

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

VICTOR GUR

Plaintiff

v.

JONATHAN NADAV

Defendant

: November Term, 2016
:
: Case No. 02384
: Commerce Program
:
: 917 EDA 2017
:

MEMORANDUM OPINION

Defendant Jonathan Nadav has appealed this Court's Order-and-Memorandum Opinion dated February 15, 2017 which denied defendant's petition to strike or open judgment by confession. For the reasons explained in that Order-and-Memorandum Opinion and in this supplemental appeal *Memorandum* Opinion, this Court respectfully suggests that the Order dated February 15, 2017 be affirmed on appeal.

BACKGROUND

On December 22, 2016, defendant Jonathan Nadav (hereinafter "Borrower"), filed a petition to strike or open judgment by confession which had been previously entered by plaintiff Victor Gur (hereinafter, "Lender"). In the petition, Borrower asserted that the confessed judgment should be stricken because the interest rate of 50% per year, as charged against Borrower under the terms of a promissory note (the "Note"), was usurious and in violation of 18 Pa. C.S. § 911(b) of the Crimes-and-Offenses Code (hereinafter, the "RICO Statute").

On January 26, 2017, Lender filed a response-and-memorandum-of-law in



opposition to the petition to strike or open. On February 15, 2017, this Court denied the petition to strike or open the confession of judgment. In the Order-and-*Memorandum-Opinion* denying the petition, this Court rejected Borrower's argument that the inordinate amount of interest charged by Lender constituted a "Racketeering Activity" in violation of 18 Pa. C.S. § 911(b) of the Crime-and-Offenses Code [the "RICO Statute"].¹ In the *Memorandum Opinion*, this Court noted that "the express intent of the corrupt organization statute [is] to prevent infiltration of legitimate businesses by organized crime."² Based on the foregoing, this Court rejected Borrower's argument because "the petition to strike or open ... [had failed to even] remotely aver that the inordinate interest charged by Lender [was] connected with an attempt by organized crime to infiltrate Lender's legitimate business."³

On the same day, but nearly two hours after this Court issued its Order-and-*Memorandum-Opinion*, a supplemental brief appeared on the docket. The supplemental brief, filed by Borrower, reasserted the same argument contained in the petition to strike or open –namely, that the judgment should be stricken because the rate of interest contemplated under the Note was usurious and in violation of the RICO Statute. In that supplemental brief, Borrower relied upon an unpublished Opinion issued by the Pennsylvania Superior Court to support his conclusion that "[t]he purpose of the RICO Statute's interest rate limit is to prohibit loaning money to individuals at excessive interest rates."⁴ On the following day, February 16, 2017, Borrower filed a motion for reconsideration. In that motion, Borrower asked the Court to reconsider its

¹ Order-and-*Memorandum-Opinion* dated February 15, 2017, pp. 3–4.

² *Id.* (citing *Com. v. Bobitski*, 632 A.2d 1294, 1296 (Pa. 1993)).

³ *Id.*, p. 4.

⁴ *First Surety Financial, LLC v. Taylor Associates, LP* 134 A.3d 91 (Pa. Super. 2015); supplemental brief of Borrower dated February 15, 2017, p. 5 (un-numbered).

decision and to rule in his favor on the strength of the same argument stated the previous day in the supplemental brief. On February 22, 2017, this Court issued an Order denying the motion for reconsideration and Borrower filed an appeal. The instant appeal *Memorandum Opinion* is offered to supplement the Order-and-*Memorandum Opinion* issued by this Court on February 15, 2017.

