

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

DOCKETED

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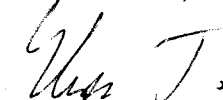
R. POSTELL
COMMERCE PROGRAM

MELROSE CREDIT UNION	:	August Term, 2017
	:	Case No. 00820
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
FATOU—SALIF, INC.	:	
and	:	
SALOKOU SYLLA	:	
	:	Control No. 17092615
<i>Defendants</i>	:	

ORDER

AND NOW, this 3rd day of January, 2019, upon consideration of the petition to strike or open confession of judgment and for a stay of execution, the response in opposition, and the parties' *memoranda* of law, it is **ORDERED** that the petition is **DENIED**. The **STAY OF EXECUTION** is **LIFTED**.

BY THE COURT,



GLAZER, J.

Melrose Credit Union Vs-ORDRC



MEMORANDUM OPINION

On August 10, 2017, plaintiff, Melrose Credit Union (“Lender”), entered judgment by confession against individual defendant Salokou Sylla and corporate defendant Fatou—Salif, Inc. The judgment was entered upon a promissory note which the defendants had executed on October 16, 2013. The promissory note identified both defendants as borrowers (hereinafter, the “Borrowers”), and contained a *cognovit* clause empowering Lender to confess judgment against them.¹ In addition, the promissory note contained a personal guaranty which individual defendant Salokou Sylla executed in his capacity as a “Guarantor” to the underlying indebtedness of Borrowers.² Finally, the parties executed a “Security Agreement” whereby Borrowers and Guarantor granted to Lender an interest in certain collateral property, including a Taxi Cab Medallion, No. P—945.

On September 20, 2017, Borrowers and Guarantor filed the instant petition to strike or open confession of judgment and for a stay of execution. The petition is denied.

THE PETITION TO STRIKE

A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record....

A fatal defect on the face of the record denies the prothonotary the authority to enter judgment.... When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike ... a court may only look at what was in the record when the judgment was entered.³

¹ Promissory Note, Exhibit A to the complaint-in-confession-of-judgment, pp. 1, 5, 6-7.

² *Id.*, p. 7.

³ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267–68 (Pa. Super. 2015).

Borrowers/Guarantor argue that the record is fatally flawed and the judgment should be stricken because the *cognovit* clause contains only the initials of individual defendant Salokou Sylla. They argue that since Borrowers and Guarantor are separate parties, the *cognovit* clause should contain the initials of corporate Borrower (Fatou—Salif, Inc.), of individual Borrower (Salokou Sylla), and of personal Guarantor (Salokou Sylla). This argument is rejected.

A review of the pertinent section of the promissory note reveals that a single line marks the place where “Borrower’s and Other Obligor’s initials” may be affixed.⁴ In this case, defendant Salokou Sylla affixed his initials once upon that single line. The court finds that the single set of initials “S.S.” suffices to bind to the *cognovit* clause not only Salokou Sylla as an individual “Borrower” and as a personal “Guarantor,” but also the corporate borrower Fatou—Salif, Inc. To find otherwise would imply that Salokou Sylla should have affixed his initials “S.S.” three times: once in his capacity as the individual borrower, a second time in his capacity as president of the corporate the Borrower, and a third time in his capacity as a personal guarantor. Although “Pennsylvania applies a ... strict standard to establish the validity of a cognovit clause,”⁵ this court finds that the absence of two additional sets of identical initials does not constitute a fatal flaw in the record, and cannot require striking this confession of judgment. The court finds that the absence of two sets of identical initials cannot constitute a fatal flaw in the record because only one individual, a defendant whose initials are “S.S.,” was acting simultaneously as an individual Borrower, as the president of the corporate Borrower, and as a Guarantor to both Borrowers. Salokou Sylla properly affixed a single set of

⁴ Promissory Note, Exhibit A to the complaint-in-confession-of-judgment, p. 5.

⁵ Graystone Bank v. Grove Estates, LP., 58 A.3d 1277, 1282 (Pa. Super. 2012).

initials in the appropriate space, and for this reason the first challenge to the validity of the judgment is rejected.

The petition to strike also asserts that the judgment should be stricken as illegal because Pennsylvania law specifically prohibits the waiver of rights involved herein.⁶ In support of this conclusion, Borrowers and Guarantor cite Title 42 of the Pennsylvania Consolidated and Annotated Statutes which instructs as follows:

§8122. Waiver of exemption.

