

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

ALISON RENEE LEE, Presiding Circuit Court Judge
FEB 04 2016
SC Court of Appeals

Case No. 2013-CP-10-04518

THOMAS CAMPBELL


Respondent,

v.

CYRUS KAMINI &
HEIDEH LARIJANI,

Appellant.

BRIEF OF APPELLANT



Cyrus Kamini
Appearing Pro-se
1 Drews Aly
Charleston, SC 29401
(843)460-7462

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STATUTES

S.C. CODE ANN Sec. 15-9-1705

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AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL

1. DID THE COURT ERRED WHEN IT ISSUED A DEFAULT JUDGMENT AGAINST APPELLANT AT TRIAL WITHOUT PROPER JURISDICTION AND DENIED APPELLANT A MOTION FOR NEW TRIAL?
2. IS THE JUDGMENT VOID WHEN THE COURT DOES NOT ESTABLISHED JURISDICTION OVER THE APPELLANT?

Statement of the Case

Respondent Thomas Campbell, filed a complaint on August 2, 2013 alleging breach of contract for a real estate matter in which Thomas Campbell was to rent an apartment from the Appellant and had paid rental fees up front for an apartment which was under construction but never completed in a timely manner due to no fault of Appellant.

Appellant was never served personally with a copy of the Summons and Complaint. Appellant was working up in Vermont at the time of the alleged service of the Summons and Complaint. The Summons and Complaint was served at Appellant mother's home.

Further, Appellant and his Mother was not on good terms in that Appellant mother is a co-defendant in the subject matter. Any information that Appellant mother had in her possession was never forwarded to Appellant.

On or about March 24, 2015 a bench trial was held in this matter and Appellant was not presence but Appellant Mother (Heideth Larijani) was presence, and an Ordered of Judgment was ordered against Appellant and his Mother co-defendant Heideth Larijani.

On or about August 12, 2015, Appellant filed a Motion for New Trial and was denied by the trial court without any hearing whatsoever. (See attached Notice)

FACT

The Respondent never served Appellant. Appellant appeared in Court to argue and to preserve its rights under the law that Appellant was never served. The trial Court erred in ruling and that the Appellant has not been given proper notice and an opportunity to be heard. No notice sufficient to satisfy due process was obtained in this matter.

ARGUMENT

1. NO PROPER SERVICE

Respondent never exercise reasonable or due diligence to effect service on Appellant. See e.g. S.C. Code Ann Secs. 15-9-710 and 730 (2005) (providing that when an individual or corporate agent, respectively, cannot be located in this Sate after the exercise of due diligence, Service may be held by publication once this fact has been established by affidavit to the satisfaction of the Court) these various requirements are substantial, not formal. They are conditions of jurisdiction over the person, in the absence of a voluntary waiver on the part of the Appellant. Failure to observe them is fatal.

Appellant filed motions and sent letters to the presiding Judge so Appellant can be heard before the Circuit Judge. Appellant requests went unanswered.

2. VOID JUDGMENT

A void judgment is one that, from its inception, is a complete nullity and is without legal effect. "Thomas & Howard Co., v. T.W. Grahman and Co., 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The definition of void under the rule only encompasses judgments from courts failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental That no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Tyron Fed. Sav. & Loan Assn'n. v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it an may assume that no court will enforce it against his person property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dept of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995). A Judgment is void if the Court rendering it does not have jurisdiction either of the asserted cause of action or of the Parties. *Moore v. Humphrey*, 247 N.C. 423, 101 S.E.2d 460; *Mills v. Richardson*, 240 N.C. 187, 81 S.E.2d 409; *Powell v. Turpin* 224 N.C. 67, 29 S.E.2d; *Dunn v. Wilson*, 210 N.C. 493, 187 S.E.

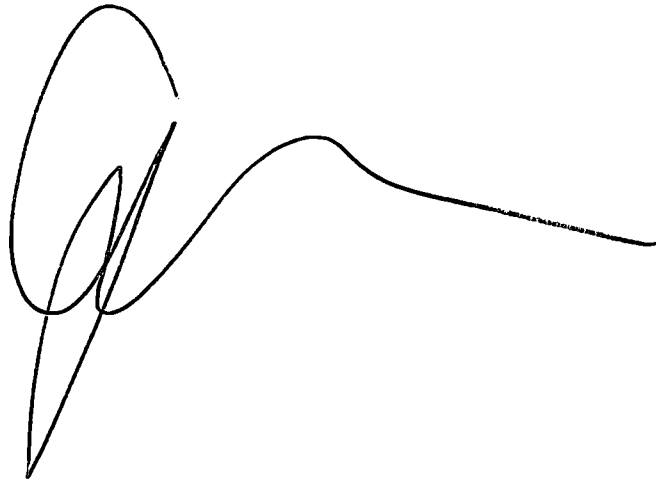
CONCLUSION

For this reason stated, this Court should reverse the Judgment of the Circuit Court. Appellant prays that this matter be sent back to the Circuit Court Calendar for New Trial and order the Circuit Court to cancel the Judgment in this matter.

