Circuit Court for Montgomery County
Case Nos.: 478002V; 478003V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 1129 & 1130

September Term, 2020

TAX LIEN LAW GROUP, LLC, *et al.*
v.
EAGLEBANK

ALTASSA, LLC, *et al.*
v.
EAGLEBANK

Gould,
Ripken,
Eyler, Deborah
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: August 3, 2021

In this consolidated appeal, the borrowers and guarantors under a commercial loan agreement claim error in the trial court's entry of confessed judgments against them and its denial of their subsequent motions to vacate the same. Appellants present the following questions for our review:

1. Whether the Guaranty upon which [EagleBank] took judgment was unenforceable as a matter of law for lack of consideration? [1]

2. Whether Appellants raised substantial and sufficient grounds of an actual controversy on the merits which required the Court to vacate the confessed judgments?

3. Whether the Court was required to hold a hearing on Appellants' Motion[s] to Vacate?

For the reasons explained below, we shall affirm the judgments of the circuit court.

BACKGROUND

THE PARTIES' LOAN HISTORY

The REO Loan

In August 2013, Sulion, LLC ("Sulion") entered into a Guidance Line of Credit Loan Agreement with EagleBank under which Sulion could borrow up to two million dollars for the acquisition of distressed real estate (the "REO Loan"). The REO Loan was secured by a Guaranty Agreement executed by Dr. Mark A. Schwartz and Axis Investment Holdings Trust ("Axis Investment").

[1] The first question was presented only by the guarantors. The latter two questions were presented by both the guarantors and borrowers.

By 2017, the lending limit on the REO Loan had been increased to four million dollars, and ALTASSA, LLC ("Altassa") was added as a borrower. Also, by 2017, two additional parties—Axis Capital, Inc. ("Axis Capital") and Tax Lien Law Group, LLP ("Tax Lien LLP")—were added as guarantors.

On August 28, 2017, Sulion and Altassa executed an Amended and Restated Guidance Line of Credit Revolving Promissory Note that extended the maturity date of the REO Loan and reduced its credit limit to three million dollars. At the same time, Dr. Schwartz, Tax Lien Law Group LLC ("Tax Lien LLC"), and Axis Investment became the guarantors under a Second Amended and Restated Guaranty of Payment Agreement,[2] which, in section 1.9 stated:

> Upon the occurrence of an event of default, and if such event of default shall continue beyond any applicable notice and cure period, the guarantor hereby authorizes any attorney designated by the lender or any clerk of any court of record to appear for the guarantor in any court of record and confess judgment against the guarantor without prior hearing, in favor of the lender for, and in the amounts of, the balance then due under any one or more of the promissory notes evidencing all or any part of obligations, all accrued and unpaid interest thereon, all other amounts payable by the guarantor to the lender under the terms of this agreement, costs of suit, and attorneys' fees of five percent (5%) of the unpaid principal sum. The guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the guarantor may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force and which may hereafter be enacted. The authority and power to appear for and enter judgment against the guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in

[2] Tax Lien LLP and Axis Capital were dropped as guarantors in this agreement.

> the same or different jurisdictions as often as the lender shall deem necessary and desirable, for all of which this agreement shall be a sufficient warrant.

(Emphasis removed).

The Tax Lien Loan

In May 2015, Sulion entered into a separate Financing and Security Agreement (the "Financing Agreement") with EagleBank permitting Sulion to borrow up to eight million dollars, with a one year maturity, to fund its business of purchasing tax certificates (the "Tax Lien Loan"). The credit limit was later increased to fifteen million dollars. The Tax Lien Loan was secured by a Guaranty of Payment Agreement executed by Dr. Schwartz, Axis Investment, Axis Capital, and Tax Lien LLP.

By late August 2017, Altassa was added as an additional borrower and other changes to the terms and conditions of the loan were made, including a decrease in the lending limit and an extension of the maturity date. In addition, Dr. Schwartz, Tax Lien LLC, and Axis Investment became the guarantors under an Amended and Restated Guaranty of Payment Agreement.

