

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

ALISON RENEE LEE, Presiding Circuit Court Judge

Case No. 2013-CP-10-04518

THOMAS CAMPBELL, Respondent,

v.

CYRUS KAMINI & HEIDEH LARIJANI, Defendants
Of Whom CYRUS KAMINI is the Appellant.

BRIEF OF APPELLANT

Cyrus Kamini
Appearing Pro-se
1 Drews Aly
Charleston, SC 29401
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SC Court of Appeals

TABLE OF CONTENTS

Table of Authoritiesii(3)

Statement of Issues on Appeal4

Statement of the Case4

Facts5

Arguments:

1. BECAUSE APPELLANT APPEARED AT A COURT HEARING DOES NOT GIVE THE COURT JURISDICTION OVER THE PARTIES. APPELLANT FILED AND SERVED COURT DOCUMENTS TO PRESERVE ITS RIGHTS DOES NOT GIVE THE COURT JURISDICTION OVER THE SUBJECT6

3. A JUDGMENT IS VOID IF THE COURT RENDERING IT DOES NOT HAVE JURISDICTION EITHER OF THE ASSERTED CAUSE OF ACTION OR OF THE PARTIES.....6

Conclusion9

CASES

Moore v. Humphrey, 247 N.C. 423, 101 S.E.2d 4606

Mills v. Richardson, 240 N.C. 187, 81 S.E.2d 4096

Powell v. Turpin, 224 N.C. 67, 29 S.E.2d6

Thomas & Howard Co., v. T.W. Grahman and Co., 318 S.C. 286, 291, 457
S.E.2d 340, 343 (1995).6

McDaniel v. U.S. Fid. & Guar. Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871
(Ct. App. 1996).....6

Tyron Fed. Sav. & Loan Assn'n. v. Phelps, 307 S.C. 361, 362, 415 S.E.2d
397, 398 (1992).....6

Grannis v. Ordean, 234 U.S. 385, 394 (1914).....6

S.C. Dept of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849
(1995).6

STATUTES

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

S.C. CODE ANN Sec. 15-9-730 (2005)5

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 present but Appellant Mother (Heideth Larijani) was present, and an Order 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.

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 State 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 and 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
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AFFIDAVIT OF SERVICE

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I, Cyrus Kamini, the above Appellant appearing Pro-se herewith served the party below a true and executed copy of Appellant's Designation of Matter to be included in the Record On Appeal and a corrected copy of Appellant's Brief on November 29, 2016 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:

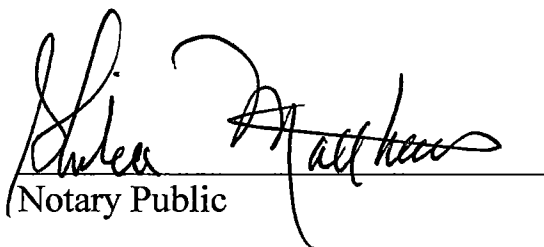
Served: November 29, 2016

Attorney for Respondent
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7015 1730 0002 1617 3477

Dated: November 29, 2016


Cyrus Kamini


Notary Public

SHELIA MATTHEWS
Notary Public, State of South Carolina
My Commission Expires 3/24/2018

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