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

POSEL ENTERPRISES,	APRIL TERM 2024	DOCKETED
<i>Plaintiff,</i>	No. 176	SEP 11 2024
v.	COMMERCE PROGRAM	R. POSTELL COMMERCE PROGRAM
GEORGIAN BAKERY & CAFE, LLC	CONTROL NUMBER 24051155	
<i>Defendant.</i>		

ORDER

AND NOW, this 11th day of September 2024, upon consideration of the petition to strike or open confessed judgment of defendant Georgian Bakery & Café, LLC, and the response, it is ORDERED that the petition is DENIED.

BY THE COURT:

ASSE F-R

ABBE FLETMAN, J.

ORDRC-Posel Enterprises Vs Georgian Bakery And Cafe, Llc [RCP]



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

POSEL ENTERPRISES, <i>Plaintiff,</i> v. GEORGIAN BAKERY & CAFE, LLC <i>Defendant.</i>	APRIL TERM 2024 No. 176 COMMERCE PROGRAM CONTROL NUMBER 24051155
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OPINION

Before the Court is the petition to open or strike the confessed judgment of defendant Georgian Bakery & Café, LLC (“the Bakery”). For the reasons that follow, the petition is denied.

On March 24, 2017, the parties entered into a commercial lease agreement (“the Lease”) (Lease, Exhibit A to the petition to open or strike confessed judgment, Trial Docket (“Dkt.”) at 5/5/24.) Under the terms of the Lease, the Bakery rented commercial space in the Leo Mall for a Georgian-style bakery. (*Id.* at ¶¶1-3.) Plaintiff Posel Enterprises (“Posel”) confessed judgment against the Bakery on March 29, 2024, for failing to pay rent. (Complaint in confession of judgment, ¶¶12-13, Dkt. at 3/29/2024.) The Bakery filed this petition to open or strike the judgment on May 5, 2024.

“A confessed judgment will be stricken only if a fatal defect or irregularity appears on the face of the record. A judgment by confession will be opened if the petitioner acts promptly, alleges a meritorious defense, and presents sufficient evidence in support of the defense to require the submission of the issues to a jury.” *Ferrick v. Bianchini*, 69 A.3d 642, 647 (Pa. Super. 2013) (internal citations omitted).

The Bakery filed its petition 37 days after the confession of judgment. It argues that the judgment should be stricken because the judgment amount is wrong, constituting a fatal defect. (Petition to open or strike, ¶7, Dkt. at 5/5/2024.) It argues that the petition should be opened

because Posel: 1) agreed to a payment plan; 2) violated the Lease by permitting a food truck selling Georgian cuisine on the premises of the mall; and 3) miscalculated the judgment amount. (*Id.* at ¶¶5-6.)

The Lease explicitly permits the security deposit replenishment fee the Bakery objects to. (Lease, ¶14(a), Exhibit A to the petition to open or strike confessed judgment, Dkt. at 5/5/2024.) The Bakery has not shown how this fee or the judgment amount constitute a fatal defect on the face of the record, and the judgment will not be stricken.

The Lease contains an integration clause stating that the entire agreement is contained within it, and that any subsequent modification must be in writing and signed. (*Id.* at ¶41(d).) The Court therefore cannot consider any evidence of a payment plan outside the written Lease and its amendments.

The exclusivity provision in the Lease, as Posel notes, explicitly favors other tenants of the mall, not the Bakery. (*Id.* at Exhibit B to Lease.) It is an acknowledgement by Tenant (the Bakery) of exclusive uses by other tenants prohibited to it, not restrictions on Landlord (Posel). *Id.* Exhibit B includes a prohibition on “any use prohibited by Section 7.4 of the Home Depot Lease.” *Id.* Section 7.4 of the Home Depot Lease prohibits the mall from being used for specific purposes, including restaurants, with specific exceptions expressly permitted. *Id.* The Bakery alleges, as a defense to the judgment, that Posel violated these provisions by permitting the competing food truck, and that it properly withheld the rent in response. It has not shown, however, that the restrictions apply to food trucks, or that this one violated them. The Bakery has not alleged a meritorious defense, so the judgment will not be opened.

BY THE COURT:



ABBE FLETMAN, J.