

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PIDC REGIONAL DEVELOPMENT CORPORATION	:	JULY TERM 2005
Plaintiff,	:	
v.	:	NO: 1360
	:	
ALLEN WOODRUFF	:	CONTROL NO: 082378
Defendant	:	
	:	COMMERCE PROGRAM

ORDER

AND NOW, this 28th day of November, 2005, upon consideration of defendant Allen Woodruff's Petition to Strike/Open Confessed Judgment, and response thereto, and in accordance with the Court's contemporaneously filed Opinion, it is hereby ORDERED and DECREED that said Petition is DENIED.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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OPINION

Defendant Allen Woodruff (“Woodruff”) has filed a Petition to Strike/Open Judgment (the “Petition”), in response to plaintiff PIDC Regional Development Corporation’s (“PIDC”) Complaint in Confession of Judgment against him. For the reasons set forth in this Opinion, said Petition is denied.

BACKGROUND¹

On January 1, 2002, Marshall Industries, LLC (“Marshall”) and PIDC entered into an Amended and Restated Note (the “Note”), in which PIDC agreed to loan Marshall \$74,278.93. The Note provided for repayment of the loan in monthly installments by Marshall to PIDC, with interest, with the balance being due on or before April 1, 2009. The Note also contained a Confession of Judgment provision, which empowered any attorney of any Court of Record within the United States or elsewhere to appear for Marshall and confess judgment against Marshall and in favor of PIDC. Specifically, it allowed PIDC, upon default of the loan by Marshall and after thirty (30) days written notice to Marshall, to confess judgment for the unpaid principle of the Note and all

¹ This background is taken from PIDC’s Verified Complaint and the exhibits attached thereto, as well as from the Court’s Docket.

arrearages of installment payments, together with costs of suit and attorney's commission of five percent (5%) for collection.

As further security for the loan, Woodruff, as the sole member of Marshall, signed a Guaranty of Obligations ("Guaranty"), in which Woodruff agreed to be the surety for Marshall, guaranteeing the prompt payment of the Note to PIDC as and when due. The Guaranty also contained a Confession of Judgment provision. Woodruff further executed a Confession of Judgment Explanation and Disclosure of Rights/Waivers, which explained that certain rights were being waived by him as a result of the warrants of attorney to confess judgment against him under the Guaranty.

PIDC contends that Marshall failed to tender timely payments when due and/or upon demand since February 2002. On July 15, 2005, PIDC brought its Complaint in Confession of Judgment against Woodruff, asserting that Woodruff, as surety, is liable to PIDC for a total of \$105,358.07. On August 4, 2005, PIDC served Woodruff with notice of the judgment and execution thereon pursuant to Pennsylvania Rule of Civil Procedure 2958.1 ("Notice Served Prior to Execution"). An affidavit averring same was filed by PIDC with the Prothonotary on August 16, 2005. On August 29, 2005, Woodruff filed his Petition to Strike/Open the Judgment by Confession.

DISCUSSION

Woodruff has filed a combined petition to strike/open the judgment. The Pennsylvania Supreme Court has stated that "a petition to strike and a petition to open are two distinct forms of relief, each with separate remedies." Resolution Trust Corp. v. Copley Qu-Wayne Assocs., 546 Pa. 98, 105, 683 A.2d 269, 273 (1996). See also Manor Bldg. Corp. v. Manor Complex Assocs., 435 Pa. Super. 246, 251, 645 A.2d 843, 845

(1994) (stating that a petition to strike and a petition to open are each “intended to relieve a different type of defect in the confession of judgment proceedings”). Accordingly, each remedy will be discussed in turn.

Petition to Strike Judgment

A petition to strike a judgment is a common law proceeding that operates as a demurrer to the record. Resolution Trust Corp., 546 Pa. at 106, 683 A.2d at 273. A petition to strike a judgment may only be granted when there is an apparent defect on the face of the record. Germantown Savings Bank v. Talacki, 441 Pa. Super. 513, 519, 657 A.2d 1285, 1288 (1995). “In considering the merits of a petition to strike, the court will be limited to a review of only the record as filed by the party in whose favor the warrant is given, i.e., the complaint and the documents which contain confession of judgment clauses.” Resolution Trust Corp., 546 Pa. at 106, 683 A.2d at 273. A court’s order that strikes a judgment “annuls the original judgment and the parties are left as if no judgment had been entered.” Id.

Woodruff asserts two grounds for striking the confessed judgment. First, Woodruff contends that PIDC’s Averment of Default attached to its Complaint is defective because PIDC did not comply with its own default provisions provided in the Note. Specifically, Woodruff alleges that PIDC did not comply with the requirement in the Note that PIDC provide thirty (30) days notice of default before declaring a default and filing for a confession of judgment. Therefore, Woodruff contends that the confessed judgment should be stricken.

In response, PIDC argues that it confessed judgment on the Guaranty, not on the Note. The Guaranty does not contain any notice provisions; instead, only the Note

contains the 30-day notice provision. Additionally, PIDC asserts that allegations of failure to comply with the terms of a note's default provisions are matters outside the record. Therefore, it contends that the Petition to Strike should be denied.

The Court agrees with PIDC. The judgment was confessed on the Guaranty, not on the Note. The Guaranty contains no notice provisions. In fact, the Guaranty states that “the undersigned [Woodruff] hereby waives...any notice of default by the Borrower [Marshall].” Therefore, notice was not a necessary prerequisite before confessing judgment on the Guaranty. Thus, the Petition to Strike on these grounds is denied.

