

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

SANTANDER BANK, N.A., f/k/a SOVEREIGN BANK, N.A. : April Term, 2021
: Case No. 01321
Plaintiff :

v.

**PERSSONAL HEALTH CHIROPRACTIC, LLC
and MARC PERSSON**

Defendants

: Commerce Program
:
:
:
: Control No. 21053355
:

ORDER

AND NOW, this 23rd day of August, 2021, upon consideration of the petition to open confession-of-judgment filed by the defendants, the response in opposition of plaintiff, the respective briefs, and all matters of record, it is **ORDERED** that the petition is **DENIED**.

The judgment amount is modified and reduced,¹ and the new amounts is as follows:

Unpaid principal balance	\$147,179.84
Interest	\$505.93
Attorney's fees	\$14,685.00
Filing Fees	\$156.51
New total	\$162,527.28

BY THE COURT,



RAMY I. DJERASSI, J.

¹ The reasons for this modification may be found at footnote No. 13, *infra*.



OPINION

Plaintiff is Santander Bank, N.A. (“Lender”); defendants are an entity named Perssonal Health Chiropractic, LLC (“Borrower”), and an individual named Marc Persson (“Guarantor”). On May 2, 2018, Borrower executed in favor of Lender a \$150,000 promissory note (the “Note”), and Guarantor executed in favor of Lender a personal guaranty (the “Guaranty”) in the same amount.² Both documents contain warrants-of-attorney.

On April 16, 2021, Lender confessed judgment against Borrower and Guarantor for their failure “to make all agreed-upon payments ... pursuant to the ... agreements.³ The amount confessed by Lender includes an unpaid principal balance of \$147,179.84, attorney’s fees of \$15,016.94, filing fees of \$156.51, and interest of \$505.93, for a total of \$162,859.22. On May 20, 2021, Borrower and Guarantor filed a petition to open confession-of-judgment, and Lender filed a response thereto on June 2, 2021. The petition and answer have been briefed.

DISCUSSION

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

[a] petition to open is an appeal to the court's equitable powers and is addressed to the sound discretion of the court.... If evidence is produced which in a jury trial would require the issues to be submitted to the jury[,] the Court shall open judgment. [T]he standard of sufficiency the court must employ is that of a directed verdict, viewing all evidence in the light most favorable to the petitioner and accepting as true all evidence and proper inferences

² Note, Exhibit A to the complaint; Guaranty, attached to the record via *praecipe* to substitute / attach, dated May 20, 2021.

³ Complaint, ¶ 8.

therefrom supporting the defense, while rejecting the adverse allegations of the party obtaining the judgment.⁴

In addition, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.”⁵

In the petition, Borrower and Guarantor argue that the judgment should be opened to allow Guarantor “to be dismissed as a party to this action.”⁶ They reach this conclusion because the record, as originally filed by Lender, “is devoid of a personal guaranty executed by [the Guarantor].”⁷ Preliminarily, the Court notes that Lender amended the record via *praecipe* to substitute or attach, and included therein the personal Guaranty executed by Guarantor, on the same day when the instant petition was filed. Nevertheless, this challenge to the validity of the judgment against Guarantor is rejected:

formal defects, mistakes and omissions, in confessions of judgment, may be corrected by amendment where the cause of action is not changed, where the ends of justice require the allowance of such amendment and where the substantive rights of defendant or of any third persons will not be prejudiced thereby.⁸

Next, Borrower and Guarantor aver that the Note has neither a forum selection clause, nor a venue selection clause: the two petitioners thus conclude that the instant action-in-confession-of-judgment has been improperly asserted in Philadelphia County.⁹ This objection to the judgment is rejected because the warrants-of-attorney in

⁴ Indus. Valley Bank & Tr. Co. v. Lawrence Voluck Assocs., Inc., 428 A.2d 156, 158 (Pa. Super. 1981).

⁵ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

⁶ Petition to open, ¶ 9.

⁷ Id., ¶ 8.

⁸ George H. Althof, Inc. v. Spartan Inns of Am., Inc., 441 A.2d 1236, 1238 (Pa. Super. 1982).

⁹ Petition to open, ¶¶ 10-11.

the Note and Guaranty clearly state that Borrower and Guarantor “irrevocably” authorize—

the prothonotary or clerk of **any court in the Commonwealth of Pennsylvania** ... to appear ... against Borrower [and Guarantor] ... and ... confess or enter judgment against Borrower [and Guarantor]....¹⁰

Here, the warrants-of-attorney contemplated entry of the instant confession-of-judgment within any court of the Commonwealth of Pennsylvania, and judgment was thus properly entered in this, the Court of Common Pleas of Philadelphia County. For this reason, the Court rejects the defense based on the absence of forum and venue selection clauses in the agreements.

Borrower and Guarantor also aver that the confession-of-judgment is improper because “all payments were made timely ... and at no point prior to the filing of the instant confession of judgment were ... [Borrower and Guarantor] in default of the ... Note.”¹¹ Borrower and Guarantor further aver that Lender’s judgment claims inaccurate amounts under the Note and Guaranty.¹² These defenses are likewise rejected because Borrower and Guarantor bear the burden of offering evidence in support of their defenses; here, however, neither has substantiated such defenses by offering proof of payments made –whether through cancelled checks, wire transfer statements, or signed receipts– and neither has provided this court with evidence showing that Lender seeks to recover improper or inaccurate amounts.¹³

¹⁰ Note, p. 3-of-4, Guaranty, p. 4-of-5 (emphasis supplied). The court finds the above-quoted language to be clear and unambiguous: “[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.” Humberston v. Chevron USA, Inc., 75 A.3d 504, 510 (Pa. Super. 2013).

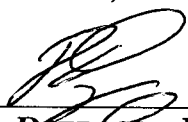
¹¹ Note, ¶ 12.

¹² Id., ¶ 13.

¹³ However, the Court notes that under the warrants-of-attorney, Lender may collect attorney’s fees of 10% of the unpaid balance and accrued interest –that is, 10% of the sum of \$147,179.84 and \$505.93, or

Finally, Borrower and Guarantor aver that Lender was entitled to enter judgment by confession only after expiration of the Maturity Date, May 2, 2021, and conclude that the judgment as entered on April 16, 2021 was premature.¹⁴ This defense is rejected for two reasons: first, Borrower and Guarantor have failed to point to the specific language in the Note that allegedly requires the entry of a judgment only after expiration of the Maturity Date; and second, a straightforward reading of the Note discloses that Lender enjoyed the right thereunder “to declare the entire unpaid principal amount ... due” upon the occurrence of any of the listed events of default.¹⁵ For these reasons, the petition to open confession-of-judgment is denied in its entirety.

BY THE COURT,



RAMY I. DJERASSI, J.

\$147,685.77. A quick calculation shows that 10% of \$147,685.77 yields attorney’s fees of **\$14,685.00**, whereas Lender claims such fees in the excessive amount of **\$15,016.94**. This mathematical error is modified, and the amount claimed by Lender is reduced accordingly. See, Braun v. Walmart Stores, Inc., 24 A.3d 975, 981-82 (Pa. Super. 2011) (aff’d 106 A.3d 656 (Pa.)). See also, Dollar Bank v. Northwood Cheese Co., 637 A.2d 309 (Pa. Super. 1994) (“if the judgment as entered is for items clearly contemplated within the judgment note but excessive in amount, the court will modify the judgment and cause a proper judgment to be entered”). See also, PNC Bank v. Bolus, 655 A.2d 997 (Pa. Super. 1995) (stating that the Pennsylvania Superior Court “encourage[s] trial courts to monitor the amounts charged ... and to reduce clearly excessive fees”).

¹⁴ Petition to open, ¶¶ 14-15.

¹⁵ Note—Lenders’ Rights, p. 2-of-4.