

DOCKETED

OCT 18 2021

R. POSTELL  
COMMERCE PROGRAM

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

CAMAPLAN ADMINISTRATOR FBO  
MICHAEL S. YALOWITZ, IRA

*Plaintiff*

v.

BRIDGET D. WATTS-JONES

*Defendant*

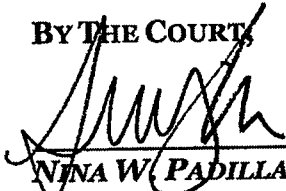
: April Term, 2021  
: Case No. 01715  
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:  
: Commerce Program  
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: Control No. 21060789

ORDER

AND NOW, this 18<sup>th</sup> day of October, 2021, upon consideration of the defendants' petition to strike or open confession-of-judgment, the response in opposition of plaintiff, and the respective *memoranda-of-law*, it is **ORDERED** that the petition is **DENIED**.

It is further **ORDERED** that the judgment amount is reduced by \$35,239.07, in accordance with the explanation in the accompanying **OPINION**. The new judgment amount is \$238,284.74.

BY THE COURT,

  
NINA W. PADILLA, J.

210401715 Camaplan Administrator Fbo Michael S. Yalowitiz Ira



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### OPINION

Plaintiff is Camaplan Administrator FBO, Michael S. Yalowitz, IRA (the "Lender"); defendant is an individual, Bridget D. Watts-Jones, (the "Borrower"). On December 26, 2018, Borrower obtained a commercial, \$211,250.00 loan from Lender, as evinced by a Construction Loan Agreement (the "Loan Agreement"), and promissory note (the "Note").<sup>1</sup> As security to the loan, Borrower executed in favor of Lender a "Mortgage" and a "Guaranty."<sup>2</sup> The property under the Mortgage is located at 2251 W. Oxford Street, in Philadelphia, Pennsylvania (the "Property"). On August 19, 2019, Lender forwarded to Borrower a document captioned Loan Modification for 2251 W. Oxford Street (the "Loan Modification Agreement"). Pursuant to that document, Borrower obtained an additional amount of \$22,000.00 to sustain unexpected costs incurred to rehabilitate the Property (the "Additional Loan Amount"). In return for the additional \$22,000.00, Borrower was required to pay additional points, interest and fees.<sup>3</sup> The Note bore a maturity date of December 26, 2019.

On April 21, 2021, Lender confessed judgment against Borrower for her failure to make timely payments on the principal amount of the Note, including the additional \$22,000.00, plus interest and other costs and fees.<sup>4</sup> Specifically, Lender's complaint avers that certain amounts overdue remain unpaid, including interest in excess of \$30,000.00, plus late fees.<sup>5</sup>

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<sup>1</sup> Loan Agreement, Note, Exhibit A to the complaint.

<sup>2</sup> Mortgage, Exhibit A to the complaint; Guaranty, Exhibit B to the complaint.

<sup>3</sup> Loan Modification, Exhibit C to the complaint.

<sup>4</sup> Complaint, ¶¶ 11-12.

<sup>5</sup> Complaint, ¶ 17.

On June 3, 2021, Borrower filed a petition to strike or open confession of judgment, and on June 24, 2021, Lender filed an answer in opposition thereto. The petition and response have been briefed.

### DISCUSSION

In the petition, Borrower argues that the judgment should be stricken or opened on several grounds. First, she asserts that Lender should not have confessed the judgment for her failure to timely repay her debts, because in the course of her business dealings with Lender, late payments were routinely accepted.<sup>6</sup> This argument is rejected because Borrower's untimely payments constituted events of default under the Loan Agreement, Note, Mortgage and Guaranty, and Lender's acceptance of any untimely payments did not erase Borrower's defaults, nor Lender's contractual right to enter judgment by confession.<sup>7</sup> In addition, certain overdue amounts remain unpaid, including interest and late fees, and a defense based on the belated remittance of payments, in the course of the parties' dealings, may not prevent Lender from confessing judgment under these circumstances.

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<sup>6</sup> Petition, ¶¶ 8-9.