2018 Amendments

By the time the two loans came up for renewal a year later in 2018, the principal balance on the REO Loan was zero, and the Tax Lien Loan balance was $3,847,793.50.

Dr. Schwartz and EagleBank negotiated to renew the REO Loan for another nine months pursuant to an Eighth Amendment to Guidance Line of Credit Loan Agreement dated November 30, 2018 (the "2018 Loan Agreement"). The borrowers under the 2018 Loan Agreement were Sulion, Altassa, and a newly added entity named Reovest, LLC

("Reovest"). Under this renewal, the credit limit was increased to six million dollars. The guarantors—Dr. Schwartz, Tax Lien LLC, and Axis Investment—executed an aptly-named Reaffirmation of Guaranty to reaffirm their obligations under the Second Amended and Restated Guaranty of Payment Agreement (together, the "2018 Guaranty"), which included the confessed judgment provision.

The six-million-dollar credit limit was evidenced and governed by a Second Amended Guidance Line of Credit Revolving Promissory Note effective as of October 27, 2018 (the "2018 Note"). Section 4.6 of the 2018 Note states:

> Upon the occurrence of an Event of Default, Borrower hereby authorizes any attorney designated by Lender or any clerk of any court of record to appear for Borrower in any court of record and confess judgment without prior hearing against Borrower in favor of Lender for and in the amount of the outstanding principal, all interest accrued and unpaid thereon, all other amounts payable by Borrower to Lender under the terms of this Note or any other Loan Documents, costs of suit, and attorneys' fees of fifteen percent (15%) of the unpaid principal amount of the Note and interest then due hereunder. By its acceptance of this Note, Lender agrees that in the event Lender exercises at any time its right to confess judgment under this Note, Lender shall use its best efforts to obtain legal counsel who will charge Lender for its services on an hourly basis, at its customary hourly rates and only for the time and reasonable expenses incurred. In no event shall Lender enforce the legal fees portion of a confessed judgment award for an amount in excess of the fees and expenses actually charged to Lender for services rendered by its counsel in connection with such confession of judgment and/or the collection of sums owed to Lender. In the event Lender receives, through execution upon a confessed judgment, payments on account of attorneys' fees in excess of such actual attorneys' fees and expenses incurred by Lender, then, after full repayment and satisfaction of all of the obligations under and in connection with this Note, the Loan Agreement and all of the other Loan Documents, Lender shall refund such excess amount to Borrower. Borrower hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Borrower may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States

> of America now in force or which may hereafter be enacted. The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as Lender shall deem necessary or desirable, for all of which this Note shall be a sufficient warrant.

Of the six-million-dollar credit limit, $3,847,793.50 was immediately used to pay the balance of the Tax Lien Loan as well as to fund the closing costs of $52,660.[3] This drawdown left $2,099,546.50 of available credit, and was evidenced by a separate promissory note—referred to in the 2018 Note as a "Sub-Note" (the "2018 Sub-Note," and together with the 2018 Loan Agreement, 2018 Guaranty, and 2018 Note, the "2018 Loan Documents")—in that amount, dated November 30, 2018.

Section 3.15 of the 2018 Sub-Note states:

> Upon the occurrence of an Event of Default, and if such event of default shall continue beyond any applicable notice and cure period, Borrower hereby authorizes any attorney designated by Lender or any clerk of any court of record to appear for Borrower in any court of record and confess judgment without prior hearing against Borrower in favor of Lender for and in the amount of the outstanding principal, all interest accrued and unpaid thereon, all other amounts payable by Borrower to Lender under the terms of this Note, costs of suit, and attorneys' fees of fifteen percent (15%) of the unpaid principal amount of the Note and interest then due hereunder. By its acceptance of this Note, Lender agrees that in the event Lender exercises at any time its right to confess judgment under this Note, Lender shall use its best efforts to obtain legal counsel who will charge Lender for its services on an hourly basis, at its customary hourly rates and only for the time and reasonable expenses incurred. In no event shall Lender enforce the legal fees portion of a confessed judgment award for an amount in excess of the fees

[3] At closing, the borrowers executed a Loan Closing Fee Schedule agreeing to closing costs totaling $52,660, including loan commitment and legal fees, among others, and agreeing to pay the full balance on the Tax Lien Loan.

