

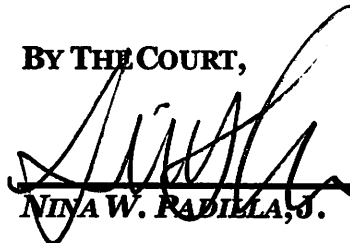
**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL**

WESGOLD, LLC	:	April Term, 2021
<i>Plaintiff</i>	:	Case No. 02931
	:	
v.	:	Commerce Program
	:	
GOT THE LOOK, INC.	:	
<i>Defendant</i>	:	Control No. 21060015

ORDER

AND NOW, this 2nd day of July, 2021, upon consideration of defendant's petition to open judgment by confession, plaintiff's answer in opposition, the respective briefs, and all matters of record, it is **ORDERED** that the **PETITION IS DENIED** and **THE STAY OF EXECUTION IS LIFTED**.

BY THE COURT,



NINA W. PADILLA, J.

OPINION

Plaintiff is Wesgold, LLC (“Landlord”), a Pennsylvania entity that owns commercial real property located at the intersection of 52nd and Jefferson Streets, in Philadelphia, PA (the “Premises”). Defendant is Got The Look, Inc. (“Tenant”), an entity with an address at the above-mentioned Premises.

On August 31, 2006, Landlord leased the Premises to a predecessor-in-interest of Tenant, under the terms of a commercial “Lease” containing a warrant-of-attorney for the recovery of money and repossession. On May 27, 2008, Landlord and Tenant’s predecessor changed certain terms of the Lease by executing an “Amended Lease.” Then, on March 10, 2010, Tenant assumed the Lease and the Amended Lease under the terms of an ASSIGNMENT AND ASSUMPTION AND SECOND AMENDMENT TO LEASE (the “2nd Amended Lease”), which restated the existing warrant-of-attorney.¹ In addition, the Lease and Amended Lease contained the following relevant provisions:

2.2 Right to Extend.

Tenant shall have the right to extend the term of this lease for two (2) successive periods of five (5) Lease Years ... exercisable upon the following terms and conditions:

2.2.1. Tenant shall give Landlord written notice of such election to extend the then current term for a Renewal Period at least nine (9) months prior to the expiration of such then current term....²

On June 15, 2011, Landlord and Tenant executed a document captioned REINSTATEMENT OF AND THIRD AMENDMENT TO THE LEASE (the 3rd Amendment). The Third Amendment incorporated in its body the original warrant-of-attorney from the

¹ The Lease, Amended Lease and 2nd Amended Lease are attached to Landlord’s complaint.

² Lease, Exhibit A at § 2.2 (emphasis supplied).

Lease, and explained that “except as modified ... the Lease shall remain in full effect,” and “if any inconsistency exists between the terms of the Lease and the terms of this [3rd] Amendment, the terms of this [3rd] Amendment shall prevail.”³

On November 19, 2019, Tenant appealed an Order issued in favor of Landlord by the Municipal Court of the City of Philadelphia (the “Prior Action”).⁴ While the appeal was pending in the Prior Action, the parties negotiated a settlement: Tenant paid a specific amount to Landlord, and Landlord marked the Prior Action as satisfied.⁵

On December 15, 2020, Landlord informed Tenant that the Lease and its amendments would expire on June 30, 2021, and asked Tenant to timely and peacefully surrender the Premises.⁶ On April 30, 2021, Landlord confessed judgment in ejection against Tenant. In the complaint, Landlord avers that the term of the Lease has expired, and that Tenant not only failed to timely exercise its option to extend the Lease, but also failed affirm that it will vacate the Premises on time.⁷

On May 31, 2021, Tenant filed a petition to open confession-of-judgment and for a stay of execution, and Landlord filed its response thereto on June 29, 2021. The petition and response have been briefed.

DISCUSSION

The law on opening a confession-of-judgment is settled:

if the truth of the factual averments contained in the complaint in confession of judgment and attached exhibits are disputed, then the remedy is by proceeding to open the judgment....

³ 3rd Amendment, Exhibit B to the complaint at §§ 9, 15.2.9.1, 15.2.9.2.

⁴ Wesgold, LLC v. Got The Look, Inc., Case No. 1911-02745.

⁵ Id., docket entry dated October 10, 2020.

⁶ Lease Expiration letter dated December 15, 2020, Exhibit C to the complaint.

⁷ Complaint, ¶¶ 11, 13, 15, 16-17.

