

DOCKETED
OCT 18 2019
R. POSTELL
COMMERCE PROGRAM

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

SPRING GARDEN LENDING GROUP, LLC

Plaintiff

v.

THOMAS WRIGHT

Defendant

: June Term, 2019
: Case No. 05135
:
:
: Commerce Program
:
:
: Control No. 19082886

ORDER

AND NOW, this 18th day of October, 2019, upon consideration of defendant's petition to open confession of judgment and for a stay of execution, the answer of plaintiff in opposition thereto, and defendant's reply, it is **ORDERED** that the petition is **DENIED**.

BY THE COURT,


GLAZER, J.

Spring Garden Lending G-ORDRC



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OPINION

Plaintiff is Spring Garden Lending Group (“Lender”), an entity based in Philadelphia, Pennsylvania. Defendant is Thomas Wright, an individual with an address in Maryland (“Borrower”). Borrower required funds to renovate and repair real property in Philadelphia, and obtained such funds from Lender; therefore, on November 30, 2017, Borrower signed a promissory note in excess of \$180,000.00 (the “Note”), in favor of Lender. The Note contains a warrant-of-attorney empowering Lender to confess judgment upon a default committed by Borrower.¹

On June 4, 2019, Lender confessed judgment against Borrower for his “failure to pay the balance due at maturity.”² The amount confessed by Lender is \$156,145.49, which includes a principal balance of \$140,363.23, interest of \$1,395.94, processing fees of \$350.00, and attorney’s fees of \$14,036.32.

On August 22, 2019, Borrower filed the instant petition to open the confessed judgment; subsequently, on September 12, 2019, Lender filed an answer to the petition. The petition to open the confessed judgment is denied.

DISCUSSION

The law on opening a confession of judgment is well-settled:

if the truth of the factual averments contained in the complaint in confession of judgment and attached exhibits are disputed, then the remedy is by proceeding to open the judgment.... A petition to open a confessed judgment is an appeal to the equitable powers of the court.³

Moreover, **due process** in an action in confession of judgment—

¹ Promissory Note, Exhibit A to the complaint, p. 3.

² Complaint, ¶ 8.

³ Neducsin v. Caplan, 121 A.3d 498, 504–05 (Pa. Super. 2015).

does not require a proceeding comparable to a full trial, but may be satisfied by other procedural opportunities to be heard, such as a petition to open judgment....⁴

Finally, in an action in confession of judgment—

the petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.⁵

If evidence is produced which in a jury trial would require the issues to be submitted to the jury[,] the court shall open the judgment.⁶

In the petition to open the judgment, Borrower avers that Lender breached its implied duty of good faith and fair dealing, as well as its fiduciary duties, by interfering with Borrower's ability to fulfill his obligations and to complete the repair work upon the property.⁷ Borrower specifically avers that Lender improperly and "unilaterally imposed its own process for releasing draws on the loan ... withheld funding [from Borrower and] ... became involved in the actual day-to-day management and operations" of Borrower's enterprise.⁸ Borrower also avers that the judgment should be opened because he "made significant improvements" upon the property, and argues that Lender would be unjustly enriched if it were allowed to recover the full amount in confession.⁹ All of borrower's defenses are rejected because a judgment entered by confession may be opened if "evidence is produced which in a jury trial would require the issues to be submitted to the jury," whereas "the petitioning party bears the burden of producing sufficient

⁴ Dollar Bank Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994) (emphasis supplied).

⁵ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984) (emphasis supplied).

⁶ Pa. R.C.P. 2959(e) (2019).

⁷ Petition to open, ¶ 13-14,

⁸ Id., ¶¶ 24-26, 38, 57.

⁹ Id., ¶¶ 58-59.

evidence to substantiate ... [such] alleged defenses.”¹⁰

In this case, Borrower has produced no evidence that Lender interfered with his ability to fulfill any obligations under the Note, no evidence that Lender withheld any funds or became involved in the operations of Borrower’s enterprise, and no evidence of any repairs made upon the property as would allow Lender to enjoy the fruits of unjust enrichment. Borrower has failed to sustain his burden of proof, and for this reason the petition to open is denied in its entirety.

BY THE COURT,



GLAZER, J.

¹⁰ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984); Pa. R.C.P. 2959(e) (2019).