FIRST DIVISION
June 20, 2016

No. 1-15-1995
2016 IL App (1st) 151995-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CORUS BANK, U.T. #1156, LOUIS A. PALIVOS, Nominee, Plaintiffs-Appellees, Cross-Appellants, v. BGB, LLC (ERWIN LAW, LLC and DANIEL A. HAWKINS, attorneys for Defendant), BANK, N.A., as purchaser of the loans and other Defendant-Appellants, Cross-Appellants, CHICAGO TITLE LAND TRUST COMPANY, U.T. #CT90001156, Successor to Cole Taylor Bank, U.T. #1156, Successor to Corus Bank, U.T. #1156, Louis A. Palivos, Nominee, Plaintiff-Appellee, v. TRATTORIA TRULLO, LLC, (ERWIN LAW, LLC, and DANIEL A. HAWKINS, attorneys for Defendant), Defendants-Appellants.	Appeal from the Circuit Court of Cook County. 10 M2 00685 & 10 M2 002768 (Cons.) Honorable Robert G. Fein, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

Held: Trial court's imposition of sanctions was appropriate where defendants filed a petition to intervene without conducting a reasonable investigation of the facts; and trial court's award of certain attorney fees was not an abuse of discretion, while the reduction of those fees by 5 % was an abuse of discretion.

¶ 1 This case presents an appeal and a cross-appeal from the trial court's imposition of sanctions. The plaintiff in the underlying cause of action was a land trust (landlord) that owned the premises in question at 4767 North Lincoln (the premises). The named defendant was "BGB, LLC, now d/b/a Trattoria Trullo," the tenant of the premises. The landlord brought an action for eviction against BGB on April 23, 2010, alleging that BGB failed to make timely rent payments. The procedural history that ensued is complex, but will be simplified below. On June 23, 2015, the trial court entered an order granting the landlord's motion for sanctions against BGB and its attorneys (defendants). Defendants now appeal, arguing that it was an abuse of discretion for the trial court to impose sanctions. The landlord cross-appeals, arguing that the trial court should have awarded the full amount of sanctions requested. For the following reasons, we affirm the trial court's judgment as modified.

¶ 2 BACKGROUND

¶ 3 The landlord entered into a lease with BGB in 2003, with a term ending December 30, 2010. The lease prohibited any assignment of the tenant's obligation without the landlord's consent. BGB's principal equity owner was William Platt (Platt). In 2007, BGB changed the name of the restaurant it was operating on the premises to Trattoria Trullo (Trullo). A "City of Chicago Department of Business Affairs and Licensing Change of Doing Business as Name

Application", signed by Platt, was dated April 19, 2007, and showed the legal name of the owner of the premises as BGB, using Trullo as its new "doing business as" name. BGB's City of Chicago food and liquor licenses for the period of November 16, 2007, to September 15, 2015, were all in the name of "BGB, LLC dba Trattoria Trullo."

¶ 4 In 2010, the landlord filed a forcible detainer action against BGB, "now d/b/a Trattoria Trullo," and received a money judgment and order for possession. On November 1, 2010, the parties entered into an agreed order vacating the order for possession, requiring BGB to pay various amounts, and providing for the trial court to retain jurisdiction to enforce the agreed terms. Platt signed the agreed order as BGB's principal.

¶ 5 In April 2011, Platt received a letter from the landlord's counsel stating that BGB had not renewed its lease. In May 2011, the trial court granted the landlord's motion for possession, however, the landlord did not enforce this right based on BGB's representation that it would pay the amounts due.

¶ 6 On January 9, 2012, the landlord's counsel wrote a letter to Giovani DeNigris, the operations manager of the restaurant, "D/B/A Trattoria Trullo," stating, "since you have not signed the lease, the law recognizes our relationship as a month to month tenancy." In March 2014, the landlord filed a motion for possession and a motion to extinguish liens. On April 15, 2014, BGB's attorney filed a motion to strike the motion for possession.

¶ 7 On May 9, 2014, BGB's counsel gave the landlord's counsel a copy of an "Assignment and Assumption of Lease" dated May 7, 2007 (assignment). The assignment was executed with a rubber stamp of Platt's signature for BGB, as assignor of the lease, and for Trullo, as assignee of the lease.

