

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

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| SANTANDER BANK, N.A., | : | May Term 2021 |
| | : | |
| Plaintiff, | : | |
| | : | No. 1597 |
| v. | : | |
| PMT CONTRACTING CO., INC. and | : | |
| MAURICE J. ABDALLA, | : | COMMERCE PROGRAM |
| | : | |
| Defendants. | : | Control Number 21103067 |
| | : | |
| | : | |
| | : | 1485 EDA 2022 |

OPINION

Wright Padilla, S.J.

August 31, 2022

This opinion is submitted relative to the appeal of this court's order dated May 3, 2022 which granted Plaintiff Santander Bank N.A.'s motion for reconsideration and modified and reduced by \$500.00 the confessed judgment. For the reasons discussed below, this court's order dated May 3, 2022 should be affirmed.

Plaintiff is Santander Bank, N.A. ("Lender"). Defendants are PMT Contracting Company, Inc. ("Borrower"), and Maurice J. Abdalla ("Guarantor"). The Borrower and Guarantor will be referred to collectively as "Defendants" when necessary. Borrower and Guarantor respectively signed a promissory note (the "Note"), and a personal guaranty (the "Guaranty"), wherein the former promised to repay to Lender a \$150,000.00 line-of-credit loan, and the latter guaranteed all of Borrower's obligations under the Note.¹ The Note and Guaranty contain warrants of attorney entitling Lender to confess judgment against Borrower and Guarantor upon a default committed by either.² Maurice J. Abdalla signed the Note as the president of Borrower, and signed the Guaranty in his personal capacity.

¹ Note and Guaranty, Exhibit A to the complaint.

² Id., Note, p. 3; Guaranty, p. 4.



On September 1, 2020, Lender notified Defendants that they had defaulted on the Note for “fail[ing] to reduce the Line of Credit to 40% annually for 30 consecutive days.”³ Additionally, the Lender also notified Defendants that nonpayment defaults existed such as a failure to provide Lender with necessary documentation.⁴ This notification specifically informed Defendants that it operated as a “demand for payment.”⁵ On May 11, 2021, Lender through its counsel forwarded to Defendants a second notification of default, for, “among other things, [their failure] to make payments when due.”⁶ The second notification demanded “immediate payment in full of all amounts” under the Note.⁷

On May 18, 2021, Lender filed a complaint in confession of judgment against Defendants for defaulting “in their obligations under the Note ... as required to make payments under the monies loaned.”⁸ The complaint confessed judgment in the total amount of \$185,355.15, including \$149,250.00 (unpaid principal), \$156.51 (filing fees), \$17,803.25 (accruing interest), \$809.15 (late fees), \$500.00 (other fees), and \$16,836.24 (attorney’s fees).

On June 17, 2021, Defendants filed a petition to strike or open the judgment by confession. On June 29, 2021, Lender filed a response in opposition. On October 7, 2021, after considering the parties respective submissions, the court granted Defendants Petition to Open on one issue. In a footnote, the court identified the issue as the inclusion of \$500.00 for “Other

³ Letter dated September 1, 2020, attached as Exhibit A to Certification of Maurice J. Abdalla (“Abdalla”) attached to Defendants’ petition to strike or open confession of judgment.

⁴ Id.

⁵ Id.

⁶ Letter dated May 11, 2021 attached as Exhibit A to Certification of Abdalla attached to Defendants’ petition to strike or open confession of judgment.

⁷ Id.

⁸ Complaint, ¶ 6.

Fees” which was not authorized by the warrants of attorney. The footnote did not identify any other reasons for opening the judgment.

On October 18, 2021, Lender filed a praecipe to amend the judgment from \$185,355.15 to \$184,805.15, a reduction of \$500.00. Additionally, Lender also filed a motion for reconsideration of the order dated October 7, 2021 granting Defendants’ Petition to Open on the limited issue of the unauthorized “Other Fee” amount. Lender informed the court that it reduced the judgment amount by \$500 eliminating the “Other Fees” from the judgment therefore removing the contention of any issue of fact and asked that the October 7, 2021 be vacated and Defendants Petition to Open be denied. On January 26, 2022, the court ordered that Defendants file a response to the motion for reconsideration. On February 16, 2022, Defendants filed a response to the motion for reconsideration arguing that the basis for opening the judgment was not solely limited to the inclusion of \$500 representing “other fees”. On February 23, 2022, Lender filed a reply.

