NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

MMG INVESTMENTS II, LLC	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
SEAN HOPKINS, INDIVIDUALLY AND D/B/A HOPKINS CHIROPRACTIC	:	
Appellant	:	No. 375 WDA 2026

Appeal from the Order Entered February 17, 2026
In the Court of Common Pleas of Allegheny County Civil Division at No(s): GD-21-009717

BEFORE: KING, J., NEUMAN, J., and BENDER, P.J.E.

MEMORANDUM BY NEUMAN, J.: **FILED: November 9, 2026**

Appellant, Sean Hopkins, individually and d/b/a Hopkins Chiropractic, appeals from the trial court's order granting summary judgment in favor of MMG Investments II, LLC (hereinafter "MMG"), after MMG claimed Appellant defaulted on a loan. We affirm.

The trial court summarized the background of this matter as follows:

> On or about August 16, 2021, MMG … filed a Complaint in Confession of Judgment against [Appellant]….[1] [MMG's] action is brought pursuant to a certain Revolving Demand Note dated June 14, 2005, in favor of Citizens Bank, in the original principal amount of $125,000.00 (the "Note"), which Note was subsequently endorsed to MMG in March 2022. Effective June 15,

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[1] The complaint was originally filed by Commercial Loan Investment VII, LLC against Appellant on August 16, 2021. However, on May 4, 2022, MMG filed a praecipe for voluntary substitution, explaining the loan at issue in this case had been sold to MMG. For ease of discussion, we refer to "MMG" as the plaintiff herein, even though we recognize Commercial Loan Investment VII, LLC may have been the plaintiff at times.

> 2015, [Appellant] had executed and delivered a Modification Agreement (the "Modification") in favor of VFC Partners 18, LLC, as assignee of Citizens Bank. The Modification modified the terms of the Note and the Collateral Documents as specified therein (the "Collateral Documents").
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> [Appellant] filed a Petition to Open the Confessed Judgment[,] which was granted by Order of Court dated July 6, 2022. On or about July 14, 2022, [Appellant] filed an Answer and New Matter to [MMG's] Complaint, and the pleadings closed on or about August 11, 2022, with [MMG] filing its Reply to [Appellant's] New Matter.
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> On or about November 11, 2024, … MMG filed the Motion for Summary Judgment that is before the [c]ourt. Much of the filings and briefs surrounding the Motion for Summary Judgment addressed the enforceability of a Forbearance Agreement that was executed by [Appellant] on July 16, 2020, extending the maturity date of the Note to December 15, 2020 (the "Forbearance[")]. A failure to pay on the loan does not appear to be disputed.[2] Instead, [Appellant] argued … the Forbearance was governed by New York state law and the interest rate established in the Forbearance violated such law, making the Forbearance void. Further, [Appellant] argued that since the Forbearance was void, then the Modification was the controlling document and correspondingly [MMG's] claims were barred by the statute of limitations. [MMG] submits … a waiver of the statute of limitations in the Modification is valid and enforceable.[3]

Trial Court Opinion ("TCO"), 2/17/26, at 1-2.

In disposing of MMG's summary judgment motion, the trial court determined the Forbearance was void and that the Modification, which set the

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[2] Appellant admitted he never made any payments after November 16, 2020, to any entity. ***See*** MMG's Motion for Summary Judgment, 11/11/24, at ¶¶ 16-18; Appellant's Answer to Motion for Summary Judgment, 2/3/25, at ¶¶ 16-18.

[3] In advance of oral argument on MMG's summary judgment motion, the trial court ordered the parties to file supplemental briefs "addressing the validity/enforceability of the waiver of the statute of limitations provision contained in the [M]odification." Order, 8/4/25.

maturity date of the Note as July 15, 2017, was the controlling document. ***Id.*** at 3. However, the trial court rejected Appellant's argument that the action is subject to a four-year statute of limitations that began to run on July 15, 2017, agreeing with MMG that Appellant expressly waived any statute of limitations defense in the Modification. ***Id.*** at 4-7. Accordingly, it granted summary judgment in MMG's favor, noting Appellant has not provided any valid defense to MMG's action. ***See id.*** at 7.[4] It thereby entered judgment against Appellant in the amount of $252,306.40, plus interest, additional late charges, and attorneys' fees and costs. Order, 2/17/26.

