

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

MAMADOU BARRY

Plaintiff

v.

HAMIDOU SOW

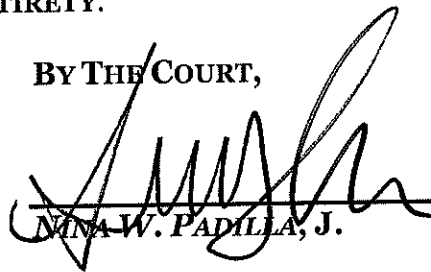
Defendants

: June Term, 2015
: Case No. 000971
:
:
: Commerce Program
:
:
: Control No. 21062405

ORDER

AND NOW, this 5th day of October, 2012, upon consideration of defendants' petition to strike or open confession-of-judgment, the memorandum-of-law in opposition, and all matters of record, it is **ORDERED** that the petition to strike or open confession-of-judgment is **DENIED IN ITS ENTIRETY**.

BY THE COURT,



NINA W. PADILLA, J.

OPINION

Plaintiff is Mr. Mamadou Barry (“Landlord”), owner of commercial property located at 2975 North 22nd Street, in Philadelphia, Pennsylvania (the “Property”); defendant is Mr. Hamidou Sow, an individual who occupied the Property as a “Tenant,” pursuant to the terms of a five-year, non-residential lease-and-addendum agreement (together, “the Lease”), with a retroactive commencement date of July 1, 2011, and an expiration date of June 30, 2016.¹

On June 5, 2015, Landlord confessed judgment against Tenant, pursuant to the power of a warrant-of-attorney within the Lease.² Under the judgment, Landlord sought to recover \$43,100.00, including unpaid rents of \$36,000.00, (from December 2011 through December 2013), \$3,600.00 in late fees, and \$3,500.00 in attorney’s fees.³

On May 24, 2021, nearly six years after the entry of judgment, Landlord filed a writ of revival seeking to recover the same amounts as originally confessed on June 5, 2015. Tenant challenged the judgment by filing a petition to strike or open on June 11, 2021, and Landlord filed a *memoranda*-of-law in opposition to the petition.⁴

DISCUSSION

The standards for striking a confession-of-judgment are settled—

[a] petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the

¹ Lease, Exhibit A to the complaint, p. 1-of-2.

² Lease at ¶ 19, p. 3-of-4.

³ Complaint, ¶ 9.

⁴ Tenant’s petition to strike or open comprises only two short, un-numbered paragraphs containing several material allegations. This petition fails to follow Pa. R.C.P. 206.1(c), which instructs that “[a] petition shall be divided into paragraphs numbered consecutively ... [and] [e]ach paragraph shall contain as far as practicable only one material allegation.” Similarly, Landlord has filed a *memorandum*-of-law in opposition to Tenant’s petition, even though Pa. R.C.P. 206.2(a) instructs that an **answer** “shall state the material facts which constitute the defense to the petition.” (Emphasis supplied). On this occasion, the Court chooses to disregard such errors of procedure “which do[] not affect the substantial rights of the parties.” See, Pa. R.C.P. 126.

record.... The record must be sufficient to sustain the judgment.... The original record that is subject to review in a motion to strike a confessed judgment consists of the complaint in confession of judgment and the attached exhibits.⁵

The standards for opening a confession-of-judgment are equally settled—

if the truth of the factual averments contained in the complaint in confession of judgment and attached exhibits are disputed, then the remedy is by proceeding to open the judgment, not to strike it.... A petition to open a confessed judgment is an appeal to the equitable powers of the court.... Factual disputes by definition cannot be raised or addressed in a petition to strike off a confession of judgment, because factual disputes force the court to rely on matters outside the relevant record to decide the merits of the petition.⁶

The Court notes that Landlord originally failed to include into the record page 1-of-4 of the addendum to the Lease. On September 7, 2021, however, Landlord amended the record by including the missing page *via praecipe* to supplement the complaint; thus, the amendment cured a fatal flaw in the record, and the judgment shall not be stricken on such grounds, because a petition to strike a confession-of-judgment “may not be granted if the defect is one that can be remedied by an amendment of the record or other action.”⁷

In the petition, Tenant appears to argue that the record is fatally flawed, and judgment should be stricken, because he “was never notified of the entry of the original [j]udgment.”⁸ This challenge to the validity of the judgment is rejected because the Pennsylvania Rules of Civil Procedure instruct that—

[t]he prothonotary shall immediately give written notice of the entry of ... a judgment entered by confession ... by

⁵ Neducsin v. Caplan, 121 A.3d 498, 504 (Pa. Super. 2015).

⁶ Neducsin v. Caplan, 121 A.3d 498, 504–05 (2015).

⁷ Atl. Nat. Tr., LLC v. Stivala Invs., Inc., 922 A.2d 919, 923 (Pa. Super. 2007).

