

[Cite as *Garabet v. Sabbagh*, 2015-Ohio-4703.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102933

ALEX GARABET

PLAINTIFF-APPELLEE

vs.

SAMIR SALIM SABBAGH

DEFENDANT-APPELLANT

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-804291

BEFORE: Keough, J., Celebrezze, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: November 12, 2015

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KATHLEEN ANN KEOUGH, J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow the court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; App.R. 11.1(E).

I. Background

{¶2} In March 2012, plaintiff-appellee, Alex Garabet (“Garabet”), filed suit in California Superior Court against defendant-appellant, Samir Salim Sabbagh (“Sabbagh”), Mayada Tawfiq, and Aram Media. The complaint alleged that in June 2008, Garabet entered into a written partnership agreement with Sabbagh and Tawfiq to form Aram Media, a printing company that conducted business in Iraq and obtained lucrative contracts to print the *Stars and Stripes* newspaper for the United States military in Iraq.

{¶3} The complaint alleged that Garabet contributed \$619,500 to the partnership in 2008, but gave notice in September 2010 that he was exercising his right under the agreement to either dissolve the partnership or sell his equity to the remaining partners. A copy of a promissory note attached to Garabet’s complaint demonstrated that on September 23, 2010, Sabbagh signed a promissory note acknowledging that Garabet had paid \$619,500 to Aram Media, converting the payment to a loan, and agreeing to pay Garabet \$619,500 plus interest at 10% per year from June 30, 2008 “as soon as Aram Media receives any funds from its operations.” The promissory note further stipulated that Aram Media, Sabbagh, and Tawfiq were jointly and severally liable for the note. The complaint alleged that although Aram Media had received substantial funds from its operations after 2010, it had refused to pay Garabet any part of the amount due him.

{¶4} On October 3, 2012, Garabet obtained a default judgment against the defendants in the amount of \$619,500, plus interest of \$258,322 and \$475 in costs. In April 2013, the judgment was transferred to Ohio and filed with the common pleas court pursuant to Ohio's Uniform Enforcement of Foreign Judgments Act, R.C. 2329.021 et seq.

{¶5} Over a year and a half later, in December 2014, Sabbagh filed a motion to vacate the California judgment, asserting that the judgment was void. Sabbagh argued that the California court did not have jurisdiction to enter default judgment against him because he was not a California resident and did not have sufficient contacts with California to permit the court to exercise its long-arm jurisdiction. In addition, he claimed that he was never served with the summons and complaint.

{¶6} In an affidavit attached to his motion, Sabbagh averred that he has been an Ohio resident since 2002; never lived in California; has no assets in California; was not an owner, investor, or partner in Aram Media (although he admitted he was employed as its general manager); and his signatures on the partnership agreement and promissory note attached to Garabet's complaint in the California action were forgeries. Sabbagh further alleged that he was never served with the summons and complaint in the California action, and had never met the process server, Falah Hadl, even though Garabet had filed two return- of-service documents with the California Superior Court demonstrating that Hadl had served Sabbagh in Iraq with the complaint and summons. He also alleged that Aram Media had ceased operations in October 2012.

{¶7} Garabet filed a brief in opposition to Sabbagh's motion to vacate, in which he argued that Sabbagh's motion should be denied because it was not timely filed under Civ.R. 60(B), and further, that Sabbagh's allegations that his signatures on the partnership agreement

and promissory note were forged, and that he was never served with the summons and complaint in the California lawsuit, were “patently false.”

{¶8} In an affidavit attached to his brief, Garabet stated that he entered into a partnership agreement regarding Aram Media with Sabbagh and Tawfiq, contributed \$619,500 to the partnership, and subsequently demanded the return of his investment when he discovered that Sabbagh had squandered most of the funds that had been contributed to the partnership. He further averred that on September 23, 2010, Sabbagh executed a promissory note in the amount of \$619,500, plus interest at 10 percent per annum retroactive to June 30, 2008, and that true and accurate copies of the partnership agreement and promissory note were attached to the complaint that he filed in California.

{¶9} Garabet’s affidavit stated that Sabbagh was served with the complaint and summons in Iraq by Hadl, and that copies of the summons and complaint were also sent to Sabbagh’s California lawyer. Garabet stated further that before he filed suit, Sabbagh telephoned and emailed him in California regarding his demands for repayment on the promissory note. Garabet averred that Sabbagh was indeed a partner in Aram Media, had filed a lawsuit in California on behalf of the company, and come to California in 2013 for a settlement conference in that case.

