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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. ARISTRONG
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.¹ 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;

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), 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

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PROCEEDINGS

THE COURT: Good morning everyone. Be seated please. This is docket number 2013-CP-10-04518 Thomas R. Campbell versus Cyrus Kamini and Heideh Larijani. The plaintiff is represented by Westbrook Wills is that correct?

MR. WILLS: Yes, Your Honor, correct.

THE COURT: And Ms. Larijani you are representing yourself is that correct?

MS. LARIJANI: Yes, ma'am.

THE COURT: Okay. And Cyrus Kamini is not present?

MS. LARIJANI: No.

THE COURT: Do you know whether he intends to appear?

MS. LARIJANI: When he is going to appear?

THE COURT: Do you know if he plans to come?

MS. LARIJANI: I have no idea.

THE COURT: All right. We're here on an action that has brought relating to a lease that was entered into back in 2013 I believe. And Ms. Larijani I understand that you're not represented by an attorney is that correct?

MS. LARIJANI: Yes.

THE COURT: We're here for a non jury trial. And

1 what will happen is that Mr. Wills will have the
2 opportunity to present his case on behalf of his client
3 Mr. Campbell. And then if there are any witnesses called
4 they will give testimony from the witness stand. You'll
5 have the opportunity to ask those witnesses questions
6 about that testimony and then when he's completed then
7 you will have the opportunity to be able to present any
8 evidence that you would like to present including your
9 testimony. Do you have any questions at this particular
10 point? I can't give you legal advice but I can try to
11 answer your questions.

12 MS. LARIJANI: I truly believe that Cyrus Kamini
13 should be here.

14 THE COURT: And he's -- I don't know whether they
15 have tried to contact him and have not been successful in
16 contacting him and so the only thing we can do is make
17 contact at the numbers that we've had for him and I
18 believe the Clerk's Office has done that. I think they
19 tried calling numbers and they may have left messages.
20 And so it's been noticed for today and while he has filed
21 some documents with the court we have no other way of
22 contacting him than by the numbers that he has left with
23 us which I believe the Clerk's Office has done.

24 MS. LARIJANI: When I spoke to Mr. Edwards Mr.
25 Edwards said that he was -- the court was going to order

1 that he be completely involved in this.

2 THE COURT: I'm not aware of that other than what
3 I've seen in the file. He has never answered the lawsuit
4 although he has filed some documents. The last document
5 that is in the file that he filed was on March the 12th
6 and he left an address. He didn't leave -- he did leave
7 a telephone number I believe and I believe he has been
8 contacted at that number is that correct to your
9 knowledge Ms. Morris?

10 CLERK OF COURT: Yes, ma'am.

11 THE COURT: And I believe I was informed that
12 messages were left yesterday at that number.

13 CLERK OF COURT: Yes, ma'am.

14 THE COURT: And currently Mr. Edwards no longer
15 represents Mr. Campbell. Mr. Wills now represents Mr.
16 Campbell and has represented him for some time. I think
17 there was an order in January in which Mr. Edwards was no
18 longer representing. He was relieved from representing
19 Mr. Campbell and Mr. Wills took over. Is there anything
20 else we need to take up before we get started?

21 MR. WILLS: Your Honor, I've got a few motions
22 before we start.

23 THE COURT: Yes, sir. I'll be happy to hear those
24 at this time.

25 MR. WILLS: Thank you, Your Honor.

1 MOTION FOR DEFAULT JUDGMENT

2 MR. WILLS: My first motion would be for entry of
3 default judgment against Cyrus Kamini. The grounds being
4 that he has appeared in this case, he was served properly
5 with Summons and Complaint and failed to file an answer
6 or otherwise respond to the allegations of the complaint.
7 Those allegations are deemed admitted and he has not
8 appeared to defend in this case or otherwise ask the
9 court to give the court any reason at all why he hasn't
10 -- why he has failed to defend in this case or file
11 responsive pleadings.

12 So we would move to enter default judgment against
13 Cyrus Kamini in an amount that is going to be shown here
14 at trial, but specifically for the amount of -- well,
15 we'll get into the damages here shortly. But those
16 damages will include 1,500 dollars that Mr. Campbell has
17 paid as a security deposit.

