

No. 1-09-2371

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).

FIFTH DIVISION
January 14, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MILFICO FOODS, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
OCEAN STAR FOODS, INC.,)	No. 06 M1 702754
)	
Defendant,)	
)	
and JANE PARK,)	Honorable
)	Diane M. Shelley,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Joseph Gordon and Howse concurred in the judgment.

O R D E R

HELD: The trial court's finding that the tenant of commercial premises was the actual or apparent agent of the apparent guarantor on the lease, so that the guarantor was bound by and liable under the lease, was not against the manifest weight of the trial evidence on the incomplete record on appeal.

This is an appeal from a judgment in a forcible entry and detainer action, following trial, for \$66,809.70 plus attorney fees for plaintiff Milfico Foods, Inc., and against defendants Ocean Star Foods, Inc., and Jane Park. Defendant Park contends on appeal that the judgment against her, and in particular the finding that she was liable under the lease pursuant to actual or apparent agency, was against the manifest weight of the evidence.

Plaintiff filed its complaint in February 2006, alleging that defendants withheld possession of certain commercial premises and owed \$45,165.01 for rent from December 2005 through February 2006.

Defendant Ocean Star appeared and filed an answer admitting that plaintiff was entitled to possession of the premises and stating that it was "prepared to vacate the premises." Ocean Star denied that any rent was due and alleged that there was an oral hold-over agreement between Joe Nam and Ira Gitlin, agents of Ocean Star and plaintiff respectively, under which the \$20,000 security deposit would pay for Ocean Star's continuing occupancy.

An agreed order for possession of the premises was entered on March 29, 2006, enforceable on March 31, with all monetary issues continued.

Plaintiff amended its complaint, alleging that it was the managing agent for the owners of the premises, the Ira Gitlin Trust and Sandra Gitlin Trust (collectively, the "Trust"). The

Trust and defendants entered into a lease of the premises in June 2005, with a July 2005 rider, providing for \$11,000 monthly rent, requiring that defendants maintain the premises and have a maintenance contract for the refrigeration system, and requiring \$1,000 daily rent for hold-over past the end of the lease on December 31, 2005, unless the Trust provided otherwise in writing. Plaintiff denied that it or the Trust issued a document allowing a hold-over and alleged that defendants thus owed \$1,000 per day from December 31 until they vacated the premises on March 31. Plaintiff alleged that defendants failed to pay their maintenance contract for the refrigeration system, that the system failed after the contractor stopped maintaining it, and thus it cost plaintiff \$23,543 to replace the system's compressor. Plaintiff also alleged that it paid \$290.87 to repair a broken window, \$1,560 to remove fish carcasses defendants left behind, and \$37,530 for various other repairs to the premises. Plaintiff had to pay a water bill of \$2,800 incurred by defendants. Plaintiff thus sought over \$166,000 in damages plus attorney fees as provided in the lease.

The attached copy of the lease and riders named the Trust as lessor and both Ocean Star and Park as lessees. The June lease and rider bear the same signature for Park and Ocean Star, and the July rider bears a signature purporting to be that of Park.

Defendant Park appeared and filed a motion for summary judgment and an answer. In the motion, Park alleged that she did not sign the lease nor authorized anyone to sign for her. Park also alleged that Sam Nam of Ocean Foods signed Park's name in Ira Gitlin's presence. Park admitted to participating in negotiations to sell the premises but denied having any interest in leasing the premises or participating in negotiations to that end. The motion was supported by Park's affidavit. Park's answer also denied that she entered into the lease and that she had any obligations thereunder.

Before trial, the court found Ocean Star to be in default and reserved prove-up of the default for trial. Trial commenced on May 26, 2009, and continued through May 28 and June 5 to conclude on June 26.

On the final day of trial, Tod Gitlin testified that he was the trustee of the Trust as well as plaintiff's president. Park attended a meeting before the lease was signed regarding defendants' inability to obtain financing to purchase the premises. During the meeting, in which the terms of the lease were discussed, Gitlin stated that Park should be listed as a tenant because she had assets while Ocean Star did not, and plaintiff would not enter into a lease with Ocean Star as the sole tenant. Gitlin was not present when the lease was signed at

a later meeting and did not know who signed on Park's behalf nor did he recall Park attending the signing meeting.

After Ocean Star vacated the premises, Gitlin directed plaintiff to pay \$20,000 to replace a refrigeration compressor on the premises that was operable while Ocean Star occupied the premises but was no longer operable. Gitlin found large amounts of rotting fish and had plaintiff pay \$1,162.62 to clean the premises. Plaintiff also had to pay several unpaid water bills for the premises.

