

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KRISTOPHER PAUL HOCHENDONER,
Petitioner

vs.

MICHAEL J. KING, EXECUTOR OF THE
ESTATE OF JAMES E. KING,
Respondent

On Petition for a Writ of Certiorari to the
Supreme Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

MICHAEL S. GEISLER, ESQUIRE
Counsel of Record
1100 Penn Center Blvd., Suite 704
Pittsburgh, PA 15235
Phone: (412) 613-2133
E-Mail: m.s.geisler@att.net

QUESTIONS PRESENTED

- I. WHETHER THE SUPREME COURT OF PENNSYLVANIA VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION WHEN IT FAILED TO SET ASIDE THE SHERIFF'S SALE OF THE PETITIONER'S PROPERTY FOR A LACK OF SUBJECT MATTER JURISDICTION FOR FAILURE TO PROPERLY PLEAD SENDING OF A NOTICE OF DEFAULT?

PARTIES TO THE PROCEEDING

The Petitioner is Kristopher Paul Hochendoner.

The Respondent is Michael J. King, Executor of The Estate of James E. King.

TABLE OF CONTENTS

QUESTION PRESENTED	-ii-
PARTIES TO THE PROCEEDING	-iii-
TABLE OF CONTENTS.....	-iv-
TABLE OF AUTHORITIES	-v-
OPINIONS BELOW	-1-
BASIS OF JURISDICTION	-2-
STATEMENT OF THE CASE.....	-3-
REASONS FOR GRANTING THE WRIT	-4-
CONCLUSION.....	-9-
APPENDIX:	
ORDER OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY PENNSYLVANIA.....	-10-
OPINION OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA.....	-14-
OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA.....	-23-
ORDER OF THE SUPREME COURT OF PENNSYLVANIA.....	-33-

TABLE OF AUTHORITIES

Statutes

28 U.S.C. Section 1257 (a)	-2-
Pa.R.C.P. 2952	-4-
Pa.R.C.P. 2952(a)(6).....	-4-

Cases

<i>Dime Bank v. Andrews</i> , 115 A.3d 358 (2015)	-4-
<i>Green Acres Rehab. & Nursing Ctr. v. Sullivan</i> , 113 A.3d 1261, 1268 (Pa.Super.2015)	-6-
<i>Commonwealth v. Jones</i> , 593 Pa. 295, 929 A.2d 205, 208 (2007)	-6-
<i>Turner Const. v. Plumbers Local 690</i> , 130 A.3d 47, 63 (Pa.Super.2015)	-6-
<i>S.K.C. v. J.L.C.</i> , 94 A.3d 402, 406 (Pa.Super.2014)	-6-
<i>Romberger v. Romberger</i> , 290 Pa. 454, 457, 139 A. 159, 160 (1927)	-7-
<i>Clarion, M. & P. R. Co. v. Hamilton</i> , 127 Pa. 1, 3, 17 A. 752 (1889)	-7-
<i>Comm. ex rel. Penland v. Ashe</i> , 341 Pa. 337, 341, 19 A.2d 464, 466 (1941)	-7-

<i>33 C.J.S. Execution ss 6, 230, 299a (1942);</i>	
<i>Restatement, Judgments s 115, comment j (1942)</i>	
<i>and Pennsylvania Annotations</i>	<i>-8-</i>
<i>3 American Law of Property ss 13.1, 18.60 (1952). .</i>	<i>-8-</i>
<i>Harris v. Harris, 428 Pa. 473, 239 A.2d 783 (1968)</i>	<i>-8-</i>
<i>Caldwell v. Walters, 18 Pa. 79, 55 Am.Dec. 592, 6</i>	
<i>Harris 79 (1851).....</i>	<i>-8-</i>

OPINIONS BELOW

The trial Court's order, from the Court of Common Pleas of Westmoreland County, Pennsylvania, denying Petitioner's Petition to Set aside the Sheriff's Sale, entered on June 7, 2023, is attached hereto as Appendix A-1.

The trial court's opinion, from the Court of Common Pleas of Westmoreland County, Pennsylvania, denying Petitioner's Petition to Set aside the Sheriff's Sale, entered on August 17, 2023, is attached hereto as Appendix A-2.

The non-precedential opinion that the Superior Court of Pennsylvania, affirming the trial court's denial of the Petitioner's Petition to Set Aside the Sheriff's Sale, entered on March 26, 2024, is attached hereto as Appendix A-3.

The Order of the Supreme Court of Pennsylvania, denying the Petition of Allowance of Appeal, entered on October 2, 2024, is attached hereto as Appendix A-4.

BASIS OF JURISDICTION

This is an appeal from an Order from the Supreme Court of Pennsylvania, at Case No. 142 WAL 2024, dated October 2, 2024, denying the Petitioner's Petition for Allowance of Appeal. This court has jurisdiction under 28 U.S.C. Section 1257 (a):

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

Petitioner is the Defendant, Kristopher Paul Hochendoner, and is the owner of 866 State Rt 31, Ruffsedale, PA 15688. Respondent is the Plaintiff, Michael J. King, Executor of the Estate of James E. King. On 2/16/2022, the Respondent filed a Complaint in Confession of Judgment against the Petitioner. On 9/12/2022, the Respondent entered a Judgment against the Petitioner. On 9/12/2022, the Respondent obtained a Writ of Execution against the Defendant. The Plaintiff scheduled a Sheriff's Sale for 1/3/2023 at 9:00 a.m.. The Sheriff then sold the property at the sale for costs and taxes to the Plaintiff. Petitioner brought a Petition to Set Aside Sheriff's Sale which was denied by the Court of Common Pleas of Westmoreland County, Pennsylvania. Petitioner appealed to Superior Court who affirmed the lower Court. Petitioner petitioned to the Pennsylvania Supreme Court for allowance of an appeal which was denied. Petitioner petitions to this Court.

REASONS FOR GRANTING THE WRIT

1. THE SUPREME COURT OF PENNSYLVANIA VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION WHEN IT FAILED TO SET ASIDE THE SHERIFF'S SALE OF THE PETITIONER'S PROPERTY FOR A LACK OF SUBJECT MATTER JURISDICTION FOR FAILURE TO PROPERLY PLEAD SENDING OF A NOTICE OF DEFAULT.

A judgment by confession will be stricken if notice to cure is not sent in conformity with the lease or loan documents. Pa.R.C.P 2952 provides, in relevant part, that a complaint in confession of judgment based upon an agreement that subjects confession of judgment proceedings to a condition precedent must include "an averment of the default or of the occurrence of the condition precedent." Pa.R.C.P. 2952(a)(6). *Dime Bank v. Andrews*, 115 A.3d 358 (2015).

Paragraph 9 of the Note required as a condition precedent to obtaining a confession of judgment, the sending of a Notice of Default thirty days prior to the exercise of the warrant of attorney as follows:

“If there exists an event of default as defined in this note which remains uncured thirty (30) days after written notice thereof is given by lender to the maker (of which an affidavit on behalf of lender shall be sufficient evidence), then the maker hereby irrevocably authorizes and empowers any attorney of any court of record in the Commonwealth of Pennsylvania, or elsewhere, to appear for and to enter and confess judgment against the maker, at any time or times and as of any term, for the principal sum above mentioned, with or without declaration, with interest and costs of suit, without stay of execution, and with reasonable attorney's fees. The maker agrees that any of its property may be levied upon to collect said judgment and may be sold upon a writ of execution...”

Nowhere in the Complaint does it state that notice of default was sent. The Complaint in Confession does not contain the pleading of the sending of a Notice of Default.

The Court has no authority to enter judgment. The failure to serve the Petitioner or give him notice deprives this court of personal and subject matter jurisdiction. Subject matter jurisdiction “relates to the competency of the individual court, administrative body, or other tribunal to determine controversies of the general class to which a particular case belongs.” *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1268 (Pa.Super.2015).

“[S]ubject matter jurisdiction [is] not susceptible to waiver.” *Commonwealth v. Jones*, 593 Pa. 295, 929 A.2d 205, 208 (2007). *Turner Const. v. Plumbers Local 690*, 130 A.3d 47, 63 (Pa.Super.2015) (“[W]e can raise the issue of jurisdiction sua sponte[.]”). “It is hornbook law that as a pure question of law, the standard of review in determining whether a trial court has subject matter jurisdiction is de novo and the scope of review is plenary.” *S.K.C. v. J.L.C.*, 94 A.3d 402, 406 (Pa.Super.2014).

The judgment is void and should be stricken. 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. *Romberger v. Romberger*, 290 Pa. 454, 457, 139 A. 159, 160 (1927) (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”). *Clarion, M. & P. R. Co. v. Hamilton*, 127 Pa. 1, 3, 17 A. 752 (1889) (“a void judgment is no judgment at all”). A void judgment is one that the court does not have the power to enter. It cannot become valid through the lapse of time. *Comm. ex rel. Penland v. Ashe*, 341 Pa. 337, 341, 19 A.2d 464, 466 (1941) (“It is certainly true that a void judgment may be regarded as no judgment at all; and every judgment is void, which clearly appears on its own face to have been pronounced by a court having no jurisdiction or authority in the subject matter.”) Void judgments are to be treated in the same way that they were treated at common law, i.e., at any time that a void judgment is brought to the attention of the court, it must be stricken.

If the execution sale was based upon a voidable judgment, a bona fide purchaser will be protected against actions seeking to recover the purchased property. On the other hand, where a void judgment is the basis for an execution sale, one who purchases property will not acquire title even if a bona fide purchaser for value. See *33 C.J.S. Execution* ss 6, 230, 299a (1942); *Restatement, Judgments* s 115, comment j (1942) and *Pennsylvania Annotations; 3 American Law of Property* ss 13.1, 18.60 (1952). *Harris v. Harris*, 428 Pa. 473, 239 A.2d 783 (1968). *Caldwell v. Walters*, 18 Pa. 79, 55 Am.Dec. 592, 6 Harris 79 (1851).

The Petitioner has not received due process as guaranteed by the Fourteenth Amendment of the Constitution. Proper Notice of Default as required by the Agreement was not given or pled on the Complaint in Confession of Judgment. The Supreme Court of Pennsylvania failed to enforce its Rules requiring it. The judgment was void and should not have been enforced because of a lack of subject matter jurisdiction.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted, and the judgment of the Supreme Court of Pennsylvania should be reversed.

Respectfully submitted,
/s/ Michael S. Geisler

MICHAEL S. GEISLER, ESQUIRE
1100 Penn Center Blvd., Suite 704
Pittsburgh, PA 15235
Telephone: (412) 774-0575
Attorney for Petitioner
Khristopher Paul Hochendoner

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION-LAW

MICHAEL J. KING,)	
EXECUTOR OF THE)	
ESTATE OF JAMES E.)	
KING,)	
Plaintiff,)	
vs.)	No. 536 JU 2022
)	
KRISTOPHER PAUL)	
HOCHENDONER,)	
Defendant.)	

ORDER OF COURT

AND NOW, to wit this 7th day of JUNE, 2023,
with a hearing scheduled on Defendant's Petition to
Set Aside Sheriffs Sale; with counsel for Plaintiff and
Defendant appearing and indicating that they did not
need to present testimony and the matter could be
decided on oral argument; with Plaintiffs counsel
indicating that Defendant's petition was timely filed

