


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

FORUM REALTY COMPANY	:	November Term, 2020
	:	Case No. 02221
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
ALEX D. YOON AND MARIA Y. YOON	:	
	:	
<i>Defendants</i>	:	Control No. 21020465

ORDER

AND NOW, this 8th day of March, 2021, upon consideration of the defendants' petition to open confession-of-judgment, and the answer in opposition of plaintiff, it is **ORDERED** that the judgment entered by confession is **STRICKEN**.

BY THE COURT,



GLAZER, J.

OPINION

The petition to open confession-of-judgment requires this court to determine whether the defendants in this action agreed to be bound to the terms of a *cognovit* clause in a lease agreement, and in two subsequent modifications thereof. The court finds that the *cognovit* clause and its subsequent reiterations cannot bind the defendants, and for this reason the confession-of-judgment is stricken.

BACKGROUND

The parties to this action entered into a commercial lease agreement (the “Lease”), on August 7, 2003. The Lease contains a warrant-of-attorney permitting plaintiff (“Landlord”), to confess judgment for money and in ejection against defendants (“Tenants”), upon the occurrence of a default committed by them.¹ Although the Lease contains a warrant-of-attorney, it appears to be lacking the signatures of Tenants.²

Subsequently, Landlord and Tenants modified certain terms of the original Lease pursuant to an agreement identified as the “1st Addendum.”³ Tenants did sign the 1st Addendum.

On January 22, 2020, Landlord and Tenants entered into a second modification agreement (the “2nd Addendum”), which changed certain terms of both the original Lease and 1st Addendum.⁴ Tenants did sign the 2nd Addendum.

In November 2020, Landlord entered judgment by confession against the two Tenants, and on February 3, 2021, they filed the instant petition to open the judgment.

¹ See, Lease, Exhibit 1 to the complaint, ¶ 19.

² Id., p. 15.

³ See, 1st Addendum, Exhibit 2 to the complaint.

⁴ See, 2nd Addendum, Exhibit 3 to the complaint.

Landlord timely answered the petition. On March 4, 2021, Tenants also filed an emergency motion to stay writ of execution. On March 5, 2021, this court issued an Order granting the emergency motion to stay writ of execution, and issued a stay. The court now tackles the petition to open the judgment.

DISCUSSION

The first issue presented by the petition requires this court to determine whether Tenants agreed to be bound to the warrant-of-attorney within the original Lease.

At the onset of this analysis, the court notes that Landlord supported its confession-of-judgment by attaching to the complaint a copy of that Lease. However, the Lease appears to lack the signatures of Tenants, in violation of a specific provision in the Pennsylvania Rules of Civil Procedure, a provision instructing that—

[t]he complaint [in confession-of-judgment] shall contain the following:

* * *

the original or photostatic copy or like reproduction **of the instrument showing the defendant's signature**....⁵

Nevertheless, the absence of Tenants' signature does not necessarily void the entire Lease, since contractual signatures under Pennsylvania law "are [generally] not required[,] unless such signing is expressly required by law or by the intent of the parties."⁶ However, a defendant's signature is required in a case where a plaintiff wishes to avail itself of the advantages of a warrant-of-attorney: in such a case, the law not only requires a defendant's signature upon the operative agreement, but also the creation of a direct relation between the warrant-of-attorney therein, and the defendant's signature.

⁵ Pa. R.C.P. 2952(a)(2).

⁶ Shovel Transfer & Storage, Inc. v. Pennsylvania Liquor Control Bd., 739 A.2d 133, 136 (Pa. 1999).

The law specifically instructs that—

[w]here a lease contains a warrant-of-attorney, the signature of the lessee must bear such a direct relation to the provision authorizing the warrant as to leave no doubt that the lessee signed, conscious of the fact that he was thereby conferring upon the lessor a warrant to confess judgment against him for a breach of a covenant.⁷

A defendant's signature must directly relate to the warrant-of-attorney because a confession-of-judgment—

is a voluntary submission to the jurisdiction of the court, giving by consent and without the service of process, what could otherwise be obtained by summons and complaint, and other formal proceedings. A person who confesses a judgment submits to be sued in that form and manner.⁸

Stated differently, a person who submits to a confession-of-judgment relinquishes certain due process rights, and, at a minimum, this voluntary deprivation requires that a plaintiff strictly adhere to specific legal formalities: “[i]f the authority to enter judgment by confession on a warrant of attorney is not strictly followed, the judgment will be stricken.”⁹

In this case, the original Lease presents two spaces specifically dedicated to each Tenant; however, neither space bears the appropriate, required, and essential signature of the specified party.¹⁰ The absence of these essential signatures cannot indicate that Tenants intended to consciously confer upon Landlord a warrant to confess judgment

⁷ Egyptian Sands Real Estate, Inc., v. Polony, 294 A.2d 799, 804 (Pa. Super. 1972) (emphasis added).

⁸ O'Hara v. Manley, 12 A.2d 820, 822 (Pa. Super. 1940).

⁹ Dime Bank v. Andrews, 115 A.3d 358, 364 (Pa. Super. 2015).

¹⁰ Lease, Exhibit 1 to the complaint at signature page.

against them, and the court concludes that Tenants are not bound by the terms of the warrant from the original Lease.

The second issue presented by the petition requires this court to determine whether Tenants empowered Landlord to enter judgment against them by operation of the 1st and 2nd Addenda. Specifically, if the 1st and 2nd Addenda contain warrants-of-attorney, or if they properly incorporate the failed warrant from the original Lease, then Tenants may possibly have conferred upon Landlord the power to enter judgment against them.

The court immediately recognizes that Tenants did sign the 1st and 2nd Addenda, but it also notes that neither Addendum contains warrants-of-attorney: instead, each relies on language of revival in an effort to adopt the failed warrant from the original Lease. Thus, the court must test whether the language of revival in the two Addenda suffices to properly restate or incorporate the failed warrant.

The law on the incorporation of warrants-of-attorney from an original contract is well settled: where an amendment fails to restate “in its entirety,” the warrant, but **specifically “states that the confession of judgment provisions** contained ... [in the prior agreement] are ... **republished,**” then Pennsylvania Courts will find that such language validly incorporates an old warrant into the new agreement.¹¹ Simply stated, an old warrant will be validly incorporated into a new agreement if the language of incorporation specifically states that the prior “**warrant**” is “**republished,**” or at least

¹¹ Ferrick v. Bianchini, 2013 PA Super 116, 69 A.3d 642, 652 (Pa. Super. 2013) (emphasis supplied).

employs words conveying the same meaning.¹² This legal principle flows from the well-established premise that a—

mere general reference in the ... [original lease] is insufficient to bind ... [a party] to the warrant-of-attorney clause as set forth in that lease.¹³

Turning to the provisions inserted by Landlord in the 1st and 2nd Addenda, the court notes the following language:

[a]ll terms, provisions and addenda made between the parties on August 7, 2013 [sic] is [sic] **renewed** as requirements of both Landlord and Tenant.¹⁴

And—

4. Effect of Lease. This [2nd] Addendum shall supersede any terms of the Lease in contradiction hereto.
Notwithstanding the foregoing, all terms and provisions of the [L]ease are renewed as restated herein and remain in full force and effect.¹⁵

In this case, the language of incorporation in the 1st Addendum is patently vague and insufficient to bind Tenant to the failed original warrant. Similarly, the language of incorporation in the 2nd Addendum, while attempting to “restate all the terms” from the original Lease, fails to mention that the revival specifically included republished or incorporated, the original warrant-of-attorney. The court likewise concludes that the language of incorporation in the 2nd Addendum is generic, vague, and insufficient to bind Tenants to the failed original warrant.¹⁶

¹² Id.

¹³ Scott, 1523 Walnut Corp., 447 A.2d 951, 956 (Pa. 1982) (quoting Solazo v. Boyle, 76 A.2d 179 (Pa. 1950)).

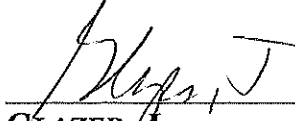
¹⁴ See, 1st Addendum, Exhibit 2 to the complaint, p. 2 (emphasis supplied).

¹⁵ See, 2nd Addendum, Exhibit 3 to the complaint p. 2-of-4 (emphasis supplied).

¹⁶ “The task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the language of the written instrument.” Humberston v. Chevron USA, Inc., 75 A.3d 504, 510 (Pa. Super. 2013).

The confession-of-judgment is a nullity and is stricken.¹⁷

BY THE COURT,



GLAZER, J.

¹⁷ [H]istorically, void confessed judgments could be stricken off or opened at any time as they were considered a legal nullity because the court lacked subject matter jurisdiction over the matter.... [A] void judgment is a mere blur on the record, and which it is the duty of the court of its own motion to strike off, whenever its attention is called to it.... The policy reasons behind this ... treatment are clear: it is in the public interest for judgments to be final. However, sound public policy cannot create jurisdiction. Accordingly, where the court lack[s] jurisdiction, as it does when it enters a void confessed judgment, that court cannot enter a valid judgment, no matter how much time has passed. M & P Mgmt., L.P. v. Williams, 937 A.2d 398, 400-01 (Pa. 2007).