{¶10} Finally, Garabet averred that contrary to Sabbagh’s assertion that Aram Media ceased operating in Iraq in 2012, as of March 2013, Aram Media was printing the *Stars and Stripes* newspaper for the United States military in Afghanistan. Garabet attached a letter dated February 21, 2013, signed by Sabbagh as “Director of Aram Media,” in which Sabbagh acknowledged that effective March 1, 2013, Aram Media would be printing and distributing the *Stars and Stripes* to the United States Army in Afghanistan.

{¶11} The trial court subsequently denied Sabbagh's motion to vacate, ruling that he could refile his motion if the original judgment from the superior court of California was vacated. This appeal followed.

II. Analysis

{¶12} In his single assignment of error, Sabbagh asserts that the trial court erred in denying his motion to vacate the foreign judgment filed by Garabet because the California court lacked personal jurisdiction over him. In response, Garabet argues that the trial court properly denied Sabbagh's motion because it was untimely under Civ.R. 60(B) and, further, that the California court had personal jurisdiction over Sabbagh because Sabbagh was served with the summons and complaint and had sufficient contacts with California to allow application of California's long-arm statute.

{¶13} Generally, judgments from a sister state's court are entitled to full faith and credit. *Litsinger Sign Co. v. Am. Sign Co.*, 11 Ohio St.2d 1, 4, 227 N.E.2d 609 (1967); R.C. 2329.021 et seq. However, a foreign judgment is subject to collateral attack in Ohio if there was no subject matter or personal jurisdiction to render the judgment under the law of the foreign state. *Id.*

{¶14} A judgment rendered by a court that lacks jurisdiction over the person is void. *Peoples Banking Co. v. Brumfield Hay & Grain Co.*, 172 Ohio St.545, 179 N.E.2d 53 (1961), paragraph two of the syllabus. It is within a trial court's inherent authority to vacate a void judgment. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988). Therefore, a party need not seek relief under Civ.R. 60(B) in order to have the judgment vacated. *Id.*; *Timekeeping Sys. v. Safety Prot. Universal Ltd.*, 8th Dist. Cuyahoga No. 99714, 2013-Ohio-3919, ¶ 11; *Copelco Capital, Inc. v. St. Mark's Presbyterian Church*, 8th Dist. Cuyahoga No. 77633, 2001 Ohio App. LEXIS 315, *5 (Feb. 1, 2001).

{¶15} Here, Sabbagh did not seek to vacate the California judgment under Civ.R. 60(B); he moved the trial court to vacate the judgment under the trial court's inherent authority to vacate a void judgment. Accordingly, Sabbagh was not required to satisfy the requirements of Civ.R. 60(B) to demonstrate an entitlement to relief. Rather, he was required to show that the California court lacked jurisdiction to enter judgment. *Id.*

{¶16} In his motion to vacate, Sabbagh argued that the California court lacked personal jurisdiction over him because he did not have sufficient minimum contacts with California to create long-arm jurisdiction. In addition, he argued that he was never served with the summons and complaint in the California case. Sabbagh attached an affidavit to his motion in which he alleged that he is not a California resident, has no assets in California, and all contacts with Garabet occurred in Iraq. He also averred that he was never served with the summons and complaint.

{¶17} In contrast, Garabet's affidavit averred that Sabbagh telephoned and emailed him in California regarding Aram Media and had other contacts in California regarding the company that were sufficient to establish minimum contacts for long-arm jurisdiction. Garabet also averred that Sabbagh was indeed served with the summons and complaint.

{¶18} Where there are conflicting affidavits concerning the movant's claims for relief that require the evaluation of the credibility of the affiants, the trial court abuses its discretion in denying the movant's motion to vacate judgment without first holding an evidentiary hearing. *Infern-O-Therm Corp. v. Thickstun Bros. Equip. Co.*, 10th Dist. Franklin No. 91AP-51, 1991 Ohio App. LEXIS 2068 (Apr. 16, 1991) (trial court erred in overruling motion to vacate foreign judgment without according the parties an evidentiary hearing where the affidavits were in

conflict regarding the sufficiency of defendant's contacts with the foreign state to constitute constitutionally required minimum contacts for personal jurisdiction).

{¶19} Here, because the parties submitted conflicting affidavits regarding Sabbagh's motion to vacate judgment that require factual determinations that are dependent upon the credibility of the affiants, the trial court abused its discretion in denying the motion to vacate without conducting an evidentiary hearing. Accordingly, the assignment of error is sustained; the matter is reversed and remanded for an evidentiary hearing.

{¶20} Judgment reversed and remanded.

It is ordered that the parties share equally the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

KATHLEEN ANN KEOUGH, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
TIM McCORMACK, J., CONCUR