


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

DUNGAN HEIGHTS ASSOCIATES, LLP,	:	January Term 2017
Plaintiff,	:	
v.	:	No. 982
FOX CHASE SENIOR CENTER, INC.,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 17021747

ORDER

AND NOW, this 21<sup>st</sup> day of March 2017, upon consideration of Fox Chase Senior Center, Inc.'s Petition to Strike or, in the alternative, Open Confessed Judgment and Dungan Heights Associates, LLP's response in opposition, it hereby is **ORDERED** that the Motion to Strike is **Granted** and the Confessed Judgment is stricken from the judgment index.

BY THE COURT,



PATRICIA A. McINERNEY, SJ

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COMMERCE PROGRAM

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Plaintiff,	:	
v.	:	No. 982
FOX CHASE SENIOR CENTER, INC.,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 17021747
	:	

**OPINION**

Presently pending before the court is Petitioner Fox Chase Senior Center, Inc.’s petition to open/strike confessed judgment. For the reasons set forth below, the petition to strike is granted.

**BACKGROUND**

On April 17, 2012, Dungan Heights Associates (hereinafter “Landlord”) leased the property known as 7770 Dungan Road, Store Number 01, Philadelphia, Pa. to Fox Chase Senior Center, Inc. (hereinafter “Tenant”). The lease was for a period of five years beginning June 1, 2012 and ending May 31, 2017 and the premises were to be used solely as an adult day care center. The Lease, in section 13.2 entitled Remedies, provides that in the event of default by the tenant, the landlord shall have the right to a confession of judgment in ejectment and for damages. Each page of the Lease, including the section setting forth the confession of judgment provisions, is initialed by the tenant. On January 7, 2015, the landlord and tenant executed an amendment to the Lease, Lease Amendment, which modified the term of the lease by extending the rental period to May 31, 2020 and modifying the basic rent and additional rent charges. Paragraph 3 of the Lease Amendment states as follows:

3. Except as modified by the terms of this Amendment, all other terms and conditions of the Lease shall remain in full force and effect.

Tenant stopped paying rent. On June 2, 2014, landlord confessed judgment against tenant in the amount of \$46,508.00 in an action captioned June Term 2014 No. 372.<sup>1</sup> On January 6, 2017, the instant confession of judgment action was filed by landlord against tenant for \$130,274.16, representing monies due and owing since the June 2014 confession of judgment was filed. In January 2017, landlord issued a writ of execution. On February 13, 2017, tenant filed the instant petition to open/strike the confessed judgment. Additionally, tenant requested a stay of execution proceedings. On March 13, 2017, the court entered an order staying all execution proceedings pending disposition of the petition to open/strike confessed judgment. The petition is now ripe for consideration.

### **DISCUSSION**

A petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.<sup>2</sup> In considering the merits of a petition to strike, the court will be limited to a review of only the record as filed by the party in whose favor the warrant is given, *i.e.*, the complaint and the documents which contain confession of judgment clauses. Matters *dehors* the record filed by the party in whose favor the warrant is given will not be considered. If the record is self-sustaining, the judgment will not be stricken. An order of the court striking a judgment annuls the original judgment and the parties are left as if no judgment had been entered.<sup>3</sup>

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<sup>1</sup> Tenant did not petition the court to open or strike this judgment.

<sup>2</sup> *Resolution Trust Corp. v. Copley Qu-Wayne Associates*, 546 Pa. 98, 106, 683 A.2d 269, 273 (1996).

<sup>3</sup> *Neducsin v. Caplan*, 121 A.3d 498, 505 (2015), appeal denied, 131 A.3d 492 (Pa. 2016), citing *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa.Super.2011) (quoting *Resolution Trust Corp.*, *supra.* ).

Pennsylvania recognizes and permits entry of confessed judgments pursuant to the authority of a warrant of attorney contained in a written agreement.<sup>4</sup> “[A] warrant of attorney is a contractual agreement between the parties and the parties are free to determine the manner in which the warrant may be exercised.”<sup>5</sup> Entry of a valid judgment by confession must be “made in rigid adherence to the provisions of the warrant of attorney; otherwise, such judgment will be stricken.”<sup>6</sup>

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 extrinsically nor imputed from assignment of the instrument containing the warrant.<sup>7</sup> There should be no doubt that the lessee signed the warrant and that he was conscious of the fact that he was conferring a warrant upon the lessor to confess judgment in the event of a breach. A general reference in the body of an executed lease to terms and conditions to be found outside the agreement is insufficient to bind the lessee to a warrant of attorney not contained in the body of the lease unless the lessee signs the warrant where it does appear. A warrant of attorney to confess judgment should not be foisted upon anyone by implication or by general and nonspecific reference.<sup>8</sup>

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<sup>4</sup>*Neducsin v. Caplan*, 121 A.3d 498, 505 (2015) citing *Scott Factors, Inc. v. Hartley*, 425 Pa. 290, 228 A.2d 887 (1967).

<sup>5</sup>*Id.* citing *Atlantic Nat. Trust, LLC v. Stivala Investments, Inc.*, 922 A.2d 919, 924 (Pa.Super.2007), *appeal denied*, 594 Pa. 702, 936 A.2d 39 (2007).

<sup>6</sup>*Id.* citing *Dollar Bank, Federal Sav. Bank v. Northwood Cheese Co., Inc.* [431 Pa.Super. 541], 637 A.2d 309, 311–12 ( [Pa.Super.] 1994), *appeal denied*, 539 Pa. 692, 653 A.2d 1231 (1994).

<sup>7</sup> *Id.* citing *Hazer, supra* at 1171.

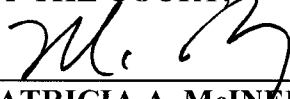
<sup>8</sup> *L.B. Foster Co. v. Tri-W Constr. Co.*, 409 Pa. 318, 186 A.2d 18, 19-20 (1962).

Here, the warrants of attorney in the original Lease were not confirmed in the Lease Amendment and therefore the confessed judgment should be stricken. The Lease Amendment modified material terms such as the term of the lease as well as the payments and generally stated that “all other terms and conditions of the Lease shall remain in full force and effect.” However, this statement is not sufficient to preserve the warrant provisions.<sup>9</sup> A clear manifestation with a specific acknowledgment that the tenant consented to the warrant is necessary in order to find the confessed judgment valid. Such an acknowledgment does not exist here and therefore the warrants of attorney will not be foisted by implication upon the tenant with the general and nonspecific incorporation clause contained in the Lease Agreement. Based on the foregoing, the confession of judgment contains a fatal flaw and the judgment is stricken.<sup>10</sup>

### CONCLUSION

For the foregoing reasons, the tenant’s petition to strike the confession judgment is granted and the judgment is stricken from the judgment index.

BY THE COURT,

  
PATRICIA A. McINERNEY, SJ.

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<sup>9</sup> See, *Scott v. 1523 Walnut Corp.*, 447 A.2d 951, 956-957 (Pa. Super. 1982)(general reference in 1972 amendment to the July 1, 1950 lease, without specific mention of *cognovits* clause was insufficient to bind the tenant to the warrant of attorney clause set forth in that lease). But see, *Ferrick v. Bianchini*, 69 A.3d 642 (2013)(Tenant’s specific acknowledgment in the amendment that it would continue to be bound by the confession of judgment clauses contained in the original lease, assignment and guaranty and suretyship agreements was a clear manifestation of consent that is required to sustain the validity of a *cognovits* clause.).

<sup>10</sup> In light of the foregoing, tenant’s other grounds for striking the judgment and petition to open need not be considered.