2018 IL App (1st) 17-2719-U

THIRD DIVISION
December 19, 2018

No. 1-17-2719

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

BALVINDER SINGH, Plaintiff-Appellee, v. SYED H. QUADRI and UNKNOWN OCCUPANTS, Defendants-Appellants.	)	Appeal from the Circuit Court of Cook County, Illinois, Municipal Department, First District No. 2017 M1 709151 The Honorable Matthew Link and the Honorable Elizabeth A. Karkula, Judges Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied the defendant's motion to dismiss on the basis of *res judicata*, where the plaintiff's two prior forcible entry and detainer actions did not arise from the same group of operative facts as the instant lawsuit. Any error in the trial court's refusal to dismiss the plaintff's cause of action on the basis of his failure to attach the written commercial lease to his complaint was harmless, where the defendant was in possession of that lease long before trial, and never disputed either its execution or its validity. The trial court's order granting possession of the property to the plaintiff after trial was not against the manifest weight of the evidence.

¶ 2 This appeal stems from a five-year commercial lease entered into by the plaintiff landlord,

Balvinder Singh, and the defendant tenant, Syed H. Quadri for the property located at 1765-69 W. Touhy Avenue, Chicago, Illinois (hereinafter the property). Since the signing of the lease, the plaintiff has attempted on three separate occasions to evict the defendant from the property by way of forcible entry and detainer actions (735 ILCS 5/9-101 *et seq*. (West 2016)). In the present case, which involves the plaintiff's third and final attempt at eviction, after a bench trial, the circuit court ruled in favor of the plaintiff and entered an order of possession in his favor. The defendant appeals both from the circuit court's order entering judgment in favor of the plaintiff, and from the circuit court's pretrial order denying the defendant's motion to dismiss and strike the plaintiff's complaint. The defendant contends that his motion to dismiss should have been granted because the plaintiff failed to attach the commercial lease to his complaint and because the plaintiff's cause of action was barred by the doctrine of *res judicata*. On appeal, the defendant further contends that the circuit court's order entering judgment and granting possession in favor of the plaintiff after trial was against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record below reveals the following relevant facts and procedural history.

¶ 5 A. The Commercial Lease

¶ 6 On August 31, 2012, the defendant and the plaintiff entered into a five-year commercial lease for the property. The commercial lease, which is signed by both parties, consists of: (1) a four page document, with three pages containing fill-in blanks and some additional handwritten terms (hereinafter the lease) and (2) a typed addendum (hereinafter the addendum). We set forth those terms of the lease and the addendum that are relevant for purposes of this appeal.

¶ 7 In addition to the address of the property, the addendum defines the scope of the premises

incorporated in the lease as "the front warehouse, one bathroom, five offices, and the north parking lot on Touhy Avenue."

¶ 8 Paragraph 3 of the lease provides that the lease term is from September 2012 to September 2017 and the monthly rent is $3,000. The addendum clarifies that this rent amount applies only for the first 12 months of the lease, and that thereafter the rent shall increase "by 5% of the original rent amount per year." Paragraph 3 and paragraph 17 both provide that at the expiration of the lease term, "if the tenant is in full compliance" with all of the terms of the lease, he will have an option to renew the lease for another five years.

¶ 9 Paragraph 6 of the lease provides that the tenant agrees to use the property solely for the purpose of "carrying on the following lawful business: Mechanic shop/Body shop/Car Wash/ Auto Sales."

¶ 10 Paragraph 8 divides the parties' responsibilities with respect to "upkeep and repair" of the property, with the landlord responsible for the exterior, and the tenant responsible for the interior of the property. In this respect, paragraph 9 also requires the tenant to "obtain and pay for all necessary utilities for the property." In addition, paragraph 8 provides in pertinent part:

> "Tenant agrees to maintain the interior of the property and the surrounding outside area in a clean, safe, and sanitary manner and not to make any alterations to the property without the Landlord's consent. At the termination of this Lease, the Tenant agrees to leave the property in the same condition as when it was received, except for normal wear and tear."

¶ 11 With respect to termination, paragraph 14 of the lease states:

> "This Lease may only be terminated by ___ days written notice from either party, except in the event of a violation of any terms or default of any payments or responsibilities due under this Lease, which are governed by the terms in paragraph 11 ***."

