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

CRE/ADC VENTURE 2013-1, LLC,	:	
Plaintiff	:	
	:	
Vs.	:	**No. 17-1238**
	:	
ROBERT H. ANDERSON and	:	
JEAN M. ANDERSON,	:	
Defendants	:	

Michael Barrie, Esquire	Counsel for Plaintiff
Cynthia Yurchak, Esquire	Counsel for Robert H. Anderson
James Nanovic, Esquire	Counsel for Jean M. Anderson

MEMORANDUM OPINION

Matika, J. - May 18 , 2018

Before the Court are two (2) Petitions[1] to Open and/or Strike Judgment by Confession filed by each of the Defendants, Robert H. Anderson and Jean M. Anderson (hereinafter referred to collectively as "the Andersons" and individually as "Mr. Anderson" or "Mrs. Anderson" where appropriate). For the reasons stated within this Opinion, the Petitions are **DENIED**.

[1] Defendant Mr. Anderson, represented by Attorney Cynthia S. Yurchak, filed his Petition on July 25, 2017. On October 13, 2017, Defendant Mrs. Anderson, represented by Attorney James R. Nanovic, filed her Petition. This Petition was identical to that filed by Mr. Anderson, with two (2) exceptions: Mrs. Anderson additionally claimed that the Complaint lacked a Pennsylvania Rule of Civil Procedure 1018.1 Notice to Defend, and also that she did not receive "advanced notice."

FACTUAL[2] AND PROCEDURAL BACKGROUND

On or about December 1, 2006, the Andersons executed a business loan agreement with NOVA Savings Bank (hereinafter "NOVA") in the amount of one hundred thirty thousand dollars ($130,000.00). A promissory note was also made, executed, and delivered by the Andersons to NOVA for that same amount. Both documents contained obligatory language whereby the Andersons agreed to repay this sum. On October 17, 2013, both the loan agreement and promissory note were assigned by NOVA to Plaintiff, CRE/ADC Venture 2013-1, LLC (hereinafter "CRE/ADC").

On June 20, 2017, CRE/ADC confessed judgment against the Andersons pursuant to its claim that the promissory note contained a Warrant of Attorney to appear and confess judgment on behalf of CRE/ADC on the basis that the Andersons did not repay these monies in accordance with the terms set forth in the agreement and note. After the default by the Andersons, this complaint in confession of judgment alleges that all required notices were provided, that the Andersons defaulted on their obligations under the terms of the loan agreement and promissory note, that the amount sought is two hundred sixty-five thousand four hundred forty-three dollars and seventy-three cents ($265,443.73), and that pursuant to the

[2] The majority of the facts identified herein are gleaned from Exhibit #1, which all parties agreed should be admitted. The remaining facts derive from the testimony taken at the hearing that occurred on October 26, 2017.

Warrant of Attorney, CRE/ADC has entered judgment in its favor.

On June 28, 2017, the Andersons were personally served with the Complaint and accompanying documents. Those documents included a notice pursuant to Pennsylvania Rule of Civil Procedure 2958.1 that CRE/ADC had entered judgment against both of them in the amount of two hundred sixty-five thousand four hundred forty-three dollars and seventy-three cents ($265,443.73) and that they had thirty (30) days from the date of service to file a petition seeking relief from the judgment. On July 25, 2017, Mr. Anderson filed the instant petition. On October 13, 2017, Mrs. Anderson filed a very similar petition. In both petitions to open/strike, the Andersons laid out a number of claimed deficiencies, identical in each petition. Those deficiencies and meritorious defenses, as they call them, are as follows:

A. Plaintiff failed to serve Petitioner with a Notice of Intention to enter the judgment pursuant to Pa.R.C.P. Rule 237.1.
B. Plaintiff lacks standing to bring the subject action.
C. The amounts calculated in the subject judgment are inaccurate.
D. There is no alleged dates of performance or alleged default in the complaint to justify the relief sought by Plaintiff.
E. The Business Loan Agreement does not provide for 10% attorney fees, only actual fees incurred.
F. The Promissory Note indicates an interest rate of 7.5%. The per diem amount for $120,658.71 at 7.5% annual interest rate is $24.79, not the $41.90 in the confessed judgment.
G. The Loan and Promissory Note are not instruments under seal.
H. The paragraph containing the confession of judgment language in said instrument was not conspicuous in

the Promissory Note and therefore not known to Petitioner.

