

[Cite as *Garlikov & Assoc. v. Krupman*, 2010-Ohio-3029.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Garlikov & Associates, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-1092 (C.P.C. No. 09CVH11-16364)
Victor Krupman,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2010

Zeiger, Tigges & Little LLP, and Christopher J. Hogan, for appellee.

Victor Krupman, pro se.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Victor Krupman, appeals from a judgment of the Franklin County Court of Common Pleas in favor of plaintiff-appellee, Garlikov & Associates, Inc. ("Garlikov"). For the following reasons, we reverse and vacate the judgment.

{¶2} On November 2, 2009, Garlikov filed a complaint in the trial court seeking a judgment on a cognovit note that Krupman executed on August 31, 2006. Using the authority granted by the warrant of attorney contained within the cognovit note, an

attorney answered the complaint on behalf of Krupman and confessed judgment in the amount outstanding on the note. On the same day the complaint and answer were filed, the trial court granted a cognovit judgment in favor of Garlikov.

{¶3} Krupman now appeals and assigns the following error:

THE TRIAL COURT ERRED IN RENDERING A JUDGMENT AGAINST DEFENDANT-APPELLANT KRUPMAN ON A COGNOVIT NOTE AS IT LACKED SUBJECT MATTER JURISDICTION. SUCH ERROR IS REFLECTED IN THE COURT'S JUDGMENT DECREE.

{¶4} Pursuant to R.C. 2323.13(E), "[a] warrant of attorney to confess judgment contained in any instrument executed on or after January 1, 1974, arising out of a consumer loan or consumer transaction, is invalid and the court shall have no jurisdiction to render a judgment based upon such a warrant." Consequently, if a cognovit note arose out of a consumer loan or consumer transaction, then a cognovit judgment entered on the note is void and must be vacated for lack of subject matter jurisdiction. *Shore West Constr. Co. v. Sroka* (1991), 61 Ohio St.3d 45, 48.

{¶5} Construing R.C. 2323.13(E), this court has held that a trial court lacks subject matter jurisdiction to enter a cognovit judgment unless: (1) the complaint specifically avers that the cognovit note did not arise from a consumer loan or consumer transaction, or (2) the trial court makes some finding in the record that the cognovit note did not arise from a consumer loan or consumer transaction. *Taranto v. Wan-Noor* (May 15, 1990), 10th Dist. No. 90AP-1. See also *Simon v. Crow*, 9th Dist. No. 22172, 2005-Ohio-1266, ¶8-9 (following *Taranto*). Here, nothing in the complaint, the note, or the record establishes that the cognovit note that Krupman executed did not arise from a consumer loan or consumer transaction. Accordingly, we conclude that the trial court

lacked subject matter jurisdiction to enter a cognovit judgment against Krupman, and we sustain Krupman's assignment of error.

{¶6} Garlikov failed to file a brief, but it did file a motion asking this court to remand this case to the trial court for it to consider amending its judgment to include a finding that the cognovit note did not arise from a consumer loan or consumer transaction. We deny this motion.

{¶7} For the foregoing reasons, we sustain Krupman's assignment of error, and we deny Garlikov's motion. We reverse and vacate the judgment of the Franklin County Court of Common Pleas.

*Judgment reversed and vacated; and
motion denied.*

BRYANT and FRENCH, JJ., concur.