On May 3, 2022, the court granted Lender’s motion for reconsideration and vacated the October 7, 2021. Additionally, the court denied in part and granted in part Defendants’ petition to open and/or strike the confessed judgment. The court ordered that the Judgment by Confession in the amount of \$185,355.15 be modified and reduced by \$500 to \$184,805.15. Further, the court ordered the Office of Judicial Records to modify the Judgment Index and enter Judgment against Defendants in the amount of \$184,805.15. On June 2, 2022, Defendants appealed this court’s order dated May 3, 2022 granting Lender’s Motion for Reconsideration.

Discussion

The standard of review of a motion for reconsideration is limited to whether the trial court manifestly abused its discretion or committed an error of law.⁹ This does not mean merely

⁹ *Dahl v. AmeriQuest Mortg. Co.*, 954 A.2d 588, 593 (Pa. Super 2008).

an error of judgment, but rather if the law is overridden or misapplied by the court in coming to its conclusion, or if the judgment is lacking a reason, discretion must be held to have been abused.¹⁰ In order to properly evaluate whether this court erred in granting Lender's motion for reconsideration, the court must revisit and analyze Defendants' Petition to Open and/or Strike the Confessed Judgment. After reviewing Defendants' Petition, it is clear this court acted within its discretion to grant the motion for reconsideration.

"A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record."¹¹ "A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record."¹² In reviewing "the merits of a petition to strike, the court will be limited to a review of only the record as filed by the party in whose favor the warrant is given, *i.e.*, the complaint and the documents which contain confession of judgment clauses."¹³ The record must be sufficient to sustain the judgment.¹⁴

On the other hand, "A petition to open a confessed judgment is an appeal to the equitable powers of the court."¹⁵ The 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

¹⁰ *Id.* (quoting *Drelles v. Manufacturers Life Insurance Company*, 881 A.2d 822 (Pa. Super. 2005)).

¹¹ *Resolution Trust Corp. v. Copley Qu-Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996) (citation omitted).

¹² *Id.* (citation omitted).

¹³ *Id.*

¹⁴ *ESB Bank v. McDade*, 2 A.3d 1236, 1239 (Pa. Super. 2010).

¹⁵ *Neducsin v. Caplan*, 121 A.3d 498, 504 (Pa. Super. 2015).

submission of the case to a jury.”¹⁶ “[I]f the truth of the factual averments contained in the complaint in confession of judgment and attached exhibits are disputed, then the remedy is by proceeding to open the judgment, not to strike it.”¹⁷ Here, there were no fatal defects on the face of the record to strike the judgment by confession and only one issue existed which required opening the judgment.

Defendants, in their petition to open and or strike, raised several challenges to the judgment by confession. After careful consideration of these matters which will be discussed below, the court determined that only one challenge required the court to open the judgment.

The challenges raised to strike the judgment were as follows:

1. The Lender failed to provide Borrower and Guarantor with notice prior to confessing judgment.

With respect to the argument of improper notice or failure to provide notice prior to confessing judgment, the Note and Guarantee did not require prior notice to the Defendants before the filing of a confessed judgment.¹⁸ Abdalla executed a “Disclosure for Confessed Judgment” for the Note and the Guaranty wherein he specifically acknowledged on behalf of himself and the company that he understood that notice would not be given before the warrants for confession of judgment would be exercised. The disclosure provided the following:

“THE UNDERSIGNED UNDERSTANDS THAT THE NOTE [GUARANTY] CONTAINS A CONFESSION OF JUDGMENT PROVISION THAT WOULD PERMIT LENDER TO ENTER JUDGMENT AGAINST DECLARANT [BORROWER OR GUARANTOR] IN COURT, AFTER A DEFAULT ON THE NOTE, WITHOUT ADVANCE NOTICE TO DECLARANT AND WITHOUT OFFERING DECLARANT AN OPPORTUNITY TO DEFEND AGAINST THE ENTRY OF JUDGMENT.”¹⁹

¹⁶ *Id.* at 506 (citation and emphasis omitted).

¹⁷ *Id.* at 504 (internal quotation marks, citation, and brackets omitted).

¹⁸ Note and Guaranty confession of judgment provision.

¹⁹ Disclosures for Confession of Judgment.

Based on the unambiguous language of this disclosure statement, the court found that the Lender did not have a duty to notify Defendants prior to filing the complaint in confession of judgment.

