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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

02/28/2022 at 09:57:00 AM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

DARRYL COTTON,

Plaintiff,

v.

LAWRENCE (A/K/A LARRY) GERACI, an
individual,

Defendant.

Case No. 37-2022-00000023-CU-MC-CTL

**NOTICE OF RULING ON PLAINTIFF'S
MOTION TO VACATE VOID JUDGMENT**

Date: February 25, 2022

Time: 9:00 a.m.

Dept.: C-75

Judge: Hon. James A. Mangione

Complaint Filed: January 3, 2022

Trial Date: Unassigned

The motion of the plaintiff Darryl Cotton to the vacate the judgment in San Diego Superior Court Case No. 37-2017-00010073-CU-BC-CTL came on regularly for hearing on February 25, 2022, in Department C-75 of the above-entitled court, the Hon. James A. Mangione presiding. The law firm of Tiffany & Bosco, P.A. by Attorney Evan P. Schube appeared on behalf of plaintiff Cotton. Attorney James D. Crosby appeared on behalf of defendant Larry Geraci. At the hearing, the Court, having considered the moving, opposition and reply papers and heard oral argument of the parties, confirmed its tentative ruling denying the motion and ordered that the court's tentative ruling, a true and correct copy of which is attached hereto, was the final order of the court on the motion.

Date: February 28, 2022

/s/ James D. Crosby

James D. Crosby

Attorney for Defendant Larry Geraci

Exhibit 1

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 24, 2022

EVENT DATE: 02/25/2022

EVENT TIME: 09:00:00 AM

DEPT.: C-75

JUDICIAL OFFICER: James A Mangione

CASE NO.: 37-2022-00000023-CU-MC-CTL

CASE TITLE: COTTON VS. GERACI [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED:

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.