IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT STATE OF FLORIDA

REGIONS BANK, an Alabama state chartered bank, as successor in interest to AmSouth Bank,

Appellant,

v.

HEMANT N. SHAH and MAYUR J. MEHTA,

Appellees.
_____/

CASE NO.: 2D19-2530
L.T. Nos.: 10-CA-7496
10-CA-7498

APPELLEE, MAYUR MEHTA'S
NOTICE TO INVOKE THE DISCRETIONARY
JURISDICTION OF THE FLORIDA SUPREME COURT

NOTICE IS GIVEN that MAYUR J. MEHTA, Appellee/Petitioner ("Mehta"), invokes the discretionary jurisdiction of the Florida Supreme Court to review the decision of this Court rendered on July 24, 2020. A true and accurate copy of the decision is attached to this Notice. The decision expressly and directly conflicts with a decision of another District Court of Appeal and/or of the Florida Supreme Court on the same question of law. Mehta invokes the discretionary jurisdiction of the Florida Supreme Court, pursuant to Rules 9.120 and 9.030(a)(2)(A)(iv), *Florida Rules of Appellate Procedure*.

Respectfully submitted,

/s/ Katie Brinson Hinton

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Attorneys for Appellee, Mayur J. Mehta

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via the Court's E-Filing System and/or electronic transmission and/or via U.S. Mail on this 21st day of August, 2020, to the following:

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/s/ Katie Brinson Hinton
Attorney
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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

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SECOND DISTRICT

REGIONS BANK, an Alabama State chartered bank, as successor in interest to Am South Bank, Appellant, v. BIG BEND INVESTMENTS GROUP OF FLORIDA, LLC, a Florida limited liability company, GAUTHAM SAMPATH, HEMANT N. SHAH, MAYUR J. MEHTA, CARE MULTISPECIALTY GROUP, P.A., a Florida professional association, CARE DENTISTRY GROUP, LLC., a Florida limited liability company, NIGASOFT, INC., a Florida corporation, KEY EQUIPMENT FINANCIAL, INC., PASCO SUNRISE, INC., ALKA SHAH, HEMANTKUMAR NATHUBHAI SHAH, MADHVI F. SHARA, PARAS SHAH, SURAJ KIRAN, INC., and SYNERGY MEDICAL SERVICE, LLC., Appellees.	)	Case No. 2D19-2530

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& Partners, LLC, Tampa, for Appellant.

Katie Brinson Hinton and Richard J. McIntyre of McIntyre, Thansides, Bringgold, Elliott, Grimaldi, Guito and Matthews, P.A., Tampa, for Appellee, Mayur J. Mehta.

Daniel Nicholas of Cole, Scott & Kissane, P.A., Tampa for Appellee, Hemant N. Shah.

No appearance for remaining Appellees.

LUCAS, Judge.

A decade ago, Regions Bank instituted civil litigation to recover on a loan it had extended in connection with a failed commercial office project in Riverview. We need not recount the wending course the bank's proceedings took in the circuit, bankruptcy, and appellate courts. Suffice to say that by July of 2011 the various lawsuits proceeded to the point where Regions Bank had set a hearing on its motion for summary judgment against the debtor and, pertinent here, the guarantors of the loan, Mayur J. Mehta (Dr. Mehta) and Hemant N. Shah (Dr. Shah).[1]

Neither of the guarantors, who appeared pro se at the summary judgment hearing,[2] requested a continuance of the hearing. Nor did they ever proffer any rebuttal evidence or argument against Regions Bank's motion. The circuit court granted

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Regions Bank's motion and on September 7, 2011, entered a final judgment that adjudicated the amount owed to Regions Bank (a little over two million dollars), determined that various defendants—including the guarantors—were jointly and severally liable for that judgment, and granted foreclosure of the bank's lien over the property that secured the loan.

Five days later, an attorney appeared on behalf of the guarantors and filed a motion for relief from judgment under Florida Rule of Civil Procedure 1.540. That motion was never set for hearing, and the guarantors never sought rehearing or to stay the final judgment. The guarantors did not appeal the final judgment. Thus, although there was a motion for relief from judgment pending, the collateral property proceeded to a foreclosure sale.

