

John W. Stone
Shirley Stone
Petitioners, pro Se
Real Parties in Interest

IN THE ARIZONA SUPERIOR COURT
MARICOPA COUNTY

| | | |
|--|---|--|
| John W. Stone and Shirley D. Stone, |) | |
| Husband and wife, |) | NO: |
| |) | |
| Petitioners |) | |
| |) | |
| vs. |) | |
| |) | |
| Justice of the Peace Pro Tem Judge David |) | Maricopa County Manistee Justice Court |
| Fletcher, in and for Maricopa County |) | Case No. CC2007176431 |
| Manistee Justice Court and Kent C. |) | |
| Harding, real party in interest, |) | |
| |) | |
| Respondents |) | |
| _____ |) | |

PETITION FOR SPECIAL ACTION

Submitted and Filed: September 12, 2008

TABLE OF CONTENTS

| | Page |
|---------------------------------|-----------------|
| Table of Authorities | 3 |
| Jurisdictional Statement | 6 |
| Statement of Issues | 11 |
| Standard of Review | 12 |
| Statement of Facts | 13 |
| Argument | 17 |
| Conclusion | 25 |
| Certificate of Compliance | 27 |
| Certificate of Service | 29 |
| Appendix | separate binder |

TABLE OF AUTHORITES

| CASES | PAGE |
|--|-------|
| <u>ARIZONA CASES:</u> | |
| Supreme Court of Arizona, In re, Arizona Supreme Court, James M. Smith, No. CV-0153-CQ. | 7 |
| King v. Superior Court (1983) 138 Ariz. 147, 673 P.2d 787 | 10 |
| Ariz. Dep’t of Econ. Sec. v. Holland, 120 Ariz. 371, 373, 586 P.2d 216, 217 (App. 1978). | 8 |
| In re Silver v. Rose, 135 Ariz. 339 (App.) | 9 |
| <u>OTHER JURISDICTIONS:</u> | |
| Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir. 1994) (quoting V.T.A., Inc. v. Airco, Inc., 597 F.2d 220, 224 n.8 (10th Cir. 1979). | 7, 22 |
| Wells v. State, 495 So. 2d 1221, 1222 (Fla. 1 st DCA 1986) | 8, 20 |
| In re Schwartz, 954 F.2d 569 F.2d 569, 572 (9 th Cir. 1992) | 8, 17 |
| Bates v. Board of Education, Allendale Community Consolidated School District No. 17, 136 Ill.2d 260 267 (1990) | 8, 24 |
| People ex rel. Gowdy v. Baltimore & Ohio R.R. Co. 385 Ill. 86, 92, 52 N.E.2d 255 (1943) | 8, 24 |
| Package Express Ctr. V. Motley, 717 So.2d 378, 379 (Ala.Civ. App. 1998) | 9, 24 |
| Burt & Carlquist Co. v. Marks et. al, 53 Utah 77, 177 P. 224, 4 C.J.S., Appeal and Error, § 41, page 21, at page 123 | 6, 21 |
| Citizens Bank of Maryland v. Strunf, 516 U.S. 16, 21, 116 S.Ct. 286, 290, 133 L.Ed.2d 258 (1995) | 17 |

| Cases | Page |
|--|-------------|
| Securities and Exchange Commission v. American Capital Investments, Inc., U.S. 9 th Circuit of Appeals, 98 F.3d 1133, No. 95-55193. | 18, 19 |
| In re Randall Enterprises, Inc., Bkrcty.D.Colo.1990, 115 B.R. 292. | 18 |
| Refractories Co., Inc. v. Forth Eight Insulations, Inc. F.3d 169 (2d Cir. 1998) | 19 |
| In re Eden Associates, 13 B.R. 578 (S.D.N.Y. 1981) | 19 |
| Dep't of Transp. v. Bailey, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992) . . . | 20 |
| People v. Green, 71 Cal. 100 [16 Pac. 197, 5 Am. St, Rep. 448] | 21 |
| Coates v. Klette, Cal.App. 119 P,2d, 397, 399, 400 | 21 |
| Nielson v. Patterson, 65 P.3d 911, 914 (AZ 2003) | 23 |
| In re Hollensbee's Estate, 67 So.2d 275, 276 (Ms. 1953) | 23 |
| Young v. Progressive Cas. Ins. Co., 671 A.2d 515, 518 (Md. 1996) | 23 |
| Bates v. Board of Education, Allendale Community Consolidated School District No. 17, 136 Ill.2d 260 267 (1990) | 24 |

STATUTES AND RULES:

| | |
|---|-------|
| 11 U.S.C. § 362(a) | 6, 17 |
| Arizona Rule of Civil Procedure 60(c) | 22 |

OTHER AUTHORITIES:

49 C.J.S. § 13 7

A.R.S. Const. Art. 6 § 4 and 5 6, 10

49 C.J.S. Judgments § 357. 9

4 C.J.S., Appeal and Error, § 41. 9

30A Am Jur Judgments §§ 44, 45 24

JURISDICTIONAL STATEMENT

Petitioners John Stone and Shirley Stone hereby petition this Court to accept jurisdiction of this petition pursuant to A.R.S. § 12-2001, Arizona Constitution, Article VI, section 18, and Rule 4, Arizona Rules of Procedure for Special Actions, to reverse, vacate, or set aside respondent Pro Tem Justice of the Peace David Fletcher's August 13, 2008 orders, for lack of jurisdiction and authority of law.

Respondent Pro Tem Justice David Fletcher lacked jurisdiction and authority of law, to reconsider and reverse the June 20, 2008 forcible detainer post-judgment order, which vacated the August 10, 2005 judgment of restitution for lack of jurisdiction because of the bankruptcy automatic stay. (*Exhibit A*)

The petitioners come to this court because they have no other adequate means, such as a direct appeal for which the issue can be corrected because as a matter of law, the August 13, 2008 order is void for lack of jurisdiction.

In re Arizona Supreme Court of Olds Bros. Lumber Co., v. Rushing, 64 Ariz. 199, the court held that, "Forcible entry and detainer actions are statutory proceedings and; **an appellate court acquires no jurisdiction on appeal where trial court or lower court had no jurisdiction of the cause**, see well established rule of law."¹

¹ 4 C.J.S., Appeal and Error, § 41, page 21, at page 123; *Burt & Carlquist Co. v. Marks et. al*, 53 Utah 77, 177 P. 224

The June 20, 2008 order that was reversed by Justice Fletcher, was rendered by Pro Tem Justice of the Peace Richard Haworth ruling on the Stones' June 6, 2008 forcible detainer post-judgment motion to vacate the August 10, 2005 judgment of restitution, pursuant to ARCP, Rule 60(c)(4), the judgment is void. (*Exhibit B*)

“Where Rule 60(c)(4) is properly invoked on the basis that the underlying judgment is void, relief is not a discretionary matter; it is mandatory.”¹

The post-judgment motion was based on the court record that contains the August 11, 2005 order showing that the as of August 3, 2005, the bankruptcy automatic stay was in effect. (*Exhibit C*).

The Supreme Court ruled, “under bankruptcy laws, a petition for bankruptcy operates to stay action to “create, perfect, or enforce liens or judgments.”²

The record shows that, on August 4, 2005, Peoria Justice Court former Justice of the Peace Lex Anderson, held a forcible detainer hearing against the Stones, and on August 11, 2005, vacated the August 10, 2005 writ of restitution, but not the judgment of restitution, rendered the same day. (*Exhibit D*)

Because the forcible detainer action was commenced and proceeded in violation of the stay, case law provides that, “Violations of an automatic stay are

¹*Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994) (*quoting V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10th Cir. 1979)

² 11 U.S.C.A. § 362(a), Supreme Court of Arizona, *In re, Arizona Supreme Court, James M. Smith*, No. CV-0153-CQ.

void as a matter of law”¹ , and “subsequent orders based on a void order are void.”²

Thus, the June 20, 2008 ruling on the June 6, 2005 post-judgment motion that vacated the void August 10, 2005 judgment of restitution is the only valid subsequent order, which destroyed the August 10, 2005 judgment of restitution.

It is well-established that, “[i]f a judgment is void for lack of jurisdiction, the [trial] court has no discretion to refuse to vacate the judgment.”³

Justice Richard Haworth, had no discretion and vacated the August 10, 2005 judgment of restitution, however later without jurisdiction and any authority of law, granted the emergency hearing to argue the respondent Harding’s motion for reconsideration of his June 20, 2008 order that vacated the void judgment.

The petitioners filed motions opposing the motion for reconsideration and the emergency hearing providing support that the court lacked jurisdiction, and that “.... No judge has the lawful authority to make a void order valid”⁴; “a court cannot confer jurisdiction where none existed and cannot make a void proceeding valid”⁵.

¹ *Wells v. State*, 495 So. 2d 1221, 1222 (Fla. 1st DCA 1986)

² *In re Schwartz*, 954 F.2d 569 F.2d 569, 572 (9th Cir. 1992).

³ *Ariz. Dep’t of Econ. Sec. v. Holland*, 120 Ariz. 371, 373, 586 P.2d 216, 217 (App. 1978).

⁴ *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260 267 (1990)

⁵ *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E.2d 255 (1943)

Moreover, “The rules of civil procedure do not authorize a movant to file a motion to reconsider the trial judge’s ruling on his own post-judgment motion.”¹

Nevertheless, with no response from Harding’s attorney(s) showing how the court somehow gained jurisdiction, the newly assigned respondent Pro Tem Justice of the Peace David Fletcher, proceeded with the August 13, 2008 hearing without jurisdiction or legal authority, and rendered another void order, to replace the valid order, that destroyed the void August 10, 2005 judgment of restitution.

“Where a judgment is vacated or set aside by a valid order or judgment, it is entirely destroyed and the rights of the parties are left as though no such judgment had even been entered. No further steps can be legally taken to enforce the vacated judgment. The original judgment is not susceptible to appeal and cannot become a final judgment from which an appeal can be taken.”²

The supreme court ruled, that “a void order or judgment entered by a court lacking jurisdiction may be attacked at any time;that the rights of the parties need not be so long delayed. Extraordinary relief has long been appropriate in Arizona, illustrated by the language of the Arizona Supreme Court in *City of Phoenix v. Rodgers*, 44 Ariz. 40, 34 P.2d 385 (1984)”.³

¹*Package Express Ctr. V. Motley*, 717 So.2d 378, 379 (Ala.Civ. App. 1998); ARCP, Rule 7.1(e)

²49 C.J.S. Judgments § 357

³*In re Silver v. Rose*, 135 Ariz. 339 (App.)

Additionally, the reversing of the August 10, 2005 judgment of restitution that was destroyed and reinstated, has corruptly prejudiced the core issue in the Stones' pending civil rights case in the Federal District Court, Case No. CV07-1801-PHX and in the Stones' "Court of Appeals Case CC-CV-07-0770", which was appealed from the Superior Court's order for case CV-2006-050748 denying the Stones' summary judgment for damages from the forcible detainer action. Because of the circumstances and issues of the pending litigations in other courts, the Stones believe that they would be so damaged as to be not correctable by appeal and there is no other speedy adequate remedy available by law.

"Jurisdiction by Supreme Court over petition for special action is frequently accepted when under no rule of law can trial court's actions can be justified."¹

No rule of law supports Judge Fletcher's reinstatement of a void judgment, and he had no legal justification.

"Special action relief was appropriate ..., where question presented was pure issue of law in reversing post-judgment order and error by trial court in dismissing complaint was patent."²

The rule of law is that the court lacked jurisdiction because of violating 11 U.S.C.A. § 362, as well as A.R.S. § 12-1178.

¹A.R.S. Const. Art. 6 § 5; *King v. Superior Ct.* (1983) 138 Ariz. 147, 673 P.2d 787.

²*King v. Superior Court* (1983) 138 Ariz 147, 673 P.2d 787.

STATEMENT OF THE ISSUES

1. Finding that the August 13, 2008 hearing and rendering of the August 13, 2008 orders by Respondent Justice of the Peace Pro Tem Judge David Fletcher was without jurisdiction and authority of law.

Thus, finding that respondent Pro Tem Judge Fletcher's August 13, 2008 order, which claims to reinstate the August 10, 2005 judgment of restitution, is VOID, as well as all other orders that were rendered by Judge Fletcher for this case.

2. Finding that the June 20, 2008 order, rendered by Pro Tem Judge Richard Hayworth, which granted the Stone's post-judgment motion to vacate the August 10, 2005 Judgment of Restitution filed pursuant to Rule 60(c)(4), is a valid and final order, which completely destroyed the August 10, 2005 Judgment of Restitution;

3. That the justice court is without jurisdiction and authority of law to proceed with the forcible detainer action that was commenced and proceeded in violation of the bankruptcy automatic stay, A.R.S. § 12-1178, and the Arizona Landlord Tenant Act, and any other finding within the inherent power of the court deem necessary for the fair adjudication of this case.

STANDARD OF REVIEW

Rule 3, Rules of Procedure for Special Actions states that the only questions that may be raised in a special action are:

1. Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or
2. Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or
3. Whether a determination was arbitrary and capricious or an abuse of discretion.

STATEMENT OF FACTS

1. This action arises out the hearing held August 13, 2008 before respondent Justice of the Peace Pro Tem Judge David Fletcher for the adjudication of respondent Harding's motion for reconsideration of the June 20, 2008 post-judgment order.
2. As the result of the hearing, Judge Fletcher rendered several orders, including the August 13, 2008 order granting the respondent Harding's motion to reconsider to reverse the post-judgment order of June 20, 2008. (*Exhibit A*)
3. The June 20, 2008 post-judgment order was rendered by Justice of the Peace Richard Haworth. The order vacated as void for lack of jurisdiction, was the August 10, 2005 Judgment of Restitution. (*Exhibit B*)
4. The August 10, 2005 judgment of restitution was rendered as the result of the August 4, 2005 forcible detainer hearing held against the Stones, while the bankruptcy automatic stay was in effect. (*Exhibit F*)
5. The bankruptcy stay was in effect from August 2, 2005 until September 6, 2005.
6. On August 11, 2005, Peoria Justice Court former Justice of the Peace Judge Lex Anderson, vacated the August 10, 2005 writ of restitution he rendered, but not the judgment of restitution, rendered the same day. (*Exhibit D*)
7. On June 6, 2008, the Stones, filed with the Manistee Justice Court a post-judgment motion to vacate the August 10, 2005 Judgment of Restitution. (*Exhibit C*)
8. The post-judgment motion was an independent action filed pursuant to Rule 60(c)(4), the court lacked jurisdiction-- the judgment is void.

9. Attached to the motion were exhibits of the record; the exhibits were:
- a. The August 2, 2005 bankruptcy petition. (*Exhibit E*)
 - b. The August 10, 2005, Judgment of Restitution and a Writ of Restitution rendered by former Peoria Justice Court Justice of the Peace Judge Lex Anderson. (*Exhibits F and G*)
 - c. Judge Anderson's August 11, 2005 order vacating the August 10, 2005 Writ of Restitution. (*Exhibit D*)

Note: In the order Judge Anderson acknowledged the bankruptcy filing, but did not vacate the August 10, 2005 Judgment of Restitution rendered the same time as the writ.

- d. Respondent Harding's August 12, 2005 lift the stay motion; (*Exhibit H*) and
 - e. The September 6, 2005 bankruptcy lift the stay order. (*Exhibit I*)
10. Respondent Harding did not respond to the Stones' motion to vacate the August 10, 2005 judgment of restitution; however, on June 10, 2008, Harding's attorney filed a motion to strike the Stones' motion to vacate judgment; (*Exhibit L*) however, labeled the motion to strike defendants' (the Stones') second motion to vacate the September 7, 2005 writ of restitution, which was not filed by the Stones. (*Exhibit K*) (*Exhibit J*)
11. On June 16, 2005, the Stones filed motion responding to plaintiff's motion to strike. (*Exhibit M*)

12. On June 20, 2008, Justice of the Peace Pro Tem Judge Richard Haworth rendered the post-judgment order vacating the August 10, 2005 Judgment of Restitution and denied the Harding's motion to strike. (*Exhibit B*)

