2017 IL App (1st) 160481-U

FOURTH DIVISION
June 29, 2017

No. 1-16-0481 & 1-16-1942 Cons.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

---

540 NORTH LASALLE, LLC,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant, Cross-Appellee,	)	of Cook County
	)	
v.	)	
	)	
INTER-TRACK PARTNERS, LLC,	)	
	)	09 L 000327
Defendant and Third Party Plaintiff-Appellee, Cross-Appellant,	)	
	)	
v.	)	
	)	
JOSE LAGOA,	)	Honorable
	)	James E. Snyder,
Third Party Defendant.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Landlord's appeal dismissed for want of jurisdiction where landlord filed a notice of appeal from a nonfinal order. Judgment affirmed over tenant's various cross-claims. Attorney fee award vacated and remanded for further proceeding where tenant requested, but had not received, an evidentiary hearing.

¶ 2 This appeal arises out of a commercial lease between landlord, 540 North LaSalle, LLC (LaSalle), and tenant, Inter-Track Partners, LLC (Inter-Track), and a dispute between those parties as to certain alleged breaches of their lease contract.

¶ 3 The record shows that on October 29, 2004, Inter-Track signed a ten-year lease with North Star Company to occupy and use a portion of the building located at 540 North LaSalle Street in Chicago as an off-track betting facility. LaSalle acquired title to that building three months later, on January 31, 2005, and the lease was assigned to LaSalle. The lease stated that Inter-Track was required to begin paying rent on the "Rent Commencement Day," which was later negotiated to July 1, 2006. On April 8, 2009, the City of Chicago filed a lawsuit against LaSalle, separate from the instant action, alleging various building code violations at the premises. Inter-Track moved out in September 2010, and, on December 9, 2010, LaSalle consented to the entry of an injunction in the City code violation lawsuit, under which it agreed that the premises would remain vacant until the code violations were remedied.

¶ 4 Meanwhile, on January 12, 2009, LaSalle filed a complaint (and later amended first and second complaints), against Inter-Track alleging, among other claims not relevant to this appeal, that Inter-Track had breached the lease contract by failing to pay the rent due. LaSalle sought the unpaid rent, as well as late charges and interest fees specified in the parties' lease. Inter-Track filed a counter-complaint on January 19, 2010, contending, as relevant to this appeal, that LaSalle had breached certain provisions in the lease that required LaSalle to provide Inter-Track with an elevator, and a $25,000 "Windows and Stairs" cash allowance. Inter-Track also alleged that LaSalle had improperly drawn on a security deposit letter of credit in violation of the lease provisions.

¶ 5 This case involved extensive pretrial proceedings over the course of almost seven years. On April 20 and 24, 2015, the court held a two-day bench trial on the merits in which the parties presented witnesses and evidence regarding the above described issues. After closing argument and the matter had been submitted to the trial court for ruling, LaSalle filed a motion for leave to replace certain tables in its proposed findings of fact, and to "Suggest Further Briefing on the Issue of Mitigation of Damages." On August 5, 2015, the trial court granted LaSalle's motion, but ordered that LaSalle was required to "pay the fees & expenses incurred by defendant Inter-Track resulting from this motion ***." Accordingly, on August 12, 2015, Inter-Track filed a Fee Petition against LaSalle based on the August 5, 2015 order, which sought $3,000 in attorney fees.

¶ 6 Thereafter, on January 22, 2016, the trial court entered an order, which was later corrected on January 27, 2016. The corrected order found that LaSalle was entitled to recover rent from July 1, 2006—the rent commencement date—until December 9, 2010—the day that LaSalle consented to enter an injunction preventing the premises from being occupied. The trial court found that Inter-Track's obligation to pay rent ceased at that point because it could no longer occupy the premises after LaSalle consented to the entry of that injunction.

¶ 7 The trial court found that LaSalle was entitled to a judgment in the amount of $121,672.80 for delinquent rent, late fees and interest (calculated at the prime rate plus 3%, as provided by the lease) over the course of the aforementioned period. It concluded that LaSalle had made reasonable attempts to mitigate damages by finding a replacement tenant after Inter-Track vacated the premises; specifically, there was testimony that at least 20 or 30 tenants had done "a walk through [to] observe the space" but none of the tenants were willing to enter a lease with terms acceptable to LaSalle.

