2017 IL App (1st) 161656-U

SIXTH DIVISION
Order filed: June 30, 2017

Nos. 1-16-1656 and 1-16-2435, cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LEE SOLOMON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 M1 113616
	)	
MARILYN LONDON,	)	Honorable
	)	Jerry A. Esrig,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse the judgment of the trial court as to its order granting the tenant's "Motion to Reconsider" and reducing the judgment in the landlord's favor, and reinstate the trial court's judgment awarding the landlord $4,059 on her counterclaims. Additionally, we affirm the trial court's judgment in favor of the tenant under section 5-12-170 of the Chicago Residential Landlord and Tenant Ordinance (Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013)), such that the trial court did not err in granting the tenant attorney fees and costs for prevailing on his claim under that provision.

¶ 2 The defendant, Marilyn London, appeals from the judgment of the trial court in an action filed by the plaintiff, her former tenant, Lee Solomon, under the Chicago Residential Landlord

and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.* (amended Mar. 31, 2004)). Following a bench trial, the trial court entered judgments totaling $2,450 in favor of Solomon on his complaint and $4,059 in favor of London on her counterclaims. Subsequently, the trial court granted Solomon's "Motion to Reconsider" by reducing the judgment in London's favor to $500, and awarding Solomon attorney fees and costs totaling $3,028.79. On appeal, London contends that the trial court erred in: (1) granting Solomon's "Motion to Reconsider" and reducing the judgment in her favor; (2) entering judgment for Solomon on count II of his complaint, which alleged that London failed to attach a summary of the RLTO to the lease agreement that she offered him in 2014; and (3) awarding Solomon attorney fees and costs as to that count. For the reasons that follow, we reverse in part, affirm in part, and reinstate the trial court's judgment awarding London $4,059 on her counterclaims.

¶ 3 The following factual recitation is taken from the pleadings, testimony, and exhibits of record.

¶ 4 From March 2012 to March 2015, Solomon rented a condominium owned by London in Chicago. On June 22, 2015, he filed a complaint against London consisting of two counts. Count I alleged that London failed to return interest on Solomon's $1,175 security deposit and sought damages equal to double the amount of the security deposit under section 5-12-080 of the RLTO (Chicago Municipal Code § 5-12-080 (amended July 28, 2010)). Count II alleged that London failed to attach a summary of the RLTO to a lease agreement that the parties signed in February 2014 (the 2014 Lease) and sought $100 in damages under section 5-12-170 of the RLTO (Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013)).

¶ 5 On December 21, 2015, London filed an answer and two counterclaims, which alleged that Solomon breached the 2014 Lease by (1) failing to vacate the condominium by the last day

of the lease, and (2) failing to return the premises "in as good condition as when [he] took possession, ordinary wear and tear excepted."

¶ 6 The matter proceeded to a bench trial on March 9, 2016. Because neither party appeals the trial court's judgment as to London's counterclaim regarding Solomon's alleged failure to timely vacate the condominium, we set forth only those facts relevant to Solomon's complaint and London's counterclaim as to the condominium's condition.

¶ 7 The evidence adduced at trial established that, in February 2012, London installed a new wooden floor in a condominium that she owned. That month, she rented the condominium to Solomon per a lease agreement (the 2012 Lease). Pursuant to the 2012 Lease, Solomon gave London a $1,175 security deposit and was required to return the premises in as good condition as it was delivered to him, excluding wear and tear. Solomon testified that, while he lived in the condominium, he occasionally used a mop to clean the floor. In February 2014, during the second year that he lived in the condominium, he informed London that the floor near the front foyer and windows "would shrink [in] the wintertime and expand in the summertime." In response, London viewed the condominium and contacted her flooring supplier but did not repair or replace the floor. Later that month, Solomon renewed the lease for a third year and signed the 2014 Lease. The 2014 Lease—unlike the 2012 Lease—did not state that copies of "the landlord-tenant ordinances are here attached ***."

¶ 8 In February 2015, Solomon told London that he wanted to renew his lease for a fourth year. London provided Solomon with a copy of a new lease but, on February 19, 2015, informed him that the lease would not be renewed because she intended to sell the condominium. London advertised the condominium using photographs that were taken while Solomon was still in possession of the unit, and testified that, based upon those photographs, a prospective buyer

asked her to reduce the purchase price by $500 due to damage to the floor; the sale failed, however, after the buyer learned that the building might impose restrictions on renting condominiums.

