

HE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAR 01 2016

**SC Court of Appeals**

ALISON RENEE LEE, Presiding Circuit Court Judge

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Case No. 2013-CP-10-04518

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THOMAS CAMPBELL, Respondent,

v.

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

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DESIGNATION OF MATTER TO BE INCLUDED  
IN THE RECORD ON APPEAL

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

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Appellant proposes the following be included in the Record on Appeal:

1. Order of November 16, 2016

I certify that this designation contains no matter which is irrelevant to this appeal.

November 27, 2016

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Cyrus Kamini  
Appearing Pro-se  
Appellant  
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Folley Beach, SC 29439  
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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. HARRIS-STRONG  
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), SCRPC.<sup>1</sup> 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), SCRPC, 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;

<sup>1</sup> 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.

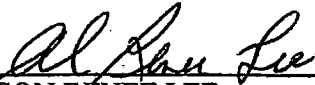
2) he never received notice of the trial date; and 3) Campbell obtained default judgment against him as a result of his failure to appear at trial and present his defenses.

Rule 4(d)(1), SCRCP, 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