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

ROBERT W. DRISCOLL, JR.	:	May Term, 2016
Plaintiff	:	Case No. 03286
v.	:	Commerce Program
THOMAS ARENA	:	
Defendants	:	Control No. 16093364

ORDER

AND NOW, this 13th day of December, 2016, upon consideration of defendant's petition to strike or open judgment by confession and for stay of execution, plaintiff's response in opposition, and the respective *memoranda* of law, it is **ORDERED** that the petition to strike is **GRANTED** and judgment by confession is **STRICKEN**.

BY THE COURT,

RAMY I. DJERASSI, J.

Driscoll Vs Arena-ORDRF

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THOMAS ARENA	:	
Defendants	:	Control No. 16093364

MEMORANDUM OPINION

The petition to strike or open the instant confessed judgment requires this court to determine whether a legal document –in this case a promissory note– was a sealed instrument within the meaning of the twenty-year statute of limitations found at 42 Pa. C.S.A. § 5529(b)(1) of the Judicial Code. For the reasons below, the court finds that the promissory note is not a sealed instrument and is not governed by the twenty-year statute of limitations.

BACKGROUND

This action in confession-of-judgment arises out of a loan transaction between plaintiff Robert W. Driscoll ("Lender"), and defendant Thomas Arena ("Borrower"). A promissory note (the "Note") dated March 24, 2005, shows that upon an event of default, Lender was empowered by Borrower to confess judgment in any court of record, including any court in Pennsylvania. Under the terms of the Note, Borrower was required to repay Lender the sum of $183,861.00, plus interest, on or before September

1, 2005.[1] The Note also contained the following language:

> Borrower intends this [promissory note] to be a sealed instrument and to be legally bound hereby. All issues arising hereunder shall be governed by the laws of Pennsylvania.[2]

On May 25, 2016, Lender confessed judgment against Borrower. In the complaint, Lender asserted that Borrower had defaulted "by virtue of his failure to make timely principal and interest payments as required under the ... Note...."[3] Lender confessed judgment against Borrower in the amount of $320,939.86, an amount which includes the loan's principal, interest and attorney fees of 5%.

On September 23, 2016, approximately four months after notice of execution had been served, Borrower filed the instant petition to strike or open the confessed judgment and for a stay of execution.[4] On November 17, 2016, Lender filed a response in opposition to the petition to strike or open and for stay of execution.

DISCUSSION

In Pennsylvania, "[a] motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. If the record is self-sustaining, the judgment will not be stricken.[5]

Borrower asserts a single argument in support of his petition to strike or open the judgment –namely, that Lender entered judgment by confession upon the Note after

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[1] Promissory note, Exhibit A to the complaint-in-confession-of-judgment, p. 1.
[2] Id. p. 2.
[3] Complaint-in-confession-of-judgment, ¶ 5. In the response in opposition, Lender asserts as follows: "[i]t is undisputed that [Borrower] has not made any payments on the ... Note." *Memorandum* in opposition to the petition to strike or open, p. 5.
[4] Borrower filed his petition without adhering to the requirements of the Pennsylvania Rules of Civil Procedure which instructs in pertinent part that "[a] petition shall be divided into paragraphs numbered consecutively [which] ... shall contain as far as practicable only one material allegation." Pa. R.C.P. 206.1 (2016). Notwithstanding Borrower's error, the Court chooses to "disregard any error or defect of procedure which does not affect the substantial rights of the parties." Pa. R.C.P. 126 (2016).
[5] Fourtees Co. v. Sterling Equip. Corp., 242 Pa. Super. 199, 205, 363 A.2d 1229, 1232 (1976).

expiration of the applicable statute of limitations.[6] Borrower asserts that under Pennsylvania law, the Note would be governed by a twenty-year statute of limitations, but only if it had been executed under seal.[7] Borrower contends that the Note was not executed under seal because no seal or its equivalent appears next to Borrower's signature.[8] Borrower next avers that since the twenty-year statute of limitations is not available, the Note in question must necessarily fall under a six-year statute of limitations governed by the Uniform Commercial Code.[9] Borrower states that the six-year statute of limitations commenced immediately after September 1, 2005, the day by which he was required to repay the full balance of the loan, plus interest. Borrower concludes that he is entitled to relief because Lender confessed the instant judgment on May 26, 2016, more than six years after the expiration of the agreed-upon repayment date of September 1, 2005. In addition, Borrower states that he has "uncovered no Pennsylvania cases where a document was found to have been signed under seal that did not include a designation of the word 'SEAL' or something to that effect, next to the ... party's signature."[10]

In the response in opposition, Lender avers that the Note is a sealed instrument governed by a twenty-year statute of limitations. Therefore, Lender concludes that this judgment was timely entered within that period. Lender supports his contention by

