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FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

ADR 125-29 S. 16, LLC,	:	July Term 2023
	:	
Plaintiff,	:	
	:	No. 2722
v.	:	
TSOLMON GOULDEN, et al.,	:	
	:	Commerce Program
Defendants.	:	
	:	Control Number 23085271

ORDER

AND NOW, this 4th day of March 2024, upon consideration of defendants' Petition to Strike and/or Open Confessed Judgment, plaintiff's opposition and in accord with the attached opinion, it is **ORDERED** that the petition is **DENIED**.

BY THE COURT



ABBE F. FLETMAN, J.

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COMMERCE PROGRAM

230702722-Adr 125-29 S. 16 Llc Vs Goulden Etal



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Plaintiff,	:	
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v.	:	No. 2722
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TSOLMON GOULDEN, et al.,	:	
	:	
Defendants.	:	Commerce Program
	:	
	:	
	:	Control Number 23085271

OPINION

Before the court is the petition of defendants Tsolmon Goulden, Dulmaa Natsagdorj and Muhntuya Goulden to open and/or strike a confessed judgment. For the reasons discussed below, the petition is denied.

BACKGROUND

On March 24, 2022, plaintiff ADR 125 S. 16, LLC (“Landlord”) and defendants Tsolmon Goulden, Dulmaa Natsagdorj and Muhntuya Goulden (“Tenants”) entered into a Lease Agreement (“Lease”) for Tenants to occupy the property located at 125-29 South 16th Street, Philadelphia, PA 19102 (“Leased Property”) and operate a nail salon. Complaint in Confession of Judgment (“Complaint”) ¶ 5 and Lease Agreement (“Lease”) attached to the Complaint as Exhibit A, Docket (Dkt.) July 26, 2023. The Lease contained a warrant of attorney clause authorizing a confession of judgment for money damages against Tenants and in favor of Landlord. Lease at pp. 9-11, Dkt. July 26, 2023. The term of the Lease was two years. The payment of rent commenced on July 1, 2022. *Id.* at pp. 1, 2.

The Lease requires Tenants to pay property taxes on an annual basis during the Lease term within 30 days of receiving a property tax invoice from Landlord. *Id.* at p. 3 ¶ 5. On April 26, 2023, Landlord and Tenants executed a modification to the Lease (“Lease Modification”), pursuant

to which the parties agreed to a revised schedule that allowed monthly property tax payments instead of an annual lump sum. Lease Modification Agreement (“Lease Modification”) attached to the Complaint at Exhibit B, Dkt. July 26, 2023. The Lease Modification does not contain a restatement of the warrant of attorney clause. *Id.*

On July 26, 2023, Landlord filed the Complaint in confession of judgment against Tenant for \$42,620.62. Dkt. July 26, 2023. Tenant filed the pending petition to strike and/or open confessed judgment. Dkt. August 25, 2023. Landlord filed a response. Dkt. September 14, 2023. The petition is now ripe for disposition.

DISCUSSION

I. Legal Standard

A petition to strike a judgment may be granted only when a fatal defect or irregularity appears on the face of the record. *Manor Bldg. Corp. v. Manor Complex Assocs., Ltd.*, 645 A.2d 843, 846 (Pa. Super. 1994). When considering a petition to strike, the court is limited to review only the record filed by the party in whose favor the warrant is given, i.e., the complaint and the documents attached to the complaint. *Resolution Trust Corp. v. Copley Qu-Wayne Assocs.*, 683 A.2d 269, 273 (Pa. 1996).

A petition to open a confessed judgment, in contrast, appeals to the equitable powers of the court. *Neducsin v. Caplan*, 121 A.3d 498, 504 (Pa. Super. 2015) A court may open a confessed judgment “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.” *Id.* (citations omitted). 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.” *Neducsin v. Caplan*, 121 A.3d 498, 506–07 (Pa. Super. 2015) (*quoting Foerst v. Rotkis*, 368 A.2d 805, 807–08 (1976)).

II. The Petition to Strike is Denied because Landlord Failed to Identify a Fatal Defect or Irregularity on the Face of the Record

Tenants contend that the Court should strike the confession of judgment because the Lease Modification extinguished the warrant of attorney, Landlord did not properly serve Tenant with the Complaint, and Landlord failed to include a proper itemization of the amount due. Memorandum of Law to the Petition to Open and/or Strike Confessed Judgment at pp. 5-9, Dkt. August 25, 2023. None of these arguments withstand scrutiny.

A. The Lease Modification Did Not Extinguish the Warrant of Attorney

Pennsylvania courts require that confession of judgment provisions be explicit and be strictly construed due to the loss of due process rights. *Ferrick v. Bianchini*, 69 A.3d 642 (Pa. Super. 2013). As a result, the law does not presume an intent to preserve a confessed judgment clause when the parties modify a contract. *Egyptian Sands Real Estate, Inc. v. Polony*, 294 A.2d 799 (Pa. Super. 1972). Further, a mere general reference to preserve all other provisions in an agreement, contained in a modification to the agreement, is insufficient to preserve the confessed judgment clause to the modified agreement. *Scott v. 1523 Walnut Corp.*, 447 A.2d 951, 956-57 (Pa. Super. 1982). However, an immaterial change in the wording of a judgment note does not prevent the entry of judgment by confession. *Duque v. D'Angelis*, 568 A.2d 231, 232 (Pa. Super. 1990).

In this case, the Lease Modification contains a general reference to the confession of judgment provisions of the Lease: "...Except as modified in this Agreement, the remaining terms, conditions and covenants in the Lease shall remain applicable." Exhibit B Lease Modification ¶ 2 Dkt. July 26, 2023. While this generic language is usually insufficient to preserve an existing warrant of attorney in the Lease, Landlord was not required to restate or republish the warrant of attorney in the Lease Modification because the modification consisted of nothing more than

converting the payment of the property tax rent from an annual lump sum payment to seven equal installment payments. Exhibit B ¶ 1 to the Complaint, Dkt. July 26, 2023. The burden to pay property taxes as additional rent was not newly added to the Lease Modification. Instead, the burden on the Tenant was eased because the Lease Modification allowed installment payments. Therefore, Tenants remain bound by the confession of judgment in the original Lease. *See Graystone Bank v. Grove Estates, LP*, 58 A-3d 1277 (Pa. Super. 2013) (Tenants remained bound by the warrant of attorney in the original lease where the modification is nothing more than an extension of the original maturity date and not a new, comprehensive agreement setting new burdens and benefits upon the parties.)

B. No Affidavit of Service Was Required

Tenants also contend that the Court should strike the Complaint because Landlord did not file an affidavit attesting that it served the Complaint on Tenants. A confession of judgment, however, “is a voluntary submission to the jurisdiction of the court, given by consent and without the service of process.” *Horner Sales Corp. v. Motor Sport, Inc.*, 105 A.2d 285, 286 (Pa. 1954). Under the Rules of Civil Procedure, the Office of Judicial Records is responsible for providing Tenants with notice of the filing of the complaint in confession of judgment. *See* Pa. R. Civ. P. 236 (a)(1). As Tenants failed identify a fatal flaw in the record, the petition to strike the complaint in confession of judgment on this ground is denied.

C. The Complaint Contained Adequate Itemization

Lastly, the Court denies Tenants’ contention that it should strike the Complaint because the Landlord failed to include a properly itemized computation of the property taxes due. Rule 2952 (a)(7) of the Pennsylvania Rules of Civil Procedure requires that a complaint in confession of judgment contain “an itemized computation of the amount then due....” In *Davis v. Woxall*

Hotel, Inc., 577 A.2d 636, 638 (Pa. Super. 1990), the court construed Rule 2952(a)(7) to require only that a plaintiff aver a default and allege the amounts due in a complaint for confession of judgment. This was exactly what Landlord did in its Complaint in this case. Landlord itemized the amounts that made up the confessed judgment, including base rent, property taxes, water and U&O taxes and attorneys' fees. Consequently, the petition to strike on this ground is denied.

III. The Petition to Open is Denied Because There Is No Evidence that the Tenants Did Not Understand the Warrant of Attorney Provision of the Lease

Tenants contend that the Court should grant the petition to open because Tenants did not knowingly, voluntarily or intelligently execute the warrant of attorney because they are recent immigrants from Mongolia and have a very limited proficiency in spoken and written English. Memorandum of Law to the Petition to Open and/or Strike Confessed Judgment at p. 11, Dkt. August 25, 2023. Tenants have produced no evidence that they lack proficiency in the English language. An allegation of lack of understanding of the warrant of attorney provision does not constitute grounds to open or strike a confession of judgment. *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., Inc.*, 637 A.2d 309 (Pa. Super. 1994), *appeal denied*, 653 A.2d 1231 (Pa. 1994). This is particularly true where the confession of judgment clause is clear and conspicuous and part of a commercial transaction as it is in the Lease. *See* Exhibit A to the Complaint at pp. 9-11, Dkt. July 26, 2023; *Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., Inc.*, 637 A.2d 309 (1994) (citations omitted).

Also, Tenants' reliance on *Egyptian Sands Real Estate v. Polony*, 294 A.2d 799 (Pa. Super. 1972) is misplaced because, unlike in *Egyptian Sands*, there is no evidence of record that Tenants were dissuaded from seeking outside counsel or that Landlord's counsel was representing both parties. On the contrary, the evidence of record is that Tenants knowingly, intelligently, voluntarily, and irrevocably and on the advice of their separate counsel waived all rights to prior

notice and a hearing. Exhibit A to the Complaint, pp. 9-11, Dkt. July 26, 2023. Accordingly, Tenants' petition to open is denied.¹

CONCLUSION

Based on the foregoing, the petition to open and/or strike the confession of judgment is denied.

BY THE COURT



ABBE F. FLETMAN, J.

¹ Tenants also contend that the Court should open the judgment because the Lease Modification extinguished the warrant of attorney, Landlord did not properly serve Tenant with the Complaint, and Landlord failed to include a proper itemization of the amount due. For the same reasons this Court denied the petition to strike, the petition to open is also denied.