Paragraph 11, in turn, states:

> "If the Tenant fails to pay the rent on time or violates any other terms of this Lease, the Landlord will provide written notice of the violation or default, allowing ___ days to correct the violation or default. If the violation or default is not completely corrected within the time prescribed, the Landlord will have the right to terminate this Lease with ___ days notice and in accordance with state law. Upon termination of this Lease, the Tenant agrees to surrender possession of the property. The landlord will also have the right to re-enter the property and take possession of it, remove Tenant and any equipment or possessions of Tenant, and to take advantage of any other legal remedies available."

¶ 12 With respect to termination, paragraph 5 of the addendum provides that the tenant "can terminate this lease at any time without penalty after the first 12 months upon 3 months notice to Landlord." The addendum also provides that "[i]f there is a conflict" between terms in the lease and the addendum, the "[a]ddendum shall rule."

¶ 13 B. Prior Litigation

¶ 14 In March 2015, the plaintiff filed his first forcible entry and detainer action against the defendant in case No. 2015 M1 705256, alleging, that he was entitled to possession of the premises on the basis that the commercial lease was never signed and that instead the parties had entered into an oral lease agreement, which he had terminated by way of written notice to the defendant. The trial court in that case found that there was a fully executed written commercial lease and entered summary judgment in favor of the defendant and against the plaintiff.

¶ 15 On January 8, 2016, the plaintiff again attempted to evict the defendant by filing his second forcible entry and detainer action in case No. 2016 M1 700388. Therein, he alleged that the defendant had held over the property, after he terminated the tenancy by giving the defendant 60

days' written notice, as permitted under paragraph 14 of the lease. After a bench trial, the court ruled in favor of the defendant finding that paragraph 14 of the lease was too vague to be enforceable, and that instead paragraph 5 of the addendum was controlling so as to permit the tenant, rather than the landlord to terminate the lease after the first 12 months. In ruling in favor of the defendant, the court further found relevant that the plaintiff had continued to accept rent even after he filed his suit alleging termination of the lease. After the plaintiff appealed, we affirmed the trial court's decision in a summary order. See *Sing v. Quadri*, 2017 IL App (1st) 16-1953-U.

¶ 16 C. The Instant Lawsuit

¶ 17 On June 27, 2017, the plaintiff filed the instant forcible entry and detainer action against the defendant, alleging that he was entitled to possession of the property, because the defendant "breached the terms of the lease by breaching" paragraphs 8 and 9.

¶ 18 In response, the defendant filed a motion to strike and dismiss the plaintiff's complaint. In that motion, the defendant asserted that dismissal pursuant to section 2-619(a)(4) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(4) (West 2016)) was proper because the cause was barred under the doctrine of *res judicata* since the plaintiff had twice attempted and failed to litigate two identical forcible entry and detainer actions. The defendant further asserted that dismissal and/or the striking of the plaintiff's complaint was proper under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) because the plaintiff had failed to attach a copy of the commercial lease to his complaint as required under section 2-606 (735 ILCS 5/2-606 (West 2016)) and therefore failed to plead any violation of the lease, or any facts, under which the court could enter an order terminating the defendant's tenancy of the premises.

¶ 19 After a hearing,[1] on August 3, 2017, the trial court denied the defendant's motion to dismiss and strike the complaint. The plaintiff subsequently filed an amended complaint, in which, in addition to possession he further sought "court costs and reasonable attorney's fees."

¶ 20 On August 14, 2017, the defendant filed his answer to the amended complaint, denying all the allegations therein. In addition, the defendant, *inter alia*, acknowledged that under paragraph 8 of the commercial lease, he was responsible for the repair and upkeep of the interior of the property, and that pursuant to that provision he "replaced a broken and filthy commode" in the bathroom of the property. The defendant, however, denied having "performed any alterations to the leased property" at any time.

¶ 21 On October 10, 2018, the cause proceeded to bench trial at which the following evidence was adduced. The plaintiff first testified that he is the owner and landlord of the property, which comprises a mechanic's shop and contains five offices and one bathroom. He acknowledged that the parties signed the commercial lease for the property and agreed on a five year term, beginning on September 1, 2012, so that the lease had expired a month prior to trial. The plaintiff identified the commercial lease and it was introduced into the evidence.

¶ 22 The plaintiff next testified that sometime in March 2017, together with his real estate inspector he went into the property, and noticed that the defendant kept garbage and oil "all over the outside of the property," and that he had built a new bathroom inside. He explained that the property contained only one bathroom and that under the terms of the lease, specifically paragraph 8, the defendant was not permitted to make any alterations to the property without his consent. The plaintiff explained that the additional bathroom had been built inside an attached but abandoned house, which he owned, but which was not part of the leased property.

[1] The transcript of this proceeding is not part of the record on appeal.

¶ 23 While on the premises, the plaintiff approached the defendant about the added bathroom and the state of the premises outside. He also told the defendant he needed to keep the property clean. The plaintiff then used his cell phone to take pictures of the alterations and the state of the property outside. Those photographs were introduced into evidence at trial.

¶ 24 The plaintiff stated that immediately thereafter he contacted his attorneys and had them send a notice of default to the defendant on May 4, 2017. Subsequently, on May 23, 2017, the plaintiff returned to the property and handed Muhammad Saquib (Saquib), an employee of the business being operated at the property, a 10-day notice of termination of the tenancy, which explained that the tenancy was being terminated on the basis of the defendant's violation of paragraph 8 of the lease. The plaintiff did not speak to Saquib about the condition of the property when he served the notice of termination. Both the notice of default and the notice of termination were admitted into evidence.

¶ 25 The plaintiff averred that despite the notice of termination, the defendant has not surrendered possession of the property to him, and has instead continued to occupy it and run his business there.

¶ 26 The plaintiff further testified that a day before trial, he returned to the property to inspect it and take more photographs. He described the property as being in far worse condition than on his previous visit. Outside, the plaintiff observed scattered car parts and junk. He also noticed open drums filled with black oil, some of which was spilling onto the ground, posing a fire hazard. In addition, inside the property, the plaintiff observed that the defendant had not removed the second bathroom, but instead continued to use it.

¶ 27 The plaintiff further testified that since the filing of the instant litigation, he never spoke to

the defendant about renewal of the lease, nor agreed that the defendant could continue to lease the property. The plaintiff affirmatively stated that he wanted the defendant to return possession of the property to him.

¶ 28 On cross-examination, the plaintiff acknowledged that in March 2017 he received a letter from the defendant's attorney expressing the defendant's interest in exercising his option to renew the lease. On redirect examination, the plaintiff affirmatively stated that he did not accept the defendant's request for renewal. In addition, he explained that under paragraph 3 of the lease he was not required to accept such a request because the defendant had breached the lease by not keeping the property in a "clean, safe and sanitary condition," as he was obligated to do under paragraph 8 of the lease.

¶ 29 After the plaintiff rested his case-in-chief, the defendant called Saquib. Saquib testified that he operates an auto repair shop at the property, and has done so since September 1, 2012. He stated that as part of this type of work, he often has occasion to work with oil and car parts, which must be kept and placed inside and outside of the property. Saquib further acknowledged that as part of the auto repair shop he maintains a waiting room for customers.

¶ 30 Saquib identified a group of photographs, which he took in June 2017, and which depicted the auto repair shop, including: (1) a customer waiting room; (2) an office area; (3) a back restroom for employees; (4) a front restroom for customers; and (5) a back office for storing parts and inventory.

¶ 31 Saquib averred that since he began operating the auto repair shop at the property there has never been any construction there. He denied having built out for any additional rooms or any additional buildings, and specifically building any additional bathrooms on the property. Saquib admitted, however, that the sink and the commode in one of the bathrooms were replaced "near

the beginning, when [he] first came into the facility because the old material was really dilapidated." He stated, however, that the flooring, walls, lighting, mirror and everything else in the bathroom remained the same.

¶ 32 Saquib stated that he is aware that the plaintiff is the landlord of the property, and that he often comes to the property unannounced.

¶ 33 On cross-examination, Saquib acknowledged that the defendant is his stepbrother and that he works for the defendant. Saquib also admitted that he has previously seen the commercial lease between the plaintiff and the defendant, and that under that lease the property that the defendant is entitled to use includes only *one* bathroom. On cross-examination, Saquib acknowledged that in spite of that lease provision, since the inception of the lease, he has been using a second bathroom on the premises. Additionally, he admitted that he replaced a sink and a toilet in that bathroom without the plaintiff's written consent. He also acknowledged that he never personally sought the plaintiff's permission to use that second bathroom, and that he was unaware of whether the defendant ever had.