2. Lender did not give Defendants an opportunity to cure the default.

Once again, under the terms of the Note, Lender was not required to give Defendants a cure period for a payment default. Defendants, contrary to their arguments that they were never informed about the nature of their default, received two letters from Lender informing Defendants of their default. On September 1, 2020, Lender provided Defendants with notice that they were in default of their obligations under the Note. Specifically, the September 2020 letter informed Defendants that there were payment defaults as well as nonpayment defaults. Under the terms of the Note, only nonpayment defaults are subject to the cure provision and only if certain conditions existed. As Defendants defaulted on their payment obligations, a cure period was not required and this challenge to the confessed judgment failed.

3. The contents of the complaint in confession of judgment were faulty.

Defendants next challenge may be categorized as defects in the complaint in confession of judgment. Defendants argue that the complaint in confession of judgment's averment of default, calculation of the judgment and verification attached were faulty. This court was persuaded in part. Pa. R. Civ. P. 2952 (a)(6) states that a complaint in confession of judgment shall allege "if the judgment may be entered only after a default,...an averment of a default." Lender's complaint did aver a default.²⁰ Similarly, Pa. R. Civ. P. 2952 (7) requires that a complaint in confession of judgment set forth "an itemized computation of the amount then due, based on matters outside the instrument if necessary, which may include interest and attorneys'

²⁰ See complaint ¶¶5-9; See also the affidavit of default.

fees as authorized by the instrument.” In *Davis v. Woxall Hotel, Inc.*,²¹ this court construed Rule 2952(a)(7) as to require only that a plaintiff aver a default and allege the amounts due in a complaint for confession of judgment. This was exactly what Lender did in its complaint to confess judgment. Based on the itemization in the complaint for confessed judgment, the court agreed with Defendants that the judgment amount included items that were not authorized by the warrant, that is, \$500 for “Other Fees”. As a result, the court opened the judgment.²²

In preparing this appeal opinion, this court also discovered that the amount for attorneys’ fees is also incorrect. The confessed judgment provides for an attorney fee commission of 10% to be calculated on the sum of the unpaid principal balance and interest. In this case, ten percent (10%) of the sum of the unpaid principal balance (\$149,250.00), and interest (\$17,803.25), equals \$167,053.25. Ten percent (10%) of \$167,053.25 equals \$16,705.33. Lender claims attorney’s fees of \$16,836.24 which is \$130.91 greater than the authorized amount. The court notes that this mathematical calculation was not addressed in its orders dated October 7, 2021 and May 3, 2022 and is subject to correction once this appeal is decided.

Defendants also challenged the verification attached to the complaint in confession of judgment arguing that the verification failed to indicate the affiant’s position at the Bank and whether he would have knowledge as to the veracity of the information contained within the complaint. While Defendants are correct that the verification failed to specifically set forth the affiant’s position, the verification complies with Pa. R. Civ. P. 2952 (a) (10) and 206.2. Mr.

²¹ 577 A.2d 636, 638 (Pa.Super. 1990).

²² Defendants argue that Lender improperly captioned the loan’s unpaid balance amount as “damages for default,” and argue that this extraneous term leaves them “unable to defend” because it appears nowhere in the Note. (See Petition, ¶ 36). However, Lender’s complaint in confession of judgement adequately set forth “an itemized computation of the amount then due”. Lender need only list “the principle [*sic*] amount ... in one lump sum.” See, Pa. R. Civ. P. 2952 (7) and *Davis v. Woxall Hotel, Inc.*, *supra*. In this case, it does not matter that Lender identified the unpaid principal amount of the loan as “damages for default,” since such a deviation represents a distinction without a difference—a distinction that fails to uncover a fatal flaw in the record.

Cesar Casillas²³ verified the complaint and acknowledged the facts set forth therein and declared them to be true and correct to the best of his knowledge. Based on the foregoing, the court rejected, Defendants challenges to the contents of the complaint in confession of judgment in part.

4. The attorney fees are excessive.

Defendants challenged the requested attorney fees as excessive.²⁴ To test this challenge, the court examined the two warrants of attorney respectively implicated herein in the Note and the Guaranty. They state as follows:

Borrower empowers any attorney ... to appear at any time for Borrower after a default under this Note and ... confess or enter judgment against Borrower for the entire principal balance of this Note and all accrued interest, late charges and any and all amounts expended or advanced by Lender ... **together with costs of suit and an attorney's commission of ten percent (10%) of the unpaid principal balance and accrued interest** for collection....(Emphasis Removed).²⁵

This provision allowed Lender to claim attorney's fees calculated as 10% of the sum of the unpaid principal balance and interest. In this case, ten percent (10%) of the sum of the unpaid principal balance (\$149,250.00), and interest (\$17,803.25), equals \$167,053.25. Ten percent (10%) of \$167,053.25 equals \$16,705.33.²⁶ Since a 10% attorney commission was specifically

²³ Mr. Casillas is a bank representative with knowledge of the facts alleged in the complaint for confession of judgment.

