

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FILED

August 1, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160706-U

NO. 4-16-0706

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LACREA SANDERS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
MENNENGA CONSTRUCTION, INC.,)	No. 16SC736
Defendant-Appellant.)	
)	Honorable
)	Mark S. Goodwin,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erroneously concluded plaintiff was entitled to rescind the lease with an option to purchase agreement she and defendant executed.

¶ 2 In July 2016, plaintiff, Lacrema Sanders, filed a *pro se* small-claims complaint, alleging she was entitled to recovery of a \$5000 down payment to defendant, Mennenga Construction, Inc. (Mennenga Construction), on a lease with an option to purchase agreement. After a bench trial, the trial court found in plaintiff’s favor and entered judgment against defendant for \$5000.

¶ 3 Defendant appeals, arguing the trial court erroneously concluded plaintiff could rescind the contract. Defendant maintains neither the Truth in Lending Act (15 U.S.C. § 1601 *et seq.* (2012)) nor Illinois statutory law provides a three-day period for rescission of a signed lease

with an option-to-purchase agreement. Defendant further contends the common-law claim of rescission is inapplicable. Plaintiff did not file an appellee's brief. We reverse.

¶ 4

I. BACKGROUND

¶ 5 On July 19, 2016, the parties signed a contract entitled "Residential Lease with Option to Purchase" for the premises located at 1607 Cleveland Avenue in Danville, Illinois. The terms of the lease included rent of \$540 per month for the first year, \$550 per month for the second year, and \$560 per month for the third year. The lease period was set to begin on August 1, 2016.

¶ 6 The lease included an "option to purchase," which included a \$5000 down payment. According to the option, the purchase price of the property is \$38,000 if purchased before July 31, 2018, and \$39,000 if purchased after July 31, 2018, and before July 31, 2019. Plaintiff was entitled to a credit of between \$50 and \$60 per month toward the purchase price if she purchased the property during the time of the lease. In addition, the option provided plaintiff's down payment would be credited toward the purchase price of the property. If plaintiff failed to exercise the option to purchase, she forfeited the down payment.

¶ 7 On July 21, 2016, plaintiff filed a small-claims complaint in the circuit court of Vermilion County, seeking the return of the \$5000 down payment. Plaintiff asserted she "went over the contract with [her] mom and decided [she] didn't want the home."

¶ 8 A bench trial was held on plaintiff's claim. Plaintiff testified she went to the property and signed the agreement. After signing the lease, plaintiff returned home and decided she "didn't really want" the property. Plaintiff texted Phyllis Mennenga, the secretary of Mennenga Construction, and asked for her money back. When Phyllis refused, plaintiff filed a

claim with the circuit court.

¶ 9 After plaintiff testified, defendant moved for a directed verdict. The trial court asked, “Why isn’t there an applicable three-day right of rescission *** [u]nder the Illinois Consumer Protection Act?” The court denied the motion.

¶ 10 At the conclusion of the trial, the trial court held in plaintiff’s favor, ordering the return of the \$5000 down payment. The court found the contract to be “an installment purchase agreement” subject to Regulation Z (12 C.F.R. § 226.1 *et seq.* (2016)), issued by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act (15 U.S.C. § 1601 *et seq.* (2012)), as well as to “provisions of the Illinois Consumer Credit Protection Act.” The court believed a mandatory three-day right of rescission applied to the contract and plaintiff attempted to rescind without being advised of her right of rescission. The court further found the sales agreement “blatantly unfair.”

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 We first address plaintiff’s failure to file an appellee’s brief. On appeal, parties are not justified in assuming the appellate court will act as both a judge and an advocate for an appellee or search the record to sustain the trial court’s judgment. *People ex rel. Ryan v. Coles*, 64 Ill. App. 3d 807, 809, 381 N.E.2d 990, 992 (1978); see also *Guava LLC v. Comcast Cable Communications, LLC*, 2014 IL App (5th) 130091, ¶ 52, 10 N.E.3d 974. In the absence of an appellee’s brief, we may reverse the trial court’s judgment if the appellant’s brief demonstrates *prima facie* reversible error and the appellant’s contentions are supported by the record. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009).

