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

SANTANDER BANK, N.A.	:	January Term, 2017
Plaintiff	:	
	:	Case No. 03567
v.	:	Commerce Program
	:	
JOSEPH O'KEEFE	:	
	:	Control No. 17023059
Defendant	:	

ORDER

AND NOW, this 4th day of April, 2017, upon consideration of the petition to strike or open judgment by confession and for a stay of execution filed by defendant Joseph O'Keefe, the response in opposition filed by plaintiff Santander Bank, N.A., the respective *memoranda* of law, and defendant's supplemental brief, it is **ORDERED** that the petition to strike is **GRANTED** and the **CONFESSION OF JUDGMENT IS STRICKEN**.

BY THE COURT,

GLAZER, J.

DOCKETED
APR - 4 2017
R. POSTELL
COMMERCE PROGRAM

Santander Bank Na F/K/A-ORDRF

17010356700011

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

SANTANDER BANK, N.A.	:	January Term, 2017
Plaintiff	:	
	:	Case No. 03567
v.	:	Commerce Program
	:	
JOSEPH O'KEEFE	:	
	:	Control No. 17023059
Defendant	:	

MEMORANDUM OPINION

A predecessor-in-interest of "Lender" agreed to provide "Borrower" with a loan in the form of a line of credit, not to exceed $30,000.00. This loan is evidenced by a promissory note bearing the date April 4, 2002.[1] The promissory note contains two clearly identifiable *cognovit* clauses: one for the borrower and one for the guarantor or guarantors.[2]

On March 21, 2003, Lender's predecessor-in-interest and Borrower entered into a modification agreement. The modification merely changed the amount of principal loaned to Borrower. The modification agreement also contained the following language:

> 3. Ratification. Each of the Obligors, as applicable, hereby ratifies and confirms all of the terms of the Loan, as set forth in the Loan Documents. Except as expressly modified by this Agreement, the terms of the Loan, as set forth in the Loan Documents, shall remain unchanged and in full force and effect.[3]

[1] Promissory/Term Loan/Line of Credit Note, Exhibit A to the complaint-in-confession-of-judgment.
[2] Id., pp. 5 of 8, 6 of 8. Borrower and guarantor are one-and-the-same person, namely, defendant Joseph O'Keefe.
[3] Modification Agreement, Exhibit A to the complaint-in-confession-of-judgment, ¶ 3, p. 2 of 5.

The modification agreement does not have a *cognovit* clause, nor any specific language purporting to republish the *cognovit* clauses contained in the original promissory note.

On January 25, 2017, Lender confessed judgment against Borrower in the amount of $19,437.23. Borrower filed a timely petition to strike or open the judgment and Lender filed its response in opposition.

DISCUSSION

Under Pennsylvania law,

> [a] petition to strike a judgment is a common-law proceeding that operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.... An order of the court striking a judgment annuls the original judgment and the parties are left as if no judgment had been entered....
>
> In assessing whether there are fatal defects on the face of the record a court may only look at what was in the record when the judgment was entered. Moreover, if any defect disclosed by the record is one that can be remedied by an amendment of the record or other action, *nunc pro tunc,* the judgment should not be stricken off.[4]

Borrower asserts a number of standard challenges to the confession of judgment entered by Lender. None of these challenges discloses the existence of a fatal flaw which would require the judgment to be stricken, or asserts a valid defense which would require the judgment to be opened. Nevertheless, the petition to strike is granted because the judgment is void as entered. The judgment is void because Pennsylvania courts require "a clearer manifestation of assent to sustain a warrant of attorney to confess judgment than it does to sustain a normal contract provision .... [and] will not

[4] Dime Bank v. Andrews, 115 A.3d 358, 364 (Pa. Super. 2015).

presume ... an intent of parties ... [to a modified contract] to perpetuate [an original] warrant of attorney."[5]

In Scott v. 1523 Walnut Corp., (hereinafter, "Scott"), "Lessor" leased in 1950 certain premises to "Lessee," pursuant to a lease agreement containing a *cognovit* clause.[6] Over the years, Lessee formed a corporation (the "New Lessee") which assumed the leasehold interest; meanwhile, Lessor transferred its interest in the property to a new owner (the "New Lessor"). In 1972, following several modifications to the lease, the new Lessor and New Lessee entered into one last agreement which extended the term of the lease for ten additional years.[7] This new agreement did not contain a *cognovit* clause; rather, it contained language purporting to adopt or incorporate the original *cognovit* clauses by ratification –that is, through the use of the following language:

> [e]xcept as modified hereby, the terms of the Lease Agreement dated July 1, 1950, as heretofore amended, shall remain in full force and effect.[8]

The New Lessor confessed judgment against the New Lessee, and the New Lessee filed a petition to strike or open the judgment. The trial court denied the petition and the New Lessee appealed. On appeal, the Pennsylvania Superior Court was asked to determine whether—

---

[5] Scott v. 1523 Walnut Corp., 447 A.2d 951, 956 (Pa. Super. 1982) (quoting Solazo v. Boyle, 76 A.2d 179 (Pa. 1950)). "[W]here the court lack[s] jurisdiction, as it does when it enters a void confessed judgment, that court cannot enter a valid judgment." M & P Mgmt., L.P. v. Williams, 594 Pa. 489, 494, 937 A.2d 398, 401 (Pa. 2007) (citing Romberger v. Romberger, 139 A. 159-160 (Pa. 1927)). Moreover, 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, 594 Pa. 489, 494, 937 A.2d 398, 400-401 (Pa. 2007) (citing Clarion M. & P. R. Co. v. Hamilton, 17 A. 752 (Pa. 1889)). In this case, the judgment entered by Lender is a nullity and this court may *sua sponte* strike such a nullity in accordance with the discussion *infra*.

[6] Id.

[7] Id. at 954.

[8] Id.

> the warrants of attorney to confess judgment ... contained in lease and assignment documents entered into in 1950, were valid and binding upon the Appellant as a result of a renewal document signed in 1972.[9]

Reversing the lower court's decision which had denied the petition to strike or open, the Pennsylvania Superior Court stated that—

> [f]irst, we are not permitted to presume that it was the intent of the parties, in their various agreements up through and including the 1972 agreement, to perpetuate the 1950 warrant of attorney....
>
> Next, we may not treat the *cognovit* clause in the 1950 lease as a binding part of the 1972 agreement, as it was only in an appended document, and thus bore no direct relation to the signature of the Appellant's representative on the 1972 document....
>
> Finally, we recognize that the mere general reference in the 1972 document to the July 1, 1950 lease is insufficient to bind the Appellant to the warrant of attorney clause set forth in that lease.[10]

The facts in this case are similar to those in Scott. First, the parties to this action entered into a 2002 loan agreement, as evidenced by a promissory note containing two clearly identified *cognovit* clauses. Second, the parties in 2003 modified their agreement without specifically republishing the *cognovit* clauses. However, they drafted in the new contract a ratification clause whose language, as in Scott, sought to adopt and confirm by mere general reference all of the terms and conditions of each of the original loan documents, including the original *cognovit* clauses. Such a general reference in Scott, however, was insufficient to bind a party to the original cognovit

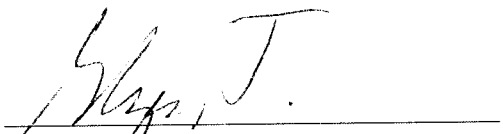
---

[9]

[10] Id. at 259.

clause, and is insufficient in this case to achieve the same result.[11] Stated another way, there is no direct relation between the old *cognovit* clauses in the original promissory note executed by Borrower in 2002, and his signature at the end of the modified agreement executed in 2003.[12] For this reason, the petition to strike is granted and the judgment by confession is stricken.

BY THE COURT,



GLAZER, J.

[11] See Ferrick v. Bianchini, 69 A.3d 642 (Pa. Super. 2013) (finding that a *cognovit* clause was properly **republished** in an amended contract because such a contract "specifically mentioned" such a clause: "[t]he clause in question was clear and conspicuous in the [original agreement] and assignment as well as mentioned specifically in the amendment." Id. at 650-651.

[12] "A warrant of attorney to confess judgment must be self-sustaining and to be self-sustaining the warrant must be in writing and signed by the person to be bound by it. The requisite signature must bear a **direct relation to the warrant of attorney and may not be implied**." L. B. Foster Co. v. Tri-W Const. Co., 186 A.2d 18, 20 (Pa. 1962) (emphasis supplied).