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

R. POSTELL
COMMERCE PROGRAM

BLUEBIRD LENDING I, LLC,

Plaintiff

v.

807 N. 17th, LLC

Defendant

: August Term, 2020
: Case No. 02509
:
:
: Commerce Program
:
:
:
: Control No. 20100484

ORDER

AND NOW, this 21st day of December, 2020, upon consideration of the petition to open confession-of-judgment, the answer in opposition thereto, and the parties' briefs, it is **ORDERED** that the petition to open confession-of-judgment is **GRANTED**, and the judgment is **OPENED**.

This action shall proceed under an Expedited Case Management Track, with a discovery deadline of April 5, 2021. Litigation shall proceed in accordance with the requirements contained in Pa. R.C.P. 2960.¹

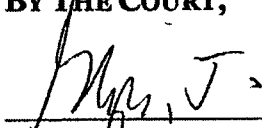
¹ Pa. R.C.P. 2960 instructs that—

[i]f a judgment is opened ... the issues to be tried shall be defined by the complaint ... and by the petition, answer and the order of the court opening the judgment. There shall be no further pleadings.

Here, defendant filed an answer with new matter and a counterclaim in this, an action-in-confession-of-judgment, even though the above-quoted Rule prohibits the separate filing of such pleading. Nevertheless, Pennsylvania law does allow a counterclaim to be inserted in a petition to open, before the court decides the petition. J.M. Korn & Sons, Inc. v. Fleet Air Corp., 446 A.2d 945 (Pa. Super. 1982). Moreover, the Pennsylvania Rule of Civil Procedure 126 also instructs that—



BY THE COURT,



GLAZER, J.

[t]he court at any stage of any ... action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.

Based on the foregoing, the court chooses to disregard defendant's procedural error and the counterclaim is allowed to survive. The requirements of Pa. R.C.P. 2960 are applicable in every other respect.

OPINION

Plaintiff (“Lender”), loaned \$100,000.00 to defendant, an entity named 807 N. 17th, LLC, under the terms of a Construction Loan Agreement (the “Loan Agreement”), dated March 21, 2019.² The Loan Agreement states its fundamental purpose: to provide 807 N. 17th, LLC with the funds needed to acquire and develop a property located at the premises of 807 N. 17th Street, in Philadelphia, Pennsylvania (the “Property”).³ An individual named Theodore Dandridge (“Mr. Dandridge”), manager of 807 N. 17th, LLC, executed the Loan Agreement; as a result, 807 N. 17th, LLC accepted the \$100,000.00 from Lender pursuant to a document titled Unanimous Consent Of The Members Of 807 N. 17th, LLC (the “Consent Agreement”).⁴ The Consent Agreement was executed by Mr. Dandridge as the manager and a member of 807 N. 17th, LLC, and by an individual named Dolores Dandridge (“Ms. Dandridge”), the only other member of 807 N. 17th, LLC.⁵ Hereinafter, defendant 807 N. 17th, LLC shall be identified as the “Borrower.”

Lender secured its loan by receiving from Borrower a signed Open-end Mortgage-and-Security Agreement (the “Mortgage”), wherein Borrower mortgaged the Property to Lender.⁶ The Mortgage contains a warrant-of-attorney empowering Lender to eject Borrower from the Property upon a default of the Loan Agreement and certain other related documents, including a promissory note (the “Note”).⁷ Under the Note,

² Construction Loan Agreement, Exhibit 2 to the complaint.

³ Id., at “Background,” § B.

⁴ Id., signature page; Consent Agreement, Exhibit B to Lender’s response in opposition to the petition of Borrower to open confession-of-judgment.

⁵ Upon information and belief of Lender, Ms. Dandridge “is believed to be ... [Mr. Dandridge’s] mother.” See, response of Lender to Borrower’s petition to open confession-of-judgment.

⁶ Mortgage, Exhibit 3 to the complaint.

⁷ Mortgage, ¶ 14(b)(ii)—14(c); Note, Exhibit 1 to the complaint.

