

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

DOCKETED

FIRSTTRUST BANK,	:	December Term 2019	FEB 28 2020
	:		
Plaintiff,	:		
	:		
v.	:	No. 2121	R. POSTELL
TONY SOVINSKI, PYRAMID INVESTMENT	:		COMMERCE PROGRAM
GROUP, INC., PYRAMID MORTGAGE GROUP,	:	Commerce Program	
INC., RENTAL PROPERTIES, INC., TRI-STATE	:		
PROPERTIES, INC., and EQUITABLE	:	Control Number 20011749	
PROPERTIES, INC.,	:		
	:		
Defendants.	:		


ORDER

AND NOW, this 28th day of February 2020, upon consideration of Defendants'

Petition to Strike/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/Open is **Denied in part and Granted in part** as follows:

1. The Petition to Strike is **Granted in part** and the mortgage satisfaction fee in the amount of \$1,798.75 is stricken and the judgment entered shall be modified to reflect the new amount of \$761,138.65. All other aspects of the Petition to Strike are **Denied**.
2. The Petition to Open is **Denied**.
3. The motion for stay of execution is **Denied**.

BY THE COURT,



GLAZER, J.

Firsttrust Bank Vs Sovin-ORDRF



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Plaintiff,	:	
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v.	:	No. 2121
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INC., RENTAL PROPERTIES, INC., TRI-STATE	:	
PROPERTIES, INC., and EQUITABLE	:	Control Number 20011749
PROPERTIES, INC.,	:	
	:	
Defendants.	:	

OPINION

This action commenced as a confessed judgment. Presently before the court is defendants Tony Sovinski, Pyramid Investment Group, Inc., Pyramid Mortgage Group, Inc., Rental Properties, Inc., Tri-State Properties, Inc., Tri-State Properties, Inc. and Equitable Properties, Inc.'s (collectively referred to as "Defendants") petition to strike/open confessed judgment. For the reasons set forth below, defendants' petition to strike/open is granted in part and denied in part.

On January 12, 2004, plaintiff Firsttrust Bank ("Bank") loaned defendant Tony Sovinski and Glen Rosenwald the sum of \$850,000, at an interest rate of 4.5% per annum. The loan was secured by an executed promissory note which constituted the parties agreement, memorialized the terms of repayment and defined the conduct constituting default on the loan. The Note provided that in the event of default Bank may increase the interest rate by 5.500 percentage points over the index. The Note identified the following items as events of default: failure to make payment per the terms of the note, the death of the borrower, a material adverse change in the financial conditions of borrowers Sovinski and Rosenwald, and breach of any other term of the Note. Upon default, Bank may declare the entire unpaid principal balance on the Note and

all accrued unpaid interest immediately due. The Note was collateralized by various properties. The Note also stated that any payment default can be cured within five days and any non-payment default can be cured within 20 days after written notice from Bank.

The Note also contained a confession of judgment provision, which upon default authorized Bank to confess judgment for money damages against Sovinski for the entire balance of the Note and all accrued interest, late charges, costs of suit, and a reasonable attorney's commission. The loan was guaranteed by Guarantors for the amounts owed under the Note. The guarantees contained confession of judgment provisions.

On March 31, 2006, September 30, 2008, December 30, 2010, February 25, 2011, and December 24, 2013, Sovinski, Rosenwald and the Guarantors at the time executed Change in Terms Agreements. Each of the Change in Terms Agreement contained confession of judgment provisions. On April 11, 2014, Sovinski, Rosenwald and the Guarantors executed another Change in Terms Agreement which changed the date repayment was due, set a fixed interest rate and set payment terms with a final estimated payment due at maturity of \$696, 416.49. The April 2014 Change in Terms Agreement also contained a confession of judgment provision, which upon default authorized the Bank to confess judgment for money damages against Sovinski for the entire principal balance of the Note and all accrued interest, late charges, costs of suit, and a reasonable attorney's commission of not greater than ten percent (10%) of the unpaid principal balance and accrued interest. ¹

In conjunction with the April 2014 Change in Terms Agreement, Bank and Sovinski and Rosenwald entered into a Business Loan Agreement which governed subsequent disbursements

¹See Complaint in Confession of Judgment – Exhibit “H” p. 3.

of loan funds under the Note, affirmed the execution of guarantees, defined defaults and reaffirmed the confession of judgment provisions in the various loan documents.

