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2017 IL App (3d) 160234-U

Order filed May 31, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

DAVID RABIDEAU,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	LaSalle County, Illinois.
)	
v.)	Appeal No. 3-16-0234
)	Circuit No. 16-LM-18
JESSICA'S CORNER 230, LLC, and)	
JESSICA SELLETT,)	The Honorable
)	Joseph P. Hettel,
Defendants-Appellees.)	Judge, presiding.
)	

JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's denial of plaintiff's complaint in forcible entry and detainer for failure to pay rent during the months of October to December 2015 was not against the manifest weight of the evidence. The trial court's judgment of rental payments for the months of January to April 2016 was against the manifest weight of the evidence.
- ¶ 2 Plaintiff David Rabideau entered into a lease agreement with defendants Jessica's Corner 230, LLC, and Jessica Sellet (collectively, defendants). Rabideau filed a complaint in forcible

entry and detainer against defendants for failure to pay rent. At trial, Rabideau filed a motion for directed verdict, which the trial court denied. Ultimately, the trial court ruled Jessica's Corner had a right to possession of the property but ordered Jessica's Corner to pay rent from January to April 2016. The court also denied Rabideau's request for attorney fee. We affirm in part and reverse in part.

¶ 3

FACTS

¶ 4

In 2010, Rabideau, Jessica's Corner, and Jessica Sellett entered into a five-year lease agreement in which Jessica's Corner would occupy the empty, unimproved building located at 230 W. Madison Street, Ottawa, Illinois. Pursuant to the agreement, Jessica's Corner installed the electrical, plumbing, bar, kitchen, and bathrooms necessary to use the premises as a restaurant.

¶ 5

In October 2014, Rabideau, Jessica's Corner, and Jessica Sellett entered into a subsequent five-year lease agreement in which Jessica's Corner would occupy the premises located at 230 and 228 West Madison Street. Between the relevant period of October 2015 and April 2016, Jessica's Corner was to pay a monthly installment of \$1600 in rent. The premises were to be operated as a restaurant and bar.

¶ 6

In September 2015, a fire, accidentally caused by a restaurant employee, occurred at Jessica's Corner. Rabideau's insurance company, Country Mutual Insurance Company, issued Rabideau a lost rent payment in the amount of \$8000 for the months of November 2015 to February 2016. In December 2015, defendants, alleging a complete gutting of the restaurant by Rabideau and his agents, filed an unrelated complaint (case No. 15-L-179) against Rabideau claiming breach of contract and constructive eviction and requesting the trial court to suspend the rent payments until the building can be used for its intended purpose. Currently, that case is still

pending in the circuit court. Pertinent to the instant case, Rabideau served Jessica's Corner with a 30-day notice for failure to pay rent for the months of October to December 2015. In January 2016, Rabideau filed a complaint in forcible entry and detainer against defendants alleging failure to pay rent in the amount of \$6400.

¶ 7 At the evidentiary hearing, Jessica testified that she visited the premises the day the fire occurred and observed that the fire was contained to the east and west kitchens. Furthermore, she observed that the west dining room had only smoke damage while the east dining room had no damage. Jessica believed that the kitchen needed electrical work and equipment replaced. She estimated the restaurant would be operational in 30 to 45 days.

¶ 8 Also, Jessica testified that the City of Ottawa, Rabideau, and Jessica's Corner entered into an agreement in which Jessica's Corner would pay for a handicap ramp and doors and Rabideau and the City of Ottawa would each reimburse Jessica's Corner a one-third share of that cost. Jessica further stated that Rabideau and Jessica's Corner came to an oral agreement that Jessica's Corner could offset Rabideau's one-third share against the rent. In August 2015, Jessica's Corner paid a contractor to install the ramp and doors, and the City of Ottawa reimbursed Jessica's Corner for its one-third share. In January 2015, Jessica's Corner offset Rabideau's one-third share against the December 2015 rent and tendered a check for the balance in the amount of \$192.

¶ 9 Ronald Yanke, a part owner of Jessica's Corner, testified that he was the owner of Yanke Realty and Developers and had been involved in real estate development for 25 years with experience in the area of construction and remodeling. Yanke testified that, in September 2015, a fire occurred at Jessica's Corner and that he visited the premises the day the fire had occurred. From his observation, the west original kitchen where the fire started was heavily damaged;

however, the rest of the restaurant was undamaged except for minor smoke damage in the west and east dining rooms. He also observed that the paint on the ceiling outside of the kitchen was bubbled but concluded that there was no structural damage to that area; the pictures and lights were intact on the wall, the linens were on the table, and the electrical and HVAC in the east dining room was intact. Based on Yanke's experience, he testified that the kitchen needed to be redone but that the remainder of the restaurant did not need to be demolished. He estimated that the restaurant would be operational in 45 to 60 days.

