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

IMPACT LOAN FUND, INC., : July Term 2023  
Plaintiff, :  
v. : No. 922  
MAXIM BABIN, :  
Defendant. : Commerce Program  
: Control Number 23081245

**ORDER**

AND NOW, this 16<sup>th</sup> day of April 2024, upon consideration of defendant Maxim Babin's petition to strike and request for a prompt hearing, plaintiff Impact Loan Fund, Inc.'s opposition, and in accord with the attached opinion, it is **ORDERED** that the petition is **DENIED**.

**BY THE COURT**

  
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ABBE F. FLETMAN, J.

**DOCKETED**  
APR 16 2024  
R. POSTER  
COMMERCE PROGRAM

230700922-Impact Loan Fund, Inc. Vs Babin



23070092200014

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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
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IMPACT LOAN FUND, INC.,	:	July Term 2023
	Plaintiff,	:
	v.	No. 922
MAXIM BABIN,	:	
	Defendant.	Commerce Program
	:	
	:	Control Number 23081245

**OPINION**

Before the Court is a petition to strike confessed judgment and request for a prompt hearing filed by defendant Maxim Babin<sup>1</sup>. For the reasons set forth below, the petition is denied.

**BACKGROUND**

Plaintiff Impact Loan Fund, Inc. (“Impact”) made a business loan to Mr. Babin for the sum of \$22,500.00. Complaint ¶ 4 and Affidavit of Income, Addresses, Non-Military Service, Business Transaction and Non-Retail Transaction of Paul Marcus, Director of Impact Loan Fund Inc. ¶ 7 (Docket [Dkt.] at July 10, 2023). The loan is evidenced by a Promissory Note executed by Impact and Mr. Babin on March 8, 2022. Promissory Note attached to the Complaint as Exhibit A (Dkt. at July 10, 2023). The Promissory Note sets forth in part the following terms: an interest rate of four percent per annum, a nine-month payment deferral period, payment of principal and interest in monthly installments to be repaid in 60 equal monthly installments after deferral period ends, and a confession of judgment provision that includes a warrant of attorney to be used by Impact in

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<sup>1</sup> Mr. Babin is proceeding *in forma pauperis* in accordance with this court’s order dated August 22, 2023. (Docket at August 23, 2023). While unrepresented litigants may be afforded leniency, they are still bound by the Rules of Civil Procedure and cannot be afforded any advantages. *Smathers v. Smathers*, 670 A.2d 1159, 1160 (Pa. Super. 1996).

the event of default. Exhibit A p. 1 (Dkt. at July 10, 2023). Mr. Babin signed the Promissory Note electronically on March 8, 2022. *Id.* On the same date, Mr. Babin also executed a Security Agreement. Security Agreement attached to the Complaint as Exhibit B Dkt. at July 10, 2023). The Security Agreement includes no confession of judgment provision but gives Impact a security interest in Mr. Babin's personal property as identified in the agreement. *Id.* Impact agreed to file the Security Agreement executed by Mr. Babin only in the event of default. Exhibit A p. 2.

Impact alleges Mr. Babin defaulted on the loan by failing to make the required payments when due. Complaint (Dkt. at July 10, 2023). On July 10, 2023, Impact filed a complaint in confession judgment against Mr. Babin in the amount of \$24,987.46. (Dkt. July 10, 2023) On August 5, 2023, Mr. Babin filed a petition to strike the judgment and requested a prompt hearing. (Dkt. at August 4, 2023) Impact filed a response in opposition. (Dkt. at August 23, 2023) The petition is now ripe for disposition.

## DISCUSSION

A petition to strike a judgment may be granted only when a fatal defect or irregularity appears on the face of the record. *Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.*, 645 A.2d 843, 846 (Pa. Super. 1994). When considering a petition to strike, the court is limited to review only the record as filed by the party in whose favor the warrant is given, i.e., the complaint and the documents attached to the complaint. *Resolution Trust Corp. v. Copley Qu-Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996). Following a confession of judgment, the debtor can choose to litigate the judgment by filing a petition in compliance with Pa. R. Civ. P. 2959. The debtor must raise all grounds for relief (to strike off or open) in a single petition. Pa. R. Civ. P. 2959 (a)(1). A party waives all defenses and objections which are not included in the petition or answer. Pa. R. C. P. 2959 (c).

