

2025 PA Super 249

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
MICHAEL SCIORE :
:
:
Appellant : No. 1036 MDA 2021

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5256

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
MICHAEL SCIORE :
:
:
Appellant : No. 1037 MDA 2021

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5252

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
v. :
:
:
MICHAEL SCIORE :
:
:
Appellant : No. 1038 MDA 2021

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5205

CENTRIC BANK : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
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 v. :
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 M.S. ACQUISITIONS & HOLDINGS, :
 LLC :
 : No. 1039 MDA 2021
 Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5269

CENTRIC BANK : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 :
 v. :
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 M.S. ACQUISITIONS & HOLDINGS, :
 LLC, MICHAEL SCIORE, AND MARIE :
 ANGIE HERNANDEZ-SCIORE : No. 1040 MDA 2021
 Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5209

CENTRIC BANK : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 :
 v. :
 :
 :
 :
 M.S. ACQUISITIONS AND :
 HOLDINGS, LLC :
 : No. 1041 MDA 2021
 Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-05271-NT

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
v. :
: M.S. ACQUISITIONS AND
: HOLDINGS, LLC
: No. 1042 MDA 2021
Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-05305-NT

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
v. :
: AMERICA'S BUSINESS CAPITAL, LLC
: No. 1043 MDA 2021
Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5249

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
v. :
: AMERICA'S BUSINESS CAPITAL, LLC
: No. 1044 MDA 2021
Appellant :

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-05207-NT

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v. :

GREGORY P. DEMINCO :

Appellant :

No. 1045 MDA 2021

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-05257-NT

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v. :

GD CAPITAL GROUP, LLC :

Appellant :

No. 1046 MDA 2021

Appeal from the Order Entered July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5273

CENTRIC BANK : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v. :

MEGA-PHILADELPHIA, LLC :

Appellant :

No. 1047 MDA 2021

Appeal from the Order Dated July 9, 2021
In the Court of Common Pleas of Dauphin County Civil Division at No(s):
2020-CV-5272

CENTRIC BANK	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
SPANISH SPORTS NETWORK, LLC	:	
	:	
Appellant	:	No. 1048 MDA 2021

Appeal from the Order Entered July 9, 2021
 In the Court of Common Pleas of Dauphin County Civil Division at No(s):
 2020-CV-5267

BEFORE: PANELLA, P.J.E., LANE, J., and STEVENS, P.J.E.*

OPINION BY LANE, J.: **FILED: NOVEMBER 7, 2025**

Micheal Sciore ("Sciore"), Marie Angie Hernandez-Sciore ("Hernandez-Sciore"), M.S. Acquisitions & Holdings, LLC ("M.S. Acquisitions"), America's Business Capital, LLC ("ABC"), MEGA-Philadelphia, LLC ("MEGA"), GD Capital Group, LLC ("GD Capital"), Gergory P. Deminco ("Deminco"), and Spanish Sports Network, LLC ("SSN") (collectively, "Appellants") appeal from the orders denying their petitions to strike or open confessed judgments in favor of Centric Bank ("Centric"). We affirm.

Beginning in 2014, Centric, a bank headquartered in Harrisburg, made numerous loans to Sciore, his wife Hernandez-Sciore (collectively, the "Sciores"), and the various companies Sciore controlled, including M.S. Acquisitions, MEGA, and ABC. The first was a \$250,000 loan ("\$250,000 Loan") in December 2014 to Sciore and Hernandez-Sciore, which was

* Former Justice specially assigned to the Superior Court.

guaranteed by Eagle Rock Green Energy, LLC (“Eagle Rock”) and secured by a mortgage granted by Eagle Rock on the Sciores’ vacation home in Schuylkill County.

Over the ensuing five years, Centric extended numerous other loans to the Sciores and Sciore’s companies. In its opinion, the trial court identified these loans and summarized the factual background of this matter as follows:

a) \$470,000 line of credit to M.S. Acquisitions and . . . Sciore on April 24, 2015;

b) \$2,300,000 loan [(“\$2,300,000 Loan”)] to M.S. Acquisitions, . . . Sciore and . . . Hernandez-Sciore . . . on June 12, 2015. This [l]oan was also secured by a mortgage on the Sciores’ New Jersey home;

c) \$600,000 loan [(“\$600,000 Loan”)] to [ABC] on December 30, 2015[. Centric] required the guarantees of ABC’s members, M.S. Acquisitions and its sole member, . . . Sciore and GD Capital and its sole member, . . . Deminco^[1];

d) \$250,000 line of credit to America’s Mortgage Institute Corp on August 5, 2016. Plaintiff required . . . Sciore’s guaranty of the loan;

e) \$400,000 loan [(“\$400,000 Loan”)] to [MEGA] on February 9, 2017[. Centric] required the guarantees of [MEGA’s] sole members, M.S. Acquisitions, . . . Sciore, and [SSN], a company in which . . . Sciore has an interest[;]

f) \$400,000 Small Business [Administration (“SBA”)] loan to [MEGA] on August 10, 2017 This loan was guaranteed by M.S. Acquisitions, Sciore, and [SSN];

¹ Deminco held a forty-nine percent interest in ABC through GD Capital. **See** Sciore Dep., 11/10/20, at 183-84.

g) \$350,000 [SBA loan to MEGA] on August 10, 2017, which was guaranteed by M.S. Acquisitions, . . . Sciore, and [SSN; and]

h) \$1,241,500 line of credit to Old City Pretzel Company in April of 2018, which was secured by the guarantees of . . . Sciore and Eagle Rock . . . and a mortgage granted by Eagle Rock to Centric . . . on the Sciores' vacation home located in Schuylkill County[.]

* * * *

In February 2019, . . . Sciore approached Centric . . . with a proposal to restructure/payoff certain existing loans to M.S. Acquisitions in a way that would give Centric . . . a fully secure loan position and provide M.S. Acquisitions with an additional \$1,000,000 in working capital. [On May 13, 2019, Centric extended a \$1,100,000 line of credit (“\$1,100,000 LOC”) to M.S. Acquisitions, which Sciore guaranteed.] In September 2019, Centric . . . suggested increasing the \$[1,100,000] LOC if it was allowed to obtain a lien on property that . . . Sciore owned in Puerto Rico. . . .

Thereafter, the parties devised a strategy to restructure existing debt of Sciore and his companies in order to pay off or consolidate existing debt into a new loan to M.S. Acquisitions, . . . Sciore, and . . . Hernandez-Sciore. The plan was to increase the [\$1,100,000] LOC to \$1,375,000 and make a new loan to M.S. Acquisitions in the amount of \$2,035,000 (which ultimately became \$2,050,000) to pay off or consolidate existing debt, including loans to [MEGA]. This plan also included a proposal to sell [MEGA, which owned and operated a radio station in Philadelphia,] and use proceeds from the sale to pay off the new [\$2,050,000] loan as well as certain [MEGA] loans, and apply residual monies to pay down the existing [\$1,100,000] LOC. This restructur[ing] of the loans ensured that, with the sale of [MEGA], the only remaining debt would be the \$1,241,500 [loan to] Old City Pretzel [Company], the new \$1,375,000 line of credit to M.S. Acquisitions, and the [\$6]00,000 . . . Loan [to ABC.]

On January 27, 2020, Centric . . . made a \$2,050,000 Loan to M.S. Acquisitions [(“\$2,050,000 Loan”)] for the purpose of consolidating and refinanc[ing] the 2015 [\$2,300,000] Loan, [the] \$250,000 line of credit to ABC, and the \$350,000 [SBA loan to MEGA. In addition to M.S. Acquisitions and Sciore,] Hernandez-Sciore was listed as a borrower on [the \$2,050,000] Loan [and

ABC guaranteed the loan]. This [l]oan required a copy of an executed sales contract for the sale of [MEGA] be entered into by March 15, 2020, with due diligence to be completed by May 15, 2020 and a closing to occur on or before July 15, 2020.