<sup>7</sup> Preliminarily, it should be noted that the afore-mentioned defense requires this Court to interpret the term "Default" in Loan Agreement, and the warrants-of-attorney in the other operative documents, since "[t]he task of interpreting a contract is generally performed by a court...." Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 510 (Pa. Super. 2013)." In this case, the Loan Agreement defines an event of default as the—

"Non-Payment ... of principal ... or interest or any fee or any amount hereunder or under any Loan Document [including the Note, Mortgage and Guaranty] ... **when said payment is due.**" (See, Loan Agreement, ¶ 13, at Exhibit A to the complaint (emphasis supplied)).

This clear language, and upon a straightforward reading of the warrants-of-attorney, convince the Court finds that the defense based on course of dealing lacks merit.

Next, Borrower appears to aver that the untimely payments should have been excused because her renovation project was delayed by vandalism, and by the unruly, negligent conduct of her subcontractors.<sup>8</sup> This challenge to the judgment is rejected because Borrower has failed to point to any contractual provisions permitting late payments upon the occurrence of the afore-mentioned disruptions.

Next, Borrower appears to aver that she became current with her payment obligations between March 10, 2020, and March 19, 2020, when she remitted three separate interest payments to Lender.<sup>9</sup> In support of this challenge, Borrower has provided evidence in the form of a spreadsheet generated by Lender.<sup>10</sup> This challenge is rejected because under a petition to open confession-of-judgment, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.”<sup>11</sup> In this case, the spreadsheet does not offer “sufficient evidence” showing that Borrower obligations became current with the three payments mentioned above, nor can they show that such payments were timely made as to preclude additional defaults.

Next, Borrower asserts that her untimely payments resulted from the economic shutdown occasioned by the Covid-19 pandemic of 2020-2021.<sup>12</sup> This challenge is rejected because Borrower has failed to point to any contractual provision providing for a delay of repayments in the event of a pandemic-induced shutdown, and this Court has been unable to find such a provision anywhere in the record.

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<sup>8</sup> Petition, ¶¶ 10-15.

<sup>9</sup> Petition, ¶¶ 16-17.

<sup>10</sup> Exhibit 3 to the petition, at p. 4.

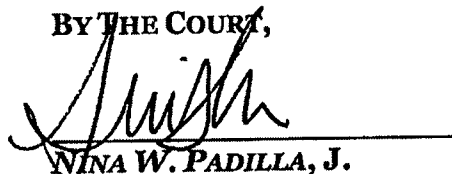
<sup>11</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

<sup>12</sup> Petition, ¶¶ 18, 20-25.

Next, Borrower asserts that the judgment amount is excessive in accordance with her "own accounting."<sup>13</sup> In support of this challenge, Borrower has provided a spreadsheet purporting to show that she remains in arrears only for an amount of \$19,640.34, and that her outstanding obligations should be lowered from \$273,523.81 to \$246,559.21. This challenge is likewise rejected because the evidence produced in support thereof is insufficient to show that Borrower reduced her obligations as stated in the petition.

Finally, the Court notes that the judgment amount includes \$35,239.07, comprising the Additional Loan of \$22,000.00, an originating fee of \$4,225.00, an interest increment of \$3,960.00, an increment of 3 percentage loan-points in the amount of \$660.00, interest in the amount of \$4,244.07 and a wire transfer fee of \$150.00. The amount of \$35,239.07 is stricken because the purported Loan Modification Agreement underlying the above-mentioned figures has no warrant-of-attorney, and without such a critical provision, Lender may not recover through this action in confession-of-judgment.<sup>14</sup> Accordingly, the judgment amount is reduced from \$273,523.81 to \$238,284.74.

BY THE COURT,



NINA W. PADILLA, J.

<sup>13</sup> Petition, ¶¶ 26-30.

<sup>14</sup> To execute a confession-of-judgment, an agreement "must contain a warrant-of-attorney provision authorizing confession by the plaintiff's attorney." *Crum v. Shaffer Co.*, 693 A.2d 984 (Pa. Super. 1997). In this case, the Court has found no evidence of the existence of a warrant-of-attorney applicable to the Additional Loan Amount of \$22,000.00 and related sums; thus, Lender may not recover said sums under this, an action in confession-of-judgment.