

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

JIN YUN ZHENG and XIAO PING YUAN, : November Term 2017
Plaintiffs, :
v. : No. 2185
JIAN HAI LIU, :
Defendant. : Commerce Program
:
: Control Number 17123238

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ORDER

AND NOW, this ^{5th} day of February 2018, upon consideration of Defendant's Petition to Strike or Open Confessed Judgment, Plaintiffs' response in opposition, and the attached Opinion, it hereby is **ORDERED** that the Petition is **Denied** and the stay of execution is lifted.

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BY THE COURT,



GLAZER, J.

Zheng Etal Vs Liu-ORDRC



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Plaintiffs,	:	
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JIAN HAI LIU,	:	
Defendant.	:	Commerce Program
	:	
	:	Control Number 17123238

OPINION

Presently pending before the court is defendant Jian Hai Liu’s (“defendant”) petition to strike and/or open confessed judgment filed by plaintiffs Jin Yun Zheng and Xiao Ping Yuan (“plaintiffs”). For the reasons discussed below, defendant’s petition is denied.

In October, 2003, Sindy Tsui and Chin Yang were the owners of the real property located at 3512 Germantown Avenue, Philadelphia, Pennsylvania. On October 3, 2003, Tsui and Yang entered into a lease agreement with defendant, doing business as Hot Wok, for the lease of said property for a term of fifteen years. On June 29, 2010, Tsui and Yang sold the property to plaintiffs. Plaintiffs and defendant have performed under the terms of the October 2003 lease. On November 21, 2017, plaintiffs confessed judgment against defendant for money in the amount of \$25,782.00 for unpaid rent, trash refuse charges, and real estate taxes and for possession.¹ On December 26, 2017, defendant filed a petition to open/strike the confessed judgment. The court ordered plaintiffs to respond to the petition. Plaintiffs filed their response and the petition is now ripe for disposition.

¹ The amount confessed also includes an attorney fee commission per the terms of the warrant provision within the lease.

DISCUSSION

In considering the merits of a petition to strike, the court reviews only 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.² In the case *sub judice*, defendant fails to direct this court to any technical irregularities to warrant striking the judgment and therefore the petition to strike is denied.

Defendant also seeks to open the confessed judgment. A confessed judgment may be opened “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.”³ A judgment of confession will be opened if “a petitioner seeking relief therefrom produces evidence which in a jury trial would require issues to be submitted to a jury.”⁴ The standard of sufficiency here is similar to the standard for a directed verdict, in that the facts must be viewed most favorably to the moving party, the evidence and proper inferences in support of the defense raised must be accepted as true, and all adverse allegations must be rejected.⁵ In support of his petition to open confessed judgment, defendant argues that his withholding of rent payments was justified because plaintiffs failed to repair the roof on the property as required under the terms of the lease. Defendant argues that since he paid for the roof repair, his obligation to pay rent is excused by plaintiffs’

² *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa.Super. 2011).

³ *Neducsin v. Caplan*, 121 A.3d 498, 506 (2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁴ *Id.*, quoting *Foerst v. Rotkis*, 244 Pa.Super. 447, 368 A.2d 805, 807–08 (1976).

⁵ *Id.*, citing *Greenwood v. Kadoich*, 239 Pa.Super. 372, 357 A.2d 604, 606 (1976).

nonperformance. Defendant further argues that he does not owe any real estate tax or trash charge. This defense is not meritorious. Per the terms of the lease, plaintiffs do not have an obligation to repair the roof. The lease provides in pertinent part as follows:

(e) Lessor has let the demised premises in their present “as is” condition and without any representations, other than those specifically endorsed hereon by Lessor, through its officers, employees, servants and/or agents. It is understood and agreed that Lessor is under no duty to make repairs, alterations, or decorations at the inception of this lease or at time thereafter unless such duty of Lessor shall be set forth in writing endorsed hereon.

Since plaintiffs does not have the responsibility to repair the roof, they are not in breach of the lease and defendant’s defense fails. Notwithstanding the foregoing, even if plaintiffs did not have an obligation to repair the roof,⁶ defendant failed to produce sufficient evidence to submit the matter to a jury. Defendant attached to its petition a proposal dated October 28, 2017 for roof work totaling \$4200 and an invoice dated August 21, 2017 for \$1500.00. While it is evident that defendant retained a contractors to repair the roof, there is no evidence that the invoices were paid. Moreover, there is no evidence that defendant paid the trash charges or the real estate taxes. Additionally, even if the invoices were paid in full, the amount expended on these two invoices (\$5,700.00) does not equal the amount of unpaid rent (\$23,558.85). Defendant’s evidence is not clear, direct and precise to support its defense. As such the petition to open is denied.

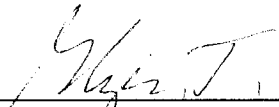
CONCLUSION

For the foregoing reasons, defendant’ petition to open and/or strike is denied and the stay

⁶ Plaintiffs in their answer to defendant’s petition to strike off or open confessed judgment and stay of proceedings “Admitted that the Plaintiff/Landlord is responsible for repair of roof.” However, the contractual obligations under the term of the lease do not place the obligation of repair upon expressly plaintiffs. Based on the foregoing contradiction, this court will follow the express terms of the lease.

for execution is lifted.

BY THE COURT,



GLAZER, J.