

No. 1-09-1443

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).

SECOND DIVISION
May 10, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INNOCENT OBI,)	Appeal from the
)	Circuit Court of
Defendant-Appellant,)	Cook County.
)	
v.)	No. 08 M1 187445
)	
TANYA JOHNSON,)	Honorable
)	Pamela E. Hill Veal,
Plaintiff-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Harris concurred in the judgment.

O R D E R

Held: The trial court found in favor of plaintiff-tenant and against defendant-landlord following their landlord-tenant contract dispute. We found the record on appeal insufficient to address defendant's claims of error. The trial court's judgment was affirmed.

Defendant Innocent Obi, the former landlord of plaintiff Tanya Johnson, appeals *pro se* from the trial court judgment

against him following a landlord-tenant contract dispute. Defendant contends that the trial court failed to entertain his motions to quash service of process and to dismiss for lack of jurisdiction, resulting in a void order. Defendant further contends he was denied his right to a jury trial; the trial judge improperly denied his motion for substitution of judges; and the complaint violated the statute of limitations.

Although plaintiff has elected not to file an appellee's brief, we proceed in our review pursuant to the principles stated in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

The limited common law record reveals that on November 5, 2008, plaintiff filed a complaint under the Residential Landlord and Tenant Ordinance (Chicago Municipal Code §5-12-080 (added Sept. 8, 1986)) against defendant for failure to return her security deposit, failure to send an itemized list of damages, and failure to pay interest on her security deposit following her fall 2006 move from the rental property. She alleged damages in the amount of \$4,000, which was two times the amount of the security deposit, plus interest. She requested the return of her \$2,000 security deposit, attorneys fees, and any other such relief deemed necessary. In addition, she alleged that she was illegally prohibited from accessing her apartment, resulting in the conversion of certain items worth \$10,800.

A special process server served defendant with the complaint and alias summons on February 13, 2009, by leaving copies of the relevant documents with his wife at his usual place of abode. On March 4, 2009, defendant, who represented himself *pro se* throughout the proceedings, filed a "motion to produce," in which he requested the name of the private process server, the server's certificate, license, and the address served. The same day, defendant also filed a motion to dismiss the complaint based on insufficient service of process. He argued that he was never personally served with the court documents and that plaintiff should be referred to the Attorney General's office for contempt proceedings.

A trial call order reveals that both parties appeared before the court on March 6. Plaintiff tendered a copy of the complaint to defendant, and the court ordered defendant to answer the complaint by April. The court set trial for June 1.

Days later, defendant filed a motion to quash service of process claiming he did not live at the address where he was served. He again requested that plaintiff be referred to the Attorney General's office for contempt proceedings. Defendant also filed a motion for substitution of judge. On March 16, the parties appeared before the court. The court denied defendant's motion for substitution of judge and admonished defendant regarding Supreme Court Rule 137 (eff. Feb. 1, 1994), which is

designed to prevent the filing of false and frivolous lawsuits and pleadings. The court warned defendant "not to file similar motions."

Following that, defendant filed a counterclaim. He alleged that plaintiff was liable for monetary damages in the amount of the security deposit for her damage to the apartment upon moving. He also filed an affirmative defense and answer to the complaint in which he claimed that he had paid plaintiff the security deposit plus interest and had sent her an itemized list of deductions from the deposit. He claimed it was she who owed him monetary damages, and he further denied wrongdoing. In addition, defendant filed another motion to quash service of process, a motion to produce, interrogatories, and a request to admit.

Following responsive pleadings, defendant filed his appearance and a jury demand on May 6. He also filed motions for discovery closure, mandatory arbitration, and a motion to withdraw his motion to quash service of process.

A trial call order reveals that both parties appeared before the court on May 22. The court addressed defendant's motions for discovery closure, mandatory arbitration, default for failure to reproduce discovery, and withdrawal of his motion to quash service of process. The court denied defendant's motion to close discovery and for mandatory arbitration, but granted defendant's withdrawal of his motion to quash service of process. The court

granted plaintiff's motion for sanctions.

Trial was held June 1. In the order, the court noted that defendant had waived his jury demand, failed to give the court prior notice of the jury demand, and "filed numerous motions, including but not limited to, discovery motions for [the] court to hear." The court noted that, initially, defendant objected to the court hearing the case, but then withdrew his objection. The court further noted that trial was set for June 1 "with prior notice to all parties." Following these notations, the court found in favor of plaintiff and ordered defendant to pay plaintiff a total of \$11,800. This included \$4,000 for defendant's failure to pay interest on plaintiff's security deposit, \$2,000 for the unreturned security deposit, and \$5,800 for plaintiff's conversion claim. The court ruled in favor of plaintiff on defendant's counterclaim. Pursuant to the May 22 order, the court ordered defendant to pay \$450 in attorneys fees to plaintiff. Defendant appealed and now raises a number of claims relating to the case.

We observe that there is no transcript, bystander's report, or agreed statement of facts in the record reflecting the evidence presented at the June 1 hearing on plaintiff's complaint, as required under Supreme Court Rule 323 (eff. Dec. 13, 2005). The record is thus insufficient for our review.

It is well established that the appellant bears the burden of providing a reviewing court with a complete record which fairly and fully presents all matters necessary and material for a decision of the question raised, and in the absence of such a record, we will not speculate as to what errors may have occurred below. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757 (2006); see also *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). When the record on appeal is incomplete, a reviewing court should actually indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly. *Smolinski*, 363 Ill. App. 3d at 757-58.

Defendant now contends that the trial court failed to entertain his motion to quash service of process and motion to dismiss for lack of jurisdiction. Defendant also contends he was improperly denied his right to a jury trial.

The limited common law record reveals that a trial on plaintiff's complaint was held on June 1 with both parties present. The June 1 order resulting from that trial states that defendant withdrew his motion challenging service of process and, presumably, jurisdiction and that he waived his jury demand. It states that defendant ultimately agreed to have the court, not a jury, hear his case. The trial court's statements directly contradict defendant's claims on appeal. Given the incomplete record before us, we presume the trial court heard adequate

evidence to justify its rulings. See *Smolinski*, 363 Ill. App. 3d at 758.

We reach a similar conclusion with respect to defendant's contention that the trial judge improperly denied his motion for substitution of judge. Although a party is entitled to one substitution of judge without cause as a matter of right (735 ILCS 5/2-1001(a)(2)(I) (West 2008)), the petition must be presented before trial or hearing begins and before the judge has ruled on any substantial issue in the case. Even when the court has not ruled on a substantial issue, the motion may be denied if the movant had an opportunity to test the waters and form an opinion as to the court's reaction to his claim. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 338 (2001).

Here, the record does not contain a transcript, bystander's report, or agreed statement of facts reflecting the evidence presented at either the March 6 hearing, conducted after defendant filed his first motion challenging service of process, or the March 16 hearing, wherein the court admonished defendant to stop filing false or frivolous pleadings and denied his motion for substitution of judge. Because we do not know what took place at these hearings, we cannot determine what issues were presented to the court. Given the limited record, again we must presume that the court had adequate reason to deny defendant's motion.

Finally, defendant contends that plaintiff failed to file the lawsuit within the two-year statute of limitations under section 13-202 of the Code of Civil Procedure (735 ILCS 5/13-202 (West 2008)). In *Namur v. Habitat Co.*, 294 Ill. App. 3d 1007, 1013 (1998), which defendant cites, this court held that the two-year statute of limitations set forth in 13-202 applies to actions, like the present one, brought under section 5-12-080(f) of the Residential Landlord and Tenant Ordinance (Chicago Municipal Code §5-12-080 (added Sept. 8, 1986)). See also *Landis v. Marc Realty*, 235 Ill. 2d 1, 13 (2009). Section 5-12-080(f) provides that a tenant may be awarded damages in an amount equal to two times the security deposit plus interest if a landlord violates section 5-12-080(c) or (d). Under section 5-12-080(c), a landlord must pay a tenant interest due within 30 days after the end of each 12-month rental period. Under section 5-12-080(d), a landlord must return the security deposit or any balance due, along with interest accrued, within 45 days of the tenant's vacancy of the apartment or within seven days of the tenant's notice of termination under Section 5-12-110(g).

Plaintiff claimed that defendant violated sections 5-12-080(c) and (d). Given those provisions, plaintiff was required to bring the lawsuit within two years after facts existed that supported filing the action. See *Namur*, 294 Ill. App. 3d at 1013. While the record makes clear that plaintiff rented the

1-09-1443

apartment in October 2005, it does not disclose the exact date or manner in which plaintiff vacated the apartment in fall 2006. In plaintiff's responsive interrogatory, she denies filing the lawsuit beyond the two-year statute of limitations. Obviously, the issue defendant raises involves a factual dispute. Given the insufficient record, again we are unable to adequately assess the accuracy of defendant's claim and must presume the trial court heard evidence sufficient to support its ruling in favor of plaintiff.

Based on the foregoing, we affirm the judgment of the circuit court.

Affirmed.