Also on January 27, 2020, Centric . . . extended a \$1,375,00[0] line of credit to M.S. Acquisitions [("\$1,375,000 LOC")], which was predominately utilized to pay off the existing [\$1,100,000] LOC and over \$22,000 in fees charged by Centric . . ., leaving \$216,355.63 in undisbursed funds available to M.S. Acquisitions The [\$1,375,000] LOC is evidenced by a [p]romissory [n]ote, which is payable on demand and provides for monthly payments of interest only. [Sciore and La Bella Vita, LLC ("La Bella Vita") guaranteed payment of the \$1,375,000 LOC.]

By mid-March [2020], the [COVID]-19 pandemic started to cause some issues, specifically with the sale of [MEGA]. The purported purchaser of [MEGA] did not want to purchase [a radio station] in the middle of a pandemic. Moreover, no payments were made on any of the subject loans since March of 2020, and no payments have ever been made on the [\$2,050,000] Loan or the [\$1,375,000] LOC.

Trial Court Opinion, 7/9/21, at 3-6.

In May 2020, Centric filed the underlying thirteen complaints in confession of judgment in the Court of Common Pleas of Dauphin County against Appellants relating to the \$2,050,000 Loan, \$1,375,000 LOC, \$600,000 Loan, and \$400,000 Loan (collectively, "Loans").² The prothonotary of the trial court entered judgments as follows: (1) \$2,290,501.30 against M.S. Acquisitions, Sciore, Hernandez-Sciore, and ABC on the \$2,050,000 Loan; (2) \$1,533,088.15 against M.S. Acquisitions and Sciore on the \$1,375,000 LOC; (3) \$665,487.40 against ABC, M.S. Acquisitions, Sciore, GD

² Centric filed an additional complaint in confession of judgment against La Bella Vita, but Centric voluntarily discontinued that action.

Capital, and Deminco on the \$600,000 Loan; and (4) \$445,470.89 against MEGA, M.S. Acquisitions, Sciore, and SSN on the \$400,000 Loan.

Appellants filed petitions to strike or open the confessed judgments and later amended petitions to strike or open. In their amended petitions, Appellants raised numerous potential defenses to the judgments. Additionally, the Sciores and M.S. Acquisitions asserted counterclaims against Centric for breach of contract, breach of duty of good faith and fair dealing, and breach of Centric's duties under the loan documents.

The trial court convened an evidentiary hearing on the amended petitions. In lieu of presenting evidence, the parties submitted transcripts of seven depositions and numerous exhibits. During argument at the hearing, Centric noted that it filed in the Court of Common Pleas of Schuylkill County ("Schuylkill County Court") separate complaints for confession of judgment against the Sciores and Eagle Rock relating to the \$250,000 Loan ("Schuylkill County Actions"). The Sciores and Eagle Rock filed petitions to strike or open the judgments in those cases, raising many of the defenses presented here. The Schuylkill County Court denied the petitions to strike or open, and this Court ultimately affirmed on appeal. ***See Centric Bank v. Sciore***, 263 A.3d 31 (Pa. Super. 2021). Following the submission of post-hearing briefs, the trial court ordered additional oral argument on whether there were material differences between the Schuylkill County Actions and the present cases such that the trial court could not rely on the Schuylkill County Court's reasoning with respect to the overlapping defenses.

On July 9, 2021, the trial court issued orders denying Appellants' petitions to strike or open the confessed judgments. In its accompanying opinion, the trial court found that, with respect to the bulk of Appellant's claimed meritorious defenses, there was "no significant difference between the instant matters and the Schuylkill County Action[s]." Trial Court Opinion, 7/9/21, at 9. The trial court found the Schuylkill County Court's reasoning "persuasive" on those defenses and "adopt[ed] and incorporate[d]" the Schuylkill County Court's analysis thereto. *Id.* at 8-9. The trial court further addressed the additional defenses raised by Appellants here that were not present in the Schuylkill County Action.

Appellants filed timely notices of appeal from each of the July 9, 2021 orders. **See** Pa.R.A.P. 311(a)(1) (permitting interlocutory appeals from orders refusing to open or strike off a judgment). Appellants complied with the trial court's order to file concise statements of errors complained of on appeal pursuant to Pa.R.A.P. 1925, and the trial court issued a statement indicating that it relied on its July 9, 2021 opinion. Upon stipulation by the parties, this Court consolidated these appeals. **See** Pa.R.A.P. 513 (permitting consolidation of the appeals by stipulation of the parties where there is more than one appeal from the same order or where the same question is involved in two or more appeals in different cases).

In April 2022, following briefing of these appeals, Appellants filed notice that M.S. Acquisitions and MEGA had filed for bankruptcy relief, and this Court stayed this appeal in accordance with Section 362 of the United States

Bankruptcy Code. **See** 11 U.S.C. § 362. In April 2025, Appellants notified this Court that the United States Bankruptcy Court for the Middle District of Florida had dismissed the bankruptcy cases and terminated the automatic stay. The instant appeals are now ripe for our review.

Appellants raise the following issues on appeal:

1. Whether the trial court erred by denying the petition to strike and/or open the confessed judgment as to . . . Hernandez-Sciore when the evidence was sufficient to establish a defense for violat[ion of] the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.* by Centric . . . ?
2. Whether the trial court abused its discretion in denying the petition to open the confessed judgment as to . . . Hernandez-Sciore, an unsophisticated borrower, because the warrant of attorney to confess judgment is a contract of adhesion and is unconscionable under the circumstances where she was required to sign as a borrower on a \$2,050,000 business loan made in connection with the restructure of her husband's companies' debt?
3. Whether the trial court abused its discretion in denying petitions to open the confessed judgment on the basis that the cases before the court were not significantly different from two, unrelated Schuylkill County [A]ctions in which the Schuylkill County Court denied petitions to open confessed judgments in cases involving a different loan, different facts and issues, including whether the loan was a consumer loan and the confession of judgment violated Pa.R.C[iv].P. 2050?
4. Whether the trial court erred to the extent it did not consider evidence critical to the issues before the court, but instead relied on the opinion of the Schuylkill County Court in two different matters?
5. Whether the trial court abused its discretion by denying petitions to open the confessed judgment when the [Appellants] disputed the accuracy of the calculations of the amount due under the loans at issue because Centric . . . applied monies from a line of credit and collateralized funds,

but failed to account for the monies leading the borrowers to belie[ve] all loans were current?

6. Whether the trial court abused its discretion by denying petitions to open the confessed judgment when [Appellants] asserted meritorious defenses, including that Centric Bank breached its contract with its borrower, misrepresented the amount M.S. Acquisitions would have available on a new \$1,375,000 [LOC], and dealt unfairly and acted in bad faith in its dealings with borrowers?
7. Whether the trial court erred in failing to find that the purpose and basic assumptions of the parties' loan agreements were frustrated and made impracticable due to circumstances brought on by the COVID-19 pandemic?
8. Whether the trial court abused its discretion by failing to open the confessed judgments when Appellants asserted meritorious defenses of waiver and course of dealing regarding payment delinquencies?
9. Whether the trial court erred in failing to consider or address counterclaims raised in the petitions?

Appellants' Brief at 3-5 (reordered for ease of disposition).

Appellants' issues challenge the trial court's orders to the extent they denied Appellants' requests to open the confessed judgments.³ We review an order denying a petition to open a confessed judgment for an abuse of discretion. **See Obara Realty Grp., LLC v. Atlas Real Estate Investments, LLC**, 279 A.3d 614, 617 (Pa. Super. 2022).

