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**FOR PUBLICATION**

**IN THE SUPERIOR COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**ROBERT A. BISOM,**  
  
**Plaintiff,**  
  
**v.**  
  
**COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS, ET AL.,**  
  
**Defendants.**

**CIVIL ACTION NO. 96-1320**  
  
  
  
**ORDER GRANTING  
PLAINTIFF’S MOTION TO  
VACATE JUDGMENT**

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This matter was last before the Court on December 19, 2006 on Plaintiff Robert Bisom’s motion under Rule 60(b) to vacate an August 25, 2006 order. That order granted Defendant Richard Bradshaw’s motion to compel Plaintiff to prepare the transcript for purposes of the pending appeal. Defendant appeared telephonically *pro se*. Plaintiff was represented by his local counsel Mark Hanson.

**BACKGROUND**

The Court’s December 29, 2005 order granted Defendant’s motion to vacate the default judgment against him for \$139,000. Plaintiff timely appealed and filed notice that he was not ordering a transcript, as he believed that no transcript was needed for the appeal.<sup>1</sup> Plaintiff served Defendant with notice on January 25, 2006. Defendant did not seek to have a transcript provided at that time, as he allegedly (1) did not know what was being appealed without a copy of the opening

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<sup>1</sup> The appeal concerns the propriety of this Court’s December 29, 2005 order vacating the default judgment entered against Defendant in February 2000. Plaintiff argues that neither the testimony at the 2000 trial nor the 2005 hearing relate to this issues on appeal.

1. brief of the appeal and (2) believed the Attorney General's office would represent him based on a  
2. notification from the clerk of court's office

3. In June 2006, Defendant filed a petition for an order to compel Plaintiff to provide a  
4. complete transcript. The petition asserted that Defendant could not timely move to have a transcript  
5. prepared, as he didn't know what was being appealed. The petition also asserts that Defendant  
6. believed the attorney general's office was representing him.

7. Defendant did not notice a hearing for his motion.

8. Plaintiff filed an opposition on July 12, 2006. The opposition argued that Defendant waived  
9. any right to a transcript by failing to make a timely request for a transcript in accordance with Com.  
10. R. App. Proc. 10(b)(3). Plaintiff argued that Defendant knew what was being appealed, as the  
11. arguments Plaintiff made in the opening brief were the same as those made in his opposition to  
12. Defendant's original motion to vacate filed in the Superior Court. Plaintiff argued that Defendant  
13. was well aware that the attorney general's office did not represent Defendant.<sup>2</sup>

14. An August 25, 2006 order prepared by Defendant and inadvertently signed by this Court<sup>3</sup>  
15. ordered Plaintiff to prepare the transcript of the February 2000 trial and the October 2005 Rule  
16. 60(b) hearing. Since no hearing on this matter was held, and since Plaintiff apparently did not  
17. receive notice of this order, he did not timely move for a motion to reconsider under Rule 59(e).

18. When Plaintiff failed to follow the August 25, 2006 order, Defendant filed a motion to  
19. dismiss Plaintiff's appeal in the supreme court. The supreme court's October 30, 2006 order stated  
20. that it would not enforce the superior court order, as Defendant should have petitioned the **supreme**  
21. **court** for preparation of the transcript.

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24. <sup>2</sup> The Court's December 29, 2005 Order stated as much.

25. <sup>3</sup> The Court maintains a system in which incoming documents are placed in either a pile for signature (i.e.,  
26. stipulations) or a pile for review (i.e., motions requiring a hearing). Defendant's motion was apparently improperly  
27. placed in the former pile.

1. On October 30, 2006, Plaintiff filed a notice of motion and a Rule 60(b)(6) motion for relief  
2. from the August 25, 2006 superior court order.