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[6] *Memorandum* of law in support of Borrower's petition to strike or open judgment by confession. pp. 13—20.
[7] *Memorandum* of law in support of Borrower's petition to strike or open judgment by confession. pp. 15—17.
[8] Id., p. 15.
[9] Id., pp. 13—15. Borrower specifically asserts that the Note in question is a "negotiable instrument" as defined under the Uniform Commercial Code, 13 Pa. C.S.A. § 3104. The Court finds it unnecessary to discuss whether the Note is governed by a six-years statute of limitations under the Uniform Commercial Code, 13 Pa. C.S.A. § 3104, or governed by a shorter four-years statute of limitations under the Judicial Code, 42 Pa. C.S.A. § 5525.
[10] Id., p. 16.

directing the Court's attention to the language of the Note which states that "[b]orrower **intends** this to be a sealed instrument and to be legally bound hereby."[11] In essence, Lender argues that the word "SEAL," applied next to a signature line, is not necessary to create a sealed instrument; rather, a sealed instrument may be created if its language merely shows that the parties intend to be bound thereunder.[12] Lenders also asserts that "[n]o Pennsylvania court ever expressly held that, if the word 'SEAL' is missing from the signature line ... then the document cannot be a sealed instrument."[13]

Before discussing the issue of whether the word "SEAL" or an equivalent mark is essential to create a sealed instrument, this Court turns to the Restatement (Second) of Contracts ("Restatement 2nd") for some useful background information. Restatement 2nd states in pertinent part that—

> [t]he use of the seal in England seems to have begun after the Norman Conquest.... Originally a seal often consisted of wax bearing the imprint of an individualized signet ring.... But in the United States the courts have not required either wax or impression. Impressions directly on the paper were recognized early and are still common for notarial and corporate seals, and gummed wafers have been widely used. In the absence of statut[ory laws,] decisions have divided on the effectiveness of the written or printed word seal, the printed initials L.S. (locus sigilli, meaning place of the seal), a scrawl made with a pen ... and a recital of sealing.[14]

Next, the Court will inquire into Pennsylvania case law to determine what constitutes a "sealed instrument." In Osprey Portfolio, LLC v. Izett, the trial court was required to determine whether a personal guaranty was "sealed," where the document contained the word "SEAL" to the right of the signature lines. In Osprey, plaintiff's

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[11] Promissory note, Exhibit A to the complaint-in-confession-of-judgment, p. 2 (emphasis supplied).
[12] *Memorandum* of law in opposition to Borrower's petition to strike or open and for stay of execution, p. 23.
[13] Lender's *Memorandum* of law in opposition to Borrower's petition, p. 23.
[14] Restatement (Second) of Contracts § 96 (1981).

predecessor had loaned funds to defendant, as evidenced by a promissory note and a personal guaranty dated September 9, 1999.[15] The word "SEAL" had been placed upon the personal guaranty "to the right of the signature line."[16] More than ten years later, in June 2010, plaintiff's confessed judgment against defendant for his failure to repay the loan.[17] Defendant timely filed a petition to strike or open the confessed judgment. In the petition, defendant asserted that the personal guaranty was governed by the four-year statute of limitations, pursuant to 42 Pa. C.S.A. § 5525. Defendant noted that the judgment had been confessed beyond the four-year statute of limitations, and concluded that plaintiff was barred from confessing judgment upon the personal guaranty.[18] The trial court concluded otherwise, determined that the personal guaranty was a sealed instrument, and ruled that it was governed by a twenty-year statute of limitations.

On appeal, the Pennsylvania Superior Court noted that the word "SEAL" had been printed to the right of the signature line"; therefore, the Superior Court quickly concluded that personal guaranty had been "indisputably signed under seal."[19]

Next, the Pennsylvania Superior Court tackled another issue –namely, whether the sealed personal guaranty was an "instrument" as described by the twenty-year statute of limitations of the Pennsylvania Judicial Code, 42 Pa. C.S.A. § 5529(b)(1). That statute specifically states that "[n]otwithstanding § 5525(7) (relating to four year limitation), an action upon an **instrument** in writing under seal must be commenced within 20 years."[20] Noting that the term "instrument" was not defined in the Judicial

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[15] Osprey Portfolio LLC v. Izett, 32 A.3d 793, 796 (Pa. Super. 2011).
[16] Id. at 796.
[17] Id. at 795
[18] Id. at 796.
[19] Id. at 797.
[20] 42 Pa. Stat. and Cons. Stat. Ann. § 5529 (2016) (emphasis supplied).