¶ 8 On May 21, 2014, the parties entered into two agreed orders, one for possession of the premises, and the other containing the terms of the settlement. The settlement provided that the tenant, BGB, was to surrender possession to the landlord by August 31, 2014, and that in exchange, the landlord was to pay BGB $90,000 on September 1, 2014. The landlord was allowed to change the locks to the premises on September 1, 2014. BGB was to indemnify the landlord for all liens and encumbrances relating to the furniture and equipment, and the landlord was to release all financial claims against BGB, estimated to exceed $200,000.

¶ 9 In August 2014, defense counsel filed a petition to intervene in the initial 2010 case on behalf of Trattoria Trullo (Trullo). Defense counsel stated in the petition that from May 2007 to the present, Trullo occupied the premises and operated the restaurant at that location. Attached to the petition was the assignment, as well as a purported exercise of an option to renew the subject lease from BGB to Trullo. Also attached to the petition was an affidavit by Platt, stating that he was a member of Trullo, the lease had been assigned to Trullo in 2007, and Trullo had operated a restaurant on the premises continuously since that time. Defendants argued in the petition that landlord could not be awarded possession because Trullo was not a party to the 2010 case.

¶ 10 The landlord responded, stating that it had earlier requested sanctions in connection with the assignment, that the trial court had admonished Platt in open court, and that Platt continued to mislead the trial court under the guise of "his 2 corporate entities, [BGB] and [Trullo]."

¶ 11 On August 4, 2014, counsel for defendants filed a Chancery case on behalf of Trullo against the landlord.[1]

¶ 12 On August 15, 2014, the trial court ordered the parties to exchange discovery in the 2010 case and stayed the May 21, 2014, agreed order and order for possession.

[1] This case is not part of this appeal.

¶ 13 On September 9, 2014, the landlord filed an emergency motion to compel defendants to comply with its discovery requests, which the trial court granted. On October 9, 2014, the landlord filed a motion for sanctions, stating that defense counsel failed to comply with its discovery requests.

¶ 14 On September 10, 2014, BGB, filed a "Citation to Discover Assets" against the landlord, asserting that the $90,000 that BGB was to receive "in exchange for possession" under the May 21, 2014, agreed order was a judgment.

¶ 15 On November 13, 2014, defense counsel presented a Memorandum of Judgment for $90,000 pursuant to the May 21, 2014 agreed order. The trial court entered the order but then vacated it on its own motion the same day, presumably because the trial court realized that the earlier agreed order was not a final judgment and that defendants were not entitled to $90,000.

¶ 16 On November 21, 2014, the landlord filed a new forcible detainer action against Trullo.[2]

¶ 17 On November 25, 2014, the trial court heard arguments pursuant to the petition to intervene and other pending motions. It denied the landlord's sanctions motion, denied BGB's sanctions motion with prejudice, and gave the landlord leave to file a motion to extend the May 21, 2014, order for possession.

¶ 18 On January 21, 2015, Trullo filed a motion to dismiss the November 21, 2014, complaint. The trial court then conducted a trial on the 2010 case regarding the landlord's motion to extend the May 21, 2014, order of possession, the 2014 case as to the landlord's request for order of possession, and defendants' motion to dismiss the 2014 case. After hearing testimony, the trial court stated that the landlord's nominee witness was credible, believable, honest, forthright, and open, but that the trial court had "serious reservations about the credibility of the defendants' witnesses."

[2] This is case number 2014 M2 002768, which is consolidated with the 2010 case and is part of this appeal.

¶ 19 The trial court noted that no new lease had been entered into since December 30, 2010, and that any entity occupying the premises after that date would have done so on a month-to-month basis "at best." The trial court found that the "purported assignment of the lease from BGB to [Trullo] on May 7, 2007, is not effective. The landlord never consented in writing to the assignment as required by the lease, nor did the landlord even know of the assignment until August of 2014." The trial court further noted that the assignment did not even "bear the signature of the assignor or the assignee; only a stamp purporting to be the signature of [Platt]." The trial court found that Trullo had no right to remain in possession.

