SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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FINALL, INC.,

Plaintiff,

-against-

AMERITUBE, LLC, JOSEPH RAVITSKY, GARY RAVITSKY, AND CHARA RAVITSKY,

Defendants.

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Index No. 151156/17

Motion seq. no. 001

DECISION AND ORDER

BARBARA JAFFE, JSC:

For plaintiff:
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For defendants:
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By order to show cause, plaintiff Finall moves, on default, for an order directing the clerk of New York County to enter a confession of judgment against defendants for the principal amounts and interest owed on seven promissory notes.

I. RELEVANT BACKGROUND

As part of a settlement agreement dated February 15, 2014, defendants issued seven promissory notes to plaintiff for $120,000, $200,000, $73,500, $64,500, $188,000, $35,000, and $72,000. (NYSCEF 3, 4). The notes provide that interest will accrue on the principal and that, after default, the interest rate will increase. (NYCSEF 4).

Pursuant to the same agreement, on February 28, 2014, defendants signed an affidavit of confession of judgment. (*Id.*). The affidavit provides that, should defendants default on the notes, the clerk of New York County is authorized to enter judgment as follows:

> . . . against Ameritube LLC, Gary Ravitsky, Chara Ravitsky and Joseph Ravitsky, jointly and severally, and in favor of Finall, Inc. ("Finall"), in the sum of $437,000.00, as well as costs and disbursements as taxed by the Clerk.

(*Id.*).

In the affidavit, defendants state that there are "three separate promissory notes payable to Finall," in the amounts of $120,000, $200,000 and $72,000, and that Finall is the owner of four other promissory notes assigned to it, without setting forth the value of those notes. Although "Chara Ravitsky" is named as one of the alleged judgment debtors, the name "Chara," where it appears beneath her signature line, is stricken through, and the name "Cherunya" is handwritten in its place. (*Id.*).

On September 1, 2014, defendants allegedly defaulted on the notes. (NYSCEF 3). On January 9, 2017, more than two years later, plaintiff filed the confession of judgment with the clerk. (NYSCEF 3, 7). On January 17, 2017, the clerk returned it to him for correction, stating the following:

> . . . the clerk is unable to determine, if Chara or Cherunya Ravitsky signed the confession, if they are one and the same person, and therefore who to enter judgment against. You will need an order from a Judge directing the clerk to enter the confession and whom to enter it against. Note: the 3 year window to enter judgment based on your confession closes on 2/28/17. 2) Since no interest was confessed to . . . the clerk cannot enter judgment for interest . . .

(NYSCEF 7). On or about February 3, 2017, plaintiff commenced this action. (NYSCEF 1-3).

II. CONTENTIONS

Plaintiff alleges that "Chara" is a shortened form of "Cherunya," and that use of the two names does not invalidate the affidavit of confession of judgment. In support, it submits a marriage announcement from the *New York Times* in which the name "Chara Ravitsky" appears, and a printout from an online public records search engine reflecting that "Cheryn Ravitsky" is also known as "Chara" and "Cherunya." It argues that, in any event, a discrepancy as to her

name should not prevent the clerk from entering judgment against the remaining three defendants, as the liability is joint and several. (NYSCEF 3).

Plaintiff also asserts that the clerk should enter judgment for $437,000, observing that the seventh paragraph of the affidavit states that it is entitled to interest on the notes. It argues that combining the principal amount owed with the interest that has accrued, defendants owe at least $437,000. (NYSCEF 3).

III. ANALYSIS

A. Showing of the sum justly due

The right to enter judgment is set forth in CPLR 3218, and it is the burden of the party seeking entry to show "strict compliance" with the applicable statutory provisions. (*Giryluk v Giryluk*, 30 AD2d 22, 25 [1st Dept 1968], *aff'd* 23 NY2d 894 [1969]; *Cty. Nat. Bank v Vogt*, 28 AD2d 793, 794 [3d Dept 1967], *affd* 21 NY2d 800 [1968]). Where it fails to do so, the confession may be deemed defective and the sum not "justly due" (*Cty. Nat. Bank*, 28 AD2d at 794); *Wood v Mitchell*, 117 NY 439, 441-442 [1889]), even where the relief is sought on default (*Matter of Dyno v Rose*, 260 AD2d 694, 698 [3d Dept 1999], *appeal dismissed* 93 NY2d 998, *lv denied* 94 NY2d 753).

Although an affidavit of confession should not be "interpreted in a captious spirit," it is sufficient only if "it adequately sets out the facts of which the debt for which judgment is confessed arose (*Giryluk*, 30 AD2d at 25), and shows "that the sum confessed is justly due" (*Wood*, 117 NY at 441–42).

Here, the confession of judgment states precisely the amount confessed, but contains no indication of how that amount was calculated. Moreover, the reference to seven promissory notes in the affidavit is bereft of amounts attributable to each, and it is unclear from the few

amounts set forth how plaintiff arrived at $437,000. Thus, the statement is too indefinite to satisfy CPLR 3128. (*See Wood*, 117 NY at 441–42 [motion to set aside confession granted as, *inter alia*, there was insufficient information as to the amount of various loans and it was not stated how much of the sum was for interest and how much for principal]; *Cty. Nat. Bank*, 28 AD2d at 794 [statement of confession insufficient as, *inter alia*, did not state amount of loan or how much of amount confessed was principal or interest]).

Even if the affidavit were sufficiently particular, I could not order the clerk to enter it with interest, as the affidavit does not provide for attachment of interest. (*See Rae v Kestenberg*, 23 AD2d 565, 566 [2d Dept 1965], *affd* 16 NY2d 1023 [liability under confession of judgment "must be strictly limited by the terms of the instrument"]; David D. Siegel, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C3218:13).

Given this conclusion, it is irrelevant whether plaintiff has sufficiently established the identity of the judgment debtor "Chara" or "Cherunya" Ravitsky. In any event, plaintiff's evidence is insufficiently probative as to her legal name.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion is denied in its entirety.

ENTER:

Barbara Jaffe, JSC

BARBARA JAFFE

DATED: July 14, 2017
New York, New York