**I. The Request for a Prompt Hearing is Improper.**

Mr. Babin requests a prompt hearing contending he did not voluntarily give up his right to notice and hearing before judgment. (Dkt. August 4, 2023) There are three instances where a prompt hearing is required. They are: 1) in support of a request for a stay, previously denied, despite timely filing of that request and “the presentation of *prima facie* evidence of a defense.”, 2) when personal property had been levied upon or attached without prior notice and hearing under Rule 2958.2, and 3) when a defendant in possession of leased residential real property has been evicted without prior notice and hearing under Rule 2973.3. Pa. R. Civ. P. 2959 (a)(2)(i) and (ii); See, Explanatory Comment -1996 to Pa. R. Civ. P. 2959 (a)(2). In all other instances, the issues upon a petition for relief from the judgment will be the merits and not the waiver of due process. *Id.*

Mr. Babin’s request for a prompt hearing does not fall within the requirements of Rule 2959 (a)(2)(i) and (ii) of the Pennsylvania Rules of Civil Procedure. Mr. Babin did not request a stay and the court never denied such a request. Impact did not levy Mr. Babin’s personal property even though the Security Agreement does give Impact a security interest in Mr. Babin’s personal property. Lastly, Impact has not evicted Mr. Babin from leased residential real property. In fact, a review of the record shows that Impact, as of the writing of this opinion, has not filed a writ of execution. Based on the foregoing, Mr. Babin’s request for a prompt hearing is denied.

**II. The Petition to Strike Confessed Judgment is Denied.**

Mr. Babin petitions the court to strike the confessed judgment because he “was manipulated and lied to by Stewart Scott (representative from Impact Loan) regarding the money.” Babin’s Memorandum of Law (Dkt. August 5, 2023). He further contends that he did not sign the

Security Agreement and that his family will suffer great hardship due to his economic and personal situations. *Id.*

First, Mr. Babin's contentions that the judgment should be stricken because a representative of Impact "manipulated and lied" to Mr. Babin and because of any personal and economic hardships are not proper grounds to strike a judgment. When considering a petition to strike, a court is confined to examine the record as filed by the lender to determine if the judgment should be stricken. *Resolution Trust Corp. v. Copley Qu-Wayne Assocs., supra.* at 275 (Pa.1996) ("it is improper to consider the equities of the matter in a petition to strike"). The record in this case is the complaint and the documents attached to the complaint, the Promissory Note and the Security Agreement. Since the grounds raised by Mr. Babin contending he was "manipulated and lied to" by Impact and his personal and economic hardships are not part of the record the court is required to consider on a petition to strike, the petition is accordingly denied.<sup>2</sup>

Lastly, Mr. Babin contends that the judgment should be stricken because he did not sign the Security Agreement and did not voluntarily, intelligently and knowingly give up his right to notice and hearing. The Security Agreement is not relevant to this petition. The judgment is based on the warrant of attorney contained in the Promissory Note that Mr. Babin executed. The warrant

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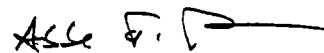
<sup>2</sup> Mr. Babin's contention that Impact "manipulated and lied" to Mr. Babin is more appropriately made in a petition to open a judgment. Mr. Babin did not file a petition to open. However, even if Mr. Babin had filed a petition to open, the petition would be denied as Mr. Babin failed to attach any evidence to support this contention. See, *Germantown Savings Bank v. Talacki*, 657 A.2d 1285, 1289 (Pa. Super.1995) (evidence of a meritorious defense must be "clear, direct, and precise, and believable"). Additionally, while the Court is sympathetic to Mr. Babin's economic and personal hardships, inability to repay a loan due to alleged personal hardships is not a meritorious defense. See, *Luber v. Luber*, 614 A.2d 771, 774 (Pa. Super. 1992) (A party generally assumes the risk of his own inability to perform his contractual duties.)

of attorney in the Promissory Note is prominently displayed on its own page in all capital letters. (Exhibit “A” pp. 4-5). The provision gave Mr. Babin the option to consult with counsel of his choosing before signing the agreement. Importantly, Mr. Babin acknowledged by signing the Promissory Note that he understood that by agreeing to the loan and accepting the monies that he “VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY” gave up his rights to notice and a hearing before entry of a judgment. *Id.* A warrant of attorney is a grant of authority by one contracting party to the other, upon the happening of a certain event such as a default, to enter a judgment. *SDO Fund II D32, LLC v. Donahue*, 234 A.3d 738, 743 (Pa. Super. 2020). There is no dispute that Mr. Babin defaulted on the loan. Consequently, Impact exercised its right use the warrant of attorney that Mr. Babin authorized and entered judgment against Mr. Babin. Since the Promissory Note containing the confession of judgment provision that authorized the entry of the judgment was prominently displayed and acknowledged by Mr. Babin with his signature, the petition to strike is denied. *See, Neducsin v. Caplan*, 121 A.3d 498, 508–09 (Pa. Super. 2015).

#### CONCLUSION

For the foregoing reasons, the petition to strike the confessed judgment and request for a prompt hearing is denied.

BY THE COURT



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ABBE F. FLETMAN, J.