

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

BERKSHIRE BANK

Plaintiff

v.

**TURTLE TIME JRP 2, LLC,
THE INTEGRITY GROUP, LLC and
JIGER PATEL**

Defendants

: December Term, 2019

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: Case No. 03454

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: Control No. 20014232

ORDER

AND NOW, this 11th day of May, 2020, upon

consideration of the petition to strike or open confession of judgment and for a stay of execution, the response of plaintiff, and the respective *memoranda* of law, it **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

BY THE COURT,



GLAZER, J.

OPINION

Plaintiff is Berkshire Bank (“Lender”), a Massachusetts entity. Defendants are Turtle Time JRP 2, LLC, and The Integrity [sic] Group, LLC, both based in Feasterville, Pennsylvania (hereinafter, the “Borrowers”). Individual defendant, Jiger Patel (“Guarantor”), is a member of Borrowers. At all times relevant to this action, Guarantor had authority to contractually bind the two Borrowers. On February 26, 2018, Lender loaned funds to Borrowers; in return, they executed in favor of Lender a U.S. Small Business Administration Note (the “Note”), in the amount of \$2,230,000.00.¹ Simultaneously, Guarantor guaranteed the obligations of Borrowers by executing in Lender’s favor a personal, unconditional guaranty (the “Guaranty”).² The Note and Guaranty contained warrants-of-attorney authorizing Lender to confess judgment against Borrowers and Guarantor in the event of their default.³ Each warrant-of-attorney contemplated the collection of attorney’s fees, assessed at 10% of the amount owed by Borrowers.⁴

On December 24, 2019, Lender confessed judgment against Borrowers and Guarantor for the Borrowers’ failure “to make monthly payments when due.”⁵ The amount as confessed by Lender comprises an unpaid principal

¹ Note, Exhibit A to the complaint.

² Guaranty, Exhibit B to the complaint.

³ Note, Exhibit A to the complaint, ¶ 10; Guaranty, Exhibit B to the Complaint, ¶ 10.

⁴ Id.

⁵ Complaint, ¶ 12.

balance (\$2,048,934.61), interest (\$30,734.02), late charges (\$3,850.74), attorney's fees (\$208,351.94), and costs of suit (\$156.51), for a total of \$2,292,027.82.⁶ On January 31, 2020, Borrowers and Guarantor filed the instant petition to strike or open the judgment and for a stay of execution. Lender filed a response in opposition, and the petition is ripe for a resolution.

DISCUSSION

The law on opening a confession of judgment is well-settled:

if the truth of the factual averments contained in the complaint in confession of judgment and attached exhibits are disputed, then the remedy is by proceeding to open the judgment.⁷

The petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses. The defenses raised must be valid ones.⁸

The petition asserts that the judgment should be opened because Lender, in violation of PA. R.C.P. 2952(a)(7), failed to include in the record a history of the loan in question, including a list of payments made-and-received, as well as a detailed itemization of the confessed amount.⁹

The Rule invoked by Borrowers and Guarantor states as follows:

The complaint [in confession of judgment] shall contain:

* * *

an itemized computation of the amount then due, based on matters outside the record if necessary, which may include interest and attorney's fees authorized by the instrument....⁹

⁶ Id. ¶ 17.

⁷ Neducsin v. Caplan, 121 A.3d 498, 504 (Pa. Super. 2015).

⁸ Haggerty v. Fetner, 332 Pa. Super. 333, 339, 481 A.2d 641, 644 (PA. Super. 1984) ⁹ Petition, ¶¶ 11-13, 21.

⁹ PA. R.C.P. 2952(a)(7).

The Pennsylvania Superior Court construed the language of this Rule in Davis v. The Woxhall Hotel, Inc.¹⁰ In Davis, plaintiff/lessor confessed judgment against defendant/lessee. In the complaint, plaintiff had not offered a detailed itemization of the principal amount then due, but had instead listed it in one lump-sum. Subsequently, defendant challenged the judgment by filing a petition to strike: the trial court denied that petition, and the defendant appealed. On appeal, the Superior Court framed the issue as follows:

[t]he primary issue in this case is whether ... [Rule] 2952 ... requires a plaintiff ... to [further] itemize the principal amount alleged due in the complaint to show how the judgment was computed.¹¹

Affirming, the Superior Court explained that—

[t]he procedures by which a party can contest the factual averments in the complaint are provided for in the Rules of Civil Procedure [2952].... The party against whom judgment is confessed has the burden of disproving the averments it challenges.... On this basis we [the Superior Court] conclude that [the] Rule ... does not require the party seeking confession of judgment ... to itemize the monthly rentals represented in the judgment. To hold otherwise would serve to shift the burden to the plaintiff, and this we decline to do.¹²

Stated differently, the Superior Court found that when a defendant contests the amount confessed by plaintiff, the burden remains upon the defendant to disprove that amount, even where that amount is listed in a single lump-sum. In this case, Lender did not offer a detailed itemization of its claimed

¹⁰ Davis v. The Woxhall Hotel, Inc., 577 A.2d 636, 638 (PA. Super. 1990).

¹¹ Id. at 637.

¹² Id. at 638 (discussing PA. R.C.P. 2952(f) which was revised in 1996 and re-named PA. R.C.P. 2952(a)(7)).

amount, but listed it in one lump-sum, as permitted under Davis; on the other hand, Borrowers and Guarantor have contested the amount, but have offered no evidence to substantiate their defense, and have altogether failed to meet their burden of proof.¹³ For this reason, the first challenge to the judgment is rejected. Next, Borrowers and Guarantor assert that the judgment should be opened because the instant confession of judgment deprives them of their property rights without due process.¹⁴

In an action in confession of judgment—

[t]he hearing required to comport with due process means simply an opportunity to be heard; it does not require a proceeding comparable to a full trial, but may be satisfied by other procedural opportunities to be heard, such as **a petition to open judgment**, a stay of execution, a rule to show cause why the judgment should not be opened, depositions to support the allegations in the petition, and oral argument.¹⁵

In this case, Borrowers and Guarantors availed themselves of an opportunity to be heard when they filed the instant petition to open the judgment. In turn, the petition to open judgment, though not comparable to a full trial, did satisfy the due process rights of Borrowers and Guarantors, and for this reason, the defense asserting a deprivation of due process rights is rejected.

¹³ The court additionally notes that the due process rights of a defendant-in-confession-of-judgment “may be satisfied” by various procedural opportunities to be heard, including “a petition to open judgment.” Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (PA. Super. 1994). In this case however, Borrowers and Guarantors have offered no evidence in support of their challenge to the amount as confessed by Lender.

¹⁴ Petition to open, ¶¶ 14-15.

¹⁵ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (PA. Super. 1994) (emphasis supplied). ¹⁷ Petition, ¶ 19.

Third, Borrowers and Guarantors aver that the judgment should be opened because Lender, by failing to state “which payments ... [remain] overdue,” has failed to establish the occurrence of an event of default.¹⁷

The Pennsylvania Rule of Civil Procedure, 2952(a)(6) instructs that if a judgment may be confessed after a default, then the complaint-in-confession-of-judgment shall contain “an averment of the default or the occurrence of the condition precedent.”¹⁶ The Pennsylvania Superior Court construed the abovequoted language in a case decided in 2004: Stahl Oil Co. v. Helsel.¹⁷

In Stahl, the Superior Court was required to decide whether plaintiff’s complaint had failed to aver with sufficient particularity the occurrence of a default, where the complaint was silent as to how that default had occurred.¹⁸ The Court held that a “default need not be averred with particularity,” and found that the complaint had fully “met the default averment requirement pursuant to PA R.C.P. 2952(a)(6).”¹⁹ In other words, the Superior Court held that a simple averment of default complied with the Rules of Civil Procedure, even if the averment provided no explanation as to how that default had occurred.

In this case, Lender has averred in its complaint that Borrowers and Guarantors “are in default, for failing to make monthly payments when due.”²² This averment, though lacking particularity, complies with the requirements of Pa. R.C.P. 2952(a)(6) as construed by the Pennsylvania Superior Court, and for this reason, the third challenge to the confession of judgment is rejected.

¹⁶ PA. R.C.P. 2952(a)(6).

¹⁷ Stahl Oil Co. v. Helsel, 860 A.2d 508 (PA. Super. 2004).

¹⁸ Id., 860 A.2d at 512.

¹⁹ Id., 860 A.2d at 513.

²² Complaint, ¶ 12.

Fourth, Borrowers and Guarantor assert that the judgment should be opened because the amount of attorney's fees claimed by Lender is unconscionable.²⁰ This argument is quickly rejected: while a "trial court may consider whether the ... claimed [attorney's fees] are reasonable, and ... reduce the fees ... if appropriate," the Courts of Pennsylvania have routinely permitted "attorney's fees in the amount of fifteen percent ... [if] specifically authorized by the warrant of attorney."²¹ In this case, the warrants in the Note and Guaranty specifically permit Lender to recover attorney's fees of 10% of the amounts owed, and this court finds that the amount of attorney's fees claimed by Lender in this action is reasonable.

Lastly, Borrowers and Guarantors assert that the judgment should be opened because none of the loan documents involved in this action have been executed by Lender.²² They appear to suggest that without Plaintiff's signatures, none of the documents involved in this action denote that they parties assented to the terms therein. This challenge is also rejected because the Pennsylvania Rules of Civil Procedure instruct that a complaint-in-confession-of-judgment shall contain "the original or photostatic copy or like reproduction of the instrument showing defendant's signature...."²³ In addition, "signatures [in a written contract] are not required unless signing ... is expressly required by law or the intent of the parties."²⁴

²⁰ Petition, ¶¶ 22-23.

²¹ See, Mc. Mullen v. Kutz, 985 A. 2d 769, 776-77 (PA. 2009); Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 431 Pa. Super. 541, 552, 637 A.2d 309, 314 (PA. Super. 1994).

²² Petition, ¶ 24-28.

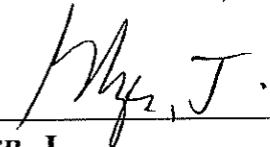
²³ Pa. R.C.P. 2952(a)2.

²⁴ Pittsburgh Logistics Sys., Inc. v. B. Keppel Trucking, LLC, 153 A.3d 1091, 1094 (PA. Super. 2017).

In this case, the Rules of Civil Procedure specifically required only the signatures of Borrowers and Guarantor –that is, only the signatures of defendants herein. Borrowers and Guarantor have not identified in the loan documents any provision which expressly required Lender’s signature under the law, nor any provision showing that the parties intended to include Lender’s signatures on the operative documents.

For all of these reasons, the petition to strike or open confession of judgment and for a stay of execution is denied.²⁵

BY THE COURT,



GLAZER, J.

²⁵ The petition to strike confession of judgment is likewise denied because Borrowers and Guarantor have failed to identify any fatal flaw in the record. See, Dime Bank v. Andrews, 115 A.3d 358, 364 (PA. Super. 2015): “[a] petition to strike a judgment is a common law proceeding that operates as a demurrer to the record.... A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record....”