

IN THE
Supreme Court of the United States



CONEY ISLAND AUTO
PARTS UNLIMITED INC.,

Petitioner,

v.

JEANNE ANN BURTON,
CHAPTER 7 TRUSTEE FOR VISTA-PRO
AUTOMOTIVE, LLC

Respondent.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

REPLY BRIEF FOR PETITIONER

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SUMMARY OF ARGUMENT

The Trustee's brief does not tackle the central logical problem presented by this matter: if a judgment is void immediately upon entry and is a nullity for all purposes, how could there be a deadline to vacate it such that after the deadline the null judgment is fully enforceable?

Instead, the Trustee insists that Rule 60(c)(1) imposes a "reasonable time" limitation, and that is that. But this Court has consistently held that the Federal Rules of Civil Procedure are not sacrosanct. They must yield to superior concerns, specifically those mandated by the Rules Enabling Act and the requirements of due process. Further, this Court and the courts of appeals have clarified that a "reasonable time" for a collateral attack on a void judgment can and often should extend to the point when the plaintiff initiates adversarial enforcement proceedings. This is precisely when Coney Island filed its Rule 60(b)(4) motion, making the motion timely.

The Trustee responds to Coney Island's argument concerning the Advisory Committee by contending that the Committee members' statement do not override the clear language of the Rules. But this Court has held previously that the Committee's statements should be given weight. Moreover, this Court can harmonize the Committee statements with the text of Rule

60(c)(1) by noting that its “reasonable time” limitation applies to voidable and erroneous judgments rather than judgments void on their face.

The Trustee’s assertion that the procedural posture here amounts to a waiver or an improper collateral attack on established jurisdiction lacks merit. The doctrines of waiver and collateral estoppel apply only when the movant has already had their day in court – meaning they either failed to argue voidness when they had the opportunity or argued it and lost. Neither scenario occurred here.

For these reasons, as elaborated upon below, this Court is respectfully requested to reverse the Judgment.

ARGUMENT

I. The Trustee Misstates Facts Concerning Coney Island's Discovery of the Judgment and Later Events

As an initial matter, it bears noting that the Trustee has misstated several key factual points.

First, the Trustee claims that Coney Island admitted to being on notice of her 2016 correspondence concerning the Judgment. (Trustee Br. at 4-5). Not so. Coney Island admitted only that the correspondence seemed to be properly addressed and placed into the custody of the U.S. Postal Service, which creates “a mere inference of fact founded on the probability that the officers of the government will do their duty and [sic] the usual course of business.” *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884) (quoting *Huntley v. Whittier*, 105 Mass. 391, 392 (1870)). By the same token, however, when the inference “is opposed by evidence that the letters never were received, [that] must be weighed with all the other circumstances of the case, by the jury in determining the question whether the letters were actually received or not.” *Id.* at 194. Here, Daniel Beyda, Coney Island’s principal, stated that he first became aware of the Judgment in February 2021, when Coney Island’s bank seized funds sufficient to satisfy the Judgment. (Declaration of Daniel Beyda at 1, Bankr.

S.D.N.Y., No. 1:20-ap-00401, Dkt. 5 (“Beyda Decl.”)). Thus, whether Coney Island was on notice of the Judgment is a contested fact. In any event, as explained below, lack of proper service is not remediable through actual or constructive notice of a pending action.

The Trustee also contends that Coney Island unjustifiably delayed in moving for relief from the Judgment, namely by waiting six months from its discovery of the Judgment until it made its application to the New York bankruptcy court. (Trustee Br. at 5-6). Again, the Trustee is off base. Coney Island discovered the Judgment when its bank seized its funds in February 2021. (Beyda Decl. at 1). Its counsel immediately contacted the Trustee’s New York counsel to discuss vacation of the Judgment or a settlement. (Mot. Hr’g Tr. 14-15, Bankr. M.D. Tenn., No. 3:15-ap-90079, Dkt. 71). Similarly, contra the Trustee (Br. at 6), Coney Island did not delay in seeking vacation of the Judgment in the Tennessee bankruptcy court. Rather, after the New York district court affirmed the New York bankruptcy court’s decision in April 2022, Coney Island retained local counsel in Tennessee who entered his appearance in June 2022. (Bankr. M.D. Tenn., No. 3:15-ap-90079, Dkt. 42). Thus, at all times Coney Island has moved with alacrity.

Lastly, the Trustee contends that service of process was valid after all because Coney Island

identified itself as the agent for service of process. (Br. at 3). Not so. The Trustee misconstrues the New York Department of State record and its legal import. New York permits any domestic or registered foreign corporation to be served with any process whatsoever by way of the Secretary of State. N.Y. Bus. Corp. Law § 304(a). Such service is valid and complete when the papers are delivered to the Department of State. *Id.* § 306(b). Upon delivery of the papers, the Secretary of State sends them via “certified mail, return receipt requested, to such corporation, at the post office address, on file in the department of state, specified for the purpose.” *Id.* Thus, the Trustee incorrectly asserts that the address on file was valid service upon an “agent” as envisioned by Rule 7004(b)(3). Rather, that was the address to which the Secretary of State would mail papers pursuant to the Business Corporation Law, if that were the method by which Vista-Pro (the Trustee’s predecessor) chose to serve Coney Island. It did not, and therefore its attempt at service of process was invalid. Moreover, the Trustee does not explain how a principal can label itself as its own agent.

II. The Inherent Nature of a Void Judgment Renders Timeliness Irrelevant

The gravamen of Coney Island’s argument is that a judgment entered in the absence of

jurisdiction is void upon entry and thereby an unenforceable nullity. In response, the Trustee argues that the text of Rule 60(c)(1) is unambiguous and that this Court has already spoken in favor of its interpretation of the Rule.

A. The Rules of Civil Procedure Do Not Predominate Over Constitutional Protections

The Trustee's position that Rule 60(c)(1) unambiguously requires motions to be made within a reasonable time is beside the point. The Rules of Civil Procedure are promulgated pursuant to the Rules Enabling Act, which states that the Rules "shall not abridge, enlarge or modify any substantive right." 28 U.S.C. § 2072(b). This Court has held, therefore, that the Rules are valid only insofar as they "transgress[] neither the terms of the Enabling Act nor constitutional restrictions." *Hanna v. Plumer*, 380 U.S. 460, 471 (1965). One form of constitutional restriction is the absolute necessity of compliance with service of process rules. See *Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee* ("*Bauxites*"), 456 U.S. 694, 703 (1982) ("The personal jurisdiction requirement recognizes and protects an individual liberty interest."); *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965) (holding that failure to give proper notice violates "the most rudimentary demands of due process of law"); *Omni Capital Int'l v. Rudolf*

Wolff & Co., 484 U.S. 97, 104 (1987) (“Before a federal court may exercise personal jurisdiction over a defendant, the procedural requirement of service of summons must be satisfied.”).

For this reason, the “fact that this Court promulgated the rules as formulated and recommended by the Advisory Committee does not foreclose consideration of their validity, meaning or consistency.” *Miss. Publ’g Corp. v. Murphree*, 326 U.S. 438, 444 (1946); *cf. Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 842 (1999) (adopting a “limiting construction” of Rule 23(b)(1)(B), which “minimizes potential conflict with the Rules Enabling Act” and “avoids serious constitutional concerns”).

The Court should engage in this “limiting” exercise here. The mere fact that Rule 60(c)(1) exists is not proof that it passes logical or constitutional muster in this particular instance.

B. *Kemp* and *Gonzales* Support Coney Island’s Position, and the Court Should Interpret Rule 60(c)(1) to Avoid Statutory Dissonance

The Trustee contends that this Court has recently spoken on the question presented in *Kemp v. United States*, 596 U.S. 528 (2022). (Br. at 12). In *Kemp*, the Court stated that “Rule 60(c)

imposes deadlines on Rule 60(b) motions. All must be filed ‘within a reasonable time.’” 596 U.S. at 533. But the narrow issue in *Kemp* was “whether the term ‘mistake’ includes a judge’s error of law,” *id.* at 530, not the question presented here. And, at the conclusion of its opinion, the Court observed that “we have no cause to define the ‘reasonable time’ standard here.” *Id.* at 538.

