

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Huntington National Bank,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-163 (C.P.C. No. 12CV-1598)
Moses Law, LLC and Ambrose Moses, III,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on December 4, 2012

Jody Michelle Oster, for appellee.

Ambrose Moses, III, pro se.

APPEAL from the Franklin County Court of Common Pleas

BRYANT, J.

{¶1} Defendants-appellants, Moses Law, LLC ("Moses Law") and Ambrose Moses, III (collectively, "defendants"), appeal from a judgment of the Franklin County Court of Common Pleas granting a cognovit judgment to plaintiff-appellee, The Huntington National Bank. Because the trial court had subject-matter jurisdiction to enter the cognovit judgment, we affirm.

I. Facts and Procedural History

{¶2} On February 8, 2012, plaintiff filed a complaint against defendants seeking a monetary judgment for breach of a promissory note and commercial guaranty securing the promissory note. In the complaint, plaintiff alleged (1) Moses Law executed and delivered a promissory note on June 12, 2008 in the original principal amount of \$25,000; (2) Ambrose Moses, III on the same date personally executed and delivered a

commercial guaranty for the full payment of all obligations arising out of the promissory note; and (3) Moses Law on May 11, 2009 executed and delivered a change in terms agreement that extended the maturity date of the promissory note. The complaint further alleged the promissory note, the commercial guaranty, and the change in terms agreement all contained warrants of attorney authorizing an attorney to confess judgment.

{¶3} According to the complaint, Moses Law defaulted under the terms of the promissory note as amended in the change in terms agreement ("amended note") by failing to make payment. Plaintiff requested judgment for the remaining balance on the principal and interest of the amended note, as well as late charges and interest at a rate of \$3.95 per day, costs, fees, and expenses. Attached to the complaint were copies of the promissory note, commercial guaranty, the change in terms agreement, and the affidavit of Gina R. McDevitt, a special assets representative and staff officer for plaintiff who attested to the authenticity of the documents and the amount of outstanding debt.

{¶4} On the date plaintiff filed its complaint, an attorney filed an answer on behalf of defendants pursuant to the warrants of attorney confessing judgment in favor of plaintiff. The next day, February 9, 2012, the common pleas court filed an entry granting judgment on the cognovit note in favor of plaintiff in the amount sought in the complaint, noting originals of the amended note and the commercial guaranty were produced. The court found no just reason for delay.

{¶5} After defendants filed a notice of appeal from the trial court's judgment, defendants filed in the trial court a Civ.R. 60(B) motion for relief from judgment, contending the trial court lacked subject-matter jurisdiction over plaintiff's complaint due to plaintiff's failure to comply with the pertinent statutes governing cognovit judgments.

II. Assignments of Error

{¶6} On appeal, defendants assign the following errors:

I. Where the maker(s) reside in Delaware County and the warrant(s) of attorney were signed in Delaware County and/or Fairfield County, the Court of Common Pleas for Franklin County erred by entering a cognovit judgment against said maker(s) in Franklin County.

II. Where the pleadings (i.e. cognovit complaint and answer confessing judgment) contain no factual allegations upon which the trial court could determine subject matter jurisdiction pursuant to R.C. 2323.13, it is error for the trial court to enter a cognovit judgment.

III. Where his clients reside in Delaware County and signed a warrant of attorney in Delaware County and/or Fairfield County, it was a denial of due process and a breach of his duty to his clients and to the court for an attorney to conceal these facts from the court when confessing judgment against his clients in Franklin County.

Because defendants' three assignments of error are interrelated, we address them together.

III. Cognovit Judgments and Subject-Matter Jurisdiction

A. Preliminary Matters

{¶7} Defendants apparently seek to support their appellate argument, at least in part, with their Civ.R. 60(B) motion, attached to their appellate brief but filed in the trial court after defendants filed their notice of appeal from the trial court's judgment for plaintiff. We can neither decide nor consider the motion since it was filed after the trial court filed its decision and judgment entry. *Bank of New York v. Bartmas*, 10th Dist. No. 04AP-1011, 2005-Ohio-6099, ¶ 7; *Cherol v. Sieben Invests.*, 7th Dist. No. 05 MA 112, 2006-Ohio-7048, ¶ 19 (noting the original judgment and the judgment on a Civ.R. 60(B) motion "are two separate and distinct final appealable orders which require separate notices of appeal to vest this Court with jurisdiction to review either").

{¶8} Rather, our review is limited to the record as it existed when the trial court entered its judgment. *Bartmas* at ¶ 9, citing *Chickey v. Watts*, 10th Dist. No. 04AP-818, 2005-Ohio-4974, citing *Van Meter v. Stebner*, 9th Dist. No. 2348-M (Dec. 28, 1994). In addressing defendants' assignments of error, we therefore consider only the complaint, amended note, commercial guaranty, affidavit, answer confessing judgment, and the trial court's judgment entry.