3. Plaintiff's October 30, 2006 motion argues that Defendant failed to attach or incorporate a  
4. notice of hearing in accordance with Rule 7(b)(7). Further, there was no showing of good cause  
5. under Rule 6(d)(2) why a hearing should not be held. Since notice of the order was not served on  
6. Plaintiff, he did not learn about it later.<sup>4</sup>

7. Defendant argues that the remedy is not to vacate the August 25, 2006 order, but to allow  
8. Plaintiff a later date to comply with the preparation of the transcript. Defendant disagrees with  
9. Plaintiff as to whether Plaintiff's appeal raises issues that must be verified through the transcript.  
10. Defendant argues that Plaintiff's appeal makes references to the oral hearings. Defendant cites  
11. Appellate Rule 10(b)(3) for the proposition that, unless appellant is going to prepare the entire  
12. transcript, appellant must file a statement of issues for the appeal. Defendant claims that Plaintiff  
13. failed to prepare such a statement. Plaintiff argues that this statement is required only when a partial  
14. transcript is being ordered, not when no transcript at all is ordered.

15.  
16. **ANALYSIS**

17. As the Court stated at the hearing, the problem with the August 25, 2006 judgment is that a  
18. hearing was not noticed. Service of a motion does not substitute for a hearing on the matter and  
19. notice of the hearing. Procedures that deny a meaningful opportunity to participate in litigation  
20. render a judgment void. *Winhoven v. United States*, 201 F. 2d 174 (9th Cir. 1952). Since "the  
21. judgment is void," Plaintiff is entitled to have it vacated under Com. R. Civ. Pro. Rule 60(b)(4).<sup>5</sup>

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24. <sup>4</sup> The date Plaintiff learned of the order is disputed. Defendant argues that Plaintiff's counsel Sorensen was  
25. aware on September 26, 2006, when the matter was before the supreme court. Plaintiff's co-counsel Hanson obtained a  
copy of the August 25, 2006 order on October 11, 2006.

26. <sup>5</sup> See also *Thos. P. Gonzales Corp. v. Consejo Nacional de Costa Rica*, 614 F. 2d 1247, 1256 (9th Cir. 1980);  
27. *Honneus v. Donovan*, 691 F. 2d 1, 2 (1st Cir. 1982); *Recreational Properties, Inc. v. Southwest Mortgage Service, Inc.*,

1. The Court takes the opportunity to clarify that Rule 60(b)(4), and not the appellate rules,  
2. require vacation of the August 25, 2006 judgment. Under Appellate Rule 10(b)(3), the Superior  
3. Court **does** have the jurisdiction to force Appellant to prepare the transcript. *See* Com. R. App. Pro.  
4. 10(b)(3): if the appellant fails to order the requested parts of the transcript and notify the appellee,  
5. “the appellee may within the following 10 days either order the parts or move in the Superior Court  
6. for an order requiring the appellant to do so.” While Defendant is thus free to re-file his motion in  
7. the superior court, it should be noted that this matter involves the interpretation of the rules of  
8. appellate procedure. The supreme court may be in a better position to decide whether, where an  
9. appellant has decided that no part of the transcript should be ordered, Appellate Rule 10(b)(3)  
10. requires the appellant to file and serve a statement of the issues he intends to present on the appeal.  
11.

12. **CONCLUSION**

13. Plaintiff’s motion to vacate the August 25, 2006 order is hereby GRANTED. Defendant  
14. should petition the supreme court for any relief to which he may be entitled as a result of Plaintiff’s  
15. failure to file a statement of the issues on appeal.

16. SO ORDERED this 20<sup>th</sup> day of December 2006.

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19. /S/  
20. Juan T. Lizama  
Associate Judge, Superior Court

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26. 804 F. 2d 311, 314; *Dial Corp. v. MG Skinner & Associates*, 180 Fed.Appx. 661, 663-664, 64 Fed. R. Serv. 3d 566 (9th  
27. Cir. 2006); *Gould v. Mutual Life Ins. Co. of New York*, 790 F.2d 769, 771 (9th Cir. 1986); *Watts v. Pinckney*, 752 F.2d  
28. 406, 410 (9th Cir. 1985).