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
Plaintiff	:	
	:	
v.	:	Commerce Program
	:	
ALEX D. YOON AND MARIA Y. YOON	:	
	:	
Defendants	:	Control No. 21031649

ORDER

AND NOW, this 23rd day of April, 2021, upon consideration of plaintiff's unopposed motion for reconsideration, it is **ORDERED** that the motion is **DENIED**.

BY THE COURT,

GLAZER, J.

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	:	
Defendants	:	Control No. 21031649

Dated: April 23, 2021

OPINION

On February 3, 2021, an untimely petition to open confession-of-judgment was submitted to this court by the two defendants in this action. The petition sought to open the judgment but did not seek to strike it. On March 8, 2021, this court issued an Order disregarding the petition to open, yet striking on its own motion the confession-of-judgment. The court struck the judgment on its own motion for two reasons: first, the operative instrument, a commercial "Lease," lacked the defendants' signatures, in violation of Pa. R.C.P. 2952(a)(2). The court determined that the lack of defendants' signature on the Lease could not bind them to the warrant-of-attorney because under the law of Pennsylvania, when a contract contains a warrant-of-attorney, "the requisite signature [of a defendant] must bear a direct relation to the warrant … and may not be implied."[1] Furthermore, the Rules of Civil Procedure specifically require that a complaint-in-confession-of-judgment contain "the original or a photostatic copy or like

[1] L.B. Foster Co. v. Tri—W. Constr. Co., 186 A.2d 18, 20 (Pa. 1962). See, also Egyptian Sands Real Est., Inc. v. Polony, 294 A.2d 799, 803 (Pa. Super. 1972).

reproduction of the **instrument <u>showing the defendant's signature</u>**."[2] Stated another way, this court found that in the absence of defendants' signatures, the warrant-of-attorney could only be construed against plaintiff as the beneficiary of that provision.[3] The court struck the judgment for a second reason: the two agreements which the parties executed subsequent to the Lease, (hereinafter, the "Addenda"), had failed to republish or incorporate the original-yet-ineffective warrant from the Lease because their vague language purporting to do so was insufficient to bind the defendants to that provision.[4] Thus, the court struck the judgment on its own motion because nothing in the record suggested that the defendants had relinquished their due process rights:

> [a] warrant of attorney authorizing judgment is perhaps the most powerful and drastic document known to civil law. The signer deprives himself of every defense and every delay of execution, he waives exemption of personal property from levy and sale under the exemption laws, he places his cause in the hands of a hostile defender. The signing of a warrant of attorney is equivalent to a warrior of old entering a combat by discarding his shield and breaking his sword. **For that reason the law jealously insists on proof that**

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[2] Pa. R.C.P. 2952(a)(2).

[3] <u>Frantz Tractor Co. v. Wyoming Valley Nursey</u>, 120 A.2d 303 (Pa. 1956). Stating that "A Pennsylvania warrant of attorney must be signed. And it will be construed strictly against the party to be benefited by it"). <u>See</u>, <u>also</u> <u>O'Hara v. Manley</u>, 12 A.2d 820, 822 (Pa. Super. 1940) (stating that 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 judgment submits to be sued in that form and manner"). <u>See</u>, <u>also</u> <u>Egyptian Sands Real Estate, Inc. v. Polony</u>, 294 A.2d 799, 804 (Pa. Super. 1972) (stating that "[w]here a lease contains a warrant-of-attorney, the **<u>signature</u>** of the lessee must bear such a **direct relation** to the provision authorizing the warrant **as to leave no doubt the he was thereby conferring upon lessor a warrant to confess judgment against him for a breach of a covenant**.") (Emphasis supplied).

[4] <u>See</u>, <u>Scott v. 1523 Walnut Corp.</u>, 301 Pa. Super. 248, 257, 447 A.2d 951, 955 (Pa. Super. 1982): "([a] general reference in the body of an executed lease to terms and conditions to be found outside the agreement is insufficient to bind the lessee to a warrant of attorney not contained in the body of the lease[,] **unless the lessee <u>signs</u> the warrant** where it does appear." (Emphasis supplied). The court explained the legal reasons as to why the Addenda failed to properly republish of incorporate the failed warrant in its Order-and-Opinion dated March 8, 2021.

