

NOTICE
Decision filed 06/20/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150091-U

NO. 5-15-0091

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

ROC RENTALS, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Saline County.
)	
v.)	No. 08-LM-169
)	
SHAWN BEDI,)	Honorable
)	Joseph M. Leberman,
Defendant-Appellant.)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court’s finding that a landlord made reasonable efforts to re-lease a commercial building following a tenant’s abandonment of the leased property is not against the manifest weight of the evidence.

¶ 2 **BACKGROUND**

¶ 3 This case concerns a landlord’s efforts to mitigate damages following a tenant’s breach of a lease and abandonment of a commercial building. The circuit court entered a judgment in favor of the plaintiff, ROC Rentals, LLC, for damages resulting from the breach of the lease by the defendant, Shawn Bedi. On appeal, the defendant challenges

the circuit court's judgment, maintaining that the evidence presented at trial established that the plaintiff failed to make reasonable efforts to re-lease the property.

¶ 4 The defendant originally entered into the lease on October 31, 2004, with Ron and Gail Orr for the lease of commercial property located in Galatia, Illinois, so the defendant could operate a medical facility in the building. The building had previously housed a medical facility prior to the defendant's lease. The lease encompassed 4196 square feet of the building, which amounted to 40.27% of the building's space. The lease also included use of the Orrs' medical equipment located in the building. Rent under the lease was \$1400 per month that was due the fifteenth of each month. A \$50 late fee applied for any rent not paid within 10 days of the due date. The lease required the defendant to pay 40.27% of the property's real estate taxes and insurance and was for 10 years, terminating on December 14, 2014.

¶ 5 In February 2006, the plaintiff bought the building and the Orrs' equipment in the building, and the Orrs assigned the defendant's lease to the plaintiff. The defendant began paying rent to the plaintiff. In August 2008, the defendant discontinued operating the medical clinic on the leased property. On September 26, 2008, the plaintiff sent a notice to the defendant that he had not paid the monthly rent that was due on September 15, 2008. At that time, the plaintiff's property manager, Jonathan Russell, believed that the defendant still occupied the leased property because he still had personal property inside the building. Sometime in September 2008, Russell learned that the defendant had discontinued the practice of medicine and was the subject of a criminal investigation.

¶ 6 At the trial, Russell testified about his efforts to re-lease the property when he determined that the defendant had abandoned the premises. He testified that the plaintiff owned a variety of commercial and residential rental properties, mostly residential. He explained that the plaintiff had a very high occupancy rate in its rental properties, generally did not advertise much, and did not do any advertising on the Internet. The first thing he did after learning that the defendant had abandoned the premises was place a sign in a window of the front door of the building. He remembered placing the sign approximately one month after the defendant's medical practice shut down in August 2008. The sign stated "Rent or Lease" and included the plaintiff's operations telephone number. In describing the sign, Russell testified that the building was located on Main Street in Galatia, which is a state highway that passes through the center of the town. The building is located less than a block from the town's post office and adjoins a bank. He stated that commercial space is very limited in the small town (approximately 1000 residents) and that it would be hard for anyone looking to lease commercial space in Galatia to miss the "Rent or Lease" sign.

¶ 7 Russell also placed an advertisement in the Money Stretcher, which he described as a free paper that serviced the Galatia area, as well as Saline County and parts of Williamson, Wayne, and Franklin Counties. The paper was distributed through the mail and given away at various businesses. He also advertised the building in the Harrisburg Daily Register and prepared a brochure to send to other medical organizations and businesses. He remembered making 100 copies of the brochure but could not remember where they were all distributed. He called Rea Clinic in Christopher, Illinois, and spoke

with the operations manager who informed him that he was not interested in pursuing a clinic in Galatia at that time. He also contacted Shawnee Health Services in Carterville, Illinois, and Ferrell Hospital in Eldorado, Illinois.

