

Emmanuel Constant #07R1071
Defendant Pro Se
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051-0999

Honorable Sidney H. Stein
United States District Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
Court Room 23A
500 Pearl Street, Room 1010
New York, New York 10007

Re: Doe v. Constant, 04-CV-10108[SHS]
Motion For Relief of a Void Judgment
Pursuant To Rule 60[b][4] of The Federal
Rule of Civil Procedure.

Your Honor:

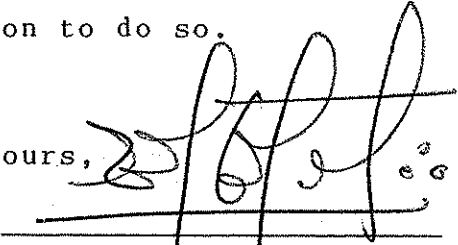
I am the Defendant in the above-referenced matter, and I am writing seeking relief from a void judgment entered against me on August 16, 2006.

I am presently incarcerated at Coxsackie Correctional Facility in the State of New York, for a case unrelated to the instant matter. I am proceeding pro se and filing this motion in a timely manner pursuant to Wright & Miller, Federal Practice and Procedure, Civil 2d §§ 2862, 2866; Sea Land Service Inc. v. Ceramic Europa II, Inc., 160 F.3d 849 (1st Cir.1998); pursuant to the Rule in the above-referenced matter.

I am therefore requesting for the Court to vacate the Default Judgment entered against me on August 16, 2006, on the grounds that

it was erroneous for the Court to enter such a judgment, when the Court lacked the subject-matter jurisdiction to do so.

Very Respectfully Yours,



Emmanuel Constant

c/c : Ivor E. Samson
Sonn Enschein Nath and Rosenthal LLP.
525 Market Street, 26th Floor
San Francisco, California 94105-2708

Jennifer Green
Center For Constitutional Rights
666 Broadway, 7th Floor
New York, New York 10012

Moira Feeney
Center For Justice & Accountability
870 Market Street, Suite 684
San Francisco, California 94 102

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE I, JANE DOE II,
JANE DOE III,
Plaintiffs,

-against-

EMMANUEL CONSTANT A/K/A
TOTO CONSTANT,
Defendant.

MOTION PURSUANT TO RULE 60(b)(4)
OF THE FEDERAL RULES OF CIVIL
PROCEDURE
FOR RELIEF OF A VOID JUDGMENT

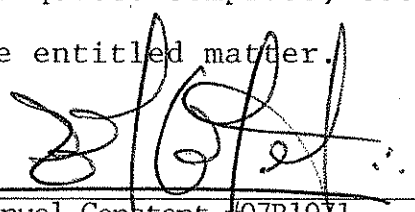
Case No. 04-CV-10108(SHS)

TO ALL PARTIES AND PRIVIES:

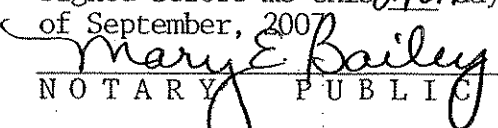
BE IT KNOWN THAT, Emmanuel Constant, the party named as the Defendant in the above entitled matter, and proceeding pro se, herewith presentment laid before this Honorable Court, hereby moves the Court, seeking relief from a void judgment pursuant to rule 60(b)(4) of the Federal Rules of Civil Procedure.

BE IT FURTHER KNOWN THAT, upon the annexed Affidavit In Support of this Rule 60(b)(4) Motion, together with an Exhibit in thereof, the aforementioned defendant party will evince to this Honorable Court, that he is in fact entitled to have the above entitled matter nullified, and, therefore, humbly requests complete, total and absolute annulment of the entire above entitled matter.

Dated :


Emmanuel Constant #07R10X1
Defendant Pro Se
Coxsackie Correctional Facility
P.O. Box 999
Coxsackie, New York 12051-0999

Signed before me this 27th day
of September, 2007


NOTARY PUBLIC

Mary E Bailey
Notary Public, State of New York
No. 01BA5015939
Qualified in Albany County
Commission Expires 8/2/20 09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE I, JANE DOE II,
JANE DOE III,
 Plaintiffs,

-against-

EMMANUEL CONSTANT A/K/A
TOT CONSTANT,
 Defendant.

AFFIDAVIT IN SUPPORT OF MOTION
PURSUANT TO RULE 60(b)(4) OF THE
FEDERAL RULES OF CIVIL PROCEDURE
FOR RELIEF OF A VOID JUDGMENT

Case No. 04-CV-10108(SHS)

STATE OF NEW YORK)
COUNTY OF GREENE) ss.:

EMMANUEL CONSTANT, being duly sworn, deposes and avers that:

1.) I am the party named as the defendant in the above entitled matter and make this affidavit in support of the foregoing motion, pursuant to Rule 60(b)(4), annexed hereto.

