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2011 IL App (3d) 100897-U

Order filed November 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

HERITAGE SQUARE DEVELOPMENT,)	Appeal from the Circuit Court
LLC,)	of the 10 th Judicial Circuit
)	Peoria County, Illinois
Plaintiff-Appellant,)	
)	Appeal No. 3-10-0897
and)	Circuit No. 10-L-21
)	
ZUZU, INC., d/b/a M & Z LIQUOR and)	
ZIAD Z. MADANAT,)	Honorable
)	Stephen Kouri
Defendants-Appellees.)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* President of corporation was not responsible for corporation's loan where he signed a personal guaranty for the loan under economic duress.
- ¶ 2 Plaintiff, Heritage Square Development, LLC, leased commercial property to defendant ZuZu, Inc. When ZuZu, Inc. failed to timely pay rent, Heritage Square filed a two-count complaint against ZuZu and its president, Ziad Madanat. Count I was a forcible entry and detainer action against ZuZu. Count II sought judgment against Madanat based on a personal guaranty he signed

for improvements to the leased property. The trial court found in favor of Heritage Square on the first count and in favor of Madanat on the second count. Heritage Square appeals the court's ruling on the second count. We affirm.

¶ 3 Plaintiff, Heritage Square Development, LLC, owns commercial real estate. Michael Lewis is the manager of Heritage Square. ZuZu, Inc. is an Illinois corporation, and defendant Ziad Madanat is the president of ZuZu. On April 1, 2009, Heritage Square and ZuZu entered into a written lease agreement, whereby ZuZu agreed to lease real estate from plaintiff in order to operate a liquor store for a period of ten years. The monthly rent for the property was \$1325.

¶ 4 The lease agreement contained several addenda. The fourth addendum obligated Heritage Square to make certain improvements to the property requested by ZuZu. According to the third addendum, Zuzu agreed to pay \$56,436 for the improvements. The addendum provided that the cost of the improvements would be included in the lease and required ZuZu to pay Heritage Square an additional \$990 per month for a period of five years.

¶ 5 In early May 2009, Lewis advised Madanat that he needed a personal guaranty in order for Heritage Square to obtain financing for the tenant improvements. Madanat's attorney questioned where the lease contained such a requirement. Lewis responded in a letter stating that it was being required by Heritage Square's lender, Heritage Bank, and that ZuZu was free to obtain its own financing elsewhere, in which case a personal guaranty may not be required. Thereafter, Zuzu's attorney sent Lewis a letter indicating that Madanat was willing to sign a personal guaranty. On June 3, 2009, Madanat signed a document that stated as follows: "Z & I, Inc. and Ziad Madanat hereby guarantee the Tenant Improvement Charges totaling \$56,436 per Lease Addendum Number 3."

¶ 6 Heritage Square completed the tenant improvements in late June 2009. Thereafter, ZuZu began operating the liquor store. ZuZu failed to make regular and timely rental payments. On December 16, 2009, Heritage Square gave ZuZu a 5-day notice to cure. ZuZu failed to cure, and Heritage Square then sent ZuZu a 10-day notice to quit and deliver possession. ZuZu vacated the premises in late December 2009 or early January 2010.

¶ 7 On January 21, 2010, Heritage Square filed a two-count complaint against ZuZu and Madanat. Count I was a forcible entry and detainer action against ZuZu, and count II sought to enforce Madanat's personal guaranty. The trial court found in favor of Heritage Square on the forcible entry and detainer action and reserved the remaining count for trial. Prior to trial, defendants filed an amended answer which included the affirmative defense of economic duress.

¶ 8 At trial, Madanat testified that he entered into the lease agreement with Heritage Square on behalf of ZuZu Inc. on April 1, 2009, and received keys to the leased premises on that day. Lewis told Madanat that he would take care of obtaining financing for the tenant improvements and would add the loan payments into the lease. It was not Madanat's understanding that he would have to obtain a loan for the tenant improvements on behalf of ZuZu. Madanat testified that plaintiff began making tenant improvements "immediately after" he signed the lease.

¶ 9 Madanat testified that he "was forced" to sign the personal guaranty because Lewis changed the locks on the store and told him he would not give him a key until he signed the guaranty. That happened in late May. He was locked out of the store "for days." When Madanat spoke to Lewis about not wanting to sign the guaranty and inquired about who Lewis's attorney was, Lewis told Madanat that his attorney was "Smith & Wesson."

¶ 10 Madanat's counsel told him the only way to get the door to the store unlocked was to sign

the guaranty. Madanat was not advised of any other alternatives. He said he decided to sign the guaranty because "[t]hat's the only way I could get to the store."

¶ 11 When Madanat was locked out of the store, he already had most of his inventory in the store and was adding "a little finishing touch." According to Madanat, the tenant improvements were nearly complete when he signed the guaranty.

¶ 12 Kenneth Boddie, a sergeant with the Peoria Police Department, testified that he went with Madanat to the liquor store in late May 2009. He and Madanat could not get in the store because the door was locked.

¶ 13 William Stahl testified that on June 4 or 5, 2009, he came to Madanat's store to deliver materials for a walk-in cooler. When he arrived, no one was there. He called Madanat, who told him that his landlord locked him out of the store. At least a week later, Madanat told him that he could deliver the materials.

