

06-203-CD
S&T Bank vs Scenic View Family

S&T Bank vs Scenic View Family
2006-203-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

S&T BANK,

Plaintiff

vs.

SCENIC VIEW FAMILY
RECREATION CENTER, INC.,

Defendant.

CIVIL DIVISION

NO.: 2006-203-CD

ISSUE NO.:

TYPE OF PLEADING:

**COMPLAINT IN CONFESSION OF
JUDGMENT**

FILED ON BEHALF OF:
S&T Bank, Plaintiff

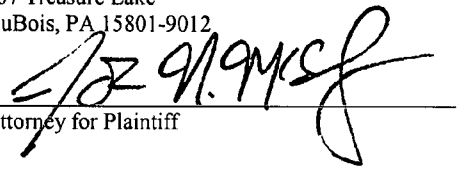
COUNSEL OF RECORD FOR THIS PARTY:

John N. McElroy
Pa. I.D. #87529

GRENN & BIRSIC, P.C.
One Gateway Center
Ninth Floor
Pittsburgh, PA 15222
(412) 281-7650

I HEREBY CERTIFY THAT THE ADDRESS OF THE
PLAINTIFF IS:
614 Liberty Avenue
DuBois, PA 15801

I HEREBY CERTIFY THAT THE ADDRESS OF THE
DEFENDANT IS AS FOLLOWS:
567 Treasure Lake
DuBois, PA 15801-9012


Attorney for Plaintiff

FILED (12)
FEB 08 2006
M 11:30 / w
William A. Shaw
Prothonotary/Clerk of Courts
CERT WITH NOTICE TO
DEPT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

S&T BANK,)	CIVIL DIVISION
)	
Plaintiff)	NO.:
)	
vs.)	
)	
SCENIC VIEW FAMILY)	
RECREATION CENTER, INC.,)	
)	
Defendant.)	
)	

COMPLAINT IN CONFESSION OF JUDGMENT

S&T Bank, by its attorneys, Grenen & Birsic, P.C., files this Complaint in Confession of Judgment as follows:

1. S&T Bank is a commercial bank existing under the laws of the Commonwealth of Pennsylvania, with offices located at 614 Liberty Avenue, DuBois, PA 15801 (hereinafter referred to as "Plaintiff").

2. Scenic View Family Recreation Center, Inc., with the last known address of 567 Treasure Lake, DuBois, PA 15801-9012 (hereinafter referred to as "Defendants").

3. On or about July 21, 2003, Defendant executed a Promissory Note in favor of Plaintiff in the original principal amount of \$88,000.00 ("Note"), which Note authorized the confession of judgment against Defendant. A copy of said Note, which copy is a true and correct copy of said Note, is marked **Exhibit "A"**, attached hereto and made a part hereof.

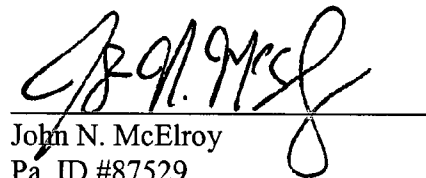
4. The aforesaid Note has been released, transferred or assigned.
5. Judgment is not being entered by confession against a natural person in connection with a consumer credit transaction
6. Judgment has not been entered against the Defendant on the aforesaid Note in any jurisdiction.
7. The aforesaid Note authorizes the entry of judgment upon the occurrence of an event of default thereunder.
8. Defendant is in default under the terms and conditions of the aforesaid Note for failure to make payments when due..
9. The itemization of the amount due, including interest and attorneys' fees as authorized by the Note, is as follows:

Principal	\$75,765.01
Interest to 1/19/06	\$ 1,004.51
Late charges 1/19/06	\$ 523.39
Other Fees	<u>\$ 101.00</u>
TOTAL	\$77,393.91

WHEREFORE, the Plaintiff, as authorized by the Warrant of Attorney contained in the Note, demands judgment against the Defendant in the total sum of \$77,393.91, with interest on the principal sum (\$75,765.01) at the contractual rate, and additional late charges under the Note from January 19, 2006, plus reasonable attorneys' fees and costs, and brings said instruments to court to recover said sum.

GRENNEN & BIRSIC, P.C.

By:

A handwritten signature in black ink, appearing to read "J. N. McElroy", is written over a horizontal line.

John N. McElroy

Pa. ID #87529

Attorneys for Plaintiff

One Gateway Center, Ninth Floor

Pittsburgh, PA 15222

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

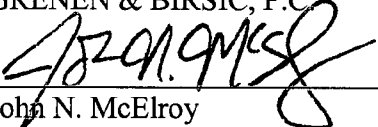
S&T BANK,)	CIVIL DIVISION
)	
Plaintiff)	NO.
)	
vs.)	
)	
SCENIC VIEW FAMILY)	
RECREATION CENTER, INC.,)	
)	
Defendant.)	

