ORIGINAL

IN THE COURT OF COMMON PLEAS LEBANON COUNTY PENNSYLVANIA

CIVIL DIVISION

LYNNETTE M. NOVAK	:	
v.	:	**NO. 2023-00089**
DARYL G. LAYSER	:	
-and-	:	
LISA R. LAYSER	:	

2025 JUN -2 P 3: 35
ENTERED & FILED
PROTHONOTARY OFFICE
LEBANON, PA

ORDER OF COURT

AND NOW, this 2nd day of June, 2025, the Defendants' Motion to Strike or Open a Confessed Judgment is hereby DENIED.

BY THE COURT:

BHCh, J.
BRADFORD H. CHARLES

BHC/ram

Cc: Court Administration (order only) / I10
Bret M. Wiest, Esq. & Andrew Luch, Esq. / Prothy mailbox
Kenneth C. Sandoe, Esq. &Timothy T. Engler, Esq. / Prothy mailbox

Pursuant to Pa. R. Civil P. 236
All parties are hereby notified
this date: 6-4-25 [illegible]
Prothonotary, Lebanon PA

ENTERED & FILED
PROTHONOTARY OFFICE
LEBANON, PA
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APPEARANCES

Bret Wiest, Esq. and Andrew Luch, Esq.	**For Plaintiff**
Kenneth C. Sandoe, Esq. and Timothy T. Engler, Esq.	**For Defendants**

OPINION BY CHARLES, J., June 2, 2025

This is a confession of judgment action instituted by a promisee alleging she is owed judgment from promisors on a promissory note executed in 1989. The Defendants filed a Motion to Open or Strike the Judgment. Based on both parties' briefs, we write this Opinion to address the Petition to Strike the Confessed Judgment. For the reasons stated herein, we will deny the Defendants' Motion to Strike Confessed Judgment.

I. FACTUAL & PROCEDURAL HISTORY

On November 5, 1985, Daryl and Lisa Layser (hereafter "DEFENDANTS" or, individually, "DARYL" and "LISA") together with LISA's mother, Tessie E. Ondrusek (hereafter "TESSIE"), purchased a property located at 140 North College Street in Myerstown, Pennsylvania for eighty-five thousand dollars ($85,000). A mortgage was subsequently taken out, encumbering almost the entire value of the property. In September of 1986, the mortgage was satisfied using proceeds from the sale of both TESSIE's house located on West Park Avenue in Myerstown, and DEFENDANTS' former home.

On March 14, 1989, DEFENDANTS made, executed, and delivered a one (1) page Promissory Note (hereafter "Note") for fourteen thousand dollars ($14,000) to LISA's sister (TESSIE's other daughter), Lynnette Novak (hereafter "PLAINTIFF"), at the Law Office of Attorney James Reilly. Attorney Reilly represented both TESSIE and LISA at the time. The parties agreed that DEFENDANTS had already received a benefit from TESSIE in the form of proceeds from the sale of TESSIE's home that were used to satisfy the mortgage on the property at 140 North College Street. The parties agreed that PLAINTIFF was owed twenty-one thousand dollars ($21,000) from the sale of TESSIE's home for her share of the inheritance to which she would be entitled upon the death of TESSIE. DEFENDANTS agreed to pay PLAINTIFF seven thousand dollars ($7,000) to fulfill one third

(1/3) of the total agreed amount[1]. The other fourteen thousand dollars ($14,000) was satisfied by the Note and payable upon TESSIE's death[2].

TESSIE died on October 14, 2021. The Note includes a clause authorizing confession of judgment against DEFENDANTS. On January 17, 2023, PLAINTIFF filed a Motion for Leave of Court to File Confession of Judgment Complaint pursuant to **Pa.R.C.P. 2951**. On January 25, 2023, this Court issued a Rule to Show Cause upon DEFENDANTS. DEFENDANTS filed an Answer to Complaint and New Matter on February 7, 2023, arguing that the twenty (20) year statute of limitations had passed. Further, DEFENDANTS asserted that PLAINTIFF never paid them any money, gave them a loan, provided them with any services, or gave them anything of value, so the Note was unenforceable due to a lack of consideration.

