

2018 IL App (1st) 170394-U

No. 1-17-0394

Order filed February 1, 2018

Fourth Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LISA ZAYAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 15 L 6987
)	
P.S. ILLINOIS TRUST,)	Honorable
)	Brigid Mary McGrath,
Defendant-Appellee.)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* Where the defendant storage space facility provided adequate notice to the plaintiff renter of the public sale of her property, the circuit court's order dismissing the plaintiff's complaint is affirmed.

¶ 2 Plaintiff Lisa Zayan appeals from the circuit court's order dismissing her complaint for conversion against defendant P.S. Illinois Trust. On appeal, plaintiff contends that the circuit court erred in granting defendant's motion to dismiss where defendant failed to issue her a notice

of lien in March 2015 prior to its public sale of her property to recover unpaid rent for a storage space for that month. For the reasons that follow, we affirm.

¶ 3 On January 12, 2015, the parties entered into a lease/rental agreement for a storage space at a facility in Palatine, Illinois, whereby plaintiff agreed to pay defendant \$311 per month, due on or before the first day of the month. The agreement included language specifying that if plaintiff, as the occupant, were to fall behind in the payment of rent or any other charges or fees, defendant could deny plaintiff access to her property until she paid the past due rent and charges. This section of the agreement further specified:

“Rent and other charges related to the lien continue to accrue during the period of time when access is denied because of non-payment. If Occupant fails to pay rent or any other fee or charge due under this Rental Agreement within fourteen (14) days after Owner gives notice, Owner may sell or otherwise dispose of Occupant’s personal property in order to satisfy Owner’s lien.”

¶ 4 On February 26, 2015, defendant mailed plaintiff a “Notice of Enforcement of Lien,” notifying her that “[y]ou owe and have not paid rent and other charges due for the use of the storage space.” The notice indicated that the amount due at the time of mailing was \$262.85, and stated, “Please note that charges and fees may continue to accrue during the period of time when access is denied because of non-payment up until the time of the sale.” The notice further provided as follows:

“The Owner hereby demands full payment for all charges due within 14 days after the mailing date of this notice. UNLESS YOU PAY THE FULL AMOUNT DUE WITHIN THE TIME PERIOD STATED, THE PERSONAL

PROPERTY IN THE STORAGE SPACE WILL BE ADVERTISED FOR PUBLIC SALE, OR OTHER DISPOSITION, AND WILL BE SOLD AT PUBLIC AUCTION AT THE STORAGE FACILITY, OR OTHERWISE DISPOSED OF, ON 03/30/2015 AT 10:45 A.M.

Only your full payment of all present and future amounts due will stop this sale! A partial payment will not stop the sale. *** You can avoid these actions, and save your personal property from sale, by making full payment.”

¶ 5 On March 1, 2015, plaintiff paid defendant \$262.85. On March 3, 2015, defendant mailed plaintiff a communication titled “PARTIAL PAYMENT RECEIPT ON LIENED SPACE.” The communication provided as follows:

“Thank you for your recent rental payment of \$262.85. After crediting your account with this amount, the balance owing as of 03/03/2015 is \$311.00. This amount owed will continue to increase at the rates provided in your Rental Agreement until paid in full or your property is sold.

You should also be aware that:

- 1) Your partial payment does not constitute payment in full of all sums past due and delinquent under the Rental Agreement.
- 2) Your partial payment does not stop the sale of your property.
- 3) A partial payment does not cure nor constitute the waiver of the existing defaults under your Rental Agreement.”

¶ 6 On March 30, 2015, defendant sold the contents of the storage space at a public auction.

¶ 7 Plaintiff thereafter filed a complaint for conversion against defendant, and defendant moved to dismiss. The circuit court granted defendant's motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)), but allowed plaintiff to replead. Plaintiff filed an amended complaint, alleging that she had cured the lien by paying defendant \$262.85 on March 1, 2015, and was in compliance with all her obligations of the contract; that defendant had failed to send her a notice of enforcement of lien for March 2015, any other notice of deficiency or account statement, or a notice of public sale; and that defendant unlawfully, willfully, and intentionally converted her property by selling it at public auction.

¶ 8 Defendant filed a motion to dismiss pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2014)), arguing, among other things, that it had complied with all of the notice requirements under the Illinois Self-Service Storage Facility Act (Act) (770 ILCS 95/1 *et seq.* (West 2014)), prior to the auction. Following a hearing, the circuit court granted the motion with prejudice, stating, "I'm finding you can't state a claim for conversion under the facts of this case." This appeal followed.

