2017 IL App (4th) 170205-U

NO. 4-17-0205

FILED
December 18, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WILDER HAVEN EAST,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
JORGE MAGANA and ELIZABETH CHAVEZ,	)	No. 15LM249
Defendants-Appellants.	)	
	)	Honorable
	)	Phoebe S. Bowers,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part, reversed in part, and remanded with directions, finding the trial court did not err in ruling on defendants' affirmative defenses, the statute of frauds, and plaintiff's damages, but it did err in allowing plaintiff to file an amended complaint posttrial.

¶ 2 In April 2015, plaintiff, Wilder Haven East, filed a forcible entry and detainer action against defendants, Jorge Magana and Elizabeth Chavez. In January 2016, the trial court found in favor of plaintiff and against defendants in the amount of $181. In February 2016, defendants filed a motion to reconsider. In April 2016, the court granted the motion to reconsider, vacated its prior judgment, and allowed plaintiff to file an amended complaint. In August 2016, plaintiff filed an amended complaint. In February 2017, the court entered judgment in favor of plaintiff for $1,581 plus $350 in attorney fees and ordered defendants' $2,000 deposit be credited toward the judgment amount.

¶ 3 On appeal, defendants argue the trial court erred in (1) allowing plaintiff to file an amended complaint, (2) denying their affirmative defenses, (3) finding the statute of frauds did not apply, and (4) refusing to reduce plaintiff's damages. We affirm in part, reverse in part, and remand with directions.

¶ 4 I. BACKGROUND

¶ 5 In April 2015, plaintiff filed a forcible entry and detainer action against defendants, alleging it was entitled to possession of 378 Scott Court in Decatur, Illinois. The complaint alleged defendants had unlawfully withheld possession of the premises and had unpaid rent totaling $1,612. The complaint also sought $350 in attorney fees and court costs. In May 2015, the trial court entered judgment against defendants and directed them to vacate the premises.

¶ 6 In June 2015, defendants filed a counterclaim against plaintiff. Therein, defendants alleged they had entered into a lease/lease-to-own agreement for the subject premises in November 2014. At that time, defendants paid plaintiff a deposit of $2,000. Defendants alleged the deposit had not been repaid. They also alleged the agreement was a nullity because it was not put into writing.

¶ 7 Also in June 2015, defendants filed an answer and their affirmative defenses. In their answer, defendants stated possession of the premises was not an issue and they had vacated the premises. They stated no written documents were attached to the complaint that would give plaintiff the right to recover attorney fees. In their affirmative defenses, defendants relied on payment and the statute of frauds. First, defendants claimed plaintiff had not returned the $2,000 deposit and, if that amount was applied toward any amounts owed, then plaintiff had been paid in full and owed defendants a refund. Second, defendants claimed plaintiff never provided them

with a written contract regarding the lease/lease-to-own agreement and thus plaintiff was barred from bringing the action based on the statute of frauds.

¶ 8 In October 2015, defendants filed a motion to dismiss plaintiff's claim for rent in its complaint for forcible entry and detainer. Defendants argued plaintiff failed to file a response to defendants' affirmative defenses and thus had admitted them. In November 2015, plaintiff filed an answer to defendants' affirmative defenses.

¶ 9 In November 2015, the trial court, relying on Illinois Supreme Court Rule 181(b)(2) (eff. Jan. 4, 2013), denied defendants' motion to dismiss in a docket entry, holding "the motion is based entirely on the timeliness of Plaintiff's replies to Defendants' untimely pleadings."

¶ 10 In January 2016, the trial court conducted a bench trial. Christy Cummings, a property manager for plaintiff, testified, over defense counsel's objection, to a lease agreement between plaintiff and defendants for a mobile home. Cummings stated the rent was $650 per month, with $320 for the mobile-home lot. Cummings stated Chavez took possession on November 26, 2014, and her first payment was due January 1, 2015. Cummings also testified to a document signed by Chavez on November 26, 2014, wherein Chavez acknowledged all repairs had been done to her satisfaction and she was taking possession in an "as/is" condition. The document also indicated all future repairs would be Chavez's responsibility. Cummings stated $330 was due each month for the rent-to-own aspect of the agreement for a period of seven years. Cummings testified defendants defaulted on both the lot rent and the rent-to-own agreements. Under the lot rent agreement, defendants owed $1,351. Under the rent-to-own agreement, defendants owed $1,029.