DEFENDANTS decided to not pursue the statute of limitations argument, and ultimately only argued whether consideration existed to make the Note enforceable. A Factual Hearing was conducted on September 29, 2023. As a result of that hearing, we reached the following conclusions:

- On November 5, 1985, TESSIE and DEFENDANTS purchased property at 140 North College Street for eighty-five thousand dollars ($85,000). TESSIE began living with DEFENDANTS at that property.
- A mortgage was taken out encumbering the North College Street property for almost its entire value.

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[1] The upfront money provided PLAINTIFF help with paying some of her personal debt at the time.
[2] Neither party was able to explain why the $14,000 was designated to be payable upon TESSIE's death.

- In September of 1986, the mortgage encumbering the North College Street property was satisfied from the proceeds of the sale of both TESSIE's and DEFENDANTS' former homes.
- At a meeting in 1989 at the law office of Attorney Jim Reilly, PLAINTIFF, TESSIE, and LISA all agreed that DEFENDANTS had received a benefit from TESSIE in the form of receipt of proceeds from the sale of TESSIE's house that was used to satisfy the mortgage on the property at 140 North College Street. TESSIE, LISA, and PLAINTIFF all agreed that twenty-one thousand dollars ($21,000) was owed to PLAINTIFF so that she would receive her rightful share of the inheritance to which she would be entitled when TESSIE died.
- DEFENDANTS agreed to pay PLAINTIFF seven thousand dollars ($7,000). In addition, they provided a note in the amount of fourteen thousand dollars ($14,000). The total represented the twenty-one thousand dollars ($21,000) to which the parties agreed PLAINTIFF was due as her inheritance from TESSIE.
- "The Court concludes that the intent of the parties in creating the $14,000 note was to compensate [PLAINTIFF] for her share of TESSIE's inheritance that had effectively been already provided to [DEFENDANTS] when TESSIE's money was used to satisfy the mortgage on the North College Street Property."

On October 27, 2023, the parties filed briefs in support of their positions regarding our findings from the Factual Hearing. On December 7,

2023, we issued an eighteen (18) page Opinion granting PLAINTIFF's Motion for Leave of Court to File a Confession of Judgment. Our Opinion reached the following conclusions:

- The warrant for the confession of judgment clause within the Note is unambiguous on its face.
- The confession of judgment clause is in the Note and the Note is signed by those that would be bound by it, the DEFENDANTS. The Note includes DEFENDANTS' signatures at the bottom of the one (1) page document with "3-14-89" beside each signature. Their names are typed out underneath their signatures.
- Next to each signature line, "(SEAL)" is pre-printed on the instrument. DEFENDANTS have not disputed signing the Note. Under the Uniform Written Obligations Act (UWOA), a written promise signed by an obligor that includes a specific intent to be legally bound, does not require further consideration.
- The Note was an instrument under seal. Therefore, consideration was presumed.
- PLAINTIFF's responsive pleadings to Paragraphs 17-20 of DEFENDANTS' New Matter were judicial admissions because they were general denials and PLAINTIFF presumably would know whether it was true or false that any money, services, or property were given to DEFENDANTS in exchange for the Note. PLAINTIFF may also have known that she gave nothing of value, as enumerated in the New

Matter. Paragraph 21 is a conclusion of law, and PLAINTIFF's reply is not treated as a judicial admission.