and prior to the recording of a deed; with the Court reviewing the docket, the arguments presented, and the applicable law; upon careful consideration, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. "A petition to set aside a sheriff's sale is grounded in equitable principles and is addressed to the sound discretion of the hearing court. The burden of proving circumstances warranting the exercise of the court's equitable powers is on the petitioner [...]." Kaib, Jr. v. Smith, 684 A.2d 630, 631 (Pa. Super. 1996). This includes the "burden of showing inadequate notice resulting in prejudice [...]." Id.
2. Defendant, as petitioner, failed to satisfy his burden of proof as to either basis for his request to set aside the sheriffs sale.
 - a. The argument regarding notice in accordance with the loan documentation was not raised until Defendant filed his memorandum of law on June 6, 2023. He never raised the failure to provide the

notice in a petition to open or strike the judgment. Also, Defendant did not establish prejudice that resulted from not receiving the notice, as he did receive all notices required pursuant to the Pennsylvania Rules of Civil Procedure for Confession of Judgments. Further, Plaintiff raised a factual dispute at the time of argument as to whether that notice was in fact provided.

- b. Defendant failed to satisfy his burden to establish that the Act 6 and Act 91 notices were required, as the property at issue was not residential and the notices apply to residential properties.
3. As a result of Defendant's failure to satisfy his burden, there is no basis for this Court to exercise its equitable powers to set aside the sheriffs sale. Defendant's Petition to Set Aside Sheriffs Sale is DENIED.

BY THE COURT:

/s/ Judge Rita Donovan Hathaway

Judge Rita Donovan Hathaway

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL DIVISION-LAW

MICHAEL J. KING,)	
EXECUTOR OF THE)	
ESTATE OF JAMES E.)	
KING,)	
Plaintiff,)	
vs.)	No. 536 JU 2022
)	
KRISTOPHER PAUL)	
HOCHENDONER,)	
Defendant.)	

1925 (A) OPINION

BY THE COURT:
(Opinion of Hathaway, J.)

Facts/Procedural History

Plaintiff, Michael J. King, as Executor of the Estate of James E. King, filed a Complaint in Confession of Judgment against Defendant, Kristopher Paul

Hochendoner, on February 16, 2022. Plaintiff alleged that James E. King loaned Defendant \$90,000 pursuant to a note dated October 12, 2020. Plaintiff attached the note as an exhibit to the Complaint.

The Westmoreland County Prothonotary entered judgment on February 16, 2022 in the amount of \$89,853.26 with interest, costs, and attorney fees. Notice of the Judgment was sent to Defendant. Defendant never filed a petition to open or strike the judgment. A Writ of Execution was then issued on September 12, 2022, seeking a lis pendens against Defendant's real property and scheduling a sheriffs sale for January 3, 2023. An Affidavit of Service dated November 14, 2022 indicated that Defendant was personally served with notice of the Sheriff's Sale. Notice was also posted by the Westmoreland County Sheriffs Office at the front door of Defendant's property. Defendant still did not file a petition to open or strike the confessed judgment, or to prevent the sheriffs sale.

On January 24, 2023, Defendant filed a Petition to Set Aside Sheriffs Sale. A rule to show cause was issued as to why the relief should not be granted, and

Plaintiff filed an answer to the rule. Oral argument was held, with counsel for both parties appearing. After a review of the record, this Court issued an Order dated June 7, 2023 denying Defendant's petition. This appeal followed, and Defendant alleged in his 1925(b) Statement that the rules for Complaint in Confession of Judgment and Execution were not properly followed, that Plaintiff did not give proper notice and denied Defendant his due process rights, and that Act 6 and Act 91 notices were not provided prior to filing the complaint. The following is this Court's opinion supporting the June 7, 2023 Order of Court.

