

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION—CIVIL  
R. POSTELL  
COMMERCE PROGRAM

<b>MARGARITA MORENO—NIX</b>	:	
as Power-of-Attorney for	:	December Term, 2015
Marianita Gutierrez and Julios Industries, LLC	:	Case No. 02363
	:	
<i>Plaintiff</i>	:	
	:	
<b>v.</b>	:	
	:	
<b>RICHARD KNELLINGER</b>	:	Commerce Program
	:	
<i>Defendant</i>	:	Control No. 16013158

**ORDER**

AND NOW, this 11<sup>th</sup> of April, 2016, upon consideration of defendant's petition to strike or open judgment by confession, plaintiff's response in opposition, the respective *memoranda* of law, and plaintiff's supplemental brief in explanation of the amount of Real Estate taxes actually chargeable to defendant, it is **ORDERED** as follows:

- I. The petition to strike judgment by confession is **DENIED**.
- II. The petition to open judgment by confession is **GRANTED**.
- III. The stay of execution is **LIFTED** and plaintiff may proceed in ejectment.

BY THE COURT,

  
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 GLAZER, J.

Moreno-Nix As Poa For M-ORDOP



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## MEMORANDUM OPINION

Plaintiff (“Landlord”) confessed judgment against defendant (“Tenant”), for breach of a Lease Purchase Agreement (the “Agreement”). The confessed judgment included the sum of \$10,000.00 claimed against Tenant as Real Estate taxes. Tenant petitioned to strike or open the confessed judgment, and Landlord timely filed a response in opposition. Upon reviewing the record, this court ordered Landlord to file a supplemental brief providing proof of the amount claimed as Real Estate taxes. Landlord filed her supplemental brief and conceded that the amount of \$10,000.00 was excessive. Landlord submitted evidence that the actual amount of Real Estate taxes did not exceed \$3,588.00.

Turning to the issues contained in the instant petition, it is undisputed that Tenant defaulted on the Agreement. There is no dispute because although Tenant asserts in his petition that he “made all payments required under the Agreement,” he did not sustain his “burden of producing sufficient evidence to substantiate” his defense.<sup>1</sup> Since it is undisputed that Tenant defaulted, this court finds that Landlord is entitled to take possession of the leased premises in ejectment, even though Landlord failed to file a separate writ of possession, as required under the Pennsylvania Rules of Civil Procedure.<sup>2</sup> Ejectment is just because the court finds in this case that the lack of a properly filed writ of possession does not constitute a fatal flaw in the record.<sup>3</sup> For this reason, the petition to strike the confessed judgment is denied and Landlord may

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<sup>1</sup> Petition to strike or open, ¶ 8; Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

<sup>2</sup> Pa. R.C.P. 3160, Pa. R.C.P. 3254.

<sup>3</sup> “A motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record. If the record is self-sustaining, the judgment will not be stricken.” Fourtees Co. v. Sterling Equip. Corp., 363 A.2d 1229, 1232 (Pa. Super. 1976).

proceed in ejectment.

The analysis, however, cannot end here because the court perceives issues of fact raised by inconsistencies in the monetary claim asserted by Landlord. Specifically, Landlord charges the amount of \$118,500.00 under the caption “unpaid rent.”

Describing this amount, Landlord offers the following averment:

- a. Defendant is delinquent for failing to render full monthly rental payments of the months of March 2012 through December 2015.
- b. Defendant failed to pay rent entirely for the months of August 2014 through December 2015.<sup>4</sup>

The court finds that the afore-quoted language is ambiguous and confusing.

Specifically, *item a.* states as follows:

Defendant is delinquent for failing to render **full monthly rental payments** of the months of March 2012 to December 2015.<sup>5</sup>

This court finds the language in *item a.* ambiguous because the words therein, “**failed to render full monthly rental payments,**” could conceivably be construed as having the same meaning as those contained in *item b.*, which states that defendant “**failed to pay the entire rental payments.**” The ambiguity in draftsmanship raises a question of fact –namely, whether the claim asserted in *item a.* overlaps partially with the claim asserted in *item b.*, for the specific period running between August 2014 and December 2015.<sup>6</sup> The issue of fact raised by the ambiguous draftsmanship requires this court to open the judgment, especially in light of Landlord’s prior error in properly calculating the amount of Real Estate taxes owed by Tenant. For this reason, the

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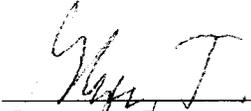
<sup>4</sup> Complaint-in-confession-of-judgment, ¶ 9.

<sup>5</sup> *Id.* (Emphasis supplied).

<sup>6</sup> “[I]f the factual averments are disputed, the remedy is by a proceeding to open the judgment....” Manor Bldg. Corp. v. Manor Complex Associates, Ltd., 435 Pa. Super. 246, 252, 645 A.2d 843, 846 (1994).

confessed judgment is opened.

**BY THE COURT,**

  
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**GLAZER, J.**