



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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CITY OF FAIRFAX

July 1, 2020

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Re: Walnut Street Finance, LLC v. Andre Slonopas, CL-2020-5604¹

Dear Counsel:

This matter came before the Court on June 26, 2020 upon Defendant Andre Slonopas's motion to set aside a confessed judgment against him.²

BACKGROUND

On or about February 9, 2018, Slonopas Real Estate, LLC ("SRE") executed a deed of trust and a promissory note ("Note") payable to the order of Walnut

¹ The motion filed by Defendant Slonopas indicates in the caption that there is a co-defendant, Slonopas Real Estate, LLC. In fact, only Andre Slonopas is a defendant in CL-2020-5604; Slonopas Real Estate, LLC is a defendant in another case, CL-2020-5603. Moreover, counsel for Defendant Slonopas informed the court at the hearing that a motion to set aside the confessed judgment against Slonopas Real Estate, LLC had been filed in Case No. CL 2020-5603. No such motion is on file with the court, so the court will not address whether any of Defendant Slonopas's defenses apply to Slonopas Real Estate, LLC.

² Defendant's motion includes what are characterized as "Cross Claims" against a third party, Demetrious Voudouris. As these "Cross Claims" do not comply with Va. Sup. Ct. R. 3:13(a) and are not relevant to the motion, they will be stricken from the motion.

Street Finance, LLC in the principal amount of \$520,000. The Note required interest of 12% per annum (§ 1.2), but allowed Walnut Street Finance, LLC, "[i]n the event of any failure by Borrower to comply with any of its obligations of payment or performance," to "increase the interest rate payable hereunder by six (6) percentage points above the interest rate otherwise in effect." § 1.3. The Note is secured by a deed of trust on certain property. In a separate *Unconditional Guaranty Agreement*, Andre Slonopas personally guaranteed the Note. The Note, at § 2.2.2, contained a provision for Confession of Judgment in the event of a default, which provides in pertinent part:

UPON THE OCCURRENCE OF A DEFAULT, THE BORROWER AGREES THAT ANY ATTORNEY DESIGNATED BY THE LENDER . . . IS HEREBY AUTHORIZED TO ENTER JUDGMENT BY CONFESSION AGAINST THE BORROWER IN FAVOR OF THE HOLDER OF THIS NOTE FOR THE FULL AMOUNT OF THE INDEBTEDNESS DUE HEREUNDER, INTEREST AND COSTS, INCLUDING ATTORNEY'S FEES OF TWENTY-FIVE PERCENT (25%) OF THE UNPAID PRINCIPAL BALANCE AND INTEREST THEN DUE HEREUNDER. . . . THE BORROWER HEREBY DULY CONSTITUTES AND APPOINTS DEMETRIS VOUDOURIS, ESQ. . . . AS THE BORROWER'S TRUE AND LAWFUL ATTORNEYS IN FACT . . . TO CONFESS JUDGMENT AGAINST THE BORROWER IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX, VIRGINIA . . . UPON THIS NOTE, FOR THE FULL AMOUNT OF THE INDEBTEDNESS DUE HEREUNDER, INTEREST AND COSTS, INCLUDING ATTORNEY'S FEES OF TWENTY-FIVE PERCENT (25%) OF THE UNPAID PRINCIPAL BALANCE AND INTEREST THEN DUE HEREUNDER, HEREBY RATIFYING AND CONFIRMING THE ACTS SAID ATTORNEYS IN FACT AS FULLY AS IF DONE BY THEMSELVES. . . . NOTWITHSTANDING THE FOREGOING, THE LENDER ACKNOWLEDGES THAT ATTORNEYS' FEES ARE STATED TO BE TWENTY-FIVE PERCENT (25%) SOLELY FOR THE PURPOSE OF FIXING A SUM CERTAIN FOR WHICH JUDGMENT CAN BE ENTERED BY CONFESSION, AND THE LENDER AGREES THAT IN ENFORCING ANY SUCH JUDGMENT BY CONFESSION, THE LENDER SHALL NOT DEMAND, SOLELY WITH RESPECT TO ATTORNEYS' FEES INCURRED BY THE LENDER IN CONNECTION WITH SUCH INDEBTEDNESS AFTER SUCH JUDGMENT HAS BEEN RENDERED, ANY AMOUNTS IN EXCESS OF THE ACTUAL AMOUNT OF ATTORNEYS' FEES CHARGED OR BILLED TO THE LENDER.

The personal guaranty of Defendant Slonopas contains an identical provision, except for references to "Guarantor" instead of "the Borrower" and to the "Beneficiary of this Guaranty" instead of the "Holder of this Note."

On or about December 31, 2018, the principal amount of the Note was increased to \$750,000. On December 2, 2019, Defendant Slonopas was called to active duty through January 20, 2020 and then received an extension of active duty orders not to exceed 396 days from January 25, 2020.

On or about April 14, 2020, Demetris Voudouris, acting in his capacity as attorney in fact, confessed judgment in this court against Defendant Slonopas in the amount of \$320,021.88, with interest at the rate of 18% from April 14, 2020 until payment, and the costs of this proceeding, including 25%

attorney fees.³ Defendant was served with the confessed judgment on May 4, 2020 and he timely filed a motion to set aside the confessed judgment.⁴

ANALYSIS

Defendant Slonopas raises four defenses to the confessed judgment: that he is protected by 50 U.S.C. § 3953, part of the Servicemembers Civil Relief Act ("SCRA"), from enforcement of foreclosure or repossession; that he is protected by 50 U.S.C. § 3931, also part of the SCRA, from default judgments; that he is entitled to an interest rate cap of 6% pursuant to 50 U.S.C. § 3937(a)(1)(A), also part of the SCRA; and that the 25% attorney fees is unreasonable. The court will consider each defense in turn.