¶ 8 The court however, declined to interpret the late charge provision as requested by LaSalle, which had argued that the lease authorized a 10% monthly late fee on the cumulative rent deficiency. The court noted that LaSalle's witness, Martin Sandoval, a Certified Public Accountant who prepared financial statements for LaSalle, testified that the late fee was a single penalty based on the current month's delinquent rent. The trial court also found "nothing in the Lease that authorizes [LaSalle] to assess the late fee as a cumulative monthly penalty. Based on the language of the Lease and the evidence presented at trial, the Court finds that the 10% late fee provision is a single additional sum based on that month's delinquent rent."

¶ 9 Regarding Inter-Track's counterclaim, the trial court found that LaSalle had breached the lease in three ways. First, the trial court concluded that LaSalle breached the lease by failing to provide Inter-Track with an elevator as was required by the lease. The trial court found, however, that Inter-Track had not provided evidence to prove the damages for the breach, and the parties had not agreed to a cash contribution in lieu of building the elevator. The trial court noted that evidence showing that an elevator could have been reactivated at a cost of $193,000 did not represent the amount of damages that Inter-Track suffered as a result of LaSalle's breach, and, if Inter-Track were allowed to recover the full cost of reactivating the elevator, it would "constitute a windfall" for Inter-Track. The trial court noted that "[t]he proper measure of damages is the difference in value of the rental property with the elevator and without[,]" but Inter-Track had provided no evidence of that value.

¶ 10 Second, the trial court found that LaSalle had improperly drawn on a letter of credit, and at the conclusion of the lease, it had failed to return the proceeds from the letter of credit and provide an accounting for the funds, or apply the funds to reduce any alleged rent deficiency.

The court found that Inter-Track was entitled to a judgment on this issue in the amount of $77,766.75, which included 5% statutory interest for 2573 days.

¶ 11 Finally, the trial court found that Inter-Track had proven that it was entitled to the full $25,000 window and stairs allowance, and entered judgment in the amount of $35,119.86, which included $10,119.86 in statutory interest at 5% for 2955 days. The combined damages in favor of Inter-Track totaled $112,886.61, which the court offset against LaSalle's judgment of $121,672.80, entering a total judgment in favor of LaSalle in the amount of $8,786.19. In its January 27, 2016, order, the trial court stated that the order was "final" and was entered "January 22, 2016 *nunc pro tunc*." The trial court did not address Inter-Track's pending fee petition in the order. LaSalle filed a notice of appeal on February 17, 2016, seeking review of the trial court's order of "1/22/16[.]"

¶ 12 On February 22, 2016, Inter-Track re-noticed its pending attorney fee petition. On March 2, 2016, the court entered an order granting Inter-Track's fee petition, allowing Inter-Track $3,000 in attorney fees, and reducing the judgment to $5,786.19.

¶ 13 The trial court granted LaSalle leave to file a petition for attorney fees, which it filed on February 23, 2016, seeking $113,914.40 in attorney fees and costs. Inter-Track responded, arguing that an award of attorney fees was not warranted because LaSalle was not the prevailing party under the parties' lease, which specified:

> "In the event of any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses including, without limitation, reasonable attorneys' fees and experts' fees and costs incurred by the prevailing party in connection with such litigation."

Inter-Track also argued that LaSalle had not "incurred" any fees because the invoices had been billed to a third party, and because the fees sought were not reasonable. Inter-Track additionally requested "discovery" and "an evidentiary hearing as to the reasonableness of the fees petition[.]"

¶ 14 On June 16, 2016, the trial court entered an order, on the pleadings, regarding LaSalle's petition for attorney fees. The trial court found that LaSalle was a "prevailing party" because the court had "found for [LaSalle] and against [Inter-Track] on Count I of the complaint." Because LaSalle "prevailed on Count I," the trial court found that "the lease agreement entitles [LaSalle] to an award of attorney fees."

¶ 15 The trial court also found Inter-Track's argument that LaSalle had not incurred any attorney fees unavailing because the attorney fee invoices were billed to Jose Lagoa, the owner of LaSalle. Finally, the court found sufficient evidence to support an award of fees based on the affidavit of the attorney representing LaSalle. The trial court did, however, "agree[] with [Inter-Track] that there [were] inappropriate block billing entries, that there [was] a lack of invoices to support the entire amount asked for, and that the invoices include[d] fees associated with other cases." The trial court therefore awarded LaSalle $74,487.50 in attorney fees and costs, of the $113,914.40 that it sought.

