

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

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

Plaintiff

v.

LA ROSA GREENHOUSE, LLP *et al.*

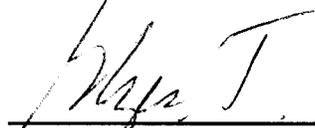
Defendants

: October Term, 2015
:
: Case No. 01672
:
: Commerce Program
:
:
: Control No. 16063991

ORDER

AND NOW, this 3rd day of July, 2016, upon consideration of the petition to strike or open judgment by confession filed by defendants La Rosa Greenhouse, LLP, Carmen J. La Rosa and Charlene W. La Rosa, the response in opposition of plaintiff Complete Business Solutions Group, Inc., the respective *memoranda* of law, and defendants' supplemental brief, it is **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

BY THE COURT,



GLAZER, J.

DOCKETED

JUL 13 2016

R. POSTELL
COMMERCE PROGRAM

Complete Business Solut-ORDRC



MEMORANDUM OPINION

Plaintiff Complete Business Solutions Group, Inc. (“CBSG”), is a lender based in Philadelphia, Pennsylvania. Defendant La Rosa Greenhouse, LLP (“Greenhouse”), is a New Jersey-based entity engaged in the production, distribution, and sale of flowers and vegetables. Individual defendants Carmen J. La Rosa and Charlene W. La Rosa (the “Individual Defendants”), own Greenhouse.

On August 25, 2015, CBSG entered into a “Merchant Agreement” with Greenhouse.¹ Pursuant to the Merchant Agreement, CBSG loaned cash in the amount of \$30,000.00 to Greenhouse, and Greenhouse agreed to repay CBSG in the amount of \$42,000.00, to be drawn from its accounts receivables over a period of one-hundred days.² Specifically, CBSG was empowered to periodically deduct sums from an account owned by Greenhouse, in the amount of \$420.00 for each of the one-hundred days contemplated in the contract.³ Pursuant to section 3.3 of the Merchant Agreement, CBSG was also empowered to confess judgment against Greenhouse upon the occurrence of an event of a default.⁴

CBSG and the Individual Defendants entered also into a Security Agreement and Guarantee (the “Guarantee”) which was incorporated into the Merchant Agreement.⁵ The Guarantee contained a section titled “DISCLOSURE FOR CONFESSION OF JUDGMENT,” whereby the Individual Defendants agreed that judgment could be confessed against them in the event of a default by Greenhouse.⁶ The Individual Defendants placed their

¹ Merchant Agreement, Exhibit A to the complaint-in-confession of judgment of plaintiff CBSG.

² Id. p. 1

³ Id. §§ 1.1–1.2.

⁴ Id. § 3.3.

⁵ Security Agreement and Guarantee, Exhibit A to the complaint-in-confession-of-judgment of CBSG.

⁶ Id., p.7, DISCLOSURE FOR CONFESSION OF JUDGMENT.

signatures at the bottom of the page containing their Guarantee.⁷

The Merchant Agreement and Guarantee also contained a section titled “APPENDIX A: THE FEE STRUCTURE,” found at page 10 of the document. In pertinent part, this section stated as follows:

7. Default Fee – \$5,000 default fee and 30% collection costs – If a Merchant [Greenhouse] changes bank accounts or switches to another credit card processor without CBSG’s consent, or commits another default pursuant to the [Merchant] Agreement.⁸

On October 16, 2015, CBSG filed the instant complaint-in-confession-of-judgment against Greenhouse and the Individual Defendants. The complaint avers that Greenhouse defaulted by failing to make the payments required under the Merchant Agreement. Specifically, CBSG asserts that after remitting nine payments, Greenhouse closed its bank account and thus prevented CBSG from directly deducting therefrom the amounts becoming due.⁹ In the complaint, CBSG avers that it is entitled to recover the unpaid principal and interest, in the amount of \$41,815.00, together with attorney’s fees of ten percent, in the amount of \$4,200.00, and collection “Fees” of \$12,544.50.¹⁰

On October 31, 2015, CBSG served upon Greenhouse and the Individual Defendants its complaint-in-confession-of-judgment with notice of execution, as evidenced by a return-of-service statement issued by the U.S. Post Office. The statement shows that the Post Office delivered the complaint and notice of execution to an addressee named “La Rosa” who received service by scribbling an illegible signature

⁷ *Id.*

⁸ *Id.* p. 12.

⁹ *Memorandum of law in opposition to the petition to open confessed judgment*, p. 2.

