

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

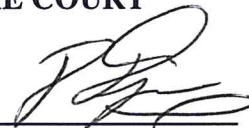
L.G. FINANCIAL CONSULTANTS, INC.,	:	October Term 2018
Plaintiff,	:	
v.	:	No. 2188
LAWYERS FUNDING GROUP, LLC, ET. AL.,	:	
Defendants.	:	COMMERCE PROGRAM
	:	
	:	Control Number 20102636

ORDER AND JUDGMENT

AND NOW, this 2nd day of March, 2021, upon consideration of Defendants Lawyers Funding Group, LLC and Alan Zibelman' s Motion for Post-Trial to Vacate Assessment of Damages and Plaintiff' s response in opposition, and for reasons explained in an accompanying Opinion, it is hereby **ORDERED** that the Motion is **DENIED**.

It is further **ORDERED and ADJUDICATED** that Judgment is entered in favor of Plaintiff L.G. Financial Consultants, Inc. and against Defendants Lawyers Funding Group, LLC and Alan Zibelman in the amount of \$63,003.50.

BY THE COURT



RAMY I. DJERASSI, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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L.G. FINANCIAL CONSULTANTS, INC.,	:	October Term 2018
Plaintiff,	:	
v.	:	No. 2188
LAWYERS FUNDING GROUP, LLC, ET. AL.,	:	
Defendants.	:	COMMERCE PROGRAM
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OPINION

This court assessed damages in favor of Plaintiff L.G. Financial Consultants, Inc. (“LGFC” or “Plaintiff”) and against Defendants Lawyers Funding Group, LLC (“LFG”) and Alan Zibelman (“Zibelman”) (collectively “Defendants”) in the amount of \$63,003.50 after a hearing on July 30, 2020 via Zoom. Defendants now file this post-trial motion seeking to vacate the assessment and to assess zero damages. Defendants’ post-trial motion is denied.

Procedural History

On October 16, 2018, Plaintiff LGFC, a commercial lender to small businesses particularly attorneys and law firms, confessed judgment against LFG, a law firm, and Zibelman, the managing member of LFG for \$93, 280.28. (N.T. p. 144 L 16-19; N.T. p. 145 L12-25). On December 26, 2018, we opened judgment after finding that a factual dispute existed as to the principal amount owed to LGFC by LFC on a loan. During the discovery period, the parties did not depose any witnesses, nor pursue discovery of relevant documents including cancelled checks or ledgers.

On October 4, 2019, LFGC filed a motion for summary judgment. Defendants responded and admitted monies were owed to LFGC but disputed the amount.¹ On February 27,

¹ See response in opposition to Plaintiff’s motion for summary judgment. ¶¶13, 14-15 and 35-38. See response in opposition to Plaintiff’s motion for summary judgment. ¶¶2, 16.

2020, we granted an uncontested motion for summary judgment in favor of Plaintiff on liability but set assessment of damages for trial because the parties disputed how much was actually owed. On July 30, 2020, we held an assessment of damages hearing via Zoom, and the parties presented evidence, documentary and testimonial, on the amount that was due on the loan. On October 16, 2020, damages were assessed in favor of Plaintiff and against Defendants in the amount of \$63,003.50. On December 29, 2020, Defendants filed this motion for post-trial relief seeking to vacate the assessment.

Factual Background

Plaintiff and Defendants' lending relationship began in April 2009 with a loan by LGFC to LFG for \$100,000. (Plaintiff's Exhibit 5). The original loan was modified six times with additional monies being borrowed on each occasion. (Plaintiff's Exhibit 21; Defendants' Exhibit 1; N.T. 146 L17-25-p. 147 L1-3). The last loan was made on June 13, 2013 for \$250,000 and was memorialized as Loan Modification #9. (Plaintiff's Exhibit 21; Defendants' Exhibit 1). The terms of Loan Modification #9 were as follows: a term of five years (sixty payments), a principal payment of \$4,000 per month, interest rate of 1% per month on the outstanding monthly loan balance, and a 2% default rate of interest when the loan is in default. All other terms and conditions of the original note dated April 14, 2009 remained in full force and effect including a confession of judgment provision which included a provision for attorney's fees.² (Plaintiff's Exhibits 5 and 21 and Defendants' Exhibit D-1).

In July or August 2016, Plaintiff retained the services of GFCIB Advisors, LLC (GFCIB) to act as the servicing agent for the LFC loan as well as other loans within the LFGC portfolio.

² Paragraph 4 of Plaintiff's Exhibit 5 provides in relevant part as follows: "...LEGAL FEE EQUAL TO TWENTY PERCENT (20%) OF THE UNPAID PRINCIPAL INDEBTEDNESS AT TIME OF JUDGMENT OR TWO THOUSAND DOLLARS (\$2,000), WHICHEVER IS GREATER, EXPENSES, AND WITH COSTS OF SUIT".