A petition to open a confessed judgment is an appeal to the equitable powers of the court. **See SDO Fund II D32, LLC v. Donahue**, 234 A.3d 738, 742 (Pa. Super. 2020). A trial court may open a confessed judgment

³ Appellants do not argue that the trial court erred by not **striking** the confessed judgments.

when the petitioner: (1) acts promptly; (2) alleges a meritorious defense; and (3) produces sufficient evidence in support of the defense to submit the issue to the jury. **See id.** Where the defendant disputes the truth of the factual averments contained within the complaint in confession of judgment, the proper remedy is a proceeding to open the judgment, rather than a petition to strike. **See id.**

“A meritorious defense is one upon which relief could be afforded if proven at trial.” **Obara Realty Grp.**, 279 A.3d at 617 (citation omitted).

If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment. Furthermore, the court must view the evidence presented in the light most favorable to the moving party, while rejecting contrary evidence of the non-moving party. The petitioner need not produce evidence proving that if the judgment is opened, the petitioner will prevail. Moreover, we must accept as true the petitioner’s evidence and all reasonable and proper inferences flowing therefrom.

Neducsin v. Caplan, 121 A.3d 498, 506-07 (Pa. Super. 2015) (citations omitted).

In their first issue, Appellants challenge the trial court’s decision to not open the confessed judgment as to Hernandez-Sciore on the \$2,050,000 Loan, based on her claimed defense under the federal Equal Credit Opportunity Act (“ECOA”). Pursuant to the ECOA, it is “unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction . . . on the basis of . . . marital status[.]” 15 U.S.C. § 1691(a)(1). Regulation B implementing the ECOA provides that “a creditor

shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested." 12 C.F.R. § 202.7(d)(1). Regulation B also provides an exception to this rule, allowing a creditor to require a spouse's consent to establish collateral on property jointly owned by the spouse and applicant. **See** 12 C.F.R. § 202.7(d)(4). However, in such cases, the creditor may only demand the spouse's signature on documents necessary "to make the property being offered as security available to satisfy the debt in the event of default" and not as a borrower on the loan generally. **Id.**

Under Regulation B, "it is critical to determine whether the husband and wife were joint applicants on the loan [because] lenders are permitted to require spousal signatures where the spouses are joint applicants." **Sw. Pennsylvania Reg'l Council, Inc. v. Gentile**, 776 A.2d 276, 282 (Pa. Super. 2001). Furthermore, the proponent of an ECOA claim must show that the credit applicant was "individually creditworthy" because "a lender does not violate the ECOA . . . where the credit seeker is not individually creditworthy absent a spousal signature." **Id.** A loan applicant or guarantor may assert an ECOA violation as a defense in a state-court confession-of-judgment proceeding. **See id.** "If the defense is successful, the [applicant's] obligation is voided, but the underlying debt and any other guarantees are not voided." **Id.**

Appellants argue that the trial court abused its discretion by not opening the confessed judgment against Hernandez-Sciore on the \$2,050,000 Loan because the evidence supported both elements of her ECOA defense. First, Appellants contend that Hernandez-Sciore's deposition testimony demonstrated that she was not a joint applicant on the \$2,050,000 Loan, did not request the loan, and had no interest in M.S. Acquisitions or any of her husband's companies. Rather, Appellants cite Hernandez-Sciore's testimony that Centric required her signature on the loan documents merely because she was married to Sciore.

While recognizing that Hernandez-Sciore was also a borrower — along with M.S. Acquisitions and Sciore — on the 2015 \$2,300,000 Loan, Appellants contend that there was no reason to carry over the same "borrowing package" to the \$2,050,000 Loan because that loan paid off multiple prior loans, and not only the \$2,300,000 Loan. Appellants' Brief at 42. Instead, they contend that Hernandez-Sciore's "inclusion as a co-signer of the \$2,050,000 [Loan] was foisted upon the Sciores as a 'take it or leave it' proposition." ***Id.***

Appellants further argue that Centric failed to investigate whether M.S. Acquisitions and Sciore were independently creditworthy before they approved the \$2,050,000 Loan. According to Appellants, Centric also did not investigate Hernandez-Sciore's creditworthiness, as the bank did not request that she provide a personal financial statement and only had her credit score. While Centric required that the Sciores include their New Jersey residence as security for the \$2,050,000 Loan, Appellants contend that Regulation B only

allowed Centric to obtain Hernandez-Sciore's consent to the mortgage of the couple's property and did not authorize the inclusion of Hernandez-Sciore as a borrower on the loan. **See** 12 C.F.R. § 202.7(d)(4). Appellants aver that the inclusion of the couple's home further demonstrated that there was sufficient security for the \$2,050,000 Loan and Centric's requirement that Hernandez-Sciore act as a borrower was solely because she was Sciore's spouse.

The trial court found that Hernandez-Sciore's ECOA defense had "no merit because . . . Sciore specifically testified that [Centric] never requested that . . . Hernandez-Sciore be listed as a borrower." Trial Court Opinion, 7/9/21, at 10. The court found that "[w]ithout even a request, there can be no violation of the" ECOA. **Id.**

Based on our review, we conclude that the trial court did not abuse its discretion by rejecting the ECOA defense. **See Obara Realty Grp.**, 279 A.3d at 617. Appellants failed to offer credible evidence that Centric "require[d]" Hernandez-Sciore to act as a borrower on the \$2,050,000 Loan. The only evidence Appellants cite to support this claim is Hernandez-Sciore's conclusory deposition testimony that Centric "require[d] [her] signature because [she is] married to" Sciore. Hernandez-Sciore Dep., 12/2/20, at 106. However, Hernandez-Sciore testified that she did not have any conversations with Centric employees and did not even know she was a borrower on the \$2,050,000 Loan until the date of her deposition. **Id.** at 27-29, 103. Rather, she testified that Sciore alone had "the relationship with" Centric and she "just

signed” the loan documents because her “husband asked [her] to sign them and [she] just trust[ed]” him. ***Id.*** at 25-28, 59.

Furthermore, Sciore’s deposition testimony directly contradicted his wife’s testimony. When asked if Centric ever requested that Hernandez-Sciore “be listed as a borrower,” Sciore responded, “No.” ***See*** Sciore Dep., 11/11/20, at 132. Sciore testified instead that the likely reason Centric included Hernandez-Sciore as a borrower on the \$2,050,000 Loan was that she also was a borrower on the \$2,300,000 Loan that the more recent loan retired. ***See id.*** at 133-34. While, as Appellants observe, the reasons Hernandez-Sciore was a borrower on the \$2,300,000 Loan “are unknown,” we emphasize that Appellants bear the burden of producing evidence supporting their defense that Centric required Hernandez-Sciore to act as a borrower in violation of the ECOA. Appellants’ Brief at 42; ***see also Donahue***, 234 A.3d at 742. Appellants have not met their burden here.

Accordingly, as Appellants failed to demonstrate that Centric required Hernandez-Sciore to sign the \$2,050,000 Loan solely based on her status as Sciore’s spouse, the trial court properly deemed her ECOA defense meritless. Appellants’ first issue merits no relief.

In their second issue, Appellants contend that the trial court should have opened the confessed judgment against Hernandez-Sciore because the warrant of attorney for the \$2,050,000 Loan was an adhesion contract and unconscionable. “Historically, Pennsylvania law has recognized and permitted entry of confessed judgments pursuant to the authority of a warrant of

attorney contained in a written agreement.” **Neducsin**, 121 A.3d at 505 (citation omitted). A warrant of attorney “constitutes a grant of authority by one contracting party to the other, upon the happening of a certain event, *i.e.*, a breach of the terms of the agreement wherein the warrant is contained, to enter that which results ordinarily only after a trial of the issue between the parties, *i.e.*, a judgment.” **Donahue**, 234 A.3d at 743 (citation omitted).

