

[Cite as *Professional Bank Servs. v. Abboud*, 2015-Ohio-1651.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102078

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**PROFESSIONAL BANK  
SERVICES, ET AL.**

PLAINTIFFS-APPELLEES

vs.

**MICHEL F. ABBoud, ET AL.**

DEFENDANTS-APPELLANTS

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**JUDGMENT:**  
REVERSED AND REMANDED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-05-579415

**BEFORE:** Kilbane, J., Celebrezze, A.J., Laster Mays, J.

**RELEASED AND JOURNALIZED:** April 30, 2015

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MARY EILEEN KILBANE, J.:

{¶1} Defendant-appellant, Michel Abboud (“Abboud”), appeals from the order of the trial court that denied his motion to vacate the April 2006 default judgments entered in favor of plaintiffs-appellees, Professional Bank Services (“PBS”) and Francis Calvert (“Calvert”), in appellees’ collection action. Having reviewed the record and the controlling case law, we reverse and remand the matter for an evidentiary hearing.

{¶2} The record reveals that on May 13, 2002, Abboud was indicted for numerous offenses in the United States District Court for the Northern District of Ohio, including 26 counts of bank fraud, 42 counts of money laundering, and other charges. In defending against these charges, Abboud and his brother, Elie Abboud (“Elie”), retained the services of PBS and Calvert to perform litigation consulting work. Abboud was subsequently convicted of two federal offenses on April 29, 2004. In July 2004, he was sentenced to 97 months of imprisonment, but he was released on a surety bond and later granted a new sentencing hearing.

{¶3} By December 2005, appellees alleged that Abboud and Elie<sup>1</sup> owed PBS \$25,678 and owed Calvert \$26,763. Appellees filed suit for the unpaid litigation consulting services on December 12, 2005. As of this date, Abboud was on bond in the federal matter (because he was remanded to serve his federal sentence on September 8, 2006).

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<sup>1</sup>Elie is not a party to this appeal.

{¶4} The record also reveals that Abboud was also subject to criminal charges in state court as of the December 12, 2005 filing of appellees' complaint for unpaid professional services. The state charges stemmed from a 2001 indictment for aggravated robbery, aggravated burglary, coercion, and extortion. By December 12, 2005, the defendant had been convicted of all offenses, on retrial, and an appeal bond granted by the Cuyahoga County Court of Common Pleas in connection with state court charges was revoked upon this court's affirmance of convictions for all charges. *See State v. Abboud*, 8th Dist. Cuyahoga No. 85750, 2005-Ohio-5847. The record additionally indicates, however, that Abboud was transported to jail on December 12, 2005. The record further indicates that on April 17, 2008, the trial court gave Abboud credit for all time served, which as of that date was calculated to be two years, nine months, and four days.<sup>2</sup>

{¶5} The record next reveals that appellees' complaint and summons for the unpaid professional services fees was served upon Abboud by certified mail on December 30, 2005, at 4689 Derbyshire Road, in North Randall, the address listed in the criminal

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<sup>2</sup>On April 17, 2008, Abboud ultimately pled guilty to unlawful restraint and aggravated burglary, and the remaining charges were dismissed. The journal entry issued in connection with the plea indicates that

[t]he court imposes a prison sentence at Grafton Correctional Institution of 3 year(s). In regards to count 1, defendant is sentenced to the county jail for a term of 90 days to run concurrent with count 3. Defendant to be given credit for all time served including county jail which has been represented to be two years, nine months and four days. To be verified through the Department of Corrections and Rehabilitation [sic].

proceedings. It was returned as unclaimed on January 27, 2006. Appellees then reissued service of complaint and summons by ordinary mail on February 3, 2006.

{¶6} On March 16, 2006, appellees filed a motion for default hearing. The trial court granted the motion, and on March 24, 2006, it notified Abboud that the default hearing would be heard on April 5, 2006. On that date, the trial court heard the matter and entered default judgment against Abboud and Elie and in favor of PBS in the amount of \$26,469. The trial court also awarded Calvert a default judgment against Abboud and Elie in the amount of \$27,476.