2.) That Rule 60(b)(4) of the Federal Rules of Civil Procedure permits relief from a void judgment.

3.) That I hereby move this Honorable Court, without delay, and thus, in a prompt manner, for relief of the void judgment.

4.) That on August 16, 2006, the Court entered a Default Judgment against me in the above entitled matter and iterated that 28 U.S.C. § 1350, Alien Tort Statute and Torture Victim Protection Act, as the basis of Subject Matter Jurisdiction.

5.) That Default Judgment entered on August 16, 2006, is a void Judgment due to lack of subject matter jurisdiction of the Court.

6.) The Court lacked subject matter jurisdiction of the above entitled matter because plaintiffs' claim is untimely, and plaintiffs

have failed to exhaust adequate and available remedies in the place in which the alleged conduct, giving rise to the above entitled claim, occurred.

7.) That the claim of the above entitled matter was not filed within ten (10) years after the cause of action arose, as is required by "Torture Victim Protection Act of 1991 § 2(c)."

8.) That plaintiffs' causes of action are all based upon alleged conduct that occurred no later than July of 1994, and for any claim to be commenced within the statute of limitations it must be filed prior to or by July of 2004, to be within the proscribed ten (10) year statute of limitations set forth in § 2(c) of the Torture Victim Protection Act of 1991.

9.) That the above entitled Claim was filed December 22, 2004, which is calculably beyond the ten (10) year statute of limitations set forth in § 2(c) of the Torture Victim Protection Act of 1991.

10.) That due to the untimeliness of plaintiffs' claim, the action is unmaintainable. Thereby, depriving the Court of the Subject-Matter jurisdiction to enter any type of judgment. Default or otherwise and, thus, the above named defendant is entitled to relief.

11.) That averments herein numbered 7,8,9 and 10, evince to this Court a lack of subject-matter jurisdiction, making all judgments within the herein action void, and, as such, entitles the defendant to immediate relief in the form of annulment/nullification of the herein action in its entirety and in Abnitic.

12.) That § 2(b) of the Torture Victim Protection Act of 1991, unequivocally requires exhaustion of adequate and available remedies in the place where the alleged conduct giving rise to the Claim occurred, and this must occur prior to a Court hearing a claim under

under § 2 of the Torture Victim Protection Act of 1991.

13.) That plaintiffs in the above entitled action fail to make a prima facia claim in lieu of their failure to aver that said remedies have been exhausted.

14.) That plaintiffs' claim is based upon allegations of conduct that occurred within the geographical border of the Nation of Haiti, and this would require plaintiffs to exhaust adequate and available remedies within the Nation of Haiti.

15.) That adequate and available remedies within the Nation of Haiti exist and have existed since "1996". (see; Exhibit "A", Declaration of Mario Joseph, Attorney).

16.) That since "1996" there has existed an organization in Port-au-Prince, the Capitol City and seat of National Government, known as the "Bureau des Avocats Internationaux", and said organization offers legal representation in civil litigation to those victims of human right violations.

17.) That the Bureau des Avocats Internationaux is directed by Attorney Mario Joseph, who is also the attorney of record for victims of human right violations.

18.) That attorney Mario Joseph has never filed a Claim, Tort, or Suit on behalf of any of the plaintiffs in the above entitled matter.

19.) That all the plaintiffs in the herein matter failed to avail themselves of the adequate remedies available to them in Haiti.

20.) That averments herein, numbered 12-19, evince to this Court a failure of plaintiffs to exhaust available remedies, and, thus, according to the Torture Victim Protection Act of 1991 § 2(b), it prohibits the Court from hearing the Claim entitled above.

21.) That the Court should have taken judicial notice of this and acted sua sponte, dismissing the claim.

22.) That the "prohibitive" language of § 2(b) of the Torture Victim Protection Act of 1991, exhibits a clear legislative intent that a Court should not assume subject-matter jurisdiction, and, thus have lawful authority to hear a claim; when there has been a failure to exhaust available remedies.

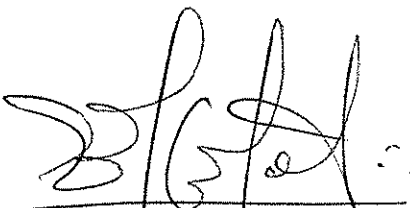
23.) That due to the Court not having lawful authority to hear the Claim of the above entitled matter, and, thus, being deprived of subject-matter jurisdiction, the judgment rendered therefrom, is Void and the above named defendant is entitled to relief.

