

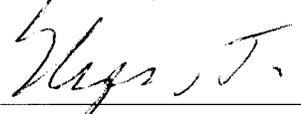
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

STAVROS KARAYIOVANIS	:	February Term, 2016
and	:	
CHRYSOULA KARAYIOVANIS	:	Case No. 04933
<i>Plaintiffs</i>	:	
v.	:	
	:	
KAY PIZZA, INC.,	:	Commerce Program
MOHAMMAD R. KANAN	:	
and	:	
RHIANNON K. BETTELEY	:	Control No. 16060791
<i>Defendants</i>	:	

ORDER

AND NOW, this 1st day of September, 2016, upon consideration of the petition to strike or open judgment by confession and for stay of execution filed by defendants Kay Pizza, Inc. and Rhiannon K. Betteley, the response in opposition of plaintiffs Stavros Karayiovanis and Chrysoula Karayiovanis, and the respective *memoranda* of law, it is **ORDERED** that the petition is **DENIED** in its **ENTIRETY**.

BY THE COURT,



GLAZER, J.

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R. FOSTELL
COMMERCE PROGRAM

Karayiovanis Etal Vs Ka-ORDRF



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MEMORANDUM OPINION

Before the court is a petition to strike or open judgment by confession and for stay of execution filed by corporate defendant Kay Pizza, Inc. and individual defendant Rhiannon K. Betteley. For the reasons below, the petition is denied.

BACKGROUND

Plaintiffs Stavros Karayiovanis and Chrysoula Karayiovanis (“Landlords”), own real property located at 8004 Horrocks Street, in Philadelphia, Pennsylvania. Defendant Kay Pizza, Inc. (“Kay Pizza”), is a business located at the premises owned by Landlords, as evidenced by a “Lease Agreement” dated October 27, 2015.¹ Individual Defendants Mohamad R. Kanan (“Kanan”) and Rhiannon K. Betteley (“Betteley”), are respectively Secretary and President of Kay Pizza.² Pursuant to the terms of a contemporaneous Guaranty and Surety Agreement, Kanan and Betteley are also personal guarantors to a loan which was required to finance the Lease Agreement and was advanced by a lender named “Kavala.”³

On February 10, 2016, Kavala’s successor-in-interest notified defendants Kay Pizza, Kanan and Betteley that they were in default of their obligations to make a timely rent payment and a timely loan repayment for the month of February, 2016.⁴ On March 2, 2016, Kavala’s successor-in-interest notified defendants that they had failed to cure their defaults from February 2016; in addition, the notification indicated that the defendants had improperly and untimely vacated the leased premises.⁵ The following

¹ LEASE AGREEMENT between Landlords and Kay Pizza, Exhibit A to the complaint-in-confession-of-judgment.

² Id. at CONFESSION OF JUDGMENT DISCLOSURE STATEMENT, xxxv.

³ GUARANTY AND SURETY AGREEMENT, Exhibit B to the complaint-in-confession-of-judgment.

⁴ Notice of Default, Exhibit C to the complaint-in-confession-of-judgment.

⁵ Notice of Abandonment, Exhibit C.

day, March 3, 2016, Landlords filed the instant complaint-in-confession-of-judgment against Kay Pizza, Kanan and Betteley, pursuant to the *cognovit* clauses contained in the Lease Agreement and Guaranty and Surety Agreement.⁶ On June 6, 2016, defendants Kay Pizza and Betteley filed the instant petition to strike or open judgment by confession and for a stay of execution.⁷ On August 26, 2016, Landlords filed their response in opposition to the petition to strike or open judgment by confession.⁸

DISCUSSION

The petition of defendants Kay Pizza and Betteley lists a number of bad acts allegedly committed by Mr. Karayiovanis or his counsel. However, the petition fails to explain how the alleged bad acts require this court to either strike or open the judgment.

The alleged bad acts listed in the petition include—

1. requests for cash payments made to defendant Betteley for the purpose of avoiding payment of taxes;
2. public defamatory statements proffered by Mr. Karayiovanis against defendant Betteley, and threatening statements inviting a non-party to assault her;
3. failure of Landlords' counsel to ask whether defendants had legal representation at the time they signed the Lease Agreement and other documents;
4. obscene remarks and indecent gestures which Mr. Karayiovanis addressed to defendant Betteley in the presence of business patrons; and,
5. public statements through which Mr. Karayiovanis questioned defendant's Betteley's moral standing and ability to meet her payroll obligations.⁹

⁶ LEASE AGREEMENT, Exhibit A to the complaint-in-confession-of-judgment at ¶¶ 23(c) and Confession of Judgment Disclosure Statement; GUARANTY AND SURETY AGREEMENT, Exhibit B at ¶ 10.

⁷ The petition to strike or open was filed nearly three months after Landlords filed their praecipe for writ of execution upon judgment by confession. See Exhibit A to the response of Landlords in opposition to defendants' petition to strike or open judgment by confession and for stay of execution.

⁸ The response in opposition was filed pursuant to two stipulations which allowed Landlords to extend their filing deadlines.

⁹ Petition to strike or open judgment by confession, ¶¶ 14–33.

In addition to these alleged bad acts, the petition also avers that the Lease Agreement is ambiguous because the term of ten years therein, and the option to renew the Lease Agreement, are misstated and in contradiction with each other.¹⁰ Finally, the *memorandum* of law in support of the petition offers two additional arguments: first, the Lease Agreement references a promissory note but fails to attach it to the complaint; and second, Landlords failed to comply with the written-notice requirements of the Lease Agreement identified at ¶ 24 of page XXII, ¶ 25 of page XXIV, and ¶ 1 of page V thereof. All of the afore-mentioned arguments are rejected.

In Pennsylvania,

[a] petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a **fatal** defect or irregularity appearing on the face of the record....

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.¹¹

In this case, the court reviewed the complaint and the documents thereto, and specifically the cognovit clauses therein. After completing this review, the court found that Landlords' misstated dates within the Lease Agreement –dates addressing the term of the lease and the option of renewal thereof– amounted to no more than mere scrivener errors which did not create a fatal defect in the record and do not require this court to strike the judgment. Likewise, the failure to attach a promissory note referenced in the Lease Agreement did not create a fatal defect in the record and, for the

¹⁰ *Id.*, ¶¶ 3–4.

¹¹ *Midwest Fin. Acceptance Corp. v. Lopez*, 78 A.3d 614, 622–23 (Pa. Super. 2013) (emphasis supplied).

same reason, the judgment shall not be stricken on such grounds.

In addition, defendants' *memorandum* of law asserts that Landlords failed to comply with the written notice requirements contained in paragraphs 24, 25 and 1 of the Lease Agreement, which are respectively found at pages XXII, XXIV and V thereof.¹² Through this argument, defendants appear to imply that Landlords failed to send the written notices to defendants "By Certified Mail, Return Receipt Requested, or [through a] recognized national overnight courier," as required under the Lease Agreement.¹³ The court rejects this argument because defendants do not deny receipt of Landlords' notices, nor do they explain how receipt thereof, even if not by certified mail, created a fatal defect in the records as to require striking the judgment.

Finally, the court rejects any of defendants' implied or tenuously articulated arguments seeking to open the confessed judgment. The Pennsylvania Rules of Civil Procedure instruct that "[i]f the petition [to strike or open judgment by confession] states prima facie grounds for relief the court shall issue a rule to show cause and may stay proceedings."¹⁴ Under this specific Rule—

the trial court ... [must] first determine whether the petition states a prima facie ground for relief. If such grounds do not exist, the court may not issue a rule to show cause why the confessed judgment should not be opened.¹⁵

In this case, defendants aver that individual plaintiff Stavros Karayiovanis engaged in certain bad acts; however, defendants fail to explain how such alleged bad acts relate to the instant action in confession of judgment. The petition does not state

¹² *Memorandum* of law in support of Kay Pizza's and Betteley's petition to strike or open the confessed judgment and for stay of execution, p. 9.

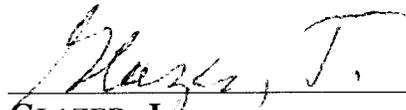
¹³ Lease Agreement, page XXIV, ¶ 25.

¹⁴ Pa. R.C.P. 2959(b).

¹⁵ *City of Pittsburgh v. Allegheny Cty. Distributors, Inc.*, 488 A.2d 333, 334 (Pa. Super. 1985).

prima facie grounds for relief, and for this reason the judgment by confession may not be opened. For all of the reasons above, the petition to strike or open the confessed judgment and for stay of execution is denied in its entirety.¹⁶

BY THE COURT,



GLAZER, J.

¹⁶ The court also notes that defendants filed their petition to strike or open and for stay of execution nearly three months after Landlords had filed their praecipe for writ of execution. The untimely petition by itself precludes striking or opening the confessed judgment. Magee v. J.G. Wentworth & Co., Inc., 761 A.2d 159, 161 (Pa. Super. 2000) (“under the ... rules, timely filing of the petition to strike and/or open means within thirty days from a notice of execution, which need not be timely at all.”) “Unless the defendant can demonstrate that there were compelling reasons for the delay, a petition not timely filed shall be denied.” Pa. R.C.P. 2959(a)(3). In this case, nothing in the record shows that defendants articulated any compelling reasons for their untimely filing.