

DOLPHIN & BRADBURY, INC.,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 01-01,337
	:	
THOMAS R. BALABAN, JR.,	:	CIVIL ACTION - LAW
	:	
Defendant	:	PETITION TO STRIKE

**Date: November 16, 2001**

**OPINION and ORDER**

Before the Court is the Petition to Strike Complaint for Judgment by Confession, which was filed by Defendant on September 18, 2001. The Petition asserts that pursuant to Pa. R.C.P. 2951 the Judgment by Confession should be stricken because the note authorizing the Judgment by Confession was not attached to the Complaint and no explanation for its absence was given. Plaintiff conceded that when the Complaint for Confession of Judgment was filed on August 16, 2001 the notes containing the confession of judgment provisions were not attached to the Complaint, despite allegations in the Complaint indicating the notes were attached. Defendant, therefore, asserts judgment by confession entered on August 16<sup>th</sup> must be stricken since Pa. R.C.P. Rule 2951(e) provides judgment should not be entered where the Note or copy of it is not attached without leave of court and prior notice.

After Defendant filed the Petition to Strike Plaintiff on October 31, 2001, filed the original notes as an "Amendment" to the Complaint. Although the Amendment was not filed with leave of court nor with the consent of the Defendant as required by Pa. R.C.P. 1033, Plaintiff moved at the time of oral argument on November 7, 2001 for permission to amend the Complaint by adding the notes. Defendant objects to the amendment but has not stated how the

amendment would prejudice the Defendant, except to the effect that an improper judgment has already been entered and the absence of the notes have prevented Defendant from asserting other potential grounds to strike or open the judgment under Pa. R.C.P. 2959.

This Court agrees that the failure to attach the notes to the Complaint for Confession of Judgment is a significant defect which made the entry of judgment by confession improper since Pa. R.C.P. 2951(e) prohibits the entry of judgment in such circumstances unless authorized by the Court after notice to the Defendant. The Court, however, agrees that the Complaint may be amended to include the notes, which have now been filed if doing so does not adversely affect the rights of the Defendant. Under these principles it is determined the judgment entered August 16, 2001 should be stricken but that judgment under the amended Complaint should be entered as of the date of filing this Order with Defendant being allowed to proceed to assert any rights Defendant may have, with the applicable time limits commencing when notice of the entry of this Order and judgment are given.

Accordingly, the following Order will be entered.

### **ORDER**

1. The Defendant's Petition to Strike is GRANTED. The Judgment by Confession under the Notes entered on August 16, 2001 are STRICKEN.
2. Plaintiff's Motion to Amend the Complaint by including the notes filed October 31, 2001 is GRANTED and the Complaint is so amended, effective with the filing of this Order.

3. Judgment(s) as originally entered and as provided for in the Confession of Judgment attached to the Complaint shall be entered by the Prothonotary against Defendant upon the filing of this Order.
4. No additional service of the Complaint need be effected; however, the Prothonotary shall give notice of the entry of this Order and the entry of judgment as required by the applicable rules of civil procedure.
5. Defendant may proceed to assert any rights or remedies he may have, with any applicable time limit commencing effective with the giving of notice as directed above.

BY THE COURT,

William S. Kieser, Judge

cc: Sanford Kelson, Esquire  
Kelson & Slomski; 411 Seventh Avenue, Suite 1402A; Pittsburgh, PA 15219  
Allen E. Ertel, Esquire  
Judges  
Gary L. Weber, Esquire (Lycoming Reporter)  
Suzanne R. Lovecchio, Law Clerk