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

DESCARTES SPECIALTY FINANCE,
LTD.,

Plaintiff,

v.

ADMIRAL COURT REALTY CO., L.P.
and DORSETT COURT REALTY CO.,
L.P.,

Defendants.

MARCH TERM, 2024

No. 1523

COMMERCE PROGRAM

CONTROL NUMBER 24044749

ORDER

AND NOW, this 9th day of December 2024, upon consideration of the petition to strike or open confessed judgment of the defendants, Admiral Court Realty Co. and Dorsett Court Realty Co., and the response, it is **ORDERED** that:

1. The petition is **DENIED**; and
2. The motion to stay execution is **DENIED**.

BY THE COURT:


ABBE FLETMAN, J.

ORDRC-Descartes Specialty Finance Ltd Vs Admiral Court R [RCP]



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DEC 10 2024

R. POSTELL
COMMERCE PROGRAM

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

DESCARTES SPECIALTY FINANCE, LTD.,	MARCH TERM 2024
<i>Plaintiff,</i>	No. 1523
v.	COMMERCE PROGRAM
ADMIRAL COURT REALTY CO., L.P. and DORSETT COURT REALTY CO., L.P.,	CONTROL NUMBER 24044749
<i>Defendants.</i>	

OPINION

Before the Court is the petition to open or strike the confessed judgment of defendants Admiral Court Realty Co. and Dorsett Court Realty Co. (collectively, “Admiral”). For the following reasons, the petition is denied, and the motion to stay execution is denied.

M360 Community Development Fund LLC (“M360”) and Admiral executed a secured note on March 26, 2019, for a loan of \$25,895,000, secured by mortgages on two pieces of Philadelphia real property. (Secured Note, Exhibit A to complaint in confession of judgment, Trial Docket (“Dkt.”) at 3/13/2024.) The note contains a warrant of attorney to confess judgment. (*Id.* at ¶ 33).

Descartes Specialty Finance, LTD (“Descartes”), who asserts that it is the owner of all rights, title, and interest in the secured note and the security instruments, confessed judgment on March 13, 2024, for \$29.4 million in principal, interest, and fees, after Admiral defaulted on the interest-only payments. (Complaint in confession of judgment, ¶¶ 1,14,15,24.) Admiral filed this petition to strike or open the confessed judgment on April 22, 2024. (Petition to strike or open, Dkt. at 4/22/2024.)

The secured note contains the following provision entitled "Governing Law: Consent to Jurisdiction and Venue," which sets jurisdiction and venue in Orange County, California:

This Secured Note is made by the Lender and accepted by the Borrower in the State of California except that at all times the provisions for the creation, perfection, priority, enforcement and foreclosure of the liens and security interests created in the Property under the Loan Documents shall be governed by and construed according to the laws of Pennsylvania. To the fullest extent permitted by the law of Pennsylvania, the law of the State of California shall govern the validity and enforceability of all Loan Documents, and the debt or obligations arising hereunder (but the foregoing shall not be construed to limit Lender's rights with respect to such security interest created in Pennsylvania). The parties agree that jurisdiction and venue for any dispute, claim or controversy arising, other than with respect to perfection and enforcement of Lender's rights against the Property, shall be Orange County, or the applicable federal district court that covers said County, and Borrower submits to personal jurisdiction in that forum for any and all purposes. Borrower waives any right Borrower may have to assert the doctrine of forum non conveniens or to object to such venue.

(Secured note at ¶ 15.)

It also contains an arbitration provision:

Concurrently herewith, borrower and any guarantor shall execute that certain arbitration agreement whereby borrower, any guarantor, and lender agree to arbitrate any disputes to resolve any claims (as defined in the arbitration agreement.)

(*Id.* ¶20.1)

"A confessed judgment will be stricken only if a fatal defect or irregularity appears on the face of the record. A judgment by confession will be opened if the petitioner acts promptly, alleges a meritorious defense, and presents sufficient evidence in support of the defense to require the submission of the issues to a jury." *Ferrick v. Bianchini*, 69 A.3d 642, 647 (Pa. Super. 2013) (internal citations omitted).

