

No. 1-11-3271

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GEORGE GRIVAS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 M4 1101
)	
CARL MARK ROBINSON,)	Honorable
)	Cheryl D. Ingram,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment against defendant for \$42,000 following trial was not against manifest weight of the evidence. Defendant admitted at trial that he did not pay that sum as provided in an earlier agreed order that he admitted reflected the agreement of the parties. Defendant contracted with plaintiff, defended, and countersued in his own name rather than that of a limited liability company (LLC) that he argued at trial was the proper defendant.
- ¶ 2 This case arises out of a forcible entry and detainer action by plaintiff George Grivas against defendant Carl Robinson, in which defendant filed a countersuit regarding a contract for the sale of real property. Defendant appeals from a judgment, following trial, for plaintiff in the

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amount of \$42,000 plus costs, contending that the judgment is against the manifest weight of the evidence.

¶ 3 In July 2010, plaintiff filed a complaint seeking possession of specified premises and \$60,000 in rent due since February 1, 2010, plus costs. The complaint named defendant, personally, as the sole defendant.

¶ 4 Defendant was served with process in August 2010.

¶ 5 On August 16, 2010, the court entered an agreed order that defendant would pay plaintiff \$22,000 by August 9 and \$34,000 by September 24. The order also provided that defendant would pay a prorated portion of the \$8,000 rent for September 2010 by September 24, or the entire month's rent "if loan doesn't close by" that date. The order continued the case until October 4 for trial. In the order, the sums of \$22,000 and \$34,000 were handwritten substitutions for scratched-out typewritten sums. The provision for full rent for September 2010 after the 24th was also handwritten, and the continuance for trial was a handwritten substitute for typewritten language continuing the case for "status of compliance."

¶ 6 Defendant filed an appearance on August 27, 2010 – through counsel but in his own name – and answered the complaint, admitting that plaintiff was entitled to possession of the premises but denying both that he was unlawfully withholding possession of the premises and that he had rent due.

¶ 7 Defendant also filed a counter-complaint alleging that the parties entered into a contract for the sale of the premises, a tavern, under which defendant paid plaintiff \$110,000 in earnest money. However, plaintiff then made various knowingly-false misrepresentations upon which defendant relied: that the premises would be repaired, that plaintiff was the sole "titleholder" of the premises, that he would deposit the \$110,000 in an interest-bearing escrow account, and that defendant could operate the tavern under plaintiff's liquor license though this was contrary to state law and municipal ordinance. Defendant also alleged that plaintiff "grossly overvalued the

'inventory' located on the premises and refused to complete the sale" until defendant paid the insisted price. Defendant repeatedly requested that plaintiff provide proof of the escrow account, but he did not. Thus, defendant sought either an accounting of the \$110,000 earnest money or a judgment against plaintiff for that sum.

¶ 8 The counter-complaint was supported by attached copies of the sales contract and two earnest-money checks totaling \$110,000. While the contract named defendant and plaintiff personally as buyer and seller respectively, the checks were issued in the name of Hideaway Nightclub LLC ("the LLC"). One of the checks was a cashier's check naming the LLC as remitter, and the other check was issued by the LLC, signed by defendant, and provided his home address (where service of process had been made) as the address of the LLC.

¶ 9 In October 2010, plaintiff filed a motion for sanctions, alleging that defendant violated the agreed order of August 16 by not paying \$34,000 or \$8,000 rent by September 24, defendant's loan having failed to close by that date.

¶ 10 Plaintiff also filed a motion to dismiss the counterclaim, noting that in a forcible entry action, "no matter not germane to the distinctive purposes of the proceeding shall be introduced by joinder, counterclaim, or otherwise." 735 ILCS 5/9-106 (West 2010). Since the counterclaim did not seek possession of the premises, plaintiff argued, it is barred by section 9-106.

¶ 11 On October 18, 2010, the court entered an agreed order granting possession of the premises to plaintiff. Specifically, the court ordered that plaintiff "have and recover of and from the Defendant(s)" – naming defendant alone – possession of the premises. The court also gave defendant 21 days to respond to plaintiff's motions to dismiss and for sanctions, and continued the case for hearing thereon.

¶ 12 Defendant responded to the motion to dismiss, admitting that the issue of possession was resolved by the October 18 order but alleging that the counterclaim was still pending and thus the motion to dismiss should be denied.

¶ 13 Defendant also amended his counter-complaint to reiterate the original allegations (including naming plaintiff and defendant personally) and add a claim that the premises had been damaged by flooding in July 2010 but had not been fully cleaned until September 2010 and certain enumerated repairs and replacements remained unfinished despite defendant's demand to restore the premises to "its pre-flood condition."

¶ 14 Plaintiff filed a motion to dismiss the amended counter-complaint, arguing that the unamended allegations were based on a November 2009 contract that the parties had terminated and replaced with a July 2010 contract "under basically the same terms as the previous contract" with the \$110,000 earnest money continuing to serve as earnest money under the new contract. Plaintiff sought dismissal of the amended counter-complaint on the basis that it alleged misrepresentations contrary to the now-terminated November 2009 contract. Attached to the motion to dismiss was a July 2010 contract for the sale of the premises between defendant personally as buyer and plaintiff and Vasiliki Grivas as sellers.

