2013 IL App (4th) 120884-U

NO. 4-12-0884

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 29, 2013
Carla Bender
4th District Appellate
Court, IL

R.L.R. INVESTMENTS, LLC,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
CENTRAL FREIGHT LINES, INC.,	)	No. 09L303
Defendant-Appellant.	)	
	)	Honorable
	)	John W. Belz,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Plaintiff was entitled to recover damages to the roof of the leased premises caused by defendant, where the lease provision imposing upon plaintiff the repair and maintenance responsibilities of the roof did not preclude defendant's liability.

(2) Plaintiff sufficiently proved the amount of damages awarded.

(3) Plaintiff was not required to mitigate damages as provided in the forcible entry and detainer statute.

¶ 2 Defendant, Central Freight Lines, Inc., a trucking company, appeals from the trial court's judgment awarding $56,100 in damages to plaintiff, R.L.R. Investments, LLC. Defendant had leased the loading-dock premises from plaintiff and caused damages to the property during the seven years it was in possession. Defendant claims (1) a provision in the lease precluded plaintiff's recovery of damages to the roof, (2) plaintiff failed to sufficiently prove the amount of damages awarded, and (3) plaintiff failed to mitigate damages. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 6, 2009, plaintiff filed a complaint against defendant for damages that occurred while defendant was in legal possession and control of plaintiff's leased property. A few months earlier, plaintiff had filed a forcible entry and detainer action against defendant (Sangamon County case No. 09-LM-1141) and, in September 2009, obtained a judgment awarding plaintiff possession of the property. The bench trial in this case consisted of the presentation of two evidence depositions with accompanying exhibits.

¶ 5 The first deposition presented was that of Michelle Ann Worley, defendant's facility manager, taken February 8, 2012. She said defendant entered into the five-year lease (plaintiff's exhibit No. 1) in October 2002, but the lease was renewed for an additional two years expiring on October 31, 2009. However, prior to the lease's expiration, defendant vacated the premises in March 2008. On April 29, 2008, plaintiff sent defendant a letter, asking defendant to address the questionable items of trash on the property, oil spills that had not been cleaned, and a missing floor scale. Worley immediately began arranging for remediation of the complaints. As of May 20, 2008, the concerns had been addressed, with the exception of the scale.

¶ 6 Worley said thereafter she received letters from plaintiff dated October 10, 2008, February 11, 2009, March 31, 2009, and June 8, 2009, each requesting payment of rent, late fees, and utilities, without mention of any additional damages. She was provided the list of damages, not from defendant, but from defendant's attorney after the lawsuit had been filed.

¶ 7 Worley was questioned about plaintiff's list of damages, which included 19 items and was marked as plaintiff's exhibit No. 5. Defendant's counsel went through each item, asking Worley whether she had previously been made aware of the alleged damage to each. The only items she

knew needed repairs were the scale and the fence. The last item on the list was damage to the structure or roof. The exhibit indicated there were "21 damaged areas from trailers popping up."

¶ 8 On cross-examination, Worley admitted defendant had not provided written notice of its intent to vacate the premises prior to the expiration of the lease term. She acknowledged the rental amount continued to accrue even though defendant had stopped paying rent. Plaintiff had continued to demand payment as indicated in the letters mentioned above, marked as plaintiff's group exhibit No. 2. Worley acknowledged plaintiff had obtained a judgment in September 2009 against defendant for possession, rent, and late fees in the separate forcible entry and detainer action. The list of damages (exhibit No. 5) was also dated September 2009.

¶ 9 The second deposition presented was that of Stanley L. Richards, plaintiff's director of construction and facility maintenance, taken December 28, 2011. Richards said his primary duty was to enter plaintiff's leased property after the expiration of the lease term, photograph the condition of the property, and assess the damages. He said paragraphs 10 and 11 of the lease agreement (marked as plaintiff's exhibit No. 1) address the lessor's obligations regarding the condition of and repairs to the property during the lease term. Richards said that during his nine years of performing these duties for plaintiff, he had prepared damage estimates in approximately 40 to 50 cases in the Midwest—5 or 6 in Illinois, and 2 in central Illinois, including this case.

