

RECEIVED

SEP 12 2024

ROOM 521

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

POSEL ENTERPRISES,

*Plaintiff,*

v.

DMITRY DOLGHIK,

*Defendant.*

APRIL TERM 2024

No. 192

COMMERCE PROGRAM

CONTROL NUMBER 24051154

ORDER

AND NOW, this 11<sup>th</sup> day of September 2024, upon consideration of the petition to strike or open confessed judgment of defendant Dimitry Dolghik, and the response, it is ORDERED that the petition is DENIED.

BY THE COURT:



ABBE FLETMAN, J.

ORDRC-Posel Enterprises Vs Dolghik [RCP]



24040019200019

DOCKETED

SEP 12 2024

R. POSTELL  
COMMERCE PROGRAM

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

---

<b>POSEL ENTERPRISES,</b>		<b>APRIL TERM 2024</b>
v.	<i>Plaintiff,</i>	<b>No. 192</b>
<b>DMITRY DOLGHIK,</b>		<b>COMMERCE PROGRAM</b>
	<i>Defendant.</i>	<b>CONTROL NUMBER 24051154</b>

---

**OPINION**

Before the Court is the petition to open or strike the confessed judgment of defendant Dmitry Dolghik. For the reasons that follow, the petition is denied.

On March 24, 2017, Georgian Bakery and Café, LLC (“the Bakery”) and plaintiff Posel Enterprises (“Posel”) 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.) Simultaneously, Mr. Dolghik entered into a Surety Agreement for the Bakery with lessor Posel. (Surety Agreement, Exhibit C to the petition to open or strike confessed judgment, Dkt. at 5/5/24.) Posel confessed judgment against Mr. Dolghik on March 29, 2024, for the Bakery’s breach of the Lease. (Complaint in confession of judgment, ¶¶12-15, Dkt. at 3/29/2024.) Mr. Dolghik 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).

Mr. Dolghik filed this petition 37 days after the confession of judgment. He 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.) He 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 Mr. Dolghik objects to. (Lease, ¶14(a), Exhibit A to the petition to open or strike confessed judgment, Dkt. at 5/5/2024.) He 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 of 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.* Mr. Dolghik alleges, as a defense to the judgment, that Posel violated these provisions by permitting the competing food truck, and that the Bakery properly withheld the rent in response. He has not

shown, however, that the restrictions apply to food trucks, or that this one violated them. He has not alleged a meritorious defense, so the judgment will not be opened.

**BY THE COURT:**



---

**ABBE FLETMAN, J.**