I. Any action on an alleged default for a contract loan is barred by the application Statute of Limitations, including, but not limited to, the four-year Statute of Limitations for actions on a contract.

J. The amount confessed includes charges (including unknown charges labeled as "advances, fees, and costs reimbursements", that are outside the warrant of confession.

K. The Complaint is defective, as it fails to attach an affidavit that verifies the copy of the documents, as is specifically required by the warrant.

In addition, Mrs. Anderson also argued that the judgment should be opened or stricken because Plaintiff failed to include a Notice to Defend as required by Pennsylvania Rule of Civil Procedure 1018.1, and because she did not receive "advanced notice." CRE/ADC advances a defense to each of these claimed deficiencies and perceived meritorious defenses. Further, CRE/ADC argues that as a precursor to addressing Mrs. Anderson's petition, the Court should entertain CRE/ADC's request to dismiss her petition as untimely filed because it was filed well beyond the thirty (30) day filing period.

On October 26, 2017, a hearing was held and all parties were thereafter given an opportunity to lodge briefs or legal memoranda in support of their respective positions. The petitions are now ripe for disposition.

LEGAL DISCUSSION

Before this Court addresses the content of the Petitions to Open and/or Strike the Judgment, it must first address CRE/ADC's argument that the petition filed by Mrs. Anderson is untimely.

I. TIMELINESS OF MRS. ANDERSON'S PETITION

On June 20, 2017, CRE/ADC filed, along with other documents, a notice pursuant to Pennsylvania Rule of Civil Procedure 2958.1 to inform the Andersons that CRE/ADC had obtained a Confessed Judgment and that the parties had the right to "prevent [their] money or property from being taken" by the sheriff to satisfy this judgment. The notice further advises that the Andersons had thirty (30) days from service to file a petition to seek relief from that judgment. All of the documents, including this Rule 2958.1 notice, were served on Mrs. Anderson. Pennsylvania Rule of Civil Procedure 2958.1 reads in pertinent part: "A written notice substantially in the form prescribed by Rule 2964 shall be served on the defendant at least thirty days prior to the filing of the praecipe for a writ of execution." The notice sent by CRE/ADC was in substantial conformity to this rule and was served on Mrs. Anderson on June 28, 2017. Thus, since Mrs. Anderson filed her petition on October 13, 2017, almost four (4) months later, her petition is untimely. However, Pennsylvania Rule of Civil Procedure 2959(a)(3) reads: "If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) . . . the petition shall be filed within thirty days

after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied."

In the case *sub-judice*, Mrs. Anderson testified that after she was served with the Complaint and related documents, she "didn't know what to do with those papers at that point." She further testified that it was not until after her divorce attorney, Michael Beltrami, reached out to her that she eventually contacted current counsel,[3] who filed the instant petition on October 13, 2017.

Based on the testimony presented by Mrs. Anderson, this Court does not find any compelling reason for her delay in filing her petition. Her testimony of "I didn't know what to do," coupled with the fact that she had counsel (albeit for a divorce) and never took it to him to find out what to do with it, suggests that she had no intent to do anything with it, let alone seek relief from judgment.

However, Mrs. Anderson also argued that her petition should be considered a supplement to the petition filed by her estranged husband, Mr. Anderson, because Pennsylvania Rule of Civil Procedure 2959 does not require "separate" petitions to be filed

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[3] Attorney Michael Beltrami, according to Mrs. Anderson, was informed by Attorney Yurchak that "something else was going on." As a result, Mrs. Anderson took the papers to Attorney Beltrami, who recommended she contact Attorney Nanovic as he (Attorney Beltrami) did not handle these types of cases.

by each party. This Court finds this contention meritless and will deny the petition of Mrs. Anderson as untimely filed.[4]

II. MR. ANDERSON'S PETITION

Mr. Anderson has filed a Petition to Open and/or Strike the Judgment obtained by CRE/ADC. "A petition to strike a confessed judgment and a petition to open a confessed judgment are distinct remedies; they are not interchangeable." *Midwest Financial Acceptance Corp v. Lopez*, 78 A.3d 614, 623 (Pa. Super. Ct. 2013)(citation omitted).

> A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. [It] may be granted only for a fatal defect or irregularity appearing on the face of the record. In assessing 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. Therefore, the original record that is subject to review in a petition to strike a confessed judgment consists only of the complaint in confession of judgment and the attached exhibits.

Gur v. Nadav, 178 A.3d 851, 856 (Pa. Super. Ct. 2018)(internal citations and quotation marks omitted).

Comparatively speaking, "if the truth of the factual averments contained in [the complaint in confession of judgment and attached exhibits] are disputed, then the remedy is by a proceeding to open the judgment and not to strike it." *Resolution Trust Corp. v. Copley Qu-Wayne Assoc.*, 683 A.2d 269, 273 (Pa. 1996)(citations omitted). "A petition to open [a confessed]

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[4] Even had this Court not dismissed this petition as untimely filed, it would ultimately be denied for the same reasons outlined herein regarding Mr. Anderson's petition, as would Mrs. Anderson's other two arguments.

judgment is an appeal to the equitable powers of the court." *PNC Bank v. Kerr*, 802 A.2d 634, 638 (Pa. Super. Ct. 2002)(citation omitted). "Factual disputes by definition cannot be raised or addressed in a petition to strike off a confession of judgment, because factual disputes force the court to rely on matters outside the relevant record to decide the merits of the petition." *Midwest*, 78 A.3d at 623.

It appears from Mr. Anderson's petition that his claims, if true, would allow for either type of relief. Accordingly, this Court will address both opening and striking the judgment as appropriate with this claim raised by Mr. Anderson.

A. FAILURE TO SERVE PETITIONER WITH NOTICE OF INTENT TO ENTER JUDGMENT PURSUANT TO PENNSYLVANIA RULE OF CIVIL PROCEDURE 237.1

Mr. Anderson alleges that the judgment should be stricken based upon the fact that a notice was not provided to him pursuant to Pennsylvania Rule of Civil Procedure 237.1 before judgment was entered against him. CDE/ADC counters that claim by stating that CDE/ADC provided two notices: one pursuant to Rule 236 and another under Rule 2958.1, and that notice was not required under Rule 237.1.

Pennsylvania Rule of Civil Procedure 237.1 requires a ten (10) day default judgment notice in advance of a party obtaining "judgment of non-pros" or "judgment by default." Nothing in this

rule requires notice in advance of a judgment by confession, and Mr. Anderson provides no legal authority to support this claim.

Under that chapter of the rules of civil procedure dealing with the confession of judgment for money, Pennsylvania Rule of Civil Procedure 2958.1 provides the requirements of notice to those actions. The notice provided by CDE/ADC and included in the joint exhibit is in compliance with the rule. This document triggers the thirty (30) day notice requirement prior to the filing of the praecipe for writ of execution, and also constitutes notice to Mr. Anderson that he has thirty (30) days to seek relief from the judgment, including the filing of the instant petition. Further, the Rule 236 notice, also attached to this exhibit (and docketed in this matter), was provided in accordance with the rule.

B. PLAINTIFF LACKS STANDING TO BRING THIS ACTION

Mr. Anderson next contends that the judgment should be opened/stricken because the Plaintiff lacks standing to bring this action. He claims that the Complaint fails to connect FDIC to NOVA Savings Bank, and further alleges that CDE/ADC fails to show how the original creditor, NOVA Savings Bank, is now NOVA Bank.