Unfortunately for all concerned, the foreclosure sale in 2011 did not generate sufficient funds to satisfy the bank's judgment. Over the course of the ensuing years, the parties engaged in more postjudgment litigation, mediation, and appellate proceedings.[3] Five years after filing their initial rule 1.540 motion, on December 2, 2016, the guarantors (now represented by new counsel) filed what purported to be an amended rule 1.540 motion for relief from judgment. A third iteration, this time styled as an "emergency amended" motion, was filed two weeks later. The circuit court heard the guarantors' motions on February 9, 2017, and on February 16, 2017, entered an order

[3]The guarantors were appellants in the following appeals before this court, all of which stemmed from the same underlying litigation: 2D16-5538, 2D17-1510, 2D17-1584, 2D17-2187, and 2D17-3509. Most of the guarantors' appeals were dismissed for failure to prosecute.

denying the guarantors' motions, apparently on the ground that it no longer had jurisdiction to afford any relief.

Our court reversed that order in Shah v. Regions Bank, 255 So. 3d 951, 953 (Fla. 2d DCA 2018), and observed that since "no evidence was presented at the hearing—for reasons that appear to be based on the court's initial statement that it did not have jurisdiction—we cannot determine if denial of the motion would otherwise have been appropriate." With respect to Dr. Mehta, we remanded the case for the circuit to convene an evidentiary hearing on his motion.

On October 5, 2018, more than seven years after the final judgment's entry, the guarantors filed "Renewed Motions for Relief from Final Judgment." In their renewed motions, the guarantors argued that the 2011 final judgment was void because they were deprived of notice and a meaningful opportunity to be heard. They further argued that certain of their affirmative defenses were never adjudicated prior to entry of the final judgment. A hearing was convened on their renewed motion on April 17, 2019, with a new circuit judge presiding.

At that hearing, Dr. Mehta and Dr. Shah presented transcripts of the various hearings leading to entry of the final judgment and copies of the notices that they alleged were inadequate. From these, they argued that they were deprived of notice and a meaningful opportunity to be heard. Regions Bank argued from the same documents that its prior notice was adequate and that Dr. Mehta and Dr. Shah were not deprived of a meaningful opportunity to be heard.

The circuit court agreed with the guarantors and on May 31, 2019, entered an order granting both guarantors' motions and vacating the final judgment as to both of

them. In its order, the circuit court reviewed transcripts from the prior proceedings and concluded that the guarantors' due process rights had been violated and that their affirmative defenses were not completely adjudicated before the final judgment's entry. Regions Bank now appeals that order. See Fla. R. App. P. 9.130(a)(5).

We would generally review a trial court's order on a rule 1.540(b) motion for abuse of discretion. Rodriguez v. Thompson, 235 So. 3d 986, 987-88 (Fla. 2d DCA 2017); Deluca v. King, 197 So. 3d 74, 75-76 (Fla. 2d DCA 2016). However, "[a] decision whether or not to vacate a void judgment is not within the ambit of a trial court's discretion; if a judgment previously entered is void, the trial court must vacate the judgment." Wiggins v. Tigrent, Inc., 147 So. 3d 76, 81 (Fla. 2d DCA 2014) (citing Horton v. Rodriguez Espaillat y Asociados, 926 So. 2d 436, 437 (Fla. 3d DCA 2006)). Determining whether a judgment is void poses a question of law that we review de novo. See Dabas v. Boston Inv'rs Grp., Inc., 231 So. 3d 542, 545 (Fla. 3d DCA 2017) ("Because the issue of whether a judgment is void presents a question of law, we review the trial court's ruling de novo." (citing Vercosa v. Fields, 174 So. 3d 550, 552 (Fla. 4th DCA 2015))).

From our de novo review, we must conclude that the trial court erred when it deemed the final judgment void. It appears the trial court construed the provision of an inadequate or insufficient notice of hearing sent to Dr. Mehta's bankruptcy counsel (which could possibly be considered voidable) as an outright failure to provide him with notice (which would be considered void). That was error. See Cannella v. Auto-Owners Ins. Co., 801 So. 2d 94, 99-100 (Fla. 2001); State ex rel. Gore v. Chillingworth, 171 So. 649, 652 (Fla. 1936); Decker v. Kaplus, 763 So. 2d 1229, 1230 (Fla. 5th DCA

2000). "It is only where service is so defective as to amount to no notice that a judgment is void, because then there is a denial of due process. Where notice is adequate, defects in process or service of process are waived if not timely raised." Kathleen G. Kozinski, P.A. v. Phillips, 126 So. 3d 1264, 1268 (Fla. 4th DCA 2013) (quoting Paleias v. Wang, 632 So. 2d 1132, 1135 (Fla. 4th DCA 1994) (Klein, J., concurring specially)). It cannot seriously be argued that Dr. Mehta and Dr. Shah had no notice of the hearing that precipitated the court's entry of a judgment against them when they were present at that hearing, presented materials for the court to consider, and were permitted to speak for themselves.

