

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**SOVEREIGN BANK,
Plaintiff**

vs.

RICHARD BRUCE THATCHER,

* * * * *

**SOVEREIGN BANK,
Plaintiff**

vs.

**R. BRUCE THATCHER, DMD, PC,
Defendants**

:
: No. 06-00052; 06-00053
: 06-00057; 06-00304;

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: No. 06-00051; 06-00058;
: 06-00059

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ORDER

AND NOW, this ___ day of September 2007, the court DENIES Defendant's Petition to Open or Strike Confessed Judgments. Defendants have not set forth any defect on the face of the record to support striking the judgments. Defendants, however, contend that the judgments should be opened because Plaintiff improperly cashed forged checks written on one of their accounts when there were insufficient funds to cover the checks. Defendants rely on First Pennsylvania Bank, N.A. v. Lehr, 293 Pa.Super. 189, 438 A.2d 600 (Pa.Super. 1981) to support their assertion that their forgery claims constitute a meritorious defense. The court cannot agree.

In First Pennsylvania Bank a confessed judgment was entered against appellant pursuant to a warrant of attorney contained in a personal guaranty. Appellant claimed that the signature on the personal guaranty was not his and was a forgery. The Pennsylvania Superior Court found this claim raised a meritorious defense sufficient to open

the confessed judgment. Here, unlike the appellant in First Pennsylvania Bank, Defendants are not claiming that Dr. Thatcher's signatures on the loan documents were forged. Instead, the testimony presented by Defendants showed that Dr. Thatcher knew an employee stamped his signature on two checks without his authorization, and, despite that knowledge, Dr. Thatcher entered into a "bridge loan" with Plaintiff to cover the unauthorized checks. Defendants' evidence also showed that Plaintiff did not confess judgment against Defendants' other loans pursuant to a provision permitting default if the borrower defaults on any other loan with Plaintiff, but because Defendants stopped paying on all their loans with Plaintiff.

Although the court does not in any way condone Plaintiff honoring approximately \$40,000 in allegedly forged checks when there was only about \$4,000 in the account, the court finds Defendants' claims are unliquidated counterclaims or set-offs, which would not justify opening the confessed judgments. See Hopewell Estates, Inc. v. Kent, 435 Pa.Super. 471, 477, 646 A.2d 1192, 1195 (1994)("An unliquidated counterclaim or set-off cannot be asserted as a ground for opening a confessed judgment.").

By The Court,

Kenneth D. Brown,
President Judge

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