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

September Term, 2019
Case No. 01684

Commerce Program
Control No. 19102076

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OPINION

Defendant Oxford Federal, LLC (“Borrower”), is a company with an address in Philadelphia, Pennsylvania. Individual defendant Jarred Scott Yaron (“Guarantor”), is a member of Borrower who, at all times relevant to this action, held the power to execute contracts on behalf of Borrower.

On June 6, 2016, plaintiff, Centric Bank (“Lender”), issued a “Commitment Letter” whereby it promised to fund certain business projects of Borrower, for up to \$2,075,000.00. The promise to provide such funds, however, was “subject to receipt of ninety percent (90%) guaranty from the Small Business Administration” (“SBA”).¹

On July 16, 2016, before the SBA could issue a decision as to whether or not it should offer a 90% guarantee to Borrower, Lender provided Borrower with a stop-gap loan in the amount of \$100,000.00.² Borrower agreed to repay this loan under the terms of a promissory note (the “Note”). The Note contained a warrant-of-attorney empowering Lender to confess judgment upon a default committed by Borrower.³ On the same date, July 16, 2016, Guarantor personally guaranteed the \$100,000.00 loan by executing in favor of Lender a guaranty which also contained a warrant-of-attorney.⁴

On July 18, 2016, the SBA forwarded to Borrower a letter of rejection. The letter stated:

We have reviewed the above referenced loan guarantee request, however we are unable to approve the request for the following reason(s):

Pending legal action against the applicant.

¹ Commitment Letter, Exhibit B to the petition to strike or open confession of judgment and for a stay of execution, ¶ 7.

² Borrower and Guarantor admit that the \$100,000.00 loan was meant to operate as a stop-gap loan. See, petition to open confession of judgment, ¶ 44.

³ Promissory note dated July 16, 2016, Exhibit A to the complaint, p. 2.

⁴ Guaranty dated July 16, 2016, Exhibit B to the complaint.

Our review of the file revealed that the owner of the business is the subject of a pending lawsuit with **Bancorp** with an as yet undetermined amount of exposure. Based upon the potential substantial adverse change this poses to the future operation and cash flow of the business, we have concluded that it presents excessive risk to repayment of the requested loan.⁵

Subsequently, between August 12, 2016, and September 5, 2017, Borrower and Lender executed five separate Change-in-Terms Agreements (“CIT Agreements”) to the original \$100,000.00 Note. Under the new CIT Agreements, Lender agreed to increase the loan amount of \$150,000.00, and to extend the maturity dates for repayment of the obligation.⁶ During the same approximate period, Guarantor executed four separate guaranties to each new CIT Agreement.⁷ Each new CIT Agreement and Guaranty contained a warrant-of-attorney empowering Lender to confess judgment upon a default committed by Borrower.

On September 12, 2019, Lender entered judgment by confession against Borrower and Guarantor on the grounds that they “have refused or are unwilling or unable to pay the outstanding sums due under the Note, Guaranties and ... [CIT] Agreements.”⁸ On October 15, 2019, Borrower and Guarantor filed a petition to strike or open the confessed judgment and for a stay of execution. The petition contains a counterclaim for damages, at paragraphs 46-47.⁹ The counterclaim states as follows:

[a]s previously stated herein ... [Lender’s] failure to deliver on its letter of commitment ... of the \$2,075,000.00 loan proceeds has resulted in significant and irreparable

⁵ Letter of rejection from SBA to Borrower, Exhibit C to the petition to strike or open confession of judgment and for a stay of execution.

⁶ Change-in-Terms Agreements, Exhibits D, E, F, G, I and J to the complaint.

⁷ Guaranties, Exhibits C, E and H to the complaint.

⁸ Complaint, ¶ 25.

⁹ It is proper to include a counterclaim in the petition to open or strike a confessed judgment so that the issues raised thereby can be determined in the event the judgment is opened. Lambakis v. Exar, 490 A.2d 882, 885-886 (Pa. Super. 1985).

monetary and reputational harms to ... [Borrower and Guarantor], including ... counsel fees ... [l]oss of opportunity to bid on a twenty-five million dollars [contract] ... during pendency of an involuntary bankruptcy action ... [l]oss of at least five million dollars in investments; [l]oss of a least five million dollars worth of international trade; [l]oss of the ability to pay ... one-hundred twenty-five thousand dollars ... of federal tax debt ... [etc.]¹⁰

On November 5, 2019, Lender filed a response in opposition to the petition, and on November 27, 2019, Borrower and Guarantor filed a reply in further support of their petition.

