

NORTHWEST SAVINGS BANK,

Plaintiff

vs.

S. J. SWITALA TRUCKING & REPAIR,
INC.,

Defendant

) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

)
) CIVIL ACTION - LAW

)
) NO. 2006-549-CD

)
) COMPLAINT IN CONFESSION OF
) 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 16501-1461
) (814) 459-2800

FILED

APR 07 2006

m 12:20 (w)

William A. Shaw

Prothonotary/Clerk of Courts

1 CENT TO DEPT.

1 CENT TO ATT

NORTHWEST SAVINGS BANK,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	)	
	)	
vs.	)	CIVIL ACTION - LAW
	)	
S. J. SWITALA TRUCKING & REPAIR,	)	
INC.,	)	NO.
	)	
Defendant	)	

COMPLAINT IN CONFESSION OF JUDGMENT

AND NOW, this 6th day of April, 2006, the plaintiff, Northwest Savings Bank ("Plaintiff"), by and through its attorneys, Knox McLaughlin Gornall & Sennett, P.C., with this Complaint in Confession of Judgment against the Defendant, S. J. Switala Trucking & Repair, Inc., stating as follows:

1. Plaintiff is a Pennsylvania State chartered bank with a principle place of business at 100 Liberty Street, Drawer 128, Warren, Pennsylvania 16365.
2. Defendant, S. J. Switala Trucking & Repair, Inc. ("Defendant"), is a Pennsylvania corporation maintaining an address of P.O. Box 202, Philipsburg, Pennsylvania 16866.
3. On or about August 31, 2004, Defendant executed a Term Note in favor of Plaintiff whereby it obtained a loan in the original amount of \$73,858.62 from Plaintiff which it agreed to repay with interest at nine (9%) percent beginning on September 30, 2004. A true and correct copy of the Term Note (the "Term Note") is attached hereto as Exhibit A and is incorporated herein by reference.
4. The Term Note 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 Term Note in any jurisdiction.

7 A default has occurred under the terms of the Term Note as a result of a failure to make payments when due.

8. An itemization of the amount due to the Plaintiff from the Defendant under the aforementioned instruments as of March 15, 2006 is as follows:

Principal	\$ 66,189.82
Interest as of March 15, 2006	5,365.62
Late fees	to be added
Costs	to be added
Attorney's commission (15%)	<u>9,928.47</u>
TOTAL	\$ 81,483.91

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

WHEREFORE, plaintiff, as authorized by the warrant of attorney contained in the attached Term Note, demands judgment against the Defendant in the amount of \$81,483.91 plus interest at the Term Note rate 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 16501-1461
(814) 459-2800

TERM NOTE

(Fixed Rate)

\$73,858.62

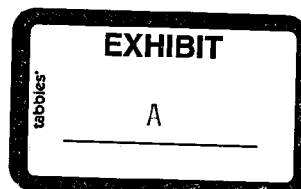
08/31/2004

FOR VALUE RECEIVED AND INTENDING TO BE LEGALLY BOUND
HEREBY, the Undersigned,

S J Switala Trucking & Repair, Inc

("Borrower") a(n) _____ Corporation _____ organized and existing under the laws of the State of _____ PA _____ hereby promises to pay to the order of NORTHWEST SAVINGS BANK ("Lender"), or its assigns, in lawful money of the United States of America at its office in _____ Clearfield, PA 16830 the sum of \$73,858.62 plus interest thereon accruing from the date hereof to be payable as follows:

- (i) Interest shall be payable on the outstanding principal balance at a fixed rate equal to 9.000% per annum.
- (ii) Commencing on September 30, 2004 and on the same day of each month thereafter for a total of 36 months, payments shall be due in the amount of \$2,353.06 representing blended principal and interest in an amount which amortizes the principal balance over a 36 month period.
- (iii) The entire outstanding balance of principal shall be payable on August 31, 2007 ("Maturity Date") together with accrued interest then outstanding, if not sooner paid.
- (iv) 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. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges.
- (v) Any and all partial prepayments shall be applied on the principal balance due. There shall be no prepayment fee.



Borrower will be in default if any of the following happens: (a) Borrower fails to make any payment when due. (b) Borrower breaks any promise Borrower has made to Lender, or Borrower fails to comply with or to perform when due any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, or in any other agreement or loan Borrower has with Lender. (c) Borrower 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 any and all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness. (d) Any representation or statement made or furnished to Lender by Borrower or on Borrower's behalf is false or misleading in any material respect either now or at the time made or furnished. (e) Borrower becomes insolvent, a receiver is appointed for any part of Borrower's property, Borrower makes an assignment for the benefit of creditors, or any proceeding is commenced either by Borrower or against Borrower under any bankruptcy or insolvency laws. (f) Any creditor tries to take any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of Borrower's accounts with Lender. (g) Any guarantor dies or any of the other events described in this default section occurs with respect to any guarantor of this Note. (h) A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired. (i) Lender in good faith deems itself insecure.

Borrower shall pay to Lender a late charge of five (5%) percent of any monthly payment not received by Lender within fifteen (15) days after the payment is due.

This Note is secured by a:

- ☒ Security Agreement of even date herewith, granting a lien on the personal property described therein.
- ☐ Mortgage of even date herewith, granting a lien on the real estate described therein.
- ☐ Unsecured.

Borrower grants to Lender a contractual security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender all Borrower's right, title and interest in and to, Borrower's accounts with Lender (whether checking, savings, or some other account), including without limitation all accounts held jointly with someone else and all accounts Borrower may open in the future, excluding however all IRA and Keogh accounts, and all trust accounts for which the grant of a security interest would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on this Note against any and all such accounts.

Borrower hereby authorizes and empowers any attorney of any court of record of Pennsylvania or elsewhere to appear for it and to confess judgment against it, and in favor of Lender, as of any term, with or without declaration filed, for the entire amount of this Note then remaining unpaid, all arrearages of interest thereon, and any other amounts due the Lender pursuant to the terms hereof and of the Loan Agreement, with costs of suit and with an attorney's commission for collection of fifteen (15%) percent of the principal amount hereof, or Three Hundred Fifty Dollars (\$350.00), whichever is the larger amount; and with respect to any judgment entered hereon, Borrower waives, in regard to any real or personal property levied upon, any right of appraisal, exemption or stay of execution under any law now in force or hereafter enacted, the right of appeal, and does 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 Lender shall elect until such time as any holder hereof shall receive payment in full of the principal sum together with interest and costs.

Borrower expressly agrees that no renewal or extension hereof granted, nor any indulgence shown to Borrower, nor any dealings between Lender and any person now or hereafter interested herein or in any property, tangible or intangible, securing the indebtedness evidenced by this Note, whether as owner, encumbrancer or otherwise, shall discharge, extend or in any way affect any of its obligations under this Note.

The remedies of this Note and any other documents evidencing or securing this indebtedness providing for the enforcement of the payment of the principal sum thereby secured, together with interest thereon, and for the performance of the covenants, conditions and agreements, matters and things therein and herein contained, are cumulative and concurrent and may be pursued singly, or successively, or together at the sole discretion of Lender, and may be exercised as often as occasion therefor shall occur.

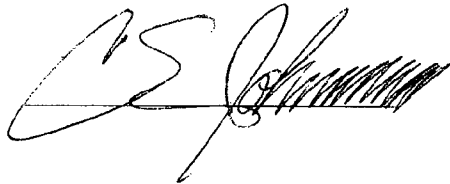
Lender's failure to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other right at any subsequent time. No agreement with respect to this Note or any collateral shall be binding upon Lender unless signed by it.

The Borrower agrees to pay all costs of collection hereof, including reasonable attorney's fees.

This Note inures to the benefit of the Lender, its successors and assigns, and is binding upon the Borrower, its successors and assigns. The Lender may transfer this Note and may transfer any collateral given under this Note to any transferee, who shall thereupon become vested with all the powers and rights given to the Lender under this Note, and the Lender shall thereafter be forever relieved and fully discharged from any liability or responsibility arising under this Note.

WITNESS:

By:

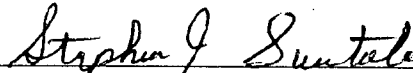


Loan number 1555016458

BORROWER:

S J Switala Trucking & Repair, Inc

By:


Stephen J Switala, President

NORTHWEST SAVINGS BANK,

Plaintiff

vs.

S. J. SWITALA TRUCKING & REPAIR,
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Defendant

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) CLEARFIELD COUNTY, PENNSYLVANIA

) CIVIL ACTION - LAW

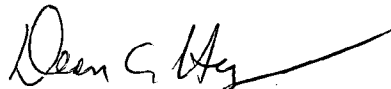
) NO.

AFFIDAVIT

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

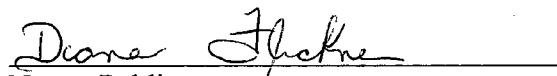
1. I am a Vice President of Credit Review of the Plaintiff, Northwest Savings Bank.

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.



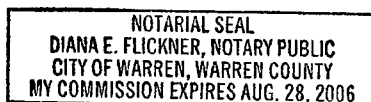
Dean C. Huya

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 31st DAY OF MARCH, 2006.


Notary Public

My commission expires: _____

662238



NORTHWEST SAVINGS BANK,	)	IN THE COURT OF COMMON PLEAS OF
	)	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	)	
	)	
vs.	)	CIVIL ACTION - LAW
	)	
S. J. SWITALA TRUCKING & REPAIR,	)	
INC.,	)	NO.
	)	
Defendant	)	

CONFESSION 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 Defendant and confesses judgment in favor of Northwest Savings Bank and against the Defendant as follows:

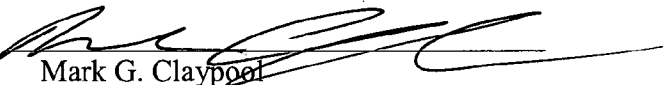
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Respectfully submitted,

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 16501-1461
(814) 459-2800

NORTHWEST SAVINGS BANK,

Plaintiff

vs.

S. J. SWITALA TRUCKING & REPAIR,
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) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA

)
)
) CIVIL ACTION - LAW

)
) NO.
)
)

CERTIFICATE OF RESIDENCE

I hereby certify that the address of the Plaintiff is 100 Liberty Street, Drawer 128,
Warren, PA 16365, that the last known address of the Defendant is as follows:

S. J. Switala Trucking & Repair, Inc.
P.O. Box 202
Philipsburg, PA 16866

BY:


Mark G. Claypool
Pa. I.D. No. 63199
120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800

NORTHWEST SAVINGS BANK,

Plaintiff

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INC.,

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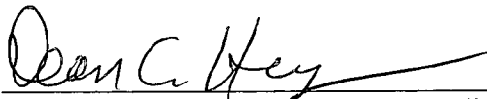
) IN THE COURT OF COMMON PLEAS OF
) CLEARFIELD COUNTY, PENNSYLVANIA
)
)

) CIVIL ACTION - LAW
)
)

) NO.
)
)

VERIFICATION

On this, the 31st day of March, 2006, 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,

Plaintiff

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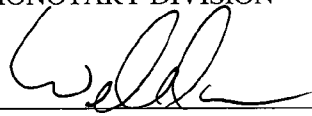
) CIVIL ACTION - LAW
)
)

) NO.
)
)

TO THE DEFENDANT:

YOU ARE HEREBY NOTIFIED, as required by law, that a judgment has been entered against you in the amount of \$81,483.91, plus interest at the rate provided in the Notes and attorneys' fees and costs at the above term and number on April 7, 2006. 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 Rules 2959 and 440 of the Pennsylvania Rules of Civil Procedure 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.