13. On July 3, 2008, Harding's attorney filed a motion for reconsideration telling the court that Pro Tem Judge Haworth lacked jurisdiction, because the issue had been adjudicated by Manistee Justice Court Presiding Justice of the Peace Judge Gary Handley and affirmed by appeal by Maricopa County Superior Court Appellate Pro Tem Judge William Schafer. (*Exhibit N*)

14. On July 9, 2008, the Stones received a phone call from the Manistee Justice Court informing them that an emergency hearing had been scheduled by Judge Haworth for July 14, 2008, to argue Harding's motion for reconsideration of his June 20, 2008 order.

15. On July 16, 2008, the Stones filed a motion responding and opposing Harding's motion for reconsideration and the hearing that was scheduled July 14, 2008.

Note: In the motion, the Stones told the court that jurisdiction was wanting and the court had no authority of law to reconsider reversing a valid judgment. (*Exhibit O*)

16. On July 14, 2008, the Stones attended the hearing, but respondent Harding nor did his attorney(s) showed up for the emergency hearing.

Note: While waiting, the Stones questioned Judge Haworth about the jurisdiction and was told by him that he would not answer because Harding was not

present, but was expecting Harding's attorney to later file an ex parte motion to continue, which he would grant.

17. Later that day, on July 13, 2008, Judge Haworth granted Harding's ex parte motion to continue, and rescheduled the hearing for August 13, 2008.

18. On July 21, 2008, the Stones filed the motion to vacate the August 13, 2008 hearing citing laws and rules of procedure proving the court lacked jurisdiction and authority of law to reconsider and reverse the valid order that vacated the August 10, 2005 void judgment and asked that Judge Haworth be recused. (*Exhibit P*)

19. On August 13, 2008, the case was assigned to respondent Judge Pro Tem David Fletcher who then denied the Stones' motions opposing the reconsideration and vacate the hearing.

20. The Stones attended the hearing to tell the court again, that it lacked jurisdiction and authority of law. (*Exhibit Q- partial transcript of hearing*)

21. Respondent Justice of the Peace Pro Tem Judge David Fletcher, adjudicated issues and rendered the order reversing the June 20, 2008 order vacating as void for lack of jurisdiction, the August 10, 2005 Judgment of Restitution and ordered the void judgment reinstated; denied the Stones' motion for sanctions, (*Exhibit R*); denied the Stones' motion to dismiss forcible detainer, and granted Hardings motion to deny the dismissal to continue the forcible detainer action. (*Exhibit S*)

ARGUMENT

As a matter of law, respondent Judge David Fletcher lacked jurisdiction and authority of law to, (a) reconsider a final valid order that vacated a void judgment for lack of jurisdiction, (b) grant the motion for reconsideration to reverse the final valid order, (c) reinstate the vacated void judgment, and (d) adjudicate other matters.

Since Judge Fletcher was without jurisdiction and authority of law, the orders he rendered are void. Specifically, Judge Fletcher was lacking jurisdiction and authority of law to reverse the June 20, 2008 ruling on the June 6, 2008 post-judgment motion to reinstate the August 10, 2005 judgment of restitution for the following reasons:

First, Bankruptcy laws were violated at the time of the original transaction.

The original transaction was the August 4, 2005, forcible detainer hearing that proceeded while the bankruptcy automatic stay was in effect.

“It is a basic understanding that, a bankruptcy filing automatically stays any act to obtain possession of property, or to exercise control over property, and to collect, assess, or recover a claim against a debtor that arose before commencement of the case.”¹ “Violations of the automatic stay are void as a matter of law.”²

¹ *Citizens Bank of Maryland v. Strunf*, 516 U.S. 16, 21, 116 S.Ct. 286, 290, 133 L.Ed.2d 258 (1995); 11 U.S.C.A. § 362.

² *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992)

As the result of that hearing, Peoria Justice Court former Justice of the Peace Judge Lex Anderson, rendered the August 10, 2005 judgment of restitution, along with the August 10, 2005 writ of restitution; then, on August 11, 2005 rendered the order vacating the August 10, 2005 writ of restitution, but not the August 10, 2005 judgment of restitution.

