

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

DOCKETED

EAGLE SIX CONSULTING, INC.,	:	October Term 2019
Plaintiff,	:	
v.	:	No. 1936
AKERS NANOTECHNOLOGY INC. d/b/a	:	
AKERS NANOTECHNOLOGY d/b/a AKERS	:	COMMERCE PROGRAM
NANOTECH,	:	
Defendants.	:	Control Number 19112563

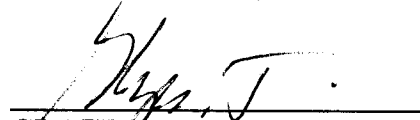
**R. POSTELL
COMMERCE PROGRAM**

ORDER

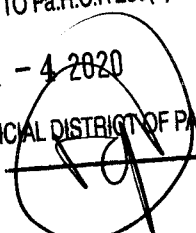
AND NOW, this 4th day of March 2020, upon consideration of defendants' Petition to Strike Judgment and Request for a Prompt Hearing, or in the alternative, defendant's Petition to Open Judgment, plaintiff's response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that defendants' Petition is **Granted in part and Denied in part** as follows:

1. Defendants' Petition to Strike is **Granted in part** and the amount of the judgment shall be modified to reflect the new amount of \$400,308.42. All other aspects of the Petition to Strike are **Denied**.
2. The Petition to Open is **Denied**.
3. The request for a prompt hearing is **Denied**.

BY THE COURT,


GLAZER, J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)

MAR - 4 2020
FIRST JUDICIAL DISTRICT OF PA
USER I.D.: 

Eagle Six Consulting, I-ORDRF



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NANOTECH,	:	
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OPINION

This is an action in confession of judgment. Presently pending before the court is defendants Akers Nanotechnology Inc. d/b/a Akers Nanotechnology d/b/a Akers Nanotech (“Defendants”) petition to strike judgment and request for prompt hearing, or, in the alternative a petition to open. For the reasons discussed below, defendants’ petition is granted in part and denied in part.

Plaintiff Eagle Six Consulting, Inc. (“Plaintiff”) and defendants entered into a Factoring Agreement dated January 17, 2019 wherein defendants sold to plaintiff and plaintiff purchased from defendants certain of defendants future receivables under the terms set forth in the Agreement. The transaction was not a consumer transaction.¹ In accordance with the terms of the agreement, plaintiff purchased from defendants \$413,000.00 worth of defendants’ receivables.

The Factoring Agreement contained a warrant of attorney. The warrant of attorney provided in pertinent part as follows:

3.4 WARRANT OF ATTORNEY TO CONFESS JUDGMENT. UPON THE OCCURRENCE OF A VIOLATION OF THE REPRESENTATIONS AND WARRANTIES MADE HERETOFORE BY MERCHANT IRREVOCABLY AUTHORIZE AND EMPOWER ANY ATTORNEY, CLERK OF ANY COURT

¹ Exhibit “A” to Complaint in Confession of Judgment – Factoring Agreement ¶ 2.12 Business Purpose.

OR RECORD, TO APPEAR FOR AND CONFESS JUDGMENT AGAINST MERCHANT FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS MERCHANT AGREEMENT OR ANY ACCOMPANYING DOCUMENTS, WITH OR WITHOUT DECLARATION, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH AN AMOUNT, FOR LIEN PRIORITY PURPOSES EQUAL TO TEN PERCENT (10%) OF THE AMOUNT OF SUCH JUDGMENT, BUT NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000.00). ADDED FOR ATTORNEYS' COLLECTION FEES, WITH THE ACTUAL AMOUNT OF ATTORNEY'S FEES AND COSTS TO BE DETERMINED IN ACCORDANCE WITH THE SECTION OF THIS MERCHANT AGREEMENT "ATTORNEY'S FEES AND COLLECTION COSTS..."²

The Factoring Agreement was signed on by Ray Akers in his official capacity as the CEO of defendants.

Defendants defaulted by failing to pay per the terms of the agreement. On October 18, 2019, plaintiff confessed judgment against defendants in the amount of \$401,308.42 per the warrant of attorney contained within the Factoring Agreement which included and provided for 6% interest per annum from the date of default to the date of filing of the complaint in confession of judgment, attorney fees in the amount of \$18,975.00 and a domestication fee of \$650. On November 19, 2019, defendants filed this motion to strike judgment, request for a prompt hearing and petition to open. Plaintiff responded to the petition on December 10, 2019. This matter is now ripe for disposition.

Defendants argue that the judgment entered by confession should be stricken because it is a consumer transaction and Mr. Akers was forced to sign a confession of judgment in his own name by duress and therefore did not waive his due process rights knowingly, intelligently or voluntarily. Defendants also argue that the judgment is invalid because the court lacks jurisdiction, the judgment is vague and is grossly excessive.

² Exhibit "A" to Complaint in Confession of Judgment – Factoring Agreement ¶ 3.4.