> and expenses actually charged to Lender for services rendered by its counsel in connection with such confession of judgment and/or the collection of sums owed to Lender. In the event Lender receives, through execution upon a confessed judgment, payments on account of attorneys' fees in excess of such actual attorneys' fees and expenses incurred by Lender, then, after full repayment and satisfaction of all of the obligations under and in connection with this Note, the Loan Agreement and all of the other Loan Documents, Lender shall refund such excess amount to Borrower. Borrower hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Borrower may otherwise be entitled under the laws of the United States of America or of any state or possession of the United States of America now in force or which may hereafter be enacted. The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdictions as often as Lender shall deem necessary or desirable, for all of which this Note shall be a sufficient warrant.

PROCEDURAL HISTORY

THE CONFESSED JUDGMENTS

On January 22, 2020, EagleBank simultaneously filed two complaints for confessed judgments in the Circuit Court for Montgomery County: one against borrowers Altassa, Sulion, and Reovest (hereinafter, "Borrowers"), and the other against Tax Lien, LLC, Dr. Schwartz, and Axis Investment (hereinafter, "Guarantors"). The complaints alleged that Borrowers had defaulted on the 2018 Note, and that Guarantors failed to honor their obligations under the 2018 Guaranty. As such, EagleBank requested confessed judgments against Borrowers and Guarantors pursuant to the applicable provisions of the 2018 Note and 2018 Guaranty, respectively. EagleBank supported its complaints with copies of the 2018 Note and 2018 Guaranty, an affidavit by an EagleBank representative testifying to

the default, and a transaction detail showing all payments, interest rates, and the running balance.

On January 30 and 31, confessed judgments were entered against Guarantors and Borrowers, respectively, for $3,534,029.08, plus attorneys' fees and pre- and post-judgment interest (the "Confessed Judgments"). The court issued notice of the judgments to Borrowers and Guarantors that same day.

THE MOTIONS TO VACATE

Because EagleBank filed one action against the Borrowers and a separate action against Guarantors, out of necessity, Borrowers and Guarantors filed separate motions to vacate the Confessed Judgments.[4] Soon after, they filed a motion to consolidate their two cases.

In their motions to vacate, Guarantors and Borrowers argued, among other things, that they were not provided with adequate notice or service of the judgments, that the 2018

[4] In support of their motion, Guarantors filed, among other things, a lengthy affidavit by Dr. Schwartz and several email exchanges between Dr. Schwartz and EagleBank representatives. Borrowers, however, provided no evidentiary support for their motion to vacate. Instead, Borrowers and Guarantors moved to consolidate the cases. Assuming that the court would grant the motion to consolidate, Borrowers stated in their motion to vacate that they were relying on the evidence submitted by Guarantors. The court denied the motion to consolidate, and Borrowers failed to supplement their motion with any supporting evidence. As such, Borrowers cannot be said to have met their "burden of presenting evidence satisfactorily supporting [their] purported defense[.]" *Garliss v. Key Fed. Sav. Bank*, 97 Md. App. 96, 104 (1993). On those grounds alone, the court's denial of Borrowers' motion to vacate would be upheld. Nevertheless, because the arguments advanced by Borrowers and Guarantors in the circuit court and on appeal are virtually the same, we shall credit Borrowers with the same evidence submitted by Guarantors for purposes of this opinion.

Note and 2018 Guaranty were unenforceable and void *ab initio* due to lack of consideration, that there was no event of default other than the one manufactured by EagleBank, and that EagleBank breached its contract with Borrowers and committed fraud by charging $52,000 for the loan renewal and credit increase when it "had no intention of lending anything to Borrowers."

On November 13, Guarantors and Borrowers each filed a "Request for Hearing or Proceeding" on their motions to vacate. On November 25, the court, without a hearing, denied the motion to consolidate and the motions to vacate. Borrowers and Guarantors (hereinafter, "Appellants") timely noted their appeals, which we have consolidated.[5]

DISCUSSION

I.

CONFESSED JUDGMENTS

"A confession of judgment clause . . . is a provision by which debtors agree to the entry of judgment against them without the benefit of a trial in the event of default on the debt instrument." *Schlossberg v. Citizens Bank of Maryland*, 341 Md. 650, 655 (1996). Generally, a confessed judgment is "entitled to the same faith and credit, as any other judgment." *Id.* (quoting *Keiner v. Commerce Trust Co.*, 154 Md. 366, 370 (1927)). However, it is still disfavored by Maryland courts, and considering "the ease with which a

[5] We initially denied Borrowers and Guarantors' joint motion to consolidate their appeals. However, we ordered consolidation after reviewing the arguments presented by the parties in their written briefs and at oral arguments, finding that the substantive issues and underlying facts of the two appeals were the same and the interests of judicial economy favored consolidation.

creditor may obtain a confessed judgment and the potential for fraud and abuse," attacks against confessed judgments have been liberally construed. *Goshen Run Homeowners Ass'n, Inc. v. Cisneros*, 467 Md. 74, 79 (2020).

Pursuant to Maryland Rule 2-611, a confessed judgment may be entered against a party "upon the filing of a complaint accompanied by the original or a copy of the instrument authorizing the confessed judgment and an affidavit specifying the amount due and stating the address of the defendant." *Schlossberg*, 341 Md. at 655-56 (citing Md. Rule 2–611(a)). The clerk must then notify the defendant of the judgment. Md. Rule 2-611(c). The defendant may "move to open, modify, or vacate the judgment" within the prescribed time, and such a motion must state "the legal and factual basis for the defense to the claim." Md. Rule 2-611(d). Finally, "[i]f the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading." Md. Rule 2-611(e).

A.

"MERITORIOUS DEFENSES"

The party moving to "open, modify, or vacate" a confessed judgment must demonstrate a "meritorious (prima facie) defense to the execution or amount of the confessed judgment itself." *NILS, LLC v. Antezana*, 171 Md. App. 717, 726-27 (2006). What constitutes a meritorious defense to a confessed judgment, however, is limited. *Goshen Run*, 467 Md. at 104. In *NILS, LLC v. Antezana*, we explained that a meritorious

defense "is not intended to be an attack on the antecedent debt or obligation itself, for which, for instance, a promissory note (and its attendant confession of judgment) might have been given in satisfaction." 171 Md. App. at 728. Instead, it must be a defense challenging either "1) the execution of the promissory note itself or 2) the amount of debt due on the note." *Id.*

The party moving to strike a confessed judgment has "the burden of presenting evidence satisfactorily supporting its purported defense[.]" *Garliss*, 97 Md. App. at 104. That burden, however, is not a heavy one and "the movant is entitled to prevail if, in light of the evidence presented, persons of ordinary judgment and prudence could fairly draw different inferences from the evidence presented." *Gambo v. Bank of Maryland*, 102 Md. App. 166, 185 (1994) (cleaned up). The evidence should be enough to persuade "the fair and reasoned judgment of an ordinary man that there are substantial and sufficient grounds for an actual controversy as to the merits of the case[.]" *NILS, LLC*, 171 Md. App. at 727 (emphasis omitted) (quoting *Remsburg v. Baker*, 212 Md. 465, 469 (1957)). "In other words, if the evidence is such that persons of ordinary judgment and prudence could honestly and fairly draw different inferences from it, one favoring the plaintiff and the other the defendant, the court should not itself decide that conflict, but should submit it to a jury." *Id.* (quoting *Remsburg*, 212 Md. at 469). What constitutes a "meritorious defense" is a question of law that we review de novo. *Gambo*, 102 Md. App. at 185.

B.

ANALYSIS

1. Appellants' Unpreserved Contentions

Appellants advance several arguments on appeal that they did not assert in the circuit court.

First, Appellants dispute that there had been an "offer, acceptance, and a meeting of minds sufficient to form a legally binding and enforceable contract[]" between the parties. They base this claim on an alleged dispute over whether the 2018 Note and 2018 Guaranty were part of a new loan agreement or were merely amendments to an existing loan agreement.

Second, Appellants claim that there is an actual controversy concerning the judgment amount because they allege that they were entitled to a set-off or credit of $52,660 for loan commitment fees that EagleBank charged at closing on the 2018 Loan Documents. This claim is predicated on their contention that EagleBank advanced no funds under those documents and further, that the 2018 Note did not document a new loan.

Third, Appellants claim that that EagleBank froze $70,000 of Borrowers' funds as a "right of set-off," but never applied those funds against the loan balance, resulting in an inflated judgment amount.

Fourth, Appellants argue that the 2018 Note and 2018 Guaranty are void due to duress and unconscionability.

We do not ordinarily decide any issue unless it "plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131. Appellants hope to skirt the preservation issue by contending that there was evidence presented to the circuit court that supported each of these defenses. It is not enough to put the evidence before the court—if a party wants the court to consider an argument, it must ask the court to do so. We therefore decline to entertain these unpreserved issues on appeal.[6]

2. Appellants' Contention that EagleBank Failed and Refused to Provide the Agreed Upon Financing Under the 2018 Note

Pointing to the alleged fact that they did not draw down any of the credit available under the 2018 Note, Appellants contend that the 2018 Note was not supported by consideration, that EagleBank breached its agreement to loan the funds contemplated by the 2018 Note, and that EagleBank fraudulently induced them into executing the 2018 Loan Documents. Appellants also claim that, to the extent there was a default under the 2018 Note, it was caused by EagleBank as a result of its refusal to permit draws on the credit facility. Guarantors also allege that the 2018 Guaranty is not enforceable because no "new" money was advanced to Borrowers during the 2018-19 loan term.

[6] Even if preserved, these arguments do not provide a basis to reverse the judgments. There was clearly an offer, an acceptance, and a meeting of the minds, as evidenced by Borrowers' and Guarantors' signatures on the 2018 Loan Documents. Appellants do not contend that either of those instruments fail for vagueness or lack of definite terms. The duress and unconscionability arguments likewise would fail. Appellants presented nothing other than general, conclusory allegations in Dr. Schwartz's affidavit that suggest that, at most, EagleBank enforced its rights under the various loan documents and declined to accede to Dr. Schwartz's demands. The $52,660 in closing costs was specifically accepted when the parties closed the 2018 amendments to the loan, so that argument likewise fails to present a meritorious defense.

These defenses are premised on the verifiably incorrect assertion that EagleBank failed to provide any funding under the 2018 Loan Documents.[7] At the time the REO and Tax Lien Loans came up for renewal in 2018, EagleBank could have required full payment of the approximately 3.8 million dollars still owed to them under the Tax Lien Loan; conversely, Borrowers could have paid the entire balance due on the Tax Lien Loan. Instead, the parties entered into the 2018 Loan Agreement, whereby Borrowers' credit limit under the REO Loan was increased to six million dollars. Borrowers immediately used a portion of that credit to pay off the balance due on the Tax Lien Loan plus the $52,660 in closing costs, leaving approximately 2.1 million dollars in available credit under the 2018 Loan Agreement. Thus, EagleBank did provide funding under the 2018 Loan Agreement, which, in addition to the remaining credit made available to Borrowers and other mutual promises, was the consideration upon which the 2018 Loan Documents were premised. That those funds did not flow through Borrowers but were instead used to directly repay

[7] We also note that none of the foregoing defenses are meritorious defenses to the Confessed Judgments. As explained above, a "meritorious defense" to a confessed judgment is one that challenges either the execution of the instrument that permitted the confessed judgment itself or challenges the amount of judgment. *NILS, LLC*, 171 Md. App. at 728. A meritorious defense does not challenge any "antecedent transactions and proceedings that may have eventuated in the execution of the promissory note." *Id.* at 730. None of the foregoing defenses meet that test.