¶ 16 In this appeal, LaSalle contends that the trial court erred in calculating the damages due to it in two ways. First, LaSalle contends that the lease unambiguously specifies that late charges and interest are to be based on a cumulative rent deficiency rather than applying only to the deficiency for the current month. Second, LaSalle contends that the trial court erred in concluding that LaSalle's entry into a voluntary injunction terminated Inter-Track's obligation to

pay rent. However, before turning to the merits of those issues, we must first address Inter-Track's claim that this court lacks jurisdiction to consider LaSalle's appeal.

¶ 17 LaSalle's jurisdictional statement in its brief states that it is an appeal "from a final order *** that resolved all claims brought by each of the parties" pursuant to Illinois Supreme Court Rule 301. In Inter-Track's motion to dismiss LaSalle's appeal, which this court took with the case, Inter-Track points out that LaSalle's notice of appeal references only the trial court's order of January 22, 2016. LaSalle contends that the January 22, 2016, order was not a final order, and that the final order in this case was the one resolving LaSalle's petition for attorney fees which was entered almost five months later, on June 16, 2016. Because LaSalle did not file a notice of appeal following the entry of the June 16, 2016 order, Inter-Track contends that LaSalle's prior Notice of Appeal was premature and this court lacks jurisdiction to entertain LaSalle's appeal.

¶ 18 In its response to Inter-Track's motion to dismiss, LaSalle asserts that it is appealing the order entered "January 22, 2016, *nunc pro tunc*." LaSalle contends that this is a final order, and that the "January 22, 2016 Order fixed the rights of the parties and allowed for execution of the judgment."

¶ 19 "The filing of a notice of appeal 'is the jurisdictional step which initiates appellate review.' " *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (quoting *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7 (1998)). Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal. *Id*. A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal. *People v. Lewis*, 234 Ill. 2d 32, 37 (2009). "The purpose of the notice of appeal is to inform the prevailing party that the other party seeks review of the trial court's decision." *Id*. A notice of appeal " 'should be considered as a whole

and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " *Smith*, 228 Ill. 2d at 105 (quoting *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229 (1991)).

¶ 20 Initially, we note that the order to which LaSalle refers, and to which it claims to be appealing, was actually entered on January 27, 2016, when the trial court corrected its earlier order. Although the court entered that order "*nunc pro tunc*" to January 22, 2016, that does not turn the January 27, 2016 order into an order of "1/22/16"—the only order from which LaSalle purported to appeal. As such, we cannot conclude that LaSalle fairly provided notice of its intent to appeal the January 27, 2016, order when it indicated that it was appealing the order of "1/22/16[.]" See *Id*..

¶ 21 Nonetheless, even if LaSalle had invoked its intent to appeal from the corrected order, neither the January 22 nor January 27, 2016, orders were final orders that would support this court's jurisdiction. "Our jurisdiction is limited to the review of appeals from final judgments, unless otherwise permitted under the Illinois Supreme Court rules or by statute. [Citations.]" *Inland Commercial Property Management, Inc. v. HOB I Holding Corp.*, 2015 IL App (1st) 141051, ¶ 17. "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof. [Citations.] A judgment is final if it fixes absolutely and finally the rights of the parties in the lawsuit *** [and] determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." (Internal quotation marks omitted). *Id.* ¶ 18.

¶ 22 Here, at the time that the January 22 and January 27, 2016 orders were entered, Inter-Track's pending fee petition, filed in August 2015, had not yet been ruled on. Additionally, the January 2016 orders left unresolved the issue of LaSalle's attorney fees, which was raised in the pleadings, and which was later resolved by the trial court in its June 16, 2016 order—the actual final order in this case. See *Hise v. Hull*, 116 Ill. App. 3d 681 (1983) (holding that a trial court's order was not final and appealable where the trial court had reserved ruling on defendant's claim for attorney fees) (superceded by statute on other grounds); *Bale v. Barnhart*, 343 Ill. App. 3d 708 (2003) (trial court's order granting motion to dismiss was not final and appealable where the moving party had requested attorney fees in the motion to dismiss, and later filed a timely petition for attorney fees, and the trial court had not yet ruled on the request). Because we find no final order in this case until June 16, 2016, we lack jurisdiction over LaSalle's appeal based on its prematurely filed notice of appeal, and we must dismiss LaSalle's appeal for want of jurisdiction.

