

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

PENNSYLVANIA TAXI ASSOCIATION, INC.

Plaintiff

v.

A.A.S. CAB CORP.

and

AMADOU A. SAWANE

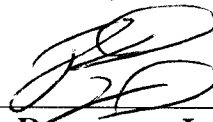
Defendants

: June Term, 2016
:
: Case No. 01525
:
: Commerce Program
:
:
: Control No. 16071768
:

ORDER

AND NOW, this 31st day of May, 2017, upon consideration of the petition to open judgment by confession filed by defendants A.A.A, Cab Corp. and Amadou S. Sawane, the response in opposition of plaintiff Pennsylvania Taxi Association, Inc., and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED** and the **STAY OF EXECUTION IS LIFTED**.

BY THE COURT,



RAMY I, DJERASSI, J.

DOCKETED

MAY 31 2017

R. POSTELL
COMMERCE PROGRAM

Pennsylvania Taxi Assoc-ORDRC



MEMORANDUM OPINION

The petition to open judgment-by-confession requires this Court to determine whether judgment should be opened where the petitioning parties have failed to offer any evidence to support their defense. The petition is denied.

BACKGROUND

Plaintiff is Pennsylvania Taxi Association, Inc. (“Lender”), a corporation with an address in Philadelphia, Pennsylvania. The individual defendant in this action is Amadou A. Sawane; the corporate defendant is an entity named A.A.S. Cab Corp. The individual and corporate defendants shall hereinafter be identified as “Borrowers.” Borrowers share the same address in Philadelphia, Pennsylvania.

On August 8, 2015, Lender and Borrowers entered into a COMMERCIAL PROMISSORY NOTE (the “Note”), whereby Borrowers agreed to repay a loan to Lender in the principal sum of \$105,000.00, plus interest, in 145 equal monthly payments of \$1,131.90.¹ The Note contained a warrant-of-attorney provision which, in the event of Borrowers’ default, authorized Lender to confess judgment against the Borrowers for the “unpaid balance ... with interest, together with any charges, taxes and liens ... plus reasonable attorneys’ fees....”²

On June 15, 2015, Lender confessed judgment against Borrowers. The complaint-in-confession-of-judgment avers that Borrower defaulted on the Note by failing to remit a number of monthly payments totaling \$5,714.00.³

On July 15, 2016, Borrowers filed a petition to open the confession of judgment. In the petition, Borrowers aver that that they “are not indebted to [Lender] for the

¹ COMMERCIAL PROMISSORY NOTE, Exhibit A to the complaint-in-confession-of-judgment.

² *Id.*, ¶ M.

³ Complaint-in-confession-of-judgment, ¶ 5; Loan Payment statement, Exhibit B thereto.

amounts alleged in the complaint.”⁴ In addition, Borrowers aver that Lender, acting as a servicing agent on behalf of a separate lender (hereinafter, “Melrose”), diverted to itself funds which Borrowers remitted to satisfy the Melrose obligation.⁵

On August 5, 2016, Lender filed a response in opposition to the petition to open the confession-of-judgment. In the response and accompanying *memorandum* of law, Lender denies the averments made by Borrowers.⁶

On September 9, 2016, this Court issued an Order instructing the parties to engage in discovery to determine whether Lender had in any way diverted the funds destined to Melrose.⁷ Under the Order, discovery would last thirty days; subsequently, the parties had thirty additional days to file briefs explaining their respective positions. The Order also stayed any execution proceedings. An examination of the docket shows that the parties have not indicated whether or not they conducted the discovery, and have not filed any briefs as required under the Order dated September 9, 2016.

DISCUSSION

The standards for opening a confession of judgment are well-settled in Pennsylvania:

[a] trial court may open a confessed judgment if the petitioner—

- (1) acts promptly,
- (2) alleges a meritorious defense, **and**
- (3) can produce sufficient evidence to require submission of the case to a jury....

A meritorious defense is one upon which relief could be afforded if proven at trial.... If evidence is produced which in

⁴ Petition to open confession of judgment, ¶ 3.

⁵ *Id.*, ¶¶ 4–10.

⁶ Response in opposition to the petition to open judgment by confession, ¶¶ 4–10.

⁷ Order dated 9 September, 2017.

a jury trial would require the issues to be submitted to the jury the court shall open the judgment....

In other words, a judgment of confession will be opened if a petitioner seeking relief therefrom produces evidence which in a jury trial would require issues to be submitted to a jury.⁸

In the petition to open, Borrowers aver that Lender diverted to itself certain payments destined to Melrose. Specifically, Borrowers allege that such payments were made by Borrowers' taxi cab drivers who individually paid Lender to satisfy the Melrose obligation. The petition appears to conclude that the amount owed to Lender in this action should be offset by the amounts which Lender allegedly diverted from the payments destined to Melrose, and by additional amounts which Borrowers paid directly to Lender.⁹ These arguments are rejected because Borrowers have failed to produce any evidence "which in a jury trial would require the issues to be submitted to the jury."¹⁰ Specifically, Borrowers have failed to produce any evidence that their taxi cab drivers individually remitted payments to Lender to satisfy the Melrose obligation. Furthermore, Borrowers have failed to produce evidence of any partial payments which they claim to have made directly to Lender. The lack of such evidence –whether in the form of cancelled checks, affidavits from the individual taxi cab drivers, or other– shows that Borrowers have not sustained their burden of proof, and have not met the basic requirements necessary to open a confession-of-judgment. For this reason, the petition to open is denied and the stay of execution is lifted.

BY THE COURT,



RAMY I. DJERASSI, J.

⁸Neducsin v. Caplan, 121 A.3d 498, 506–07 (Pa. Super. 2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁹ Petition to open, ¶¶ 4–10 and "Wherefore" clause.

¹⁰ Neducsin v. Caplan, 121 A.3d at 506–07 (Pa. Super. 2015).