

DOCKETED

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R. POSTELL
COMMERCE PROGRAM

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

SANTANDER BANK, N.A.

Plaintiff

v.

RONALD MILLER d/b/a MILLER CONSTRUCTION

Defendant

: February Term, 2018
: Case No. 00434
:
:
: Commerce Program
:
:
: Control No. 18033270

ORDER

AND NOW, this 20th day of April, 2018, upon consideration of the petition to strike or open judgment by confession and for a stay of execution, the response in opposition, and the respective *memoranda* of law, it is **ORDERED** as follows:

- (1) The petition to strike or open judgment by confession is **DENIED**.
- (2) The stay of execution is **LIFTED**.
- (3) The amount of attorney's fees is reduced from 10% to 5%, in accordance with the attorney's fees provision contained in the warrants-of-attorney.
- (4) The new amount-in-confession-of-judgment is itemized as follows:

Damages for Default	\$15,000.00
Attorney's Fees	\$750.00
Filing Fees	\$156.51
Interest	\$62.19
Total	\$15,968.70

Santander Bank, N.A., F-ORDRC



18020043400014

BY THE COURT,

GLAZER, J.

MEMORANDUM OPINION

Plaintiff is Santander Bank, N.A. (“Lender”), formerly known as Sovereign Bank, N.A. Defendant is Ronald Miller, doing business as Miller Construction. On April 6, 2001, Ronald Miller (“Borrower”), executed on behalf of his company a promissory note (the “Note”), whereby Borrower agreed to repay regular monthly payments to Lender pursuant to a line-of-credit loan.¹ The Note contains a warrant-of-attorney empowering Lender to confess judgment against Borrower upon the occurrence of an event of default.² On the same day, April 6, 2011, Borrower personally guaranteed the line-of-credit indebtedness by executing an unconditional personal guaranty, attached to the Note.³ The warrant-of-attorney in the personal guaranty is identical to the one in the Note.

On February 7, 2018, Lender confessed judgment against Borrower. On March 23, 2018, Borrower filed a petition to strike or open the confessed judgment and for a stay of execution. On March 27, 2018, this court issued a Rule Returnable Order requiring Lender to file a response and *memorandum* of law to the petition of Borrower, and to re-file a legible copy of the Note. On April 13, 2018, Lender re-filed a legible copy of the Note and, on April 16, 2018, Lender filed a response to the petition to strike or open.

THE PETITION TO STRIKE

In the petition, Borrower avers that the record is fatally flawed and the judgment

¹ Promissory Note included in Exhibit A to the complaint-in-confession-of-judgment by way of praecipe to substitute and/or attach.

² *Id.*, pp. 3–4 (pages not numbered).

³ *Id.*, pp. 4–5.

should be stricken because Lender has offered no evidence that Lender, Santander Bank, N.A., is one-and-the-same as Sovereign Bank whose name appears on the Note.⁴ This challenge to the judgment is rejected because a petition to strike may be granted “only for a fatal defect or irregularity **appearing** on the face of the record.”⁵ In this case, the complaint-in-confession-of-judgment avers that Lender, Santander Bank, N.A., was formerly known as Sovereign Bank, N.A. The caption in the instant complaint, and any documents filed therewith, show no fatal defect or irregularity appearing on the face of the record. For this reason the petition to strike is denied.⁶

THE PETITION TO OPEN

In the petition to open the confessed judgment, Borrower avers that he “has made all payments due under the terms of the Note which was [*sic*] withdrawn from the business account ... [that Borrower] has with Sovereign Bank.”⁷ This argument is rejected for the same reason articulated in footnote 6, below because Borrower has failed to produce any bank statements showing that sums owned by Borrower were automatically withdrawn from his account and paid to Lender.

The petition to open also avers that the judgment should be opened because Lender failed to provide Borrower with a notice of default. Unfortunately, Borrower has

⁴ Petition to strike, ¶¶ 3–6.

⁵ Resolution Tr. Corp. v. Copley Qu-Wayne Assocs., 683 A.2d 269, 273 (Pa. 1996) (emphasis added).

⁶ The issue of whether Lender, Santander Bank, N.A. is the same as Sovereign Bank, N.A., involves a question of fact, and that issue would be properly addressed through a petition to open the judgment. “The facts averred in the complaint are to be taken as true; if the factual averments are disputed, the remedy is by a proceeding to open the judgment and not by a motion to strike.” Manor Bldg. Corp. v. Manor Complex Assocs., Ltd., 645 A.2d 843, 846 (Pa. Super. 1994). However, when a factual averment in the complaint is disputed, the “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). Even if this court considered the above-described issue as being asserted under a petition to open, it would reject the assertion because the petitioning party, Borrower, has offered no evidence that Santander Bank, N.A. is not one-and-the-same with Sovereign Bank, N.A.

⁷ Petition to open, ¶¶ 11–12.

failed to indicate which provision in the Note and personal guaranty required Lender to provide notice prior to the entry of judgment, and this court has been unable to locate such a provision in the record. Borrower has thus failed to meet its burden of proof to open the judgment, and for this additional reason the petition to strike or open the confessed judgment is denied.

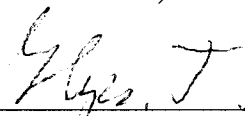
THE ATTORNEY'S FEES

In the complaint, Lender avers that it is entitled to recover attorney's fees "in the amount of ten percent (10%) of the outstanding principal balance...."⁸ However, this court reviewed the Note and personal guaranty, and found that the warrants-of-attorney in both documents entitle Lender to recover "an attorney's commission of [only] five percent...."⁹ Based on the foregoing, the amount of attorney's fees is modified because—

if the judgment as entered is for items clearly within the judgment note, but excessive in amount, the court will modify the judgment and cause a proper judgment to be entered.¹⁰

In this case, Lender claims an amount of attorney's fees that is twice the amount allowed under the warrants-of-attorney; therefore, the claim is reduced by half.

BY THE COURT,



GLAZER, J.

⁸ Complaint-in-confession-of-judgment, ¶ 10.

⁹ Note, pp. 3–4; personal guaranty, p. 5 (not-numbered).

¹⁰ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 314 (Pa. Super. 1994).