

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

---

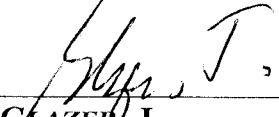
|  |   |  |
|--|---|--|
| <p><b>MELROSE CREDIT UNION</b></p> <p style="text-align: center;"><i>Plaintiff</i></p> <p style="text-align: center;"><b>v.</b></p> <p><b>J.K.P. TRANSPORT, INC.,</b><br/><b>PARMINDER KAUR SIDHU and KEWAL PAL SIDHU</b></p> <p style="text-align: center;"><i>Defendants</i></p> | <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> | <p>August Term, 2017</p> <p>Case No. 00621</p> <p>Commerce Program</p> <p>Control No. 17112609</p> |
|--|---|--|

---

**ORDER**

AND NOW, this 24<sup>th</sup> day of September, 2018, upon consideration of defendants' petition to strike or open judgment entered by confession and for a stay of execution, and plaintiff's answer-and-memorandum of law in opposition, it is **ORDERED** that the petition is **DENIED** and the stay of execution is **LIFTED**.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

Melrose Credit Union Vs-ORDRC



FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

---

|   |   |                      |
|---|---|----------------------|
| <b>MELROSE CREDIT UNION</b>                     | : | August Term, 2017    |
|   | : | Case No. 00621       |
| <i>Plaintiff</i>                                | : |                      |
|   | : |                      |
| <b>v.</b>                                       | : | Commerce Program     |
|   | : |                      |
| <b>J.K.P. TRANSPORT, INC.,</b>                  | : |                      |
| <b>PARMINDER KAUR SIDHU and KEWAL PAL SIDHU</b> | : |                      |
|   | : | Control No. 17112609 |
| <i>Defendants</i>                               | : |                      |

---

**MEMORANDUM OPINION**

Plaintiff Melrose Credit Union (“Melrose”) entered judgment by confession against corporate defendant J.K.P Transport, Inc., and against individual defendants Parminder Kaur Sidhu and Kewal Pal Sidhu (collectively, the “Borrowers”). Whenever required, individual defendants Parminder Kaur Sidhu and Kewal Pal Sidhu shall be identified herein as “Guarantors.” Borrowers/Guarantors operate a taxi-cab business.

Melrose confessed judgment against Borrowers/Guarantors pursuant to a promissory note (the “Note”), which contains a warrant-of-attorney. The warrant-of-attorney states that upon an event of default by Borrowers/Guarantors, Melrose may enter judgment against them for any unpaid amount connected to an underlying loan, plus interest, counsel fees, disbursements and costs of suit.<sup>1</sup> Melrose specifically claims \$846,008.99 as the unpaid principal of the loan, and interest thereon of \$27,385.43, accruing at the rate of 15%<sup>2</sup>. In addition to the Note, Melrose secured as collateral the

---

<sup>1</sup> Promissory note, Exhibit A to the complaint-in-confession-of-judgment, ¶ 8.

<sup>2</sup> *Id.* The promissory note states at ¶ 1.(b) that upon default, the unpaid balance of the loan shall bear interest of 15%.

tree taxi-cab medallions owned by Borrowers/Guarantors, pursuant to a Security Agreement dated April 30, 2013.<sup>3</sup> On November 17, 2017, Borrowers/Guarantors filed a petition to strike or open the judgment entered by confession.

#### THE PETITION TO STRIKE

A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing 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 court may only look at what was in the record when the judgment was entered.<sup>4</sup>

The petition to strike asserts that the judgment should be stricken due to a number of fatal defects in the record. First, the petition asserts that the warrant-of-attorney was improperly executed because the Guarantors did not affix their initials in the space provided immediately below the *cognovit* clause. This argument is rejected.

Upon review of the record, the court notes that only individual defendant Parminder Kaur Sidhu, as an officer of the corporation, affixed his initials below the *cognovit* clause on behalf of himself, and on behalf of the corporation. Next, the court notes that page 7 of the Note contains a personal guaranty wherein the two individual defendants, Parminder Kaur Sidhu and Kewal Pal Sidhu, agreed to be individually liable upon the Borrowers' default. In this case, it is irrelevant that the initials of Guarantors fail to appear in the space reserved under the *cognovit* clause: what matters is that the individual Guarantors executed a personal guaranty sufficiently close to the *cognovit* clause as to create a direct relationship between that clause and their respective

---

<sup>3</sup> Security Agreement, Exhibit B to the complaint-in-confession-of-judgment.

<sup>4</sup> Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267–68 (Pa. Super. 2015).

signatures.<sup>5</sup> For this reason, the first argument for striking the judgment is rejected.

Second, Borrowers/Guarantors assert that the judgment should be stricken because Melrose claims grossly overstated amounts. Specifically, Borrowers/Guarantors state that—

Pennsylvania Courts have stricken confessed judgments when it appears that judgments has been entered for grossly excessive amounts or includes recovery for items that were not authorized by the written warrant to confess judgment.<sup>6</sup>

In support of this proposition, Borrowers/Guarantors rely on a Pennsylvania case, Colony Fed. Sav. & Loan Ass'n v. Beaver Valley Eng'g Supplied (“Colony Federal”), which states that “if a confessed judgment includes an item not authorized by the warrant, the judgment is void in its entirety and must be stricken.”<sup>7</sup> A reading of the afore-quoted case shows that Borrowers/Guarantors have improperly relied on Colony Federal by conflating two separate issues –namely, whether the judgment amount is excessive, and whether Melrose improperly included in the judgment an item not authorized by the warrant. Since Borrowers/Guarantors have not averred the existence of an un-authorized item in the judgment, their second argument in favor of striking the judgment is rejected, and the court shall address the allegedly excessive amounts in the next section of this *Memorandum Opinion*.

Third, the petition to strike avers that the judgment should be stricken because Melrose, a federal credit union under conservatorship, is not the real party in interest and has no standing to confess judgment. The petition argues that the conservator –not Melrose– has sole standing to confess judgment against Borrowers/Guarantors,

---

<sup>5</sup> “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)

<sup>6</sup> Petition to strike, ¶ 73.

<sup>7</sup> Colony Fed. Sav. & Loan Ass'n v. Beaver Valley Eng'g Supplies Co., A.2d 343, 346 (Pa. Super. 1976).

pursuant to section 1786(h) of the United States Code. This argument is rejected because the section cited by Borrowers/Guarantors instructs that a conservator “**may ...** take possession and control of the business and assets of any insured credit union.”<sup>8</sup> The above-quoted language is merely permissive or discretionary: it does not strip Melrose of its standing to collect from Borrowers/Guarantors, nor does it prevent the conservator to take immediate possession of any assets as may be received by Melrose.

Based on the foregoing, the court denies the petition to strike because Borrowers/Guarantors have not pointed to any fatal flaw that would require the judgment to be stricken.

#### THE PETITION TO OPEN

A petition to open a confessed judgment “may be granted 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.”<sup>9</sup>

First, the petition avers that the judgment should be opened because Melrose seeks to recover excessive amounts. The argument is rejected because Borrowers/Guarantors have failed to provide any evidence tending to show that the amounts claimed by Melrose exceed those which Melrose may lawfully seek.<sup>10</sup> Borrowers/Guarantors have failed to sustain their burden of proof, and for this reason the first argument in favor of opening the judgment is rejected.

Second, Borrowers/Guarantors asserts that Melrose employed unsound lending

---

<sup>8</sup> 12 U.S.C.A. § 1786(h) (emphasis supplied).

<sup>9</sup> *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa. Super. 2011).

