

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

DOCKETED  
OCT 26 2015  
R. POSTELL  
COMMERCE PROGRAM

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THE EMANUEL VASILIADES	:	August Term, 2015
and	:	Case No. 02230
CONSTANCE T. VASILIADES PARTNERSHIP	:	
	:	
<i>Plaintiff</i>	:	
v.	:	
	:	Commerce Program
UNCLE JOHN'S PIZZERIA & CAFÉ INC.	:	
and	:	
KONSTANTIN KORIFIDIS	:	
	:	
<i>Defendant</i>	:	Control No. 15092267

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**ORDER**

AND NOW, this 26<sup>th</sup> day of October, 2015, upon consideration of defendants' petition to strike and/or open improperly confessed judgment and for sanctions, the response in opposition of plaintiffs, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED IN ITS ENTIRETY**.

BY THE COURT,

  
\_\_\_\_\_  
GLAZER, J.

The Emmanuel M. And Con-ORDRC



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<b>UNCLE JOHN’S PIZZERIA &amp; CAFÉ INC.</b>	:	
and	:	
<b>KONSTANTIN KORIFIDIS</b>	:	
	:	
<i>Defendants</i>	:	Control No. 15092267

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**MEMORANDUM OPINION**

This case is based upon the breach of a commercial real estate lease, whereby “Defendants/Lessees” stopped making rent payments when due, and vacated the leased premises before expiration of the contract.

On July 13, 2015, Defendants/Lessees sent a letter to “Plaintiff/Landlord.” The letter stated that Defendants/Lessees relinquished possession of the leased premises because their pizza “business [had] failed.”<sup>1</sup> On August 18, 2015, Landlord/Plaintiff confessed judgment. On 21 September 2015, Defendants/Lessees filed the instant petition to strike or open confessed judgment. The petition asserts that the confessed judgment should be stricken or opened because Landlord/Plaintiff is not entitled to charge Defendants/Lessees for rents and other expenses occurring after they vacated the premises.<sup>2</sup> The petitions also asserts that the confessed judgment should be stricken

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<sup>1</sup> Notice of Termination, Exhibit A to Defendants/Lessees’ petition to strike or open confessed judgment.  
<sup>2</sup> Petition to strike, ¶ 7.

or opened because under Pennsylvania law, landlords may not confess judgment “both for possession and all monies then due and for monies due for the entire term.”<sup>3</sup>

The petition to strike is denied because “a motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record.”<sup>4</sup> In this case, the arguments advanced by Defendants/Lessees do not show the existence of a fatal flaw in the record: at best such arguments, but only if meritorious, could be used by Defendants/Lessees to open the confessed judgment of Plaintiff/Landlord. Here however there is no indication of a fatal flaw of the record, and the petition to strike judgment by confession is denied.

As to the portion of the petition seeking to open the confessed judgment, the court notes that Defendants/Lessees advance the same arguments found in the petition to strike. The court shall examine each argument *seriatim*.

First, Defendants/Lessees argue that they should not be liable for “Base Rent, Common Area Maintenance and Apportioned Real Estate Taxes” accrued after they unilaterally vacated the premises.<sup>5</sup> However, this court notes that the Lease Agreement specifically contemplates such payments in the event of default by Defendants/Lessees.<sup>6</sup> Defendants/Lessees freely entered into the Lease Agreement by presumably reading the provision requiring them to be liable for base rent, maintenance expenses and real estate taxes.<sup>7</sup> After agreeing to the terms of the Lease Agreement, Defendants/Lessees

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<sup>3</sup> Petition to strike or open, ¶ 23.

<sup>4</sup> Fourtees Co. v. Sterling Equip. Corp., 242 Pa. Super. 199, 205, 363 A.2d 1229, 1232 (1976).

<sup>5</sup> Petition to open, ¶ 7.

<sup>6</sup> Lease Agreement, Exhibit A to the complaint-in-confession-of-judgment, § 30.2.3, states that in an event of default, Defendants/Lessees may be liable for “other charges, payments, costs and expenses as though such amounts were payable in advance on the date of default occurred.”

