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No. 15-0762

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

4211 N. CICERO, LLC,)	Appeal from the Circuit Court of
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 10 M1 729060
)	
SIX CORNERS SAME DAY SURGERY, LLC,)	
)	Honorable Leonard Murray,
Defendant-Appellant)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err by finding plaintiff to be the prevailing party in a commercial lease dispute. Thus, the trial court did not err when it awarded attorney fees to the plaintiff under the prevailing party provision in the lease.

¶ 2 This is a lessor-lessee dispute and the issue on appeal is whether the lessor was properly awarded attorney fees under a prevailing party provision in a commercial lease. We hold that the trial court did not abuse its discretion in finding the plaintiff to be a prevailing party and, accordingly, we affirm.

¶ 3

BACKGROUND

¶ 4 Non-party Gendell Partners Advocate, LLC and defendant Six Corners Same Day Surgery, LLC entered into a lease agreement in 2002 for a term of ten years. Plaintiff 4211 N. Cicero, LLC assumed the lease as the lessor during its operative term. The lease contains an option that allows Six Corners to extend the lease term for two additional ten-year terms if the options are properly exercised. The lease also provides for a service fee for overdue rent payments. In 2010, Six Corners was behind on its rent payments and 4211 N. Cicero filed this forcible entry and detainer action. In its complaint in this case, 4211 N. Cicero alleged that it was due rent for nonpayments beginning in April 2010 and continuing to December 2010 when this case was filed. 4211 N. Cicero sought unpaid rent as damages, the eviction of Six Corners, service charges, and attorney fees.

¶ 5 Six Corners does not dispute that it was behind on rent payments at the time the suit was filed. During the course of the litigation, Six Corners hired an accountant to determine the amount it owed under the lease. In addition, Six Corners filed a separate suit seeking a declaration that it had properly exercised its option for a second lease term. Six Corners argued that the service charge fees or late fees sought by 4211 N. Cicero totaling several hundred thousand dollars were not supported by the terms of the lease and were commercially unreasonable. In an effort to cure its admitted rent deficiency, Six Corners made payments to 4211 N. Cicero while the litigation continued (excluding the portion of service charges that it contested) and, on June 22, 2012, Six Corners made a \$31,226.41 payment that it and its accountant averred made it current on its obligations under the lease. Six Corners then moved to dismiss the case.

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¶ 6 4211 N. Cicero responded that there was a genuine issue of material fact concerning the amount that Six Corners owed as a service charge. The parties continued to dispute the proper way that such a charge should be calculated. While the parties were debating the service charge issue in this case with several filings over the course of another year, the court entered an order in the separate declaratory judgment case. In that case, the court held that Six Corners properly exercised its option to possess the leasehold for another ten-year term. Thus, since the back rent had now been paid and the possession issue was decided, aside from the attorney fee issue, the only issue that remained in this case was the amount of the service charge still owed, if any.

¶ 7 After much back and forth, with multiple ledgers and expert opinions submitted, the trial court found that 4211 N. Cicero was not entitled to the amount it sought for the service charge. The trial court's ruling supported the position Six Corners held as of June 22, 2012 when it tendered the back rent that it agreed was owed—that Six Corners had satisfied its lease obligations at that point. The trial court subsequently addressed 4211 N. Cicero's demand for attorney fees under the prevailing party provision in the lease. That is the issue before us now.

¶ 8 Six Corners argues that 4211 N. Cicero is not a prevailing party. After all, its argument goes, 4211 N. Cicero sued for unpaid rent, possession, and an excessive amount of service charges. By the time the litigation was complete, Six Corners retained possession and obtained a ruling in its favor that 4211 N. Cicero was not entitled to the large service fee it sought. Six Corners emphasizes that the only thing 4211 N. Cicero obtained was the rent that Six Corners paid on its own initiative but was not based on any order or judgment from the court. On the other hand, 4211 N. Cicero argues that Six Corners was delinquent in rent payments beginning eight months before the suit was filed. 4211 N. Cicero maintains that the litigation that is the subject of its attorney fees

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was the impetus for and was required in order to get Six Corners to become current on its obligations. 4211 N. Cicero received more than \$200,000 in back rent payments after filing the suit that it could not obtain before filing. Therefore, 4211 N. Cicero contends that it received a substantial benefit from the case and is properly characterized as a prevailing party.

¶ 9

ANALYSIS

¶ 10 The issue on appeal is whether the trial court erred when it awarded attorney fees to plaintiff-lessor 4211 N. Cicero as a prevailing party. The lease provides that, if a dispute arises regarding the lease, the prevailing party is entitled to attorney fees.

"Either party shall reimburse the other party for all reasonable attorneys' fees and other expenses incurred by the prevailing party in successfully enforcing any of the obligations under this Lease or in any litigation or negotiation in which either party shall, without its fault, become involved through, on account of, or by reason of this Lease, or arising out of the relationship between Lessor or Lessee hereunder."

¶ 11 Although the construction of a lease is a question of law subject to *de novo* review (*Peleton, Inc. v. McGivern's Inc.*, 375 Ill. App. 3d 222, 226 (2007)), whether either party prevails in enforcing the lease requires the trial court to apply the facts to the law and is reviewed for an abuse of discretion. *Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511, 515 (2001). Both parties argue their positions on appeal in acquiescence that the abuse of discretion standard is appropriate.

¶ 12 Six Corners maintains that 4211 N. Cicero cannot be considered a prevailing party because

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it did not obtain any of the relief sought in its action through litigation. However, after not paying rent in several of the months prior to the suit being filed and having obligations exceeding \$200,000, Six Corners made payments totaling \$238,727.07 once the suit was filed.

¶ 13 A prevailing party, for purposes of awarding attorney fees, is one that is successful on a significant issue and achieves some benefit in bringing suit. *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276, 280 (2001). In its complaint, 4211 N. Cicero sought more than \$250,000 in unpaid rent and fees and sought eviction for nonpayment. After filing the case, 4211 N. Cicero received payment for rent that had been in arrears for eight months and a portion of the service fee it demanded. The eviction and possession issue was mooted, but only after 4211 N. Cicero already received the unpaid rent—a significant benefit from bringing suit. Six Corners admits that it was delinquent in paying what it owed at the time the suit was filed and for 18 months thereafter. So at the time the suit was brought and for 18 months thereafter (26 months total), 4211 N. Cicero would have been entitled to succeed on its eviction claim too.

¶ 14 We have observed in the past that even though a litigant does not have to succeed on all its claims to be considered a prevailing party, when the dispute involves multiple claims and each party has won and lost on different claims, it may be inappropriate to find that either party is the prevailing party. *Peleton*, 375 Ill. App. 3d at 227-28. The only thing that 4211 N. Cicero sought but did not prevail on was the amount of the service charge. Importantly, the amount of attorney fees incurred to the point Six Corners cured its admitted breach is roughly the same as the amount awarded. It is not as if 4211 N. Cicero ran up its fees while disputing the amount of the service charge. Even though this case endured for more than four years, the trial court only awarded \$13,500 in attorney fees.

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¶ 15 In its complaint, 4211 N. Cicero sought \$256,335.11. During the course of the litigation, Six Corners paid it \$238,727.07, or almost 94% of what was sought at the outset of the case. A successful litigant is still considered the prevailing party under a fee-shifting provision even if the amount recovered is below the amount claimed. *Timan v. Ourada*, 2012 IL App (2d) 100834, ¶ 29. 4211 N. Cicero misinterpreted the way that the service charge should be calculated causing it to seek more than it was entitled to. But there is no evidence of bad faith. 4211 N. Cicero put forth a rational argument for seeking the amount it sought, supported it with an expert opinion, and the parties went back and forth on the issue with briefs and battling experts for a full year.

¶ 16 At bottom, all of the attorney fees leading up to June 2012 were reasonably incurred as a result of Six Corners' breach and to enforce Six Corners' admitted obligations. 4211 N. Cicero received more than \$200,000 after filing this case whereas it did not receive proper payment under the lease for eight months before initiating litigation. 4211 N. Cicero achieved an affirmative recovery on a significant claim and the fees incurred can be fairly said to have been reasonable and necessary to achieve the ends attained. Ultimately, the trial court did not abuse its discretion in finding the plaintiff to be a prevailing party.

¶ 17 CONCLUSION

¶ 18 Accordingly, we affirm.

¶ 19 Affirmed.