

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

PennyMac Loan Servs., LLC v. Valdez

2026 NY Slip Op 00060 (Supreme Court of the State of New York Appellate Division First Department 2026) ·
No. Index No. 36309/19; Appeal Nos. 5545-5546; Case Nos. 2025-02533, 2025-05673 · Decided January 8,
2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed a judgment of foreclosure and sale and dismissed as subsumed an appeal from an order denying Carlos Valdez's motion to vacate a default judgment or file a late answer. The court held that the plaintiff's affidavits established proper service under CPLR 308(2), and that Valdez failed to provide a reasonable excuse for his default.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; González, J.; Mendez, J.; Rodriguez, J.; Pitt-Burke, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 8, 2026
DOCKET	Index No. 36309/19; Appeal Nos. 5545-5546; Case Nos. 2025-02533, 2025-05673
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of foreclosure and sale and an order denying defendant's motion to vacate a default judgment, dismiss the complaint, or obtain leave to file a late answer.
STANDARD OF REVIEW	The Appellate Division reviewed whether defendant established improper service and a reasonable excuse for his default sufficient to vacate the default judgment.
PRECEDENTIAL VALUE	Published New York appellate opinion
PARTIES	Carlos Valdez, also known as Carlos A. Valdez v. PennyMac Loan Services, LLC

TOPICS

service of process

default judgment

foreclosure

appellate procedure

civil procedure

PRACTICE AREAS

Civil procedure

Real estate litigation

Foreclosure

QUESTIONS PRESENTED

1. Whether Valdez rebutted the affidavits of service and established that he was not properly served under CPLR 308(2).
2. Whether Valdez demonstrated a reasonable excuse for his default sufficient to vacate the default judgment.
3. Whether the appeal from the order denying vacatur was subsumed in the appeal from the judgment of foreclosure and sale.

HOLDINGS

1. The plaintiff's affidavits of service constituted prima facie evidence of proper service, and Valdez failed to rebut the showing of service at his residence.
2. Valdez failed to establish a reasonable excuse for his default because he did not rebut plaintiff's showing of proper service.
3. The appeal from the order denying Valdez's motion was dismissed as subsumed in the appeal from the judgment of foreclosure and sale.

KEY QUOTATIONS

*"The affidavits of service filed by plaintiff were prima facie evidence that defendant was properly served with the supplemental summons and amended complaint pursuant to CPLR 308(2)" ([*1])*

*"Because defendant failed to provide a reasonable excuse for his default, we need not address whether he demonstrated a meritorious defense" ([*1])*

FACTUAL BACKGROUND

PennyMac filed affidavits of service stating that Valdez was served with the supplemental summons and amended complaint pursuant to CPLR 308(2), including service at his residence and mailing of the pleadings there. Valdez argued that service at a subject property was invalid because it was an active construction site and that the person served at his residence could not have been the named individual, Andres Valdez, who was his deceased father. The court concluded that Valdez did not rebut the showing of proper service at his residence or address the mailing of the pleadings.

PROCEDURAL HISTORY

Supreme Court, Bronx County, denied Carlos Valdez's motion to vacate the default judgment and dismiss the complaint or permit a late answer. The court entered a judgment of foreclosure and sale on or about July 23,

2025. The Appellate Division unanimously affirmed the judgment and dismissed the appeal from the order as subsumed in the appeal from the judgment.

DISPOSITION

affirmed

CASES CITED

- Ocwen Loan Servicing, LLC v. Ali, 180 A.D.3d 591, 591 (1st Dep't 2020), leave dismissed, 36 N.Y.3d 1046 (2021)
- Johnson v. Deas, 32 A.D.3d 253, 254 (1st Dep't 2006)
- HSBC Bank USA, N.A. v. Gifford, 224 A.D.3d 447, 450 (1st Dep't 2024)
- Nationstar Mtge., LLC v. Kamil, 155 A.D.3d 966, 967 (2d Dep't 2017)
- PEP LLC v. Channel Creations LLC, 217 A.D.3d 591, 592 (1st Dep't 2023)
- Citibank, N.A. v. K.L.P. Sportswear, Inc., 144 A.D.3d 475, 476 (1st Dep't 2016)
- Lopez v. Mama's Fried Chicken, Inc., 202 A.D.3d 597, 598 (1st Dep't 2022)

OPINION

PER CURIAM.