Since the August 10, 2005 writ of restitution was void and vacated because the court lacked jurisdiction, then the judgment of restitution issued on August 10, 2005 “is void, too, as an injunction in furtherance of a void order”.¹

In re Randall Enterprises, the court also held that, “Actions undertaken prior to party’s obtaining relief from stay are invalid, void and of no force and effect, and are not cured or validated by subsequently obtaining relief from stay.”²

This is standard practice consistent with the bankruptcy code § 362, which is why on August 12, 2005, Harding filed with the bankruptcy court, an emergency motion to lift the stay and obtained the lift stay order. (*Exhibit I*) (*Exhibit I*)
However, what was not consistent with the authority of law was the fact that, on September 7, 2005 Harding obtained a new writ of restitution using the void August 10, 2005 judgment of restitution, still while the court lacked jurisdiction. (*Exhibit J*)

¹*Securities and Exchange Commission v. American Capital Investments, Inc.*, U.S. 9th Circuit of Appeals, 98 F.3d 1133, No. 95-55193.

²*In re Randall Enterprises, Inc.*, Bkrcty.D.Colo.1990, 115 B.R. 292.

In re Refractories Co., Inc., the court ruled, “An order terminating the automatic stay permits a party to re-initiate its lawsuit, or start another one, after the termination order is entered, but does not affect the status of actions taken between the filing of the bankruptcy petition and the entry of the termination order; such actions are void ab initio.¹ Court has also determined that, “The mere termination of the stay does not validate actions taken in violation of it.”²

The August 10, 2005 judgment of restitution was not a valid judgment and was void “as an injunction in furtherance of a void order.”³

Therefore, the violations of the bankruptcy stay remain violations, just as the August 10, 2005 judgment of restitution remained void.

In applying the above case laws, the respondent Harding was enjoined from using the August 10, 2005 judgment of restitution to obtain the September 7, 2005 new writ of restitution, even after the stay was lifted.

Rule 58(a), Rules of Civil Procedure, 16 A.R.S., as amended provides; “All judgments shall be in writing and signed by a judge or a court commissioner duly authorize to do so.”

¹*Refractories Co., Inc. v. Forth Eight Insulations, Inc.* F.3d 169 (2d Cir. 1998)

²*In re Eden Associates*, 13 B.R. 578 (S.D.N.Y. 1981).

³*Securities and Exchange Commission v. American Capital Investments, Inc.*, U.S. 9th Circuit of Appeals, 98 F.3d 1133, No. 95-55193.

Since Harding failed to re-initiate its claim against the Stones, the forcible detainer proceeding that continued was still without jurisdiction and authority of law, and was prohibited from using the void August 10, 2005 judgment of restitution, as the bases for the September 7, 2005 writ of restitution.

Courts have held that when an order is void, “all subsequent orders based upon it, were void ab initio. *See Dep’t of Transp. v. Bailey*, 603 So. 2d 1384, 1386-87 (Fla. 1st DCA 1992) (holding a judgment is void if the court lacked jurisdiction to enter it, and if void, the judgment must be vacated); *Wells v. State*, 495 So. 2d 1221, 1222 (Fla. 1st DCA 1986) (holding subsequent orders based on a void order were void).

Therefore, the September 7, 2005 writ of restitution, that was obtained subsequent to the rendering of the August 10, 2005 judgment of restitution and subsequent to the lift stay order, is also void, and “must be vacated.”

So, on August 29, 2007, the Stones filed with the Manistee Justice Court, a motion to vacate the September 7, 2005 writ of restitution, pursuant to Rule 60(c)(4)(5), writ void for lack of jurisdiction, based on void judgment. (*Exhibit K*)

Manistee Justice Court Presiding Judge Gary Handley, with no discretion, denied the Stones’ post-judgment motion to vacate the writ. Giving no grounds for the ruling, the Stones appealed; however, Maricopa County Superior Court Appellate Pro Tem Judge William Schafer affirmed Judge Handley’s denial.