<sup>10</sup> Upon a petition to open judgment entered by confession, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.” *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984). Borrowers/Guarantors also argued in the afore-discussed petition to strike that Melrose claims “grossly overstated amounts” requiring the judgment to be stricken as fatally flawed.

practices which ultimately resulted in the impairment of collateral –that is, in the devaluation of their taxi-cab medallions. Specifically, the petition to open avers that Melrose’s “loan approval process was rudimentary and almost entirely asset-based ... with little or no regard for borrowers’ income, credit scores or cash flow.”<sup>11</sup> The petition further avers that initially, Melrose’s “easy lending” caused the taxi-cab medallion prices to increase, and that—

[b]alloon payments were consistently refinanced, giving ... [herein Borrowers/Guarantors] the false impression that refinancing was always available.... This false sense of security based on Melrose’s actions and promises contributed to further medallion price increases.<sup>12</sup>

\* \* \*

Despite the presence of [new transportation companies, such as Uber and others,] Melrose continued its unsound practices of easy lending with no warning to the Philadelphia taxicab industry of the market forces at play....

Eventually, and without warning ... Melrose abruptly began reducing the amount of its lending ... [which ultimately caused] the Philadelphia medallion prices... to fall....<sup>13</sup>

\* \* \*

Once Melrose stopped making loan modifications and new loans, delinquencies began to increase and revenues decreased, with the result that it became impossible for ... [herein Borrowers/Guarantors] to make their monthly payments.<sup>14</sup>

Stated differently, Borrowers/Guarantors argue that Melrose impaired the value of the taxi-cab medallions by lending money without conducting an appropriate level of due diligence. In support of this argument, Borrowers/Guarantors rely on the Pennsylvania Commercial Code which states in pertinent part that—

[i]f the obligation of a party [such as Borrowers/Guarantors] is secured by an interest in collateral ... and a person entitled

---

<sup>11</sup> Petition to strike or open, ¶¶ 13-14.

<sup>12</sup> Id. ¶ 16.

<sup>13</sup> Id., ¶¶ 20-21, 25.

<sup>14</sup> Id., ¶ 26

to enforce the instrument impairs the value of the interest in collateral [then] the obligation of any party ... with respect to the obligation is discharged to the extent [of] the impairment....

The burden of proving impairment is on the party asserting discharge.<sup>15</sup>

According to this provision, the burden is on Borrowers/Guarantors to provide evidence that the actions of Melrose impaired the value of their taxi-cab medallions. This burden, moreover, is in lock-step with the overall burden of Borrowers/Guarantors to provide sufficient evidence to substantiate their alleged defense against the judgment.<sup>16</sup> In this case, Borrowers/Guarantors have not offered any evidence showing that Melrose impaired the value of their taxi-cab medallion; rather, Borrowers/Guarantors appear to suggest that Melrose impaired the value of their taxi-cab medallions by failing to employ a more stringent set of due diligence rules. However, such veiled allegations are “merely conclusions of law ... not supported by any allegations of fact.”<sup>17</sup> For this reason, the argument seeking to open the judgment under a theory of collateral impairment is rejected.

Finally, the petition avers that the judgment should be opened because Melrose, while transacting with Borrowers/Guarantors, made certain misrepresentations and breached the implied covenant of good faith and fair dealing. This argument is also rejected for the same reason as above –namely, Borrowers/Guarantors have not offered any evidence that Melrose engaged in such wrongdoings.

---

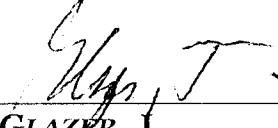
<sup>15</sup> 13 Pa. C.S.A. § 3605(e).

<sup>16</sup> In a petition to open judgment entered by confession, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.” Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

<sup>17</sup>City of Pittsburgh v. Allegheny Cty. Distributors, Inc., 488 A.2d 333, 334 (Pa. Super. 1985).

For the reasons above, the petition to strike or open judgment entered by confession is denied in its entirety.

**BY THE COURT,**

  
\_\_\_\_\_  
**GLAZER, J.**