¶ 20 The trial court further found that BGB had no right to transfer possession to Trullo in May of 2007 or after. The court noted that BGB did not comply with the May 21, 2014, order to deliver possession. The court also found that the purported notice of an option to extend the term of the lease, dated October 15, 2010, was found to be "unproven," and that there was no effective extension of the lease. The trial court stated that DeNigris had no authority to sign that document, and so it was a "worthless" document. The trial court held that Trullo's attempts to argue that the May 21, 2014, order could not be effective against it because it was not a party to the 2010 case was "misplaced." The trial court noted that such a position would suggest to the court that defendants committed a fraud against the landlord and the court on May 21, 2014, which could "not be tolerated." The trial court stated: "Why would the landlord have agreed to the terms of the May 21, 2014, settlement unless it was a complete settlement, allowing the landlord to re-take possession and release the premises to whomever it chose?" The court found that "[i]n view of the frivolous positions taken by BGB and [Trullo], there will be no stay of execution of the order of possession or the money judgment for damages provided for below." The court awarded the landlord $167,925.49 for the outstanding arrears, late fees, use and

occupancy, *pro rata* share of insurance, real estate taxes, and water charges, as invoiced by the landlord to the tenant, and against BGB and Trullo, "jointly and severally."

¶ 21 The trial court noted that the landlord was not barred from filing for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013), but that there was no motion pending at that time. The court stated that it had heard enough to justify a ruling finding certain parties in contempt of court, however, "in an effort to hopefully conclude the issue between the plaintiff and all of the defendants in both cases and their counsel, the [c]ourt at this time is declining to enter – to issue such a ruling, even though [it] probably could be justified." The trial court stated that the cases were set for status on January 29, 2015.

¶ 22 On January 29, 2015, the landlord claimed that defendants were still occupying the premises and were in contempt of the trial court's most recent order. The cases were set for status on February 19, 2015.

¶ 23 On February 9, 2015, defense counsel filed a response to the landlord's motion for attorney fees, arguing that the landlord's counsel did not have the requisite skill and standing to recover fees because two of his family members had been convicted of crimes, and because of an ARDC complaint from 23 years prior.

¶ 24 In an order dated February 19, 2015, the trial court noted that defendants were still in possession of the premises, and that by doing so, "continue to violate the 5/21/14 Order and the Orders entered on January 22 and 29, 2015." The court further noted that some of the arguments and comments made by defense counsel in its response to the landlord's motion for attorney fees were "irresponsible, repulsive, offensive, and unprofessional." The court stated that it was "inappropriate and unnecessary" to mention anything about certain family members, who had nothing to do with the case. The court further stated that defense counsel's "blatant attempt at

character assignation by guilt by association with family members is disgusting," and that mention of the landlord's counsel's ARDC reprimand 23 years ago was "repugnant and distasteful." The court went on to state that had defense counsel's assertions been made outside the context of litigation, "they undoubtedly would have been found to be defamatory." The landlord was awarded attorney fees of $41,208 and costs of $917.43. Judgment was entered in favor of the landlord and against "defendants" jointly and severally, for $42,125.43.

¶ 25 Thereafter, the landlord filed a motion for sanctions against defendants and their attorneys, and defendants also filed a motion for sanctions against the landlord's counsel. These issues were briefed, and the trial court held a hearing on the motions. During the hearing, counsel for the landlord argued that defendants violated the May 21, 2014, agreed order by not surrendering possession on August 31, 2014, and that defense counsel filed this "frivolous, totally baseless" petition to intervene which was "based on false facts." Landlord's counsel argued that the petition to intervene precipitated most of what happened in this case, and that BGB was doing business in the restaurant, not Trullo. The landlord's counsel argued that Platt's affidavit attached to the petition to intervene was "completely false" and that the assignment was "fraudulent and false." The landlord's counsel also argued that the notice to exercise the option was manufactured, fraudulent, and false. The landlord's counsel argued that defense counsel merely had to look at the liquor license or the insurance certificate to see that BGB, and not Trullo, was the tenant of the premises.

¶ 26 The attorney representing defense counsel responded that the petition to intervene was filed in August, and withdrawn in November, and so any fees for consideration should only be those in that time period. The attorney also argued that the filing of the petition was not sanctionable because using hindsight to impose sanctions was impermissible. The attorney

argued that defense counsel's client, Platt, had given him facts in an affidavit that was never challenged, and that the trial court never made a finding that any documents were manufactured after the fact, or were in any way fraudulent. He argued that the trial court could not sanction defense counsel for the client's nonperformance of an order.

¶ 27 The trial court stated that the landlord claimed and proved that BGB failed to deliver possession to the landlord on August 31, 2014. Instead, in August 2014, defense counsel filed a petition to intervene, stating that from May 2007 to the present, Trullo had openly occupied the premises and operated the restaurant at that location. The court stated that "[t]his Court has found that a purported exercise of an option to renew the subject lease and a purported assignment of the lease from BGB to [Trullo] were bogus and not credible and were ineffective for their intended purposes." The trial court went on to say that defense counsel "could have and should have inquired of the City of Chicago as to the city liquor license and the food license for the restaurant and inquired of the State of Illinois as to the state liquor licenses and business authorization license. Those would have been reasonable and simple inquiries. Also, the licenses are easily accessible through the City of Chicago's web page."

