

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

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NINE PENN CENTER ASSOCIATES, L.P.,	:	July Term, 2001
Plaintiff	:	
	:	No. 3249
v.	:	
	:	Commerce Case Program
COFFEES OF THE WORLD CORP. t/a,	:	
TIMOTHY'S COFFEES OF THE WORLD,	:	Control No. 092065
Defendant	:	

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**OPINION**

Defendant Coffees of the World Corp. t/a Timothy's Coffees of the World has filed a petition to strike or open judgment ("Petition") in response to Plaintiff Nine Penn Center Associates, L.P.'s complaint in confession of judgment ("Complaint") against it. For the reasons set forth in this Opinion, the Petition is denied.

**BACKGROUND**

On August 17, 1994, the Plaintiff and the Defendant entered into a lease ("Lease") for approximately 1200 square feet of space at the Mellon Bank Building ("Premises"). The Lease commenced on February 1, 1995, on which date the Defendant opened a retail coffee shop on the Premises, and had a termination date of January 31, 2005. Paragraphs 17(B)(5) and (6) allow the Plaintiff to confess judgment for rent and other expenses, possession of the Premises and attorneys' fees of five percent.

The Defendant forwarded a letter to the Plaintiff on May 17, 2001 informing the Plaintiff of a change in management of the Defendant's operations and requesting that the locks to the Premises be

changed. The following day, a Friday, the Defendant drafted a letter notifying the Plaintiff of its intention to cease its operations, to vacate the Premises and to remove approximately \$30,000.00 in equipment over the weekend. However, this letter was not sent until Monday, May 21, and the Plaintiff denied the Defendant's representatives access to the Premises when they sought entrance on May 20. Once the Plaintiff received the Defendant's May 18 letter, it responded by letting the Defendant know that it had changed the locks and that a new key was available at the Plaintiff's office.

On June 11, 2001, the Plaintiff informed the Defendant of what it called the "unacceptable" conditions of the Premises due to unremoved garbage, potential fire hazards and rodent and insect infestation. Although the Defendant was willing to clean out the Premises, no arrangement was made between the Parties, and the Defendant never picked up the new key. Ultimately, the Plaintiff filed the Complaint and confessed judgment against the Defendant for (1) \$182,463.43 in accelerated rent due from July 1, 2001 to January 31, 2005; (2) \$5,461.78 for accrued rent for June 2001; (3) attorneys' commission in the amount of \$9,396.26 (5%); and (4) \$71.50 in filing fees, for a total of \$197,392.97. The Plaintiff asserts that the present value is \$197,808.08.<sup>1</sup>

## DISCUSSION

A petition to strike must be granted when there is an "apparent defect on the face of the record on which the judgment was entered." Germantown Sav. Bank v. Talacki, 441 Pa. Super. 513, 519, 657 A.2d 1285, 1288 (1995). When reviewing a petition to strike, a court may review only the record "as filed by the party in whose favor the warrant is given, i.e., the complaint and the documents which

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<sup>1</sup> This modification reflects a recalculated rent obligation and credit for the Defendant's payment of a portion of the rent for June 2001.

contain confession of judgment clauses.” Resolution Trust Corp. v. Copley Qu-Wayne Assocs., 546 Pa. 98, 105, 683 A.2d 269, 273 (1996). If there are any ambiguities in the warrant authorizing the confession of judgment, they are to be “resolved against the party in whose favor the warrant is given.” Manor Bldg. Corp. v. Manor Complex Assocs., Ltd., 435 Pa. Super. 246, 252, 645 A.2d 843, 846 (1994).

Similarly, a court is required to open a confessed judgment when the petitioner acts promptly, alleges a meritorious defense and presents evidence that is sufficient to require submission of the issue to a jury. Crum v. F.L. Schaffer Co., 693 A.2d 984, 986 (Pa. Super. Ct. 1997) (citation omitted). A petition to open is treated as a motion by the petitioner for a directed verdict, with the court “viewing all the evidence in the light most favorable to the petitioner and accepting as true all evidence and proper inferences therefrom supporting the defense while rejecting adverse allegations of the party obtaining the judgment.” Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 431 Pa. Super. 541, 547, 637 A.2d 309, 311 (1994). Such evidence of a meritorious defense must be “clear, direct, precise and believable.” Germantown Sav. Bank, 441 Pa. Super. at 520, 657 A.2d at 1289. In reaching its decision, a court may look beyond the confession of judgment documents to testimony, depositions, admissions and other evidence. Resolution Trust Corp., 546 Pa. at 106, 683 A.2d at 273 (1996).

