

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

SANTANDER BANK	:	October Term, 2016
f/k/a SOVEREIGN BANK, N.A.	:	Case No. 01582
	:	
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
YODER PLUMBING AND HEATING, INC.	:	
and KENNETH YODER	:	
	:	
<i>Defendants</i>	:	Control No. 16111594

ORDER

AND NOW, this 20th day of March, 2017, after the confessed judgment was opened in the course of a hearing held on Thursday, March 2, 2017, wherein plaintiff conceded that the principal balance owed by defendant amounted to \$58,348.52 as opposed to the originally claimed amount of \$70,848.52, it is **ORDERED** that the original amount in confession of judgment is **MODIFIED** and **JUDGMENT IS ENTERED** in favor of plaintiff and against defendant in a new total amount as reflected below:

Principal	\$58,348.52
Interest	\$12,629.00
Filing Fees	\$151.76
Late fees	\$69.31
Attorney's fees	\$7,097.75
Total	\$78,296.34

DOCKETED

MAR 20 2017

R. POSTELL
COMMERCE PROGRAM

It is further **ORDERED** that the stay of execution is lifted.

BY THE COURT,


MCINERNEY, J.

Santander Bank, N.A., F-ORDRF



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<i>Defendants</i>	:	Control No. 16111594

MEMORANDUM OPINION

Plaintiff confessed judgment on the basis of defendant's default of a promissory note. The promissory note contains at page 1 a provision titled INTEREST CALCULATION METHOD. Pursuant to such method, interest should be calculated "by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding." In the complaint-in-confession-of- judgment, plaintiff applied the interest rate of 9% as contemplated at page 1 of the promissory note.

Subsequently, through a petition to strike or open the judgment, defendant challenged the amount of interest. This challenge, however, was based not on grounds that the rate thereof was wrong, but on grounds that plaintiff had computed the amount

of interest on the basis of an overstated principal balance.¹

At the evidentiary hearing held on March 2, 2017, plaintiff conceded that it had overstated the principal balance. Consequently, plaintiff was directed to provide a correct amount of the principal balance, and to recalculate accordingly the interest thereof. Plaintiff eventually did submit the correct principal balance, but calculated the amount of interest by increasing the rate from 9% to 17%. The additional 8 percentage points claimed by plaintiff reflect another provision found at page 1 of the promissory note. According to this provision, which bears the caption of “INTEREST AFTER DEFAULT,” plaintiff was allowed to increase the 9% rate of interest by 8 additional percentage points, for a total of 17%, upon an event of default committed by defendant. As a result of the insertion of the 8 additional percentage points, the amount of interest presently claimed by plaintiff exceeds the amount claimed under the original, yet overstated principal balance. The increase claimed by plaintiff is disallowed.

The Pennsylvania Rules of Civil Procedure instruct that a complaint-in-confession-of-judgment shall contain:

an itemized computation of the amount then due, based on matters outside the instrument, if necessary, which may include interest and attorney’s fees authorized by the instrument.²

In this case, plaintiff’s complaint claimed an amount of interest computed as 9% of the unpaid principal balance, even though a provision in the promissory note entitled plaintiff to claim a combined rate of 17%. This Court will not disturb the itemized computation of interest based on the original rate. The Court will not disturb the

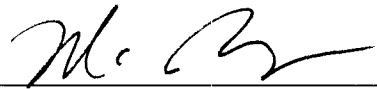
¹ Petition to strike, ¶¶ 33, 46.

² Pa. R.C.P. 2952(7).

original rate because its existence in the record, though potentially costly to plaintiff, did not create a fatal flaw, did not create a question of fact requiring that the issue be submitted to a jury, and did not trigger any challenge by the defendant.³ For this reason, the Court disallows plaintiff's proposed rate-increase, and finds that the amount of interest recoverable by plaintiff shall be determined on the basis of the originally-claimed rate of 9%.

Finally, plaintiff has submitted not only the revised, correct principal balance as required by this Court, but also additional items not originally itemized in the complaint-in-confession-of-judgment. These newly-claimed items comprise a filing fee, appraisal fees, title fees, environmental fees, and liens/taxes, for a total of \$6,525.00. Such submissions are also disallowed for the same reasons explained above.

BY THE COURT,



MCINERNEY, J.

³ “A petition to strike a judgment operates as a demurrer to the record, and must be granted whenever some fatal defect appears on the face of the record.... When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a judgment, a court may only look at what was in the record when the judgment was entered.” Oswald v. WB Pub. Square Assocs., LLC, 80 A.3d 790, 793–94 (Pa. Super. 2013).

“A petition to open judgment is only granted in limited circumstances. As an appeal to the equitable powers of the court, it rests firmly on the sound discretion of the hearing court and will only be disturbed in the case of a manifest abuse of discretion.” Sams Corp. v. Garin, 507 A.2d 402, 403 (Pa. Super. 1986).