

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

DE LAGE LANDEN FINANCIAL SERVICES, INC.	:	JULY TERM, 2013
	:	
Plaintiffs	:	NO. 2985
v.	:	
REACH COMMUNICATIONS SPECIALISTS, INC.	:	COMMERCE PROGRAM
	:	
Defendants	:	CONTROL NO. 13103164

DOCKETED

NOV 22 2013

G. HART  
CIVIL ADMINISTRATION

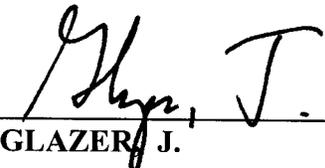
ORDER

AND NOW, this 22<sup>nd</sup> day of November, 2013, upon consideration of the petition to strike and/or open confessed judgment of defendant, Reach Communications Specialists, Inc., it is hereby

**ORDERED**

that said petition is **DENIED**.

BY THE COURT:

  
\_\_\_\_\_  
GLAZER, J.

De Lage Landen Financia-ORDOP



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<b>REACH COMMUNICATIONS SPECIALISTS, INC.</b>	:	
	:	
	:	
<b>Defendants</b>	:	
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**OPINION**

GLAZER, J.

November 22, 2013

**PROCEDURAL AND FACTUAL HISTORY**

Plaintiff, De Lage Landen Financial Services, Inc. (“DLL”), commenced the current action when it filed a Complaint of Confessed Judgment against defendant, Communications Specialists, Inc. (“Reach”). Defendant now brings a motion to strike and/or open the confessed judgment.

On January 17, 2013, the parties executed a Note with Confession of Judgment (“Note”) whereby defendant agreed to borrow a principal amount of \$100,791.81 from plaintiff. The Note states an event of default occurs when the defendant “fails to make any payment when due hereunder and fails to cure such default within five (5) business days after receipt of written notice of such default from the Creditor (a “Default”).” See Complaint in Confession of Judgment, Exhibit A. Additionally, Section G(vi) specifies that any notice to defendants given

in connection with the Note is to be delivered to Reach and Reach's counsel, Indik & McNamara, P.C., in the following manner:

(i) hand delivered to the addressee at his or its then-specified address; or (ii) mailed to the addressee by United States mail, certified or registered mail . . .; or (iii) delivered to the addressee at his or its then-specified address by an overnight courier service . . . . In addition, notice shall be transmitted to the addressee by electronic mail, facsimile or other means of electronic transmission. Notice shall be deemed to be complete and effective upon sending.

Id. On June 10, 2013, due to defendant's failure to pay its monthly obligations under the Note, plaintiff mailed a notice of default to Reach via certified and electronic mail, but only notified Reach's counsel via electronic mail. See Plaintiff's Brief in Opposition to Defendant's Petition to Strike or Open Judgment Entered by Confession, Exhibit A. Defendant then failed to cure its default within five business days after receiving notice. On June 17, 2013, defendant openly admitted in a letter to DLL that Reach is aware of being in default and is "unable to continue making payments until the company is able to generate more revenue." See id., Exhibit B. As a result of Reach's failure to cure, plaintiff filed a Complaint in Confession of Judgment on July 23, 2013.

## **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.

In the case at hand, defendant asserts that this court should strike the confessed judgment. In the Complaint, plaintiff avers that “DLL sent Reach written notice of default for failing to make these monthly payments. . . . Reach has failed to cure its default within five (5) business days after receiving this written notice.” Complaint at ¶7. Defendant alleges that delivery of written notice to counsel, at the address and in the manner specified in the Note, must occur prior to Default—before a confessed judgment may be entered. Therefore, Reach claims the Complaint should have alleged that notice was delivered to defendant’s counsel and that defendant failed to cure after receipt of proper notice to counsel. See Petition to Strike or Open Judgment Entered by Confession, ¶10, 11. Because the Complaint lacked such an averment, defendant argues that the record is not self-sustaining. However, this court is not persuaded. DLL’s omission is minor. A failure to aver every manner by which defendant and defendant’s counsel received notice of default under the Note does not rise to the level of being a fatal defect.

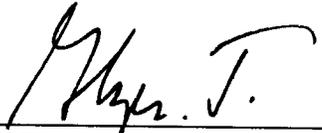
Defendant also claims, in the alternative, that failure to allege that notice was delivered to Reach’s counsel in accordance with the terms of the Note warrants opening the judgment. In

doing so, defendant is not disputing whether defendant's counsel actually received notice of default. This is because notice was delivered via electronic mail, albeit not in addition to a hard copy delivered to its address. Instead, defendant is solely focusing on the Complaint's failure to state so. Such a defense cannot be deemed meritorious because no issue would require being submitted to a jury; defense counsel received notice via electronic mail, and defendant admitted it is unable to meet its obligations under the Note.

**CONCLUSION**

Based on the foregoing, defendant's Motion to strike and/or open plaintiff's confessed judgment is denied.

**BY THE COURT:**

  
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GLAZER, J.