Through the averments contained in its Complaint (Paragraphs 1 & 7) and in Exhibit C attached thereto, CDE/ADC explains its authority to pursue this action against Mr. Anderson. Exhibit C, containing both an allonge and an omnibus assignment, are documents executed by Jocelyn Spector, a Senior Capital Markets Specialist

for the Federal Deposit Insurance Corporation (FDIC) in its capacity as receiver for NOVA Bank, Berwyn, PA, assigning all rights, title and interest NOVA Bank has in the subject loan to Plaintiff herein, CDE/ADC. The assignment, for value received, also identifies "Nova Savings Bank" as "Nova Bank." There is an identifiable pathway of interest in this loan between Mr. Anderson and Nova Savings Bank through FDIC as receiver for Nova Bank (formerly Nova Savings Bank) to CDE/ADC. Clearly, CDE/ADC has standing to bring this action.

C. THE AMOUNTS CALCULATED IN THE SUBJECT JUDGMENT ARE INACCURATE

Mr. Anderson next contends that the confessed judgment should be opened because the amounts calculated in the judgment are inaccurate and/or not proper as CDE/ADC has failed to explain how it calculated the principal balance and interest, what "advances, fees or reimbursements" were made, or how the attorney fees are reasonable. CDE/ADC countered that meritless argument by stating that the calculations are made in accordance with the loan documents.

In the confession of judgment clause set forth in the note, it reads in pertinent part: " . . . the entire principal balance of this note and all accrued interest, late charges and any and all amounts expended and advanced by lender relating to any collateral securing this note, together with costs of suit, and an

attorney's commission of ten percent (10%) of the unpaid principal balance and accrued interest for collection . . .." These items collectible under the note are spelled out in paragraph 19 of the Complaint.

In order for Mr. Anderson to prevail on his claim that the judgment should be opened on this basis, he must, *inter alia*, aver a meritorious defense and present sufficient evidence of that defense to require submission to a jury. *PNC Bank v. Kerr*, 802 A.2d 634, 638 (Pa. Super. Ct. 2002)(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." *Liazis v. Kosta, Inc.*, 618 A.2d 450, 453 (Pa. Super. Ct. 1992)(citation omitted). "A meritorious defense is one upon which relief could be afforded if proven at trial." *Ferrick v. Bianchini*, 69 A.3d 642, 647 (Pa. Super. Ct. 2013)(citation omitted). At the hearing held on this matter, Mr. Anderson did not present a scintilla of evidence on any deficiency or incorrectness in the amounts set forth for any of these items as calculated by CRE/ADC. Further, this Court is not aware of any case law that requires a lender to provide any time of calculation or itemization of how it determined the principal claimed still due and owing upon default.

D. NO DATES OF PERFORMANCE OR DEFAULT ALLEGED IN COMPLAINT

Mr. Anderson next alleges that because CDE/ADC failed to state when he either performed (i.e. made payments) or, alternatively, defaulted, its attempt to confess judgment is improper. CRE/ADC counters this argument by saying that Exhibit D of the Complaint identifies, as of March 31, 2016, the balances owed under the loan, which are owed due to a "default" under the loan documents by Mr. Anderson. This default letter is sufficient to put Mr. Anderson on notice that the loan is in default and that it is the intent of CRE/ADC to take action should the default not be cured. Further, the Complaint specifically alleges that the Complaint identifies averments of default, referencing this exhibit in the process.

Additionally, Mr. Anderson has not advanced any case law to support this argument, nor is this Court aware of anything more being required of CRE/ADC beyond what has been advanced in the Complaint.

E. 10% ATTORNEY FEES NOT PROPER

Mr. Anderson next contends that the ten (10) percent attorney fee charged by CDE/ADC is not proper, and as a result the confessed judgment should be stricken because the loan documents only referred to the collectible attorney fees as those actually incurred. CDE/ADC argues in response that it is irrelevant what the loan documents say, as the language in the confession of

judgment clause contained in the note controls since CDE/ADC entered a confessed judgment under the terms of the note.

