

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

DOCKETED
APR 27 2016
R. POSTELL
COMMERCE PROGRAM

THE BANCORP BANK	:	February Term, 2016
<i>Plaintiff</i>	:	Case No. 00647
v.	:	Commerce Program
MATTHEW B. STUDNER and WENDY STUDNER	:	
<i>Defendants</i>	:	Control No. 16031640

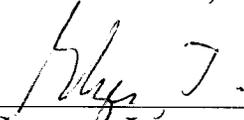
ORDER

AND NOW, this 27th day of April, 2016, upon consideration of defendants' petition to strike or open the confessed judgment and for stay of execution, the response in opposition of plaintiff, and the respective *memoranda* of law, it is

ORDERED as follows:

- I. The petition to strike the confessed judgment is **GRANTED-IN-PART** and **DENIED-IN-PART**. The items in the judgment listed as UCC Fees and Mortgage Satisfaction Fees are **STRICKEN**, and the judgment is **MODIFIED** to reflect the new amount of \$370,231.65.
- II. The remainder of the petition to strike or open the confessed judgment and for stay of execution is **DENIED**.

BY THE COURT,



GLAZER, J.

The Bancorp Bank Vs Stu-ORDRF



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<i>Defendants</i>	:	Control No. 16031640

MEMORANDUM OPINION

The court is required to rule on a petition to strike or open judgment-by-confession which was entered by plaintiff, The Bancorp Bank (“Lender”).

Background

On March 3, 2006, Lender loaned \$500,000.00 to JRS Imports, LLC (“JRS”), under the terms of a loan agreement and promissory note.¹ The loan under this transaction was personally guaranteed by herein defendants, Matthew B. Studner and Wendy a/k/a Wendalyn Studner (the “Guarantors”), as evinced by separate commercial guaranty agreements attached to the complaint-in-confession-of-judgment.² Subsequently, the loan agreement between Lender and JRS was modified under the terms of a Change-In-Terms-Agreement (the “CIT Agreement”).³ Guarantors signed the CIT Agreement, which, *inter alia*, authorized Lender to confess judgment in the

¹ Loan Agreement and Promissory Note between Lender and JRS, Exhibits A–B to the complaint-in-confession-of-judgment.

² Commercial Guaranty Agreements, Exhibits C, D.

³ CIT Agreement, Exhibit E.

event of default.

Lender entered judgment against the Guarantors on February 3, 2016. The complaint-in-confession-of-judgment avers that JRS defaulted on the loan by failing to make payments of principal and interest upon maturity of the obligation.⁴ The amount of the confessed judgment is \$370,588.65, which includes principal of \$334,887.57, interest, late fees, a UCC release fee, a mortgage satisfaction fee, and legal fees of \$20,719.00, which amount approximately to 6% of the unpaid principal.

On March 29, 2016, the Guarantors timely filed a petition to strike or open the confessed judgment and to stay execution, and Lender timely filed its response in opposition. The petition is ripe for a decision.

A. Petition to strike.

In their petition to strike, the Guarantors argue that the record contains a fatal flaw because Lender's confessed judgment incorporates a UCC release fee in the amount of \$84.00, and a mortgage satisfaction fee in the amount of \$243.00, neither of which are directly authorized in the pertinent warrant-of-attorney provisions.⁵ This argument is rejected because the inclusion of unauthorized items in a confessed judgment does not necessarily require striking the judgment.

In Pennsylvania—

[a] warrant of attorney to confess judgment must be strictly construed and conform strictly with its terms. It may not be extended by implication or inference beyond the limits expressed in the instrument.⁶

⁴ Complaint-in-confession-of-judgment, paragraphs 13–14.

⁵ Petition to strike, paragraph 20.

⁶ Roche v. Rankin, 176 A.2d 668, 671-72 (Pa. 1962).

It has ... been said that if a confessed judgment includes an item not authorized by the warrant, the judgment is void in its entirety and must be stricken.