- Forbearance is an established form of consideration. None of Paragraphs 17-20 of DEFENDANTS' New Matter discussed the concept of forbearance. Thus, PLAINTIFF has not judicially admitted that the Note was unsupported by forbearance as a form of consideration.
- PLAINTIFF is claiming entitlement to $14,000 as part of an inter vivos arrangement between herself, DEFENDANTS and TESSIE. PLAINTIFF is <u>not</u> claiming entitlement to $14,000 as a result of TESSIE's Last Will and Testament. This illuminates the nature of PLAINTIFF's forbearance. The parties agreed that PLAINTIFF was owed $21,000, that PLAINTIFF would receive $7,000 upfront, and she would "forbear" the remaining $14,000 due to her until TESSIE died. PLAINTIFF's forbearance to receive $14,000 in 1989 is considered to be consideration.
- PLAINTIFF's forbearance included giving up a claim of interest. Had the Note included simply two percent (2%) interest per annum, the amount would have grown to $26,911 in the thirty-three (33) years of forbearance. Inflation could also have increased the amount due to PLAINTIFF. The $14,000 due in 1989 was worth $34,737 in 2023. By accepting an amount owed in 1989 dollars and not 2023 dollars when DEFENDANTS received their share in 1989 is another form of

forbearance that created consideration for the agreement between the parties.

We rejected the argument proffered by DEFENDANTS regarding consideration. We concluded that the Note signed by DEFENDANTS was enforceable even if no consideration existed. However, we found the Note was supported by consideration in the form of PLAINTIFF's forbearance. PLAINTIFF's agreement to take only one-third (1/3) of her share in 1989 and forbear the other two-thirds (2/3) until TESSIE's death, was sufficient consideration to support the agreement documented in the Note. The Promissory Note provided by DEFENDANTS to PLAINTIFF is thus enforceable.

DEFENDANTS appealed to the Superior Court on December 27, 2023. Two days later, on December 29, 2023, we ordered DEFENDANTS to file a Statement of Errors Complained on Appeal. On January 18, 2024, in response to DEFENDANTS' errors complained, we issued an Order concluding that DEFENDANTS' issues raised were already addressed in the Opinion of December 7, 2023. The Superior Court, on April 11, 2024, quashed DEFENDANTS' appeal stating an appeal may only be made after the Confession of Judgment is filed and a Petition to Strike or Open Confessed Judgment is filed.

On June 6, 2024, PLAINTIFF filed a Confession of Judgment against DEFENDANTS for the unpaid Note pursuant to **Pa. R.C.P. 2951(a)**. DEFENDANTS filed their Petition to Strike or Open Confessed Judgment

on June 27, 2024. The parties filed briefs in support of their positions and the matter is now ripe for disposition on DEFENDANTS' Petition to Strike or Open Confessed Judgment.

II. ISSUES

DEFENDANTS have raised multiple issues throughout their pleadings, and we will address each below:

1. Whether PLAINTIFF's responses to DEFENDANTS' New Matter, Paragraphs 17-21, should be considered judicial admissions?
2. Whether PLAINTIFF's response to DEFENDANTS' New Matter, Paragraph 11, should be considered a judicial admission as it pertains to consideration?
3. Whether the Note contained language necessary to legally bind DEFENDANTS?
4. Whether the Note constitutes an instrument under seal?
5. Whether the Note lacked consideration as it pertains to confession of judgment?
6. Whether forbearance is considered adequate consideration in exchange for the Note?
7. Whether the Court may find, sua sponte, that forbearance on the Note and interest is consideration?
8. Whether an Affidavit of Income was required to make the Note valid?

9. Whether the Note, on its face, violates DEFENDANTS' due process rights?

III. DISCUSSION

1. Confession of Judgment

To provide background information, we first reiterate the law found in our Opinion of December 7, 2023 pertaining to confession of judgments. A confession of judgement is an acknowledgment that a debt is justly due, and it cuts off all defenses and right of appeal. **Am.Jur.2d § 194**. Judgments of confession are recognized by Pennsylvania courts. *See e.g.* ***Usnick v. Terminal Coal Corporation***, 157 A. 787 (Pa. 1931). If the instrument that contains the confession of judgment is more than 20 years old, judgment may be entered only by leave of court after notice and the filing of a complaint. **Pa.R.Civ.P 2951 (b)**.

A warrant of attorney for confession of judgement must be self-sustaining by being in writing and signed by the person(s) bound by it. ***L.B. Foster Co. v. Tri-W Construction Co***, 186 A.2d 18, 20 (Pa. 1962). A warrant of attorney for confession of judgement does not need to be attested to by a subscribing witness. ***Neducsin v Caplan***, 121 A.3d 498 (Pa.Super. 2015), appeal denied; 131 A.3d 492 (Table) (Pa. 2016); ***Midwest Financial Acceptance Corp. v. Lopez***, 78 A.3d 614 (Pa. Super. 2013).