¶ 8 Russell could not remember whether he used his sister's real estate agency in seeking a tenant for the building or advertised in the Southern Illinoisan. He believed that he used commercially reasonable methods to advertise and re-lease the property. He stated, "We very much wanted to get the property re[-]leased." During the defendant's testimony, when asked whether the plaintiff did what it could to rent the building, the defendant said, "I don't know. I suppose maybe they may have tried to rent this place."

¶ 9 Russell testified that he contacted Harrisburg Medical Center about leasing the building in September of 2008, but it did not rent the building at that time. Years later, its agent contacted him through an advertisement about the building and subsequently entered into a lease of the building beginning September 1, 2012, through August 31, 2014, for \$1300 per month. The lease does not provide that Harrisburg Medical Center is responsible for any portion of real estate taxes or insurance on the leased premises. Russell testified that \$1300 per month was the best rent he could get in re-leasing the building. He tried to get more rent, but Harrisburg Medical Center would not pay more and would not agree to pay any portion of the real estate taxes or insurance.

¶ 10 Russell testified that when the defendant discontinued his medical practice in Galatia, Ferrell Hospital opened a medical facility in the small town in a different building, but later closed the facility. The medical provider for Ferrell Hospital in Galatia went to work for Harrisburg Medical Center and, at the time of the trial, was the primary

medical provider at the leased building. According to Russell, since 2004, there had been only one medical center in Galatia.

¶ 11 On November 17, 2008, the plaintiff filed its complaint alleging that the defendant breached the lease and, at that time, owed \$2800 in unpaid rent and \$100 in late fees. The initial complaint was superseded by a second amended complaint that was filed on April 8, 2011, in which the plaintiff sought a judgment for unpaid rent, late fees, attorney fees, real estate taxes, insurance, and lost or destroyed equipment.

¶ 12 On June 4, 2014, the circuit court conducted a bench trial. At the trial, much of the evidence concerned the plaintiff's claim for equipment that was included as part of the lease but not returned by the defendant. The circuit court did not award the plaintiff any damages for missing or damaged equipment, and the parties' dispute with respect to equipment is not at issue on appeal.

¶ 13 The trial testimony also concerned the plaintiff's efforts to re-lease the premises after the defendant vacated the building, which the plaintiff presented with Russell's testimony outlined above. The defendant argued that Russell's efforts to re-lease the property were inadequate because he did not list the property with a real estate broker, did not contact any nonmedical facilities, and did not advertise on the Internet.

¶ 14 At the conclusion of the bench trial, the court took the matter under advisement. On June 12, 2014, the circuit court entered a judgment in favor of the plaintiff for \$89,189.40, which included unpaid rent, late fees, real estate taxes, insurance, and attorney fees. In its damages calculation, the court factored in, as mitigation, the rent that

the plaintiff had collected from Harrisburg Medical Center after the plaintiff re-leased the property as well as a credit for an overpayment the defendant had made.

¶ 15 With respect to the defendant's argument that the plaintiff failed to reasonably mitigate its damages, the court noted, "There was no evidence that it is customary in the local area to list commercial real estate of the type and size of Plaintiff's property with real estate agents." Also, the court noted that there was no evidence that the plaintiff "needed to make any improvements to the property to make it attractive to prospective lessees" or that the plaintiff "was unreasonable in the terms of a new lease." The court made the following findings which supported its conclusion that the plaintiff made reasonable efforts to mitigate its damages:

"That Russell[] testified that he was the property agent for Plaintiff. In that capacity, he placed a 'For Rent or Lease' sign on the door of the building. The building was on the main street in Galatia and the sign was visible from the road. He made one hundred flyers and sent them to various businesses. He took out advertisements in the Money Stretcher and the Daily Register. He called several medical service businesses advising them of the availability of the building.

That for some time, the building had been used as a medical services office. Based on the testimony, in the recent past, there has only been one medical services office in Galatia. At some point after Defendant stopped practicing in Galatia, another medical services office opened in Galatia.

That considering the size, location and prior use of the subject premises and the population of the area, the actions taken by Plaintiff were reasonable efforts to mitigate the damages arising from Defendant's default on the lease contract."

