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

<b>RICHARD BASCIANO</b>	:	November Term, 2014
<i>Plaintiff</i>	:	Case No. 00910
<b>v.</b>	:	Commerce Program
<b>GERMAME S. SAHLE and KENNETH OLDAM</b>	:	
<i>Defendants</i>	:	Control No. 15011512

ORDER

AND NOW, this 6<sup>th</sup> day of February, 2015, upon consideration of defendant Kenneth Oldam's petition to strike or open judgment by confession, the response in opposition of plaintiff Richard Basciano, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED** in its entirety.

BY THE COURT,

  
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**McINERNEY, J.**

DOCKETED

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R. POSTELL  
DAY FORWARD

Basciano Vs Sahle Etal-ORDOP



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**MEMORANDUM OPINION**

On July 21, 2011, defendants “Sahle” and “Oldam,” as commercial borrowers, executed in favor of “Plaintiff” a promissory note in the amount of \$250,000.00. The promissory note contained a confession-of-judgment provision which stated in pertinent part:

Upon default, Maker [Sahle and Oldam] irrevocably authorized [*sic*] and empowers the Prothonotary or Clerk of any attorney of any court of record, in the State of New York or elsewhere, to appear for him and to enter judgment against him for all sums due hereunder....<sup>1</sup>

On November 7, 2014, Plaintiff filed the instant complaint in confession of judgment. On December 8, 2014, defendant Oldam filed an Answer with New Matter, Counterclaim and Cross—claims to the complaint in confession of judgment. On December 22, 2014, Plaintiff filed a motion to strike defendant Oldam’s Answer with New Matter, Counterclaim and Cross—claims. On January 7, 2015, defendant Oldam filed a petition to strike or open Plaintiff’s judgment by confession.

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<sup>1</sup> Promissory Note dated July 21, 2011, Exhibit A to Plaintiff’s response in opposition to the petition to strike or open confessed judgment.

On January 22, 2015, this Court issued an Order striking defendant Oldam's Answer with New Matter, Counterclaim and Cross—claims. The Court explained that under the Pennsylvania Rules of Civil Procedure, defendant Oldam's Answer with New Matter, Counterclaim and Cross—claim constituted an improper and impermissible pleading in the instant confession-of-judgment action.<sup>2</sup>

On February 4, 2015, Plaintiff filed a response in opposition to defendant Oldam's petition to strike or open confessed judgment. The petition is now ripe for a decision.

**I. Petition to strike confessed judgment.**

In the petition to strike, defendant Oldam asserts that the confession of judgment clause in the promissory note is not sufficiently descriptive, not properly set apart, and not properly signed.<sup>3</sup> In the *memorandum* of law in support of the petition, defendant Oldam further explains that the warrant of attorney is contained on a page separate from the page bearing Oldam's signature. Defendant Oldam, concludes that the complaint in confession of judgment is fatally flawed because no relationship exists between the confessed judgment clause on page 2 of the promissory note, and the signature of defendant contained on page 3 thereof. Defendant Oldam further argues that the complaint in confession of judgment is fatally flawed because "the supposed warrant of attorney appears in the middle of approximately twenty paragraphs of small print...."<sup>4</sup>

In Pennsylvania,

A petition to strike a judgment by confession will be granted where there is an apparent defect on the face of the record on

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<sup>2</sup> Pa. R.C.P. 2959(a); Pa. R.C.P. 2960

<sup>3</sup> Petition to Strike, ¶ 10.

<sup>4</sup> Memorandum of law in support of the petition to strike, ¶ A.2.

which the judgment was entered.<sup>5</sup>

It is well-settled that a written ... contract which authorizes a party to confess judgment must be clear and explicit and strictly construed.<sup>6</sup>

In addition, a complaint in confession of judgment is not fatally flawed just because the confessed-judgment clause is printed in the same size type as the rest of the text.<sup>7</sup>

In this case, review of the confessed-judgment clause contained in the promissory note shows that the document is comprised of less-than 3 full pages, the pertinent clause straddles the last two pages, and defendant Oldam executed the last page thereof. In light of this evidence, the Court rejects defendant Oldam's argument that no relationship exists between his signature contained on page 3 of the document, and the confessed judgment clause which straddles the last 2 pages of the same. In addition, the Court rejects defendant Oldam's suggestion that the complaint in confession of judgment is fatally flawed because the pertinent confession-of-judgment language is typed in small print. Having reviewed the print in the promissory note in general, and the confessed judgment clause in particular, this Court finds that the language thereof is printed in a regular print-size which appears consistently throughout the 3 pages of the document. In other words, the print size of the confessed judgment clause is sufficiently and consistently clear throughout the document; consequently, the Court rejects defendant Oldam's argument that he did not waive his due process rights because the confessed judgment provision was unclear due to the small size therein of its type. Finally, this Court finds that the confessed judgment language in the promissory note is

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<sup>5</sup> Germantown Sav. Bank v. Talacki, 441 Pa. Super. 513, 519, 657 A.2d 1285, 1288 (1995).

<sup>6</sup> Fourtees Co. v. Sterling Equip. Corp., 242 Pa. Super. 199, 206, 363 A.2d 1229, 1232 (1976).

<sup>7</sup> Germantown Sav. Bank v. Talacki, 441 Pa. Super. 513, 521, 657 A.2d 1285, 1289 (1995).

sufficiently descriptive and explicit as to give notice to the maker thereof.<sup>8</sup> For these reasons, defendant Oldam's petition to strike judgment by confession is denied.

## **II. Petition to open confessed judgment.**

In the petition to open, defendant Oldam appears to assert a defense based on setoff. Specifically, defendant Oldam argues that he performed management services on behalf of Plaintiff for an unpaid amount totaling \$201,500.00. Defendant Oldam appears to imply that the complaint in confession of judgment should be opened because any monies he owes to Plaintiff under the promissory note should be offset by the \$201,500.00 which he allegedly earned in the performance of services for the benefit of Plaintiff. In Pennsylvania,

[o]ne who petitions to open a confessed judgment must act promptly and offer a meritorious defense.... 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), Pa.R.C.P. which states in pertinent part: "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.<sup>9</sup>

In this case, defendant Oldam has offered no evidence showing a relationship between the transaction involving his obligations under the promissory note and the

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<sup>8</sup> "The task of interpreting a contract is generally performed by a court...." Standard Venetian Blind Co. v. Am. Empire Ins. Co., 503 Pa. 300, 304, 469 A.2d 563, 566 (1983).

<sup>9</sup> Indus. Valley Bank & Trust Co. v. Lawrence Voluck Associates, Inc., 285 Pa. Super. 499, 502, 428 A.2d 156, 158 (1981)

transaction involving his alleged work on behalf of Plaintiff.<sup>10</sup> Defendant Oldam has produced no evidence which would require the issue to be submitted to a jury, and his petition to open judgment by confession is denied.<sup>11</sup>

**BY THE COURT,**

  
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**McINERNEY, J.**

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<sup>10</sup> As Plaintiff readily concedes, “[i]f defendant ... truly believed he had a claim [for services rendered to Plaintiff], he is free to file a Civil Action—Complaint for such a claim....” *Memorandum* of law in support of Plaintiff’s response in opposition to the petition to strike or open, p. 6 (unmarked).

<sup>11</sup> The Court also notes that pursuant to Pa. R.C.P. 2959(a)(3), “[i]f written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.” In this case, defendant Oldam filed his petition to strike or open nearly sixty days after notice was served, and without offering any compelling reason for his delay. His untimely filing is by itself sufficient grounds warranting denial of the petition to strike or open.