

OPINION

Defendant (“Borrower”), promised to repay certain sums of money to plaintiff (“Lender”), pursuant to the terms of a promissory note (the “Note”). The Note was amended three times over a period running from November 2008 to September 2018. The Note, its Amendments, and the “Loan Documents” attached thereto, contained either specific warrants-of-attorney, or incorporated such warrants by reference.¹

On September 13, 2019, Lender confessed judgment against Borrower as a result of Borrower’s “failure to make payment of all outstanding principal and accrued interest on or before the maturity date of March 31, 2019.”² Borrower has challenged the judgment by filing the instant petition to strike or open, and for a stay of execution.

The Petition to Strike

In the petition, Borrower asserts that the judgment should be stricken because the loan documents, including the Note and its Amendments, are “ambiguous as to the final payment of the Loan balance.”³ This argument is rejected as improper because a judgment entered by confession shall be stricken only when a fatal defect or irregularity appears on the face of the record.⁴ In this case, the ambiguous language in the operative loan documents, if any, does not constitute a fatal flaw in the record because any contractual ambiguities may be properly interpreted and resolved by the Court: “[t]he task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the

¹ (Exhibits A, C, D and E to the Complaint).

² Complaint, ¶ 9.

³ (Petition to strike, ¶ 7).

⁴ Resolution Trust Corp. v. Copley Qu-Wayne Assocs., 683 A. 2d 269273 (Pa. 1996).

language of the written instrument.”⁵ For this reason, the petition to strike confession of judgment is denied.

The Petition to Open

In the petition to open, Borrower asserts that the last Amendment to the Note, dated September 14, 2018, “nowhere ... state[s] that failure to pay all principal and interests before [the maturity date of] March 31, 2018, constitutes a default.”⁶ Borrower concludes that “it did not violate the Loan Documents, as it paid the agreed upon payments on a timely basis up until the [maturity date of] March 31, 2019 and was at all times during the 2018 Amendment ... in compliance with the Loan Documents.”⁷ In essence, this argument appears to state that Borrower’s failure to pay the outstanding principal did not constitute an event of default because the last amendment to the Note, dated September 14, 2018, did not specifically require that Borrower pay the outstanding principal by the maturity date of March 31, 2018. This argument is rejected.

The pertinent language in the September 14, 2018 Amendment states as follows:

Amendment dated September 14, 2018—

1. The Borrower agrees ... that the current principal balance on the Note is \$368,058.34.
2. The maturity date ...shall be renewed to March 31, 2019.
3. Borrower shall continue to make monthly payments of \$7,500.00 towards principal plus interest.⁸

This language is clear and unambiguous: it describes the principal balance on the Note as

⁵ Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 510 (Pa. Super. 2013).

⁶ Petition to Open, ¶ 4.

⁷ Id., ¶ 11.

⁸ Amendment to Promissory Note, Exhibit E to the complaint, pp. 1-2

of September 14, 2018; it fixes a new maturity date to coincide with March 31, 2019; and it requires Borrower to continue to make specific monthly payments toward principal and interest. Therefore, Borrower correctly asserts that nothing in the afore-quoted language requires payment of the outstanding principal balance upon its maturity date of March 31, 2019. However, the Court’s analysis may not end here because the September 14, 2018 Amendment also states that—

ALL TERMS of the [original] Note and any prior amendments, modifications and/or extensions shall remain in full force, except as modified by this Amendment....⁹

A straightforward reading of this provision requires the Court to examine the original Note, and specifically, to read any terms therein which would allow the Court to determine when the principal balance on the Note should be repaid, if at all. Turning to that original Note, the Court has found the following language:

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule:

Borrower will pay this loan in one payment of all outstanding principal plus accrued interest ... unless extended in writing by Lender in its sole and absolute discretion....

Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal....¹⁰

This language is also clear and unambiguous: it requires Borrower to pay all outstanding principal and accrued interest “**in one payment.**” Thus, a combined reading of the original Note and its September 14, 2018 Amendment point to one conclusion –namely,

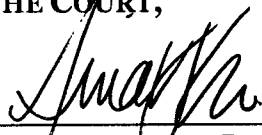
⁹ *Id.*, p. 2.

¹⁰ Promissory Note, Exhibit A to the complaint. p. 1 (emphasis added).

that the maturity date of March 31, 2019, as identified in the September 14, 2018 Amendment, is the date by which Borrower was required to repay its obligations in full, including the obligation to repay the outstanding principal balance on the Note. In this case however, Borrower has offered no evidence that it repaid the outstanding principal balance, and for this reason the first argument advanced in the petition to open is rejected.¹¹

In addition to the afore-discussed defense, Borrower avers that the judgment should be opened because the amounts claimed by Lender, “including ... interest, late charges and attorney’s fees ... are unjustified and unreasonable.”¹² This argument is likewise rejected because Borrower has failed to offer any evidence that the interest and late fees claimed by Lender are unjustified or unreasonable. As to the amount of attorney’s fees, this Court notes that under Pennsylvania law, a party may recover attorney’s fees of up to 15% if the warrant-of-attorney so specifies.¹³ In this case, Lender claims only 10% in attorney’s fees, even though the original Note and its various Amendments specify that Lender may recover attorney’s fees of 15% of the amounts due. The amount of attorney’s fees is not unjustified or unreasonable, and for this additional reason the petition to strike or open confession of judgment and for a stay of execution is denied in its entirety.

BY THE COURT,



NINA W. PADILLA, J.

¹¹ Borrower’s failure to offer any evidence of full repayment of the outstanding balance is fatal: “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.” Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

¹² Id., ¶ 12.

¹³ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 314 (Pa. Super. 1994).