

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

CITY LINE SHOPPING CENTER ASSOCIATES

Plaintiff

v.

GEORGE RODRIGUEZ, M.D., P.C.,
d/b/a ADVANCED DIAGNOSTIC

Defendant

: August Term, 2008
: Case No. 00891
:
:
: Commerce Program
:
:
:
: Control No. 20102486

ORDER

AND NOW, this 19th day of January, 2021, upon consideration of defendants' petition to strike or open confession-of-judgment, the response of plaintiff, and the respective briefs, it is **ORDERED** that the petition to strike or open is **DENIED IN ITS ENTIRETY**.

DOCKETED
JAN 19 2020
R. POSTELL
COMMERCE PROGRAM

BY THE COURT,


GLAZER, J.

City Line Shopping Cent-ORDRC



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OPINION

Plaintiff is City Line Shopping Center, Associates (“Landlord”), owner of a shopping center in Philadelphia, Pennsylvania. Defendant is George Rodriguez, M.D., P.C., (“Tenant”), engaged in a medical-diagnostic business.

On August 26, 2009, Landlord and Tenant entered into a lease agreement (the “Lease”). The Lease entitled Tenant to operate a magnetic resonance imaging facility on Landlord’s property (the “Leased Premises”), in exchange for rent payments and other obligations.¹ The Lease contained warrants-of-attorney empowering Landlord to confess judgment for re-possession of the Leased Premises and for money damages, upon a default committed by Tenant.² The Lease underwent minor modifications on September 24, 2008 and March 12, 2009, a correction relieving Tenant from the obligation to provide Landlord with certain financial reports, and a final modification (the “3rd Modification”), executed on May 29, 2018.³ The 3rd Modification contained warrants-of-attorney.⁴

On August 11, 2020, Landlord confessed judgment against Tenant for its “fail[ure] to make required payments of monthly installments of minimum rent....”⁵ In the complaint, Landlord claims \$69,896.35 as past due rent, \$536,292.37 as accelerated, discounted rent, and \$30,309.44 as attorney’s fees, for a total of

¹ Lease, § 1.1(j)(i)—Fundamental Lease Provisions, Exhibit A to the complaint.

² *Id.*, § 18.5(B) (for possession of the Leased Premises); § 18.5(c) (for money damages).

³ The modifications and correction to the Lease can be found as Exhibits B, C, D and E to the complaint.

⁴ 3rd Modification, Exhibit E to the complaint, at § VI (B) and § VI(C). In error, Landlord failed to include in its exhibits the full text of one of the warrants found in the 3rd Modification. Subsequently, Landlord moved to include the missing text, this court granted the motion by Order dated December 12, 2020, and Landlord filed the missing page via *praecipe*, on December 7, 2020. A reading of the subsequently-included text shows that the warrants-of-attorney from the 3rd Modification are substantially the same as the warrants from the original Lease.

⁵ Complaint, ¶ 10.

\$636,498.16.⁶ On October 28, 2020, Tenant filed the instant petition to strike or open the confession of judgment.

DISCUSSION

THE 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. A fatal defect on the face of the record denies the prothonotary the authority to enter judgment.⁷

Tenant asserts that the judgment should be stricken because the record is fatally flawed. Tenant asserts that the record is fatally flawed because the warrants-of-attorney from the 3rd Modification are incomplete.⁸ This challenge to the validity of the judgment is rejected because “[a] motion to strike [confession-of-judgment] may not be granted if the defect can be remedied by an amendment of the record or other action.”⁹ Here, as noted already, Landlord moved to add the missing portion of the relevant text from the 3rd Modification, this court granted that motion, and the record is no longer flawed.

Next, Tenant avers that the record is fatally flawed because the warrants-of-attorney are not notarized, in violation of two sub-chapters within 20 Pa. C.S.A. § 5601

⁶ *Id.*, ¶17. The complaint does not seek to enforce ejectment of Tenant under the warrant-of-attorney; apparently, Tenant is no longer in possession of the Leased Premises.

⁷ *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1267 (Pa. Super. 2015).

⁸ Petition to strike, ¶ 2.

