

AG

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 2nd, 11th & 13th Judicial Districts

MICHELLE WESTON, J.P.
MARTIN M. SOLOMON
DAVID ELLIOT, JJ.

MAR 26 2015
FEBRUARY 4, 2015 TERM
2013-01315 RI C

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SLOMIN'S, INC.,

Appellant,

-against-

Lower Court #
22812/08

ROBERT SERPICO,

Respondent.
-----X

The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT OF THE CITY OF NEW YORK, RICHMOND COUNTY** entered on **JUNE 19, 2013** and the said appeal having been **submitted** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondent and due deliberation having been had thereon; it is hereby,



ORDERED AND ADJUDGED that the order is reversed, without costs, and the defendant's motion to vacate the default judgment is denied.

Weston, J.P., Solomon and Elliot, JJ., concur.

GENE W. ROSEN, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
200 GARDEN CITY PLAZA, STE. 500
GARDEN CITY, NEW YORK 11530

ENTER:

ROBERT SERPICO
38 WOODDALE AVENUE
STATEN ISLAND, NEW YORK 10304


PAUL KENNY
CHIEF CLERK
APPELLATE TERM 

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd, 11th & 13th JUDICIAL DISTRICTS

-----X

PRESENT : WESTON, J.P., SOLOMON and ELLIOT, JJ.

-----X

SLOMIN'S, INC.,

Appellant,

-against-

MAR 26 2015

NO. 2013-1315 RI C

DECIDED

ROBERT SERPICO,

Respondent.

-----X

Appeal from an order of the Civil Court of the City of New York, Richmond County (Philip S. Straniere, J.), entered June 19, 2013. The order granted defendant's motion to vacate a default judgment.

ORDERED that the order is reversed, without costs, and defendant's motion to vacate the default judgment is denied.

In this action to recover the principal sum of \$2,725.57 for breach of an alarm installation and servicing agreement, plaintiff appeals from an order of the Civil Court which granted defendant's motion to vacate a default judgment.

In his affidavit submitted in support of his motion, defendant merely alleged that he had not been served properly. Defendant's conclusory denial of service was

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insufficient to rebut the prima facie proof of proper service set forth in the process server's affidavit of service (see Deutsche Bank Natl. Trust Co. v Pietranico, 102 AD3d 724 [2013]; ACT Props., LLC v Garcia, 102 AD3d 712 [2013]; LR Credit 22, LLC v Monaghan, 38 Misc 3d 129[A], 2012 NY Slip Op 52395[U] [App Term, 9th & 10th Jud Dists 2012]). Consequently, defendant failed to establish a basis to vacate the default judgment pursuant to CPLR 5015 (a) (4). Defendant likewise failed to demonstrate any other basis to vacate the default judgment. Accordingly, the order is reversed and defendant's motion to vacate the default judgment is denied.

Weston, J.P., Solomon and Elliot, JJ., concur.