

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

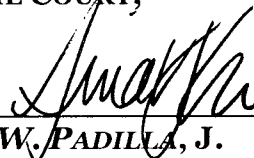
KRASCO FINANCIAL, LLC	:	July Term, 2018
	:	
<i>Plaintiff</i>	:	Case No. 03260
	:	
v.	:	Commerce Program
	:	
MOVITA JOHNSON	:	
<i>Defendant</i>	:	Control No. 181001770

18101770

ORDER

AND NOW, this 25th day of October, 2018, upon consideration of the motion for reconsideration filed by defendant Movita Johnson, it is **ORDERED** that the motion is **DENIED**.

BY THE COURT,



NINA W. PADILLA, J.

Krasco Financial, Llc V-ORDOP



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MEMORANDUM OPINION

On July 6, 2005, defendant Movita Johnson “Defendant,” executed a promissory note in the amount of \$100,000 (the “First Note”), in favor of her lender, an individual named Mina Panah (“Panah”).¹ Under the First Note, Panah was empowered to confess judgment against Defendant upon the occurrence of an event of default. On the same date, July 6, 2005, Defendant executed a second promissory note in the amount of \$460,000 (the “Second Note”), also in favor of Panah.² Under the Second Note, Panah was similarly empowered to confess judgment against Defendant upon the occurrence of an event of default. The indebtedness of Debtor under the First Note and Second Note was secured by a mortgage in favor of Panah. On June 18, 2018, Panah assigned her rights under the First Note, the Second Note, and the mortgage, to herein plaintiff, Krasco Financial, LLC (Plaintiff).³ On June 21, 2018, counsel of behalf of Plaintiff forwarded to Defendant a notice of default and acceleration which stated that Defendant had failed to make repayments under the Notes since February 2018, and had failed to insure the mortgaged collateral and to keep its taxes current.⁴

On July 30, 2018, Plaintiff commenced the instant action by entering a confession of judgment against Defendant. Subsequently, on August 27, 2018, Plaintiff filed a petition for the appointment of a receiver: this petition avers that the appointment of a receiver is necessary to prevent waste of the mortgaged collateral.⁵ A hearing upon this motion is scheduled to take place on November 7, 2018.

On September 10, 2018, defendant filed a petition to strike or open the judgment

¹ First Note, Exhibit A to the complaint-in-confession-of-judgment.

² Second Note, Exhibit B to the complaint-in-confession-of-judgment.

³ Assignment of Mortgage, notarized, Exhibit C to the complaint-in-confession-of-judgment.

⁴ Notice of default and acceleration, Exhibit D to the complaint-in-confession-of-judgment.

⁵ Petition for the appointment of a receiver, ¶¶ 16-17.

entered by confession. In this petition, defendant asserts that Panah, the original holder of the First and Second Notes, had allowed Defendant to delay repayment of her obligations.⁶ The petition thus concluded that defendant had not defaulted on her obligations under the First Note and Second Note because the “Forbearance Agreement” struck by the parties was still in force when Plaintiff confessed the judgment.⁷

On September 11, 2018, the instant action was transferred to the Commerce Program. On October 5, 2018, this Court issued an Order denying Defendant’s petition to strike or open the confessed judgment. In the footnoted Order, the Court explained that the petition had been denied, *inter alia*, because the Defendant had “failed to produce any evidence showing that the original holder of the operative notes [Panah,] had granted ... additional time to remedy the delayed payments.”⁸

On October 12, 2018, Defendant filed the instant motion for reconsideration. In the motion, Defendant re-asserts that she and Panah had entered into the Forbearance Agreement. Defendant avers that her business survives thanks to monthly state funding –funding which “would periodically be delayed” pending approval by the Commonwealth of Pennsylvania.⁹ According to Defendant, Panah knew of the recurring delays in the disbursement of such funding, and “agreed to ... not declare default or initiate legal action until ... [Defendant] received the retroactive payments from the Commonwealth of Pennsylvania.”¹⁰ In support of the existence of the Forbearance Agreement, Defendant submitted for the first time copies of text messages exchanged between Panah and Defendant, for the period beginning April 30, 2018, through May

⁶ Petition to strike or open, ¶ 7.

⁷ *Id.*, ¶ 8.

⁸ Order dated October 5, 2018, footnote.

⁹ Motion for reconsideration, ¶ 5.

¹⁰ Motion for reconsideration, ¶ 7.

24, 2018.¹¹ Defendant explains that she had been meaning to provide such evidence at a deposition scheduled to take place on October 26, 2018; however, her plans were negated when the Court “prematurely entered” its Order denying the petition to strike or open the judgment.¹²

DISCUSSION

A motion for reconsideration should be granted sparingly....
The only proper grounds for granting reconsideration are new and material evidence of facts, a change in the controlling law or a clear error in applying the facts or law to the case at hand so that it is necessary to correct a clear error and prevent a manifest injustice from occurring. Mere disagreement with the court’s conclusion is not a basis for reconsideration.¹³

I. The Order dated October 5, 2018 was not prematurely entered.

[I]n the context of a judgment confessed on a judgment note, the hearing required to comport with due process means simply an opportunity to be heard; it does not require a proceeding comparable to a full trial, but may be satisfied by other procedural opportunities to be heard, such as a petition to open judgment, a stay of execution, a rule to show cause why the judgment should not be opened, depositions to support the allegations in the petition, and oral argument.¹⁴

In addition, the Pennsylvania Rules of Civil Procedure instruct that “[t]he court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence.¹⁵

In this case, Defendant filed a petition to strike or open the confessed judgment

¹¹ Text messages exchanged between Panah and Defendant Movita Johnson, attached to the affidavit of Defendant at Exhibit D to the motion for reconsideration.