1) 50 U.S.C. § 3953(a) provides in pertinent part:

This section applies only to an obligation on real or personal property **owned by** a servicemember that--

(1) originated before the period of the servicemember's military service and for which the servicemember is still obligated; and

(2) is secured by a mortgage, trust deed, or other security in the nature of a mortgage. (Emphasis added).

The property at issue here is not "owned by" Defendant Slonopas; it is owned by SRE. Thus, 50 U.S.C. § 3953 is not applicable to the instant case.

2) 50 U.S.C. § 3931(g)(1) provides:

If a **default judgment** is entered in an action covered by this section against a servicemember during the servicemember's period of military service (or within 60 days after termination of or release from such military service), the court entering the judgment shall, upon application by or on behalf of the servicemember, reopen the judgment for the purpose of allowing the servicemember to defend the action if it appears that--

(A) the servicemember was materially affected by reason of that military service in making a defense to the action; and

(B) the servicemember has a meritorious or legal defense to the action or some part of it. (Emphasis added).

³ In CL 2020-5603, Voudouris, acting in his capacity as attorney in fact, confessed judgment in this court against Defendant SRE in the same amount.

⁴ Pursuant to Code § 8.01-433, Defendant had 21 days to file to file his motion from the date of notice, i.e., until May 25, 2020. As May 25, 2020 was a holiday, Defendant's filing of his motion on May 26, 2020 was timely.

Defendant Slonopas is not seeking to set aside a default judgment; he is seeking to set aside a confessed judgment pursuant to Code § 8.01-433.⁵ As a confessed judgment is not a default judgment, and Defendant Slonopas presents no authority showing that the two types of judgments are synonymous, 50 U.S.C. § 3931 does not apply to the instant case.

3) 50 U.S.C. § 3937(a)(1)(A) provides:

An obligation or liability bearing interest at a rate in excess of 6 percent per year **that is incurred by a servicemember**, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service shall not bear interest at a rate in excess of 6 percent--

(A) during the period of military service and one year thereafter, in the case of an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage

The interest obligation at issue here was incurred by SRE as the Borrower, not by Defendant Slonopas. Accordingly, 50 U.S.C. § 3937(a)(1)(A) does not apply to the instant case.

4) In contending that an attorney fee of 25% is unreasonable, Defendant focused only on the first two sentences of the confessed judgment provision of the Note, ¶ 2.2.2, and did not consider the last sentence of that provision, which reads:

NOTWITHSTANDING THE FOREGOING, THE LENDER ACKNOWLEDGES THAT ATTORNEYS' FEES ARE STATED TO BE TWENTY-FIVE PERCENT (25%) SOLELY FOR THE PURPOSE OF FIXING A SUM CERTAIN FOR WHICH JUDGMENT CAN BE ENTERED BY CONFESSION, AND THE LENDER AGREES THAT IN ENFORCING ANY SUCH JUDGMENT BY CONFESSION, **THE LENDER SHALL NOT DEMAND**, SOLELY WITH RESPECT TO ATTORNEYS' FEES INCURRED BY THE LENDER IN CONNECTION WITH SUCH INDEBTEDNESS AFTER SUCH JUDGMENT HAS BEEN RENDERED, **ANY AMOUNTS IN EXCESS OF THE ACTUAL AMOUNT OF ATTORNEYS' FEES CHARGED OR BILLED TO THE LENDER.**

Accordingly, the attorney fees are not 25%, but the "actual amount of attorneys' fees charged or billed to the Lender," so that the court need not evaluate whether 25% is reasonable. Moreover, because the court has not been provided the "actual amount of attorneys' fees charged or billed to the Lender," the court cannot, at this time, determine the reasonableness of those attorney fees.

In sum, the court having found that none of Defendant Slonopas' arguments have merit, the court DENIES his motion to set aside the confessed judgment against him.

⁵ The authority to set aside default judgments is found in Code § 8.01-428.

An appropriate order will enter.

Sincerely yours



Richard E. Gardiner
Judge

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

WALNUT STREET FINANCE, LLC)	
)	
Plaintiff)	
)	
v.)	CL 2020-5604
)	
ANDRE SLONOPAS)	
)	
Defendant)	

ORDER

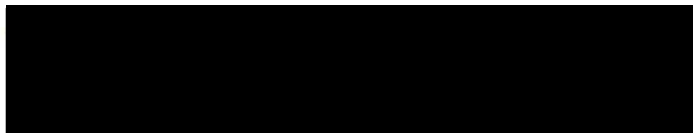
THIS MATTER came before the court on Defendant's motion to set aside the confessed judgment.

IT APPEARING to the court, for the reasons stated in the court's letter of today's date, that Defendant's motion to set aside the confessed judgment should be denied, it is hereby

ORDERED that Defendant's motion to set aside the confessed judgment is DENIED, and it is further

ORDERED that the "Cross Claims" against a third party, Demetrious Voudouris, are stricken from Defendant's motion.

ENTERED this 1st day of July, 2020.



Richard E. Gardiner
Judge

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD FOR THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE SUPREME COURT OF VIRGINIA

Copy to:

Patrick J. Hughes
Counsel for Defendant

Douglas R. Kay
Counsel for Plaintiff