IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

WILMINGTON SAVINGS FUND SOCIETY, F.S.B.	)	
Plaintiff-Appellee	)	
v.	)	Case No. N24J-01079 SPL
H. ADAM WAHL, III and BROOKSIDE PROPERTIES, LLC	)	
Defendants-Appellants.	)	

Submitted: October 16, 2026
Decided: November 18, 2026

Upon Defendants' Appeal from Commissioner's Findings of Fact and Recommendations,
ADOPTED.

MEMORANDUM OPINION & ORDER

Jeffrey S. Cianciulli, Esquire, WEIR LLP, Wilmington, Delaware, *Attorney for Appellee Wilmington Savings Fund Society, F.S.B.*

David E. Wilks, Esquire, WILKS LAW, LLC, Wilmington, Delaware, *Attorney for Appellants H. Adam Wahl, III, and Brookside Properties, LLC.*

LUGG, J.

INTRODUCTION

Quality HVAC borrowed $6,000,000.00 from WSFS. H. Adam Wahl, III ("Wahl") and Brookside Properties ("Brookside") guaranteed the loan. Quality HVAC defaulted, and WSFS moved to secure its financial interest. WSFS invoked provisions of the guarantees to seek confessions of judgment against the loan guarantors – Wahl and Brookside. The guarantors opposed. They contend WSFS failed to demonstrate the guarantors knowingly, intelligently, and voluntarily waived their due process rights.

A Superior Court Commissioner concluded that Wahl knowingly, intentionally, and voluntarily waived, on behalf of himself and Brookside, the guarantors' rights to notice and a hearing.[1] Wahl appealed the Commissioner's findings.[2]

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[1] *Wahl I,* 2025 WL 2206759; *Wahl II*, 2026 WL 1747746.

[2] Defendants appealed the Superior Court Commissioner's 2025 finding that "[t]he Confession of Judgment provisions of the . . . [guarantees] are valid and enforceable and WSFS is entitled to confess judgment against them." D.I. 27; *Wilmington Savings Fund Society, FSB v. Wahl*, 2025 WL 2206759 (Del. Super. Ct. Jul. 31, 2025) (*Wahl I*). The Court recommitted the matter to that Commissioner to allow for the testimony of an additional witness. D.I. 31. After that witness testified, the Commissioner again concluded "[t]he Confession of Judgment provisions of the . . . [guarantees] are valid and enforceable and WSFS is entitled to confess judgment against them." D.I. 40; *Wilmington Savings Fund Society, FSB v. Wahl*, 2026 WL 1747746 (Del. Super. Ct. June 16, 2026) (*Wahl II*). Defendants again appealed. D.I. 41. The parties agree that there is a single appeal before the Court. D.I. 45. This Order considers the facts developed at both evidentiary hearings in assessing the enforceability of the confession of judgment provisions.

Having considered the Commissioner's Orders, the parties' arguments, and the complete record in this matter, the Commissioner's conclusion, finding "the confession of judgment provisions [to be] valid and enforceable against the Defendants,"[3] is **ADOPTED**.

[3] *Wahl I,* 2025 WL 2206759 at *9-10; *Wahl II*, 2026 WL 1747746 at *15.

BACKGROUND

Wahl served as President of Quality Heating and Air-Conditioning, Inc. ("Quality HVAC"),[4] a manufacturer and installer of commercial sheet metal ductwork.[5] On October 2, 2017, Quality HVAC received a loan from Wilmington Savings Fund Society, F.S.B. ("WSFS") for $6,000,000.[6] Wahl personally signed as Guarantor.[7]

In addition to his role with Quality HVAC, Wahl was the sole owner of Brookside.[8] Brookside owned a commercial property which Wahl leased to Quality HVAC to use as its fabrication shop.[9] Following the October 2, 2017, loan agreement, Wahl signed a Commercial Guaranty adding Brookside as Guarantor of the loan between Quality HVAC and WSFS.[10]

Each Guaranty contained a Confession of Judgment provision which, in bold, all-capitalized font, read:

> **CONFESSION OF JUDGMENT. GUARANTOR HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY-AT-LAW, AFTER THE OCCURRENCE OF AN**

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[4] D.I. 29, Ex. A; D.I. 30, Ex. B; D.I. 43, Ex. A ("Jan. 2025 Evid. Hr'g"), at 16.

[5] *Id.* at 61.

[6] *Id.* at 66.

[7] *Id.* at 106.

[8] *Id.* at 10.

[9] *Id.* at 64.

[10] *Id.* at 54.

> **EVENT OF DEFAULT, TO APPEAR IN ANY COURT OF RECORD AND TO CONFESS JUDGMENT AGAINST GUARANTOR FOR THE UNPAID AMOUNT OF THIS GUARANTY, REASONABLE ATTORNEYS' FEES EQUAL TO TWENTY PERCENT (20%) OF THE PRINCIPAL AND INTEREST DUE UNDER THIS NOTE, PLUS COSTS OF SUIT, AND TO RELEASE ALL ERRORS, AND WAIVE ALL RIGHTS OF APPEAL. IF A COPY OF THIS GUARANTY VERIFIED BY AN AFFIDAVIT SHALL HAVE BEEN FILED IN THE PROCEEDING, IT WILL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY. GUARANTOR WAIVES THE RIGHT TO ANY STAY OF EXECUTION AND THE BENEFIT OF ALL EXEMPTION LAWS NOW OR HEREAFTER IN EFFECT. NO SINGLE EXERCISE OF THE FOREGOING WARRANT AND POWER TO CONFESS JUDGMENT WILL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERECISE SHALL BE HELD BY AND COURT TO BE INVALID, VOIDABLE, OR VOID; BUT THE POWER WILL CONTINUE UNDIMINISHED AND MAY BE EXERCISE FROM TIME TO TIME AS LENDER MAY ELECT UNTIL ALL AMOUNTS OWING ON THIS GUARANTY HAVE BEEN PAID IN FULL.**[11]

The October 2, 2017, loan was modified several times.[12] The modifications altered the loan allowance, extended the maturity dates, and, on August 8, 2018, added Brookside as a Commercial Guarantor.[13]

Wahl signed each Guaranty in his personal and representative capacity, and each document contained the above quoted Confession of Judgment provision.[14]

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[11] *Id.*; Joint Hr'g Ex. ("Exs.") 4 at 3, 8(d) at 2-3.

[12] Jan. 2025 Evid. Hr'g at 54.

[13] *Id.*; D.I. 24, Ex. 8(d).

[14] *Id.* at 72-73.

Wahl signed each document under the following advisory, also printed in bold, all-capitalized font:

> **EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTEE IS DATED OCTOBER 2, 2017.**
>
> **THIS GUARANTY IS DELIVERED UNDER SEAL AND IT IS INTENDED THAT THIS GUARANTY IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.**[15]

On the final Change in Terms Agreement, dated April 18, 2022, the maturity date of the Promissory note was extended through June 30, 2023. In March 2023, Quality HVAC filed for bankruptcy and defaulted on the WSFS loan.[16] WSFS filed suit to confess judgment against Wahl and Brookside as Commercial Guarantors to recover $6,663,200.26 – an amount encapsulating the remaining loan principal plus

[15] Ex. 4 at 4; Ex. 8(d) at 4.

[16] Jan. 2025 Evid. Hr'g, at 91-93.

interest and other expenses.[17] Wahl and Brookside objected to the entry of confessed judgment,[18] and the Court scheduled a hearing on the matter.[19]

Wahl acknowledged he understood that as a guarantor he was "personally and primarily guaranteeing, not only the payment of debt, but the performance of all the Borrower's obligations[.]"[20] He testified that he did not read the loan documents because he "thought they were nonnegotiable."[21] Although a lawyer did not represent Wahl at the October 2, 2017 loan signing, Wahl acknowledged that, if he wanted representation, he could have obtained a lawyer to help him review the loan documents before signing.[22]

A Superior Court Commissioner found that Wahl, being a "sophisticated businessman," signed the loan documents "knowingly, intentionally, and voluntarily."[23] The Commissioner explained that a confession of judgment provision "must be considered under the totality of the circumstances of each particular matter."[24] Under the totality of the circumstances, the Commissioner concluded that

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[17] D.I. 1.

[18] D.I. 5.

[19] D.I. 6.

[20] Jan. 2025 Evid. Hr'g, at 120.

[21] *Id.* at 43.

[22] *Id.* at 43-44.

[23] *Wahl I*, 2025 WL 2206759, at *8.

[24] *Wahl I*, 2025 WL 2206759, at *8.

Wahl was a highly sophisticated businessman with a wealth of experience in both loan documents and Confession of Judgment provisions.[25] Wahl consulted an attorney less than two months prior to the loan transaction and, if he wanted to do so, he could have obtained legal assistance in this transaction.[26] The Commissioner found Wahl "had all the time he needed to review the Commercial Guaranties,"[27] and found the Confession of Judgment provision to be valid and enforceable.[28]

Defendants appealed the Commissioner's findings, arguing "the Commissioner's failure to consider or hear all *Zimmerman* factors to effectively employ the totality of circumstances in determining the validity of Defendants' waiver under the confession of judgment provision at issue is a reversable error and the Court should make a *de novo* determination of the Commissioner's findings in its bench ruling and Order."[29] Defendants also asserted that the Commissioner denied them the opportunity to fully develop their case at the evidentiary hearing through the testimony of WSFS's loan officer, John Matarese.[30] To allow for

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[25] *Id*.

[26] *Id*.

[27] *Id.* at *8.

[28] *Id.* at *10.

[29] D.I. 29 at 8-9, ¶ 15.

[30] D.I. 29 at 7-8, ¶ 13.

consideration of Matarese's testimony, this Court recommitted the matter to the Commissioner.[31]

Matarese testified to his dealings with Wahl.[32] He explained that, in 2016, he sought to "woo [Wahl] away from PNC to win the business."[33] WSFS engaged in a series of "smaller" transactions with Wahl to establish its ability to meet Wahl's needs.[34] Satisfied with WSFS's service, Wahl engaged WSFS in "larger" commercial transactions.

Matarese explained the lending process and the creation and finalization of the documents involved. WSFS presents the lender with a term sheet and "a discussion happens regarding how the documents are prepared."[35] WSFS "can prepare [the documents] internally through [their] LaserPro documents, which have limitations in terms of the ability to adjust a boilerplate language."[36] Alternatively, if substantial changes are needed, WSFS "certainly can go to outside counsel. [The borrower's] counsel can talk with [WSFS] counsel."[37] The latter process provides

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[31] D.I. 31 at 3-4, ¶¶ 9 – 10; Super. Ct. Civ. R. 132(a)(4)(iv) ("A judge may . . . recommit the matter to the Commissioner with instructions.").

[32] D.I. 41, Ex. B; D.I. 43, Ex. B ("("Feb. 2026 Evid. Hr'g").

[33] Feb. 2026 Evid. Hr'g, at 23-24.

[34] *Id.* at 43-46.

[35] *Id.* at 29.

[36] *Id*.

[37] *Id.* at 29-30.

"the ability to make a lot more adjustments within fine print on an outside counsel prepared document versus an internally prepared document;"[38] but, as long as both parties to the transaction are satisfied, bespoke documents may be employed.[39] Wahl chose to use the documents prepared and provided by WSFS, and Matarese explained that the "documents would be a draft version until [he] get[s] okay from [Wahl] that he reviewed" them and confirmed they are representative of their discussion.[40]

Matarese also explained his process in finalizing the documents at closing and the information he provides with respect to confession of judgment provisions. He informs borrowers that this provision allows WSFS "to enter into a judgment at any time after an event of default. It allows WSFS, without notice or acknowledgement to a guarantor, that we can go enter a judgment with the Court without a trial process or a going through the Court process that you would have to otherwise."[41] The confession of judgment provision is printed in bold and all caps "to draw the attention to the signer that this is an important provision within the document."[42]

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[38] *Id.* at 30.

[39] *Id*.

[40] *Id.* at 84.

[41] *Id.* at 35, 36.

[42] *Id.* at 53.

Matarese described Wahl as a "sophisticated businessman," who took his company from "doing 4 or 5 million in sales" in the early 2000s and "grew the company . . . [to] 23 or 25 million in revenue."[43] Further, Matarese understood Wahl to be represented by counsel.[44] He described a time when Wahl "called [Matarese] into Manny Fournaris's office to discuss the financial performance of the company and the cash flow need because of this larger job that they have."[45] Over the course of Wahl's dealings with WSFS, he signed 27 loan agreements containing the same confession of judgment provision included in the guaranties presently before the Court.[46]

Matarese traveled to Wahl's office on October 2, 2017, to complete the loan closing.[47] Matarese did not watch Wahl read the entire agreement; rather, he discussed the terms generally and explained the application of the confession of judgment provision as allowing WSFS to obtain a "judgment that we can enter in the event of a default without going through a court process, and we can do it immediately."[48] Matarese clarified that, while he had previously testified at a

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[43] *Id.* at 55.

[44] *Id.* at 36.

[45] *Id.* at 40.

[46] *Id.* at 52.

[47] *Id.* at 89.

[48] *Id.* at 94, 113.

deposition that he discussed this provision in the context of a note, "[u]sually, when [he is] speaking about the confession of judgment, it is in relation to a borrower's – a person's personal guarantee."[49] At no point did Matarese dissuade Wahl from taking additional time to review the documents or from involving counsel in any of the loan transactions.[50]

On the more fully developed record, the Commissioner again found the Confession of Judgment to be valid and enforceable.[51] The Commissioner found that Wahl agreed to the contract provisions, and he "cannot now complain that the loan documents were nonnegotiable."[52] The Commissioner assessed the totality of the circumstances and found Wahl to be a "highly sophisticated businessman with extensive experience in financial loan transactions" who, at best, chose "not to read the loan documents before signing them."[53] The Commissioner concluded that "[t]he Confession of Judgment provisions in the Wahl Guaranty and the Brookside Guaranty are valid and enforceable and WSFS is entitled to confess judgment against them."[54]

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[49] *Id.* at 94, 106, 110.

[50] *Id.* at 114-115.

[51] *Wahl II*, 2026 WL 1747746, at *15.

[52] *Id.* at *6.

[53] *Id.* at *14.

[54] *Id.* at *15.

Defendants renewed their appeal and challenge "WSFS's claimed authority to use the confession-of-judgment provisions to obtain judgment against them without the notice and opportunity to be heard ordinarily required by due process."[55] Defendants contend "that WSFS cannot satisfy its burden of proving that [Defendants] knowingly, intelligently, and voluntarily waived [notice and opportunity to be heard ordinarily required by due process."[56] Defendants frame the dispute as "whether WSFS proved that Defendants knew the confession-of-judgment provisions in the Relevant Guarantees surrendered their constitutional rights to notice and a hearing and intentionally agreed to relinquish those rights."[57] WSFS, of course, disagrees, and asserts that the totality of the circumstances support a valid waiver of rights and judgment should be entered against Defendants.[58]

[55] D.I. 41 at 3, ¶3 (internal citations omitted).

[56] *Id*.

[57] *Id.* at 9, ¶ 17.

[58] D.I. 43 at 3, ¶ 3.

STANDARD OF REVIEW

Under Superior Court Civil Rule 132, a Superior Court commissioner is empowered "to conduct case-dispositive evidentiary hearings . . . and to submit to a judge of this Court proposed findings and recommendations for the disposition by a judge, of any case dispositive matter."[59] A party may "serve and file written objections to the Commissioner's order which set forth with particularity the basis for the objections. The written objections shall be entitled 'Appeal from Commissioner's Findings of Fact and Recommendations.'"[60] The judge then engages in *de novo* review of the objections and may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner." A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.[61]

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[59] Super. Ct. Civ. R. 132(a)(4). The Commissioner's orders may be more appropriately titled "'Proposed Findings of Fact and Recommendations,' because [they were] tendered in a case-dispositive matter." *Preferred Financial Services, Inc., v. A & R Bail Bonds LLC,* 2019 WL 315331, at *3 n.43 (Del. Super. Ct. Jan. 23, 2019). *See also*, D.I. 41 at 7-8, ¶ 14; D.I. 43 at 11, ¶ 30.

[60] Super. Ct. Civ. R. 132(a)(4)(ii).

[61] Super. Ct. Civ. R. 132(a)(4)(iv).

ANALYSIS

Superior Court Civil Rule 58.1 sets forth the procedural requirements for entry of judgment by confession under 10 *Del. C.* § 2306. "A judgment by confession may be entered . . . for money due or to become due, or to secure the obligee against a money contingent liability, or both."[62] "If a confession of judgment action is contested, courts are to inquire into the validity of the waiver."[63] The plaintiff must show "that the defendant has knowingly, intelligently, and voluntarily waived notice and an opportunity to be heard,"[64] and "[i]f the plaintiff carries his burden, the burden shifts to the defendant to raise defenses to prevent an entry of judgment."[65] "[A] valid waiver must be voluntarily, knowingly, and intelligently made, or an intentional relinquishment or abandonment of a known right or privilege."[66] "The validity of a waiver depends upon the totality of the circumstances."[67]

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[62] 10 *Del. C.* § 2306(a).

[63] *Preferred Financial Services, Inc.,* 2019 WL 315331 at *3; 10 Del. C. § 2306(b).

[64] *Preferred Financial Services, Inc.,* 2019 WL 315331 at *3 (citing Super. Ct. Civ. R. 58.1(d)(5)).

[65] *Preferred Financial Services, Inc.,* 2019 WL 315331 at *3 (citing Super. Ct. Civ. R. 58.1(h)(3)(III)).

[66] *Mazik v. Decision Making, Inc*., 449 A.2d 202, 204 (Del. 1982) (cleaned up).

[67] *Id*. (citing *Johnson v. Zerbst*, 304 U.S. 458 (1938)).

The United States District Court for the District of Delaware, in *RBS Citizens, N.A. v. Caldera Mgmt, Inc.*,[68] "summarized the non-exhaustive list of factors that Delaware courts examine in determining whether there has been an effective waiver for purposes of entering a confessed judgment."[69] The Delaware Supreme Court has approved this Court's use of these factors in assessing the validity of a waiver.[70] The factors considered by the Court include:

> (1) the defendant's business sophistication and experience with similar documents;
> (2) whether the defendant consulted with an attorney;
> (3) whether all bargaining parties took the necessary steps to ensure that the terms of the agreement were read and understood at the time the transaction was entered;
> (4) whether defendant had the opportunity and time to review the document containing the confession of judgment.[71]

In *RBS Citizens*, the District Court declined to find a valid waiver where the defendant lacked "business sophistication or experience with similar documents which would engender the understanding that signing the Guaranty would waive the

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[68] 2009 WL 3011209 (D. Del. Sept 16, 2009).

[69] *Customers Bank v. Zimmerman,* 2013 WL 6920558, at *3 (Del. Super. Ct. Nov. 22, 2013).

[70] *Zimmerman v. Customers Bank*, 94 A.3d 739 (Del. 2014). Employing the non-exhaustive list articulated by the District Court, the Superior Court's conclusion that the Zimmerman's "waived their right to notice and a hearing before entry of judgment [was] supported by ample evidence in the record. *Id* at 740.

[71] *Customers Bank v. Zimmerman*, 2013 WL 6920558, at *3 (quoting *RBS Citizens,* 2009 WL 3011209, at *3) (cleaned up).

defendant's due process rights."[72] On the other hand, in *Zimmerman*, this Court found "the Zimmermans are sophisticated business professionals who were likely to understand the implications of the confession of judgment provisions."[73] So, too, here.

The record overwhelmingly establishes Wahl's business sophistication. Wahl oversaw the daily operations of Quality HVAC and its high-level employees.[74] Under his supervision, Quality HVAC's gross revenue increased from $5,000,000 to $25,000,000.[75] Wahl also reviewed financial documents for Quality HVAC, including its tax returns, loans and, of course, the loan at issue here.[76] In total, Wahl, on behalf of himself or one of his companies, signed over twenty loan documents;[77] all of which contained the same Confession of Judgment provisions.[78]

Wahl did not consult with an attorney when signing the loan documents. However, he acknowledges he could have consulted an attorney if he wished to do

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[72] *Zimmerman*, 2013 WL 6920558, at *3 (quoting *RBS Citizens*, 2009 WL 3011209, at *1) (cleaned up).

[73] *Customers Bank*, 2013 WL 6920558, at *4.

[74] Jan. 2025 Evid. Hr'g, at 18.

[75] *Id.* at 31.

[76] *Id.* at 18-19.

[77] *Id.* at 57.

[78] *Id.* at 30.

so, and that WSFS would not have prevented his efforts.[79] Wahl's decision not to review the documents with an attorney does not diminish the effect of his waiver.

WSFS took steps to ensure Wahl understood the contract before signing. WSFS afforded Wahl ample time to review the loan agreement.[80] Over two weeks prior to the initial loan closing on October 2, 2017, Matarese expressly advised Wahl to review the draft Loan and confirm that the documents were acceptable to him.[81] Matarese reviewed the documents with Wahl and noted the confession of judgment provision.[82] Finally, Wahl signed beneath a clause asserting that "he read and understood the terms of the agreement."[83] These provisions – the confession of judgment and the representation of understanding – were conspicuously presented in bold, all-capitalized font.[84]

Despite signing the acknowledgement, Wahl claimed he did not actually read the document but instead, "skimmed for liquidated damages provisions."[85] Thus, he argues, because he failed to read the confession of judgment paragraph, WSFS failed

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[79] *Id.* at 67-68.

[80] Jan. 2025 Evid. Hr'g, at 127:14-17.

[81] Feb. 2026 Evid. Hr'g, at 29:12-23; 30: 1-20.

[82] *Id.* at 112:21 – 115:16.

[83] Jan. 2025 Evid. Hr'g, at 68:7-69:1.

[84] *Id.* at 56:16-22; 116:10-14.

[85] *Id.* at 88:8-23.

to meet its burden.[86] Not so. "[T]he Court cannot protect business people who decide to sign contracts and promissory notes without reading them."[87] Wahl had ample time to review the loan documents, acknowledged he did so, and now claims he did not read the conspicuous provisions.[88] "[A] debtor's failure to read a confession of judgment provision does not weigh against a finding of effective waiver if there was still adequate opportunity to review the documents."[89] Wahl chose not to read the documents before signing, but he is bound by the terms of the agreement. To find otherwise would allow Wahl to "radically redefine his contract simply by proving that he had not been informed of its stated terms."[90] "A party to a contract cannot silently accept its benefits, and then object to its perceived disadvantages, nor can a party's failure to read a contract justify its avoidance."[91]

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[86] D.I. 35 at 9-10.

[87] *Harrington Raceway, Inc. v. Vautrin*, 2001 WL 1456873, at *3 (Del. Super. Ct. Aug. 31, 2001).

[88] Jan. 2025 Evid. Hr'g, at, at 127:14-17.

[89] *Zimmerman*, 2013 WL 6920558, at *3.

[90] *Pellaton v. Bank of N.Y.*, 592 A.2d 473, 477 (Del. 1991) (cleaned up).

[91] *Id.* (quoting *Graham v. State Farm Mut. Auto. Ins. Co.,* 565 A.2d 908, 912 (Del. 1989) (cleaned up).

CONCLUSION

The Court has considered the totality of the circumstances and finds Wahl knowingly, intelligently, and voluntarily waived his and Brookside's rights to notice and a hearing under the Confession of Judgment provision. Accordingly, the Commissioner's conclusion that "[t]he Confession of Judgment provisions in the Wahl Guaranty and the Brookside Guaranty are valid and enforceable and WSFS is entitled to confess judgment against them"[92] is **ADOPTED**.[93]

IT IS SO ORDERED.

Sean P. Lugg, Judge

[92] *Wahl II,* 2026 WL 1747746, at *15.

[93] The Court, in adopting the Commissioner's conclusion, does not endorse what Defendants refer to as a "dispositive 'document selection' rule." D.I. 46 at 16. Rather, the Court has engaged in the requisite *de novo* review and concludes that the totality of the circumstances support a finding of a valid and enforceable waiver.