

DOCKETED

NOV -- 7 2016

R. POSTELL  
COMMERCE PROGRAM

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

---

<p><b>CITY CENTRE PHILADELPHIA, PA. LIMITED PARTNERSHIP</b></p> <p style="text-align: center;"><i>Plaintiff</i></p> <p style="text-align: center;">v.</p> <p><b>DA CHANG RESTAURANT, INC.</b></p> <p style="text-align: center;"><i>Defendants</i></p>	<p>:</p>	<p>July Term, 2016</p> <p>Case No. 02584</p> <p>Commerce Program</p> <p>Control No. 16083743.</p>
--	---	---

---

ORDER

AND NOW, this 7<sup>th</sup> day of November, 2016, upon consideration of the petition to strike/vacate or open confession of judgment, the answer thereto, the respective briefs, and after a settlement conference chaired on October 28, 2016 by a specially-appointed Judge *pro-tempore*, it is **ORDERED** that the petition is **DENIED** in its **ENTIRETY**, and the **STAY OF EXECUTION PROCEEDINGS** is **LIFTED**.

BY THE COURT,

  
\_\_\_\_\_  
MCINERNEY, J.

City Centre Philadelphi-ORDRC



16070258400019

## MEMORANDUM OPINION

This action arises out of a commercial lease agreement (the “Lease”), executed by plaintiff (“Landlord”), and defendant “Tenant,” involving real property located at 4504 City Line Avenue, Philadelphia, Pennsylvania.<sup>1</sup> Upon the occurrence of a default, the Lease empowered Landlord to confess judgment in ejection against Tenant.<sup>2</sup> On July 25, 2016, Landlord confessed judgment in ejection against Tenant, and Tenant filed a timely petition to strike or open the confession of judgment.<sup>3</sup>

In the petition, Tenant asserts that the warrant-of-attorney is unconscionable because the individuals who executed the Lease on behalf of Tenant “do not read or write English” and thus “did not knowingly waive” their due process rights since “there could be no meeting of the minds.”<sup>4</sup> This argument is rejected because—

[a] judgment taken by confession will be opened ... only ... when the [petitioner] ... alleges a meritorious defense and presents sufficient evidence of that defense to require submission of the issues to the jury.”<sup>5</sup>

In addition—

[t]here is ... no merit to appellants' assertion that their purported lack of knowledge and/or understanding of the warrant of attorney provisions.... The failure to read a confession of judgment clause will not justify avoidance of it.<sup>6</sup>

---

<sup>1</sup> Lease, Exhibit A to the complaint-in-confession-of-judgment, p. 1.

<sup>2</sup> Id. § 28.31.

<sup>3</sup> “A petition to strike a judgment is a common-law proceeding that 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. Dime Bank v. Andrews, 115 A.3d 358, 364 (Pa. Super. 2015). The court could not identify a single fatal flaw or defect in the record, and for this reason its analysis will focus exclusively on Tenant’s petition to open the judgment by confession.

<sup>4</sup> Petition to strike/vacate or open judgment by confession, ¶ 3.

<sup>5</sup> First Seneca Bank & Trust Co. v. Laurel Mountain Dev. Corp., 485 A.2d 1086, 1088 (Pa. Super. 1984).

<sup>6</sup> Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994).

In this case, Tenant has failed to allege that its owners were denied representation by legal counsel at the time they signed the Lease, or that they were coerced by Landlord when they affixed their signatures upon that instrument. Stated plainly, the alleged failure by Tenant's owners to read and understand the Lease does not constitute a meritorious defense. For this reason, Tenant's first challenge to the confession of judgment is rejected.

Next, Tenant asserts that due to the negligence of Landlord, "electric services were shut down at the leased premises rendering it ... unusable for an extended period of time."<sup>7</sup> Tenant concludes that the electric failure constituted a breach by the Landlord for which no offset was provided.<sup>8</sup> This argument is rejected because in Pennsylvania—

[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.... The defenses raised must be valid ones.<sup>9</sup>

In this case, Tenant has not produced any evidence tending to show whether the alleged electric failures occurred, if at all, before or after Tenant's own breaches, nor has Tenant indicated how long the black-outs lasted, or what amount of damages they may have caused. Tenant has failed to meet its burden of proof for opening a confession of judgment, and for this reason Tenant's argument is rejected.

Finally, Tenant asserts that pursuant to § 22 of the Lease, the parties thereto agreed "that any action, suit or proceedings arising out of ... the Lease ... shall be adjudicated exclusively in New York State Supreme Court, Monroe County, New

---

<sup>7</sup> Petition to strike/vacate or open judgment by confession, ¶ 6.

<sup>8</sup> Id.

<sup>9</sup> Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

York....”<sup>10</sup> This challenge requires the court to interpret the pertinent portion of the Lease.

In Pennsylvania—

a lease is in the nature of a contract and is controlled by principles of contract law. It must be construed in accordance with the terms of the agreement as manifestly expressed, and the accepted and plain meaning of the language used, rather than the silent intentions of the contracting parties, determines the construction to be given the agreement.<sup>11</sup> The task of interpreting [a] contract is generally performed by a court rather than by a jury.<sup>12</sup>

[T]he rules of contract interpretation provide that the mutual intention of the parties at the time they formed the contract governs its interpretation. Such intent is to be inferred from the written provisions of the contract. When the words of an agreement are clear and unambiguous, the intent of the parties is to be ascertained from the language used in the agreement ... which will be given its commonly accepted and plain meaning.<sup>13</sup>

In this case, the pertinent provision of the Lease reads as follows:

Owner [Landlord] and Tenant further agree that any action, suit or proceeding arising out of or relating to this Lease, or the parties’ relationship arising out of the Lease, shall be adjudicated exclusively in New York Supreme Court, Monroe County, New York, and the parties expressly, specifically, and irrevocably consent to the personal jurisdiction and venue of such court.

\*\*\*

Notwithstanding the foregoing, the parties agree that, solely with respect to actions and proceedings by Owner [Landlord] seeking possession of the leased premises, including, but not limited to, actions and/or proceedings seeking to evict or eject Tenant, such actions and/or proceedings shall be

---

<sup>10</sup> Petition to strike/vacate or open judgment by confession, ¶ 8.

<sup>11</sup> Humberston v. Chevron U.S.A., Inc., 75 A.3d 504, 509 (Pa. Super. 2013).

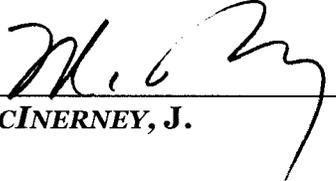
<sup>12</sup> 401 Fourth St., Inc. v. Inv’rs Ins. Grp., 879 A.2d 166, 171 (Pa. 2005)

<sup>13</sup> Miller v. Poole, 2012 Pa. Super. 45 A.3d 1143, 1146 (2012).

venued in the jurisdiction in which the leased premises are located and shall be governed by the laws of the state in which the leased premises are located.<sup>14</sup>

This clear and unambiguous language leaves no doubt: Landlord and Tenant agreed that any action, suit or proceedings shall be adjudicated by a New York court, except for actions initiated by Landlord to evict or eject Tenant. Under this exception, an exception which the parties knowingly carved-out in the Lease, Landlord is entitled to assert an action in ejectment in the venue, and under the laws of the jurisdiction, where the leased property is located. Such is the only intent which the court can infer upon a reading of the plain language of the pertinent section of the Lease. Tenant's third challenge to the confession of judgment has no merit, and for this final reason the petition to strike/vacate or open judgment by confession is denied in its entirety.

**BY THE COURT,**

  
\_\_\_\_\_  
**MCINERNEY, J.**

---

<sup>14</sup> Lease, § 22.03—Governing Law and Jurisdiction, Exhibit A to the complaint-in-confession-of-judgment.