

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

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ASIAN BANK,	:	
	:	May Term 2005
Plaintiff,	:	No. 1031
	:	
v.	:	Commerce Program
	:	
224 EAST 13 <sup>TH</sup> STREET REALTY CORP.,	:	Control No. 050703
	:	
Defendant.	:	

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**ORDER and MEMORANDUM**

**AND NOW**, this 6<sup>TH</sup> day of June, 2005, upon consideration of Plaintiff Asian Bank's Motion for Preliminary Injunction, the response of Defendant 224 East 13<sup>th</sup> Street Realty Corp. ("Realty Corp.") thereto, the evidence presented at the hearing held on May 16, 2005 and in accordance with the Findings of Fact and Conclusions of Law issued contemporaneously herewith, it hereby is **ORDERED** that said Motion is **GRANTED** as follows:

1. Realty Corp. is enjoined from confessing judgment against Asian Bank for possession or monetary relief based upon the asserted breach of the Lease in connection with the April 2005 Minimum Annual Rent Payment for the property located at 1008 Arch Street, Philadelphia, PA 19107.

2. The continued effectiveness of this Order is conditioned on Asian Bank filing a bond with the Prothonotary, in the amount of \$10,416.67, which is equivalent to one month's rent under the Lease, within fifteen (15) days of the date of entry of this Order.

**BY THE COURT:**

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**C. DARNELL JONES, J.**

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	:	Control No. 050703
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**MEMORANDUM OPINION**

***C. DARNELL JONES, J.***

Plaintiff Asian Bank has requested that this court enjoin Defendant 224 East 13<sup>th</sup> Street Realty Corp. (“Realty Corp.”) from confessing judgment against it under the circumstances at bar. A hearing was conducted on May 16, 2005. Based upon the evidence presented by the parties, the court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. On February 20, 1998, Asian Bank and Realty Corp.’s predecessor-in-interest, 1010 Arch Street Partners, executed a lease for the first floor of an eight-story building located at 1010 Arch Street, Philadelphia, PA (the “Lease”).

2. Asian Bank is a community bank which serves the Asian community in Philadelphia. Asian Bank’s only branch is located in the leased premises. As such the Lease is of vital importance to Asian Bank’s business.

3. The Lease provided for an initial term of ten years, commencing on March 1, 1998. Under the Lease, Asian Bank is required to pay Minimum Annual Rent of \$10,416.67 per month through February 2008, plus various additional charges as set forth in Article 3 of the Lease, on or before the first of every month. Compl. Exh. A. at §§ 3.1, 3.3.

4. Under Section 17.1(b) of the Lease, “[t]he failure of Tenant to pay Landlord within five (5) days of the due date of any installment of Minimum or, following ten (10) days written notice by Landlord, the failure of Tenant to pay Additional Rent or other monetary charge due from Tenant hereunder,” constitutes an “Event of Default.” Id. at § 17.1 (b).

5. Due to an oversight, Asian Bank mailed a check for April’s Minimum Annual Rent to Realty Corp. on April 7, 2005.

6. Realty Corp. did not receive the Tenant’s Minimum Annual Rent until after April 8, 2005.

7. By letter dated April 8, 2005, Realty Corp. purported to terminate the lease and accelerate all remaining rent (“Termination Notice”). The asserted basis for Realty Corp.’s Termination Notice was nonpayment of minimum rent for April 2005 and additional rent first billed on March 16, 2005.

8. Asian Bank mailed the minimum and additional rent payments before Realty Corp. sent the Termination Notice.

9. Realty Corp. never sent a ten-day notice to Asian Bank regarding the additional rent as required by Section 17.1(b) of the Lease.

10. The Termination Notice itself differed from the Lease's requirements in the following respects:

- a. The original was delivered to the first floor of 1010 Arch Street, not Suite 600;
- b. The copy was mailed to Patrick Oakes, Esquire at 1200 Liberty Ridge Drive in Wayne, not to 1055 Westlakes Drive in Berwyn; and
- c. The copy was sent to Mr. Oakes by regular mail, not by certified mail, return receipt requested.
- d. The original was addressed to "United Asian Bank," not Asian Bank; and
- e. The original was sent "c/o Julie Wong," who is Asian Bank's former President and has no office there.

11. Because the original Termination Notice was misaddressed, Asian Bank's current President did not actually receive it until Monday, April 11, 2005. The copy was also emailed to Mr. Oakes, but not until 12:15 p.m. on Monday, April 11, 2005.

12. Since the date of the Termination Notice, Realty Corp. has threatened several times to confess judgment for possession and accelerated rent.

### **DISCUSSION**

Upon review of the briefs submitted by the parties and the evidence presented at the hearing of this matter, this court finds that Asian Bank has demonstrated that a special injunction is necessary to prevent the immediate and irreparable harm which would surely result if Realty Corp. was permitted to confess judgment in this instance.

Pursuant to Pa.R.C.P. 1531, in order for a petitioner to be entitled to a preliminary injunction, it must demonstrate:

1. The injunction is necessary to prevent immediate and irreparable harm that cannot be compensated by monetary damages;

2. Greater injury will result from refusing to issue the injunction than from issuing it;
3. The injunction will properly restore the parties to the *status quo* as it existed prior to wrongful conduct;
4. The activity sought to be restrained is actionable, the right to relief is clear, and the wrong is manifest; and
5. The injunction is reasonably suited to abate the activity in question.

School Dist. Of Wilkinsburg v. Wilkinsburg Educ. Ass'n, 542 Pa. 335, 337 n.2, 667 A.2d 5, 6 n.2 (1995). This court finds that Asian Bank has satisfied each of these elements.

Based on the evidence presented, this court concludes that the threatened confession of judgment would have a devastating effect on Asian Bank's business. Not only would the right to possession of its only place of business be in doubt, but the public confidence essential to consumer banking would be severely impaired, which could result in a run on the bank. This is a serious public policy concern. Thus, unless appropriately restrained, Realty Corp.'s actions will cause immediate and irreparable harm to Asian Bank and its customers for which there is no adequate remedy at law. This injunctive relief is intended to reserve the *status quo*; it does not prevent Realty Corp. from confessing judgment in the event of any future breaches of the Lease.

This court also finds that Asian Bank's right to relief is clear and the wrong which would be perpetuated if Realty Corp. was permitted to confess judgment under these circumstances is manifest. Realty Corp. is threatening to put Asian Bank out of business by confessing judgment for a default which is questionable at best. This court possesses grave concerns as to the validity and lawfulness of Realty Corp.'s actions. Realty Corp. has threatened to confess judgment for both possession and accelerated rent. However, those are mutually exclusive remedies. Pierce v. Hoffstot, 236 A.2d 828, 830 (Pa. Super.

Ct. 1987) (“the landlord can accelerate for future rent accruing under the lease or eject the tenant, but not both”). Finally, the confession of judgment clause only applies to possession of the premises. See Lease, Section 17.4 (purporting to authorize Realty Corp. “to confess judgment against Tenant in ejectment for possession of the herein demised premises . . .”). The Lease does not provide anywhere for confession of a money judgment for accelerated rent. In addition, this court also has concerns regarding the conspicuousness of the confession of judgment clause. Compl. Exh. A. at § 17.4. This provision appears to be buried among other provisions, is not separately captioned and is not stated in more prominent type or prominently positioned within the Lease, as required under Pennsylvania law. Provco Leasing Corp. v. Safin, 402 A.2d 510, 512-13 (Pa. Super. 1979); Serfass v. Kreykenbohm, 12 Pa. D. & C.3d 228, 229-30 (1979).

Moreover, the record makes it clear that there were various defects in connection with the Termination Letter which would render Realty Corp.’s threatened confession of judgment unlawful. First, Realty Corp. never sent a ten-day notice to Asian Bank regarding the additional rent as required by Section 17.1(b) of the Lease. By the Lease’s own terms, there can be no event of default for additional rent unless it remains unpaid more than ten days after such a notice is served. This is not the case here.

Although Asian Bank could petition to open such a judgment, once entered, the judgment would still remain on record pending a final disposition of this dispute. See Pa. R. Civ. P. 2959(f). This court finds that the record clearly demonstrates that Realty Corp.’s counsel is aware of that risk and is attempting to use it as leverage to renegotiate the rent.<sup>1</sup> Thus, unless appropriately restrained, Realty Corp.’s actions will cause

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<sup>1</sup> Moreover, this court is aware that Realty Corp. has been engaged in construction outside the building and on the floors above Asian Bank’s leased space, causing some disruptions to Asian

immediate and irreparable harm to Asian Bank for which there is no adequate remedy at law.

Finally, under Pa.R.C.P. 1531, before any injunction issued becomes effective, a petitioner is required to file a bond or deposit a fixed amount of legal tender with the Prothonotary. Rule 1531(b). In this instance, this court will require Asian Bank to post a bond in the amount of \$10,416.67, which is equivalent to one month's rents under the Lease, within fifteen (15) days of the entry of this Order.

### **CONCLUSIONS OF LAW**

1. A injunction is necessary to prevent immediate and irreparable harm to Asian Bank, as Asian Bank has no adequate remedy at law.
2. Greater injury will be inflicted upon Asian Bank by the denial of injunctive relief than would be inflicted upon Realty Corp. by granting such relief, as this injunction will maintain the *status quo*.
3. The injunction is reasonably suited to prevent immediate harm caused to Asian Bank without impinging unnecessarily on Realty Corp.'s right to confess judgment in the event of any future breaches of the Lease.
4. On the basis of the record, this court is entering a contemporaneous Order in accord with the foregoing. Realty Corp. is enjoined from confessing judgment against Asian Bank for possession or monetary relief based upon the asserted breach of the Lease in connection with the April 2005 Minimum Annual Rent Payment for the property at 1008 Arch Street, Philadelphia, PA 19107.

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Bank's business operations. This court is further aware that Realty Corp. had requested Asian Bank's permission to install sewer pipes in the ceiling of the lease premises, which Asian Bank refused, forcing Realty Corp. to pursue another course.

5. The continued effectiveness of this Order is conditioned on Asian Bank filing a bond with the Prothonotary, in the amount of \$10,416.67, which is equivalent to one month's rents under the Lease, within fifteen (15) days of the date of entry of this Order.

**BY THE COURT:**

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**C. DARNELL JONES, J.**