

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

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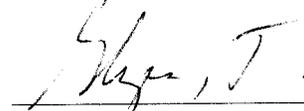
<b>CAROL MCAVEY</b>	:	
<i>Plaintiff</i>	:	December Term, 2015
	:	Case No. 02157
<b>v.</b>	:	
<b>RELEVANTE, INC. and WILLIAM BRASSINGTON</b>	:	Commerce Program
<i>Defendants</i>	:	Control No. 16010958

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**ORDER**

AND NOW, this 5<sup>th</sup> day of February, 2016, upon consideration of defendants' petition to strike or open judgment by confession, plaintiff's answer in opposition, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED**.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

DOCKETED

FEB - 5 2016

R. POSTELL  
COMMERCE PROGRAM

Mcavey Vs Brassington E-ORDRC



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	:	Case No. 02157
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**MEMORANDUM OPINION**

Pursuant to a “Settlement Agreement” executed by the parties on August 29, 2014, defendants were required to remit to plaintiff a specific monthly payment on the fifteenth day of each month.<sup>1</sup> In the event of default in the payments, plaintiff was obligated to “notify [herein defendants] Relevante and/or Brassington of the default in writing, and ... provide a period of 15 days to cure.”<sup>2</sup>

Defendants failed to make the required payment of \$2,619.05 on the fifteenth day of November, 2015, as required under the Settlement Agreement. On December 2, 2015, plaintiff’s counsel contacted defendants’ counsel via e-mail. In the e-mail, plaintiff’s counsel informed defendants’ counsel that as of December 2, 2015, no payment had been made for the month of November. The e-mail also asked defendants’ counsel to “confirm that the money has been sent or will be sent right away.”<sup>3</sup> The

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<sup>1</sup> SETTLEMENT AGREEMENT AND MUTUAL RELEASE, Exhibit A to the complaint in confession of judgment, ¶ 3(c).

<sup>2</sup> *Id.* ¶ 4.

<sup>3</sup> E-mail string dated December 2–3, 2015, Exhibit B to the complaint in confession of judgment.

following day, December 3, 2015, defendants' counsel informed plaintiff's counsel that "payment has not been made but they [defendants] will make it shortly."<sup>4</sup> Plaintiff's counsel replied to this communication as follows:

[p]lease consider this email to be a written notice of default that triggers the start of ... [the] time to cure. Please let me know if you think that this email is not an adequate notice so that I can draft a more formal document.<sup>5</sup>

On December 18, 2015, fifteen days after plaintiff's counsel gave to opposing counsel a notice of default, defendants made a partial payment for the month of November, 2015, in the amount of \$1,519.05, which left an unpaid balance of \$1,100.00.<sup>6</sup> Defendants aver that subsequently they paid the balance of \$1,100.00 to satisfy their November 2015 obligation.<sup>7</sup> On December 22, 2015, plaintiff confessed judgment against defendants, and defendants timely filed their petition to strike or open the confessed judgment of plaintiff.

Defendants assert in their petition that the judgment should be stricken because plaintiff failed to provide notice of default "directly to [defendants] Relevante or Brassington as required by the Settlement Agreement."<sup>8</sup> 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.<sup>9</sup>

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

<sup>5</sup> *Id.*

<sup>6</sup> Complaint, ¶ 14; petition to strike or open judgment by confession, ¶¶ 5, 6.

<sup>7</sup> Petition to strike or open judgment by confession, ¶ 6.

<sup>8</sup> *Id.* ¶ 9.

<sup>9</sup> *Manor Bldg. Corp. v. Manor Complex Associates, Ltd.*, 645 A.2d 843, 846 (Pa. Super. 1994).

After reviewing the section of the Settlement Agreement invoked by defendants, this court finds that nothing in the language thereof required plaintiff to “directly” or exclusively provide notice of default to defendants. Review of the evidence, in this case an e-mail dated December 3, 2013, shows that plaintiff’s counsel not only notified opposing counsel of a default, but also provided defendants with an opportunity to cure.<sup>10</sup> There is not fatal defect or irregularity on the face of the record, and the petition to strike the confessed judgment is denied.

Defendants also argue that the confessed judgment should be opened because defendants paid the balance of their obligation on December 23, 2015, “and thereby cured the default on that day.”<sup>11</sup> This argument is also rejected. In Pennsylvania,

[a] petition to open judgment is an appeal to the equitable powers of the court.... Furthermore, a court should open a confessed judgment if the petitioner ... presents evidence on a petition to open which in a jury trial would require that the issues be submitted to the jury.<sup>12</sup>

In this case, evidence shows that the fifteen-day period in which defendants were entitled to cure their default expired on December 18, 2015. Evidence also shows that on that day, defendants failed to remit the full amount which they owed for the month of November 2015. Defendants’ failure to fully cure by the end of December 18, 2015 transformed a curable default into a default that could not be cured by any additional payments. Moreover, even assuming that the additional payment could cure the default, defendants have offered no evidence showing that such payment was made. Defendants have offered no evidence which would “require the issues to be submitted to the jury.”

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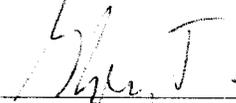
<sup>10</sup> E-mail dated December 3, 2015, Exhibit B to the complaint in confession of judgment.

<sup>11</sup> Petition to strike or open judgment by confession, ¶¶ 11, 12.

<sup>12</sup> Stahl Oil Co. v. Helsel, 860 A.2d 508, 512 (Pa. Super. 2004).

For this additional reason, the petition to strike or open judgment by confession is denied.

**BY THE COURT,**

  
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**GLAZER, J.**