

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

---


<b>SANTANDER BANK, N.A.</b>	:	March Term, 2018
	:	
<i>Plaintiff</i>	:	Case No. 01554
	:	
<b>v.</b>	:	Commerce Program
	:	
<b>BBL ENTERPRISES, INC.</b>	:	
and	:	
<b>STEPHEN BARNETT and CHRISTINE BARNETT</b>	:	
	:	Control No. 18051595
<i>Defendants</i>	:	

---

**ORDER**

AND NOW, this 5<sup>th</sup> day of June, 2018, upon consideration of the petition to strike or open judgment by confession filed by individual defendants Stephen Barnett and Christine Barnett, the response in opposition of plaintiff, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

**BY THE COURT,**

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

DOCKETED  
JUN - 6 2018  
R. POSTELL  
COMMERCE PROGRAM

Santander Bank, N.A. V-ORDRC



18030155400009

## MEMORANDUM OPINION

Petitioners, Christine Barnett and Stephen Barnett (“the Barnetts”), are respectively president and vice president of defendant BBL Enterprises, Inc. (“Borrower”), a corporation which on November 26, 2014, obtained a line-of-credit loan from plaintiff Santander Bank, N.A. (hereinafter, “Lender”). The Barnetts, in their capacity as officers of Borrower, executed a PROMISSORY NOTE in favor of Lender.<sup>1</sup> The PROMISSORY NOTE included a warrant-of-attorney empowering Lender to confess judgment against Borrower for the principal amount of the loan, accrued interest and attorney’s fees thereon of 10%, plus late charges and costs-of-suit.<sup>2</sup> The Barnetts also executed an UNCONDITIONAL PERSONAL GUARANTY OF PAYMENT in favor of Lender.<sup>3</sup>

On January 16, 2015, Borrower and Lender executed a MODIFICATION AGREEMENT whereas the amount of the line-of-credit loan was increased to \$100,000.00 and the interest rate payable by Borrower was increased by 3.25 percentage points.<sup>4</sup> The Modification Agreement also contained a warrant-of-attorney provision similar to the provision in the PROMISSORY NOTE.<sup>5</sup>

Lender entered judgment by confession against Borrower and the Barnetts on March 13, 2018. On May 10, 2018, the Barnetts, acting *pro se*, filed a petition to strike or open the confessed judgment. The petition does not point to any fatal flaws in the record; therefore, the petition to strike is denied.<sup>6</sup> However, the petition asserts that

---

<sup>1</sup> PROMISSORY NOTE, Exhibit A to the complaint-in-confession-of-judgment.

<sup>2</sup> Id.

<sup>3</sup> UNCONDITIONAL PERSONAL GUARANTY OF PAYMENT, Exhibit A to the complaint-in-confession-of-judgment.

<sup>3</sup> Id.

<sup>4</sup> MODIFICATION AGREEMENT, id.

<sup>5</sup> Id.

<sup>6</sup> “A petition to strike is not a chance to review the merits of the allegations of a complaint. Rather, a petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief. A fatal defect on the face of the record denies the prothonotary the authority

during negotiations leading to the MODIFICATION AGREEMENT, Lender gave “repeated and clear [oral] assurance” that it would not enforce certain new terms which made the Barnetts “extremely uncomfortable.”<sup>7</sup> The petition to open further avers that Borrower and the Barnetts entered into the Modification Agreement based on the oral representations and assurances made by Lender.<sup>8</sup> This argument is rejected under the parol evidence rule:

the purpose of the parol evidence rule is to preserve the integrity of written agreements by refusing to permit the contracting parties to attempt to alter the import of their contract through the use of contemporaneous (or prior) oral declarations.... Where parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement.<sup>9</sup>

In this case, the Barnetts aver that before they executed the Modification Agreement, they were told that Lender “did not have proper policies and procedures in place” to enforce the prior oral representations allegedly made by Lender.<sup>10</sup> Stated differently, the Barnetts aver that they executed the Modification Agreement with the knowledge that they were signing a document bearing the very terms which had made them “extremely uncomfortable” in the course of the prior oral negotiations. This averment shows that the Barnetts “deliberately put their engagements in writing”; therefore, they may not subsequently “attempt to alter the import of their contract through [the use of] ... prior oral declarations.”<sup>11</sup> Accordingly, this defense is rejected.<sup>12</sup>

---

to enter judgment.” Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267 (Pa. Super. 2015). “A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.” Id.

<sup>7</sup> Petition to open, ¶¶ 11, 10.

<sup>8</sup> Id., ¶¶ 12–13.

<sup>9</sup> Le Donne v. Kessler, 389 A.2d 1123, 1126 (Pa. Super. 1978).

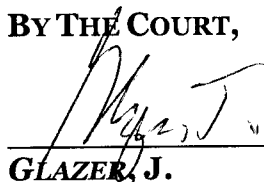
<sup>10</sup> Petition to open, ¶ 13.

<sup>11</sup> Le Donne v. Kessler, 389 A.2d at 1126 (Pa. Super. 1978).

<sup>12</sup> “[A] party cannot justifiably rely upon prior oral representations yet sign a contract denying the

The petition also appears to aver that Borrower's default, if any, may be attributable to a "glitch" in Lender's primitive computerized system –a malfunction which allegedly prevented Borrower from making timely payments.<sup>13</sup> This argument is also rejected because a party petitioning to open the judgment "bears the burden of producing sufficient evidence to substantiate its alleged defenses."<sup>14</sup> In this case, the Barnetts have not produced any evidence to substantiate that they were prevented from making timely payments due to a malfunction in Lender's computer system. For this additional reason, the petition to open is denied in its entirety.

BY THE COURT,



---

GLAZER, J.

---

existence of those representations." Youndt v. First Nat. Bank of Port Allegany, 868 A.2d 539, 546 (Pa. Super. 2005) (citing Blumenstock v. Gibson, 811 A.2d 1029, 1036 (Pa. Super.2002).

<sup>13</sup> Petition to open, ¶ 14.

<sup>14</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).