January 20, 2016

Respectfully submitted

/s/ Cyrus Kamini
Cyrus Kamini
Appearing Pro-se
1 Drews Aly
Charleston, SC 29401
(843)460-7462

A handwritten signature in black ink, appearing to read 'Cyrus Kamini', with a long horizontal flourish extending to the right.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-10-04518

Thomas Campbell

2015 NOV 16 AM 11:31

Cyrus Kamini

Heideh Larijani

PLAINTIFF(S)

DEFENDANT(S)

JULIE J. ARMSTRONG
CLERK OF COURT

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Al Bruce Lee Judge Code 2118 Date 11/10/2015

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

W. Westbrook Wills, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS)
NINTH JUDICIAL CIRCUIT)

Thomas Campbell,)

Civil Action No: 2013-CP-10-04518)

Plaintiff,)

v.)

ORDER

Cyrus Kamini and Heideh Larijani,)

Defendants.)

FILED
2015 NOV 16 AM 11:32
JULIE J. ARHSTRONG
CLERK OF COURT

This matter comes before the Court on Defendant Cyrus Kamini's ("Kamini") Motion for New Trial pursuant to Rules 12(b)(2) & (5), 26(f), and 60(b), SCRC¹. This matter came before the Court on March 24, 2015, as a bench trial on Plaintiff's causes of actions for breach of contract and quantum meruit. Present at the trial were Plaintiff Campbell, appearing with counsel W. Westbrook Wills, III, Esquire, and Defendant Heideh Larijani ("Larijani") appearing pro-se. Despite notice of the hearing provided by the Clerk of Court, Kamini failed to appear at trial. Testimony was taken, evidence was received, and the entire record in the case was considered by the Court. The Court found that Plaintiff Thomas Campbell ("Campbell") and Defendants Kamini and Larijani (collectively, "Defendants") entered into a valid written residential lease agreement for the rental of an apartment, and that Defendants breached that agreement by failing to deliver possession of the apartment to Campbell on, or by, April 1, 2013, or any subsequent date agreed upon by the parties. Kamini filed this Motion for New Trial on August 12, 2015. After careful consideration of the motion made, memoranda submitted, and the record in this case, Kamini's Motion for a New Trial is **DENIED**.

Kamini argues that he is entitled to a new trial under Rules 12(b)(2) & (5) and 60(b), SCRC¹, because: 1) he was never served a copy of Campbell's Summons and Complaint, and therefore, the Court never exercised personal jurisdiction over him, rendering the judgment void;

¹ Kamini essentially argues that he was not served with the Summons and Complaint, and thus, the Court did not exercise personal jurisdiction over him. Accordingly, the Court will interpret this Motion for New Trial as one based on Rules 12(b)(2) & (5) and 60(b). Rule 26(f) concerns discovery conferences and is irrelevant in the instant action.

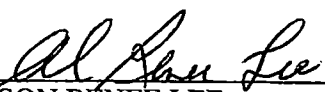
2) he never received notice of the trial date; and 3) Campbell obtained default judgment against him as a result of his failure to appear at trial and present his defenses.

Rule 4(d)(1), SCRCF, provides that proper service upon an individual other than a minor under 14 years of age or an incompetent person is made "by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein . . ." The evidence in the record, and the testimony provided at trial, establishes that on August 9, 2013, the date of service, Kamini resided with his mother, Larijani, at 24 Chalmers Street in Charleston, South Carolina. The Affidavits of Service filed on August 27, 2013, attest that service of process was lawfully perfected on Kamini by leaving a copy of the Summons and Complaint with Larijani at Kamini's known place of residence. Kamini does not dispute that he resided with Larijani at the 24 Chalmers Street residence on August 9, 2013. Accordingly, Kamini was properly served with the Summons and Complaint.

Furthermore, assuming, *arguendo*, that Kamini was not properly served, he waived his defense of lack of personal jurisdiction by appearing in court, filing motions with the Court, participating in Court-ordered mediation, and asking the Court to grant him various types of relief. A court may obtain "personal jurisdiction if the defendant makes a voluntary appearance." *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007). Kamini admits that he "voluntarily appeared" at motion hearings. Kamini's Motion for New Trial 7. Kamini, therefore, waived any defense of lack of personal jurisdiction. *Bakala v. Bakala*, 352 S.C. 612, 629, 576 S.E.2d 156, 165 (2003) ("Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised.").

For the reasons stated above, it is therefore **ORDERED** that Kamini's Motion for New Trial is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

November 10, 2015
Columbia, South Carolina

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In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

FEB 04 2016

SC Court of Appeals

ALISON RENEE LEE, Presiding Circuit Court Judge

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Appellant.

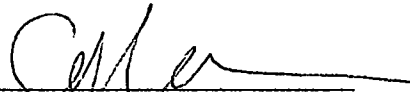
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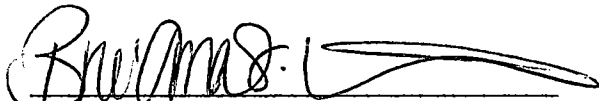
Cyrus Kamini
Appearing Pro-se
1 Drews Aly
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(843)460-7462

I, Cyrus Kamini, the above Appellant appearing Pro-se herewith served the party below a true and executed copy of Appellant's Brief at their known address below by depositing same in the U.S. Postal Service Depository postage pre paid Certified Mail Return Receipt Requested addressed to:

Served: Attorney for Respondent
W. Westbrook Wills III
PO Box 822
Folley Beach, SC 29439

Dated: January , 2016


Cyrus Kamini


Notary Public
01/24/2016

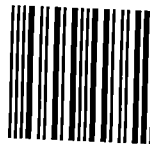


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Charleston, SC 29401

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