B. Applicable Law

{¶9} Defendants' three assignments of error rest on the single assertion that the trial court lacked subject-matter jurisdiction to enter a cognovit judgment against them.

We review the issue of subject-matter jurisdiction de novo. *Cheap Escape Co., Inc. v. Tri-State Constr., L.L.C.*, 173 Ohio App.3d 683, 2007-Ohio-6185, ¶ 18 (10th Dist.), citing *In re Protest Against Jerome Twp. Zoning Referendum Petition on New California Woods*, 162 Ohio App.3d 712, 2005-Ohio-4189, ¶ 8 (3d Dist.). "[A] judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*. Consequently, the authority to vacate a void judgment is not derived from Civ.R. 60(B), but rather constitutes an inherent power possessed by Ohio courts." *Patton v. Diemer*, 35 Ohio St.3d 68, 70 (1988).

{¶10} "The purpose of a cognovit note is to allow the holder of the note to obtain judgment quickly and without a trial." *Klosterman v. Turnkey-Ohio, L.L.C.*, 182 Ohio App.3d 515, 2009-Ohio-2508, ¶ 19 (10th Dist.), citing *Sky Bank v. Colley*, 10th Dist. No. 07AP-751, 2008-Ohio-1217, ¶ 7. R.C. 2323.12 and 2323.13 govern a trial court's jurisdiction over cognovit notes, "and these statutory requirements must be met in order for a valid judgment to be granted upon a cognovit note, or for a court to have subject-matter jurisdiction over it." *Buehler v. Mallo*, 10th Dist. No. 10AP-84, 2010-Ohio-6349, ¶ 9, citing *Klosterman* at ¶ 19.

C. R.C. 2323.13(A) - Where Maker Resides or Executes Note

{¶11} Defendants' first and third assignments of error assert the trial court did not have subject-matter jurisdiction because, contrary to the requirements of R.C. 2323.13(A), Moses Law, as maker of the note, did not reside or execute the note within the county where the trial court is located. R.C. 2323.13(A) provides in pertinent part, that "[n]otwithstanding any agreement to the contrary, if the maker or any of several makers resides within the territorial jurisdiction of a municipal court * * *, or signed the warrant of attorney authorizing confession of judgment in such territory," the "judgment on such warrant of attorney shall be confessed in a municipal court having jurisdiction in such territory, provided the court has jurisdiction over the subject matter." "[O]therwise, judgment may be confessed in any court in the county where the maker or any of several makers resides or signed the warrant of attorney."

{¶12} Here, the amount at issue exceeds the jurisdictional limit of the municipal court, so plaintiff properly filed its complaint in the common pleas court. See R.C. 1901.17; *Taranto v. Wan-Noor*, 10th Dist. No. 90AP-1 (May 15, 1990). The common pleas court's exercise of subject-matter jurisdiction over plaintiff's complaint thus is proper if Moses

Law, as signer of the documents at issue, either resided in Franklin County at the time of signing or signed them in Franklin County. Plaintiff does not dispute defendants' contention that Moses Law did not sign the documents in Franklin County. The issue, then, is where Moses Law resided for the purposes of R.C. 2323.13(A), and the parties disagree on that issue.

{¶13} "In order for a cognovit judgment to be valid, the terms of the note itself must be sufficient to facially support the judgment for which confession is made." *Gunton Corp. v. Banks*, 10th Dist. No. 01AP-988, 2002-Ohio-2873, ¶ 29. Where the cognovit note states the address of the maker on its face, the cognovit note, in the absence of evidence to the contrary, meets the requirement of R.C. 2323.13(A) if the listed address is within the court's territorial jurisdiction. *B & I Hotel Mgt., LLC v. Ditchman Holdings, L.L.L.P.*, 8th Dist. No. 84265, 2004-Ohio-6294, ¶ 25 (concluding that listing the maker's address on the face of the cognovit note was sufficient to establish subject-matter jurisdiction).

{¶14} The original promissory note, change in terms agreement, and the commercial guaranty all list the address of the maker, Moses Law, as "4200 Regent Street, Columbus, OH." The parties do not dispute that the address is within Franklin County. Further, nothing in the record supports defendants' contention that Moses Law resides in any county other than Franklin. *See Ditchman* at ¶ 26. R.C. 2323.13(A) thus is satisfied insofar as the maker, Moses Law, resided in the county in which the judgment was confessed. Accordingly, we overrule defendants' first and third assignments of error.

D. *Factual Allegations of the Complaint*

{¶15} Defendants' second assignment of error asserts more generally that the pleadings contained no factual allegations sufficient for the trial court to enter judgment. As in their other two assignments of error, defendants argue only that the maker of the note did not reside in the county in which judgment was confessed. Having already determined defendants' argument lacks merit, we nevertheless examine whether the record reflects that the pleadings comply with the remaining requirements listed in R.C. 2323.13.

