

<b>HR MILAN, LLC</b>	*	<b>NO. 2017-CA-0491</b>
<b>VERSUS</b>	*	<b>COURT OF APPEAL</b>
<b>MONA'S RESTAURANT, KARIM TAHA</b>	*	<b>FOURTH CIRCUIT</b>
<b>REPRESENTATIVE OF MONA'S RESTAURANT, NIHAD MONEM</b>	*	<b>STATE OF LOUISIANA</b>
<b>REPRESENTATIVE OF MONA'S ON ELYSIAN FIELD'S AND MIHAD MONEM</b>	*	
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**MCKAY, C.J., DISSENTS WITH REAONS**

I respectfully dissent from the majority opinion and would reverse the judgment of the trial court for the reasons that follow.

Karim Taha is the only defendant who signed the lease agreement. However, Karim Taha was never served. The Sheriff’s return showing personal service upon Karim Taha through Nihad, is on its face, improper service. There is no evidence in the record that Nihad had authority to represent Karim Taha for purposes of serving this eviction proceeding. There is no evidence that any defendant other than Karim Taha signed the lease agreement or had any right of occupancy or possession of the leased premises.

The evidence adduced at trial also shows that the rent for January 2017 through April 2017 was paid to the court’s registry in a concursus proceeding. The evidence further shows that the monthly rents were deposited into the registry of the court in the amounts of \$4,500.00 per month were accepted by the landlord after the filing of the notice to vacate and after the filing of the petition for eviction and pule to show cause. In a summary proceeding, the court must look to see if the rent was paid and/or if the rent was accepted after the notice to vacate was given. If so, the notice is vitiating and the tenant is entitled to possession of the leased

premises. *See* Bowling USA, Inc. v. Genco, 536 So.2d 814 (La.App. 4 Cir. 1988); La. C.C.P. Arts. 4701, 4702, and 4731. In this case, the rent was paid and the landlord accepted it after posting the notice to vacate and the filing of petition for eviction.