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

MOUISE SALIM,

Appellant,

v.

STEVE FLYNN,

Appellee.

_____/

APPELLATE DIVISION (CIVIL) "AY"
CASE NO: 502011AP000013XXXXMB
L.T. NO: 502009CC002850XXXXSB RF

Opinion filed: MAY 15 2013

Appeal from the County Court in and for Palm Beach County,
Judge Debra Moses Stephens.

For Appellant: Mouise Salim
P.O. Box 398706
Miami, FL 33239-8706

For Appellee: Steve Flynn
16701 E. Cornwall Dr.
Loxahatchee, FL 33470

Appellant Mousie Salim ("Landlord") filed a complaint in county court for possession against Appellee Steve Flynn ("Tenant"). As a result of the parties' mediation session in March 2010, Tenant agreed to vacate the premises and agreed the funds in the court registry would be returned to Landlord. The parties also agreed that the last month's rent and security deposit were to be returned to Tenant by Landlord pursuant to Florida law. Landlord subsequently issued two refund checks to Tenant. The court then entered an order approving the parties' settlement agreement.

In a letter sent by Tenant to the Court dated December 16, 2010, Tenant alleged that Landlord did not refund the correct amount owed to Tenant for his deposits as ordered by the

court in the March 2010. Tenant certified a copy of the letter was also sent to Landlord's attorney of record. On January 6, 2011, the court set a hearing for January 31, 2011. Copies of the Notice of Hearing were sent to Tenant and Landlord's attorney of record from the eviction. Following the hearing where the Landlord did not attend, the court entered a Final Judgment on February 1, 2011 finding that Landlord violated the terms of the March 2010 order and ordered that Landlord pay Tenant $2,050.00. Landlord was also ordered to complete Florida Form 1.977 and return it to Tenant.

On February 1, 2011, Landlord filed *pro se* an untitled motion alleging that he did not receive any notice of the hearing from Tenant or the court concerning the hearing scheduled January 31, 2011. Landlord stated he only learned of the hearing after Tenant called him on January 31, 2011 to tell him that the Tenant obtained a judgment against the Landlord. The court interpreted Landlord's correspondence as a motion for rehearing and denied the motion as untimely on February 7, 2011 "since it was filed more than twenty-four hours after the hearing."

Landlord is *pro se* and he did not cite to Florida Rule of Civil Procedure 1.540(b) or any other rule of procedure in his motion. However, Landlord clearly stated that he did not have notice of the hearing, implicating Rule 1.540(b). In his letter, Landlord alleges that he never received notice of the January 31, 2011 hearing and he first learned of the hearing when Tenant called him later in the day on January 31, 2011 to tell him of the default judgment. Thus, Landlord is essentially stating that he was never served with notice of the hearing and that the judgment should be void. A review of the Record reveals a Notice of Hearing signed January 6, 2011, which was served on Landlord's attorney. There is a trial court order which denied a "Motion for Rehearing" on February 7, 2011. Since there is nothing titled "Motion for Rehearing" in the Record on Appeal, it appears that the court treated the Landlord's letter as a

Motion for Rehearing and denied it as "untimely" without holding an evidentiary hearing on the same.

Failure to receive notice of a proceeding may result in a void judgment which may be vacated pursuant to Rule 1.540(b)(4). *Colon v. Colon*, 45 So. 3d 553 (Fla. 4th DCA 2010); *see also Touloute v. City of Fort Lauderdale,* 80 So. 3d 1129 (Fla. 4th DCA 2012). The Fourth District Court of Appeal has held that a party alleging a judgment is void for failure to receive notice is entitled to an evidentiary hearing. *See Schuman v. Int'l Consumer Corp.*, 50 So. 3d 75, 77 (Fla. 4th DCA 2010); *Canney v. Canney*, 453 So. 2d 179, 181 (Fla. 2d DCA 1984) (holding allegation that certain documents and notices in proceedings were not received by party may be an adequate ground on which to set aside a default and final judgment against the party); *see, e.g.*, *Pollack v. Korn*, 237 So. 2d 556, 557 (Fla. 3d DCA 1970) (holding trial court abused its discretion in its refusal to grant plaintiff's motion to set aside default, which had been entered without plaintiff having received notice of default proceedings, one day before plaintiff filed amended complaint and twenty-one days after order granting plaintiff twenty days to file amended complaint).

The trial court should have interpreted Landlord's correspondence as a motion for rehearing, and should have also interpreted Landlord's correspondence as a motion to vacate a void judgment pursuant to Rule 1.540(b) and held an evidentiary hearing on that issue. The Court also notes Landlord's attorney during the eviction proceeding, which had concluded over eight months previously, was listed as having been mailed a copy of Tenant's December letter to the court and the Notice of Hearing for January 31, 2011.[1] The record reflects that Landlord's attorney of record withdrew, with the court's permission, very soon after the final judgment was entered on January 31, 2011.

[1] Landlord's attorney was also mailed a copy of the final judgment entered by the Court on February 1, 2013.

Accordingly, the Order Denying Landlord's Motion for Rehearing is REVERSED and this case is REMANDED for the trial court to hold an evidentiary hearing on whether Landlord received notice of the hearing held on January 31, 2011.

Brown, Cox, G. Keyser JJ., concur.