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

SIGNATURE FINANCIAL, LLC

*Plaintiff*

v.

TOBA TAXI, LLC  
and  
EVERETT ABITBOL

*Defendants*

: November Term, 2018  
: Case No. 00421  
:  
: Commerce Program  
:  
:  
: Control No. 19013924


ORDER

AND NOW, this 18<sup>th</sup> day of June, 2019, upon consideration of the petition to strike or open judgment entered by confession, the response in opposition, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED** in its entirety and the **STAY OF EXECUTION IS LIFTED**.

BY THE COURT,

  
GLAZER, J.

COPIES SENT  
PURSUANT TO Pa.R.C.P. 236(b)

JUN 18  
FIRST JUDICIAL DISTRICT OF PA  
USER I.D.: 

Signature Financial, LI-ORDRC



18110042100014

## OPINION

On December 30, 2015, defendant Toba Taxi, LLC (“Borrower”), executed a promissory note (the “Note”), in favor of plaintiff, Signature Financial, LLC (“Lender”).<sup>1</sup> The Note contains a warrant-of-attorney empowering Lender to confess judgment against Borrower upon Borrower’s default.<sup>2</sup> Also on December 30, 2015, individual defendant Everett Abitbol (“Guarantor”), executed a personal guaranty (the “Guaranty”), in favor of Lender.<sup>3</sup> The Guaranty contains a warrant-of-attorney empowering Lender to confess judgment against Guarantor for any amounts remaining unpaid under the note.<sup>4</sup>

On November 5, 2018, Lender confessed judgment against Borrower and Guarantor for Borrower’s failure to make payments upon the note. On January 28, 2018, Borrower and Guarantor filed a petition to strike or open the confession of judgment and for a stay of execution. On February 5, 2018, this court issued an Order staying execution proceedings.

### The Petition to Strike

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.<sup>5</sup>

In the petition to strike, Borrower and Guarantor assert that the judgment should be stricken due to a number of fatal irregularities on the face of the record. First, they argue that the record is fatally flawed because the signatures of Borrower and Guarantor

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<sup>1</sup> Promissory Note, Exhibit A to the complaint.

<sup>2</sup> Id., p. 3.

<sup>3</sup> Guaranty, Exhibit B to the complaint.

<sup>4</sup> Id., at ¶ 17, pp. 5-6.

<sup>5</sup> Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267 (Pa. Super. 2015).

appear “pages away” from the warrants-of-attorney in the Note and Guaranty.<sup>6</sup> This argument is rejected because the law merely establishes that “[t]he requisite signature [of Borrower/Guarantor] must bear a direct relation to the warrant....”<sup>7</sup> Here, though the pertinent signatures may appear “pages away” from the respective warrants, they bear a direct relation thereto.

Second, the petition asks that the judgment be stricken because the warrants of attorney lack the initials of Borrower and Guarantor.<sup>8</sup> This challenge to the judgment is rejected because under the Pennsylvania Rules of Civil Procedure—

[t]he complaint [in-confession-of-judgment] shall contain ...  
the original or photostatic copy or like reproduction of the  
instrument **showing the defendant’s signature.**<sup>9</sup>

The above-quoted language merely requires that the signature of a defendant be affixed upon the document containing a warrant: it does not require any initials.

Third, the petition asserts that the judgment is invalid because it was confessed in Pennsylvania, even though the judgment was designed to be confessed exclusively in the State of New York.<sup>10</sup> This argument is rejected because the warrant of attorney in the Note contains the following language:

THE MAKER [BORROWER] HEREBY AUTHORIZES, IRREVOCABLY,  
THE PROTHONOTARY[,], THE CLERK OF COURT, OR ANY ATTORNEY  
OF **ANY COURT** OF RECORD TO APPEAR FOR THE MAKER IN SUCH  
COURT ... AND CONFESS A JUDGMENT WITHOUT PROCESS IN FAVOR  
OF ANY HOLDER OF THIS NOTE....<sup>11</sup>

This plain language leaves no doubt: it was the intent of the parties that judgment

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<sup>6</sup> Petition to strike, ¶ 27.

<sup>7</sup> L.B. Foster Co. v. Tri-W Constr. Co., 186 A.2d 18, 20 (Pa. 1962).

<sup>8</sup> Petition to strike, ¶ 29.

<sup>9</sup> Pa. R.C.P. 2952(a)(1) (emphasis supplied).

<sup>10</sup> Petition to strike, ¶¶ 32-28.

