

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

ROWAN DEVELOPMENT, INC.	:	November Term, 2017
	:	Case No. 00915
<i>Plaintiff</i>	:	
	:	
v.	:	Commerce Program
	:	
WESTWOOD, INCORPORATED	:	
	:	
<i>Defendant</i>	:	Control No. 17113680

ORDER

AND NOW, this 22nd day of January, 2018, upon consideration of the petition to strike or open judgment-by-confession filed by defendant Westwood, Incorporated, the answer in opposition filed by plaintiff Rowan Development, Inc., and the respective *memoranda* of law, it is **ORDERED** that **THE PETITION IS DENIED** and the **STAY OF EXECUTION IS LIFTED**.

BY THE COURT,



GLAZER, J.

Rowan Development, Inc.-ORDRC



17110091500016

DOCKETED

JAN - 3 2018

R. POSTELL
COMMERCE PROGRAM

MEMORANDUM OPINION

The petition to strike or open judgment-by-confession requires this court to determine whether it lacks subject matter jurisdiction for the purported failure of plaintiff to join indispensable parties to this action. The petition also requires this court to determine whether the petitioner has provided sufficient evidence to support its defense asserting that it did not voluntarily, knowingly and intelligently waive certain constitutional rights. For the reasons explained below, the petition to strike or open the judgment-by-confession is denied in its entirety.

BACKGROUND

Plaintiff is Rowan Development, Inc. (“Landlord”), a corporation with an address in Philadelphia, Pennsylvania. Defendant is Westwood, Incorporated (“Tenant”), a corporation with an address in Pennsylvania.

On June 26, 2012, Tenant leased from Landlord a building located at 6801 N. 16th Street, in Philadelphia, Pennsylvania (the “Property”). The operative “Lease” agreement contained two warrants-of-attorney: pursuant to the first warrant-of-attorney, Landlord could confess judgment for monies against Tenant upon the occurrence of an event of default; pursuant to the second warrant-of-attorney, Landlord could also eject Tenant from the Property.¹ No other parties were involved in this Lease.

On July 13, 2017, Landlord and Tenant entered into a “Settlement Agreement.” Pursuant the Settlement Agreement, the outstanding past rent owed by Tenant was reduced from \$368,561.02 to \$346,370.35. The Settlement Agreement also contains two warrant-of-attorney clauses which are applicable upon the occurrence of an event of

¹ Lease, Exhibit A to the complaint-in-confession-of-judgment, ¶ 8(xii)(aa)–8(xii)(bb).

default: the first warrant-of-attorney empowers Landlord to enter judgment against Tenant for money damages; the second warrant-of-attorney empowers Landlord to eject Tenant from the Property.² The Settlement Agreement was executed on behalf of Tenant by Ms. Sirlena Swift-Watson, president of Tenant/Westwood, Inc.³ No other parties are involved in the Settlement Agreement.

On November 9, 2017, Landlord entered judgment-by-confession against Tenant. The Judgment seeks recovery of money damages in the amount of \$381,007.38, which includes the outstanding principal of \$346,370.35, plus \$34,637.03 in attorney fees (equivalent to ten percent of the outstanding amount). The Judgment also seeks to eject Tenant from the Property. This judgment was confessed exclusively under the Settlement Agreement.

On November 30, 2017, Tenant filed a petition to strike or open the confessed judgment and for a stay of execution. In the petition, Tenant advances two arguments. Under the first argument, Tenant asserts that the judgment should be stricken because this court lacks subject matter jurisdiction over the case. According to Tenant, this court lacks subject matter jurisdiction because Landlord failed to join certain indispensable parties –namely, certain banks and their successors-or-assigns, to which Landlord had assigned its rent and mortgage interests.⁴ Under the second argument, Tenant asserts that the person who bound Tenant to the Settlement Agreement, Ms. Watson, was gravely ill and did not voluntarily, intelligently and knowingly bind the Tenant to the terms of the warrants-of-attorney.⁵ The petition to strike or open the

² Settlement Agreement, Exhibit C to the complaint-in-confession-of-judgment, ¶ 9(a)–9(b).

³ Id., signature page

⁴ Petition to strike or open, ¶¶ 1–15.

⁵ Id., ¶¶17–20.

confessed judgment does not deny that Tenant defaulted on its obligation “to make any ... payments ... in accordance with the terms of the Settlement Agreement.”⁶

On December 1, 2017, this court issued an Order requiring Landlord to file an answer and *memorandum* opinion in opposition to the petition to strike or open the confessed judgment.⁷ The court also stayed any execution proceedings pending resolution of the petition.⁸ On December 21, 2017, Landlord filed its answer and *memorandum* of law in opposition to the petition, and all the issues in the action are ripe for a resolution.

STANDARDS

The law on striking judgments by confession is well-settled:

[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.⁹

The law on opening a confessed judgment is also well-settled:

[t]he 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.¹⁰

DISCUSSION

I. The rent and mortgage assignees of Landlord, if any, are not indispensable parties.

⁶ See complaint-in-confession-of-judgment, ¶ 10.

⁷ Docket, Order dated December 1, 2017.

⁸ *Id.*

⁹ *Fourtees Co. v. Sterling Equip. Corp.*, 363 A.2d 1229, 1232 (Pa. Super. 1976).

¹⁰ *Neducsin v. Caplan*, 121 A.3d 498, 506 (Pa. Super. 2015).

In the petition to strike or open, Tenant avers that the banks to which Landlord purportedly assigned its rent and mortgage rights are indispensable parties; Tenant concludes that without such parties, this court lacks subject matter jurisdiction over the instant action. This argument is rejected. Under Pennsylvania law—

[t]he determination of an indispensable party question involves the following considerations:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of that right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating the due process rights of absent parties?¹¹

In this case, no parties other than Landlord and Tenant have a right or interest related to the Settlement Agreement. In addition, although the purported assignees of Landlord may have a right to collect any unpaid rents or protect their mortgage rights upon the Property, such rights are not essential to the merits of the instant confession of judgment action. Specifically, if the purported assignees find themselves compelled to assert their right to collect any rents or assert their mortgage rights upon the Property, they may do so against Landlord in a separate action.

II. **The defense based on the alleged involuntary, un-intelligent and un-knowing waiver of rights is meritless.**

The second challenge to the confession-of-judgment asserts that Ms. Watson, as the person who executed the Settlement Agreement, was gravely ill at the time and did not voluntarily, intelligently and knowingly bind Tenant to the terms contained in the

¹¹Bastian v. Sullivan, 117 A.3d 338, 343 (Pa. Super. 2015).

warrants-of-attorney. In support of this argument, Tenant has submitted as evidence an un-dated note issued by Ms. Watson's physician. The note states as follows:

I am writing to medically verify that Ms. Sir
Lena Watson must have a medical procedure
on Sept. 5.

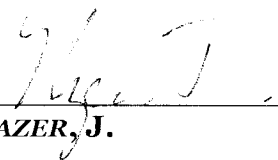
S/ Wayne L. Gibbons, M.D.

In Pennsylvania, "[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses."¹² Moreover—

[t]here is ... no merit to [the] assertion [of a] purported lack of knowledge and/or understanding of the warrant of attorney provisions.... The failure to read a confession of judgment clause will not justify avoidance of it.... This is particularly true where the confession of judgment clause is clear and conspicuous and part of a commercial transaction.¹³

In this case, the evidence produced by Tenant, including the un-dated doctor's note, is insufficient to substantiate the assertion that Ms. Watson did not voluntarily, intelligently and knowingly bind Tenant to the warrants-of-attorney contained in the Settlement Agreement. The argument asserted by Tenant is meritless and the petition to strike or open the confessed judgment is denied in its entirety.

BY THE COURT,



GLAZER, J.

¹² Haggerty v. Fetner, 481 A.2d 641, 644 (Pa. Super. 1984).

¹³ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 637 A.2d 309, 313 (Pa. Super. 1994).