

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

CARPENTERS HEALTH AND
WELFARE FUND OF
PHILADELPHIA AND VICINITY,
ET AL.

v.

JOSEPH PAONE, JR. and JUDITH
PAONE

AUGUST TERM, 2013

NO. 01231

COMMERCE PROGRAM

CONTROL NO. 13100300

DOCKETED

MAR 7 - 2014

COURT
CIVIL TRIAL DIVISION

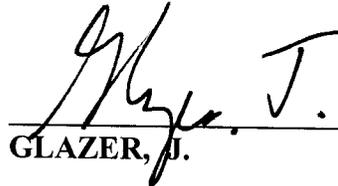
ORDER

AND NOW, this 7th day of March, 2014, upon
consideration of the petition to open confessed judgment and stay the action of defendants,
Joseph Paone, Jr. and Judith Paone, and any response thereto, it is hereby

ORDERED

that the said petition is **DENIED**.

BY THE COURT:



GLAZER, J.

Carpenters Health And W-ORDOP



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See plaintiffs' opposition to the petition to open judgment, Exhibit 2.

Moreover, the warrant stated:

The Obligor hereby authorizes the Funds or holder to confess judgment on said Judgment Note at any time against them and, in order to carry out that provision, authorize any attorney of the bars of the Commonwealth of Pennsylvania, State of New Jersey or elsewhere, to appear for them in any competent court and confess judgment against the Obligor and in favor of the Funds, its successors and assigns, or the holder of the Judgment Note, for the full amount of liability under the Judgment Note including attorney's fees equal to or greater of \$500 or twenty percent (20%) of the amount due and owing on the Judgment Note at the time the judgment is confessed, plus applicable costs and interest.

Id. at Exhibit 3.

Plaintiffs allege that, “[petitioners] defaulted on the Note in April of 2013, and became delinquent on fringe benefit contributions in June and July of 2013.” Id. at pp. 3. Plaintiffs further allege that on July 16, 2013, petitioners were notified of the alleged default. Moreover, petitioners allegedly failed to cure the default by the July 26, 2013 deadline. On August 13, 2013 plaintiffs filed a complaint and confession of judgment. Included in the confessed judgment is a request for \$51,026.08 in post-delinquent contributions and \$5,145.81 in liquidated damages on post-note contributions. Subsequently, petitioners filed the instant petition to open the confessed judgment and stay the action. On November 15, 2013 this court entered an order, as modified by its December 23, 2013 order, allowing the parties to conduct limited discovery as to the confessed judgment.

DISCUSSION

Under Pennsylvania law, it is well settled that, “[o]ne who petitions to open a confessed judgment must act promptly and aver a meritorious defense.” Wenger v. Ziegler, 424 Pa. 268, 272, 226 A.2d 653 (1967). “Traditionally, a confessed judgment will be opened in only a limited number of circumstances, and only when the person seeking to open acts promptly, alleges a meritorious defense and presents sufficient evidenced of that defense to require submission of the issues to the jury. Iron Worker’s Sav. & Loan Assoc. v. IWS, Inc., 622 A.2d 367, 370 (Pa.Super. 1993) (citation omitted). Pursuant to Pennsylvania Rules of Civil Procedure 2959(e), “[i]f evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment.” Moreover, “[i]n testing the sufficiency of the evidence, the facts as alleged must be viewed by the court in the exercise of its discretion in the light most favorable to the moving party and further, the ... court must accept as true all evidence and reasonable and proper inferences flowing therefrom.” Lincoln Bank v. Kelly, 282 Pa. Super. 261, 268, 422 A.2d 1106, 1110 (1980).

Petitioners argue that opening the confessed judgment is appropriate on the grounds that the warrant does not specifically authorize confession of judgment for “Post-Note Delinquent Contributions”. However, this argument is meritless considering the clear and unambiguous language of the note and warrant. The warrant provides that petitioners “authorize the [plaintiffs] to confess judgment on said [note] at any time against them.” See plaintiffs’ opposition to the petition to open judgment, Exhibit 3. The note provides that payment can be accelerated for “the failure to promptly and fully remit all contributions becoming due after the date of this Note to the funds...” Id. at Exhibit 2. Thus by the plain language of the contract,

plaintiffs are permitted to confess judgment on “all contributions becoming due after the date of” the note. Id.

Petitioners further allege that opening the confessed judgment is appropriate because of “disagreements among the parties respecting the actual amount that remains due and owing under the note versus the amount applied to fringe benefits.” See petitioners’ supplemental brief in further support of petition to open confessed judgment, at pp. 8. In support of this argument petitioners allege that plaintiffs have been unable to provide snapshots of subject accounting disagreements and thus the confessed judgment should be opened. However, this court finds that petitioners have not satisfied their burden to open the confessed judgment. While petitioners point to testimony from plaintiffs’ corporate designee, Eric Sheckler, in which he stated that the parties had disagreements as to accuracy of accounting, petitioners do not provide any evidence that the disagreements as to accuracy were valid. Id. at pp. 5. Moreover, petitioners’ argument is flawed as they focus on procedural rather than substantive errors.

CONCLUSION

Based on the foregoing, petitioners’ motion to open confessed judgment and stay the action is denied.

BY THE COURT:



GLAZER, J.