

IN THE SUPREME COURT OF THE UNITED STATES

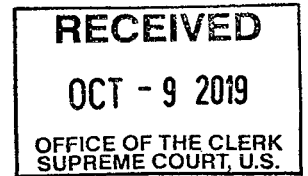
JAMES L. HINES,
Plaintiff,

V.

REGIONS BANK f/k/a
UNION PLAANTERS BAN, N.A.,

Defendant.

Case No.: 18-14799-H



**MOTION TO STAY ISSUANCE OF MANDATE PENDING FILING
AND DISPOSITION OF PETITION FOR CERTIORARI**

Pursuant to Fed. R. App. P.41(d)(1) and U.S. Code 2101(f), Appellant hereby requests a stay of the Court of Appeals mandate in the above-captioned case, for a period of ninety (90) days, to and including November 26, 2019. The stay is necessary to allow the Appellant to prepare and file a petition for certiorari. The Court denied Appellant's petition for rehearing on August 28, 2019. Accordingly, the mandate issued on September 4, 2019, and the petition for certiorari is due on, or before, November 26, 2019.

1. A Motion to Stay issuance of mandate was filed with the United States Court of Appeals for the Eleventh Circuit on the 16th day of September, 2019 which was returned unfiled stating that the case is closed and no further relief is available from this court.

2. A party who seeks a stay of the mandate pending the filing of a petition

for a writ of certiorari “must show that the petition for certiorari would present a substantial question and there is good cause for a stay.” Fed. R. App. P.

41(d)(2)(A). See also Circuit Advisory Committee Note to rule 41-1 (“The motion will not be routinely granted; it will be denied if the Court determines that the application for certiorari would be frivolous or is made merely for delay.”).

“Ordinarily,” however, “a party seeking a stay of mandate following this court’s judgment need not demonstrate that exceptional circumstances justify a stay.”

United States v. Pete, 525 F.3d 844, 851 n.9 (9th Cir. 2009) (quoting Bryant v. Ford

Motor Co., 886 F.2d 1526, 1528-1529 (9th Cir. 1989) (noting that a stronger

showing must be made when an applicant seeks to stay the mandate after certiorari has been denied). The criteria for a stay of the mandate are plainly satisfied here.

Any petition for a writ of certiorari would present a substantial question of constitutional right of due process under the law as defined by the United States Supreme Court. The parameters of such a right are the subject of even greater import and illustrate the substantial nature of the questions that a petition for writ of certiorari would present.

“Good cause” to stay the mandate exists. The district court erred as a matter of law when it ignored the precedent established by the United States Supreme Court in the due process of law in a summons and complaint. Further, Defendant has stated throughout the case that the summons and complaint wasn’t received in

order to deny the claims. However, the defendant “voluntarily” appeared in the state court action and removed the case to the district Court. A question exists concerning how the Defendant knew about the complaint in details, in order to file a request to transfer the case to district court, unless it had received a copy of the complaint? In fact, Defendant has never denied, on the record, that it did not receive a copy of the summons and complaint; only that it was not served with “proper notice” and there was no evidence of return service from the post office on file. This, in itself, would be good cause to file for stay of mandate pending petition for a writ of certiorari in order for Defendant to answer this question for the record.

Staying the mandate can result in no harm to Defendant. Plaintiff filed a request for rehearing that was denied by the Court of Appeals. For that reason, Defendant incurred no injury during the pendency of the petition for rehearing, nor will the Defendants suffer any harm during the ninety days for filing the writ of certiorari.

CONCLUSION

28 U.S. Code 2101(f) states, “In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a

reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court.”

For the foregoing reasons, the Court should stay issuance of the mandate for a period of ninety (90) days, to and including, November 26, 2019.

Respectfully submitted this 1st day of October, 2019,

A handwritten signature in black ink, appearing to read "James Leonard Hines", is positioned above a horizontal line.

