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Westchester County Roundup: January 2020

Judge Román Remands Judgment on Confession to State Court

In *24 Capital Funding, LLC v. Peters Broadcasting Engineering, Inc.*, No. 19-cv-4929, 2019 WL 5294841 (S.D.N.Y. Oct. 18, 2019), the plaintiff filed two confessions of judgment against the defendants in New York State Supreme Court, Putnam County arising out of the defendants' breaches of a series of financing agreements. The defendants sought to remove the case to the Southern District of New York based on diversity jurisdiction and the plaintiff moved to remand back to state court. Finding federal courts lack subject matter jurisdiction over confession of judgment proceedings, Judge Nelson Román agreed with the plaintiff and remanded the action back to New York State Supreme Court.

Judge Román based his remand decision on two principles. First, the federal removal statute, 28 U.S.C. § 1441 applies to "any civil action," but CPLR 3218 provides that judgments by confession may be entered "without an action." Because the state procedural law distinguishes a judgment by confession from an action, they are not removable actions under the federal procedural rules. Second, federal courts must abstain from confession of judgment cases based on the *Rooker-Feldman* doctrine, which denies federal jurisdiction over cases that are essentially appeals of state court judgments. *The Rooker-Feldman* doctrine applies to both original and removed proceedings where: (1) the federal court plaintiff lost in state court; (2) the state court judgment caused the injuries which the plaintiff complains of; (3) the plaintiff is inviting review and rejection of the state court judgment; and (4) the state judgment was rendered prior to the commencement of the district court proceedings. Here, judgment by confession had been entered in state court against the defendants, satisfying the first and fourth prongs of the doctrine. The defendants were attempting to bring the case in federal court, complaining of the state court result and requesting rejection of that judgment, satisfying the second and third prongs of the doctrine. Accordingly, the *Rooker-Feldman* doctrine mandated abstention from the exercise of subject matter jurisdiction over the judgments, and remand was required.

Judge Seibel Denies Plaintiff's Motion for Summary Judgment and Grants Defendant's Cross-Motion for Summary Judgment in Individuals with Disabilities Education Improvement Act Case

In *K.B. on behalf of S.B. v. Katonah Lewisboro Union Free School District*, No. 18-CV-9553, 2019 WL 5553292 (S.D.N.Y. Oct. 28, 2019), the plaintiff sued her daughter's School District alleging, inter alia, a failure to provide her daughter a Free and Appropriate Public Education ("FAPE") for 2015 through 2017, and a failure to locate and service her daughter pursuant to the Individuals with Disabilities Education Act ("IDEA"). Judge Cathy Seibel granted the defendant's motion for summary judgment, holding the District did not violate its IDEA obligations to find and service children suspected of having a disability, known as the

"Child Find" obligation, and adequately provided a FAPE for the plaintiff's daughter in the relevant period.

In the Spring of 2015, the plaintiff's daughter ("S.B.") was admitted to a psychiatric hospital where she remained until October 2015. In August 2015, at the plaintiff's request, S.B. was referred to a local committee on special education and was found to be eligible for special education services. S.B.'s first Individualized Education Program ("IEP") recommended special class placement with counseling and dialectical behavior therapy. The committee recommended that S.B. attend Karafin school—a state-approved, non-public program. The plaintiff rejected this recommendation, notified the District that S.B. would attend a private school and requested reimbursement of S.B.'s tuition and travel. The District agreed only to reimburse travel costs. Early in 2016, the committee reconvened to discuss whether S.B. required summer school, ultimately deciding that she did not. Several months later a new IEP was developed recommending a larger class size and placement in a new therapeutic program at the District's high school. The plaintiff again rejected the committee's recommendations and informed the District that S.B. would continue at private school through the summer and for the 2016-17 school year.

The plaintiff sought tuition reimbursement for the private school first from an Impartial Hearing Officer ("IHO") and then a State Review Officer ("SRO"). The SRO held the District did not fail to offer S.B. a FAPE at any point and, because there was no failure to provide a FAPE, the plaintiff was not entitled to reimbursement of expenses. The plaintiff appealed the SRO decision to the district court and both parties cross-moved for summary judgment.