¶ 23 We next turn to Inter-Track's cross-appeal, which we do have jurisdiction to consider based on Inter-Track's timely notice of appeal filed July 15, 2016, within 30 days of the June 16, 2016, final order.

¶ 24 Inter-Track raises five issues in its cross-appeal. First, it claims that the trial court erred in entering judgment in favor of LaSalle, because the evidence shows that LaSalle had not fully performed all obligations under the lease. Inter-Track also contends that it was absolved of its obligation to pay rent, and that the trial court erred in entering judgment for LaSalle, because LaSalle "failed to mitigate [its] damages." Additionally, Inter-Track challenges the trial court's interest award in favor of LaSalle, because it failed to credit Inter-Track on its counterclaim as an offset before calculating interest. Inter-Track further argues that the trial court erred in failing to

award damages based on LaSalle's failure to install an elevator. Finally, Inter-Track contends that the trial court's award of attorney fees to LaSalle should be reversed because LaSalle was not the prevailing party. We address each issue in turn.

¶ 25 Inter-Track first asserts that the trial court erred in entering judgment in favor of LaSalle where LaSalle also breached the lease, citing *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289 (1980), for the proposition that LaSalle was "required to prove that it fully performed all of its obligations under the contract in order to recover damages." Inter-Track also contends that the Illinois Supreme Court applied this "material breach doctrine" to commercial leases in *University of Chicago v. Deakin*, 265 Ill. 257, 260-61 (1914), and quotes a passage, which it mistakenly purports to be from that case. This court has examined the case cited by Inter-Track and finds no such language in that case.

¶ 26 Under the material breach doctrine, "[a] party to a contract is discharged from his duty to perform where there is a material breach of the contract by the other party." *Susman v. Cypress Venture*, 187 Ill. App. 3d 312, 316 (1989). A failure to perform is a material breach where the covenant not performed is of such importance that the contract would not have been made without it. *Haisma v. Edgar*, 218 Ill. App. 3d 78, 86 (1991). However, even if the material breach doctrine applied in this case, it would not absolve Inter-Track of its duty to pay rent for the time that it remained in the leased premises.

¶ 27 Where a tenant fails to surrender possession after the landlord's commission of acts justifying the abandonment of the premises, the liability for rent will continue so long as possession of the premises is continued." *Automobile Supply Co., v. Scene–In–Action Corp.*, 340 Ill. 196, 200–01 (1930); see also *McArdle v. Courson*, 82 Ill. App. 3d 123, 126 (1980) ("We are unaware of any authority in this state for permitting a commercial tenant to both remain in

possession and refuse to pay rent when a landlord breaches a covenant of the lease, unless the terms of the lease so provide."). Accordingly, the doctrine could apply, at most, to the time after Inter-Track vacated the property, but Inter-Track remained obligated to pay rent for the prior time period when it remained in possession of the leased premises.

¶ 28 We thus turn to the question of whether the trial court erred in determining that Inter-Track remained obligated to pay rent for the time period after it vacated the leased premises in September 2010. To justify a premature termination or forfeiture of a lease agreement, the breach must have been material or substantial. *First National Bank of Evergreen Park v. Chrysler Realty Corp.*, 168 Ill. App. 3d 784, 793 (1988); see also *Mann v. Mann*, 283 Ill. App. 3d 915, 922 (1996) (immaterial breach did not warrant termination of lease agreement);

¶ 29 A breach is material where the covenant breached is one of such importance that the contract would not have been entered into without it. *Galesburg Clinic Ass'n v. West*, 302 Ill. App. 3d 1016, 1019 (1999); *United States Fidelity & Guaranty Co. v. Old Orchard Plaza Limited Partnership*, 284 Ill. App. 3d 765, 776 (1996). The determination of whether a breach is sufficiently material to forgive a party of future performance depends "on the inherent justice of the matter and presents 'a complicated question of fact' " (*Wolfram Partnership, Ltd. v. LaSalle National Bank*, 328 Ill. App. 3d 207, 222–23 (2001), quoting *Kel–Keef Enterprises, Inc. v. Quality Components Corp.*, 316 Ill. App. 3d 998, 1016–17 (2000)), and this court reviews the trial court's findings under the manifest weight of the evidence standard (*Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007) ("In reviewing a judgment entered after a bench trial, the trial court's findings will not be disturbed on appeal unless they are against the manifest weight of the evidence")).