Woodruff’s second ground for striking the judgment is that the Guaranty does not name Woodruff’s name in the body of the document. Woodruff asserts that although Woodruff appears to have signed the Guaranty, he is not specifically named in the document. This argument is without merit. Although Woodruff is not referred to by name in the body of the Guaranty, there are numerous references to “the undersigned” in the Guaranty. At the end of the document, below the signature line, the undersigned is identified as “Allen Woodruff.” It was duly executed by Woodruff and witnessed on January 1, 2002. There is no apparent defect on the face of the Guaranty in this respect. Therefore, Woodruff’s Petition to Strike is denied.

Petition to Open Judgment

In contrast to a petition to strike judgment, when determining a petition to open a confessed judgment, the court may look beyond the confession of judgment documents to testimony, depositions, admissions, and other evidence. Sovereign Bank v. Mintzer, 2000 Phila. Ct. Com. Pl. Lexis 88, *3, Commerce Program (2000). A court should open a confessed judgment when the petitioner acts promptly, alleges a meritorious defense,

and provides sufficient evidence to require submission of the issue to a jury. Crum v. F.L. Shaffer Co., 693 A.2d 984, 986 (Pa. Super 1997). The evidence of a meritorious defense must be “clear, direct, precise and believable.” Germantown Savings Bank, 441 Pa. Super. at 520, 657 A.2d at 1289. A petition to open is treated as a motion for a directed verdict by the petitioner. Mintzer, 2000 Phila. Ct. Com. Pl. Lexis at *3. “An order of the court opening a judgment does not impair the lien of the judgment or any execution issued on it.” Resolution Trust Corp., 546 Pa. at 106-07, 683 A.2d at 273.

Woodruff alleges four grounds for opening the confessed judgment. First, Woodruff asserts that PIDC has not credited Marshall and/or Woodruff for all payments made on the Note and Guaranty. In response, PIDC asserts that its Complaint clearly credits defendant for payments in the amount of \$3,783.48. Furthermore, PIDC points out that the principal balance due in the Complaint is less than the original amount of the Note.

The Court finds that defendant has not met his burden of alleging a meritorious defense and providing sufficient evidence to require the submission of this issue to a jury. In his Petition to Open, Woodruff states, in general terms, that he and/or Marshall have not been credited for payments made on the Note or Guaranty. He does not allege any facts or evidence to support his assertion. For instance, he attaches no documentation, such as cancelled checks, receipts, or affidavits, to support his claim. Additionally, he does not state the amount that he should be credited for. Moreover, it is clear that PIDC accounted for his payments of \$3,783.48 in its calculations of the balance owed, as evidenced in the Complaint. See PIDC’s Complaint, ¶13 under “Accrued Interest.” Therefore, the Petition to Open is denied on these grounds.

Second, Woodruff contends that the Guaranty is defective because PIDC never obtained, and Woodruff never executed, the required corporate resolutions or other documents showing Woodruff's intent and approval to enter into the agreement. The Court disagrees. Woodruff did not execute the Guaranty on behalf of any corporation, but rather executed it in his individual capacity, so a corporate resolution was not necessary. Moreover, Woodruff did, in fact, execute a corporate resolution which authorized Woodruff, as President of Marshall, to execute the Note with PIDC, "as well as a Security Agreement, Financing Statements and all other documents which in his judgment are necessary or desirable to obtain such financing." See Exhibit "A" to PIDC's Response to Petition to Strike/Open, entitled "Action by Unanimous Consent in Writing of the Board of Directors." Therefore, Woodruff's argument is without merit.

Third, Woodruff asserts the Guaranty is defective because Woodruff was fraudulently induced by PIDC to enter into the Guaranty since he received no value in exchange for assuming the debt of Marshall, and it was done only as an accommodation to PIDC. This argument also fails. Woodruff, as the President and sole member of Marshall, did receive value in obtaining the loan on behalf of Marshall. Moreover, Woodruff's assertion of fraudulent inducement is conclusory; again, Woodruff does not allege any facts or evidence to support his claim. Therefore, Woodruff has not met his burden, and his Petition to Open on these grounds is denied.

Woodruff's fourth reason for opening the confessed judgment is that PIDC waited more than three and one half (3 ½) years to execute on the Note and Guaranty. Thus, Woodruff raises the equitable defense of laches. The defense of laches "bars relief when the plaintiff's dereliction indicates a lack of due diligence in failing to institute an action

and such failure results in prejudice to another.” Commonwealth ex rel. Baldwin v. Richard, 561 Pa. 489, 496, 751 A.2d 647, 651 (2000). Importantly, “the party asserting laches as a defense must present evidence demonstrating prejudice from the lapse of time.” Id. Evidence of prejudice “may include establishing that a witness has died or become unavailable, that substantiating records were lost or destroyed, or that the defendant has changed his position in anticipation that the opposing party has waived his claims.” Id.

Woodruff has not presented any evidence demonstrating prejudice from the lapse of time by PIDC in executing on the Guaranty. Instead, in support of his defense of laches, Woodruff states *only* that “Plaintiff waited more than three and a half years to execute on the Note and Guaranty, thereby raising the equitable defense of laches.” See Woodruff’s Petition to Strike/Open, ¶ 5. He does not present any facts or evidence as to why this delay has resulted in prejudice to him, or how he has changed his position to his detriment. Therefore, Woodruff has not met his burden in alleging a meritorious defense, and his Petition to Open is denied.

CONCLUSION

For all the foregoing reasons, Woodruff’s Petition to Strike/Open the Confession of Judgment is DENIED. The Court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT,

HOWLAND W. ABRAMSON, J.