¶ 34 After Saquib's testimony, the defendant took the stand. The defendant identified the commercial lease and acknowledged that he signed it. He averred that since September 1, 2012, as per the terms of that lease, he has run an automobile repair shop at the property. He testified that since that date there has been no construction on the property, but acknowledged that because it was his responsibility to upkeep the interior of the property, he has completed several "remodeling projects," inside. These projects include: (1) the remodeling of the waiting room, by adding canned lights to the fixture; and (2) the replacing of the commode and the sink in one of the bathrooms.

¶ 35 The defendant averred that both bathrooms are part of the property contemplated under the

commercial lease and that the second bathroom has been on the property since the inception of the lease. The defendant explained that the separate house that the plaintiff had testified about is actually contiguous to the auto repair shop structure and that you can walk into it from inside of the warehouse. As the defendant explained: "From inside the premises, you would not be able to tell which building you were in. It's only when you go outside that you realize that these are separate structures, which are now contiguous."

¶ 36 After closing arguments, the trial court ruled in favor of the plaintiff and entered an order of possession in his favor, with enforcement to be stayed by agreement of the parties until October 31, 2017. In doing so, the trial court explained:

> "The lease is quite clear. There was only one bathroom that was leased *** on the premises.
>
> * * *
>
> However, *** parties on both sides did testify to the fact that although it appears to be two separate buildings from the outside, there is a home that's [*sic*] owned by the plaintiff and it is attached. And both parties did testify to the fact that that additional bathroom was being used.
>
> I did see the pictures. What I know--and I'm not a mechanic, obviously, but I've seen, you know, auto shops. We all have. And I looked at these pictures, and it does appear that some things are in a little bit of disarray, and enough that gives me cause for concern.
>
> * * *
>
> So on that basis, I'm going to be ruling in favor of the plaintiff."

¶ 37 After trial, the defendant moved for an additional stay, which was denied. The defendant now appeals.

¶ 38 II. ANALYSIS

¶ 39 On appeal, the defendant makes two assertions. He contends that the trial court erred: (1) in denying his pretrial section 2.619.1 motion to dismiss (735 ILCS 5/2.619.1 (West 2016)); and (2) in granting judgment in favor of the plaintiff, after trial, and ordering possession of the property to the plaintiff.

¶ 40 A. Motion to Dismiss

¶ 41 We begin by addressing the court's decision to deny the defendant's motion to dismiss. Section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)) permits a party to combine a section 2-615 (735 ILCS 5/2-615 (West 2016)) motion to dismiss based on a plaintiff's substantially insufficient pleadings with a section 2-619 (735 ILCS 5/2-619 (West 2016)) motion to dismiss based on certain defects or defenses. “It is proper for a court[,] when ruling on a motion to dismiss under either section 2-615 or section 2-619[,] to accept all well-pleaded facts in the complaint as true and to draw all reasonable inferences from those facts in favor of the nonmoving party.” *Edelman, Combs and Latturner v. Hinshaw and Culbertson,* 338 Ill. App. 3d 156, 164 (2003), citing *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 162 (1998). "Our review is *de novo* for motions to dismiss brought under both sections 2-615 and 2-619." *Edelman, Combs and Latturner*, 338 Ill. App. 3d at 164.

¶ 42 1. *Res Judicata*

¶ 43 On appeal, the plaintiff first argues that the trial court erred when it refused to dismiss the plaintiff's complaint pursuant to section 2-619(a)(4) of the Code on the basis of *res judicata*. We disagree.

¶ 44 Section 2-619(a)(4) of the Code permits the involuntary dismissal of a cause of action on the

basis that it "is barred by a prior judgment." 735 ILCS 5/2-619(a)(4) (West 2016); see also *Marvel of Illinois v. Marvel Containment Control Industries, Inc.*, 318 Ill. App. 3d 856, 863 (2001) (citing *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 294 (1992)). Section 2-619(a)(4) incorporates the doctrine of *res judicata*, which provides that a "final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). *Res judicata* extends not only to those issues that were actually decided in the original lawsuit but also to those matters that could have been decided in that first suit. See *Cooney v. Rossiter*, 2012 IL 113227, ¶ 18; see also *Hudson*, 228 Ill. 2d at 467. For *res judicata* to apply three requirements must be met: (1) a final judgment on the merits rendered by a court of competent jurisdiction; (2) an identity of causes of action; and (3) an identity of parties or their privies. *Marvel*, 318 Ill. App. 3d at 863. If all three elements are met, then the prior action is conclusive as to all issues that were, or properly might have been, raised in that action. *Marvel*, 318 Ill. App. 3d at 863 (citing *Burris*, 151 Ill. 2d at 294).