¶ 14 Michael Bukilah testified that he attempted to deliver a cooler to Madanat's liquor store in early June 2009. When he arrived, no one was there, and the door was locked. Bukilah called Madanat, who told him that he had a problem with his landlord and would have to reschedule the delivery.

¶ 15 Lewis testified that he never locked Madanat out of the store. He denied ever changing the locks and said that Madanat always had access. Lewis denied that Madanat ever told him he was locked out and denied ever mentioning "Smith and Wesson" to Madanat.

¶ 16 Lewis testified that he did not start the tenant improvements on the property until early June, after Madanat signed the personal guaranty. The improvements took a few weeks and were complete by June 29, 2009. Lewis testified that Madanat did not bring in any inventory while the

improvements were being done, except possibly a cooler. Representatives from Heritage Bank told him that the personal guaranty was necessary to secure the tenant improvement loan.

¶ 17 Following the trial on the second count of Heritage Square's complaint, the trial court ruled in favor of defendants, stating: "The court finds that the guarantee was entered into under duress and without consideration. The two versions of the circumstances surrounding the execution cannot be reconciled and the court finds the version presented by the Defendant to be more credible."

¶ 18 ANALYSIS

¶ 19 Heritage Square argues that the trial court erred in finding that Madanat was under economic duress when he signed the guaranty. Heritage Square contends that Madanat failed to provide reliable evidence that he was locked out of the store.

¶ 20 Economic duress, also known as "business compulsion," is an affirmative defense to a contract that releases the party signing under duress from all contractual obligations. *Bank of America N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 173 (2010). Economic duress occurs where one is induced by a wrongful act of another to make a contract under circumstances depriving him of the exercise of free will. *Id.* "To establish duress, it must be shown that the act or threat left the individual bereft of the quality of mind essential to the making of a contract." *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 727 (2003).

¶ 21 Acts or threats cannot constitute duress unless they are wrongful. *Bank of America*, 401 Ill. App. 3d at 174. The term "wrongful" extends to acts that are wrongful in a moral sense, as well as acts which are criminal, tortious, or in violation of contract duty. *Id.* A landlord commits a wrongful act when he changes the locks on the leased premises, preventing the tenant from entering. See *64 East Walton, Inc. v. Chicago Title and Trust Co.*, 69 Ill. App. 3d 635, 642-44 (1979).

¶ 22 The coercive acts of the wrongdoer "must be such as to overbear the will of the plaintiff." *Golden v. McDermott, Will & Emery*, 299 Ill. App. 3d 982, 992 (1998). Whether the circumstances did in fact overbear the plaintiff's will is ordinarily a question of fact. *Id.*

¶ 23 After a bench trial, we will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App.3d 884, 890 (2010). "The reviewing court gives great deference to the trial court's findings because, as the trier of fact, the trial court is in a superior position to observe the witnesses while testifying, to judge their credibility and to determine the weight their testimony and other evidence should receive." *International Capital Corp. v. Moyer*, 347 Ill. App. 3d 116, 121-22 (2004). A finding is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the finding appears to be arbitrary, unreasonable or not based on the evidence. *Southwest Bank*, 401 Ill. App. 3d at 890; *Moyer*, 347 Ill. App. 3d at 122.

¶ 24 Here, there was conflicting testimony about whether Heritage Square locked Madanat out of the store. Madanat testified that Heritage Square changed the locks, and he was unable to enter the store for several days. His testimony was supported by three witnesses, who testified that Madanat either told them that his landlord had locked him out or observed that he was unable to unlock the door to the store. Lewis, on the other hand, denied that Madanat was ever locked out of the store. The trial court noted that both versions of events could not be true and found "the version presented by the Defendant to be more credible." Because there was sufficient evidence to support the trial court's finding that Madanat was denied access to his store by Heritage Square, the trial court's finding is not against the manifest weight of the evidence.

¶ 25 Heritage Square, nevertheless, argues that locking Madanat out of the store did not amount

to economic duress because it was not wrongful and was insufficient to compel him to sign the guaranty. We disagree.

¶ 26 Heritage Square performed a wrongful act by locking Madanat out of the store and denying him access. See *64 East Walton, Inc.*, 69 Ill. App. 3d at 642-44. If this wrongful act was sufficient to "overbear the will" of Madanat, then the trial court's finding of economic duress was not against the manifest weight of the evidence. See *Golden*, 299 Ill. App. 3d at 992.

¶ 27 Madanat testified that Lewis locked him out and told him that he would give him a key only if he signed the guaranty. Madanat then sought advice from his counsel, who told Madanat that if he wanted to get back in the store, he had to sign the guaranty. Madanat testified that he signed the guaranty because he believed doing so was "the only way I could get to the store" where he already had a great deal of inventory.

¶ 28 Under these circumstances, there was sufficient evidence to establish that Heritage Square's actions did in fact overbear Madanat's will. The trial court's finding of economic duress was not against the manifest weight of the evidence.

¶ 29 **CONCLUSION**

¶ 30 The order of the circuit court of Peoria County is affirmed.

¶ 31 Affirmed.