NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

FIRST CITIZENS COMMUNITY BANK	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SA LIVING FUND LLC, CRAIG L. GROSSMAN, AND AARON Z. COHEN	:	
Appellants	:	No. 2083 EDA 2025

Appeal from the Order Entered July 9, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at No(s): 250302422

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY McLAUGHLIN, J.: **FILED NOVEMBER 9, 2026**

SA Living Fund LLC ("SA Living"), Craig L. Grossman, and Aaron Z. Cohen (collectively, "the SA Living Parties") appeal from the Order denying their petition to open and/or strike the confessed judgment entered against them by First Citizens Community Bank ("FCCB"). We affirm.

The trial court summarized the factual background as follows:

> In July 2022, SA Living borrowed $3,850,000 for a period of 18 months, executing a loan agreement secured by mortgaged premises located at 827 Spring Garden Street, Philadelphia, subject to an extension option and modifications. The Note and Loan Agreement contained confession of judgment provisions. [] Cohen and Grossman individually guaranteed SA Living's performance under the loan documents, signing a Guaranty and Suretyship Agreement, which also contained a confession of judgment provision. The initial term of the loan was for a period of 18 months.
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> In March 2024, [the SA Living Parties] exercised the option to extend the maturity date one month to April 26,

> 2024, paying an extension fee of $9,625 and a legal fee of $750. The first modification also contained a confession of judgment provision. In November 2024, [the SA Living Parties] sought a second modification to the loan agreement whereby they agreed to make a payment of $103,433.33 to [FCCB] to bring the loan current and to make an additional prepayment of interest for the upcoming year. [FCCB] agreed to extend the maturity date to October 2029 unless it opted to call the loan sooner. The second modification contained a confession of judgment provision.

Trial Ct. Op., filed Jan. 15, 2026, at 1-2.[1]

In January 2025, FCCB sent a letter to the SA Living Parties detailing the loan history, including the second modification, wherein the SA Living Parties agreed to pay $103,433.33 to bring the loan current and $100,000.00, which would be held in reserve to satisfy the future monthly principal and interest payments due. Answer to Pet. to Strike and/or Open, filed May 28, 2025, at Exh. 1. The letter continued that the SA Living Parties had failed to make the full amount of payments due under the second modification, with an outstanding balance of $18,463.33 owed for the modification payments. ***Id.*** It further stated that the SA Living Parties owed $30,010.55 for the principal and interest payment that had been due on January 1, 2025. The letter pointed out that the failure to pay was an event of default under the loan. ***Id.*** It provided SA Living with 15 days to cure the defect. ***Id.*** In March 2025, FCCB filed a complaint for a confessed judgment, and the prothonotary entered a confessed judgment.

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[1] FCCB is the successor by merger of Huntingdon Valley Bank, which was the original lender.

The SA Living Parties filed a petition to strike and/or open the confessed judgment. The SA Living Parties claimed the complaint was facially defective because FCCB alleged in a conclusory manner that the SA Living Parties were in default without specifying what the alleged default was, when it occurred, and how it ripened into an event of default. They further claimed they had valid defenses and disputed the money amount sought.

At a hearing, the SA Living Parties' counsel discussed good faith and fair dealing, and Grossman testified as to the negotiations. N.T., 7/9/2025, at 7-9, 16. Further, FCCB agreed that the calculations in the complaint were incorrect and requested that the court "grant the bank leave to amend to file an amended complaint with amended judgment." ***Id.*** at 31. The court denied the petition to strike and/or open judgment and ordered FCCB to file a motion to reassess damages.[2] The SA Living Parties filed a notice of appeal.

The SA Living Parties raise the following issues:

> Question 1: Did the Trial Court err in denying [the SA Living Parties'] Petition to Strike, or in the alternative to Open, the confessed judgment where [FCCB's] [c]omplaint failed to allege facts establishing that an Event of Default had occurred and was continuing as required by the underlying Loan documents and Pennsylvania Rules of Civil Procedure 2952(a)(6) and 1019?
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> Question 2: Did the Trial Court err in denying [the SA Living Parties'] Petition to Open the confessed judgment where [the SA Living Parties] presented evidence of a meritorious defense that [FCCB's] calculations of the sums due were patently and materially erroneous—evidence so compelling

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[2] FCCB filed the motion to reassess damages. The court deferred ruling on the motion until after disposition of the appeal. Order, filed Aug. 8, 2025.

> that the Trial Court itself directed [FCCB] to file a Motion to Reassess Damages?
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> Question 3: Did the Trial Court err in denying [the SA Living Parties'] Petition to Open the confessed judgment where [the SA Living Parties] presented colorable evidence sufficient to submit to a jury that [FCCB] breached the implied covenant of good faith and fair dealing?

The SA Living Parties' Br. at 5 (suggested answers omitted).

The SA Living Parties first contend the court erred in failing to strike the judgment. It claims the loan documents require that an Event of Default has occurred and be continuing before FCCB can exercise the warrants of attorney. They point out the complaint alleged SA Living "failed to remit the required payments under the Loan documents and is now in default" and Cohen and Grossman "have failed to remit the required payments under the Loan documents, guaranteeing SA Living's performance under the Loan documents, and they are now in default." ***Id.*** at 15 (quoting Complaint, filed Mar. 18, 2025, at ¶¶ 45-46). They note the complaint does not specify what payments were allegedly missed, when they were due, what the amount was, or whether and for how long the failure was continuing. The SA Living Parties further claim the complaint did not allege that an Event of Default, as defined by the loan documents, occurred and is continuing. They conclude, "The bare allegation that [SA Living] is 'now in default' is conclusory, fails Rule 2952(a)(6)'s specificity requirement, and ignores the contractually-defined trigger upon which the warrants of attorney are conditioned." ***Id.***

The SA Living Parties further claim the complaint does not allege any acceleration. They note the loan was not scheduled to be due until October 1,

2029, and maintain that the balance could have been due only if the loan was accelerated.

The SA Living Parties maintain the January 2025 letter was not evidence that an Event of Default had occurred and was continuing. They contend it was sent more than two months before the Confession of Judgment, was silent as to acceleration, and did not declare the entire balance immediately due and payable. They claim that "because the conditions precedent set forth in the warrants of attorney were not alleged, much less established, on the face of the complaint, the confessed judgment must be stricken." ***Id.*** at 17.

"We review a trial court's order denying a petition to strike a confessed judgment to determine whether the record is sufficient to sustain the judgment." ***Graystone Bank v. Grove Estates LP***, 58 A.3d 1277, 1281 (Pa.Super. 2012) (quoting ***Osprey Portfolio, LLC v. Izett***, 32 A.3d 793, 795 (Pa.Super. 2011)). "A petition to strike a judgment is a common[-]law proceeding [that] operates as a demurrer to the record." ***Stoltzfus v. Green Line Labs, LLC***, 303 A.3d 447, 452 (Pa.Super. 2023) (citation omitted; alterations in ***Stoltzfus***). A court may grant a petition to strike a judgment "only for a fatal defect or irregularity appearing on the face of the record." ***Id.*** at 452-53 (quoting ***Dime Bank v. Andrews***, 115 A.3d 358, 364 (Pa.Super. 2015)). When determining whether "there are fatal defects on the face of the record . . . , a court may only look at what was in the record when the judgment was entered." ***Id.*** (quoting ***Dime Bank***, 115 A.3d at 364). "[I]f any defect disclosed by the record 'is one that can be remedied by an amendment

of the record or other action, *nunc pro tunc*, the judgment should not be stricken off.'" ***Id.*** (quoting ***Dime Bank***, 115 A.3d at 364).

The trial court concluded:

> [The SA Living Parties'] statement of matters complained of on appeal states that the court erred in not opening the judgment because the complaint "failed to allege facts establishing that an Event of Default had occurred and was continuing." The complaint outlines terms to which [the SA Living Parties] had agreed to obtain the second modification and alleges that [the SA Living Parties] did not make those payments and was thereby in default. It is not heavy on details and does not mention the contents of the January 15, 2025 letter. However, the response to the Petition to Open included the letter and it was entered into the record at the hearing. The submissions and the testimony demonstrate that [the SA Living Parties] had not fully met the terms to which they had agreed and had no factual basis to assert a defense on that basis.

Trial Ct. Op. at 4.

In this issue, the SA Living Parties challenged the denial of their motion to strike. The trial court, however, reviewed not only the complaint and documents attached thereto, but also the testimony and evidence submitted in response to the petition to open and/or strike. This was error, as when addressing a motion to strike a court may only review documents of record at the time judgment was entered. ***See Stoltzfus***, 303 A.3d at 452.

However, based on the record when FCCB confessed judgment, we conclude the court that the error was harmless because the court ultimately properly denied the petition to strike. Pennsylvania Rule of Civil Procedure

2952 governs the contents of a complaint in a confession of judgment action and provides:

> (a) The complaint shall contain the following:
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> (1) the names and last known addresses of the parties;
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> . . .
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> (2) the original or a photostatic copy or like reproduction of the instrument showing the defendant's signature; if the original is not attached, an averment that the copy attached is a true and correct reproduction of the original; if neither the original nor a reproduction can be attached, an explanation why they are not available;
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> . . .
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> (3) an averment that judgment is not being entered by confession against a natural person in connection with a consumer credit transaction;
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> (4) a statement of any assignment of the instrument;
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> (5) either a statement that judgment has not been entered on the instrument in any jurisdiction or if it has been entered an identification of the proceedings;
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> . . .
>
> **(6) if the judgment may be entered only after a default or the occurrence of a condition precedent, an averment of the default or of the occurrence of the condition precedent;**
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> (7) an itemized computation of the amount then due, based on matters outside the instrument if necessary, which may include interest and attorneys' fees authorized by the instrument;
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> (8) a demand for judgment as authorized by the warrant;
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> . . .
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> (10) signature and verification in accordance with the rules relating to a civil action.

> (b) The complaint shall neither contain a notice to defend nor be endorsed with a notice to plead, and no responsive pleading shall be required whether or not the complaint contains a notice to defend or is endorsed with a notice to plead.
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> . . .

Pa.R.Civ.P. 2952 (emphasis added).

The SA Living Parties contend that the complaint did not sufficiently allege a default occurred as required by Rule 2952(a)(6). We disagree. The complaint stated that, "[u]nder the Loan Agreement, an event of default includes SA Living's failure to pay any amount of principal, interest, fees, or other sums when they become due and owing under the Loan documents." Complaint at ¶ 18. It further alleged that "[a] default under the Loan documents constitutes a default under the Security Agreement." ***Id.*** at ¶ 29. The complaint included an allegation that "under the Second Modification, SA Living, Cohen, and Grossman promised to make a payment of $103,433.33 to the Bank to bring the loan current." ***Id.*** at ¶ 39. The complaint then stated, "SA Living has failed to remit the required payments under the Loan documents and is now in default," and "Cohen and Grossman have failed to remit the required payments under the Loan documents, guaranteeing SA Living's performance under the Loan documents, and they are now in default." ***Id.*** at ¶¶ 45-46, 51, 53; ***see also id.*** at ¶ 64 ("SA Living defaulted under the Loan documents by failing to timely remit the required payments"); ¶ 65 ("Cohen and Grossman—jointly and severally—also defaulted under the Loan documents by failing to unconditionally guarantee SA Living's performance").