Appellant timely appealed. The trial court did not order him to file a concise statement pursuant to Pa.R.A.P. 1925(b). On appeal, Appellant raises the following two issues for our review:

> 1. The court below erred and/or abused its discretion when the court ruled that the Modification … itself falls within the definition of the term "Collateral Documents" defined at page two of the Modification…, that therefore Appellant … waived the benefit of the statute of limitations which might otherwise inure to [Appellant's] benefit under the terms of any and all Collateral Documents, when Appellant … raised the statute of limitations in his answer and new matter and also in his petition to open the confessed judgment, the "waiver" of the statute of limitations, allegedly contained in the Modification…, is not "a clear, distinct and unequivocal acknowledgment of a debt sufficient to take a case out of the operation of the statute, without any uncertainty, so distinct and unambiguous as to remove hesitation in regard to the debtor's meaning[,"] as required by the authority relied on by the court below, ***McIntosh v. Condron***, 20 Pa. Super. 118, 124-125[] (Pa. Super. 1902), and the Modification … is not a release.

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[4] Along with an order granting MMG's motion for summary judgment, the trial court also issued an opinion explaining the reasoning for its decision.

> 2. The lower court erred and abused its discretion when it held that the case of ***McIntosh*** … is still controlling law, when the Pennsylvania Supreme Court's adoption, in 1946, of Rules 1030 and 1032 of the Pennsylvania Rules of Civil Procedure, abrogated that decision, by providing that the statute of limitations can only be waived by failing to plead the statute of limitations in new matter as a defense, and it is undisputed that Appellant … raised the defense of statute of limitations in his petition to open, and in his answer and new matter.

Appellant's Brief at 5-6 (some capitalization modified).[5]

> In reviewing an order granting summary judgment, we observe:
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> Our scope of review is plenary, and our standard of review is the same as that applied by the trial court. Our Supreme Court has stated the applicable standard of review as follows: An appellate court may reverse the entry of a summary judgment only where it finds that the lower court erred in concluding that the matter presented no genuine issue as to any material fact and that it is clear that the moving party was entitled to a judgment as a matter of law. In making this assessment, we view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. As our inquiry involves solely questions of law, our review is *de novo*.
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> Thus, our responsibility as an appellate court is to determine whether the record either establishes that the material facts are undisputed or contains insufficient evidence of facts to make out a *prima facie* cause of action, such that there is no issue to be

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[5] Appellant's arguments in the Argument section of his brief do not fully align with the issues raised in his Statement of Questions Involved. ***See*** Pa.R.A.P. 2116(a) ("The statement of the questions involved must state concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. … No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby."); Pa.R.A.P. 2119(a) ("The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part--in distinctive type or in type distinctively displayed--the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent."). While we do not condone such briefing, we address Appellant's arguments as they are presented in the Argument section of his brief.

> decided by the fact-finder. If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied.

Reinoso v. Heritage Warminster SPE LLC, 108 A.3d 80, 84 (Pa. Super. 2015) (*en banc*) (cleaned up).

In Appellant's first issue, he argues the trial court erred when it concluded the waiver of the statute of limitations applied to the Modification. ***See*** Appellant's Brief at 17. By way of background, in determining Appellant waived the statute of limitations defense, the trial court explained:

> [Appellant] submits … this action is subject to a four-year statute of limitations that began to run on the date of maturity, or July 15, 2017. The Complaint in this matter was filed on August 16, 2021. MMG argues … [Appellant] expressly waived any statute of limitations defense. In the absence of ambiguity, the plain meaning of the agreement will be enforced. ***Gene & Harvey Builders, Inc. v. P[a.] Mfrs.' Ass'n Ins. Co.***, … 517 A.2d 910, 913 ([Pa.] 1986). The meaning of an unambiguous written instrument presents a question of law for resolution by the court. ***C[mty.] College v. C[mty.] College, Society of the Faculty***, … 375 A.2d 1267, 1275 ([Pa.] 1977). A contract provision is ambiguous when it is reasonably susceptible to different constructions and capable of being understood in more than one sense. ***Enter. Bank v. Frazier Family L.P.***, 168 A.3d 262, 265 (Pa. Super. 2017).
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> The court has determined through a plain reading of the Modification … that the Modification itself falls within the definition of a Collateral Document. The Modification expressly states, "The term Collateral Documents shall include all documents listed above under the heading 'Collateral Documents' **and any other documents securing the payment of or related to the Note**." Modification, p. 2, last paragraph (emphasis added).
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> The terms of the Modification set forth:
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> - A Modification Maturity Date, which extended the maturity date of the Note to July 15, 2017;

- A Modification Payment Amount of $1,386.45 to be paid monthly and commenced on July 15, 2015;
- A Modification Interest rate set at 6.00% annum effective June 15, 2015;
- The next payment to be due on July 15, 2015;
- Modification Payment Terms; and
- Requirements that the Borrow[er] provide the Holder true and correct copies of Borrower's personal and business tax returns for 2014 and for all subsequent years as soon as they were filed with the Internal Revenue Service until the Note was paid in full.

