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IN THE JUSTICE COURTS OF THE STATE OF ARIZONA
IN AND FOR THE PRECINCT OF LAKE PLEASANT , COUNTY OF MARICAPA

9 Kent C. Harding)
10)
11 Plaintiff,)
12 vs.)
13 John W. Stone)
14 Shirley D. Stone)
15 Defendants)

Case No. CV05-03485fd

**DEFENDANTS’ REPLY TO PLAINTIFF’S
RESPONSE TO DEFENDANTS’
MOTION TO VACATE ORDER**

15 The defendants hereby reply to the plaintiffs’ response to the defendants’ Motion to Vacate the
16 writ of restitution dated September 7, 2005.

17 **“Court must prove on the record, all jurisdiction facts related to the jurisdiction**
18 **asserted.” Latana v. Hopper, 102 F.2d 188; Chicagoo v. New York 37 F.Supp. 150.**

19 The question to this Court does not involve the actions taken by either party after the Writ of
20 Restitution was issued on September 7, 2005. The defendants object to the plaintiff’s responsive
21 pleading in that the plaintiff is attempting to influence this Court that it has jurisdiction in those issues
22 and discretion to look beyond the void judgment/order that was vacated and used to procure the Writ of
23 Restitution.

1 In responding to the plaintiff's statement that this action is not timely the defendant objects to
2 that frivolous defense pursuant to well grounded laws, statutes, case law and Arizona Rules of Civil
3 Procedure, Rule 60(c)(4).

4 **Since a void order has no legal force or effect there can be no time limit within**
5 **which to challenge the order or judgment. Further, since the order has no legal**
6 **force or effect, it can be repeatedly challenged, since no judge has the lawful**
7 **authority to make a void order valid. Bates v. Board of Education, Allendale**
8 **Community Consolidated School District No. 17, 136 Ill.2d 260, 267 (1990) (a court**
9 **"cannot confer jurisdiction where none existed and cannot make a void proceeding**
10 **valid." People ex rel. Gowdy v. Baltimore & Ohio R.R. Co., 385 Ill. 86, 92, 52,**
11 **N.E.2d 255 (1943)**

12 **Any motion for relief from a void judgment is timely regardless of when it is filed.**
13 **V.T.A., Inc. v. Airco, Inc., supra @ 221; Venable v. Haislip, 721 F.2d 297, 298 (1983).**

14 **If a judgment is void, it is a nullity from the outset and any Civ. R. 60(c)(4) motion is**
15 **therefore filed within a reasonable time. Orner v. Shalala, 30 F.3d 1307, 1308 (1994).**

16 As set-forth in the defendants' Motion to Vacate the defendants carefully and respectfully pointed
17 out to this Court the void judgment that was vacated by this Court on August 11, 2005 and was then
18 used on September 7, 2005 in this Court to procure a Writ of Restitution. **See Exhibit C, September 7,**
19 **2005 Writ of Restitution.**

20 With all due respect to this Court, as a matter of law, a void order cannot be validated, and in this
21 particular case that void judgment/order was not only void but it was vacated by this Court.

22 On August 11, 2005 this Court's Judge Lex Anderson granted the defendants' relief and
23 executed a judgment/order vacating his own August 10, 2005 Forcible Detainer Judgment/Order that
24 was found in favor of the plaintiff. **See exhibit A, vacated judgment/order.**

25 The August 11, 2005 judgment/order sets-forth the facts that the defendants had personally
served notice on this Court's record, Judge Anderson, and the plaintiff in the form of the defendants'
bankruptcy petition on or before August 3, 2005, and that no proceedings took place in this action until
August 4, 2005, which left the Court with No Jurisdiction in this action and Jurisdiction Wanting. **See**
Exhibit A, vacated judgment/order and Exhibit D, Bankruptcy Petition.

1 On August 10, 2005, Judge Lex Anderson did not properly examine the file, where he would
2 have seen the defendants' bankruptcy petition and the fact that he had no jurisdiction, prior to executing
3 the forcible detainer judgment/order in favor of the plaintiff and against the defendant. On August 11,
4 2005 the defendants made a personal Motion to Vacate that judgment/order and was granted. See
5 exhibit E, void judgment/order of August 10, 2005.

6 On September 6, 2005, bankruptcy Judge James Marlar executed a judgment/order commanding
7 the plaintiff to follow Arizona State Forcible Detainer and Constitutional Laws to take possession of his
8 rental home only. See exhibit B, Bankruptcy lift stay order.

9 First of all hard and unimpeachable evidence of the plaintiff's guilt is the fact that since the
10 bankruptcy stay was not lifted until September 6, 2005 it is absolutely impossible for the plaintiff or any
11 human being to procure the relief that under lawful statutory conditions takes days to satisfy.