A confessed judgment will be stricken "only if a fatal defect or irregularity appears on the face of the record." ***Graystone Bank v. Grove Estates, LP***, 58 A.3d 1277 (Pa.Super.2012). A judgment by confession will be opened if the petitioner acts promptly, alleges a meritorious defense, and presents sufficient evidence in support of the defense to require the submission of the issues to a jury. ***Crum v. F.L. Shaffer Co.***, 693 A.2d 984 (Pa.Super.1997). A confessed judgment upon warrant of attorney carries with it the same legal consequences as any judgment of a court. ***Scott Factors, Inc. v. Hartley***, 228 A.2d 887 (Pa. 1967).

Courts have expressed the need for strict adherence to the rules governing confessed judgements because of the plenary power it gives the donee to the adjudication of his/her own claim. ***Frantz Tractor Company v. Wyoming Valley Nursery***, 120 A.2d 303, 305 (Pa. 1956). If there are any other provisions on the promissory note, the signature must be positioned in the writing that leaves no doubt of signer's intent to be bound by the confession of judgment. ***Centennial Bank V. Germantown-Stevens Academy***, 419 A.2d 698 (Pa.Super. 1980); **Egyptian Sands Realty, Inc. v. Polony**, 294 A.2d 799 (Pa. Super 1972).

Once the signature is proven, consideration and delivery are presumed from the fact that the instrument is under seal. A plaintiff who relies on an instrument under seal is not obliged to prove consideration. ***Austen v. Marzolf,*** 161 A. 72, 73 (Pa. 1932). When a party signs a contract which contains the pre-printed word "SEAL," that party has presumptively

signed a contract under seal. ***Klein v. Reid***, 282 Pa.Super. 332, 422 A.2d 1143 (1980) *superseded by statute on other grounds as stated in* ***Packer Soc. Hill Travel Agency, Inc. v. Presbyterian University of Pennsylvania Medical Center***, 635 A.2d 649)).

2. Judicial Admissions

In the instant case, we addressed the matter of judicial admissions for Paragraphs 17-21 in our Opinion of December 7, 2023. We concluded that PLAINTIFF generally denied Paragraphs 17-20 meaning those paragraphs are admissions. PLAINTIFF would know whether it was true or false that any money, services, or property were given to DEFENDANTS in exchange for the Note.[3]

We agreed with PLAINTIFF that Paragraph 21 is a conclusion of law, and therefore her reply is not treated as a judicial admission. Although PLAINTIFF judicially admitted Paragraphs 17-20, we are not required to rule against PLAINTIFF. We ruled in favor of PLAINTIFF on this issue for two (2) reasons:

1. We found the Note to be under seal which meant consideration is presumed.
2. None of the judicial admissions in Paragraphs 17-20 pertained to the concept of forbearance. Thus, PLAINTIFF has not judicially admitted

[3] Though many years have passed since the formation of the Note, she could have done "reasonable investigation" into the circumstances in 1989 that led to the execution of it. Had she done so, PLAINTIFF might have availed herself of the option to plead that she was, "without knowledge of information sufficient to form a belief as to the truth of an averment", of the allegations in Paragraphs 17-20, and it would have had the effect of denial.

that the Note was unsupported by forbearance as a form of consideration.

Paragraph 11 of DEFENDANTS' New Matter can be similarly ruled upon. DEFENDANTS' Paragraph 11 reads as follows:

11. No Defendants raise the affirmative defense of the failure of consideration in this matter.

PLAINTIFF responded:

11. No response is required from Plaintiff as no factual averments are alleged.

Even if we agree with DEFENDANTS that PLAINTIFF has admitted Paragraph 11, all that admission entails is that DEFENDANTS have raised an issue, not that the issue should guarantee success.

