendant's motion which was pursuant to CPLR 5015(a) to vacate a judgment of the same court entered July 8, 2015, which, upon an order of the same court dated April 29, 2015, granting the plaintiff's unopposed motion for leave to enter a default judgment against the defendant, is in favor of the plaintiff and against the defendant in the principal sum of \$27,192.08.

ORDERED that the order dated June 12, 2023, is affirmed insofar as appealed from, without costs or disbursements. The plaintiff, a limited liability company engaged in the business of providing skilled nursing home care services, commenced this action against the defendant, the daughter of a deceased former resident of the plaintiff (hereinafter the decedent), individually and as distributee of the decedent's estate, to recover the balance for services the plaintiff provided to the decedent.

The defendant failed to appear or answer the complaint. Thereafter, the plaintiff moved for leave to enter a default judgment against the defendant. In an order dated April 29, 2015, the Supreme Court granted the plaintiff's unopposed motion.

On July 8, 2015, a judgment was entered in favor of the plaintiff and against the defendant in the principal sum of \$27,192.08. In August 2022, the defendant moved, inter alia, pursuant to CPLR 5015(a) to vacate the judgment.

In an order dated June 12, 2023, the court, among other things, denied that branch of the defendant's motion. The defendant appeals. CPLR 5015(a)(4) provides that "[t]he court which rendered a judgment or order may relieve a party from it upon such terms as may be just," upon the ground of "lack of jurisdiction to render the judgment or order." "Service of process upon a natural person must be made in strict compliance with the statutory methods of service set forth in CPLR 308" (*Globe Trade Capital, LLC v Hoey*, 199 AD3d 769, 771; see *Citimortgage, Inc. v Cardali*, 230 AD3d 467, 468).

"A process server's affidavit of service constitutes prima facie evidence of proper service" (*Taron Partners, LLC v McCormick*, 173 AD3d 927, 928; see *Citimortgage, Inc. v Cardali*, 230 AD3d at 468). "Although a defendant's sworn denial of receipt of service generally rebuts the presumption of proper service established by a process server's affidavit and necessitates an evidentiary hearing, no hearing is required where the defendant fails to swear to specific facts to rebut the statements in the process [*2]server's affidavits" (*Taron Partners, LLC v McCormick*, 173 AD3d at 928 [internal quotation marks omitted]).

"Minor discrepancies between the appearance of the person allegedly served and the description of the person served in the affidavit of service are generally insufficient to raise an issue of fact warranting a hearing" (*Deutsche Bank Natl. Trust Co. v Yurowitz*, 181 AD3d 646, 648; see *Citimortgage, Inc. v Cardali*, 230 AD3d at 468).

Here, the Supreme Court properly denied vacatur of the judgment pursuant to CPLR 5015(a)(4). An affidavit of the plaintiff's process server constituted prima facie evidence of proper service upon the defendant pursuant to CPLR 308 (see *Flanagan v Delaney*, 194 AD3d 694, 696-697).

The alleged discrepancies between the defendant's physical appearance at the time of service and the description of the person served contained in the process server's affidavit were either too minor or insufficiently substantiated to warrant a hearing (see *TD Bank, N.A. v Turbo Group, Inc.*, 226 AD3d 1058, 1059; *HSBC Bank USA, N.A. v Rahmanan*, 194 AD3d 792, 794), and the defendant failed to swear to specific facts to rebut the statements in the process server's affidavit (see *Wells Fargo Bank, N.A. v Tricarico*, 139 AD3d 722, 723).

Furthermore, the defendant failed to provide any evidence of fraud, mistake, inadvertence, surprise, or excusable neglect that would warrant vacatur of the judgment in the interests of substantial justice (see *Legal Servicing, LLC v Gomez*, 229 AD3d 785, 787; *CitiMortgage, Inc. v Maldonado*, 171 AD3d 1007, 1008-1009).

Accordingly, the Supreme Court properly denied that branch of the defendant's motion which was pursuant to CPLR 5015(a) to vacate the judgment. DILLON, J.P., CHAMBERS, VENTURA and MCCORMACK, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court