Here, the Defendant has filed a combined petition to open/strike, and the dispute between the Parties focuses on the Defendant’s two defenses/grounds to strike the judgment: (1) that the Plaintiff may not confess judgment both for possession of the Premises and for all outstanding rent; and (2) that the amount of the judgment is excessive. A close examination reveals that the Petition neither presents

evidence of a meritorious defense nor points out a defect in the Complaint. As a result, the Petition is denied.

Pennsylvania prohibits a landlord from confessing judgment both for possession and all monies then due and for all monies due for the entire term. Homart Dev. Co. v. Sgrenci, 443 Pa. Super. 538, 557, 662 A.2d 1092, 1101 (1995); Grakelow v. Kidder, 95 Pa. Super. 250, 256 (1929). In this case, however, the Plaintiff did not confess judgment for possession of the Premises. In fact, the Plaintiff continued to make the new key to the Premises available to the Defendant, and it was the Defendant who failed to take advantage of this means of access, leaving the Premises in a state of hazardous disrepair.<sup>2</sup> Moreover, the Plaintiff's denying the Defendant access to the Premises on May 20, 2001 is readily understandable, as the Plaintiff knew of the Defendant's management dispute and had not been informed of any authorized entry. Accordingly, the statement of law barring confession for possession and future rent has no bearing on the Court's decision and does not provide the Defendant with an affirmative defense.

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<sup>2</sup> This undermines the Defendant's argument that it was evicted from the Premises. Cf. Walnut-Juniper Co. v. McKee, 236 Pa. Super. 1, 5, 344 A.2d 549, 551 (1975) (defining "eviction" as "any unlawful act of a landlord which deprives a tenant of the beneficial enjoyment of the demised premises and which manifests an intent to hold adversely to the tenant"). In addition, there is no evidence that the Plaintiff accepted a surrender of the Premises. Cf. Stonehedge Sq. Limited Partnership v. Movie Merchants, Inc., 454 Pa. Super. 468, 474, 685 A.2d 1019, 1022-23 (1996) (Landlord did not accept tenant's surrender of premises where landlord did not move materials into premises until one month after tenant vacated, that the materials would have been moved out if tenant had indicated desire to resume operation there, that only some locks were changed, and that tenant was still able to enter store at will via different door.).

Pennsylvania courts must strike a judgment where a confession complaint sets forth a “grossly excessive amount or includes recovery for items that were not permitted in the contract authorizing a confession of judgment.” J.F. Realty Co. v. Yerkes, 263 Pa. Super. 436, 440, 398 A.2d 215, 217 (1979) (citing Colony Fed. Sav. & Loan Ass’n v. Beaver Valley Eng’g Supplies Co., 238 Pa. Super. 540, 361 A.2d 343 (1976); H.A. Steen Indus., Inc. v. Richer Communications, Inc., 226 Pa. Super. 219, 314 A.2d 319 (1973)). If, however, “the judgment as entered is for items clearly within the judgment note, but excessive in amount, the court will modify the judgment and cause a proper judgment to be entered.” Dollar Bank, 431 Pa. Super. at 552, 637 A.2d at 314. Here, the Lease specifically authorizes the Plaintiff to accelerate rent and to confess judgment for all rent for the unexpired balance of the term of the Lease. Moreover, all of the charges set forth in the Complaint are permitted by the Lease, and there is no indication that the Plaintiff has barred the Defendant from retrieving its \$30,000 in equipment from the Premises. Thus, there is no defect in the amount of the confessed judgment, and the Petition is denied.

### **CONCLUSION**

The Defendant has not presented sufficient evidence of a meritorious defense, prima facie grounds for relief or a reason to strike the judgment, and the Petition is denied accordingly.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: January 28, 2002

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
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CIVIL TRIAL DIVISION**

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**ORDER**

AND NOW, this 28th day of January, 2002, upon consideration of the Petition to Strike or Open Confessed Judgment of Defendant Coffees of the World Corp. t/a Timothy's Coffees of the World and Plaintiff Nine Penn Center Associates, L.P.'s response thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED as follows:

1. The Petition is DENIED, and
2. The judgment is molded to the sum of \$197,808.08.

BY THE COURT:

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JOHN W. HERRON, J.