¶ 30 A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or when findings appear to be arbitrary, unreasonable, or not based on the evidence presented at trial. *Id*., citing *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005) and *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). A reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact. *Id*., citing *Eychaner*, 202 Ill. 2d at 252 and *Kalata v. Anheuser–Busch Cos.*, 144 Ill. 2d 425, 434 (1991). The trial court's findings of fact are entitled to deference, particularly where credibility determinations are involved. *Id.*, citing *Eychaner*, 202 Ill. 2d at 251, and *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989). This rule recognizes the superior position of the trier of fact to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh the evidence and determine the preponderance thereof. *Id*. A judgment will not be overturned merely because the reviewing court might disagree with the judgment or might have come to a different conclusion. *Id.*, citing *Eychaner*, 202 Ill. 2d at 270–71.

¶ 31 In this case, we find nothing that would overcome the deferential standard afforded to the trial court in determining that LaSalle's breaches did not entitle Inter-Track to vacate the premises and release it of its continuing obligation to pay rent. The specific breaches of which Inter-Track complains are LaSalle's failure to provide it with an elevator and a cash allowance for windows and stairs, and that LaSalle had improperly drawn on a letter of credit. However, there is no evidence presented that would allow us to determine that these provisions were "of such importance that the contract would not have been entered into without [them]." See *Galesburg Clinic Ass'n*, 302 Ill. App. 3d at 1019. Specifically, regarding the elevator, there was evidence at trial that Inter-Track had access to, and use of, another elevator in the lobby of the

premises, and that the lack of the elevator that was contracted for in the lease was "an inconvenience."

¶ 32 Inter-Track also challenges the entry of judgment in favor of LaSalle, because LaSalle "failed to mitigate [its] damages." A landlord has a statutory duty to "take reasonable measures to mitigate the damages recoverable against a defaulting lessee." 735 ILCS 5/9–213.1 (West 2014). The landlord bears the burden of proving that it complied with the statutory duty of mitigation. If a landlord cannot show that it took reasonable steps to mitigate its damages, the damages that it would otherwise recover are reduced, and losses which reasonably could have been avoided are not recoverable." (Internal citation and quotation marks omitted.) *Danada Square, LLC v. KFC National Management,* 392 Ill. App. 3d 598, 608 (2009). Whether a landlord has met its statutory duty to mitigate its damages is a question of fact, for which we apply a manifest weight of the evidence standard of review. *Id*., at 607; *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008).

¶ 33 We note, again, that even if LaSalle had failed to mitigate damages, such failure does not constitute a total defense to a judgment for unpaid rent as Inter-Track appears to contend, since the damages are reduced only by the amount of "losses which reasonably could have been avoided." *Danada Square, LLC*, 392 Ill. App. 3d at 608. An alleged failure to mitigate damages is not a defense for the time that Inter-Track continued to occupy the premises.

¶ 34 Inter-Track contends that plaintiff introduced "no evidence of mitigation and accordingly failed to comply with its statutory duty to mitigate its damages." We disagree. The record shows that there was testimony regarding the efforts that LaSalle undertook to re-lease the premises, and that at least 20 or 30 prospective tenants had walked through the premises to observe the space. However, none of the tenants were willing to enter into a lease with terms that were

acceptable to LaSalle. The trial court found, based on the above, that LaSalle had undertaken reasonable efforts to mitigate damages after Inter-Track abandoned the premises. Given the evidence presented at trial, we do not find that conclusion to be against the manifest weight of the evidence.

¶ 35 Inter-Track also contends that, "by consenting to the entry of a permanent injunction, [LaSalle] totally abrogated its statutory obligation to mitigate its damages and effectively foreclosed its ability to recover future rent from Inter-Track" because "no party could thereafter undertake any leasing of the premises" where LaSalle agreed that the building would remain vacant. Inter-Track's argument on this point is perplexing, because the trial court found that Inter-Track was not obligated to pay rent following LaSalle's consent to the injunction. As stated, a failure to mitigate damages does not operate as a complete bar to receiving any and all unpaid rent, and thus, LaSalle's consent to an injunction is not relevant to its duty to mitigate damages, all of which occurred prior to the injunction.