⁹ *Atlantic Nat. Trust, LLC v. Stivala Investments, Inc.*, 922 A.2d 919, 923 (Pa. Super. 2007).

of the "PROBATE, ESTATES AND FIDUCIARY CODE."¹⁰ Specifically, Tenant avers that the absence of a notary's signature is fatal because Landlord, while acting as Tenant's attorney-in-fact, violated Tenant's "reasonable expectations," and conducted itself in "conflict" with the interests of Tenant.¹¹ This challenge is rejected for two reasons: first, Tenant may not invoke the PROBATE, ESTATES AND FIDUCIARY CODE in this, a commercial lease transaction between Landlord and Tenant. Stated another way, Landlord was not acting as an agent or fiduciary of Tenant, as each operated at arms-length in the formation and execution of a commercial agreement.¹² Second, the challenge is rejected because nothing in the Pennsylvania Rules of Civil Procedure requires that a warrant-of-attorney be notarized. The Rules merely state that the complaint-in-confession-of-judgment shall contain "the original or photostatic copy or like reproduction of the instrument [containing the warrant-of-attorney,] **showing the defendant's signature.**"¹³

THE PETITION TO OPEN.

To be successful, a petition to open confession-of-judgment it must be promptly filed; if untimely, it must offer an explanation or excuse for its untimeliness; and the party seeking to open the judgment must show a meritorious defense....¹⁴ In addition, "[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses."¹⁵

¹⁰ 20 Pa. C.S.A. § 101—Short Title (2021). The specific provision on which Tenant relies are 20 Pa. C.S.A. § 5601(a)(1), 20 Pa. C.S.A. § 5601.3(b)(2).

¹¹ Petition to strike, ¶¶ 4-5.

¹² Tenant has offered no evidence showing that Landlord acted as an agent or fiduciary of Tenant in the course of the instant commercial transaction. See, e.g., *Germantown Sav. Bank v. Talacki*, 657 A.2d 1285, 1290, (stating that the mere allegation of a conflict of interest, without any evidence in support thereof, cannot affect the validity of a judgment entered by confession).

¹³ Pa. R.C.P. 2952(a)(2) (emphasis supplied).

¹⁴ *Green Acres Rehab. & Nursing Ctr. v. Sullivan*, 113 A.3d 1261, 1270 (Pa. Super. 2015).

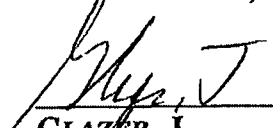
¹⁵ *Haggerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super. 1984).

In the petition to open confession-of-judgment, Tenant appears to aver a defense based on fraud-in-the-inducement. Specifically, the petition to open asserts that Landlord requested Tenant's financial statements, tax returns, and income reports, in the course of negotiations designed to reduce Tenant's rent. Tenant avers that it detrimentally relied on Landlord's request, only to be denied an opportunity to mitigate its damages.¹⁶ This argument is rejected:

fraud and misrepresentation [are] meritorious defenses that could support the opening of a confessed judgment. However, the mere pleading of those defenses is insufficient. [A petitioner] must also establish that it set forth sufficient evidence in support of those defenses to give rise to a questions that would require submission of the case to a jury.¹⁷

In this case, Tenant has presented no evidence that Landlord engaged in fraud during rent-rebate negotiations, and no evidence that such negotiations occurred. For this reason, the petition to strike or open confession-of-judgment is denied in its entirety.¹⁸

BY THE COURT,


GLAZER, J.

¹⁶ Petition to open, ¶¶ 6-9.

¹⁷ *PNC Bank v. Bluestream*, 14 A.3d 831, 840-841 (Pa. Super. 2010).

¹⁸ Landlord seeks accelerated rent, pursuant to a specific provision in the Lease. The Court reminds the parties that—

where a commercial tenant vacates the leasehold, the landlord may seek accelerated rent if the lease so provides, and re-let the premises. The landlord, however, must credit tenant ... for sums paid by the replacement tenant. *Ferrick v. Bianchini*, 69 A.2d 642, 656 (Pa. Super. 2016).