DISCUSSION

I. **BORROWER’S PETITION FAILED TO DISCLOSE A FATAL FLAW IN THE RECORD OR ASSERT A MERITORIOUS DEFENSE.**

Before turning to the substance of Borrower’s argument, the Court readily concedes that Pennsylvania Civil Courts may rely upon the RICO Statute to impose specific civil remedies enumerated under § 911(d) of the Rico Statute. In pertinent part, § 911(d) of the RICO Statute states that—

the several courts of common pleas and the Commonwealth Court, shall have jurisdiction to prevent and restrain violations of subsection (b) of this section by issuing appropriate orders including ... ordering any person to divest himself of any interest direct or indirect, in the enterprise....⁵

Based on the foregoing language, it is clear that this Court may assert jurisdiction to prevent and restrain certain violations under the RICO Statute. However, before the Court asserts jurisdiction under the RICO Statute, it must preliminarily determine whether the statute is applicable to the allegations and facts of the case.

Turning at once to the substance of Borrower’s argument, the Court notes the following remarks which the Pennsylvania General Assembly inserted at the beginning of the RICO Statute. The remarks specifically state as follows:

(a)Findings of fact.—The General Assembly finds that:

⁵18 Pa. C.S.A. § 911(d)(i) (2017) (emphasis supplied).

(3) the vast amounts of money and power accumulated by organized crime are increasingly used to infiltrate and corrupt legitimate businesses operating within the Commonwealth...;

(5) such infiltration and corruption provide an outlet for **illegally obtained capital** ...;

(6) in order to successfully resist and eliminate this situation, it is necessary to provide new remedies and procedures.⁶

Next, the Court turns its attention to the operative language contained in the RICO Statute. That language, contained in subsection (b), states *inter alia* as follows:

(b) Prohibited activities.—

(1) **It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity in which such person participated as a principal, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise....⁷**

In addition, the RICO Statute states that “**Racketeering activity**” means—

[t]he collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding 25% per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law.⁸

Finally, the RICO Statute states that “[p]attern of racketeering activity refers to a course of conduct requiring **two or more acts of racketeering activity....**”⁹

⁶ *Id.*, § 911(a).

⁷ *Id.*, § 911(b) (2017) (emphasis supplied).

⁸ *Id.*, § 911(h)(iv).

⁹ *Id.*, § 911 (h)(4) (emphasis supplied).

After reviewing the language above, this Court determined that Borrower did not disclose any fatal flaw in the record and did not assert any meritorious defense. First, Borrower failed to aver that the funds which he received under the terms of a loan and Note represented “illegally obtained capital.” More specifically, Borrower failed to aver that Lender obtained “directly or indirectly,” through a “pattern of racketeering activity” in which Lender “participated as a principal,” the funds which were subsequently loaned to Borrower at the inordinate rate of 50%. Second, Borrower failed to aver that the pattern of racketeering activity in which Lender was presumably involved consisted of “a course of conduct requiring two or more acts of racketeering activity.” In this case, nothing alleged in Borrower’s petition justified his invocation of the RICO Statute as a proper challenge to the confession of judgment.¹⁰ For this reason, this Court denied the petition to strike or open the confession of judgment.

II. Borrower misinterpreted and improperly relied upon a Pennsylvania Superior Court decision.

In his supplemental brief, Borrower relied on First Surety Financial, LLC v. Taylor Associates, LP, an unpublished opinion issued by the Pennsylvania Superior Court in 2015.¹¹ Borrower misinterpreted the holding in First Surety, and relied upon his misinterpretation to improperly conclude that—

[o]bviously, the Superior Court was reluctant to hold that a loan at an interest rate far exceeding the maximum rate set

¹⁰ The other “usury” statute promulgated by the Pennsylvania Assembly is of no help to Borrower. Pursuant to that statute, 41 P.S. § 201(b), **the maximum lawful interest rate in our Commonwealth, “for the loan or use of money in an amount of fifty thousand dollars (\$50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum.”** Moreover, **such maximum lawful interest rate “shall not apply to ... business loans of any principal amount.”** *Id.*, § 201(b)(3) (emphasis supplied). In this case, the Note executed by Borrower is clearly identified as a business or “COMMERCIAL JUDGMENT PROMISSORY NOTE,” whose stated principal amount was well in excess of \$50,000.00. Since the transaction in this case is clearly a business transaction, the maximum lawful interest rate required under 41 P.S. § 201(b) “shall not apply.” *Id.*

¹¹ First Surety Financial, LLC v. Taylor Associates, LP, 134 A.3d 91 (unpublished) (Pa. Super. 2015).

by the RICO Statute could not be usurious if for business purposes. The purpose of the RICO Statute's interest rate limit is to prohibit loaning money to individuals at excessive interest rates.¹²

This incautious conclusion is easily refuted.

