

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Erie Industrial Park Associates, LLC

Court of Appeals No. OT-09-005

Appellee

Trial Court Nos. 07-CVH-659

08-CVH-176

v.

08-EX-013

Aaron Bates d/b/a Northcoast
Polymers, et al.

DECISION AND JUDGMENT

Appellants

Decided: November 13, 2009

* * * * *

Stefanie E. Deller, Cynthia L. K. Steele, and John W. Hilbert, II,
for appellee.

William H. Smith, Jr., for appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Ottawa County Court of Common Pleas which denied appellants' Civ.R. 60(B) motion for relief from a cognovit judgment.

For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellants, Aaron Bates d/b/a Northcoast Polymers, et al., set forth the following sole assignment of error:

{¶ 3} "ASSIGNMENT OF ERROR NO. 1: THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO GRANT 60(B) RELIEF FROM A JUDGMENT BY CONFESSION WHEN A HEARING WAS HELD AND THE APPELLANT DEMONSTRATED A MERITORIOUS DEFENSE AND THAT THE MOTION WAS TIMELY FILED."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On November 1, 2004, appellant Aaron Bates executed a commercial lease agreement for premises located in a Port Clinton industrial park with Kuehne & Nagle Inc., appellee's predecessor-in-interest. Bates executed the commercial lease agreement in the course of his position as general manager of appellant Northcoast Polymers Inc. Northcoast secured this space in order to relocate its operations from Cleveland to Port Clinton.

{¶ 5} Northcoast subsequently acquired the operations of another tenant in the industrial park. Northcoast failed to make payment for the additional space it utilized in connection with this acquisition. Several meetings were conducted between the parties to address appellant's increasing arrearage. Appellants represented to appellee their intention of becoming current on monies owed based upon anticipated revenue that they hoped to generate from a new product that they were developing. Unfortunately, this turnaround did not materialize.

{¶ 6} Despite ongoing communications and efforts between the parties to rectify the matter, appellants were unable to do so. Accordingly, appellants were presented with a cognovit promissory note to address monies owed to appellee.

{¶ 7} On January 24, 2007, appellants executed the cognovit promissory note to appellee in an amount of \$14,734.60, plus interest. Appellants continued to be delinquent both on current commercial rental amounts owed as well as on the cognovit note obligations to address past due amounts.

{¶ 8} On December 11, 2007, appellee filed a complaint on its cognovit note. The trial court granted judgment in favor of appellee on the cognovit note. On February 22, 2008, appellee filed for certificate of judgment. On March 28, 2008, appellant Aaron Bates filed a Civ.R. 60(B) motion for relief from, and to stay execution of, the cognovit note judgment.

{¶ 9} On August 4, 2008, an evidentiary hearing was conducted on the pending motion for relief from judgment. The record reflects that conflicting testimony and evidence was presented. Bates testified on behalf of appellants. James McKinney, owner of the leased premises, testified on behalf of appellee. The parties subsequently filed opposing proposed findings of fact and conclusions of law. On January 12, 2009, the trial court denied Bates' Civ.R. 60(B) motion and adopted appellee's proposed findings of fact and conclusions of law upholding the cognovit judgment in favor of appellee.

{¶ 10} In the sole assignment of error, appellants assert that the trial court abused its discretion in denying the Civ.R. 60(B) motion for relief from judgment. In support,

appellants place determinative reliance upon the allegations that the underlying cognovit note was executed under duress and that it overcharged appellants.

{¶ 11} It is well-established that the decision whether or not to grant relief from judgment pursuant to Civ.R. 60(B) lies well within the purview and discretion of the trial court. As such, these decisions will not be disturbed unless it is shown that the trial court abused its discretion. *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174. An abuse of discretion requires more than a mere error of law or judgment; it requires establishing that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 12} We have carefully scrutinized the record of evidence, paying particular attention to the transcript of the Civ.R. 60(B) motion hearing, for any indicia that the cognovit note was executed under duress. We note that the record does not reveal any improper conduct on the part of appellee that could constitute the legal defense of duress. On the contrary, the record reflects that appellants concede that financial delinquencies had accumulated and were aware of the pending legal consequence of eviction if the matter were not rectified.

{¶ 13} Despite assertions of questionable pressure or threats by appellee, the record shows that appellee never even served notice of eviction upon appellants. Regardless, relevant case law establishes that threatening to take an action for which one is legally entitled to take does not constitute duress. In a separate cognovit note case, the threat to file mechanic's liens in response to a refusal to sign a cognovit note was

determined not to constitute execution of the note under duress. *Medina Supply Co. v. Corrado* (1996), 116 Ohio App.3d 847, 850. Similarly, in the instant case, raising the possibility of instituting an eviction action prior to execution of a cognovit note does not constitute signature under duress.

{¶ 14} The second prong of appellants' argument is the contention that appellee overcharged them in calculating the amount of rent owed during 2007. With respect to this overcharge claim, the record shows conflicting evidence and testimony which was weighed by the trial court in favor of appellee. The trial court determined the testimony of the premises owner more persuasive than the self-serving affidavit of appellant Bates.

{¶ 15} The record contains no evidence that the trial court acted unreasonably, arbitrarily, or unconscionably in weighing the dispute pertaining to the amounts owed in favor of appellee. We find appellants' sole assignment of error not well-taken.

{¶ 16} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Erie Indus. Park Assoc., LLC
v. Bates
C.A. No. OT-09-005

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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