¶ 11 On cross-examination, Cummings testified defendants deposited $2,000 toward

the lease-to-own arrangement and that amount had not been refunded. Cummings also stated the rent-to-own agreement was not put into writing but would take seven years to complete.

¶ 12 Chavez testified she entered into the rent-to-own agreement, but plaintiff never provided her with a written document. She stated rent on the mobile home was $330 per month and rent on the lot was $320 per month. Chavez testified regarding a document dated April 3, 2015, wherein defendants notified plaintiff of their intent to vacate the premises on May 3, 2015, and asked for the return of their deposit. Chavez stated she moved into the premises in December 2014 and moved out on April 25, 2015.

¶ 13 In its written judgment order, the trial court found defendants owed plaintiff $921 in lot rent and $660 under the rent-to-own agreement for a total of $1,581. The court also ordered defendant to pay $600 as reasonable attorney fees. With $2,000 in deposit credit, the court entered judgment in favor of plaintiff and against defendants in the amount of $181.

¶ 14 In its ruling, the trial court found the statute of frauds did not apply in this case because Chavez testified the rent-to-own contract was made. In response to defense counsel's argument that the written agreement was improper evidence as to the existence of the rent agreement because it was not attached to the complaint, the court found "though it may be a better practice to attach a lease to a complaint in forcible entry and detainer actions, it is not a requirement." The court also noted plaintiff asked for attorney fees based on the written lot rent agreement.

¶ 15 In February 2016, defendants filed a motion to reconsider. Therein, defendants argued plaintiff failed to attach a copy of the written agreement to its complaint, and plaintiff's claim for lot rent and attorney fees was based on that written agreement. Thus, defendants argued plaintiff was not entitled to lot rent or attorney fees. Defendants also argued the trial

court erred in rejecting their claim under the statute of frauds.

¶ 16 In April 2016, the trial court granted defendants' motion to reconsider due to plaintiff's failure to attach the lease to the complaint. The court vacated its prior judgment and gave plaintiff leave to file an amended complaint with the lease agreement attached.

¶ 17 In May 2016, defendants filed a motion to vacate, asking the trial court to vacate the portion of its order allowing plaintiff to file an amended complaint. Defendants argued plaintiff did not request such relief and allowing plaintiff the opportunity to amend the pleadings after trial would be prejudicial to defendants.

¶ 18 On August 3, 2016, plaintiff filed an amended complaint for forcible entry and detainer against defendants. Plaintiff sought the sum of $1,612 for unpaid rent and $350 in attorney fees. Plaintiff attached the lot rent agreement to the amended complaint.

¶ 19 On August 5, 2016, the trial court entered a docket entry denying defendants' motion to vacate. The court stated it had discretion to allow plaintiff to file amended pleadings after it granted defendants' motion to reconsider and any prejudice was remedied when the court granted the motion to reconsider.

¶ 20 On August 15, 2016, defendants filed a motion to dismiss plaintiff's amended complaint, arguing the complaint did not correct a typographical or similar error and thus the trial court had no discretion to allow it. On August 29, 2016, plaintiff filed a response, stating vacating the judgment effectively returned the case to a pretrial posture and "any amendment that would have been proper prior to trial would be proper now."

¶ 21 In September 2016, the trial court denied defendants' motion to dismiss. The court noted the previous judgment had been vacated and was not a final judgment. Further, the court stated it exercised its discretion in allowing plaintiff to file an amended complaint with the

lease and doing so was not prejudicial because the court vacated its prior judgment.