Accordingly, in the complaint, FCCB made an "averment of the default," as is required under Rule 2952(a)(6). Further, under the terms of the loan documents, the loan would be accelerated at the default interest rate. Complaint, Exh. 2, at ¶ 9.1.1 ("Upon the occurrence and continuation of an Event of Default, unless the Bank agrees otherwise at its sole discretion, interest shall accrue on the outstanding principal balance . . . until payment is made to the Bank of the full amount due to the Bank"), ¶ 9.1.2 ("[U]pon the occurrence and continuation of any other Event of Default in the sole discretion of the Bank, the unpaid principal balance of the Loan, all interest . . . and fees accrued and unpaid thereon, and all other amounts and Obligations payable by Borrower under this Agreement . . . shall immediately become due and payable in full, all without protest, presentment, demand, or further notice of any kind to Borrower, all of which are expressly waived by Borrower"). The SA Living Parties provide no support for their contention that more detailed allegations were required. This claim fails.

In their next two issues, the SA Living Parties allege the trial court erred in denying the petition to open. This Court reviews "an order denying a petition to open a confessed judgment for an abuse of discretion." ***Centric Bank v. Sciore***, 348 A.3d 1089, 1099 (Pa.Super. 2025). "A petition to open a confessed judgment is an appeal to the equitable powers of the court." ***Id.***

A trial court may open a confessed judgment "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." ***Id.*** If "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." ***Id.***

"A meritorious defense is one upon which relief could be afforded if proven at trial." ***Obara Realty Group, LLC v. Atlas Real Estate Invs., LLC***, 279 A.3d 614, 617 (Pa.Super. 2022) (citation omitted). Therefore,

> 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.

Centric Bank, 348 A.3d at 1099 (quoting ***Neducsin v. Caplan***, 121 A.3d 498, 506-07 (Pa.Super. 2015)).

First, the SA Living Parties argue they had a meritorious defense because FCCB's calculations of the sums due were erroneous. They claim this was a meritorious defense that required opening the judgment. They allege they established the $454,775 in interest claimed by FCCB was mathematically impossible. They point out that FCCB conceded there were technical defects and clerical errors in the complaint, and stated they would file a motion to correct the amounts. The SA Living Parties note the court ordered FCCB to file such a motion. The SA Living Parties claim that denying the petition to open while also permitting the filing of a motion to correct the

damages was "internally inconsistent and constitute[d] an abuse of discretion." The SA Living Parties' Br. at 20.

Here, the trial court concluded that a calculation error did not require the grant of the petition to open:

> [T]he court disagrees with [the SA Living Parties] that a calculation error as to the amount of interest invalidates the entirety of the proceeding. Not only was the error corrected, but also the judgment would have rectified it after the damages hearing. [The SA Living Parties] prematurely appealed the court's decision without waiting for a damages hearing, but the essential dispute here involves whether a meritorious defense to loan obligation necessitates a dismissal for a calculation error. The court finds no substantive basis for such a re-set where non-payment was clear and unassailable on the record.

Trial Ct. Op. at 4.

The court did not abuse its discretion when it denied the petition to open the judgment. The SA Living Parties do not allege that they are not in default. Rather, they allege, and FCCB agrees, that the amount of damages alleged in the complaint was incorrect. An error in the amount of damages is not a "meritorious defense . . . upon which relief could be afforded if proven at trial." ***Obara Realty Group, LLC***, 279 A.3d at 617.[3]

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[3] The case relied on by the SA Living Parties, ***H.A. Sheen Industries, Inc. v. Richer Communications, Inc., (W102FM)***, 314 A.2d 319, 322 (Pa.Super. 1973), is distinguishable. There, the defendant alleged the damages should be mitigated because the plaintiff had leased the billboards at issue to new clients. The court opened the judgment, and we affirmed, noting that the "rule for real estate is that where the lessor terminates the lease and enters into possession he may not have possession of the Premises and also judgment for rent for the unexpired period of the lease." ***Id.*** Here,
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Here, FCCB agrees that the complaint contained an error in the damages amount. The amended damages calculation will be based on the documents submitted with the complaint. Such an amendment to the amount of damages does not require opening the judgment.[4]

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there is no claim regarding mitigation of damages or a claim that FCCB is not entitled to all sums due under the contract.