We do not believe that the concept of judicial admission requires a decision favoring DEFENDANTS. Neither Paragraph 11 nor Paragraphs 17-20 contain any language regarding forbearance. PLAINTIFF's non-response to those paragraphs does not therefore preclude our finding that consideration existed based upon forbearance.

10. Instruments Under Seal

There are few exceptions to the rule that a valid contract must contain mutual consideration. ***Stelmack v. Glen Alden Coal Co.***, 14 A.2d 127, 128 (Pa. 1940). However, a contract containing a written express statement of intent to be legally bound supplies the necessary consideration to support the enforceability of an agreement. ***Socko v. Mid-Atlantic Systems of***

CPA, Inc., 126 A.3d 1266, 1277 (Pa. 2015). Under the Uniform Written Obligations Act (hereafter "UWOA"), a written promise, made and signed by the person promising, is not invalid or unenforceable for lack of consideration if the writing also contains an express statement, in any form language, that the signer intends to be legally bound. **33 P.S. § 6**. If an agreement is accompanied by an intentional, binding statement, it does not require further consideration. ***Nicholas v. Hoffman***, 158 A.3d 675, 690 (Pa. Super. 2017). Furthermore, any party challenging the validity of a contract containing an express intent to be legally bound will not be entitled to relief from the agreement on the basis that the promises made therein lack consideration. ***Id.***

DEFENDANTS argue that the Note did not constitute an instrument under seal nor that it contained language necessary to legally bind DEFENDANTS. We addressed these issues in our Opinion on December 7, 2023. We concluded:

1. The warrant for the confession of judgment clause within the Note is unambiguous on its face:

   > "And further, we do hereby authorize and empower the Prothonotary, Clerk of Court or any Attorney of any Court of Record of Pennsylvania, or elsewhere, to appear for and to confess judgment against us for the above sum . . . ." Ex. A.

2. The confession of judgment clause is in the Note.

3. The Note is signed by those who would be bound by it, the DEFENDANTS.
4. The Note is a one (1) page document and DEFENDANTS' signatures appear at the bottom of the page, dated "3-14-89" by each of their signatures.
5. DEFENDANTS' names are typed out under each signature.
6. Next to each signature line, "(SEAL)" is pre-printed on the instrument.
7. DEFENDANTS have not disputed they signed the Note.

On its face, the Note legally binds DEFENDANTS to pay the judgment entered against them. There has been no evidence offered that proves DEFENDANTS did not willingly enter into the agreement. The Note also has "(SEAL)" pre-printed on the instrument. Documents containing the pre-printed "SEAL" are regarded as being an actual seal. ***Driscoll v. Arena***, 213 A.3d 253, 259 (Pa.Super. 2019) citing ***Beneficial Consumer Discount v. Dailey***, 644 A.2d 789, 791 (Pa.Super. 1994). "When a party signs a contract which contains the pre-printed word "SEAL," that party has presumptively signed a contract under seal." ***Dailey*** at 790. Further, DEFENDANTS' Answer to PLAINTIFF's Motion for Leave of Court blatantly admitted the agreement was a document under seal:

> 5. Admitted. By way of further answer, the Note is dated March 14, 1989, and is thirty-four (34) years old. The statute of limitations for *documents under seal* is twenty (20) years. 42 Pa. C.S.A. 5592(b)(1), attached hereto as Exhibit "A", states: "Notwithstanding

section 5525(7) (relating to four-year limitation), an action upon an instrument in *writing under seal* must be commenced within 20 years." (emphasis added).

DEFENDANTS cannot now go back and say the document is not under seal when they themselves have admitted as such in prior filings.

11. Consideration

Consideration is the crux of DEFENDANTS' argument; every filing that has occurred in this action has included something about consideration. In our December 7, 2023, Opinion, we noted that the UWOA did not require further consideration, and the Note was a document under seal. Therefore, consideration was presumed.