> **this helplessness and impoverishment was voluntarily accepted and consciously assumed**.[5]

On March 16, 2021, plaintiff filed a motion for reconsideration asking the court to vacate its Order dated March 8, 2021, and to re-instate the confession-of-judgment for money and possession of the leased premises. Subsequently, counsel from both sides shared documents with this Court: these documents showed that counsel for defendant would be unable to file a timely response to the motion for reconsideration because the deadline thereof coincided with other prior, conflicting commitments. On March 22, 2021, this court issued an Order vacating its Order of March 8, 2021, "for the sole purpose of accommodating certain prior, irrevocable plans to which counsel for defendants … [was] bound. The Order of March 22, 2021 also specified that defendants' response to plaintiff's motion for reconsideration had to be filed no later than by April 12, 2021. To date, counsel for defendants has not filed a response, nor has he provided a reason to explain this inaction. Nevertheless, the court shall address the motion for reconsideration of plaintiff, and rebut each argument therein.

Preliminarily, the standards for striking a judgment are well-settled:

> [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 fatal defect on the face of the record denies the prothonotary the authority to enter judgment. When a prothonotary enters judgment without authority, that judgment is void *ab initio*.[6]

A. <u>The court did not err in considering the untimely petition to open</u>.

The first challenge asserts that this court erred because Pennsylvania law prevents a court from entertaining an untimely petition to open judgment. The court

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[5] Scott v. 1523 Walnut Corp., 447 A.2d 951, 955 (Pa. Super. 1982) (emphasis supplied)
[6] Green Acres Rehab. & Nursing Ctr. v. Sullivan, 113 A.3d 1261, 1267–68 (Pa. Super. 2015).

readily agrees that the defendants filed an untimely petition to open the judgment; nevertheless, this court had the power to strike the judgment for two reasons: first, the Pennsylvania Rules of Civil Procedure allow any court to disregard procedural defects of procedure, such an untimely petition, to secure the just outcome of any legal action. The pertinent provision states that—

> [t]he Rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding.... The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties.[7]

Second, the court quickly noticed that the warrant in the original Lease was ineffective because it lacked the requisite signatures of defendants. The court also noticed that the 1st and 2nd Addenda failed to effectively republish or incorporate the old warrant onto its subsequent modifications. With no valid warrant in the original Lease, and no valid republication or incorporation thereof into the subsequent Addenda, this court had no choice but to strike the judgment on its own motion, regardless of whether the defendants untimely filed their petition to open. The court had no choice but to strike the judgment because–

> a void judgment may be regarded as no judgment at all; and every judgment is void, which clearly appears on its own face to have been pronounced by a court having no jurisdiction or authority in the subject matter....
>
> [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 <u>of its own motion</u> to strike off, whenever its attention is called to it**...

[7] Pa. R.C.P. 126 (2021).

> Void judgments are to be treated in the same way that they were treated at common law, i.e., at any time that a void judgment is brought to the attention of the court, it must be stricken.[8]

In this case, the original warrant had no effect because the Lease lacked the requisite signatures of defendants, the defendant's untimely petition could not validate a judgment that had no value, and the language seeking to incorporate or republish the ineffective warrant had failed due to its vagueness and insufficiency.

B. <u>The court properly struck the judgment on its own motion</u>.

This court has already articulated, *supra*, the legal grounds upon which it struck the judgment on its own motion: no further discussion is required.

C. <u>The court properly found that the language purporting to renew the failed warrant was insufficient</u>.

The challenge asserting that the court erred in interpreting certain terms of renewal rests on two arguments. Under the first argument, plaintiff asserts that the initials of defendants, affixed below the warrant-of-attorney in the original Lease, demonstrate that they did agree to be bound to that provision, whether or not they signed the Lease. This argument is rejected because the Pennsylvania Rules of Civil Procedure specifically state that a complaint-in-confession-of judgment shall contain "the original or photostatic copy or like reproduction of **the instrument showing the defendant's <u>signature</u>**."[9] This Rule specifically requires a defendant's signature and does not instruct that a set of initials will suffice in lieu thereof. For this reason, the court rejects plaintiff's first assertion that the defendant's initials near the warrant-of-attorney were sufficient to bind them thereto.

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[8] <u>Id.</u>, at 401-402.
[9] Pa. R.C.P. 2952(a)(2) (emphasis supplied).

