NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

FIRST NATIONAL COMMUNITY BANK, Appellee v. THE POWELL LAW GROUP, P.C., Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1514 MDA 2012

Appeal from the Order of July 31, 2012,
in the Court of Common Pleas of Luzerne County,
Civil Division at No. 9748-L of 2011

BEFORE: DONOHUE, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: **FILED SEPTEMBER 06, 2013**

This is an appeal from an order purporting to deny Appellant's petition to strike a confessed judgment and to grant in part Appellant's petition to open the same confessed judgment. In addition, Appellee has filed in this Court a motion to quash this appeal.[1] We deny the motion to quash and affirm the order.

The background underlying this matter can be summarized in the following manner. On July 26, 2011, Appellee First National Community

---

[1] In its motion to quash, Appellee asks this Court to quash or dismiss this appeal due to Appellant's failure to comply with a number of the Rules of Appellate Procedure. Appellant's alleged failure to comply with the rules cited by Appellee in no way hampers our ability to review this matter. Consequently, we deny Appellee's motion.

*Retired Senior Judge assigned to the Superior Court.

Bank ("Appellee") filed a complaint in confession of judgment against Appellant The Powell Law Group, PC ("Appellant"). Appellee averred that it and W-CAT, Inc. ("W-CAT") are parties to a construction loan agreement dated May 3, 2005, evidencing, *inter alia*, a loan from Appellee to W-CAT in the original principal amount of $2,500,000.00. The loan is further evidenced by a Multiple Advance Promissory Note in the same original principal amount. On June 25, 2008, at the request of W-CAT, Appellee extended the term note for an additional six months.

In addition, on May 3, 2005, Appellee agreed to provide W-CAT with two line-of-credit loans of one million dollars each. These loans are evidenced by line-of-credit notes in the same principal amounts. W-CAT defaulted on all of the above-mentioned loans.

According to the complaint, on February 26, 2009, Appellant and all of the guarantors of the W-CAT loans entered into a six-month forbearance agreement with Appellee. One of the conditions of the forbearance agreement was a requirement that Appellant guaranty the repayment of all of W-CAT's indebtedness to Appellee. On or about February 27, 2009, Appellant executed a Guaranty and Suretyship Agreement ("the Guaranty") in which it guarantied repayment of all of the W-CAT loans. The Guaranty contained a confession-of-judgment provision. In short, the W-CAT loans went into default, and Appellee confessed judgment against Appellant.

Appellee maintained that, pursuant to the Guaranty, Appellant is liable to Appellee in the total amount of $4,621,845.88 which includes the remaining, unpaid principals of the three loans and a total attorney's fee of

$515,820.93. The attorney's fee reflected 15% of the remaining, unpaid principal balances of the three loans. A judgment was entered against Appellant.

On August 25, 2011, Appellant filed a petition to strike or open judgment.[2] In terms of its petition to strike, Appellant first contended that the judgment should be stricken because the Guaranty lacked a signature or initial requirement on the page that contained the confession-of-judgment clause. Appellant also maintained that the court should strike the judgment because the attorney's fees are grossly excessive.

As to its petition to open, Appellant asserted that it had "counterclaims" against Appellee, such as a claim that Appellee breached its duty of confidentiality. Appellant "proffered" these counterclaims in an exhibit attached to its petition.

In an order dated July 31, 2012, the trial court denied Appellant's petition to strike. The court, however, purported to grant in part Appellant's petition to open. Regarding the portion of the petition to open the court supposedly granted, the court modified the award of attorney's fees to five percent of the outstanding principal of the loans, *i.e.*, $171,940.31. We note that Appellant did not claim **in its petition to open** that the attorney's fees

---

[2] In addition to challenging the judgment in this case, Appellant's petition addressed confessed judgments entered in favor of Appellee and against Appellant in two other cases. The trial court disposed of each case in separate orders. Appellant filed separate appeals for all of the cases. Appellant's other appeals are docketed in this Court at 1512 MDA 2012 and 1513 MDA 2012.

awarded to Appellee were excessive or unreasonable. On August 20, 2012, Appellant filed a notice of appeal wherein it stated its desire to appeal the order dated July 31st.

Before we address Appellant's issues, we pause to address whether this Court has jurisdiction over this appeal. Orders refusing to strike or open a judgment are immediately appealable as of right. Pa.R.A.P. 311(a)(1). An order granting a petition to open a judgment is not immediately appealable. ***See Joseph Palermo Development Corp. v. Bowers***, 564 A.2d 996, 997 (Pa. Super. 1989) ("Although prior to the [ ] amendments to Rule 311(a)(1) an interlocutory appeal as of right was available to a litigant if the trial court had ordered a judgment opened, this is no longer the case. Under the [current version of the] Rule, . . . only an order *refusing* to open, vacate or strike off a judgment is immediately appealable.") (emphasis in original). Furthermore, when a petitioner seeks an order striking a judgment or in the alternative opening a judgment, the petitioner cannot file an appeal until the trial court disposes of each claim for relief. Pa.R.A.P. 311(a)(1).

Here, the complained-of order denied Appellant's petition to strike but granted in part Appellant's petition to open. Thus, at first glance, the order appears to be unappealable. However, the trial court's order is not typical of an order granting a petition to open a judgment. Because the court already set an amount for the attorney's fees, the parties have nothing left to litigate. Moreover, while the court did not reduce its order to judgment, it should have done so. ***Dollar Bank, Federal Sav. Bank v. Northwood Cheese Co., Inc.***, 637 A.2d 309, 314 (Pa. Super. 1994) ("[I]f the judgment

as entered is for items clearly within the judgment note, but excessive in amount, the court will modify the judgment **and cause a proper judgment to be entered**.") (emphasis added). Because the trial court should have, but failed to, cause judgment to be reentered in this case, we will regard as done that which ought to have been done. ***See Zitney v. Appalachian Timber Products, Inc.***, 2013 WL 3366740, 3-4 (Pa. Super. 2013) (regarding "as done that which ought to have been done" where two parties praeciped for the entry of judgment but the trial court's docket was unclear as to whether judgment, in fact, was entered). Because the court's order disposed of all parties and their claims, the order constitutes a final, appealable order. Pa.R.A.P. 341(a) and 341(b)(1).

