No.

IN THE

Supreme Court Of The United States

NORMAN D. COX, JR.,
Pro Se Petitioner,

v.

THE MONEY SOURCE, INC.,
Respondent.

On Petition For Writ Of Certiorari
To The SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

NORMAN D. COX JR
Pro Se Petitioner
212 78th STREET
NORTH BERGEN, NJ 07047
(831) 233-2226

QUESTION(S) PRESENTED

1. Did the Trial Court err in or abuse it's discretion by entering default judgment against Petitioner based upon the Respondent's defective Service of Process that was served upon "Neville Cox" (of no relations to Appellant) without first conducting a traverse hearing?

   Yes.

2. Did the Trial Court err in or abuse it's discretion in failing to vacate the default judgment on the grounds of newly discovered evidence by overlooking the laws and facts? Petitioner was never served the notice of complaint and did not know that an action had risen to the level of Default.

   Yes.

3. Has the Trial Court erred or abused it's discretion in failing to vacate or set aside the default judgment on the grounds of excusable neglect pursuant to R. 4:50-1(a)?

   Yes.

PARTIES TO PROCEEDING AND RELATED CASES

[X] All parties **do not** appear in the caption of the case cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Clerk of the Supreme Court of New Jersey, Hughes Justice Complex, P.O. Box 970, Trenton, NJ 08625-0970 Phone: (609) 815-2955

Clerk of the Superior Court of New Jersey, Appellate Division, Hughes Justice Complex, P.O. Box 006, Trenton, New Jersey 08625-0006. Phone: (609) 815-2950

Clerk of the Superior Court of New Jersey, Chancery Division, 583 Newark Avenue, 2nd Floor, Jersey City, New Jersey 07306. Phone: (609) 815-2950

Stern & Eisenberg, P.C., Attorney for Respondent, 1040 N. Kings Highway, Suite 407, Cherry Hill, New Jersey 08034. Phone: (609) 397-9200

The Money Source, Inc., 500 S. Broad Street, Suite 100A, Meriden, Connecticut 06450. Phone: (866) 867-0330

Honorable Marybeth Rogers, 583 Newark Avenue, 4th Floor, Jersey City, New Jersey 07306.
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IN THE

Supreme Court Of The United States

No.

NORMAN D. COX, JR.,
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THE MONEY SOURCE, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

Norman D. Cox Jr. respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey Appellate Division and Superior Court of New Jersey Chancery Division.

OPINIONS BELOW

[ ] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from state courts:

The opinion of the highest state court to review the merits appears at **Appendix "H"** to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the court appears at **Appendix "H"** to the petition and is
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including (date) on (date) in Application No.____ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from state courts:

The date on which the highest state court decided my case was **June 13, 2019.**

[X] A timely petition for rehearing was thereafter denied on the following date: **August 9, 2019**, and a copy of the order denying rehearing appears at **Appendix "I"**.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No.____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

STATUTORY AND CONDITIONAL PROVISIONS INVOLVED

5th Amendment of the United States Constitution

8th Amendment of the United States Constitution

14th Amendment of the United States Constitution and Procedural Due Process

Petitioner asserts that it is a violation of due process to impose a default judgment against a defendant when the defendant has not been served. In the case of default judgments under the Hague Convention, due process is defined under Article 15. Since the Convention is a treaty, under the Supremacy Clause of the Constitution, the Hague Service Convention due process requirements for issuing a default judgment take precedence over state and federal requirements.

More specifically, the New Jersey court stated that it was not "convinced that a constitutional inquiry is inappropriate or unnecessary where the Hague Convention applies. Indeed, a due process inquiry is necessary to ensure the veracity of the certificate when the underlying facts are contested."