¶ 16 The defendant now appeals the circuit court's judgment, challenging the circuit court's finding that the plaintiff made reasonable efforts to mitigate its damages.

¶ 17

ANALYSIS

¶ 18 By statute, a landlord must undertake reasonable efforts to re-let leased premises following a defaulting tenant's departure from the premises. 735 ILCS 5/9-213.1 (West 2008). At trial, the landlord has the burden of establishing mitigation of damages because it occupies the best position to prove compliance with its duty to mitigate damages. *Snyder v. Ambrose*, 266 Ill. App. 3d 163, 166 (1994). "The question of whether a landlord has met its statutory duty to mitigate its damages is, generally speaking, a question of fact." *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009). "Ordinarily, we will not reverse a trial court's findings of fact unless they are against the manifest weight of the evidence." *Id.* at 608. Also, we note that an award of damages made after a bench trial is reviewed under the manifest weight of the evidence standard. *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13. A finding is against the manifest weight of the evidence only if the opposite conclusion is clear or when the trial court's findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 19 In the present case, we cannot say that the circuit court’s finding that the plaintiff made reasonable efforts to re-lease the premises was against the manifest weight of the evidence.

¶ 20 In its judgment, the circuit court correctly noted that, in evaluating the plaintiff’s efforts to re-lease the commercial building, it must consider the geographical area in which the premises are located. Obviously, reasonable efforts necessary to re-let commercial property in Chicago are not comparable to reasonable efforts necessary to re-let commercial property in small towns in rural southern Illinois. Galatia’s population is approximately 1000 people, and it has very limited commercial space. The plaintiff’s building sits on the main road leading through the center of the town, and this main road is a state highway (Route 34). Russell testified that he placed a “Rent or Lease” sign in the front door of the building that passersby could see from the highway. The circuit court was entitled to agree with Russell’s testimony that it would be hard for anyone looking for commercial space in Galatia to miss the sign. The sign included the plaintiff’s operations telephone number. Therefore, with very little effort, potential renters residing, visiting, or driving around or through Galatia would know that the plaintiff’s building was available for lease and would know how to contact the plaintiff to inquire about leasing the building. We also note that Russell testified that he posted the sign shortly after learning that the defendant abandoned the building. A landlord’s duty to mitigate is triggered after the tenant abandons the premises. *Block 418, LLC v. Uni-Tel Communications Group, Inc.*, 398 Ill. App. 3d 586, 591 (2010). Accordingly, the record supports a finding that the sign placement was a reasonable effort to re-let the building.

¶ 21 The evidence also established that the building was most recently used as a medical facility not only by the defendant but also by the tenant before the defendant. Therefore, Russell contacted multiple medical organizations in the geographic area near Galatia. Evidence that another medical facility (Ferrell Hospital) opened in the small town in a different building after the defendant vacated the plaintiff's building explained the plaintiff's difficulty in re-leasing the premises to another medical organization.

¶ 22 In addition, Russell placed advertising in local newspapers (the Money Stretcher and the Harrisburg Daily Register) and produced and distributed 100 brochures. Although Russell personally contacted only medical organizations, the "Rent or Lease" sign on the building, the newspaper advertising, and the brochures support a finding that any type of business or individual looking for commercial space in Galatia could easily discover that the building was available to lease through Russell's efforts. As the trier of fact, the trial court was entitled to believe Russell when he testified, "We very much wanted to get the property re[-]leased."

¶ 23 Based on the record before us, we cannot conclude that the circuit court's finding that the plaintiff made reasonable efforts to mitigate damages is against the manifest weight of the evidence. Therefore, we must affirm. *MXL Industries, Inc. v. Mulder*, 252 Ill. App. 3d 18, 31-32 (1993) ("It is not the duty of this court to invade the province of the trier of fact and substitute our judgment for that of the trier, where the trier's determination is otherwise supported by sufficient evidence in the record. We find ample support for the trial court's conclusion that defendant took reasonable measures to mitigate his damages.").

¶ 24

CONCLUSION

¶ 25 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 26 Affirmed.