It is respondent Harding's contention that the prior rulings on the September 7, 2005 writ that was rendered without jurisdiction of the court and was based on the void August 10, 2005 judgment of restitution validated the August 10, 2005 judgment of restitution.

This is not consistent with the jurisprudence concerning void judgments for lack of jurisdiction, which coincides with *in re People v. Green*, for which the court ruled, "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void."¹

In *re Coates v. Klette*, the court held that, "Affirmance of a judgment of the justice court by Superior cannot impart jurisdiction where none existed in the Justice Court."²

Arizona Supreme Court Case of *Olds Bros. Lumber Co., v. Rushing*, ruled that, "Forcible entry and detainer actions are statutory proceedings and; **An** **appellate court acquires no jurisdiction on appeal where trial court or lower court had no jurisdiction of the cause.**"³

This means that Judge Handley and Judge Schafer's ruling, denying the

¹*People v. Green*, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]

²*Coates v. Klette*, Cal.App. 119 P.2d, 397, 399, 400.

³4 C.J.S., Appeal and Error, § 41, page 21, at page 123; *Burt & Carlquist Co. v. Marks et. al*, 53 Utah 77, 177 P. 224

Stones' motion to vacate the September 7, 2005 writ of restitution was without authority of law or jurisdiction; therefore, the denial of the Stones' August 29, 2007 post-judgment motion to vacate the September 7th writ of restitution is void.

It was the August 10, 2005 judgment of restitution that was brought before Justice of the Peace Pro Tem Judge Richard in a post-judgment motion to vacate as void, for lack of jurisdiction, on June 6, 2008; (*Exhibit C*) not a second motion to vacate the September 7, 2005 writ of restitution, as claimed by Harding in his motion to strike. (*Exhibit L*)

The Stone's June 6, 2008, motion to vacate the August 10, 2005 judgment of restitution was filed pursuant Arizona Rule of Civil Procedure, Rule 60(c)(4), judgment is void for lack of jurisdiction.

Case law states, "Where Rule 60(c) is properly invoked on the basis that the underlying judgment is void, "relief is not a discretionary matter; it is mandatory."¹

On June 20, 2008, Justice of the Peace Richard Haworth, saw in the record that, (a) the August 11, 2005 order rendered by the original trial court judge, Peoria Justice Court Judge Lex Anderson, acknowledged the bankruptcy filing, and (b) vacated the August 10, 2005 writ of restitution, but not the August 10, 2005 judgment of restitution filed the same day.

¹*Orner v. Shalala*, 30 F.3d 1307, 1310 (10th Cir. 1994) (*quoting V.T.A., Inc. v. Airco, Inc.*, 597 F.2d 220, 224 n.8 (10th Cir 1979)

There is no better evidence to prove that the rendering of the orders violated the stay, which with no discretion, Judge Haworth rendered a valid order granting the Stones' June 6, 2008 post-judgment motion to vacate the August 10, 2005 judgment of restitution.

Pursuant to case law, the granting of the Rule 60(c) post-judgment motion destroyed the August 10, 2005 judgment of restitution, which restored the Stones' to the previously existing status.¹

Since according to case law, the August 10, 2005 judgment of restitution was destroyed, respondent Judge David Fletcher's August 13, 2008 order reinstating the August 10, 2005 judgment, had no judgment of restitution to reinstate, thus his August 13, 2008 order of reversal and reinstatement is a nullity.

¹ *Nielson v. Patterson*, 65 P.3d 911, 914 (AZ 2003) (“A vacated judgment lacks force or effect and places parties in the position they occupied before entry of the judgment.”); *In re Hollensbee's Estate*, 67 So.2d 275, 276 (Ms. 1953) (“Where a judgment is vacated or set aside by a valid order or judgment, it is entirely destroyed and the rights of the parties are left as though no such judgment had ever been entered. No further steps can be legally taken to enforce the vacated judgment.”); *Young v. Progressive Cas. Ins. Co.*, 671 A.2d 515, 518 (Md. 1996) (“the judgment was vacated and thereafter ceased to exist.”)