Scope and Standard of Review

"A petition to set aside a sheriffs sale is grounded in equitable principles and is addressed to the sound discretion of the hearing court." *Kaib, Jr. v. Smith*, 684 A.2d 630, 631 (Pa. Super. 1996). "[The Superior] court will not reverse the trial court's decision absent a clear abuse of discretion. *Id.*

Decision

Although Defendant alleged that Plaintiff failed to

comply with the rules for a Complaint in Confession and Execution, Defendant did not provide this Court with any specifics as to which rule or rules Plaintiff allegedly violated. Pa. R.C.P. 2951 states that the action is commenced by filing a complaint that conforms with Pa. R.C.P. 2952. Plaintiff's complaint did conform with this rule. As a result, the Westmoreland County Prothonotary's Office was required to "enter judgment in conformity with the confession." *Pa. R.C.P. 2956.*

In addition, Defendant was not denied due process because the docket establishes that proper notice was provided in accordance with the rules. As to the Complaint to Confess Judgment, the rules do not set forth a notice requirement, except for loans that are more than twenty years old, which this loan was not. In fact, unlike in regular civil actions, the rules do not allow a plaintiff to attach to the complaint a notice to defend or a notice to plead, and a responsive pleading is not required. *Pa. R.C.P.2952(b)*. Once judgment is entered, the Prothonotary's Office must then give notice of the entry of judgment pursuant to Pa. R.C.P. 236, which was done in this case and evidenced by a document

signed by Gina O. Barto of the Westmoreland County Prothonotary's Office. Once the Writ of Execution was issued on September 12, 2022, which scheduled the January 3, 2023 Sheriffs Sale, affidavits of service were provided showing personal service and posting at the property.

Even if there was a notice requirement, Defendant waived any right to that notice pursuant to the terms of the note. In bold, capital letters, the note states:

"The following paragraph sets forth a warrant of authority for an attorney to confess judgment against maker. Except as specifically provided herein, in granting this warrant of attorney to confess judgment against the maker, the maker hereby **knowingly, intentionally and voluntarily, and, on the advice of the separate counsel of the maker, unconditionally waives any and all rights the maker has or may have to prior notice** and an opportunity for hearing under the respective

constitutions and laws of the United States and the Commonwealth of Pennsylvania." (emphasis added)

Defendant relies on an additional paragraph of the note which states that Plaintiff is required to give thirty (30) days-notice of a default before having authorization to proceed with a confession of judgment. The paragraph states:

"If there exists an event of default as defined in this note which remains uncured thirty (30) days after written notice thereof by lender to maker (of which an affidavit on behalf of lender shall be sufficient evidence), then the maker hereby irrevocably authorizes and empowers any attorney [...], to appear for and to enter and confess judgment against the maker [...].

However, this Court did not find this argument compelling in light of the previously cited waiver language and a separate Disclosure for Confession of

Judgment signed by Defendant. In paragraph A of the disclosure, it is clearly stated that

"Borrower understands that the note contains a confession of judgment provision that would permit lender to enter a joint and several judgment against borrower in court, **after a default on the note, without advance notice to defend against the entry of judgment.** which states that he waived "any right to advance notice of the entry of judgment" (emphasis added)

Defendant had the burden to prove circumstances warranting the exercise of this court's equitable powers, including the burden of showing inadequate notice resulting in prejudice. *Kaib Jr., v. Smith*, 684 A.2d 630, 631 (Pa. Super. 1996). Even if Defendant did not get a thirty- day notice that he defaulted on the loan, that fact alone was not sufficient to show prejudice.

Defendant knew he signed a note with a

confession of judgment clause and a separate disclosure addressing a confession in judgment, both of which waived all forms of notice. Further, the only person that would have had knowledge of a default other than Plaintiff would have been Defendant himself. Defendant would have known that he failed to make a payment without Plaintiff telling him that he missed a payment. Therefore, this Court did not abuse its discretion in finding that Plaintiff provided sufficient notice within the rules and within the terms of the parties' agreement.

Finally, Defendant argues that he was entitled to Act 6 and Act 91 notices. However, Defendant only cites to 41 P.S. §407 to support this position. That provision relates to residential real property, and the property at issue in this case was commercial, not residential.

Defendant did not provide anything of record to establish that the property at issue was residential. Therefore, this Court did not abuse its discretion in finding that the Act 6 and Act 91 notices were not required.

Conclusion

As set forth above, there was sufficient evidence of record to establish that Plaintiff complied with all rules and agreement terms regarding notice to Defendant. The confession of judgment was properly entered, and this Court did not abuse its discretion in denying Defendant's Petition to Set Aside the Sheriffs Sale. Therefore, Defendant's appeal should be dismissed.

Respectfully Submitted:

/s/ Judge Rita Donovan Hathaway

Judge Rita Donovan Hathaway

8/17/2023

**NON-PRECEDENTIAL OPINION – SEE
SUPERIOR COURT O.P. 65.37**

MICHAEL J. KING	:	IN THE SUPERIOR
EXECUTOR OF THE	:	COURT OF
JAMES E. KING	:	PENNSYLVANIA
vs	:	
KRISTOPHER PAUL	:	No. WDA 2023
HOCHENDONER	:	

Appeal from the Order Entered June 7, 2023
In the Court of Common Pleas of Westmoreland
County Civil Division at No(s): No. 536 of 2022

BEFORE: PANELLA, P.J.E., KING, J., and
BENDER, P.J.E.

MEMORANDUM BY PANELLA, P.J.E.:

FILED: March 26, 2024

Kristopher Paul Hochendoner brings this appeal from the order denying his petition to set aside sheriff's sale in this confession of judgment action initiated by Michael J. King, Executor of the Estate of James E. King. Upon careful review, we affirm.

On October 12, 2020, Hochendoner secured a \$90,000.00 loan from King. The purpose of the loan

was to assist Hochendoner in the purchase of commercial real property from King, which contained a one-story building used as a restaurant. The note executed by Hochendoner contains a five- paragraph confession of judgment provision. In addition, on October 12, 2020, Hochendoner also executed a separate disclosure for confession of judgment. After execution of the note, King conveyed the property to Hochendoner.

Due to Hochendoner's default for failure to make monthly payments under the terms of the note, King filed a complaint in confession of judgment on February 16, 2022. The complaint indicated that, as of January 30, 2022, the amount due and owing by Hochendoner was \$89,855.26, plus interest at the default rate, costs, and attorney's fees. On February 16, 2022, the Westmoreland County Prothonotary entered judgment in favor of King and sent notice of the entry of judgment to Hochendoner.

On September 12, 2022, King filed a writ of execution and notice of judgment of execution. On November 10, 2022, a process server/constable personally served Hochendoner with notice of judgment and execution and of the scheduled sheriff's sale. In addition, the Westmoreland County Sheriff posted notice of the sheriff's sale on the front door or

the property on November 15, 2022.

On January 3, 2023, the sheriff sold the property to King for costs and taxes. Hochendoner filed a petition to set aside the sheriff sale on January 24, 2023. The trial court entered an order directing King to show cause why relief should not be granted and setting a hearing date. King filed a timely answer. On June 7, 2023, the trial court received oral argument and denied Hochendoner's petition to set aside the sheriff's sale. This timely appeal followed. Both Hochendoner and the trial court complied with Pa.R.A.P. 1925. In his sole issue, Hochendoner argues that he was not given proper notice and was denied due process. *See* Appellant's Brief, at 11-12. He contends that King failed to provide him with a default notice prior to seeking confession of judgment. *See id.* at 12. Hochendoner posits that "[t]he failure to serve [him] notice deprives [the] court of personal and subject matter jurisdiction and any subsequent execution should be set aside." *Id.*

Generally, we observe that Pennsylvania Rule of Civil Procedure 3132 governs petitions to set aside sheriff's sales, and provides as follows:

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause

shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Pa.R.C.P. 3132.

