

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

LVNV FUNDING, LLC,

Appellee

v.

ASIA KNIGHT,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1605 WDA 2013

Appeal from the Order Entered September 4, 2013
In the Court of Common Pleas of Allegheny County
Civil Division at No(s): AR-10-010079

BEFORE: BENDER, P.J.E., OLSON, J., and FITZGERALD, J.*

MEMORANDUM BY BENDER, P.J.E.:

FILED JULY 24, 2014

Appellant, Asia Knight, appeals from the September 5, 2013 order denying her petition to strike default judgment. We affirm.

On November 3, 2010, Appellee, LVNV Funding, LLC, filed a complaint against Appellant seeking payment of the unpaid balance of \$1,027.24 of her HSBC Bank Nevada N.A./Best Buy credit card account. Appellee was assigned the account by the original creditor, HSBC Bank Nevada N.A./Best Buy. Appellant failed to answer the complaint. Consequently, on December 27, 2010, the arbitration center entered default judgment against Appellant in the amount of \$1,027.24 plus court costs. On July 9, 2013, Appellant

* Former Justice specially assigned to the Superior Court.

filed a petition to strike default judgment.¹ After the trial court denied her petition, Appellant filed a timely notice of appeal to this Court. The court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b), and Appellant complied. In her brief, Appellant raises one question for our review:

Whether the default judgment entered against [Appellant] should be stricken because the record fails to establish that [Appellee] is a real party in interest?

Appellant's Brief at 1 (unnecessary capitalization omitted).

¹ Although neither Appellee nor the court challenge the timeliness of Appellant's petition to strike default judgment, we acknowledge that Appellant's petition was filed approximately three years after the entry of default judgment in Appellee's favor. However, Appellant effectively argued in her petition to strike, and also reiterates on appeal, that the default judgment was **void** because Appellee did not plead in the complaint that it was a real party in interest, as required by our Rules of Civil Procedure (discussed further, *infra*). **See Franklin Interiors, Inc. v. Browns Lane, Inc.**, 323 A.2d 226, 228 (Pa. Super. 1974) ("[A] default judgment entered where there has not been strict compliance with the rules of civil procedure is void.") (internal citation omitted). Because "[t]he courts of this Commonwealth have long held that an individual may seek to strike a **void** judgment at any time[,]" we conclude that the trial court had jurisdiction to assess the merits of Appellant's petition to strike default judgment. **Mother's Rest., Inc. v. Krystkiewicz**, 861 A.2d 327, 337 (Pa. Super. 2004) (emphasis added) (internal citations omitted); **cf. Oswald v. WB Pub. Square Assocs., LLC**, 80 A.3d 790, 797 (Pa. Super. 2013) ("There is a clear distinction between judgments which are simply 'voidable' based upon mere irregularities and those which are 'void *ab initio*.' The general rule is that if a judgment is sought to be stricken for an irregularity, not jurisdictional in nature, which merely renders the judgment voidable, the application to strike off must be made within a reasonable time.") (internal citations omitted).

When reviewing such questions, we employ the following standard of review:

With regard to a motion to strike a default judgment, [a] court may only look at the facts of record at the time judgment was entered to decide if the record supports the judgment. A petition to strike does not involve the discretion of the court. A petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. Matters outside of the record will not be considered, and if the record is self-sustaining, the judgment will not be stricken.

Aquilino v. Philadelphia Catholic Archdiocese, 884 A.2d 1269, 1280 (Pa. Super. 2005) (internal citations omitted).

Appellant contends that Appellee did not properly set forth in its pleadings the derivation, or chain, of title. **See** Appellant's Brief at 2-3. In other words, Appellant claims that the record has a fatal defect because Appellee did not plead that HSBC Bank Nevada N.A./Best Buy directly assigned Appellant's account to Appellee. **Id.** at 4. Consequently, Appellant asserts that the record is unclear as to whether Appellee is the true owner of the account, or if there are intervening assignees. **See id.**

Our Rules of Civil Procedure require that "all actions shall be prosecuted by and in the name of the real party in interest[.]" Pa.R.C.P. 2002(a). This Court has explained, "[T]he real party in interest must show in his pleading how he acquired that interest." ***Brown v. Esposito***, 42 A.2d 93, 94 (Pa. Super. 1945). However, assignees are "not required to set out [the] assignment verbatim or attach a copy of the assignment as an exhibit to their pleadings." **Id.**; **see also Wells Fargo Bank, N.A. v. Lupori**, 8

A.3d 919, 922 (Pa. Super. 2010) (reversing an order denying a petition to strike default judgment where the bank made no mention in the complaint that it was the assignee of the subject mortgage).

Here, Appellee alleged in its complaint:

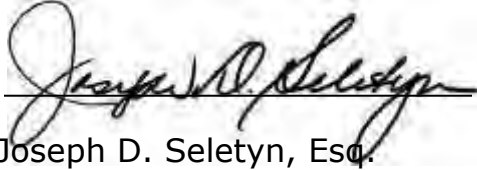
[Appellee], LVNV Funding, LLC, is the assignee and successor of interest of account # ending in [redacted four-digit number]; and said account was issued to [Appellant] by HSBC Bank Nevada N[.]A[.]/Best Buy, the original creditor.

Complaint, 11/3/10, ¶ 3 (unnecessary capitalization omitted). Based on this allegation, Appellee adequately pled that it was the real party in interest.

Furthermore, Appellant's concern that she may be subject to multiple claims brought forth by intervening assignees of the account is meritless. First, the language of the complaint is clear that the original creditor issued the account to Appellee. There is no reason to suspect intervening assignees. Second, because Appellee provided Appellant's account number, if any other assignee would attempt to collect on the account, Appellant could easily prove that the debt was already paid, and thereby avoid undue liability. In sum, we determine that the record supports the court's denial of Appellant's petition to strike default judgment.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/24/2014