

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

CUSTOMERS BANK	:	April Term, 2018
	:	Case No. 05278
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
SUN GARDEN APARTMENTS, LLC	:	
<i>and</i>	:	
DAVID EISDORFER	:	
	:	Control No. 18062007
<i>Defendants</i>	:	

ORDER

AND NOW, this _____ day of July, 2018, upon consideration of the petition to strike or open judgment by confession, the memorandum of law in opposition, and all documents of record, it is **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

BY THE COURT,

GLAZER, J.

MEMORANDUM OPINION

Plaintiff is Customer Bank, (“Lender”), an entity with a Pennsylvania business address. The two defendants, Pennsylvania residents, are Sun Garden Apartments, LLC (the “Borrower”), and Mr. David Eisdorfer (the “Guarantor”). On September 14, 2016, the Borrower executed a promissory note in favor of Lender in the amount of \$1,392,000¹; on the same day, the Guarantor executed a personal guaranty in favor of Lender.²

On May 4, 2018, Lender confessed judgment against Borrower and Guarantor in the amount of \$1,453,375.19. This amount includes an unpaid principal, interest, late charges, a prepayment penalty, a satisfaction fee, and attorney’s fees of \$69,208.34.³ The complaint-in-confession-of-judgment avers that Borrower and Guarantor “have failed to make all agreed upon payments ... pursuant to the Agreement.”⁴

On June 18, 2018, the Guarantor filed a *pro se memorandum* of law in support of a petition to strike or open the judgment entered by confession. In the *memorandum*, the Guarantor advances a number of challenges to the confessed judgment. Under the first challenge, Guarantor asserts that he “was not explained about any waiver of ... [his] due process rights ... and this [waiver] was no voluntary....”⁵ This defense is rejected because under Pennsylvania law, there is “no merit to [the] assertion that [the petitioner] ... purported[ly] lack[ed] ...knowledge and/or understanding of the warrant of attorney provisions in the note and guaranty agreement.... This is particularly true where the confession of judgment clause is clear and conspicuous and part of a

¹ PROMISSORY NOTE, Exhibit A to the complaint-in-confession-of-judgment.

² BAD ACTS GUARANTY, *id.*

³ Complaint-in-confession-of-judgment, ¶ 16.

⁴ *Id.*, ¶ 10.

⁵ *Memorandum* of law in support of petition to strike or open confessed judgment.

commercial transaction.”⁶ In this case, the confession-of-judgment clause is clearly written, conspicuously printed and unmistakably contained in the warrant-of-attorney. For this reason, the first challenge to the judgment entered by confession is rejected.

The second challenge to the judgment asserts that Lender induced the default by refusing to accept payments tendered by Borrower and Guarantor. This defense is rejected because in the effort to open a confessed judgment, “the petitioning party bears the burden of producing sufficient evidence to substantiate ... [his] alleged defenses.”⁷ In this case, the *pro se* litigant has failed to produce any evidence tending to show that was forced to default by the alleged wrongdoings of Lender.

The last challenge to the judgment asserts that the attorney fees of \$69,208.34 are excessive. This defense is rejected because courts in Pennsylvania will allow attorney’s fees of 15% if “specifically authorized by the warrant-of-attorney.”⁸ In this case, the operative warrants-of-attorney do not specifically state what percentage of attorney fees may be recovered by Lender, but merely state that the Lender may recover “reasonable attorney’s fees for collection.”⁹ A quick calculation shows that the attorney’s fees of \$69,208.34 represent approximately 5% of the unpaid balance of nearly \$1.4 million; therefore, the court finds that the amount of attorney’s fees claimed by the Lender is reasonable.

For the reasons stated above, the petition to strike or open judgment entered by

⁶ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994.) Borrower and Guarantor further aver that they lacked knowledge and an understanding of their waiver of rights when they subsequently executed an “amendment which was incorporated” into the loan documents. See memorandum of law in support of the petition to strike or open. However, Borrower and Guarantor have failed to supply this court with any evidence of an “amendment,” and have failed to sustain their burden of proof. See discussion in the following paragraph.

⁷ Haggerty v. Fetner, 481 A.2d 641, 644, (Pa. Super. 1984).

⁸ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 314 (Pa. Super. 1994).

⁹ Promissory Note, Exhibit A to the complaint-in-confession-of-judgment, ¶ 12. Similarly, the Bad Act Guaranty at ¶ 35, states that Lender may recover “an attorney’s reasonable commission for collection.”

confession is denied.

BY THE COURT,

GLAZER, J.