

123 Bail Bonds Servs., Inc. v Sanchez

2017 NY Slip Op 32866(U)

December 18, 2017

Civil Court of the City of New York, Bronx County

Docket Number: CV-012111-16

Judge: Sabrina B. Kraus

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART 34

123 BAIL BONDS SERVICES, INC.,
ATTORNEY IN FACT OF BANKERS
INSURANCE

Plaintiff

HON. SABRINA B. KRAUS

DECISION & ORDER

-against-

**Index Nos.: CV-012112-16
CV-012111-16**

PETRA SANCHEZ

Defendant

X

BACKGROUND

On or about May 2, 2016, Defendant submitted an application for a \$5,000.00 to Plaintiff to post bail for her brother Francisco Rivera (Rivera). Defendant submitted a signed indemnity agreement (Ex A), and an Affidavit of Confession (Ex B).

On August 4, 2016, Rivera failed to appear for his court date in Nassau County, and on October 14, 2016 his bail was forfeited. On or about November 14, 2016, Plaintiff filed the Judgments of Confession.

Plaintiff asserts that a copy was mailed to Defendant by certified mail to the address listed on her application 110-31 172nd Street, Jamaica, NY 11433, and that delivery was attempted but it was marked “ refused/moved” and returned on or about July 12, 2017. However, the Queens County address remains Defendant’s current address.

Defendant states she received no notification of entry of the judgment until the Marshal sought to execute the judgment by garnishing her wages.

The two affidavits for the two judgments are identical except for the amount. The Confession filed under Index Number 12112 is for \$5,000.00. The Confession under Index Number 12111 is for \$500.00 . Both list Jamaica, New York as Defendant's county of residence and both state that they are given to secure the same appearance in court by Rivera.

MOTIONS PENDING BEFORE THE COURT

Defendant moves by order to show cause for an order vacating the judgments and related relief. Two separate motions were filed under each Index Number. The motions were originally returnable on November 13, 2017. Both motions were adjourned to December 12, 2017. On December 12, 2017, the court heard brief oral argument and reserved decision on the motions. Plaintiff filed only one set of opposition papers listing both index numbers. No reply papers were filed. The two motions are consolidate herein for disposition.

DISCUSSION

CPLR § 3218 governs judgments by confession and provides in pertinent part:

(a) Affidavit of defendant. Except as provided in section thirty-two hundred one, a judgment by confession may be entered, without an action, either for money due or to become due, or to secure the plaintiff against a contingent liability in behalf of the defendant, or both, upon an affidavit executed by the defendant;

1. stating the sum for which judgment may be entered, authorizing the entry of judgment, and stating the county where the defendant resides or if he is a non-resident, the county in which entry is authorized;
2. if the judgment to be confessed is for money due or to become due, stating concisely the facts out of which the debt arose and showing that the sum confessed is justly due or to become due; and
3. if the judgment to be confessed is for the purpose of securing the plaintiff against a contingent liability, stating concisely the facts constituting the liability and showing that the sum confessed does not exceed the amount of the liability.

(b) Entry of judgment. At any time within three years after the affidavit is executed, it may be filed with the clerk of the county where the defendant stated in his affidavit that he resided when it was executed or, if the defendant was then a non-resident, with the clerk of the county designated in the affidavit. Thereupon the clerk shall enter a judgment in the supreme court for the sum confessed. ... The judgment may be docketed and enforced in the same manner and with the same effect as a judgment in an action in the supreme court.

This provision is incorporated by reference in § 1403 of the New York City Civil Court Act “ ... where the relief for which the judgment is confessed is within the jurisdiction of this court.”

“A confessed judgment is valid only if it conforms to the strict requirements of CPLR 3218 (Siegel N.Y. Prac. § 299 5th ed).”

“Confessions of judgments are always closely scrutinized (6 Williston, Contracts [rev. ed.], § 1724, p. 4871) and in judging them a liberal attitude should be assumed in favor of the judgment debtor (4 Weinstein-Korn-Miller, N.Y. Civ. Prac., p. 32-237) . . . [, and] any liability under a guarantee must be strictly limited by the terms of the instrument” (Rae v Kestenberg, 23 AD2d 565, 566 [1965], affd 16 NY2d 1023 [1965]; see Irons v Roberts, 206 AD2d 683, 684 [1994]).

(*Corrales v. Walker*, 20 Misc. 3d 285, 287–88).

If the defendant's statement of county residence in the affidavit, as required by CPLR 3218(a), is one of the counties in New York City, the confession may be filed with the clerk of the civil court in that county. If the defendant is a nonresident, then the confession is to be filed with the clerk of the civil court in the county designated in the affidavit [N.Y. City Civ. Ct. Act § 1403 (McKinney)(*Siegel, Practice Commentaries*)].

In this case, Defendant stated her residence was in Queens County. This is stated in the indemnity agreement signed by Defendant which listed her residence as being in Jamaica New York, as well as each affidavit which specifies her address is in Jamaica New York. As such the

provision providing for the designation of a county for nonresidents is inapplicable, and the judgment should have been filed in Queens County Civil Court.

The specification of county is important because it will of course dictate the venue of the confessed judgment. The statute assumes that entry will ordinarily be in the debtor's residence county, apparently enabling entry to be in a designated county only when the debtor is a nonresident. Subdivision (b) buttresses that conclusion. Should it turn out that the debtor is a resident of X county in New York while the affidavit authorizes entry in Y county, the defect should not in this instance be treated as innocent, i.e., should not be considered a mere matter of venue, as in a contested action. Hence the filing in Y county should not be allowed.

(Supplementary Practice Commentaries, Siegel, C3218:8).

Additionally, there is no valid basis for Plaintiffs to have secured two different confessions of judgment for two different amounts to secure the same court appearance for Rivera. Plaintiff's vague explanation that the \$500 is for "fees for recovery" is not supported by the affidavit pertaining to such judgment.

Based on the foregoing, the motions are granted, both judgments are vacated and the matter pending under each index number is dismissed. Any executions or levies under either judgment are also vacated.

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This constitutes the decision and order of the Court.

Dated: Bronx, New York
December 18, 2017

Sabrina B. Kraus, JCC

TO: MIGUELINA CAMILO, ESQ.
Attorney for Plaintiff
903B Sheridan Avenue, 1st Fl
Bronx, New York 10451
718.412.0105

PETRA SANCHEZ
Defendant *Pro Se*
110-31 172ND Street
Jamaica, New York 11433