¶ 28 The trial court stated that the "assignment of the subject lease from BGB to [Trullo] was found by the Court to be bogus and ineffective. It was not even manually signed. It bore only a stamp of Platt's signature on behalf of both the assignor and assignee. A lease provided that no assignment could be made without the landlord's written consent. No such consent has ever been presented because no such written consent was ever given." The trial court found that before relying on the assignment, defense counsel "should have, but apparently did not objectively inquire into its validity and genuineness." The court found that defense counsel's reliance on

Platt's affidavit was "not reasonable, as there was an ongoing objective duty to make reasonable inquiries regarding the affidavit and the assignment."

¶ 29 In its written order, the trial court found that defense counsel should not have allowed defendants "to attempt to deceive the Court and Plaintiff with the bogus assignment, which first appeared in the spring of 2014." The trial court further found that even if defense counsel did not prepare the assignment, defense counsel caused it to be filed in connection with the petition to intervene, and used it at the January 21, 2014, trial, which violated Rule 137.

¶ 30 The trial court also stated in its written order that the purported exercise of the option to renew the subject lease, which was signed by DeNigris, was false and ineffective. The trial court noted that Platt had testified that DeNigris was not an equity owner, officer, member, or director of either BGB or Trullo, and therefore did not have the authority to execute an option to renew the lease. The trial court found that this "was another blatant attempt by Defendants to deceive the Court and Plaintiff." The court found that defense counsel should have reasonably and objectively inquired as to the validity or genuineness of the purported exercise of the option to renew the lease.

¶ 31 The trial court found that "all time expended by Plaintiff's counsel after Defendants Counsel served Defendants' Petition to Intervene was an outgrowth of the false path created by Defendants or their counsel that there was a valid assignment of the lease to [Trullo] and a valid exercise of an option to renew, both of which the Court found to be bogus, and that [Trullo] (not BBG) had been openly operating the restaurant." The trial court also found that defendants' pleadings were filed "for the improper purposes of harassment of the Plaintiff and to delay these proceedings, and were filed without a reasonable or objective investigation of the facts."

¶ 32 The trial court found that the landlord's requested $300 hourly rate was fair and reasonable, and common and customary for such services rendered by its attorneys. The trial court noted that in the landlord's initial motion, it requested fees and costs of $47,640.18. The trial court noted that $917.43 of the costs itemized in the motion were identical to $917.43 of costs itemized in the landlord's prior fee/cost request and awarded in the February 19, 2015 order. The trial court also noted that of the new fee request in the landlord's motion, $42,208 of those fees were identical to the same entries included in the prior fee/cost request and awarded in the February 19, 2015 order. The trial court found that because the landlord had executed a release and satisfaction of that judgment without receiving payment, it would not award attorney fees and costs which were considered in connection with February 19, 2015, order. The trial court stated, "The Court realizes that such ruling might be considered to be unfair to [landlord], especially since the Court previously found those fees and costs to be fair and reasonable and appropriately awarded under the circumstances. However, [the landlord's] execution of the release and satisfaction in connection with the 2015 Settlement waived its right to collect those specific fees and costs."

¶ 33 The trial court stated that the only difference in the requested attorney fees in the landlord's motion from the prior fee/cost request was the inclusion of five hours for research on Supreme Court Rule 137 and four hours for preparing and filing motions, for a total of $2,700. The trial court further noted that in the landlord's reply, the total request for attorney fees and costs increased to $83,732.43 for court appearances, pleadings, and correspondences. In the landlord's second reply, there was a verified itemization of additional attorney fees of $10,098.75 and costs of $123.75, expended from March 30, 2015 to May 26, 2015.

¶ 34 The trial court found that an award of attorney fees would be made for the specified time itemized and valued the fees at $2,700 in the landlord's initial motion, $38,007 in the landlord's reply, and $10,098.75 in the landlord's second reply, for a total of $50,805.75, and for costs of $123.75 itemized in the landlord's reply. The trial court stated, however, that "in an abundance of caution, and in the unlucky event that some of the [defense counsel's] time expended was not related to a pleading, motion or other document that was presented by [defense counsel] deserving of a Rule 137 sanction, the fee award of $50,805.75 will be reduced by 5 % or $2,540.75 for a net award of attorney fees of $48,265.00."

¶ 35 ANALYSIS

¶ 36 On appeal, defendants contend that the trial court erred by imposing sanctions against them. Defendants claim that affirming the trial court's award of sanctions would punish them for being zealous yet unsuccessful. Plaintiff responds that this was not a case of defendants being zealous yet unsuccessful, but rather one where they were deceitful and unethical.

¶ 37 Rule 137 provides, in pertinent part, the following:

> "Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document, that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or

> needless increase in the cost of litigation. *** If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expense incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. July 1, 2013).

¶ 38 We review the trial court's imposition of Rule 137 sanctions under an abuse of discretion standard. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). An abuse of discretion occurs when "no reasonable person could have taken the view [the trial court] adopted." S*terdjevich v. RMK Management Corp*., 343 Ill. App. 3d 1, 19 (2003). "The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits." *Yunker v. Farmers Automobile Management Corp*., 404 Ill. App. 3d 816, 824 (2010). The rule is not intended to penalize litigants and their attorneys "because they were zealous but unsuccessful in pursuing an action." *Id*. Rule 137 allows a court to impose sanctions against a party or counsel who files a pleading or motion that is not well-grounded in fact, is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or is interposed for any improper purpose. *In re Estate of Wernick*, 127 Ill. 2d 61, 77 (1989). Rule 137 imposes an affirmative duty on attorneys and litigants alike to conduct an investigation of the facts and the law before filing an action, pleading, or other paper. *O'Brien & Associates, P.C. v. Tim Thompson, Inc.*, 274 Ill. App. 3d 472, 482 (1995). In reviewing a trial court's decision to impose sanctions, " 'the primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Sterdjevich*, 343 Ill. App. 3d at 19.

(quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000)).

¶ 39 In this case, the trial court did not abuse its discretion in imposing Rule 137 sanctions. As previously stated, defense counsel filed, on behalf of Trullo, a petition to intervene, arguing that possession could not be given to the landlord from BGB because Trullo was the current tenant, not BGB. The landlord reminded the court that it had previously requested sanctions in connection with the assignment, and that defendants were trying to mislead the court by contending that BGB and Trullo were two separate entities. Because of the petition to intervene, the agreed order from May 21, 2014, was stayed. Discovery ensued, which included an emergency motion by the landlord to have defendants comply with discovery requests. In September 2014, BGB filed a citation to discover assets against the landlord, trying to collect $90,000 from the agreed order that had been stayed. In November, defendants presented a Memorandum of Judgment for $90,000 that it presented to the court. Because of the petition to intervene, the landlord filed a new forcible detainer action against Trullo, which Trullo then moved to dismiss.

¶ 40 A trial was held in January 2015, at which point the trial court found that the purported assignment of the lease from BGB to Trullo was not effective because the landlord had never consented in writing to the assignment, as required by the lease. The trial court ordered BGB to immediately give possession of the premises to the landlord. In February 2015, defendants were still in possession of the premises, which was in violation of several of the trial court's orders. At the hearing on the parties' motions for sanctions, the trial court noted that defense counsel should have made a reasonable inquiry into the facts contained in Platt's affidavit before filing the

petition to intervene and that a mere walk-through the premises would have revealed that the liquor licenses and food licenses were in BGB's name, doing business as Trullo.

¶ 41 Based on the above facts, we find that the trial court's decision to impose sanctions was based on valid reasoning, and followed logically from the facts. *Sterdjevich*, 343 Ill. App. 3d at 19. We cannot say that "no reasonable person" could take the position adopted by the trial court. *Id*. See also *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 110 (1998) (an "imposition of sanctions is appropriate where a [party] is required to endure unnecessary litigation and incur needless expense due to [the other party's] violation of Rule 137 by filing of unsubstantiated pleadings based upon allegations which were never subjected to a reasonable inquiry.") The litigation that ensued after the filing of the frivolous petition to intervene was extensive and costly.

¶ 42 Nevertheless, defendants maintain that the trial court abused its discretion in imposing sanctions when: (1) it substituted its judgment for the discretionary rulings of a prior judge, (2) it engaged in hindsight, (3) the record shows that defendants and their attorneys did not state that Trullo was the sole payor of rent, (4) defendants' attorneys had a reasonable basis in both law and fact to contend that the assignment was effective, (5) defendants' attorneys had a reasonable basis in both law and fact to conclude that Trullo was openly occupying the premises, (6) defendants' attorneys had a reasonable basis in both law and fact to believe the renewal notice was effective, and (7) defendants' attorneys did not file any pleadings for an improper purpose.

¶ 43 Defendants' first argument is that the trial court abused its discretion in imposing sanctions when it substituted its judgment for that of the judge who ruled on the landlord's 2014 motion for sanctions. Because this argument was not raised before the trial court, and is being raised for the first time on appeal, we find that this issue has been forfeited. See *Mabry v. Boler*,

2012 IL App (1st) 111464, ¶ 15 (arguments not made before trial court are forfeited and cannot be raised for the first time on appeal).

¶ 44 Defendants next argue that the trial court abused its discretion in imposing Rule 137 sanctions when it engaged in hindsight. Defendants contend that in imposing sanctions, the trial court should not have considered the landlord's exhibits and testimony that were adduced at the trial that began on January 21, 2015. Rather, defendants argue that the if the petition to intervene was so sanctionable, then the landlord should have raised the issues in response to the petition. Defendants rely solely on *Gambino v. Blvd. Mortgage Corp*., 398 Ill. App. 3d 21, 73 (2009), for the proposition that "the court must ascertain what was reasonable at the time, and should not engage in hindsight." The trial court did exactly that when it ruled on the landlord's motion for sanctions, and found that at the time the petition to intervene was filed, it was not reasonable for defendants or their counsel to believe that Trullo was the current occupier of the premises. This was based on evidence that came out in pleadings after the petition was filed – the food and liquor licenses, as well as the testimony presented at the trial and hearings. To find that a motion for Rule 137 sanctions must be made in response to the offending filing would be unprecedented and without authority.

¶ 45 Next, defendants argue that the trial court abused its discretion when it imposed sanctions because the record shows that defendants did not state that Trullo was the sole payor of rent. Defendants are referring to a sentence in the June 23, 2015, order that states: "Had Defendants Counsel made such objective investigation, perhaps the false statement that [Trullo] was the sole payor of rent from January 2011 through November 2014 would not have been made." Defendants argue that their filings never stated that Trullo was the sole payor of rent to the landlord, but instead stated that the landlord "accepted rent checks from [Trullo] from January

2011 through November 2014." During the hearing on sanctions, however, defense counsel stated that the landlord "accepted rent checks" but never showed "you one check from BGB, LLC, subsequent to the date that [Trullo] moved in."

¶ 46 Defendants rely on *In Re Marriage of Lyman*, 2015 IL App (1st) 132832, for the proposition that a trial court may not award sanctions on the basis of a suspicion, feeling, or belief. However, defense counsel argued at the hearing on the motions for sanctions that the landlord could not accept "checks for five years, and then claim [it] didn't know somebody was" on the premises. It was therefore reasonable for the trial court to conclude that defendants were arguing that Trullo was the sole payor of rent during that time period. Even if that is not what defense counsel was arguing, it cannot be said that the trial court abused its discretion when it awarded sanctions, or that it made its decision to award sanctions based on suspicion, feeling, or belief. There was ample additional evidence, laid out in detail above, upon which the trial court based its imposition of sanctions.

¶ 47 Defendants next argue that the trial court abused its discretion when it imposed sanctions because defense counsel had a reasonable basis in both law and fact to contend that the assignment was effective. Defendants contend that their allegation that the assignment occurred was based on the averments in Platt's affidavit, the written assignment itself, a 2009 default notice identifying Trullo as successor to BGB, and the rent checks from Trullo to the landlord. However, as stated above, Rule 137 imposes an affirmative duty on attorneys and litigants alike to conduct an investigation of the facts before filing an action or pleading. *O'Brien*, 274 Ill. App. 3d at 482. Here, as the trial court noted, a simple walk-through of the premises, which displayed the liquor and food licenses showing BGB as the tenant, should have raised a red flag for defense counsel. Additionally, a reading of the lease, which showed that the landlord had to give written

consent in order for the lease to be assigned to another party, should have indicated to defense counsel that a rubber-stamped assignment, signed only by Platt, was ineffective. Accordingly, we are unwilling to give credence to the allegation that defense counsel had a reasonable basis in law and fact to file the petition to intervene.

¶ 48 Defendants' next argument is that the trial court abused its discretion in imposing Rule 137 sanctions because defense counsel had a reasonable basis in both law and fact to conclude that Trullo was openly occupying the premises. Defendants support this contention by first stating that the trial court improperly relied on hindsight by considering evidence adduced at the trial on January 21, 2015, to rule on the motion for sanctions. However, we already addressed that issue above. Defendants then support this argument by stating that Platt testified at a hearing that the premises was vacant for a portion of 2006 and 2007, and that in April 2007 Trullo began operating a restaurant. Additionally, defendants point to the rent checks from Trullo. We initially note that this evidence that defendants point to in support of their argument is the same evidence that they claim was improperly introduced as hindsight. Regardless, we find that the trial court did not abuse its discretion in this case. The fact that the BGB began operating under a new name, Trullo, is not evidence that Trullo was a new tenant. Again, the licenses displayed on the wall indicated that BGB was still the occupier of the premises, the assignment was found to be ineffective, and Platt's testimony was found not credible by the trial court.

¶ 49 Defendants also contend that the trial court abused its discretion in imposing sanctions because defense counsel had a reasonable basis in both law and fact to believe the renewal notice was effective. Defendants claim that DeNigris had the authority to sign the renewal notice in 2010, and that it was effective. We reject this argument for the same reasons stated above.

Defense counsel had an affirmative duty to make a reasonable investigation before filing the petition to intervene. *O'Brien*, 274 Ill. App. 3d at 482 (Rule 137 imposes an affirmative duty on attorneys and litigants alike to conduct an investigation of the facts and the law before filing an action, pleading, or other paper). While the renewal notice may have appeared to be valid, a simple investigation into the facts would have shown that it was ineffective. The landlord had sent a letter in April 2011 to Platt memorializing that no renewal option had been exercised and that there were negotiations with BGB for a new lease. As the trial court noted, there would be no reason for negotiations if the lease had been validly renewed in 2010.

¶ 50 Defendants also contends that the trial court abused its discretion in imposing Rule 137 sanctions because defense counsel did not file any pleadings for an improper purpose. Defendants claim that the trial court "inferred" that the pleadings were filed for an improper purpose because the court stated that certain of defendants' statements were "irresponsible, repulsive, offensive, and unprofessional." However, a review of the court's order reveals that the court found defendants' pleadings to have been filed without a reasonable or objective investigation of the facts, and filed for the improper purpose of "harassment of [the landlord] and to delay these proceedings." It was not an abuse of discretion for the trial court to make this finding in light of the information contained in the record, including: pleadings that contained allegations about the landlord's counsel and his family members, filing a citation to discover assets to recover $90,000 in a different division of the court, and presenting a memorandum of judgment for the $90,000 after the citation was dismissed, despite the fact that a judgment was never entered on the prior order defendants were allegedly relying on.

¶ 51 Defendants' final argument regarding the trial court's imposition of Rule 137 sanctions is that the trial court erred in awarding the landlord monetary sanctions because they claim the

landlord "did not actually incur any attorney fees as a result of the petition to intervene." Defendants claim that the landlord had no obligation to pay its counsel for time expended. However, as the landlord points out, this argument reads a limitation into Rule 137 that is not there. See *Peterson v. Wallach*, 198 Ill. 2d 439, 446 (2002) (court will not depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent). The rule does not state that sanctions should be limited to fees actually paid by a litigant. Rather, the rule gives the trial court authority to impose appropriate sanctions, which may include an order to pay the amount of reasonable expenses incurred, including a reasonable attorney fee. The trial court calculated the expenses incurred by the landlord's counsel based on his hourly rate and the hours spent working on the case after the petition to intervene was filed.

¶ 52 Defendants also appeal the trial court's denial of their Rule 137 sanctions against the landlord's attorney. Defendants filed a petition for sanctions in the trial court against the landlord's counsel arguing that counsel had signed certain pleadings that stated he first became aware of the assignment when it saw the petition to intervene in August 2014, despite the fact that the landlord's counsel filed a pleading with the assignment attached in early May 2014. At trial, when questioned on this subject, the landlord's counsel stated that he did not remember seeing the assignment prior to the filing of the petition to intervene. When confronted with the May 2014 pleading, he stated, "now that I see it, I remember [defense counsel] discussing it." The trial court found, and we agree, that this mistake was a *de minimus* error. When counsel's memory was refreshed, he admitted that he had seen the assignment prior to the filing of the petition to intervene. It is clear to us that the landlord and the trial court thought that May 2014 agreed order took care of any pending issues between all the parties, regardless of the existence

of the assignment. It is in the discretion of the trial court to impose sanctions, and we are unwilling to find that the trial court abused its discretion by failing to sanction the landlord's counsel for a mistake that he later corrected and had no prejudicial effect on defendants.

¶ 53 Cross-Appeal

¶ 54 On cross-appeal, the landlord contends that the trial court abused its discretion when it awarded only $48,265 of the $93,954 requested fees and costs. The trial court noted that in February 2015, the landlord had been awarded $42,108 in fees and $917.43 in costs, for defendants' "willful disobedience or civil contempt" of the agreed order from May 2014, and the orders entered in January 2015. The trial court further noted, however, that the subsequent settlement agreement between the parties released all obligations, which included defendants' obligation to pay the fees and costs. The trial court found that since defendants' obligation to pay those fees and costs had been released, defendants could not recover them pursuant to their Rule 137 petition. We are unwilling to find that this was an abuse of the trial court's discretion. While the trial court may have found those fees and costs to be reasonable, it was also reasonable to find that the release of defendants' obligation to pay those fees and costs pursuant to the settlement agreement prevented the landlord from recovering them pursuant to a petition for sanctions. Accordingly, we will not disturb the trial court's finding.

¶ 55 However, we find the trial court's reduction of the total award by 5 % to be an abuse of discretion. In considering the award of reasonable attorney fees, the trial court should consider a variety of factors. *Olsen v. Staniak*, 260 Ill. App. 3d 856, 865 (1994). These include "the skill and standing of the attorney employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between

the fees charged and the litigation." *Olsen*, 260 Ill. App. 3d at 865-66. A trial court's decision as to the reasonableness of attorney fees will not be reversed absent an abuse of discretion. *Selvy v. Beigel*, 309 Ill. App. 3d 768, 777 (1999).

¶ 56 Here, the trial court found that the times and costs submitted by the landlord were "very fair and reasonable and necessary for the services performed, which services are found to have been necessary and appropriate, and [landlord's counsel] requested $300 hourly rate is fair and reasonable and common and customary in the Chicago metropolitan area for similar services rendered by attorneys with as much experience as [landlord's attorney]." We have thoroughly reviewed the sanctions order of the trial court and the methodology used to compute the amount of sanctions requested, and we find that the trial court properly found that the fees and costs requested were fair and reasonable.

¶ 57 However, the trial court then noted that "in an abundance of caution, and in the unlikely event that some of [the landlord's counsel's] time expended was not related to a pleading or motion or other document that was presented by [defendants] deserving a Rule 137 sanction, the fee award *** will be reduced by 5 [%] ***." While it is true that the trial court is permitted to use its own knowledge and experience to assess the time required to complete particular activities and a court of review may not reverse an award of attorney fees merely because it might have reached a different conclusion (*Olsen*, 260 Ill. App. 3d at 866), there was no indication that any of the fees requested by the landlord were not related to a document that was presented by defendants deserving a Rule 137 sanction. Accordingly, we find that the trial court abused its discretion in reducing the fee award by 5 %, and we modify the trial court's order to reflect a fee award of $50,805.75. See *Jurgensen v. Haslinger*, 295 Ill. App. 3d 139 (1998) (sanction award should be reduced; sanctions affirmed as modified).

¶ 58 As a final matter, the landlord requests in its cross-appeal that it be awarded costs for responding to defendants' appeal in this case. While defendants did not prevail in this appeal, we do not find that filing the appeal was sanctionable. Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), states in pertinent part that if "it is determined that the appeal or other action itself is frivolous, or than an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or other parties." Rule 375(b) states that an appeal will be deemed frivolous where "it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 59 Here, the landlord argues that if defendants' counsel had examined the court file, consulted with prior counsel, and examined readily available third party information, this case "would have been over in August 2014." The landlord requests an award equal to its fees and costs in defending this appeal. While we agree that some of the arguments on appeal are less meritorious than others, namely, those based on the petition to intervene and accompanying documents, we cannot conclude that the appeal as a whole was frivolous. See *Carlson v. City Construction Co*., 239 Ill. App. 3d 211, 246-47 (1992) (even though some of the issues raised on appeal were more obviously sustainable than others, disagreeing that the appeal as a whole was frivolous). This conclusion is further evidenced by defendants' argument regarding the trial court's abuse of discretion pursuant to the amount of the sanctions awarded to the landlord.

While we ultimately found no abuse of discretion, this does not mean that this argument was frivolous.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, we affirm the judgment, as modified, of the circuit court of Cook County.

¶ 62 Affirmed as modified.