Exemptions from attachment or execution granted by statute may not be waived by the debtor by express or implied contract before or after the commencement of the matter, the entry of judgment or otherwise.⁷

This argument is rejected. The argument is rejected because the statute cited by Borrowers and Guarantor establishes that the exemptions listed therein apply only when a creditor attempts to execute against a debtor upon money “to the value of \$300” (with some exceptions), upon specific items of personal property such as wearing apparel, Bibles, school books, sewing machines and uniforms, or upon retirement, insurance and pension benefits, *etc.*⁸ In this case, the Taxi-Cab medallion does not fit into any of the classes exempted from attachment and execution; therefore, the court finds no merit in the argument seeking to strike the judgment through the requirements contained in 42 Pa. C.S.A. § 8122.

The petition to strike asserts that the record is fatally flawed because the name of the witness to the promissory note is un-identified. This argument is rejected because the Pennsylvania Rules of Civil Procedure do not have such a requirement; merely, the

⁶ Petition to strike, ¶ 40.

⁷ 42 Pa. C.S.A. § 8122 (2018).

⁸ *Id.*, §§ 8123-8127.

Rules only require that the complaint-in-confession-of-judgment contain “the original or photostatic copy ... of the instrument showing the defendant’s signature.”⁹

The petition to strike also asserts that the record is fatally flawed because the security agreement upon the collateral –the taxi-cab medallion– is not signed by Lender and is not conspicuously printed. This argument is likewise rejected because the security agreement is not the operative document upon which Lender confessed the judgment.

The petition to strike asserts that the record is fatally flawed because Lender is a federal credit union under conservatorship and that only the conservator has standing to confess the judgment. This argument is rejected because section 1786(h) of the United States Code instructs that a conservator “**may ...** take possession and control of the business and assets of any insured credit union.”¹⁰ The above-quoted language is merely permissive or discretionary: it does not strip Lender of its standing to collect from Borrowers and Guarantor, nor does it prevent the conservator to take immediate possession of any assets as may be received by Lender.

Finally, the petition to strike asserts that the record is fatally flawed because Borrowers and Guarantor not only lacked legal representation when the promissory note was signed, but also lacked the language-skills and business sophistication to understand the implications of their corporate and personal actions. This argument is inappropriate for a petition strike because it does not point to a fatal flaw in the record; merely, it asserts that the individual Borrower/Guarantor unknowingly and unintelligently waived certain due process rights at the time he executed the promissory

⁹ Pa. R.C.P. 2852(a)(2).

¹⁰ 12 U.S.C.A. § 1786(h) (emphasis supplied).

note. In other words, this is a defense potentially involving a factual dispute which “by definition cannot be raised or addressed in a petition to strike off a confession of judgment.”¹¹ As a matter of law, “if 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.”¹² Notwithstanding the petitioners’ analytical error, their argument is nevertheless rejected because “[t]here is ... no merit to [the] assertion that ... a [petitioner] lack[ed] knowledge and/or understanding of the warrant of attorney provisions in the note and guaranty agreement.... The failure to read a confession of judgment clause will not justify avoidance of it.”¹³

THE PETITION TO OPEN

A petition to open a confessed judgment “may be granted 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.”¹⁴

In the petition to open, Borrowers and Guarantor aver that Lender impaired the value of their collateral by practicing “unsound lending practices.”¹⁵ Specifically, Borrowers and Guarantor aver that the unsound lending practices employed by Lender caused initially an artificial and unreasonable rise in value of the collateral, only to cause that value to subsequently deflate and collapse.¹⁶ However, Borrowers and Guarantor

¹¹ Neducsin v. Caplan, 121 A.3d 498, 504 (Pa. Super. 2015).

¹² Id.

¹³ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994).

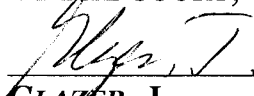
¹⁴ Hazer v. Zabala, 26 A.3d 1166, 1169 (Pa. Super. 2011).

¹⁵ Petition to open, ¶ 67.

¹⁶ Petition to open, ¶¶ 67-70.

have not offered any evidence that Lender engaged in unsound lending practices resulting in the collapse of the collateral. The allegations of Borrowers and Guarantor are “merely conclusions of law ... not supported by any allegations of fact,” and are rejected accordingly.¹⁷

Finally, the petition to open asserts that Borrowers and Guarantor relied on certain misrepresentations made by Lender and were fraudulently induced to execute the promissory note. Borrowers and Guarantor further aver that through such misrepresentations, Lender breached the implied covenant of good faith and fair dealing. These arguments are rejected for the same reasons provided above: “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.”¹⁸ In this case, Borrowers and Guarantor have failed to meet their burden of producing such evidence, and for these reasons the petition to strike or open judgment entered by confession and for a stay of execution is denied in its entirety.

BY THE COURT,


GLAZER, J.

¹⁷ City of Pittsburgh v. Allegheny Cty. Distributors, Inc., 488 A.2d 333, 334 (Pa. Super. 1985).

¹⁸ Haggerty v. Fetner, 481 A.2d 641 (Pa. Super. 1984).