

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

US FOOD SERVICE,

Appellee

v.

KEN & JIM CUC, INC. R. MICHAEL BEST,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1004 MDA 2012

Appeal from the Order Entered May 25, 2012
In the Court of Common Pleas of Cumberland County
Civil Division at No(s): 11-6545 Civil Term

BEFORE: BENDER, J., SHOGAN, J., and FITZGERALD, J.*

MEMORANDUM BY BENDER, J.

Filed: April 29, 2013

R. Michael Best, defendant below, appeals *pro se* from the May 25, 2012 order that denied his motion to strike the judgment entered in favor of US Food Service, plaintiff below. After review, we affirm.

The trial court provided the following procedural and factual history of this matter:

PROCEDURAL HISTORY

On August 22, 2011, US Food Service - Baltimore Division ("Plaintiff") filed a Complaint with this Court bringing an assumpsit action against Ken & Jim C U C, Inc., d.b.a. Cluck U Chicken, Cluck U College Park (collectively "Additional Defendants"), and [R. Michael Best,] Defendant as the Personal Guarantor. On October 17, 2011, the Prothonotary entered a default judgment in favor of Plaintiff and assessed damages in the amount of \$7,618.36 against Defendant and Additional

* Former Justice specially assigned to the Superior Court.

Defendants. On October 17, 2011, the Prothonotary mailed notices of the default judgment to Defendant and Additional Defendants. On March 13, 2012, Defendant filed a Motion to Strike Judgment with this Court. On May 25, 2012, this Court denied Defendant's Motion to Strike Judgment to which Defendant has now appealed.

STATEMENT OF FACTS

Plaintiff's Complaint alleged the following: (1) Defendant and Additional Defendants submitted a Credit Application with Personal Guaranty to Plaintiff; (2) Defendant and Additional Defendants ordered goods from Plaintiff in the amount of \$5,743.45; (3) Defendant and Additional Defendants defaulted in payment for those goods and have refused to pay. Plaintiff brought suit to recover the cost of the goods, interest thereon at the statutory rate, and attorney's fees per the terms of the Credit Application and Personal Guaranty.

Attached to the Complaint was a copy of the Credit Application and Personal Guaranty signed by Defendant on behalf of Additional Defendant Ken & Jim CUC Inc. The Personal Guaranty provides that Defendant "personally and unconditionally guaranties the payment by [Additional Defendant Ken & Jim C U C, Inc.] to Sellers of all amounts due and owing now, and from time to time hereafter ..., from [Additional Defendant Ken & Jim C U C, Inc.] to Sellers."

Defendant's Motion to Strike Judgment was based on a claim of "fraudulent joinder of a non-party" and Defendant attached three exhibits to the motion in support thereof. In the motion, Defendant averred he never owned Ken & Jim C U C, Inc. and the balance was due from either CUC of MD Inc. or Cluck U Chicken.

Trial Court Opinion, 9/21/12, at 1-3 (citations to the record omitted).

After Best filed his appeal to this Court from the order denying his motion to strike, the trial court ordered Best to submit a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b), and Best complied. In his Rule 1925(b) statement, it appears that Best is attempting to raise issues concerning the receipt of the notice of the entry of the default

judgment and the court's improper denial of the motion to strike. However, in his brief, Best sets forth the following questions for our review:

1. Did the [c]ourt [c]ommit an error in law by treating [p]laintiff's [f]ilings as [e]vidence?
2. Can U[S] Foods sell trademark projected [sic] goods to non-licensed offerors?
3. Does US Foods provide [o]verrides for all purchases of Cluck U [f]ranchisees to Cluck U Chicken Inc[.] ([f]ranchisor)?
4. Does US Foods possess scienter?

Best's brief at 3.

We recognize that these four questions do not challenge the court's denial of Best's motion to strike the judgment. Reviewing the brief submitted by Best to this Court, it is apparent that Best presents arguments about the underlying case and identifies reasons that the trial court should have found in his favor and relieved him of his duty to pay what he owes to US Food Service. However, under the present posture of this case, we may not address issues relating to the underlying matter. Rather, if Best had properly raised issues concerning the denial of the motion to strike we would review the record to determine if the court properly denied that motion. Because Best does not list any questions or provide any argument relating to the motion to strike, he has waived the related issues. **See** Pa.R.A.P. 2116.

Rule 2116 states in part:

(a) General rule. The statement of the question involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement shall be no more than two pages and will be

deemed to include every subsidiary question fairly comprised therein. *No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.*

Pa.R.A.P. 2116(a) (emphasis added). ***See Eiser v. Brown & Williamson Tobacco Corp.***, 938 A.2d 417 (Pa. 2007) (citing ***Krebs v. United Refining Co. of Pennsylvania***, 893 A.2d 776, 797 (Pa. Super. 2006) (holding that this Court will not consider any issue if it has not been set forth in or suggested by the statement of questions involved)). Accordingly, we conclude that Best has waived any issues relating to the motion to strike and we, therefore, affirm the court's order denying his motion to strike the judgment.

Order affirmed.

Judge Shogan concurs in the result.