Under the second argument, plaintiff asserts that the term "renewed" is not ambiguous, and this court erred when it found otherwise. That term appears in the 2nd Addendum, and was employed in an effort to incorporate or republish therein the original-yet-ineffective warrant. This argument is likewise rejected because plaintiff has improperly focused on the term "renewed," without considering the vague and generic language which accompanies that term in the operative provision. In itself, the term "renewed" is not necessarily ambiguous; however, when it is included in a provisions that purports to incorporate or reference a prior warrant-of-attorney, yet fails to specifically reference that provision, it fails to bind a party thereto. The Pennsylvania Superior Court has held that "**a general reference in the body of an executed lease to terms and conditions to be found outside the agreement is insufficient to bind the lessee to a warrant of attorney not contained in the body of the lease.**"[10] To illustrate the difference between an insufficient reference to a prior warrant-of-attorney, and a reference that sufficiently calls attention upon a prior warrant, the court will compare the language of renewal contained in the 2nd Addendum under examination, with language of renewal capable of binding a defendant to a warrant from an outside document.[11] The insufficient language of incorporation or republication in Plaintiff's 2nd Addendum states:

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[10] Ferrick v. Bianchini, 69 A.3d 642, 651 (Pa. Super. 2013) (emphasis added). In Ferrick, the parties executed an amendment to a lease. The amendment did not restate *verbatim* the original warrant-of-attorney from the lease, but **specifically referenced** that warrant in an effort to incorporate the old warrant into the new amendment. Plaintiff "Landlord," confessed judgment against defendant "Tenant," and the court denied Tenant's petition to strike or open the judgment. Tenant appealed. Affirming, the Pennsylvania Superior Court explained that a warrant-of-attorney outside of a newly-formed amendment need not be restated in its entirety. Instead, the court noted that language of renewal validly incorporated or republished a warrant found outside of the amendment, when its language **specifically** draws attention to the existence of a prior warrant. Ferrick v. Bianchini, 69 A.3d 642, 652 (Pa. Super. 2013).

[11] The court finds no need to analyze the language in the 1st Addendum, as that language is even more amorphous and ambiguous that the language of republication or incorporation from the 2nd Addendum.

> Effects on the Lease. This Addendum shall supersede any terms of the [original] Lease in contradiction hereto. Notwithstanding the foregoing, all terms and provisions of the [original] Lease are renewed as is stated herein and remain in full force and effect.[12]

This Court found the afore-quoted language ambiguous in its entirety because it lumped into one amorphous body all the terms and provisions from the original Lease, including its warrant-of-attorney, without calling specific attention upon that provision.[13]

By way of comparison, the Superior Court in Ferrick tackled a substantially similar issue, wherein a plaintiff did succeed in the effort to republish an old warrant-of-attorney because it relied on language that called specific attention upon that outside provision. The successful language of republication in Ferrick stated that—

> the **confession of judgment provisions** contained in [the prior agreements] … are hereby **republished** and both Tenant and Assignee **agree to be bound** thereby in accordance with the terms thereof.[14]

This comparison clearly shows that the vague language of incorporation or republication employed by Plaintiff in the 2nd Addendum did not sufficiently call the attention of Defendants upon the prior-but-failed warrant-of-attorney. For this reason, the third challenge to the Order dated March 8, 2021 is rejected.

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[12] 2nd Addendum, Exhibit 3 to the complaint-in-confession-of-judgment, ¶ 4.

[13] "The interpretation of any contract is a question of law.... In interpreting a contract, the ultimate goal is to ascertain and give effect to the intent of the parties as reasonably manifested by the language of their written agreement." Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 509–10 (Pa. Super. 2013)

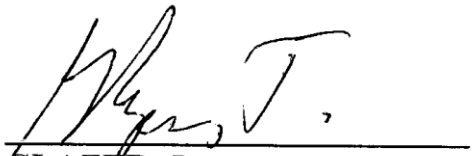
[14] Ferrick v. Bianchini, 69 A.3d 642, 652 (Pa. Super. 2013). The court feels compelled to add that it does not suggest any particular language or formula for the renewal of a prior warrant into a new agreement; rather, it only requires that an Addendum either re-state the old warrant, or **specifically reference** the old warrant in the language of incorporation. As this court stated in its Order-and-Opinion of March 8, 2021, the language of renewal need not repeat *verbatim* any specific formula, as long as it sufficiently **conveys the meaning of renewal**.

D. **<u>The Court did not convert a petition to open judgment into a petition to strike judgment: it merely struck a void judgment *ab initio*</u>.**

This challenge has already been rebutted in § A, *supra*. As stated earlier, this court did not convert a petition to open into a petition to strike; rather, it merely noticed that the judgment was void *ab initio*, and struck it from the record on its own motion, as required.

In conclusion, the warrant-of-attorney in the original Lease did not bind the defendants because their signature appears nowhere onto that document; in addition, the efforts to republish the failed warrant onto the 1st and 2nd Addenda failed because the language of renewal or incorporation was vague and incapable of binding the defendants to the old-but-failed warrant.

BY THE COURT,



GLAZER, J.