Our Supreme Court has long held that petitions to set aside sheriff's sale are governed by equitable principles. *See Doherty v. Adal Corp.*, 261 A.2d 311, 313 (Pa. 1970). Equitable principles are applied to sheriff's sales because "[t]he purpose of a sheriff's sale in mortgage foreclosure proceedings is to realize out of the land, the debt, interest, and costs which are due, or have accrued to, the judgment creditor." *Kaib v. Smith*, 684 A.2d 630, 632 (Pa. Super. 1996). Moreover, we are mindful that the petitioner has the burden of proving circumstances warranting the exercise of the trial court's equitable powers. *See Bornman v. Gordon*, 527 A.2d 109, 111 (Pa. Super. 1987). As a general rule, the burden of proving circumstances warranting the exercise of the court's equitable powers is on the applicant, and the application to set aside a sheriff's sale may be refused because of the insufficiency of proof to support the material allegations of the application, which are generally required to be established by clear evidence. *See id.* This Court will not reverse the trial court's decision absent an abuse of discretion. *See id.* An

abuse of discretion occurs where, for example, the trial court misapplies the law. *See Bank of America, N.A. v. Estate of Hood*, 47 A.3d 1208, 1211 (Pa. Super. 2012).

We are mindful that Pa.R.C.P. 2959 provides, in part, that “[r]elief from a judgment by confession shall be sought by petition,” and “all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition.” Pa.R.C.P. 2959(a)(1). If written notice of the entry of the confession of judgment is sent to the defendant, the petition to open or strike must be filed within thirty days of the entry of the judgment.¹ *See* Pa.R.C.P. 2959(a)(3). “A party waives all defenses and objections which are not included in the petition or answer.” Pa.R.C.P. 2959(c). Here, regarding the confession of judgment, the trial court observed, “Pa.R.C.P. states that the action is commence by filing a complaint that conforms with

¹ We note our courts have held the thirty-day deadline for filing a petition to strike or open a confessed judgment does not run from the date that the judgment or writ of execution is filed. *See Magee v. J.G. Wentworth & Co.*, 761 A.2d 159, 161 (Pa. Super. 2000). Rather, it begins to run when the defendant is served with written notice of execution. *See* Pa.R.C.P. 2959(a)(3); *Magee*, 761 A.2d at 161.

Pa.R.C.P. 2952. [King's] complaint did conform with this rule. As a result, the Westmoreland County Prothonotary's Office was required to enter judgment in conformity with the confession.' Pa.R.C.P. 2956." Trial Court Opinion, 8/17/23, at 2-3. Concerning notice to Hochendoner, the trial court further explained, "As to the Complaint to Confess Judgment, the rules do not set forth a notice requirement [prior to filing of the complaint or entry of judgment], except for loans that are more than twenty years old, which this loan was not." *Id.* at 3. The court then expounded, "unlike in regular civil actions, the rules do not allow a plaintiff to attach to the complaint a notice to defend or a notice to plead, and a responsive pleading is not required. Pa.R.C.P. 2952(b)." *Id.* The trial court correctly noted that "[o]nce judgment is entered, the Prothonotary's Office must then give notice of entry of judgment pursuant to Pa.R.C.P. 236, which was done in this case and evidenced by a document signed by Gina O. Barto of the Westmoreland County Prothonotary's Office." *Id.*

Our review reflects the trial court accurately summarized the state of the certified record before us. King commenced this action with the filing of a complaint in confession of judgment on February 16, 2022, in compliance with Rule 2952. *See* Complaint,

2/16/22. Attached to the complaint was a copy of the note executed by Hochendoner. *See id.* at Exhibit A. In addition, King attached a disclosure for confession of judgment, which was executed by Hochendoner the same day as the note and also bears his initials at the end of multiple paragraphs. *See id.* at Exhibit B. Finally, attached to the complaint is a “notice of order, decree or judgment,” which is dated February 16, 2022, addressed to Hochendoner, and signed by the Westmoreland County Prothonotary. *See id.*

The record also establishes that on September 12, 2022, King filed a praecipe for writ of execution upon the confession of judgment in the form of a sheriff’s sale of the real property. *See* Praecipe, 9/12/22. Attached to the praecipe and dated September 12, 2022, is a notice of judgment and execution addressed to Hochendoner and alerting him that a sheriff’s sale has been scheduled for January 3, 2023. *See id.* Importantly, the record contains a notarized affidavit of service reflecting that a process server/constable personally served Hochendoner with a notice of execution of the judgment and sheriff’s sale on November 10, 2023, at 6:23 p.m. *See* Affidavit of Service, 11/21/23, at 2.