The latter principle, however, is one of those general statements which must be read and interpreted in the light of the particular circumstances which gave it expression.... [T]his rule has been applied where the item which was added to the face value of the judgment note was something foreign to and so unassimilable with the ... [claimed amount] that the total which was finally formed became a heterogeneous rather than a homogeneous whole, or where the items included were outside of the scope of the warrant.⁷

In this instance, the two Guarantors executed commercial guaranties which state as follows:

Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower [JRS] to Lender, and the performance and discharge of all Borrower's obligations under the note and the Related Documents.⁸

The word Indebtedness ... means **all of the principal amount outstanding ... accrued unpaid interest thereon and all collection costs and legal expenses related thereto ... liabilities and obligations of every nature or form, now existing or hereafter arising....**⁹

This clear and unambiguous language convinces the court that the claimed UCC fee and mortgage satisfaction fee are not foreign or unassimilable amounts forming a heterogeneous whole. Instead such items, though not directly authorized in the warrant, are impliedly contemplated in the commercial guaranties as "obligations of

⁷ Colony Fed. Sav. & Loan Ass'n v. Beaver Valley Eng'g Supplies Co., 361 A.2d 343, 346 (Pa. Super. 1976).

⁸ Under the commercial guaranties, the term "Related Documents" is defined as "all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness."

Commercial guaranties, Exhibits C, D to the complaint in confession of judgment.

⁹ Id. (Emphasis supplied).

every nature ... now existing or hereafter arising,” and would form a homogenous whole with all the other amounts claimed by Lender, if Lender had submitted any “Related Documents” as evidence of the existence of such fees and amounts. Lender has not offered such evidence, and for this reason the UCC fee and mortgage satisfaction fee are stricken from the judgment.¹⁰ The petition to strike the confessed judgment in its entirety is denied; however, the UCC fee and mortgage satisfaction fee are stricken from the judgment, and the amount of judgment is modified accordingly.

B. Petition to open.

The petition to open relies on two arguments: first, Lender failed to produce an itemized accounting of the sum confessed in judgment, in violation of Pa. R.C.P. 2952(a)(7); and second, the amount claimed therein is in dispute. These arguments are also rejected.

The Pennsylvania Rules of Civil Procedure instruct that a complaint in confession of judgment shall contain “an itemized computation of the amount then due, based on matters outside the instrument if necessary, which may include interest and attorneys' fees authorized by the instrument.”¹¹ Pennsylvania Courts have explained that the party confessing judgment is required to merely allege the amounts due. This is because to require otherwise, “would serve to shift the burden to the plaintiff,” even though the petitioning parties –in this instance the Guarantors— bear “the burden of disproving the averments it challenges.”¹² In this case, the court is satisfied that Lender produced an itemized computation of the amount due; therefore, the burden shifted to petitioning

¹⁰ “[B]ecause [the unauthorized] item ... is not an item separate and apart from the substantive debt, its improper inclusion has not resulted in nullification of the entire judgment.” Colony Fed. Sav. & Loan Ass'n v. Beaver Valley Eng'g Supplies Co., 361 A.2d 343, 346 (Pa. Super. 1976).

¹¹ Pa. R.C.P. 2952(a)(7).

¹² Davis v. Woxall Hotel, Inc., 577 A.2d 636, 638 (Pa. Super. 1990).

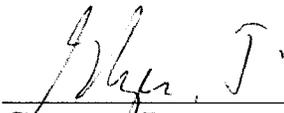
Guarantors to show that the itemized amount is incorrect, or to prove that the claimed amounts are disputed. However, the Guarantors have not offered any evidence to sustain their burden; therefore, the court rejects their argument asserting that the itemization is improper, or that the claimed amount is in dispute.

Finally, the Guarantors seek to open the judgment on grounds of fraud or misrepresentation. Specifically, the Guarantors aver that Lender violated its duty of good faith and fair dealing by misleading the Guarantors on how to handle the promissory note.¹³ This argument is also rejected. In Pennsylvania—

fraud and misrepresentation [are] meritorious defenses that could support the opening of a confessed judgment. However, the mere pleading of those defenses is insufficient. [A petitioner] must also establish that it set forth sufficient evidence in support of those defenses to give rise to a question that would require submission of the case to a jury.¹⁴

The Guarantors have offered no evidence in support of their allegation asserting a violation of Lender's duty of good faith and fair dealing, nor have they produced any evidence showing fraud or misrepresentation. For these reasons, Guarantors' petition to open the confessed is denied in its entirety.

BY THE COURT,



GLAZER, J.

¹³ Petition to open, ¶¶ 36–39.

¹⁴ PNC Bank, Nat. Ass'n v. Bluestream Tech., Inc., 2010 PA Super 215, 14 A.3d 831, 840 (2010).