<sup>11</sup> Promissory Note, Exhibit A to the complaint, p. 3 (emphasis supplied). The warrant contained in the Guaranty contains substantially similar language. See, Guaranty, Exhibit B to the complaint at ¶ 20, p. 6.

be confessed in “any court of record,” and any court of record includes any court in Pennsylvania.<sup>12</sup>

Fourth, the petition challenges the validity of the judgment on grounds that “the notary’s signature in all ... documents is illegible,” the papers “reference two different notaries on the same page,” and it is “impossible to tell which notary notarized the documents.”<sup>13</sup> This challenge is rejected because the Pennsylvania Rules of Civil Procedure do not require that the documents in an action in confession of judgment be notarized. Instead, the Rules merely require that the complaint include “the original or a photostatic copy or like reproduction of the instrument showing the **defendant’s signature**.”<sup>14</sup> In this case, the Note and Guaranty bear the required signatures, and the illegibility of a notary’s signature cannot create a fatal flaw in the record.

Fifth, the petition challenges the validity of the judgment on grounds that the law of New York governs this case. The petition further asserts that under New York law, a confession of judgment requires adherence to certain strict formalities which are not adhered to in this case.<sup>15</sup> The petition concludes that the judgment is fatally flawed and should be stricken because the stricter formalities required under the New York law have not been observed in this action. This challenge is easily rejected because the Note clearly states that it “shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania,” and the Guaranty substantially restates the same

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<sup>12</sup> The interpretation of a contract is generally performed by a court, and the object thereof is to determine the intent of the parties as manifested by the language of the instrument. Madison Constr. Co. v. Harleysville Mut. Ins. Co., 735 A.2d 100, 106 (Pa. 1999).

<sup>13</sup> Petition to strike, ¶ 39.

<sup>14</sup> Pa. R.C.P. 2952(a)(2) (emphasis supplied).

<sup>15</sup> Id., ¶ 41.

language.<sup>16</sup> In short, the parties contractually agreed that Pennsylvania law, not New York law, should govern their relationship.

Based on the foregoing, the petition to strike the judgment entered by confession is denied because Borrower and Guarantor have failed to show any fatal flaw in the record.

#### PETITION TO OPEN

A petition to open a judgment entered by confession is the proper procedure to challenge any of the facts asserted by plaintiff in the complaint.<sup>17</sup> When deciding a petition to open, any factual doubts are resolved against the party confessing the judgment.<sup>18</sup>

Borrower and Guarantor assert that the judgment should be opened because Lender impaired the value of the collateral –that is, the value of Borrower’s taxicab medallions– as a result of its unsound lending practices, its refusal to refinance the underlying loan, and its failure to support the Borrower during a historic upheaval in taxicab industry.<sup>19</sup> Borrower and Guarantor also assert that the Lender breached its duty of good faith and fair dealings by misrepresenting the Borrower’s ability to refinance the underlying loan.<sup>20</sup> Finally, Borrower and Guarantor aver that they “wired \$35,000 to ... [Lender] in exchange for the promise that the loans would be refinanced and, the refinance never took place.”<sup>21</sup> These factual challenges are rejected because in an action in confession of judgment, “the petitioning party bears the burden of

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<sup>16</sup> Promissory Note, Exhibit A to the Complaint, at signature page; Guaranty, Exhibit B to the complaint, at ¶ 19, p. 6.

<sup>17</sup> Manor Bldg. Corp. v. Manor Complex Asscs., Ltd., 645 A.2d 843, 848 (Pa. Super. 1994).

<sup>18</sup> Scott Factors, Inc. V. Hartley, 228 A.2d 887, 888 (Pa. 1967).

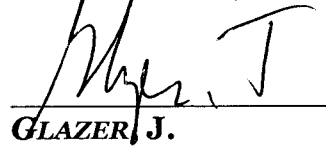
<sup>19</sup> Petition to open, ¶¶ 47-51.

<sup>20</sup> Id., ¶¶ 52-55.

<sup>21</sup> Id., ¶¶ 58-59.

producing sufficient evidence to substantiate its alleged defenses.”<sup>22</sup> In this case, Borrower and Guarantor have produced no evidence showing how the Lender impaired the value of the taxicab medallions, no evidence showing any misrepresentations which Lender allegedly made, and no evidence of payment of \$35,000 in exchange for a promise to refinance the underlying loan. For these reasons, the petition to is denied in its entirety.

BY THE COURT,

A handwritten signature in black ink, appearing to read "J. Glazer", is written over a horizontal line. The signature is stylized with a large initial "J" and a prominent "G".

GLAZER, J.

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<sup>22</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).