

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

Diane Schafer Goodstein, Circuit Court Judge

JAN 10 2019

Appellate Case No. 2018-001090
Trial Court Case No. 2017-CP-10-3324

SC Court of Appeals

Rosa Maritza Galban Aranda, Respondent,

v.

Rigoberto Ortega, Appellant.

FINAL BRIEF OF APPELLANT

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STATUTES

None

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STATEMENT OF ISSUES ON APPEAL

1. ARE THE SECOND COMPLAINT, AND THE ORDER OF DEFAULT ARISING FROM IT, BARRED BY RES JUDICATA?
2. DID THE TRIAL COURT ERR WHEN IT DENIED APPELLANT'S MOTION FOR RELIEF FROM JUDGMENT?

STATEMENT OF THE CASE

On January 27, 2017, Respondent filed a Complaint bearing Civil Action No.: 2017-CP-10-0432 ("the First Complaint"). (R. pp. 9-11). On June 5, 2017, an *Order of Default* (R. p. 7) was entered as to the First Complaint. (R. pp. 9-11). On August 14, 2017, Respondent filed a *Notice of Voluntary Dismissal with Prejudice* (R. p. 16), also pertaining to the First Complaint. (R. pp. 9-11).

Meanwhile, Respondent filed a second Complaint bearing Civil Action No.: 2017-CP-10-3324 ("the Second Complaint") (R. pp. 12-15), alleging the same causes of action between the same parties as contained in the First Complaint. (R. pp. 9-11).

On September 15, 2017, an *Order of Default* (R. p. 8) was entered as to the Second Complaint. (R. pp. 12-15). On November 14, 2017, a *Notice of Appearance* was entered on behalf of Appellant (R. pp. 17-18), as well as a Motion for Relief from Judgment in accordance with S.C.R.Civ.P. 60(b). (R. pp. 19-20). On March 21, 2018, Appellant filed its *Memorandum in Support of its Motion for Relief from Judgment* in accordance with S.C.R.Civ.P. 60(b). (R. pp. 23-34).

On March 21, 2018, Appellant's motions were heard. On April 27, 2018 the trial court denied Appellant's request to relieve it from judgment. (R. pp. 2-6).

ARGUMENTS

I. RES JUDICATA BARS THE SECOND COMPLAINT AND THE ORDER OF DEFAULT ARISING FROM IT.

Res judicata precludes a party from re-litigating issues actually litigated and those which might have been litigated in the first action. Town of Sullivan's Island v. Felger, 318 S.C. 340, 457 S.E.2d 626 (Ct. App. 1995). For the doctrine of *res judicata* to apply, the following elements must be shown: (1) the identities of the parties are the same as in the prior litigation; (2) the subject matter is the same as in the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. Garris v. Governing Bd. of S.C. Reinsurance Facility, 333 S.C. 432, 511 S.E.2d 48 (1998).

In both complaints, the parties are the same. In both complaints, the subject matter is the same in that it concerns alleged injuries sustained from a fall. Respondent's claims were adjudicated in the Charleston County Court of Common Pleas when the *Notice of Voluntary Dismissal with Prejudice* (R. p. 16), pertaining to the First Complaint (R. pp. 9-11), was filed. As a result, both the Second Complaint (R. pp. 12-15) and the *Order of Default* (R. p. 8) arising from it are barred.

II. THE TRIAL COURT ERRED WHEN IT DENIED PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT.

On motion, the court may relieve a party from a final judgment, order or proceeding for mistake, inadvertence, surprise or excusable neglect *or if the judgment is void* (emphasis added). S.C.R.Civ.P. 60(b). Relief from a final judgment must be had through Rule 60, which is the mechanism for relief from a judgment or order. Thompson v. Ballentine, 298 S.C. 289, 379 S.E.2d 896, 898 (1989). The motion shall be made within a reasonable time not more than one year after the judgment, order or proceeding

was entered or taken. *Id.* A void judgment is one that, from its inception, is a complete nullity and is without legal effect. Belle Hall Plantation Homeowner's Assn., Inc. v. Murray, 419 S.C. 605, 799 S.E.2d 310, 316 (2010). The definition of "void" under the rule only encompasses judgments which failed to provide proper due process or which lacked subject matter jurisdiction. *Id.* An action may be dismissed with prejudice and without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer. S.C.R.Civ.P. 41(a)(1). "[D]ismissal with prejudice indicates an adjudication on the merits and *precludes subsequent litigation* to the same extent as if the action had been tried to final adjudication (emphasis added). Where an action has been dismissed with prejudice, the judgment operates in subsequent litigation to the same extent as if the action had been tried to a final adjudication." Jones v. City of Folly Beach, 326 S.C. 360, 483 S.E.2d 770, 773 (Ct. App. 1997).

On November 14, 2017, Appellant filed its Motion for Relief from Judgment. (R. pp. 19-20). This occurred only two months after the *Order of Default* (R. p. 8) was entered, which is within one year as required.

Respondent's August 8, 2017 *Notice of Voluntary Dismissal with Prejudice* (R. p. 16) of the First Complaint (R. pp. 9-11) voids the Second Complaint (R. pp. 12-15), as well as the *Order of Default* (R. p. 8)-- a final judgment-- arising from it. Both complaints contain the same, exact, parties and claims. Because Respondent's claims were finally adjudicated by dismissal with prejudice, the *Order of Default* (R. p. 8) is jurisdictionally defective and void, because it was considered by the trial court and issued *after* the final adjudication of Respondent's claims.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the trial court to relieve Appellant from judgment, declare the *Order of Default* void, and remand to the trial court for dismissal with prejudice of the Second Complaint as well as the *Order of Default* arising from it.

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December 26, 2018
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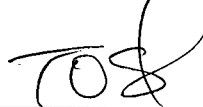
v.

Rigoberto Ortega, Appellant.

CERTIFICATE OF COUNSEL

I certify that this Final Brief complies with Rule 211(b), SCACR.

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