12 **Ariz.App. Div. 2 2000. If defendant is not properly served with process, any**
13 **resulting judgment is void and must be vacated upon request. *Hilgeman v.***
***American Mortg. Securities, Inc.*, 994 P.2d 1030, 196 Ariz. 215.**

14 On September 7, 2005, less than 24 hours from procuring a lift the stay order to follow Arizona
15 State Statutes and laws in recovering the rental property, during the hearing in this Court the plaintiff
16 Intentionally Neglected to inform this Court that it was executing a Writ of Restitution on a
17 judgment/order that the Court itself had vacated on August 11, 2005.

18 **“Courts are constituted by authority and they cannot go beyond that power**
19 **delegated to them. If they act beyond that authority, and certainly in contravention**
20 **of it, their judgments and orders are regarded as nullities; they are not voidable, but**
simply void, and this even prior to reversal.” Williamson v. Berry, 8 How. 945, 540
12 L. Ed. 1170, 1189 (1850).

21 On September 7, 2005, the plaintiff did not notice the defendants about the hearing to procure the
22 Writ of Restitution in part because he was violating the August 11, 2005 vacated judgment/order by
23 presenting to the Court as being valid the vacated void judgment/order to fraud the Court and procure
24 the Writ of Restitution.
25

1 **Order of Honorable Margaret H. Downie and case law from Superior Court of**
2 **Arizona Maricopa County, Lower Court Reversed/Remanded, Case No.:LC2005-**
3 **000906-001 DT: If a defendant is not properly served with process, any resulting**
4 **judgment is void and must be vacated upon request. Hilgeman v. American**
5 **Mortgage Securities, Inc. 196 Ariz. 215, 994 P.2d 1030 (App. 2000).**

6 The plaintiff did not appeal Judge Lex Anderson's August 11, 2005 judgment/order.

7 The plaintiff admits on the record and on page 1 lines 16 through 18 of his response that
8 "Judgment in this action has long been final and Defendants' opportunity to appeal the judgment expired
9 five days after the entry of judgment in special detainer, which occurred on August 11, 2005."

10 However, as the record clearly evinces the August 11, 2005 judgment/order granted relief to the
11 defendants not the plaintiff and the plaintiff failed to appeal that order.

12 The plaintiff misrepresents the record in this case because as a matter of fact their was NO
13 hearing held on August 11, 2005 and the only proceeding held on August 11, 2005 was the judicial
14 action whereby Judge Anderson vacated his own judgment/order issued on August 10, 2005 that was
15 procured by and ruled in favor of the plaintiff.

16 For the record, the plaintiff reveals once again that he was aware that he was forbidden to violate
17 this Court's and Judge Anderson's August 11, 2005 judgment/order.

18 The plaintiff admits that he did in fact set out to and accomplished violating this Court's August
19 11, 2005 judgment/order when he tricked the Court into rendering a Writ of Restitution on its own
20 vacated judgment/order, which completely invalidates and voids the entire transaction.

21 **If voidness of judgment is found then relief from judgment is not discretionary and**
22 **any order based upon that judgment is also void. V.T.A., Inc. v. Airco, Inc., supra @**
23 **221; Venable v. Haislip, 721 F.2d 297, 298 (1983).**

24 The record in this action clearly reflects the facts that Judge Lex Anderson found VOIDNESS
25 OF HIS OWN JUDGMENT of August 10, 2005, (see exhibit E forcible detainer judgment/order),
because on August 11, 2005, he vacated that transaction, (see exhibit A order vacating), thus as a
matter of law, the subsequent order(s) to the August 11, 2005 judgment/order vacating the transaction,
as stated in the case law above, are also VOID, including the September 7, 2005 Writ of Restitution.

1 The law is elementary in that a Motion to Vacate a Judgment/Order is either void or valid and a
2 Court must vacate a void order when requested.

3
4 **Ariz.App. Div. 1 2004. The court must vacate a void judgment, even in the case of**
5 **unreasonable delay by the party seeking relief from the judgment. 16 A.R.S. Rules**
6 **Civ.Proc., Rule 60(c)(4), *Master Financial, Inc., v. Woodburn*, 90 P.3d 1236, 208 Ariz.**
7 **70, as amended.**

8 Judge Anderson had NO Jurisdiction to issue the Writ of Restitution of September 7, 2005, for
9 the reasons herein and because the Court vacated its own forcible detainer judgment/order dated August
10 10, 2005 on August 11, 2005; and the September 7, 2005 Writ of Restitution was a subsequent order to
11 the August 11, 2005 judgment/order vacating the August 10, 2005 transaction, resulting from the August
12 4, 2005 invalid hearing.