In First Surety, "Plaintiff" loaned funds to a construction company engaged in excavation work on behalf of a land developer (together, the "Defendants"). Plaintiff sued the Defendants to recover the loan. In the course of litigation, Defendants argued that the high interest rate charged by Plaintiff, in excess of 25% per year, violated the RICO Statute. At the close of a bench trial, the Honorable Judge Albert John Snite, Jr. entered judgment in favor of Plaintiff and articulated his reasons through findings-of-fact and conclusions-of-law. Specifically, Judge Snite found that the RICO Statute was inapplicable as a defense, and explained that an exception to the RICO Statute did not preclude charging rates of interest above 25% in cases involving business loans. Judge Snite concluded that Defendants could not invoke the RICO Statute because the loan at issue was unquestionably a business loan. "Accordingly," Judge Snite stated, "the Loan [and the interest rate thereof, were] permitted by law...."¹³

On appeal, the Pennsylvania Superior Court affirmed the decision and stated as follows:

[w]e have reviewed the briefs of the parties, the relevant law, the certified record, and the well-written opinions from the able trial judge.... We conclude that the claims raised in [Defendants'] brief are meritless and that **Judge Snite's opinion ... meticulously and accurately explain why [Defendants'] claims fail.** Therefore, we adopt the trial court's opinion as our own.¹⁴

¹² Supplemental brief of Borrower dated February 15, 2017, p. 5 (un-numbered).

¹³ Findings-of-Fact and Conclusions-of-Law, First Surety Financial, LLC v. Taylor Associates, LP et al., Court of Common Pleas, Philadelphia County, Trial Division—Civil, Case No. 1010—02749.

¹⁴ First Surety Financial, LLC v. Taylor Associates, LP, 2015 WL 6460422 (Pa. Super. 2015) (unpublished) (emphasis supplied).

This language leaves no doubt: the Pennsylvania Superior Court agreed in full with Judge Snite's reasoning and adopted his conclusion stating that interest rates in excess of 25 percent are not impermissible in business transactions. Even more importantly, nothing in the opinion issued by the Superior Court appears to support Borrower's conclusion that "the Superior Court [is] reluctant to hold that a loan at an interest rate far exceeding the maximum rate set by the RICO Statute could not be usurious if for business purposes."¹⁵

To recap, this Court did not grant Borrower's petition to strike or open the confessed judgment because Borrower's challenge, based *inter alia* upon the alleged violation of the RICO Statute, did not disclose a fatal flaw in the record and did not assert a meritorious defense.¹⁶ For these reasons, this Court respectfully suggests that its Order dated February 15, 2017 be affirmed on appeal.

Dated: 3/22/17

BY THE COURT,


MCINERNEY, J.

¹⁵ Supplemental brief of Borrower dated February 15, 2017, p. 5 (un-numbered).

¹⁶ This Court is well aware of the inordinate rate of interest charged by Lender. Nevertheless, Borrower's challenge to the judgment neither disclosed a fatal flaw in the record, nor asserted a meritorious defense. For this reason, Borrower's petition was denied despite the immoderate rate of interest charged by Lender. "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." Fourtees Co. v. Sterling Equip. Corp., 363 A.2d 1229, 1232 (Pa. Super. 1976). Moreover, "[o]ne who petitions to open a confessed judgment must ... offer a meritorious defense." Indus. Valley Bank & Trust Co. v. Lawrence Voluck Assocs., Inc., 428 A.2d 156, 158 (Pa. Super. 1981).