

DOCKETED

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R. POSTELL  
COMMERCE PROGRAM

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

<p>DEPAUL AND COMPANY</p> <p style="text-align: center;"><i>Plaintiff</i></p> <p style="text-align: center;">v.</p> <p>GANGANDEEP S. LAKHMNA <i>et. al.</i></p> <p style="text-align: center;"><i>Defendants</i></p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>November Term, 2015</p> <p>Case No. 00066</p> <p>Commerce Program</p> <p>Control No. 15113527</p>
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**ORDER**

AND NOW, this 3<sup>rd</sup> day of March, 2016, upon consideration of defendant's petition to strike judgment by confession, the answer in opposition of plaintiff, and the respective *memoranda* of law, it is **ORDERED** that the petition to strike is **DENIED**.

BY THE COURT,

  
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 MCINERNEY, J.

Depaul And Company Vs Lakhmna Etal-ORDRC



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

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<b>DEPAUL AND COMPANY</b>	:	November Term, 2015
<i>Plaintiff</i>	:	Case No. 00066
<b>v.</b>	:	
<b>GANGANDEEP S. LAKHMNA et. al.</b>	:	Commerce Program
<i>Defendants</i>	:	Control No. 15113527

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**MEMORANDUM OPINION**

Plaintiff, DePaul and Company (“DePaul”), is an entity based in Pennsylvania. Defendant, Gangandeeep S. Lakhmna (“Lakhmna”), is an individual residing in Philadelphia, Pennsylvania. Defendants Creating Real Estate (“CRE”) and Allied 101, LLC (“Allied”), are Pennsylvania entities controlled by individual defendant Lakhmna.

On November 20, 2009, Lakhmna, on behalf of CRE and Allied, entered into a promissory-note agreement with DePaul. The promissory note contained a warrant-of-attorney provision entitling DePaul to confess judgment against Lakhmna.<sup>1</sup>

In February 2011, Lakhmna filed a voluntary petition for bankruptcy proceedings under Chapter 7 of the Bankruptcy Code.<sup>2</sup> On July 11, 2011, the United States Bankruptcy Court for the Eastern District of Pennsylvania issued an Order titled “Discharge of Debtor.”<sup>3</sup> The Order stated that “[t]he debtor is granted a discharge under section 727 of Title 11, United States Code (the Bankruptcy Code).”<sup>4</sup> The Discharge

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<sup>1</sup> Promissory note dated November 20, 2009, paragraphs 13–14, Exhibit A to the complaint-in-confession-of-judgment.

<sup>2</sup> Voluntary Petition, case No. 11–10791–mdc, Exhibit C. to the petition to strike of defendant Lakhmna.

<sup>3</sup> Discharge of Debtor, Exhibit D. to the petition to strike of defendant Lakhmna.

<sup>4</sup> *Id.*

Order identified certain differences between discharged and non-discharged debts as follows:

### **Debts That are Discharged**

The Chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debt are discharged if the debt existed on the date the bankruptcy was filed....

### **Debts That are Not Discharged**

Some of the common types of debts which are **not** discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay non-dischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements of reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.<sup>5</sup>

On November 2, 2015, DePaul entered judgment against Lakhmna pursuant to

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<sup>5</sup> Id., Explanation of Bankruptcy Discharge in a Chapter 7 Case.

the warrant-of-attorney provision contained in the promissory note. On November 25, 2015, Lakhmna filed the instant petition to strike the confessed judgment. According to Lakhmna's petition, the judgment should be stricken because the obligation thereunder not only pre-dates commencement of the bankruptcy proceedings, but also fails to fit into any of the afore-mentioned types of non-dischargeable debts listed by Bankruptcy Court in its Order. Thus, Lakhmna concludes that DePaul's confessed judgment should be stricken because Lakhmna's obligation thereunder was discharged through the Chapter 7 bankruptcy proceedings. This argument is rejected.

In Pennsylvania,

[a] motion to strike a judgment operates as a demurrer to the record and will only be granted if a fatal defect or irregularity appears on the face of the record or judgment.... The defect which is a matter of record or which appears from the face of the judgment must be alleged in the application.<sup>6</sup>

In this case, Lakhmna has failed to allege in the application that a fatal defect or irregularity appears on the face of the record or judgment: for this reason, the petition to strike is denied. The analysis, however, cannot stop here. In the petition, Lakhmna advances the argument that the debt owed under the promissory note was discharged by the Chapter 7 bankruptcy proceedings. This argument impliedly challenges a material fact contained in DePaul's complaint –that is, this argument challenges the continuing existence, and thus the enforceability, of an obligation which is averred in DePaul's complaint. This factual challenge would require going beyond the face of the record by means of a petition to open the judgment, even though Lakhmna, in this action, chose to proceed solely on a motion to strike.<sup>7</sup> Nonetheless, this court rejects the covert

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<sup>6</sup>Manor Bldg. Corp. v. Manor Complex Associates, Ltd., 645 A.2d 843, 846 (Pa. Super. 1994)

<sup>7</sup> In Pennsylvania, "if the factual averments are disputed, the remedy is by a proceeding to open the

argument advanced by Lakhmna because Lakhmna not only failed to proceed simultaneously under a petition to open the judgment, but also failed to offer evidence in support of any factual challenge to DePaul's complaint. In Pennsylvania, "[t]he petitioning party [in a confession-of-judgment action] bears the burden of producing sufficient evidence to substantiate its alleged defenses."<sup>8</sup>

For the reasons above, Lakhmna's petition to strike is denied, and any covert factual challenges to DePaul's complaint are irrelevant and moot.

**BY THE COURT,**

  
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**MCINERNEY, J.**

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judgment and not by a motion to strike." *Id.*

<sup>8</sup>*Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984). For example, the U.S. Bankruptcy Code requires a bankruptcy petitioner such as Lakhmna to file a list of creditors with the Bankruptcy Court. 11 U.S.C.A. § 521. In this case, however, Lakhmna has failed to provide proof that it listed DePaul as a creditor in compliance with U.S.C.A. § 521. Therefore, Lakhmna has failed to show that the debt owed to DePaul was actually discharged.