**Rules of procedure give the second reason why Judge Fletcher was
Without jurisdiction and authority of law.**

Judge Fletcher's ruling was on the June 6, 2005 post-judgment motion to vacate the August 10, 2005 judgment of restitution as void for lack of jurisdiction. The proceeding for the reinstatement of the August 10, 2005 judgment of restitution was based on a forcible detainer proceeding held violation of the bankruptcy stay, thus Judge Fletcher's hearing was void as a matter of law, as well as the orders.

It is a principle of law that, "A judgment of proceedings founded on a void judgment are void."¹

Additionally, "The rules of civil procedure do not authorize a movant to file a motion to reconsider the trial judge's ruling on his own post-judgment motion. ... "Trial court lacked jurisdiction to act on a party's motion to set aside that court's previous ruling denying the party's post-judgment motion....", "all actions taken after the denial of the [post-judgment] motion were void."²

"No judge has the lawful authority to make a void order valid." Bates v. Board of Education, Allendale Community Consolidated School District No. 17, 136 Ill.2d 260 267 (1990) (a court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid." People ex rel. Gowdy v. Baltimore & Ohio R.R. Co., 385 Ill. 86, 92, 52 N.E.2d 255 (1943)

¹30A Am Jur Judgments §§§ 43, 44, 45.

²Package Express Ctr. V. Motley, 717 So.2d 378, 379 (Ala.Civ. App. 1998)

CONCLUSION

There is no dispute and the record shows that the bankruptcy automatic stay was in effect from at least, August 3, 2005, the day after the bankruptcy petition was filed until September 6, 2005, the day the stay was lifted.

Since the stay was in effect, the justice court lacked jurisdiction and the August 10, 2005 judgment of restitution was void.

Judge Haworth's June 20, 2008 post judgment order that was reversed by Judge Fletcher was a **valid** final order based on the record showing the court lacked jurisdiction.

Since the court lacked jurisdiction, had no authority of law, and had no discretion in the matter, Judge Fletcher's August 13, 2008 order is void, and the June 20, 2008 post-judgment ruling vacating the August 10, 2005 judgment of restitution is still valid, since the August 10, 2005 judgment of restitution was destroyed.

By denying the Stone's motion to dismiss the forcible detainer action and granting the respondent Harding's motion to deny the Stone's motion to dismiss, Judge Fletcher is threatening to continue to proceed with future adjudications, still without jurisdiction or legal authority with the forcible detainer action commenced in violation of the bankruptcy automatic stay.

CERTIFICATE OF COMPLIANCE

It is certified that this foregoing petition for Special Action is within the authorized word and page limitations set forth in Rule 7(e), Arizona Rules of Procedure for Special Actions. This petition contains a proportionately, 14 point typeface of Times New Roman. According to Microsoft Word utility, the petition contains not more than 7,000 words inclusive of all subsections, headings, etc.

Signed: _____

Date: _____

My Commission expires: _____
AFFIDAVIT OF VERIFICATION

State of Arizona
County of Maricopa

Appellant declare:

1. That I am authorized and entitled to make this foregoing affidavit on behalf of my self.
2. I am aware of certain matters set forth and incorporated herein, which collectively constitute this petition.
3. I have read the foregoing petition and know the contents thereof to be true except as to those things stated upon information and belief and as to those, they are believed to be true.

Signed under penalty of perjury on _____.

By: _____
John W. Stone

On _____, John W. Stone personally came before me and, being duly sworn, did state that he is the person described in the above and that he signed this document in my presence.

Notary

Notary Public, for the County of Maricopa, State of Arizona.

My Commission expires: _____

CERTIFICATE OF SERVICE

Original hand-delivered this 12th day of September 2008 to:

Arizona Superior Court
Maricopa County
Clerk of Court
201 W. Jefferson
Phoenix, AZ 85003

One copy mailed or hand delivered this 2nd day of September 2008 to:

Maricopa County Justice Court
Manistee Precinct Clerk of Court
14264 W. Tierra Buena Lane
Surprise, AZ 85374

Law Offices of Scott M. Clark
Paul A. Henderson
3008 North 44th Street
Phoenix, 85018
Attorney(s) for respondent Kent Harding

By: _____