¶ 36 Next, Inter-Track contends that the trial court's interest award was erroneous, because it failed to credit Inter-Track on its counterclaim as an offset before calculating interest. As stated above, the judgment in favor of LaSalle included interest that was calculated at the prime rate plus 3%, as was specified in the parties' lease. The trial court, however, credited Inter-Track with statutory interest at 5% on its judgment. Inter-Track's claim on appeal—that LaSalle's judgment should have been offset with the judgment for Inter-Track before calculating interest—is effectively an argument that Inter-Track should have received the same, prime plus 3%, interest on its judgment, as was awarded to LaSalle.

¶ 37 The sole case Inter-Track cites in support of its claim is *Saint Joseph Hospital v. Corbetta Construction Co.*, 21 Ill. App. 3d 925, 968 (1974). At issue in *Saint Joseph Hospital* was a

construction contract between the hospital and contractor which provided that an architect would certify the amount due and withholding payment for defective work. After the contractor completed the work, but before an architect had certified completion, the hospital withheld money due contractor based on paneling that did not meet city code. Although the court found that the hospital was liable to the contractor for money withheld, it also concluded that, under the parties' contract "moneys are not 'due and payable' under the written contract until an architect's certificate has been obtained (or a judgment is entered by a court)." *Id*., at 967. The court thus determined that the hospital was not obligated to pay interest until the court determined the amount due. It stated, "interest should not begin to run on the sums so withheld until the trial court, on remand, has fixed the amount improperly withheld and has entered judgment therefore in favor of Corbetta and against the Hospital." *Id*., at 968.

¶ 38 *Saint Joseph Hospital* does not hold, as Inter-Track contends, that the judgments must be offset before interest accrues. Rather, the case held, under the provisions of the parties' contract, that an amount did not become due and owing until it was properly determined by the judgment, and thus, the hospital did not owe interest on the amount before that time.

¶ 39 The two treatises cited by Inter-Track, *Dobbs Law of Remedies* and *The Restatement Second of Contracts*, are equally unsupportive of Inter-Track's position. *Dobbs* recognizes that, in cases where a plaintiff's claim is ascertainable and prejudgment interest is awarded, a party's successful counterclaim that reduces his liability for reasons arising out of the same facts that gave rise to the plaintiff's claim, does not prevent prejudgment interest, but the interest should be computed "on the net amount the plaintiff recovers after crediting the defendant." However, the treatises also recognize that "parties *** may provide for interest in their contracts, *** [and], [so] far as valid, the contract establishes the parties' rights including rights to interest, its rate and

computation." See Dan B. Dobbs, *Dobbs Law of Remedies*, § 3.6(1), (2d ed. 1993); see also *Restatement Second of Contracts*, § 354 (Am. Law Inst. 1981) ("If the parties have agreed on the payment of interest, it is payable not as damages but pursuant to a contract duty that is enforceable as is any other duty, subject to legal restrictions on the rate of interest.").

¶ 40 Likewise, in this case, there is a particular provision in the parties' lease which governs an interest award. That provision specifies that,

> "if any installment of Rent or any other sum due from Tenant is not received by Landlord when due, Tenant shall promptly pay to Landlord *** interest on such delinquent amount at the rate equal to the prime rate plus three percent (3%) for the time period such payments are delinquent ***."

As the plain language of this provision makes clear, the interest rate of prime plus 3% applies to unpaid rent or other sums due from the *tenant* to the *landlord*. There is no similar provision in the parties' lease which would allow the same interest rate to be applied to claims by the tenant against the landlord, and, had the trial court interpreted the lease as Inter-Track contends, it would have been acting in violation of the parties' agreement. In these circumstances, where there is a specific lease provision governing the issue, we do not find the authority cited by Inter-Track persuasive.

¶ 41 Inter-Track next asserts that the trial court erred in finding that it had not proven damages based on LaSalle's failure to install an elevator as required by the lease. Inter-Track alleges that the trial court erred in failing to award damages in the amount of $193,000, the estimated cost to reactivate the elevator. The parties agree that we review the trial court's damages award under the manifest weight of the evidence standard.

¶ 42 The only authority Inter-Track cites in support of its claim of error is *De Koven Drug Co. v. First National Bank of Evergreen Park*, 27 Ill. App. 3d 798 (1975), which it cites for the proposition that absolute certainty as to damages is not required to justify recovery, and that an estimate or approximation is sufficient. Inter-Track, however, misunderstands the trial court's finding. Inter-Track's claim of damages did not fail because the evidence supporting the cost of reactivating the elevator was approximate. It failed because the total cost of reinstalling an elevator is not an appropriate measure of damages for LaSalle's failure to provide it with one.

¶ 43 " 'As a general rule *** the damages to which one party to a contract is entitled because of a breach thereof by the other are such as arise naturally from the breach itself, or such as may reasonably be supposed to have been within the contemplation of the parties at the time of making the contract as a probable result of a breach thereof' " *Zion Industries, Inc. v. Loy*, 46 Ill. App. 3d 902, 911 (1977), quoting *Sitnick v. Glazer*, 11 Ill. App. 2d 462, 467 (1956). A tenant who does not receive the benefit of its lease contract may bring a claim for damages resulting from the landlord's breach, effectively offsetting the rent it is obligated to pay, either in full or in part, based upon the diminished value of the leased premises. See *64 E. Walton, Inc. v. Chicago Title & Trust Co.*, 69 Ill. App. 3d 635, 642 (1979); *Keating v. Springer*, 146 Ill. 481, 496 (1893). The measure of damages in such a case is the difference between the rental value of the premises involved and the rent which the tenant has agreed to pay, together with such special damages as may have been directly and necessarily occasioned to the tenant by the landlord's breach. *64 E. Walton, Inc.*, 69 Ill. App. 3d at 642

¶ 44 In this case, Inter-Track offered no evidence regarding the rental value of the leased premises without the elevator, or any other "special damages" that it suffered from the lack of the elevator that was contracted for in the parties' lease. In these circumstances, the trial court

correctly found that an award of the full cost of reactivating an elevator would have constituted a "windfall" to Inter-Track. We do not find the court's conclusion that Inter-Track had not proven damages based on LaSalle's breach to be against the manifest weight of the evidence.

¶ 45 Finally, Inter-Track contends that the trial court's award of attorney fees to LaSalle should be reversed because LaSalle was not the prevailing party under the relevant provision in the parties' lease. Inter-Track contends that "where, as here, the Court finds both parties breached the lease, neither party can seek fees under the plain terms of the attorney's fee provision." Inter-Track specifically asserts that the parties lease provision governing attorney fees is "highly restricted," and "requires the prevailing party to triumph on all issues to be the one entitled to attorney's fee."

¶ 46 In general, Illinois follows the "American Rule," under which each party must bear its own attorney fees. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 572 (2000). However, Illinois courts will award attorney fees when the parties contracted for the award of fees or when such an award is authorized by statute. *Geisler v. Everest National Insurance Co.*, 2012 IL App (1st) 103834, ¶ 86. A court must strictly construe a contractual provision providing for attorney fees, which requires construing the provision " 'to mean nothing more—but also nothing less—than the letter of the text.' " *Bjork v. Draper*, 381 Ill. App. 3d 528, 544 (2008) (quoting *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 952 (2004)).

¶ 47 Generally, a trial court has broad discretion to award attorney fees and its decision will not be disturbed on appeal absent an abuse of that discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44 (1991); *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 225 (2007). However, in cases in which a party contests the trial court's authority to award attorney fees under the terms of a lease, our standard of review is twofold. *Id*. First, to the extent that the trial court interpreted

the terms of the lease, our review is *de novo. Id*. Second, where the trial court applied the terms of the contract to the facts, our review is based on an abuse of discretion standard. *Id*. at 226.

¶ 48 We first examine the language of the lease *de novo*. The primary goal of contract interpretation is to give effect to the intent of the parties, as shown by the language in the contract. *Lease Management Equipment Corp. v. DFO Partnership,* 392 Ill. App. 3d 678, 685 (2009). In determining the intent of the parties, a court must consider the document as a whole and not focus on isolated portions. *Premier Title Co. v. Donahue,* 328 Ill. App. 3d 161, 164 (2002). If the language of a contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract itself. *Virginia Surety Co. v. Northern Insurance Co. of New York,* 224 Ill. 2d 550, 556 (2007). That language should be given its plain and ordinary meaning, and the contract enforced as written. *Id*.