This Court has never interpreted what is a “reasonable time” under Rule 60(c)(1). In the meantime, however, the lower courts have interpreted that term with significant elasticity. *Compare, e.g., Crosby v. Bradstreet Co.*, 312 F.2d 483, 485 (2d Cir. 1963) (directing that motion to vacate void judgment nearly thirty years after its entry be granted), *with Ghaleb v. Am. S.S. Co.*, 770 Fed. App’x 249, 250 (6th Cir. 2019) (holding that five months is unreasonably long to move to vacate void judgment).

Gonzales v. Crosby, 545 U.S. 524 (2005), aptly illustrates the principle that the Rules should be construed in consonance with other federal statutes and constitutional protections. There, the Court examined the Antiterrorism and Effective Death Penalty Act’s amendment prohibiting successive applications for habeas corpus relief. *See* 28 U.S.C. § 2244(b)(1). At issue was whether a motion nominally made pursuant to Rule 60(b) was in effect a successive application

for habeas corpus contrary to § 2244(b)'s prohibition on review of such motions. *Gonzales*, 545 U.S. at 530-31. This Court endorsed the consensus among the courts of appeals that reviewing a Rule 60(b) motion containing one or more “claims,” made after an initial habeas corpus application, would impermissibly circumvent § 2244(b). *Id.* at 531. Therefore, contrary to the Trustee’s argument, this Court has already held that a right afforded by Rule 60 gives way to other statutory and constitutional requirements.

Similarly, each of the courts of appeals – other than the Sixth Circuit – engaged in this avoidance doctrine analysis and concluded that, in effect, Rule 60(c)(1)’s requirement of bringing Rule 60(b) motions within a “reasonable time” does not apply when the movant asserts that the judgment is void *ab initio*. See, e.g., “*R*” *Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 123-24 (2d Cir. 2008) (“In fact, it has been oft-stated that, for all intents and purposes, a motion to vacate a default judgment as void may be made at any time” (internal quotation marks omitted)); *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1180 (D.C. Cir. 2013) (rejecting plaintiff’s argument that Rule 60(c)(1) applies to motions to vacate a default judgment as “contrary to this court’s precedent, as well as that of almost every other circuit court of appeals, all

of which reject a time limit that would bar Rule 60(b)(4) motions”).

Previously, this Court and others have suggested that a “reasonable time” under Rule 60(c)(1) in connection with a Rule 60(b)(4) motion may simply refer to that time when the defaulted defendant challenges the judgment. *See Bauxites*, 456 U.S. at 706 (“A defendant is always free to ignore the judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding.”). The Court there did not indicate when the collateral proceeding should take place, nor did it imply that the defaulting defendant should commence the collateral proceeding as soon as the underlying judgment is entered. Accordingly, other courts and commentators have concluded that an appropriate time – a “reasonable time” – is when the judgment creditor attempts to enforce the judgment in a manner significantly contrary to the defaulted defendant’s personal interest. *See Practical Concepts, Inc. v. Republic of Bolivia*, 811 F.2d 1543, 1547 (D.C. Cir. 1987) (“Alternatively, the defendant may refrain from appearing, thereby exposing himself to the risk of a default judgment. When enforcement of the default judgment is attempted, however, he may assert his jurisdictional objection.”); *United States v. Baus*, 834 F.2d 1114, 1122-23 (1st Cir. 1987) (finding Rule 60(b) motion timely despite it being filed five years after judgment because it

was filed soon after the government began enforcement efforts); *Kaplan v. Bank Saderat PLC*, 77 F.4th 110, 117 n.11 (2d Cir. 2023) (“Alternatively, the non-appearing defendant may challenge the judgment collaterally in any forum in which the holder of the default judgment seeks to enforce it.”); 10A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2695 (3d ed. 1998) (“Attacks of this type also are made collaterally at the time an attempt is made to enforce the judgment.”).

While the fundamental principle that a judgment void *ab initio* is perpetually invalid remains, achieving coherence with federal statutes suggests that Rule 60(c)(1) be interpreted to require motions to vacate such a judgment for lack of jurisdiction to be lodged at the point of adversarial enforcement, treating that moment as the measure of a “reasonable time.”

III. The Text of the Rules and The Viewpoint of Its Drafters Support Coney Island’s Interpretation

The Trustee argues that the Court should disregard remarks made by the Advisory Committee’s members in connection with their drafting of Rule 60. (Br. at 26-27). The Trustee urges this course because those remarks contradict its position in this case. Regardless,

this Court has made two critical pronouncements concerning the Rules that are relevant here. First, the “fact that this Court promulgated the rules as formulated and recommended by the Advisory Committee does not foreclose consideration of their validity, meaning or consistency.” *Murphree*, 326 U.S. at 444. And second, that “in ascertaining their meaning[,] the construction given to them by the Committee is of weight.” *Id.* Thus, the Court has recognized the need to challenge the meaning of the Rules when appropriate, and commentary by the Advisory Committee as to the Rules should be viewed with due regard.

The Trustee points to a memorandum read by the Advisory Committee’s Chairman, which included the line that a void judgment is “subject to collateral attack in any forum at any time,” and argues that that is not necessarily the view of the Committee. (Br. at 27-28 (quoting Advisory Committee at 555)). But neither did any member of the Committee challenge, much less seek clarification on, that statement. The Trustee also argues that the Chairman’s view that Rules 60(b)(4)-(5) “have no limitation of time on them” referred to a prior draft of the Rule. (Br. at 28 (quoting Advisory Committee at 604)). By any ordinary examination, the cited discussion is about what became Rule 60 in general, not about any one proposal.

In any event, the question of why the drafters put Rule 60(b)(4) under Rule 60(c)(1)'s "reasonable time" limitation may be resolved by noting that judgments may be void for a variety of reasons. The Trustee treats "void" and "lacking jurisdiction" synonymously. They are not. A judgment may be held void for reasons unrelated to a court's jurisdiction to have entered it. *See, e.g., Tumey v. Ohio*, 273 U.S. 510, 524 (1927) (noting that "the slightest pecuniary interest of any officer, judicial or quasi-judicial, in the resolving of the subject matter which he was to decide, rendered the decision voidable" (citation omitted)); *Manufacturers Trading Corp. v. Roberts*, 138 F.2d 806, 808 (5th Cir. 1943) (judgment held void because against public policy); *Fernow v. Gubser*, 136 F.2d 971, 973 (10th Cir. 1943) (describing a judgment against an incompetent person as voidable); *Simer v. Rios*, 661 F.2d 655, 663 (7th Cir. 1981) (stating that settlement decree was void for purposes of Rule 60(b)(4) where it was entered without notice to putative class members, in violation of their due process rights).

In these and alike instances, the judgments are not void *ab initio* because the tribunals issuing them possess personal and subject matter jurisdiction over the defendant. *Carter v. Fenner*, 136 F.3d 1000, 1006 (5th Cir. 1998) (holding that although the term "void judgments" typically alludes to an absence of jurisdiction, "they allow

enough room to capture within their reach situations where the parties' failure to follow relevant law or procedure in securing the judgment will undermine its ultimate validity."). By contrast, a judgment entered without jurisdiction is considered a nullity, as if it never happened. *See Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649 (1st Cir. 1972) ("A void judgment is one which, from its inception, was a complete nullity and without legal effect.").

To harmonize the dichotomy, the Court should note that the inquiry into what is a "reasonable time" limitation is multi-pronged, taking into effect the legal aspects of the underlying judgment. *United States v. Zima*, 766 F.2d 1153, 1159 (7th Cir. 1985); *Pruzinsky v. Gianetti (In re Walter)*, 282 F.3d 434, 440 (6th Cir. 2002) ("[A]n abuse of discretion exists where the trial court fails to consider the applicable legal standard[.]"). Thus, although the reasonableness analysis envisioned by the Advisory Committee may have viewed the passage of an unreasonable amount of time as possibly buttressing a voidable judgment, the judgment void *ab initio* can never be allowed to be enforced as a matter of both logic and respect for the limitations of the courts' jurisdiction. *Farm Credit Bank v. Ferrera-Goitia*, 316 F.3d 62, 67 (1st Cir. 2003) ("Since a void judgment is a legal nullity, there is ordinarily no need to request relief from it (and, thus, no time limit within which to request relief).").

In sum, the legal distinction between judgments merely voidable and judgments void *ab initio* provides an explanation for the Advisory Committee's concurrent opinions that Rule 60(c)(1)'s reasonable time limitation applies to the former but not the latter.

IV. A Judgment's Status As Void From Inception Excludes It From the Time Limits Applied to Judgments That are Voidable or Erroneous

Next, the Trustee argues that Rule 60(c)(1)'s "reasonable time" limitation is no different than any other deadline found in federal litigation, and there is no reason why Rule 60(c)(1) should not be enforced as written. (Br. at 16-18). But the difference is that a void judgment is a nullity from inception, whereas other judgments and orders are merely voidable or erroneous. *See Ex parte Reed*, 100 U.S. 13, 23 (1879) (explaining the difference between a judgment "merely erroneous and voidable" and "absolutely void").

The Trustee's reliance on *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) (Br. at 16-17), illustrates this principle. In that case, the petitioner lender argued that a bankruptcy court's discharge of student loan interest without the debtor commencing an adversary proceeding for an "undue hardship"

determination rendered the discharge void and susceptible to attack using Rule 60(b)(4). *Id.* at 266. This Court held unanimously that Rule 60(b)(4) did not apply because, first, by filing a proof of claim the lender submitted to the bankruptcy court's jurisdiction. *Id.* at 275. And second, the bankruptcy court's discharge, although contrary to the Bankruptcy Rules and Code, did not place the court's jurisdiction in doubt. *Id.* at 272. Accordingly, erroneous judgments differ markedly from void judgments, and their treatment under the law should be markedly different.

The Trustee also contends that not enforcing the "reasonable time" limitation is particularly dire in bankruptcy actions because of the need to marshal the estate's assets quickly. (Br. at 17-18). But although this action arises in the bankruptcy context, at bottom it is a simple breach of contract case that could have been commenced in any trial court. Thus, that specific procedural setting here is immaterial.

The Trustee also argues that not applying a reasonable time limitation to void judgments leaves open the possibility that a plaintiff may be prejudiced by having to contend with fading memories and mislaid documents years after the judgment. (Br. at 18). But this is a concern shared by many litigants, and in part is one of Vista Pro's own creation. A "plaintiff is the

master of the complaint[.]” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). As a result, the plaintiff is obliged to show “the grounds for the court’s jurisdiction,” Fed. R. Civ. P. 8(a)(1), and must assist the court in determining “whether it has jurisdiction over the defendant before entering judgment by default against a party who has not appeared in the case.” *Dennis Garberg & Assocs. v. Pack-Tech Int’l Corp.*, 115 F.3d 767, 772 (10th Cir. 1997). Vista Pro did not confirm that service of process was valid and that the bankruptcy court had personal jurisdiction over Coney Island before moving for entry of the Judgment.

Nor is the Trustee’s parade of horrors distinctive, and Coney Island can assemble one of its own. If the Court were to rule that there is a fluctuating “reasonable time” for vacating void judgments, nothing stops a plaintiff from effecting flawed service of process and then using subsequent mailings to show “actual notice” of the pending action to overcome a Rule 60(b)(4) motion. In fact, that is what happened here. And yet, “notice does not confer personal jurisdiction on a defendant when it has not been served in accordance with Rule 4.” *De Gazelle Grp., Inc. v. Tamaz Trading Establishment*, 817 F.3d 747, 751 (11th Cir. 2016) (citing *Omni Capital*, 484 U.S. at 104); *Mid-Continent Wood Products, Inc. v. Harris*, 936 F.2d 297, 301 (7th Cir. 1991) (“[A]ctual knowledge of the existence of a lawsuit

is insufficient to confer personal jurisdiction over a defendant in the absence of valid service of process.”). No court below held that service was proper here. (See Pet. App. 83a, 147a).

V. Challenging a Void Judgment Is Distinct from Waiver or Making an Appearance to Contest Jurisdiction

Continuing on, the Trustee attempts to make an analogy between a time bar on an initial challenge to a void judgment, and a procedural bar following prior litigation in relation to the same judgment. The analogy fails, however, because in the latter instance the challenger has already had an opportunity to show the judgment is void and either lost on the merits on that issue or chose not to make the argument.

