

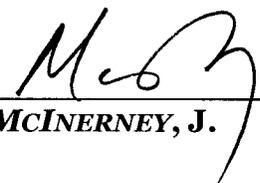
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

| | | |
|---------------------------------|---|----------------------|
| FLEETWAY CAPITAL CORP. | : | February Term, 2016 |
| | : | |
| Plaintiff | : | Case No. 04827 |
| | : | |
| v. | : | Commerce Program |
| | : | |
| SH&T EXPRESS, LLC <i>et al.</i> | : | |
| | : | |
| Defendants | : | Control No. 16041304 |

ORDER

AND NOW, this 9th day of May, 2016, upon consideration of the petition to open judgment by confession filed by defendants, the response in opposition filed by plaintiff, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED**.

BY THE COURT,



MCINERNEY, J.

DOCKETED
MAY 10 2016
R. POSTELL
COMMERCE PROGRAM

Fleetway Capital Corp. -ORDRC



MEMORANDUM OPINION

The petition to open judgment by confession arises out a lease agreement and related guarantees, whereby defendants leased three trucks and three trailers from plaintiff.

BACKGROUND AND DISCUSSION

Defendants assert that the petition to open judgment by confession should be granted on several grounds. First, defendants assert that they did not knowingly and intelligently waive their due process rights because when they executed the pertinent documents, they relied on a Russian-speaking translator who failed to apprise them of the significance and implications of the warrants-of-attorney incorporated therein.¹ This argument is rejected. In Pennsylvania, “there is no merit to [defendants’] assertion that their purported lack of knowledge and/or understanding of the warrant of attorney provisions ... requires ... the judgment be ... opened.”² There is no merit to such an argument because “the failure to read a confession of judgment clause will not justify avoidance of it.”³

Second, defendants assert that when they began to experience financial problems, plaintiff unreasonably and in bad faith refused to allow two willing individuals to assume the financial obligations of defendants.⁴ The petition also asserts that plaintiff was the cause behind the financial problems experienced by defendants. Specifically, the petition states that plaintiff refused to provide defendants with a signed document certifying the existence of an ongoing business relationship between plaintiff

¹ Petition to open judgment by confession, ¶¶ 6–12.

² Dollar Bank, Federal Savings Bank v. Northwood Cheese Co., Inc., 637 A.2d 309, 312 (Pa. Super. 1994).

³ Id.

⁴ *Memorandum of law in support of the petition to open p. 4 (un-numbered).*

and defendants. According to the petition, the failure to issue such a document deprived defendants of the investment benefits from potential new investors, and this deprivation caused the financial difficulties which ultimately resulted in a default.⁵ These arguments are also rejected. In Pennsylvania, the “petitioning party bears the burden of producing evidence to substantiate its alleged defenses. The defenses raised must be valid ones.”⁶ In this case, petitioners have not provided any evidence that plaintiff was contractually obligated to allow new parties to assume the obligations of defendants, or to issue the certificate of ongoing business relationship which might have enabled defendants to obtain new investors.

Finally, the petition asserts that after refusing to allow the afore-mentioned two individuals to assume defendants’ obligations, plaintiff required the defendants to return the leased trucks. According to the petition, plaintiff informed the defendants by letter, dated February 29, 2016, that the returned trucks would be sold at a “private” sale.⁷ The petition avers that plaintiff has not sold the returned trucks; therefore, defendants conclude that the confessed judgment may not be entered until the trucks are sold.⁸ This third and final argument is also rejected. As stated before, “the petitioning party bears the burden of producing evidence to substantiate its alleged defenses. The defenses raised must be valid ones.”⁹ In this case, defendants have not provided evidence of the letter dated February 29, 2016, by which letter plaintiff

⁵ Petition to open, ¶¶ 17(b), ¶¶ 16–17(a). (Erroneously, the petition contains two paragraphs identified under number 16, and two paragraphs identified under number 17. For this reason, the Court distinguishes the first-mentioned set as 16–17(b) and the second-mentioned set as 16–17(a)).

⁶ *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984).

⁷ Petition to open, ¶¶ 22–24. These averments appear to suggest that plaintiff owed a duty to mitigate defendants’ default by applying the proceeds from the sale of the trucks toward the reduction of defendants’ obligation.

⁸ *Id.*, ¶¶ 26–27.

⁹ *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984).

purportedly indicated that the returned trucks would be sold at a private sale.

Moreover, defendants have offered no evidence that plaintiff had a duty to mitigate defendants' default, either under the original agreements, or under a subsequent, separate agreement. Lack of any evidence whatsoever convinces this Court that defendants' petition to open judgment by confession offers no "meritorious" defense.¹⁰

For this reason, the petition is denied in its entirety.

BY THE COURT,


MCINERNEY, J.

¹⁰ "One who petitions to open a confessed judgment must ... offer a meritorious defense." Industrial Valley Bank and Trust Co v. Lawrence Voluck Associates, Inc., 428 A.2d 156, 158 (Pa. Super. 1981).