CONFESSION OF JUDGMENT

Pursuant to the Warrant of Attorney contained in the aforementioned Note, the original or copy of which is attached to the Complaint filed in this action, I appear for the Defendant and confess judgment in favor of Plaintiff and against the Defendants as follows:

Principal	\$75,765.01
Interest to 1/19/06	\$ 1,004.51
Late charges 1/19/06	\$ 523.39
Other Fees	\$ <u>101.00</u>
TOTAL	\$77,393.91

with interest on the principal sum (\$75,765.01) at the contractual rate, and additional late charges and other amounts due under the Note from January 19, 2006, plus reasonable attorneys' fees and costs.

By: 
GRENNEN & BIRSIC, P.C.
John N. McElroy
Attorneys for Defendants
Pro Hac Vice

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

S&T BANK,

Plaintiff

vs.

SCENIC VIEW FAMILY RECREATION
CENTER, INC.,

Defendant.

CIVIL DIVISION

No.:

TYPE OF PLEADING:
**NOTICE PURSUANT TO 42 PA C.S.A.
2737.1**

FILED ON BEHALF OF:
S&T Bank, Plaintiff

COUNSEL OF RECORD FOR THIS
PARTY:

John N. McElroy
Pa. I.D. #87529

GRENNEN & BIRSIC, P.C.
One Gateway Center
Ninth Floor
Pittsburgh, PA 15222
(412) 281-7650

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA

S&T BANK,)	CIVIL DIVISION
)	
Plaintiff)	
)	NO.:
vs.)	
)	
SCENIC VIEW FAMILY RECREATION)	
CENTER, INC.,)	
)	
Defendant.)	

NOTICE PURSUANT TO 42 PA C.S.A. 2737.1

JUDGMENT HAS BEEN ENTERED AGAINST YOU BY CONFESSION OF JUDGMENT AT THE ABOVE CAPTIONED NUMBER AND TERM.

PURSUANT TO 42 PA C.S.A. 2737.1, IF YOU HAVE BEEN INCORRECTLY IDENTIFIED AS A DEFENDANT IN THE COMPLAINT IN CONFESSION OF JUDGMENT AND HAD A CONFESSION OF JUDGMENT ENTERED AGAINST YOU, YOU SHALL BE ENTITLED TO COSTS AND REASONABLE ATTORNEY FEES AS DETERMINED BY THE COURT.

YOU MAY SEEK TO HAVE THE COURT STRIKE THE CONFESSION OF JUDGMENT BY FOLLOWING THE PROCEDURE SET FORTH IN RULE 2959 OF THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, WHICH RULE 2959 IS SET FORTH BELOW:

**Pennsylvania Rule of Civil Procedure 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.

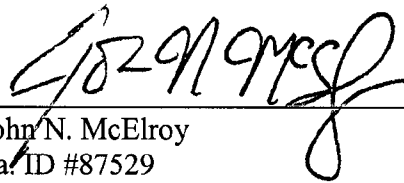
(f) The lien of the judgment or of any levy or attachment shall be preserved while the proceedings to strike off or open the judgment are pending.

GRENNEN & BIRSIC, P.C.

Dated: _____

2/3/06

By: _____



John N. McElroy

Pa. ID #87529

Attorneys for Plaintiff

One Gateway Center, Ninth Floor

Pittsburgh, PA 15222

(412) 281-7650

EXHIBIT "A"



PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$88,000.00	11-10-2004	11-11-2010	2000107074-200	CH	00000645083	713	
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

Borrower: Scenic View Family Recreation Center, Inc.
28 Division St
DuBois, PA 15801-2520

Lender: S&T BANK
Commercial Lending
PO Box 190
Indiana, PA 15701
(724) 349-1800

Principal Amount: \$88,000.00

Interest Rate: 6.790%

Date of Note: November 10, 2004

PROMISE TO PAY. Scenic View Family Recreation Center, Inc. ("Borrower") promises to pay to S&T BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Eighty-eight Thousand & 00/100 Dollars (\$88,000.00), together with interest at the rate of 6.790% per annum on the unpaid principal balance from November 11, 2004, until "Change Date".

PAYMENT. Borrower will pay this loan in accordance with the following payment schedule:

The term of this Note shall be 72 months. The outstanding principal balance and the accrued and unpaid interest shall be repaid in 72 consecutive monthly payments of principal including interest, based on a 6 year amortization schedule. The first 60 payments of principal including interest shall be in the amount of \$1,495.37 and shall commence on December 11, 2004 and continue on the 11th day of each consecutive month thereafter, with the monthly principal including interest payment to be adjusted on November 11, 2009 (hereinafter referred to as the "Change Date") in accordance with any adjustment in the interest rate such that the loan will continue to amortize at the 6 year amortization schedule over the balance of the months remaining in the term, with all outstanding principal, accrued and unpaid interest and all other sums due and owing under the terms of this Note to be immediately due and payable in full, unless sooner paid, on November 11, 2010. Interest shall accrue during the 60 month period commencing from the date of this Note to and including November 10, 2009 at a fixed rate of 6.790% per annum and for the twelve (12) month period thereafter, commencing on the Change Date at a fixed rate equal to the index, as determined on the Change Date plus 2.750% per annum. The index shall mean the weekly average yield of the five (5) year Fixed-Rate Credit (adding the daily Fixed-Rate Credit yields and dividing by 5), as is published and released in the Federal Home Loan Bank of Pittsburgh Weekly Financial Summary on the Friday on which the Change Date falls or if the Change Date does not fall on a Friday by using the publication most recently published immediately prior to such Change Date. If for any reason, the index is not available, the index shall mean such other index as Lender shall choose from time to time, which index shall have as closely as possible a historical movement substantially similar to the original index. Lender will inform Borrower of the new index upon Borrower's request.

Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due and may result in Borrower's making fewer payments. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: S&T Bank, Loan Servicing Center, PO Box 469 Indiana, PA 15701.

LATE CHARGE. If a payment is 16 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$20.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, Lender, at its option, may, if permitted under applicable law, increase the interest rate on this Note 3.000 percentage points. The interest rate will not exceed the maximum rate permitted by applicable law. If judgment is entered in connection with this Note, interest will continue to accrue on this Note after judgment at the existing interest rate provided for in this Note.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan.

This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

Change in Ownership. Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS. Upon default, Lender may, after giving such notices as required by applicable law, declare the entire unpaid principal balance on this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by, construed and enforced in accordance with federal law and the laws of the Commonwealth of Pennsylvania. This Note has been accepted by Lender in the Commonwealth of Pennsylvania.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clearfield County, Commonwealth of Pennsylvania.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts.

PRIOR NOTE. In addition to new funds, this Note is a refinancing of the promissory Note in the original principal amount of \$68,000.00 from Scenic View Family Recreation Center, Inc. to S&T Bank dated July 21, 2003 and the promissory Note in the original principal amount of \$20,000.00 from Scenic View Family Recreation Center, Inc. to S&T Bank dated November 14, 2003.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several. If any portion of this Note is for any reason determined to be unenforceable, it will not affect the enforceability of any other provisions of this Note.

CONFESSION OF JUDGMENT. BORROWER HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OR THE PROTHONOTARY OR CLERK OF ANY COURT IN THE COMMONWEALTH OF PENNSYLVANIA, OR ELSEWHERE, TO APPEAR AT ANY TIME FOR BORROWER AFTER A DEFAULT UNDER THIS NOTE AND WITH OR WITHOUT COMPLAINT FILED, CONFESS OR ENTER JUDGMENT AGAINST BORROWER FOR THE ENTIRE PRINCIPAL BALANCE OF THIS NOTE AND ALL ACCRUED INTEREST, LATE CHARGES AND ANY AND ALL AMOUNTS EXPENDED OR ADVANCED BY LENDER RELATING TO ANY COLLATERAL SECURING THIS NOTE, TOGETHER WITH COSTS OF SUIT, AND AN ATTORNEY'S COMMISSION OF TEN PERCENT (10%) OF THE UNPAID PRINCIPAL BALANCE AND ACCRUED INTEREST FOR COLLECTION, BUT IN ANY EVENT NOT LESS THAN FIVE HUNDRED DOLLARS (\$500) ON WHICH JUDGMENT OR JUDGMENTS ONE OR MORE EXECUTIONS MAY ISSUE IMMEDIATELY; AND FOR SO DOING, THIS NOTE OR A COPY OF THIS NOTE VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT. THE AUTHORITY GRANTED IN THIS NOTE TO CONFESS JUDGMENT AGAINST BORROWER SHALL NOT BE EXHAUSTED BY ANY EXERCISE OF THAT AUTHORITY, BUT SHALL CONTINUE FROM TIME TO TIME AND AT ALL TIMES UNTIL PAYMENT IN FULL OF ALL AMOUNTS DUE UNDER THIS NOTE. BORROWER HEREBY WAIVES ANY RIGHT BORROWER MAY HAVE TO NOTICE OR TO A HEARING IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT AND STATES THAT EITHER A REPRESENTATIVE OF LENDER SPECIFICALLY CALLED THIS CONFESSION OF JUDGMENT PROVISION TO BORROWER'S ATTENTION OR BORROWER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL.

PROMISSORY NOTE
(Continued)

Loan No: 2000107074-200

Page 3

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THIS NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.

BORROWER:

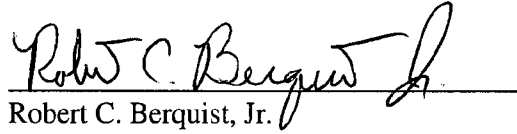
SCENIC VIEW FAMILY RECREATION CENTER, INC.

By: Virginia L Novak (Seal)
Virginia L. Novak, President of Scenic View Family
Recreation Center, Inc.

By: Timothy M. Novak (Seal)
Timothy M. Novak, Secretary/Treasurer of Scenic
View Family Recreation Center, Inc.

VERIFICATION

Robert C. Berquist, Jr., Vice President, and duly authorized representative of S&T Bank, deposes and says subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities that the facts set forth in the foregoing Complaint in Confession of Judgment are true and correct to his information and belief.


Robert C. Berquist, Jr.
Vice President

Deputy