

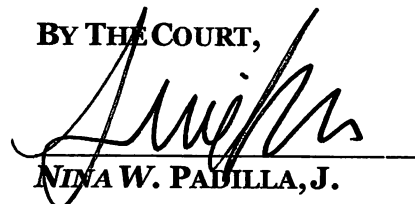
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL**

COMMONWEALTH CAPITAL, LLC,	:	January Term, 2021
to the use of	:	Case No. 00093
2375 WELSH NOTE ACQUISITION, LLC	:	
	:	
<i>Use Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
SRAMPICKAL DEVELOPERS, LLC,	:	
TYSON THOMAS, SABY JOSEPH, SHAJIMON THOMAS	:	
and THOMAS MATHEW	:	
	:	Control Nos. 20120607,
<i>Defendants</i>	:	21010020.

ORDER

AND NOW, this 22nd day of April, 2021, upon consideration of two separate petitions to open confession-of-judgment, the responses in opposition, and the briefs, it is **ORDERED** that both petitions are **DENIED**.

BY THE COURT,



NINA W. PADILLA, J.

OPINION

Before the Bench are two petitions to open confession-of-judgment, both filed collectively by all the defendants involved in this case. For the reasons below, the two petitions are denied.

BACKGROUND

On September 11, 2017, a Pennsylvania entity named Srampickal Developers, LLC (“Borrower”), executed and delivered a \$750,000.00 mortgage-and-note (the “Note”), to an entity named Commonwealth Capital, LLC (“Lender”), in exchange for a loan in the same amount.¹ On the same day, four individuals executed four separate “Guaranties” in favor of Lender. Whenever expedient, the four individuals shall be identified collectively as “Guarantors.” The Note and Guaranties contain warrants-of-attorney entitling Lender to confess judgment against Borrower and Guarantors.²

On August 1, 2019, Lender confessed judgment against Borrower and Guarantors; however, on December 20, 2019, Lender filed a *praecipe* to vacate the judgment, and the action was discontinued on the same day.³ The judgment entered on August 1, 2019 was vacated and discontinued because Borrower and Guarantors had paid the amounts owed in arrears, pursuant to a Forbearance Agreement dated September 11, 2019.⁴

On November 20, 2020, Lender confessed judgment once more against Borrower and Guarantors. The complaint-in-confession-of-judgment avers that they breached the

¹ Note, Exhibit A to the complaint.

² Note, *id.* at ¶ 19; Guaranties, Exhibit B to the complaint at pp. 8.

³ Commonwealth Capital, LLC v. Srampickal Developers, LLC et al., case No. 1907-04283.

⁴ Complaint, ¶ 14; *Memorandum-of-law* in support of answer to petition to open confession-of-judgment, p. 3 (un-numbered), control No. 21010020.

Note and Guaranties by failing “to make payment due and owing upon the maturity date [of the Note] of December 16, 2020.”⁵ In the complaint, Lender claims the unpaid principal of the loan (\$750,000.00), plus interest calculated from 3/16/202 through 9/9/2020, and from 9/10/2020 through 9/14/2020 (\$52,843.75 + \$1,484.35), plus unpaid late charges and accrued late charges (\$5,799.91 + 2,226.55), plus NFS fees (\$105.00), plus attorney’s fees (\$37,500.00), for a total of \$848,959.56.

On December 4, 2020, Borrower and Guarantors filed a petition to open confession-of-judgment (the “First petition”), and Lender filed a response in opposition-with-brief on December 18, 2020. On January 2, 2021, Borrower and Guarantors filed a second petition to open confession-of-judgment (the “Second Petition”). The Second Petition is substantially identical to the first.⁶

On or about January 5, 2021, an entity named 2375 Welsh Note Acquisition, LLC (the “Use Lender”), acquired the rights to the Note, and on that day, Lender also filed a *praecipe* to mark the assignment in favor of the Use Lender.⁷

On January 8, 2021, the Use Lender filed its response-with-brief to the Second Petition to open the confession-of-judgment.

DISCUSSION

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

⁵ Complaint, ¶ 15.

⁶ The First Petition contained *inter alia* a challenge to the validity of the judgment based on Lender’s alleged failure to effectuate proper service to Borrower some of the Guarantors. (See, petition to open, control No. 20120607 at ¶ 15. This challenge has not been renewed in the Second Petition. Nevertheless, the challenge to the validity of the judgment in the First Petition is rejected because under the Rules of Civil Procedure, the “prothonotary shall immediately give notice of the entry of a judgment ... by confession ... with a copy of all documents filed”; in addition, a plaintiff’s complaint-in-confession-of-judgment “shall neither contain a notice to defend, nor be endorsed with a notice to plead....”) Pa. R.C.P. 236(a)(1), Pa. R.C.P. 2952(b). Stated another way, the prothonotary gives notice to a defendant in an action-in-confession-of-judgment: the plaintiff does not.

⁷ Docket entry dated January 5, 2021.

if a petition to open a judgment is to be successful, it must meet the following test:

- (1) the petition to open must be promptly filed;
- (2) the failure to appear or file a timely answer must be excused; and
- (3) **the party seeking to open the judgment must show a meritorious defense.**⁸

Moreover—

[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.⁹

The Second Petition appears to argue a defense based on impossibility of performance —namely, that the Covid—19 pandemic caused Borrower and Guarantors to suffer catastrophic adverse financial conditions which prevented them from repaying their debt under the Note.¹⁰ This defense is rejected because Borrower and Guarantors have offered no contractual evidence showing how the Covid—19 pandemic affected their ability to repay the loan, let alone any evidence of a contractual provision which would have excused them from repaying their debt upon the occurrence of a pandemic or any other disastrous event.

The Second Petition also avers that Borrower and Guarantors have offered to make belated payments to either the Lender or to the Use Lender, yet neither wishes to accept such offers.¹¹ This defense is rejected because after judgment has been confessed, neither Lender nor the Use Lender has an obligation to accept a belated payment, unless Borrower and Guarantor can point to a contractual obligation requiring otherwise.

⁸ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1270 (Pa. Super. 2015) (emphasis supplied).

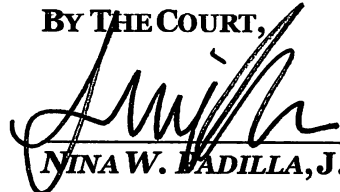
⁹ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

¹⁰ Second Petition, ¶ 11.

¹¹ Id., ¶ 12.

The Second Petition also avers in defense of Borrower and Guarantors that they are working on refinancing their loan under a different lender.¹² This defense is likewise rejected because no effort to repay the loan through additional financing could compel a court to open the judgment: only evidence “which in a jury trial would require the issues to be submitted to the jury” may require a court to open the judgment.¹³ In this case, Borrower and Guarantors have not identified any provision in the Note and Guaranties that would require opening the judgment upon a defendant’s efforts to refinance their defaulted obligations, and for this reason the defense based on refinancing the loan is rejected.

Finally, the Second Petition avers that Lender or the Use Lender “had agreed to lower the total amount due.”¹⁴ This final assertion is rejected because Borrower and Guarantors have offered no evidence of a new agreement involving terms that deviate from those contained in the Note and Guaranties. For all these reasons, the two petitions to open confession-of-judgment are denied.

BY THE COURT,

NINA W. PADILLA, J.

¹² Id., ¶ 13.

¹³ Pa. R.C.P. 2959(e).

¹⁴ Id., ¶ 14.