¶ 9 On April 3, 2015, after the 2014 Lease expired and Solomon vacated the condominium, London briefly viewed the premises and returned Solomon's security deposit without interest. On April 4, London examined the condominium again and observed areas where the wooden floor had expanded and contracted. She hired a contractor, Waldemar Kruk, who testified that he found that 10% of the floor was damaged when he examined it in April 2015. Because London could not obtain the same wood used for the rest of the floor, she testified that she replaced the entire floor at a cost $4,059. An invoice from her supplier, AAmerican Custom Flooring, Inc., which was introduced at trial, indicated that her order "shipped" on February 27, 2015, but also displayed a stamp with the date March 17, 2015, and a separate, typewritten date of April 16, 2015.

¶ 10 Following arguments, the trial court entered judgment in favor of Solomon on count I of his complaint based upon London's failure to return the security deposit with interest, and awarded him $2,350, representing damages equal to double the amount of his security deposit under section 5-12-080 of the RLTO (Chicago Municipal Code § 5-12-080 (amended July 28, 2010)). The trial court also entered judgment in favor of Solomon on count II of his complaint based upon London's failure to attach a summary of the RLTO to the 2014 Lease, and awarded him a $100 statutory penalty under section 5-12-170 of the RLTO (Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013)). As to London's counterclaims, the trial court awarded her $4,059 for the cost of replacing the condominium floor.

¶ 11 On April 7, 2016, Solomon filed a "Motion to Reconsider." In his motion, he argued that the trial court erred in awarding London the full replacement cost of the condominium floor because: (1) no evidence demonstrated that the floor needed to be replaced in order for London to sell or lease the condominium; (2) the proper measure of damages was not the full replacement cost of the floor but, rather, the loss of value to the condominium, *i.e.*, $500; and (3) the shipment date on the invoice from AAmerican Custom Flooring indicated that London decided to replace the condominium floor prior to discovering the water damage.

¶ 12 London filed a response to Solomon's motion, attaching her affidavit and a second invoice from AAmerican Custom Flooring that was not introduced at trial. In her affidavit, London averred that, per the second invoice, she purchased wood from AAmerican Custom Flooring for a different unit on February 27, 2015. On April 16, 2015, after learning that she needed to replace the floor in the condominium she leased to Solomon, she placed the order documented in the invoice introduced at trial. London attested that AAmerican Custom Flooring "must have used the same form invoice on their system to generate the new invoice, but failed to correct the 'date shipped.' " Thus, according to London, the invoice introduced at trial did not establish that she decided to replace the condominium floor prior to discovering the water damage.

¶ 13 Solomon filed a reply to London's response, arguing that her explanation of the February 27, 2015, shipping date was speculative because she did not provide an affidavit from AAmerican Custom Flooring and, moreover, did not explain why the invoice introduced at trial was stamped several weeks before the date on which she claimed to have discovered the water damage.

¶ 14 On June 2, 2016, the trial court granted Solomon's "Motion to Reconsider" and reduced London's award on her counterclaim to $500. Solomon then filed a petition for attorney fees under section 5-12-180 of the RLTO (Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991)). On August 25, 2016, the trial court granted Solomon attorney fees and costs totaling $3,028.79. London timely appealed from both orders. In her brief on appeal, she raises no argument with respect to the trial court's order entering judgment in favor of Solomon on count I of his complaint.

¶ 15 On appeal, London first contends that the trial court erred in granting Solomon's "Motion to Reconsider" as to the calculation of damages on her counterclaim, as the proper measure of damages was the cost to replace the entire floor of the condominium and not the diminution in value caused by the water damage.

¶ 16 A trial court's ruling on a motion to reconsider is generally reviewed under an abuse of discretion standard. *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20. Where, however, as in the case at bar, "a motion to reconsider only asks the trial court to reevaluate its application of the law to the case as it existed at the time of judgment, the standard of review is *de novo*." *Id.*

¶ 17 In general, " an 'award of damages aims at compensating the injured party for damage to his property' " and " 'restor[ing] the party to the equivalent of his rightful pre-injury position.' " *Ceres Terminals, Inc. v. Chicago City Bank & Trust Co.*, 259 Ill. App. 3d 836, 860 (1994) (quoting *Rittenhouse v. Tabor Grain Co.*, 203 Ill. App. 3d 639, 650 (1990)). However, the rules governing the measure of damages in particular cases are "guides only *** [that] should not be applied in an arbitrary, formulaic, or inflexible manner, particularly where to do so would not do substantial justice." (Internal quotation marks omitted.) *LaSalle National Bank v. Willis*, 378 Ill. App. 3d 307, 329 (2007). Thus, while tort damages to real property are usually measured by the

difference between the market value of the property before the injury and its value after the injury, courts may, when it is appropriate, award the cost of repair or replacement as damages. *Id.* at 329-30.