¹⁰ *Complaint-in-confession-of-judgment*, p. 4. The court notes that while the complaint-in-confession-of-judgment claims \$12,544.50 as “Fees,” paragraph 7 of the FEE STRUCTURE contained in APPENDIX A identifies the same item under the heading “Default Fee,” and immediately thereafter breaks down such a fee into two components, an actual “default fee” of \$5,000.00, and “30% collection costs.”

upon the return-of-service form.¹¹ The form clearly identifies the address as being “910 King’s Hwy” in Woodstown, New Jersey. This is the same address identified in the Merchant Agreement and Guarantee as the “physical address” of both Greenhouse and Individual Defendants.¹²

On June 29, 2016, the Individual Defendants filed the instant petition to strike or open the confessed judgment. The *memorandum* of law attached to the petition argues that the Merchant Agreement should be voided because the interest charged thereunder by CBSG, –\$12,000.00 over a period of one-hundred days– “constitutes a usurious loan transaction” requiring the judgment to be stricken or opened.¹³ This argument is rejected.

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.¹⁴

[The Pennsylvania rules of Civil Procedure set forth the] standard by which a court determines whether a moving party has properly averred a meritorious defense. If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment....

In other words, a judgment of confession will be opened if a petitioner seeking relief therefrom produces evidence which in a jury trial would require issues to be submitted to a jury.

¹¹ Return of Service Affidavit, Exhibit C to the response of CBSG to the petition to open judgment by confession.

¹² Merchant Agreement and Guarantee, Exhibit A to the response of CBSG to the petition to open judgment by confession; Return of Service Affidavit, Exhibit C to the response of CBSG to the petition to open judgment by confession.

¹³ *Memorandum* of law in support of petition to open judgment by confession, pp. 6–13.

¹⁴ *Fourtees Co. v. Sterling Equip. Corp.*, 363 A.2d 1229, 1232 (Pa. Super. 1976).

In this case, the Individual Defendants specifically rely on 18 Pa. C.S.A. § 911(b) and § 911(h)(1)(iv) of the Crimes Code—Corrupt Organizations, in their effort to invalidate the Merchant Agreement as usurious. The pertinent portions of those provisions state as follows:

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity in which such person participated as a principal, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in the acquisition of any interest in, or the establishment or operation of, any enterprise.... [or] to acquire or maintain, directly or indirectly, any interest in or control of any enterprise....¹⁵

[Racketeering activity means] ... [t]he collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding 25% per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law.¹⁶

The Individual Defendants have not alleged that CBSG is a corrupt organization, nor have they produced any evidence tending to show that CBSG participated as a principal in any racketeering activities, or that CBSG invested the proceeds from such unlawful activities to acquire an interest in the accounts receivables of Greenhouse.¹⁷ The Individual Defendants have not met their burden of producing evidence which, in a jury trial, would require the issues to be

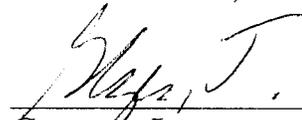
¹⁵ 18 Pa. C.S.A. § 911(b)(1), § 911(b)(2) (2016).

¹⁶ *Id.* § 911(h)(1)(iv).

¹⁷ The argument asserting that the interest charged by CBSG is usurious seems to imply that the Individual Defendants did not understand the alleged usurious nature of the deal; in turn, this argument seems to imply that the Individual Defendants did not knowingly agree to the terms of the Merchant Agreement, including the warrant-of-attorney provision therein. The argument has no merit. See Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994) (finding no merit in the assertion that petitioners lacked knowledge and/or understanding of the warrant of attorney provisions, and that the failure to read a confession of judgment clause cannot defeat the judgment).

submitted to a jury, and for this reason the petition to open must be denied.¹⁸ However, while the Individual Defendants have failed to meet their burden of proof, this court readily acknowledges that the interest rate charged by CBSG is very high; in addition, while the transaction at issue may be, in retrospect, a bad deal, it is still a deal to which the defendants agreed without any apparent coercion. There has been no evidence set forth to contradict the assertion that the Merchant Agreement was anything but an arm's length deal entered into legally, and for this reason the petition to open judgment by confession is denied. Likewise, the petition to strike is denied because the Individual Defendants have not identified a single fatal defect on the record which would require this court to strike the judgment.¹⁹

BY THE COURT,



GLAZER, J.

¹⁸ The court also notes that according to the findings-of-fact section of § 911, the Crimes Code statute was enacted to prevent that a racketeering organization “infiltrate and corrupt legitimate businesses within the **Commonwealth** [of Pennsylvania].” 18 Pa. C.S.A. § 911(a) (emphasis supplied). The court notes that defendant Greenhouse is a New Jersey business without any alleged address in, or connections with, this Commonwealth.

¹⁹ In the petition to strike or open the confessed judgment and in a subsequently-filed supplemental brief, the Individual Defendants assert that “[i]n fact, [the Individual Defendants] to this day have never been served with the Pennsylvania Judgment.” The court rejects the contention that service was not made upon defendants. The contention is rejected because the court has already determined that the return-of-service statement issued by the U.S. Post Office “shows that the Post Office delivered the complaint and notice of execution to an addressee named ‘La Rosa’ who received service by scribbling an illegible signature upon the return-of-service form.” *See Memorandum Opinion*, pp. 3–4, *supra*.