¶ 10 Counsel showed Richards the photographs he took of the property during his inspection in August 2009, which were marked as plaintiff's group exhibit No. 4. He described the photographs showing the damage to the roof from the "tipped trailers." At the request of Mark Sherman, he prepared a compilation of damages (plaintiff's exhibit No. 5), totaling $56,100 based on the local costs of materials, labor, and expenses. This exhibit listed 19 items requiring repair:

(1) janitorial services $4,000; (2) ceiling tiles $800; (3) heating, ventilation, and air conditioning $4,250; (4) painting $2,000; (5) heater in office $450; (6) lighting $800; (7) heater in restroom $450; (8) plumbing $3,500; (9) exterior power spray $750; (10) power spray dock floor $1,800; (11) dock plates $2,000; (12) dock painting $5,000; (13) fencing $3,750; (14) scale $500; (15) dock pads $300; (16) reposition curbs/stops $100; (17) repair handrail $300; (18) trash cleanup $150; and (19) repair 21 damaged areas on roof $25,200.

¶ 11 Richards explained there were 21 dock-door locations where the driver had backed the trailer into the dock and the workers had apparently failed to use a "load stand" near the fifth wheel, causing the trailer to tip up when the truck drove out. He listed the specific dock numbers of the 21 spaces where the damage had occurred. The estimate to repair all of the damaged roof areas was $25,200, which included the rental of a scissor lift, the needed replacement metal, the replacement purlins, and the labor involved. Richards said his total estimated damages of $56,100 did not include any items of normal wear and tear.

¶ 12 On cross-examination, Richards testified defendant was not the only tenant at this property. The entire premises included 184 docks. Defendant leased only 40 docks. Richards also testified that, to his knowledge, his company had not performed any of the estimated services to repair the premises.

¶ 13 On redirect examination, Richards explained section 10 of the lease as follows:

> "Q. Okay. What, can you explain to the Judge what paragraph 10 refers to when it talks about roof and structural integrity?
>
> A. For example, if the structure was not constructed right, if

> there had not been the associated permits, if there was an Act of God and there was a four-foot snow, it landed on the roof and the snow load was not able or the roof was not able to handle the snow load, that would certainly not be the tenant's responsibility."

Richards said he spoke with the manager of the adjacent tenants, who said he saw defendant's trailers tipped on occasion.

¶ 14 In June 2012, the trial court entered judgment for plaintiff in the amount of $56,100. The court's docket entry states as follows:

> "After careful consideration of all submitted evidence and arguments of counsel, the court enters judgment for plaintiff [] in the amount of $56,100. The court finds, based on the photographs and the evidence depositions submitted, the plaintiff has provided adequate evidentiary and factual foundation for the admission of the evidence of damages against defendant. The court finds persuasive the testimony of the witness Stan Richards as to the damages *** the plaintiff sustained to the property. Additionally, the court finds the defendant is responsible for the damages to the roof in the amount of $25,200 as outlined in item 19 of exhibit [No.] 5 of the plaintiff."

Defendant filed a motion to reconsider, which the court denied. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Defendant appeals from the trial court's judgment, claiming the award of $56,100 was against the manifest weight of the evidence. In particular, defendant claims (1) the lease precludes

recovery of damages to the roof, (2) Richards' testimony was not sufficient to establish damages, and (3) plaintiff failed to mitigate damages.

¶ 17 A. Damages to Roof

¶ 18 The applicable provisions of the lease provide as follows:

> "**10. <u>Lessor's Repairs and Maintenance</u>**. Lessor accepts no maintenance and repair responsibilities during the Term of this Lease, with the exception of the roof and structural integrity of the truck terminal.
>
> **11. <u>Lessee's Repairs and Maintenance</u>.** Lessee shall be responsible for any and all repairs to the Leased Premises not specified in paragraph 10 of this Lease. At the expiration of this Lease, or prior termination, the Lessee shall surrender the Leased Premises to the Lessor in at least as good a condition as when received, normal wear and tear, damage from the elements or acts of God, or damage resulting from the negligence or willful misconduct of Lessor, its agents or employees, excepted. Lessee shall reimburse Lessor for the cost of a chain link fence across the dock. Lessor may, at its election and sole cost and expense, install a fence across the yard as depicted in Exhibit A."

Defendant insists this language "clearly provides that defendant is not liable for damage to the roof or structure." We disagree.

¶ 19 Because this appeal presents an issue of law, our review is *de novo*. See *Avery v.*

State Farm Mutual Automobile Insurance Co., 216 Ill. 2d 100, 129 (2005) ("As a general rule, the construction, interpretation, or legal effect of a contract is a matter to be determined by the court as a question of law.") *De novo* review means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). Thus, the question before us is whether plaintiff is entitled to damages associated with roof repairs in light of the lease provisions arguably prohibiting the same.

¶ 20 Citing this court's decision in *Riney v. Weiss & Neuman Shoe Co.*, 217 Ill. App. 3d 435, 442 (1991), defendant argues the parties' intentions with respect to their duties and obligations under the lease are clearly stated in the lease terms—that is, that defendant is not responsible for any repairs needed to the roof. *Riney* provides that the parties' intentions can be ascertained by looking to the language in the contract itself, and when that language is not ambiguous, there is no need to look outside of the four corners of the contract for the meaning of the contractual terms. *Riney*, 217 Ill. App. 3d at 442-43. "A contract is ambiguous if its terms are capable of being understood in more than one sense because either an indefiniteness of expression or a double meaning is attached to them. [Citation.] A provision is not rendered ambiguous simply because parties do not agree on its meaning. [Citation.]" *Riney*, 217 Ill. App. 3d at 444.

¶ 21 Defendant contends the language is not ambiguous and clearly states it is not liable for damages to the roof or structure, and therefore, it claims, the judgment in the amount of $25,200 for roof repairs is improper and contrary to the lease provisions. Defendant further claims that, because the trial court did not explain its justification of the award of damages in light of the lease provisions, the judgment must be vacated.

¶ 22 Plaintiff, on the other hand, argues defendant's interpretation of section 10 of the lease

would lead to the absurd result that a tenant may cause damage to the roof "at will and walk away with impunity." Plaintiff insists this provision does not condone damaging the roof or structure without liability. It merely requires plaintiff to undertake repairs to the roof or structure during the lease term, should the same be necessary. Plaintiff claims it does not have a repair obligation during the lease term with regard to any other part of the premises. It further claims this section was not meant to allocate damages, as the tenant is responsible for *any* part of the premises it damages, including the roof and structure. Rather, plaintiff claims, this section merely imposes plaintiff's maintenance and repair obligations during the lease term. We agree with plaintiff.

¶ 23 In general terms, section 10 sets forth plaintiff's obligation to maintain and repair the roof and the structure itself during the lease term. Defendant had that responsibility for every other part of the premises. According to the lease terms, plaintiff agreed to undertake this responsibility while defendant was in possession of the premises. This section was not intended to relieve defendant's obligation to pay for any damages it caused to the roof. It merely provided that plaintiff had the obligation to maintain and repair that part of the premises should such repair be needed during the lease term. This section of the lease has no application to an allocation of damages.

¶ 24 A landlord generally has no obligation to make repairs unless he specifically agrees to do so. See *Forshey v. Johnston*, 132 Ill. App. 2d 1106, 1107 (1971). Here, plaintiff specifically agreed to make repairs to the roof, if necessary, during the lease term. Otherwise, defendants were responsible for maintaining and repairing the premises during its occupancy. Section 10 does not preclude defendant's liability for damages it caused to the roof or structure. It merely allocated between the parties the *obligation* to maintain and repair the premises.

¶ 25 This interpretation is consistent when read in conjunction with the other provisions

of the lease. See *Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011) (courts will not interpret a contract provision in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used). For example, section 11 requires defendant to surrender the premises in "at least as good condition as when received," and section 13 requires each party to hold the other harmless "for damage to the other party's property." It is apparent from these provisions that defendant was to avoid damaging property and, if damages were indeed sustained, then liability would follow. Richards testified that defendant caused damage to the roof when its trailers tipped at the dock. Thus, plaintiff was entitled to recover damages from defendant.

¶ 26 B. Sufficiency of Proof of Damages

¶ 27 Next, defendant contends Richards' testimony regarding the itemized list of damages set forth in exhibit No. 5 was insufficient to prove actual damages. Defendant claims Richards did not obtain estimates from contractors or other professionals, but instead relied only upon his seven years of experience and the regional costs of repair and labor in calculating plaintiff's damages.

