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

SIGNATURE FINANCIAL LLC, a/k/a	:	January Term 2017
SIGNATURE BUSINESS LEASING LLC,	:	
Plaintiff,	:	No. 639
v.	:	
GREGORY A. WESTFALL,	:	COMMERCE PROGRAM
Defendant.	:	
	:	Control Number 17034481

ORDER

AND NOW, this 20th day of June, 2017, upon consideration of Defendants' Petition to Strike/Open Plaintiff's Confession of Judgment and Plaintiff's response in opposition thereto and the attached Opinion, it hereby is **ORDERED** that Defendant's Petition is **Granted in part** and the judgment is **modified and amended** to \$171,763.28 and the judgment index shall reflect the change. All other aspects of the Petition are **denied**.

BY THE COURT,



RAMY I. DJERASSI, J.

DOCKETED

JUN 21 2017

R. POSTELL
COMMERCE PROGRAM

Signature Financial, LI-ORDRF



**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
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SIGNATURE BUSINESS LEASING LLC,	:	
Plaintiff,	:	No. 639
v.	:	
GREGORY A. WESTFALL,	:	COMMERCE PROGRAM
Defendant.	:	Control Number 17034481
	:	

OPINION

Presently before the court is defendant Gregory A. Westfall's ("Guarantor") Petition to Strike/Open confessed judgment filed by plaintiff Signature Financial LLC a/k/a Signature Business Leasing, LLC ("Lessor"). For the reasons discussed below the petition to strike/open is granted in part and the judgment is modified from \$254,474.32 to \$171,763.28.

On December 11, 2012, a Master Lease Agreement was entered between Connect Transport, LLC ("Connect"), the lessee, and Vision Financial Group, Inc. ("Vision Financial"), the Lessor. At the time the Master Lease Agreement was signed, Guarantor was the executive vice president of Connect. On the same date the Master Lease Agreement was signed, Guarantor delivered to Vision Financial a guaranty wherein he irrevocably and unconditionally agreed to guaranty Connect's full payment and performance of the Master Lease Agreement and the Equipment Lease obligations. The Guaranty contained a confession of judgment provision which permitted the entry of judgment against Guarantor.

On May 1, 2014, Vision Financial assigned the Agreements at issue here to Lessor; Vision Financial continued to manage the contracts for Lessor. On August 30, 2016, Connect defaulted under the terms of the Equipment Lease by failing to make the payment when due and when it filed for Chapter 11 bankruptcy protection. On September 9, 2016, Connect made one

payment in the amount of \$10,182.60. On January 5, 2017, Lessor filed a complaint in confession of judgment against Guarantor in the amount of \$254, 474.32.¹ On March 31, 2017, Guarantor filed the petition to open/strike the confessed judgment. Lessor filed a response in opposition and the matter is now ripe for disposition.²

DISCUSSION

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record and may be granted only for a fatal defect or irregularity appearing on the face of the record.³ In considering the merits of a petition to strike, the court will be limited to a review of only the record *as filed by the party in whose favor the warrant is given*, i.e., the complaint and the documents which contain confession of judgment clauses. Matters *dehors* the record filed by the party in whose favor the warrant is given will not be considered. If the record is self-sustaining, the judgment will not be stricken.⁴

Guarantor argues that the judgment should be stricken since Guarantor failed to calculate its damages in accordance with the terms of the Guaranty because “software” was erroneously included in Lessor’s calculation of damages for the confessed judgment, the “Casualty Value” used by Lessor was incorrect and Lessor lacks standing to sue on the Guaranty. First, “software” was properly included in the judgment calculation. Under the terms of the relevant documents,

¹ While the warrant of attorney in the Guaranty provides for the cost of suit and an attorney’s commission of fifteen percent (15%), Lessor has not included this amount in the confession of judgment.

² On several occasions, the parties herein stipulated to extend the time to respond to the Petition to Strike/Open in order to discuss settlement, however the discussions were unsuccessful.

³ *Bethlehem Steel Corporation v. Tri State Industries, Inc.*, 434 A.2d 1236 (Pa. Super. (1981).

⁴ *Franklin Interiors v. Wall of Fame Management Company, Inc.*, 510 Pa. 597, 511 A.2d 761 (1986).

“Equipment” is defined as “Touchstar Hardware, Software and Services”.⁵ As such software is a proper factor to include as “equipment” and no reduction is required. As for the standing argument, Lessor has standing to bring the complaint in confession of judgment since Signature Business Leasing LLC is the registered fictitious name of Signature Financial LLC.⁶ As for the “casualty value”, Lessor acknowledges that the wrong percentage was used in calculating this figure. As such, since Lessor plaintiff has acknowledged the error, the judgment will be modified to reflect a reduction from \$254,474.32 to \$171,763.28.⁷

Guarantor also moves to open judgment. A confessed judgment may be opened “if the petitioner (1) acts promptly, (2) alleges a meritorious defense, and (3) can produce sufficient evidence to require submission of the case to a jury.”⁸ A judgment of confession will be opened if “a petitioner seeking relief therefrom produces evidence which in a jury trial would require issues to be submitted to a jury.”⁹ This sufficiency standard is similar to the test for a directed verdict. Facts must be viewed most favorably to the moving party. Evidence along with proper

⁵ See Master Lease Agreement section 1.1 (Equipment is defined as set forth in the Acceptance Certificate); Acceptance Certificate (defines “Equipment” as “Touchstar Hardware, Software and Services”) and Notice of Acknowledgement of Assignment of Lease (defining “Equipment” as “Touchstar Hardware, Software, and Services”).

⁶ Texas Secretary of State Business Organization Inquiry.

⁷ See, *Dime Bank v. Andrews*, 115 A.3d 358, 365 (Pa. Super.2015) quoting *West Penn Sand & Gravel Co. v. Shippingport Sand Co.*, 367 Pa. 218, 80 A.2d 84, 86 (1951) (emphasis added) (It has always been held that **formal defects, mistakes and omissions** in confessions of judgment may be corrected by amendment where the cause of the action is not changed, where the ends of justice require the allowance of such amendment, and where the substantive rights of defendant or of any third persons will not be prejudiced thereby).

⁸ *Neducsin v. Caplan*, 121 A.3d 498, 506 (2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁹ *Id.* quoting *Foerst v. Rotkis*, 368 A.2d 805, 807–08 (Pa. Super. 1976).

inferences supporting the defense must be accepted as true and all adverse allegations are rejected.¹⁰

Guarantor sets forth three defenses to the judgment which are 1) failing to credit a security deposit of \$19,932.36, 2) Lessor's failure or refusal to take possession of the leased equipment when offered for return by Lessee and 3) Lessor's failure to return any portion of an advance or provide an accounting of \$91,129.00 which was tendered by Connect Transport to Vision Financial. These defenses have no merit in light of Guarantor's failure to offer clear, direct, precise and believable evidence in support.¹¹ Guarantor does not point to any evidence that Lessor is contractually required to give credit for the security deposit after the lessee breached. Even so, Lessor agrees to credit the security deposit, though no required, in order to avoid more delay and more attorney's fees.¹²

As for the second defense, per the Master Lease, Lessor is not obligated to take possession of the equipment. Under § 4.2 of the Master Lease, remedies including repossession are not intended to be exclusive, and each remedy is cumulative. Moreover, in its response Lessor states that it is not pursuing cumulative remedies. Lastly, the March 6, 2016 payment from Connect to Vision Financial was a fee advance with a request for additional financing. The payment was not related to either the Master Lease or the Equipment Lease, nor the Guaranty itself. Therefore no credit is due and Guarantor's petition to open judgment in respects other than correcting a formal and acknowledged mistake is Denied.

¹⁰ *Id* citing *Greenwood v. Kadoich*, 357 A.2d 604, 606 (Pa. Super. 1976).

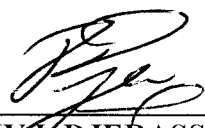
¹¹ *Germantown Savings Bank v. Talacki*, 657 A.2d 1285, 1289 (Pa.Super.1995)(Evidence of a meritorious defense must be clear, direct, precise, and believable.).

¹² Guarantor avers that the amount of the security deposit is \$19,932.36. However, this figure is not supported by any evidence. Lessor directs the court's attention to § 5.1 of the Master Lease which identifies the security deposit as one month's Basic Rent, \$9,007.48.

CONCLUSION

For the foregoing reasons, Defendant and Guarantor Gregory A. Westfall's Petition to Strike/Open is **Granted in part** and the judgment is **modified and amended** to \$171,763.28, and the judgment index shall reflect this change. All other aspects of the Petition are Denied.

BY THE COURT,



RAMY J. DJERASSI, J.