

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Home Savings & Loan Company	:	
of Youngstown, Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-1180
	:	(C.P.C. No. 09CVH-08-11902)
Vandeleur Investors, LLC et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	
	:	

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D E C I S I O N

Rendered on September 20, 2011

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*Bricker & Eckler LLP, Anthony M. Sharett and Kenneth C. Johnson*, for appellee.

*Richard L. Goodman Co., L.P.A., and Richard L. Goodman*, for appellants.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Vandeleur Investors, LLC, and James J. Moro are appealing from the failure of the trial court to grant them relief from the judgment entered against them. They assign two errors for our consideration:

I. The trial court erred as a matter of law, abused its discretion, and its decision is against the manifest weight of

the evidence, when it denied Defendants' motion for relief from cognovit judgment without considering all the facts presented at the hearing and without considering the relaxed standards associated with opening a cognovit judgment.

II. The trial court erred as a matter of law, abused its discretion, and its decision is against the manifest weight of the evidence, when it simply overruled the objections to the Magistrate's Decision without any analysis or specific findings and adopted such Magistrate's Decision without independently assessing the facts and conclusions contained in the Magistrate's Decision.

{¶2} Home Savings and Loan Company of Youngstown, Ohio, filed suit against Vandeleur Investors, LLC, and James Moro on August 7, 2009. Judgment was granted the same day based upon a confession of judgment provision in the note signed by Moro which obligated both Moro and Vandeleur Investors, LLC. Stated in common terms, the note executed by Moro and Vandeleur Investors, LLC, was a cognovit note.

{¶3} Over six months later, Moro and Vandeleur Investors, LLC filed a motion seeking relief from the judgment. The motion was referred to a magistrate to conduct appropriate proceedings. The magistrate conducted an evidentiary hearing at which Moro testified and exhibits were received. The magistrate then issued a general decision overruling the motion.

{¶4} Counsel for Moro and Vandeleur Investors, LLC filed a request for findings of fact and conclusions of law. On July 20, 2010, the magistrate issued a detailed decision, again overruling the judgment.

{¶5} Counsel for Moro and Vandeleur Investors, LLC filed objections to the magistrate's decision, which were overruled.

{¶6} Turning to the assignments of error, the documents before the trial court clearly demonstrate that Moro executed the cognovit note on behalf of Vandeleur Investors, LLC. He signed the note as "James J. Moro, member." The documents related to the loan list Moro as a guarantor of the loan. His signature with respect to the guaranty provision is simply "James J. Moro." The loan was part of a construction loan agreement, not a consumer transaction.

{¶7} To set aside a judgment under Civ.R. 60(B), the party seeking relief must allege a meritorious defense. No meritorious defense is demonstrated by the testimony before the trial court. Moro may have believed that he was somehow shielded from liability on the loan by signing some of the paperwork "James J. Moro, member." His belief does not make it so. The affidavit signed by Moro at the time of the filing of the Civ.R. 60(B) motion complains that Moro was misled as to whether or not he was assuming personal liability on the construction. However, the paperwork clearly contains a series of places where Moro is referred to as "guarantor." As noted earlier, he signed the guaranty provision in his own name. Moro is clearly a sophisticated businessman who had to know that when he signed a loan guaranty in his own name, that he was obligating himself personally. Further, since Vandeleur Investors, LLC had no assets, he had to know that a savings and loan company would want something more than a document signed on behalf of an insolvent LLC to secure a loan of significant amount. The magistrate found Moro's testimony on this issue incredible and was correct to do so.

{¶8} Counsel for Moro alleges that a second defense was also meritorious, namely that the transaction was a consumer transaction. There is likewise no basis for

the allegation. The loan of over \$500,000 was clearly a construction loan, not a loan involving a consumer transaction.

{¶9} Counsel further alleges that the amount of the judgment was incorrect. This allegation does not mean that the fact of the cognovit judgment is incorrect, only that Home Savings and Loan is entitled to collect only a portion of the judgment. The safeguards with respect to garnishment proceedings will protect Moro from an incorrect sum being collected.

{¶10} Moro does not deny that a significant sum is still due on this loan. No formal answer was tendered to the trial court, only allegations in the memoranda filed in conjunction with the two motions filed. None of their allegations demonstrate a meritorious defense, as opposed to a hypothetical defense.

{¶11} Both the magistrate and the trial judge who reviewed the magistrate's decision carefully addressed the pertinent legal and factual issues. Unfortunately for Moro, the issues were straightforward and easily resolved against his interests.

{¶12} Both assignments of error are overruled.

{¶13} The judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

CONNOR, J., concurs.  
SADLER, J., concurs in judgment only.

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