

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SPCP GROUP, LLC,	:	NO. 08 – 00,224
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
ASIF JAVAID,	:	Amendment of Confessed Judgment
Defendant	:	Petition to Strike/Open Confessed Judgment

OPINION AND ORDER

Before the Court is Defendant’s Petition to Strike/Open Confessed Judgment, filed March 3, 2008. Argument on the petition was heard April 15, 2008.

On February 6, 2008, Plaintiff filed a complaint for Confession of Judgment against Defendant as guarantor, in the amount of \$865,910.53, attaching a copy of the Promissory Note and Guaranty Agreement. The complaint alleges default of the note in the form of failure to make payments under the note, and seeks unpaid principal, interest, attorney’s fees and late charges. In the petition filed on March 3, 2008, Defendant seeks to both strike and open the confessed judgment.

In the petition to strike, Defendant contends the amount of attorney’s fees included in the judgment is not reasonable, and that a sale of the property¹ which secured the note and related mortgage should reduce the amount of the judgment. As both are issues of fact, neither is a proper basis for striking a confessed judgment. Resolution Trust Corporation v. Copley Qu-Wayne Associates, 683 A.2d 269 (Pa. 1996)(dispute regarding truth of factual averments contained in the record properly considered in petition to open confessed judgment rather than petition to strike). The petition to strike will therefore be denied.²

In the petition to open, Defendant contends the purchase of the property by LLB was an indirect purchase in violation of the Deficiency Judgment Act, the fair market value of the property exceeded the sale price, and thus no amount is due on the Guaranty.³ Specifically,

¹ On February 1, 2008, the property was sold at sheriff’s sale to Little League Baseball, Inc. (“LLB”) for \$588,500.

² Plaintiff’s counsel did agree at argument that Defendant should receive credit for the net proceeds of the sale, however, in the amount of \$515,675.92. Thus, while the petition to strike will be denied, the Court will amend the judgment to reflect this credit.

³ The Deficiency Judgment Act provides, in pertinent part, that whenever any real property is sold, directly or indirectly, to the judgment creditor in execution proceedings and the price for which the property has been sold is

Defendant alleges Plaintiff was an indirect purchaser because Plaintiff and LLB had “reached an agreement or an understanding in principal with regard to the purchase by LLB Inc. approximately equal to the bid price.” To succeed in opening the judgment, Defendant must not only allege a meritorious defense, but must also produce evidence which in a jury trial would require the issues to be submitted to the jury. Pa.R.C.P. 2959(e). Plaintiff has filed an Affidavit made by a consultant for the investment manager of SPCP Group denying any relationship between Plaintiff and LLB, denying any degree of control over LLB⁴ and denying any preexisting agreement between Plaintiff and LLB. Defendant has offered no evidence in response. Thus, even were the Court to conclude that a preexisting agreement regarding the bid price could render a sale an indirect purchase by the creditor, there is no basis upon which to open the judgment in this case.

ORDER

AND NOW, this 22nd day of April 2008, for the foregoing reasons, Defendant’s Petition to Strike/Open is hereby DENIED. The Judgment by Confession entered on February 6, 2008, shall be amended, however, to reflect a credit against that judgment in the amount of \$515,675.92, and proper notice of that amendment shall be provided by the Clerk of Courts pursuant to Pa.R.C.P. 236.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Timothy P. Palmer, Esq., Buchanan Ingersoll & Rooney, PC
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Hon. Dudley Anderson
Prothonotary

not sufficient to satisfy the amount of the judgment, interest and costs, if the creditor seeks to collect the balance due the court must be petitioned to set the fair market value. 42 Pa.C.S. Section 8103(a).

⁴ In First Federal Savings & Loan Association of Carnegie v. Keisling, 746 A.2d 1150, 1156 (Pa. Super. 2000)(emphasis added), the Superior Court held that a sale of real property at execution may be deemed an indirect sale to the judgment creditor “whenever the purchaser stands in a degree of relation to the creditor’s counsel that effectively allows the creditor, acting through counsel, to exercise control over the property.”