

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

WELLS FARGO BANK, N.A.	:	August Term, 2012
<i>Plaintiff</i>	:	Case No. 03282
	:	
v.	:	Commerce Program
	:	
PENNINGTON 189 MANAGEMENT, LLC	:	
<i>Defendant</i>	:	Control No. 17041460.
	:	

ORDER

AND NOW, this ¹² 12 day of July, 2017, upon consideration of the petition to open judgment filed by Defendant Pennington 189 Management, LLC, and the response in opposition of plaintiff Wells Fargo Bank, N.A., it is **ORDERED** that the petition to open judgment is **DENIED**.

BY THE COURT,



RAMY I. DJERASSI, J.

DOCKETED
JUL 12 2017
R. POSTELL
COMMERCE PROGRAM

Wells Fargo Bank, N.A. -ORDOP



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MEMORANDUM OPINION

This action in mortgage foreclosure began on August 30, 2012, when plaintiff, Wells Fargo Bank, N.A. (“Plaintiff”), filed its original complaint against defendant Pennington 189 Management, LLC (“Defendant”).¹ The action was originally assigned to the Honorable Judge Idee C. Fox as Team Leader of the Motions and Statutory Appeals Program of the Court of Common Pleas, Philadelphia County.

On March 12, 2014, Plaintiff filed a motion for summary judgment. The motion for summary judgment and the response thereto were fully briefed, and on June 24, 2014, the motion for summary judgment was denied by the Honorable Judge Ellen Ceisler of the Motions and Statutory Appeals Program. Subsequently, the case was assigned for trial to the Honorable Judge Ramy I. Djerassi. The trial was held on July 10, 2014.

At the close of trial, Judge Djerassi issued Findings-of-Fact and Conclusions-of-Law in favor of Plaintiff and against Defendant. These findings were docketed on July 14, 2014. A subsequent Judgment Order was entered on the docket on July 31, 2014. Due to a scrivener’s error committed by Plaintiff, notice to Defendant of the Judgment Order was improperly identified as a “Judgment by Default.”² Moreover, due to a separate scrivener’s error committed by the Court’s personnel, the Judgment Order dated July 31, 2014 was improperly docketed as a “Judgment Entered by Agreement.”³

¹ On December 3, 2012, Plaintiff filed an amended complaint.

² Docket entry dated July 31, 2014, p. 3.

³ *Id.*, cover page. As to the docketing error, the Court notes that it “has inherent power to amend its records, to correct mistakes of the clerk or other officer of the court, inadvertencies of counsel, or supply defects or omissions in the record at any time.” Manufacturers & Traders Trust Co. v. Greenville Gastroenterology, SC, A.3d 913, 921 (Pa. Super. 2015).

In lieu of the two scriveners' errors, the correct entries on the notice and docket should have been "Judgment on Court Findings."

On June 7, 2016, Plaintiff filed a praecipe for writ of execution. In the writ, Plaintiff instructed the Sheriff of Philadelphia County to sell the mortgaged real property owned by Defendant, and to satisfy with the proceeds therefrom the amount stated in the Judgment of July 31, 2014.⁴ On September 30, 2014, Defendant filed a motion to postpone the Sheriff's Sale. In the motion, defendant admitted that the matter in the instant action "**went to bench trial and a judgment was entered in favor of plaintiff....**"⁵ On October 4, 2016 the Court granted the motion to postpone the Sheriff's Sale. On the left margin of the Order granting postponement, the Court made an annotation stating that the "[p]arties have agreed to postpone the Sheriff's Sale until December 6, 2016." To this date, the property has not yet been auctioned.⁶

On April 12, 2017, Defendant filed a petition to open the Judgment of July 31, 2014. On April 27, 2017, Plaintiff filed a response-and-memorandum-of-law in opposition to the petition to open the Judgment. The petition was assigned to Judge Djerassi, currently sitting in the Commerce Program of the Court of Common Pleas of Philadelphia County.