1. R.C. 2323.13(A)

{¶16} R.C. 2323.13(A) states that "[a]n attorney who confesses judgment in a case, at the time of making such confession, must produce the warrant of attorney for making it

to the court before which he makes the confession." *See Huntington Natl. Bank v. 199 S. Fifth St. Co.*, 10th Dist. No. 10AP-1082, 2011-Ohio-3707, ¶ 21 (concluding an attorney confessing judgment must present the original warrant of attorney to the trial court at the time the attorney makes the confession). The trial court in its judgment entry stated that originals of the amended note and commercial guaranty were produced. R.C. 2323.13(A) further states that "[t]he original or a copy of the warrant shall be filed with the clerk." Here, copies of the promissory note, commercial guaranty, and change in terms agreement, all of which included a warrant of attorney, were filed with the court.

2. R.C. 2323.13(B)

{¶17} R.C. 2323.13(B) provides that "[t]he attorney who represents the judgment creditor shall include in the petition a statement setting forth to the best of his knowledge the last known address of the defendant." Plaintiff's complaint stated defendants' last known address and therefore complies with R.C. 2323.13(B).

3. R.C. 2323.13(C)

{¶18} R.C. 2323.13(C) states that "[i]mmediately upon entering any such judgment the court shall notify the defendant of the entry of the judgment by personal service or by registered or certified letter mailed to him at the address set forth in the petition." The record on appeal does not suggest non-compliance with R.C. 2323.13(C). We nonetheless do not address definitively the trial court's compliance with R.C. 2323.13(C), as the matter is more properly addressed further in a motion for relief from judgment pursuant to Civ.R. 60(B) due to the limited nature of the record in this direct appeal from the trial court's cognovit judgment. *See Sky Bank* at ¶ 7.

4. R.C. 2323.13(D)

{¶19} R.C. 2323.13(D) requires a warning on a cognovit judgment, the absence of which renders the promissory note invalid and deprives the courts of authority to render a judgment based on such a warrant. The warning must appear "on the instrument evidencing the indebtedness, directly above or below the space or spaces provided for the signatures of the makers, or other person authorizing the confession, in such type size or distinctive marking that it appears more clearly and conspicuously than anything else on the document." The statutory warning states: "Warning--By signing this paper you give up your right to notice and court trial. If you do not pay on time a court judgment may be

taken against you without your prior knowledge and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause." R.C. 2323.13(D).

{¶20} Here, the promissory note contains a warrant of attorney in a separate paragraph surrounded by a black box and consisting only of bold, capitalized letters. Further, the language of the warrant of attorney mirrors the statutory language and satisfies R.C. 2323.13(D) by appearing more clearly and conspicuously than anything else in the document. *See Buehler* at ¶ 13-17; *Huntington Natl. Bank v. Burda*, 10th Dist. No. 08AP-658, 2009-Ohio-1752, ¶ 11-13.

5. R.C. 2323.13(E)

{¶21} "R.C. 2323.13(E) prohibits a warrant of attorney to confess judgment when the note arises out of a consumer loan." *Agarwal v. Matthews*, 8th Dist. No. 96950, 2012-Ohio-161, ¶ 7. The Supreme Court of Ohio previously has stated that "R.C. 2323.13(E)(1) sets forth essentially four elements in the definition of consumer loan: (1) there must be a 'loan'; (2) to a 'natural person'; (3) by which a debt is incurred; (4) for primarily personal, family, educational or household purposes." *Shore W. Constr. Co. v. Sroka*, 61 Ohio St.3d 45 (1991), paragraph one of the syllabus.

{¶22} Here, the record reflects no evidence to suggest the warrant of attorney to confess judgment arose out of a consumer loan. The complaint asserts the loan was made for commercial purposes, and the answer confessing judgment admits the allegation. *See Sky Bank* at ¶ 11. Further, the affidavit of Gina R. McDevitt states the promissory note arises out of a commercial transaction and not as a result of any consumer transaction or loan. Finally, Ambrose Moses, III signed the promissory note in his capacity as an officer of Moses Law. *See Arlington Bank v. BEE, Inc.*, 10th Dist. No. 10AP-41, 2010-Ohio-6040, ¶ 21, citing *Brown-Graves Co. v. Caprice Homes, Inc.*, 9th Dist. No. 20689, 2002-Ohio-945. All of the evidence thus indicates the note did not arise out of a consumer loan; R.C. 2323.13(E) is satisfied.

{¶23} Because the pleadings contained factual allegations sufficient for the trial court to exercise subject-matter jurisdiction, we overrule defendants' second assignment of error.

IV. Disposition

{¶24} Having overruled defendants' three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
