

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

DOCKETED

1100 W. GIRARD, LLC,

Plaintiff,

v.

A MOTHER'S TOUCH DAYCARE, LLC,

Defendant.

October Term 2019

No. 3929

Commerce Program

Control Number 19112271

JAN - 8 2020

R. POSTELL  
COMMERCE PROGRAM


ORDER

AND NOW, this 8<sup>th</sup> day of January 2020, upon consideration of defendant's Petition to Open or Strike the Judgment by Confession for Possession only, plaintiff's response in opposition and in accord with the attached Opinion, it hereby is **ORDERED** that defendant's Petition is **Denied**.

It is **ORDERED** that the parties appear before this court on Monday January 27, 2020 at 10:00 a.m. in room 531 City Hall, Philadelphia, PA 19107 for a status conference to discuss an orderly process for plaintiff's repossession and defendant's departure from the premises. Plaintiff shall file a writ of possession after the status conference with the court.

It is further **Ordered** that plaintiff's complaint and exhibits filed on October 31, 2019 be secured from public view by the Office of Judicial Records since an exhibit attached to the complaint contains information deemed confidential. Plaintiff shall file a redacted version of the complaint and exhibit for public view forthwith.

BY THE COURT,

  
GLAZER, J.

1100 W Girard, Llc Vs -ORDOP



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

1100 W. GIRARD, LLC,	:	October Term 2019
	:	
Plaintiff,	:	
	:	
v.	:	No. 3929
	:	
A MOTHER’S TOUCH DAYCARE, LLC,	:	
	:	
Defendant.	:	Commerce Program
	:	
	:	
	:	Control Number 19112271
	:	

**OPINION**

**GLAZER, J.**

**January 8, 2020**

Presently before the court is defendant A Mother’s Touch Daycare, LLC’s (“defendant”) petition to open and/or strike confessed judgment filed by plaintiff 1100 W. Girard, LLC (“plaintiff”) for defendant’s default under the terms of a commercial lease. For the reasons discussed below, defendant’s petition is denied.

On February 21, 2016, plaintiff and defendant entered into a written commercial lease agreement for a term of ten years concerning the premises at 1100 W. Girard Avenue, 2<sup>nd</sup> floor, Philadelphia, PA 19123. The premise was leased to defendant for use as a day care/child care education facility with offices. The lease provides for the payment of minimum rent and additional rent. The lease defines minimum rent as “a fixed minimum base rent...for each Lease year in the amount set forth as Minimum Rent” in the lease summary.<sup>1</sup> The minimum rent for the first two lease years was \$11,000 and increased every lease year thereafter within the term.<sup>2</sup> At the time the judgment for confession was filed, the minimum rent was \$11,220.00.

Additional rent is defined as follows:

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<sup>1</sup> Lease § 2.01.

<sup>2</sup> Lease Summary ¶ 9.

“...all the sums required to be paid by Tenant under the terms and conditions of the Lease, such as, by way of example and not limitation, Tenant’s Share of taxes, and Tenant’s Expense Share, whether or not a sum or charge is specifically defined as additional rent when it appears in the Lease. Tenant shall pay additional rent at the time or times specifically provided herein for payment of such item(s) of additional rent, and if no specific time is provided, such amount shall be paid with the next installment of Minimum Rent thereafter falling due...”<sup>3</sup>

The Lease further provides that the tenant shall pay, as additional rent, Tenant’s pro rata share of all “Taxes” which may be levied or assessed by any lawful authority against the land and improvements in the Complex in equal monthly installments with the additional rent. <sup>4</sup>

Tenant was also responsible to pay its Pro Rata Share of Expenses of all operating costs in operating and maintaining the Complex. The operating costs include all costs and expenses of Landlord paid or incurred in the operation, management, supervision, cleaning, repair, maintenance and reasonable reserves of the Complex and all the Common Areas. <sup>5</sup>

Pursuant to the terms of the Lease, the defendant’s failure to pay any installation of the minimum rent or additional rent constitutes an event of default. In the event of default, the lease contains a warrant of attorney authorizing the landlord to confess judgment against tenant for possession of the premises and to obtain a writ of possession without any prior proceeding. <sup>6</sup>

Defendant failed to pay the total rent due, minimum rent and additional rent, under the Lease on a timely basis. Plaintiff provided defendant notice of the default and tenant failed to

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<sup>3</sup> Lease § 2.02.

<sup>4</sup> Lease § 9.01 (a).

<sup>5</sup> Lease § 10.01 (a)(b).

<sup>6</sup> Lease §§ 21.09 and 21.10.

cure. On October 31, 2019, plaintiff filed a complaint in confession of judgment for ejectment. On November 18, 2019, defendant filed this petition to open/strike the judgment by confession.<sup>7</sup>

## 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.<sup>8</sup> 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.<sup>9</sup>

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.”<sup>10</sup> 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.”<sup>11</sup> The standard of sufficiency here is similar to the

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<sup>7</sup> In addition to this complaint for confession of judgment against defendant, plaintiff also filed a complaint for money damages for the unpaid rent against defendant and the guarantors. This action is currently pending in this court and is captioned *1100 W. Girard, LLC v. A Mother’s Touch Daycare, et. al.*, 1910-2602.

<sup>8</sup> *Hazer v. Zabala*, 26 A.3d 1166 (Pa. Super. 2011).

<sup>9</sup> Defendant argue that the judgment should be stricken because the Lease fails to define the term “additional rent”. Notwithstanding the fact that alleged ambiguity of an agreement does not constitute a basis to strike a confessed judgment, the term “additional rent” is a defined term under the lease. See Lease §§ 2.02, 9.01 and 10.01. As such the petition to strike in this regard is denied. Moreover, any attempt to create an ambiguity regarding the definition of additional rent as a basis to open the judgment is also denied. The Lease agreement is not ambiguous.

<sup>10</sup> *Neducsin v. Caplan*, 121 A.3d 498, 506 (2015), *appeal denied*, 131 A.3d 492 (Pa. 2016).

<sup>11</sup> *Id. quoting Foerst v. Rotkis*, 244 Pa. Super. 447, 368 A.2d 805, 807-08 (1976).

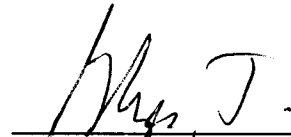
standard for a directed verdict, in that the facts must be viewed most favorably to the moving party, the evidence and proper inferences in support of the defense raised must be accepted as true, and all adverse allegations must be rejected.<sup>12</sup>

Applying the foregoing to the facts at hand, defendant's petition to open is also denied. Defendant relies upon legal conclusions to open the judgment without producing any evidence which could be submitted to a jury for consideration. Defendant produced no cancelled checks, bank statements, or other documents evidencing it made payments for the amount upon which judgment was confessed. Additionally, the claim that defendant owns the fixtures and assets in the premises is not a bar to this confessed judgment for possession. The cases cited by defendants are not persuasive and the petition to open is denied.

### CONCLUSION

For the foregoing reasons, defendant's petition to strike and/or open the confessed judgment for possession is denied. It is further **Ordered** that plaintiff's complaint and exhibits filed on October 31, 2019 be secured from public view by the Office of Judicial Records since an exhibit attached to the complaint contains information deemed confidential. Plaintiff shall file a redacted version of the complaint and exhibit for public view forthwith.

**BY THE COURT,**

  
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**GLAZER, J.**

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<sup>12</sup> *Id.*, citing *Greenwood v. Kadoich*, 239 Pa. Super. 372, 357 A.2d 604, 606 (1976).