¶ 28 A trial court's decision as to damages will not be disturbed upon review unless it is manifestly erroneous. *Lynch v. Precision Machine Shop, Ltd.*, 93 Ill. 2d 266, 278 (1982). Fixing the amount of damages is preeminently the function of the fact finder, and its determination will not be disturbed unless it is obviously the result of passion and prejudice. *Pioneer Trust & Savings Bank v. Zonta*, 96 Ill. App. 3d 339, 345-346 (1981). As a general proposition, damages may be proven in any reasonable manner. *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 108 (2006). But, the plaintiff must prove damages to a reasonable degree of certainty and the evidence cannot be remote, speculative, or uncertain. *Northwest Commerce Bank v. Continental Data Forms, Inc.*, 233 Ill. App.

3d 124, 129-130 (1992).

¶ 29 In the context of a landlord and tenant relationship, a vacating tenant has no duty to pay for capital improvements which add value to the property. *Pioneer Trust*, 96 Ill. App. 3d at 346. However, if the condition of the premises is not the same at the end of a tenancy as at the beginning, the landlord may hold the tenant liable for the costs to return the premises to a condition acceptable for rental. *Pyramid Enterprises, Inc. v. Amadeo*, 10 Ill. App. 3d 575, 579 (1973). The landlord has the discretion to decide how to fix it (*Northwest Commerce Bank*, 233 Ill. App. 3d at 126-127), but he must supply a reasonable basis for his damage computation (*Northwest Commerce Bank*, 233 Ill. App. 3d at 129).

¶ 30 Richards' testimony was the only evidence presented on the computation of damages. His assessment was based on his knowledge, training, and experience. He said his duties specifically included the task of walking through plaintiff's leased premises after a tenant vacates to determine what work needs to be completed and the costs thereof before the premises can be rented again. Richards said he spends 75 to 80% of his time performing this function. The trial court considered Richards' testimony credible and reliable and the same was not rebutted or contradicted. Thus, we find no basis to disturb the court's damage award. See *Northwest Commerce Bank*, 233 Ill. App. 3d at 127 (testimony of landlord's assessment of damages to leased property was sufficient).

¶ 31 C. Mitigation of Damages

¶ 32 Finally, defendant contends plaintiff failed to mitigate damages before claiming them from defendant. Defendant refers this court to section 9-213.1 of the Code of Civil Procedure (735 ILCS 5/9-213.1 (West 2010)), which governs forcible entry and detainer proceedings and provides that "a landlord or his or her agent shall take reasonable measures to mitigate the damages

recoverable against a defaulting lessee." Defendant claims it vacated the property in March 2008. Richards documented the damages in September 2009. Therefore, between March 2008 and September 2009, the premises were unoccupied. Defendant claims many of the items of damages, such as maintenance of the dock plates, power washing, the heating and plumbing issues, the ceiling tiles, and maintenance of the dock pads could have been prevented had plaintiff taken reasonable steps to maintain the property while it was vacant. Instead, defendant claims, plaintiff permitted the loss to be unnecessarily enhanced by its own willfulness. See *Culligan Rock River Water Conditioning Co. v. Gearhart*, 111 Ill. App. 3d 254, 258 (1982) ("As a general proposition, the law imposes upon a party, injured from another's breach of contract or tort, the active duty of making reasonable exertions to render the injury as light as possible. If, by this negligence or wilfulness, he allows the damages to be unnecessarily enhanced, the increased loss, that which was avoidable by the performance of his duty, falls upon him.").

¶ 33 Plaintiff contends that, because the lease was still in effect until October 31, 2009, (1) defendant's obligation to maintain the premises remained even after it had vacated, and (2) plaintiff had no authority to enter the property until it received the September 9, 2009, judgment awarding possession in its forcible entry and detainer action. We agree with plaintiff.

¶ 34 Pursuant to section 11 of the lease, defendant was to "surrender the Leased Premises to the Lessor in at least as good a condition as when received" at the expiration of the lease term. Thus, the damages were assessed at the earliest time possible, because before the September 2009 judgment, plaintiff had no legal right to take possession of the property. Further, the mitigation requirement cited by defendant applies to forcible entry and detainer actions and requires the landlord to mitigate its damages by making a reasonable attempt to relet the premises in place of the

defaulting tenant. *St. George Chicago, Inc. v. George J. Murges & Associates, Ltd.*, 296 Ill. App. 3d 285, 290-91 (1998). That is, this mitigation requirement relates to the collection of rent. It does not apply to a landlord's action for damages caused by the tenant discovered after the landlord retakes possession of the leased property. Therefore, we conclude plaintiff had no obligation or opportunity to mitigate damages so as to preclude its recovery from defendant.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's judgment.

¶ 37 Affirmed.