

Confessions of Judgment – Indiana Style

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Indiana prohibits the use of confessions of judgment and cognovits notes. The Indiana Code defines a cognovit note as “a negotiable instrument or other written contract to pay money that contains a provision or stipulation ... (2) authorizing or purporting to authorize an attorney, agent, or other representative, however designated, to confess judgment on the instrument for a sum of money when the sum is to be ascertained, or the judgment is to be rendered or entered otherwise by action of the court upon a hearing after personal service upon the debtor...” Ind. Code § 34-6-2-22 (2). In other words, a cognovits note contains a provision which permits a court to enter a judgment against a borrower without the need for a lawsuit or any kind of hearing on that particular note. A confession of judgment similarly permits a creditor to get a judgment against a debtor without filing a lawsuit and without any notice to the debtor. In fact, it is a Class B misdemeanor to knowingly obtain either a confession of judgment or take advantage of a cognovits note in Indiana. Ind. Code § 34-54-4-1.

Despite Indiana’s prohibition, cognovits notes and confessions of judgment are legal in a few other states. For example, Ohio permits cognovit notes. Ohio Rev. Code 2323.12. What happens if a creditor uses a cognovit note or confession of judgment in another state where it is legal but seeks to enforce it in Indiana? The Indiana Court of Appeals recently answered that question in *EBF Partners, LLC v. Evolving Solutions Inc.*, 95 N.E.3d 145 (Ind. App. 2018). EBF Partners obtained a judgment against Evolving Solutions using an Affidavit of Confession of Judgment in New York. EBF sought to enforce the New York judgment in Indiana. Initially, the Indiana trial court entered an order recognizing the New York judgment but later rescinded the order upon the request of Evolving Solutions.

EBF appealed the trial court’s decision. The Indiana Court of Appeals compared Indiana’s prohibition against cognovit notes with the Full Faith and Credit Clause of the United States Constitution. Article IV of the Constitution requires that each state give “full faith and credit” to judgment rendered in another state. Further, the Constitution provides that the Constitution, federal laws, and treaties supersede state laws under the “Supremacy Clause” contained in Article VI. Against this backdrop, the Court of Appeals considered the implications of the Indiana laws and their public policy with the Full Faith and Credit Clause and the Supremacy Clause. Ultimately, the court concluded that Indiana courts have a duty to enforce a validly obtained judgment from another state.

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Similarly, the Indiana Court of Appeals upheld the enforceability of a promissory note despite the fact that it contained a cognovit provision. In *Jaehnen v. Booker*, 800 N.E.2d 31 (Ind. App. 2004), the plaintiff filed suit to collect a note which included cognovit language. The defendant alleged that the entire note was void based upon the inclusion of such language. The Court of Appeals determined that the note was enforceable despite the inclusion of the cognovits language. The creditor did not seek to use the cognovits provision but instead filed a complaint to enforce the note.

So despite Indiana's prohibition against cognovits notes and confessions of judgment, a savvy creditor can still recover.

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