

04-344-CD
NORTHWEST SAVINGS BANK vs. MICHAEL A. BUERK

Northwest Savings Bank vs. Michael Buerk
2004-344-CD

NORTHWEST SAVINGS BANK,

Plaintiff

vs.

MICHAEL A. BUERK,

Defendant

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
)
) CIVIL ACTION-LAW
)
) NO. 2004-344-C0
)
)
)
)
)
) COMPLAINT IN JUDGMENT
)
) CODE:
)
) Filed on behalf of plaintiff, Northwest Savings
) Bank
)
)
)
) Counsel of Record:
) Mark G. Claypool, Esquire
) PA I.D. No. 63199
) KNOX MCLAUGHLIN GORNALL &
) SENNETT, P.C.
) 120 West Tenth Street
) Erie, Pennsylvania 16501
) (814) 459-2800

FILED

MAR 12 2004

3/2:40/04

William A. Shaw
Prothonotary

I CERT W/ NOTICE TO
DEPT.

I CERT TO ATTY. W/ STATEMENT

NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff)
) CIVIL ACTION-LAW
vs.)
) NO.
MICHAEL A. BUERK,)
)
Defendant)

COMPLAINT IN JUDGMENT

AND NOW, this 10th day of March, 2004, the plaintiff, Northwest Savings Bank ("Plaintiff"), by and through its attorneys, Knox McLaughlin Gornall & Sennett, P.C., with this Complaint in Judgment against the Defendant, Michael A. Buerk, stating as follows:

1. Plaintiff is a Pennsylvania State chartered bank with a principle place of business at Liberty Street at Second Avenue, Drawer 126, Warren, PA 16365.
2. Defendant, Michael A. Buerk, is an adult individual maintaining an address of 971 Treasure Lake, DuBois, PA 15801.
3. A true and correct copy of a Continuing Guaranty dated December 3, 1998 ("Guaranty") is attached hereto and is incorporated herein by reference as Exhibit "A." Under the terms of the Guaranty, Michael A. Buerk (the "Defendant") guaranteed payment in full of all amounts due plaintiff under a series of four separate loans by and between Plaintiff and Kronenwetter Electric, Inc. as evidenced by Notes dated 12/3/98, 12/3/98, 2/9/00 and 6/30/00 in the original principal amount of \$250,000, \$250,000, \$40,000 and \$100,000.
4. The Guaranty has not been assigned.

5. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction.

6. Judgment has not previously been entered on the Guaranty in any jurisdiction.

7 A default has occurred under the terms of the Guaranty and the Notes as a result of a failure to make payments when due and the Chapter 7 bankruptcy filing of Kronenwetter Electric, Inc. with the U.S. Bankruptcy Court for the Western District of Pennsylvania at Case No. 03-12717-WWB.

8. An itemization of the amount due to the plaintiff from the Defendant under the aforementioned instruments is as follows:

Principal Sum	\$435,852.45
Interest as of December 3, 2003	\$5,552.31
Costs	to be added
Late fees	\$2,920.72
Attorney's Commission (15%)	<u>\$65,377.86</u>
TOTAL AMOUNT:	\$509,703.34

Attorney's fees, costs, charges, and interest at the rates provided by the Notes continue to accrue until paid in full.

WHEREFORE, plaintiff, as authorized by the warrant of attorney contained in the attached Guaranty, demands judgment against the Defendant in the amount of \$509,703.34 plus interest at the Note rates of interest until paid in full, plus late charges, attorneys' fees and costs of suit and for such other relief as is necessary and just.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
Attorneys for Northwest Savings Bank

BY:


Mark G. Claypool
Pa. I.D. No. 63199
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

526873

CONTINUING GUARANTY

THIS CONTINUING GUARANTY is made on the 3rd day of December, 19 98 by the persons or entities whose names and signatures appear below (collectively, "Guarantors") to NORTHWEST SAVINGS BANK, ("Bank").

