

IN THE COURT OF COMMON PLEAS OF MERCER COUNTY, PENNSYLVANIA
CIVIL DIVISION

HP PROPERTIES, ONE, LLC, :
Plaintiff :
vs. : No. 2020-258
WILLIAM C. WEISS, :
Defendant :

OPINION AND ORDER

Currently before this Court is Defendant's Petition to Strike or Open Confessed Judgment and to Transfer Venue. By agreement of the parties the argument with regard to the Petition to Strike was scheduled separately, and in advance of, any hearings with regard to the Open Confessed Judgment and to Transfer Venue issues. After thorough briefing by the parties, oral argument was held on June 12, 2020. Hence, this matter is ripe for resolution.

I. STANDARD OF REVIEW

A Petition to Strike acts as a demurrer to the records. *Manor Building Corporation v. Manor Complex Associates Ltd.*, 6405 A.2d 843, 845 (Pa. Super. 1994) In reviewing such a demurrer, all facts of record in favor of Plaintiff are taken as true. *Id* at 848. If the truth of an allegation is disputed, the matter is more appropriately a Petition to Open. *TD Bank, N.A. v. Silica Investments, LLC* (decision of December 20, 2012, C.P. Phila., Tucker, J.) The Honorable Judge Tucker's opinion was adopted by

the Superior Court and the Superior Court agreed with the Trial Court's "well-reasoned analysis". *TD Bank, N.A. v. Silica Investments, LLC*, 2996 EDA 2012 (Pa. Super. 2013) A judgment will only be stricken if there is a fatal defect apparent on the face of the record, and only the record may be reviewed. *TD Bank, N.A.* Id at 4. The Court's review is limited to the record as filed by Plaintiff, being the Complaint and documents which contain the confession of judgment clauses." Id at 5.

The confession will not be stricken if the record is self-sustaining. Id. To be self-sustaining, the record must indicate the confession of judgment authorization is in writing, is signed by the person bound by the confession of judgment provision, and the signature is in direct relation to same. Id. The authority to confess judgment must be clear and explicit and must be strictly construed. Id. Matters outside of the record will not be considered. *Vogt v. Liberty Mutual Fire Insurance Company*, 900 A.2d 912, 915-916 (Pa.Super. 2006) (citations omitted).

A complaint for confession of judgment for money is governed by Pa.R.C.P. 2952. Said rule establishes a Complaint must contain:

1. Name and last known addresses of the parties;
2. An original or photostatic copy of the instrument showing the Defendant's signature. If a copy is attached there must be an averment that said copy is a true and correct reproduction of the original;

3. An averment judgment is not being entered in connection with a consumer credit transaction;
4. A statement of any assignment;
5. A statement as to whether or not judgment has been entered on the instrument in any jurisdiction;
6. An averment of default;
7. Itemization of the amount due, which may include attorney's fees and interest;
8. A demand for judgment;
9. Signature and verification as required by the rules.

II. PROCEDURAL HISTORY

On January 21, 2020 Plaintiff filed a Complaint in Confession of Judgment. On February 18, 2020 Defendant filed a Petition to Strike or Open Confessed Judgment and to transfer venue. This Petition, with regard to the request to strike judgment, asserted Defendant neither signed nor was a party, to the cognovit clause in the promissory note. The Petition to Strike asserts "four (4) discreet defects on the face of this record". (Petition to Strike ¶49) Paragraph 50 of the Petition asserts the four (4) defects are: 1) Defendant was neither a party nor signature to the cognovit clause or the note; 2) the complaint did not include an averment the attached instruments were true and correct

reproductions of the originals; 3) the complaint failed to include an averment of assignment; and 4) improper inclusion of a quantum of attorney's fees not authorized by the cognovit clause.

On April 3, 2020 this Court granted Plaintiff leave to file an Amended Complaint. Said Amended Complaint was filed on April 3, 2020. The First Amended Complaint addressed, and cured to the extent they existed, all of the alleged defects asserted by Defendant with the exception of whether Defendant was a signator or party to a cognovit clause. On April 17, 2020 Plaintiff filed an Answer and Counterclaim to the Petition to Strike. By Order of June 5, 2020 this Court struck Plaintiff's Counterclaim to the Petition to Strike as improper.

Loan documents relevant for this Court's analysis.

On September 6, 2013 the borrower in the underlying transaction, QIOC, L.P., entered into a \$4 million dollar loan with First Choice Bank. Paragraph 3 of the Promissory Note defines, "loan documents". Subsection (d) of ¶3 includes as a loan document the joint and several unconditional limited guarantees of several parties, including Petitioner herein. Page 7, subsection (f) of the Promissory Note contains a confession of judgment clause. Petitioner did not sign the Promissory Note.

Also on September 6, 2013 Petitioner executed a Limited Guarantee Agreement. Pages 4 and 5 of the Agreement contain a confession of judgment clause under the

heading "Power to Confess Judgment". Petitioner's signature appears on said Agreement.

