

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JERSEY SHORE STATE BANK,	:	
Plaintiff	:	DOCKET NO. 08-02600
	:	CIVIL ACTION – LAW
vs.	:	
	:	
KEVIN L. JOHNSON,	:	
Defendant	:	

ORDER

AND NOW, this 12th day of March, 2012, following oral argument on Defendant’s Motion to Strike and/or Open Confession of Judgment, it is hereby ORDERED and DIRECTED that Defendant’s motion is DISMISSED. This Court finds Defendant’s motion to be untimely.

A brief factual history of this matter is as follows: on September 13, 2002, Defendant executed a Promissory Note, Mortgage, Security Agreement and Surety Agreement in favor of Plaintiff. On November 12, 2008, Plaintiff filed a Complaint in Confession of Judgment against Defendant. In that complaint, Plaintiff provided that “[a]ny judgment entered as a result of this action is not being entered by confession against a natural person in connection with a consumer credit transaction.” Complaint, 1. Plaintiff attached to that complaint a Notice of Judgment and Execution Thereon, pursuant to Pa. R.C.P. 2958.1.¹ On November 12, 2008, Judgment by Confession was entered against Defendant in favor of Plaintiff. On November 18, 2008, the Sheriff’s Department of Clinton County, Pennsylvania, served Defendant with that complaint and its attached notice.

¹ That notice stated, in part, that Defendant “may have legal rights to defeat the judgment or to prevent your money or property from being taken. **YOU MUST FILE A PETITION SEEKING RELIEF FROM THE JUDGMENT AND PRESENT IT TO A JUDGE WITHIN THIRTY (30) DAYS AFTER THE DATE ON WHICH THIS NOTICE IS SERVED ON YOU OR YOU[R] MAY LOSE YOUR RIGHTS.**” Notice, 1-2.

Generally, the Pennsylvania Rules of Civil Procedure that relate to confession of judgment for money, Pa. R.C.P. 2950-67, govern this action. Particularly, Pa. R.C.P. 2959 governs the striking or opening judgments. That rule provides that:

(a)(1) Relief from a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

....
(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), 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.

Pa. R.C.P. 2959.

In this instance, relief was properly sought in this Court because the judgment was originally entered in Lycoming County. However, Defendant's petition must be denied because it was not filed within thirty days, as required by Pa. R.C.P. 2959. In order to apply the time constraints of Pa. R.C.P. 2959(a)(3), this Court must determine that the confessed judgment in this case is not void. This Court holds that the confessed judgment in this case is valid and that the time constraints to strike and or open the judgment should be applied.

In *M & P Management, L.P. v. Williams*, 937 A.2d 398 (Pa. 2007), our Supreme Court held that Pa. R.C.P. 2959(a)(3) does not apply to void confessed judgments. In that case, the lower court dismissed Defendant's petition to strike a confessed judgment. *Id.* at 400. The lower court dismissed Defendant's petition because Defendant filed it two years after he was served with a writ of execution and a notice of sheriff's sale. *Id.* The lower court held that the timeliness provisions of Pa. R.C.P. 2959 are conclusive for void, voidable, and valid judgments. *Id.* at 400. Our Supreme Court disagreed; our Supreme Court remanded the case for a

determination of whether the judgment as issue was void. *Id.* at 399. That Court reasoned that “a void judgment is one that the court does not have power to enter. It cannot become valid through the lapse of time.” *Id.* at 401. Therefore, our Supreme Court held that the lower court must make a determination of the status of the confessed judgment before applying the timeliness provisions of Pa. R.C.P. 2959(a)(3).

In this instance, the confessed judgment is valid. Defendant argues that the judgment is invalid because Plaintiff did not follow the Pennsylvania Deficiency Judgment Act, 42 Pa. C.S.A. § 8103. This Court finds that the Pennsylvania Deficiency Judgment Act does not apply in this case because this case pertains to a deed in lieu of foreclosure and the act does not apply in deed in lieu of foreclosure transactions. *PNC Bank v. Balsamo*, 634 A.2d 645, 653 (Pa. Super. Ct. 1993).

In short, on November 18, 2008, the Sheriff’s Department of Clinton County, Pennsylvania, served Defendant with Plaintiff’s complaint for a confessed judgment and its attached notice. Defendant failed to file his petition to strike and/or open the judgment within the statutorily prescribed thirty-day period. Defendant did not provide to this Court any evidence that justified his failure to file his petition for over three years. Thus, this Court finds Defendant’s petition untimely, and it is therefore DISMISSED.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Michael J. Casale, Jr., Esquire
Jacqueline A. Kramer, Esquire
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