This Court agrees with CRE/ADC's contention that this action was brought forth in accordance with the confessed judgment clause of the note upon default by Mr. Anderson. That clause provides for "an attorney's commission of ten percent (10%) of the unpaid principal balance and accrued interest." Thus, $21,108.56, being ten percent (10%) of $211,085.69, would be the appropriate measure of the attorney's commission under the note. Insofar as Mr. Anderson would argue that this amount is excessive, the Courts have held that an attorney commission, specifically noticed by the warranty, is enforceable. *RAIT P'ship, L.P. v. E Pointe Prop. I, Ltd.*, 957 A.2d 1275, 1279 (Pa. Super. Ct. 2008). Therefore, this argument is meritless.

F. CALCULATION OF INTEREST IS IMPROPER

Mr. Anderson next argues that CDE/ADC's calculation of interest is incorrect. Mr. Anderson argues that the note calls for an interest rate of seven and one-half percent (7.5%). As such, the per diem charge should only be $24.79, not the $41.90 identified in the confessed judgment complaint. What Mr. Anderson neglects to identify here is language in the note which reads: "Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the interest rate on this Note 5.000 percentage points.

The interest rate will not exceed the maximum rate permitted by applicable law." Thus, upon default, CRE/ADC may seek additional interest over and above the 7.5% interest rate set forth in the note, but may not exceed 12.5%. This CRE/ADC had chosen to do, and had done so properly.

G. THE LOAN AND PROMISSORY NOTE ARE NOT INSTRUMENTS UNDER SEAL

Mr. Anderson next argues that the judgment should be opened on the basis that the underlying note giving rise to confess that judgment was not "under seal." Accordingly, in and conjunction with his argument proffered in paragraph 1, the statute of limitations to obtain this judgment in this fashion is four (4) years, pursuant to 42 Pa.C.S.A. § 5525. Since this action was filed on June 20, 2017, it was filed well beyond the date of the execution of the note (2006).

Title 42 Section 5529(b)(1) of the Pennsylvania Consolidated Statutes reads: "Notwithstanding section 5525(7) (relating to four year limitation), an action upon an instrument in writing under seal must be commenced within 20 years." There is no question that the note is an instrument, as it defines "rights, duties, entitlements, and liabilities of the parties involved." *In re Estate of Snyder*, 13 A.3d 509, 513 (Pa. Super. Ct. 2011). Thus, the issue turns on whether this note is "under seal." The *Snyder* Court went on to further state that "this [C]ourt has held, in

accord with many cases written by our Supreme Court, that when a party signs [an instrument] which contains a pre-printed word 'SEAL,' that party has presumptively signed [an instrument] under seal." *Id.* (quoting *Beneficial Consumer Disc. v. Dailey*, 644 A.2d 789, 790 (Pa. Super. Ct. 1994)).

Here, the note contains a pre-printing of the word "seal" in parenthesis immediately adjacent to the signature line of Mr. Anderson. Further, immediately above the signature line in bold capital letters is the sentence "THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW."

Based on a review of the note in conjunction with applicable case law, this Court finds that the note is in fact an "instrument under seal."

H. THE LANGUAGE OF THE CONFESSION JUDGMENT PROVISION IS NOT CONSPICUOUS

Mr. Anderson next contends that neither he nor his wife, Mrs. Anderson, were sophisticated business persons and did not possess the expertise or experience to understand the confession language, language which Mr. Anderson also contends was not so conspicuous that he would readily notice it. In support of this argument, the following exchange took place between Mr. Anderson and his counsel regarding his intelligence level and his understanding of the various documents he executed the night of the closing of the loan:

Q. Mr. Anderson, how old are you?
A. 42.
Q. And in - let's see, what was this? In 2006, how old were you?
A. 36.
Q. And how old are you now?
A. 42. No, 34. I don't know. I have a calculator at work.

. . .

Q. This was 11 years ago?
A. Yes.
Q. Okay.
A. So I was 31.

. . .

Q. What is your educational background?
A. High school.

. . .

Q. Okay. And do you know where you graduated, in the top ten percent, middle? Where did you graduate?
A. Bottom ten percent.

. . .

Q. Did you have any other education, formal education, college?
A. No. 11th and 12th grade, I went to school half day and worked for my dad half day.
Q. Okay. Now, 11 years ago at the time that these documents in question were executed, did you have any experience running a business?
A. No.
Q. Did you have any knowledge on legal documents or the type of documents -
A. No.
Q. Now, the documents in question that we have already put in evidence, in 2006 when these were signed, did you know what they meant?
A. No.
Q. Okay. What did you think was happening?
A. Purchasing a building.
Q. Okay.
A. Well, refinancing a building.
Q. A refinance?

A. Yes.
Q. Okay. And do you understand legal documents?
A. No.
Q. Do you understand any business documents?
A. No.
Q. Where were these documents signed?
A. At my house and Jean's house in McAdoo.
Q. In McAdoo. And who was present?
A. Jean, myself and the person from Nova, the man from Nova. I don't know his name.
Q. Okay. A representative from Nova Bank?
A. Yes.

. . .

Q. What did this gentleman tell you about reading the documents?
A. He said; we can either just sign everything or if we want to sit here for six hours and go through it, you know. Then I was just, you know, let's get it done.

. . .

Q. So let me ask this; did you read them?
A. No.

This line of questioning attempts to establish two things: 1) A lack of intelligence on the part of Mr. Anderson, and, more importantly, 2) that Mr. Anderson, faced with the option of reading those documents or not, chose not to read them—a voluntary choice he made before signing each one.

This Court does not find Mr. Anderson to be so unsophisticated and unintelligent as to render his execution of these documents a nullity. This Court does find that his choice not to read them before signing was perhaps not a wise choice as, had he done so, he would have seen bold, capitalized language which read:

CONFESSION OF JUDGMENT. BORROWER HEREBY IRREVOCABLY AUHTORIZES AND EMPOWERS ANY ATTORNEY OR THE PROTHONOTARY OR CLERK OF ANY COURT IN THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE, TO APPEAR AT ANY TIME FOR BORROWER AFTER A DEFAULT UNDER THIS NOTE AND WITH OR WITHOUT COMPLAINT FILED, CONFESS OR ENTER JUDGMENT AGAINST BORROWER FOR THE ENTIRE PRINCIPAL BALANCE OF THIS NOTE AND ALL ACCRUED INTEREST, LATE CHARGES AND ANY AND ALL AMOUNTS EXPENDED OR ADVANCED BY LENDER RELATING TO ANY COLLATERAL SECURING THIS NOTE, TOGETHER WITH COSTS OF SUIT, AND AN ATTORNEY'S COMMISSION OF TEN PERCENT (10%) OF THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST FOR COLLECTION, BUT IN ANY EVENT NOT LESS THAN FIVE HUNDRED DOLLARS ($500) ON WHICH JUDGMENT OR JUDGMENTS ONE OR MORE EXECUTIONS MAY ISSUE IMMEDIATELY; AND FOR SO DOING, THIS NOTE OR A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT. THE AUTHORITY GRANTED IN THIS NOTE TO CONFESS JUDGMENT AGAINST BORROWER SHALL NOT BE EXHAUSTED BY ANY EXERCISE OF THAT AUTHORITY, BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL PAYMENT IN FULL OF ALL AMOUNTS DUE UNDER THIS NOTE. BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE TO NOTICE OR TO A HEARING IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT AND STATES THAT EITHER A REPRESENTATIVE OF LENDER SPECIFICALLY CALLED THIS CONFESSION OF JUDGMENT PROVISION TO BORROWER'S ATTENTION OR BORROWER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL.

Title 13 Section 1201 of the Pennsylvania Consolidated Statutes defines the word "conspicuous" as follows:

> With reference to a term, means so written, displayed or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:
>
> (i) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size.
>
> (ii) Language in the body of a record or display in larger type than the surrounding text, in contrasting type, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by

symbols or other marks that call attention to the language.