(N.T. p. 38 L 23-25 p. 39 L 1-22; Plaintiff's Exhibit 1). On August 11, 2016, Plaintiff sent a letter advising all clients, including LFC, that all future payments were to be remitted to GFCIB. (N.T. p. 43 L10-15; Defendants' Exhibit 3). On August 29, 2016, GFCIB sent a letter to all LGFC clients, including LFC, advising that they were now administering the loan, and that all payments beginning in September, 2016 should be sent to them. While the August 29, 2016 letter enclosed an invoice captioned as a September 2016 invoice, the August 2016 letter stated that GFCIB would not be mailing monthly invoices. (N.T. p. 43 L16-24; Defendants' Exhibit 4; N.T. p. 48 L1-7).

LFC missed three loan payments in August, September and December of 2017. (N.T. p. 153 L9-21; Defendants' Exhibit 23). LFC made two payments in October and November 2017 leaving a loan balance of \$40,000. (Defendants' Exhibit 23). LFC made its last loan payment on December 6, 2017. (Plaintiff's Exhibit 3; N.T. 52 L. 20-25 -53 L1-2). LFC did not make any payments on the loan in 2018. (N.T. 159 L15-25- 160 L1-4).

DISCUSSION

I. Defendants' motion for post-trial relief fails to comply with Pa. R. Civ. 227. 3 and Phila. Civil Rule 227 (b).

"All post-trial motions shall contain a request designating that portion of the record to be transcribed in order to enable the court to dispose of the motion ... If no portion is indicated, the transcription of the record shall be deemed unnecessary to the disposition of the motion."³ Here, defendants failed to designate that portion of the record to be transcribed in their post-trial motion as required by Pa. R. Civ. P. 227.3 and Philadelphia Local Rule of Civil Procedure 227

³ Pa.R.C.P. 227.3, See also, *McLaughlin v. Royer*, No. 07-4168, 2009 WL 6364885 (Pa. Com. Pl., Montgomery County, Mar. 10, 2009) and Philadelphia Local Rule Civil Procedure 227 (d).

(d). As a result, the court was deprived of the opportunity to determine whether Defendants adequately preserved its issues for review. Defendants also failed to attach a certificate of service to its motion for post-trial relief. Phila Local Rule. 227 (b) provides in part that: “All motions for post-trial relief shall be accompanied by a certificate of service setting forth the name of the Trial Judge and the names, addresses and telephone numbers of all counsel and unrepresented parties.” Based on failure to comply with Pa. R. Civ. P. 227.3 Phila Local Rule 227 (b) and (d), Defendants’ post-trial motion is denied.

II. Leaving aside Defendants’ technical failures in filing their post-trial motion, this court’s assessment of damages is proper and supported by the evidence.

Defendants claim the court should have assessed zero damages on a theory that Plaintiff failed to produce sufficient evidence to support the assessment. Defendants also claim we improperly shifted burden of proof to Defendants. For reasons discussed below, Defendants’ motion is denied.⁴

a. The court did not err by granting summary judgment in favor of Plaintiff and against Defendants on liability.

Defendants aver this court erred in granting summary judgment in favor of Plaintiff and against Defendants on liability. Defendants waived this objection.⁵ Defendants never objected to the order granting partial summary judgment on the issue of liability at the hearing. In fact,

⁴ Plaintiff argues that Defendants’ motion for post-trial relief is untimely. Pa. R. Civ. P. 227.1(c) requires the filing of post-trial motions within ten days of the filing of the decision in a nonjury trial. See, Pa.R.C.P. 227.1(c)(2). The ten-day period does not commence until the prothonotary sends notice of the decision to the parties. See, *Carr v. Downing*, 388 Pa.Super. 195, 565 A.2d 181, 181 (1989). Here, the Office of Judicial Records sent notice of the assessment to the parties on October 19, 2020. Defendants’ post-trial motion was filed on October 29, 2020. Hence the motion is timely.

⁵ See, Pa. R. Civ. P. 227.1 (b).

Defendants own pleadings admit they were in default and that a sum of \$40,000 was due and owing.⁶ Defendants' averment of error on this point is not worthy of further comment.

Defendants, however, also claim we improperly shifted its burden of proof to Plaintiff by finding summary judgment in favor of Plaintiff on liability. Again, Defendants did not contest liability in their papers opposing the motion for summary judgment, having admitted owing Plaintiff \$40,000. This liability concession was repeated during the damages trial as well.⁷

Even so, had no admission been made, the evidence presented in court was clear that Plaintiff's remaining balance on the principal was \$40,000. We did not assume any concessions or admissions to make this finding. By plain numbers and the notes themselves, we are satisfied the damages are affirmatively proven.

b. Defendants' fail in their claim that the amended servicing agreement between Plaintiff and GFCIB expired; therefore the court correctly assessed damages in favor of Plaintiff.

