

IN THE COUNTY COURT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.:16-006-SC-1534
DIVISION: K

CAPITAL ONE BANK,

Plaintiff,

vs.

CHRISTINA W. BRANNON,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR RELIEF
FROM FINAL JUDGMENT EXECUTION WITHHELD**

This cause came before the Court on the motion to set aside a form stipulation served upon Defendant, Christina Brannon (hereinafter "Defendant" or "Ms. Brannon") with service of process by an agent of the Sheriff's office and to set aside the "Final Judgment Execution Withheld" entered herein May 10, 2006.

The Court finds that Ms. Brannon's argument that the stipulation and cover letter were wrongfully and illegally served on her with initial process and thus she was misled as to the consequences of signing the stipulation is well taken and that because the stipulation and its terms were unfair and unconscionable, said stipulation is unenforceable.

Plaintiff argues that this Court does not have jurisdiction to set aside the final judgment because Defendant's Motion was not timely filed and Plaintiff also disagrees with Defendant's substantive arguments. The subject final judgment was entered on May 10, 2006, and filed May 11, 2006. Ms. Brannon served her challenge on May 4, 2007, and filed it on May 7, 2007, well within the time limitations provided by Fla.R.Civ.P. 1.540(b) cited by Plaintiff.

The Court finds that Plaintiff's form "Final Judgment Execution Withheld" is not in conformity with the stipulation process contemplated by the Florida Small Claims Rules. Form 7.345, Fl.Sm.Cl.R. - "Stipulation for Installment Settlement, Order Approving Stipulation and Dismissal" - when signed provides for the entry of a final judgment upon Defendant's default in payment under terms of the stipulation and provides for the entry of a dismissal of the case if the stipulation is signed and paid. In the small claims process, a final judgment is not contemplated until and unless a defendant defaults on the stipulation, not when a defendant is paying.

This Court finds there is no provision in the Florida Rules of Civil Procedure or Florida Small Claims Rules for Plaintiff's "Final Judgment Execution Withheld", and the same is not a proper pleading contemplated by said rules and should never have been served with the initial process upon Defendant. At the time the stipulation was signed by Defendant in March 2006, she was misled as to its nature, her options and was not informed of important legal rights she was forfeiting by signing same.

Therefore, it is

ORDERED AND ADJUDGED that Defendant's Motion for Relief from Final Judgment Execution Withheld be and the same is hereby granted and said Final Judgment filed May 11, 2006, and recorded in Bk 13264, Page 1502, Official Records of Duval County, is hereby vacated and set aside. Defendant shall have twenty (20) days from date of this Order to file response to Plaintiff's initial Complaint.

The Court reserves jurisdiction as to the awarding of attorney fees and costs in this matter.

ORDER ENTERED

AUG 17 2007

/s/ Sharon H. Tanner
Judge

Copies to:

Robert J. Orovitz, Esq.
7765 S. W. 87 Ave., Ste 101
Miami, FL 33173
Attorney for Plaintiff

Lynn Drysdale, Esq.
126 W. Adams St.
Jacksonville, FL 32202
Attorney for Defendant