CHOCTAW TRIBAL SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

MARY JOHN — **APPELLANT**

V. — **CAUSE NO. SC2017-09**

GRACELAND RENTALS, LLC — **APPELLEE**

OPINION AND ORDER

Procedural History

Timeline: Appellant Mary John filed a civil complaint against Graceland Rentals, LLC in the Choctaw Civil Court on April 6, 2015. Her lawsuit alleges a February 5, 2015 unlawful seizure of a 10' x 16' Lofted Barn (portable building) without having first obtaining a court order or plaintiff's written permission. Appellant had acquired the building under a 16-month rent-to-own agreement executed between her and Graceland Properties, LLC. The lawsuit alleges Graceland Rentals, LLC perpetrated unlawful conversion of the building and its contents, breach of the peace, intentional or negligent infliction of mental and emotional distress, and seeks statutory and punitive damages based upon a claimed unlawful seizure or repossession under CTC § 26-9-903(3)(a).

On April 17, 2015 Mary John filed a motion for temporary injunction seeking to enjoin the (re)sale of the building and ordering preservation of its $6,000 of personal contents. Summons was had by first class mail upon Graceland Rentals, LLC's registered MS agent -- CT Corporation; 645 Lakeland East Drive – Suite 101; Flowood, MS 39232 -- and upon Daniel Burnett; Graceland Rentals, LLC; 8150 US Highway 62; Cunningham, KY 42035. An Order Granting Temporary Injunction against the aforenamed was filed April 9, 2015. Plaintiff commenced her discovery process by a May 11, 2015 Notice of Plaintiff's First Request for Documents Propounded to Defendant.

A pleading titled "Special Entry of Appearance for Purpose of Challenging Jurisdiction, Motion to Dismiss and to Compel Arbitration" was filed May 20, 2015 by Graceland Properties, LLC. The essence of Graceland Properties, LLC's response was that plaintiff Mary John had sued the wrong corporate party, for it had named Graceland Rentals, LLC as the defendant when in truth she executed the contract with Graceland Properties, LLC. Attached as Exhibit "A" was a copy of the contract at issue. Exhibit "A" clearly establishes that the transaction was between Mary John and Graceland Properties, LLC; rather than between plaintiff and Graceland Rentals, LLC. Consequently, they said, "the Complaint should be dismissed for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, and failure to name proper party defendant." They asserted that Graceland Properties, LLC reserved their right to raise any and all other affirmative defenses they might enumerate. Also filed then was GRACELAND RENTALS, LLC's Motion for Protective Order, To Stay Discovery, and Objection to Request for Admissions. Accompanying the motion was its Memorandum of Authorities in Support of Motion to Dismiss and Compel Arbitration.

Plaintiff's Response to Graceland Rentals, LLC's Motion to Compel Arbitration and Stay Proceedings in this Court, dated June 22, 2015, failed absolutely to address the wrongly named party claim. That response was followed immediately thereafter by the June 22, 2015 dated Plaintiff's Response to Graceland Rentals, LLC's Motion to Compel Arbitration and Stay Proceedings in This Court.

On June 23, 2015, an abbreviated hearing was held culminating with a court directive that both parties submit their briefs on the plenary matters. In the interim, a Choctaw Civil Court Order of Continuance on that date included a hand-written entry at the bottom line labeled "Additional Order" provided "that discovery was to be stayed pending ruling on jurisdiction."

The last Order Setting Cause for Arguments on Graceland Rentals, LLC's Motions to Dismiss and Compel Arbitration was signed by Judge Christopher Collins who had presided over the case up to that point, and it set a court date for October 27, 2015.

Thereafter, counsel for Mary John filed December 15, 2015 her Memorandum of Law in Support of Plaintiff's Contention That the Rent to Own Agreement actually constituted a sale agreement rather than a rental and that she should not be required to submit the matter to arbitration. Attached to her memorandum were Exhibits A, B, C, and D. These exhibits were all claimed to support Plaintiff's contention that either a written consent for repossessing, or a tribal court issued Judgment in Replevin, was a necessary prerequisite to recovering property of any conditional sale. Examples of such transactions submitted to prove that this company had in the past on multiple occasions duly and successfully used the tribal replevin process to recover property were attached as accompanying exhibits. However, two of the three attached agreements were with Graceland Rentals, LLC and one was with Graceland Properties, LLC. Differences between the appearances of Graceland Rentals, LLC's and Graceland Properties, LLC's written contracts were distinctive. Furthermore, the Exhibit "A" which had first been attached as the agreement to Plaintiff's original complaint was clearly formatted like contracts used by Graceland Properties, rather than looking like those rent-to-own agreements used for Graceland Rentals. A second, accompanying Memorandum of Law in Support of Plaintiff's Contention that the Rent-To-Own Agreement was a Credit Sale and that the Arbitration Agreement was Void argued those points.

On January 4, 2016 defendant Graceland Properties Response Memorandum in Support of Motion to Dismiss and to Compel Arbitration began by once again pointing out the misidentification of the true contracting limited liability corporation. Graceland also took exception to plaintiff's arguments that the transaction in question should be properly characterized as a credit sale contract, rather than a lease agreement, and Graceland's memorandum argued its case in support of the matter being referred by the court to binding arbitration in accordance with the rent-to-own agreement's terms.

Up until this point in proceedings the case had been assigned to and overseen by tribal civil court Judge Christopher Collins. On March 29, 2016 Gov. Phil Bryant appointed Judge Collins as a Circuit Judge for the Eighth Judicial District in Mississippi. On April 18, 2017, the case having in the meantime been reassigned to tribal civil court Judge Jeffrey Webb, an agreed order setting

cause for a court hearing date of May 23, 2017 was entered. It was out of that hearing that the August 15, 2017 nine-page memorandum opinion and order was issued. The court's ruling granted Graceland Rentals, LLC's motion to dismiss and ordered that the matter and the parties be referred for compulsory arbitration. There is no indication anywhere in the record that either presiding judge ever took up or ruled on the threshold question of whether Graceland Rentals, LLC, or Graceland Properties, LLC was the properly named corporate entity to the contract, nor the proper corporation against which the lawsuit should have been filed.

Appellant Mary John filed her Notice of Appeal on September 29, 2017. Briefs were duly filed by the parties, and on July 12, 2018 respective counsel presented oral arguments before this Court. This opinion and order follows.

ANALYSIS AND ORDER

We commence our discussion and analysis of this matter by stating that Appellant Mary John filed her lawsuit against the wrong named corporate party. In her April 5, 2015 complaint initiating this action, she names Graceland Rentals, LLC a Kentucky corporation, as the corporate defendant with whom she claims that she entered into her rent-to-own contractual relationship to acquire the 10' x 18' lofted barn (outside storage shed) which she had placed at her on-reservation residence. And it was in connection with a claimed contractual agreement between her and Graceland Rentals, LLC that she alleges this company committed certain actions in tort in the form of a claimed unlawful self-help repossession of the storage shed.

On May 23, 2015 an attorney for Graceland Properties, LLC filed a Special Entry of Appearance for Purposes of Challenging Jurisdiction and Motion to Dismiss. It alleged *inter alia* that "the Complaint should be dismissed for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency of process, insufficiency of service of process, and failure to name proper party defendant." It further declared "Graceland's entry of appearance is solely for the purpose of contesting jurisdiction; therefore, Graceland reserves the right to raise

any and all other affirmative defenses." To authenticate its assertion, Graceland Properties, LLC attached as Exhibit "A" the copy of the 36-month rent-to-own contract which Mary John entered into with Graceland Properties, LLC and *not* with Graceland Rentals, LLC. Graceland's filing of its special appearance motion therefore placed Mary John through her counsel on notice just one month into this years-long litigation that they had mistakenly filed suit against the wrong named party.

History of the "Special Appearance: A "special appearance" under our law of civil procedure is a method whereby a person or entity may step into the courtroom simply for the purpose of notifying the court (and counsel involved) that they have not either procedurally or substantively (or both) under law fully acquired the court's jurisdiction over a proper party to the lawsuit or that they have brought a party before the court in an improper manner. Such a person or corporation's limited appearance to raise that issue alone does not implicate them in any way to further court processes or proceedings unless or until their contention might be resolved by the court against them or be otherwise corrected by the party filing the lawsuit. Arcane practices in some states, including Mississippi, once required that "**[a]ny motion to the jurisdiction should be heard and determined before any other plea or pleading may be filed by the defendant**. If the objection to jurisdiction is overruled, the objecting party may thereafter appear generally for any purpose. Any such special appearance or such general appearance shall not be deemed a waiver of the objection to jurisdiction, when the objecting party is not amenable to process…" or bar a later appeal from the court's denial of their objection to jurisdiction. *Mladinich v.Kohn,* 250 Miss. 138, 156-157, 164 So.2d 785, 794 (Miss. 1964). (Emphasis added.)