Borrowers' other debts to EagleBank, does not change that fact. Nor does the fact that Borrowers did not choose to make use of the remaining credit.[8]

3. Lack of Notice

Appellants argue that the court erred in refusing to vacate the Confessed Judgments because the judgments were entered "in secret, without notice to Appellants either prior to filing [the] complaint[s] or for a full five months after entr[ies] of judgment." We disagree. Confessed judgments, by their nature, are entered without prior notice to the party against whom they are enforced. *See Goshen Run*, 467 Md. at 79. By agreeing to the confessed judgment provisions in the 2018 Note and 2018 Guaranty, Appellants waived their right to notice prior to entry of judgment. Appellants' defense therefore fails because lack of prior

[8] Appellants claim that they attempted to make use of this available credit, but that EagleBank wrongfully denied their requests for funding. The 2018 Loan Agreement set forth the following specific requirements for requesting a disbursement under the loan:

> *Special Provisions Governing all Advances*. Borrower shall present a written request to Lender to make a disbursement under the Loan, which disbursement shall be evidenced by a Sub-Note, pertaining to a Property which has been conveyed to Borrower by a Tax Sale Deed (or its equivalent), which draw may be made to the extend said request otherwise complies with the requirements of the Loan Documents.

Appellants point to nothing in the record demonstrating that Borrowers properly made a request under the 2018 Loan Agreement which was then denied by EagleBank. At oral argument, Dr. Schwartz contended that the record showed such a request, but he referred only to an email that he had written to an EagleBank representative in which he made a conclusory allegation that EagleBank had refused to honor his draw requests. There is no evidence in the record that documents or even references a specific request. Moreover, even if EagleBank had failed to honor a proper request to draw from the credit facility, that would not constitute a meritorious defense to the confessed judgment action for the reasons explained in footnote 7.

notice is not a meritorious defense to the Confessed Judgments, and the record shows that Appellants received adequate post-judgment notice.[9]

4. Appellants' Contention that the Only Default was One that EagleBank Caused

Appellants argue that there was no default on the 2018 Note and that EagleBank's own actions caused Borrowers to default. Notably, as for the existence of an event of default, Appellants do not contend that they paid the entire principal amount of $3,900,453.50 or any of the late charges, fees, and interest that were included in the judgment amount of $3,534.029.08. Dr. Schwartz's conclusory and unsupported assertions do not identify any facts to support the notion that there was no event of default. The record clearly reflects that the funds borrowed under the 2018 Loan Documents were not fully repaid—thus there is no basis for the Appellants' contention that there had been no event of default.

[9] Appellants contend, without elaboration, that they did not receive notice for five months after entry of the Confessed Judgments. Although we generally address only fully briefed issues, we nonetheless respond. Our review of the record shows this argument is incorrect. As explained in the procedural history section, the Confessed Judgments were entered against Guarantors and Borrowers on January 30, 2020 and January 31, 2020, respectively. The court issued notices of the judgment to Guarantors and Borrowers the same day that the judgments were entered against them. On April 16, EagleBank filed a motion for alternative service as to borrower Altassa, alleging that its attempts to personally serve Altassa were unsuccessful and requesting leave to serve through first class mail. EagleBank simultaneously filed two affidavits attesting that a registered agent for borrowers Sulion and Reovest had been personally served on March 3. The court granted the motion for alternative service on May 8, and on May 15, notice was thereby served on Altassa. On April 27, the court re-issued notice to Guarantors at an alternative address at the behest of EagleBank. On June 15, the court re-entered the January 31 judgment in order to correct a misspelling in borrower Altassa's name, but with no other substantive change.

