

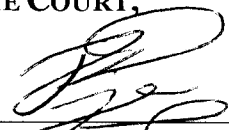
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION—CIVIL

2300 CHESTNUT ASSOCIATES, L.P.	:	May Term, 2017
<i>Plaintiff</i>	:	Case No. 02770
	:	
v.	:	Commerce Program
	:	
SAXBYS COFFEE, INC.	:	
	:	
<i>Defendant</i>	:	Control No.17053330

ORDER

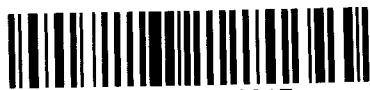
AND NOW, this 27th day of June, 2017, upon consideration of the petition to strike judgment by confession filed by defendant Saxbys Coffee, Inc., the response in opposition filed by plaintiff 2300 Chestnut Associates, L.P., and the respective *memoranda* of law, it is **ORDERED** that the petition to strike is **GRANTED AND THE JUDGMENT BY CONFESSION IS STRICKEN.**

BY THE COURT,



RAMY I. DJERASSI, J.

2300 Chestnut Associate-ORDRF



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R. POSTELL
COMMERCE PROGRAM

MEMORANDUM OPINION

The petition to strike judgment by confession requires this Court to determine whether a warrant-of-attorney contained in a Lease is successfully incorporated into a subsequent amendment, where such amendment fails to either specifically reference the warrant-of-attorney, or republish the contents thereof. For the reasons below, the Court finds that a warrant-of-attorney provision is not successfully incorporated in a contractual amendment that fails to specifically reference the original warrant-of-attorney, or fails to republish the contents thereof.

BACKGROUND

Plaintiff is 2300 Chestnut Associates, L.P. (“Landlord”), a New Jersey company that owns real property located at 2300 Chestnut Street, in Philadelphia Pennsylvania (the “Premises”). Defendant is Saxby’s Coffee, Inc. (“Tenant”), a corporation with an address at 2300 Chestnut Street, in Philadelphia Pennsylvania. On November 10, 2014, Landlord and Tenant entered into an Agreement of Lease (the “Lease”), whereby Tenant acquired a leasehold interest in a portion of the Premises. The Lease contains an appendix titled Confession of Judgment Rider (the “Rider”). The Rider states that upon the occurrence of an event of default, Tenant—

irrevocably authorizes and empowers ... Landlord ...
to appear for Tenant and confess or otherwise enter
judgment in ejection for possession of the Premises
against Tenant....¹

¹ Confession-of-Judgment Rider attached to the Agreement of Lease, Exhibit A to the complaint.

Landlord and Tenant subsequently amended the Lease on three separate occasions. Each of the three amendments contained language reaffirming all the provisions in the original Lease, except for the provisions expressly modified under the respective amendments. For example, the third amendment specifically states that—

[t]he parties agree that except for the First Amendment, Second Amendment, and this Third Amendment, the Agreement of Lease entered into on November 10, 2014 has not been modified or otherwise altered. The parties expressly ratify and reaffirm the Lease as modified by this Third Amendment.²

On May 17, 2017, Landlord confessed judgment in ejectment against Tenant. The complaint-in-confession-of-judgment avers *inter alia* that Tenant breached the Lease by causing the freight elevator within the Premises to malfunction. In addition, the complaint avers that Tenant breached the Lease by unnecessarily summoning the fire department, causing certain fire doors to be damaged beyond repair upon intervention by the fire department, and by violating security protocols contemplated under the Lease.³

On May 26, 2017, Tenant filed the instant petition to strike or open the confession of judgment and for a stay of execution. In the petition, Tenant advances a number of challenges to the confession of judgment, one of which asserts that the judgment is fatally flawed because the three subsequent

² Third Amendment to Lease, dated January 25, 2017, Exhibit A to the complaint.

³ Complaint, ¶¶ 44–53.

amendments to the Lease “lack any confession of judgment language, nor do they specifically incorporate the confession of judgment clause by reference.”⁴

On May 30, 2017, this Court issued a Rule Returnable requiring Landlord to file a timely answer to the petition to strike or open, and staying execution proceedings, if any. On June 12, 2017, Landlord timely filed its response in opposition to the petition to strike or open. The issues presented by the respective filings are now ripe for a resolution.

DISCUSSION

Under Pennsylvania law—

[a] petition to strike a judgment is a common-law proceeding that 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.... An order of the court striking a judgment annuls the original judgment and the parties are left as if no judgment had been entered....

In assessing whether there are fatal defects on the face of the record a court may only look at what was in the record when the judgment was entered.⁵

According to Tenant’s petition, the judgment is fatally flawed because the three amendments fail to specifically reference or actually republish the warrant of attorney contained in the Rider to the original Lease.⁶ Tenant concludes that Landlord is not empowered to confess judgment because under Pennsylvania law, a warrant of attorney in the original Lease may not be successfully incorporated into any subsequent lease amendments by a mere general

⁴ Petition to strike, ¶ 16.

⁵ Dime Bank v. Andrews, 115 A.3d 358, 364 (Pa. Super. 2015).

⁶ Petition to strike, ¶ 16.

reference.⁷ Opposing this argument, Landlord argues that it “has not confessed judgment ... under any of the three ... so-called ‘Amendments’ but rather under the Rider entitled [*sic*] **Confession of Judgment**,” which specifically authorizes Landlord to enter judgment by confession.⁸ Landlord’s argument is rejected.

In Pennsylvania, the law

requires a clearer manifestation of assent to sustain a warrant of attorney to confess judgment than it does to sustain a normal contract provision ... and will not presume ... an intent of the parties [to an amended lease] to perpetuate [an original] warrant of attorney.⁹

In Scott v. 1523 Walnut Corp., (hereinafter, “Scott”), “Lessor” leased in 1950 certain premises to “Lessee,” pursuant to a lease agreement containing a warrant-of-attorney.¹⁰ Over the years, Lessee formed a corporation (the “New Lessee”) which assumed the leasehold interest; meanwhile, Lessor transferred its interest in the property to a new owner (the “New Lessor”). In 1972, following several modifications to the lease, the New Lessor and New Lessee entered into one last agreement which extended the term of the lease for ten additional years.¹¹ This new agreement did not contain a warrant-of-attorney; rather, it contained language purporting to adopt or incorporate the language from the original warrant-of-attorney by mere general ratification –that is, through the use of the following language:

⁷ Id.

⁸ Landlord’s answer in opposition to Tenant’s petition to strike, ¶ 16.

⁹ Scott v. 1532 Walnut Corp., 447 A.2d 951, 956 (Pa. Super.)

¹⁰ Id.

¹¹ Id. at 954.

[e]xcept as modified hereby, the terms of the Lease Agreement dated July 1, 1950, as heretofore amended, shall remain in full force and effect.¹²

The New Lessor confessed judgment against the New Lessee, and the New Lessee filed a petition to strike or open the judgment. The trial court denied the petition and the New Lessee appealed. On appeal, the Pennsylvania Superior Court was asked to determine whether—

the warrants of attorney to confess judgment ... contained in lease and assignment documents entered into in 1950, were valid and binding upon the Appellant as a result of a renewal document signed in 1972.¹³

Reversing the lower court's decision, which had denied the petition to strike or open, the Pennsylvania Superior Court stated that—

[f]irst, we are not permitted to presume that it was the intent of the parties, in their various agreements up through and including the 1972 agreement, to perpetuate the 1950 warrant of attorney....

Next, we may not treat the *cognovit* clause in the 1950 lease as a binding part of the 1972 agreement, as it was only in an appended document, and thus bore no direct relation to the signature of the Appellant's representative on the 1972 document....

Finally, we recognize that the mere general reference in the 1972 document to the July 1, 1950 lease is insufficient to bind the Appellant to the warrant of attorney clause set forth in that lease.¹⁴

The facts in this case are sufficiently similar to those in Scott. First, the parties to this action executed a Lease dated November 10, 2014. The Lease

¹² Id.

¹³ Id. at 953.

¹⁴ Id. at 956–957.

contained a clearly-labeled confession-of-judgment Rider which empowered Landlord to confess judgment in ejection against Tenant.¹⁵ However, the parties subsequently executed three separate amendments to the Lease, on April 1, 2015, September 9, 2015, and January 25, 2017, which did not republish or specifically reference the warrant-of-attorney from the original confession-of-judgment Rider.¹⁶ As in Scott, the three amendments herein seek to adopt and confirm by mere general reference all of the terms and conditions of each of the original loan documents, including the original warrant-of-attorney. Such a general reference in Scott, however, was insufficient to bind a party to the original warrant-of-attorney, and is insufficient in this case to achieve the same result.¹⁷ Stated another way, there is no direct relation between the original warrant-of-attorney contained in the Rider to the Lease, and the signatures executed by Tenant's representative at the bottom of each of the three Amendments.¹⁸

In conclusion, Landlord's judgment entered by confession is void. The judgment is void because the generic language of incorporation in the Third Amendment is insufficient to overcome the standard which in this case requires Tenant to give "a clearer manifestation of assent" to the use of a warrant-of-

¹⁵ Confession-of-judgment Rider, Exhibit A to the complaint of Landlord.

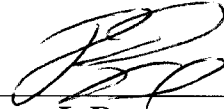
¹⁶ Id.

¹⁷ See Ferrick v. Bianchini, 69 A.3d 642 (Pa. Super. 2013) (finding that a *cognovit* clause was properly **republished** in an amended contract because such a contract "specifically mentioned" such a clause: "[t]he clause in question was clear and conspicuous in the [original agreement] and assignment as well as mentioned specifically in the amendment." Id. at 650-651.

¹⁸ "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.**" L. B. Foster Co. v. Tri-W Const. Co., 186 A.2d 18, 20 (Pa. 1962) (emphasis supplied).

attorney.¹⁹ For this reason, the petition to strike is granted and Landlord's judgment by confession is stricken.

BY THE COURT,



RAMY I. DJERASSI, J.

¹⁹ Id. In addition, “where the court lack[s] jurisdiction, as it does when it enters a void confessed judgment, **the court cannot enter a valid judgment.**” M & P Mgmt., L.P. v. Williams, 937 A.2d 394, 401 (Pa. 2007) (emphasis supplied). A void judgment is a “mere blur on the record, and which is the duty of the court of its own motion to strike off, whenever its attention is called to it.” Id.