

926 So.2d 436
 District Court of Appeal of Florida,
 Third District.

Helen B. HORTON, Appellant,

v.

RODRIGUEZ ESPAILLAT y ASOCIADOS, Appellee.

No. 3D05-1884. | April 5, 2006.

Synopsis

Background: The Circuit Court, Miami-Dade County, Michael B. Chavies, J., denied defendant's motion to vacate judgment. Defendant appealed.

[Holding:] The District Court of Appeal held that underlying judgment was void, and thus defendant was entitled to relief from judgment.

Reversed and remanded.

West Headnotes (3)

[1] Judgment

🔑 **Insufficiency or illegality of cause of action**

Underlying judgment that was entered in favor of plaintiff was void, and thus defendant was entitled to relief from judgment; complaint, on its face, failed to state recognizable claim against defendant for liability on dishonored checks. [West's F.S.A. RCP Rule 1.540\(b\)](#).

3 Cases that cite this headnote

[2] Appeal and Error

🔑 **Extent of Review Dependent on Nature of Decision Appealed from**

Where a party who seeks relief from judgment asserts that the underlying judgment is void, it is necessary to evaluate the underlying judgment in reviewing the order denying the motion. [West's F.S.A. RCP Rule 1.540\(b\)](#).

1 Cases that cite this headnote

[3] Judgment

🔑 **Invalidity of judgment in general**

If it is determined in proceeding for relief from judgment that the judgment entered is void, the trial court has no discretion, but is obligated to vacate the judgment. [West's F.S.A. RCP Rule 1.540\(b\)](#).

5 Cases that cite this headnote

Attorneys and Law Firms

*437 Weissman, Dervishi, Borgo & Nordlund, P.A., [Brian S. Dervishi](#), and [John Borgo](#), Miami, and [Jonathan Bakalarz](#), for appellant.

[Silva & Silva, P.A.](#), Miami, and [Ibrahim Reyes, Jr.](#), for appellee.

Before [GREEN](#), [RAMIREZ](#), and [SUAREZ](#), JJ.

Opinion

PER CURIAM.

[1] [2] [3] We reverse the order denying defendant's motion to vacate the final judgment pursuant to [Florida Rule of Civil Procedure 1.540\(b\)](#). Where a party asserts that the underlying judgment is void, "it is necessary to evaluate the underlying judgment in reviewing the order denying the motion. If it is determined that the judgment entered is void, the trial court has no discretion, but is obligated to vacate the judgment." *Dep't of Transp. v. Bailey*, 603 So.2d 1384, 1386-87 (Fla. 1st DCA 1992).

In this case, the underlying judgment is void because the complaint, on its face, fails to state a recognizable claim against the defendant, *see Becerra v. Equity Imports, Inc.*, 551 So.2d 486 (Fla. 3d DCA 1989); *Magnificent Twelve, Inc. v. Walker*, 522 So.2d 1031 (Fla. 3d DCA 1988); *see also Palmer v. Parker*, 52 Fla. 389, 42 So. 398, 400 (1906), for liability on the dishonored checks. The trial court should have granted the motion on this basis.

This cause is therefore reversed and remanded for further proceedings. The remaining points raised on appeal lack merit.

Reversed and remanded.

Parallel Citations

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