{¶7} On August 1, 2014, Abboud filed a motion to vacate the default judgments entered against him and asserted that the judgments were void ab initio. He asserted that the Derbyshire address is a “former address,” and that he did not receive the complaint and summons because he was in jail or prison at that time. In an affidavit offered in support of the motion, Abboud averred:

Affiant states that on November 17, 2005, he was remanded to the Cuyahoga County Jail by Judge David T. Matia; that he remained at the Cuyahoga County Jail for approximately two weeks, and thereafter[,] was transferred to the Lorain Correctional Institution where he remained for a period of time before being moved from the Lorain Correctional Institution to the Marion Correctional Institution where he remained until he was transferred to Grafton Correctional where he completed his state sentence and thereafter transferred to Elkton Federal Institution and completed his

federal sentence on April 27, 2013[,] after being housed at the Oriana House on East 55th Street.

{¶8} In opposition, appellees argued that default judgments were properly awarded following proper service of the complaint and summons. Appellees presented evidence that Abboud was not in jail in connection with the Cuyahoga County matter or in connection with the federal prosecution at the time of the service of the PBS-Calvert complaint and summons, and that service was properly completed in February 2006. In opposition to Abboud's averments concerning his various imprisonment at various locations from 2005 to 2014, appellees presented the docket entries for the state and federal criminal matters. Appellees also presented the docket entries for the federal matter that indicated Abboud was remanded on September 8, 2006, or after service was sent to him in February 2006.

{¶9} On September 12, 2014, the trial court denied Abboud's motion for relief from the default judgments awarded to PBS and Calvert.

{¶10} Abboud now appeals, assigning the following error for our review.

#### Assignment of Error

Defendant was denied due process of law when the court overruled his motion to vacate without at least an evidentiary hearing.

{¶11} In support of this assignment of error, Abboud argues that the default judgments are void ab initio because he was incarcerated or imprisoned at the time of the December 2005 through February 2006 attempts at service at his former residence.

{¶12} A judgment rendered without personal jurisdiction over a defendant is void. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph three of the syllabus. Therefore, where the plaintiff has not perfected service on a defendant and the defendant has not appeared in the case or otherwise waived service, the court lacks jurisdiction to render a default judgment against the defendant. *Rite Rug Co., Inc. v. Wilson*, 106 Ohio App.3d 59, 62, 665 N.E.2d 260 (10th Dist.1995).

{¶13} A trial court's authority to vacate a void judgment constitutes an inherent power possessed by Ohio courts. *Newark Orthopedics, Inc. v. Brock*, 92 Ohio App.3d 117, 123, 634 N.E.2d 278 (10th Dist.1994). A defendant may raise the issue of insufficient service of process through a Civ.R. 60(B) motion, but the defendant "need not establish either a meritorious defense or that the motion was timely under Civ.R. 60(B)." *CompuServe, Inc. v. Trionfo*, 91 Ohio App.3d 157, 161, 631 N.E.2d 1120 (10th Dist.1993).

{¶14} On appeal, a reviewing court will not overturn the decision of a trial court regarding a motion to vacate a purportedly void judgment absent an abuse of discretion. *Miley v. STS Sys., Inc.*, 153 Ohio App.3d 752, 2003-Ohio-4409, 795 N.E.2d 1254, ¶ 7 (10th Dist.); *Hoffman v. New Life Fitness Ctrs., Inc.*, 116 Ohio App.3d 737, 739, 689 N.E.2d 84 (3d Dist.1996).

{¶15} In this matter, the record indicates that Abboud was released on an appeal bond in the federal matter during the time of the service of the summons and complaint in this matter. The docket of the state court proceedings indicates, however, that after this

court affirmed his convictions on November 23, 2005, Abboud was remanded into custody on December 12, 2005. Although a notation in the docket indicates that Abboud was leaving jail on December 15, 2005, this entry may have been issued in connection with the beginning of Abboud's sentence at the Lorain Correctional Institution. Further, by April 17, 2008, the court noted that Abboud had served two years, nine months, and four days of his sentence. Accordingly, it cannot definitively be determined from this record whether Abboud was residing at the Derbyshire address at the time of the service of the complaint, and therefore, the matter must be remanded to the trial court for a hearing on his precise whereabouts in February 2006, when service was sent to his home residence.

{¶16} Abboud's sole assignment of error is well taken. Therefore, we reverse and remand the matter for an evidentiary hearing.

It is ordered that appellant recover of appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.



A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and  
ANITA LASTER MAYS, J., CONCUR