

DOCKETED

JUN - 1 2016

R. POSTELL
COMMERCE PROGRAM

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

INVEST—N—INVOICE, INC. : March Term, 2016

Plaintiff : Case No. 01494

v. : Commerce Program

MBM INDUSTRIES, INC. d/b/a PAPER PRESERVE, INC. :
and :
MATTHEW STUDNER : Control No. 16042422

Defendants :

ORDER

AND NOW, this 1st day of June, 2016, upon consideration of defendants' petition to strike or open judgment by confession and for a stay of execution, plaintiff's response thereto, and the respective *memoranda* of law, it is

ORDERED as follows:

- I. The petition to strike or open judgment by confession is **DENIED**.
- II. The petition for stay of execution is **DENIED AS MOOT**.
- III. **THE JUDGMENT AMOUNT** of \$224,217.39 as entered by plaintiff is **MODIFIED**.

Consistently with this Court's *MEMORANDUM OPINION* issued simultaneously herewith, the new amount in confession of judgment is **\$221,114.76**.

Invest-N-Invoice, Inc. -ORDRC



BY THE COURT,

RAMY I. DJERASSI, J.

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

INVEST—N—INVOICE, INC.	:	March Term, 2016
	:	
<i>Plaintiff</i>	:	Case No. 01494
	:	
v.	:	Commerce Program
	:	
MBM INDUSTRIES, INC. d/b/a PAPER PRESERVE, INC.	:	
and	:	
MATTHEW STUDNER	:	Control No. 16042422
	:	
<i>Defendants</i>	:	

MEMORANDUM OPINION

Defendants’ petition requires this Court to determine whether a confessed judgment should be stricken or opened, where the instrument upon which the judgment is based contains an ambiguous term regarding the amount of principal sought to be recovered by plaintiff. For the reasons below, the Court finds that the ambiguity in the instrument-in-confession-of-judgment does not require striking or opening the judgment, but merely requires this Court to modify the judgment amount.

Background

Plaintiff, Invest-N-Invoice, Inc. (“Lender”), is a Massachusetts corporation. Corporate defendant MBM Industries, Inc. is a corporation based in Philadelphia, Pennsylvania. At all times relevant to this case, individual defendant Matthew Studner was the president of MBM Industries, Inc. Hereinafter, MBM Industries, Inc. and Matthew Studner shall be collectively identified as “Borrower.”

On August 18, 2015, Borrower obtained from Lender a loan, which is evidenced

by a document titled "INSTALLMENT JUDGMENT NOTE CONTAINING CONFESSION OF JUDGMENT" (the "Confessed Judgment Note"). Under the Confessed Judgment Note, of which only the signature page has been included in the record, Borrower promised to make repayments to Lender. The four-paragraph page of the Confessed Judgment Note specifically states:

Borrower ... is bound unto [Lender] in the penal sum of **\$184,140.00 (plus interest)....**¹

The condition of this obligation, FOR VALUE RECEIVED, is such that the borrower shall pay to lender the amount by **11/16/2015 payment of \$193,347.00....**

If any One or More of the Installment payments herein provided is not paid in full for the space of 7 days after it falls due, or if the borrower defaults in payment of performance of any one or more of the obligation contained in the Security Agreement, attached here to and made part here off[,] then the entire unpaid balance of the principle [sic] sum shall, at the option of the lender and without notice become immediately due and payable with all accrued interest thereon, with premium, costs ... together with attorney's commission of 14% on the original principal sum....

And further, Borrower hereby authorizes ... the prothonotary, clerk or any Attorney of any Court of record of the Commonwealth of Pennsylvania ... to appear for Borrower and with or without a declaration filed, to confess judgment in the name of and against Borrower and in favor of Lender for the penal sum above mentioned with costs of suit....²

On March 17, 2016, Lender confessed judgment against Borrower on the grounds that Borrower had failed to make payment due by November 16, 2015.³ Lender confessed judgment in the amount of \$224,217.39, which includes the principal sum of

¹ INSTALLMENT JUDGMENT NOTE CONTAINING CONFESSION OF JUDGMENT, Exhibit A to the complaint-in-confession-of-judgment.

² Id.

³ Complaint-in-confession-of-judgment, paragraph 5.

\$193,347.00, interest of 3,655.05, attorney's commission of \$27,068.58, and costs of \$146.76.

On April 18, 2016, Borrower filed a petition to strike or open the confessed judgment and for stay of execution. Lender timely filed its response in opposition, and the petition is ripe for a decision.