¶ 45 In the present case, while there is no dispute that the first and third requirements have been satisfied, as shall be explained further below, the defendant has failed to show an identity of causes of action between the instant lawsuit and the 2015 and 2016 forcible entry and detainer actions, so as to trigger the application of *res judicata*.

¶ 46 In Illinois for purposes of *res judicata*, we use the "transactional test" to determine the identity of causes of action. *Cooney*, 2012 IL 113227, ¶ 21. Under this test separate claims are considered the same cause of action for purpose of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *Cooney*, 2012 IL 113227, ¶ 22; see also *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484, 490-91 (1993)

("Although a single group of operative facts may give rise to the assertion of more than one kind of relief or more than one theory of recovery, assertions of different kinds or theories of relief arising out of a single group of operative facts constitute but a single cause of action."). The test generally employed is whether the evidence needed to sustain the subsequent action would have sustained the first. *Torcasso*, 157 Ill. 2d at 490. If the same facts are essential to maintain both proceedings, or the same evidence is necessary to sustain the two, there is identity between the causes of action asserted, and *res judicata* bars the latter one. *Torcasso*, 157 Ill. 2d at 490. Claims are generally considered "part of the same cause of action 'even if there is not a substantial overlap of evidence, so long as they arise from the same transaction.' " *Cooney*, 2012 IL 113227, ¶ 22 (quoting *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 129, 311 (1998)).

¶ 47 In the present case, the 2015 action concerned the plaintiff's characterization of the defendant's tenancy as a month-to-moth tenancy based on an oral agreement, and his attempt to terminate that tenancy without cause on 30 days' notice. The 2016 action concerned the plaintiff's attempt to terminate the defendant's lease without cause on 60 days' notice.

¶ 48 In stark contrast, the current lawsuit arises out of the defendant's violation of the terms of the lease in May 2017, by failing to maintain the premises in a clean and sanitary condition and converting adjacent space in the premises into a bathroom without the plaintiff's consent. Because the facts giving rise to this action are completely different from the facts underlying the 2015 and 2016 lawsuits, this lawsuit does not assert the same cause of action for *res judicata* purposes as either the 2015 or 2016 lawsuits. Accordingly, the trial court properly denied the defendant's section 2-619(a)(4) motion to dismiss (735 ILCS 5/2-619(a)(4) (West 2016)).

¶ 49 In this respect, we disagree with the defendant's assertion that the plaintiff must have been

aware of the violations complained of in 2017 from the inception of the lease, and therefore could have and should have raised this claim in his two earlier lawsuits. First, unlike the current action, the 2015 and 2016 lawsuits were based solely on no-fault lease terminations, and not on any alleged violation of the lease. As a result, the operative facts giving rise to the 2015 and 2016 actions were different than the facts underlying the current lawsuit, and the plaintiff was under no duty imposed by *res judicata* to invoke the defendant's violations of the lease as a basis to evict him in 2015 and 2016.

¶ 50 In addition, even we were to accept the defendant's position that the plaintiff was aware that the defendant was violating his lease in 2015 and 2016 in the same manner in which he is currently violating the lease, the defendant's ongoing violations constitute separate causes of action, which are not barred by the doctrine of *res judicata*. See *Altair Corp. v. Grand Premier Trust & Investment, Inc.*, 318 Ill. App. 3d 57, 63 (2000) (*Res judicata* does not apply where "the wrong suffered by the plaintiff is of a recurrent or ongoing nature."); see also *D'Last Corp. v. Ugent*, 288 Ill. App. 3d 216, 222 (1997) ("[A] defendant's continuing course of conduct, even if related to conduct complained of in an earlier action, creates a separate cause of action. [Citations.] The doctrine of *res judicata* does not bar claims for continuing conduct complained of in the [latter] lawsuit that occur after judgment has been entered in the first lawsuit. [Citations.]"); see also *Rasmussen v. City of Lake Forest*, 848 F. Supp. 2d 864, 868 (N. D. Ill. 2012) (noting that if *res judicata* applied to bar claims occurring after judgment was entered in the previous lawsuit "defendants who repeatedly cause injury through continuing nuisances would effectively have immunity from liability for future violations if a plaintiff did not successfully obtain injunctive relief in the initial suit."); see also *United Food & Commercial*

Workers Local 100-A Health & Welfare Fund v. City Foods, Inc., 878 F. Supp. 122 (N. D. Ill. 1995); *Raabe v. Messiah Evangelical Lutheran Church*, 245 Ill. App. 3d 539 (1993).

