

DOCKETED

APR 28 2016

R. POSTELL  
COMMERCE PROGRAM

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

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<p><b>TABOR MEDICAL ANNEX, L.P.</b></p> <p><i>Plaintiff</i></p> <p>v.</p> <p><b>AFFORDABLE DENTISTRY OF NORTH AMERICA, INC. et al.</b></p> <p><i>Defendants</i></p>	<p>: October Term, 2015</p> <p>:</p> <p>: Case No. 01366</p> <p>:</p> <p>: Commerce Program</p> <p>:</p> <p>: Control No. 16032674</p>
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ORDER

AND NOW, this 28<sup>th</sup> day of April, 2016, upon consideration of the unopposed petition to strike or open judgment by confession filed by defendant Tahir Farid, it is **ORDERED** that the petition to strike is **GRANTED-IN-PART** and Judgment by Confession is **STRICKEN** as to defendants Tahir Farid and George Hanna.<sup>1</sup> The remainder of the petition to strike or open the confessed judgment is **DENIED**.

BY THE COURT,




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RAMY I. DJEKASSI, J.

Tabor Medical Annex, L.-ORDOP



<sup>1</sup> Although defendant George Hanna did not file a petition to strike or open the confessed judgment, the court strikes the judgment as against this defendant for the reasons explained in the accompanying *Memorandum Opinion*, and especially those found in footnote 10, *infra*.

**MEMORANDUM OPINION**

DEFENDANT SOLIMAN'S PETITION.

Plaintiff Tabor Medical Annex, L.P. (“Landlord”), owns a commercial property at 1335 West Tabor Road in Philadelphia, Pennsylvania. Individual defendant Joseph M. Soliman (“Soliman”), is or was a minority shareholder in a corporation named Affordable Dentistry of North America, Inc. At all times relevant to this action, Affordable Dentistry of North America, Inc. was a tenant (“Tenant”), at the commercial property owned by Landlord. Tenant occupied the afore-mentioned property pursuant to a commercial “Lease Agreement” executed on December 16, 2014.<sup>2</sup> On the same day in which Tenant executed the Lease Agreement, Soliman executed a “Guaranty Agreement.” The Guaranty Agreement was incorporated into the Lease Agreement.

On October 14, 2015, Landlord confessed judgment against Tenant and three personal guarantors to the Lease Agreement, including defendant Soliman. The complaint-in-confession-of-judgment alleged that Tenant was in default of the Lease Agreement by failing to tender the required monthly minimum rental and tax payments, and by assigning the remainder of the Lease to a sub-lessee without the written consent of Landlord, as was required under the Lease Agreement.<sup>3</sup>

On November 13, 2015, Soliman filed a petition to strike or open Landlord’s confessed judgment. In his petition, Soliman asserted that the confessed judgment should be stricken because the Guaranty Agreement did not contain any provision empowering Landlord to confess judgment against him. The Court examined Soliman’s

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<sup>2</sup> Lease Agreement, Exhibits A1–A3 to the complaint in confession of judgment.

<sup>3</sup> Complaint-in-confession-of-judgment, ¶¶ 10–14.

Guaranty Agreement and found that while this document was incorporated into the Lease Agreement, it did not bear a direct relation to the warrant of attorney therein. For this reason, this Court struck the confessed judgment only against Soliman as defendant/personal guarantor to the Lease Agreement.<sup>4</sup>

DEFENDANT FARID'S PETITION.

The Lease Agreement in this action also identified two additional defendantsw/personal guarantors, "Farid" and "Hanna," who, unlike defendant Soliman, did not challenge the confessed judgment, and did not file a timely petition to strike or open.

However, months later, on March 17, 2016, defendant-guarantor Farid did file a petition to strike or open the confessed judgment, to which Landlord failed to file a response in opposition thereto. The third individual guarantor to the Lease Agreement, Hanna, neither challenged the confessed judgment of Landlord, nor filed any petition to strike or open the judgment.

In the instant petition to strike or open, Farid asserts that even if untimely, his petition should be granted and judgment should be stricken. Farid argues that the Guarantee Agreement is void because it bears no direct relation to the warrant-of-attorney provision contained in the Lease Agreement. Relying on M&P Management, L.P. v. Williams,<sup>5</sup> Farid asserts that a judgment by confession entered on a void guarantee may be stricken any time.

In M&P, defendant had signed two promissory notes, each of which contained a

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<sup>4</sup> In the Order with *Memorandum* Opinion, this Court noted that the other two personal guarantors to the Lease Agreement, unlike defendant Soliman, had not filed their respective petitions to strike or open the confessed judgment. The Court also noted the judgment entered in favor of Landlord was not affected as against such non-petitioning defendants. *Memorandum* Opinion, at footnote 7.

<sup>5</sup> M&P Management, L.P. v. Williams, 937 A.2d 398 (Pa. 2007).

warrant-of-attorney provision. Subsequently, the parties amended the promissory notes, but failed to include therein any new warrant-of-attorney provisions. Plaintiff confessed judgment on the notes against defendant, defendant belatedly filed a petition to strike the judgments, and the trial court denied the petition as untimely. Defendant appealed, the Pennsylvania Superior Court affirmed, and the Pennsylvania Supreme Court agreed to hear the case on final appeal. Reversing, the Supreme Court stated that it could not “provide finality to a judgment [entered against defendant] when a court [below] lacked subject matter jurisdiction over the underlying dispute.”<sup>6</sup> The Supreme Court further explained that—

[t]he reasonable time requirement for bringing an action to strike off ... a confessed judgment was based upon the doctrine of laches. However, historically, **void** confessed judgments could be stricken off or opened at any time as they were considered a legal nullity because the court lacked subject matter jurisdiction over the matter.<sup>7</sup>

The Supreme Court concluded by holding as follows:

Because we ... determine that *if* the confessed judgments are void, then they may be challenged at any time....<sup>8</sup>

In this case, defendant Farid has untimely filed a petition to strike or open the confessed judgment entered against him and the third individual, defendant/personal guarantor, Hanna. However, because the personal Guaranty Agreement executed by Soliman, Farid and Hanna does not bear any relation to the cognovit<sup>9</sup> clause contained in the Lease Agreement, this Court finds that the personal Guaranty Agreement

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<sup>6</sup> Id., 937 A.2d at 401.

<sup>7</sup> Id., 937 A.2d at 402 (emphasis supplied).

<sup>8</sup> Id.

<sup>9</sup> Cognovit clause is another term for warrant-of-attorney: “[a] contractual provision by which a debtor ... authorizes the entry of an adverse judgment in the event of default or breach.” BLACK’S LAW DICTIONARY, p. 254 (7<sup>TH</sup> ed.) See id., p. 1581.

executed by such defendants is a nullity and the judgment entered against Farid and Hanna as personal guarantors is therefore stricken.<sup>10</sup> The judgments entered against Tenants, defendants Affordable Dentistry of North Philadelphia, Inc. and affordable Dentistry of North Philadelphia, Corp. are unaffected by this decision.<sup>11</sup>

BY THE COURT,

  
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RAMY I. DJERASSI, J.

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<sup>10</sup> In M&P, the Pennsylvania Supreme Court also instructed that “a void judgment is a mere blur on the record ... which **it is the duty of the court of its own motion to strike off, whenever its attention is called to it.**” Id. at 401 (emphasis supplied). Based on the foregoing, the court, on its own motion, strikes the confessed judgment entered against defendant/personal guarantor George Hanna, even though this defendant has not challenged the confessed judgment entered against him.

<sup>11</sup> Farid’s petition argues in the alternative that the confessed judgment should be opened for two additional reasons: first, Landlord failed to make a demand payment as required under the Guarantee Agreement, and second, the amount in-confession of judgment is excessive. The Court rejects both arguments. Both arguments are rejected because to open a confessed judgment in Pennsylvania, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses....” Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984). In this case, Farid has not produced any evidence in support of his petition to open the confessed judgment.