The lower Court exceeds its jurisdiction:

"A judgment is *void on its face* if the trial court exceeded its jurisdiction by granting relief that it had no power to grant. Jurisdiction cannot be conferred on a trial court by the consent of the parties." See, Summers v. Superior Court (1959), supra,; Roberts v. Roberts (1966) supra,)

Thus, the fact that a judgment is entered pursuant to stipulation does not insulate the judgment from attack on the ground that it is void. In People v. One *1941* Chrysler Sedan (1947) 81 Cal. App. 2d 18, 21-22 [183 P.2d 368]

A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. Sabariego v Maverick, 124 US 261, 31 L Ed 430, 8 S Ct 461, and, is not entitled to respect in any other tribunal.

"Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 - Klugh v. U.S., 620 F.Supp., 892 (D.S.C. 1985). Where Due Process is denied, the case is void , *Johnson v. Zerbst*, 304 U.S. 458 S Ct.1019; *Pure Oil Co. v. City of Northlake*, 10 Ill. 2D 241, 245, 140 N.E. 2D 289 (1956) *Hallberg v. Goldblatt Bros.*, 363 Ill. 25 (1936).

Irreparable Injury: It is difficult to imagine many injuries less capable of adequate monetary redress than the loss of one's home. Even the mere "threat of eviction and the realistic prospect of homelessness" constitute irreparable injury sufficient for preliminary injunctive relief. McNeill v. New York City Housing Authority, 719 F. Supp 233, 254 (S.D.N.Y. 1989). See Jiggetts v. Perales, 202 A.D.2d 341, 342, 609 N.Y.S.2d 222, 224 (1st Dept. 1994) ("Defendant" established entitlement to preliminary injunctive relief pending determination of the underlying action by demonstrating the irreparable harm of a possible eviction if the relief sought was not granted").

STATEMENT OF THE CASE

The principal reasoning offered by the trial court for denying Petitioner's Motion to Vacate is its conclusion that Petitioner failed to establish excusable neglect or extraordinary circumstances and that Petitioner's motion "does not engender any sort of constitutionality or approach even a consideration of any sort of federal question for which [this] Court would be most concerned". See Page 15 of the Court Transcript of Motion and Decision dated October 24, 2019 initiating time noted 2:26pm ¶¶6-9.
This interpretation is flawed.

Petitioner respectfully submits that the trial court's denial of his Motion to Vacate was an abuse of discretion and should be reversed. The trial court should not have entered default judgment against Petitioner on the foreclosure claims made by plaintiff without first conducting a hearing on the issue of service of process.

The trial court also abused its discretion in refusing to vacate the default judgment under either R. 4:50-1(a) based upon excusable neglect, or R. 4:50-1(f) based upon exceptional circumstances due to the questionable merits of respondent's service of process.

Accordingly, and for the reasons set forth below, Petitioner respectfully requests that this Court reverse the trial court's March 23, 2018 Order denying his Motion to Vacate and remand for further case management scheduling and trial. And, the June 13, 2019 denial of the Supreme Court of New Jersey. And, the October 24, 2019 denial of the Superior Court of New Jersey Chancery Division.

REASONS FOR GRANTING THE PETITION

I. The trial Court abused its discretion in failing to vacate the default judgment of a foreclosure proceeding on the grounds of newly discovered evidence, Petitioner did not know that an action had risen to the level of default.

The November 7, 2016, affidavit of service is newly discovered evidence. I was not served and, therefore, did not receive the summons, complaint and notices. Personal service was improperly served at an address other than Appellant's known address, the premises of this action and to a person that your Appellant does not know, thus, in violation of Rule 4:4-4(a)(1)(4) and R. 6:2-3(d).

Further, had service of process of the summons, complaint and foreclosure been served upon me or someone I actually know I would have had an opportunity to prepare a defense that would have probably altered the judgment or order. However, it was impossible for me to defend this action because, even by due diligence I could not have discovered in time that a foreclosure complaint was pending because I do not know the party the defendants claimed to have served. See, Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Please refer to Plaintiff's affidavit of service and affidavit of due diligence.

The defendant filed a motion to vacate due to defective service of process at a previous address of Petitioner in New York rather than defendant's primary New Jersey address, thereby, absolving Petitioner of an opportunity to defend against the action or to prepare a

defense without notice. Your defendant filed an Affidavit in Opposition to Plaintiff's Reply to Defendant's Motion to Vacate Default Judgment in which the Superior Court Clerk received the Affidavit but did not file instead labeling the reply as miscellaneous. Concomitantly, had the clerk correctly filed defendant's motion in opposition it would have taken into account valuable witness affidavits and evidence of my residency, which would have corroborated your defendant's non-service issue. Please refer to Clerk's notice transaction ID: CHC2018223514. The record would reflect these defects. I also provided my state issued identification(s) outlining my current addresses) in New Jersey and California that was also left off the record when the Clerk labeled them as miscellaneous and left it off the record. In support of my claim that would have entitled me to relief, I submitted evidence of my previous years tax returns and addresses, that 853 Empire Boulevard in Brooklyn New York was a previous address of more than 6 years ago. Also provided was a copy of defendant's January 2, 2018 Bankruptcy Petition reflecting 212 78th Street, North Bergen as my primary address in which Plaintiff claims but did not provide proof that 853 Empire Boulevard, Brooklyn, New York was used not as a previous address.

Even more, Elaine Cox, a lifelong resident and leaseholder for 853 Empire Boulevard, Brooklyn, New York 11213, attested that she does not know a "Neville Cox".

a. Further, the Writ was not served in accordance with Rule 4:4-3(b) or "all writs and process to enforce a judgment or order shall be served by the *sheriff.id.*
b. The judgment or order is void. "Neville Cox" was not a person authorized to accept service.

II. The Trial Court abused its discretion in failing to vacate the default judgment on the grounds of excusable neglect pursuant to R. 4:50-1(a).

The term "excusable neglect" has been defined as excusable carelessness "attributable to an honest mistake that is compatible with due diligence or reasonable prudence." Mancini v. E.D.S., 132 N.J. at 335.

The trial court erroneously concluded that Cox did not establish excusable neglect based on his claims that service was defective and, thus, the Court is not with personal jurisdiction in this action. The respondent claimed to have served Cox through a stranger that conveniently has the last same last name as Cox in this particular case.

Specifically, at trial court respondent did not provide any documentation to support allegations of debt or whether Cox received notice of the action or not. On April 23, 2018, I made a transcript request. On the same day, according to the Appellate Court transcript Coordinator, Marie Sosa, there are no transcripts of the hearings available for review, thereby no testimony or anything was entered upon the record. Please refer to email dated April 23, 2018. "In the face of [none] service, Cox's actions does qualify as 'excusable neglect' as that term is contemplated by R. 4:50-1(a) or the applicable case law."

The Court was pointing out what legal maneuvers of federal law not presented as though had federal claims been presented the outcome would have been favorable to me. See Page 9-10 of the Court Transcript of Motion and Decision dated October 24, 2019 initiating time noted 10:20am ¶¶13-25; 1-17.

However, what exactly must be pleaded to establish a federal question is a matter of considerable uncertainty in many cases. It is no longer the rule that, when federal law is an ingredient of the claim, there is a federal

question. Such was the rule derived from Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824). *See* Franchise Tax Board v. Construction Laborers Vacation Trust, 463 U.S. 1 (1983); Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804 (1986).

Perhaps Justice Cardozo presented the most understandable line of definition, while cautioning that "[t]o define broadly and in the abstract 'a case arising under the Constitution or laws of the United States' has hazards [approaching futility]. Gully v. First National Bank in Meridian, 299 U.S. 109, 117 (1936).