¹² *Id.*, ¶¶ 7, 11.

¹³ *Scartelli Gen. Contractors Inc. v. Selective Way Ins. Co.*, No. 2006 CV 4193, 2008 WL 5575968 (Pa. Com. Pl. Sept. 9, 2008).

¹⁴ *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co.*, 637 A.2d 309, 313 (Pa. Super. 1994).

¹⁵ Pa.R.C.P. No. 2959(e).

on September 10, 2018. In the petition, Defendant asserted a defense based on the existence of a Forbearance Agreement, but failed to attach any evidence in support of that defense. Stated another way, the petitioning Defendant failed to produce “sufficient evidence to substantiate ... [her] alleged defenses.”¹⁶ Nevertheless, this Court issued a Rule Returnable Order on September 11, 2018, stayed execution proceedings, if any, and instructed Plaintiff to file a response in opposition. After the response in opposition had been filed, this Court followed the Pennsylvania Rules of Civil Procedure and disposed “of the rule on petition and answer.” The Court disposed of the rule on petition and answer because due process in this action did not require a proceeding comparable to a full trial; instead, due process “was satisfied by other procedural opportunities to be heard, such as a petition to open judgment, a stay of execution, a rule to show cause,” in addition to the response of Plaintiff. The Court thus denied the petition to strike because it found no fatal defects in the record, and denied the petition to open because Defendant had not sustained her burden of proof.

II. The defense asserting the existence of a Forbearance Agreement is unavailable.

In her motion for reconsideration, Defendant asserts that she did not default because her re-payment delay was allowed pursuant to a Forbearance Agreement, the terms of which are found in an exchange of text messages between Panah and Defendant. This new evidence shows that Panah and Defendant exchanged communications between April 30, 2018, and May 24, 2018, and suggests that Panah and Defendant had indeed entered into a Forbearance Agreement stemming from the Commonwealth of Pennsylvania’s failure to timely release certain funds to Defendant.

¹⁶ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

To determine whether Defendant may avail herself of the defense asserting the existence of a Forbearance Agreement, the Court shall examine the text messages exchanged between Panah and Defendant. The final exchanges read as follows:

[Panah] Any luck with payments[?]

[Defendant] I am just waiting for them [*i.e.* the Commonwealth of Pennsylvania] to send my money.

[Panah] Do you know when?

[Defendant] June 21st. **I will mail you a check prior and date it for the 21st.**¹⁷

This language shows that Defendant had agreed to remit **before** June 21, 2018 a check which Panah could deposit or cash-in **no sooner** than by June 21, 2018.¹⁸ Next, the Court turns its attention to an affidavit which Defendant has attached to her motion for reconsideration. The affidavit states as follows:

12. Ultimately, **the retroactive state funding was not received until June 25, 2018**, at which point Panah had already assigned the loan Documents to Plaintiff, which had already declared a default and accelerated the entire balance due under the Loan Documents.¹⁹

A reading of this paragraph compels the Court to conclude that by June 25, 2018 –that is, four days beyond the deadline for repayment– defendant did not have in her account the state funds which she needed by June 21, 2018 to satisfy her obligation under the terms of the Forbearance Agreement. The language quoted above amounts to an admission by Defendant that she breached the Forbearance Agreement; therefore,

¹⁷ Text messages exchanged between Panah and Defendant, attached to the affidavit of Defendant Movita Johnson at Exhibit D to the motion for reconsideration (emphasis supplied).

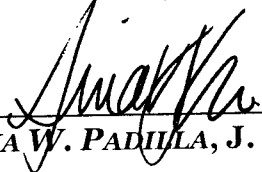
¹⁸ “The task of interpreting a contract is generally a question of law to be decided by a court rather than a jury.” *O’Boyle v. J.C.A. Corp.*, 538 A.2d 915, 917 footnote 2, (Pa. Super. 1988).

¹⁹ Affidavit of Defendant Movita Johnson, attached as Exhibit D to her motion for reconsideration (emphasis supplied).

Defendant may not subsequently invoke that agreement to avoid the judgment which Plaintiff entered by confession.

In conclusion, the petition to strike or open judgment entered by confession was properly denied because Defendant had failed to offer any evidence in support of her defense. In addition, the instant motion for reconsideration is likewise denied because Defendant cannot argue that she did not default on her obligations pursuant to the terms of the Forbearance Agreement, while simultaneously admitting in her affidavit that she breached the very terms of that agreement. For all of the reasons above, the motion for reconsideration is denied.

BY THE COURT,



NINA W. PADILLA, J.