

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

ROBERT E. KRUMM

Plaintiff

v.

CHRISTIAN POWELL

Defendant

: October Term, 2016
: Case No. 00978
:
: Commerce Program
:
:
: Control No. 17041545
:

ORDER

AND NOW, this 18th day of May, 2017, upon consideration of the petition to strike or open judgment by confession, the response in opposition, and the respective memoranda of law, it is **ORDERED** that the petition to strike or open is denied. **THE AMOUNT OF JUDGMENT IS MODIFIED**, and the new amount in confession-of-judgment is \$12,880.00.¹

BY THE COURT,



RAMY I. DJERASSI, J.

DOCKETED
MAY 19 2017
F. BROWN
DAY FORWARD

Krumm Vs Powell-ORDMM



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¹ The modified amount in confession of judgment is itemized as follows:

\$11,200.00 (representing six months of unpaid rent/damages)
+ \$1,620.00 (representing attorney's fees of 15% of the total amount of damages)
= \$12,880.00 (total amount of judgment after modification).

MEMORANDUM OPINION

The Court is asked to rule on a petition to strike or open judgment entered by confession. For the reasons provided below, the petition to strike or open the confession of judgment is denied, and the amount of judgment is modified.

Background and Discussion

Plaintiff is Robert E. Krumm (hereinafter, “Landlord”), an individual with an address in the State of New Jersey. Defendant is Christian Powell (hereinafter, “Tenant”), an individual with an address in Philadelphia, Pennsylvania. On July 28, 2016, Landlord leased to Tenant the storefront and basement of real property located at 708 North 2nd Street, in Philadelphia, Pennsylvania (the “Premises”), pursuant the terms of a lease agreement executed on the same day (the “Lease”). The Lease executed by the parties identifies not only the types of events giving rise to Tenant’s default, but also the remedies subsequently available to Landlord.² For example, the Lease states that Tenant shall have committed an event of default if “Tenant shall fail to pay any installment of Rent ... on or before the day such payment is due.”³ In addition, the Lease states that “[u]pon the occurrence of an event of default, Landlord shall have the option to pursue any one or more of the ... following remedies” which include the entry of a confessed judgment against tenant for moneys due and for possession of the leased Premises.⁴

On October 7, 2016, Landlord confessed judgment against Tenant. In the complaint, Landlord avers that “Tenant failed to pay ... the monthly rent ... for

² Lease, Exhibit C to the complaint-in-confession-of-judgment, article 21(g)(i)–(ii).

³ *Id.*, article 21.1

⁴ *Id.*, article 21(g)(i)–(ii).

September 2016.”⁵ Landlord also avers that “[d]espite written demand ... Tenant failed to vacate ... the Leased Premises ... and pay to Landlord the outstanding monthly base rent ... and additional rent ... and such amounts remain unpaid as of the date of filing of this complaint.”⁶

On April 13, 2017, Tenant filed the instant petition to strike or open the confession of judgment; on May 8, 2017, Landlord filed his response in opposition thereto. The parties have fully briefed their respective positions and the petition is ripe for a resolution.

PETITION TO STRIKE

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.... A petition to strike is not a chance to review the merits of the allegations of a complaint. Rather, a petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief.... When deciding if there are fatal defects on the face of the record ... a court may only look at what was in the record when the judgment was entered.⁷

In the petition, Tenant avers that pursuant to article 21 of the Lease, Landlord failed to provide Tenant with a thirty-day notice prior to entering the judgment.⁸

Tenant concludes that by virtue of such a failure, Landlord lacked authority to confess the judgment; therefore, the judgment should be stricken. This argument is rejected.

Article 21 of the Lease states as follows in pertinent part:

The following events shall be deemed to **be events of default by Tenant** under the Lease:

⁵ Petition to strike or open confession of judgment, ¶ 15.

⁶ *Id.*, ¶ 18.

⁷ Green Acres Rehab. & Nursing Ctr. v. Sullivan, 2015 PA Super 73, 113 A.3d 1261, 1267–68 (2015).

⁸ Petition to strike, ¶ 8.

(1) **Tenant shall fail to pay any of the installment of rent hereunder on or before the day such payment is due.**

(2) Tenant shall fail to comply with any term, provision, or covenant of this Lease, **other than the payment of Rent**, and shall have not cured such a failure within thirty (30) days after written notice thereof to Tenant....⁹

A straightforward reading of this provision leaves no doubt: the thirty-day notice contained in article 21 of the Lease applies only in cases where Tenant fails to comply with obligations “**other than the payment of rent.**”¹⁰ In this case however, the complaint-in-confession-of-judgment avers that Tenant **failed to pay** to Landlord the **monthly base rent** ... constituting an event of Default under the Lease Agreement.”¹¹ The clear language of article 21 requires Landlord to provide a thirty-day notice only for defaults other than for those based on a failure to pay rent, and for this reason the Court finds that Landlord was authorized to confess judgment without providing any notice.

Next, Tenant avers that the record is flawed and the judgment should be stricken because Landlord’s confession of judgment fails to account for the security deposit paid by Tenant.¹² According to Tenant, this failure violates the requirements of Pa. R.C.P. 2952(a)(7), which specifically instructs that the complaint-in-confession-of-judgment shall contain “an itemized computation of the amounts then due.”¹³ Denying these averments, Landlord explains that Tenant’s security deposit of \$2,600.00, was applied

⁹ Lease, Exhibit C to the complaint-in-confession-of-judgment, article 21(1)–(2).

