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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

PATRICK McDEVITT,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant and)	
Counterdefendant,)	
)	
v.)	No. 15-LM-2179
)	
MARK D. MERCER,)	
)	Honorable
Defendant-Appellee and)	Eugene G. Doherty,
Counterplaintiff.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The (1) The trial court was permitted to invoke equity to deny plaintiff his right to a forfeiture under a contract for deed; (2) the trial court did not abuse its discretion in refusing to reopen the proofs, as the proffered evidence would have been tangential to the basis for the court's decision.

¶ 2 Plaintiff, Patrick McDevitt, filed a forcible entry and detainer action against defendant, Mark D. Mercer, seeking possession of an apartment building that defendant was purchasing on contract. The trial court denied relief and plaintiff appeals. He contends that the court erred by (1) relying on equitable principles even though plaintiff had complied with the statute; and

(2) refusing to reopen the proofs to allow plaintiff to present evidence of the property's rental value. We affirm.

¶ 3 On March 18, 2007, the parties signed an agreement for deed. Defendant agreed to purchase a six-unit apartment building in Rockford for \$165,000. Defendant would pay \$1,700 monthly until March 1, 2008, when the balance would become due. A notation at the bottom of the page provided that the balance due as of March 1, 2008, would be \$160,000.¹ The agreement did not explicitly provide for interest. Paragraph 3 of the agreement provided that, in the event of a default, plaintiff could, “upon giving 30 days written notice pursuant to the [Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2014))] forfeit Buyer's interest under this Agreement for Deed and retain all sums paid as liquidated damages.”

¶ 4 On July 1, 2008, the parties signed a one-year extension with monthly rent of \$1,650. Although the extension was to last, by its terms, for only a year, defendant continued to make payments until 2012. Both parties testified at trial that, if defendant missed a payment, plaintiff would go to his house to collect it.

¶ 5 On December 11, 2012, the parties signed a second amendment, extending the original agreement to December 14, 2015. Defendant continued making monthly payments until September 2015. On September 15, 2015, defendant's attorney sent plaintiff two checks totaling

¹ This provision is signaled by an asterisk in the body of the contract, which states that on March 1, 2008, “the remaining balance* shall be due and payable in full.” At the bottom of the page is the notation “* of \$153,000.00 (\$12,000.00 being applied to principal).” Everything after “of” is crossed out and replaced with a handwritten “\$160,000.00.” The parties' initials appear next to both provisions. We note that 12 times \$1,700 is \$20,400. Applying this full amount to the purchase price would leave a balance of \$144,600.

\$2,400. A letter stated that the checks were to pay in full the remaining balance on the contract. Plaintiff, believing that the balance due was closer to \$30,000, did not negotiate the checks. At about that time, plaintiff's wife, Donna McDevitt, learned through the Winnebago County recorder's office that a lien of \$300 plus interest and fines had been placed against the property as a result of building code violations.

¶ 6 On October 15, 2015, plaintiff sent defendant a notice of his intention to declare a forfeiture of all rights under the contract. Defendant refused to accept the certified letter. Plaintiff then sent a declaration of forfeiture. Plaintiff then filed a forcible entry and detainer action, and defendant filed a counterclaim for specific performance of the contract.

¶ 7 At trial, plaintiff and his wife testified to the foregoing. Defendant testified that he filed bankruptcy in 2012 and listed the debt owing to plaintiff at that time as \$68,074. However, defendant could not explain how his bankruptcy attorney calculated that number.

¶ 8 In closing arguments, the parties continued to dispute the amount that defendant actually owed. The trial court concluded that it was \$9,050. Plaintiff's counsel argued that plaintiff had done everything required by the statute to declare a forfeiture. Defense counsel argued that it would be inequitable to forfeit defendant's interest in the contract given the good-faith dispute about the amount due, which, in any event, was small in relation to the entire purchase price.

¶ 9 Citing *Ramer v. Storment*, 119 Ill. App. 3d 79 (1983), the court held that whether to forfeit defendant's interest in the contract required a balancing of the equities. The court found that, under the circumstances, it would be inequitable to declare a forfeiture. Accordingly, the court denied plaintiff relief and ordered him to tender defendant a deed.

¶ 10 Plaintiff moved to reopen the proofs. He argued that defendant raised the issue of equitable balancing for the first time in closing argument and that, if the court was going to

decide the issue on equitable grounds, plaintiff should be allowed to present evidence of the rental value of the property. Plaintiff alleged that he had managed the property before contracting to sell it to defendant and was thus familiar with its rental value. He contended that, if it was on its face inequitable to declare a forfeiture after defendant had paid a large percentage of the contract price, plaintiff should be allowed to show that defendant could have rented the units for nearly twice that amount during the length of the contract.