To determine whether the District had violated its Child Find obligation with respect to S.B., the Court focused on what the District knew and when. The Court found that, although the District was aware of S.B.'s emotional trouble in the early spring of 2015, S.B.'s positive academic performance at school rendered the school's failure to act before S.B.'s hospitalization reasonable. Additionally, given S.B.'s hospitalization in the Spring of 2015, the Court was unclear on how the District would have been able to initiate its procedures to identify S.B. Moreover, the Court noted that the IHO and SRO agreed that Child Find was satisfied and that their agreement warranted deference by the district court under Second Circuit precedent. The Court then turned to whether the District provided S.B. with a reasonable FAPE for the 2015 through 2017 period. Judge Seibel found the SRO's opinion to be thorough and well-reasoned and so entitled to deference. Notably, the Court commented that "the law does not require the District to place SB in the best possible environment; it merely requires the School District to make a recommendation that is reasonably calculated to enable SB to make progress appropriate in light of her circumstances in the least restrictive environment." Based on that standard, Judge Seibel found no adequate basis to overturn the SRO's recommendation and so affirmed its decision.

Judge Briccetti Grants Plaintiff's Motion to Substitute a New Named Plaintiff in Putative Deceptive Marketing Class Action Case

In *Suarez v. California Natural Living, Inc.*, 17 CV 9847, 2019 WL 5188952 (S.D.N.Y. Oct. 15, 2019), the plaintiff Pamela Suarez brought a putative class action claiming the defendant deceptively marketed cosmetic products as natural when in fact they contained synthetic ingredients. Following the pretrial conference, the Court issued a Civil Case Discovery Plan and Scheduling Order, which set a deadline to amend pleadings and join parties. Three months after the court-ordered deadline, the plaintiff filed a motion to, inter alia, substitute a new named plaintiff and amend the pleadings. In support of the motion, Suarez filed an affidavit stating that recent work obligations and continuing family obligations had caused her to doubt her ability to dedicate the appropriate time to the case. Judge Vincent Briccetti granted the motion, finding good cause had been shown warranting

substitution of the named plaintiff and an extension of discovery.

Judge Briccetti first noted the tension between Federal Rules of Civil Procedure 15 and 16. Rule 15 directs courts to give leave to amend pleadings freely when justice requires but Rule 16 requires good cause for amendment after the expiration of a court-ordered deadline. The Court further noted Rule 21, which governs misjoinder and nonjoinder, is similarly governed by both the liberal standard of Rule 15 and the good cause requirement of Rule 16. In addition, a court exercising its discretion under Rule 21 must consider principals of fundamental fairness and judicial efficiency. In holding that the plaintiff had shown good cause in this case, Judge Briccetti focused on the diligent actions of the plaintiff's counsel upon learning of the plaintiff's hesitation to continue representing the putative class. Counsel immediately began searching for a replacement, informed defense counsel of plaintiff's desire to be substituted and filed the instant motion less than two weeks after learning defense counsel would not consent to substitution. Judge Briccetti added that, because the plaintiff had not yet sought class certification and the proposed amendment to the complaint did not materially alter any remaining claims, the defendant would not be prejudiced. Finally, the Court concluded that denying the plaintiff's motion would not further the goal of resolving the dispute in a just, speedy and inexpensive manner.

Judge Karas Grants Plaintiff's Motion for Summary Judgment in Quiet Title Action

In *U.S. Bank Nat'l Ass'n as Tr. for Structured Adjustable Rate Mortg. Loan Tr., Mortg. Pass-Through Certificates, Series 2005-23 v. Haskins*, No. 18-CV-8478, 2019 WL 6888654 (S.D.N.Y. Dec. 18, 2019), the plaintiff in a quiet title action moved for summary judgment granting them strict foreclosure pursuant to New York Real Property Actions and Proceedings Law (RPAPL) § 1352. Judge Kenneth Karas granted the plaintiff's summary judgment motion, providing the defendant 60 days to notify the plaintiff of his intent to redeem his interest in the property.

The Court began by summarizing the series of transactions that led to the plaintiff's fee simple ownership of the property at issue. One of the plaintiff's predecessors in interest commenced an action for foreclosure and sale of the property. The notice of pendency for that action was filed on February 14, 2011 and was valid for three years. The notice of pendency was re-filed on April 21, 2014 which created a gap in the record of the foreclosure action. During this gap, the defendant in the instant action filed an abstract of judgment granted against the previous mortgagor of the property, acquiring a lien against the property. On November 2, 2016, the plaintiff's predecessor in interest was granted a Judgment of Foreclosure and Sale which was subsequently transferred to the plaintiff. The plaintiff then purchased the property by referee's deed. Because the defendant had not been joined in the initial foreclosure action, the defendant's lien had survived the foreclosure and sale. Under New York real property law, the plaintiff had two avenues to remove the defendant's encumbrance on the property's title. First, strict foreclosure allows the court to fix a time period within which third parties with a right of redemption or a right to foreclose on a subordinate lien must act or forfeit any claim on the title or interest in the property. Second, the defendant could move for reforeclosure, which requires a finding that the defect in the original foreclosure (nonjoinder of the defendant) was not caused by the fraud or willful neglect of the plaintiff. In this case, the plaintiff chose strict foreclosure. Although the defendant argued that the additional reforeclosure requirements should be read into the strict foreclosure statute, the Court found no authority for that proposition. Judge Karas instead cited case law holding strict foreclosure provided an absolute right regardless of the plaintiff's knowledge of the defendant's interest at the time of purchase and so even if the plaintiff had engaged in fraud or willful neglect, it would not be barred from relief under the strict foreclosure statute. The Court also considered the defendant's

argument that notice provisions in the terms of sale to the plaintiff put the plaintiff on notice of the subordinate lien. On their face, the terms of sale only notified the plaintiff that the property was being sold as is and that there may be prior liens; nothing in the terms put the plaintiff on notice of the defendant's lien specifically. Judge Karas concluded that the plaintiff was entitled to strict foreclosure as a right and granted the plaintiff's motion for summary judgment giving the defendant 60 days to notify the plaintiff if he intended to redeem his lien on the property.

Westchester Supreme Court Justice Giacomo Grants Defendant's Motion for Summary Judgment in Foreclosure Action

In *MTGLQ Investors, LP v. Baksh*, 70760/2018, 2019 WL 6483441 (N.Y. Sup. Ct. West. Cty. Dec. 2, 2019), the plaintiff in an action for foreclosure on a mortgage moved for, inter alia, summary judgment against the appearing defendants, and defendant Amid Baksh moved for summary judgment dismissing the complaint. Justice William Giacomo granted the defendant's motion and dismissed the complaint as time barred.

Baksh obtained a loan from the plaintiff's predecessor in interest in 2006 and executed a mortgage as security for the loan. The predecessor in interest commenced an action against Baksh to foreclose on the mortgage in 2012, but the action was ultimately dismissed for failure to prosecute. The plaintiff commenced the instant action in 2019, alleging Baksh had failed to make monthly loan payments since February 2013. The Court first noted the statute of limitations for a foreclosure proceeding was six years. For an installment loan, there are separate causes of action (and so separate limitations periods) for each installment owed. However, once a mortgage is accelerated the statute of limitations begins to run on the entire debt unless the lender affirmatively revokes the acceleration within the six-year limitations period. In the instant case, the plaintiff's predecessor in interest had accelerated the mortgage by commencing the 2012 action and there was no evidence of an affirmative act of revocation. Accordingly, the statute of limitations ran on the entire debt in 2018, prior to the plaintiff's commencement of the instant action. The Court therefore granted Baksh's motion for summary judgment and dismissed the case