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

AUG 20 2014

MICHAEL L. PESCE, P.J.
THOMAS P. ALIOTTA
DAVID ELLIOT, JJ.

MAY 21, 2014 TERM
2012-02494 K C

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PALISADES COLLECTION, L.L.C.,

Respondent,

-against-

Lower Court #
083391/05

IONNA JIMENEZ,

Appellant.
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The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT OF THE CITY OF NEW YORK, KINGS COUNTY** entered on **JULY 25, 2012** and the said appeal having been **argued** by **EVAN DENERSTEIN, ESQ.** counsel for the appellant and **argued** by **CRAIG STILLER, ESQ.** counsel for the respondent and due deliberation having been had thereon; it is hereby,

ORDERED AND ADJUDGED that the order, insofar as appealed from, is reversed, without costs, and the matter is remitted to the Civil Court for a new determination, following a traverse hearing, of the defendant's motion to vacate the default judgment.

Pesce, P.J., Aliotta and Elliot, JJ., concur.

EVAN DENERSTEIN, ESQ.
MFY LEGAL SERVICES, INC.
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NEW YORK, N.Y. 10007

ENTER:

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PAUL KENNY
CHIEF CLERK
APPELLATE TERM

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

-----X

PRESENT : PESCE, P.J., ALIOTTA and ELLIOT, JJ.

-----X

PALISADES COLLECTION, L.L.C.,

Respondent,

-against-

AUG 20 2014

NO. 2012-2494 K C

DECIDED

IONNA JIMENEZ,

Appellant.

-----X

Appeal from an order of the Civil Court of the City of New York, Kings County (Carolyn E. Wade, J.), entered July 25, 2012. The order, insofar as appealed from, upon, in effect, renewal, adhered to a prior determination denying defendant's motion to vacate a default judgment.

ORDERED that the order, insofar as appealed from, is reversed, without costs, and the matter is remitted to the Civil Court for a new determination, following a traverse hearing, of defendant's motion to vacate the default judgment.

In this action to recover for breach of a credit card agreement, defendant moved to vacate a default judgment that had been entered against her, alleging that she had never received the summons and complaint and that she had not been served properly.

RE: PALISADES COLLECTION, L.L.C. v IONNA JIMENEZ
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After her motion was denied, defendant moved for, in effect, leave to renew, alleging that she had never lived at the address at which the summons and complaint had been served. Upon granting, in effect, leave to renew, the Civil Court adhered to its prior determination.

We find that defendant's sworn allegation that she had never lived at the address where the summons and complaint had been served was sufficient to rebut the affidavit of service and warrant a traverse hearing (see Aurora Loan Servs., LLC v Gaines, 104 AD3d 885 [2013]; University of Bridgeport v Emengo, 34 Misc 3d 145[A], 2012 NY Slip Op 50153[U] [App Term, 2d, 11th & 13th Jud Dists 2012]).

Accordingly, the order, insofar as appealed from, is reversed, and the matter is remitted to the Civil Court for a new determination, following a traverse hearing, of defendant's motion to vacate the default judgment.

Pesce, P.J., Aliotta and Elliot, JJ., concur.