24.) That in light of all the averments made herein, the above named defendant has made a prima facie and evincing showing that the Court lacks jurisdiction over this matter as per legislative and case law requirements enabling it not to entertain and maintain the claim.

25.) That no previous application for relief has been sought by defendant in any other court in the United States.

WHEREFORE, the above named Defendant, as affiant herein, humbly and respectfully moves this Honorable Court to GRANT the relief hereby sought; viz. nullifying the Default Judgment entered against him by the Court on August 16, 2006.

Dated: Sept. 27, 2007



Emmanuel Constant
Defendant/Affiant Pro Se

Sworn to before me this 27th day
of September, 2007

Mary E. Bailey
NOTARY PUBLIC

Mary E Bailey
Notary Public, State of New York
No. 01BA5015939
Qualified in Albany County
Commission Expires 8/2/20 09

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JANE DOE I, JANE DOE II AND
JANE DOE III,

Plaintiffs,

v.

EMMANUEL CONSTANT,
a.k.a. TOTO CONSTANT,

Defendant.

)
) Case No.: 04-CV-10108 (SHS)
)
)
)

)
) **DECLARATION OF MARIO JOSEPH**
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I, Mario Joseph, declare as follows:

1. I have personal knowledge of the matters set forth in this declaration. If called upon to do so, I could and would testify competently thereto.

2. I am a licensed attorney practicing in Haiti, and a member of the bars of St. Marc and Port-au-Prince. I have extensive experience in civil litigation in Haitian courts. I have directed the Bureau des Avocats Internationaux (BAI) in Port-au-Prince, Haiti since 1996. Under my direction, the BAI offers legal representation to victims of human rights abuses. Our office works closely with judges, prosecutors, police and government officials, providing legal, technical and material assistance, as well as policy advice. The BAI trains Haitian law school graduates, hosts U.S. law student interns and works with U.S. law school clinics through its clinical program. I serve as the attorney of record for the victims, and the chief trial lawyer, and help supervise the BAI training program. Before joining the BAI, I worked as an attorney for the Catholic Church's Justice and Peace Commission. I have also held a variety of teaching and administrative posts. I am a graduate of the Ecole Normale Supérieure, Haiti's leading teaching college, and the Gonaives Law School. I am also a member of the Law Reform Commission in Haiti.

EXHIBIT A

3. Haitian law allows victims of torts to sue for civil damages. In particular, torture, rape, assault and false imprisonment are all crimes under Haitian law, and the victim of any one of these crimes has a right to seek damages through a civil action. See Constitution of Haiti (1987), art. 27; Haitian Penal Code, arts. 85 et seq., 289 et seq.; Haitian Code of Criminal Procedure, art. 1 et seq. (providing a civil action for those who sustain damages due to a felony, misdemeanor, or infraction).

4. Haitian law requires any party causing damage to another to compensate the injured party.

5. Under the Haitian Law, there are various types of damages: physical or material damages, and moral or non-pecuniary damages.

6. The category of physical or material damages includes injuries, loss of an organ or body part, medical expenses, and all expenses incurred as a result of deterioration in the health of a victim.

7. Moral or non-pecuniary damages include all types of mental pain and suffering and even the emotional suffering of the victim and the members of the victim's family.

8. Haitian law gives individual judges discretion to determine the amount of the award of damages. Thus, the Judge decides whether the tort gives rise to damages, whether the award should include moral damages, and the amount of the damages awarded.

9. Haitian statutes do not precisely authorize punitive damages. However, the gravity of damages takes into consideration the heinousness of the crime and whether it is intentional, as well as the motive of the tort when it is committed and the financial strength of the parties. The more heinous and vicious the tort, the larger the damage award. Thus, even if punitive damages are not precisely provided for by Haitian statutes, in practice judges award punitive-like damages similar to those awarded in U.S. law. For

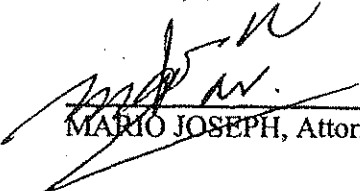
example, a driver who deliberately drives his car into another could be liable for an amount of damages beyond the damages awarded to a victim who suffered similar damages as the result of negligent driving.

10. Since damage awards are within the discretion of a judge, trial court decisions do not create precedent for awards. Appellate law in Haiti is not well developed, and provides little guidance.

11. The Haitian Code of Civil Procedure provides that the losing party may bear the expense of the action, including attorney's fees and other costs.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 25, 2006 in Port au Prince, Haiti.



MARIO JOSEPH, Attorney