

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

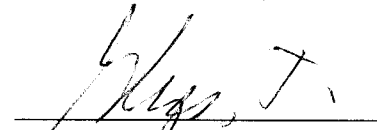
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THE PROVIDENT BANK, : April Term 2017 JUN 14 2017
Plaintiff, : ROOM 521
v. : No. 2516
MNAP MEDICAL SOLUTIONS, INC., SNB :
BILLING & SERVICES, INC., SNB : COMMERCE PROGRAM
PUBLISHING, INC., GALINA BOGATIN, BORIS :
BOGATIN and SERGIY SHKURO, : Control Number 17052109
Defendants. :
:

ORDER

AND NOW, this 4th day of June, 2017, upon consideration of Defendants MNAP Medical Solutions, Inc., SNB Billing & Services, Inc., SNB Publishing, Inc., Galina Bogatin, Boris Bogatin, and Sergiy Shkuro's Petition to Strike Confessed Judgment or in the alternative, to Open Confessed Judgment and for Stay of Execution, Plaintiff's response in opposition and the attached Opinion, it hereby is **ORDERED** that the Petition is **Denied**.

BY THE COURT,



GLAZER, J.

The Provident Bank Vs M-ORDRC



DOCKETED

JUN 15 2017

R. POSTELL
COMMERCE PROGRAM

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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TRIAL DIVISION-CIVIL**

THE PROVIDENT BANK,	:	April Term 2017
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v.	:	No. 2516
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BILLING & SERVICES, INC., SNB	:	COMMERCE PROGRAM
PUBLISHING, INC., GALINA BOGATIN, BORIS:	:	
BOGATIN and SERGIY SHKURO,	:	Control Number 17052109
Defendants.	:	
	:	

OPINION

Presently before the court is defendants MNAP Medical Solutions, Inc., SNB Billing & Services, Inc., SNB Publishing, Inc., (“The Borrowers”) and Galina Bogatin, Boris Bogatin, and Sergiy Shkuro’s (“Guarantors”) Petition to Strike Confessed Judgment or Open Confessed Judgment filed by plaintiff The Provident Bank (“Plaintiff”) and for Stay of Execution. For the reasons set forth below, the petition is denied.

On September 24, 2015, plaintiff and defendant borrowers entered into three loans for \$3,700,000.00, \$1,200,000.00 and \$1,000,000.00, respectively. In connection with each of these loans, the guarantors each executed and delivered to plaintiff Unconditional Guaranty and Surety Agreements (“Guarantees”) for each of the loans. The loans and the Guarantees respectively contain warrants of attorney authorizing confession of judgment against the borrowers and the guarantors.

On March 16, 2017, the borrowers stopped making payments on the loans. On April 17, 2017, plaintiff confessed judgment against the borrowers and the guarantors in the amount of \$5,482,735.89. On May 16, 2016, the borrowers and guarantors filed the instant petition to open

and or strike the judgment and stay of execution. Plaintiff responded to said petition and the matter is now ripe for disposition.

DISCUSSION

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record and may be granted only for a fatal defect or irregularity appearing on the face of the record.¹ In considering the merits of a petition to strike, the court will be limited to a review of only the record *as filed by the party in whose favor the warrant is given*, i.e., the complaint and the documents which contain confession of judgment clauses. Matters *dehors* the record filed by the party in whose favor the warrant is given will not be considered. If the record is self-sustaining, the judgment will not be stricken.²

Here, the borrowers and guarantors argue that the judgment should be stricken because venue and the notary acknowledgements are improper and that the attorney fees request is not authorized. Each of these arguments lacks merit. First, venue is proper in Philadelphia County. While the Guarantees in paragraph five place jurisdiction exclusively in Bucks County for any and all actions and legal proceedings arising under the Guarantees, this provision solely pertains to the guarantors and does not affect the right of plaintiff “TO BRING ANY ACTION OR PROCEEDING AGAINST SURETY OR THE PROPERTY OF SURETY IN THE COURTS OF ANY OTHER JURISDICTION.” (emphasis in original). Moreover, in paragraph 8 (a) of the Guaranty, guarantors authorized any attorney of any court of record to appear for guarantor at any time to confess judgment. As such, venue is appropriate in Philadelphia. Second, warrants

¹ *Bethlehem Steel Corporation v. Tri State Industries, Inc.*, 290 Pa. Super. 461, 434 A.2d 1236 (1981).

² *Franklin Interiors v. Wall of Fame Management Company, Inc.*, 510 Pa. 597, 511 A.2d 761 (1986).

of attorney to confess judgment do not require notarization.³ Notwithstanding the foregoing, it is clear from the record that the warrants were notarized and that a copying error occurred causing the notary acknowledgements to be mixed-up.⁴ Lastly, the attorney's fees are authorized by the warrants and the amount requested is not grossly excessive. Plaintiff obtained a judgment in the amount of \$5,482,735.89. The request for attorney fees in the amount of \$18,000 is attributed to the \$1 million dollar loan. As the request for \$18,000 is less than the 5% authorized by the warrant of attorney for this particular loan, the amount is not excessive, let alone grossly so. The petition to strike is denied.

In the alternative, borrowers and guarantors also seek to open the confessed judgment. A confessed judgment may be opened "if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury."⁵ 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."⁶ The standard of sufficiency here is similar to the standard for a directed verdict, in that the facts must be viewed most favorably to the moving party, the evidence and proper inferences in support of the defense raised must be accept as true, and all adverse allegations we must reject.⁷

³ See, 20 Pa. C. S. A. § 5601 (e.1) (v).

⁴ See, *Dime Bank v. Andrews*, 115 A.3d 358, 365 (2015) quoting *West Penn Sand & Gravel Co. v. Shippingport Sand Co.*, 367 Pa. 218, 80 A.2d 84, 86 (1951) (emphasis added) (It has always been held that **formal defects, mistakes and omissions** in confessions of judgment may be corrected by amendment where the cause of the action is not changed, where the ends of justice require the allowance of such amendment, and where the substantive rights of defendant or of any third persons will not be prejudiced thereby).

⁵ *Neducsin v. Caplan*, 121 A.3d 498, 506 (2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁶ *Id* quoting *Foerst v. Rotkis*, 244 Pa.Super. 447, 368 A.2d 805, 807-08 (1976).

⁷ *Id* citing *Greenwood v. Kadoich*, 239 Pa.Super. 372, 357 A.2d 604, 606 (1976).

Borrowers and guarantors argue the judgment should be opened because plaintiff breached its agreement to forbear from entering judgment and breached a duty to act in good faith. According to the petition, borrowers informed plaintiff of efforts being made to refinance and that one lender would soon be issuing a term sheet detailing the proposed refinance and that plaintiff stated that so long as borrowers provided it with the new lender's term sheet for refinance no action would occur. Borrowers provided plaintiff with the term sheet and contrary to their alleged agreement, plaintiff confessed judgment.⁸ The petition to open judgment based on this defense fails. Borrowers and guarantors failed to offer clear, direct, precise and believable evidence that an express forbearance agreement existed with plaintiff sufficient to raise a jury question.⁹ Moreover, the exhibits attached to plaintiff's response in opposition clearly shows that while borrowers and guarantors were desirous of such an agreement, plaintiffs never agreed to forbear.¹⁰ As such, the petition to open on this basis fails.¹¹

CONCLUSION

Based on the foregoing, the petition to strike and/or open is denied.

BY THE COURT,



GLAZER, J.

⁸ Borrowers and guarantors refer to plaintiff's breach of this alleged express agreement as a "snap" judgment.

⁹ *Germantown Savings Bank v. Talacki*, 657 A.2d 1285, 1289 (Pa.Super.1995)(Evidence of a meritorious defense must be clear, direct, precise, and believable.

¹⁰ Exhibits "D" through "O" to Plaintiff's response in opposition to petition to strike/open confessed judgment.

¹¹ Borrowers and guarantors defenses raised in their petition at paragraphs 62-72 suffer the same fate since clear, direct, precise and believable evidence was not presented.