This Supreme Court has declared, when interpreting pro se papers, the Court should use common sense to determine what relief the party desires. S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (Court has special obligation to construe pro se litigants' pleadings liberally); Poling v. K. Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

I have the right to submit a pro se emergency pleading even though my emergency pleadings may be inartfully drawn, if the court can reasonably read and understand it, See, Vega v. Johnson, 149 F.3d 354 (5th Cir. 1998), the Court shall go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result and in this case injustice will certainly result should I not be allowed to stop the sale of my residence and this Court allow it under suspect service practices and based on law that the Court knew and based its determination on Federal law that the Court claims was not added to my pro se pleadings. U.S. v. Sanchez, 88 F.3d 1243 (D.C.Cir. 1996).

The court erroneously denied the motion based on Rule 4:50-1(a), which requires proof of excusable neglect and a meritorious defense. Defendant, in effect, moved to vacate the default judgment pursuant to Rule 4:50-1(d),

claiming that the judgment is void for lack of personal jurisdiction due to defective service.

A motion pursuant to Rule 4:50-1(d) *does not* require proof of excusable neglect and a meritorious defense. See Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003), certif. denied, 179 N.J. 309 (2004). Rather, such a motion requires proof that the judgment is void for the lack of personal jurisdiction due to defective service. id.

A motion to vacate a judgment that "is void and, therefore, unenforceable . . . is a particularly worthy candidate for relief (R. 4:50-1(d)) provided that the time lapse [between the entry of the judgment and the motion to vacate the judgment] is not unreasonable and an innocent third party's rights have not intervened." Bank v. Kim, 361 N.J. Super. 331, 336 (App. Div. 2003) (citing Berger v. Paterson Veterans Taxi Serv., 244 N.J. Super. 200, 205 (App. Div. 1990); Coryell, L.L.C. v. Curry, 391 N.J. Super. 72, 80 (App. Div. 2006). All doubt should be resolved in favor of the party seeking relief. Arrow Mfg. Co. v. Levinson, 231 N.J. Super. 527, 534 (App. Div. 1989) (citing Foster v. New Albany Mach. & Tool Co., 63 N.J. Super. 262, 269-70 (App. Div. 1960)).

Here, only eight months had lapsed before Appellant filed the motion to vacate judgment. For motions based on Rule 4:50-1(a), (b) and (c), the Rule bars relief when the motion is filed "more than one year after the judgment, order or proceeding was entered or taken." ((Motions based on other subsections of Rule 4:50-1 are not subject to the one-year bar. See Garza v. Paone, 44 N.J. Super. 553, 557-58 (App. Div. 1957).

A motion to vacate judgment must be filed within a reasonable time, which may be less or greater than one year.)). In this action, only eight months had passed before appellant filed the motion to vacate and not the outermost time limit.

The Rule does not mean that it is reasonable to file such a motion within one year; the one-year period represents only the outermost time limit for the filing of a motion based on Rule 4:50-1(a), (b) or (c). All Rule 4:50 motions must be filed within a reasonable time, which, in some circumstances, may be less than one year from entry of the order in question. See Bascom Corp. v. Chase Manhattan Bank, 363 N.J. Super. 334, 340 (App. Div. 2003) (holding that Rule 4:50-2 "requires all motions under R[ule] 4:50-1 to be brought within a reasonable time"), certif. denied, 178 N.J. 453, cert. denied, 542 U.S. 938, 124 S. Ct. 2911, 159 L. Ed. 2d 813 (2004); Jackson Constr. Co. v. Ocean Twp., 182 N.J. Super. 148, 161, 3 N.J. Tax 296, 309.

The facts of this action supports eight months as a reasonable amount of time when service of process has not been affected and is also within the outermost time limit, and another fact is, no innocent third, Appellant's rights to due process—matters testified to were never entered upon the record because it was never transcribed nor were a third party's rights intervened, thereby the court erred in its determination denying appellant's motion to vacate.

CONCLUSION

The judgment against Appellant Petitioner was void. Service of Process was defective and the court erred, as a matter of law, in declining to vacate it. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Date: **NOVEMBER 15, 2019**