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

THE BANCORP BANK, v. MICHAEL YARON	:	JULY TERM, 2013 NO. 00903 COMMERCE PROGRAM Control No. 13080285
THE BANCORP BANK, v. OXFORD CONSTRUCTION AND DEVELOPMENT CORP	:	JULY TERM, 2013 NO. 00926 Control No. 13080288
THE BANCORP BANK, v. OXFORD CONSTRUCTION OF PENNSYLVANIA, INC.	:	JULY TERM, 2013 NO. 00906 Control No. 13080292
THE BANCORP BANK, v. 218 ARCH STREET, L.P.	:	JULY TERM, 2013 NO. 00859 Control No. 13080286

The Bancorp Bank Vs Oxf-ORDOP

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ORDER

AND NOW, this 19th day of December, 2013, upon consideration of the Petitions to Open and/or Strike Confessed Judgment of defendants, Michael Yaron, Oxford Construction and

Development Corp, Oxford Construction of Pennsylvania, Inc., and 218 Arch Street, L.P., and any responses thereto, it is hereby

ORDERED

that said petitions are **DENIED.**

BY THE COURT:

GLAZER, J.

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OPINION

GLAZER, J.

December 19, 2013

PROCEDURAL AND FACTUAL HISTORY

Plaintiff, The Bancorp Bank ("Bancorp"), commenced the current action when it filed a Complaint of Confessed Judgment against defendants, Michael Yaron, Oxford Construction Development Corp ("OCD"), Oxford Construction of Pennsylvania ("OCP"), and 218 Arch Street, L.P.. Defendants now bring Petitions to Strike and/or Open the confessed judgment.

In 2009, OCD and OCP (collectively "Borrowers") entered into a Line of Credit Loan and Security Agreement with Bancorp to provide them a working capital line of credit in a principal amount not to exceed $8,000,000 ("the loan"). The loan was accompanied by a Note which mandated that Borrowers repay the loan in monthly installments. See Complaint in Confession of Judgment for Money, Exhibit B. On or about the same day, defendant Yaron, among others, executed and delivered to plaintiff a Guaranty and Suretyship Agreement which contained a confession of judgment clause. See id., Exhibit C. The Guaranty also stated that the guarantors waive all rights to notice of default or any other notices regarding the guaranteed obligations. See id. In 2010, OCP was removed as co-borrower and made a guarantor and surety of the obligations of OCD under the loan. The original maturity date was then extended to July 1, 2013.

Plaintiff alleges that, among other instances, defendants defaulted on its obligation to make its required monthly payment on April 1, 2013. On April 15, 2013, plaintiff sent defendants a notice of default stating that Bancorp was accelerating the entire outstanding balance, interest, and other fees owed. Bancorp asserts the amount owed under the Note totals $8,121,792.72. See id. at ¶15. As a result of defendants' failure to pay the outstanding balance, Bancorp filed a Complaint in Confession of Judgment on July 3, 2013.

Defendants subsequently filed Petitions to Open and/or Strike Confessed Judgment on August 2, 2013. Defendants first raised affirmative defenses that attacked the specificity of the

complaint. Additionally, defendants dispute that a triggering event of default occurred. The latter defense was based entirely on a letter Bancorp sent to Berger Development ("Berger") at the end of April 2013. See Petition to Open and/or Strike Confessed Judgment, Exhibit A. Berger, a general contractor, had an independent construction loan with Bancorp and also hired OCP as a subcontractor to work on a development project. See Plaintiff's Response in Opposition to Defendants' Petition at ¶6. According to Bancorp, funds would typically flow from Bancorp to Berger, and then Berger would pay its subcontractors, such as OCP. See id. However, Bancorp claims on several instances, based oral agreements and its prior relationship with OCP, that money was transferred directly from Bancorp and applied towards defendants' outstanding loan. See id. These transfers are outlined in a letter from Bancorp to Berger confirming that on four occasions funds from Berger's loan were advanced "to the benefit of [OCP] and its related entities" between November 2011 to March 2013. Petition to Open and/or Strike Confessed Judgment, Exhibit A. Defendants not only denied granting Bancorp permission to apply such funds, but they also claimed to have had no knowledge of these transactions, and therefore, questioned how those funds were applied to the loan. In turn, defendants attempted to raise a factual issue whether an event of default occurred due to the alleged murkiness over the application of these funds.

In order to clarify discrepancies between the parties on how the above described funds were accounted for, this court ordered the parties to provide, among other items, any documentation that indicates how these transfers were applied to defendants' outstanding loan. See October 22, 2013 Court Order. As requested, plaintiff provided detailed explanations and financial records showing funds from the Berger loan being applied to defendants' outstanding

balance on various occasions. See Bancorp Supplemental Memorandum Pursuant to Order Dated October 22, 2013, Exhibits A, D1-D10.

After reviewing the additional discovery and supplemental brief, any doubt this court had in reaching its decision was eliminated. For the reasons set for below, this court denies defendants' Petitions to Open and/or Strike the Confessed Judgment.

DISCUSSION

The Supreme Court of Pennsylvania has defined a petition to strike and a petition to open as two different forms of relief, each with its own standard of review. See Resolution Trust Corp. v. Copely Qu-Wayne Associates, 546 Pa. 98, 105-106, 683 A.2d 269, 273 (1996). A petition to strike functions as a demurrer to the record and "may be granted only for a fatal defect or irregularity appearing on the face of the record." Id. For example, "such clearly established defects justifying a motion to strike arise when the judgment entered is for a grossly excessive amount or includes recovery for items that were not permitted in the contract authorizing a confession of judgment." J. F. Realty Co. v. Yerkes, 263 Pa. Super. 436, 440, 398 A.2d 215, 217 (1979). The court may not consider matters dehors the record; if the record as filed by the party in whose favor the warrant is provided is self-sustaining, judgment will not be stricken. See Resolution Trust, 546 Pa. at 106.

If, on the other hand, a petitioner is challenging the accuracy of the factual averments in the record, then the proper remedy is to open the judgment. Id. Under Pa.R.C.P. No. 2959(e), the court shall open the judgment "[i]f evidence is produced which in a jury trial would require the issues to be submitted to the jury." Unlike petitions to strike, the court may consider matters dehors the record filed by the party in whose favor the warrant is given, such as testimonies, depositions, and admissions, and other evidence. See Resolution Trust, 546 Pa. at 106. While

the petitioner may proffer such items, evidence of a meritorious defense must be "clear, direct, precise and believable. . . ." Germantown Savings Bank v. Talacki, 441 Pa. Super 513, 519, 656 A.2d 1285, 1288 (1995).

Defendants' asserted defense that the Complaint lacks specificity is an unpersuasive reason to open or strike the confessed judgment. First, defendants note a difference between the alleged event of default as stated in the default letter Bancorp sent to defendants, a material adverse change in circumstances, as compared to the event asserted in plaintiff's Complaint, failing to make its required April 1, 2013 payment. See Petition to Open and/or Strike at ¶17-21. But this difference does not justify opening the judgment. Plaintiff's Complaint focuses solely on the missed payment, which qualifies as an event of default under the terms of the loan. See Complaint in Confession of Judgment for Money, Exhibits A, B. Moreover, the alleged event of default stated in the letter is moot because the loan documents signed by defendants do not require plaintiffs to provide such notice prior to the entry of a confessed judgment. Because the Complaint properly describes an event of default, the Complaint will not be opened or stricken for a lack of specificity.

Next, defendants claim the Complaint lacks specificity in regards to the amount of attorneys' fees owed included in the judgment. Pennsylvania Rule of Civil Procedure 2952 mandates that a complaint is to include "an itemized computation for the amount then due . . . which may include interest and attorneys' fees authorized by the instrument." Pa. R. Civ. P. 2952(a)(7). A plaintiff may easily satisfy this rule because "the plaintiff need only aver a default and allege the amounts due." Sovereign Bank v. Mintzer, 2000 WL 33711039 at *2-3 (Pa. Com. Pl. Nov. 15, 2000) (quoting Davis v. Woxall Hotel, 395 Pa Super 465, 469, 577 A.2d 636, 638 (1990)). Plaintiff's Complaint complies with this requirement as it details how much is owed on

the principal balance, unpaid accrued interest, attorneys' fees, outstanding legal fees, late charges, a satisfaction fee, and a UCC release fee. See Complaint in Confession of Judgment for Money at ¶15. Plaintiff's memorandum further clarifies that the $26,547.70 owed in outstanding legal fees is for work performed prior to the confessed judgment, and the additional $5,000 in attorneys' fees is in regards to the confession of judgment itself. See Plaintiff's Memorandum in Opposition to Defendants' Petition at pp. 13. Neither a detailed loan history or a list of the exact type of legal services rendered are necessary; plaintiff's breakdown of costs is "more than sufficient" under the requirements of Pa. R. Civ. P. 2952(a)(7). See Sovereign Bank, 2000 WL at *3. Also, these fees totaling roughly $32,000 cannot be deemed unreasonable either. The terms of the Note and Guarantee allow Bancorp to collect five percent of the obligation, i.e. over $400,000. See Complaint in Confession of Judgment for Money, Exhibit B, C. By comparison, the $32,000 is significantly less than what may be permissible under the loan.

Lastly, defendants contest that a triggering event of default had occurred due to the alleged unauthorized application of funds from the Berger loan—by Bancorp—to pay several of defendants' outstanding monthly obligations. In asserting this defense, defendants claimed ignorance in knowing that such disbursements took place, and how those payments were applied to the loan. Out of an abundance of caution, this court ordered the parties to address several questions regarding the authorization and application of funds under the Berger loan. Based on the additional discovery provided, defendants conceded that the four payments challenged within their Petition to Open and/or Strike were in fact applied in the manner as described by plaintiff. See Defendant's Brief Per Judge Glazer's Order at pp 3.

As a last straw, defendants attempted to cloud the court's judgment once again by claiming there is a question of fact over other unrelated payments that made a brief appearance in

the limited discovery performed by each party. Unfortunately for defendants, that, and arguably the entire challenge to the appropriation of funds via the Berger loan, fails to qualify as a meritorious defense. Requesting the court to open the confessed judgment so defendants can conduct further discovery in hope of finding evidence that previous payments were not credited to their outstanding loan falls far short of being "clear, direct, precise and believable." Moreover, challenging Bancorp's authorization to the funds from the Berger account is irrelevant to the issue at hand. "When an alleged defense does not attack the judgment itself but instead asserts matters collateral to the entry of judgment, there is no meritorious defense." Giunta v. Martorano, 4 Phila. Co. 648, 650, 1980 WL 194238 (Pa. Com. Pl. Nov. 7, 1980). Attacking Bancorp's authorization to direct funds from the Berger loan to the loan at issue is a collateral matter. Since it fails to attack whether defendants paid its monthly obligation on April 1, 2013, as required by its loan with Bancorp, it is not a meritorious defense.

Despite defendants' plea that confessed judgments are "draconian" and "frowned upon by Pennsylvania Courts," they are nevertheless constitutional and routinely applied within the Commonwealth.

CONCLUSION

Based on the foregoing, defendants' Petitions to Open and/or Strike plaintiff's Confessed Judgment are denied.

BY THE COURT:

GLAZER, J.