²⁴ Petition, ¶¶ 38-40.

²⁵ Note, Exhibit A to the complaint, at p. 3, paragraph captioned Confession of Judgment. The warrant of attorney in the Guaranty, also at Exhibit A to the complaint at p. 4.

²⁶ In section 3 of this opinion, this court discusses the mathematical error that exists and requires correction once this appeal is considered.

authorized by the warrants of attorney and attorney fee commissions of 15% have been found acceptable by the courts, Defendants' challenge failed.²⁷

The challenges made to open the judgment were as follows:

1. This court lacks jurisdiction over Borrower in this matter.

Defendants challenge this court's jurisdiction over Borrower in this matter. The court did not agree. Borrower consented to jurisdiction in this court. Under Pennsylvania law, the "parties to a contract may agree in advance to submit to the jurisdiction of a given court."²⁸ Specifically, Pennsylvania law provides that personal jurisdiction can be established by consent of the parties.²⁹ Because the requirement of personal jurisdiction represents an individual right, it can, like other such rights, be waived.³⁰

Here, the Note and the Guaranty provide in pertinent part that "This Note will be governed ...by, the laws of the Commonwealth of Pennsylvania without regard to its conflict of law provisions. This Note has been accepted by Lender in this Commonwealth of Pennsylvania." ³¹ Additionally, and perhaps most importantly, the confession of judgment provision within the Note "empowered any attorney or the prothonotary or clerk of any court in the Commonwealth of Pennsylvania, or elsewhere, to enter judgment against the Borrower."

²⁷ Defendants also argued that an ambiguity existed in the Note and Guaranty regarding attorney fees. According to Defendants two attorney fee provisions exist. The court did not find the Note or Guaranty ambiguous. An attorney fee provision exists in the Note independent of the Confession of Judgment provision. However, since the Lender confessed judgment, the attorney fee commission authorized by the warrant of attorney governs the authorization of attorney fees and the calculation.

²⁸ *Cont'l Bank v. Brodsky*, 311 A.2d 676, 677-78 (Pa. Super. 1973).

²⁹ *Frontier Leasing Corp. v. Shah*, 931 A.2d 676, 680 (Pa. Super. 2007) (discussing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (U.S. 1945)).

³⁰ *Id.* (citing *C. ie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982)).

³¹ See Note and Guaranty.

The Confession of Judgment provision was disclosed to Borrower by Lender and was acknowledged by Abdulla.³²

Notwithstanding, Borrower's consent to this court's jurisdiction, Borrower does business in Pennsylvania. The results of a google search by Lender attached to its response to the petition to open reveals that Borrower's website identifies a Pennsylvania telephone number and advertises an address for Borrower in Morrisville, PA., the same address set forth on the Note. Borrower's website also boasts that it has been in business for over 15 years. Based on the foregoing, this court found it had jurisdiction and that because it had jurisdiction over Borrower, there was no need to consider Borrower's allegation of fraud and denied the petition to open on this basis.

2. Calculation of Amounts due and owing were questionable.

These calculations were discussed in the section regarding striking the judgment in section 3 and did form the basis for this court opening the judgment.

CONCLUSION

Based on the forgoing, this court opened the judgment solely as to the addition of \$500 as "Other Fees" which was not authorized by the warrants of attorney. Thereafter, Lender filed a motion for reconsideration to "address and put to rest the issue of fact" informing the court that it filed a praecipe to reduce the judgment by \$500.00 representing a credit to Defendants for the previously assessed \$500.00. Because the judgment was modified to reflect the elimination of "Other Fees", there was no existing question of fact supporting the judgment's opening and the court granted the motion for reconsideration.

For the foregoing reason, this court's order dated May 3, 2022 should be affirmed.

³² Defendants suggested that the judgment should be opened based on unequal bargaining power. The court did not find this to be the case based on the commercial nature of this transaction, the executed Disclosure of Confessed Judgment, Abdalla's acknowledgement of the confession of judgment provision and the number of years Borrower has been in business.

Date: August 31, 2022

Respectfully Submitted,

BY THE COURT;



NINA W. PADILLA, S.J.