Accordingly, because written notice of the entry of the

confession of judgment was sent to Hochendoner by the prothonotary and notice of execution of the confession of judgment and scheduled sheriff's sale was personally delivered to Hochendoner, a petition to open or strike the confession of judgment needed to be filed within thirty days. **See** Pa.R.C.P. 2959(a)(3). Nevertheless, the record reflects, and it is undisputed that, Hochendoner never filed a petition to open or strike. Having failed to do so, Hochendoner has waived all defenses and objections to the confession of judgment. **See** Pa.R.C.P. 2959(c). Therefore, Hochendoner cannot now attack the propriety of the confession of judgment, and we conclude that his issue is waived.

Even if we were to address Hochendoner's allegation that "[n]owhere in the [c]omplaint does it state that notice of default was sent [and therefore, King] has no authority to confess judgment," Appellant's Brief at 12, we would conclude the claim lacks merit. As mentioned above, our Rules of Civil Procedure do not set forth a notice requirement. **See** Pa.R.C.P. 2952.

Moreover, to the extent Hochendoner relies upon language in the note executed by the parties suggesting written notice of a default would portend a

confession of judgment, we agree with the trial court's conclusion that additional provisions in the note and the disclosure signed by the parties supports the determination that Hochendoner waived any right to prior notice. As the trial court aptly stated, "[Hochendoner] knew he signed a note with a confession of judgment clause and a separate disclosure addressing a confession of judgment, both of which waived all forms of notice."² Trial Court

² Paragraph 9 of the note, titled "Confession of Judgment," contains five paragraphs, in bold capital letters. The first sentence acknowledges an agreement between the parties that "[Hochendoner] unconditionally waives any and all rights [he] has or may have to prior notice[.]" Complaint, 2/16/22, Exhibit A, at ¶ 9 (full capitalization removed). The disclosure of confession of judgment contains the following language, also in capital lettering, expressing Hochendoner's acquiescence to confession of judgment upon default without prior notice:

[HOCHENDONER] UNDERSTANDS THAT THE NOTE CONTAINS A CONFESSION OF JUDGMENT PROVISION THAT WOULD PERMIT [KING] TO ENTER A JOINT AND SEVERAL JUDGMENT AGAINST [HOCHENDONER] IN COURT, AFTER A DEFAULT ON THE NOTE, WITHOUT ADVANCE NOTICE TO [HOCHENDONER] AND WITHOUT OFFERING [HOCHENDONER] AN OPPORTUNITY TO DEFEND AGAINST THE ENTRY OF JUDGMENT.

Opinion, 8/17/23, at 4. We agree with the trial court's conclusion that Hochendoner's claim lacks merit and discern no abuse of discretion by the trial court in denying the request to set aside the sheriff's sale.

Order affirmed.

Judgment entered,
/s/ Bernard D. Kohler, Esq.

Bernard D. Kohler, Esquire.
Prothonotary
3/26/2024

Id., Exhibit B, at ¶ A (capitalization in original).

**IN THE SUPREME COURT OF
PENNSYLVANIA
WESTERN DISTRICT**

MICHAEL J. KING	:	No. 142 WAL 2024
EXECUTOR OF THE	:	
ESTATE OF JAMES	:	Petition for Allowance
E. KING,	:	of Appeal from the
Respondent,	:	Superior Court
vs.	:	
	:	
KRISTOPHER PAUL	:	
HOCHENDONER	:	
Petitioner,	:	

ORDER

PER CURIAM

AND NOW, this 2nd day of October, 2024,
the Petition for Allowance of Appeal is **DENIED**.