For instance, in *Travelers Indem. Co. v. Bailey*, 557 U.S. 137 (2009) (Br. at 20), the Court held that a party may not collaterally attack a court’s conformity with its subject matter jurisdiction after jurisdiction had already been affirmed on direct appeal. *Id.* at 153. Similarly, a party cannot appear, challenge jurisdiction, lose, and then collaterally challenge jurisdiction. *Stoll v. Gottlieb*, 305 U.S. 165, 172 (1938) (Br. at 20). As the Court said in *Bauxites*, “By submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, the defendant agrees to abide by that court’s determination on

the issue of jurisdiction: That decision will be res judicata on that issue in any further proceedings.” 456 U.S. at 706. This is not the same as declining to review on timeliness grounds alone a party’s first ever attempt at showing a judgment is void.

Similarly, when a party brings a Rule 60(b) motion and does not include within it a voidness argument, or appeals directly but chooses not to raise the voidness issue (Br. at 20), it has submitted to the court’s jurisdiction and res judicata applies. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979) (“Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.”). There is no judgment or order on the merits here, so the Trustee’s analogy is inapt.

The Trustee contends further that the Rules of Appellate Procedure contain deadlines to file appeals, and the AEDPA imposes a one-year limit on habeas petitions, including ones attacking a court’s jurisdiction to impose a sentence. (Br. at 21). Again, however, these deadlines are imposed on litigants after they voluntarily appear, submit themselves to a court’s jurisdiction and litigate an action or a motion to completion on the merits. Prior to its initial application before the New York bankruptcy court to vacate the Judgment, Coney Island neither

appeared, nor submitted itself to a court's jurisdiction, or litigated anything on the merits.

Res judicata obviously plays a role in fostering finality; at some point, litigation must end. But res judicata requires, at a minimum, a prior opportunity to appear and be heard. *Heiser v. Woodruff*, 327 U.S. 726, 733 (1946). Coney Island has never had that opportunity.

VI. Coney Island Cited Case Law Pre- and Post-the 1946 Amendments to Show an Uninterrupted Understanding Among the Courts That Void Judgments May Be Challenged At Any Time

In its opening brief, Coney Island cited a number of opinions beginning in the 19th century and continuing uninterrupted through and following the 1946 amendments, that held that void judgments may be vacated at any time. (Opening Br. at 16-20). The Trustee maintains in response that “‘plain text and structure’ trump ‘background principles’ or pre-enactment practice.” (Br. at 22 (citations omitted)). But pre-enactment practice is half the story – the Trustee does not respond to the post-enactment part of the story where courts continue to do what they had done pre-enactment. Coney Island’s purpose in citing those cases was to show that courts and commentators understood void judgments to be subject to vacation at any time both before and

after the 1938 creation of Rule 60 and its 1946 amendment. The Trustee does not distinguish those cases.

Instead, the Trustee relies on a series of state cases, primarily *Smith v. Jones*, 174 Cal. 513 (1917) (Br. at 24-25). *Smith* is not on point, however, because there the Court held that a motion to vacate a one-year-old judgment was filed after a six-month limitation for such motions imposed by California statute, and so the movant's relief was through an independent action. *Id.* at 516-17. Likewise, she relies (at Br. 29 n.5) on a series of reported and unreported cases, which do not deal with void judgments. *See, e.g., Menashe v. Sutton*, 90 F. Supp. 531, 533 (S.D.N.Y. 1950) (holding judgment was not void because of a drafting error in a pleading correctable *nunc pro tunc*); *United States v. Willenbrock*, 152 F. Supp. 431, 431 (E.D. Pa. 1957) (seeking to annul voluntary surrender of citizenship); *Rhodes v. Houston*, 258 F. Supp. 546, 560 (D. Nebr. 1966) ("this court is convinced that none of the three judgments of this court is void"); *Shorter v. Baca*, 2025 WL 900434, at *3 (9th Cir. Mar. 21, 2025) (affirming denial of Rule 60(b) motion because it was filed "after the case had been tried twice"); *Garcia v. United States*, 2021 WL 3202164, at *1 (9th Cir. July 28, 2021) ("judgment was based on Garcia's failure to oppose the motion to dismiss").