Forbearance is a recognized form of consideration. **Restatement (Second) of Contracts § 71**; ***United States v. Hall***, 979 F.3d 1107 (6th Cir. 2020). Forbearance is agreeing to refrain from doing anything which a party has a right to do. ***York Metal & Alloys Co. v. Cyclops Steel Co.***, 124 A. 752, 754 (1924) (citation omitted); *see generally* ***Stelmack v. Glen Alden Coal Co.***, 14 A.2d 127, 128 (Pa. 1940) (explaining that, under Pennsylvania law, consideration confers some "benefit to the party promising, or a loss or detriment to the party to whom the promise is made").

In our December 7, 2023, Opinion, we stated that "None of the purported judicial admissions contained in Paragraph 17-20 of New Matter pertained to the concept of forbearance." DEFENDANTS attempt to use this

language to argue that Paragraph 20 pertained to forbearance. Paragraph 20 reads as follows:

20. Petitioner never provided anything of value to the Defendants.

DEFENDANTS argue that "anything of value" includes forbearance. We will not allow DEFENDANTS to make such an ambiguous statement and then decide that forbearance should be included in it. If DEFENDANTS wanted to state that PLAINTIFF never provided forbearance to them, they should have stated that in their New Matter.

DEFENDANTS dismiss multiple other factors that provide a foundation for forbearance to have occurred. PLAINTIFF is claiming entitlement to $14,000 as part of an inter vivos arrangement between herself, DEFENDANTS, and TESSIE. She is <u>not</u> claiming entitlement to the sum as a result of TESSIE's Last Will and Testament. The parties agreed PLAINTIFF was owed $21,000 from the expected estate of TESSIE. They also agreed PLAINTIFF would receive $7,000 upfront and implied that PLAINTIFF would receive or "forbear" the remaining $14,000 due to her until TESSIE's death. This Court considers PLAINTIFF's forbearance to receive $14,000 in 1989 to be consideration. DEFENDANTS also received the benefit of not having to pay PLAINTIFF for thirty-six (36) years. Thus, PLAINTIFF's forbearance is considered consideration.

To further expound upon PLAINTIFF's forbearance, we look to the claim of interest that PLAINTIFF has relinquished because of her forbearance. As previously noted in our December 7, 2023, Opinion, the

Note's value would have skyrocketed to $26,911 with just two percent (2%) interest. That does not include adjustments for inflation. Taking $14,000 in 1989 and turning it into 2025 dollars equates to a sum of about $37,086 according to the website "CPI Inflation Calculator". Accepting an amount in 1989 dollars is a vast detriment to PLAINTIFF when clearly she could have demanded more. This is another form of forbearance that created consideration on the Note.

12. Sua Sponte Forbearance

DEFENDANTS argue this Court erred by, *sua sponte*, creating forbearance and lack of interest and considering it as consideration. However, it is within the Court's inherent powers to consider issues *sua sponte*. *See* **42 Pa.C.S. § 323**; *See* ***Thomas v. Crawford County Com'rs***, 3 Pa.D. & C.3d 566, 574 (Pa. Com. Pl. 1975) quoting ***Sweet v. Pa. L.R.B.***, 322 A.2d 362 (Pa. 1974) (courts "have certain inherent rights and powers to do all such things as are reasonably necessary for the administration of justice."). We found forbearance is an applicable concept that, although not raised by PLAINTIFF, is necessary to provide the fairest solution to the instant case. The record also clearly reflects PLAINTIFF forbore her claim to the $14,000 she was owed from DEFENDANTS per the Note.[4]

[4] Further, as previously referenced, the issue of forbearance is not an issue at all because the Note was considered a document under seal and therefore holds a presumption of consideration. (*See*, pages 13-15 infra).

13. Affidavit of Income

Nowhere in the Pennsylvania Rules of Civil Procedure does it state that an Affidavit of Income is a required document in Confession of Judgment proceedings. ***In Estate of Silvestri v. Kinest***, 464 A.2d 494 (Pa.Super. 1983), the Superior Court rejected a petition to open a confessed judgment which relied on the defense that the judgment creditor was required to file an affidavit confirming that the debtor had an annual income greater than ten thousand dollars ($10,000). The Court cited ***Swarb v. Lennox***, 314 F.Supp. 1091 (E.D. Pa. 1970), affirmed 405 U.S. 191 (1972), which held a creditor is not required to file an affidavit "alleging that the debtor's annual income was over ten thousand dollars." ***Kinest*** at 495-96.

