

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL

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NORTH POINT I CONDOMINIUM OWNERS ASSOCIATION	:	February Term, 2017
	:	Case No. 05509
	:	
<i>Plaintiff</i>	:	
v.	:	Commerce Program
	:	
HARRY BURNEY	:	
	:	
<i>Defendant</i>	:	Control No. 18070772

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**ORDER**

AND NOW, this 17<sup>th</sup> day of July, 2018, upon consideration of defendant's petition to stay execution proceedings and plaintiff's response in opposition, it is **ORDERED** that the judgment entered by confession is **STRICKEN**.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

DOCKETED  
JUL 17 2018  
P. MOORE  
DAY FORWARD

North Point I Condomini-ORDOP



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**MEMORANDUM OPINION**

Plaintiff is North Point I Condominium Association (the “Association”), an entity based in Ridley Park, Pennsylvania. Defendant is Harry Burney (“Mr. Burney”), an individual residing in Philadelphia Pennsylvania. The address of Mr. Burney is listed as 3850 Woodhaven Road, at condominium unit No. 904. Mr. Burney is a member of the Association.

The complaint-in-confession-of-judgment alleges that Mr. Burney failed to pay to the Association certain required monthly condominium fees. Following this original alleged breach, the Association and Mr. Burney entered into a subsequent Settlement Agreement whereby Mr. Burney promised to pay the amounts owed. The Settlement Agreement contains a warrant-of-attorney to confess judgment against Mr. Burney.<sup>1</sup>

The complaint-in-confession-of-judgment further alleges that Mr. Burney has failed to make payments upon the subsequently-executed Settlement Agreement; therefore, the Association confessed judgment against him on February 21, 2017.

On July 7, 2018, Mr. Burney filed a petition to stay execution proceedings. On July 10, 2018, this court issued an order instructing the Association to file a response in opposition to the petition to stay execution, and an affidavit of non-consumer transaction, in adherence with Pa. R.C.P. 2952(a)(3). In addition, this court stayed any execution proceedings until further Order.

On July 12, 2018, the Association filed an affidavit of non-consumer transaction together with a response in opposition to the petition to stay execution. In the response, plaintiff admits that the confessed judgment “arises out of a breach of contract related to

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<sup>1</sup> Settlement Agreement, Exhibit A to the complaint.

the failure of ... [Mr. Burney] to pay homeowner dues and assessments.”<sup>2</sup> Based on this admission, the court strikes on its own motion the confessed judgment of plaintiff.

The Pennsylvania Rules of Civil Procedure instruct that in the context of judgments entered by confession, the term *action* means—

a proceeding to enter judgment by confession for money pursuant to an instrument, **other** than an instrument executed by a natural person in connection with a consumer credit transaction...

[C]onsumer credit transaction means a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property, or services which are the subject of the transaction are primarily for personal, family or household use.<sup>3</sup>

In addition, our Pennsylvania Supreme Court has stated that—

historically[,] void confessed judgments could be stricken off or opened at any time as they were considered a legal nullity because the court lacked subject matter jurisdiction over the matter.... [A] void judgment is a mere blur on the record, and which **it is the duty of the court of its own motion to strike off, whenever its attention is called to it...**

The policy reasons behind this disparate treatment are clear: it is in the public interest for judgments to be final. However, sound public policy cannot create jurisdiction. Accordingly, where the court lacked jurisdiction, as it does when it enters a void confessed judgment, that court cannot enter a valid judgment, no matter how much time has passed.<sup>4</sup>

In this case, the Rules of Civil Procedure specifically instruct that judgment by confession may not be entered against a natural person in connection with a consumer

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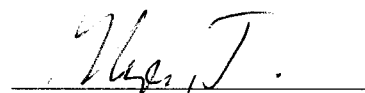
<sup>2</sup> Response in opposition to the petition to stay execution, ¶ 1.

<sup>3</sup> Pa. R.C.P. 2950 (emphasis supplied).

<sup>4</sup> *M & P Mgmt., L.P. v. Williams*, 937 A.2d 398, 400–01 (Pa. 2007) (emphasis supplied) (explaining that a judgment entered by confession is void, and the trial court lacked subject matter jurisdiction to enter the judgment as confessed, where an amendment to the original instruments contained no warrants-of-attorney but merely attempted to republish the prior warrants with generic language of ratification).

credit transaction.<sup>5</sup> Here, plaintiff has filed on one hand an affidavit of non-consumer transaction, yet, on the other, has admitted that the instant judgment arises out of Mr. Burney's "failure ... to pay homeowner dues and assessments."<sup>6</sup> This admission convinces the court that judgment was entered by confession in connection with a consumer credit transaction: this is particularly so considering that the condominium unit involved in the instant matter is located at the same address identified in the complaint as the residence of defendant. The court reaches this conclusion because payment of condominium fees is primarily personal in nature and related to family and household purposes.<sup>7</sup> In conclusion, the judgment entered by confession is fatally flawed and thus void because the judgment was filed upon an instrument which had been executed by a natural person in connection with a consumer transaction. Since the judgment is void, this court lacks jurisdiction over the matter, and the judgment is stricken on the court's own motion.

**BY THE COURT,**

  
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**GLAZER, J.**

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<sup>5</sup> Pa. R.C.P. 2950.

<sup>6</sup> Response in opposition to the petition to stay execution, ¶ 1.

<sup>7</sup> See, e.g. *Willits v. Fryer*, 734 A.2d 425, 427 (Pa. Super. 1999) (finding that a promissory note agreement was a consumer credit transaction where the note, executed by debtors in favor of creditors, arose out of the purchase by debtors of a residential home).