

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 02/25/2022

TIME: 09:00:00 AM

DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione

CLERK: Meaghan Abosamra

REPORTER/ERM: Bridget Mastrobattista CSR# 7715

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2022-00000023-CU-MC-CTL** CASE INIT.DATE: 01/03/2022

CASE TITLE: **Cotton vs. Geraci [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

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**EVENT TYPE:** Motion Hearing (Civil)

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**EVENT TYPE:** Ex Parte

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**APPEARANCES**

Brandon Mika, counsel, present for Plaintiff(s).

James D Crosby, counsel, present for Defendant(s).

Evan Shuby - Counsel for Plaintiff specially appearing via Remote Video Appearance (Pro Hac Vice)

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**MOTION HEARING:**

Defendant waives any defect in service and has no objection to Mr. Shuby appearing in this matter.

The Court grants to oral motion and request for appointment of Evan Shuby (BAR #028849) to appear Pro Hac Vice. )

The Court hears oral argument and confirms the tentative ruling as follows:Plaintiff Darryl Cotton's Motion to Set Aside Judgment is denied.

"Equity's jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original action." (Olivera v. Grace (1942) 19 Cal.2d 570, 575.) "A direct attack on an otherwise final, valid judgment by way of an independent action to set it aside is permitted where it appears that the complaining party was fraudulently prevented from presenting his claim or defense in the prior action. This rule is based upon the important public policy that litigants be afforded a fair adversary proceeding in which fully to present their case. Such relief will be denied, however, where it appears that the complaining party has had an opportunity to present his case to the court and to protect himself from any fraud attempted by his adversary." (Kachig v. Boothe (1971) 22 Cal.App.3d 626, 632 (internal citations, alterations and quotation marks omitted).)

Here, Plaintiff was not precluded from presenting his illegality argument to the court. Plaintiff argues that the judgment is void because it is based on an illegal contract. However, he received the opportunity to present this argument in a fair, adversarial proceeding. Consequently, relief is not available pursuant to a direct attack against the judgment via independent action. Furthermore, the judgment is not void on its face such that it should be set aside pursuant to Code of Civil Procedure § 473(d).

All requests for judicial notice are granted.

All evidentiary objections are overruled.

Renewal fee for Application to Appear as Counsel Pro Hac Vice is due on the anniversary date of this order each year the case continues.



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Judge James A Mangione