

DOCKETED

DEC 28 2017

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

PETER SIRAVO and DOMENICO SIRAVO	:	October Term, 2017
	:	Case No. 04013
<i>Plaintiffs</i>	:	
	:	
v.	:	Commerce Program
	:	
MAGDY MAYER and ISABELL KALDES	:	
and SOUTH STREET PIZZA	:	
	:	Control No. 17120137
<i>Defendants</i>	:	

ORDER

AND NOW, this 28th day of December, 2017, upon consideration of the petition to strike or open judgment by confession, it is **ORDERED** as follows:

- I. The petition to strike is granted only as to defendant South Street Pizza, and the judgment entered by confession against said defendant is **STRICKEN**. The remainder of the petition to strike is otherwise **DENIED**.
- II. The petition to open judgment by confession is **DENIED** in its entirety.

BY THE COURT

[Handwritten Signature]

GLAZER, J.

Siravo Etal Vs Mayer Et-ORDRC



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MEMORANDUM OPINION

Plaintiffs/landlords (“Landlords”), entered judgment by confession against defendants/tenants (“Tenants”), to repossess certain premises located at 1410 South Street, in Philadelphia Pennsylvania. The operative document in this action is a lease agreement (the “Lease”), which was executed by the parties on April 12, 2012. The Lease was executed only by the two individual defendants named in this action: Magdy Mayer and Isabell Kaldes. The third defendant, an entity named South Street Pizza, did not execute the Lease. Landlords concede this point at paragraph 5 of their answer in opposition to the petition to strike or open.

Under Pennsylvania law, a “petition to strike a judgment may be granted only for a fatal defect or irregularity appearing on the face of the record.”¹ In addition—

[a] warrant of attorney to confess judgment must be self-sustaining; the warrant must be in writing and signed by the person to be bound by it ... and may not be implied extrinsically nor imputed.... There should be no doubt that the lessee signed the warrant and that he was conscious of the fact that he was conferring a warrant upon the lessor to confess judgment in the event of breach.²

Finally, a “[j]udgment cannot be entered in favor of a stranger to the contract....”³

In this case, defendant South Street Pizza did not execute the Lease containing the warrant-of-attorney, Landlords concede this point, and the petition to strike is granted only as to defendant South Street Pizza.

In the petition to open, the Tenants aver at paragraph 5 that the Landlords failed to strictly comply with the requirements of the warrant-of-attorney, failed to give

¹ Dime Bank v. Andrews, 2015 PA Super 114, 115 A.3d 358, 364 (Pa. Super. 2015).

² Ferrick v. Bianchini, 69 A.3d 642, 651 (Pa. Super. 2013).

³ Fourtees Co. v. Sterling Equip. Corp., 242 Pa. Super. 199, 206, 363 A.2d 1229, 1232 (1976)

proper notice of termination of the Lease, and breached the Lease by interfering with the Tenants' right to peacefully enjoy the leased premises. In paragraph 6 of their petition, the Tenants also aver that they did not voluntarily, intelligently and knowingly relinquish their constitutional rights when they executed the Lease which contains the warrant-of-attorney empowering the Landlord to enter judgment by confession. However, the Tenants have offered no evidence in support of such defenses.

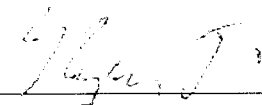
Under Pennsylvania law, a trial court may open a confessed judgment if the petitioner—

- (1) acts promptly,
- (2) alleges a meritorious defense, **and**
- (3) can produce sufficient evidence to require submission of the case to a jury.⁴

Moreover, “[t]he [party] petitioning [to open a confessed judgment] ... bears the burden of producing sufficient evidence to substantiate its alleged defenses.... The defenses raised must be valid ones.”⁵

In this case, Tenants have failed to produce any evidence which, in a jury trial, would require this court to submit the issues to the jury. The Tenants have not overcome their burden of producing the necessary evidence, and for this reason the petition to open the confessed judgment is denied in its entirety.

BY THE COURT,



GLAZER, J.

⁴ Neducsin v. Caplan, 121 A.3d 498, 506 (Pa. Super. 2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁵ Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).