¶ 15 Defendant responded to the motion to dismiss the amended counter-complaint, arguing that the July 2010 contract did not resolve the allegations based on the November 2009 contract. In an affidavit attached to the response, defendant averred that the negotiations for the July 2010 contract did not address the issues raised in the counterclaim.

¶ 16 On February 28, 2011, the court granted plaintiff's motion to dismiss the counter-complaint, also granting defendant 28 days to file an amendment. Leave to file an amended counter-complaint was extended on April 18 to May 23 with "no further extensions." There is no indication in the record that defendant filed an amended counter-complaint.

¶ 17 On July 12, 2011, trial was held.¹

¹While there is no transcript of the trial, the parties agreed to, and the trial court approved, a bystander's report of the trial. *See* Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005).

¶ 18 Plaintiff testified that he and defendant entered into an agreement in December 2009 to sell plaintiff's business at the premises, under which defendant would pay \$10,000 per month from December 2009. Defendant paid the first two monthly payments, and plaintiff accepted checks naming the LLC as payor. However, in February 2010, defendant paid only \$8,908.62, which plaintiff supported with a copy of the check. Plaintiff returned this check and demanded payment of the full \$10,000 but defendant did not pay. Plaintiff served five-day notice on June 16, 2010, but defendant failed to pay \$50,000 as stated in the notice, so plaintiff brought the instant action. Plaintiff admitted that, as of the filing of this action, he "was not the fee simple owner" of the premises. The parties then agreed to reduce the monthly payment to \$8,000 and that defendant would owe plaintiff \$56,000 for the period of February 1 to September 30, 2010; the agreed order of August 18, 2010,² accurately memorialized this agreement. While defendant paid \$22,000 pursuant to the agreed order, he failed to pay the balance due of \$42,000 or "close his loan" by September 24, 2010, as provided in the agreed order.

¶ 19 Defendant testified that, at all times when he dealt with plaintiff, he acted as a member of the LLC, which was in good standing and authorized to conduct business in this State. He never acted in his personal capacity, and all payments were made by the LLC. Defendant admitted that the agreed order accurately reflected the parties' agreement and that he did not pay \$42,000 as provided in that order. Defendant did not testify either that he did not agree to that order or that counsel signed the agreed order without authority or defendant's consent.

¶ 20 The court entered judgment for plaintiff and against defendant personally in the amount of \$42,000 plus \$489 in costs. In doing so, the court ruled that plaintiff waived his right to claim that he was not the appropriate defendant. The court did not rule upon defendant's assertions that plaintiff was not the proper plaintiff or that he, defendant, was not the proper defendant.

²As stated above, the agreed order in question was issued August 16.

¶ 21 Defendant filed a post-trial motion. He noted the court's findings that plaintiff lacked standing and defendant was not the appropriate defendant, and that defendant waived "certain issues" by participating in an agreed order. He argued that the court should enter judgment against the LLC or vacate the judgment for plaintiff as he did not own the premises. The court denied the post-trial motion on September 27, 2011, and this appeal timely followed.

¶ 22 Before proceeding further, we note that plaintiff has not filed an appellee's brief. We shall consider the appeal on defendant's brief alone. *Village of Richmond v. Magee*, 407 Ill. App. 3d 560, 565 (2011), citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 23 On appeal, defendant contends that the judgment against him is against the manifest weight of the evidence. He argues that the evidence is "strong and convincing" that the LLC, rather than defendant himself, was in possession of the premises and owed plaintiff therefor. He also argues that the August 16th agreed order did not resolve all pending issues between the parties and should not constitute a waiver by defendant as the trial court found.

¶ 24 This court will not reverse a civil judgment following trial unless it was against the manifest weight of the evidence. *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478,

¶ 14. A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or the finding appears to be arbitrary, unreasonable, or not based on the evidence, so that this court should not overturn a trial court's findings merely because we do not agree or because we might have reached a different conclusion had we been the trier of fact. *Id.*

¶ 25 Here, there are two key facts or circumstances in place before trial that govern much of this case. The first is that defendant had no counterclaim pending at the time of trial, so that the trial concerned the allegations in the complaint as focused by the subsequent agreed orders regarding money due for, and possession of, the premises. The second is that, except for the checks issued by or on behalf of the LLC, there was no indication on the record until trial that

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defendant was acting for any person or entity other than himself. Two contracts with plaintiff regarding the premises named defendant, not the LLC, as the buyer of the premises and the latter was signed by defendant in his own name, not on behalf of the LLC. He defended the case in his own name and did not interpose a defense that he was not the tenant or occupant of the premises. He – not the LLC – countersued on the contracts. The agreed order of August 16 was to the effect that defendant – not the LLC – owed plaintiff certain amounts and the agreed order of October 18 was that plaintiff would recover possession of the premises from defendant.

¶ 26 Moreover, the parties both testified at trial that the August 16th agreed order accurately reflected the agreement of the parties and that defendant did not pay \$42,000 as that order provided. The undisputed evidence, read in the light of the aforementioned circumstances, amply supports the court's judgment that defendant, rather than the LLC, owed plaintiff \$42,000. Any mischaracterization by the trial court that its conclusion rested upon waiver does not render that conclusion or the resulting judgment erroneous.

¶ 27 Accordingly, the judgment of the circuit court is affirmed.

¶ 28 Affirmed.