Appellants' argument that EagleBank caused the events of default fares no better. Appellants allege that EagleBank caused Appellants to default by: 1) failing to use available funds in Sulion's account to cover $43,243.20 alleged to be owed by Borrowers in EagleBank's September 16, 2019 notice of default, despite Dr. Schwartz's requests that they do so; 2) refusing to advance 10-day "gap closing" financing to Borrowers to close on a real estate contract that would have purportedly produced one million dollars in proceeds; 3) freezing funds in Appellants' operating accounts and intercepting payments directed at Appellants; and 4) refusing to fund any loan advance requests by Borrowers.

As to each of these allegations, Appellants fail to identify any specific provisions in the 2018 Loan Documents that EagleBank violated or any specific facts that constitute a breach of same. Dr. Schwartz's unsupported conclusory allegations are not the stuff of a meritorious defense. *See NILS, LLC*, 171 Md. App. at 727. Moreover, these arguments are effectively set-off and recoupment defenses that do not, under the terms of the 2018 Note and 2018 Guaranty, excuse Appellants from their obligations under those instruments.

The 2018 Note precludes set-offs and vests EagleBank with virtually unfettered discretion to pick and choose its rights and remedies in an event of default, as follows:

> 2.2 *Remedies.* Upon the occurrence of and continuation of an Event of Default, in addition to all other rights and remedies available to Lender under the Loan Documents and applicable law, Lender shall have the following rights and remedies:
>
> a. *Acceleration.* Lender, in Lender's sole discretion and without notice or demand, may declare the entire principal balance outstanding under any or all Sub-Notes, plus accrued interest and all other sums owed in connection therewith, immediately due and payable; reference is made to the Loan Documents for further and additional rights on the part of Lender to

declare the entire balance outstanding under the Sub-Notes, plus accrued interest and all other sums owed thereunder, immediately due and payable.

b. *Default Interest Rate.* Lender, in Lender's sole discretion and without notice or demand, may raise the rate of interest accruing on the principal balance outstanding under any Sub-Note by five (5) percentage points above the rate of interest otherwise applicable, independent of whether Lender elects to accelerate the principal balance outstanding under such Sub-Note.

* * *

3.4 *Unconditional Obligation.* Borrower's obligations under this Note and Sub-Notes shall be the absolute and unconditional duty and obligation of Borrower and shall be independent of any rights of set-off, recoupment or counterclaim which Borrower might otherwise have against the holder of this Note and the Sub-Notes, and Borrower shall pay absolutely the payments of principal, interest, fees and expenses required under this Note or the Sub-Notes, free of any deductions and without abatement, diminution or set-off.

* * *

3.8 *Set-off.* In addition to all liens upon, and rights of set-off against the money, credit, stocks, bonds and/or securities or other property of any nature whatsoever of Borrower given to the Lender by law, the Lender shall have a lien upon and a right of set-off against all money, credit, stocks, bonds and/or securities and other property of any nature whatsoever of Borrower now or hereafter on deposit with, or held by, or in the possession of or on account with the Lender, whether held in a general or special account or deposit, or for safe-keeping or otherwise; and every such lien and right of set-off may be exercised without demand upon or notice to Borrower, upon an Event of Default under this Note or any of the Loan Documents. No lien or right of set-off shall be deemed to have been waived by any act or conduct on the part of the Lender, or by any neglect to exercise such right of set-off or to enforce such lien, or by any delay in so doing, and every right of set-off and lien shall continue in full force and effect until such right of set-off or lien is specifically waived or released by an instrument in writing executed by the Lender.

