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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST MUNICIPAL DISTRICT

CLERK

CONCUTY BROWN

LECHNER AND SONS,)	
f/k/a/ A.W. ZENGELER, INC.)	Case No. 07 M1 116723
Plaintiff,)	
v.)	
AZTEC TRUCKING, INC.)	Judge Joyce Marie Murphy Gorman
Defendant,)	Presiding Judge

MOTION FOR RE-HEARING PURSUANT TO 735 ILCS 5/2-1203

NOW COMES, on this 9th day of November 2007, the Defendant, AZTEC TRUCKING, INC., (hereinafter "Mr. Hernandez"), *Pro Se*, as and for his Motion for Re-Hearing Pursuant to 735 ILCS 5/2-1203, moves this Court to grant his relief in entirety, and respectfully states as follows in support thereof:

1. That 735 ILCS 5/2-1203 states in pertinent part:

Sec. 2-1203. Motions after judgment in non-jury cases. (a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.

2. That the Legal Standards which entitle Mr. Hernandez to a re-hearing before The Honorable Joyce Marie Murphy Gorman of the matter before her on October 10, 2007 which resulted in the denial of Mr. Hernandez's motion to vacate a default judgment entered without notice to Mr. Hernandez [**Exhibit A**] include informing the court of (1) newly discovered evidence previously unavailable at the time of the original hearing; (2) changes that have occurred in the law since the original hearing; or (3) errors in the

court's earlier application of the law. [*Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1061 (5th Dist. 2002)] Mr. Hernandez brings this motion for re-hearing forward on point (3) in good faith and for just cause, warranted in law and in fact, and in the lawful exercise of his federally-protected equal access to justice rights.

3. Further stating, Mr. Hernandez brings this motion forward pursuant to constitutional law and his First and Fourteenth Amendment rights as well as binding authorities regarding void orders and fraud upon the court.

4. That the laws which were misapplied were (1) Fourteenth Amendment Due Process of Law Rights, (2) First Amendment Freedom of Speech Rights, and (3) binding opinions that fraud upon the court by an officer of the court with malicious intent to deceive the court and eclipse the just and impartial adjudication of the matter vitiates the proceeding.

A. Fourteenth Amendment Due Process of Law Rights

5. The denial of Mr. Hernandez's motion to vacate the default judgment entered without notice represents a reversible error as a matter of law. It is well established that a party must receive proper notice prior to the entry of an order or judgment. That Mr. Hernandez did not receive notice before the entry of the default judgment entered June 6, 2007. Mr. Hernandez had no knowledge whatsoever that a cause of action involving his interests had been filed and was proceeding. This fact rendered the court without jurisdiction over the subject matter and results in a default judgment that is void.

6. That Mr. Hernandez has an ascertainable legal right to his Fourteenth Amendment due process of law rights which rights have been withheld from him to date in these proceedings regarding the underlying cause of action for breach of contract. Mr.

Hernandez did not breach his contract with the Plaintiff. Material evidence and witness testimony can prove that in fact it was the Plaintiff who breached their contract to provide adequate service to Mr. Hernandez and his company. Mr. Hernandez has not been afforded his constitutional due process of law right to have the opportunity to respond and to be meaningfully heard, specifically, to present his evidence and witnesses to the Court.

7. Supporting authorities include but are not limited to the following:

a. In re Adoption of A.W., J.W., and M.W., Minors, 343 Ill.App.3d 396, 796 N.E.2d 729, “An order entered without notice is void. Maras, 126 Ill. App 3d at 881, 81 Ill.Dec. 728, 467 N.E.2d 599. See also Vortanz v. Elmhurst Memorial Hospital, 179 Ill.App.3d 584, 589, 128 Ill.Dec. 443, 534 N.E.2d 625 (1989). “At a minimum, procedural due process requires notice, an opportunity to respond, and a meaningful opportunity to be heard.” Gustafson, 268 Ill.App.3d at 409, 206 Ill.Dec. 45, 644 N.E.2d 813. Prior to entry of a new order, a party must give notice that a motion will be presented to the court. Maras v. Bertholdt, 126 Ill.App.3d 876, 881, 81 Ill.Dec. 728, 467 N.E.2d 599 (1984). An order entered without notice is void. Maras, 126 Ill.App.3d at 881, 81 Ill.Dec. 728, 467 N.E.2d 599. See also Voranz v. Elmhurst Memorial Hospital, 179 Ill.App.3d 584, 589, 128 Ill.Dec. 443, 534 N.E.2d 625 (1989).... We remark in passing that the Seventh Circuit Court of Appeals has taken the view that a judgment rendered without notice is void. “A judgment may be deemed void if the court that rendered the judgment acted in a manner inconsistent with due process of law. [Citation] Generally, due process requires that all litigants be given notice and an

opportunity to be heard. [Citation]” Grun v. Pneumo Abex Corp., 163 F.3d 411, 423 (7th Cir. 1998).”

