

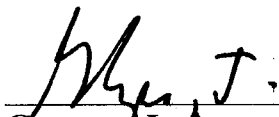
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

RORVIK GENERAL CONTRACTING SERVICES	:	June Term, 2015
	:	
<i>Plaintiff</i>	:	Case No. 02925
	:	
v.	:	
	:	
COMPASS POINTE HEALTHCARE SYSTEMS	:	Commerce Program
d/b/a	:	
THE RIDGE AT WHITEMARSH HEALTH & REHABILITATION	:	
	:	
<i>Defendant</i>	:	Control No. 15080067
	:	

ORDER

AND NOW, this 28th day of August, 2015, upon consideration of the petition to strike or open judgment by confession filed by defendant Compass Pointe Healthcare Systems, the response in opposition filed by plaintiff Rorvik General Contracting Services, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED** in its **ENTIRETY**.

BY THE COURT,


GLAZER, J.

Rorvik General Contract-ORDMM



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**R. POSTELL
COMMERCE PROGRAM**

RORVIK GENERAL CONTRACTING SERVICES	:	June Term, 2015
	:	
<i>Plaintiff</i>	:	Case No. 02956
	:	
v.	:	
	:	
COMPASS POINTE HEALTHCARE SYSTEMS	:	Commerce Program
d/b/a	:	
THE RIDGE AT WHITEMARSH HEALTH & REHABILITATION	:	
	:	
<i>Defendant</i>	:	Control Nos. 15080067
	:	

Defendant’s petition asks the court to strike or open the confessed judgment entered by plaintiff.¹ In Pennsylvania, “[a] motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record.”²

[a] petition to open is an appeal to the court's equitable powers and is addressed to the sound discretion of the court; and a reviewing court will not reverse the determination of the lower court absent clear and manifest abuse of discretion. However, the discretion exercised by the lower court must be guided by Rule 2959(e), PA. R.C.P. which states in pertinent part:

If evidence is produced which in a jury trial would require the issues to be submitted to the jury the Court shall open judgment.

¹ The petition to strike and/or open judgment by confession arises out of a contract executed by the parties, whereby plaintiff agreed to perform snow-removal services at the property owned or controlled by defendants, and defendants agreed to pay plaintiff for the work performed. Agreement executed on November 25, 2014. Exhibit 1 to the complaint in confession of judgment.

² Fourtees Co. v. Sterling Equip. Corp., 242 Pa. Super. 199, 205, 363 A.2d 1229, 1232 (1976).

Thus the standard of sufficiency the court must employ is that of a directed verdict, viewing all evidence in the light most favorable to the petitioner and accepting as true all evidence and proper inferences therefrom supporting the defense, while rejecting the adverse allegations of the party obtaining the judgment.³

Defendant asserts that judgment by confession should be stricken because the language in the warrant of attorney is not sufficiently explicit under the law, and the text therein is rendered vague by the use of small-case lettering.⁴ The court rejects these arguments. The pertinent contractual language containing the warrant of attorney states as follows:

Customer [defendant] upon any and every breach of this Agreement, hereby authorizes any attorney of any court of record, to appear for and enter judgment against Customer for such amounts as at any time may be due, together with costs of suit, release of errors, without stay of execution, and with 15% added for collecting fees.⁵

In Pennsylvania, “the task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the language of the written instrument.”⁶ Review of the afore-cited language convinces this court that the warrant of attorney is sufficiently explicit as to provide defendant with notice of plaintiff’s power to enter judgment, even though such language does not contain the words “judgment by confession.” Furthermore, although the afore-cited language is printed in small type, it is contained within the same page bearing the signatures of both parties, and is clearly identifiable within the text. Defendant cites no law holding that a warrant of attorney is invalid if printed in

³ Indus. Valley Bank & Trust Co. v. Lawrence Voluck Associates, Inc., 428 A.2d 156, 158 (Pa. Super. 1981).

⁴ Petition to strike, ¶¶ 11–14, 15–17.

⁵ Exhibit 1 to plaintiff’s complaint in confession of judgment, p. 3 (signature of the parties at the bottom thereof).

⁶ Humberston v. Chevron U.S.A., Inc., 2013 Pa. Super 238; 75 A.3d 504, 510 (Pa. Super. 2013).

small text, and the petition to strike judgment by confession is denied because no fatal flaw or defect appears on the face of the record.

In addition, defendant seeks to open judgment by confession by advancing two arguments: first, Philadelphia County is an improper venue for the entry of judgment; and second, defendant did not knowingly and voluntarily waive its due process rights because the warrant of attorney was written in a vague language.⁷ The court has already determined that the provision describing the warrant of attorney was sufficiently explicit, and will therefore address only defendant's argument based on the defense of improper venue.

A reading of the warrant of attorney reveals the following language: "Customer [defendant] ... authorizes any attorney **of any court of record**, to appear for and enter judgment against Customer...."⁸ This clear and unambiguous language shows that defendant agreed to the entry of judgment by confession in any court of record, which includes this court in Philadelphia County. Having agreed to the entry of judgment in Philadelphia County, defendant may not now challenge this venue on the grounds that defendant is located in Montgomery County, Pennsylvania. The petition to open is denied because defendant has failed to offer any evidence which, in a jury trial, would require the issues to be submitted to a jury.

BY THE COURT,



GLAZER, J.

⁷ Petition to open, ¶¶ 35–37; 38–42.

⁸ Exhibit 1 to plaintiff's complaint in confession of judgment, p. 3 (signature of the parties at the bottom thereof) (emphasis supplied).