

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT IN
AND FOR MARTIN COUNTY, FLORIDA.

CASE NO.: 88-94 CA

NORMAN E. MURPHY,

Plaintiff,

vs.

STEINBERG & LYMAN, a Limited
Partnership, and MANUEL P.
ASENSIO, individually,

Defendants.

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1989 FEB 23 10 30 AM

DEPENDANT MANUEL P. ASENSIO'S AMENDED MOTION TO VACATE JUDGMENT

COMES NOW the Defendant, MANUEL P. ASENSIO, by and through his undersigned counsel, and hereby moves the Court pursuant to Florida Rule of Civil Procedure 1.540(b)(4), to set aside the Final Judgment entered in the above-styled action on April 3, 1989, on the grounds that the pleadings herein affirmatively show no claim of fact exists against Defendant in that the Judgment is void for failure of Defendant to receive proper service. Defendant, in support thereof, would allege as follows:

1. Defendant MANUEL P. ASENSIO was not a Principal, Officer, or Partner of Defendant STEINBERG & LYMAN, a Limited Partnership (hereinafter Defendant STEINBERG & LYMAN).

2. On February 22, 1989, Plaintiff attempted to serve MANUEL P. ASENSIO by delivering substituted service to Mr. Steinberg, of Defendant STEINBERG & LYMAN. A copy of the proof of service is attached as Exhibit "A" and incorporated herein.

3. Mr. Steinberg, or any other employee of STEINBERG &

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LYMAN, was not authorized to accept service on behalf of Defendant MANUEL P. ASENSIO.

4. Defendant MANUEL P. ASENSIO was no longer employed by Defendant STEINBERG & LYMAN, nor was Defendant MANUEL P. ASENSIO working at 1250 Broadway at the time Plaintiff attempted to serve Defendant MANUEL P. ASENSIO by Substituted Service. As a result, Defendant MANUEL P. ASENSIO did not have any knowledge of Plaintiff's attempt to serve Defendant by serving Defendant's former employer.

5. Plaintiff also claims to have attempted to serve Defendant MANUEL P. ASENSIO by mailing a copy of the Summons and Complaint to Defendant's last known residence. The proof of service states that the copy was mailed to 1250 Broadway, which is not Defendant's address. Instead, 1250 Broadway is the address of Defendant STEINBERG & LYMAN. At the time Plaintiff mailed the copy, Defendant MANUEL P. ASENSIO was no longer an employee of Defendant STEINBERG & LYMAN. Defendant MANUEL P. ASENSIO did not receive the copy of the Summons and Complaint.

6. Subsequent to the filing of the Motion to Vacate Judgment, a second proof of service was discovered by attorney for the Defendant. A copy of the proof of service is attached as Exhibit "U" and incorporated herein.

7. Defendant MANUEL P. ASENSIO denies that he was personally served as the proof of service states. His affidavit is attached and incorporated herein as Exhibit "C".

8. Also in support, Defendant submit the Affidavits of Jeffrey B. Steinberg and Charles Drabach as Exhibits "D" and "E" respectively. Jeffrey B. Steinberg was an employee of Defendant

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STEINBERG & LYMAN at all times material to the above-captioned lawsuit. Mr. Steinberg states that he was not authorized to receive service for Defendant MANUEL P. ASESSIO. Charles Brambach was the Doorman for Defendant MANUEL P. ASESSIO's apartment at all times material to the above-captioned lawsuit. Mr. Brambach states that he did not allow a process server to enter the apartment on the day process was allegedly served.

9. Defendant MANUEL P. ASESSIO was not properly served, and did not have proper notice of the lawsuit. The Judgment against Defendant MANUEL P. ASESSIO is void, and should be set aside and stricken from the record.

WHEREFORE, the Defendant, MANUEL P. ASESSIO, respectfully requests that this Court grant his Motion and Order that the final Judgment entered in the above styled action on April 3, 1999, be set aside, in that the Judgment is void for failure of Defendant MANUEL P. ASESSIO to receive proper service.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to NOEL R. BOSKO, ESQUIRE, Kohl, Bobko and McKey, P.A., Suite 2B, American Bank Building, 2081 East Ocean Boulevard, Stuart, FL 34995, and JEFFREY BETER, ESQUIRE, Boyer, Hollaway and Dauber, 2191 W. Commercial Boulevard, Fort Lauderdale, FL 33309, by mail, this 11th day of September, 1999.

COE AND BROGERS
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By: 

JOHN S. WILBUR, JR., Esq.
Florida Bar Number 0248866

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