James Leonard Hines
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Scottsboro, AL 35769
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jimhines123@msn.com

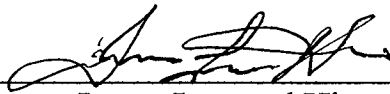
CERTIFICATE OF SERVICE

I do hereby certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, that a copy of Appellant's motion has been served via U.S. Mail, postage prepaid, upon:

John David Collins
Braxton Thrash
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, AL 35203-2618

who are the attorneys of record for Regions Bank.

Respectfully submitted on the 1st day of October, 2019.




James Leonard Hines

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. The motion complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(b) because it contains 751 words , excluding the parts of the motion exempted by Fed. R. App. P. 32A(a)(7)(b)(iii).

2. The motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally space typeface using Word in Times New Roman 14 Pt. font.

Dated October 1, 2019.


James Leonard Hines
Pro Se for Appellant

CERTIFICATE OF INTERESTED PERSONS

The undersigned Pro Se for Appellant certifies that the following listed persons and entities as described have an interest of the outcome in this case.

1. Collins, John David, Attorney for Appellee
2. Haikala, Madeline Hughes, District Court Judge
3. Hines, James L., Appellant
4. Hines, Sandra H., Wife of Appellant and joint owner of property
5. Longshore, W. L. III., attorney for Appellee
6. Regions Bank, Appellee
7. Thrash, Braxton, Attorney for Appellee

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James Leonard Hines

Pro Se for Appellant

PACER fee: Exempt

General Docket
United States Court of Appeals for the Eleventh Circuit

Court of Appeals Docket #: 18-14799 Nature of Suit: 3890 Other Statutory Actions James Hines v. Regions Bank Appeal From: Northern District of Alabama Fee Status: Fee Paid	Docketed: 11/16/2018 Termed: 07/29/2019
Case Type Information: 1) Private Civil 2) Federal Question 3) -	
Originating Court Information: District: 1126-5 : <u>5:16-cv-01996-MHH</u> Civil Proceeding: Madeline H. Haikala, U.S. District Judge Date Filed: 12/13/2016 Date NOA Filed: 11/16/2018	
Prior Cases: None	
Current Cases: None	

JAMES LEONARD HINES	Plaintiff - Appellant	James Leonard Hines Direct: 256-599-6689 [NTC Pro Se] 203 WILLOWCHASE DR SCOTTSBORO, AL 35769
versus		
REGIONS BANK, f.k.a. Union Planters Bank, N.A.	Defendant - Appellee	John David Collins Direct: 205-254-1104 [COR LD NTC Retained] Maynard Cooper & Gale, PC Firm: 205-254-1000 1901 6TH AVE N STE 2400 BIRMINGHAM, AL 35203 Braxton Scott Thrash [NTC Retained] Maynard Cooper & Gale, PC Firm: 205-254-1000 1901 6TH AVE N STE 2400 BIRMINGHAM, AL 35203

<p>JAMES LEONARD HINES,</p> <p>Plaintiff - Appellant,</p> <p>versus</p> <p>REGIONS BANK, f.k.a. Union Planters Bank, N.A.,</p> <p>Defendant - Appellee.</p>