Defendants claim we erred by assessing damages in favor of Plaintiff and against Defendants based on their position that the Amendment to the Loan Servicing Agreement Plaintiff and GFCIB expired and was not renewed in writing. The Agreement provides in part as follows:

“The term of this Agreement shall begin on the Effective Date (i.e. March 1, 2018) and end on the second anniversary of the Effective Date (the “Term”), unless sooner terminated in accordance with Section 5, below. After the end of the Term, this Agreement shall be renewable upon the written agreement of the Parties.”⁸

The Agreement further provides that it “will be automatically renewed subject to a sixty (60) day notification from any party of their intent to withdraw from this Agreement.” Neither

⁶ See response in opposition to plaintiff's motion for summary judgment filed by Defendant Alan Zibelman, Esquire ¶¶13, 14-15 and 35-38. See response in opposition to plaintiff's motion for summary judgment filed by David Denenberg, Esquire ¶¶2, 16.

⁷See N.T. pp. 6, 8, 201.

⁸ Plaintiff's Exhibit 2.

GFCIB nor LGFC issued a sixty day notice of intent to withdraw.⁹ Since there were no notifications from either party to withdraw from the Agreement, the Agreement automatically renewed and did not expire.

c. The court did not rely on immaterial testimony of witness Jack Miller.

Defendants claim the court erred by relying on GFCIB representative Jack Miller's testimony. Defendants cite his lack of personal knowledge of record keeping relating to Plaintiff's payments. This claim fails for the simple reason that we did not rely on Miller's testimony relating to accounting of payments made and late fees assessed.

Miller was not reliable on how much Plaintiff's loan balance actually was at the time of LFC's original default. For example, Plaintiff LGFC introduced Plaintiff's Exhibit 3 ("P-3") as evidence of LFC's loan balance. P-3, an account history of the LFC loan from December 2014 to the present, fails to provide material evidence of the principal balance at the time of LFC's default for several reasons. First, P-3 showed late fee charges were added every month beginning in December 2014 and ending on July 31, 2020. Jack Miller's lack of personal knowledge, however, makes it impossible to determine the principal amount of the loan at the time of Plaintiff's original default. Second, P-3 does not provide a complete loan payment history, again making Exhibit P-3 immaterial. Accordingly, we could not accept P-3 as probative on whether late fees were charged before April 14, 2009, and if so, by how much.¹⁰ While Jack

⁹ N.T. p. 94, L5-17; p. 97 L 6-16.

¹⁰ Indeed Mr. Zibelman testified that when the loan was being serviced by Mr. Green "sometimes there were little problems with the recordkeeping and it was off a hundred dollars or two. And, Your Honor, this is after eight years of payments we were down to \$140 difference. Mr. Green and I never had a problem." (N.T. p. 147 L16-22). This testimony creates a reasonable inference that late fees were not charged during the time that Mr. Green serviced the loans, further reducing the probative value of the late fee charges written on P-3 from December 2014 to August 2016.

Miller confirmed that LFC was in default, a fact plain to the court, his testimony was not material to fact finding on how much is owed today. He could add nothing relevant to measuring amounts allegedly owed for late fees that began in December 2014, four and a half years after the loan originated in April 2009.¹¹

d. Proposed findings of fact and conclusions of law are not required.

Defendants claim we erred by deciding against assigning counsel the task of drafting proposed findings of fact and conclusion of law. Defendants are incorrect since there is no rule requiring a trial court to accept supplementary filings. In this case, given our general familiarity with the case following summary judgment motions, we preferred deciding the case based on testimony, exhibits and argument actually presented in court. Some trial courts fulfill their duty under Pa. R.C.P. 1038(b) by submitting a decision that consists “only of general findings as to all parties”; we offer specific findings and discussion here.¹²

e. The court properly assessed attorney fees and interest.

Defendants claim we erred by assessing attorney fees at 20% of the principal owed and interest at 24% per annum on the principal balance. Defendants waived this objection since they failed to object during the assessment of damages hearing when the court went over numbers with counsel.

¹¹ Similarly, Defendants aver that the court erred in assessing damages because Mr. Green, the principal of LFFC, suffers from dementia and because the other principal of LGF, Marvin Levin, is deceased. (See Exhibit 3 to Plaintiff’s response to Defendants’ motion.). Neither Mr. Green’s medical condition nor Mr. Levin’s death affected our ability to complete fact finding since other evidence was available.

¹² A fact-finder is free to believe all, part, or none of the evidence, and to assess the credibility of the witnesses. *Commonwealth v. Johnson*, 542 Pa. 384, 668 A.2d 97, 101 (1995). Questions about inconsistent testimony and motive go to the witnesses’ credibility. *Commonwealth v. Boxley*, 575 Pa. 611, 838 A.2d 608, 612 (2003).

No matter, our calculation of attorney fees and interest is based on the language of the actual Promissory Note dated April 9, 2009.¹³

CONCLUSION

For these reasons, Defendants' motion for post-trial relief is denied and judgment is entered in favor of Plaintiff L.G. Financial Consultants Inc. and against Defendants Lawyers Funding Group, LLC and Alan Zibelman in the amount of \$63,003.50.

DATE: March 2, 2021

BY THE COURT



RAMY I. DJERASSI, J.

¹³ See, Plaintiff's Exhibit "5".