

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

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 502019AP000037CAXXMB
L.T. NO.: 502017CC000684XXXXSB

THE HILLS OF LAKE EDEN
HOMEOWNERS ASSOCIATION, INC.,
SCOTT B. CHAPMAN, and
EXCEL PROPERTY MANAGEMENT
SERVICES, LLC,
Appellants,

v.

DARREN E CLEVELAND,
Appellee.

Opinion filed: June 29, 2020

Appeal from the County Court in and for Palm Beach County,
Judge Marni Bryson

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PER CURIAM.

Appellant, Excel Property Management Services, LLC (“Excel”), timely appeals the trial court’s order denying Appellant’s motion for rehearing and motion to vacate default judgment and other relief. The Hills of Lake Eden Homeowner’s Association, Inc. (the “Association”) and counsel for the Association (“Counsel”) appeal the same order, although, as discussed below, it is unclear why the Association appealed as the judgment was not entered against the Association. Excel alleges multiple procedural errors in the litigation below, but we only need address one. Because Excel was improperly added as a third-party defendant without leave of court, we reverse.

On January 9, 2017, the Association filed a complaint against Appellee, Darren Cleveland, seeking to foreclose a lien on Appellee’s residential condominium unit for unpaid Association fees. The Association’s complaint claimed \$3,014.27 plus interest and other costs owed by Appellee. Appellee, *pro se*, filed his answer to the foreclosure action on February 8, 2017.

On January 26, 2018, Appellee sought leave of court to amend his answer by adding a counterclaim against the Association. Appellee attached his proposed counterclaim to the motion for leave of court. Although not mentioned in his motion for leave to amend, the proposed pleading also purported to add Counsel as a third-party defendant. At a hearing on February 27, 2018, the trial court granted Appellee’s “motion to file counterclaim” due to the Association’s absence from the hearing.

Two weeks later, Appellee filed his counterclaim against the Association and, in that pleading, also named Counsel and Excel (the Association’s property management company) as third-party defendants. Appellee’s counterclaim and third-party complaint alleged slander of title, abuse of process, and malicious prosecution against Excel, Counsel, and the Association. Appellee demanded \$15,000 in damages, plus costs and interest, against Excel, Counsel, and the

Association. Counsel and Excel were served with the third-party complaint on April 19, 2018. On April 23, 2018, the Association filed a motion for extension of time to respond to Appellee's counterclaim. No response was filed on behalf of Excel or Counsel.

On June 26, 2018, the Clerk of Court entered defaults against Counsel and Excel for failing to respond to the third-party complaint. Appellee moved for final default judgment against Counsel and Excel and, following a hearing, the trial court entered final default judgment against Counsel and Excel on January 9, 2019. In the final default judgment, the court ordered that \$15,470 was due to Appellee from Counsel and Excel.

The day after the court entered the final default judgment against Counsel and Excel, the Association responded with an emergency motion to vacate the final judgment, arguing that neither Counsel nor Excel were provided notice of Appellee's motion for final default judgment. That same day, the court entered an order summarily denying the motion. Two weeks later, Excel filed a motion for rehearing and, alternatively, a motion to vacate judgment and other relief, arguing that Appellee improperly added Excel as a third-party defendant and committed other procedural errors. The trial court denied Excel's motion on March 5, 2019.

On March 11, 2019, the Association and Counsel filed a notice of appeal with respect to the court's March 5, 2019 order denying Excel's motion. On March 13, 2019, Excel filed its own Notice of Appeal with respect to the March 5, 2019 order. The Association and Counsel thereafter filed a Corrected Notice of Appeal attaching the January 10, 2019 order denying the Association's emergency motion to vacate. As discussed above, it is unclear what standing the Association has to appeal anything pertaining to the judgment entered against Counsel and Excel. Further, Counsel's attempt to appeal the January 10, 2019 via his March 11, 2019 Notice of Appeal is

untimely. See *Taylor v. Greenpoint Mortg. Corp.*, 939 So. 2d 137 (Fla. 4th DCA 2006). However, Excel's Notice of Appeal is timely.

