

Porges v Kleinman

2024 NY Slip Op 30248(U)

January 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 510385/2022

Judge: Leon Ruchelsman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

-----X
CHAIM PORGES,

Plaintiff,

Decision and order

- against -

Index No. 510385/2022

ABRAHAM KLEINMAN,

Defendant,

January 16, 2024

-----X
PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The plaintiff has moved seeking to vacate a confession of judgement filed. The defendant opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the complaint, the defendant presented the plaintiff with a real estate investment opportunity in New Jersey and then pressured the plaintiff to essentially sign a contract for the purchase of the properties. The complaint further alleges the defendant pressured the plaintiff to obtain a high cost loan to finance the purchase and did not allow the plaintiff to conduct any due diligence. The closing was scheduled for January 15, 2021 and the complaint asserts that the defendant pressured the plaintiff to sign a note and confession of judgement after the closing had concluded.

Approximately a year later, on January 4, 2022 the defendant initiated an action and filed the confession of judgement. That action has been joined with this action. Indeed, this action, and specifically, this motion, seeks to vacate the confession of

judgement on the grounds the confession of judgement is insufficiently specific and has been altered following the plaintiff's execution. This action asserts causes of action for fraudulent inducement, to vacate the judgement and for a declaratory judgement.

The plaintiff has now moved seeking to vacate the confession of judgement. As noted, the motion is opposed.

Conclusions of Law

It is well settled that to vacate a judgement based upon a confession of judgement a plenary action must generally be commenced (Regency Club at Walkkill LLC v. Beinisch, 95 AD3d 879, 942 NYS2d 894 [2d Dept., 2012]). A plenary action has been filed and consequently the motion is proper.

First, CPLR §3218(a)(1) provides that the confession of judgement must state the county where the confessor resides. The confession of judgement, executed by Mr. Porges in this case states that "I...reside at the address set forth both in the caption and below" (see, Confession of Judgement, ¶1 [NYSCEF Doc. No. 12]). However, the caption does not contain an address at all. Rather the caption merely stated the "County of New York" which was then crossed out and changed to say "Kings" (*id*). Further, below the caption, the affidavit contains an abbreviated scilicet that reads "State of New York County of New York" (*id*).

Thus, even if the plaintiff meant to express that he lived in the County stated above and below, the "county" stated above, twice mentions New York County. The signature portion of the affidavit merely states that it was executed in Kings County on January 15, 2021 (id). Thus, the affidavit does not contain the plaintiff's address at all and even the counties noted are different. Thus, CPLR §3218(b) provides that a confession of judgement "may be filed, but only with the clerk of the county where the defendant's affidavit stated that the defendant resided when it was executed or where the defendant resided at the time of filing" (id). Although in this case the plaintiff, and not defendant, signed a confession of judgement, the change in posture does impact the scope of the statute. Thus, the confession of judgement does not really adequately list the county where the plaintiff resides.

There is also no dispute that the confession of judgement signed by the plaintiff listed the caption as New York County and that the defendant, through his counsel, changed the caption to Kings County. While surely there was no fraud or malicious intent in executing this change and indeed, defendant's counsel has submitted an affirmation that the change was made at the direction of the clerk of the court (see, Affirmation of Ephraim Lipschutz, ¶¶4-7 [NYSCEF Doc. No. 37]), the change was designed to permit the clerk of Kings County to accept the confession of

judgement. The defendant characterizes the change as a ministerial correction of changing the venue of enforcement from New York County to Kings County to allow the Confession to be filed in the appropriate venue" (see, Memorandum of Law in Opposition, page 13 [NYSCEF Doc. No. 36]). However, the confession of judgement never complied with the requirements of CPLR §3218(a)(1) since it never clearly described the plaintiff's county of residence. Indeed, the entire basis which permits the clerk to file the confession of judgement in Kings County is the county contained within the confession of judgement.

In Fleigel v. Blonder, 121 Misc2d 502, 468 NYS2d 95 [Supreme Court Nassau County 1983] the court held that where a confession of judgement was changed wherein the caption was altered to reflect the correct county, and other changes as well, then the confession of judgement was insufficient to support judgement. This trivial oversight cannot simply be amended by the defendant with the intent to cure this deficiency. It is well settled that for a confession of judgement to be valid it must strictly comply with all the provisions of CPLR §3218. Furthermore, this deficiency highlights the lack of explanation and elaboration of the confession of judgement as a whole. While there might not be legal infirmities in this regard the general nature of the haste and carelessness of the confession of judgement is apparent.

In this case, there is no dispute there has not been strict

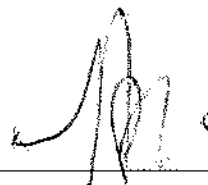
compliance with that statute. Consequently, the motion seeking to vacate the confession of judgement is granted.

The motion seeking the plaintiff to comply with discovery demands is now denied as moot.

So ordered.

ENTER:

DATED: January 16, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC