

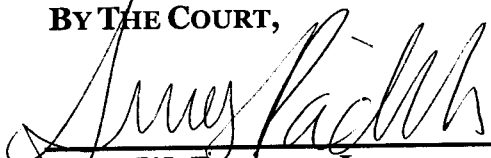
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL**

SANTANDER BANK, N.A.	:	April Term, 2021
	:	Case No. 00256
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
DESIGN CIRCLE, INC. and JOHN SINISI	:	
	:	
<i>Defendants</i>	:	Control No. 21052032

ORDER

AND NOW, this 27th day of August, 2021, upon consideration of defendants' petition to strike or open confession-of-judgment and for a prompt hearing, it is **ORDERED** that the petition is **DENIED** and the **STAY OF EXECUTION** is **LIFTED**.

BY THE COURT,



NINA W. PADILLA, J.

210400256-Santander Bank Na Vs Design Circle Inc Etal



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OPINION

Plaintiff, Santander Bank, N.A. (“Lender”), provided a line-of-credit loan to corporate defendant Design Circle, Inc. (“Borrower”), backed by a promissory Note (the “Note”).¹ Individual defendant John Sinisi (hereinafter, “Mr. Sinisi” or “Guarantor,” as required), guaranteed in person the obligations of Borrower by signing a “Guaranty.”² The Note-and-Guaranty contain warrants-of-attorney empowering Lender to confess judgment upon a default committed Borrower and/or Guarantor.

On April 5, 2021, Lender confessed judgment against Borrower and Guarantor on the averment that they had defaulted upon their obligations.³ On May 12, 2021, Borrower and Guarantor filed a petition to strike or open the confession-of-judgment.⁴ In the petition, the Guarantor avers that he did “not voluntarily, intelligently, or knowingly” execute the Guaranty because “the loan documents were represented to ... [him] to make the business, and not ... [himself,] personally responsible in the event of a loan default.”⁵ Specifically, Guarantor avers that he relied on the representations made by an employee of Santander Bank (“Lyskowsky”), and by a second individual with a criminal history (hereinafter, “Evans”), who allegedly was acting as a sub-agent of Lender. In other words, the petition to strike or open the confession-of-judgment seeks to add to the existing language of the Note and Guaranty certain prior or contemporaneous oral misrepresentations allegedly made by Lyskowsky and Evans while acting, apparently, as the agents of Lender. This challenge is rejected.

¹ Note, Exhibit A to the complaint.

² Guaranty, Exhibit A to the complaint.

³ Complaint, ¶ 6.

⁴ Cover sheet to the petition, filed May 12, 2021.

⁵ Petition, ¶ 26.

Preliminarily, the task of interpreting a contract belongs to the court:

[t]he task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the language of the written instrument.⁶

Next, the court turns its attention to the Note, which, in pertinent part, states as follows:

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETE COPY OF THIS PROMISSORY NOTE.⁷

Immediately below this bold, capitalized language, Mr. John Sinisi signed his name in his capacity as the president of Borrower. The above-quoted language, immediately followed by Mr. Sinisi's signature, demonstrates that he understood all the terms and provisions within the note, and agreed to bind Borrower to all the obligations therein.

Henceforth, the court turns its attention to the Guaranty, and to the Guarantor's effort to vary or alter the terms of that document under a theory of fraud.

The law in Pennsylvania recognizes two types of fraud: fraud-in-the-inducement and fraud-in-the-execution. Fraud in the execution is invoked when a party "averts that a term was **omitted** from the contract because of fraud, accident, or mistake."⁸ Stated another way, fraud in the execution is involved in situations where a term, which the

⁶ Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 510 (Pa. Super. 2013).

⁷ Note, Exhibit A to the complaint, p. 3.

⁸ DeArmitt v. New York Life Ins. Co., 73 A.3d 578, 590 (Pa. Super. 2013) (emphasis supplied).

parties had intended to include in the contract, is omitted therefrom due to fraud, accident or a mere mistake.

Conversely, the elements of fraud-in-the-inducement are—

- (1) a representation;
- (2) which is material to the transaction at hand;
- (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false;
- (4) with the intent of misleading another into relying on it;
- (5) justifiable reliance on the misrepresentation; and
- (6) the resulting injury was proximately caused by the reliance.⁹

Turning to the petition, the court notes the following language:

[b]ased on Lyskowsky's and Evans's representations that ... [the Guarantor] was not personally liable for the loan ... [the Guarantor] executed the loan documents on January 9, 2018.¹⁰

This language leaves no doubt: in the challenge to the confession-of-judgment, Guarantor does not aver that certain essential terms were omitted from the Guaranty due to fraud, accident or a mere mistake; instead, he claims to have relied on certain misrepresentations made by Lyskowsky and Evans when he signed that instrument. In other words, the Guarantor asserts fraud-in-the-inducement, and this court shall address that challenge under a legal principle known as the parol-evidence rule.

The Pennsylvania Supreme Court explained that—

[w]here the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. All preliminary negotiations, conversations and verbal agreements are merged in and superseded by the subsequent written contract and unless fraud, accident or mistake be averred, the writing constitutes

⁹ Eigen v. Textron Lycoming Reciprocating Engine Div., 874 A.2d 1179, 1185 (Pa. Super. 2005).

¹⁰ Petition, ¶ 24.

the agreement between the parties, and its terms and agreements cannot be added to nor subtracted from by parol evidence.... Therefore, for the parol-evidence rule to apply, there must be a writing that represents the entire contract between the parties.... To determine whether or not a writing is the parties' entire contract, the writing must be looked at and if it appears to be a contract complete within itself, couched in such terms as import a complete legal obligation without any uncertainty as to the object or extent of the parties' engagement, it is conclusively presumed that the writing represents the whole engagement of the parties.... An **integration clause** which states that a writing is meant to represent the parties' entire agreement is also a clear sign that the writing is meant to be just that and thereby expresses all of the parties' negotiations, conversations, and agreements made prior to its execution.¹¹

Stated succinctly, this explanation stands for two main propositions: first, a written contract, when formed in the absence of fraud, accident, or mistake, constitutes a complete, final and unchangeable agreement, as it contains all of the parties' negotiations, conversations and understandings; and second, such a contract is conclusively presumed complete, unchangeable, and final, if it also contains an integration clause –that is, a device providing assurance that every prior negotiation, conversation, and understanding, has been included into the contract.

Lastly, the court turns its attention to the Guaranty. This document states as follows:

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; **the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty.**¹²

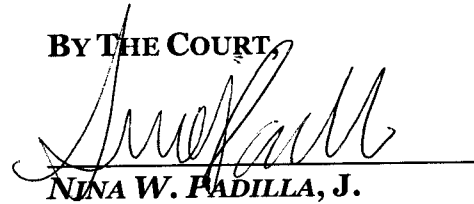
¹¹ Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436 (Pa. 2004) (emphasis supplied).

¹² Guaranty, at p. 3-of-4, Exhibit A to the complaint.

This language clearly and unambiguously states that Guarantor understood the terms within the Guaranty, and that those terms –and nothing more– constitute the entire agreement reached by the parties.

In conclusion, Borrower and Guarantor may not challenge the confession-of-judgment through a defense based on fraud-in-the-inducement because such a challenge is precluded by the parol-evidence rule. For this reason, the petition to strike or open confession-of-judgment is denied, and the stay of execution is lifted.

BY THE COURT

A handwritten signature in black ink, appearing to read "Nina W. Padilla", is written over a horizontal line. The signature is fluid and cursive.

NINA W. PADILLA, J.