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8 IN THE JUSTICE COURTS OF THE STATE OF ARIZONA
9
10 IN AND FOR THE PRECINCT OF MANISTEE, COUNTY OF MARICAPA

11 Kent C. Harding)

12 Plaintiff,)

13 vs.)

14 John W. Stone)
15 Shirley D. Stone)

16 Defendants)
17)
18)
19)
20)
21)
22)
23)
24)
25)

Case No. CC2007176431

**DEFENDANTS' EMERGENCY MOTION
TO VACATE ORDER FOR
"LACK OF JURISDICTION"
TO HEAR ORAL ARGUMENT SET
AUGUST 13, 2008 FOR PLAINTIFF'S
MOTION FOR RECONSIDERATION
Expedited Consideration Requested**

Since August 2, 2005, this court lacked personal jurisdiction over the defendants.

On August 11, 2005, because the bankruptcy automatic stay was still in effect, an order was executed vacating the August 10, 2005 Writ of Restitution, but not the August 10, 2005 Judgment of Restitution that was issued the same day.

On June 20, 2008, at the request of the defendants pursuant to ARCP, Rule 60(c)(4) "judgment is void", Pro Tem Judge Richard Haworth granted the defendants' post-judgment motion to vacate the August 10, 2005 Judgment of Restitution. As a matter of law, Judge Haworth had absolutely NO discretion in this matter and his June 20, 2008 order, was a mandatory ministerial act, which called for no judicial decision, since judgment was void.

A ministerial act is one that is essentially clerical in nature—when a duty is delineated by law with such clarity that nothing is left to the exercise of the official's discretion or judgment. *Soares v. Brockton Credit Union*, 107 F.3d 969, 973-74 (1st Cir. 1997)

1 “A void judgment” is in reality no judgment at all. It is a mere nullity. It is attended by
2 none of the consequences of a valid adjudication, nor is it entitled the respect accorded to
3 one. It can neither affect, impair, or create rights. As to the person against whom it
4 professes to be rendered it binds him in no degree whatever. As to the person in whose
5 favor it professes to be, it places him in no better position than he occupied before. It
6 gives him no new right, but an attempt to enforce it will place him in peril. *Minn.*
7 *Thresher Mfg. Co. v. L’Heureux*, 118 N.W. 565, 566, 82 Neb. 692, quoting and adopting
8 1 Black, Judgm. § 170, and citing and adopting *Rice v. Allen*, 95 N.W. 704, 69 Neb. 349, 355.

9 In an effort to enforce the void judgment and prevent the mandatory duty to vacate the August
10 10, 2005 void judgment of restitution, the plaintiff responded to the defendant’s post-judgment motion
11 to vacate the August 10, 2005 Judgment of Restitution with a motion to strike a second motion to vacate
12 the September 7, 2005 Writ of Restitution, which the defendants did not file.

13 Contrary to the plaintiff’s contention, the August 10, 2005 Judgment of Restitution was not
14 predicated upon the decisions regarding the September 7, 2005 Writ of Restitution or the August 10,
15 Writ of Restitution that was vacated, by Judge Anderson, August 11, 2005.

16 A writ of restitution is an order in aid of a judgment..... *Bond v. Long*, 86 N.E.2d 585,
17 587, 338 Ill.App.1 “... court has no power to issue a writ of restitution to supersede a
18 writ or order of the circuit court. *Herrin v. Franklin*, 1 Tenn.Ch.App.95, 106.

19 Affirmance of a judgment of justice court by superior court cannot impart “jurisdiction”
20 where none existed in the Justice Court. *Coates v. Klette*, Cal.App. 119 P.2d 397, 399, 400.

21 “...”Jurisdiction” being right and authority to hear, determine, and decide. *Knight v. Haley*, 176
22 A. 461, 6 W.W.Harr. 366.

23 The term “jurisdiction” relates to the exercise of such powers, only, as are judicial in their nature.
24 *Wieboldt Stores v. Sturdy*, 51 N.E.2d 268, 270, 384 Ill. 271.

25 Since the court lacked jurisdiction, the judgment and order were void; Judge Haworth vacated
the August 10, 2005 Judgment of Restitution, for the same reason that Judge Anderson vacated the
August 10, 2005 Writ of Restitution.

Judge Haworth’s order of June 20, 2008, was a final decision rendered on post-judgment
motions. Judge Haworth properly followed Arizona Rules of Civil Procedure, Rule 60(c)(4), when he
vacated, for lack of jurisdiction, the August 10, 2005 Judgment of Restitution

1 Knowing that the motion to strike was frivolous, unlawful, and the like, the plaintiff proceeded to
2 bring forth in bad faith, a motion for reconsideration to vacate the June 20, 2008 order vacating the void
3 August 10, 2005 judgment, and asked the court to reverse the decision and grant the plaintiff's motion to
4 strike a motion that the defendants did not file a second time.

5 As the defendants pointed out in their Motion in Response to Plaintiff's Motion for
6 Reconsideration, "the rules of civil procedure do not authorize a movant to file a motion to reconsider
7 the trial judge's ruling on his own post-judgment motion." *Package Express Ctr. V. Motley*, 717 So.2d
8 378, 379 (Ala.Civ. App. 1998).