The warrant of attorney “is a contractual agreement between the parties and the parties are free to determine the manner in which the warrant may be exercised.” **Neducsin**, 121 A.3d at 505 (citation omitted).

[A]greements authorizing a confession of judgment require a clearer manifestation of consent than do some other types of contract provisions. The language contained in the agreement must be specific enough to demonstrate that the signing party has consented to the entry of the judgment by confession.

Centric Bank, 263 A.3d at 39-40 (citations omitted).

“An adhesion contract is a standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms.” **Halbert**, 203 A.3d at 228 (citation omitted). However, “[n]ot every contract of adhesion is unenforceable. The doctrine of unconscionability provides an affirmative defense to an adhesion contract’s enforcement.” **Id.** (citation omitted); **see also Denlinger, Inc. v. Dendler**, 608 A.2d 1061, 1067 (Pa. Super. 1992) (stating that “[o]nce a contract is deemed to be one of adhesion, its terms

must be analyzed to determine whether the contract as a whole, or specific provisions of it, are unconscionable”).

There are two requirements to demonstrate that a contract is unconscionable: (1) the party signing the contract lacked meaningful choice in accepting the challenging provision; and (2) the challenged provision unreasonably favors the party seeking to enforce it. **See Halbert**, 203 A.3d at 228. “The burden of establishing the unconscionable nature of a contract or contract provision clearly rests upon the party challenging the contract or term.” **Centric Bank**, 263 A.3d at 40. “In the context of a confession of judgment clause, emphasis is placed on the sophistication of the parties in determining whether a provision is unconscionable. A party’s signature to a contract is designed to evidence his or her intention to be bound by the contract’s terms.” **Id.** (citation omitted).

Appellants argue that the \$2,050,000 Loan Promissory Note containing the warrant of attorney and the related Disclosure for Confession of Judgment that Hernandez-Sciore signed were “undeniably[] standard form contract[s] of adhesion[] and unconscionable.” Appellants’ Brief at 49; **see also** Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A (Promissory Note and Disclosure for Confession of Judgment). Appellants assert that Hernandez-Sciore had no knowledge of the nature of the \$2,050,000 Loan — she admitted she did not read the loan documents before signing them, she did not know she was a borrower or what a confession of judgment was, and she did not consult an attorney — and she only signed the loan documents

because Centric required her to do so. Therefore, Appellants assert that the “vast disparity that existed in the bargaining power between the powers and the economic duress placed on . . . Hernandez-Sciore” render the \$2,050,000 Loan unconscionable and not enforceable against her. Appellants’ Brief at 51.

Appellants additionally argue that the trial court improperly relied on the Schuylkill County Court’s analysis of the unconscionability defense raised in the Schuylkill County Actions, as those matters are factually distinct from the cases currently before this Court. Appellants claim that the \$250,000 Loan involved a personal loan to the Sciores, while the \$2,050,000 Loan at issue here is a business loan for the benefit of Sciore’s businesses, rather than Herandez-Sciore personally. Appellants contend that, because the \$2,050,000 Loan was a business loan in favor of her husband, Centric required that Hernandez-Sciore sign the loan documents and gave her no opportunity to negotiate the terms.

As noted above, the trial court relied on the Schuylkill County Court’s analysis with respect to the unconscionability defense in those cases. **See** Trial Court Opinion, 7/9/21, at 9. First addressing that defense as it pertained to Hernandez-Sciore, the Schuylkill County Court reasoned

As to [the] allegation that the warrant of attorney is a contract of adhesion and is unconscionable because [Hernandez-]Sciore was an “unsophisticated borrower,” [the Schuylkill County Court found the] argument to be without merit. . . . The record reflects that although [Hernandez-]Sciore testified in her deposition that she was not a businesswoman, that there was no business for which she could have used the loan proceeds, and that she signed the [l]oan documents at the request of her husband, there is also evidence that she speaks, reads, and

understands English, and that she testified on several occasions throughout her deposition that she neither read nor made an effort to understand the loan documents because she trusted her husband.

[The] argument that [Hernandez-]Sciore had no knowledge or understanding of the confession of judgment is also without merit because the record is clear that she made no effort to gain an understanding of the confession of judgment by either asking [Centric] or . . . Sciore, who is a sophisticated businessman that has both a residential and commercial background in selling and brokering loans, to explain the terms of the [l]oan to her. The records and facts indicate that although [Hernandez-]Sciore made no attempts to read the [l]oan documents, she still chose to sign the confession of judgment, sign and initial each and every paragraph of the two separate disclosures of judgment attached to the [n]ote, and initialed and/or signed that she understood that the [n]ote contained a confession of judgment provision that would permit [Centric] to enter judgment against her in court after a default on the [n]ote without notice. Additionally, by signing the [l]oan documents, [Hernandez-]Sciore also indicated that she knowingly, intelligently, and voluntarily waived her rights, including any right to advance notices of the entry of judgment against her. Therefore, [the Schuylkill County Court found Hernandez-]Sciore's willful failure to read and/or understand the [l]oan documents cannot be used . . . as a defense to justify avoidance, modification or nullification of the [\$250,000] Loan.

Schuylkill County Court Opinion, 12/23/20, at 10-11.

The Schuylkill County Court further noted that Sciore was a "sophisticated businessman" who "actively sought out the [\$250,000 L]oan with [Centric,] never attempted to negotiate the provisions of the [l]oan, and . . . never sought nor had any discussions with [Centric] with regard to altering the terms or conditions in any of the [l]oan documents." **Id.** at 11. The court concluded that if the Sciores "believed that the . . . [l]oan documents unreasonably favored [Centric], they had the ability to not sign the contractual

documents.” **Id.** at 12. The court therefore rejected the defense of unconscionability as to the Sciores and their guarantor, Eagle Rock. **See id.**

Upon review, we conclude that the trial court did not abuse its discretion in rejecting Hernandez-Sciore’s unconscionability defense based on the same reasoning as the Schuylkill County Court. **See Obara Realty Grp.**, 279 A.3d at 617. Appellants failed to present evidence that the Sciores lacked a meaningful choice in deciding whether to accept the terms of the \$2,050,000 Loan. Sciore does not dispute the trial courts’ reasoning that he was a sophisticated businessperson, had the benefit of counsel, and engaged in numerous loan transactions with Centric prior to the \$2,050,000 Loan. **See Centric Bank**, 263 A.3d at 40 (noting that sophistication of the parties is a key factor in determining whether a contract term is unconscionable); **see also Degenhardt v. Dillon Co.**, 669 A.2d 946, 952 (Pa. 1996) (reaffirming the rule that “a party who has a reasonable opportunity to consult with legal counsel before entering into a contract cannot later invalidate the contract by claiming economic duress”). Indeed, numerous prior loans between Centric and the Sciores, including the \$250,000 Loan, contained substantively identical warrants of attorney providing that Centric could confess judgment following a default without notice. Appellants presented no evidence that Centric imposed different terms with respect to the confession of judgment for the \$2,050,000 Loan than in prior loans.

As it pertains specifically to Herandez-Sciore, the record reveals that the confession of judgments provisions were prominently set forth in the loan

documents for the \$2,050,000 Loan, yet she made no effort to read the documents or attempt to familiarize herself with her obligations. **See** Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A, at 3, 7 (Promissory Note and Disclosure for Confession of Judgment). As we explained in our prior opinion affirming the Schuylkill County Court's rejection of Hernandez-Sciore's unconscionability defense in those cases,

The fact [Hernandez-]Sciore chose to make no effort to understand, or even read, the documents does not render the confession of judgment provisions unconscionable. "The failure to read a confession of judgment clause will not justify avoidance of it. This is particularly true where the confession of judgment clause is clear and conspicuous and part of a commercial transaction."

