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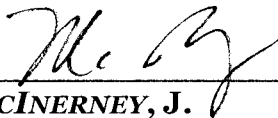
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

TOTL, LLC	:	March Term, 2017
	:	
<i>Plaintiff</i>	:	Case No. 00374
	:	
v.	:	
	:	Commerce Program
	:	
ROWAN DEVELOPMENT, INC.	:	
and	:	
OGONTZ AVENUE REVITALIZATION CRP	:	
	:	Control No. 17052764
<i>Defendants</i>	:	

ORDER-and-MEMORANDUM OPINION

AND NOW, this 16th day of June, 2017, it is **ORDERED** that the complaint-in-confession-of-judgment in this action is **DISMISSED**, and the **JUDGMENT THEREUNDER IS STRICKEN**.

BY THE COURT,



MCINERNEY, J.

DOCKETED
JUN 19 2017
R. POSTELL
COMMERCE PROGRAM

Totl Lic Vs Rowan Devel-ORDRF



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MEMORANDUM OPINION

On March 6, 2017, “Plaintiff,” entered judgment by confession in the Court of Common Pleas of Philadelphia County against two entities (hereinafter, “Defendants”), in an action captioned TOTL, LLC v, Rowan Development, Inc. and Ogontz Avenue Revitalization Crp., at case No. 1703-00158. On April 5, 2017, Defendants filed a petition to strike or open the confession of judgment and for a stay of execution, and on April 25, 2017, Plaintiff filed a response in opposition to the petition. On April 27, 2017, the petition was assigned to the Honorable Judge Patricia A. McInerney, and the action thereof became the “First Assigned Action.” Upon review of the petition to strike or open the judgment and for a stay of execution in the First Assigned Action, this Court issued an Order dated May 8, 2017. The Order dated May 8, 2017 opened the judgment and appointed a Judge *pro-tempore* to explore the possibility of a settlement. After holding a settlement conference in the First Assigned Action, the Judge *pro-tempore* reported to this Court that the parties could not reach a settlement.

Also on March 6, 2017, Plaintiff entered the instant judgment by confession in a case bearing a caption identical to the one found in the First Assigned Action –namely, TOTL, LLC v. Rowan Development, Inc. and Ogontz Avenue Revitalization Crp., at case No. 1703-00374 (the “Instant Action”). On May 22, 2017, Defendants filed a petition to strike or open judgment by confession and for a stay of execution in the Instant Action, and on June 10, 2017, Plaintiff filed a response in opposition thereto. On June 15, 2017, the petition was assigned to the Honorable Judge Ramy I. Djerassi, and on the following day, June 16, 2017, the Instant Action and the petition therein were reassigned to Judge McInerney who had already issued an Order opening the judgment in the First Assigned Action.

Discussion

Defendants' petition to strike or open in the Instant Action asserts *inter alia* that the complaint-in-confession-of-judgment should be dismissed under the doctrine of *lis pendens*. According to Defendants, the two actions "involve identical parties, the same cause of action, and seek identical relief."¹

In Pennsylvania—

[w]hen two lawsuits are pending, the common law doctrine of *lis pendens* permits the dismissal of the newer suit if both suits involve the same parties, the same relief requested, the same causes of action, and the same rights asserted.²

Moreover—

the question of a pending prior action is purely a question of law determinable from an inspection of the pleadings.... Once the defense is raised, a court may dismiss or stay the subsequent proceedings. A party asserting the defense of *lis pendens* must show that the case is the same, the parties are the same, and the rights asserted and relief prayed for the same.³

In this case, a review of the complaints in the First Assigned Action and in the Instant Action shows that they are both based on the same documents, contain an identical number of paragraphs and identical language, and seek recovery of identical sums composed of identical items.⁴ Based on the foregoing, this Court finds that the Instant Action involves "the same parties, the same relief requested, the same causes of action, and the same rights [which are] asserted" in the First Assigned Action.⁵ Based

¹ Petition to open, case No. 1703-00374, motion control No. 17052764, at ¶ 174.

² Barren v. Com., 74 A.3d 250, 253 (Pa. Super. 2013).

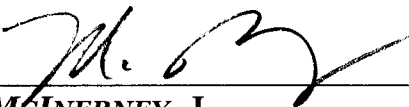
³ Crutchfield v. Eaton Corp., 806 A.2d 1259, 1262 (Pa. Super. 2002).

⁴ Complaint, Totl, LLC v. Rowan Development, Inc. and Ogontz Avenue Revitalization Crp., case No. 1703-00158, Exhibits A–M thereto; complaint, Totl, LLC v. Rowan Development, Inc. and Ogontz Avenue Revitalization Crp., case No. 1703-00374, Exhibits A–M thereto.

⁵ Barren v. Com., 74 A.3d 250, 253 (Pa. Super. 2013).

on the foregoing, the complaint-in-confession-of-judgment in the Instant Action is dismissed, and the judgment thereunder is stricken.⁶

BY THE COURT,



MCINERNEY, J.

⁶ The parties are given notice that the First Assigned Action shall proceed according to the timetable which the Court shall issue in an upcoming Case Management Order.

The parties are also placed on notice that the First Assigned Action shall be litigated in accordance with the instructions provided by the Pennsylvania Rules of Civil Procedure, which state in pertinent part that—

[i]f a judgment is opened in whole or in part the issues to be tried shall be defined by the complaint ... and by the petition, answer and the order of the court opening the judgment. **There shall be no other pleadings....** Pa. R.C. P. 2960 (2017) (emphasis supplied).