

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

FIRST NATIONAL BANK OF PENNSYLVANIA,	:	NO. 09 – 00,976
Successor by merger to Northern State Bank and The	:	
Legacy Bank,	:	
Appellee	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DAVID M. SHIRN and MAXINE A. SHIRN,	:	
Appellants	:	

OPINION IN SUPPORT OF ORDER OF AUGUST 31, 2009,
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Appellants appeal from this Court’s Order of August 31, 2009, which denied their petition to strike off or open a confessed judgment. In denying the petition, the Court found no fatal defect appearing on the face of the record, and, further, found that Appellants did not present a meritorious defense. The instant opinion is written to provide clarification with respect to those findings.

In the petition to strike off, Appellants claim that the judgment is irregular because on or before January 1, 2009, they attempted to make a partial payment on the principal balance due but such tender was refused by Appellee, that such refusal constitutes a waiver of the right to seek interest and penalties from that point forward, and that entry of the judgment was for an amount greater than the amount which appears to be due from the instrument with interest computable from the instrument. Since the instrument indicates that a default includes failing to make a *payment in full* when due,¹ however, refusal to accept a partial payment does not constitute a waiver of the right to seek interest and penalties from that point forward, and the judgment is not for an amount greater than that which appears to be due from the instrument.²

In the petition to open, Appellants contend the failure to accept the alleged tender of partial payment constitutes a breach of the underlying agreement. As was already stated, however, anything less than payment in full when due constitutes a default. Thus, Appellants’

1 See Paragraph 9A on page 2 of Exhibit A, attached to the Complaint in Confession of Judgment.
2 The Court also notes that since the alleged tender and refusal does not appear on the face of the instrument, it cannot serve as a basis for a claim of a “fatal defect appearing on the face of the record.”

defense is without merit and their request to open the confessed judgment was therefore denied.

Dated: September 18, 2009

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Fred Holland, Esquire
Philip Sunderland, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson