



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

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<b>COMPLETE BUSINESS SOLUTIONS GROUP, INC.</b>	:	December Term, 2015
and	:	
<b>FAST ADVANCE FUNDING, LLC</b>	:	Case No. 03068
	:	
<i>Plaintiffs</i>	:	
	:	
<b>v.</b>	:	
	:	Commerce Program
	:	
<b>GOVERNMENT DATA RESOURCES, LLC</b>	:	
and	:	
<b>NORMAN KANEFSKY</b>	:	
	:	Control No. 16021186
<i>Defendants</i>	:	

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**MEMORANDUM OPINION**

On October 7, 2014 and February 2, 2015, “Plaintiffs” and “Defendants” entered into two revenue-based factoring agreements (the “Agreements”), whereby Defendants sold certain future accounts receivables to Plaintiffs.<sup>1</sup> The Agreements contained identical warrant-of-attorney provisions which empowered Plaintiffs to confess judgment against Defendants upon the occurrence of a default.

Plaintiffs confessed judgment against Defendants on December 31, 2015, asserting that Defendants breached the Agreements by failing to remit certain payments as required thereunder. Defendants timely filed their petition to strike and/or open the confessed judgment of Plaintiffs. In the petition, Defendants assert they “did not know that the Confession of Judgment would waive their due process rights.”<sup>2</sup> Defendants

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<sup>1</sup> Revenue-based factoring agreements, Exhibits A and B to the complaint in confession of judgment.

<sup>2</sup> Petition to strike and/or open the confessed judgment, ¶¶ 6–9.

conclude that their alleged involuntary waiver either creates a fatal defect in the record as to require striking the confessed judgment, or raises sufficient factual challenges to the complaint as to require opening the confessed judgment. Both arguments are rejected. In Pennsylvania—

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

In assessing whether there are fatal defects on the face of the record ..., a court may only look at what was in the record when the judgment was entered. Moreover, if any defect disclosed by the record is one that can be remedied by an amendment of the record or other action, *nunc pro tunc*, the judgment should not be stricken off.<sup>3</sup>

In addition,

The failure to read a confession of judgment clause will not justify avoidance of it.... This is particularly true where the confession of judgment clause is clear and conspicuous and part of a commercial transaction.<sup>4</sup>

In this case, which is based upon two commercial transactions, Defendants' failure to read or understand the clear and conspicuous warrant-of-attorney provisions in the Agreements does not create a fatal defect or irregularity in the record. For this reason, the petition to strike judgment by confession is denied.

As to the petition to open judgment by confession, the law in Pennsylvania is clear: "a petition to open the judgment offers to show that the defendant can prove a

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<sup>3</sup> *Dime Bank v. Andrews*, 2015 Pa. Super. 114, 115; A.3d 358, 364 (Pa. Super. 2015).

<sup>4</sup> *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 431 Pa. Super. 541, 550, 637 A.2d 309, 313 (Pa. Super. 1994) (rejecting the argument that lack of knowledge and/or understanding of the warrant of attorney provisions requires that the judgment be **stricken or opened**) (emphasis supplied).

defense to all or part of the plaintiff's claim.”<sup>5</sup> Moreover—

[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.... The defenses raised must be valid ones.<sup>6</sup>

In this case, Defendants assert that there was no attorney present on their behalf when they unknowingly and un-intelligently waived their due process rights by executing the Agreements.<sup>7</sup> However, Defendants have not explained whether they voluntarily relinquished legal representation when they allegedly waived their due process rights. The lack of any explanation convinces the court that Defendants have failed to bear the burden of producing sufficient evidence to substantiate their defense. For this reason, the petition to open judgment by confession is also denied.<sup>8</sup>

Resolution of the single issue presented by Defendants’ petition does not necessarily conclude the inquiry undertaken by this court. Pursuant to the Pennsylvania Rules of Civil Procedure, a complaint-in-confession-of-judgment shall contain—

an itemized computation of the amount then due ... which may include interest and attorney’s fees **authorized by the instrument**.<sup>9</sup>

In addition,

if the judgment as entered is for items clearly within the judgment note, but excessive in amount, the court will **modify the judgment and cause a proper judgment to be entered**.<sup>10</sup>

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<sup>5</sup> *Manor Bldg. Corp. v. Manor Complex Associates, Ltd.*, 435 Pa. Super. 246, 251, 645 A.2d 843, 845 (Pa. Super. 1994).

<sup>6</sup> *Haggerty v. Fetner*, 332 Pa. Super. 333, 339; 481 A.2d 641, 644 (Pa. Super. 1984).

<sup>7</sup> Defendants’ brief in support of the petition to strike and/or open the judgment by confession, § B.

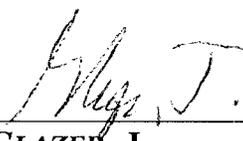
<sup>8</sup> As stated in footnote 4, *supra*, lack of knowledge or understanding offers no relief to a party, whether that party seeks to **strike and/or open** a confessed judgment.

<sup>9</sup> Pa. R.C.P. 2952(a)(7) (2016) (emphasis supplied).

<sup>10</sup> *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 431 Pa. Super. 541, 552, 637 A.2d 309, 314 (Pa. Super. 1994) (emphasis supplied).

In this case, Plaintiffs' complaint claims "Fees" and "Attorneys [sic] Fees" totaling \$17,314.08 and \$14,088.50 respectively, under Counts I and II thereof. However, this court reviewed the two pertinent instruments and found no fees mentioned therein. For this reason, the amount of judgment is modified and the "Fees" and "Attorneys [sic] Fees" claimed by Plaintiffs in Counts I and II of the complaint are excised. The amount of confessed judgment shall not exceed the principal amounts of \$36,046.92 and \$25,295.00, respectively asserted in Counts I and II of the complaint in confession of judgment.

**BY THE COURT,**

  
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**GLAZER, J.**