On September 5, 2013 Petitioner executed a "Disclosure for Confession of Judgment (Guarantor)" (hereinafter "Disclosure") dated September 6, 2013. This Disclosure is two pages in length, a majority of said document being the identification of the parties and the signature lines. Petitioner is expressly identified as a party to the agreement and in fact signed same. The substantive provisions are comprised of four paragraphs.

The disclosure contains the identification of "Guarantee of Note from QIOC, L.P. and other loan documents in the sum of \$4,000,000.00 (Four Million and 00/100 Dollars)." This sentence is immediately followed by subparagraph (a) which states,

"The undersigned acknowledges and agrees that the **above documents** contain provisions under which Lender may enter judgment by confession **against the undersigned**, ...the undersigned hereby freely, knowingly, and intelligently...**expressly agrees and consents to lenders entering judgment against it by confession pursuant to the terms thereof.**" (Emphasis added)

Subparagraph (c) of the disclosure states, "(t)he undersigned certifies that a representative of Lender specifically called the confession of judgment provisions in the above documents to the attention of the undersigned, and/or that the undersigned was represented by legal counsel in connection with the above documents."

III. ANALYSIS

In *T.D. Bank, N.A.*, the Court held the Complaint was self-sustaining, and the confession valid, as Defendant signed a guarantee agreement that specifically referenced the underlying loan and the guarantee contained a confession of judgment clause as well. *T.D. Bank, N.A.* at p. 6. The Court referenced a consent and joinder agreement which specifically stated the guarantors, “acknowledge and agrees that the Silica loan documents contain provisions under which lender may enter judgment by confession against the undersigned.” *Id* at 8. The Court recognized each document contained a warranty of attorney and specifically found Plaintiff has not, “foisted it upon anyone by implication or by general non-specific reference”. *Id.*

In the instant matter Petitioner argues that the inclusion of the phrase “other loan documents” renders the phrase ambiguous, especially given the limited guarantee agreement contains a separate confession of judgment clause. This Court finds no merit in Petitioner’s assertions.

The Amended Complaint complies with the requirements of Pa.R.C.P. 2952 in that:

1. Paragraph 8 identifies Paragraph 3(d) of the Promissory Note setting forth Petitioner as a Guarantor as well as subparagraph (f) of said Note being a clear confession of judgment clause.
2. Paragraph 12 identifies the limited guarantee agreement.

3. Paragraph 14 identifies the disclosure of confession of judgment (guarantor)
4. Paragraph 15 identifies the assignment of the obligations.
5. Paragraph 26 alleges the judgment is not in connection with a consumer credit transaction
6. Paragraph 29 alleges no other confessions have been entered.
7. Paragraph 30 alleges the obligations are in default.
8. Paragraph 31 includes the calculations of the amounts due.
9. Paragraph 32 contains a demand.

Attached and incorporated into the Amended Complaint are:

1. The Promissory Note of September 6, 2013 as Exhibit "A";
2. The Limited Guarantee Agreement as Exhibit "B";
3. The Disclosure for Confession of Judgment (Guarantor) as Exhibit "C";
4. The Purchase, Sale and Assignment of Loan Agreement as Exhibit "D";
5. Demand letters to Petitioner, amongst others, as Exhibits "E" and "F";
and
6. "Certification of Joseph K. Jones, Esquire in support of Attorney's Fees and First Amended Verified Complaint as Exhibit "G".
7. The names and last known addresses of the parties.

This Court finds the loan documents taken as a whole, establish a clear intent on behalf of Petitioner to be bound by the cognovit clause in the Promissory Note. The loan documents further establish Petitioner's intelligently, and voluntarily binding himself to said clause, and his full knowledge of same.

The inclusion of the phrase "and other loan documents" in the Disclosure does not result in a striking of the confession of judgment. Had the afore-referenced phrase reference to only "loan documents", perhaps the analysis would be different. However, the disclosure in the instant matter specifically references "guarantee of note from QIOC, L.P." Subparagraph (a) of said disclosure contains Petitioner's acknowledgement and agreement that the above documents contain provisions subjecting Petitioner to confession. Subparagraph (a) further contains Petitioner's statement of "freely, knowingly, and intelligently, waiving rights and "expressly agrees and consents to lenders entering judgment against it by confession pursuant to the terms thereof". Further, subparagraph (c) of the disclosure contains Petitioner's certification a representative of lender "specifically called the confession of judgment provisions in the above-documents to the attention of the undersigned..." The guarantee itself also contained a confession of judgment clause.

The Amended Complaint in this matter, and all documents attached thereto, clearly establish Petitioner's knowledge of, and consent to be bound by, the confession of judgment provisions set forth in the promissory note. The matter before this Court is

not a situation in which confession of judgment clauses are contained in fine print, on the back of documents which are only signed on the front, or the confession of judgment provisions were foisted upon Petitioner by implication or “general non-specific” reference. The Disclosure expressly identifies the Promissory Note.

Hence this Order,