Adverse rulings to a specially objecting party to jurisdiction nonetheless oftentimes left the person or entity on the horns of a dilemma: they could either file their general answer and proceed in litigating via general appearance (frequently at great cost in time, money, and anguish), or they could suffer a default judgment against them and thereafter appeal the ruling adverse to them (again, frequently at great cost in time, money, and further anguish) in hopes (or confidence) that the lower court's ruling would be overturned and the judgment voided or vacated by the appellate court. Alternatively, if they or their monetary assets were all located in

another state or foreign jurisdiction and the prevailing party sought to enforce a wrongly obtained judgment there through the Constitution's Full Faith and Credit Clause requirements, then some, but not all states, may allow the party to contest the judgment's validity in their courts through what is termed a "collateral attack."

These cumbersome practices and procedures have since been almost universally rectified, most frequently through their replacement by the provisions such as the Federal Rule of Civil Procedure 12(b) which permits any objecting party to file a single responsive filing that both moves for dismissal and also includes a general answer raising all affirmative defenses. Choctaw Rules of Civil Procedure (CRCP) Rule 12(b) of the Choctaw Tribal Code also has this comparable language to that of the Federal 12(b) Rule. This tribal code rule allows parties to protect and defend themselves, whatever the outcome of the trial court's ruling on the special appearance motion.

This background explains this Court's decision to address on appeal the special appearance challenge that was duly and initially raised by Graceland Properties, LLC, but never taken up prefatorily to full hearing on motions for summary judgment. The trial court's June 23, 2015 *Additional Order* correctly ruled "that discovery was to be stayed pending ruling on jurisdiction." However, despite the *Additional Order*; despite the stated procedural practice outlined in *Mladinich v.Kohn* that "[a]ny motion to the jurisdiction should be heard and determined before any other plea or pleading"; and despite, the requirement, too, that any Motion to Dismiss timely raised under CRCP Rule 12(d) "shall be heard and determined before trial"; evidently that all-important special appearance motion and motion to dismiss on jurisdictional grounds was simply by-passed by court and counsel without any final adjudication being made.[1]

[1] Presumably the oversight was because it was in "ordered stayed pending ruling on jurisdiction" status at the time of the case's judicial reassignment. Nevertheless, counsel for the parties should have brought it to the court's attention before proceeding further.

This Court's several prior opinions on *in personam, in rem,* and subject matter jurisdiction have all emphasized the necessity of ascertaining jurisdiction over the parties and the case as imperative to the validity of any final adjudication, as well as the enforceability of its judgments. *See, e.g. MBCI v Frank Milstead, Jr.*, SC 2016-04 (December 18, 2017); *Pierceson Farve v.* MBCI, SC 2014-07 (July 28, 2015). Moreover, jurisdiction may be raised by either party or the court *sua sponte.* It was not done and therefore our CRCP Rule 60(b) power of review is necessarily triggered.

CRCP Rule 60(b) Review

"Rule 60(b) offers a party relief from a judgment on motion when it is 'inequitable to permit a judgment to stand.' * * * Because of the importance of final judgments, a court should only grant 60(b) relief in exceptional circumstances." Rule 60(B): A Rule Suitable for a *Sua Sponte* Motion, 15 Public Interest Law Journal153. (Internal citations omitted.) We find, however, such relief highly appropriate here given the heretofore unprecedented facts and circumstances of this case wherein even a cursory reading of the original complaint and attachment filed before the lower court clearly demonstrated the action to be patently defective at its inception. Whether the final order be the product of a 60(b)(2) accident or mistake or of some other subsection, it certainly rises to the level of a 60(b)(4) criterion applying where by its terms "the judgment is void."

This lawsuit was filed against Graceland Rentals, LLC and service of process was had upon that corporate entity. Mary John executed her lease-to-own contract with Graceland Properties, LLC and the action of self-help repossession of the storage shed was carried out under the aegis of enforcement through that contractual relationship. At oral argument before this Court, appellant's counsel acknowledged his long-standing awareness of having mistakenly named the wrong corporation as party defendant to this lawsuit. He also acknowledged his failure to ever take the needed corrective actions to discharge Graceland Rentals, LLC from his efforts to impugn legal claims against them. Neither did appellant's counsel ever correctly address the same matters against Graceland Properties, LLC as the correct party to any such claim. We

simply cannot accept as good-faith claims or contentions those of appellant's arguments suggesting that these fundamental and egregious flaws are of such insignificance as to warrant little more than a single word change from "Rentals" to "Properties" or the simple addition of Graceland Properties, LLC as an extra party defendant, nor any of his other dismissive simplifications at oral argument of the gravamen of having so persevered unwaveringly on this course of action. Simply stated, this was no *de minimis* error to be ignored not simply through all lower court proceedings but even on through appeal as well.