The Trustee cites *Harris v. Hardeman*, 55 U.S. 334, 346 (1853), for her own assertion that “where judgments were void . . . courts could refuse to reward parties who tarried to the detriment of those who had relied in good faith on the judgments’ validity.” (Br. at 26). That was not at all the holding in *Harris*, however. Rather, *Harris* specifically held that where there is no valid service of process, the resulting judgment by default “must be regarded as obnoxious to every impeachment of its efficacy which can flow from its having been entered against one who was never a party in court[.]” 55 U.S. at 345. The party reliance issue was brought up only in the context of whether to vacate the void judgment by way of writ of error, a motion or the court’s “supervision of its own process.” *Id.* at 346. This was also generally the holding in *Wayne United Gas Co. v. Owens-Ill. Glass Co.*, 300 U.S. 131 (1937) (Br. at 26), which held that a bankruptcy court may revise its judgment even after the appeal deadline from a judgment had expired. *Id.* at 137. Nor is *Mulligan v. Fed. Land Bank of Omaha*, 129 F.2d 438 (8th Cir. 1942) (Br. at 26), helpful to the Trustee. There, appellants argued that the action ought *not* have been dismissed because the motion was untimely. *Id.* at 439. But the court affirmed, holding that lack of jurisdiction could always be raised. *Id.* at 440. The language the Trustee relies on concerning vacation being proper “unless rights have become vested in reliance upon it” refers to the rights of

innocent third parties taking assets in bankruptcy, not as between the parties to the original action. *Id.* (relying on *Wharton v. Farmers & Merchants Bank*, 119 F.2d 487, 489 (8th Cir. 1941)).

VII. Federal Courts Have a Plethora of Means to Deal With Any Consequences Arising From Vacating a Void Judgment

Lastly, the Trustee contends that Coney Island did not cite a case where a party in her position used the Rules to deal with vacated judgment in connection with statutes of limitation problems. (Br. at 31-32). That neither party could locate a reported case on this particular fact pattern does not mean that the proposed method is improper in some way.

The Trustee asserts that the method is improper because a court granting a Rule 60(b)(4) motion “may dismiss the entire proceeding and enter judgment or dismiss the complaint with prejudice[.]” (Br. at 32). It is unclear how a court vacating a void judgment would instead enter a judgment dismissing the action when, perforce of the vacation, the court lacks either or both subject matter and personal jurisdiction. Further, the Trustee provides no reason why a court would vacate a void judgment and dismiss the action *with* prejudice. In support, the Trustee cites

Mason v. Quintanilla, 775 F. Supp. 1134 (N.D. Ill. 1991), but the court dismissed that action – without prejudice – because there was lack of full diversity. *Id.* at 1136. Nothing barred plaintiff from removing the non-diverse defendant and refiling or reinstating the action in state court. Likewise, in *Int’l Hous. Ltd. v. Rafidain Bank Iraq*, 712 F. Supp. 1112 (S.D.N.Y. 1989) (Br. at 32), the court vacated a judgment by default because the defendant lacked minimum contacts with the United States. *Id.* at 1120. Accordingly, there was nothing to refile. And in *One Media IP Ltd. v. Henry Hadaway Organisation, Ltd.*, 2017 WL 492202 (M.D. Tenn. Feb. 7, 2017) (Br. at 32), the court found that defendants were not subject to personal jurisdiction in Tennessee and dismissed the action. *Id.* at *5. It is not clear why the dismissal was with prejudice given that the court opined the possibility of jurisdiction in California, and the opinion does not discuss that subject. *Id.* at *4. Regardless, dismissal for lack of jurisdiction should be without prejudice. See *Armour & Co. v. Fort Morgan S.S. Co.*, 270 U.S. 253, 258 (1926).

The Trustee does not cite any case in which a void judgment was vacated, and the plaintiff was unable to file a new action due to the expiration of the statute of limitations. And even if such a case were to exist, and setting aside the feasibility of amending a dismissed complaint to obtain relation back, Rule 4(m) states: “If a

defendant is not served within 90 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant *or* order that service be made within a specified time” (emphasis added). There is no reason why a court vacating a void judgment due to lack of valid service cannot simply order the plaintiff to re-serve the defendant.

CONCLUSION

For these reasons, the Court should reverse the judgment of the Court of Appeals.

Respectfully submitted,

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