The petition to open is denied as improper. The petition is improper because under the Pennsylvania Rules of Civil Procedure, a petition is designated as—

- a) an application "for relief from a judgment of *non-pros*"⁷;
- b) "an application to strike or **open a default judgment**"⁸; and,

⁴ The Trial Worksheet shows a judgment amount of \$83,877.29.

⁵ Motion to postpone Sheriff's Sale, ¶ 6, docket entry dated September 30, 2016 (emphasis supplied).

⁶ As of the day of this Order-and-Memorandum Opinion, the Sheriff's Sale remains postponed until September 12, 2017, pursuant to an Order issued by the Honorable Judge Daniel J. Anders from the Motions and Statutory Appeals Program.

⁷ Pa. R.C.P. 237.3(a) (2017).

⁸ Pa. R.C.P. 206.1 (2017) (emphasis supplied).

c) an application for relief “from a judgment by confession.”⁹

Finally, the Rules of Court in Philadelphia County instruct that “[i]n addition to petitions to open default judgments and petitions to open judgment of non-pros, the following applications are designated ‘petitions,’” and are governed by Pa. R.C.P. 206.1 *et seq.*:

- i. Petition to Appoint Arbitrator;
- ii. Petition to Appoint a Receiver;
- iii. Petition to Compel Arbitration;
- iv. Petition to Confirm Arbitration Award;
- v. Petition to Confirm Settlement;
- vi. Petition for Contempt;
- vii. Petition to Set Aside Arbitration Award;
- viii. Statutory Petitions; and
- ix. Petition to Appoint a Sequestrator.¹⁰

In this case, the petition to open the Judgment of July 31, 2014 fails to conform to any of the designations contemplated by the Pennsylvania Rules of Civil Procedure and by the Rules of Court of Philadelphia County. Perhaps Defendant filed the petition on the grounds that the Pennsylvania Rules of Civil procedure allow the filing of a petition “to open a **default judgment.**”¹¹ Nevertheless, this Court has already indicated that the notice to Defendant of the Judgment of July 31, 2014 improperly identifies the Judgment therein as a Default Judgment, when in fact it should have been identified as a “Judgment issued on Court Findings” pursuant to a bench trial.¹² Most important of all, the Court notes Defendant’s own admission in its prior motion to postpone Sheriff’s Sale, wherein Defendant clearly stated that the “**matter went to bench trial and a**

⁹ Pa. R.C.P. 2959 (2017).

¹⁰ Phila. Civ. R. 206.1(a) (2017).

¹¹ Pa. R.C.P. 206.1(a)(1) (emphasis added).

¹² *Supra*, p. 2. Similarly, this Court has also indicated that while the Judgment entered on July 31, 2014 was improperly docketed by Court personnel as a Judgment by Agreement, it was in fact and in substance a Judgment entered at the close of a bench trial pursuant to Findings-of-Fact and Conclusions-of-Law.

judgment was entered in favor of plaintiff.¹³ This admission leaves no doubt: Defendant knew that the Judgment of July 31, 2014 was entered after a bench trial and upon Findings-of-Fact and Conclusions-of-Law; therefore, Defendant may not now argue that such a Judgment was entered on the basis of a Default, or on any other grounds. In essence, a mere scrivener's error cannot morph a Judgment entered pursuant to a bench trial into a Default Judgment. Since the Rules of Court do not contemplate a petition to open as a challenge to Judgment entered after a trial, Defendant may not resort to such a device in this instance.¹⁴ For this reason, the petition to open judgment is denied.

BY THE COURT



RAMY I. DJERASSI, J.

¹³ Motion to postpone Sheriff's Sale, docket entry dated September 30, 2016 (emphasis supplied).

¹⁴ After this Court issued its Findings-of-Fact and Conclusion-of-Law, Defendant had the option to timely file a motion for post-trial relief, pursuant to Pa. R.C.P. 227.1(a)–227.1(c), and to timely appeal the Judgment of July 31, 2014 “within 30 days after the entry of the [Judgment] order.” See PA. R.A.P. 903(a). However, the docket does not show that defendant filed a motion for reconsideration, nor that Defendant appealed the Judgment Order of July 31, 2014.