¶ 49 As stated above, the parties' lease provided:

> "In the event of any dispute between the parties results in litigation or other proceeding, the prevailing party shall be reimbursed by the party not prevailing for all reasonable costs and expenses including, without limitation, reasonable attorneys' fees and experts' fees and costs incurred by the prevailing party in connection with such litigation."

¶ 50 Looking at the language of the lease *de novo*, we disagree with Inter-Track that it required a party to succeed on all claims in order to be considered prevailing. Although Inter-Track assigns particular importance to the fact that the word " 'prevailing' appears twice in [the relevant provision] whereas the typical provision only uses the word 'prevailing' with reference to one party," we fail to see such significance.

¶ 51 Although the parties' lease does not define the term "prevailing party," this court has held that 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." *Esker,* 325 Ill. App. 3d at 280; *Jackson,* 274 Ill. App. 3d at 70. While this court has noted that there may be some circumstances in which it "may be inappropriate" to find that either party is prevailing when a dispute involves multiple claims and both parties have won and lost on different claims, we have also specifically found that "a litigant does not have to succeed on all its claims to be considered a prevailing party." *Peleton, Inc.,* 375 Ill. App. 3d at 227-28.

¶ 52 Inter-Track cites two cases, *Battaglia v. 736 N. Clark Corp.,* 2015 IL App (1st) 142437 and *Raffel v. Medallion Kitchens of Minnesota, Inc.,* 139 F.3d 1142, 1144 (7th Cir. 1998), in support of its argument that the trial court abused its discretion in finding that LaSalle was the prevailing party when each party succeeded on separate issues. Given the very different procedural posture of those cases, considering the trial court's *denial* of an award of attorney fees under an abuse of discretion standard, whereas in this case, we are considering the trial court's award of attorney fees under the same standard, we find those cases distinguishable and unsupportive of Inter-Track's claim. We thus conclude that the trial court did not abuse its discretion in determining that LaSalle was the prevailing party. See *Powers v. Rockford Stop-N-Go, Inc.,* 326 Ill. App. 3d 511, 516 (2001).

¶ 53 Inter-Track also contends that the attorney fees entered by the trial court were not reasonable, and that the trial court erred in refusing defendant's request to conduct an evidentiary hearing on the issue. LaSalle responds that there was sufficient support for the trial court's attorney fee award, but it does not respond to Inter-Track's contention that it was entitled to an evidentiary hearing. We note that Inter-Track did, in fact, request an evidentiary hearing in its

response to LaSalle's fee petition, and we agree that an evidentiary hearing is required when a party so requests.

¶ 54 The reasonableness of fees is a matter of proof, and a party ordered to pay attorney fees has the right to conduct meaningful cross-examination on the issue. *Bank of America National Trust & Savings Association v. Schulson*, 305 Ill. App. 3d 941, 952 (1999), *as modified on denial of reh'g* (June 30, 1999) (citing *Fried v. Barad*, 187 Ill. App. 3d 1024, 1030 (1989); *6334 North Sheridan Condominium Association v. Ruehle*, 157 Ill. App. 3d 829, 834 (1987)). When a party who must pay attorney fees asks for an evidentiary hearing, he is entitled to one. *Id.* (citing *In Support of Burks*, 100 Ill. App. 3d 700, 706 (1981); *People ex rel. Holland v. DeMichael*, 79 Ill. App. 3d 974, 981 (1979)).

¶ 55 We thus vacate the award of attorney fees in favor of LaSalle, and remand this matter for further proceedings in the trial court and an evidentiary hearing regarding the reasonableness of the attorney fees sought by LaSalle. In doing so, we express no opinion as to the reasonableness of the fees awarded.

¶ 56 For the foregoing reasons, we dismiss the appeal brought by LaSalle, vacate the attorney fee award and remand for further proceedings consistent with this order, and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 57 LaSalle's appeal dismissed; Inter-Track's cross-appeal affirmed in part; attorney fee award vacated and remanded for further proceedings.