

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D25477
W/kmg

_____AD3d_____

Argued - November 13, 2009

JOSEPH COVELLO, J.P.
FRED T. SANTUCCI
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2008-11501

DECISION & ORDER

Igor Zagranichny, a/k/a Igor Zagranichnay, appellant,
v ALSA Development, LLC, et al., respondents.

(Index No. 24505/08)

Alan Blumen, P.C., Brooklyn, N.Y., for appellant.

Michael and Swerdloff, LLC, Brooklyn, N.Y. (Leonard Swerdloff of counsel), for
respondent Jeff Edelman.

In an action to secure payment of a debt through a judgment by confession, the plaintiff appeals from an order of the Supreme Court, Kings County (Solomon, J.), dated December 18, 2008, which, upon the defendants' motion, amended a prior order of the same court dated December 4, 2008, so as to, in effect, exclude certain real property owned by the defendant Jeff Edelman from execution and sale in satisfaction of a judgment by confession dated August 27, 2008.

ORDERED that the order is affirmed, with costs to the defendant Jeff Edelman.

The plaintiff claims that he obtained a judgment by confession from the defendants, which he allegedly entered in Kings County. The defendants moved to vacate the judgment on the ground that both the signature of the defendant Jeff Edelman and the signature of the notary on the affidavit of confession of judgment were forged. In an order dated December 4, 2008, the court referred the motion to a judicial hearing officer to hear and determine the issue of the authenticity of the signatures, but continued a stay preventing the disposition of Edelman's assets pending determination of the motion, except that it permitted the plaintiff to proceed on the execution and sale of Edelman's personal residence in satisfaction of the judgment. That order also directed that the sum of \$120,000 from the net proceeds of the sale of Edelman's residence were to be held in escrow by

December 22, 2009

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ZAGRANICHNY, a/k/a ZAGRANICHNAY v ALSA DEVELOPMENT, LLC

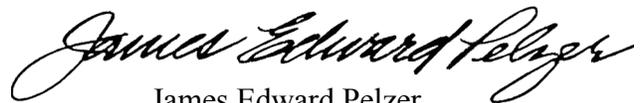
the buyer's attorney, "and not returned until determination [of the motion] by the JHO." Thereafter, in an order dated December 18, 2008, the court, upon the defendants' motion, amended the order dated December 4, 2008, so as to, in effect, exclude Edelman's residence from execution and sale in satisfaction of the judgment by confession. The plaintiff appeals from the order dated December 18, 2008, arguing that the subject property should not have been excluded. We disagree, and, thus, affirm the order dated December 18, 2008.

Under the particular circumstances of this case, the Supreme Court providently exercised its discretion in, in effect, excluding Edelman's personal residence from execution and sale in satisfaction of the judgment by confession prior to the final determination of the defendants' motion to vacate the judgment (*see* CPLR 5015; *Da Silva v Musso*, 76 NY2d 436; *cf. Marcus Dairy v Jacene Realty Corp.*, 298 AD2d 366).

The plaintiff's remaining contentions are without merit.

COVELLO, J.P., SANTUCCI, CHAMBERS and HALL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court