DEFENDANTS offer no legal basis for their argument that an unsigned Affidavit of Income is either required or a defense against the Confessed Judgment in this case. Further, the Affidavit of Income submitted in the instant case states that DEFENDANTS' annual income exceeds $10,000, although it is not signed. DEFENDANTS did not assert, at the time of execution of the Note, that their annual income was less than or equal to $10,000. A debtor must plead, as an affirmative defense, that he had an income of less than $10,000 to be afforded protection under ***Swarb***. ***Kinest*** at 496. Here, DEFENDANTS have not pleaded such a defense simply stating in their Petition to Strike or Open Confessed Judgment:

6. The Promissory Note dated March 14, 1989, does not include an Affidavit of Income, is not notarized . . . .

10. b. The Confession of Judgment, without a signed Affidavit of Income and a statement of voluntary, intelligent and knowing waiver of the right to Notice and Hearing is invalid and must be stricken.

Both DEFENDANTS' statements in their Petition do not have any legal backing. There are no citations to any statutes, cases, or other indicia that provides proof an Affidavit of Income is required in this case.

14. Due Process

Pursuant to **Pa.R.C.P. 2959(a)(2)**, a party may only raise a Due Process rights violation stating they did not voluntarily, intelligently, and knowingly waive their due process rights of notice and hearing in further support of a request for a stay of execution of the judgment when (1) the court has not stayed execution from the judgement and (2) there is presentation of prima facie evidence of a defense. The waiver defense is a question of fact for which the Court is the ultimate factfinder. **Pa.R.C.P. 2959**. If the Court finds that PLAINTIFF has shown, by a preponderance of evidence, that DEFENDANTS voluntarily, intelligently, and knowingly waived the right to notice and hearing prior to the entry of judgment, it shall enter an order so determining and the stay of the execution proceedings under subdivision shall terminate automatically. If the Court finds that PLAINTIFF has not made the required showing, it shall enter an order

vacating the writ of execution and strike the judgment. **Pa.R.C.P. 2958.3(c)(1)-(2)**.

In ***Swarb***, the Court held that confessions of judgment entered against persons with conjugal incomes of $10,000 or less were presumptively entered without a knowing, understanding, and intelligent waiver of rights. It reasoned the members of that class were all parties to adhesive contracts and had no real understanding of the importance of the rights they were waiving or the consequences of their waiver.

DEFENDANTS have not purported any misunderstanding about the rights they were relinquishing by signing the Note, that is, the right to have notice and an opportunity to be heard prior to judgment. *See* ***Swarb*** at 1100. The record shows that the negotiations for the terms of the Note took place in the law office of Attorney James Reilly. Attorney Reilly represented both TESSIE and LISA at that time. DEFENDANTS have provided no legal backing for their argument that their due process rights were violated.

To the extent that DEFENDANTS now argue that they have been deprived of Due Process as it relates to this current litigation, we remind DEFENDANTS that we conducted a lengthy factual hearing on September 29, 2023. Both sides were given the opportunity to present evidence and arguments. Due Process was clearly afforded.

IV. CONCLUSION

In some ways, this Court is troubled by the esoteric legal arguments proffered by DEFENDANTS. We would have hoped that DEFENDANTS possessed the wisdom and integrity to recognize that TESSIE wanted PLAINTIFF to receive $21,000 and that they agreed to a plan in 1989 to honor TESSIE's intentions. As we see it, and notwithstanding the legal arguments raised by DEFENDANTS, awarding PLAINTIFF the $14,000 TESSIE wanted to bequeath to her is simply "the right thing to do."

Most times, the law follows equity. This case is no exception to that general rule. Here, the Confession of Judgment Note was executed under seal. It was supported by consideration in the form of forbearance. Therefore, following the law as outlined above achieves a result in this case that we perceive as equitable. We hope and expect that Pennsylvania's Superior Court will recognize this reality and agree.