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

R. POSTELL
COMMERCE PROGRAM

TABOR MEDICAL ANNEX, L.P.	:	October Term, 2015
	:	
<i>Plaintiff</i>	:	Case No. 01366
	:	
v.	:	Commerce Program
	:	
AFFORDABLE DENTISTRY OF NORTH AMERICA, INC. <i>et al.</i>	:	
	:	
<i>Defendants</i>	:	Control No. 15112199

ORDER and MEMORANDUM OPINION

AND NOW, this 18th day of December, 2015, upon consideration of the petition to strike or open judgment by confession filed by defendant Joseph M. Soliman, the response in opposition filed by plaintiff Tabor Medical Annex, L.P., and the respective *memoranda* of law, it is **ORDERED** that the petition is **GRANTED-IN-PART** and Judgment by Confession is **STRICKEN** as to individual defendant Joseph M. Soliman. The remainder of the petition to strike or open the confessed judgment is **DENIED**.

BY THE COURT,



RAMY I. DJERASSI, J.

Tabor Medical Annex, L.-ORDRF



Plaintiff Tabor Medical Annex, L.P. (“Landlord”), owns a commercial property at 1335 West Tabor Road in Philadelphia, Pennsylvania. Individual defendant Joseph M. Soliman (“Soliman”), is or was a minority shareholder in a corporation named Affordable Dentistry of North America, Inc. At all times relevant to this action, Affordable Dentistry of North America, Inc. was a tenant (“Tenant”), at the commercial property owned by Landlord. Tenant occupied the afore-mentioned property pursuant to a commercial “Lease Agreement” executed on December 16, 2014.¹ On the same day in which Tenant executed the Lease Agreement, Soliman executed a “Guaranty Agreement.” The Guaranty Agreement was attached to the end of Lease Agreement.

On October 14, 2015, Landlord confessed judgment against Tenant and four personal guarantors to the Lease Agreement, including *herein* defendant Soliman. The complaint-in-confession-of-judgment alleges that Tenant is in default of the Lease Agreement by failing to tender the required monthly minimum rental and tax payments, and by assigning the remainder of the Lease term to a sub-lessee without the written consent of Landlord, as was required under the Lease Agreement.² The complaint seeks to recover all rent and taxes due, accelerated rent and taxes, late charges and attorney’s fees of 10%, from Tenant and the four personal guarantors to the Lease Agreement, including defendant Soliman

On November 13, 2015, Soliman filed a petition to strike or open Landlord’s confessed judgment. This petition is now ripe for a decision.

In Pennsylvania,

¹ Lease Agreement, Exhibits A1–A3 to the complaint in confession of judgment.

² Complaint-in-confession-of-judgment, ¶¶ 10–14.

A petition to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. If the record is self-sustaining, the judgment will not be stricken..... It is well-settled that a written lease or contract which authorizes a party to confess judgment must be clear and explicit and strictly construed.³

In the petition to strike or open, Soliman asserts that the confessed judgment should be stricken in its entirety because the Guarantee Agreement that he executed does not contain any provision empowering Landlord to confess judgment against him.⁴ Opposing this argument, Landlord counters that the “Guaranty Agreement [executed by Soliman] incorporates the confession of judgment clause [contained] in the Lease Agreement.”⁵ This Court has examined Soliman’s personal guaranty and finds that there is no language incorporating therein the confession-of-judgment-clause found in article 19 of the Lease Agreement. In Pennsylvania—

[a] warrant of attorney to confess judgment must be self-sustaining and to be self-sustaining the warrant must be in writing and signed by the person to be bound by it. **The requisite signature must bear a direct relation to the warrant of attorney and may not be implied.**⁶

In this case, the personal guaranty of Soliman, though attached to the Lease Agreement at the time of execution, does not contain any reference to the warrant of attorney which is found at article 19 of the Lease Agreement. Therefore, the warrant of attorney in the Lease Agreement bears no direct relation to the signature of Soliman as guarantor, and the record is fatally flawed. For this reason, the petition to strike

³ Fourtees Co. v. Sterling Equip. Corp., 363 A.2d 1229, 1232 (Pa. Super. 1976).

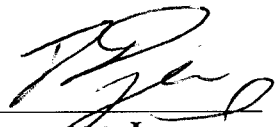
⁴ Petition to strike or open judgment by confession, ¶¶ 18(e), 18(f).

⁵ Response in opposition to the petition to strike or open, ¶¶ 18(e), 18(f).

⁶ L. B. Foster Co. v. Tri-W Const. Co., 409 Pa. 318, 322, 186 A.2d 18, 20 (1962) (emphasis supplied).

judgment by confession is granted as to defendant Joseph M. Soliman, and the complaint-in-confession-of-judgment is stricken as to this defendant.⁷

BY THE COURT,



RAMY I. DJERASSI, J.

⁷ Although the petition of defendant Soliman asks the Court to strike the confessed judgment in its entirety, the Court strikes only the portion of the petition aimed against this individual defendant. The record is not fatally flawed as to Tenant. The docket shows that the attorney who filed the petition to strike or open the confessed judgment entered appearance only on behalf of petitioner Soliman. Finally, the other three personal guarantors, unlike Soliman, did not file their respective petitions to strike or open the confessed judgment; consequently, the entered judgment against those individuals is not affected by this decision.