¶ 10 Yanke testified that Rabideau hired Rainbow International Restoration to clean, oxidize, and remove the smell in the building. When Rainbow began its work inside Jessica's Corner, it demolished undamaged parts of the restaurant, reducing the restaurant to its bare walls. Yanke stated that he had a conversation with Rabideau when Rainbow began demolishing items not damaged by the fire and Rabideau stated he would replace certain items. Specifically, Yanke stated: "This is like the third or fourth time that we have talked, and I think this is the conversation where they started tearing a little bit more than should have come down. They started gutting more. And he had told me that—it was my understanding that he was going to replace it. He told me that he was taking down the west wall to tuck-point the brick and leave it exposed. And he also told me that the ceilings were coming down because he was going to put up new sound-proof ceilings." Neither Rainbow nor Rabideau made repairs to the parts that were demolished except for the layers of drywall on the ceiling and back wall in the 228 W. Madison Street building.

¶ 11 In December 2015, Jessica's Corner hired Gatza Electrics, Grasser's Plumbing & Heating, and Integrity Drywall to repair the building. Yanke testified that he paid Integrity Drywall \$3870 for work completed, he owed \$14,000 to Gatza Electric, and he incurred over

\$3000 in supply costs. Some of the repairs made were the result of Rainbow's demolition and not the fire. Jessica's Corner seeks to offset the costs of restoring the premises for use as a restaurant and bar against the rent obligations for January through April 2016.

¶ 12 Dana Jennings, owner of Rainbow International Restoration, testified that he was contracted by Rabideau to clean up the damage from the fire. Dana stated that the insurance adjuster determines what to restore and replace following the damage and that Rabideau's insurance told the company to proceed with the work. Rainbow was not hired by and was not working at the direction of Yanke or Jessica. Dana testified that he observed various levels of damage in the two buildings. Rainbow removed the ceiling, west wall, steel channels on the west wall, everything in the bathroom, fixtures, the kitchen wall, and flooring and completed its work in October 2015.

¶ 13 Vince Gatza testified that he made the repairs to the electrical at Jessica's Corner. When he inspected the premises, he observed all the wiring and fixtures on the ceiling were gone and the remaining wire with no physical damage was disconnected and pulled back. Vince also testified that the bathroom needed the conduit repaired and needed new wire because the wire was not salvaged during the demolition.

¶ 14 Brad Grasser, part owner of Grasser's Plumbing & Heating testified that he inspected the premises a few days after the fire and observed that the plumbing for the toilets and the spirals were not damaged. However, when he returned to Jessica's Corner in November, the spirals had been removed and he had to install new spirals.

¶ 15 The parties stipulate that Jessica's Corner tendered rent to Rabideau in the amount of \$1600 for each month of October and November 2015. However, Rabideau returned the uncashed checks to Jessica's Corner.

Rabideau filed a motion for directed verdict. At the hearing on the motion, Rabideau's attorney discussed an agreement between the parties: "The December rent, they are talking about a side agreement that had nothing to do with the lease. It's not even mentioned in the lease. It has nothing to do with the lease. It was a side agreement. And they don't have the right to say well, we're going to take it off of the rent that we owe you." The trial court denied the motion, stating:

"Now that you know you have a right to the premises, it is your obligation to improve the premises. If you believe that damage was done to your buildout, which you are alleging that you are trying to prove in your L case, and that you are actually owed money for that in your L case, if you are successful you will get a judgment.

But on the lease side of this equation, you have an obligation to pay Mr. Rabideau the rent, \$1600 a month.

So I want to see if the two of you can either agree to start paying the rent again, which will make it easy for me. I think—let's keep October and November off the table; it was refused. Whether it was owed—obviously it was owed; it was tendered—is there waiver? I don't want to make that part of the discussion.

But as it relates to January, February, March and on, the rent obligation is to be dealt with. So you know what, I'm going to just let the parties talk briefly, if they wish to. If not, I'll just make a decision on it.

But I want to go forward with my other case here the parties are here.”

¶ 17 Ultimately, the trial court ruled Jessica’s Corner had a right to possession of the property, had satisfied its obligation to pay rent for October through December 2015, but ordered Jessica’s Corner to pay rent to Rabideau for January through April 2016. The court also denied Rabideau’s request for attorney’s fee. Rabideau appealed.