¶ 18 To determine the proper measure of damages, courts consider the nature of the realty involved and the impact of the injury on the plaintiff. *Id.* When the injury is permanent, the measure of damages is the diminution in value of the property due to the injury. *Ceres Terminals, Inc.*, 259 Ill. App. 3d at 861. However, when the injury is not permanent, damages are measured based upon the cost of restoration. *Id.* Whether an injury is "permanent" depends upon whether it may be repaired in a practicable manner. *Id.* (citing *Williams-Bowman Rubber Co. v. Industrial Maintenance, Welding & Machine Co., Inc.*, 677 F. Supp. 539, 545 n.6 (N.D. Ill. 1987) ("An injury would be impracticable to repair if it would put the defendant to disproportionate expense or effort to restore it to its condition prior to the injury.")). As this court explained in *Ceres Terminals, Inc.*:

> "[i]f real property is partially injured, and the injury may be repaired in a practicable manner, then the proper measure of damages is the cost of restoring the property to its condition prior to the injury. If, however, the real property is totally destroyed or damaged in a manner which renders repair impracticable, then the diminution in value rule applies." *Id.* at 861-62 (quoting *Williams-Bowman Rubber Co.*, 677 F. Supp. at 545).

Other factors relevant to determining the proper measure of damages include the location and character of the real property and whether the cost of repair is disproportionate to the value of the property. *Id.* at 862.

¶ 19 Based upon these principles, we find that the appropriate measure of damages in the present case is the cost of replacing the entire floor of the condominium rather than the diminution in value caused by the water damage. The evidence adduced at trial demonstrated that 10% of the floor was damaged by direct contact with water and that London replaced the entire floor because she could not find the same type of wood to repair the damaged section. The damage to the condominium was partial, as only the floor was damaged, and was subject to repair in a practicable manner because only the floor was replaced. Thus, we reject Solomon's argument that the measure of damages should be the diminution in the condominium's market value; even if the cost of replacing the floor exceeded the diminution in value caused by the water damage, the condominium was not destroyed or damaged in a manner that precluded repair or required disproportionate expenses to repair. Moreover, although Solomon argues that awarding London the cost of replacing the entire floor would grant her a windfall where the cost of the new floor likely exceeded the value of the floor at the time it was replaced, no evidence regarding depreciation was introduced at trial and we will not speculate as to that issue.

¶ 20 Solomon maintains, however, that the dates listed on the flooring supplier's invoice that was introduced at trial suggest that London intended to replace the floor even before she discovered the extent of the water damage. Alternatively, Solomon submits that London is estopped from seeking damages for the floor where he informed her that it was buckling in February 2014. Neither argument has merit. Solomon testified that he informed London that the floor would shrink and expand as the seasons changed, but Kruk testified that the damage he observed resulted from direct contact with water. Further, whether London planned to replace the floor prior to learning about the water damage has no bearing on Solomon's liability for damage that he caused. Therefore, we reverse the judgment of the trial court as to its order

granting Solomon's "Motion to Reconsider" and reducing the judgment in London's favor, and we reinstate the judgment of the trial court awarding London $4,059 for the cost of replacing the condominium floor.

¶ 21 Next, London contends that the trial court erred in entering judgment on count II of Solomon's complaint where, according to London, Solomon lacked standing to bring his claim because he neither alleged nor proved that London's failure to attach a copy of the RLTO to the 2014 Lease, in violation of section 5-12-170 of the RLTO, caused him actual damages. See Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013) ("A copy of such summary shall be attached to each written rental agreement when any such agreement is initially offered to any tenant or prospective tenant by or on behalf of a landlord and whether such agreement is for a new rental or a renewal thereof."). This claim has been waived, as London did not raise the issue of standing in the trial court. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988) ("lack of standing in a civil case is an affirmative defense, which will be waived if not raised in a timely fashion in the trial court."). Thus, her final claim of error, namely, that the trial court erred in awarding Solomon attorney fees and costs on count II of his complaint, is also without merit. Section 5-12-180 of the RLTO (Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991)) provides that "the prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees ***." In this case, due to London's waiver of the issue of standing, this court has no basis to disturb either the trial court's determination that Solomon prevailed on count II of his complaint or its award of attorney fees and costs on that basis.

¶ 22 Based upon the foregoing, we reverse the trial court's order granting Solomon's "Motion to Reconsider" and reducing the judgment entered in London's favor; reinstate the judgment of the trial court awarding London $4,059 for the cost of replacing the condominium floor; and affirm the trial court's judgment on Solomon's claim under section 5-12-170 of the RLTO (Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013)), awarding him attorney fees and costs totaling $3,028.79.

¶ 23 Reversed in part and affirmed in part; judgment reinstated.