

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

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S.C. MAIN STREET ASSOCIATES	:	July Term, 2014
	:	
<i>Plaintiff</i>	:	Case No. 03887
	:	
v.	:	Commerce Program
	:	
FLAT ROCK, LLC	:	
	:	
<i>Defendant</i>	:	Control No. 14091265

ORDER

AND NOW, this 13th day of November, 2014, upon consideration of the petition to open the confessed judgment filed by defendant Flat Rock, LLC, and the answer of plaintiff, S.C. Main Street Associates, it is **ORDERED** that the petition is granted and judgment by confession is **OPENED**.

BY THE COURT,



GLAZER, J.

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C. HART
CIVIL ADMINISTRATION

S.C. Main Street Associ-ORDOP



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<i>Plaintiff</i>	:	Case No. 03887
v.	:	Commerce Program
FLAT ROCK, LLC	:	
<i>Defendant</i>	:	Control No. 14091265

MEMORANDUM OPINION

The instant complaint in confession of judgment arises out of the alleged failure of defendant/tenant to pay rent when due. Defendant/tenant has failed to pay rent since May 1, 2014, the day after the leased premises were flooded with water from a nearby overflowing river. Plaintiff/landlord admits that the leased premises could not be used for their intended business purpose as a result of the flood.¹

In the petition before this court, defendant asserts that judgment by confession should be opened because the amount of judgment “does not reflect an abatement of rent for the time period when [a] flood rendered [the leased premises] unusable.”² In the answer opposing the petition, plaintiff counters by arguing that no abatement of rent is available. Plaintiff argues that under ¶ 16(a) of the Lease Agreement, rent abatement is available only if a “part of the Premises cannot be used” as a result of fire or other

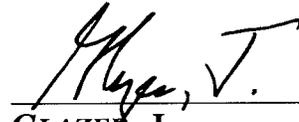
¹ Answer of plaintiff in opposition to the petition to open confession of judgment, ¶ 19.

² Petition to open confessed judgment, ¶ 23.

casualty.³ The court is not convinced by this argument: if tenant is allowed contractually to abate rent when a part of the leased Premises cannot be used, it follows that tenant must be contractually allowed to abate rent when the entire leased Premises cannot be used. In this case, ¶ 16(a) of the Lease Agreement is ambiguous and shall be construed against the drafter, in this case, Plaintiff, pursuant to well-established Pennsylvania law which states that “[u]nder the rule of *contra proferentem*, any ambiguous language in a contract is construed against the drafter and in favor of the other party if the latter’s interpretation is reasonable.”⁴

For this reason, the petition to open judgment by confession is granted.⁵ The court shall issue a simultaneous **ORDER** consistent with this *MEMORANDUM OPINION*.

BY THE COURT,



GLAZER, J.

³ Lease Agreement, ¶ 16(a); Answer in opposition to the petition to open confessed judgment, ¶¶ 22–23.

⁴ *Sun Co. (R&M) v. Pennsylvania Tpk. Comm'n*, 708 A.2d 875, 878-79 (Pa. Commw. 1998).

⁵ Rule 126 of the Pennsylvania Rules of Civil Procedure allows this court to disregard defendant’s failure to file a *memorandum* of law in support of its petition, as required by Rule *210 of the Philadelphia County Court Rules.