¹⁰ “The interpretation of any contract is a question of law.... In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement.” *Humberston v. Chevron U.S.A., Inc.*, 75 A.3d 504, 509–10 (Pa. Super. 2013). “[I]t is a fundamental rule of construction and interpretation that words and phrases [in a contract] be given their plain and ordinary meaning when possible. *Toombs NJ Inc. v. Aetna Cas. & Sur. Co.*, 591 A.2d 304, 307 (Pa. Super. 1991).

¹¹ Complaint, ¶ 15.

¹² Petition to strike, ¶ 9.

¹³ *Id.*

by Landlord to cover sums owed by Tenant prior to the filing of the confession of judgment. Landlord further explains that “[b]ecause that money had been applied to past sums due prior to the filing of the Confession of Judgment, they were not required to be included in the accounting.”¹⁴ The argument asserted by Landlord in response to Tenant’s averments is rejected, and the judgment is modified to account for the security deposit of \$2,600.00. In Pennsylvania—

[i]f the [confessed] judgment as entered is merely 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 unless ... the judgment was entered for a grossly excessive amount . . . in which event . . . the judgment must be stricken off in its entirety.¹⁵

In this case, Landlord’s complaint alleges that his monetary damages include “six (6) months’ rent at \$2,300 per month, or \$13,800.00.”¹⁶ In addition, Landlord admits in his response that he applied the security deposit of \$2,600.00 to prior outstanding obligations owed by Tenant before the judgment was entered.¹⁷ However, Landlord fails to specify in his complaint and response the exact amount of outstanding obligations which Tenant owed prior to the entry of judgment, and fails to explain whether he applied the \$2,600.00 deposit to satisfy Tenant’s outstanding obligation in full or in part. This omission constitutes a failure to properly account for Tenant’s security deposit. Moreover, Landlord’s failure to account for the security deposit is equivalent to the inclusion of amounts in excess of the rents owed under the judgment note, and for

¹⁴ Response in opposition to the petition to strike, ¶ 9.

¹⁵ Colony Fed. Sav. & Loan Ass’n v. Beaver Valley Eng’g Supplies Co., 238 Pa. Super. 540, 546, 361 A.2d 343, 347 (1976) (citing Housing Mortg. Corp. v. Tower Dev. & Inv. Corp., 167 A.2d 146 (Pa. 1961).

¹⁶ Complaint-in-confession-of-judgment, ¶ 20.

¹⁷ Response in opposition to the petition to strike, ¶ 9. The complaint-in-confession-of-judgment does not specify the amount of Tenant’s outstanding obligations which Landlord chose to set-off through the use of the security deposit fund.

this reason the amount of rents which Landlord claimed in his judgment is reduced to \$11,200.00 (\$13,800.00 – \$2,600.00 = \$11,200.00).¹⁸ The court will not strike the judgment in its entirety because the amount claimed by Landlord is not “grossly” excessive.¹⁹

PETITION TO OPEN

The law on opening a confession of judgment is well-settled in Pennsylvania:

[a] trial court may open a confessed judgment if the petitioner—

- (1) acts promptly,
- (2) alleges a meritorious defense, and
- (3) **can produce sufficient evidence to require submission of the case to a jury.**²⁰

In the petition to open, Tenant asserts that he “was not [a] sophisticated part[y] to [the] commercial Tenancy agreement ... [and] did not have an attorney present to interpret the Lease [at the time he executed the agreement].”²¹ This argument is easily rejected because—

[t]here is no merit to [the] assertion that ... [a party] lack[ed] ... knowledge and/or understanding of the warrant of attorney provisions in the ... agreement.... The failure to read a confession of judgment clause will not justify avoidance of it. This is particularly true where the confession of judgment clause is clear and conspicuous and part of a commercial transaction.²²

¹⁸ The amount of attorney fees, which under the warrant-of-attorney are calculated as 15% of the total amount of damages, shall be modified accordingly.

¹⁹ The last argument asserted by Tenant at ¶ 12 of his petition asserts that the judgment should be stricken because the attorney who entered the judgment on behalf of Landlord “is currently disbarred ... [and] [t]herefore the legal accuracy of the lease agreement is questionable.” This argument is rejected because Tenant fails to explain how a fatal flaw was created in the record by the subsequent disbarment of Landlord’s attorney.

²⁰ Neducs v. Caplan, 121 A.3d 498, 506 (Pa. Super. 2015), appeal denied, 131 A.3d 492 (Pa. 2016) (emphasis added).

²¹ Petition to open, ¶ 14.

²² Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994).

In this case, Tenant executed the Lease which contained warrants-of-attorney for a money-judgment and for repossession of the leased Premises. In addition, Tenant has not offered any evidence that he was coerced into signing the Lease, or was denied an opportunity to consult with an attorney at the time he affixed his signature to the instrument. Tenant has not produced any evidence that would require submission of the case to a jury, and for this reason the petition to open is denied.

BY THE COURT,



RAMY I. DJERASSI, J.