WITNESSETH:

WHEREAS, Kronenwetter Electric, Inc. ("Borrower"), is, on this date, borrowing money from Bank and may from time to time hereafter desire to borrow additional moneys from Bank, such current and future borrowings to be evidenced by notes and related documents to be executed and delivered by Borrower to Bank (collectively, the "Obligations"); and

WHEREAS, Bank, as a condition of extending credit to Borrower as represented by the Obligations, requires that the Guarantors obligate themselves unconditionally for the payment and satisfaction of the Obligations; and

WHEREAS, to induce Bank to extend credit to Borrower as represented by the Obligations, Guarantors are willing to guarantee the Obligations; and

WHEREAS, it is in the interests of Guarantors that credit as represented by the Obligations be extended to Borrower.

NOW, THEREFORE, for good and valuable consideration and intending to be legally bound hereby, Guarantors agree as follows:

ARTICLE I REPRESENTATIONS AND WARRANTIES

Guarantors represent and warrant that:

SECTION 1.01. Binding Effect. This Guaranty constitutes the valid and binding obligation of each of the Guarantors.

SECTION 1.02. Financial Condition. Guarantors acknowledge that they are fully cognizant of Borrower's financial condition, that Borrower is in sound financial condition and is able to perform in accordance with the terms and conditions of the Obligations, that they have access to such information as will enable them to remain informed of such financial condition and that they will not rely on Bank to provide them with any such information.

ARTICLE II GUARANTY AND SURETYSHIP

SECTION 2.01. The Guaranty and Suretyship. Guarantors hereby unconditionally guarantee and become surety to Bank and its successors and assigns for the full and punctual payment when due (whether at stated maturity, upon acceleration or otherwise) of the Obligations and all other amounts payable by Borrower pursuant thereto, including all costs, expenses and reasonable attorney's fees at any time paid or incurred by Bank in making, maintaining or administering the credit as represented by the Obligations, in endeavoring to collect any of the Obligations and in enforcing any guarantees thereof. Upon failure by Borrower to pay punctually any such amount, Guarantors shall forthwith on demand pay the amount not so paid at the place and in the manner specified in the Obligations without previous suit, judgment or execution against Borrower.

SECTION 2.02 Guaranty Joint and Several. Guarantors acknowledge and agree that the obligation created by this Guaranty shall be joint and several as between themselves and also with any other guarantees executed this date and any additional guarantees hereafter executed.

SECTION 2.03. Guaranty Unconditional. The Obligations of Guarantors under this Guaranty shall be unconditional and absolute and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by:

- (i) any extension, renewal, settlement, compromise, waiver or release in respect of Borrower or any other guarantor;
- (ii) any modification or amendment of or supplement to the Obligations;
- (iii) any release, non-perfection or invalidity of any direct or indirect security for any of the Obligations;
- (iv) any change in the existence, structure or ownership of Borrower, or any insolvency, bankruptcy, reorganization or other similar proceeding affecting Borrower or its assets;
- (v) the existence of any claim, set-off or other rights that Guarantors may have at any time against Borrower, the Bank, or any other person, whether in connection herewith or any unrelated transactions, provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim;
- (vi) any invalidity or unenforceability for any reason of any of the Obligations, or any provision of applicable law or regulation purporting to prohibit the payment by Borrower of any of the Obligations;
- (vii) any other act or omission to act or delay of any kind by Borrower, Bank or any other person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of Borrower with respect to any of the Obligations.

SECTION 2.04. Discharge Only Upon Payment In Full; Reinstatement in Certain Circumstances. This is a continuing guaranty by Guarantors and may not be withdrawn or revoked under any circumstances. Guarantors' Obligations hereunder shall remain in full force and effect until the Obligations shall have been paid in full. If at any time any payment of the Obligations is rescinded or must be otherwise restored upon the insolvency, bankruptcy or reorganization of Borrower or otherwise, Guarantors' Obligations hereunder with respect to such payment shall be reinstated as though such payment had been due but not made at such time.

SECTION 2.05. Waiver by Guarantors. Guarantors irrevocably waive acceptance hereof, presentment, demand, protest and any notice not provided for herein, as well as any requirement that at any time any action be taken by any corporation or person against Borrower, any other Guarantor or other corporation or person.

SECTION 2.06. Subrogation. Upon making any payment with respect to Borrower hereunder, Guarantors shall be subrogated to the rights of the payee against Borrower with respect to such payment; provided that Guarantors shall not enforce any payment by way of subrogation until all of the Obligations have been paid in full.

SECTION 2.07. Stay of Acceleration. If acceleration of the time for payment of any amount payable by Borrower pursuant to the Obligations is stayed upon the insolvency, bankruptcy or reorganization of Borrower, all such amounts otherwise subject to acceleration under the terms of the Obligations shall nonetheless be payable by Guarantors hereunder forthwith on demand by the Bank pursuant to the Obligations.

SECTION 2.08. Extensions, Refinancings and Releases. Guarantors hereby assent that Bank may at any time and from time to time, either before or after the maturity thereof, without further notice to or further consent of Guarantors, extend the time of payment of, exchange or surrender any collateral for, or renew any of the Obligations, and may also make any agreement with Borrower or with any other party or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between the Bank and Borrower or any such other party or person, without in any way impairing or affecting this Guaranty. This Guaranty shall in no way be impaired or affected by an acceptance by Bank of any security for the Obligations or by any disposition of, or failure, neglect, or omission on the part of Bank to realize upon, any of the Obligations or upon any collateral or security, including failure to perfect any security interest in any collateral or security or any other impairment of collateral of whatever kind, for any or all of the Obligations, or by any application of payments or credits thereon. Bank shall have the exclusive right to determine how, when and what application of payments and credits, if any, shall be made on the Obligations, or any part of them. In order to hold Guarantors liable hereunder, there shall be no necessity or duty on the part of Bank to resort at any time for payment to Borrower, or to any other person or corporation, or to all or any of the Obligations, or to any collateral, or security or property whatsoever.

SECTION 2.09. Setoff. All accounts, deposits and property of the Guarantors with or in the hands of Bank shall be pledged as collateral security for the Obligations, and Bank shall have the same right of setoff with respect to deposits and other credits of the Guarantors as it has with respect to deposits and other credits of Borrower.

ARTICLE III
MISCELLANEOUS

SECTION 3.01. No Waivers. No failure or delay by Bank or its successors or assigns in exercising any right, power or privilege hereunder or under the Obligations shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

SECTION 3.02. Successors and Assigns. The provisions of this Guaranty shall be binding upon the respective heirs, executors, administrators, successors and assigns of Guarantors.

SECTION 3.03. Pennsylvania Law. This Guaranty shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania.

SECTION 3.04. Confession of Judgment. Guarantors do hereby authorize and empower any attorney of record of Pennsylvania, or elsewhere, to appear for and to enter judgment against any or all of them to the full extent of all amounts due or as may become due from Guarantors hereunder and in favor of Bank, with or without declaration, with costs of suit, release of errors, without stay of execution and with fifteen (15%) percent of the principal amount of the Obligations or Three Hundred Fifty Dollars (\$350.00), whichever is greater, added for attorney's fees; and with respect to any judgment entered hereon, Guarantors waive, in regard to any real or personal property levied upon, any right of appraisement, exemption or stay of execution under any law now in force or hereafter enacted, the right of appeal, and do release all errors. No single exercise of the power to confess judgment shall be deemed to exhaust the power and whether or not any such exercise shall be held by any court valid, voidable or void, the power shall continue undiminished and it may be exercised from time to time as often as Bank shall elect until such time as the Obligations shall be paid in full.

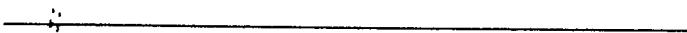
IN WITNESS WHEREOF, the undersigned have executed this Guaranty as of the day and year first above written.

WITNESS/ATTEST:

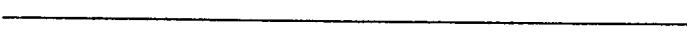


(SEAL)

Michael A. Buerk



(SEAL)



(SEAL)



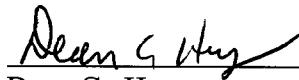
(SEAL)

NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
Plaintiff)) CLEARFIELD COUNTY, PENNSYLVANIA
vs.)) CIVIL ACTION-LAW
MICHAEL A. BUERK,)) NO.
Defendant))

AFFIDAVIT

Dean C. Huya, being duly sworn, states as follows:

1. I am a Vice President of Credit Review of the Plaintiff, Northwest Savings Bank.
2. I have had the opportunity to review the original instrument referenced in the instant complaint in judgment and I verify that Exhibit A is a true and correct copy of the original to the best of my knowledge, information and belief.



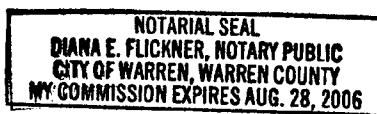
Dean C. Huya

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 16th DAY OF February, 2004.

Diana E. Flickner
Notary Public

My commission expires: _____

526873



NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
vs.)
MICHAEL A. BUERK,) CIVIL ACTION-LAW
Defendant) NO.
)
)

CONFESSTION OF JUDGMENT

Pursuant to the authority contained in the warrant of attorney, a copy of which is attached to the complaint filed in this action, the undersigned hereby appears for the plaintiff and confesses judgment in favor of Northwest Savings Bank and against the Defendants as follows:

Principal Sum	\$435,852.45
Interest as of December 3, 2003	\$5,552.31
Costs	to be added
Late fees	\$2,920.72
Attorney's Commission (15%)	<u>\$65,377.86</u>
TOTAL AMOUNT:	\$509,703.34

Attorney's fees, costs, charges, and interest at the variable rate provided by the Note continue to accrue until paid in full.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &
SENNETT, P.C.
Attorneys for Northwest Savings Bank

BY: 

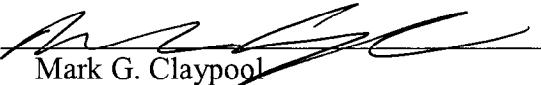
Mark G. Claypool
Pa. I.D. No. 63199
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
vs.)
MICHAEL A. BUERK,) CIVIL ACTION-LAW
Defendant) NO.
)
)

CERTIFICATE OF RESIDENCE

I hereby certify that the address of the plaintiff is Liberty Street at Second Avenue, Drawer 126, Warren, PA 16365, that the last known addresses of the Defendant is as follows:

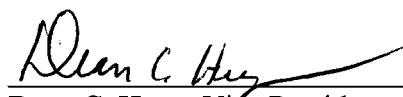
Michael A. Buerk
971 Treasure Lake
DuBois, PA 15801

BY: 
Mark G. Claypool
Pa. I.D. No. 63199
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
vs.)) CIVIL ACTION-LAW
MICHAEL A. BUERK,)) NO.
Defendant))

VERIFICATION

On this, the 26th day of February, 2004, Dean C. Huya, the undersigned, deposes and states that he is a Vice President of Credit Review of the Plaintiff, Northwest Savings Bank, that as such he is authorized to execute this verification on behalf of the Plaintiff, and that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief, subject to the penalties of 18 Pa.C.S. §4904 relating to the unsworn falsification to authorities.



Dean C. Huya, Vice President of Credit Review
Northwest Savings Bank

NORTHWEST SAVINGS BANK,) IN THE COURT OF COMMON PLEAS OF
Plaintiff) CLEARFIELD COUNTY, PENNSYLVANIA
vs.)
MICHAEL A. BUERK,) CIVIL ACTION-LAW
Defendant)) NO. 2004-344-C0
)

TO THE DEFENDANT:

YOU ARE HEREBY NOTIFIED, as required by law, that a judgment has been entered against you in the amount of \$509,703.34, plus interest at the rate provided in the Notes and attorneys' fees and costs at the above term and number on MAR. 12, 2004. You will find enclosed copies of all documentation filed in this Office in support of the Confession of Judgment. If you believe you were incorrectly identified and are not responsible for payment of the obligation, which formed the basis for this judgment, you should contact an attorney immediately. It may necessary for you to file a Petition to Strike the Judgment, present it to a Judge and request a prompt hearing. The petition can be in the form set forth at Rule 2967 of the Pennsylvania Rules of Civil Procedure. If the Court finds that you were in fact incorrectly identified, you may be entitled to recover your court costs and reasonable attorney's fees. A copy of the Rules 2959 and 440 is attached for your reference. If you have any questions, please contact Mark G. Claypool, Esquire, 120 West Tenth Street, Erie, Pennsylvania 16501; telephone (814) 459-2800.

CLERK OF RECORDS
PROTHONOTARY DIVISION

BY: 
Prothonotary

PENNSYLVANIA RULES OF CIVIL PROCEDURE

Rule 440. Service of Legal Papers other than Original Process

(a)(1) Copies of all legal papers other than original process filed in an action or served upon any party to an action shall be served upon every other party to the action. Service shall be made

(i) by handing or mailing a copy to or leaving a copy for each party at the address of the party's attorney of record endorsed on an appearance or prior pleading of the party, or at such other address as a party may agree, or

(ii) by transmitting a copy by facsimile to the party's attorney of record as provided by subdivision (d).

(2)(i) If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).

(ii) If such service cannot be made, service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served.

(b) Service by mail of legal papers other than original process is complete upon mailing.

(c) If service of legal papers other than original process is to be made by the sheriff, he shall notify by ordinary mail the party requesting service to be made that service has or has not been made upon a named party or person.

(d)(1) A copy may be served by facsimile transmission if the parties agree thereto or if a telephone number for facsimile transmission is included on an appearance or prior legal paper filed with the court.

(2) The copy served shall begin with a facsimile cover sheet containing (I) the name, firm, address, telephone number, of both the party making service and the party served, (ii) the facsimile telephone number of the party making service and the facsimile telephone number to which the copy was transmitted, (iii) the title of the legal paper served and (iv) the number of pages transmitted.

(3) Service is complete when transmission is confirmed as complete.

PENNSYLVANIA RULES OF CIVIL PROCEDURE

Rule 2959. Striking Off or Opening Judgment; Pleadings; Procedure

(a)(1) Relief from a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment.

(2) The ground that the waiver of the due process rights of notice and hearing was not voluntary, intelligent and knowing shall be raised only

- (i) in support of a further request for a stay of execution where the court has not stayed execution despite the timely filing of a petition for relief from the judgment and the presentation of *prima facie* evidence of a defense; and
- (ii) as provided by Rule 2958.3 or Rule 2973.3.

(3) If written notice is served upon the petitioner pursuant to Rule 2956.1(c)(2) or Rule 2973.1(c), the petition shall be filed within thirty days after such service. Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.

(b) If the petition states *prima facie* grounds for relief the court shall issue a rule to show cause and may grant a stay of proceedings. After being served with a copy of the petition the plaintiff shall file an answer on or before the return day of the rule. The return day of the rule shall be fixed by the court by local rule or special order.

(c) A party waives all defenses and objections which are not included in the petition or answer.

(d) The petition and the rule to show cause and the answer shall be served as provided in Rule 440.

(e) The court shall dispose of the rule on petition and answer, and on any testimony, depositions, admissions and other evidence. The court for cause shown may stay proceedings on the petition insofar as it seeks to open the judgment pending disposition of the application to strike off the judgment. If evidence is produced which in a jury trial would require the issues to be submitted to the jury the court shall open the judgment.

(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment are pending.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY ,
PENNSYLVANIA
STATEMENT OF JUDGMENT

Northwest Savings Bank
Plaintiff(s)

No.: 2004-00344-CD

Real Debt: \$509,703.34

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Michael A. Buerk
Defendant(s)

Entry: \$

Instrument: Confession of Judgment

Date of Entry: March 12, 2004

Expires: March 12, 2009

Certified from the record this March 12, 2004

William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment, Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney