

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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USA JET AIRLINES, INC.,  
Plaintiff-Appellant,

v

JAY W. SHICK,  
Defendant-Appellee.

FOR PUBLICATION  
September 11, 2001  
9:00 a.m.

No. 223077  
Washtenaw Circuit Court  
LC No. 99-010485-CK

Updated Copy  
November 26, 2001

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Before: Neff, P.J., and O'Connell and R. J. Danhof\*, JJ.

NEFF, P.J. (*dissenting*).

I respectfully dissent. I would affirm the trial court's order setting aside the judgment against defendant and granting defendant's motion for summary disposition.

Under MCL 600.2906, a provision for a confession of judgment must be in an instrument distinct from the instrument containing the contract or demand on which judgment is confessed:

Judgments may be entered in any circuit court at any time, upon a plea of confession, signed by an attorney of such court, although there is no suit then pending between the parties, if the following provisions are complied with, and not otherwise:

(1) The authority for confessing such judgment shall be in some proper instrument, distinct from that containing the bond, contract or other evidence of the demand for which such judgment was confessed;

In this case, the employment contract and the authority for confessing judgment were on the same one-page document, entitled "Employment Agreement and Cognovit Note." The top half of the page outlined the agreement for repayment of \$5,715 in training costs and incorporated the cognovit note, which followed, stating:

4. Should the Employee fail to reimburse the Company after reasonable demand has been made upon him/her, the Employee hereby authorizes the utilization of

the following Cognovit Note whose terms are incorporated herein as part of this Employment Agreement.

COGNOVIT NOTE

ON DEMAND, after the Air Carrier has been notified that my employment is being terminated, under circumstances outlined in Paragraph No. 3, prior to satisfaction of the 12-month obligation, I, the undersigned Employee, promise to pay to the Order of USA JET AIRLINES, INC. its successors or assigns, the above stipulated Cost of Training, with interest at 10.0% per annum commencing from the date of this Note.

After said obligation becomes due, in the event of default of payment for monies owed to USA Jet Airlines, Inc., I hereby authorize any Attorney at Law to appear in any Court of Record in the United States and waive the issuing and service of process and confess a Judgment against me, in favor of the Holder thereof, for the principal amount then appearing due with the interest thereon as aforementioned, together with the costs of suit and attorney's (collection) fees of 25% of the total balance due (as prayed in the *Ad Damnum*) and thereupon to release all errors and waive all right of appeal.

The bottom of the page provided for the parties' signatures and notarization.

The trial court concluded that the authority for confessing judgment did not meet the statutory requirement that it be distinct. I agree.

Authorization for a confessed judgment must "be in some proper instrument, distinct from . . . the . . . contract or other evidence of the demand" underlying the judgment. MCL 600.2906(1). Such authority need not be in a document separate from that containing the promise or obligation, and it may be part of the contract itself that such authority be given. *Trombly v Parsons*, 10 Mich 272 (1862). However, where the authority for confessing judgment is stated in conjunction with the promise or obligation in the same instrument, contrary to MCL 600.2906, a judgment obtained on such authority is void. *Jones v Turner*, 249 Mich 403, 405-407; 228 NW 796 (1930); *Acme Food Co v Kirsch*, 166 Mich 433, 434, 436-437; 131 NW 1123 (1911).

Distinct most commonly means "distinguished as not being the same; separate." *Random House Webster's College Dictionary* (2d ed). Given this view, the authorization for a confessed judgment must be distinguished as different or separate from the contract or demand.

In *Trombly, supra*, the Court determined that a confession of judgment authorization on the same sheet of paper as a note, but under a separate "warrant of attorney" instrument met the statutory requirement of being distinct from the obligation or demand where the note and the warrant required separate signatures. The *Trombly* Court observed that "[t]he instruments [were] as distinct as if drawn on separate pieces of paper." *Id.* at 273. I cannot similarly classify the employment agreement and cognovit note in this case. Here, separate signatures were not

required for the contract and the cognovit note, which were presented together in the same document, and joined for a single signature.

The statutory requirement that authority for confessing a judgment be conferred by an instrument distinct from the promise or obligation has long been recognized as a protection for the unwary. *Acme, supra* at 436. This protection is not advanced by the document in this case.

I would find no error in the trial court's determination that the confessed judgment was void.

/s/ Janet T. Neff