<sup>7</sup> “The failure to read a confession of judgment clause will not justify avoidance of it.” Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (1994). “In the absence of proof of fraud, failure to read the contract is an unavailing excuse or defense and cannot justify an avoidance, modification or nullification of the contract or any provision thereof.” Standard Venetian Blind Co. v. Am. Empire Ins.

may not now seek to avoid the consequences so clearly described therein.

Second, in support of the argument that Plaintiff/Landlord is prohibited from confessing judgment for past and accelerated rents, Defendants/Lessees rely on a number of Pennsylvania cases holding that “a landlord must elect whether to confess judgment for possession and for all monies then due, or to confess judgment for all monies due for the entire term.”<sup>8</sup> Reliance on such cases is improper. Reliance is improper because Defendants/Lessees freely entered into a Lease Agreement which specifically required them to pay accelerated rents if they breached the Lease Agreement.<sup>9</sup> In addition, the cases cited by Defendants/Lessees generally hold that a landlord “cannot **eject** the tenant and yet hold him responsible for rent accruing under the lease after the tenant has been evicted.”<sup>10</sup> In this case, however, Plaintiff/Landlord did not eject Defendants/Lessees; instead, Defendants/Lessees prematurely vacated the premises because their business had failed, and in so doing, incurred into the penalties contemplated under the terms of the Lease Agreement. Finally this argument, as advanced by Defendants/Lessees, fails for another reason – namely, that in Pennsylvania, a commercial lessor is under no duty to mitigate damages after tenant breached the lease.<sup>11</sup> For these reasons, the court rejects as un-meritorious the argument of Defendants/Lessees asserting that Plaintiff/Landlord must either assert possession of the premises, or seek accelerated rents therefrom.

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Co., 503 Pa. 300, 305, 469 A.2d 563, 566 (1983).

<sup>8</sup> See e.g. Homart Dev. Co. v. Sgrenci, 443 Pa. Super. 538, 557-58, 662 A.2d 1092, 1101 (1995).

<sup>9</sup> The Lease Agreement specifically identifies as events of default both the failure to remit rents when due as well as prematurely relinquishing the demised premises. Lease Agreement, Exhibit A to the complaint-in-confession-of-judgment, § 30—Events of Default. See also § 30.2.3 (empowering Plaintiff/Landlord to seek additional rent for the entire balance of the term in the event of a default by Defendants/Lessees).

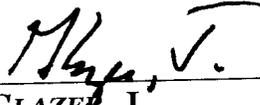
<sup>10</sup> Homart Dev. Co. v. Sgrenci, 443 Pa. Super. 538, 556, 662 A.2d 1092, 1100 (1995) (citing Pusey v. Sipps, 56 Pa. Super. 121 (1913)) (emphasis supplied).

<sup>11</sup> Stonehedge Square Ltd. P'ship v. Movie Merchants, Inc., 454 Pa. Super. 468, 480, 685 A.2d 1019, 1025 (1996) aff'd, 552 Pa. 412, 715 A.2d 1082 (1998).

Lastly, Defendants/Lessees argue that the judgment should be opened because the amount confessed by Plaintiff/Landlord is not commensurably set-off with funds held in escrow by Plaintiff/Landlord.<sup>12</sup> Defendants/Lessees assert that this amount should have been refunded by Plaintiff/Landlord within thirty (30) days after receipt of the unilateral Notice of Termination. However, Defendants/Lessees do not identify which provision in the Lease Agreements entitled them to such a refund; consequently, the failure to offer “sufficient evidence to substantiate [their] alleged defense” compels this court to reject as un-meritorious the argument based on set-off.<sup>13</sup>

For all these reasons, the petition is denied to strike or open judgment by confession in its entirety.

**BY THE COURT,**

  
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GLAZEK, J.

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<sup>12</sup> Petition to open, ¶ 9. The amount of escrowed funds is allegedly \$3,680.00  
<sup>13</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).