b. In Interest of Vaught (431 N.E.2d 1231), “A proceeding is void if the court lacks jurisdiction either of subject matter or of the person;” Stone & Adler, Inc. v. Cooper (315 N.E.2d 56), “Every act of a court beyond its jurisdiction is void and may be vacated at any time.”

c. Dec v. Manning, 248 Ill.App.3d 341, 347, 187 Ill.Dec. 776, 618 N.E.2d 367 (1993). “A void order or judgment may be attacked at any time or in any court either directly or collaterally and without any showing of diligence or meritorious defense.”

d. Evans v. Corporate Services, 207 Ill.App.3d 297, 565 N.E.2d 724, states in pertinent part, “A court has inherent authority to expunge void acts from its records. (Dahl v. Grenier (1984), 126 Ill.App.3d 891, 893-94, 81 Ill.Dec. 870, 467 N.E.2d 992; Ill.Rev.Stat 1987, ch. 100, par 2-1401.) A judgment or order is void where it is entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular order or judgment. (Portenz Corp. v. Petroczini (1988), 170 Ill.App.3d 617, 618, 121 Ill.Dec. 367, 525 N.E.2d 173), or where the order is procured by fraud. (Vulcan Materials Co. v. Bee Construction Co. (1981), 101 Ill.App.3d 30, 40, 56 Ill.Dec. 465, 427 N.E.2d 797). “Where as here, the petition sought to attack the judgment on jurisdictional grounds, we find that the respondent’s petition was properly brought before the trial court.”

e. Bates v. Board of Education, Allendale Community Consolidated School District No. 17, 136 Ill.2d 260, 267 (1990), A court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid;" People ex rel. Gowdy v. Baltimore & Ohio R.R. Co., 385 Ill. 86, 92, 52 N.E.2d 255 (1943).

B. First Amendment Freedom of Speech Rights

8. During the proceedings on October 10, 2007, Judge Gorman made the finding that she was prepared to vacate the default judgment. When opposing counsel realized that Judge Gorman was prepared to rule against his client, he pulled out a card promoting the book, Death of the Justice System, by Linda Achor. Said book was published and copyrighted by Ms. Achor in 2004. Said book's ISBN numbers are: 1-4184-2366-1(e) and 1-4184-2365-3 (sc). Said book will be presented to the Court on November 19, 2007.

9. That Mr. Hernandez asserted to the Court and/or testified under oath that he distributed a large number of said cards, which cards promoted the aforementioned book as evidenced by the title of the book and a website from which the book can be purchased printed on the card.

10. That Mr. Hernandez testified under oath that he never gave said card to opposing counsel.

11. That Judge Gorman reversed her ruling as a result of opposing counsel unlawfully introducing the card into evidence before the Court in a desperate attempt to prejudice the Court against Mr. Hernandez.

12. That Mr. Hernandez has a First Amendment Freedom of Speech right to promote any book (not lawfully banned). Moreover, Mr. Hernandez has a First

Amendment Freedom of Speech right to promote a book that champions the US Constitution due to his reverence for the US Constitution.

13. That the denial of Mr. Hernandez's motion to vacate the default judgment based on his exercising his First Amendment rights is a reversible error as a *de facto* matter of constitutional law.

C. Fraud Upon the Court by an Officer of the Court

14. On October 10, 2007, opposing counsel stated to Judge Gorman that Mr. Hernandez gave opposing counsel the aforementioned card as he unlawfully introduced the card into evidence.

15. That opposing counsel intentionally lied to Judge Gorman in a desperate attempt to prejudice Judge Gorman against Mr. Hernandez because Judge Gorman made known her finding that she was prepared to vacate the default judgment of June 6, 2007.

16. That opposing counsel's intentional deception of Judge Gorman worked and Judge Gorman stated that Mr. Hernandez's alleged act constituted "intimidation."

17. That Mr. Hernandez has the ascertainable legal right to question opposing counsel under oath as to the date, time, and place that Mr. Hernandez allegedly gave opposing counsel said card promoting a book that champions the US Constitution.

18. That Mr. Hernandez has the ascertainable legal right to question opposing counsel under oath as to how a card promoting a book that champions the US Constitution could constitute "intimidation," notwithstanding the fact that Mr. Hernandez never gave opposing counsel said card.

19. That opposing counsel's intentional deception of the court which directly resulted in the prejudicing of Judge Gorman against Mr. Hernandez constituted fraud upon the court by an officer of the court.

20. That opposing counsel's intentional deception of Judge Gorman rendered the proceedings void.

21. That opposing counsel's actions on October 10, 2007 constitutes misconduct under the Illinois Supreme Court Rules of Professional Conduct Rule 8.4.

22. That binding law requires that Judge Gorman "shall take or initiate appropriate disciplinary measures" and "shall inform the appropriate authority" due to opposing counsels' conduct under the Illinois Supreme Court Code of Judicial Conduct Rule 63(B)(a) and Rules of Professional Conduct Rule 8.3.

23. Further stating, the US District Court for the Northern District of Illinois, Eastern District opinion entered November 1, 2005 in Case No. 05 C 0283, Golden and Golden v. Nadler, Pritikin, Mirabelli, LLC, et al, stated in pertinent part, "The court notes that Illinois attorneys have an absolute duty to report misconduct of other attorneys. See Skolnick v. Alzheimer & Gray, 191 Ill.2d 214, 226, 730 N.E.2d 4, 246 Ill. Dec. 324 (2000)"

24. Under binding state and federal constitutional law, when any officer of the court has committed fraud upon the court, the orders and judgments of that court are void and of no legal force or effect. Under constitutional law, Mr. Hernandez had an ascertainable equal access to justice right to a fair trial by an impartial judge and fraud upon the court on October 10, 2007 eclipsed this constitutional right.

25. Supporting authorities include but are not limited to the following:

a. "The Court has broadly defined fraud as any conduct calculated to deceive, whether it be by direct falsehood or by innuendo, by speech or silence, by word of mouth, by look, or by gesture. Fraud includes the suppression of the truth, as well as the presentation of false information. (In re Witt (1991) 145 Ill.2d 380, 583 N.E.2d 526, 531, 164 Ill. Dec. 610)." See also In re Frederick Edward Strufe, Disciplinary case no. 93 SH 100 where the Court stated that "Fraud has been broadly defined as anything calculated to deceive." And "A judge is not the court. People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980). A judge is a state judicial officer, paid by the State to act impartially and lawfully. A judge is also an officer of the court, as well as are all attorneys."

b. Further quoting, "Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the court" And "Fraud upon the court" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶60.23."

c. "The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final." And "It is also clear and well-settled Illinois law that any attempt to commit "fraud upon the court" vitiates the entire proceeding. The People of the State of Illinois v. Fred E. Sterling, 357 Ill. 354; 192 N.E. 229 (1934) ("The maxim that fraud vitiates every


transaction into which it enters applies to judgments as well as to contracts and other transactions."); Allen F. Moore v. Stanley F. Sievers, 336 Ill. 316; 168 N.E. 259 (1929) ("The maxim that fraud vitiates every transaction into which it enters ..."); In re Village of Willowbrook, 37 Ill.App.2d 393

d. (1962) ("It is axiomatic that fraud vitiates everything."); Dunham v. Dunham, 57 Ill. 475 (1894), affirmed 162 Ill. 589 (1896); Skelly Oil Co. v. Universal Oil Products Co., 338 Ill. App. 79, 86 N.E.2d 875, 883-4 (1949); Thomas Stasel v. The American Home Security Corporation, 362 Ill. 350; 199 N.E. 798 (1935).

WHEREFORE, Defendant, AZTEC TRUCKING, INC., in good faith and for just cause, and warranted in law and in fact as clearly set forth herein, respectfully prays as follows:

- A. For the entry of an order vacating the order of October 10, 2007 as void;
- B. For the entry of an order vacating the judgment of June 6, 2007 as void;
- C. For the entry of an order setting the matters for full evidentiary hearing and/or re-hearing;
- D. For the entry of an order stating that the defendant may call as witnesses at a full evidentiary hearing and/or re-hearing: (1) himself, (2) his Office Manager, Shavone Jiles, (3) his wife, Maria Hernandez, and (4) the ex-registered agent of Aztec Trucking, Inc, Mr. Scott Dillner; and that the defendant is only required to issue a trial subpoena to Mr. Scott Dillner.
- E. For the entry of an order stating that the defendant may enter into evidence at a full evidentiary hearing and/or re-hearing included but not limited to the

following; letter sent by Plaintiff to Defendant stating name change and guaranteeing quality of service would not change; copy of Complaint letter, sent certified mail by Aztec Trucking, Inc. to Plaintiff dated 10/12/05; Lechner & Sons invoice dated 10/26/05, where Plaintiffs employee (Hugo) wrote on invoice, " You can cancel the service if you buy your uniforms"; letter from Mr. Scott Dillner dated 7/9/07, addressed my place of residence and to an employee who has not worked for the company in five years; dialogue from phone conversation attempting to contact Mr. Scott Dillner; statements where Aztec Trucking, Inc. was still being billed for service, though service had been cancelled (Nov. 2005 through Jan. 2006); and the contract in question executed on 7/8/02. For such other relief that equity and justice demands.



JAIME HERNANDEZ
Defendant Pro Se

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true.



JAIME HERNANDEZ
Defendant Pro Se