2017 IL App (1st) 151918-U

No. 1-15-1918

FIFTH DIVISION
March 17, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUBWAY REAL ESTATE CORPORATION, a Delaware Corporation, Plaintiff-Appellee-Cross-Appellant, v. DONALD N. NOVELLE, ROBERT A. NOVELLE, SANDRA L. NOVELLE, SHARON R. NOVELLE, and DEARBORN STATION MANAGEMENT COMPANY, Defendants-Appellants-Cross-Appellees, ---------- DONALD N. NOVELLE, ROBERT A. NOVELLE, SANDRA L. NOVELLE, SHARON R. NOVELLE, and DEARBORN STATION MANAGEMENT COMPANY, Counterplaintiffs-Appellants-Cross-Appellees, v. SUBWAY REAL ESTATE CORPORATION, a Delaware Corporation, Counterdefendants-Appellees-Cross-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 12 CH 40175 The Honorable Leroy K. Martin, Jr., Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶1 *HELD*: The subject lease was enforceable between the parties following the sale of the premises to the trustee. The beneficiaries became the lessors under the lease as a result of the property sale and had standing to bring their counterclaim for breach of contract. The beneficiaries were not collaterally estopped from asserting their counterclaim as a result of a prior trial court order finding that the trustee was not a party to the lease. Plaintiff's liability for breach of the lease was not limited to the cap provided in the lease where a condition of such limitation was not satisfied because defendants did not elect to accelerate rents.

¶2 This case involves the enforceability of a commercial lease originally entered into by plaintiff, Subway Real Estate Corporation, and a non-party. The non-party sold the premises to Standard Bank and Trust Company (the trust) as trustee with defendants, Robert Novelle, Sandra Novelle, Donald Novelle, Sharon Novelle and Dearborn Station Management Company,[1] as the beneficiaries of the trust. When plaintiff vacated the subject premises and ceased making rent payment, the parties instituted the underlying litigation against each other by seeking adjudication of each party's rights and obligations under the lease. The parties filed cross motions for summary judgment, which the trial court granted in part and denied in part. The trial court concluded that plaintiff was liable to defendants for unpaid rent obligations, but capped plaintiff's liability at $40,000 pursuant to the terms of the lease.

¶3 On appeal, defendants contend the trial court erred in finding that plaintiff's liability was limited to $40,000 where they did not elect to institute the acceleration provision of the lease

[1] According to defendants' counterclaim, Dearborn Station Management Co. was "owned, operated, maintained, managed and controlled" by the remaining defendants.

providing such limitation of liability. In its cross-appeal, plaintiff contends the trial court erred in finding defendants, as beneficiaries, assumed the lease upon the sale of the property and had standing to enforce that lease. Plaintiff further contends defendants were collaterally estopped from bringing their counterclaim for breach of contract. Based on the following, we affirm in part and reverse in part, and remand this cause for additional proceedings.

¶4 FACTS

¶5 On February 2, 2007, plaintiff entered into a shopping center lease with VLand Streamwood Route 59, LLC (VLand), for the rental of premises located at 648 South Sutton Road, in Streamwood, Illinois. Plaintiff took possession of the premises in July 2007. The lease provided that the term ended "on the last day of the tenth (10th) consecutive Lease Year." The lease also contained two provisions relevant to the disposition of this appeal. First, in paragraph 40 entitled "Landlord's Remedies," the lease provided:

> "In the event of Tenant's default hereunder, then in addition to any other rights or remedies Landlord may have at law or equity, Landlord shall have the following right, at Landlord's option, without further notice or demand of any kind to do the following:
>
> (a) ***
>
> (b) Notwithstanding anything in the Paragraph 40 to the contrary, in the event Tenant is in default under this Lease for failing to pay the Minimum Rent *** and Landlord elects to accelerate the Rent pursuant to this Paragraph 40, then Tenant's liability for failure to pay any Minimum Rent *** shall be limited to $40,000 (the 'Limitation'). Notwithstanding anything else in this Lease to the contrary, in the event the Tenant avails itself of the Limitation then Tenant shall not be released from any other liabilities or obligations under the lease (other than the payment of Minimum Rent ***)."