DISCUSSION

THE PETITION TO STRIKE.

Borrower and Guarantor assert that the judgment should be stricken because Lender required Borrower and Guarantor to concurrently “sign a separate Disclosure of Confession of Judgment ... to ... acknowledge the fact that the promissory note contained a clause which authorized the lender to enter judgment ... by confession.”¹¹ Borrower and Guarantor thus conclude that the adoption of a document titled “Disclosure of Confession of Judgment” operated as an admission by Lender that the warrant of attorney, by itself, was insufficient to authorize the entry of a confession of judgment.¹² In other words, Borrower and Guarantor argue that the judgment is fatally flawed because the warrants-of-attorney are not self-sustaining. This argument is rejected.

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

¹⁰ Petition to strike or open confession of judgment and for a stay of execution, ¶ 47; *see also*, Declaration of Guarantor Jarred Scott Yaron attached to the reply of Borrower and Guarantor in further support of their petition to strike or open confession of judgment and for a stay of execution.

¹¹ Petition to strike, ¶ 39.

¹² *Id.*

irregularity appearing on the face of the record.... 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.¹³

In addition—

[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.¹⁴

In this case, all the warrants-of-attorney authorized by Borrower and Guarantor are written; moreover, they are self-sustaining because Borrower and Guarantors affixed their respective signature immediately below the pertinent written text. Thus, the signatures from Borrower and Guarantor bear a direct relation to the warrants, and for this reason the Court finds no fatal flaws in the record, and no grounds for striking the judgment.

THE PETITION TO OPEN.

Borrower and Guarantor assert that they would not have entered into the various agreements with Lender, “but for ... [Lender’s] letter of commitment and continuous assurances that ... [Borrower] would be approved for the larger ... [\$2,075,000.00] loan.”¹⁵ Borrower and Guarantor aver that Lender failed to honor its commitment to provide a loan in excess of \$2 million, and conclude that Lender’s conduct triggered the events that ultimately caused Borrower and Guarantor to default on the Note.¹⁶ This argument is likewise rejected.

Preliminarily, the Court notes that Lender’s Commitment Letter, at paragraph 7,

¹³ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267–68 (Pa. Super. 2015).

¹⁴ Neducsin v. Caplan, 121 A.3d 498, 505 (Pa. Super. 2015).

¹⁵ Petition to open, ¶ 44.

¹⁶ Id., ¶ 45.

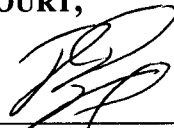
contains a condition precedent which specifically states that Lender would provide Borrower with a \$2,075,000.00 loan “subject to receipt of ninety percent (90%) guaranty from the Small Business Administration.”¹⁷ A straightforward reading of this provision yields but one conclusion –namely, that Lender would become obligated not only to loan the amount of \$2,075,000.00, but to also assume 10% of the risk thereof, **if** the SBA assumed the risk to guarantee the remaining 90% of that loan. Next, the court notes that on July 18, 2016, the SBA declined to offer any guaranty whatsoever to the proposed loan of \$2,075,000.00. Finally, the Court notes that the standards for opening a confession of judgment are well-settled:

[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.¹⁸

Where a judgment debtor offers clear and substantial evidence ... the burden of proof shifts to the judgment holder [herein Lender].¹⁹

In this case, Borrower and Guarantor bore the burden of showing that the condition precedent in the Commitment Letter had been satisfied –that is, Borrower and Guarantor bore the burden of showing that the SBA had agreed to guarantee 90% of the \$2,075,000.00 loan committed by Lender. Borrower and Guarantor have not produced such evidence and have not met their burden of proof. For this reason, the petition is denied in its entirety.

BY THE COURT,



RAMY I. DJERASSI, J.

¹⁷ Commitment Letter, Exhibit B to the petition to strike or open confession of judgment and for a stay of execution, ¶ 7. “[A] condition precedent may be defined as a condition which must occur before a duty to perform ... arises.” *Acme Markets, Inc. v. Fed. Armored Exp., Inc.*, 648 A.2d 1218, 1220 (Pa. Super. 1994).

¹⁸ *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984).

¹⁹ *Ritchey v. Mars*, 324 A.2d 513, 516 (Pa. Super. 1974).