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NO. 5-13-0362

APPELLATE COURT OF ILLINOIS

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).

Honorable
Allen F. Bennett,
Judge, presiding.

Scott. The term of the lease was three years, from March 1, 2012, to March 1, 2015, with a tenant-option for a one-year extension.

¶ 4 Bernard passed away in May 2012. Bernard's spouse, Betty Scott, was named as the executor of his estate. Betty intended to sell the farm property. She knew that Donald and Douglas were farming the property under a tenancy arrangement, but she was unaware that Bernard had entered into a written agreement with a three-year lease term. In anticipation of the sale of the farm property, Betty served Donald and Douglas with a "Notice of Termination of Tenancy." The certificates of service show that a sheriff's deputy served Donald and Douglas in July 2012. The notice stated: "You are hereby notified that I have elected to terminate your lease of the farm premises now occupied by you, being 160 acres in Buckhart Township, Christian County, Illinois, and you are hereby further notified to quit an [*sic*] deliver up possession of the same to me at the end of the lease year, the last day of such year being February 28, 2013."

¶ 5 In November 2012, a lawyer representing Donald and Douglas sent a letter to Betty to notify her that his clients had a written lease that entitled them to possession of the farm property until March 1, 2015. The lawyer provided a copy of the written lease and asked Betty to contact him if she thought she had a right to disavow the lease.

¶ 6 The written lease contains a provision addressing termination of the lease. Section 6, paragraph A, states that if either party fails to carry out substantially the terms of this lease in due and proper time, the lease may be terminated by the other party by serving a written notice citing the instance(s) of default and specifying a termination date. Betty did not recite any instances of default in her notice to terminate the tenancy, and she did not serve a subsequent notice of termination after receiving a copy of the written lease.

¶ 7 On March 4, 2013, the plaintiffs, Ronald Moreland, Sandra Moreland, Carl Michel, and Shirley Michel, purchased the farm property from Bernard's estate. The plaintiffs knew

about the written lease agreement when they purchased the property.

¶ 8 On March 12, 2013, the plaintiffs filed a complaint for possession under the Forcible Entry and Detainer Act against the defendants in the circuit court of Christian County. As part of the relief requested, the plaintiffs sought an order enjoining the defendants from possession, use, and enjoyment of the subject property during the pendency of the proceedings. The plaintiffs did not serve the defendants with a notice to quit or terminate the tenancy before they filed their complaint. On March 29, 2013, the defendants filed an answer. Therein, the defendants denied the allegations of the complaint and asserted that they were in lawful possession of the farm property under the lease. On May 9, 2013, the plaintiffs' attorney hand-delivered a "Notice of Termination of Tenancy" to Donald and Douglas. In the notice, the plaintiffs referenced section 6(A) of the written lease agreement and listed instances in which the defendants had defaulted under the lease. The plaintiffs demanded that the defendants deliver up possession of the property "*instantly*."

¶ 9 On May 23, 2013, the parties appeared in the court for an evidentiary hearing on the plaintiffs' request for a preliminary injunction. During the hearing, the plaintiffs acknowledged that the defendants were not provided with a notice identifying their alleged instances of default before the complaint for forcible entry and detainer was filed. The defendants asked the court to deny the plaintiffs' request for a preliminary injunction on the ground that they had been denied due process because they had not been served with an adequate notice to terminate the tenancy as required in the lease or in the law. The defendants noted that the original notice of termination was invalid because it did not identify any instances of default as required under the lease and the Forcible Entry and Detainer Act. They argued that the second notice of termination was invalid because it was not served at least 10 days prior to filing an action for forcible entry and detainer as required under the Act. At the close of the evidence and the arguments of counsel, the trial court

issued an order enjoining the defendants from maintaining possession of the farmland. The court directed the defendants to vacate the home and the machine shed within 60 days of its order. In a written order that followed, the court directed the defendants to vacate the home and all outbuildings on the premises, and to remove all of their personal property by or before 5 p.m. on July 22, 2013. The court stated that the injunction would remain in force and effect pending a trial on the merits, which was scheduled on June 28, 2013, at 1:15 p.m. The written order was entered on May 31, 2013, *nunc pro tunc* (May 13, 2013).

¶ 10 On June 18, 2013, the defendants filed a motion to dismiss the action pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). The defendants argued, in part, that the lessors had not served them with the required notice of termination of tenancy prior to filing of the complaint, that the service of such notice was a strict condition precedent to the bringing of a forcible entry and detainer action, that the plaintiffs' action was premature, and that any orders entered in the action were void *ab initio*.

¶ 11 On June 27, 2013, the defendants filed a motion to dissolve the preliminary injunction. As one of the grounds, the defendants asserted that they had not been served with an adequate notice of termination of tenancy prior to filing the forcible entry and detainer action.

¶ 12 The bench trial was scheduled for June 28, 2013. On that date, the trial court took up the defendants' pending motions before the trial started. The court declined to address the substance of the defendants' motion to dissolve the preliminary injunction. The court found that the motion was moot because the preliminary injunction had expired by its own terms with the start of the hearing. The court also found that the defendants' motion to dismiss was untimely and denied it. The case proceeded with a bench trial that day, and the court then took the matter under submission. While the case was under submission, the defendants filed this interlocutory appeal. On appeal, the defendants contend that the trial

court erred in refusing to consider the motion to dissolve the preliminary injunction.

¶ 13 An action brought to adjudicate rights to possession under the Forcible Entry and Detainer Act is a special statutory proceeding that is summary in nature and in derogation of the common law. *Avdich v. Kleinert*, 69 Ill. 2d 1, 6, 370 N.E.2d 504, 507 (1977). A party seeking this remedy must comply with the requirements set out in the Act. *Avdich*, 69 Ill. 2d at 6, 370 N.E.2d at 507. Section 9-102 of the Act sets forth various circumstances under which an action for forcible entry and detainer may be maintained. 735 ILCS 5/9-102 (West 2004). Section 9-102(a)(4) provides that an action for forcible entry and detainer may be maintained when any lessee holds possession without right after the termination of the tenancy either by the terms of the lease or by a notice to quit. 735 ILCS 5/9-102(a)(4) (West 2004). Section 9-210 of the Act addresses the character and content of the notice to quit. 735 ILCS 5/9-210 (West 2004). Section 9-210 provides that when there is a default in any of the terms of the lease, the lease may be terminated upon providing the lessee 10 days' notice of the termination of the tenancy. 735 ILCS 5/9-210 (West 2004). The 10-days' written notice of termination is necessary to declare a forfeiture and a strict condition precedent to filing a forcible entry and detainer action. *Avdich*, 69 Ill. 2d at 7, 370 N.E.2d at 507. Where a lessor files an action for forcible entry and detainer under the Act, without first providing 10 days' notice to quit, the tenancy is not terminated and the action is considered prematurely filed. *Avdich*, 69 Ill. 2d at 9, 370 N.E.2d at 508. A forcible entry and detainer action that is filed prematurely cannot be maintained and a lessor is not entitled to a judgment for possession. *Avdich*, 69 Ill. 2d at 9, 370 N.E.2d at 508. In addition, the failure to provide proper notice to termination of tenancy under the Act violates the due process rights of the lessee. *American Management Consultant, LLC v. Carter*, 392 Ill. App. 3d 39, 57, 915 N.E.2d 411, 428 (2009).

¶ 14 In this case, the plaintiffs admitted that they did not serve the defendants with a

proper written notice of termination of the tenancy before filing their action for forcible entry and detainer. As a result of the failure to serve proper notice under the Act, the action for forcible entry and detainer was prematurely filed and the defendants' rights to due process were violated. Contrary to the plaintiffs' contention, the subsequent notice of termination, served May 9, 2013, could not cure the aforementioned problems. In serving that notice, the plaintiffs essentially acknowledged that the tenancy had not been terminated previously. In this case, the plaintiffs filed their action in forcible entry and detainer without having served a valid notice of termination of tenancy. Therefore, we conclude that the forcible entry and detainer action was prematurely filed. The only order that the trial court could have properly entered was one to dismiss the forcible entry and detainer action as premature and without prejudice. The order granting the preliminary injunction is void and must be vacated.

¶ 15 Accordingly, we vacate the preliminary injunction, and pursuant to the authority granted in Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we dismiss the action for forcible entry and detainer as premature and without prejudice to the plaintiffs to refile.

¶ 16 Preliminary injunction vacated; cause dismissed without prejudice.