¶ 9 Review of the dismissal of a complaint under either section 2-615 or 2-619 is *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

¶ 10 On appeal, plaintiff contends that the circuit court erred in granting the motion to dismiss where the Act required defendant to issue a notice of enforcement of lien prior to selling her property, but defendant failed to issue such notice. Plaintiff acknowledges that she received a notice of enforcement of lien in February 2015 for \$262.85, but asserts that she cured her default for February by paying defendant \$262.85 within 14 days of receiving the notice. Plaintiff argues that because this payment cured the default identified in the notice, defendant was required to

issue a new notice of default advising her of her failure to pay her \$311 rent for March 2015 before it could auction off her property. Plaintiff maintains that defendant's actions warrant reversal of the circuit court's dismissal and justify adjudication on the merits.

¶ 11 The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at the facility for rent, and that the lien attaches as of the date the personal property is brought to the facility. 770 ILCS 95/3 (West 2014). Under the Act, when a lien becomes due, the owner of the self-storage facility must notify the occupant/renter in person, by verified mail, or by email, with a notice that includes:

“(1) An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

(2) The name of the facility, address, telephone number, date, time, location, and manner of the lien sale, and the occupant's name and unit number;

(3) A notice of denial of access to the personal property ***;

(3.5) *** Rent and other charges related to the lien continue to accrue during the period of time when access is denied because of non-payment;

(4) A demand for payment within a specified time not less than 14 days after delivery of the notice;

(5) A conspicuous statement that unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition, and will be sold or otherwise disposed of at a specified time and place.” 770 ILCS 95/4(C) (West 2014).

¶ 12 Here, defendant notified plaintiff on February 26, 2015, that she was in default because she had not paid rent and other charges in the amount of \$262.85; that charges and fees would continue to accrue up until the time of a sale on March 30, 2015; that only the full payment of all present and future amounts due would stop the sale; that a partial payment would not stop the sale; and that she could save her personal property from sale by making full payment. On March 1, 2015, plaintiff paid defendant \$262.85, but did not pay the March rent of \$311, which was due on that day. Two days later, defendant mailed plaintiff a communication acknowledging the receipt of “partial payment.” The communication notified plaintiff that her balance owing was \$311; that the amount owed would continue to increase until paid in full or her property was sold; that her partial payment did not constitute payment in full of all sums past due and delinquent; that her partial payment would not stop the sale of her property; and that a partial payment does not cure existing defaults.

¶ 13 We find that defendant’s notice complied with all requirements for notice set forth in the Act. Accordingly, we reject plaintiff’s contention that defendant was required to issue her an additional notice of default specifically advising her of her failure to pay her \$311 rent for March 2015 before it could auction off her property.

¶ 14 We are not persuaded otherwise by plaintiff’s citation to *Hill v. PS Illinois Trust*, 368 Ill. App. 3d 310 (2006), or *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342 (2009).

¶ 15 In *Hill*, a storage facility sold off the plaintiff’s property because his rent payments were overdue. *Hill*, 368 Ill. App. 3d at 310-11. The plaintiff sued, alleging that although he was told over the phone that his account was past due, he was not told his property would be auctioned off if payment was not made and therefore, the defendant’s actions in conducting a lien sale under

the Act were unfair and deceptive. *Id.* at 311. The trial court granted the defendant's section 2-615 motion to dismiss. *Id.* On appeal, this court determined that the plaintiff's allegations were sufficient to state a cause of action for unfair conduct and reversed the trial court's dismissal. *Id.* at 320.

¶ 16 In *Dubey*, the plaintiff sued the defendant for breach of contract, conversion, and fraud and deceptive business practices, based on an allegation that although her rent was always paid on time and current, the defendant sold her property at public auction without any notice to her. *Dubey*, 395 Ill. App. 3d at 346. Following a trial, the jury returned verdicts in favor of the plaintiff for both breach of contract and conversion. *Id.* at 348. On appeal, this court affirmed the verdicts. *Id.* at 362.

¶ 17 In both *Hill* and *Dubey*, the defendant storage facilities failed to give the plaintiffs any notice that the contents of their storage spaces would be sold. Here, in contrast, defendant provided defendant with such notice on February 26, 2015, and then supplemented that notice with another communication on March 3, 2015. As such, *Hill* and *Dubey* are distinguishable.

¶ 18 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 19 Affirmed.