9 For the court to schedule an oral argument indicates that this court is relitigating the issues,
10 which for this case would be without jurisdiction of the court and an usurpation of legal authority.

11 Where trial court's decision dismissing action for lack of jurisdiction was rendered solely
12 on question of law, a motion for new trial on ground of newly discovered evidence was
13 improper, since addition evidence could not give the court jurisdiction. *Wright v. Leyda*,
67 Ariz. 241 (Supreme Crt)

14 "Trial court lacked jurisdiction to act on a party's motion to set aside that court's
15 previous ruling denying the party's post-judgment motion and that "all actions taken after
16 the denial of the [post-judgment] motion were void." 717 So.2d at 379. In so holding,
17 "the only review of a denial of a post-judgment motion is by an appeal" taken directly
18 from that denial." *Re, Dowling*, 477 So.2d at 404.

19 In the absence of jurisdiction over the person of the defendant, any judgment or order of
20 the court might enter against the defendant is void. *Ex parte C.L.C.*, 897 So. 2d 234 (Ala.
21 2004). *Waterview Resolution Corp. v. Allen*, 274 Kan. A016, 58 P.3d 1284 (2002)

22 Simply put, just as this court had no jurisdiction to conduct the forcible detainer action against
23 the defendants, the court has gained no jurisdiction to "reconsider" the ruling of the post-judgment
24 motion to vacate the judgment where the judgment was void for lack of jurisdiction. Moreover, the
25 plaintiff failed to provide the court with contravening law that would now give this court jurisdiction to
reconsider the post-judgment motions or to amend its final decision.

1 “The power of a court to amend its own record is limited to such changes or corrections
2 as are in affirmance of the judgment originally rendered; and where the judgment
3 expressed the entire judicial action taken at the time of its rendition, the court has no
4 authority to enlarge or diminish it, to make a change or modification in matter of
substance, or under the guise of amendment, to review the case and render a different
judgment. A judgment therefore cannot be amended so as to vary the rights of the parties
as fixed by the original decision. *Rico Cons. Min. Co. v. Ruci Explor. Co.* [23 Ariz. Feb. 1922].

5 Ariz.App. Div. 2 1993. Rule providing for relief from judgment does not provide relief
6 where party merely asks court to reconsider previous legal ruling. 16 A.R.S. Rules Civ.
Proc., Rule 60(c). *Tovrea v. Nolan*, 875 P.2d 144, 178 Ariz. 485, review denied.

7 Without jurisdiction, Judge Haworth has willfully made two judicial decisions with the
8 intent to make more in this matter that represent acts committed outside of the law.

9 Furthermore, Judge Haworth has allowed the plaintiff ex parte contact in furtherance of a
10 “void process”. Continuing in this forum after the void judgment has been vacated, would be in
11 derogation of the law, would violate substantive rights and make subsequent proceedings void.

12 Process prohibited by law is “void process”, and the defect in such process cannot be
13 cured by waiver, consent, or agreement. *Howe v. Lisbon Sav. Bank & Trust Co.*, 14 A.2d 3, 6,
14 8, 11 Vt. 201.

15 “Void process” is such as the court has no power to award, or has not acquired
16 jurisdiction to issue or which does not in some material respect comply in form with legal
17 requisites of such process, or which loses its vitality in consequence of non-compliance
with an essential condition subsequent. *Hyman v. Ross*, 84 N.Y.S.2d 102, 104.

18 The procuring of a wrongful execution on a void judgment, is an “abuse of
19 process”. *Little v. Sowers*, 204 P.2d 605, 608

20 When judges act when they do not have jurisdiction to act, or they enforce a void order
(an order issued by a judge without jurisdiction), they become trespassers of the law, and
21 are engaged in treason (see below) *Yates v. Village of Hoffman Estates, Illinois*, 209
F.Supp. 757 (N.D. Ill. 1962).

22 Whenever a judge acts where he/she does not have jurisdiction to act, the judge is
engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66
23 L.Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257
(1821)

24 Many cases hold that a judge has no lawful authority to make a void order valid. An order issued
25 based on a void order is itself void. In *Eugene W. Alpern v. Philip S. Lieb*, 38 F.3d 933 (7th Cir. 1994),

1 (in that case) the judge acted entirely without jurisdiction. Since he held no jurisdiction, all actions
2 derived from the void orders of the court were also void.

3 Case law provides that “[w]here a judgment is vacated or set aside by a valid order or
4 judgment, *it is entirely destroyed and the rights of the parties are left as though no such
5 judgment had even been entered.*” 49 C.J.S. Judgments §357. See also, *Buchanan v.
6 Cabiness*, 245 S.W.2d 868, 873 (Mo. 1951).

7 “The consequences of an act beyond the court’s jurisdiction in the fundamental sense is
8 void; it may be set aside at any time and no valid rights can accrue thereunder. *People v.
9 Ruiz* (1990) 217 Cal.App.3d 574, 265 Cal. Rptr. 886.

10 **WHEREFORE**, for the foregoing reasons that because the court lacks jurisdiction, the oral
11 argument schedule for August 13, 2008 hearing exceeds this courts authority and should be
12 expeditiously vacated as a matter of law.

13 Respectfully submitted this 21st day of July 2008.

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

16
17 Copies of the original foregoing filed and mailed this 21st day of July 2008 with:

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