Page 3, paragraph 5 of the Modification, provides:

> Holder and Borrower acknowledge and agree that such amendment, modification, [or] rearrangement shall in no manner affect or impair the Note or the liens and security interests securing the same, **the purpose of this Agreement being simply to amend or rearrange the time and manner of payment of the Note and the indebtedness evidence**[**d**] **thereby, and to carry forward all liens and security interests securing the Note** (including if applicable any and all vendor's liens securing the Note), which are expressly acknowledged by the Borrower to be valid and subsisting, and in full force and effect so as to fully secure payment of the Note.

([e]mp[h]asis added). The Modification is a document dictating, *inter alia*, the date of maturity of the Note, the monthly payment amount of the Note, the interest rate on the Note, effective payment dates, and conduct between the parties regarding terms of the payment process and good faith document production until the Note is paid in full. The purpose of the Modification is to establish the time and manner of payment of the Note, as well as carry forward all liens and securities to fully secure payment of the Note. Therefore, the court concludes the Modification meets the unambiguous definition of "any other document securing the payment or relating to the Note" and is a "Collateral Document."

Pennsylvania law has long since held that the statute of limitations is a procedural bar to recovery which may be waived by explicit consent or conduct. ***Cobbs v. Allied Chem. Corp.***, … 661 A.2d

> 1375 ([Pa. Super.] 1995), *appeal den[ie]d*[], [672 A.2d 303] ([Pa.] 1996). A waiver of the statute of limitations defense can occur through an express agreement or conduct that demonstrates an intentional relinquishment of the right to assert the defense. ***McIntosh***[, ***supra***].
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> The unequivocal waiver of page 3, paragraph 5 of the Modification provides:
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> > The Borrower hereby expressly waives the benefit of any and all statute[s] of limitation[] which might otherwise inure [to] Borrower's benefit, or be in any way applicable to Borrower's obligations under the terms of any and all Collateral Documents.
>
> The Note is subject to the terms and timeline set out in the Modification as the controlling document. The waiver applies to the Modification as a Collateral Document meaning it applies to the terms and obligations of the Borrower regarding payment of the Note. The waiver is enforceable because the Modification expressly waives the statute of limitations, sufficient under Pennsylvania case law. Therefore, the waiver bars any statute of limitation[s] defense [Appellant] may raise to dispute obligations under the Note.

TCO at 4-7.

Appellant, however, contends the trial court erred when it "concluded … the Modification … itself is a [C]ollateral [D]ocument and … therefore the foregoing waiver of the statute of limitations applied to the Modification…." Appellant's Brief at 17. Appellant says, "Collateral Documents are specifically described at pages 1 and 2 of the Modification … as separate documents that secure the loan[,] *i.e.*[,] the UCC-1's, the Loan and Security Agreement, and the Landlord's consent and waiver of lien." ***Id.*** at 18. Appellant also claims the language in question must be strictly construed against MMG as it diminishes Appellant's legal rights, and maintains MMG's own filings

distinguish the Collateral Documents from the Modification. ***See id.*** at 18-19.[6]

> Appellant's arguments are unavailing. This Court has explained:
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> The interpretation of any contract is a question of law and this Court's scope of review is plenary. Moreover, we need not defer to the conclusions of the trial court and are free to draw our own inferences. In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement. When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. This Court must construe the contract only as written and may not modify the plain meaning under the guise of interpretation.

Stephan v. Waldron Elec. Heating and Cooling LLC, 100 A.3d 660, 665 (Pa. Super. 2014) (citation omitted).