A petition to open a confessed judgment is an appeal to the equitable powers of the court. Factual disputes ... force the court to rely on matters outside the relevant record to decide the merits of the petition.⁸

In addition—

[a] petition to open [confession-of-judgment] rests within the discretion of the trial court, and may be granted 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.**⁹

Preliminarily, Tenant admits that it failed to timely provide to Landlord a written notice of its intent to extend the Lease.¹⁰ Notwithstanding this admission, Tenant seeks to open the judgment, and supports its effort by advancing three separate-but-similar defenses. Under the first defense, Tenant avers that while the Prior Action was under way, the parties settled their differences with the understanding that if Tenant paid all the late charges and rent amounts in arrears, plus counsel fees, it “would be entitled to the Option to Extend” the term of the Lease.¹¹ In response, Landlord admits marking the Prior Action as satisfied, but denies reaching any agreement regarding an extension of the Lease.¹²

Under the second defense, Tenant avers that the Covid-19 crises caused it to incur into a number of rent defaults, and that Landlord, hoping to quickly secure a new

⁸ *Midwest Fin. Acceptance Corp. v. Lopez*, 78 A.3d 614, 623 (Pa. Super. 2013).

⁹ *Hazer v. Zabala*, 26 A.3d 1166, 1169 (Pa. Super. 2011) (emphasis supplied).

¹⁰ (See) text message from Tenant to Landlord dated March 31, 2021, attached as Exhibit C to Landlord’s response to Tenant’s petition to open, wherein Tenant specifically states that its bookkeeper “failed to renew the lease on time.”

¹¹ Petition to open confession-of-judgment, ¶¶ 6-9. As noted earlier, Tenant did pay the agreed-upon amounts, and Landlord did mark the Prior Action as satisfied.

¹² Response to the petition to open, ¶ 9.

occupant for the Premises, offered to waive all Covid-related defaults if Tenant agreed to vacate the premises.¹³ However, Tenant explains that it did not wish to vacate the Premises for fear of losing its successful retail business, and states that it fully paid its Covid-related defaults in an effort to preserve the opportunity to extend the Lease, and to remain in possession of the Premises beyond its term.¹⁴ In the response, Landlord admits that Tenant fully paid its the Covid-related defaults, but again denies that the parties agreed upon an extension of the Lease.¹⁵

Finally, under the third defense, Tenant avers that in early 2021, the parties agreed that Tenant could remain in possession of the Premises for an additional term of five years. Tenant specifically avers that an individual acting as a leasing broker, “Mr. Pesacov” —

negotiated a deal between the parties, whereby ... [Landlord] would agree to allow ... [Tenant] to remain in the Premises for an additional five-year term, in exchange for the payment of a full year’s rent in advance....¹⁶

These three defenses are rejected for a single reason: Tenant, as “the petitioning party, bears the burden of producing sufficient evidence to substantiate its alleged defenses.”¹⁷ In this case however, Tenant has offered no evidence to substantiate its allegations that the parties agreed to extend the Lease while settling the Prior Action, no evidence of a similar agreement when Tenant fully paid its Covid-19 defaults, and no evidence that the leasing agent, Mr. Pesacov, reached an agreement allowing Tenant to extend the Lease by five years in exchange for a full year’s rent in advance. Tenant has

¹³ Petition to open confession-of-judgment, ¶¶ 12-13.

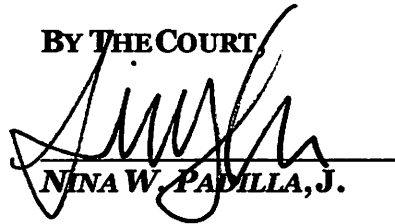
¹⁴ *Id.*, ¶ 14.

¹⁵ Response to the petition to open, ¶ 14.

¹⁶ *Id.*, ¶ 19.

¹⁷ *Hagerty v. Fetner*, 481 A.2d 641, 644 (Pa. Super.) 1984.

not met its burden of proof to open the confession-of-judgment, and for this reason the petition is denied.¹⁸ The stay of execution is lifted.

BY THE COURT,

NINA W. PADILLA, J.

¹⁸ The court notes that Landlord, in its response to the petition, has offered evidence tending to rebut Tenant's allegation that Mr. Pesacov brokered a deal for a five-year extension of the Lease. (See, response of Landlord to Tenant's petition to open at Exhibit B). However, the Court is not required to consider such evidence because under the law, "the burden of proof shifts to the judgment holder" –in this case Landlord– only if the party petitioning to open the judgment, Tenant, has offered "clear and substantial evidence" in support of its defense. Ritchey v. Mars, 324 A.2d 513, 516 (Pa. Super. 1974). Here, Tenant has failed to offer evidence in support of its defenses, and the rebutting evidence of Landlord is redundant