¶ 14 Defendant argues the trial court erroneously ordered the return of plaintiff's down payment. Defendant contends plaintiff entered into a contract and is not entitled to rescission under Regulation Z, the Illinois "Consumer Credit Protection Act," or common law.

¶ 15 As to Regulation Z, defendant maintains the regulation does not apply to the contract at issue, a lease with an option to purchase the leased premises. Under Regulation Z, consumers have the right to rescind specified credit transactions: "In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction ***." 12 C.F.R. § 226.23(a)(1) (2016). The term "credit transaction" does not appear in the definitions section of Regulation Z (see 12 C.F.R. § 226.2 (2016)), but the term "credit sale" does (12 C.F.R. § 226.2(a)(16) (2016)). Regulation Z defines a "credit sale" as "a sale in which the seller is a creditor." *Id.* "Credit sale" includes a lease only in certain circumstances.

"The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer—

- (i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and
- (ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement." *Id.*

¶ 16 Under the terms of the contract, the sale or transaction between plaintiff and

defendant does not fall within this definition. According to the agreement, plaintiff did not agree to pay compensation for a sum substantially equivalent to or in excess of the total value of the property. The only evidence as to the value of the property is the agreed-upon price of either \$38,000 or \$39,000. The total amount plaintiff would pay under the lease, including the down payment and rent, is \$24,800. In addition, plaintiff would not have become the owner of the property upon compliance with the agreement “for no additional consideration or for nominal consideration.” To own the property, under the agreement, after three years, plaintiff would have had to pay an additional \$32,300. Defendant has set forth a *prima facie* case Regulation Z does not apply to this lease with an option to purchase agreement.

¶ 17 Defendant next maintains the trial court improperly found plaintiff could rescind the contract under the Illinois “Consumer Credit Protection Act.” Defendant emphasizes, contrary to the court’s reliance on the “Consumer Credit Protection Act,” there is no such act and neither the court nor plaintiff provided a citation. Concluding the court was referring instead to the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 to 12 (West 2016)) and its three-day rescission period (815 ILCS 505/2B (West 2016)), defendant argues the provision does not apply because the agreement was not executed at plaintiff’s residence.

¶ 18 Illinois does not have an act entitled the “Illinois Consumer Credit Protection Act.” We agree it is likely the trial court intended to cite the Illinois Consumer Fraud and Deceptive Business Practices Act. Under that act, a consumer has a three-business-day right of rescission for “a sale of merchandise involving \$25 or more is made or contracted to be made *** to a consumer by a seller who is physically present at the customer’s residence ***.” 815 ILCS 505/2B (West 2016).

¶ 19 The record shows no testimony indicating any part of the transaction occurred in plaintiff's residence. Instead, there is testimony showing plaintiff visited the house subject to the lease before signing the contract, "went home," and decided she no longer wanted to lease the house. Defendant has shown a *prima facie* case the trial court erred in finding an Illinois consumer-protection act authorized plaintiff to rescind her contract with defendant.

¶ 20 Defendant additionally argues the record does not support a remedy under the equitable doctrine of rescission. Defendant contends there is no evidence showing fraud or material breach, an essential element to a rescission claim.

¶ 21 Rescission is an equitable remedy, left largely to the discretion of the trial court. *Newton v. Aitken*, 260 Ill. App. 3d 717, 719, 633 N.E.2d 213, 215 (1994). A party may rescind a contract when that party proves the following: (1) a fraud or material breach occurred and (2) the parties may be returned to the status before the contract. *Id.* at 719, 633 N.E.2d 215-16.

¶ 22 When ruling on plaintiff's claim, the trial court found the contract "blatantly unfair." There was, however, no finding of fraud or material breach by defendant, nor any evidence of such. Defendant has made a *prima facie* showing the elements of the equitable remedy of rescission were not satisfied here.

¶ 23 III. CONCLUSION

¶ 24 We reverse the trial court's judgment.

¶ 25 Reversed.