

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947

December 22, 2008

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**RE: PNC Bank v. David M. Lambert
C.A. No. S07J-08-109-ESB
PNC Bank v. David M. Lambert
C.A. No. S07J-08-112-ESB
Letter Opinion**

Date Submitted: November 21, 2008

Dear Counsel:

This is my decision on PNC Bank's action to pursuant to 10 Del.C. § 2306 and Superior Court Civil Rule 58.1 to confess judgment against David M. Lambert on the above-referenced cases. I held a hearing pursuant to Superior Court Civil Rule 58.1(g)(3) on November 21, 2008. Lambert was the only witness. The sole issue was whether Lambert had effectively waived his right to notice and a hearing before the entry of judgment against him. I have found the following facts:

1. Lambert works primarily as a rental agent for Lingo Real Estate in Rehoboth Beach, Delaware. He is also a 50% owner of WDP Ventures, LLC., a real estate developer involved in the construction of what are known as "spec." homes. Lambert and WDP have been involved in at least five real estate loan closings together. The two loans at issue in the above-references cases were the

fourth and fifth loans that Lambert was involved in as a real estate developer. Lambert attended college for two years and previously worked as the vice president of a computer software company.

2. WDP borrowed \$426,000 from Mercantile Peninsula Bank on October 3, 2005. Lambert signed a Guaranty on the same date. PNC Bank is now the holder of these loan documents.

3. WDP borrowed \$251,000 from Mercantile Peninsula Bank on October 15, 2005. Lambert signed a Guaranty on the same date. PNC Bank is now the holder of these loan documents.

4. Harold E. Dukes, Jr., an experienced real estate attorney with the law firm of Tunnel & Raysor, represented WDP at both loan closings. He did not, according to Lambert, represent him. Dukes, according to Lambert, did not explain the loan documents to him. Instead, Dukes just told Lambert where to sign and initial the loan documents.

5. Lambert admitted that he knew he had to sign a Guaranty with each loan, but denied reading them and knowing what the confession of judgment language meant.

6. The Guaranties have the following clause directly above where Lambert signed them.

CONFESSION OF JUDGMENT. In the event I default, I authorize any attorney admitted to practice before any court of record in the United States to appear on my behalf in any court having jurisdiction in one or more proceedings, or before any clerk or other court official, and to CONFESS JUDGMENT AGAINST ME, WITHOUT PRIOR NOTICE OR OPPORTUNITY FOR PRIOR HEARING, in your favor for the unpaid balance due under this Guaranty, including interest, court costs, late charges, expenses and attorneys' fees of 15 percent of the total amount then due under this Guaranty. I waive the benefit of every law, ordinance, or rule of court that gives me any right or privilege of exemption, summons and other process, that lawfully may be waived; all heirs and rights of appeal, homestead rights, stay of execution or stay of supplementary proceedings, or other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment. The authority and power to appear for and enter judgment against me will not be exhausted by one or more exercises, or by any imperfect exercise, and will not be extinguished by any judgment entered; such authority and power may be exercised one or more

times, from time to time, in the same or different jurisdictions, as often as you deem necessary or advisable.

7. Lambert acknowledged that he has no problem reading and understanding documents. He also acknowledged that Dukes was available to answer questions about the loan documents and Guaranties, but that he just signed them without asking any questions about them.

I have concluded that Lambert effectively waived his right to notice and a hearing before the entry of judgment against him. Lambert is not an unsophisticated person. He characterized himself as an “investor” during the hearing. Lambert has been actively involved in real estate development. In connection with this, Lambert has participated in at least five loan closings. At the two loan closings in question, Lambert’s real estate development company was represented by a very experienced real estate attorney. Lambert knew he was signing Guaranties and candidly admitted during the hearing that he did what Dukes told him to do and that Dukes was available to answer any questions that he may have had about the loan documents and Guaranties. Lambert made a conscious decision to sign important loan documents without even inquiring about his rights and obligations. The Superior Court has, under virtually identical circumstances, held that a person who signs a Guaranty at the direction of an attorney without reading its terms can be deemed to have effectively waived his right to notice and a hearing before the entry of a judgment against him.¹ I have reached the same conclusion in this case.

Lambert questioned PNC Bank’s legal fees at the hearing. I will resolve the issue based on written submissions from the parties. I direct PNC Bank’s legal counsel to submit an affidavit regarding his time spent on these two cases by December 29, 2008. Lambert’s legal counsel may

¹ *Pellaton v. Bank of N.Y.*, 592 A.2d 473, 477 (Del. 1991).

respond to the affidavit by January 5, 2009. I will modify the judgments against Lambert if necessary.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley