

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

CONESTOGA BANK,  
successor by merger to **First Penn Bank**

*Plaintiff*

v.

**BLACKWOOD REAL ESTATE DEVELOPMENT &  
CONSULTING SERVICES, LLC**

*Defendant*

: June Term, 2015  
:  
: Case No. 01031  
:  
:  
:  
: Commerce Program  
:  
: Control Nos. 15085444,  
: 15085451

**DOCKETED**  
AUG 27 2015  
R. POSTELL  
COMMERCE PROGRAM

ORDER

AND NOW, this 27<sup>th</sup> day of August, 2015, upon consideration of defendants' petition to open judgment by confession and motion to stay writ of execution, the responses in opposition of plaintiff, and the respective *memoranda* of law, it is **ORDERED** that the petition and motion are **DENIED**.

BY THE COURT,

  
\_\_\_\_\_  
RAMY I. DJERASSI, J.

Conestoga Bank, Success-ORDRC



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<b>CONESTOGA BANK,</b> successor by merger to <b>First Penn Bank</b>	:	June Term, 2015
<i>Plaintiff</i>	:	Case No. 01031
<b>v.</b>	:	
<b>BLACKWOOD REAL ESTATE DEVELOPMENT &amp; CONSULTING SERVICES, LLC</b>	:	Commerce Program
<i>Defendant</i>	:	Control Nos. 15085444, 15085451

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MEMORANDUM OPINION

Defendant’s petition to open challenges plaintiff’s confessed judgment by asserting three purported defenses: first, plaintiff improperly served defendant at a Delaware address which is no longer used by defendant’s member and personal guarantor; second, defendant has not defaulted because it has been timely repaying its loan obligations through an automatic bank-account deduction scheme; and third, a loan modification executed by the parties does not contain a warrant of attorney. The petition to open is denied.

In Pennsylvania,

[a] motion to open a confessed judgment is addressed to the sound discretion of the hearing court.... The petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses. The defenses raised must be valid ones.<sup>1</sup>

In addition—

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<sup>1</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super.1984).

in the context of a judgment confessed on a judgment note, the hearing required to comport with due process means simply an opportunity to be heard; it does not require a proceeding comparable to a full trial, but may be satisfied by other procedural opportunities to be heard, such as a petition to open judgment....<sup>2</sup>

In this case, the petition to open judgment provides no evidence that defendant's Delaware address had legally been changed, nor any evidence that defendant's loan-repayment obligations are up-to-date pursuant to an automatic bank-account deduction scheme.

Furthermore, the Court rejects defendant's assertion that judgment should be opened because a loan modification executed by the parties does not contain a warrant of attorney. Review of the record shows that defendant borrowed funds from plaintiff under two separate loans, as evidenced by the respective promissory notes. Both promissory notes clearly and unambiguously contain warrant-of-attorney provisions empowering plaintiff to confess judgment in the event of defendant's default.<sup>3</sup> The record also shows that on December 1, 2009, the parties entered into a Loan Consolidation and Modification Agreement.<sup>4</sup> Finally, the record shows that on August 28, 2014, defendant executed a letter captioned "Consolidated Promissory Notes from Conestoga Bank to Blackwood Real Estate and Development & Consulting Services LLC."<sup>5</sup> This fully-executed letter specifically states:

**Borrower expressly ratifies and confirms the confession of judgment and waiver of jury trial provisions contained in the [referenced] Loan Documents.**<sup>6</sup>

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<sup>2</sup> *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 431 Pa. Super. 541, 551, 637 A.2d 309, 313 (1994)

<sup>3</sup> Promissory notes, attached as exhibits A–B to plaintiff's complaint in confession of judgment.

<sup>4</sup> Loan Consolidation and Modification Agreement, attached as Exhibit C to plaintiff's complaint in confession of judgment.

<sup>5</sup> Letter dated August 26, 2014, attached as Exhibit D to the complaint in confession of judgment.

<sup>6</sup> *Id.*, p. 2.

This language leaves no doubt: by executing the letter on August 2, 2014, defendant ratified and confirmed the warrant of attorney provisions into the Loan Consolidation and Modification Agreement dated December 1, 2009. For this reason, the Court rejects defendant's argument that the Loan Modification Agreement does not contain a warrant of attorney. The petition to open judgment by confession is denied; the motion to stay execution is denied.

**BY THE COURT,**

  
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**RAMY I. DJERASSI, J.**