Discussion

The standards for striking and opening a confessed judgment are well settled:

[a] motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. If the record is self-sustaining, the judgment will not be stricken.⁴

A judgment which is defective on its face is a nullity and without legal effect.⁵

A petition to open is an appeal to the court's equitable powers and is addressed to the sound discretion of the court; and a reviewing court will not reverse the determination of the lower court absent clear and manifest abuse of discretion. However, the discretion exercised by the lower court must be guided by Rule 2959(e), [of the Pennsylvania Rules of Civil Procedure] which states in pertinent part [that if] evidence is produced which in a jury trial would require the issues to be submitted to the jury the Court shall open judgment. Thus the standard of sufficiency the court must employ is that of a directed verdict, viewing all evidence in the light most favorable to the petitioner and accepting as true all evidence and proper inferences therefrom supporting the defense, while rejecting the adverse allegations of the party obtaining the judgment.⁶

Borrower argues that the confessed judgment should be stricken or opened

⁴ Fourtees Co. v. Sterling Equip. Corp., 363 A.2d 1229, 1233 (Pa. Super. 1976).

⁵ Id. footnote 3 at 1234.

⁶ Indus. Valley Bank & Trust Co. v. Lawrence Voluck Associates, Inc., 285 Pa. Super. 499, 503, 428 A.2d 156, 158 (1981).

because it includes amounts not authorized by the warrant of attorney. Specifically, Borrower asserts that the warrant of attorney allows judgment to be confessed for a fixed amount described in the Note as a “penal sum with costs of suit....”⁷ Borrower concludes that the confessed judgment includes an improper principal amount of \$194,347.00, with added interest of \$3,655.05, both of which, being unauthorized amounts, require the Court to strike or open the judgment.⁸ The Court agrees that the afore-mentioned amounts are improper; however, it rejects Borrower’s argument that the judgment should be stricken or opened. The Court rejects this argument because the Confessed Judgment Note clearly authorizes Lender to recover the amount of principal, and interest thereon, even though the amounts actually claimed are excessive. Consequently, the Court shall modify the amounts in question without striking or opening the confessed judgment.

In Pennsylvania—

[t]he task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is, of course, to ascertain the intent of the parties as manifested by the language of the written instrument.⁹

Furthermore—

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.¹⁰

A careful reading of the Confessed Judgment Note convinces this Court that the language therein is ambiguous as to the amounts of principal and interest which may be

⁷ Petition to strike, paragraphs 14–20.

⁸ *Id.*

⁹ *Humberston v. Chevron U.S.A., Inc.*, 75 A.3d 504, 510 (Pa. Super. 2013).

¹⁰ *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 637 A.2d 309, 314 (Pa. Super. 1994).

claimed by the Lender. Specifically, the first paragraph in the Confessed Judgment Note states as follows:

Borrower ... is bound unto [Lender] in the penal sum of **\$184,140.00 (plus interest)**....¹¹

The Court construes this portion of the Confessed Judgment Note to mean that that Borrower obtained a loan from Lender in the amount of \$184,140.00, which is defined in the instrument as the “penal sum.” The Court further construes the aforementioned language to mean that Borrower agreed to be bound to Lender for the principal/penal sum of \$184,140.00 plus interest, the percentage of which is not specified in the document. Since the percentage of interest is not specified in the Confessed Judgment Note, the Court shall apply the statutory rate of interest contemplated under 41 Pa. Stat. Ann. § 202 which states that—

... reference in any document to an obligation to pay a sum of money with interest without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.¹²

Based on the foregoing, the Court finds that Borrower agreed to be bound in the amount of \$195,188.40, which is the sum of the principal/penal amount of \$184,140.00, plus interest of six percent per annum, of \$11,048.40.

In addition, the second paragraph of the Confessed Judgment Note states as follows:

The condition of this obligation, FOR VALUE RECEIVED, is such that the borrower shall pay to lender the amount by **11/16/2015 payment of \$193,347.00**. Borrower understands that Any Payment of Principal Does Not Relieve Borrower of the Remaining Liability for All Interest due

¹¹ INSTALLMENT JUDGMENT NOTE CONTAINING CONFESSION OF JUDGMENT, Exhibit A to the complaint-in-confession-of-judgment. The instrument does not specify the percentage of interest.

¹² 41 Pa. Stat. Ann. § 202 (2016).

under this Agreement.¹³

The Court finds that the afore-quoted language, as drafted, is ambiguous and confusing because it appears to bind Borrower to an amount inferior to the \$195,188.40 representing the sum of the principal/penal amount of \$184,140.00, plus the statutory interest of \$11,048.40. The afore-quoted language is also ambiguous because Lender appears to inadmissibly seek recovery of additional \$3,655.05, which Lender defines as “Interest at the Pennsylvania Statutory Rate”¹⁴ upon the amount of \$193,347.00. Construing the ambiguity against the Lender, as drafter of the Confessed Judgment Note,¹⁵ this Court finds that Lender may only claim a principal/penal sum of \$184,140.00 with interest of \$11,048.40, totaling \$195,188.40. Therefore, the judgment amount is modified, and the excessive amount of \$197,002.03, which Lender improperly obtained by adding 193,347.00 and interest of \$3,655.05, is accordingly stricken.

Having determined that the chargeable amount of principal is \$184,140.00, the Court shall recalculate and modify the amount of attorney’s commission and interest that may be claimed by the Lender. The Confessed Judgment Note states that “if [B]orrower defaults ... then the entire unpaid balance of the principal sum shall ... become due immediately and payable ... together with attorney’s commission of 14% of the original principal sum.”¹⁶ The Court finds this language to be clear and unambiguous, and rules that attorney’s fees of 14% of the original principal/penal sum

¹³ INSTALLMENT JUDGMENT NOTE CONTAINING CONFESSION OF JUDGMENT, Exhibit A to the complaint-in-confession-of-judgment, paragraph 2.

¹⁴ Complaint-in-confession-of-judgment, paragraph 6(a), 6(b).

¹⁵ “When a term is ambiguous, courts may construe the term against the drafter of the document.” W.S. Delavau, Inc. v. E. Am. Transp. & Warehousing, Inc., 810 A.2d 672, 682 (Pa. Super. 2002).

¹⁶ INSTALLMENT JUDGMENT NOTE CONTAINING CONFESSION OF JUDGMENT, PARAGRAPH 3, Exhibit A to the complaint-in-confession-of-judgment.

of \$184,140.00 is a lawful percentage under Pennsylvania law.¹⁷ Multiplying the principal/penal sum of \$184,140.00 by .14 (14%), this Court finds that the new amount of attorney's commission that may be claimed against the Borrower equals \$25,779.60.

In conclusion, adding the principal/penal sum of \$184,140.00, interest thereon of \$11,048.40, attorney's commission of \$25,779.60, and the lawfully claimed "costs of suit" of \$146.76, this Court enters the modified total amount in confession of judgment of **\$221,114.76**. This is the amount which Lender is entitled to claim.

The Court's analysis does not end here because Borrower challenges the confessed judgment on two additional grounds. First, Borrower asserts that the confessed judgment should be stricken or opened because it fails to include the entire Note; second, Borrower argues that the judgment should be stricken or opened because the complaint has been improperly verified. Tackling the first argument, this Court notes that under the Pennsylvania Rules of Civil Procedure—

(a) The complaint [in confession of judgment] shall contain the following:

(1) the names and last known addresses of the parties;

(2) the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature....¹⁸

A review of the record, which includes a photostatic copy of a portion of the Confessed Judgment Note, shows that the document includes the names and addresses of the parties, and an itemized computation of the amounts due. The Court is satisfied that the warrant of attorney to confess judgment is "self-sustaining" because it is "in

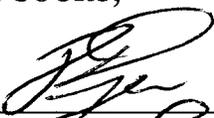
¹⁷ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 314 (Pa. Super. 1994) (finding that attorney's fees of 15% are lawful if clearly stated in the warrant of attorney).

¹⁸ Pa.R.C.P. No. 2952(a).

writing and signed by the person to be bound by it; and the requisite signature ... [bears] a direct relation to the warrant.”¹⁹ For this reason, Borrower’s challenge based on Lender’s failure to include the entire Confessed Judgment Note is rejected.

Borrower’s challenge based on improper verification is also rejected. A review of the record shows that Lender included a verification dated March 17, 2016, whereby Lender’s chief executive officer declared that the statements contained in the confessed judgment “are true and correct.” This verification satisfies the pertinent requirement in the Pennsylvania Rules of Civil Procedure which states that the complaint-in-confession-of-judgment “shall contain ... [the] signature and verification in accordance with the rules relating to a civil action.”²⁰ The Court is satisfied that the confessed judgment includes a proper verification; therefore, Borrower’s final challenge to the judgment is similarly rejected.

BY THE COURT,



RAMY I. DJERASSI, J.

¹⁹ Ferrick v. Bianchini, 69 A.3d 642, 651 (Pa. Super. 2013).

²⁰ Pa. R.C.P. 2952(a)(10). Under the Rules, “[e]very pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer’s personal knowledge or information and belief and shall be verified. The signer need not aver the source of the information or expectation of ability to prove the averment or denial at the trial. A pleading may be verified upon personal knowledge as to a part and upon information and belief as to the remainder. Pa.R.C.P. No. 1024(a).