CRCP Rule 201 captioned "Judicial Notice of Adjudicative Facts" at subsection (b) reads as follows: "Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) **capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."** (Emphasis added.) The internet accessible official Limited Liability Corporation records of the Kentucky Secretary of State's office readily indicate that Graceland Rentals, LLC is a Kentucky limited liability for-profit company organized and incorporated April 4, 2005 and in active status in good standing with them. Graceland Properties, LLC, Kentucky's Secretary of State's office records just as readily indicate, is a different Kentucky limited liability for-profit company that was organized and incorporated May 17, 2007 and also is in active status in good standing with the Kentucky Secretary of State's office. Graceland Properties, LLC is <u>not</u> the named party defendant in this lawsuit filed by plaintiff Mary John, but Graceland Properties, LLC <u>is</u> the Kentucky limited liability corporation that Mary John contracted with, yet did not sue. Appellant at oral argument suggested that the one word difference between "Rentals" and "Properties" was insignificant as those responsible knew who they were and were effectively put on notice. We disagree. The "Kentucky Limited Liability Company Act"[2] speaks to the "[u]se of company's name in judicial actions" and provides that "[s]uit may be brought by or against the limited liability company in its own name." KRS § 275.330.

[2] 1994 Ky. Acts Ch. 389 § 93, effective July 15, 1994.

The facial defect of failing to properly name and serve the proper party entity, even after defendant's initial "special appearance" and motion to dismiss had timely and duly called attention to the particulars of plaintiff's deficiencies, nonetheless was never corrected by plaintiff. The consequential effect has now been that this Court's has had to resort to its CRCP Rule 60(b) exercise of this power of review and redress to put a stop to this patent error. After all, it serves no legitimate purpose and undermines a court's institutional integrity to indulge or give free rein to the securing of a judgement – whether it be of dismissal or otherwise -- emanating from a lawsuit against a patently wrongly named defendant.

CONCLUSION AND ORDER

We do uphold the judgment of the trial court's dismissal, but on grounds separate and apart from those of the lower court dismissing the action and ordering the case to arbitration for resolution. No matter how well-reasoned the lower court's grounds for dismissal were, they nonetheless must be displaced by this Court's judgment of dismissal for Rule 12(b) reasons. This is because the initial pleading filed by Graceland Properties, LLC on May 20, 2015 and captioned "Special Entry of Appearance for Purpose of Challenging Jurisdiction, Motion to Dismiss and to Compel Arbitration" should have been granted *ab initio*.

Appellant has now had her day in court, however misdirected it was by being filed against the wrong named corporate party defendant. Now the equitable doctrines of repose and preclusion apply to preclude, both directly and indirectly, relitigating further in the courts the same claims against other parties.

> Finality in litigation has particular importance in our system of justice. It "secure[s] the peace and repose of society" by settling disputes between parties. Once a court renders a judgment, it is final and binding on all parties. In fact, the doctrine of preclusion prohibits the parties and their privies from raising, in future suits, issues actually litigated as well as issues that were not litigated but have a close relationship with the original claim.

Henry Brownstein, "Rule 60(B): A Rule Suitable for a *Sua Sponte* Motion," 15 Public Interest Law Journal 153. Her only remaining avenue of recourse for redress is through that avenue which the parties mutually contracted for in that first instance – arbitration.

On the basis and for the reasons heretofore set out, this Court sustains the lower court's earlier Dismissal with Prejudice, albeit on the other grounds as set out above.

SO ORDERED this the 27th day of December, 2018.

Chief Justice

Associate Justice

Associate Justice

CHOCTAW SUPREME COURT
CHOCTAW, MS

CERTIFICATE OF SERVICE

I, do hereby certify that I have this, the 27th day of December, 2018 caused to be forwarded by electronic mail, United States mail and/or hand delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

Hon. Andrew Hammond
Young, Wells, Williams, P.A.
Post Office Box 6005
Ridgeland, Mississippi 39158-6005
Andrew.hammond@youngwells.com

Hon. John J. Mims
Hon. Jeff D. Rawlings
Rawlings & MacInnis
Post Office Box 1789
Madison, Mississippi 39130
jon@rawlingsmacinnis.net
jonms@bellsouth.net

Hon. Jeff Webb
Choctaw Tribal Court
Choctaw, Mississippi 39350
(Hand Delivery)

Jane Charles, Clerk of Court
Choctaw Tribal Supreme Court