¶ 51 Accordingly, contrary to the defendant's position, we find that the trial court properly concluded that *res judicata* did not operate to bar the instant lawsuit.

¶ 52 2. Failure to Attach Commercial Lease to Complaint

¶ 53 On appeal, the defendant next contends that the trial court erred when it denied his section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2016)) because the plaintiff failed to plead facts sufficient to recover in a forcible entry and detainer action by failing to attach a copy of the parties' lease to the complaint as is required under section 2-606 of the Code (735 ILCS 5/2-606 (West 2016)) for claims founded upon a written instrument.

¶ 54 The plaintiff responds that section 2-606 does not apply to forcible entry and detainer actions, which are sufficiently pleaded when the plaintiff alleges that: (1) he is entitled to possession; and (2) the defendant is unlawfully withholding possession (735 ILCS 5/9-106 (West 2016)). In support of this position, the plaintiff cites to *Chicago Housing Authority v. Walker*, 131 Ill. App. 2d 299, 301 (1970).

¶ 55 Contrary to the plaintiff's position, however, the court in *Walker* merely addressed the factual pleading requirements for a complaint for forcible entry and detainer. That court did not address the requirement that parties must attach to their pleadings any written instruments on which they base their claims, or in the alternative provide an affidavit explaining the absence of the written instrument as required by section 2-606 of the Code (735 ILCS 5/2-606 (West 2016)). Moreover, we see nothing in the Code or case law that excuses plaintiffs in forcible entry and detainer actions form the requirements of section 2-606. Accordingly, while we believe that the better practice would have been for the plaintiff to attach the commercial lease to his complaint,

we need not definitively resolve this issue, since any error in failing to attach the lease, could not have and did not prejudice the defendant in any way.

¶ 56 In that respect, we note that the defendant did not dispute the existence of the commercial lease, or the validity of any of its provisions either prior to or during trial. Rather, in his answer to the plaintiff's amended complaint, the defendant explicitly referred to the express terms of paragraph 8 of the lease, under which the plaintiff was pursuing his forcible entry and detainer action. In his answer, the defendant claimed that under this provision he had not violated the terms of the lease because any remodeling of the second bathroom was permitted as part of his responsibility to "upkeep and repair" the interior of the property. At trial, the defendant acknowledged signing the lease and testified to many of its provisions. In addition, contrary to the defendant's position on appeal, there can be no doubt that as a result of the two prior forcible entry and detainer actions, which involved the commercial lease, the defendant was both in possession of the commercial lease, and aware of its contents on the date the instant action was filed. Accordingly, no prejudice could have arisen from the trial court's decision not to dismiss the cause of action on the basis of the plaintiff's failure to attach that lease to his complaint, and any error in permitting the cause of action to proceed forward was necessarily harmless.

¶ 57 C. Trial

¶ 58 The defendant finally contends that the trial court's order granting possession of the property to the plaintiff after trial should be reversed because the defendant's testimony established that he never violated any provision of the lease, and instead validly exercised his option to renew that lease for another period of five years. For the reasons that follow, we disagree.

¶ 59 “The standard of review we apply when a challenge is made to a trial court's ruling

following a bench trial is whether the trial court's judgment is against the manifest weight of the evidence." *Judgment Services Corp. v. Sullivan*, 321 Ill.App.3d 151, 154 (2001); see also *Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, ¶ 70. In reviewing such a ruling, we are mindful that, as the trier of fact, the trial court is responsible for resolving any factual disputes, assessing the credibility of the witnesses, determining the weight to be afforded the witness's testimony, and resolving any conflicts in the evidence. *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 976 (2010). We may not conclude that the trial court's findings of fact are against the manifest weight of the evidence merely because the record might support a contrary decision or we disagree with them. *Bernstein & Grazian*, 402 Ill. App. 3d at 976. Rather, a judgment is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or the trial court's findings appear to be unreasonable, arbitrary, or not based upon the evidence. *Lawlor*, 2012 IL 112530, ¶ 70.