[4] We have jurisdiction to address this appeal under Rule 311(a)(1), even though a motion to reassess damages is pending. ***See Mother's Restaurant, Inc. v. Krystkiewicz***, 861 A.2d 327, 335-36 (Pa.Super. 2004) (*en banc*) (finding this Court had jurisdiction under Rule 311(a)(1) of appeal from order denying petition to open default entered before assessment of damages); ***PNC Bank, N.A. v. Unknown Heirs***, 929 A.2d 219, 227, 227 n.3 (Pa.Super. 2007) (finding order denying petition to open after reconsideration was final order even though there was a pending motion to reassess damages before the trial court, as such a motion "invoke[d] the trial court's equitable power to enforce the underlying judgment and to grant relief until the judgment is discharged or satisfied"). ***But see Skyriser Dev., Inc. v. Save Well Foods, LLC***, 332 A.3d 1276, 1280-81 (Pa.Super. 2025) (finding that order was interlocutory because although the order "denied" the petition to strike or open the confessed judgment, the court employed its equitable powers to grant borrower's request for further proceedings on damages and the court therefore, in effect, opened the judgment for limited purpose of assessing damages, including allowing depositions); ***Digital Comms. Warehouse, Inc. v. Allen Invs., LLC***, 223 A.3d 278, 284 (Pa.Super. 2019) (finding order purporting to grant motion to strike default judgment as to damages only not appealable under Rule 311(a)(1)).

We point out that the court did not re-open the record to allow additional discovery. Rather, it permitted the motion to correct a technical, mathematical error in the complaint. This Court has found that:

> The trial court has the power to modify a judgment upon the proper application to the court for amendment . . . ; ***see also*** [***Nationsbanc Mortg. Corp. v.***] ***Grillo***, 827 A.2d [489,] 493 [(Pa.Super. 2003)] (mortgagee "had every right to petition the court to amend the writ of execution to

(Footnote Continued Next Page)

In their last issue, the SA Living Parties claim the record establishes a colorable claim that FCCB breached the implied covenant of good faith and fair dealing. They point to Grossman's testimony that the parties had a long-standing healthy relationship with the prior bank that owned the loan and was in good standing when FCCB acquired the loan. The SA Living Parties claim that the relationship soured after FCCB acquired the loan. They assert FCCB was seeking to exit the Philadelphia market and pressed the SA Living Parties to refinance or sell; FCCB demanded a full year's worth of interest as a condition of an extension, which was not sustainable; and the SA Living Parties negotiated a binding contract for sale of property before the confession of judgment, which had a financing contingency that was expected to clear within days of the hearing.

The SA Living Parties claim that there was a

> include additional interests and costs prior to" satisfaction.); ***PNC Bank, N.A. v. Unknown Heirs***, 929 A.2d 219, 227 n.3 (Pa.Super. 2007) (a motion to reassess damages "invokes a trial court's equitable power to enforce the underlying judgment and to grant relief until the judgment is discharged or satisfied."). We review the trial court's entry of a modified judgment for an abuse of discretion.
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> Based upon the foregoing legal principles, we conclude that the trial court enjoys the inherent power to amend a judgment until the judgment is discharged or satisfied.

EMC Mortg., LLC v. Biddle, 114 A.3d 1057, 1064 (Pa.Super. 2015) (cleaned up). In ***EMC Mortg., LLC***, this Court determined that the trial court had the ability to amend a default foreclosure judgment at the request of the mortgagee some six months after entry of the judgment, since the request was made before discharge or satisfaction. ***Id.***

> coordinated pattern of conduct: an acquired lender that sought to exit the Philadelphia market, imposed commercially impossible forbearance terms (a full Year's interest paid up front on a property generating $17,000 per month), pressured Borrower to refinance or sell in a market in which neither was achievable, ignored a pending sale of which it had been advised before confessing judgment, and confessed for sums the lender itself later conceded were materially overstated.

