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

SANTANDER BANK, N.A.,	:	October Term 2019
Plaintiff,	:	
v.	:	No. 3364
NICOLE B. COMER a/k/a NICOLE COMER,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 19121580

ORDER

AND NOW, this 26th day of February, 2020, upon consideration of Defendant's Petition to Strike and/or Open Confession of Judgment, Plaintiff's response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that the Petition to Strike and/or Open is **Denied**.

BY THE COURT,


GLAZER, J.

DOCKETED

FEB 26 2020

R. POSTELL
COMMERCE PROGRAM

Santander Bank, N.A. Vs-ORDRC



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Defendant.	:	Commerce Program
	:	
	:	
	:	Control Number 19121580

OPINION

This matter was commenced as a confessed judgment. Presently before the court is defendant Nicole B. Comer a/k/a Nicole Comer's petition to strike/open the confessed judgment. For the reasons discussed below, the petition is denied.

In June of 2018, Comer Enterprises, Inc. ("Borrower"), a Pennsylvania corporation with a principal place of business in Kennett Square, Pennsylvania, entered into three SBA loans with Santander Bank, N.A. ("Bank"). In connection with the loans, Nicole Comer ("Comer"), the sole shareholder of Borrower, executed three SBA "Unconditional Guarantee" forms which included identical confession of judgment provisions. The confession of judgment provisions provide in pertinent part as follows:

THE UNDERSIGNED [Nicole Comer] HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY-AT-LAW TO APPEAR IN ANY COURT OF RECORD AND TO CONFESS JUDGMENT AGAINST THE UNDERSIGNED FOR THE UNPAID AMOUNT OF THE NOTE AS EVIDENCED BY AN AFFIDAVIT SIGNED BY AN OFFICER OF LENDER SETTING FORTH THE AMOUNT THEN DUE, TOGETHER WITH ALL INDEBTEDNESS PROVIDED FOR THEREIN (WITH OR WITHOUT ACCELERATION OF MATURITY), PLUS ATTORNEYS' FEES OF TEN PERCENT (10%) OF THE TOTAL INDEBTEDNESS OR FIVE THOUSAND DOLLARS (\$5,000) WHICHEVER IS THE LARGER AMOUNT FOR THE COLLECTION, WHICH GUARANTOR AND LENDER AGREE IS REASONABLE, PLUS COSTS OF SUIT...

Comer also executed a disclosure for confession of judgment acknowledging in part as follows:

In executing the Guarantee, I [Nicole Comer] am knowingly, understandingly and voluntarily waiving my rights to resist the entry of judgment against me at the courthouse, including any right to advance notice of the entry of, or execution upon, said judgment, and I am consenting to the confession of judgment.


On August 18, 2019, Borrower filed a petition for voluntary relief under Chapter 11 of the Bankruptcy Code. On October 28, 2019, Bank filed a complaint in confession of judgment against Comer in the amount of \$2,898,109.809 plus interest. On November 12, 2019, the complaint and the notice of execution were served upon Comer. On December 12, 2019, Comer filed a petition to strike/open the judgment entered by confession. On December 20, 2019, the Bank filed a response to said petition. The petition is now ripe for disposition.

Comer argues that Bank's complaint in confession of judgment is fatally defective and should be stricken/opened because the complaint and the exhibits attached thereto fail to demonstrate that Comer, a Delaware resident, consented to the jurisdiction of the Courts in the Commonwealth of Pennsylvania in her individual capacity as a guarantor. The court does not agree. A confession of judgment for money pursuant to an instrument is not governed by the same rules of notice and adversarial protections as ordinary civil complaints.¹ By signing the Unconditional Guarantee which contained a warrant of attorney for confession of judgment and signing the disclosure document wherein the signer acknowledged acceptance of the warrant, Comer consented and therefore voluntarily submitted to the jurisdiction of any court, including

¹ *Midwest Fin. Acceptance Corp. v. Rony*, 78 A.3d 614, 631 (Pa. Super. 2013)(unless otherwise specified in the agreement, the general venue terms of Rule 1006 do not automatically apply to the initial filing of a judgment of confession, and cannot be used to strike an otherwise lawful confession of judgment that has been entered in strict compliance with a valid warrant of attorney).

the courts in this Commonwealth of Pennsylvania, that authorize the entry of judgment by confession.² Based on the foregoing, defendant's petition to strike/open is denied.

BY THE COURT,



GLAZER, J.

² See, *O'Hara v. Manley*, 140 Pa. Super. 39, 44, 12 A.2d 820, 822 (1940).