On August 14, 2009, the court issued a memorandum order reciting the trial evidence and its findings. Tod Gitlin was plaintiff's president and the son of the Trust beneficiaries, and Ki Hong Nam incorporated and operated Ocean Star. Nam and Park lived in a house purchased by Park, "held themselves out as husband and wife," and jointly owned a restaurant until 2000.

Peter Lee, Nam's counsel, sent a letter in March 2005 expressing the Nam family's interest in purchasing the premises. Lee believed that he was counsel for the Nam family, and though Lee did not meet with Park regarding the purchase, he believed from other meetings with Park that she was a member of the Nam family. When Lee sent documents regarding the purchase to the Nams, they returned signed by Park, and Park's personal check for \$20,000 served as earnest money for the premises. Park sought financing in her name for the purchase, and both the financing

application and the sales contract were signed by Park. However, contract modifications in April and May 2005 were signed by Nam.

Gitlin testified that he considered the lease of the premises to be a continuation of the purchase efforts; that is, Ocean Star would lease the premises while it obtained financing to purchase the premises. When the lease was signed in June 2005, Park was listed as a tenant at Gitlin's behest because she had assets while Ocean Star did not. Gitlin would not have entered into the lease without Park's personal guarantee. Nam signed the lease in Park's name, and Gitlin believed that Nam was acting on Park's behalf. Gitlin testified that Park had attended a March 2005 meeting where she reviewed the real estate contract.

On November 14, 2005, plaintiff demanded that defendants vacate the premises by January 1, 2006. Nam sought a one-month extension for Park and Ocean Star but Gitlin would not extend the lease unless the rent was paid, and Nam did not do so. Plaintiff then notified Nam that defendants would be considered hold-over tenants at \$1,000 daily rent pursuant to the lease. A ten-day notice was sent in mid-January 2006 seeking \$30,165.01 in rent. After the premises were vacated on March 31, plaintiff found that the freezer was inoperable and paid \$20,000 to replace the compressor. Plaintiff paid \$1,162.62 to clean the premises of rotting fish and also paid outstanding utility bills.

Park denied signing the lease, attending any meetings regarding either purchase or lease of the premises, or ever meeting Gitlin. Park denied having an ownership interest in Ocean Star or indeed any familiarity with Ocean Star's business. She denied authorizing anyone to act on her behalf.

Nam admitted that he signed the lease and riders on Park's behalf without Park's knowledge or authority and admitted to holding himself out to Gitlin as Park's agent.

Based on this evidence, the court found that the lease of the premises arose out of efforts by Ocean Star and Park to purchase the premises. A reasonably prudent person would believe that "Nam had authority to act on behalf of [a] business operation to which Park acquiesced." Park's actions in support of the purchase efforts corroborated Nam's assertions that he was acting with authority from Park. The court expressly found that Park's denial that she ever met Gitlin was impeached by Gitlin's testimony and that Park's denial of knowledge of Ocean Star's business was refuted. The court found both defendants liable to plaintiff for \$44,000 in rent, \$20,000 to replace the compressor, \$1,162.62 for waste removal, \$1,647.08 for utility services, and attorney fees. The court ordered that the judgment against Park would be offset by her \$20,000 earnest money payment. This appeal timely followed.

On appeal, defendant Park contends that the judgment against her, and particularly the finding that Nam was Park's actual or apparent agent regarding the lease of the premises, was against the manifest weight of the evidence.

However, the record on appeal contains a transcript of only one day of the trial, consisting of the final portion of Gitlin's testimony. It is clear from the record both that other witnesses testified at trial and that Gitlin testified before the portion of his testimony in the record. Defendant Park is obligated to provide us a sufficiently complete record of the trial court proceedings to support her claims of error, and we must presume in the absence of such a record that the court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). That is particularly so for a judgment following trial, which we will not reverse unless it was against the manifest weight of the evidence. *Rockford Financial Systems, Inc. v. Borgetti*, 403 Ill. App. 3d 321, 328 n.1 (2010).

Apparent authority exists when a principal holds an agent out as possessing the authority to act on her behalf, and a plaintiff arguing apparent agency must show that: (1) the principal consented to or knowingly acquiesced in the agent's exercise of authority; (2) based on the actions of the principal and agent, the plaintiff reasonably concluded that the person in

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question was an agent of the principal; and (3) the plaintiff justifiably relied on the agent's apparent authority to his detriment. *Doe v. Brouillette*, 389 Ill. App. 3d 595, 604 (2009). Considering the available evidence in light of this law, we cannot find that the judgment against Park was against the manifest weight of the evidence.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.