18 This is a little premature because we have to
19 develop this but Mr. Campbell has paid a 1,500 dollar
20 security deposit and then he paid 12,000 dollars in
21 prepaid rent in advance on the lease that he alleges was
22 breached. And under the Landlord Tenant Act he is asking
23 that those -- Landlord Tenant Act at section 27-40-410(b)
24 as a statutory recovery and remedy for this type of a
25 breach. Mr. Campbell is going to be entitled to three

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1 times his damages plus his attorney's fees for personal
2 property that he has had that was not returned and for
3 the money that he paid that has not been returned since
4 the breach of the lease agreement. We will if necessary
5 be giving testimony as to the value of the personal
6 property as well as the attorney's fees.

7 THE COURT: Was there a written lease?

8 MR. WILLS: Yes, Your Honor, there is a written
9 lease. By way ---

10 THE COURT: --- I'm sorry. And did both defendants
11 sign that lease?

12 MR. WILLS: Cyrus Kamini signed the lease. He
13 signed it as a representative of the two landlords --
14 Cyrus Kamini and Ms. Larijani are mother and son. They
15 live together at a property and they rented places in
16 that residence that they renovated out into apartments
17 and rented those spaces out to individuals.

18 THE COURT: So they both are considered to be the
19 landlords or?

20 MR. WILLS: That's our position, Your Honor, that
21 they are both defendants in this. The deal was with both
22 of them. The money was paid through a written --
23 according to the terms of a written lease. The money was
24 paid to Ms. Larijani and she cashed -- and these are
25 facts that are not only uncontroverted but these are

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1 admitted in the pleadings. But they were paid the money
2 and they had the money. And the facts, the operative
3 facts here that apply to the law are very, very simple.
4 There was a written lease agreement. Under that written
5 lease agreement Mr. Campbell was to pay in advance a
6 security deposit of 1,500 dollars and he was to pay
7 12,000 dollars in advance for prepaid rent.

8 He did pay those. He had a move in date, a delivery
9 date that was written in the lease for April 1st of 2013
10 and the defendants were not able to deliver the apartment
11 by that date. Several weeks after when they were still
12 not able to deliver the apartment, which they were never
13 able to deliver the apartment because they were
14 completing renovations on it and it was never ready. And
15 we think to this day it's still not occupiable.

16 Mr. Campbell was in a position where he had to give
17 notice that he could no longer remain in his lease. He
18 had to take care of other obligations. He made a demand
19 for his money back and thereafter the defendants just
20 refused to ever pay his money back or deliver some
21 personal items that Mr. Campbell had delivered to the
22 apartment in anticipation of moving in, which they are
23 still in possession of. They've never given any reason
24 why they haven't paid it back. The pleadings -- well,
25 as to Mr. Kamini, Cyrus Kamini he has filed no pleadings

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1 so he has admitted to the facts of the complaint. And
2 that's our first motion. We have a second motion with
3 regard to Ms. Larijani.

4 THE COURT: As it relates to Mr. Kamini it appears
5 that while he has filed documents challenging service the
6 affidavit of service indicates that a copy of the Summons
7 and Complaint were served on Mr. Kamini by delivering a
8 copy to Ms. Larijani who is the mother of Mr. Kamini and
9 that it was delivered at 24 Chalmers Street in Charleston
10 on August the 8th of 2013.

11 And at the same time that's when Ms. Larijani was
12 also served with the Summons and Complaint. There was --
13 she filed an answer, which I gather will be the subject
14 of your second motion, she filed an answer with the court
15 in September -- I'm sorry; on September the 3rd was filed
16 in the Clerk's Office and I take it as while she did
17 discuss some of the facts I think she also basically
18 denied the allegations.

19 She indicated that she was requesting some notice
20 because her son at the time was in Vermont. Upon his
21 return he has never filed any type of answer. He did
22 file a motion to continue and a Rule to Show Cause and in
23 both of those documents I believe he challenged service.
24 But it appears that service was proper so I don't have a
25 problem with the default. I do have -- and I understand

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1 that by issuing a default that basically he's admitting
2 the allegations of the Complaint. And I understand the
3 Complaint refers to them jointly as being the landlords
4 which is why I asked the question. So I am interested --
5 there is not a copy of the lease attached to the
6 Complaint so I would be bound by the terms of the lease
7 and so whenever those documents are presented to the
8 court then I will take that into consideration and rule
9 on any damages that may be appropriate. And your second
10 motion?

11 MR. WILLS: Thank you, Your Honor.

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