

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PLYMOUTH MEETING LIMITED
PARTNERSHIP BY ITS AGENT PREIT
SERVICES LLC

Appellee

v.

SHAHID MAHMOOD

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1397 EDA 2012

Appeal from the Order Entered April 18, 2012
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 10-20187

PR PLYMOUTH MEETING LIMITED
PARTNERSHIP BY ITS AGENT: PREIT
SERVICES, LLC

Appellee

v.

SHAHID MAHMOOD T/A THE PERFUME
SHOPPE AND SUMAIRA AHMED T/A THE
PERFUME SHOPPE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1497 EDA 2012

Appeal from the Order Dated April 18, 2012
In the Court of Common Pleas of Montgomery County
Civil Division at No(s): 10-20187

BEFORE: BOWES, J., GANTMAN, J., and MUSMANN, J.

MEMORANDUM BY GANTMAN, J.:

Filed: March 5, 2013

Appellant, Shahid Mahmood, appeals from the orders entered in the Montgomery County Court of Common Pleas, denying the petitions to strike and/or open a confessed judgment. We affirm.

The trial court set forth the relevant facts and procedural history as follows:

On October 30, 2008, [Landlord] and [Tenants]^[1] entered into a twenty-four month lease agreement for commercial space located at the Plymouth Meeting Mall, 500 W. Germantown Pike, Plymouth Meeting, Pennsylvania 19462. The lease agreement expired March 31, 2011.

Pursuant to the lease agreement, [Tenants] were responsible for a monthly rent payment of \$2,916.73, utilities and other charges set forth in the agreement, payable on the first day of every month. [Tenants] were responsible for late fees of five cents for every overdue dollar, pursuant to section 4.08 of the lease agreement.

[Tenants] defaulted under the terms of their agreement for failing to pay the monthly rent and associated fees as well as prematurely vacating the premises in violation of section 16.01(c) of the lease agreement. As of June 17, 2010, [Tenants'] balance in unpaid rent, fees and penalties totaled \$14,239.99. [Landlord] filed a confession of judgment against [Tenants] on July 15, 2010, seeking unpaid rent and associated fees, penalty fees, accelerated rent, and attorneys' fees totaling \$42,316.38.

On August 16, 2010 [Tenants] filed a petition for relief from judgment entered by confession. Subsequently, on August 25, 2010, [Appellant] filed a second motion to strike and/or open confessed judgment raising new

¹ Appellant and Sumaria Ahmed executed the Lease as Tenants. Appellant is the only party to this appeal. "Tenants" refers to Appellant and Sumaria Ahmed collectively.

defenses, in violation of the Pennsylvania Rules of Civil Procedure.

(Trial Court Opinion, dated July 17, 2012, at 1-2). On April 18, 2012, the court denied relief. Appellant timely filed a notice of appeal on May 17, 2012. The court did not order Appellant to file a concise statement of errors complained on appeal pursuant to Pa.R.A.P. 1925(b).

Appellant raises one issue for our review:

IS IT AN ERROR OF LAW NOT TO REFER A CONFESSION OF JUDGMENT TO A JURY WHEN [APPELLANT'S] NAME IS FORGED ON A CONTRACT AND WITNESSES ADMIT THAT [APPELLANT] IS A VICTIM?

(Appellant's Brief at 3).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Bernard Moore, we conclude Appellant's issue merits no relief. The trial court opinion properly disposes of the question presented. (**See** Trial Court Opinion, dated July 17, 2012, at 2-3) (finding: first petition to strike failed to point to specific defect in record; Appellant's filing of second petition to strike, where he raised forgery claim, violated procedural rule requiring all defenses to be set forth in single petition; failure to comply with Pa.R.C.P. 2959(a)(1) waived forgery defense; moreover, Appellant admitted signing lease, and his forgery claim is baseless). Accordingly, we affirm on the basis of the trial court opinion.

Orders affirmed.

(Handwritten initials)

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL DIVISION

PLYMOUTH MEETING LIMITED	:	
PARTNERSHIP BY ITS AGENT	:	2010-20187
PREIT SERVICES LLC,	:	
Plaintiff	:	Consolidated Appeals:
	:	1497 E.D.A. 2012
v.	:	1397 E.D.A. 2012
	:	
SHAHID MAHMOOD t/a THE	:	
PERFUME SHOPPE, and SUMAIRA	:	
AHMED t/a THE PERFUME SHOPPE,	:	
Defendants.	:	

OPINION

Moore, J.

July 17, 2012

I. FACTS AND PROCEDURAL HISTORY

On October 30, 2008, Plaintiff and Defendants entered into a twenty-four month lease agreement for commercial space located at the Plymouth Meeting Mall, 500 W. Germantown Pike, Plymouth Meeting, Pennsylvania 19462. The lease agreement expired March 31, 2011.

Pursuant to the lease agreement, the Defendants were responsible for a monthly rent payment of \$2,916.73, utilities and other charges set forth in the agreement, payable on the first day of every month. Defendants were responsible for late fees of five cents for every overdue dollar, pursuant to section 4.08 of the lease agreement.

The Defendants defaulted under the terms of their agreement for failing to pay the monthly rent and associated fees as well as prematurely vacating the premises in violation of section 16.01(c) of the lease agreement. As of June 17, 2010, the Defendants' balance in unpaid rent, fees and penalties totaled \$14,239.99. Plaintiff filed

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a confession of judgment against Defendants, Mahmood and Ahmed on July 15, 2010 seeking unpaid rent and associated fees, penalty fees, accelerated rent, and attorneys' fees totaling \$42,316.38.

On August 16, 2010 Defendants filed a petition for relief from judgment entered by confession. Subsequently, on August 25, 2010, Defendant Mahmood filed a second motion to strike and/or open confessed judgment raising new defenses, in violation of the Pennsylvania Rules of Civil Procedure.

II. DISCUSSION

In determining whether to strike a judgment the Court is limited to consideration of matters appearing on the face of the record. *Van Arkel & Moss Prop., Inc. v. Kendore, Ltd.*, 419 A.2d 593 (Pa. Super. 1980). A motion to strike a judgment operates as a demurrer to the record and will only be granted if a fatal defect or irregularity appears on the face of the record or judgment. *DeCoatsworth v. Jones*, 629 A.2d 792 (Pa. 1994).

In the original petition, the Defendants failed to point to a specific defect on the record or on the face of the judgment. Not only is a defect not alleged in the August 16, 2010 petition, it is clear from the record and the face of the judgment that a defect does not exist.

A petition to open judgment requires a party to allege a meritorious defense and present sufficient evidence to require submission of evidence to a jury. *Bell Federal Savings & Loan Ass'n. of Bellevue v. Laura Lanes, Inc.*, 292 Pa. Super. 395, 435 A.2d 1295 (1981); *Empree v. Meyers*, 440 Pa. 430, 260 A.2d 731 (1979). A trial court's determination to open a judgment will not be grounds for reversal on appeal unless the

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trial court abused its discretion or committed an error of law. *Alba v. Urology Assoc. of Kingston*, 409 Pa. Super. 406, 598 A.2d 57, 58 (1991).

A party is required to assert all grounds for relief in a single petition, or the defense is waived.

Relief from a judgment by confession shall be sought by petition. Except as provided in subparagraph (2), all grounds for relief whether to strike off the judgment or to open it must be asserted in a single petition. The petition may be filed in the county in which the judgment was originally entered, in any county to which the judgment has been transferred or in any other county in which the sheriff has received a writ of execution directed to the sheriff to enforce the judgment . . . (c) A party waives all defenses and objections which are not included in the petition or answer. Pa. R. C. P. 2959(a)(1) – (c).

Plaintiff filed a confession of judgment against the Defendants Mahmood and Ahmed on July 15, 2010. Through counsel, Defendants filed a petition for relief from judgment entered by confession on August 16, 2010 which failed to allege any defect in the judgment or the record. Subsequently, on August 25, 2010, Defendant Mahmood improperly filed a second petition to strike judgment, in violation of Pa. R. Civ. P. 2959(a)(1). The second petition contained the additional defense of forgery. The forgery defense is waived because it was not included in the original petition to open/strike judgment.

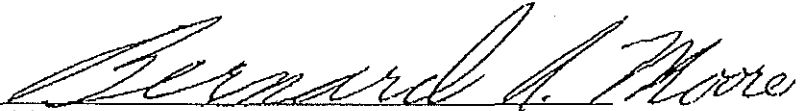
Furthermore, the allegations in the Petition for relief filed on August 16, 2010 admit that Defendant Mahmood executed, and was party to the lease. In paragraph 3(b) on the August 16, 2010 Petition, it is alleged that both Defendants relied in the language in the lease when both Defendants executed the lease. In addition, on May 25, 2010, Defendants' counsel represented that both owners executed the lease. See Exhibit B to Plaintiff's Response to Petition to Strike and/or Open Judgment.

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III. CONCLUSION

Accordingly, this Court's determination to deny Defendants' Petition to Strike and/or Open Judgment was proper and should be AFFIRMED.

BY THE COURT:


BERNARD A. MOORE, J.

Date: July 17, 2012
Cc: Dana S. Plon, Esq.
John O'Brien, Esq.