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R. POSTELL  
COMMERCE PROGRAM

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

**NFLT, A PENNSYLVANIA TRUST**

*Plaintiff*

**v.**

**GOUBAA INVESTMENTS, LLC and MOHAMED GOUBAA**

*Defendants*

: March Term, 2021

: Case No. 00996

: Commerce Program

: Control No. 21081210.

**ORDER**

**AND NOW**, this 2<sup>nd</sup> day of November, 2020, upon consideration of defendants' petition to strike or open confession-of-judgment, the answer of plaintiff, the respective briefs, the matter of record, and in accordance with the attached Opinion, it is **ORDERED** that the petition is **DENIED**.

**BY THE COURT,**

*[Signature]*  
**NINA W. PADILLA, J.**

210300996-Nflt, A Pennsylvania Trust Vs Goubaa Investments.



21030099600019

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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<b>NFLT, A PENNSYLVANIA TRUST</b>	:	March Term, 2021
	:	Case No. 00996
<i>Plaintiff</i>	:	
	:	
<b>v.</b>	:	Commerce Program
	:	
<b>GOUBAA INVESTMENTS, LLC and MOHAMED GOUBAA</b>	:	
	:	
<i>Defendants</i>	:	Control No. 21081210.

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**OPINION**

Plaintiff is NFLT (the “Lender”), a trust having an address in Philadelphia, Pennsylvania. Defendants are Goubaa Investments, LLC (the “Borrower”), and Mr. Mohamed Goubaa (the “Guarantor”), each having a respective address in Philadelphia, Pennsylvania.

On June 19, 2021, Borrower executed a promissory note (the “Note”), in favor of Lender, in the amount of \$350,000.00, while Guarantor pledged to honor the obligations of Borrower by executing a personal guaranty (the “Guaranty”).<sup>1</sup> The Note discloses the existence of a mortgage upon a property located at 3180, Grant Avenue, in Philadelphia, Pennsylvania (the “Mortgaged Property”), pledged by Borrower as collateral to the Note.<sup>2</sup>

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<sup>1</sup> Note, Exhibit A to the Complaint; Guaranty, Exhibit b to the complaint. The Note discloses the existence of a mortgage upon a property located at 3180, Grant Avenue, in Philadelphia, Pennsylvania (the “Mortgaged Property”), pledged by Borrower as collateral to the Note. See, Note, at section titled LIEN AND SECURITY INTEREST, p. 1-of-5 thereof.

<sup>2</sup> See, Note, at section titled LIEN AND SECURITY INTEREST, p. 1-of-5 thereof.

In addition, the Note and Guaranty contain warrants-of-attorney empowering Lender to confess judgment against Borrower and Guarantor, upon a default committed by the former.

On March 9, 2021, Lender confessed judgment against Borrower and Guarantor in the amount of \$335,713.46, which includes an unpaid principal balance of \$305,194.46 and attorney's fees of \$30,519.00. Lender's complaint avers that Borrower and Guarantor defaulted on the Note "by failing to make payments for gas, water and real estate taxes ... [thus] permitting liens ... to be placed on the Mortgaged Property."<sup>3</sup> On August 6, 2021, Borrower and Guarantor filed a petition to strike or open the judgment as confessed, and Lender, on August 26, 2021, filed an answer in opposition thereto. Both filings have been briefed.

#### DISCUSSION

The law on striking or opening confessions-of-judgment is well settled:

[a] petition to strike a judgment is a common law proceeding which 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.<sup>4</sup>

Conversely—

[t]he trial court may open a confessed judgment if the petitioner—

- (1) acts promptly,
- (2) alleges a meritorious defense, **and**
- (3) can produce sufficient evidence to require submission of the case to a jury.<sup>5</sup>

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<sup>3</sup> Complaint, ¶ 11.

<sup>4</sup> Neduesin v. Caplan, 121 A.3d 498, 504 (Pa. Super. 2015).

<sup>5</sup> Id., 121 A.3d 498, 506 (Pa. Super. 2015).

In footnote No. 1 of the petition, Borrower and Guarantor aver that the record is fatally flawed, and the judgment should be stricken, because Borrower received inadequate service of process in violation of Pa. R.C.P, 404 [sic], while Guarantor “never received service of the confession-of-judgment and the writ of execution.”<sup>6</sup> These challenges are rejected because under the Pennsylvania Rules of Civil Procedure—

[t]he prothonotary shall immediately give written notice of the entry of—

a judgment entered by confession to the defendant by ordinary mail together with a copy of all documents filed with the prothonotary in support of the confession of judgment....<sup>7</sup>

In this case, Borrower and Guarantor do not aver that the prothonotary failed to provide notice of the entry of judgment in adherence with the above-quoted Rule of Civil Procedure, and the Docket shows that on March 9, 2021, Borrower and Guarantor did receive from the Prothonotary notice of the entry of judgment, pursuant to Pa. R.C.P. 236.<sup>8</sup> In addition, the Court notes the allegation by Borrower and Guarantor that they never received service of the writ of execution: on the contrary, the record shows that at the time Lender entered judgment, the papers thereof contained a Notice of Execution under Pa. R.C.P. 2985.1, substantially in the form required by Pa. R.C.P 2964. Thus, the challenge averring that Borrower and Guarantor never received notice of execution is likewise rejected.

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<sup>6</sup> Petition to strike, at footnote No. 1. Pa. R.C.P. 404, on which Borrower and Guarantor rely, applies to service of original process outside the Commonwealth of Pennsylvania. Here, service of original process is not involved, and the record shows that each defendant has an address within our Commonwealth.

<sup>7</sup> Pa. R.C.P. 236(a)(1) (emphasis supplied).

<sup>8</sup> Docket at ZDPDOCT, entry made on March 9, 2021.

Next, Borrower and Guarantor aver that the record is fatally flawed because the confession-of-judgment "lacks the itemized computation ... as required by Pa. R.C.P. 2952(a)(7)."<sup>9</sup> This challenge is rejected. The pertinent Rule states that—

[t]he complaint [in confession-of-judgment] shall contain ...

\* \* \*

an itemized computation of the amount then due, based on matters outside the instrument, if necessary, which may include interest and attorney's fees authorized by the instrument.<sup>10</sup>

In addition, the courts of this Commonwealth have explained that "the itemization contemplated under ... [the Rules of Civil Procedure] permits the listing of the principal in one lump sum."<sup>11</sup> In this case, Lender listed \$305,194.46 as the unpaid "Principal Amount Due" under the Note, and this Court is satisfied that Lender's itemization complies with the Rules and with controlling case law.

Next, Borrower and Guarantor aver that the judgement was entered against them irregularly, as at least two liens already existed upon the Mortgaged Property before they defaulted; therefore, they argue that such liens could be not imputed against them to declare a default.<sup>12</sup> To tackle this issue, the Court turns to the language of the Note which states:

DEFAULT: The following shall each constitute an "Event of Default" under this Note:

\* \* \*

(e) If the Borrower permits any other lien or mortgage to be placed on the [Mortgaged] Property.<sup>13</sup>

<sup>9</sup> Petition, ¶ 9.

<sup>10</sup> Pa. R.C.P. 2952(a)(7).

<sup>11</sup> Davis v. Woxall Hotel, Inc., 577 A. 2d 636, 638 (Pa. Super. 1990).

<sup>12</sup> Petition, ¶ 5.

<sup>13</sup> Note, Exhibit A to the complaint at p. 2-of-5.

This language leaves no doubt: Borrower would default on its obligations under the Note if it permitted the creation of a new lien upon the Mortgaged Property.<sup>14</sup> Based on the foregoing, the only remaining issue is whether Borrower allowed the creation of any new liens upon the Mortgaged Property. An examination of the record shows a document captioned **JUDGMENT, BANKRUPTCY AND LIEN SEARCH**.<sup>15</sup> While this document shows the existence of a single lien predating Borrower's acquisition of the Mortgaged Property, it also lists four separate additional liens placed thereon between January and July 2020, that is, well after Borrower and Guarantor executed the loan documents dated June 19, 2019. This evidence shows that Borrower and Guarantor permitted new liens to be placed upon the Mortgaged Property, and this challenge is likewise rejected.

Lastly, Borrower and Guarantor aver that they paid "more than \$85,000.00 under the loan documents," and assert that the itemization supplied by Lender fails to reflect the true amount owed, which, they state, is now well below \$300,000.00.<sup>16</sup> This challenge is likewise rejected because Borrower and Guarantor have offered no evidence to support their allegation –no evidence of cancelled checks, wire transfer transcripts, or receipts, all of which could show that the unpaid principal amount has been reduced to below \$300,000.00.<sup>17</sup>

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<sup>14</sup> "The task of interpreting a contract is ... performed by a Court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties...." Humberston v. Chevron USA, Inc., 75 A.3d 504, 510 (Pa. Super. 2013).

<sup>15</sup> **JUDGMENT, BANKRUPTCY AND LIEN SEARCH**, attached under Exhibit C to the complaint.

<sup>16</sup> Petition, ¶¶ 9-10.

<sup>17</sup> See, Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super.1984) (stating that "the petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses").

Based on the foregoing, the petition to strike or open confession-of-judgment is denied in its entirety.

BY THE COURT,

  
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NINA W. PADILLA, J.