¶ 22 In February 2017, the trial court entered a written judgment order based on the transcript and evidence presented at the January 2016 hearing. The court found defendants owed $921 in lot rent and $660 under the rent-to-own agreement for a total of $1,581. The court awarded plaintiff $350 in attorney fees. The court entered judgment in favor of plaintiff and against defendants in the sum of $1,931 plus costs of the suit. The court also ordered defendants' $2,000 deposit be credited toward the judgment amount. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Affirmative Defenses

¶ 25 Defendants argue the trial court erred in denying their affirmative defenses. We disagree.

¶ 26 When a defendant appears pursuant to a summons in a forcible entry and detainer action, "he or she need not file an answer unless ordered by the court; and when no answer is ordered, the allegations of the complaint will be deemed denied, and any defense may be proved as if it were specifically pleaded." Ill. S. Ct. R. 181(b)(2) (eff. Jan. 4, 2013).

¶ 27 Here, plaintiff filed its complaint for forcible entry and detainer on April 14, 2015. Defendants' first appearance was on May 4, 2015. At that time, they did not file an answer, counterclaim, or affirmative defense, and the trial court did not order them to file an answer. Defendants filed an answer, counterclaim, and affirmative defenses on June 15, 2015. In October 2015, defendants filed a motion to dismiss the rent claim in plaintiff's complaint because plaintiff had not responded to defendants' affirmative defenses.

¶ 28 In denying defendants' motion to dismiss, the trial court noted defendants' answer, counterclaim, and affirmative defenses should have been filed on or before May 4, 2015,

and defendants did not obtain leave of court to file late pleadings. See *Sawyier v. Young*, 198 Ill. App. 3d 1047, 1052, 556 N.E.2d 759, 762 (1990) (stating the defendant's "failure to obtain leave of court rendered his answer and counterclaim liable at the discretion of the court to be disregarded or treated as a nullity"). We find the court did not deny defendants' affirmative defenses. The court simply denied defendants' motion to dismiss "because the motion is based entirely on the timeliness of Plaintiff's replies to Defendants' untimely pleadings."

¶ 29 B. Statute of Frauds

¶ 30 Defendants argue the trial court erred in finding the statute of frauds did not apply in this case. We disagree.

¶ 31 Section 2-201 of the Uniform Commercial Code—Sales (810 ILCS 5/2-201 (West 2014)) provides, in part, as follows:

> "(1) Except as otherwise provided in this Section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.
>
> ***
>
> (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable
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> ***
>
> (b) if the party against whom enforcement is sought admits in his pleading, testimony or

> otherwise in court that a contract for sale was made,
> but the contract is not enforceable under this
> provision beyond the quantity of goods admitted[.]"

¶ 32 As an affirmative defense, defendants stated they and plaintiff "entered into a lease/lease-to-own" but plaintiff never provided them with a written contract memorializing that agreement. Defendants contended the agreement could not be fulfilled within a year based on the agreed upon payment and, given the lack of a writing, plaintiff's action was barred by the statute of frauds.

¶ 33 At trial, Cummings testified defendants were to pay $330 per month pursuant to the rent-to-own agreement for a period of seven years. Chavez testified she entered into the rent-to-own agreement, but plaintiff never provided her with a written document. She stated the rent payments were $330 per month and agreed the payments would continue for seven years. Chavez also stated she stopped payment on the rent-to-own agreement.

¶ 34 We find the trial court did not err in finding the statute of frauds did not apply in this case. In her testimony, Chavez admitted an agreement existed to purchase the mobile home. Thus, despite the lack of a writing setting forth the rent-to-own agreement, the statute of frauds does not bar enforcement in this case.

¶ 35 C. Reduction in Damages

¶ 36 Defendants argue the trial court erred in refusing to reduce plaintiff's damages due to the condition of the mobile home. We disagree.