13 Pa.C.S.A. § 1201(b)(10).

Clearly, the language in the note pertaining to the confession of judgment is written in all caps and in bold, in accordance with subsection (ii) above. Further, a reasonable person, such as Mr. Anderson, would have noticed it if he had read it. It is larger in size (capital letters versus lower case) and bolder in print, contrasting with the surrounding language.

I. STATUTE OF LIMITATIONS OF FOUR (4) YEARS IS APPLICABLE

As noted in our discussion regarding whether the note was an instrument under seal, and in finding that it is, this Court therefore finds that 42 Pa.C.S.A. § 5529 is the applicable time bar statute and not 42 Pa.C.S.A. § 5525. Accordingly, CRE/ADC's filing is not time barred, as it had twenty (20) years to bring this action.

J. JUDGMENT INCLUDES AMOUNTS BEYOND WARRANT OF CONFESSION

Mr. Anderson next argues that the judgment confessed includes amounts that are unascertainable by him, and as such are impossible to determine if they are permitted by the warrant. Accordingly, Mr. Anderson claims the entire judgment should be stricken.

The language contained in the confession of judgment clause related to this issue reads, in pertinent part: " . . . all amounts

expended or advanced by lender relating to any collateral securing this note . . . ."

CRE/ADC counters this argument by pointing out that paragraph 19 of the Complaint identifies a claim of $33,249.58 for "advances, fees and cost reimbursements." CRE/ADC further argues that this amount includes taxes and insurance, *inter alia*, as permitted to be collected from Mr. Anderson as a result of his failure to pay.

This Court agrees with CRE/ADC that these sums are collectable through this judgment from Mr. Anderson. These advances, made on behalf of Mr. Anderson, are intended to protect and preserve the interests of CRE/ADC. Further, as the moving party, Mr. Anderson has failed to support his argument with any facts or case law to suggest otherwise.

K. FAILURE OF CRE/ADC TO ATTACH VERIFICATION

Mr. Anderson last argues that the Complaint is defective because CRE/ADC "fails to attach an affidavit that verifies the copy of the documents, as is specifically required by the warrant." More specifically, the Court believes that Mr. Anderson is relying upon language in the confession of judgment clause that reads, "A copy of this note verified by affidavit shall be sufficient warrant," and is claiming that no such affidavit has been filed.

In a review of the Complaint and attached exhibits, the Court finds a verification of Tanya McLaughlin, who verifies that "I have reviewed the exhibits attached to the complaint in confession

of judgment and such exhibits are true and correct copies of the originals to the best of my knowledge, information and belief." This verification, "made subject to the penalties of 18 Pa.C.S.A. § 4904 related to unsworn falsifications to authorities," fits the definition of the term "affidavit" as set forth in 42 Pa.C.S.A. § 102. Therefore, this Court finds that the verification attached to the Complaint is the type of affidavit required by the confession of judgment clause. Accordingly, this claim has no merit.

CONCLUSION

Based upon the foregoing, this Court enters the following order:

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

FILED
2018 MAY 18 AM 10:06
CARBON COUNTY
PROTHONOTARY

CRE/ADC VENTURE 2013-1, LLC,	:	
Plaintiff	:	
	:	
Vs.	:	**No. 17-1238**
	:	
ROBERT H. ANDERSON and	:	
JEAN M. ANDERSON,	:	
Defendants	:	
	:	

Michael Barrie, Esquire — Counsel for Plaintiff
Cynthia Yurchak, Esquire — Counsel for Robert Anderson
James Nanovic, Esquire — Counsel for Jean Anderson

ORDER OF COURT

AND NOW, this 18TH day of May, 2018, upon consideration of the Petitions to Open/Strike the Judgment separately filed by both Defendants, Robert H. Anderson and Jean M. Anderson, and after hearing thereon, and after giving due consideration to the legal briefs filed by all parties, it is hereby **ORDERED and DECREED** that said Petitions are **DENIED** for the reasons stated within this Opinion.

BY THE COURT:

Joseph J. Matika, J.