PennyMac Loan Servs., LLC v Valdez (2026 NY Slip Op 00060) PennyMac Loan Servs., LLC v Valdez 2026 NY Slip Op 00060 Decided on January 08, 2026 Appellate Division, First 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 and Entered: January 08, 2026 Before: Moulton, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Index No. 36309/19|Appeal No. 5545-5546|Case No. 2025-02533 2025-05673|[*1]PennyMac Loan Services, LLC, Plaintiff-Respondent, v Carlos Valdez Also Known as Carlos A. Valdez, Defendant-Appellant, Eddie Bueno et al., Defendants.

Petroff Amshen LLP, Brooklyn (James Tierney of counsel), for appellant. Blank Rome LLP, New York (Diana M. Eng of counsel), for respondent. Judgment of foreclosure and sale, Supreme Court, Bronx County (Naita A. Semaj, J.), entered on or about July 23, 2025, unanimously affirmed. Appeal from order, same court and Justice, entered February 26, 2025, which denied defendant Carlos Valdez's motion to vacate the default judgment against him and dismiss the complaint or for leave to file a late answer, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

The affidavits of service filed by plaintiff were prima facie evidence that defendant was properly served with the supplemental summons and amended complaint pursuant to CPLR 308(2) (see Ocwen Loan Servicing, LLC v Ali, 180 AD3d 591, 591 [1st Dept 2020], lv dismissed 36 NY3d

1046 [2021]). Even if defendant sufficiently rebutted the process server's affidavit of service at the subject property by showing that it was an active construction site at the time, defendant failed to rebut the showing of proper service at his residence (see *Johnson v Deas*, 32 AD3d 253, 254 [1st Dept 2006]).

Defendant asserts that the process server could not have served someone named "Andres Valdez," the name of his deceased father, at his residence. However, defendant did not dispute that process was served at his residence or assert that no one else matching the physical description contained in the affidavit of service lived at the residence (see *HSBC Bank USA, N.A. v Gifford*, 224 AD3d 447, 450 [1st Dept 2024]; *Nationstar Mtge., LLC v Kamil*, 155 AD3d 966, 967 [2d Dept 2017]).

In addition, defendant's affidavit "failed to address, let alone dispute, that the pleadings had been mailed to [his] residence" (*PEP LLC v Channel Creations LLC*, 217 AD3d 591, 592 [1st Dept 2023] [internal quotation marks omitted]). Supreme Court correctly determined that defendant failed to proffer a reasonable excuse for the default, as he did not rebut plaintiff's showing of proper service (see *Citibank, N.A. v K.L.P.*

Sportswear, Inc., 144 AD3d 475, 476 [1st Dept 2016]). Because defendant failed to provide a reasonable excuse for his default, we need not address whether he demonstrated a meritorious defense (see *Lopez v Mama's Fried Chicken, Inc.*, 202 AD3d 597, 598 [1st Dept 2022]). THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 8, 2026

PER CURIAM.

PennyMac Loan Servs., LLC v Valdez (2026 NY Slip Op 00060) *PennyMac Loan Servs., LLC v Valdez* 2026 NY Slip Op 00060 Decided on January 08, 2026 Appellate Division, First 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 and Entered: January 08, 2026 Before: Moulton, J.P., González, Mendez, Rodriguez, Pitt-Burke, JJ. Index No. 36309/19|Appeal No. 5545-5546|Case No. 2025-02533 2025-05673|[*1]*PennyMac Loan Services, LLC, Plaintiff-Respondent, v Carlos Valdez Also Known as Carlos A. Valdez, Defendant-Appellant, Eddie Bueno et al., Defendants. Petroff Amshen LLP, Brooklyn (James Tierney of counsel), for appellant.*

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dismiss the complaint or for leave to file a late answer, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

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Sportswear, Inc., 144 AD3d 475, 476 [1st Dept 2016]). Because defendant failed to provide a reasonable excuse for his default, we need not address whether he demonstrated a meritorious defense (see *Lopez v Mama's Fried Chicken, Inc.*, 202 AD3d 597, 598 [1st Dept 2022]).THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 8, 2026