

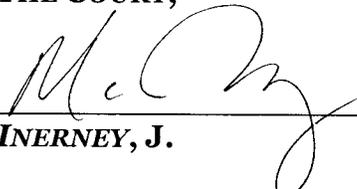
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

| | | |
|---|---|------------------------|
| B&S ASSOCIATES | : | March Term, 2014 |
| | : | |
| <i>Plaintiff</i> | : | Case No. 00872 |
| | : | |
| v. | : | |
| | : | Commerce Program |
| EMSTAR AMBULANCE SERVICES | : | |
| a/k/a/ PCA EMSTAR HOLDINGS a/k/a/ EMSTAR | : | |
| | : | Control Nos. 15063251, |
| <i>Defendant</i> | : | 15063256. |

ORDER AND MEMORANDUM OPINION

AND NOW, this 20th day of July, 2015, upon consideration of defendant's petition to strike, or in the alternative, to open judgment by confession, and petition to stay execution upon judgment entered by confession, plaintiff's responses in opposition, and the respective *memoranda* of law, it is **ORDERED** that both petitions are **DENIED**.

BY THE COURT,



MCINERNEY, J.

DOCKETED

JUL 20 2015

R. POSTELL
COMMERCE PROGRAM

B&S Associates Vs Emstar Ambulance Services-ORDRC



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MEMORANDUM OPINION

“Plaintiff” owns real property in Philadelphia, Pennsylvania. “Defendant” occupied Plaintiff’s commercial property upon inception of a lease agreement, effective February 1, 2012.

Defendant asserts in its petition that a fatal defect on the record requires this court to strike Plaintiff’s confessed judgment. Defendant makes this assertion on grounds that its name is PCA EMStar Holdings, L.P., whereas the lease documents involved in this action identify the actual lessee with different names, such as EmStar Ambulance Services and EM-Star Ambulance Service. Defendant appears to imply that such inconsistencies lead to a simple conclusion –namely, Defendant was not a party to the lease agreement. This fatal defect, according to Defendant, requires the court to strike Plaintiff’s confessed judgment.

“A motion to strike a judgment will not be granted unless a fatal defect in the judgment appears on the face of the record....”¹ In this case, Defendant denies being a party to the lease agreement, yet admits to have occupied the premises from commencement of the lease, on February 1, 2012, to February 9, 2014 or thereabout.² However, Defendant has failed to explain how it came to occupy the same premises which it claims to have never leased. Defendant’s failure to offer an explanation convinces this court that any misnomers contained in the lease documents do not constitute a fatal flaw on the record.

In addition, Defendant asks the court to strike judgment by confession on grounds that the warrant-of-attorney provision in the lease “was not voluntarily

¹ Solebury Nat. Bank of New Hope v. Cairns, 252 Pa. Super. 45, 48, 380 A.2d 1273, 1275 (1977).

² Petition to Strike or Open, ¶ 57.

accepted and consciously assumed” because it was “ written in the same small print as other sections and provisions of the [l]ease.”³

In Pennsylvania, “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.”⁴ In this case, the warrant-of-attorney provision is sufficiently clear and conspicuous: it is titled in characters which are both bold and capitalized, and the provisions thereof are sufficiently separated from the all other paragraphs and provisions contained in the document. For these reasons, the petition to strike is entirely denied.

Defendant finally asserts that judgment by confession should be opened. According to Defendant, judgment should be opened on grounds that Plaintiff changed the locks to the leased premises and thus evicted Defendant therefrom. Defendant asserts that as a result of the eviction, Plaintiff is not entitled to accelerated rent in accordance with specific case law. According to Defendant, the judgment should be opened to allow computation of the proper amounts owed to Plaintiff.

In Pennsylvania, “[t]he petitioning party bears the burden of producing sufficient evidence to substantiate its alleged defenses.”⁵ In this case, Defendant has offered no evidence in support of its allegation that it suffered eviction, other than producing an affidavit. The affidavit, signed by a member of Defendant, states that in March 2014, Plaintiff effectively evicted Defendant by changing the locks to the leased premises.⁶ However, the same affidavit also states that Defendant had ceased to occupy the

³ Petition to Strike or Open, ¶¶ 87-90.

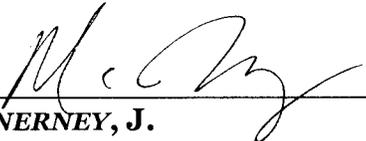
⁴ Dollar Bank, Fed. Sav. Bank v. Northwood Cheese Co., 431 Pa. Super. 541, 550, 637 A.2d 309, 313 (1994).

⁵ Haggerty v. Fetner, 332 Pa. Super. 333, 339, 481 A.2d 641, 644 (1984).

⁶ Affidavit of Joseph Zupnik, Exhibit B—3 to the Petition to Strike or Open, ¶ 10.

premises on February 9, 2014.⁷ Thus, the affidavit fails to explain how Defendant was evicted after it had already ceased to occupy the premises. The affidavit is insufficient to sustain Defendant's burden of proof in support of its defense. For this reason, the petition to strike, or, alternatively, to open judgment by confession, is denied in its entirety. For the same reasons, the petition to stay execution upon judgment entered by confession is also denied.

BY THE COURT,



MCINERNEY, J.

⁷ Id. ¶ 5.