¶ 60 A forcible entry and detainer action is a limited proceeding that determines the issue of who is entitled to immediate possession. *Wendy and William Spatz Charitable Foundation v. 2263 North Lincoln Corp*., 2013 IL App (1st) 122076, ¶ 28; *100 Roberts Road Business Condominium Ass'n v. Khalaf,* 2013 IL App (1st) 120461, ¶ 31; *Newport Condominium Ass'n v. Talman Home Federal Savings & Loan Ass'n of Chicago*, 188 Ill. App. 3d 1054, 1058 (1988) (when entertaining forcible entry and detainer actions, the court "has limited and special jurisdiction without equitable powers."). As such, matters "not germane to the issue of possession may not be litigated in a forcible entry and detainer action." *Yale Tavern, Inc. v. Cosmopolitan National Bank*, 259 Ill. App. 3d 965, 971 (1994). Our supreme court has defined "germane" to mean closely allied, related, or connected. *Rosewood Corp. v. Fisher*, 46 Ill. 2d 249, 256 (1970); see also *Milton v. Therra*, 2018 IL App (1st) 171392, ¶ 23. Therefore, the only factual questions that

need to be answered in this type of proceeding are "which party is entitled to immediate possession and whether a defense which is germane to the distinctive purpose of the action defeats plaintiff's asserted right to possession." *First Illinois Bank & Trust v. Galuska*, 255 Ill. App. 3d 86, 90 (1993). Our courts have found four general categories of claims that are germane to the issue of possession, including: (1) claims asserting a paramount right of possession; (2) claims denying the breach of the agreement vesting possession in the plaintiff; (3) claims challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; or (4) claims questioning the plaintiff's motivation for bringing the action. See *Avenaim v. Lubecke*, 347 Ill. App. 3d 855, 862 (2004); see also *American National Bank v. Powell*, 293 Ill. App. 3d 1033, 1044 (1997).

¶ 61 In the present case, to succeed on his forcible entry and detainer action, the plaintiff had to prove that he was entitled to possession of the property because the defendant had breached paragraph 8 of the parties' commercial lease, by not maintaining the property in a clean, safe and sanitary condition and by making alterations to the property without the plaintiff's consent.

¶ 62 The evidence presented at trial uncontrovertibly established that the defendant was using, and had made alterations to a second bathroom on the premises, without the plaintiff's consent. Both the defendant and the defendant's stepbrother admitted at trial that they had replaced the commode and the sink in that second bathroom, during the pendency of the five-year lease. While there was contradictory evidence regarding when during that lease term the alterations were made and whether the plaintiff should have been aware of them earlier than May 2017, the trial judge, as the trier of fact, was in the better position to observe the demeanor of the witnesses at trial and resolve any conflicts in their testimony. *Bernstein & Grazian*, 402 Ill. App. 3d at 976.

¶ 63 The evidence at trial further established that the defendant kept open oil containers, and car parts on the outside of the property. The defendant's stepbrother himself admitted that the oil containers were placed outside before pick up by a disposal company, when they became full, about once per month.

¶ 64 Based on the aforementioned evidence, the trial court found that the defendant had breached paragraph 8 of the lease and that the plaintiff was entitled to possession. After a review of the record, we find nothing manifestly erroneous in that decision. *Lawlor*, 2012 IL 112530, ¶ 70.

¶ 65 The defendant nonetheless argues, albeit inartfully, that the evidence at trial established that he had a paramount right to possession because he exercised his option to renew the lease. We disagree. While there was evidence presented at trial that the defendant sent a letter requesting a renewal of the lease through certified mail, and that the plaintiff received that letter, the plaintiff unequivocally testified that he rejected the request for the renewal of the lease on the basis of the defendant's violations of the terms of paragraph 8. The plaintiff further explained that under paragraph 3 the option to renew was triggered only if the defendant had complied with all of the terms of the lease agreement, and that in the plaintiff's view, the defendant had not. Under this record, we are compelled to conclude that the trial court's finding that the defendant did not have a paramount right to possession was not against the manifest weight of the evidence. See *Lawlor*, 2012 IL 112530, ¶ 70.

¶ 66 III. CONCLUSION

¶ 67 For the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 68 Affirmed.