The SA Living Parties' Br. at 22-23. They claim "FCCB cannot in good faith refuse reasonable accommodation, demand commercially impossible terms, ignore an imminent sale, and then confess judgment for sums it concedes were overstated." ***Id.*** at 23. They claim whether this constituted a breach is a question for a jury.

"Parties to a contract generally have a duty of good faith and fair dealing, absent an express provision to the contrary." ***Centric Bank***, 348 A.3d at 1105 . "The duty of good faith has been defined as honesty in fact in the conduct or transaction concerned." ***Id.*** at 1105-06 (quoting ***Francis v. LCP N. Third, LLC***, 293 A.3d 273, 279 (Pa.Super. 2023)). "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 . . . enforcing its legal and contractual rights as a creditor.'" ***Id.*** at 1106 (citation omitted).

> [A] lending institution does not violate a separate duty of good faith by adhering to its agreement with the borrower or by enforcing its legal and contractual rights as a creditor. The duty of good faith imposed upon contracting parties does not compel a lender to surrender rights which it has been given by statute or by the terms of its contract. Similarly, it cannot be said that a lender has violated a duty of good faith merely because it has negotiated terms of a

> loan which are favorable to itself. As such, a lender generally is not liable for harm caused to a borrower by refusing to advance additional funds, release collateral, or assist in obtaining additional loans from third persons. A lending institution also is not required to delay attempts to recover from a guarantor after the principal debtor has defaulted.

Creeger Brick and Bldg. Supply, Inc. v. Mid-State Bank and Trust Co., 560 A.2d 151, 154 (Pa.Super. 1989); ***accord Cable & Assoc. Ins. Agency, Inc. v. Commercial Nat'l Bank of Pa.***, 875 A.2d 361, 364 (Pa.Super. 2005) (noting that "the essence of Appellant's argument is that Appellee violated its contractual duty of good faith by refusing to surrender its security interest on Appellants' property (accounts receivable) so that Appellants could sell or transfer the property," and concluding that "[r]egardless of negotiations that Appellants may have had with Appellee's executives, Appellee's ultimate decision to exercise its contractual right to retain a security interest in Appellants' property, as a matter of law, cannot constitute a breach of contractual good faith").

Here, the trial court concluded:

> On appeal, [the SA Living Parties] claim a violation of good faith and fair dealing necessitated a ruling in their favor. [The SA Living Parties] did not raise this issue in their Petition to Open and only vaguely referenced the conduct of the lender at the hearing. The factual basis for this claim was asserted during argument and is that a change in bank ownership led to a more aggressive lending posture whereby [FCCB] was unwilling to grant them accommodations or deferrals that were not within the terms of the loan. A lender who insists that a borrower comply with contract terms is not acting in bad faith. An unwillingness to renegotiate is not bad faith. The testimony at the hearing contained no basis to support such a finding, and the

> eleventh-hour attempt to undermine the confessed judgment on this basis is without merit.

Trial Ct. Op. at 4-5.

The SA Living Parties did not include this claim in the petition to strike and/or open the confessed judgment. The petition stated that "the [judgment] must be opened because Petitioners maintain valid defenses (and lender liability counterclaims) against FCCB." Pet. to Open and/or Strike at ¶ 3. At the hearing, Grossman testified regarding the negotiations, and the SA Living Parties argued there had been an implied duty of good faith and fair dealing during the negotiations that FCCB breach. N.T. Jat 7-9. We conclude that because this claim was not raised in the petition, it is waived. Pa.R.Civ.P. 2959(c). The SA Living Parties did not seek to amend the petition to include such a claim.

Further, even if the SA Living Parties had not waived the claim, it would fail. We would find the court did not abuse its discretion in denying the petition to open. As the court found, an unwillingness to renegotiate or to grant accommodations or deferrals is not bad faith, particularly where FCCB entered two modifications that extended the original loan expiration date. ***Centric Bank***, 348 A.3d at 1105.

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/9/2026