Centric Bank, 263 A.3d at 42 (citation omitted). Moreover, we note that, contrary to Appellants' attempt to distinguish the Schuylkill County Actions because they involved a personal loan, the Schuylkill County Court rejected that argument and found that the \$250,000 Loan was a business loan, a finding affirmed on appeal by this Court. **See Centric Bank**, 263 A.3d at 39; **see also** Schuylkill County Court Opinion, 12/23/20, at 6-8.

Therefore, we determine that the trial court did not abuse its discretion in determining that there was insufficient evidence to support an unconscionability defense. The record supports its finding that the Sciore were not under duress and the loan documents Hernandez-Sciore chose not to read clearly and conspicuously set forth the confession of judgment clauses. No relief is due on Appellants' second issue.

In their third and fourth issues, Appellants argue that the trial court erred by relying on the Schuylkill County Court's opinion, which involved different facts and defenses and therefore was not applicable to the instant cases. Appellant contends that the loans at issue in the cases are of a different character — the Schuylkill County Actions involved only the \$250,000 Loan to the Sciores, while these appeals involve four loans primarily for the benefit of Sciore's companies. Appellants assert that the "primary issue in the Schuylkill County Actions" was distinct as it involved whether that loan was "made to the Sciores for the personal, family or household purposes" in violation of Pa.R.Civ.P. 2950, "which prohibits the use of a warrant of attorney to confess judgment in a consumer credit transaction." Appellant's Brief at 52-53. Appellants aver that the Schuylkill County Court also resolved the separate issue of "whether Centric properly confessed judgment against the Sciores and the guarantor without calling the loan in default and making demand." ***Id.*** at 53.

Appellants asserts that the instant cases involves numerous defenses not before the Schuylkill County Court, including Centric's: violation of the ECOA by requiring Hernandez-Sciore's participation in the \$2,050,000 Loan; bad faith during the negotiations of the Loans; misrepresentations regarding the amount of credit available on the Loans; breach of contract concerning the application of funds from the Loans; placing unreasonable conditions on the sale of MEGA; failure to notify Appellants regarding the default in contravention of past practice; and confessing judgment during the COVID-

19 pandemic without notice or providing reasonable accommodation on the Loans. Appellants argue that by relying only on the Schuylkill County Court's decision and failing to consider the unique facts and defenses here, the trial court failed to consider the evidence in the light most favorable to them. **See *Neducsin***, 121 A.3d at 506-07.

We conclude Appellants have not raised valid grounds to disturb the trial court's rulings based upon its partial reliance on the reasoning of the Schuylkill County Court. The trial court did not find that the Schuylkill County Court's resolution of the issues in the prior matters had a preclusive effect preventing Appellants from litigating their defenses here. Nor did the trial court overlook that Appellants presented unique defenses in the present matters that were not before the Schuylkill County Court. Rather, following its review of the depositions, exhibits, briefs, and oral argument here, the trial court "adopt[ed] and incorporate[d]" the Schuylkill County Court's "persuasive" analysis with respect to the defenses presented both in the Schuylkill County Actions and here. Trial Court Opinion, 7/9/21, at 8-10. The trial court then proceeded to address the defenses Appellants raised here but which were not before the Schuylkill County Court. ***Id.*** at 10-11.⁴

⁴ While, as Appellants note, neither the trial court nor the Schuylkill County Court addressed their waiver and estoppel defenses, we find those defenses meritless and need not remand for the trial court's consideration of the defenses. ***See infra.***

Furthermore, Appellants point to no material differences between the Schuylkill County Actions and present cases that undermine the trial court's partial reliance on the Schuylkill County Court's reasoning. The record reflects that the Schuylkill County Actions and these cases involve overlapping parties, much of the same documentary evidence, and loans that were part of the same overall credit structure. There is no dispute that Appellants were in default on the \$250,000 Loan and the Loans at issue here and that each of the loans were subject to identical confession of judgment terms. As noted above, the Schuylkill County Court and this Court rejected Appellants' argument that the \$250,000 Loan was a consumer credit transaction and instead found that the loan was a business loan, like the Loans here.

Accordingly, we find no error or abuse of discretion in the trial court's partial reliance on the Schuylkill County Court's analysis. Appellants' third and fourth issues merit no relief.

In their fifth and sixth issues, Appellants challenge the trial court's refusal to open the confessed judgments on their defenses that Centric breached the loan agreements, breached its duty of good faith and fair dealing, and made misrepresentations. To show a breach of contract, a party must prove: (1) the existence of a contract, including its essential terms; (2) a breach of the duty imposed by the contract; and (3) resultant damages. **See Rice Drilling B, LLC v. Scott**, 325 A.3d 663, 671 (Pa. Super. 2024).

Parties to a contract generally have a duty of good faith and fair dealing, absent an express provision to the contrary. **See Francis v. LCP N. Third**,

LLC, 293 A.3d 273, 279 (Pa. Super. 2023). “The duty of good faith has been defined as honesty in fact in the conduct or transaction concerned.” **Id.** (citation and quotation marks omitted). “The duty of good faith . . . appl[ies] only in limited circumstances. Implied duties cannot trump the express provisions in the contract.” **Stamerro v. Stamerro**, 889 A.2d 1251, 1259 (Pa. Super. 2005) (citation omitted).

In the context of credit agreements, Pennsylvania courts have refused to impose a duty of good faith and fair dealing on a lending institution that would prevent it from “adhering to its agreement with the borrower or by enforcing its legal and contractual rights as a creditor.” **Creeger Brick & Building Supply Inc. v. Mid-State Bank & Trust Co.**, 560 A.2d 151, 154 (Pa. Super. 1989). Therefore, a lender does not violate a duty of good faith by refusing to advance additional funds, release collateral, or assist in obtaining additional loans. **See Cable & Associates Insurance Agency, Inc. v. Commercial National Bank of Pennsylvania**, 875 A.2d 361, 364 (Pa. Super. 2005).

Misrepresentation is also a defense to justify the opening of a confessed judgment. **See PNC Bank, Nat. Ass’n v. Bluestream Tech., Inc.**, 14 A.3d 831, 840 (Pa. Super. 2010).

Where a party is induced to enter into a transaction with another by means of the latter’s fraud or material misrepresentation; such a transaction can be avoided by the innocent party. Fraud arises where the misrepresentation is knowingly false, where there is concealment calculated to deceive, or where there is non-privileged failure to disclose. Fraud renders a transaction voidable even where the misrepresentation is not material; on the other

hand, a misrepresentation made innocently is not actionable unless it is material, and in such case there must be a right to reliance.

Bortz v. Noon, 729 A.2d 555, 564 (Pa. 1999) (citation and emphasis omitted).

Appellants assert that they presented sufficient evidence to substantiate their breach of contract, misrepresentation, and breach of their duty of good faith and fair dealing defenses, but the trial court merely relied on the Schuylkill County Court's opinion addressing similar defenses without any attempt to distinguish the facts of the separate matters. With respect to the breach of contract defense, Appellants argue that Centric breached its obligations under the Disbursement Request and Authorization agreement for the \$1,375,000 LOC, which provided M.S. Acquisitions would have \$216,355.63 in undisbursed funds available at the time of the January 27, 2020 closing. **See** Exhibit 41 (Disclosure Request and Authorization). Appellants assert that the breach occurred when, within three days of closing, Centric withdrew an additional \$126,916.95 from the \$1,375,000 LOC and applied these funds to pay off past-due amounts on five of Sciore's other loans. **See** Exhibit 42 (January 30, 2020 Centric report). This withdrawal left only \$89,438.68 of available credit on the \$1,375,000 LOC. **See id.** Appellants acknowledge that the Business Loan Agreement for the \$1,375,000 LOC contained a "right of setoff in all [M.S. Acquisitions'] accounts with" Centric, but assert that this "setoff provision was designed to permit setoff of a deposit account (*i.e.*, checking, savings), not to permit Centric to unilaterally

draw on undisbursed funds of M.S. Acquisitions' newly made line of credit." Appellants' Brief at 59; **see also** Exhibit 36, at 3 (Business Loan Agreement).

On this same premise, Appellants further contend that Centric misrepresented that M.S. Acquisitions would have \$216,355.63 in available credit under the \$1,375,000 LOC, but Centric's post-closing withdrawals left only \$89,438.68. Appellants aver that Centric's conduct resulted in harm to M.S. Acquisitions and Sciore by causing them "to incur additional obligations" and by "pressur[ing them] into restructuring the debt of [Sciore's] companies, which included liability for a new \$2,050,000 Loan and the forced sale of MEGA." Appellants' Brief at 60, 65.

Furthermore, Appellants raise multiple alleged instances when Centric breached its duty of good faith and fair dealing. They contend that Centric acted in bad faith when it applied \$40,000 of collateralized funds, deposited with Centric, to loans with payments coming due. Appellants admit that Sciore consented to the application of these funds to his other loans in April 2020, but they contend that Centric did not provide a full accounting as to which loans Centric applied the \$40,000 until November 16, 2020, five months after the confession of judgments.

Appellants further argue that Centric acted in bad faith by continuing to send loan statements to Sciore's closed office during the COVID-19 pandemic even though Sciore informed Centric that it should send the statements to his post office box. Appellants aver that Centric did not assist them in paying off their loans during the pandemic "[d]espite public announcement that Centric

was working with businesses through the pandemic and deferring millions of dollars of loan payments.” **Id.** at 65-66. Appellants maintain that Centric “made no inquiry regarding Sciore’s attempts to sell MEGA” even though the sale of the radio station “was fundamental to . . . Centric’s restructure and repayment of the \$2,050,000 Loan.” **Id.** at 67. Finally, Appellants contend that Centric acted in bad faith by confessing judgment on the Loans without providing notice to any of the borrowers or guarantors that it deemed the Loans in default.

The trial court noted that Appellants did not dispute that they entered into the Loans or that they stopped paying on any of the Loans before March 2020. **See** Trial Court Opinion, 7/9/21, at 10. The court determined that, because the confessed judgments “were entered at the end of May[] 2020, almost three months after the last payment was made on any of the subject [L]oans,” Appellants “cannot show a meritorious defense, and the judgment[s] cannot be opened.” **Id.**

The trial court further adopted and incorporated the Schuylkill County Court’s reasoning with respect to Appellants’ contractual duty defenses. **See** Trial Court Opinion, 7/9/21, at 9-10. The Schuylkill County Court determined that Centric did not act in bad faith by continuing to send statements for the \$250,000 Loan to Sciore’s closed New Jersey office because he did not provide Centric with an updated address to receive the statements. **See** Schuylkill County Court Opinion, 12/23/20, at 17. The court additionally noted that Centric, through counsel, advised Sciore in a March 2, 2020 letter that it had

applied funds from the \$1,375,000 LOC to cover past due amounts on the \$250,000 Loan and his other loans. **See id.** at 16-17; **see also** Exhibit 46 (March 2, 2020 letter).

The Schuylkill County Court rejected the defense that Centric acted in bad faith by misleading the Sciores and Eagle Rock to believe the \$250,000 Loan was current by not disclosing the exact allocation from the \$1,375,000 LOC and the \$40,000 collateralized funds. The court found that Centric regularly mailed statements to Sciore throughout the relevant period; Sciore never provided the bank with an updated address; the March 2, 2020 letter informed Sciore of the exact amount of funds applied to the \$250,000 Loan from the \$1,375,000 LOC; and there was no evidence that Centric applied any of the \$40,000 collateralized funds to the \$250,000 Loan. **See** Schuylkill County Court Opinion, 12/23/20, at 19, 21-22.

The Schuylkill County Court further concluded that Centric did not act in bad faith by “unilaterally” applying funds from the \$1,375,000 LOC to the \$250,000 Loan because the March 2, 2020 letter showed that Sciore agreed to the application of the funds. **Id.** at 22. Finally, the court determined that Centric did not act in bad faith by confessing judgment during the COVID-19 pandemic, finding that the Sciores and Eagle Rock waived their right to notice of the entry of confessed judgment against them and the Sciores and Eagle Rock failed “to notify [Centric] of any changes caused by the pandemic.” **See** Schuylkill County Court Opinion, 12/23/20, at 17, 22-23.

Based on our review, we find no abuse of discretion in the trial court's finding that the evidence did not support breach of contract, breach of duty of good faith and fair dealing, and misrepresentation defenses. **See Obara Realty Grp.**, 279 A.3d at 617. With respect to breach of contract, the sole contractual term that Appellants allege Centric breached was the provision in the Disbursement Request and Authorization agreement that M.S. Acquisitions would have \$216,355.63 in available credit on the \$1,375,000 LOC after initial disbursements at closing. **See** Exhibit 41 (Disclosure Request and Authorization). Appellants contend that Centric authorized five additional withdrawals, completed within days of closing, that left only \$89,438.68 in available funds.

However, the Disbursement Request and Authorization agreement did not prohibit Centric from making further disbursements from the \$1,375,000 LOC beyond those set forth in the agreement. As Appellants recognize, the Business Loan Agreement for the \$1,375,000 LOC provided Centric with a right of setoff that applied to "all [b]orrower's accounts with" Centric. Exhibit 36, at 3 (Business Loan Agreement). While Appellants contend that the setoff provision was limited to deposit accounts, the plain language of the setoff provision permitted Centric "to the extent permitted by applicable law, to charge or setoff **all** sums owing on the indebtedness against **any and all** such accounts." **Id.** (emphasis added). Additional provisions within the loan documents provided that Appellants guaranteed the full payment on all the Loans and that default on one loan constituted default on all. **See, e.g.,**

Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A, at 3 (\$2,050,000 Loan Promissory Note providing that default included “failure to comply with any term, obligation, covenant or condition contained in any other agreement between [Centric] and [the b]orrower”); **see also, e.g.**, Complaint in Confession of Judgment, 2020-CV-5305, Exhibit B, at 1 (\$400,000 Loan Commercial Guaranty stating that guarantor “absolutely and unconditionally guarantees . . . any and all debts, liabilities and obligations of every nature or form . . . that [the b]orrower individually or collectively . . . owes or will owe” Centric). Therefore, as the setoff clause authorized the application of funds from the \$1,375,000 LOC against Sciore’s other loans and Appellants do not dispute that Centric properly disbursed the funds to cover their past-due obligations, Appellants’ breach of contract defense fails.

Appellants’ claimed defense based on Centric’s alleged misrepresentations concerning the amount of available credit on the \$1,375,000 LOC fails on similar grounds. As noted above, the Disbursement Request and Authorization agreement did not represent that Centric could not make additional disbursements from the \$1,375,000 LOC. Furthermore, Appellants agreed to a right of setoff of their indebtedness against any of the related loans. Moreover, Appellants failed to present evidence of any other communication by Centric that misled them regarding the amount of credit on the \$1,375,000 LOC. Therefore, absent any evidence that Centric made a false or misleading statement, we find that the trial court properly declined to

open the confessed judgments on Appellants' misrepresentation defense. **See Bortz**, 729 A.2d at 564.

The record further supports the trial court's determination that Appellants did not raise a meritorious defense based on the duty of good faith and fair dealing. Each of Appellants' arguments that Centric violated this duty pertain to the bank's alleged failure to maintain communication about the status of the Loans in the four months preceding the confession of judgments. However, Appellants' claims fail on a close review of the evidence before the trial court.

First, with respect to the application of \$40,000 of collateralized funds to the past-due loan obligations, the record reveals that Sciore authorized the withdrawals by text message and telephone on March 31, 2020. **See** Exhibit 50 (March 31, 2020 text message chain); **see also** Exhibit 49 (April 1, 2020 email between counsel discussing telephone conversation the prior day). Appellants failed to present any evidence that they either requested an accounting of the allocation of the \$40,000 to specific loans or that Centric failed to respond to that request.

Second, the record reflects that, after one of Sciore's employees notified Centric on April 6, 2020 that he was not receiving loan statements because his office closed during the COVID-19 pandemic, Centric updated Sciore's

address to send the statements to a post office box.⁵ **See** Exhibit 51 (April 6, 2020 email chain between ABC and Centric employees). Sciore testified that he did not receive the loan statements over a three-to-five-week period, but the issue was resolved by the end of April 2020. **See** Sciore Dep., 11/13/20, at 101-02; **see also** Sciore Dep., 11/10/20, at 174-75. Moreover, Appellants' and Centric's counsel exchanged several letters and emails in March and April 2020, wherein Centric regularly advised that the Loans were past due or "becoming past due" and that Centric "may pursue its rights and remedies" in the event of default. Exhibit 46, at 3 (March 2, 2020 letter from Centric's counsel); **see also** Exhibit 48 (March 12, 2020 email from Centric's counsel); Exhibit 47 (March 17, 2020 letter from Centric's counsel); Exhibit 49 (April 1, 2020 email from Centric's counsel). Therefore, the evidence fails to support Appellants' defense that Centric acted in bad faith by not sending loan statements or otherwise keeping Appellants informed of the status of the Loans during the pandemic.

Third, Appellants failed to demonstrate that Centric acted in bad faith by not assisting them in avoiding default during the COVID-19 pandemic. As

⁵ As Appellants note, the April 6, 2020 email exchange in which one of Sciore's associates requested that Centric update its mailing address was apparently not before the Schuylkill County Court, which found that Sciore never provided Centric with an updated address. **See** Schuylkill County Court Opinion, 12/23/20, at 17. However, Appellants ignore the fact that a Centric employee indicated that she made the address change, as well as the deposition testimony of Sciore that he began receiving statements again from Centric after, at most, a five-week delay. **See** Exhibit 51; **see also** Sciore Dep., 11/13/20, at 101-02

discussed above, Centric regularly communicated with Appellants in March and April 2020 regarding the status of the Loans and arranged to apply the \$40,000 of collateralized funds to past-due amounts to prevent default. Furthermore, Centric's counsel informed Appellants' counsel that the bank would work with Sciore to obtain a loan under a federal COVID-19 loan program. **See** Exhibit 49 (April 1, 2020 email from Centric's counsel). Centric also responded to Sciore's proposal to sell his radio station, MEGA, providing the conditions under which the bank would consider financing the sale. **See** Exhibit 47 (March 17, 2020 letter from Centric's counsel).

Finally, we conclude Centric did not act in bad faith by not giving notice that it intended to confess judgment on the Loans, because Appellants expressly waived right to notice in the loan documents. **See, e.g.**, Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A, at 3 (\$2,050,000 Loan Promissory Note stating that "borrower waives any right . . . to notice or to a hearing in connection with any such confession of judgment"); **see also, e.g.**, Complaint in Confession of Judgment, 2020-CV-5305, Exhibit B, at 4 (\$400,000 Loan Commercial Guaranty providing for identical waiver with respect to guarantor). Centric cannot be found to have acted in bad faith by adhering to the express provisions of the agreements. **See Stamerro**, 889 A.2d at 1259; **see also Creeger Brick & Building Supply**, 560 A.2d at 154.

Therefore, as we find that Appellants failed to present evidence supporting meritorious defenses of breach of contract, breach of good faith

and fair dealing, and misrepresentation, no relief is due on their fifth and sixth issues.

In their seventh issue, Appellants assert that the trial court abused its discretion by not opening the confessed judgments on their defenses of frustration of purpose and impracticability of performance due to the COVID-19 pandemic. To invoke frustration of performance as a defense to enforcement of a contract, a party must show that: “(1) the purpose frustrated must be the principal purpose of the party asserting the doctrine in making the contract; (2) the frustration must be substantial; and (3) the non-occurrence of the frustrating event must have been a basic assumption on which the contract was made.” ***Cedarbrook Plaza v. Schwartz***, 320 A.3d 1211, 1215 (Pa. Super. 2024).

A party may raise the defense of doctrine of impracticability of performance in the following circumstance:

Where, after a contract is made, a party’s performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.

Step Plan Servs., Inc. v. Koresko, 12 A.3d 401, 411 (Pa. Super. 2010) (citation omitted). Impracticability of performance is distinct from frustration of purpose as the former doctrine concerns “impediment[s] to performance by either party,” while the latter relates to “a change in circumstances [that]

makes one party's performance virtually worthless to the other." *Id.* at 413 (citation omitted).

Appellants contend that they presented sufficient evidence to open the confessed judgments related to the \$2,050,000 Loan because the COVID-19 pandemic rendered the sale of MEGA, Sciore's radio station, impractical and frustrated the purpose of the loan.⁶ Appellants note that terms of the \$2,050,000 Loan required the borrowers "to provide a copy of [the] executed sales contract for the sale of [MEGA, with the] contract to be entered into by March 15, 2020" and the transaction to close by July 15, 2020. Exhibit 23, at 3 (Business Loan Agreement); *see also* Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A, at 2 (Promissory Note). Appellants assert that neither Sciore nor Centric could have foreseen in January 2020, when they closed on the \$2,050,000 Loan, that the pandemic and resulting government public health orders would "shutter[]" businesses nationwide, including MEGA. Appellants' Brief at 68. Appellants further submit that "Sciore made a good faith proposal to sell MEGA" prior to March 15, 2020 and Centric's rejection of the proposal "does not diminish" Appellants' defenses. *Id.* at 69.

The trial court found that Appellants' frustration of purpose and impracticability defenses lacked support because Appellants presented "no

⁶ With respect to the timing of the COVID-19 pandemic, we observe that on March 6, 2020, Pennsylvania Governor Tom Wolf declared a "disaster emergency throughout the Commonwealth," and Governor Wolf issued an emergency order closing all non-life sustaining businesses on March 19, 2020. *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 877-79 (Pa. 2020).

evidence that a sale [of MEGA] was imminent prior to the start of the pandemic.” Trial Court Opinion, 7/9/21, at 10. The court further determined that the record also failed to show “how the pandemic prevented the sale of [MEGA] to potential buyers.” **Id.** at 10-11.

After review, we find no abuse of discretion in the trial court’s ruling with respect to Appellants’ frustration of purpose and impracticability of performance defenses. **See Obara Realty Grp.**, 279 A.3d at 617. The record reflects that Sciore proposed a sale of MEGA in October 2019 to pay off all of his companies’ existing debt with Centric. **See** Exhibit 11 (Overview of Sale Strategy, October 9, 2019). At that time, Sciore indicated that he “ha[d] a buyer w[ith him] on” MEGA. Exhibit 10 (October 4, 2019 text message to Centric credit officer).

Sciore made little progress on the transaction prior to March 15, 2020, the date he agreed to provide Centric with an executed agreement of sale for MEGA. Sciore testified that he met with several proposed purchasers who he did not feel were “the right fit for the deal” and ultimately selected his “back up” purchaser, “the general manager at the station.” Sciore Dep., 11/11/20, a 113. Sciore admitted that he did not sign a sale agreement by March 15, 2020. **See id.** at 121. Instead, three days prior to this deadline, Sciore, through counsel submitted a proposal to sell MEGA to the station’s general manager for \$2,500,000. **See** Exhibit 48 (March 12, 2020 email). However, this proposal required Centric to fund 100% of the purchase price and would not have retired the entire \$2,050,000 Loan as originally intended. **See id.**

Centric informed Sciore of its conditions for considering the proposed sale of MEGA on March 17, 2020, including the proposed purchaser's providing a business plan for MEGA. **See** Exhibit 47 (March 17, 2020 letter). No further communication regarding the proposed sale appears in the record.

In light of absence of evidence that Sciore was close to completing a sale of MEGA by the March 15, 2020 deadline, the trial court did not abuse its discretion in finding that the COVID-19 pandemic did not frustrate the purpose of the \$2,050,000 Loan or render the borrowers' performance impracticable. Accordingly, Appellants are due no relief on their seventh issue.

In their eighth issue, Appellants contend that the trial court abused its discretion by finding insufficient evidence to support their defenses of waiver and estoppel. A party to a contract may raise waiver as a defense to a counterparty's attempt to enforce the contract. **See, e.g., Samuel J. Marranca Gen. Contracting Co., Inc. v. Amerimar Cherry Hill Associates Ltd. P'ship**, 610 A.2d 499, 501 (Pa. Super. 1992) (holding that party waived right to enforce arbitration clause in contract by not seeking to invoke it until after an adverse ruling).

Waiver is the voluntary and intentional abandonment or relinquishment of a known right. Waiver may be established by a party's express declaration or by a party's undisputed acts or language so inconsistent with a purpose to stand on the contract provisions as to leave no opportunity for a reasonable inference to the contrary.

Prime Medica Associates v. Valley Forge Ins. Co., 970 A.2d 1149, 1156-57 (Pa. Super. 2009) (citations and quotation marks omitted).

Unlike waiver, the defense of estoppel does not require proof of a party's intent to relinquish a contractual right. **See *Brown v. City of Pittsburgh***, 186 A.2d 399, 401 n.3 (Pa. 1962). “[U]nder the estoppel concept, a contract may be modified if either words or actions of one party to the contract induce another party to the contract to act in derogation of that contract, and the other justifiably relies upon the words or deeds of the first party.” ***Kreutzer v. Monterey Cnty. Herald Co.***, 747 A.2d 358, 362 (Pa. 2000).

Appellants contend that they presented sufficient evidence to support their waiver and estoppel defenses because, prior to the confession of judgments in May 2020, Centric “repeatedly allowed for alternative resolutions to address payment delinquencies.” Appellants’ Brief at 71. These alternative procedures included drawing down on the \$1,375,000 LOC in January 2020 and the application of \$40,000 in collateralized funds to amounts overdue on Sciore’s loans with Centric. In addition, Appellants submit that “Centric routinely notified Sciore by calling, e-mailing, or te[x]ting when loan payments were delinquent and Centric required that payments be made.” ***Id.*** at 70. Appellants argue that Centric’s course of conduct waived its right to demand that Appellants immediately cure their payment deficiencies or confess judgment on the Loans.

As Appellants note in their brief, the trial court did not address the waiver and estoppel defenses in its opinion. Nevertheless, following our independent review of the record, we conclude that Appellants failed to present sufficient evidence to support these defenses. While Appellants note

that Centric assisted them in payment arrangements on the Loans to avoid default, nothing about Centric's conduct indicates that it voluntarily and intentionally abandoned its contractual rights to confess judgments on the Loans against Appellants. **See *Prime Medica Associates***, 970 A.2d at 1156. Nor do Appellants cite to any conduct by Centric that induced them to act in derogation of the terms of the Loans such that an estoppel defense applies. **See *Kreutzer***, 747 A.2d at 362.

Indeed, the loan documents expressly provided that any delay by Centric in enforcing its rights under the Loans did not constitute a waiver. The Promissory Notes for the Loans stated that Centric "may delay or forgo enforcing any of its rights or remedies under [the notes] without losing them." **See, e.g.**, Complaint in Confession of Judgment, 2020-CV-5209, Exhibit A, at 2 (\$2,050,000 Loan Promissory Note). Similarly, the loan guaranties provided that "[n]o delay or omission on the part of [Centric] in exercising any right . . . nor any course of dealing . . . shall constitute a waiver of any of [Centric's] rights or any of [the g]uarantor[s'] obligations" under the Loans. **See, e.g.**, Complaint in Confession of Judgment, 2020-CV-5269, Exhibit B, at 3 (\$600,000 Loan Guaranty). Therefore, as Appellants failed to present sufficient evidence to support the waiver and estoppel defenses and the loan documents expressly provided that any delay by Centric in enforcing its rights under the Loans would not constitute waiver, Appellants' eighth issue merits no relief.

In their ninth issue, Appellants claim that the trial court erred by not addressing the counterclaims that the Sciores and M.S. Acquisitions pleaded in their amended petitions to strike or open the confessed judgments. The law is clear that “[a]n unliquidated counterclaim or set[]off cannot be asserted as a ground for opening a confessed judgment.” **Hopewell Estates, Inc. v. Kent**, 646 A.2d 1192, 1195 (Pa. Super. 1994); **see also Nadolny v. Scoratow**, 195 A.2d 87, 89 n.4 (Pa. 1963).

The reason for the rule is understandable. “To a judgment there can be no set[]off of a debt not in judgment. One judgment may be set off against another, through the equitable powers of the court but to a judgment ripe for execution, there can be but one answer, to wit, payment pure and simple.”

J. M. Korn & Son, Inc. v. Fleet-Air Corp., 446 A.2d 945, 947 (Pa. Super. 1982) (quoting **Harrison v. Stoeckert**, 85 A.2d 154, 155 (Pa. 1952)).

Here, the Sciores and M.S. Acquisitions asserted counterclaims against Centric of breach of contract, breach of contractual duties, and breach of duty of good faith and fair dealing. As none of these counterclaims had been reduced to judgment, they did not provide grounds to open the confessed judgments. **See Hopewell Estates**, 646 A.2d at 1195; **see also J. M. Korn & Son**, 446 A.2d at 947. Therefore, the trial court did not err or abuse its discretion in not addressing the counterclaims, and Appellants’ ninth issue merits no relief.

Finally, Appellants argue that the trial court abused its discretion by not examining the equities of this matter, which they contend weigh in favor of

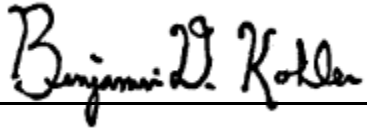
opening the confessed judgments. **See Donahue**, 234 A.3d at 742 (noting that a petition to open a confessed judgment is an appeal to the equitable powers of the court). However, Appellants did not raise this issue in their Rule 1925(b) concise statements or in the statement of questions in their appellate brief. “Failure to include an issue in a [Rule 1925(b)] concise statement of issues raised on appeal results in waiver of the issue.” **Bartlett v. Demich**, 307 A.3d 736, 740 (Pa. Super. 2023). Moreover, “[t]his Court will not consider any question ‘unless it is stated in the statement of questions involved or is fairly suggested thereby.’” **Bartlett**, 307 A.3d at 740 (*quoting* Pa.R.A.P. 2116(a)). In light of Appellants’ failure to raise this issue in their concise statements or the statement of questions, we conclude that they have waived their claim that the trial court failed to consider the equities of their petitions. **See id.**

For the foregoing reasons, we find that none of the issues raised by Appellants in these appeals merit relief and that the trial court did not abuse its discretion in finding that Appellants did not produce sufficient evidence in support of their defense to submit the issues to a jury. **See Donahue**, 234 A.3d at 742. We therefore affirm the orders denying Appellants’ amended petitions to strike or open the confessed judgments.

J-A21020-25

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink that reads "Benjamin D. Kohler". The signature is written in a cursive style and is positioned above a solid horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/7/2025