⁸ Petition to strike or open, p.1-of-1.

ordinary mail together with a copy of all documents ... in support of the confession of judgment.⁹

* * *

The prothonotary shall note in the docket the giving of the notice, and when a judgment by confession is entered, the mailing of the required notice and documents.¹⁰

Here, an examination of a docket entry dated June 5, 2015, shows the following language:

COMPLAINT IN CONFESSION OF JUDGMENT UNDER PA.R.C.P. 2951
FOR MONEY FILED. JUDGMENT ENTERED BY CONFESSION FOR
THE SUM OF \$43,100.00. ASSESSMENT OF DAMAGES \$43,100.00.
AVERMENT OF DEFAULT FILED. AFFIDAVIT OF
INCOME/BUSINESS TRANSACTION FILED.
AFFIDAVIT OF NON-MILITARY SERVICE FILED. THIS IS NOT A
RETAIL INSTALLMENT SALES AGREEMENT OF ACCOUNT.

NOTICE UNDER PA. R.C.P. 236 GIVEN. (Emphasis supplied).

This docket entry, made by the prothonotary upon receipt of Landlord's confession-of-judgment, shows that Tenant did receive notice of the entry of judgment in adherence with Rule of Civil Procedure 236. For this reason, the Court rejects Tenant's challenge based on the alleged lack of notice.

Next, Tenant appears to argue that the record is fatally flawed because the judgment entered by Lender on June 5, 2015 expired on June 5, 2020, and was not renewed or revived in a timely manner."¹¹ Tenant has not cited any statutory provision, rule of procedure or case law supporting the assertion that a judgment, no matter how old, expires upon the passage of time, while Lender, in his *memorandum* in opposition, has neglected to address the issue altogether. Nevertheless, the Court rejects Tenant's challenge.

⁹ Pa. R.C.P. 236(a)(1).

¹⁰ Pa. R.C.P. 236(b)

¹¹ Petition, p. 1-of-1.

Preliminarily, “[a] judgment is the final determination of the rights and obligations of the parties in a case.”¹² “Only a complete discharge of all obligations created under a judgment will satisfy that judgment.”¹³ Next, the Court tackles the issue presented by Tenant’s argument: whether a six year-old judgment requires revival.

In the year 2000, the Pennsylvania Supreme Court decided a case captioned Shearer v. Naftzinger, (“Shearer”), wherein that Court was required to determine whether a twenty-year statute of limitation could be invoked as a defense against the revival of an expired lien. The Supreme Court held that the twenty-year statute of limitation could not be invoked as a defense against the revival of an expired lien.¹⁴ In a concurring opinion relevant to the issue at bar, Justice Zappala felt compelled to explain the difference between a “money judgment,” as is the case here, and a judgment lien, which is created as of course upon the entry of a judgment.¹⁵ Justice Zappala specifically stated that—

[a] money judgment acts as a lien against ... property, but only for five years. The **lien must be continued (or revived)** to maintain (or obtain a new) place of priority. *However, properly speaking, it is the lien that is revived, not the judgment.... A judgment continues to exist....*¹⁶

In short, Justice Zappala explained that a judgment, no matter how old, continues to exist without any need of revival, whereas a lien, which is obtained as of course upon the entry of that judgment, if expired, might be revived.¹⁷ Based on the

¹² ISN Bank v. Rajaratnam, 83 A.3d 170, 176 (Pa. Super. 2013).

¹³ Zaleppa v. Seiwel, 9 A.3d 632, 639 (Pa. Super. 2010).

¹⁴ Shearer v. Naftzinger, 747 A. 2d 859 (Pa. 2000).

¹⁵ Id., 861-862.

¹⁶ Id. The elucidations provided by Justice Zappala became part of an Explanatory Comment to the Pennsylvania Rules of Civil Procedure, in the chapter captioned “Judgments” —that is, in the chapter comprising Pa. R.C.P. 3020 through Pa. R.C.P. 3031.1. See, Explanatory Comment—2003: V. *Enforcement of Judgments for Payment of Money*, preceding Pa. R.C.P. 3020 *et seq.*, 4th paragraph.

¹⁷ The Court notes that in this action, Lender filed a writ of revival of the judgment lien on May 24, 2021.

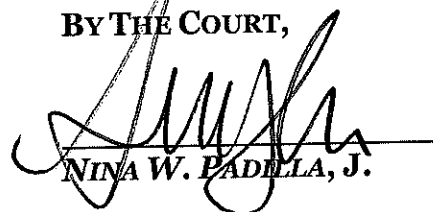
foregoing, the Court finds that Landlord's judgment has not expired and will not expire, and Tenant's challenge asserting expiration of the judgment is rejected.

Finally, Tenant asserts that the judgment should be opened because he "did not voluntarily, intelligently and knowingly give up his rights to notice and hearing prior to the entry of judgment." This defense is easily rejected:

[t]here is ... no merit to ... [a petitioner's] assertion that ... [his] purported lack of knowledge and/or understanding of the warrant of attorney ... requires that the judgment be stricken or opened. The failure to read a confession of judgment clause will not justify avoidance of it.¹⁸

In this case an indent sets apart, and brings attention upon, the warrant-of-attorney in the Note, and Tenant executed that Note by affixing his signature approximately one page removed from the warrant; and lastly, he placed his initials at the bottom of the very page bearing the provision for confession-of-judgment. Stated another way, Tenant may not assert that he did not voluntarily, intelligently and knowingly give up his due process rights, because by placing his initials and signature upon the Lease, he voluntarily, intelligently and knowingly assented to its provisions, including the warrant-of-attorney therein. For this last reason, the petition to strike or open is denied in its entirety.

BY THE COURT,



NINA W. PADILLA, J.

¹⁸ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994).