¶ 11 The trial court denied the motion. The court observed that an equitable balancing is an inherent part of a cause of action to declare a forfeiture of a real estate contract, not an affirmative defense, so that plaintiff should have presented that evidence as part of his case. The court further noted that the basis for its finding that a forfeiture would be inequitable was that the default arose from a good-faith dispute about the amount due, which in turn was a result of a poorly worded contract. And plaintiff's proposed evidence would not be relevant to that issue. Plaintiff timely appeals.

¶ 12 Plaintiff first contends that the trial court erred by deciding the issue on equitable grounds. He argues that the relevant statute is clear and that he followed the statute precisely in declaring a forfeiture. Thus, there was no basis for the court to resort to equitable considerations.

¶ 13 Section 9-104.1 of the Forcible Entry and Detainer Act (735 ILCS 5/9-104.1(a) (West 2014)) provides that, if a purchaser defaults on a contract to purchase land, the seller must make a formal demand and give the purchaser at least 30 days to satisfy the demand before filing suit. The statute provides formal requisites for making the demand. 735 ILCS 5/9-104.1 (West 2014). Plaintiff contends that he complied with the statute and, therefore, nothing further was required for him to maintain an action.

¶ 14 There is, however, a difference between filing an action and succeeding on one. In that respect, it is well established that courts of equity do not favor forfeitures and will not enforce them where injustice would result. *Rose v. Dolejs*, 1 Ill. 2d 280, 289-90 (1953). Accordingly, a court will enforce a contractual right to forfeiture, but only where such a right is clear and unequivocal and injustice will not result. *Aden v. Alwardt*, 76 Ill. App. 3d 54, 59 (1979). In deciding the enforceability of a forfeiture pursuant to a contract for deed, the court must balance the equities on a case-by-case basis, considering factors such as whether there has been prior acceptance of late payments; whether, assuming such acceptance, the buyer has been given reasonable warning that the seller will insist on prompt payment in the future; whether there has been a prior default; whether substantial payment has been made on the whole contract; whether the buyer has substantially improved the property; and whether there has been a mere “ ‘delay,’ ” as opposed to a “ ‘suspension’ ” of payments. *Ramert*, 119 Ill. App. 3d at 82. Thus, the trial court did not err in considering equitable factors in its decision.

¶ 15 Plaintiff next contends that, because the issue of equitable balancing was not raised until defendant’s closing arguments, the court should have reopened the proofs to allow him to present evidence of the property’s rental value while defendant was in possession. Plaintiff reasons that, if it was inequitable to forfeit defendant’s interest in the property after he had paid a large percentage of the purchase price, plaintiff should have been allowed to show that defendant should have been able to rent the property for nearly twice that amount. Such evidence, he claims, would have alleviated the apparent harshness of the forfeiture. See *First National Bank & Trust Co. of Barrington v. Maas*, 26 Ill. App. 3d 733, 739 (1975) (rental value of property was appropriate consideration when deciding whether forfeiture of payments made under installment contract was punitive).

¶ 16 Generally, the decision to reopen a case to allow for the introduction of additional evidence rests within the trial court's sound discretion. *Davis v. States Drywall & Painting*, 268 Ill. App. 3d 704, 716 (1994). In deciding whether to allow a party to reopen a case, a court should consider factors such as whether the failure to introduce the evidence occurred because of inadvertence or a calculated risk, whether the adverse party will be surprised or unfairly prejudiced by the new evidence, whether the new evidence is of the utmost importance to the movant's case, and whether any cogent reasons exist to justify denying the request. *Id.*

¶ 17 Here, the court reasonably concluded that the evidence was not of the "utmost importance." The court's remarks show that it was aware of the import of the proffered evidence but that it would not change the court's decision. The court explained that the primary inequity was not the percentage of the purchase price that defendant had paid, but rather that defendant's default arose from a good-faith dispute about the amount due, which in turn resulted from the poorly worded contract. Clearly, evidence about the property's rental value would not have changed that conclusion. And plaintiff does not argue that the court's conclusion that it was inequitable to order a forfeiture where the default resulted from a good-faith dispute about the contract's meaning was wrong. Thus, the court did not abuse its discretion in refusing to reopen the proofs.

¶ 18 The judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed.