

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

EFB REAL ESTATE INVESTMENT, LLC

Plaintiffs

v.

KEVIN M. CHIN, D.D.S *et al.*

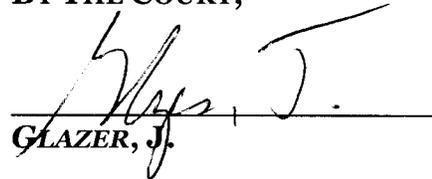
Defendants

: May Term, 2016
:
: Case No. 00200
:
: Commerce Program
:
:
: Control No. 16060305

ORDER

AND NOW, this 28th day of June, 2016, upon consideration of the petition to strike or open judgment by confession filed by defendants, the response in opposition filed by plaintiff, and the respective *memoranda* of law, it is **ORDERED** that the petition to Strike is **GRANTED** and judgment by confession is **STRICKEN**.

BY THE COURT,


GLAZER, J.

DOCKETED

JUN 28 2016

R. POSTELL
COMMERCE PROGRAM

Efb Real Estate Investm-ORDRF



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MEMORANDUM OPINION

The petition to strike judgment by confession requires the court to determine whether a direct relation exists between the signatures executed by Lessees under a commercial lease, and the warrant-of-attorney provisions therein. For the reasons below, the court finds that there is not direct relation between Lessees’ signatures and the warrant-of-attorney provisions. The judgment by confession is stricken.

Plaintiff EFB Real Estate Investment, LLC (“Lessor”), owns property located at 9733—35 Bustleton Avenue, in Philadelphia, Pennsylvania (the “Premises”). Defendants comprise doctors of dental surgery and their respective dental practices. Defendants are “Lessees” at the afore-mentioned Premises.

On November 11, 2012, Lessor’s predecessor-in-interest leased the Premises to Tenants pursuant to an OFFICE SPACE LEASE AGREEMENT (the “Lease”).¹ Below is provision No. 18 of the Lease, found at page 6 thereof. This provision states in pertinent

¹ OFFICE SPACE LEASE AGREEMENT, Exhibit A to Landlord’s complaint-in-confession-of-judgment.

part:

18. Default. If after written notice to Lessees and failure to cure within twenty (20) days,

(a)....

(b)....

(c)....

(d)....

(i)....

(ii)....

(iii)....

(iv) For value received and upon the occurrence of an event of default hereunder, Lessee does hereby empower any attorney of any court or [sic] record within the Commonwealth of Pennsylvania, to appear for Lessee and with or without complaint filed, confess judgment against Lessee and in favor of Lessor, its successors or assigns, ... for the sum due by reason of any breach of covenant or condition broken by Lessee, with costs of suit and attorney's commissions of ten (10%) percent for collection, and forthwith issue a writ or writs of execution thereon with release of all errors and without stay of execution.²

On July 2013, Lessor's predecessor-in-interest and Lessees entered into an ADDENDUM TO THE LEASE. Pursuant to the addendum, Lessees relinquished any right of first refusal to acquire the premises.³ The addendum made no reference to the warrant-of-attorney provision contained in the original Lease.⁴

On December 22, 2014, the same parties executed an amendment to the Lease. The amendment made no reference to the warrant-of-attorney provision contained on the original document.⁵

² Id. Provision 18(d)(v), found immediately below the afore-quoted language, contains a similar warrant-of-attorney for possession of the Premises.

³ ADDENDUM TO THE LEASE, Exhibit B to the petition to strike or open confessed judgment.

⁴ Id.

⁵ LEASE AMENDMENT, Exhibit C to the petition to strike or open confessed judgment.

On May 7, 2015, Lessor received assignment of all rights under the Lease from its predecessor-in-interest.⁶

On May 2, 2016, Lessor confessed judgment against Lessees. The complaint-in-confession-of-judgment avers that Lessees vacated the Premises in breach of the Lease. Specifically, Lessor avers that Lessees acquired a nearby property with the intent of moving their dentistry businesses thereto, then vacated the Premises by adducing a pretext –namely, by mounting “a campaign of various complaints regarding” a certain “illegal activity” which is allegedly taking place in a portion of the Premises leased to a different tenant.⁷

On June 2, 2016, Lessees filed the instant petition to strike or open the confessed judgment. The petition to strike avers that the record contains a fatal flaw: the warrant-of-attorney provision is inconspicuous and Lessees’ signature at the bottom of the Lease bears no direct relation to that provision; therefore, the complaint-in-confession-of-judgment should be stricken.⁸ In the alternative, Lessees’ petition seeks to open the judgment on the legal theory of nuisance. Lessees aver that the portion of the building leased to a different tenant is currently used “under the guise of a wellness center ... but [is] ... akin to a brothel.”⁹ According to Lessees, their dental practice is unable to advertise online because an online search of their location yields images of “unclad staff and allusions to [sexual] services provided.”¹⁰ According to Lessees, this and other forms of related nuisance require at a minimum that the confessed judgment be

⁶ ASSIGNMENT OF LEASE, Exhibit D to the petition to strike or open confessed judgment.

⁷ Complaint-in-confession-of-Judgment, ¶¶ 11–19.

⁸ Petition to strike, ¶¶ 40–44.

⁹ Petition to open, ¶55.

¹⁰ *Id.*, ¶ 57.

opened.¹¹

In Pennsylvania—

[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.¹²

It is a firmly established rule of construction in the case of warrants of attorney to confess judgments that the authority thus given must be clear, explicit and strictly construed, that if doubt exists it must be resolved against the party in whose favor the warrant is given, and that all proceedings thereunder must be within the strict letter of the warrant. If the authority to enter judgment by confession on a warrant of attorney is not strictly followed, the judgment will be stricken.¹³

A warrant of attorney to confess judgment must be self-sustaining and to be self-sustaining the warrant must be in writing and signed by the person to be bound by it. **The requisite signature must bear a direct relation to the warrant of attorney** and may not be implied.¹⁴

In this case, the Lease between Lessor and Lessees is a nine-page document. Provision 18 of the Lease, found at page 6, begins with a bolded heading that reads “**Default**”; however, the bolded heading and the body thereunder are printed in very minute type, and the body itself is not bolded. The body of Provision 18 is also subdivided in various parts and sub—parts. Specifically, the warrant-of-attorney is

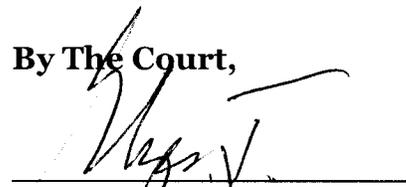
¹¹ *Id.*, ¶¶ 58–64.

¹² *Fourtees Co. v. Sterling Equip. Corp.*, 363 A.2d 1229, 1232 (Pa. Super. 1976).

¹³ *Dime Bank v. Andrews*, 115 A.3d 358, 364 (Pa. 2015).

¹⁴ *L. B. Foster Co. v. Tri-W Const. Co.*, 186 A.2d 18, 20 (Pa. 1962) (emphasis supplied). In *Foster*, the Pennsylvania Superior Court affirmed the trial court’s order striking the confessed judgment originally entered by a rental equipment company. In the Opinion, the Superior Court found *inter alia* that the agreements in question did not include on their face a warrant-of-attorney, and that the language evincing the existence of such a warrant was contained in paragraphs set-off by headings which failed to make any reference to the warrant. The Superior Court concluded that “*a warrant of attorney to confess judgment is not to be foisted upon anyone by implication or by general and nonspecific reference.*” *Id.*, 186 A.2d at 20 (Pa. Super. 1962).

found in the fourth part, fourth sub—part, of this minutely-typed provision.¹⁵ The signature of Lessees appears on page 9 of a document, at the end of thirteen additional provisions, most of which are also minutely typed.¹⁶ The entire document seems to have been produced by a cut-and-paste method, and the random, inexplicable changes in font sizes therein give a confusing appearance to the entire document. Based on the foregoing, the court finds that the Lessees’ signature fails to bear a direct relation to the remote, minute and inconspicuous language of the warrant-of-attorney, and for this reason the petition to strike is granted and the confessed judgment is stricken.¹⁷ Since the petition to strike is granted, the court shall not address the merits of Lessees’ petition to open judgment by confession.

By The Court,


Glazer, J.

¹⁵ OFFICE SPACE LEASE AGREEMENT, Exhibit A to Landlord’s complaint-in-confession-of-judgment, Provision 18.

¹⁶ Id.

¹⁷ The court notes that 13 Pa. C.S.A. § 1201(10) of the Commercial Code defines the term “Conspicuous” as follows:

“Conspicuous.” With reference to a term, means so written, displayed or presented that a reasonable person against which it is to operate ought to have noticed it. **Whether a term is “conspicuous” or not is a decision for the court.** Conspicuous terms include the following:

- (i) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size.
- (ii) Language in the body of a record or display in larger type than the surrounding text, in contrasting type, font or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language. 13 Pa. Stat. and Cons. Stat. Ann. § 1201 (2016) (emphasis supplied).