¶ 37 "The issue of damages is a question of fact and, accordingly, a trial court's finding of damages will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Doornbos Heating & Air Conditioning, Inc. v. Schlenker*, 403 Ill. App. 3d 468, 485,

932 N.E.2d 1073, 1089 (2010). "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252, 779 N.E.2d 1115, 1130 (2002).

¶ 38 Defendants argue they presented testimony and photos regarding the condition of the mobile home and the evidence indicated the refrigerator, stove, washer, and dryer did not function. They dispute the evidence indicating Chavez signed a statement agreeing the mobile home needed no repairs and contend plaintiff's conduct contradicted the statement. However, "[t]he trial court is in the best position to judge the credibility of the witnesses and resolve conflicts in the evidence." *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 35, 998 N.E.2d 686. Here, the court found Cummings more credible than Chavez, and it was in the best position to consider the photos, documents, and testimony in making its decision. We find the court's judgment in favor of plaintiff was not against the manifest weight of the evidence.

¶ 39 D. Motion To Reconsider

¶ 40 Notwithstanding the foregoing, we find the trial court erred in part when it vacated its first judgment order and allowed plaintiff to file an amended complaint. In regard to exhibits, section 2-606 of the Procedure Code (735 ILCS 5/2-606 (West 2014)) provides, in part, as follows:

> "If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her."

"Failure to comply with the requirement of section 2-606 is grounds for dismissal of a complaint." *Christoffel v. Country Mutual Insurance Co.*, 183 Ill. App. 3d 32, 35, 538 N.E.2d 1171, 1173 (1989). However, defects in a pleading are generally waived if not asserted before judgment. See *Meadows v. State Farm Mutual Automobile Insurance Co.*, 237 Ill. App. 3d 240, 253, 603 N.E.2d 1314, 1322 (1992).

¶ 41 In the case *sub judice*, plaintiff filed its forcible entry and detainer action in April 2015, seeking $1,612 in unpaid rent and $350 in attorney fees. However, plaintiff did not attach the written lease agreement to the complaint. In June 2015, defendants filed an answer and their affirmative defenses, arguing plaintiff failed to attach any written documents to the complaint that would give it the right to recover attorney fees. Plaintiff did not seek to amend its complaint prior to trial. At trial, defendants objected to testimony regarding the lease agreement. In ruling in favor of plaintiff, the trial court noted, in part, plaintiff was not required to attach the lease in this forcible entry and detainer action. Defendants filed a motion to reconsider, again raising plaintiff's failure to attach a copy of the written agreement to its complaint. Thereafter, the court agreed with defendants and vacated its judgment due to plaintiff's failure to attach the lease. However, the court gave plaintiff leave to file an amended complaint with the lease agreement attached.

¶ 42 While a trial court has broad discretion in allowing the amendment of pleadings (*Miller v. Pinnacle Door Co.*, 301 Ill. App. 3d 257, 261, 703 N.E.2d 628, 631 (1998)), we find the court abused its discretion in *sua sponte* permitting plaintiff to amend its complaint after the initial judgment had been entered in this case. Defendants raised multiple objections to the lack of a written lease and claimed the absence of the lease undermined their defense. Plaintiff, however, never sought leave—prior to, during, or after trial—to remedy the defect in its initial

pleading and should not have been rewarded with a second bite of the apple after a trial on the merits.

¶ 43 Plaintiff's failure to attach the written agreement to its complaint deprived the court of any authority to grant attorney fees. However, since the amount of lot rent was not included in the written lease, the lot rent award should not be vacated. Accordingly, with plaintiff prevailing on (1) the rent due on the lease-to-own arrangement because the statute of frauds does not apply and (2) the past due lot rent because the amount owed was not determined by the written agreement, it is entitled to recover past due rent of $1,581 plus costs. With defendants prevailing on (1) the attorney fee issue because the fees did depend on the written agreement and (2) the undisputed $2,000 deposit credit, they are entitled to receive credit for that amount. We remand for the issuance of an order consistent with this ruling.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm in part and reverse in part the trial court's judgment and remand with directions.

¶ 46 Affirmed in part and reversed in part; cause remanded with directions.