Nor from our review of the record could it be said that Dr. Mehta or Dr. Shah were deprived of an opportunity to be heard. In its order, the circuit court observed that the guarantors "were interrupted by the court several times and not allowed to fully present any argument." While we might agree with the first observation (the prior presiding judge appeared to have interrupted Dr. Shah twice in order to ask him questions about the bankruptcy proceedings), we cannot agree with the second. The hearings that ultimately led to the entry of the final judgment were "conducted in a fair manner appropriate to the nature of the proceeding." See Carmona v. Wal-Mart Stores, E., LP, 81 So. 3d 461, 464 (Fla. 2d DCA 2011) (affirming denial of a motion for relief from judgment); see also Monts v. Washington, 764 So. 2d 831, 833 (Fla. 5th DCA 2000) ("Due process requires only that a person be afforded the opportunity to be heard. It does not require more than one opportunity where a party declines to take advantage of that opportunity . . . ."). Neither Dr. Mehta nor Dr. Shah were deprived of the opportunity to present a defense.

Finally, the affirmative defenses the circuit court mentioned in its order could not have provided an independent basis to vacate the prior judgment. Indeed, the order below failed to explain how or why the prior pendency of these defenses would render the final judgment *void* under rule 1.540(b). No court has ever held that an unresolved claim or defense in a civil action renders a judgment entered in that action void. Cf. Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n, 968 So. 2d 658, 665, 667 (Fla. 2d DCA 2007) ("A void judgment is so defective that it is deemed never to have had legal force and effect. . . . For purposes of due process, Sterling had a procedure to resolve any error in this judgment by way of motion for rehearing or filing a notice of appeal. It simply chose not to use those procedures."); Miller v. Preefer, 1 So. 3d 1278, 1282 (Fla. 4th DCA 2009) ("A void judgment is one entered in the absence of the court's jurisdiction over the subject matter or the person."); Rutshaw v. Arakas, 549 So. 2d 769, 770 (Fla. 3d DCA 1989) ("It is well settled that a 1.540 motion cannot be employed as a substitute for a timely appeal . . . ."); Palmer v. Palmer, 479 So. 2d 221, 221 (Fla. 5th DCA 1985) ("If a court has subject matter jurisdiction and that jurisdiction has been properly invoked by pleadings and properly perfected by service of process, its judgments, although erroneous as to law or fact and subject to reversal on appeal, are nevertheless not void.").

Accordingly, we reverse the order below and remand with directions to reinstate the previously entered final judgment.

Reversed and remanded with directions.

CASANUEVA and SMITH, JJ., Concur.

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CASANUEVA and SMITH, JJ., Concur.

SECOND DISTRICT COURT OF APPEAL OF FLORIDA
P.O. BOX 327
LAKELAND, FLORIDA 33802-0327
(863) 499-2290

August 21, 2020

Re:

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v.
Big Bend Investment Group of Florida, LLC, et al
Appeal No.: 2D19-2530
Trial Court No.: 10-CA-007496
Trial Court Judge:

Florida Supreme Court
Attn: Clerk's Office

Attached is a certified copy of the notice invoking the discretionary jurisdiction of the Supreme Court, pursuant to Rule 9.120, Florida Rules of Appellate Procedure. Attached also is this Court's opinion or decision relevant to this case.

___The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was paid through the portal.

___ The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was received by this court and is attached.

__X__The filing fee prescribed by Section 25.241(2)(a), Florida Statutes, was not received by this court.

____ Petitioner/Appellant has been previously determined insolvent by the circuit court or our court in the underlying case.

____ Petitioner/Appellant has already filed, and this court has granted, petitioner/appellant's motion to proceed without payment of costs in this case.

No filing fee is required because:

___ Summary Appeal, pursuant to rule 9.141
___ From the Unemployment Appeals Commission
___ A Habeas Corpus proceeding
___ A Juvenile case
___ Other

In criminal cases, the notice of appeal was filed in the lower tribunal on _____.

If there are any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

Mary Elizabeth Kuenzel
Clerk

By: Joshua Dannelley

MK: jd

cc (without attachments):

John A. Anthony, Esq. Lydia M. Gazda, Esq. Stephenie B. Anthony, Esq. Richard J. Mc Intyre, Esq.
Katie M. Brinson Hinton, Esq. Stanford R. Solomon, Esq. Laura H. Howard, Esq. 975397