Borrower also agreed to the entry of a money judgment against itself, if it defaulted on its obligations therein.⁸

On April 14, 2019, Borrower and an entity named Rowhouse Funding, LLC (hereinafter the "Consulting Firm"), entered into a contract-for-services (the "Consulting Agreement").⁹ Under the terms of this agreement, the Consulting Firm agreed to perform certain services related to the planned development of the Property, in exchange for a compensation of \$20,000.00, as well as a reimbursement for any reasonable and necessary expenses.¹⁰ The Consulting Agreement was executed by Mr. Dandridge on behalf of Borrower, and by the sole member of Consulting Firm, an individual named Michael Gevurtz ("Mr. Gevurtz").¹¹

On August 28, 2020, Lender confessed judgment against Borrower in the amount of \$106,978.84, which includes an unpaid principal balance of \$80,804.00, accruing interest of \$17,104.44, late fees of \$5,030.20, and attorney's fees of \$4,040.20. The complaint-in-confession-of-judgment avers that Borrower "is in default under the loan documents ... [for] failing to make payments under the note, including its failure to repay the Loan upon [its] maturity."¹²

On October 5, 2020, Borrower filed a petition to open the judgment. In the petition, Borrower alleges as follows:

⁸ Note, Exhibit 1 to the complaint, ¶ 5.

⁹ Consulting Agreement, Exhibit A to the petition to open confession-of-judgment.

¹⁰ *Id.*, ¶¶ 2, 4-5.

¹¹ Mr. Gevurtz is also the president of Lender/mortgagee Bluebird Lending I, LLC, plaintiff herein. He executed the Loan Agreement in his capacity as the president of Lender, the Consulting Agreement in his capacity as the sole member of the Consulting Firm, and acknowledged the Mortgage of Borrower on behalf of mortgagee.

¹² Complaint, ¶ 16.

1. ... [Lender], by and through its agents approached ... [Ms.] Dandridge who has been the owner of the subject property known as 817 [sic] N. 17th Street Philadelphia PA for over 50 years and is and has been her home at all relevant times.

4. [T]o induce Ms. Dandridge to borrow money and use the home as a collateral ... to start construction, Gevurtz advised Ms. Dandridge to transfer the ... [Property] out of her name and into a corporate entity....¹³

The petition also alleges that the Loan Agreement and Consulting Agreement were "set-up as a scheme by [Mr.] Gevurtz to ... have [Mr.] Gevurtz fail ... to provid[e] ... the services as agreed ... [and] then call the loan [against Borrower] as a result of [Mr.] Gevurtz ... failing to provide consulting services."¹⁴

In the response in opposition, Lender denies the allegations above.¹⁵

DISCUSSION

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

[a] petition to open a default judgment is an appeal to the equitable powers of the court. The decision to grant or deny a petition to open a default judgment is within the sound discretion of the trial court, and ... will not [be] overturn[ed] ... absent a manifest abuse of discretion or error of law.¹⁶

If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment. Furthermore, the court must view the evidence presented in the light most favorable to the moving party, while rejecting contrary evidence of the non-moving party.... The petitioner need not produce evidence proving that if the judgment is opened, the petitioner will prevail.... Moreover ... [the court] must accept as true the petitioner's evidence

¹³ Petition to open confession-of-judgment, ¶¶ 2, 4, 6.

¹⁴ *Id.*, ¶ 6(d)(e).

¹⁵ Response, ¶¶ 2, 4-6.

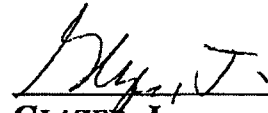
¹⁶ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1270 (Pa. Super. 2015).

and all reasonable and proper inferences flowing
therefrom.¹⁷

In this case, the court notes a possible conflict arising out of the twin roles played by the person who simultaneously had power over Lender and over the Consulting Firm: on one hand, Mr. Gevurtz empowered Lender to loan \$100,000.00 to Borrower; on the other hand, he had control over the Consulting Firm which is alleged to have breached its consultation duties to Borrower. This allegation, if true, may have been the cause of Borrower's default – a default which may ultimately allow Lender to claim the Property as a mortgagee thereof. It is undisputed that Mr. Gevurtz had control of both entities, and this evidence is sufficient to allow the court “to accept as true ... all reasonable and proper inferences flowing therefrom.”¹⁸

For this reason, the petition to open confession-of-judgment is granted and the judgment is opened.

BY THE COURT,



GLAZER, J.

¹⁷ Neduscin v. Caplan, 121 A.3d 498, 506–07 (Pa. Super. 2015).

¹⁸ Id.