

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

THIRD FEDERAL BANK,	:	MARCH TERM, 2011
	:	
Plaintiff,	:	NO. 02806
	:	
v.	:	COMMERCE PROGRAM
	:	
C & J PROPERTIES, INC., JOSEPH F.	:	Control No. 11060120
MCGOWAN, JR., and CHERYL A.	:	
ANGELO,	:	
Defendants.	:	

ORDER

AND NOW, this 11th day of July, 2011, upon consideration of defendants' Petition to Open Default Judgment, the response thereto, and all other matters of record, and in accord with the Opinion issued simultaneously, it is **ORDERED** that the Petition is **DENIED**.

BY THE COURT

ARNOLD L. NEW, J.

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MCGOWAN, JR., and CHERYL A.	:	
ANGELO,	:	
Defendants.	:	

OPINION

Defendants filed a Petition to Open the Default Judgments plaintiff lender filed against the borrower, C&J Properties, Inc., and two guarantors, Joseph F. McGowan, Jr. and Cheryl A. Angelo, of a commercial mortgage loan. Defendants’ Petition must be denied because it is procedurally improper and otherwise deficient.

The Petition was not verified, which violates Pa. R. Civ. P. 206.3. The proposed Answer attached to the Petition was not verified, which violates Pa. R. Civ. P. 237.3(a). The proposed Answer also does not state a meritorious defense as required under Pa. R. Civ. P. 237.3(b). Defendants claim improper service, but the affidavits of service filed of record indicate service was made properly, and defendants admit in their Petition they received notice of this action and drafted an Answer to the Complaint. Defendants also claim the court lacks personal jurisdiction over them, yet they admit having contracted with plaintiff, a Pennsylvania bank, for a loan, and in the loan documents they agreed to submit to the jurisdiction, and be governed by the laws, of the Commonwealth of Pennsylvania.¹

¹ See *GMAC v. Keller*, 737 A.2d 279, 282 (Pa. Super. 1999) (“When a defendant has received the benefits and protections of the forum’s laws by engaging in business activities with a forum resident, the courts have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.”)

Defendants' additional affirmative defense of equitable estoppel is not properly pled.

Defendants assert as follows:

Plaintiff's claims are barred by the doctrine of equitable estoppel. Plaintiff accepted or otherwise fostered if not created a course and pattern of conduct which was acceptable for a long period of time following the original due date of the original loan. It acquiesced to same until a unilateral demand for change of those conditions placed defendants in an unconscionable position with regard to the debt then being serviced by payments. Thereafter Plaintiff refused or otherwise failed to accept payments made by the defendant and otherwise failed to make draws as agreed upon from the account of the defendants C & J Properties, Inc. for servicing of the subject debts.

However, defendants fail to state the material facts upon which this defense is based, in violation of Pa. R. Civ. P. 1019(a). They also attempt to raise the issue of unconscionability, which will not save them in a commercial loan setting such as this.²

Furthermore, defendants respond to plaintiff's factual allegations of loan default with the boilerplate phrase: "Denied as stated. Plaintiff is left to its proofs at trial."³ "A general denial or demand for proof . . . shall have the effect of an admission." Therefore, defendants have admitted they are in default under the loan documents which form the basis for the Judgments entered against them.

Defendants also claim venue is improper in Philadelphia, which claim might have merit if properly raised. However, improper venue must "be raised by preliminary objection and if not so raised shall be waived." Pa. R. Civ. P. 1006(e). Defendants have not requested leave to file preliminary objections. Instead, they have requested leave to file an Answer. Therefore, they have waived their objections to venue.

² See Denlinger, Inc. v. Dendler, 608 A.2d 1061, 1068 (Pa. Super. Ct. 1992) ("where, as here, a contract provision affects commercial entities with meaningful choices at their disposal, the clause in question will rarely be deemed unconscionable.") Defendants' claim the loan was a contract of adhesion and the product of undue influence likewise fail because this is not a consumer loan transaction. See *id.* (court held building supply company's credit application, which made sole shareholder personally liable for his company's debts, was not an adhesion contract and was not unconscionable.)

³ Proposed Answer, ¶ 21.

For all the foregoing reasons, defendants' Petition to Open the Default Judgments filed against them must be denied.

BY THE COURT

ARNOLD L. NEW, J.