Code, the Superior Court interpreted that term as a—

> [w]ritten legal document that defines rights, duties, entitlements , or liabilities, such as a contract, will, promissory note, or in fact, any written or printed document that may be interpreted by the Courts.[21]

Based upon this definition, the Superior Court held that the personal guaranty was an instrument, and, more specifically, a sealed instrument. In other words, the Superior held that a personal guaranty was sealed because it contained the word "SEAL" to the right of the signature line; in addition, the Superior Court held that the personal guaranty was an instrument because the document dovetailed with the dictionary definition of that term.[22] In conclusion, the Superior Court affirmed the trial court's decision and held that the personal guaranty, as a sealed instrument, was governed by the twenty-year statute of limitations, pursuant to 42 Pa. C.S.A. § 5529(b)(1) of the Judicial Code.

In 1994, another Pennsylvania case required our Superior Court to determine whether the word "SEAL," which had been pre-printed onto a loan contract, sufficed to create a sealed instrument. In addition, the court was required to determine whether the parties to that contract had intended to be bound under a sealed instrument, where they had signed that document next to the pre-printed word "SEAL." In Beneficial Consumer Disc. v. Dailey, defendants, husband-and-wife ("H&W"), had signed a loan agreement containing the pre-printed word "SEAL" next to the signature lines.[23] Subsequently, H&W defaulted on the loan and plaintiff confessed judgment more than four years after the default had occurred. H&W challenged the confessed judgment by

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[21] Osprey Portfolio, LLC v. Izett, 32 A.3d 793, 797 (Pa. Super. 2011) (citing Black's Law Dictionary 813 (8th ed. 2004).
[22] Id., at 796—797.
[23] Beneficial Consumer Discount v. Dailey, 644 A.2d 789, 790 (Pa. Super. 1994).

asserting two intertwined arguments: first, they could not have intended to be bound to a sealed instrument because they had not understood the significance of the word "SEAL"; and second, since they had not grasped the significance of the word "SEAL," they could not have entered into a "contract under seal."[24] Essentially, H&W argued that the loan agreement was a mere contract governed by a four-year statute of limitations, not a sealed agreement governed by a twenty-year statute of limitations. The trial court disagreed with this argument and held that the confessed judgment had been timely filed because the loan was a sealed contract governed under a twenty-year statute of limitations. H&W appealed.

Affirming, the Pennsylvania Superior Court held that "when a party signs a contract which contains a pre-printed word "SEAL," that party has presumptively signed a contract under seal."[25] In addition, the Superior Court explained that "the only way [this] presumption might possibly be rebutted ... would be if the maker signed the document [at] ... a considerable distance from the pre-printed seal."[26] However, the Superior Court quickly noted that H&W had signed their names next to the word "SEAL"; therefore the presumption that H&W had intelligently adopted the "SEAL" was "conclusive."[27] The Court explained that—

> [u]less one distances himself from the pre-printed seal, the other party to a contract should be entitled to rely on the objective manifestation of [H&W's] actions. There can be no question that the pre-printed "SEAL" is an actual seal and ... [H&W] signed next to it.[28]

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[24] Id. at 790.
[25] Id.
[26] Id. at 791.
[27] Id.
[28] Id. The two cases discussed above represent a sampling of a number of Pennsylvania cases holding that an instrument containing the word "SEAL" (capitalized), is presumed to be a sealed instrument. *See e.g.* Collins v. Tracy Grill & Bar Corp., 19 A.2d 617, 620 (Pa. Super. 1941) ("Writing the word '(Seal)' or the letters "L.S." (the place of the seal) after the signature or signing opposite these or similar devices in the

The two cases discussed above stand for the proposition that a sealed instrument is presumptively created when a party executed a legal document by signing next to word "SEAL." Lender, however, argues that a legal document may be deemed to be sealed by merely looking at the parties' intent as manifested in the four corners of the contract. Specifically, Lender cites a Pennsylvania case, Collins v. Tracy Grill & Bar Corp. for the proposition that "[w]ith ... [a natural person], sealing has long since become constructive rather than actual **and is now largely a matter of intention.**"[29] Lender's reliance on Tracy Grill, is unjustified.

In Tracy Grill, "Borrower," a corporation, executed a promissory note which was subsequently delivered to "Lender." The promissory note was signed by Borrower's president, ("Mr. Kinder"). The word (Seal) was typed or printed next to the signature spaces reserved for both Borrower and Mr. Kinder. In this transaction, Borrower either neglected to use its official seal, or lacked an official seal altogether.

Subsequently, Lender confessed judgment against Borrower, and Borrower filed a petition to strike the confessed judgment. The petition essentially asserted that the promissory note was not a sealed document because it did not bear the company's official seal. Rather, Borrower argued that Mr. Kinder's signature appeared next an invalid scribble –in this case, the typed or printed word (Seal). The trial court was persuaded by this argument, ruled that the promissory note was not a sealed document as it lacked the company's official seal, and struck the confessed judgment. Lender

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printed form, characterize the writing a sealed instrument."); In re Estate of Snyder, 13 A.3d 509 (Pa. Super. 2011) ("[T]his court has held in accord with many cases written by our Supreme Court, that when a party signs an instrument which contains a pre-printed word "SEAL,") that party has presumptively signed an instrument under seal."