¶ 18 ANALYSIS

¶ 19 Rabideau challenges the trial court’s ruling on the complaint in forcible entry and detainer. A forcible entry and detainer action is limited to a determination regarding who is entitled to possession and may include a claim for rent. 735 ILCS 5/9–106 (West 2014). We will not reverse a trial court's determination on a motion for forcible entry and detainer unless it was against the manifest weight of the evidence. *Wendy & William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27. “A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 20 A. October and November 2015 Rent

¶ 21 Rabideau claims that Jessica’s Corner failed to pay rent for the months of October and November 2015, and therefore, he is entitled to rent payment and possession of the premises. Defendants argue Jessica’s Corner timely tendered rent payments to Rabideau for October and November rent.

¶ 22 A landlord is precluded from obtaining a judgment in a forcible entry and detainer action if a tenant tenders rent to the landlord in compliance with the notice to terminate. In *Madison v.*

Rosser, 3 Ill. App. 3d 851, 852 (1972), the landlord executed a notice to terminate when the tenant failed to tender his rent on time. The notice stated that the tenant had five days to pay the rent or the lease would be terminated. When the tenant tendered payment of the rent immediately after receiving the notice, the landlord refused the tender. The First District ruled that the tenant had satisfied his obligation under the notice and that the landlord cannot refuse the tender and commence a forcible entry and detainer action for nonpayment of rent.

¶ 23 Here, Rabideau stipulated that he received payment for October and November rent but refused to accept the payments and the trial court found Jessica's Corner was not responsible for rent payments due to Rabideau's refusal. As in *Rosser*, Rabideau cannot refuse payments and then seek a judgment in a forcible entry and detainer action based on a failure to pay. Jessica's Corner complied with terms of the lease when it timely tendered rent payments to Rabideau. We find the trial court's ruling that Jessica's Corner satisfied the obligation to make October and November rent payments was not against the manifest weight of the evidence.

¶ 24 B. December 2015 Rent

¶ 25 Rabideau alleges that Jessica's Corner failed to pay rent for the month of December 2015, and therefore, Rabideau is entitled to rent payment and possession of the premises. Defendants argue Rabideau and Jessica's Corner entered into an oral agreement in which Rabideau permitted Jessica's Corner to offset the rent in the amount of \$1408 for Rabideau's share of the handicap ramp.

¶ 26 The evidence reveals an agreement between Rabideau and Jessica's Corner to offset the rent. Specifically, Jessica testified that she had a meeting with the City of Ottawa and Rabideau regarding the construction of a handicap ramp on the premises. She stated the parties agreed that Jessica's Corner would pay the full amount for the ramp and that the city and Rabideau would

each reimburse one-third share of the cost to Jessica's Corner. She further testified that she and Rabideau agreed that Jessica's Corner could offset Rabideau's one-third share in the rent payment. During arguments for motion for directed verdict, Rabideau's attorney acknowledged an agreement between the parties: "The December rent, they are talking about a side agreement that had nothing to do with the lease. It's not even mentioned in the lease. It has nothing to do with the lease. It was a side agreement. And they don't have the right to say well, we're going to take it off of the rent that we owe you." The trial court found that there was an oral agreement between the parties and that Rabideau received notice of the offset in a letter Jessica's Corner sent to Rabideau along with the check for the remaining balance of \$192. Based on the evidence presented, we hold that the trial court's ruling on the December rent was not against the manifest weight of the evidence.

¶ 27 C. January through April 2016 Rent

¶ 28 Rabideau argues that the trial court misapplied the reasoning in *Quincy Mall, Inc. v. Kerasotes Showplace Theatres, LLC*, 388 Ill. App. 3d 820 (2009), to the present case because it failed to acknowledge Jessica's Corner's continued duty to pay rent regardless of the landlord's alleged breach in a lease. Furthermore, although Jessica's Corner offset the rent payments, it did not inform Rabideau of the repairs and did not provide Rabideau notice of the offset necessary to meet the requirements set in *Quincy Mall. Id.* at 826-27. Defendants argue that Rabideau had a duty to repair structural damages on the premises, and therefore, defendants were entitled to offset the rent against the repairs.

¶ 29 Generally, a landlord has no common law duty to repair the premises absent an agreement between the parties. *City of Chicago v. American National Bank*, 86 Ill. App. 3d 960, 963 (1980). Even if the landlord has a duty to repair, the covenant is independent of the tenant's

obligation to pay rent. *Id.* However, “the tenant may meet its obligation to pay such rent by setting off the amount it spent to make its building fit for its commercial purpose.” *Quincy Mall*, 388 Ill. App. 3d at 826. If the landlord breaches its duty, the tenant can offset rent payments by meeting the following requirements: “(1) the tenant has informed the landlord of the need to replace the necessary component; (2) the landlord failed to replace the necessary component in a timely manner; and (3) the tenant informed the landlord of its intent to set off the reasonable costs of the necessary replacement.” *Id.* at 826-27.