11/16/2018	<input type="checkbox"/>	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant James Leonard Hines on 11/16/2018. Fee Status: Fee Paid. Awaiting Appellant's Certificate of Interested Persons due on or before 11/30/2018 as to Appellant James Leonard Hines. Awaiting Appellee's Certificate of Interested Persons due on or before 12/14/2018 as to Appellee Regions Bank [Entered: 11/21/2018 12:09 PM]
11/21/2018	<input type="checkbox"/>	Appellate fee was paid on 11/16/2018 as to Appellant James Leonard Hines. [Entered: 11/21/2018 12:11 PM]
11/29/2018	<input type="checkbox"/>	Appellant's Certificate of Interested Persons and Corporate Disclosure Statement filed by Appellant James Leonard Hines. [Entered: 12/10/2018 12:05 PM]
12/03/2018	<input type="checkbox"/>	APPEARANCE of Counsel Form filed by John David Collins for Regions Bank. [18-14799] (ECF: John Collins) [Entered: 12/03/2018 07:40 PM]
12/03/2018	<input type="checkbox"/>	Certificate of Interested Persons and Corporate Disclosure Statement filed by. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here http://www.ca11.uscourts.gov/web-based-cip or on the court's website. See 11th Cir. R. 26.1-2(b). [18-14799] (ECF: John Collins) [Entered: 12/03/2018 07:42 PM]
12/24/2018	<input type="checkbox"/>	Appellant's brief filed by James Leonard Hines. Service date: 12/21/2018 [18-14799] Attorney for Appellee: Collins - US mail. [Entered: 01/08/2019 04:26 PM]
01/03/2019	<input type="checkbox"/>	The Transcript Order Form has not been filed as to Appellant James Leonard Hines. The appellant is hereby notified that upon expiration of 14 days from this date, this appeal will be dismissed by the clerk without further notice unless the default has been corrected. [Entered: 01/03/2019 10:40 AM]
01/07/2019	<input type="checkbox"/>	***SEE CORRECTED APPENDIX FILED 1/22/19***Appendix filed [1 VOLUMES - 2 copies] by Party James Leonard Hines. Deficiencies: District court's docket sheet, complaint, answer,. Service date: 12/31/2018 US mail - Appellant Hines; Attorney for Appellee: Thrash; email - Attorney for Appellee: Collins.--[Edited 01/25/2019 by CB] [Entered: 01/08/2019 08:53 AM]
01/08/2019	<input type="checkbox"/>	Notice of deficient Appellant appendix filed by Party James Leonard Hines. Deficiencies: District court's docket, complaint, answer. [Entered: 01/08/2019 08:55 AM]
01/15/2019	<input type="checkbox"/>	Over the phone extension granted by clerk as to Attorney John David Collins for Appellee Regions Bank. Appellee's Brief due on 02/08/2019 as to Appellee Regions Bank.. [Entered: 01/15/2019 10:25 AM]
01/22/2019	<input type="checkbox"/>	Corrected Appendix filed [1 volumes - 2 copies] by Party James Leonard Hines. Service: 01/25/2019 US mail - Appellant Hines; Attorney for Appellee: Thrash; email - Attorney for Appellee: Collins [Entered: 01/25/2019 02:10 PM]
02/07/2019	<input type="checkbox"/>	Appellee's Brief filed by Appellee Regions Bank. [18-14799] (ECF: John Collins) [Entered: 02/07/2019 11:45 AM]
02/07/2019	<input type="checkbox"/>	Supplemental Appendix [1 VOLUMES] filed by Appellee Regions Bank. [18-14799] (ECF: John Collins) [Entered: 02/07/2019 11:46 AM]
02/08/2019	<input type="checkbox"/>	Received paper copies of EBrief filed by Appellee Regions Bank. [Entered: 02/08/2019 02:29 PM]
02/08/2019	<input type="checkbox"/>	Received paper copies of EAppendix filed by Appellee Regions Bank. 1 VOLUMES - 2 COPIES [Entered: 02/08/2019 03:19 PM]
02/21/2019	<input type="checkbox"/>	Reply Brief filed by Appellant James Leonard Hines. Service 02/18/2019 email - Attorney for Appellee: Collins; US mail - Attorney for Appellee: Thrash. [Entered: 02/22/2019 02:39 PM]
07/29/2019	<input type="checkbox"/>	Judgment entered as to Appellant James Leonard Hines. [Entered: 07/29/2019 11:05 AM]
07/29/2019	<input type="checkbox"/>	Opinion issued by court as to Appellant James Leonard Hines. Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . [Entered: 07/29/2019 11:08 AM]
08/14/2019	<input type="checkbox"/>	Plaintiffs Notice and Motion for Reconsideration of Final Order filed by Appellant James Leonard Hines. [Entered: 08/14/2019 03:00 PM]
08/28/2019	<input type="checkbox"/>	ORDER: The Petition for Panel Rehearing filed by Appellant James Leonard Hines is DENIED. [8864739-1] [Entered: 08/28/2019 08:43 AM]
09/05/2019	<input type="checkbox"/>	Mandate issued as to Appellant James Leonard Hines. [Entered: 09/05/2019 11:28 AM]
09/18/2019	<input type="checkbox"/>	RETURNED UNFILED: Motion to Stay issuance of mandate pending filing and disposition of petition for certiorari. filed by James Leonard Hines is returned unfiled because this case is closed. No further relief is available from this Court.. [Entered: 09/18/2019 02:36 PM]

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14799
Non-Argument Calendar

D.C. Docket No. 5:16-cv-01996-MHH

JAMES LEONARD HINES,

Plaintiff-Appellant,

versus

REGIONS BANK,
f.k.a. Union Planters Bank, N.A.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

(July 29, 2019)

Before ED CARNES, Chief Judge, JILL PRYOR, and ANDERSON, Circuit
Judges.

PER CURIAM:

James Leonard Hines, proceeding pro se, appeals the district court's dismissal of his complaint against Regions Bank. He contends that he was entitled to an entry of default judgment because he effected service of process and Regions failed to timely respond to his complaint.

I.

Hines filed a complaint against Regions in Alabama state court on September 14, 2016. Hines alleged that after he had declared bankruptcy and defaulted on his mortgage, Regions violated the Real Estate Settlement Procedures Act (RESPA) by ignoring his correspondence when he attempted to cure the default.

On December 13, 2016 Regions removed the action to federal court. A week later it filed a motion to dismiss. In February 2017 Hines filed a motion for default judgment and response to Regions' motion to dismiss. He alleged that after he served his complaint, Regions failed to answer within the time limit set forth under Rule 12 of the Alabama Rules of Civil Procedure. Regions responded, attaching the state court summons and case action summary. The summons was addressed to Regions' post office box and did not list any officer or individual. The case action summary showed that a summons and complaint were issued by certified mail, but it did not include any entry for return of service.

In February 2018 the district court issued a memorandum opinion denying Hines' motion for default judgment and granting in part and denying in part Regions' motion to dismiss. The court found that Hines' attempts at service of process did not comport with the Alabama Rules of Civil Procedure because his summons was directed only to Regions' P.O. box and not an officer or authorized agent. The court found that although Hines had also attempted to serve process through the law firm that represented Regions in the initial foreclosure action, the firm's representation of Regions in that action did not make it Regions' general agent for service of process. It also noted that neither attempt at service resulted in the return of a signed receipt as required by Rule 4(i)(2)(C) of the Alabama Rules of Civil Procedure. Accordingly the court denied Hines' motion for default judgment but allowed his RESPA claim to proceed.

In the following months Regions filed a motion to alter or amend the judgment and Hines filed a motion to set aside the memorandum opinion. In November 2018 the district court granted Regions' motion, which it construed as a motion for reconsideration. The court held that it had committed clear error in its earlier order by applying a version of RESPA that was not in effect at the time of the alleged violation. It dismissed all of Hines' claims because it found that they were barred under a relevant exemption contained in the applicable version of

RESPA. Hines now appeals, contending that the district court erred in failing to grant his motion for default judgment.

II.

“We review the denial of a motion for a default judgment for abuse of discretion.” Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1316 (11th Cir. 2002). When service of process is challenged, the party on whose behalf it is made — here Mr. Hines — bears the burden of establishing its validity. Aetna Bus. Credit, Inc. v. Universal Decor & Interior Design, Inc., 635 F.2d 434, 435 (5th Cir. 1981).

An entry of default is appropriate when a party against whom affirmative relief is sought fails to plead or otherwise defend a case. See Fed. R. Civ. P. 55(a), (b). But a party’s delay may result in a default judgment only if the party has been properly served because “a court lacks jurisdiction over the person of a defendant when that defendant has not been served.” Pardazi v. Cullman Med. Ctr., 896 F.2d 1313, 1317 (11th Cir. 1990).

When evaluating the sufficiency of service of process that occurred before removal, we “look[] to the state law governing process.” Usatorres v. Marina Mercante Nicaraguenses, S.A., 768 F.2d 1285, 1286 n.1 (11th Cir. 1985) (per curiam). The Alabama Rules of Civil Procedure permit service upon a corporation “by serving an officer, a partner (other than a limited partner), a managing or

general agent, or any agent authorized by appointment or by law to receive service of process.” Ala. R. Civ. P. 4(c)(6). If service is effectuated through certified mail the addressee must be a person described in Rule 4(c). Id. at 4(i)(2)(B)(i). Service through certified mail is not effective until “the date of delivery to the named addressee or the addressee’s agent as evidenced by signature on the return receipt.” Id. at 4(i)(2)(C) (emphasis added).

The district court did not abuse its discretion in determining that Hines’ attempt at service of process did not comport with the Alabama Rules of Civil Procedure. Hines sent the summons to Regions’ P.O. box and to the law firm representing Regions in the foreclosure action, and did not address it to any officer or agent of Regions as required by Rule 4(c)(6). Hines makes the conclusory assertion that the law firm representing Regions in the foreclosure action was its authorized agent. But Alabama law does not authorize service of process on a defendant’s attorney “unless there is credible evidence of the appointment of the attorney as agent for purposes of service of process” or another relevant section of Rule 4 authorizes such service. Kingvision Pay-Per-View, Ltd. v. Ayers, 886 So. 2d 45, 52 (Ala. 2003). Hines has pointed to no evidence of such an appointment, much less credible evidence. And in any case, neither of Hines’ attempts at service resulted in the return of a signed receipt as contemplated by Rule 4(i)(2)(C).

Hines argues that he was not required to follow the Alabama Rules of Civil Procedure as long as Regions received adequate notice that did not violate its due process rights, relying on United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260 (2010). That reliance is misplaced. In Espinosa the Supreme Court held that a debtor's failure to adequately serve the creditor with a summons and complaint in accordance with the Bankruptcy Rules did not justify setting aside the bankruptcy court's judgment as void under Rule 60(b)(4) of the Federal Rules of Civil Procedure. Id. at 272. The Court recognized that Espinosa's failure to serve the creditor deprived it "of a right granted by a procedural rule" and that the creditor "could have timely objected to this deprivation and appealed from an adverse ruling on its objection." Id. But the creditor, despite having actual notice, failed to make such a timely objection or appeal and instead sought to overturn the Bankruptcy Court's final judgment under Rule 60(b)(4). Id. at 264–68. Because a judgment must be "so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final" to be declared void under Rule 60(b)(4), the Court held that the creditor was not entitled to relief because it had actual notice and failed to file a timely appeal. Id. at 270.

Hines is incorrect that under Espinosa he is entitled to default judgment so long as Regions had actual notice of his complaint and failed to make a timely answer. Rather Espinosa recognized that violating the Bankruptcy Rules' service

of process provisions deprived the creditor of a right that it could have vindicated on direct appeal instead of trying to take the extraordinary step of voiding a final judgment under Rule 60(b)(4). See id. at 272. Nothing in Espinosa excuses Hines from complying with the Alabama Rules of Civil Procedure. And we have held that providing a defendant with actual notice does not excuse a party from following such rules. See Albra v. Advan, Inc., 490 F.3d 826, 829 (11th Cir. 2007) (per curiam) (“A defendant’s actual notice is not sufficient to cure defectively executed service.”). So we cannot say that the district court abused its discretion in declining to grant Hines’ motion for default judgment.

AFFIRMED.