Admiral argues that the Court should strike the judgment because the action was improperly brought in Philadelphia, which constitutes a fatal defect. It argues that the Governing Law provision requires this matter to be litigated in Orange County, California, and that California law applies to every dispute except for “creation, perfection, priority, enforcement and foreclosure of liens and security interests.” (Petition, ¶¶28-45.) In response, Descartes argues that the warrants of attorney take precedence over the general venue clause. The warrant of attorney provision in the secured note permits “the prothonotary or clerk or any attorney of any court of record to appear for and confess judgment herein” (Secured note, exhibit A to complaint, ¶33), and the warrants of attorney in the security agreements specify that judgment may be confessed “in any court in the commonwealth of Pennsylvania, or elsewhere.” (Security agreements, exhibit B to complaint, §45.)

The warrants of attorney specifically permit judgment to be entered by confession in any court, including in Pennsylvania. This does not conflict with the general venue and choice of law provision, because entry of a confessed judgment is not an adversarial proceeding. *See Midwest Fin. Acceptance Corp. v. Lopez*, 78 A.3d 614, 625–26 (Pa. Super. 2013) (“Because the creditor is entitled to file the complaint and enter judgment against the debtor without any appearance or response from the debtor, Pennsylvania’s initial procedure for confessing judgments lacks the hallmarks of an adversary proceeding until the debtor files a petition to strike off or open the judgment.”) As with the governing law provision, the confession of judgment is not a “dispute,” and the arbitration provision does not apply. (Secured note, ¶20.1.)

Admiral also argues that the warrant of attorney is defective because it was not restated in the Extension Agreement. (Petition, ¶¶57-64). Judgment, however, was not confessed pursuant to the Extension Agreement, but pursuant to the secured note and the mortgages. (Complaint,

¶¶14-23.) Admiral questions whether Descartes is the assignee of the loan. (Petition, ¶¶65-76.) The recital of assignment in the complaint is not defective, and in determining a motion to strike, “[t]he facts averred in the complaint in confession of judgment are to be taken as true.” *Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.*, 645 A.2d 843, 848 (Pa. Super. 1994). Admiral further argues that it is unclear from the record how much was actually disbursed, and therefore how much is owed. (Petition, ¶¶77-85.) Again, “[a] challenge to the accuracy of the amounts allegedly due under the instrument, or an error in computation, should be resolved in a petition to open [rather than a petition to strike] unless it is evident from the face of the instrument that the amount is grossly excessive or not authorized by the warrant to confess judgment.” *Germantown Sav. Bank v. Talacki*, 657 A.2d 1285, 1291 (Pa. Super. 1995). That is not the case in this matter.

“A petition to open a judgment is addressed to the equitable powers of the court and is a matter of judicial discretion. A 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 submission of the case to a jury.” *Neducsin v. Caplan*, 121 A.3d 498, 506 (Pa. Super. 2015).

Admiral filed the petition to open on April 22, 2024, 40 days after judgment was confessed. (Petition, Dkt. at 4/22/2024.) It alleges defenses that echo its petition to strike. (*Id.* at ¶90.) To open a judgment, the judgment debtor must “offer clear, direct, precise and believable evidence of its meritorious defense.” *Iron Worker's Sav. & Loan Ass'n v. IWS, Inc.*, 622 A.2d 367, 370 (Pa. Super.1993). Admiral has not done so. Admiral argues that the chain of ownership of the loan is muddled and may not belong to Descartes but provides no evidence. (Petition, ¶¶65-76.) Descartes attached a verification from John Gaz of M360, setting forth the chain of assignments that led to Descartes holding the note and security agreements. (Ganz verification and exhibits, response to petition, Dkt. at 5/14/2024.) Admiral questions the computation of the

judgment amount, arguing some of the funds may have been withheld. (Petition, ¶¶77-85.)

Again, it provides no evidence to contradict Descartes's verification.

Admiral also argues that Descartes, as an unregistered foreign corporation, may not bring suit in Pennsylvania. (Petition, ¶¶ 91-94; 15 Pa. Stat. and Cons. Stat. Ann. § 411(b) (WEST, Westlaw, through Act 92 of the 2024 Regular Session.) The collection of a debt, however, does not constitute doing business according to the statute. 15 Pa. Stat. and Cons. Stat. Ann. § 403 (8) (WEST, Westlaw, through Act 125 of the 2024 Regular Session.) This is not grounds for striking or opening the judgment.

For all these reasons, the petition to open or strike is denied, and the motion to stay execution is denied.

BY THE COURT:



ABBE FLETMAN, J.