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

APPELLATE DIVISION (CIVIL): AY
CASE NO: 2015AP000041AXXXMB
L.T. NO: 2014SC007624XXXXMB

BENJAMIN HO,
Appellant,

v.

FOUNTAINS OF PALM BEACH
CONDOMINIUM, INC. NO. 3,
Appellee.
_____/

Opinion filed: FEB 8 2016

Appeal from the County Court in and for Palm Beach County,
Judge Ted Booras

For Appellant: Benjamin Ho, *pro se*
9174 Chianti Court
Boynton Beach, Florida 33472

For Appellee: Lilliana M. Farinas-Sabogal, Esq. & Howard J. Perl, Esq.
121 Alhambra Plaza, 10th Floor
Coral Gables, Florida 33134

Appellant, Benjamin Ho ("Ho"), appeals a final default judgment, arguing that the trial court erred in denying his motion to vacate the default entered against him, because Appellee, Fountains of Palm Beach Condominium, Inc. No. 3 ("Fountains"), did not properly serve him with process. We find that the trial erred in not holding an evidentiary hearing on Ho's Motion to Vacate and thus we reverse and remand this matter back to the trial court to hold an evidentiary hearing to determine whether service of process was proper.

Ho is the owner of condominium unit 101 ("unit 101") in Fountains' condominium complex. Fountains filed an action in small claims court against Ho, and on August 12, 2014, process was served via substitute service on a woman residing at unit 101. A return of service

was filed on October 7, 2014. On that same day, a Pretrial Conference was held, but Ho did not attend. On October 17, 2014, the trial court entered a default against Ho for his failure to appear.

On October 28, 2014, Fountains moved for summary judgment. On December 9, 2014, Ho filed a Motion for [sic] Vacate Summary Judgment Due to Fraud and Racial Discrimination at Luxemburg Court (hereinafter "Motion to Vacate").[1] Ho's Motion to Vacate argued, in pertinent part, that "the complaint was not served and a new hearing needs to be set." Several documents were attached to Ho's Motion to Vacate, including a handwritten, signed, and notarized letter from the woman who was served by Fountains, which stated that "[Ho] does not live here" i.e., in unit 101. On December 15, 2014, without expressly ruling on Ho's pending Motion to Vacate, the trial court entered a Final Default Judgment against Ho, awarding Fountains a sum of $5,503.00, from which Ho filed the instant appeal.

Ho contends that substitute service of process on the woman residing at unit 101 was improper because he does not live at unit 101, and did not live there at the time of service. "Service made under the substitute service provisions of section 48.031...must be strictly complied with and these provisions are to be strictly construed." *Robles-Martinez v. Diaz, Reus, & Targ, LLP*, 88 So. 3d 177, 180 (Fla. 3d DCA 2011). Where service of process is improper, the judgment is rendered void. *Willoughby v. Seese Realty Inc.*, 421 So. 2d 691, 692 (Fla. 4th DCA 1982). "If a judgment is rendered void, the party is entitled to relief from that judgment." *Body Details v. Harrington*, 22 Fla. L. Weekly Supp. 330a.

Substitute service may be perfected "by leaving the copies at his or her usual place of

[1] Despite its title, substantively Ho's motion requests the trial court to vacate the default entered against him on October 17, 2014. Although the title asks to "vacate summary judgment," summary judgment had not been entered when Ho filed this motion. It appears that the Motion to Vacate incorrectly referenced summary judgment in response to Fountains' Motion for Summary Judgment.

abode with any person residing therein who is 15 years of age or older and informing the person of their contents." § 48.031(1)(a), Fla. Stat. (2014). For a court to uphold a default judgment, the plaintiff has the burden of proving that valid substitute service of process pursuant to statutory requirements was made on the opposing party prior to the entry of default. *Block v. Tosun*, 77 So. 3d 871, 873 (Fla. 4th DCA 2012). A return of service that is regular on its face "creates a presumption of valid service, which is sufficient to satisfy this burden in the absence of clear and convincing evidence to the contrary." *Robles-Martinez v. Diaz, Reus, & Targ, LLP*, 88 So. 3d at 181, fn. 9. We find the Verified Return of Service filed on October 7, 2014 is regular on its face as it complies with the requirements of section 48.21(1), Florida Statutes, as well as section 43.031 with regard to substitute service. Thus, we find that the Appellee met its burden of proof in initially establishing valid service of process.

Once a plaintiff has met the burden of proving valid service, then the trial court must determine whether the defendant's motion to vacate and attachments are sufficient to entitle him or her to an evidentiary hearing on the motion. *Talton v. CU Members Mortg.*, 126 So. 3d 446, 447 (Fla. 4th DCA 2013). If the allegations of the defendant's motion to vacate, if true, would entitle the movant to relief, then the trial court must hold an evidentiary hearing to determine the validity of service. *Id.* It is reversible error for the trial court to summarily deny the motion without first affording an evidentiary hearing. *Id.*; *Montes-Mustira v. Aurora Loan Servs.*, L.L.C., 98 So. 3d 778 (Fla. 4th DCA 2012); *Benedetto v. U.S. Bank Nat'l Ass'n*, Fla. L. Weekly D2765b (Fla. 4th DCA Dec. 16, 2015) (finding that, based on the trial court's order and the lack of a hearing transcript in the record on appeal, a non-evidentiary hearing consisting solely of legal argument is insufficient to support a denial of a motion to quash service of process, and thus holding that the trial court erred in denying the defendant's motion without first affording

her an evidentiary hearing).

In the present case, we find that the allegations contained in the Motion and the attachment thereto, if true, would have entitled Ho to relief, as together they establish that Ho did not live in unit 101 at the time of service and thus it was not Ho's usual place of abode. *See Johnston v. Hudlett,* 32 So. 3d 700, 705 (Fla. 4th DCA 2010) (finding that the term "usual place of abode means the place where the defendant is actually living at the time of service); *see also Robles-Martinez v. Diaz, Reus & Targ, LLP*, 88 So. 3d 177 (Fla. 3d DCA 2011). Therefore, the trial court was required to hold an evidentiary hearing. *See Benedetto*, Fla. L. Weekly D2765b; *Montes-Mustira*, 98 So. 3d at 778; *Southeastern Termite and Pest v. ones*, 792 So. 2d 1266, 1268 (Fla. 4th DCA 2001); *Sperdute v. Household Realty Corp.*, 585 So. 2d 1168, 1169 (Fla. 4th DCA 1991). Because the record reflects that the trial court failed to hold such a hearing, we find that the trial court reversibly erred.

Accordingly, we REVERSE the lower court's Final Default Judgment and REMAND the case for an evidentiary hearing on Ho's Motion to Vacate. Further, we DENY Fountains' Motion for Attorney's Fees.

ARTAU, G. KEYSER, and BARKDULL, JJ. concur.