

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

RECEIVED
AUG 12 2019
ROOM 521

SANTANDER BANK, N.A.

Plaintiff

v.

SHAHEED PURNELL

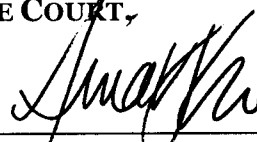
Defendant

: March Term, 2019
: Case No. 0299
:
:
: Commerce Program
:
: Control No. 19051631
:

ORDER

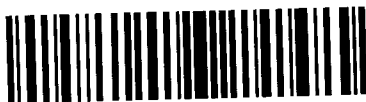
AND NOW, this 9th day of August, 2019, upon consideration of the petition to strike or open judgment entered by confession, the response in opposition, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED**. The amount of attorney's fees is **MODIFIED** and **REDUCED** to \$14,293.00. The new amount in confession of judgment is reduced to **\$158,972.31**. The **STAY OF EXECUTION** is **LIFTED**.

BY THE COURT,



NINA W. PADILLA, J.

Santander Bank, N.A., F-ORDRC



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DOCKETED

AUG 12 2019

**R. POSTELL
COMMERCE PROGRAM**

OPINION

Plaintiff, Santander Bank, N.A. (“Lender”), loaned \$140,000 to defendant, (“Borrower”), pursuant to the terms of a promissory note (the “Note”) dated April 22, 2016.¹ The Note contains a warrant-of-attorney empowering Lender to confess judgment against Borrower upon the occurrence of a default. Under the Note, Lender is entitled to recover the “entire principal balance” of the loan and “accrued interest,” plus attorney’s fees thereon of 10%.² Lender is also entitled to recover late charges and costs-of-suit.³

Lender confessed judgment against Borrower on March 12, 2019. The complaint avers that Borrower received notice of his default on February 28, 2019, for a breach that occurred at a later date, March 11, 2019.⁴

On May 13, 2019, Borrower filed the instant petition to strike or open the confessed judgment and for a stay of execution. This Court stayed execution proceedings until further Order, and Lender subsequently filed its answer in opposition to the petition. The parties’ respective positions have been briefed.

DISCUSSION

The Petition to Strike

A petition to strike judgment entered by confession will be granted only if a fatal flaw or defect appears on the record.⁵

In the petition, Borrower alleges that the judgment is fatally flawed and should be

¹ Promissory Note, Exhibit A to the complaint.

² *Id.*, p. 3—Confession of Judgment.

³ *Id.*

⁴ Complaint, ¶¶ 6, 8.

⁵ *Resolution Trust Corp. v. Copley Qu—Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996).

stricken because the Note attached to the record is “written in extremely small and blurry font,” and Borrower’s counsel “is unable to read ... [it in its] entirety.”⁶ This challenge to the validity of the judgment is rejected because a properly labeled and readable warrant-of-attorney may not fail just because its text is printed in small font.⁷ Here, the Court had no difficulty reading the entire Note, including its warrant-of-attorney, notwithstanding a degree of blurriness in the text.

Next, Borrower avers that the judgment is fatally flawed and should be stricken because Lender’s certificate of service was not “properly served” upon Borrower.⁸ This challenge is likewise rejected because such a defect, if any, does not create a fatal flaw in the record. The flaw is not fatal because the docket shows that notwithstanding any alleged improprieties in the service, Borrower was nevertheless able to petition for relief and defend his case –albeit two days beyond the thirty-day period contemplated under Pa. R.C.P. 2959(a)(3). In short, any impropriety of service by Lender, and any delay by Borrower in filing the instant petition, may be excused as non-fatal pursuant to Pa. R.C.P. 126, which instructs that “[t]he court at every stage of any action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.” In this case, the record does not contain fatal flaws, and the petition to strike is denied.⁹

The Petition to Open

A petition to open rests within the discretion of the trial court, and may be granted if the petitioner—

⁶ Petition to strike, ¶¶ 4, 6.

⁷ Plum Tree, Inc. v. Seligson, 307 A.2d 298, 299 Pa. Super. 1973.

⁸ Petition to strike, ¶ 17.

⁹ Borrower additionally asserts that the judgment should be stricken because his initials do not appear immediately after the warrant-of-attorney. See petition to strike, ¶ 15. This challenge is rejected because the Pennsylvania Rules of Civil Procedure do not require a defendant’s initials. Instead, the law simply requires that a defendant’s signature “bear a direct relation to the warrant-of-attorney.” L.B. Foster Co. v. Tri W Const. Co., 186 A.2d 18, (Pa. 1962).

- (1) acts promptly,
- (2) alleges a meritorious defense, and
- (3) can produce sufficient evidence to require submission of the case to a jury.¹⁰

In addition,

[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.¹¹

In the petition, Borrower asserts that the complaint “fails to aver an accurate date of default.”¹² According to Borrower, the complaint avers on one hand that Borrower defaulted “as of March 11, 2019,” and avers on the other that Borrower was advised of the default on February 28, 2019.”¹³ Borrower notes that he “could not have been advised of a default prior to said default occurring.”¹⁴ Based on the foregoing, Borrower argues that Lender’s failure to state an accurate date of default creates an issue of fact, and the issue of fact requires that the judgment be opened. This defense is rejected. First, the Court notes that Borrower does not deny defaulting on the Note. Second, the Court notes that the warrant-of-attorney contains the following provision:

BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE TO NOTICE OR TO A HEARING IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT AND STATES THAT EITHER A REPRESENTATIVE OF LENDER SPECIFICALLY CALLED THIS CONFESSION OF JUDGMENT PROVISION TO BORROWER’S ATTENTION OR BORROWER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL.¹⁵

This language is clear and unambiguous: under the Note, Borrower waived any right to

¹⁰ *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa. Super. 2011).

¹¹ *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984).

¹² Complaint, ¶ 23.

¹³ *Id.* See also, Complaint, ¶¶ 6, 8

¹⁴ *Id.* ¶ 23, footnote No. 2.

¹⁵ Promissory Note—warrant of attorney, Exhibit A to the complaint. “The interpretation of any contract is a question of law.... In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement.” *Humberston v. Chevron U.S.A., Inc.*, 75 A.3d 504, 509–10 (Pa. Super. 2013).

notice in connection with the confession of judgment, including a notice of a default for failure to make payments. Since Borrower waived any rights to notice, any inaccuracies in the timeline between Borrower's default and Lender's notice is immaterial, inconsequential, and of no merit. Stated differently, Borrower has not only admitted defaulting upon the Note, but has also failed to offer any evidence to substantiate that the allegedly inaccurate date of Lender's notice has somehow vitiated the ensuing judgment. For this reason, this defense is rejected.

Borrower asserts a number of additional defenses in support of his petition to open the judgment. For example, Borrower states that he did not voluntarily waive his due process rights because his knowledge of the English language is poor.¹⁶ Under the law of Pennsylvania, a knowing waiver is presumed unless the party signing the warrant-of-attorney has an annual income of less than \$10,000.¹⁷ Here, however, Borrower has offered no evidence that his income is less than \$10,000, and this defense is rejected.

Finally, Borrower avers that Lender has claimed an incorrect amount of attorney's fees.¹⁸ However, the warrant-of-attorney states in pertinent part that after a default committed by Borrower, Lender may confess judgment—

FOR THE ENTIRE PRINCIPAL BALANCE OF THIS NOTE AND ALL
ACCRUED INTEREST, LATE CHARGES AND ANY AND ALL AMOUNTS
EXPENDED OR ADVANCED BY LENDER RELATING TO ANY
COLLATERAL SECURING THIS NOTE, TOGETHER WITH COSTS AS
SUIT AND AN **ATTORNEY'S COMMISSION OF TEN PERCENT
(10%) OF THE UNPAID BALANCE AND ACCRUED
INTEREST....**¹⁹

¹⁶ Petition to open, ¶¶ 12-14.

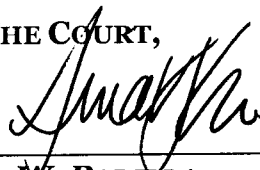
¹⁷ Swarb v. Lennox, 405 U.S. 151 (U.S. 1972).

¹⁸ Petition to open, ¶¶ 18-22.

¹⁹ Promissory Note, at p. 3, Exhibit A to the complaint (emphasis supplied).

In this case, a quick computation shows that 10% of the unpaid balance and interest equals \$14,293.00, whereas Lender has claimed the slightly greater amount of \$14,452.31. Under Pennsylvania law, "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."²⁰ For this reason, the amount of attorney's fees is modified and Lender may not recover attorney's fees in excess of 14,293.00.

BY THE COURT,



NINA W. PADILLA

²⁰ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 431 Pa. Super. 541, 552, 637 A.2d 309, 314 (1994)