The Factoring Agreement upon which plaintiff exercised its right to confess judgment is not a consumer transaction. Mr. Akers signed the Factoring Agreement in his capacity as the CEO of defendants. The warrant of attorney used to confess judgment in this matter³ is contained within the Factoring Agreement which gives this court authority to enter the judgment.⁴ Akers is not a defendant in this matter and the writs of execution issued are not directed to Mr. Akers' personal property. Hence, Mr. Akers request for a prompt hearing is denied and his reliance upon duress as his defense is misplaced since he is not a defendant in this matter.⁵

Defendants also argue that the confessed judgment should be stricken or in the alternative opened because the judgment is grossly excessive and not authorized by the instruments. With regard to the petition to strike, defendants have identified a defect or

³ Exhibit "C" to defendants' petition attaches an affidavit for confession of judgment signed by Mr. Akers personally to be filed in the state of New York. This document is not relevant nor material to this matter since it was not used in this matter to confess judgment.

⁴ See Exhibit "A"-Factoring Agreement ¶ 3.4 Warrant of Attorney- "...Merchant [defendants] irrevocably authorize and empower any attorney or any clerk of any court of record to appear for and confess judgment against Merchant [Defendants]". See also, ¶ 4.6 Governing Law/Jurisdiction/Venue for disputes. -"...Any suit, action or proceeding arising hereunder...shall, if purchaser [plaintiff] so elects, be instituted in the Court of Common Pleas, Philadelphia County....

⁵ The court notes that this confession of judgment was filed pursuant to Pa. R. Civ. P. 2958.3 Notice of Execution Served with Writ of Execution. Request for Prompt Hearing Limited to Issue of Waiver of Due Process Rights. If a writ of execution has been served and property has been levied upon or attached, the defendant shall raise such a defense by filing with the sheriff a petition to strike the judgment in the form of Rule 2967. Pa.R.C.P. 2958.3(b). The petition pursuant to Rule 2967 enables the defendant to petition the court to strike the judgment and request a prompt hearing on the issue. This hearing must be held within three business days after the sheriff presents the request to the court. Pa.R.C.P. 2958.3(c). The burden of proof is on the plaintiff to show by a preponderance of the evidence that the defendant voluntarily, intelligently, and knowingly waived the right to notice and hearing prior to entry of judgment. Pa.R.C.P. 2958.3(c)(1). The court will dispose of the matter on the testimony, admissions, or other evidence. Pa.R.C.P. 2958.3(c). Execution proceedings are stayed pending a determination of the validity of the waiver. Pa.R.C.P. 2958.3.

irregularity appearing on the face of the record as it pertains to the amount of the judgment.⁶

Defendants argue that the amount of the judgment does not reflect all of the payments made by defendants. Plaintiff purchased from defendants \$413,000.00 worth of future receivables.

Plaintiff avers in the confession of judgment complaint, that the unpaid receivables total \$379,500.00. Defendants aver that the total amount of payments made was \$34,500.00.

Subtracting the total amount of payment averred, \$34,500.00, from the total amount purchased, \$413,000.00, it is clear that a difference of \$1,000.00 exists from the amount plaintiff alleges is unpaid. Based on the foregoing, the petition to strike is granted in part and the court will modify the judgment to reflect the difference of \$1,000.00.⁷

As for the attorney fee of \$18,975.00, there is no basis to open the judgment⁸ based on the claim the attorney fee amount is excessive. Under Pennsylvania law, a party may recover attorney's fees up to 15% if the warrant of attorney so specifies.⁹ In this case, the attorney fee amount is not unreasonable or excessive since it is 5% of the confessed judgment and is authorized by the warrant of attorney.¹⁰

⁶ See *Resolution Trust Corp. v. Copley Qu-Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996)(judgment entered by confession shall be stricken only when a fatal defect or irregularity appears on the face of the record).

⁷ See, *Colony Fed. Sav. & Loan Ass'n v. Beaver Valley Eng'g Supplies Co.*, 361 A.2d 343, 346 (Pa. Super. 1976)(Because the unauthorized item is not an item separate and apart from the substantive debt, its improper inclusion has not resulted in nullification of the entire judgment.)

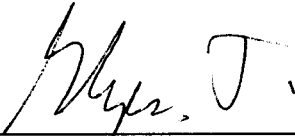
⁸ In order to open a confessed judgment, defendants must raise a meritorious defense and present sufficient evidence by clear, direct, precise, and believable evidence of the meritorious defense. See, *First Seneca Bank v. Laurel Mr. Development Corporation*, 506 Pa. 439, 443, 485 A.2d 1086, 1088 (1984).

⁹ *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 637 A.2d 309, 314 (Pa. Super. 2014).

¹⁰ Exhibit "A" to the Complaint – Factoring Agreement ¶¶ 3.4, 3.5 and 3.2.

Based on the foregoing, defendants' petition to strike is granted in part and the amount of the judgment shall be modified to reflect the payments made by defendants. All other aspects of the petition to strike are denied. The petition to open and request for a prompt hearing are denied.

BY THE COURT,



GLAZER, J.