

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

DELAWARE VALLEY AAMCO DEALERS
ASSOCIATION, INC.

Plaintiff

v.

LIVINGSTON T. JOHNSON
and
LJ AUTOMOTIVE, LLC

Defendants

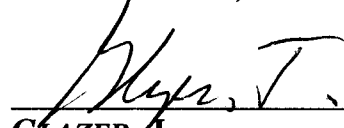
: July Term, 2019
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: Case No. 00384
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: Commerce Program
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: Control No. 19081553

ORDER

AND NOW, this 6th day of September, 2019, upon consideration of defendants' petition to strike or open confession of judgment, the answer of plaintiff, and the respective briefs, is it **ORDERED** that the petition is **GRANTED-IN-PART** and the judgment is **STRICKEN** only as to individual defendant Livingston T. Johnson. The remainder of the petition is **DENIED**.

The stay of execution is **LIFTED**.

BY THE COURT,



GLAZER, J.

Delaware Valley Aamco D-ORDRF



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OPINION

The petition to strike or open judgment requires this court to determine whether the signature affixed by an individual in his corporate capacity is sufficient to bind him personally to a warrant-of-attorney contained in a promissory note. The court finds that the signature executed by the individual in his corporate capacity bears no direct relation to the warrant-of attorney, and has no power to bind him thereto. In addition, the petition requires this court to determine whether the individual defendant's executed promise to be personally bound in a separate-yet-related agreement bears a direct relation to a warrant-of-attorney contained in the promissory note. The court finds that the signature of individual defendant upon a separate-yet-related agreement bears no direct relation to the warrant contained in the promissory note, and cannot bind him thereto.

BACKGROUND

Plaintiff, Delaware Valley AAMCO Dealers Association, Inc. ("Advertiser"), is a corporation that provides marketing and advertising services to the automotive industry. Defendant LJ Automotive, LLC ("LJ Automotive"), is an entity engaged in the automotive business; individual defendant Livingston T. Johnson ("Mr. Johnson"), is a member of LJ Automotive.

In 2006, LJ Automotive executed an installment note (the "Note"), which included a warrant-of-attorney.¹ Under the Note, LJ Automotive agreed to make a number of weekly payments of \$725.00 to Advertiser.²

On July 2, 2019, Advertiser entered judgment by confession against LJ

¹ Note, Exhibit A to the complaint.

² Id., p. 5.

Automotive and Mr. Johnson for defaulting upon the Note. The complaint avers that LJ Automotive and Mr. Johnson defaulted by failing to make fifty-four (54) payments. Advertiser claims a total amount of \$80,939.15, which includes \$39,875.00 (the unpaid weekly amounts), \$442.50 (for a partial unpaid week), \$28,275.00 (an accelerated amount), and \$12,346.65 (attorney's fees).

On August 12, 2019, LJ Automotive and Mr. Johnson filed a petition to strike or open the confessed judgment. The petition asserts that the judgment should be stricken in its entirety because Mr. Johnson executed the Note exclusively in his capacity as a member of LJ Automotive, not in his individual capacity.³ The petition to strike is granted-in-part and denied-in-part.

DISCUSSION

A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.... A fatal defect on the face of the record denies the prothonotary the authority to enter judgment.... When deciding if there are fatal defects on the face of the record ... a court may only look at what was in the record when the judgment was entered.⁴

An examination of the Note reveals that Mr. Johnson signed that document in a space reserved exclusively for execution by an “**Authorized Member**” of LJ Automotive.⁵ The court has further observed that below Mr. Johnsons’ signature, the Note contains three additional lines reserved exclusively for execution by persons acting “**Individually.**” The three lines are unexecuted and blank.⁶ Based on the foregoing, the court concludes that Mr. Johnson’s signature in his capacity as an authorized

³ Motion to strike confessed judgment, ¶¶ 3-14.

⁴ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267–68 (Pa. Super. 2015).

⁵ Note, Exhibit A to the complaint, p. 6. (Emphasis supplied).

⁶ Id., (emphasis supplied)

member of LJ Automotive cannot bind him personally to the warrant-of-attorney contained in the Note. The court reaches this conclusion because—

[a] warrant of attorney to confess judgment must be self-sustaining and to be self-sustaining the warrant must be in writing and signed by the person to be bound by it. The requisite signature must bear a **direct relation** to the warrant of attorney and may not be implied.⁷

In this case, Mr. Johnson’s signed exclusively as an authorized member of LJ Automotive and his signature bears no direct relation to the warrant-of-attorney as to bind him personally thereto. For this reason, the judgment entered against him is void *ab initio* and is stricken.⁸

In the opposition to the petition to strike, Advertiser advances an indirect assertion purporting to demonstrate that Mr. Johnson is individually liable for the default of LJ Automotive. Advertiser argues that in a related agreement titled Agreement to Participate in Advertising Pool (the “Pool Agreement”), Mr. Johnson agreed “**to be personally bound by this Agreement and the Attached Installment Note.**”⁹ Advertiser concludes that the judgment entered personally against Mr. Johnson is proper because he is liable for the default of LJ Automotive by virtue of his representations in the separate-yet-related Pool Agreement. This argument is likewise rejected because Mr. Johnson’s signature on the Pool Agreement is insufficient to bind him to the warrant-of-attorney contained in the Note. His signature

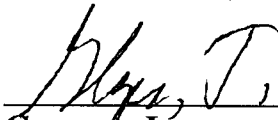
⁷ *L. B. Foster Co. v. Tri-W Const. Co.*, 186 A.2d 18, 20 (Pa. 1962). (Emphasis supplied).

⁸ “[A] petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief.... A fatal defect on the face of the record denies the prothonotary the authority to enter judgment.... When a prothonotary enters judgment without authority, that judgment is void *ab initio*. *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1267 (Pa. Super. 2015).

⁹ Response in opposition, ¶ 4; Agreement to Participate in Advertising Pool, Exhibit A to the complaint, § O at p. 3.

on the Pool Agreement is insufficient because the law clearly requires that the signature of a would-be obligor “bear a direct relation to the warrant of attorney” and not, as is the case here, to a separate-though-related agreement. This court cannot find that a direct relation exists between Mr. Johnson’s signature on the Pool Agreement and the warrant-of-attorney found at the end of the Note. For this reason, the petition to strike the confessed judgment is granted-in-part and the judgment is stricken as to Mr. Johnson individually. The remainder of that petition is denied.

BY THE COURT,



GLAZER, J.