

Piccirilli v Benjamin
2023 NY Slip Op 35159(U)
August 8, 2023
Supreme Court, Broome County
Docket Number: Index No. EFCA2017000315
Judge: Joseph A. McBride
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At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Broome County Courthouse, Binghamton, New York, on the 19th day of July 2023.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding
STATE OF NEW YORK
SUPREME COURT : BROOME COUNTY

LUCIANO PICCIRILLI,

Plaintiff,

-vs-

RONALD R. BENJAMIN,

Defendant.

DECISION AND ORDER

Index No. EFCA2017000315

RONALD R. BENJAMIN,

Plaintiff,

-vs-

LUCIANO PICCIRILLI,

Defendant.

APPEARANCES:

Counsel for Plaintiff:

Piccirilli

COUGHLIN & GERHART

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JOSEPH A. MCBRIDE, J.S.C.

The issue before the Court is a dual post-judgment motion filed by Defendant, Ronald Benjamin (“Benjamin”) in which Plaintiff, Luciano Piccirilli (“Piccirilli”) filed opposition. The Court received and reviewed moving papers maintained by the County Clerk and decided as discussed below.

BACKGROUND FACTS and PROCEDURAL HISTORY

The case before the Court originated as a breach of contract matter filed by Piccirilli. Benjamin filed a separate claim that the original contract was void as usurious. In the answer to Benjamin’s complaint, Piccirilli plead as an affirmative defense that he was induced by fraud. The two cases were consolidated and tried together. On June 8, 2022, the jury returned a verdict which found 1) Benjamin responsible for defrauding Piccirilli by forming the intent not to pay Piccirilli when Benjamin signed the Promissory Note and Mortgage; and 2) that the \$200,000 loan was usurious. After trial each party filed a post-verdict motion. On or about October 21, 2023, Benjamin’s Motion to Set Aside the Verdict was denied and Piccirilli’s Motion to confirm the jury verdict was granted.

On November 30, 2022, the Court signed the judgment awarding Piccirilli \$200,000 in damages plus 9% interest from the date of the jury verdict. The judgment was entered on November 30, 2023, and on December 5, 2023, Piccirilli’s counsel filed the notice of entry and served the same on Benjamin. Subsequently, Piccirilli filed a notice of appeal and Benjamin filed a notice of cross-appeal with the Appellate Division – Third Department. On March 23, 2023, Benjamin filed this current motion seeking 1) an Order pursuant CPLR §5240 granting a Stay of the enforcement of the \$209,206.47 [judgment] and 2) an Order directing plaintiff to prepare the record on appeal as proposed in the moving papers and share responsibility for the cost of the record of appeal. Piccirilli filed opposition to both portions of the motion. The matter was originally returnable June 20, 2023, and after some discussion, the Court adjourned the matter for 30 days and held the motion in abeyance. The Court finally heard oral argument on July 19, 2023. It should be noted that on July 17, 2023, the Court was informed that Benjamin’s cross-appeal was dismissed as of June 14, 2023, pursuant Rule 1250.10(a).

In support of Benjamin’s motion to stay the enforcement, Benjamin submitted a listing that his house was listed on the market for \$850,000 and that he was subsequently denied for a

home equity line of credit. Benjamin assured the Court that if his house sold, he would take up the judgment bond. In opposition, Piccirilli argued that a mere listing is not enough to ensure that Benjamin can pay the judgment and does not rise to a good faith basis for granting the stay. Further, turning to the record on appeal, Benjamin argued that Piccirilli's record on appeal was insufficient as the proposed record was not a complete record. Piccirilli argued that Benjamin's proposed record is not proper. The Court determines as discussed below.

ANALYSIS AND DISCUSSION

"Pursuant to CPLR §5240, a court may, on its own initiative or on motion, stay the enforcement of a judgment. The purpose of this broad discretionary power is to permit the trial court to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the court." CPLR §5240; Castle Restoration & Constr., Inc. v Castle Restoration, LLC, 155 A.D.3d 678, 682 (2nd Dept. 2017). "CPLR §5240 is an omnibus section empowering the court to exercise broad powers over the use of enforcement procedures... to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." Paz v. Long Island R.R., 241 A.D.2d 486, 487 (2nd Dept. 1997); citing Tweedie Constr. Co. v. Stoesser, 65 A.D.2d 657 (3rd Dept. 1978) [and] Sanders v. Mfrs. Hanover Trust Co., 229 A.D.2d 544 (2nd Dept. 1996).

Here, while Benjamin submitted listing demonstrating his intention to sell his home, the Court is unpersuaded that this is a case to use the Court's power to stay this judgment. There is no evidence of liens that would affect the ability for Piccirilli to recover but for the sale of the house. Like in Castle Restoration & Construction, Inc., defendant "remain[s] free to assert their counterclaims against the plaintiffs in a separate action does not preclude enforcement of the judgment in favor of the plaintiffs and against the defendants." 155 A.D.3d at 682. Likewise, Benjamin proffered no evidence that permitting the plaintiffs to enforce the judgment would cause unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Id. at 682.

Turning to the record on appeal. As of today's date, Benjamin's cross-appeal is dismissed. Moreover, Piccirilli informed the Court that they included the entire trial transcript in their record on appeal. However, in the case that Benjamin's purported motion to vacate the dismissal is granted, Benjamin is free to supplement Piccirilli's record on appeal, since it is a

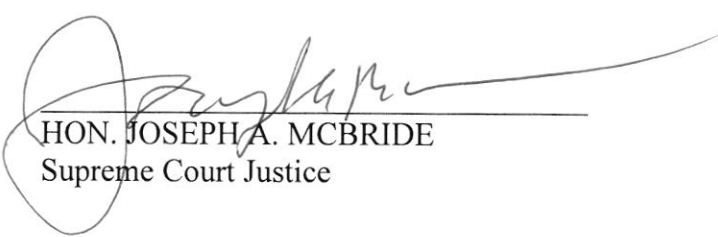
cross-appeal. Looking at the merits of the arguments, it should be noted that pursuant CPLR §5501, the Court finds that pertinent emails from the Court regarding intermediate rulings are appropriate items to submit on the appeal. However, the unrelated emails from 2017 are not appropriate inclusions. While the prerogative to reinstate the cross-appeal is in the sole discretion of the Appellate division, and is beyond this Court, in the event that the cross-appeal is reinstated, the Appellate Division Rules allow for appropriate relief by filing an appendix. However, at this time, the Court declines to submit an Order concerning the record on appeal. That being said, it is the Court's position that the litigants shall split the cost of the record on appeal.

CONCLUSION

Based on the foregoing, Benjamin's Motion to stay the enforcement of the Judgment is DENIED, Motion for an Order to submit a record on appeal as proposed is DENIED and request for an ORDER to share the costs of the appeal is GRANTED.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this Decision and Order by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 8/8, 2023
Norwich, New York


HON. JOSEPH A. MCBRIDE
Supreme Court Justice