

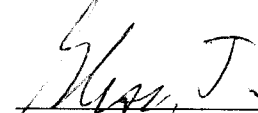
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

SEMYA 1, LLC, : March Term 2017
Plaintiff, :
v. : No. 3429
SHANE LECKERMAN, :
Defendant. : Commerce Program
:
: Control Number 17051970

ORDER

AND NOW, this 13th day of June, 2017, upon consideration of Defendant Shane Leckerman's Petition to Strike Off or Open Confessed Judgment, Plaintiff's response in opposition and the attached Opinion, it hereby is **ORDERED** that the Petition to Strike Off and Open Confessed Judgment is **Denied**.

BY THE COURT,



GLAZER, J.

Semya 1, Llc Vs Leckerm-ORDRC



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R. POSTELL
COMMERCE PROGRAM

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
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	Plaintiff,	:
v.	:	No. 3429
SHANE LECKERMAN,	:	
	Defendant.	: Commerce Program
	:	
	:	Control Number 17051970

OPINION

Presently before the court is defendant Shane Leckerman’s petition to strike off and open confessed judgment. For the reasons discussed below, the petition is denied.

Plaintiff Semya 1, LLC (“landlord”) is the landlord of the property located at 11880 Bustleton Avenue, Philadelphia, Pa. 19116. Defendant Shane Leckerman (“tenant”) was the tenant at said property. On July 19, 2017, tenant signed a lease to rent office space, #402, at 11880 Bustleton Ave., Philadelphia, Pa. 19116 for term of one year beginning August 1, 2016 and ending August 1, 2017. After the lease was signed, tenant made a series of complaints to landlord regarding the condition of the demised space. On August 5, 2016, the check tendered by tenant on July 29, 2016, as payment for deposit, security and first month rent, on the property was returned. Thereafter, tenant did not make any further payments and abandoned the premises. On March 2017, landlord confessed judgment against tenant in the amount of \$8,968.68. Tenant now seeks to open and strike the judgment.

A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record and may be granted only for a fatal defect or irregularity appearing on the face of the record.¹ In considering the merits of a petition to strike, the court will be limited to a review

¹ *Bethlehem Steel Corporation v. Tri State Industries, Inc.*, 290 Pa. Super. 461, 434 A.2d 1236 (1981).

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. Matters *dehors* the record filed by the party in whose favor the warrant is given will not be considered. If the record is self-sustaining, the judgment will not be stricken.²

In the case *sub judice*, tenant relies upon the following arguments in support of its petition to strike: 1) failure to allege how defendant defaulted, 2) failure to move for judgment thirty (30) days after providing the tenant with an invoice, 3) tenant's annual income of less than \$10,000 and 4) the inconspicuous confession judgment provision. Each of these arguments lack merit. First, an averment of default and how tenant defaulted is set forth within the complaint and is averred in a separate document entitled "averment of default" attached as an exhibit to the complaint in confession of judgment. Second, a review of the record demonstrates that landlord did comply with the requirement of filing for complaint in confession of judgment thirty days after invoicing tenant.³ Third, the lease at issue is a commercial lease and no income requirement exists.⁴ Lastly, the confessed judgment provision is conspicuous.⁵

² *Franklin Interiors v. Wall of Fame Management Company, Inc.*, 510 Pa. 597, 511 A.2d 761 (1986).

³ See, Exhibit "Shane 4, page 3" attached to tenant's petition to strike off or open judgment.

⁴ Tenant argues that landlord is precluded from filing the complaint in confession of judgment because defendant has an income of less than \$10,000 per year. While tenant does not cite any authority for this proposition, it appears as though he is relying upon *Swarb v. Lennox*, 314 F.Supp. 1091 (E.D.Pa.1972), affirmed 401 U.S. 991, 91 S.Ct. 1220, 28 L.Ed.2d 529. In that case, the United States District Court for the Eastern District of Pennsylvania ruled that no judgment could be entered on a confession of judgment document unless it is first shown that the signers have intentionally, and with understanding, voluntarily waived rights lost in the confession clause. In *Swarb*, "[t]he Supreme Court of the United States [] held that there is a presumption that the warrant of attorney was not knowingly granted *in consumer financing and lease transactions* where the debtor has an income of less than \$ 10,000; in such cases, the creditor must overcome that presumption by showing that the warrant was voluntarily and intelligently given." Here, the lease at issue is a commercial lease. Accordingly, the *Swarb* decision affords no basis upon which to grant tenants relief. See, *Rimco Properties, Inc. v. Minik*, 2013 WL 11253834, at *5 (Pa. Super. Ct. Oct. 4, 2013).

⁵ The landlord's ability to confess judgment appears in identical paragraphs found in 14.06 and 24.09 of the lease. While 14.06 is small type and not set out, paragraph 24.09 is in larger font and in bold. The provision is conspicuous.

Tenant's petition to open the judgment also fails. A confessed judgment may be opened "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."⁶ A judgment of confession will be opened if "a petitioner seeking relief therefrom produces evidence which in a jury trial would require issues to be submitted to a jury."⁷ The standard of sufficiency here is similar to the standard for a directed verdict, in that the facts must be viewed most favorably to the moving party, the evidence and proper inferences in support of the defense raised must be accepted as true, and all adverse allegations must be rejected.⁸

Tenant fails to allege a meritorious defense. Tenant argues that the judgment should be opened because a valid enforceable contract between the landlord and tenant did not exist, landlord breached the agreement by failing to provide a clean space with cell service reception and that tenant never took possession of the premises at any time. A valid contract did exist between tenant and landlord which became effective on July 19, 2016. While landlord did not sign the lease, landlord did accept tenant's check in the amount of \$950.00 dated July 29, 2017 for the first month rent and security. In accordance with the terms of the lease, tenant received and accepted possession of the premises at the time of execution of the lease.⁹ Moreover, despite tenant's complaint regarding the failure to provide a clean space and cell phone capability and demands to remediate, the landlord had no duty to remediate under the lease. Article XIII Lessee's Acceptance of Condition of Premises states clearly that the landlord "shall let the

⁶ *Neducsin v. Caplan*, 121 A.3d 498, 506 (2015), appeal denied, 131 A.3d 492 (Pa. 2016).

⁷ *Id* quoting *Foerst v. Rotkis*, 244 Pa.Super. 447, 368 A.2d 805, 807-08 (1976).

⁸ *Id* citing *Greenwood v. Kadoich*, 239 Pa.Super. 372, 357 A.2d 604, 606 (1976).

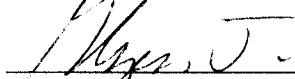
⁹ Lease ¶ 1.05.

Premises “AS IS” condition” and is “under no duty to make repairs, alterations, or decorations at the inception of this Lease...” Based on the foregoing, the landlord did not breach the lease and tenant’s petition to open the judgment based on meritorious defenses is denied.¹⁰

CONCLUSION

Based on the foregoing, the petition to strike off and/or open confessed judgment is denied.

BY THE COURT,



GLAZER, J.

¹⁰ Based on the evidence, it appears that tenant, experiencing renter’s remorse, breached the lease by placing a stop payment on the \$950.00 check for security and first month rent. See Exhibit “B” to landlord’s response to tenant’s petition to open and strike.