Under its first issue, Appellant argues that the trial court erred by denying its motion to strike the judgment.[3] Appellant essentially maintains that, when all of the attorney's fees from all of the judgments entered against Appellant and in favor of Appellee are added up, those fees are grossly excessive. Thus, in Appellant's view, the trial court should have stricken the judgments.

---

[3] "Our standard of review from the denial of a petition to strike a judgment is limited to whether the trial court manifestly abused its discretion or committed an error of law." ***Vogt v. Liberty Mut. Fire Ins. Co.***, 900 A.2d 912, 915 (Pa. Super. 2006) (citation and quotation marks omitted). "A petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. Matters outside of the record will not be considered, and if the record is self-sustaining, the judgment will not be stricken." ***Id.*** at 915-16 (citation and quotation marks omitted).

As an initial matter, only one judgment is the subject of this appeal; the judgment that originally included an attorney's fee of $515,820.93. The other judgments entered against Appellant and in favor of Appellee are not involved in this appeal. Secondly, the confession-of-judgment provision of the Guaranty signed by Appellant, a law firm, allowed Appellee to confess judgment in an amount to include "REASONABLE ATTORNEY'S FEES NOT TO EXCEED FIFTEEN (15%) PERCENT OF THE PRINCIPAL INDEBTEDNESS, BUT IN NO EVENT LESS THAN FIVE HUNDRED ($500.00) DOLLARS." Complaint, 07/26/11, Exhibit F, at 3 (emphasis in original). The total amount of the unpaid principals for all three loans was $3,438,806.20, and fifteen percent of that amount is $515,820.93.

Appellant is correct that a court must strike a judgment entered in an amount that was grossly excessive. ***Dollar Bank***, 637 A.2d at 314. Yet, the face of the record permitted Appellee to confess judgment in an amount that included the $515,820.93 attorney's fee. Appellant's poorly crafted argument fails to convince us that the trial court erred by refusing to strike the judgment due to the allegedly grossly excessive attorney's fee, especially in light of the fact that the court reduced the attorney's fee by more than sixty-six percent despite the fact that Appellant failed to seek such relief in its petition to open.

Under its second issue, Appellant asserts that, if this Court refuses to reverse the trial court's order denying the petition to strike, then the Court should further reduce the attorney's fees included in the judgments. Again, only one judgment is subject to this appeal. In any event, Appellant has

waived its issue by failing to offer a developed argument in support thereof. ***See Burgoyne v. Pinecrest Community Ass'n***, 924 A.2d 675, 680 n.4 (Pa. Super. 2007) (finding an issue waived due to the appellant's failure to develop a relevant argument).

Under its last issue, Appellant contends that the trial court erred by denying its motion to strike because all of the confession-of-judgment provisions, including the provisions that are irrelevant to this appeal, are not sufficient under Pennsylvania law. Appellant once again fails to focus on the judgment and documents in question in this appeal. The only complaint Appellant lodges that is specific to the relevant confession-of-judgment provision is as follows:

> Specifically, in case number 9748 the confession of judgment provision bears no heading and appears on multiple pages (3 and 4), nowhere near the signature page (page 10).

Appellant's Brief at 12.

> We have noted the need for strict adherence to rules governing confessed judgments.[ ] As a matter of public policy, Pennsylvania applies a similar strict standard to establish the validity of a cognovit clause. This is so because a warrant of attorney to confess judgment confers such plenary power on the donee in respect of the adjudication of his own claims that certain specific formalities are to be observed in order to effectuate the granting of such a power. Accordingly, [a] Pennsylvania warrant of attorney must be signed. And it will be construed strictly against the party to be benefited by it, rather than against the party having drafted it. A warrant of attorney to confess judgment must be self-sustaining and to be self-sustaining the warrant must be in writing and signed by the person to be bound by it. The requisite signature must bear a direct relation to the warrant of attorney and may not be implied.

Graystone Bank v. Grove Estates, LP., 58 A.3d 1277, 1282 (Pa. Super. 2012) (citations and quotation marks omitted).

Here, in substance, the Guaranty is ten pages long. The confession-of-judgment provision begins near the top of page three, and takes up approximately half of page four, of the Guaranty. This provision is in all capital letters, making it conspicuous and easy to read. If an event of default has occurred and remains uncured, the provision clearly and unambiguously "AUTHORIZES AND EMPOWERS THE PROTHONOTARY, CLERK OF COURT, OR ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR THE GUARANTOR IN SUCH COURT, . . . AND CONFESS JUDGMENT IN FAVOR OF THE LENDER . . .." Complaint, 07/26/11, Exhibit B, at 3 (emphasis in original). The secretary and president of Appellant, a law firm, signed the document on page ten. While these signatures are not located directly under the confession-of-judgment provision, they bear a direct relation to it, as it was a conspicuous provision of the Guaranty.

Appellant has failed to convince us that the confession-of-judgment provision in this case is invalid or unenforceable. For these reasons, we affirm the trial court's order.

Motion to quash denied. Order affirmed.

Judgment Entered.

Mary A. Troyanello

Deputy Prothonotary

Date: 9/6/2013