Rosenwald died on February 12, 2016 and the maturity date of April 1, 2019 passed without payment. The Bank declared a default and sent written notice of default in January 2017, November 2017, and March 2019 and sent email notice of default on November 20 and November 25, 2019. Defendants did not cure the default and in December 2019 Bank filed a confession of judgment in the amount of \$762,937.40. On January 14, 2020, defendants filed a petition to open/strike the confessed judgment and on February 3, 2020, Bank responded to the petition. This matter is now ripe for disposition.

Defendants argue that the confessed judgment should be stricken and/or opened because the amount of attorney's fees assessed \$69,169.01 is excessive under Pennsylvania law, the inclusion of \$1,798.75 as the filing fee for the mortgage satisfaction is not authorized by the warrant of attorney and is excessive and the Bank incorrectly confessed judgment because there is adequate security for the loan and that the loan will be paid off upon the impending sale of property.

Defendants failed to identify any fatal defects or irregularity appearing on the face of the record to support their petition to strike as it pertains to the attorney fee.² Defendants argue that the attorney fee is excessive. Moreover, defendants argue that the nature of the default, "technical default", alleged is improper. These arguments fail as they demand that this court consider evidence outside of the record as filed by the party in whose favor the warrant was

² 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).

given.³ Since there is no defect or irregularity on the face of the record, the petition to strike is denied as to these matters. However, as it pertains to the mortgage satisfaction fee, the court finds that this fee is not authorized by the warrant of attorney and therefore the petition to strike is granted in this regard.⁴

The petition to open is also denied since defendants failed to raise a meritorious defense and present sufficient evidence by clear, direct, precise, and believable evidence of the meritorious defense.⁵ There is no basis to open the judgment based on the claim the attorney fee amount is excessive. The 10% attorney commission is authorized by the warrant of attorney and is not excessive. Under Pennsylvania law, a party may recover attorney's fees up to 15% if the warrant of attorney so specifies.⁶ In this case, the attorney fee amount is not unreasonable or excessive.⁷ Lastly, as for defendants' argument that Bank has alleged a technical default and that there is more than adequate security for the repayment of the loan at issue is not a proper basis to

³ *Id.*

⁴ See Confession of Judgment Complaint –Exhibit “H” p. 3 (...CONFESS OR ENTER JUDGMENT AGAINST BORROWER FOR THE ENTIRE PRINCIPAL BALANCE OF THIS AGREEMENT AND ALL ACCRUED INTEREST, LATE CHARGES AND ANY AND ALL AMOUNTS EXPENDED OR ADVANCED BY LENDER RELATING TO ANY COLLATERAL SECURING THE INDEBTEDNESS, TOGETHER WITH COSTS OF SUIT, AND AN ATTORNEY'S COMMISSION OF TEN PERCENT (10%) OF THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST FOR COLLECTION, BUT IN ANY EVENT NOT LESS THAN FIVE HUNDRED DOLLARS (\$500)...). See also, *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.)

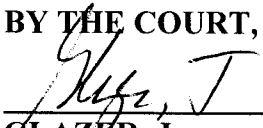
⁵ *First Seneca Bank v. Laurel Mr. Development Corporation*, 506 Pa. 439, 443, 485 A.2d 1086, 1088 (1984).

⁶ *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 637 A.2d 309, 314 (Pa. Super. 2014).

⁷ Defendants combine the attorney fee commission in the confession of judgment action captioned *Firstrust Bank v. Sovinski, et.al*, 1912-2395 to support its argument that the fee is excessive. This is improper since the confession of judgment in the other matter is based on separate contracts and loans.

open a judgment. Whether the default is technical or non-technical, a default exists since Mr. Rosenwald is deceased and due to defendants' failure to make payments and pay the loan upon its maturity date. Based on the foregoing the petition to open is denied.

BY THE COURT,



GLAZER, J.