

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

TD BANK, N.A.	:	September Term, 2014
<i>Plaintiff</i>	:	
v.	:	Case No. 02598
	:	
THE PHILADELPHIA SHAKESPEARE THEATRE	:	Commerce Program
<i>Defendant</i>	:	
	:	
	:	Control No. 15031482

ORDER

AND NOW, this 8th day of April, 2015 upon consideration of the petition to strike or open judgment by confession filed by defendant The Philadelphia Shakespeare Theatre, the response in opposition of plaintiff TD Bank, N.A., and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

BY THE COURT,



GLAZER, J.

DOCKETED

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R. POSTELL
DAY FORWARD

Td Bank, N.A. Vs The Ph-ORDRC



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<i>Plaintiff</i>	:	
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	:	
<i>Defendant</i>	:	Control No. 15031482

MEMORANDUM OPINION

Before the court is defendant’s petition to strike or open judgment by confession. For the reasons below, the petition is denied in its entirety.

Background

In 2009, TD Bank, N.A. (“Plaintiff”), loaned funds to The Philadelphia Shakespeare Theatre (“Defendant”). The existence of this loan is revealed by a Revolving Term Note dated September 10, 2009, and an Amended and Restated Revolving Term Note dated December 31, 2010.¹ The maturity date of the loan, pursuant to the Amended and Restated Revolving Term Note, was January 10, 2011. By letter dated February 16, 2012, Plaintiff extended the maturity date of the loan until December 1, 2012. The extension letter specifically stated:

[T]his letter constitutes written notice that the note has been renewed for a period of twelve (12) months and shall mature on December 1, 2012.... Borrower acknowledges that usage of the line of Credit subsequent to the current maturity date is Borrower’s [herein Defendant’s] acceptance and agreement that the Borrower continues to be legally bound by the loan documents and except as expressly set forth in

¹ Exhibits A, B to the complaint in confession of judgment.

this letter, all terms, conditions and provisions of the Note and each of the other loan documents, are hereby ratified and confirmed and continue unchanged and in full force and effect.²

On September 18, 2014, Plaintiff filed its complaint in confession of judgment, and on March 11, 2015, Defendant filed its petition to strike or open said complaint. In the petition, Defendant advances two arguments: first, the maturity terms enumerated in the Revolving Term Note, the Amended and Restated Revolving Term Note, and the Note Renewal Letter, are ambiguous as to create a fatal defect in the judgment;³ second, the person who undertook the loan obligation on behalf of Defendant, as “Artistic Director” thereof, acted in an *ultra vires* capacity.⁴ According to the petition to strike or open, the *ultra vires* actions of the Artistic Director require this court to either strike or open Plaintiff’s confessed judgment because the Artistic Director lacked the capacity to bind Defendant –a capacity residing solely with an officer thereof.

Discussion

In Pennsylvania,

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.⁵

A petition to open is an appeal to the court’s equitable powers and is addressed to the sound discretion of the court....

[T]he 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

² Loan Renewal Letter, Exhibit C to the complaint in confession of judgment.

³ Petition to strike or open judgment by confession, ¶¶ 13–19.

⁴ *Id.*, ¶ 20.

⁵ *Fourteens Co. v. Sterling Equip. Corp.*, 242 Pa. Super. 199, 205, 363 A.2d 1229, 1232 (1976)

defense, while rejecting the adverse allegations of the party obtaining the judgment.⁶

[A] petition to open offers to show that defendant can prove defense to all or part of plaintiff's claims.⁷

In this case, the court has reviewed the original Revolving Term Note, the Amended and Restated Revolving Term Note, and the Loan Renewal Letter, and has found no ambiguity in any of their terms and no fatal flaw in the record which would require this court to strike judgment by confession.⁸ In addition, review of the petition to open shows that Defendant cannot prove any defense to all or part of Plaintiff's claim.⁹ Therefore, the petition to strike or open judgment by confession is denied in its entirety.

By The Court,



GLAZER J.

⁶ Indus. Valley Bank & Trust Co. v. Lawrence Voluck Associates, Inc., 285 Pa. Super. 499, 502-03, 428 A.2d 156, 158 (1981).

⁷ Manor Bldg. Corp. v. Manor Complex Associates, Ltd., 435 Pa. Super. 246, 645 A.2d 843 (1994).

⁸ "The task of interpreting a contract [such as the loan documents in this case] is generally a question of law to be decided by a court rather than a jury." O'Boyle v. J.C.A. Corp., 538 A.2d 915, 917 n. 2 (Pa. Super. 1988).

⁹ An additional argument advanced by Defendant asserts that its Artistic Director failed to understand the warrant of attorney-provision contained in the loan documents. Specifically the Artistic Director states in her affidavit that she "did not know ... the constitutional rights of [Defendant] to trial and jury were being cut short." Affidavit of Carmen Khan, Artistic Director of Defendant, ¶ 5, attached to the petition to strike or open judgment by confession. This argument has no merit: "failure to read a confession of judgment clause will not justify avoidance of it." Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 431 Pa. Super. 541, 550, 637 A.2d 309, 313 (1994).