Similarly, the 2018 Guaranty provides:

> 1.2 *Guaranty Unconditional*. The obligations and liabilities of the Guarantor under this Agreement shall be absolute and unconditional, irrespective of the genuineness, validity, priority, regularity or enforceability of the Loan Agreement, any promissory note evidencing all or any part of the Obligations, or any of the other Loan Documents or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor. . .
>
> * * *
>
> 4.3 *Cumulative Remedies*. The rights, powers and *remedies provided in this Agreement and in other Loan Documents are cumulative, may be exercised concurrently or separately*, may be exercised from time to time and in such order as the Lender shall determine and are in addition to, and not exclusive of, rights, powers and remedies provided by existing or future applicable Laws. In order to entitle the Lender to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement. Without limiting the generality of the foregoing, the Lender may:
>
> * * *
>
> (d) without reducing or impairing the obligations of the Guarantor and without notice thereof: (i) fail to perfect the Lien in any or all Collateral or to release any or all the Collateral or to accept substitute Collateral, (ii) approve the making of advances under the credit facilities under the Loan Agreement, (iii) waive any provision of this Agreement or the other Loan Documents, (iv) *exercise or fail to exercise rights of set-off* or other rights, or (v) accept partial payments or extend from time to time the maturity of all or any part of the Obligations.

(Emphasis added).

When assessed against the foregoing provisions of the 2018 Note and 2018 Guaranty, the acts allegedly committed by EagleBank do not constitute meritorious defenses.

5. Appellants' Arguments Regarding the Interest Rates Charged by EagleBank

Appellants argue that they are entitled to a set-off or credit because the interest for the Confessed Judgments was "overcharged at rates of 7-12%, when [EagleBank] agreed to 6%."

Appellants misconstrue the interest rate provisions under the 2018 Note and 2018 Sub-Note. The 2018 Note contains the following provision regarding regular interest rates:

> *Interest Rate.* With respect to each Sub-Note, interest shall accrue on the principal balance outstanding thereunder at a variable interest rate at all times equal to the "Prime Rate" as published from time to time in the Money Rates section of *The Wall Street Journal* (the "Prime Rate"), plus one and eight hundred seventy-five thousandths of one percent (1.875%). If more than one rate is so published the Lender shall use the highest of such published rates. Changes in the variable interest rate will be contemporaneous with changes in the Prime Rate. *In no event shall the interest rate be less than six percent (6.0%) per annum*. . . .

(Emphasis added). According to this provision, six percent was the absolute minimum interest rate, and the interest rate varied based on the externally published "Prime Rate." Further, as listed above, the 2018 Note provides for a separate default interest rate, which permitted EagleBank to raise the otherwise applicable interest rate by five percent in the event of default.

Appellants provided the circuit court with no evidence that EagleBank charged an interest rate that did not comply with the above provisions. And although we are under no obligation to look outside the record to take judicial notice of the applicable prime rates at the relevant times, the result of our own survey of publicly-available information matches

the interest rates charged by EagleBank as reflected on the loan transaction history report included in the record. We see no error here.

II.

FAILURE TO CONDUCT A HEARING

Appellants argue that the court erred in denying their motions to vacate without a hearing notwithstanding their request for one. We disagree. A motion to vacate a confessed judgment is governed by Rule 2-611(d). The right to a hearing on a motion to vacate a confessed judgment is governed by Rule 2-311(f). *See EMI Excavation, Inc. v. Citizens Bank of Maryland*, 91 Md. App. 340, 342-43 (1992). Rule 2-311(f) states:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing *in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested*. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing *if one was requested as provided in this section.*

(Emphasis added). As such, a request for a hearing on a motion must be included in the motion (or the response) in two places: 1) in the body of the motion or response under a separate heading; and 2) in the title of the motion or response. Appellants' motions to vacate complied with neither requirement.[10] The circuit court, therefore, was not required to hold a hearing before denying Appellants' motions.

[10] Despite Appellant's assertions to the contrary, the "Request for Hearing or Proceeding" filed in both cases nearly five months after the motions to vacate, do not satisfy this requirement.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.