Here, even strictly construing the Modification as Appellant insists we must, the Modification states the term Collateral Documents includes all documents listed under the heading 'Collateral Documents' "***and*** any other documents securing the payment of or related to the Note." ***See*** MMG's Motion for Summary Judgment, 11/11/24, at Exhibit B ("Modification") at 2 (emphasis added). The trial court aptly explained why the Modification is a

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[6] Specifically, Appellant points out MMG's complaint states: "On or about June 15, 2015, [Appellant] executed and delivered [the] Modification … in favor of VFC Partners 18 LLC, which [Modification] modified the terms of the Note and Collateral Documents and additionally authorized a Confession of Judgment against [Appellant]." Appellant's Brief at 18 (citation omitted); ***see also id.*** at 19 (similar). Appellant also asserts "Paragraphs 3, 4[,] and 22 of MMG's Motion for Summary Judgment describe the [C]ollateral [D]ocuments as separate documents that secure payment of the loan, separate and apart from the Modification…." ***Id.*** at 18-19 (citation omitted).

document securing the payment of or related to the Note. ***See*** TCO at 4-7, ***supra***. Further, regardless of whether MMG distinguished the Modification from the Collateral Documents in their filings below, "[i]n interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement[,]" and "[w]hen construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding." ***See Stephan***, ***supra***. Thus, even if MMG distinguished the Modification from the Collateral Documents as Appellant contends, we need not consider the characterizations MMG made in its filings in interpreting the Modification.[7] Accordingly, Appellant's first issue fails.

In Appellant's second issue, he claims "[t]here is no authority in Pennsylvania law for the prospective waiver of the statute of limitations[,]" and claims he never waived the statute of limitations after it had passed. Appellant's Brief at 21-22. Appellant also suggests the statute of limitations can only be waived by failing to plead the statute of limitations in new matter as a defense, and he claims he pled the statute of limitations as a defense in new matter here. ***See id.*** at 20-23.

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[7] Setting aside the meaning of Collateral Documents, we also observe the Modification states, "Borrower hereby expressly waives the benefit of any and all statutes of limitation which might otherwise inure to Borrower's benefit…." Modification at 3. Appellant does not address this part of the provision.

These arguments relating to the statute of limitations are waived.[8] It is well-established "[i]ssues not raised in the trial court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a); ***see also Rohrer v. Pope***, 918 A.2d 122, 128 (Pa. Super. 2007) ("[A]rguments not raised initially before the trial court in opposition to summary judgment cannot be raised for the first time on appeal.") (citation omitted). Here, while Appellant claimed the statute of limitations barred MMG's action below, our review of the record does not show Appellant specifically argued that there is no authority in Pennsylvania for the prospective waiver of the statute of limitations or that the statute of limitations defense can only be waived by failing to plead the statute of limitations in new matter as a defense.[9] Accordingly, Appellant's second issue likewise fails. We affirm the trial court's order.

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[8] We may find an appellant's issue waived even though the appellee did not advocate for waiver. ***See Com. v. Triplett***, 381 A.2d 877, 881 n.10 (Pa. 1977) ("Although the issue of waiver as to [the] appellant's second contention has not been addressed by either party, we may raise the issue of waiver *sua sponte*.") (citations omitted); ***Tecce v. Hally***, 106 A.3d 728, 732 (Pa. Super. 2014) ("We are bound by our precedents to invoke waiver *sua sponte* in this case."); ***see also Wirth v. Com.***, 95 A.3d 822, 837 (Pa. 2014) ("[B]ecause the burden rests with the appealing party to develop the argument sufficiently, an appellee's failure to advocate for waiver is of no moment.") (citation omitted).

[9] Indeed, our review of the record shows Appellant's counsel stated at oral argument:

> You can waive [the statute of limitations] obviously, but it was only waived as to the [C]ollateral [D]ocument[s]. It wasn't waived as to anything else. You can waive anything you want in a commercial setting. And in a consumer setting, you can't, but

(Footnote Continued Next Page)

Order affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 11/09/2026

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this is a commercial document, so you can waive anything you want.

N.T., 10/7/25, at 7. Our review of the record also reveals Appellant denied waiving any future statute of limitations, instead claiming to have only waived statutes of limitations that had expired prior to July 6, 2015. Appellant's Answer to Motion for Summary Judgment at ¶¶ 21, 28. However, Appellant did not elaborate on that assertion, and failed to argue statutes of limitations could not be prospectively waived under the law, or that the statute of limitations defense can only be waived by failing to plead the statute of limitations in new matter as a defense. We additionally observe the trial court specifically ordered the parties to file supplemental briefs "addressing the validity/enforceability of the waiver of the statute of limitations provision in the [M]odification[,]" in advance of oral argument on MMG's summary judgment motion. Order, 8/4/25. In Appellant's supplemental brief, he argued the waiver of the statute of limitations in the Modification applies only to Collateral Documents, which he said did not encompass the Modification. ***See generally*** Appellant's Supplemental Brief, 9/29/25; ***see also*** Issue 1, ***supra***; ***cf.*** MMG's Supplemental Brief, 9/29/25 (arguing the statute of limitations may be waived by explicit consent or by conduct).