

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

SANTANDER BANK, N.A.

Plaintiff

v.

3C ENTERPRISES, INC.

and

JOO SUK SO

Defendants

: September Term, 2016

: Case No. 01301

: Commerce Program

: Control Nos. 16101581,

: 17013127.

ORDER

AND NOW, this 13th day of February, 2017, upon consideration of the petition to strike or open confession of judgment, the response in opposition and the respective briefs, it is **ORDERED** that the petition to strike is **GRANTED** and the confession of judgment is **STRICKEN**.

The motion for leave of Court to conduct discovery in support of the petition to strike is **DENIED** as **MOOT**.

BY THE COURT,



RAMY I. DJERASSI, J.

DOCKETED

FEB 13 2017

R. POSTELL
COMMERCE PROGRAM

Santander Bank, N.A., F-ORDRF



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MEMORANDUM OPINION

Plaintiff is Santander Bank, N.A. (“Lender”), a financial corporation with an address in Philadelphia, Pennsylvania. Corporate defendant is 3C Enterprises Inc., an entity located in Philadelphia, Pennsylvania. Individual Defendant is Joo Suk So who maintains an address in Pennsylvania. Corporate defendant 3C Enterprises, Inc. borrowed funds from Lender. Individual defendant Jo Suk So signed a personal guaranty on behalf of borrower. Hereinafter, 3C Enterprises Inc. and Joo Suk So shall be identified as “Defendants.”

On September 16, 2016, Lender filed a complaint-in-confession-of-judgment against Defendants. The complaint contains a document captioned **PROMISSORY NOTE**.¹ Although this document bears the title “**PROMISSORY NOTE**,” it is a unified document containing several related agreements identified as follows:

- a) the **PROMISSORY NOTE** (pp. 3—12);
- b) a **SECURITY AGREEMENT** (pp. 9—10 (out of numerical sequence));
- c) an **UNCONDITIONAL PERSONAL GUARANTY OF PAYMENT** (pp. 12—13);
- d) **DISCLOSURE FOR CONFESSION OF JUDGMENT** (as to corporate defendant/borrower 3C Enterprises, Inc. (p. 15); and,
- e) **DISCLOSURE FOR CONFESSION OF JUDGMENT** (as to the individual defendant/guarantor Joo Suk So, p. 17).

The term “**PROMISSORY NOTE**” is repeated throughout the unified document and appears near the top left corner of each page comprising items a) through e). Items a) through e) are also numbered near the top right corner of the same document, but are not always arranged in the proper numerical sequence. Immediately after item e) is a document identified as a “**LOAN MODIFICATION AGREEMENT**.” Unlike items a) through e), the **LOAN MODIFICATION AGREEMENT** is not numbered and does not bear anywhere in its four corners the term “**PROMISSORY NOTE**.”

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

In the petition to strike, Defendants assert that the record is fatally flawed because the document titled **PROMISSORY NOTE** is incomplete.² In the response in opposition, Plaintiff asserts that the Defendants have not alleged the existence of other “pertinent documents,” and therefore no other documents are necessary to decide the instant petition to strike.³

In Pennsylvania, “[a] petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record.”⁴ Specifically—

the petition to strike a confessed judgment must focus on any defects or irregularities appearing on the face of the record, as filed by the party in whose favor the warrant was given, which affect the validity of the judgment and entitle the petitioner to relief as a matter of law.... The record must be sufficient to sustain the judgment.... The original record that is subject to review in a motion to strike a confessed judgment consists of the complaint in confession of judgment and the **attached exhibits**.⁵

In this case, a review of the attached exhibits in the unified document shows that pages 8, 11, 14, 16 and possibly 18—29 are missing from the record.⁶ The omission of such pages from the unified agreements creates a fatal flaw because the missing pages could conceivably contain information confuting the allegations contained in Plaintiff’s complaint-in-confession-of-judgment. In addition, the Court rejects Plaintiff’s argument asserting that no additional documents are required in this action. The Court rejects such an argument because the evidence on the record allows the inference that the missing pages from the unified document are not “additional documents,” but are related agreements within a single, unified document bearing the overall caption of

² Petition to strike, ¶¶ 12—19.

³ Response in opposition, ¶¶ 12—19.

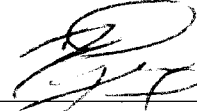
⁴ Vogt v. Liberty Mut. Fire Ins. Co., 900 A.2d 912, 915 (Pa. Super. 2006).

⁵ Neducsin v. Caplan, 121 A.3d 498, 504 (Pa. Super. 2015), appeal denied, 131 A.3d 492 (Pa. 2016) (emphasis added).

⁶ Exhibit A to the complaint.

“PROMISSORY NOTE.” For these reasons, the petition to strike is granted and the confessed judgment is stricken.

BY THE COURT,

A handwritten signature in black ink, appearing to read 'Ramy I. Djerrassi', written over a horizontal line.

RAMY I. DJERASSI, J.