

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502017AP000115XXXXMB
L.T. No.: 502004CC013909XXXXMB

MELISSA BARNES,
Appellant,

v.

CAPITAL ONE BANK,
Appellee.

Opinion filed:

AUG 27 2018

Appeal from the County Court in and for Palm Beach County,
Judge Sandra Bosso-Pardo.

For Appellant: Melissa Barnes (*pro se*)
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For Appellee: Bruce E. Wagner, Esq.
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PER CURIAM.

This is an appeal of the trial court's denial of Appellant, Melissa Barnes', two motions to vacate default judgments entered in favor of Appellee Capital One Bank. Appellant argues on appeal that the trial court erred in denying the Motions to Vacate Judgment because the underlying default judgment is void and she was entitled to a vacated judgment under section 55.10, Florida Statutes.

In the first Motion to Vacate Judgment, Appellant argues that the underlying default judgment is void because she never received proper service of process, and was therefore neither

aware of nor present at the hearing, and was unable to respond to the claims brought against her. A judgment is void if, in the proceedings leading up to the judgment, there is “[a] violation of the due process guarantee of notice and an opportunity to be heard.... Generally, due process requires fair notice and a real opportunity to be heard and defend in an orderly procedure before judgment is rendered.” *Shiver v. Wharton*, 9 So. 3d 687, 690 (Fla. 4th DCA 2009) (quoting *Viets v. Am. Recruiters Enters.*, 922 So.2d 1090, 1095 (Fla. 4th DCA 2006)). “A judgment entered without service of process on the defendant is void and may be attacked at any time.” *M.L. Builders, Inc. v. Reserve Developers, LLP*, 769 So. 2d 1079, 1080 (Fla. 4th DCA 2000).

Here, the trial court denied the first Motion to Vacate Judgment, finding that the court file “contains proof of service and a letter Defendant wrote in response to the Complaint.” (Order Den. Mot. To Vacate J.) Given the allegations in Appellant’s motion, the trial court erred by relying on the court file as proof of service and of Appellant’s participation in the case without first holding an evidentiary hearing. See *Montes-Mustira v. Aurora Loan Servs., L.L.C.*, 98 So. 3d 778 (Fla. 4th DCA. 2012) (where a party filed a motion to vacate the judgment alleging they had never been served with process, the trial court erred in denying the motion to vacate without first conducting an evidentiary hearing because the allegations, if established as true, were sufficient to entitle them to relief); See also *Talton v. CU Members Mortg.*, 126 So. 3d 446, 447 (Fla. 4th DCA 2013). If Appellant did not receive proper service of process, the final judgment is void.

In the Second Motion to Vacate Judgment, Appellant argued she was entitled to vacate the judgment under section 55.10, Florida Statutes. Section 55.10 does not address vacating judgments but rather addresses when a judgment becomes a lien. We find that the trial court did not err by denying this motion

Accordingly, we **AFFIRM** the trial court’s second Order Denying Motion to Vacate

Judgment, and **REVERSE** the trial court's first Order Denying Motion to Vacate Judgment entered on August 10, 2017, and **REMAND** this cause to the trial court to conduct an evidentiary hearing to determine whether Appellant received proper service of process.

SMALL, COATES, and NUTT, concur.

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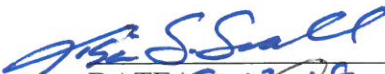
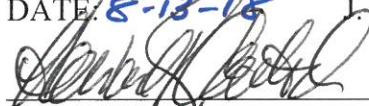

Date of Appeal: August 31, 2017

_____/_____
DATE OF PANEL: JULY 24, 2018

PANEL JUDGES: SMALL, COATES, NUTT

AFFIRMED/REVERSED/OTHER: REVERSE and REMAND

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
)))
DATE: <u>8-13-18</u>	J.		J.		J.
)))
DATE: <u>8/24/18</u>	J.		J.		J.
)))
DATE: <u>9/17</u>	J.		J.		J.