A trial court may grant relief from a final judgment pursuant to Florida Rule of Civil Procedure 1.540(b). Rule 1.540(b)(4) allows a party to challenge the validity of a judgment on the grounds that it is void because a void judgment is entered when the court lacks subject matter jurisdiction or personal jurisdiction. *Condo. Ass'n of La Mer Estates v. Bank of N.Y. Mellon*, 137 So. 3d 396, 399 (Fla. 4th DCA 2014) (citing *Miller v. Preefer*, 1 So. 3d 1278, 1282 (Fla. 4th DCA 2009)). A void judgment can be challenged at any time. Fla. R. Civ. P. 1.540(b). A voidable judgment, however, must be challenged within one year of entry of the judgment. *La Mer Estates*, 137 So. 3d at 398. A voidable judgment is "a judgment that has been entered based upon some error in procedure that allows a party to have the judgment vacated, but the judgment has legal force and effect unless and until it is vacated." *Epstein v. Bank of Am.*, 162 So. 3d 159, 161 (Fla. 4th DCA 2015) (citing *Zitani v. Reed*, 992 So. 2d 403, 409 (Fla. 2d DCA 2008)).

Florida Rule of Civil Procedure 1.180 allows a defendant to file a complaint against a third-party defendant after commencement of the action. If the defendant files the third-party complaint within 20 days of service of the defendant's original answer, then the defendant need not obtain leave of court. Fla. R. Civ. P. 1.180(a). However, "the defendant must obtain leave on motion and notice to all parties in the action" to add a third-party defendant once the 20-day period has passed. *Id.* Similarly, if the defendant wishes to amend his or her pleading beyond the 20-day period, the defendant must obtain leave of court or written consent of the adverse party. Fla. R. Civ. P. 1.190(a). A failure to obtain leave of court to add a new defendant is an unauthorized amendment, which a court should dismiss. *Diaz v. First Capital Corp.*, 771 So. 2d 598, 600 (Fla. 3d DCA 2000); *Warner-Lambert Co. v. Patrick*, 428 So. 2d 718, 719-20 (Fla. 4th DCA 1983).

Appellee here failed to properly add Excel as a third-party defendant to the action because Appellee did not obtain leave of court. Appellee moved to file a counterclaim more than one year after service of his original answer to the Association's complaint, and the court granted the motion. Appellee attached the proposed amendment to the motion, adding third-party defendant, Counsel, to the action. However, when Appellee filed his amendment, he also added Excel as a third-party defendant. Appellee did not request or obtain leave of court to add Excel. Therefore, the third-party complaint against Excel was improper and the trial court should not have entertained it. Because a judgment based on an error in procedure is voidable and must be challenged within one year of the entry of the judgment, the trial court should have vacated the default judgment against Excel when Excel challenged it two weeks after entry of judgment.

In sum, we hold that the trial court erred in denying Excel's motion to vacate final default judgment because Appellee improperly added Excel as a third-party defendant without leave of court. Therefore, we **REVERSE** the trial court's order and **REMAND** for the trial court to enter an order vacating the final default judgment in its entirety.

MARTZ, COATES, JR., and NUTT, JJ., concur.

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THE HILLS OF LAKE EDEN HOA,
SCOTT B. CHAPMAN, and
EXCEL PROPERTY MANAGEMENT
SERVICES, LLC,
Appellants,

Opinion/Decision filed: June 29, 2020

v.

Appeal from Palm Beach County Court
Judge Marni Bryson

DARREN E CLEVELAND,
Appellee.

Date of Appeal: March 11, 2019
March 13, 2019

_____/

DATE OF PANEL: APRIL 28, 2020

PANEL JUDGES: MARTZ, COATES, JR., NUTT

AFFIRMED/REVERSED/OTHER: REVERSED AND REMANDED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
	)	With/Without Opinion	)	With/Without Opinion)
)))
<u>/s/ James Martz</u>)	_____)	_____)
DATE: 6/29/2020 J.	)	J.	)	J.)
)))
<u>/s/ Howard Coates, Jr.</u>)	_____)	_____)
DATE: 6/29/2020 J.	)	J.	)	J.)
)))
<u>/s/ James Nutt</u>)	_____)	_____)
DATE: 6/29/2020 J.	)	J.	)	J.)