¶ 30 The trial court ruled defendants had an obligation to pay the rent. We believe the evidence presented reveals a different conclusion. In order to decide whether defendants were entitled to offset rent pursuant to *Quincy Mall*, we must first determine whether the landlord breached a duty to the tenant. There is a covenant in the lease that states that Rabideau demised and leased to Jessica’s Corner the two buildings on Madison Street “to be used as a restaurant and bar only.” After the fire, Yanke estimated that the restaurant would be operational in 45 to 60 days, and Jessica estimated that the restaurant would be operational in 30 to 45 days. Rabideau hired Rainbow, which demolished and removed various components of the premises including some that had not been damaged by the fire. After the demolition, the building stood empty and stripped to and within the bare walls. The defendants were not able to use the building to operate their restaurant and bar after the demolition was complete. In fact, the demolition resulted in Jessica’s Corner hiring contractors to reconstruct the building so it could reopen the restaurant. Completing the reconstruction took significantly longer than the estimated time for repairs had Rabideau not demolished the premises. Rabideau’s actions prevented the defendants from using the premises for the intended purpose agreed upon in the lease agreement. Therefore, Rabideau was in breach of the parties’ contract.

¶ 31 After finding a breach in the lease agreement, we must determine whether the defendants satisfied the requirements stated in *Quincy Mall* to offset the rent against the cost of repairs the defendants made as a result of Rabideau’s breach. Yanke testified that he had a conversation with Rabideau about his concerns with Rainbow demolishing portions of the premises that were not damaged by the fire and that Rabideau assured him that he would replace certain items. Specifically, Yanke stated: “This is like the third or fourth time that we have talked, and I think this is the conversation where they started tearing a little bit more than should have come down. They started gutting more. And he had told me that—it was my understanding that he was going to replace it. He told me that he was taking down the west wall to tuck-point the brick and leave it exposed. And he also told me that the ceilings were coming down because he was going to put up new sound-proof ceilings.”

¶ 32 Rainbow completed its work in October 2015 and never resumed repair on the premises. In December 2015, Jessica’s Corner hired subcontractors to repair the premises. After the repairs were completed, Jessica’s Corner sent a letter to Rabideau that it would be offsetting the balance of the repairs against the rent payments beginning January 1, 2016. Based on the evidence presented, defendants met their obligation to pay the January-April rent to Rabideau by offsetting the cost of repairs necessary to conform the premises for the intended purpose in accordance with *Quincy Mall*.

¶ 33 We would reach the same result if consideration of the alternative argument of collateral source was appropriate. During the trial court’s oral ruling, it observed that the payments Rabideau received from his insurance company for lost rent derived from a collateral source. In Illinois, the collateral source rule bars a defendant “from reducing the plaintiff’s compensatory award by the amount the plaintiff received from the collateral source.” (Internal quotation marks

omitted.) *Wills v. Foster*, 229 Ill. 2d 393, 400 (2008). However, this rule only applies to contract cases when there is an element of fraud, tort, or willfulness. *American Fidelity Fire Insurance Co. v. General Ry. Signal Co.*, 184 Ill. App. 3d 601, 617 (1989).

¶ 34 The collateral source rule would not apply because this case does not involve an element of fraud, tort, or willfulness. Therefore, damages for breach of contract should place an aggrieved party in the position they would have held in had the contract been properly performed. *Castricone v. Michaud*, 223 Ill. App. 3d 138, 140 (1991). Damages for breach of contract should not provide the aggrieved party with a windfall. *Walker v. Ridgeview Construction Co.*, 316 Ill. App. 3d 592, 596 (2000).

¶ 35 Here, Rabideau received lost-payments rent from his insurance company for the months of October to February. Earlier, we determined that Rabideau is not entitled to an award of rent for the months of October, November, and December. Similarly, Rabideau should not receive rent from Jessica's Corner for January and February as it would place him in a better position than he would have held had the lease been performed.

¶ 36 In all, we rule that the trial court's award of rental payments for the months of January to April 2016 was against the manifest weight of the evidence. Accordingly, defendants are entitled to possession of the property and have no obligation to pay rent for the months of October 2015 through April 2016. This issue resolves the appeal; therefore, we need not review Rabideau's argument that the trial court's denial of his motion for directed verdict was error.

¶ 37 CONCLUSION

¶ 38 The judgment of the circuit court of LaSalle County is affirmed in part and reversed in part.

¶ 39 Affirmed in part and reversed in part.