13 While the plaintiff did procure a lift the stay order from bankruptcy court judge James Marlar on
14 September 6, 2005, that order did not give the court or Judge Anderson jurisdiction because the plaintiff
15 failed to follow Arizona State Law and due process procedures in procuring the relief he sought by
16 initiating a new complaint and subsequent service of process. (**see exhibit B, bankruptcy lift stay**
17 **order**).

18 On the face of the September 7, 2005 writ, it clearly states, “On 8/4/2005, Plaintiff obtained
19 Judgment against the Defendant(s) for restitution of the following premises.” However, as the record in
20 this case reflects as with the plaintiff’s response to this motion, that on August 11, 2005, Judge
21 Anderson vacated the judgment order rendered as the result of the hearing held on August 4, 2005 and
22 stated that the defendants’ “Notice of the bankruptcy petition was filed with his Court on August 3,
23 2005.” **See Exhibit C, September 7, 2005 Writ.**

24 The plaintiff goes on to state on lines 20 and 21 of his response that “Defendants were provided
25 with notice of the August 11 court date and were properly served with the complaint and summons.”

This is another misrepresentation by the plaintiff, in that there was NO known August 11th Court
date for the defendants to appear and the Notice, Complaint and Summons were never served upon the

1 defendants for that proceeding, if there was a proceeding, or for the September 7, 2005 hearing where
2 Judge Anderson issued the Writ of Restitution.

3 The plaintiff also states on page 2 lines 8 and 9 of his response that “Oral argument is
4 unnecessary on this matter; the Writ of Restitution was issued pursuant to a lawful judgment that
5 became final two years previously.”

6 This is another blatant misrepresentation by the plaintiff. The Writ of Restitution was issued less
7 than 1-month on September 7, 2005 and was not issued on a lawful judgment because Judge Anderson’s
8 August 11, 2005 final judgment/order vacated his August 10, 2005 forcible detainer judgment order,
9 making any subsequent order based on the August 10, 2005 ruling void without effect..

10 **Ariz.App. Div. 1 1994.** If judgment or order is void, trial court has no discretion but to
11 vacate. **16 A.R.S. Rules Civ.Proc., Rule 60(c)(4), *Martin v. Martin*, 893 P.2d 11, 182**
12 **Ariz. 11, review denied.**

13 The major issue here is that the plaintiff makes it perfectly clear in his response and the record
14 that he intentionally, violated the law and Judge Lex Anderson’s August 11, 2005 judgment/order
15 vacating as void his August 10, 2005 judgment/order. He misrepresents the vacated order as being valid
16 when he procured Judge Anderson’s Writ of Restitution at the September 7, 2005 hearing.

17 Whether or not Judge Anderson knew that he was executing the September 7, 2005 Writ of
18 Restitution based on his own August 11, 2005 judgment/order vacating his August 10, 2005 forcible
19 detainer judgment/order, he should have known, the record was in the file. Nevertheless, Judge
20 Anderson’s judicial incompetence does not give the plaintiff and or his attorneys a right to commit fraud
21 on the court.

22 As to the plaintiff’s suggestion

23 of not conducting a hearing for this matter, the defendants understand why the plaintiff does not
24 want a hearing on this matter. His consciousness of guilt is obvious considering his violations of well-
25 grounded laws, statutes, rules and procedures, as well as the many misrepresentations to the courts that
continue to injure the defendants.

1 The defendants request for a hearing stands and is necessary in the interest of justice and to
2 prevent the furtherance of a miscarriage of justice.

3 **Where Rule 60(c)(4) is properly invoked on the basis that the underlying judgment**
4 **is void, “relief is not a discretionary matter; it is mandatory.” Orner v. Shalala, 30**
5 **F.3d 1307, 1310 (10th Cir. 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220,**
6 **224 n.8 (10th Cir. 1979).**

7 **WHEREFORE**, for the foregoing reasons and pursuant to Rule 60(c)(4), the defendants ask this
8 court to vacate the order for the “Writ of Restitution” dated September 7, 2005, that was based on the
9 August 10, 2005 judgment order rendered as the result of the invalid hearing held on August 4, 2005 in
10 contravention of the bankruptcy automatic stay, and subsequently vacated by Judge Anderson on August
11 11, 2005. Or in the alternative and in the interest of justice do justice.

12 Respectfully submitted this 10th day of September 2007.

13
14 By: _____ and _____
15 John W. Stone Shirley D. Stone

16
17 Copies of the original foregoing filed and mailed this 10th day of September 2007 with:

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