[29] *Memorandum* of law in opposition to the petition to strike or open, p. 23 (citing Collins v. Tracy Grill & Bar Corp., 144 A.2d 617, 619—620 (Pa. Super. 1941).

appealed.

Reversing the lower court's decision, the Superior Court explained that under statutory law, corporations were authorized to adopt an official seal, but were not compelled to "adopt a particular form of seal as [their] own."[30] Next, the Superior Court stated:

> [t]he word (Seal) in both instances where it appears in the instrument in question was a part of the printed portion of the blank form used in making the note. **A natural person, in executing a specialty on a printed form, usually signs his name on a line with the printed device appearing thereon, thereby adopting it as his seal for the purpose.... With an individual, sealing has long since become constructive rather than actual and is now largely a matter of intention. One is not obliged to exercise his immemorial right to have a distinctive and identifying seal of his own. Any kind of flourish or mark will be sufficient if it be intended for a seal. Writing the word "seal" or the letters "L.S." (the place of the seal) after the signature or signing opposite these or similar devices in the printed form, characterize the writing a sealed instrument.**[31]

The Superior Court further stated that—

> [t]here are many small corporations which rarely have need for a seal. And if the corporation intends to seal an instrument, it should not be permitted to avoid its obligation when the time arrives for performance, merely because it has not adopted and used a corporate seal of its own.[32]

In conclusion, the Superior Court reinstated the confession-of-judgment because notwithstanding the absence of an official corporate seal, Mr. Kinder's signature next to the word (Seal) had effectively created a sealed contract.

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[30] Id. at 619.
[31] Collins v. Tracy Grill & Bar Corp., 19 A.2d 617, 619–20 (1941) (emphasis supplied).
[32] Id. at 620.

Clearly, Tracy Hill stands for the proposition that individuals and corporations do not need to adopt a unique seal to become bound to a sealed instrument. Rather, they may bind themselves to a sealed instrument by merely placing their signatures next to the typed word (Seal). Therefore, Lender's argument that "**sealing has long since become ... a matter of intention**," does not advance Lender's position. Lender's argument is inappropriate because the above-quoted words merely explain that since individuals may express their intent to be bound under a sealed instrument though the act of signing next to the printed word (Seal), then corporations shall be free to do the same.[33]

Turning to the case at hand, this Court finds that the Note signed by Borrower does not have the word "SEAL" typed next to his signature, nor does this word, or an equivalent mark, appear anywhere in that document.[34] Instead, the Note merely recites that "Borrower intends this to be a sealed instrument and to be legally bound hereby."[35] These words alone do not create any presumption that the Note is a sealed instrument. Moreover, Lender has not identified any law in support of his position that the language of intent cited above is sufficient to presumptively create a sealed instrument. For these reasons, the Court finds that the Note is not a sealed instrument and is not governed by the twenty-year statute of limitations.[36] The Court also finds that Lender confessed judgment beyond the six-year statute of limitations invoked by Borrower; therefore, the

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[33] *See, e.g.* Loraw v. Nissley, 27 A. 242 (Pa. 1893) ("sealing has become constructive, rather than actual, and is in a great degree a matter of intention.... The seal has become a mere form, and a written or ink seal, as it is called, is good. And ... a seal with a flourish of the pen is not now to be questioned. Any kind of flourish or mark will be sufficient, if it be intended as a seal.")
[34] Id. ("Any kind of flourish or mark will be sufficient, if it be intended as a seal).
[35] Promissory note, Exhibit A to the complaint-in-confession-of-judgment, p. 2.
[36] "Whether an instrument is under seal or not is a question of law for the court." Swaney v. Georges Twp. Rd. Dist., 164 A. 336, 337 (Pa. 1932).

record is fatally flawed, the petition to strike is granted, and judgment by confession is stricken.[37]

BY THE COURT,

***RAMY I. DJERASSI*, J.**

[37] The court is well aware that Borrower filed his petition to strike or open beyond the thirty-day period required under Pa. R.C.P. 2958.1(a). However, Borrower's error cannot be used to defeat his petition: "historically void confessed judgments could be stricken off or opened at any time as they were considered a legal nullity because the court lacked subject matter jurisdiction over the matter.... [A] void judgment is a mere blur on the record, and which it is the duty of the court of its own motion to strike off, whenever its attention is called to it." M & P Mgmt., L.P. v. Williams, 937 A.2d 398, 401 (Pa. 2007). In this case, the judgment is void because it contains a fatal flaw, even though Borrower failed to timely petition this court.