Second, in paragraph 54 entitled "Sale of Premises," the lease provided:

> "In the event of any sale of the Leased Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. This Lease shall not be affected by any such assignment, conveyance or sale, and Tenant agrees to attorn to the purchaser, grantee or assignee, provided such transferee expressly assumes Landlord's obligations under the Lease which obligations accrue from and after the date of transfer. Landlord shall provide written notice to Tenant of any change in the entity to whom Rent is owed. Absent such notice, Tenant shall not be in default hereunder if it continues to provide Rent as provided herein."

¶6 In October 2007, VLand sold the subject premises via warranty deed to Standard Bank as trustee under Trust No. 20049, dated August 16, 2007. As stated, the beneficiaries of the trust were Robert, Sandra, Donald, and Sharon (the Novelles). The land trust agreement provided, in relevant part, that:

> "the interest of any beneficiary hereunder shall consist solely of a power of direction to deal with the title to the real estate and to manage and control the real estate as hereinafter provided, and the right to receive the proceeds from rentals and from mortgages, sales or other disposition of the real estate, and that such right in the avails of

> the real estate shall be deemed to be personal property, and may be assigned and transferred as such; *** and that no beneficiary now has, and that no beneficiary hereunder at any time shall have any right, title or interest in or to any portion of the real estate as such, either legal or equitable, but only an interest in the earnings, avails and proceeds as aforesaid.
>
> * * *
>
> The beneficiary or beneficiaries hereunder, in his, her or their own right shall have the management of the real estate and control of the selling, renting and handling thereof, and shall collect and handle the rents, earnings, avails and proceeds thereof, and the Trustee shall have no duty in respect to such management or control, or the collection, handling or application of such rents, earnings, avails or proceeds, or in respect to the payment of taxes or assessments or in respect to insurance, litigation, or otherwise, except on written direction as hereinabove provided ***. No beneficiary hereunder shall have any authority to contract or do any other act for or in the name of the Trustee or to bind the Trustee personally."

¶7 The record contains an "estoppel certificate" dated September 2007, prior to the property sale. The "estoppel certificate" was authored by plaintiff to Donald and Robert, as "buyers," and to VLand. The "estoppel certificate" stated that "the Lease is in full force and effect" and that said lease commenced on July 24, 2007, and did not expire until July 31, 2017. The "estoppel certificate" was signed by plaintiff "with the knowledge and understanding that Buyer, or an affiliate or assignee thereof or successor thereto, is acquiring the Property, and will be financing such acquisition, in reliance on this Estoppel Certificate." After VLand sold the property, plaintiff remained in the subject premises and continued paying rent to defendants.

¶8 The record also contains a "lease commencement agreement" signed on January 28, 2010. The agreement identified a lease dated February 2, 2007 between plaintiff, as tenant, and Dearborn Station Management Co., as landlord. The agreement further provided that the lease commenced on July 24, 2010, and was to end on July 23, 2017. In addition, the agreement stated that the "Landlord has fully and timely complied with and performed each and every of its obligations as set forth in the Lease."

¶9 On December 23, 2010, plaintiff sent correspondence to Standard Bank advising the trustee that plaintiff was ceasing its operation of the subject premises and would surrender possession no later than December 31, 2010. The last date plaintiff paid rent for the subject premises was December 28, 2010.

¶10 On June 7, 2011, plaintiff filed a complaint against Standard Bank, as trustee, for a declaration of rights under the lease. Plaintiff sought a declaration that it had no obligations under the lease because the lease had not been assumed by Standard Bank following the October 2007 sale. Standard Bank filed a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)), arguing that it was not a party to the lease. Attached to its motion was an affidavit authored by an assistant vice president of Standard Bank providing:

> "The Trustee is not a party to any leases with respect to the Property. Neither I, nor any other person acting on behalf of the Trustee, was asked or directed to sign any lease or to assume any lease. Neither I, nor any other person acting on behalf of the Trustee, ever signed or executed any lease or any assignment or assumption of any lease."

The affidavit further provided that Standard Bank, as trustee, received a document entitled "assignment and assumption of leases" after the legal proceedings had commenced. The

document purportedly assigned the subject lease to Standard Bank from VLand. The document was dated October 1, 2007, and was signed by a representative of VLand, as assignor, and by one of the Novelles, individually, as assignee. According to the affidavit, the "assignment and assumption of leases" did not appear in the trust file prior to the litigation. On November 18, 2011, in an agreed order, the trial court dismissed plaintiff's declaratory action, finding Standard Bank was not a party to the subject lease.

¶11 On November 1, 2012, plaintiff filed a complaint for declaratory judgment and other relief. Following the filing of defendants'[2] motion to dismiss, plaintiff was granted leave to file an amended complaint. Plaintiff's amended complaint sought a declaration of rights and liabilities for failure to assign the lease, for a kick-out clause in the lease, for commercial frustration, and for breach of contract. Defendants responded in September 2013 by filing a counterclaim against plaintiff for monetary damages based on breach of contract.

¶12 In January and February 2015, the parties filed cross-motions for summary judgment. In its motion for summary judgment, plaintiff argued that Standard Bank never expressly assumed the lease after purchasing the premises in 2007 as required by paragraph 54 of the lease; that defendants, as beneficiaries to the trust, had no standing to maintain a claim under the lease; and that defendants were collaterally estopped from making a claim under the lease as a result of the dismissal of plaintiff's declaration action against Standard Bank. In the alternative, plaintiff argued that its potential liability was limited to $40,000 pursuant to paragraph 40 of the lease. In their cross-motion for summary judgment, defendants argued that plaintiff was not absolved of liability to pay rent through the entirety of the lease term even if Standard Bank did not expressly assume the lease; that they were proper parties to the litigation; and that the $40,000 limitation of

[2] Initially, only Donald and Robert were named as defendants.

liability provision did not apply because defendants never initiated the acceleration of rents, a condition of the provision.

¶13 Following argument by the parties, on May 21, 2015, the trial court granted both summary judgment motions, in part, and denied both, in part. In so doing, the trial court granted defendants' claim that the lease survived the sale of the property, and denied plaintiff's claim that the lease was not expressly assumed pursuant to paragraph 54 of the lease and that defendants were collaterally estopped from bringing an action under the lease. In addition, the trial court granted plaintiff's claim that the lease limited its liability to $40,000, thereby denying defendants' claim that the limitation of liability did not apply. On June 8, 2015, the trial court entered an order containing language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) such that the May 21, 2015, order was final and there was no just reason to delay its enforcement or appeal. Defendants subsequently filed a timely notice of appeal, and plaintiff filed a timely notice of cross-appeal.

¶14 ANALYSIS

¶15 When parties file cross-motions for summary judgment, they agree that the matters involve questions of law only; therefore, they invite the court to decide the issues based on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. Motions for summary judgment are governed by section 2-1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005 (West 2010)). More specifically, section 2-1005(c) of the Code provides that summary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law. 735 ILCS 5/2-

1005(c) (West 2010). We review whether to grant summary judgment *de novo*. *Pielet*, 2012 IL 112064, ¶ 30.

¶16 Defendants contend the trial court erred in limiting plaintiff's liability to $40,000 where, pursuant to paragraph 40 of the lease, the limitation of liability provision only applied if defendants accelerated the rents, which they did not. On cross-appeal, plaintiff contends the trial court erred in finding the lease remained in full force and effect following the sale of the property where Standard Bank, as trustee, did not expressly assume the lease as required by paragraph 54. Plaintiff further contends defendants, as mere beneficiaries to the trust, lacked standing to maintain a claim for unpaid rent under the lease. In addition, plaintiff contends defendants were collaterally estopped from raising a claim under the lease where the trial court previously determined that Standard Bank was not a party to the lease. In the alternative, plaintiff maintains that the parties entered into a month-to-month tenancy following the sale of the property.

¶17 I. Enforceability of the Lease

¶18 Because whether an enforceable lease exists between the parties is a threshold question, we turn first to plaintiff's cross-appeal. In so doing, we must apply the well-known rules of contract construction. In construing a contract, our primary objective is to give effect to the intention of the parties by relying on the language of the contract itself. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). A contract must be construed as a whole, viewing each provision in light of the other provisions and not by viewing a clause or provision in isolation. *Id*.

¶19 Plaintiff argues that an enforceable lease did not exist between the parties. More specifically, plaintiff maintains that, pursuant to paragraph 54 of the agreement, for said lease to continue following the October 2007 sale of the property, Standard Bank was required to

expressly assume the obligations thereunder, which it did not. Defendants respond that the trial court correctly determined there was an enforceable contract between the parties where the sale of the subject premises from VLand to Standard Bank, as trustee, vested defendants, as the beneficiaries, with the full rights to continued collection of rents under the existing lease.

¶20 As stated, paragraph 54 of the lease provided:

> "In the event of any sale of the Leased Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Leased Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. This Lease shall not be affected by any such assignment, conveyance or sale, and Tenant agrees to attorn to the purchaser, grantee or assignee, provided such transferee expressly assumes Landlord's obligations under the Lease which obligations accrue from and after the date of transfer. Landlord shall provide written notice to Tenant of any change in the entity to whom Rent is owed. Absent such notice, Tenant shall not be in default hereunder if it continues to provide Rent as provided herein."

¶21 Based on the language of the contract, it is clear that, upon the sale of the subject premises, VLand was freed of all liability and obligations under the lease with plaintiff and Standard Bank, as trustee under Trust No. 20049, dated August 16, 2007, assumed all obligations thereunder without necessity of further agreement. The intent is clear that the sale of the subject

property was to conclude the seller's obligations under the lease and place those obligations with the purchaser. We further find that, based on the language of the second portion of paragraph 54 which stated "[t]his Lease shall not be affected by any such assignment, conveyance or sale," the lease remained in full force and effect following the sale of the subject premises in October 2007.

¶22 That said, we must address the trial court's November 18, 2012, agreed order, finding that Standard Bank was not a party to the subject lease. The present situation is unique in the sense that the lease was not written in express contemplation of a sale of the subject premises to a trust company as a trustee. While we conclude that the lease was successfully assigned and assumed by defendants, as beneficiaries, and remained in full force and effect, the unique set of circumstances requires that we review the law regarding trusts to understand why.

¶23 A land trust is a form of land ownership where a trustee holds title to property for the benefit of the true owner/beneficiary of the trust. *Financial Freedom Acquisition, LLC v. Standard Bank & Trust Co.*, 2015 IL 117950, ¶ 31. Legal and equitable title of the property rests with the trustee, including the right to transfer and encumber the property in accordance with the direction of the beneficiary. *Id*. ¶ 32. The beneficiary, in contrast, maintains a personal property interest in the trust itself. *Id*. ¶ 33. "Outside of holding title, however, the beneficiary exercises and manages all rights of ownership." *Toushin v. Ruggiero*, 2015 IL App (1st) 143151, ¶ 41. A beneficiary is accorded four basic powers: (1) to possess, manage, and physically control the real estate; (2) to receive all income generated by the property; (3) to direct the trustee in dealing with title to the real estate; and (4) to receive the proceeds of any sale of the property. *Id*. Specifically relevant to the instant case, a beneficiary may enter into a lease on its own behalf. *R-Five, Inc. v. Shadeco, Inc.*, 305 Ill. App. 3d 635, 639 (1999). In addition, the law allows either a beneficiary

or a trustee to act in the capacity of a lessor when the provisions of the governing trust agreement so authorize. *Id.*

¶24 The language of the trust agreement in this case provided, in relevant part:

> "The beneficiary or beneficiaries hereunder, in his, her or their own right shall have the management of the real estate and control of the selling, renting and handling thereof, and shall collect and handle the rents, earnings, avails and proceeds thereof, and the Trustee shall have no duty in respect to such management or control, or the collection, handling or application of such rents, earnings, avails or proceeds, or in respect to the payment of taxes or assessments or in respect to insurance, litigation, or otherwise, except on written direction as hereinabove provided ***. No beneficiary hereunder shall have any authority to contract or do any other act for or in the name of the Trustee or to bind the Trustee personally."

¶25 Accordingly, defendants, as beneficiaries, had the authority to enter into a lease in their own right. Defendants did not have the authority to enter into a contract in Standard Bank's name, as trustee. As a result, by virtue of the sale of the subject property to Standard Bank, as trustee, and under the terms of the trust agreement, defendants, as beneficiaries, became parties to the contract—not Standard Bank. Defendants are the lessors under the subject lease.

¶26 Turning back to the disputed language of paragraph 54 of the lease, namely, "Tenant agrees to attorn to the purchaser, grantee or assignee, provided such transferee expressly assumes Landlord's obligations under the Lease which obligations accrue from and after the date of transfer," we find the only issue is whether plaintiff was required to "attorn" without an express assumption of the landlord's obligations by defendants. Contrary to plaintiff's interpretation of paragraph 54, the enforceability of the lease did not hinge on the challenged language. Instead, as

previously noted, paragraph 54 clearly provided that "[t]his Lease shall not be affected by any such assignment, conveyance or sale, *and*" then went on to provide the disputed language. The placement of the comma after the language "[t]his Lease shall not be affected by any such assignment, conveyance or sale," but before the challenged language "and Tenant agrees to attorn to the purchaser, grantee or assignee, provided such transferee expressly assumes Landlord's obligations under the Lease which obligations accrue from and after the date of transfer" indicates the drafter's intent that the disputed language be a conditionary obligation of plaintiff, as tenant, which was separate and apart from the enforceability of the lease upon the sale of the subject property.

¶27 "An attornment is a continuation of the existing lease under the conditions and continues the landlord-tenant relationship 'under the terms of the original tenancy.' " *Coleman v. Madison Two Associates*, 307 Ill. App. 3d 570, 581 (1999) (quoting *Arendt v. Lake View Courts Associates*, 51 Ill. App. 3d 564, 566-67 (1977)). Accordingly, the contested language provided plaintiff only with the authority to challenge the continuation of the terms of the original tenancy if the purchaser failed to provide an express assumption of the seller's obligations under the lease. The contested language did not impose a condition on the enforceability of the lease itself.

¶28 Nevertheless, plaintiff failed to exercise its ability not to "attorn" by continuing to inhabit the leased premises and pay the established rent pursuant to the terms of the lease for over three years following the sale to Standard Bank, as trustee. Moreover, plaintiff's intent to "attorn" was demonstrated by submitting: (1) the September 2007 "estoppel certificate" revealing an intent to "attorn" upon the future sale of the subject property; and (2) the January 28, 2010, "lease commencement agreement" recognizing the February 2, 2007, lease and naming defendant, Dearborn Station Management Co., as landlord. Critically, the "lease commencement

agreement" signed by plaintiff stated that the "Landlord has fully and timely complied with and performed each and every of its obligations as set forth in the Lease." This document was created over two years after the sale of the subject property and approximately 11 months prior to the time plaintiff vacated the premises. The document expressly acknowledged defendants' compliance with the lease as of January 28, 2010. Clearly, plaintiff's behavior demonstrated an understanding that the lease continued following the October 2007 sale.

¶29 In sum, we find that, in conjunction with paragraph 54 of the lease, the terms of the trust agreement, and plaintiff's continuation under the established terms of the lease agreement following the October 2007 sale of the subject property, the lease remained in full force and effect with defendants as lessors of said lease and plaintiff "attorning" thereto. Because of our finding, we need not address plaintiff's alternative argument that the parties engaged in a month-to-month tenancy.

¶30 II. Standing

¶31 Plaintiff next contends defendants lack standing to bring their counterclaim where, as beneficiaries, they had no rights to assume the lease. As previously determined, defendants did have the authority to enter into the subject lease pursuant to the terms of the trust agreement. "The very nature of a land trust dictates that the beneficiary will have the rights of possession, management, control and operation of the property, as well as the right to rents, issues, profits, and proceeds of sale or mortgage financing." *Southeast Village Associates v. Health Management Associates*, 92 Ill. App. 3d 810, 812 (1981). Moreover, our courts have found a land trust beneficiary-lessor has the right to maintain an action for rent. *Klein v. Ickovitz*, 121 Ill. App. 2d 191, 195. We, therefore, find defendants had standing to bring their counterclaim for breach of contract.

¶32 III. Collateral Estoppel

¶33 Plaintiff additionally contends defendants are collaterally estopped from raising their counterclaim where the trial court's November 18, 2012, agreed order, determined that Standard Bank was not a party to the subject lease.

¶34 Collateral estoppel is an equitable doctrine that precludes a party from relitigating an issue already decided in a prior proceeding. *Herzog v. Lexington Township*, 167 Ill. 2d 288, 295 (1995). In order for collateral estoppel to apply, the following requirements must be satisfied: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question; (2) there was a final determination on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Id.*

¶35 We conclude that collateral estoppel is not applicable in the case before us where the issue decided in the 2012 matter is not identical to the question presented here. Simply stated, in its November 18, 2012, agreed order, the trial court determined the question of whether Standard Bank, as trustee, was a party to the subject lease. In contrast, in the current appeal, we have determined that defendants, as beneficiaries, were parties to the subject lease, which remained in full force and effect following the October 2007 sale of the premises. There is no identity to the issues.

¶36 IV. Limitation of Liability

¶37 Finally, defendants contend the trial court erred in limiting plaintiff's liability to $40,000 where paragraph 40 of the lease required that the limitation of liability provision only applied if defendants chose to accelerate the rent, which they did not elect to do.

¶38 In resolving defendants' contention, we again must rely on the established rules of contract interpretation. In so doing, this court's primary objective is to give effect to the intention of the parties by relying on the language of the contract itself. *Thompson*, 241 Ill. 2d at 441. We must construe the contract as a whole, viewing each provision in light of the other provisions and not by viewing a clause or provision in isolation. *Id*.

¶39 Paragraph 40 of the lease provided:

> "Notwithstanding anything in the Paragraph 40 to the contrary, in the event Tenant is in default under this Lease for failing to pay the Minimum Rent *** and Landlord elects to accelerate the Rent pursuant to this Paragraph 40, then Tenant's liability for failure to pay any Minimum Rent *** shall be limited to $40,000 (the 'Limitation'). Notwithstanding anything else in this Lease to the contrary, in the event the Tenant avails itself of the Limitation then Tenant shall not be released from any other liabilities or obligations under the lease (other than the payment of Minimum Rent ***)."

The parties agree the plain language of the lease provided that plaintiff's liability for future rent was be limited to $40,000 if it was in default for failing to pay the minimum rent *and* defendants elected to accelerate the rent. The language of the lease is clear and unambiguous. "If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999).

¶40 The question that remains is whether defendants elected to accelerate the rents. There is nothing in the record demonstrating defendants' demand for accelerated rent prior to the underlying litigation. Plaintiff, however, argues that defendants demanded an accelerated rent

payment in their counterclaim. Plaintiff additionally maintains that defendants acknowledged their intent to accelerate the rent in their answer to plaintiff's amended complaint. We disagree.

¶41 In their counterclaim, defendants claimed that plaintiff breached the parties' lease when it left the subject premises and discontinued paying rent with seven years still remaining on the lease. Defendants' counterclaim further alleged that plaintiff's breach caused them "pecuniary damages and losses all to their damage, including but not limited to unpaid rents, attorney fees, costs and any and all damages allowable under the subject lease." In their answer to plaintiff's amended complaint, defendants admitted they did not agree that plaintiff's liability was limited to $40,000 under the lease; instead, defendants posited that they "were entitled to receive full rents from [plaintiff] pursuant to the Lease through July 2017." Defendants further admitted "it [was] their intention to ultimately file suit against [plaintiff] to collect those rents." We find nothing in these pleadings establishing defendants' election to accelerate plaintiff's rent obligation. The pleadings simply state defendants alleged rights under the lease. There is no language demonstrating a current demand for all rents that could be collected under the terms of the lease, namely, from January 1, 2011, through July 2017; rather, the record reveals that defendants' requested damages incorporated only those outstanding rent payments due as of the time of the pleading. For example, attached to their motion for summary judgment, defendants provided the invoice representing the outstanding payments due and owing by plaintiff through November 1, 2013. The invoice did not reflect an outstanding amount as of July 2017. Because we have found defendants did *not* initiate acceleration of plaintiff's rents, the requisite conditions of paragraph 40 limiting plaintiff's liability were not met. As a result, we conclude the trial court erred in limiting plaintiff's liability to $40,000 under the lease. We, therefore, must remand this

cause to the trial court to determine the appropriate damages owed by plaintiff to defendants for breach of the lease.

¶42 CONCLUSION

¶43 We conclude the lease remained in full force and effect following the sale of the subject property and defendants were parties to said lease, as beneficiaries of the trust. We additionally find plaintiff's liability was not limited to $40,000 under the terms of the lease. As a result, the matter must be remanded for a proper determination of plaintiff's liability.

¶44 Affirmed in part; reversed in part; remanded.