

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

SANTANDER BANK, N.A.	:	November Term, 2017
	:	Case No. 02107
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
RESTORATION HEAVEN, LLC,	:	
DESLYN MANCINI M.D., INC.,	:	
DESLYN M. MANCINI	:	
and	:	
SHERYL BAXTER	:	Control No. 17123135
	:	
<i>Defendants</i>	:	

ORDER

AND NOW, this 28th day of December, 2017, upon consideration of the petition open judgment by confession, it is **ORDERED** that the petition is **DENIED** in its ENTIRETY.

BY THE COURT



RAMY I. DJERASSI, J.

Santander Bank Na Vs Re-ORDOP



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R. POSTELL
COMMERCE PROGRAM

MEMORANDUM OPINION

Santander Bank, NA (“Lender”), entered judgment by confession against defendant Restoration Haven, LLC (“Borrower”), and against defendants Deslyn Mancini, M.D., Inc., Deslyn M. Mancini, and Sheryl Baxter (“Guarantors”). The operative documents in this action are a promissory note (the “Note”), executed by Borrower on May 13, 2016, and three commercial guaranties (the “Guaranties”), executed separately –but on the same day– by each of the three Guarantors.¹ The Note and Guaranties contain warrants-of-attorney empowering Lender to confess judgment against Borrower and Guarantors, and to recover attorney fees of 10% of the unpaid principal balance with accrued interest.²

On December 22, 2017, Borrower, Deslyn Mancini, M.D., Inc., and Deslyn M. Mancini, filed the instant petition to open the confessed judgment. The petition asserts four defenses. Under the first argument, petitioners assert that “the record does not reflect that a 236 Notice was sent” to the petitioners.³ According to this argument, such an omission by the Lender constitutes a “fatal defect” in the record which in turn requires the judgment to be stricken.⁴ This argument is rejected because the record contains a certificate of service stating that counsel for Lender “caused a copy of the JUDGMENT BY CONFESSION [and] RULE 236 NOTICE ... to be served via certified United States mail, return receipt requested, upon the following [petitioners].”⁵

Under the second argument, petitioners assert that the judgment should be

¹ Promissory Note and Guaranties, Exhibit A to the complaint-in-confession-of-judgment.

² *Id.*

³ Petition to open, ¶ 9.

⁴ *Id.*, ¶ 10. The petitioners ask that the judgment to be stricken notwithstanding the caption of their petition which only prays for an order opening the judgment.

⁵ Complaint-in-confession-of-judgment.

stricken because the record does not show service to have been made via certified U.S. mail, as represented by Lender's counsel in the afore-quoted certificate of service.⁶ This argument is also rejected. Pursuant to Pa. R.C.P. 236, the

prothonotary shall immediately give written notice of the entry ... of a judgment entered by confession ... by **ordinary mail** with a copy of all documents filed with the prothonotary in support of the confession of judgment. The plaintiff shall provide the prothonotary with the required notice and documents for mailing and a properly stamped and addressed envelope....⁷

The afore-quoted provision shows that the Rules of Civil Procedure do not require the use of certified mail, and for this reason the second argument praying for the judgment to be stricken is rejected.

Under the third argument, petitioner asserts a defense based on excessive counsel fees. Specifically, petitioners assert that "the nearly 9%" counsel fees are "excessive" and "the judgment entered against them [should] be opened."⁸ This argument is rejected because the warrants-of-attorney contained in the Note and Guaranties clearly empower lender to charge attorney fees of 10% of the unpaid principal balance and accrued interest.⁹

Under the last argument, the petitioners assert that the judgment should be opened because the petitioners "reasonably believed that the sums due [to Lender] were being paid by Defendant [co-Guarantor] Sheryl Baxter."¹⁰ The last defense is also rejected because the petitioners have provided no evidence to support their belief that the third Guarantor, Ms. Sheryl Baxter, was timely repaying to Lender the obligations

⁶ *Id.*, ¶¶ 9–10.

⁷ Pa. R.C.P. 236(a)(1) (emphasis supplied).

⁸ Petition o open, ¶ 12.

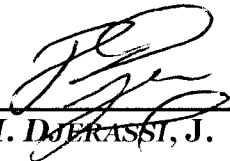
⁹ Promissory Note and Guaranties, Exhibit A to the complaint-in-confession-of-judgment.

¹⁰ Petition o open, ¶ 13.

under the Note and Guaranties.¹¹

For all of these reasons, the petition to open judgment entered by confession is denied.

BY THE COURT



RAMY I. DJERASSI, J.

¹¹ 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).