

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

DOCKETED
JUL 18 2019
N. ERICKSON
DAY FORWARD

KEY BANK f/k/a FIRST NIAGARA

Plaintiff

v.

FINANCIAL INVESTMENTS AND TRUST
and PEDRO TEIXEIRA

Defendants

: February Term, 2019
:
: Case No. 01051
:
: Commerce Program
:
: Control No. 19047009
:

ORDER

AND NOW, this 18th day of July, 2019 upon consideration of the petition to vacate confession of judgment, the answer in opposition, the respective memoranda of law, and after a hearing held on July 17, 2019, it is **ORDERED** that the petition is **DENIED**.

The **STAY OF EXECUTION** issued on June 5, 2019 is **LIFTED**.

BY THE COURT,


NINA W. PADILLA, J.

Key Bank F/K/A First Niagara Vs Financial In-ORDOP



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OPINION

Plaintiff is a financial corporation named Key Bank (“Lender”); corporate defendant is an entity named Financial Investments and Trust (“Borrower”); individual defendant is Pedro Teixeira (“Guarantor”). Lender, Borrower, and Guarantor, are based in Philadelphia, Pennsylvania.

On June 27, 2014, Borrower executed a Revolving Line-of-Credit Note (the “Note”), while Guarantor executed a personal guaranty. Under the terms of the Note and Guaranty, Borrower and Guarantor promised to repay to Lender the loan amount, plus other specified amounts. The Note contained two warrants-of-attorney entitling Lender to confess judgment against Borrower and Guarantor upon a default committed by either.¹

On February 12, 2019, Lender confessed judgment against Borrower and Guarantor for their failure to pay the amounts due.² The amount confessed under the judgment is \$30,317.97, which includes an unpaid balance of \$25,000.00, interest of \$2,424.05, attorney’s fees of \$2,742.41, and filing costs of \$151.51.

Borrower and Guarantor filed the instant petition to strike the confessed judgment. Defendants have improperly captioned their petition as a “petition to vacate confession of judgment.” However the petition, if properly captioned, would have been filed as a petition to strike confession of judgment. The Court has nevertheless ignored the defendants’ error because “the substantial rights of the parties are not affected” by the improper caption.³ Hereinafter, the Court will treat the petition to vacate as a petition to strike. Lender filed a timely response in opposition to the petition.

¹ Revolving Line-of-Credit Note, Exhibit A to the complaint, ¶¶ 1, 24; Guaranty.

² Complaint, ¶ 16.

³ Pa. R.C.P. 126.

DISCUSSION

A petition to strike a confessed judgment “will not be granted unless a fatal defect ... appears on the face of the record. If the record is self-sustaining, the judgment will not be stricken.”⁴

In the petition, Borrower and Guarantor challenge the validity of the judgment on grounds that Lender, a non-Pennsylvania entity, lacks capacity to enter the instant judgment because it is not registered to do business in Pennsylvania.⁵ Specifically, Defendants rely on the Pennsylvania Consolidated Statutes Annotated, 15 Pa. C.S.A. § 411, which states that “a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.”⁶

In the response in opposition, Lender asserts that it is exempted from the requirements of 15 Pa. C.S.A. § 411(a), pursuant to a section found within the same statutory chapter –that is, § 401(c)(1)(i).⁷ Section 401(c)(1)(i) states in pertinent part as follows:

(c) Domestic federal financial association exclusion.— Except as permitted by act of Congress, **this chapter shall not apply to:**

- (1) Any of the following institutions or similar federally chartered institutions engaged in this Commonwealth in activities similar to those conducted by banking institutions or credit unions:
 - (i) National banking associations organized under The National Bank Act (13 Stat. 99,

⁴ Fourtees Co. v. Sterling Equip. Corp., 363 A.2d 1229, 1232 (Pa. Super. 1976).

⁵ Petition to strike, ¶ 12.

⁶ 15 Pa. C.S.A. § 411(a).

⁷ Answer in opposition to the petition to strike, ¶ 12.

12 U.S.C. § 1 *et seq.*).⁸

In support of its response, plaintiff has attached a verification signed by its vice president, Mr. David Williams (“Mr. Williams”), “subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.”⁹ Mr. Williams verifies that plaintiff, “Key Bank, as a subsidiary of KeyCorp., is a national banking association organized under the National Bank Act (13 Stat. 99, 12 U.S.C. § *et seq.*).”¹⁰

On July 17, 2019, this Court held a hearing on “whether ... [Lender], allegedly a non-Pennsylvania entity, is registered to do business in our Commonwealth as required under 15 Pa. C.S.A. § 411(a), and/or whether such a requirement does not apply to ... [Lender] pursuant to 15 Pa. C.S.A. § 401(c)(1)(i).”¹¹ Lender appeared at the hearing; however, defendants did not, nor did they file any reply brief to rebut Lender’s averment of exemption. Notwithstanding defendants’ failure to appear, this Court is satisfied that Lender is exempted from the requirements of § 411(a). The Court reaches this conclusion after a straightforward reading of Committee Comment—2014, to 15 Pa. C.S.A. § 401(c). In that section, the Committee explained that

[a] financial institution organized under the laws of another jurisdiction is subject to this chapter [requiring registration in Pennsylvania] **unless** it is an interstate bank or Federal financial institution....¹²

⁸ 15 Pa. C.S.A. § 401(c)(1)(i) (emphasis supplied).

⁹ Verification of Mr. David Williams attached to the answer of Lender in opposition to the petition.

¹⁰ *Id.*

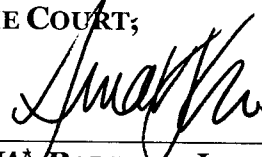
¹¹ Order dated June 5, 2019, footnote, 2nd paragraph.

¹² 15 Pa. C.S.A. § 401 *et seq.* (Emphasis supplied). The Court notes that under Pa. C.S.A. § 102(a), an association is defined as a—

corporation, for profit or not-for-profit, a partnership, a limited liability company, a business or statutory trust, an entity or two or more persons associated in a common enterprise or undertaking....

In this case, the unrebutted verification of Mr. Williams suffices to convince the Court that Lender is a national banking association organized under the National Bank Act; consequently, Lender is exempted from the requirements of § 411(a) by operation of § 401(c)(1)(i), and is not required under the latter to register with the Department of State of Pennsylvania. In conclusion, Lender does not lack capacity to sue in this Commonwealth, and Borrower and Guarantor have not identified any fatal flaws in the record; therefore, their petition to strike the judgment entered by confession is denied.

BY THE COURT;

A handwritten signature in black ink, appearing to read "Nina W. Padilla", written over a horizontal line.

NINA W. PADILLA, J.