2012 IL App (1st) 110526-U

FIRST DIVISION
FILED: June 29, 2012

No. 1-11-0526

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PHILLIP J. MORRIS and LINDA M. MAZUR,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
Plaintiffs-Appellees,	)	
v.	)	No. 10 MI 018278
LISA AHMED,	)	HONORABLE PAMELA E. HILL VEAL,
Defendant-Appellant.	)	JUDGE PRESIDING.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment against the defendant is affirmed in part, reversed in part, and the cause is remanded with directions.

¶ 2 The plaintiffs, Phillip J. Morris and Linda M. Mazur, brought this action for malicious prosecution and breach of contract against the defendant, Lisa Ahmed. Following a bench trial, the circuit court entered judgment for the plaintiffs in the amount of $10,183.04 plus costs. For the reasons that follow, we affirm in part, reverse in part, and remand with directions.

¶ 3 The record reflects that the plaintiffs initiated this small-claim action by filing a *pro se* complaint seeking recovery for malicious prosecution and for breach of the terms of the apartment lease between the parties. The complaint requested total damages of $6,000, plus costs.[1] In particular, Morris sought damages of $4,441.96 for the malicious prosecution claim, which included his cost to defend against the criminal charge initiated by the defendant, as well as compensation for pain and suffering as a result of his arrest and eight-hour incarceration. With respect to the breach-of-contract claim, the plaintiffs sought damages of $1,558.04 as reimbursement for their security deposit, moving costs, and the penalty for cancelling their contract for satellite television service.

¶ 4 The defendant appeared *pro se*, and the cause proceeded to a bench trial on December 6, 2010. Though the record on appeal does not include a report of proceedings of the trial, the documentary evidence and the bystander's report that was certified by the trial court reflects the following relevant facts.

¶ 5 On January 21, 2010, the plaintiffs signed a lease for the rental of an apartment on the first floor of a two-flat building, which was owned by the defendant. The building was located at 6429 N. Hermitage in Chicago, and the defendant lived in the second-floor apartment. The lease provided, in relevant part, that "if [the plaintiffs] behave disrespectfully or violently, this may result in a 5, 10, or 30 day notice to vacate the apartment." The term of the 16-month lease commenced on February 1, 2010, and was due to expire on June 1, 2011. When the plaintiffs executed the lease, they paid

[1] The complaint indicates that the plaintiffs sought damages of "$5,000, plus costs." However, that number appears to be the result of either a scrivner's error or a computational error, where the total amount of the individual elements of the damages claimed is $6,000.

the defendant $1,700, which included the rent for February 2010 and a security deposit, each of which were in the amount of $850.

¶ 6 According to the bystander's report, the plaintiffs presented testimony that the defendant decided to hang drywall throughout the apartment without notifying them in advance. As a result, the apartment was not available for their occupancy on February 1, and they could not move in until February 20. In addition, the presence of excessive drywall dust required that they have the apartment painted. The plaintiffs stated that they had inquired about the heat in the building prior to moving in, and the defendant assured them that it worked well. However, upon moving in, they found that only two of the five radiators worked. According to the plaintiffs, the apartment "felt cold and the back half of the apartment and bedrooms had no heat," regardless of the thermostat setting. When they contacted the defendant, she "bled" the radiators, but that did not resolve the problem. The plaintiffs also described the condition of the apartment as "nasty, unsafe, and needing a lot of repairs."

¶ 7 The plaintiffs explained that they made numerous attempts to work with the defendant to resolve the heating problem and to make necessary repairs. However, those attempts were unsuccessful, and they eventually consulted an attorney, who wrote to the defendant asking that the repairs be made before "legal intervention" was needed.

¶ 8 According to the plaintiffs, they called the city's "311 help line" when the temperature began to drop and the condition of the apartment became extremely uncomfortable. A city representative came and inspected the apartment and found many code violations. The defendant admitted that code violations had been found, but she stated that she had remedied those violations.

¶ 9 The plaintiffs explained that on April 28, 2010, the city posted another code-violation notice on the defendant's door, and she immediately began shouting at Morris. The following day, Chicago police officers came to the apartment and placed Morris under arrest on a charge of assault filed by the defendant. Morris was handcuffed and taken to the police station, where he was held for "most of the day." As a consequence, he was unable to take his prescribed medication for arthritis in his back and had "to endure [a] lot of pain" while waiting to be released. He also had to call his supervisor and explain that he may be late for work because he had just been released from jail.

¶ 10 On May 3, 2010, the defendant left a voicemail message for Mazur, advising that she thought it best for them to move out of the apartment as soon as possible, and she stated that she was releasing the plaintiffs from the lease. The following day, the defendant left another voicemail message for Mazur, stating that she was releasing the plaintiffs from the lease immediately and that they should leave the apartment as soon as possible. On May 10, 2010, the plaintiffs' attorney sent the defendant a letter, indicating that the plaintiffs had accepted her request that they vacate the property, based on the defendant's termination of the lease, and that the plaintiffs would be moved out by May 31, 2010. The letter further indicated that the apartment would be cleaned, and the plaintiffs' security deposit and/or a letter listing any itemized deductions therefrom should be mailed to the plaintiffs within 30 to 45 days.

¶ 11 According to the plaintiffs, they telephoned the defendant on several occasions to request a final walk through of the apartment. Though Mazur waited in the apartment, the defendant did not come down. Ultimately, the plaintiffs mailed the apartment keys to the defendant, along with a letter summarizing their attempts to reach her and advising of their forwarding address.

¶ 12 The plaintiffs stated that, although they had moved out of the apartment more than five months earlier, they had not received their security deposit or a letter explaining why it was being withheld. The defendant acknowledged that she had not returned the plaintiffs' security deposit and claimed that she had not done so because of a note that had been hand-written by Morris and taped near the thermostat in the plaintiffs' apartment, which read, "do not touch and do not raise the temperature pass [*sic*.] stated temperature."

¶ 13 The plaintiffs presented a certified statement of the disposition of the criminal charge against Morris, reflecting that the assault charge against him was stricken with leave to reinstate on August 4, 2010. According to the plaintiffs, the "defendant was allotted 120 days to reinstate." The plaintiffs further stated that the defendant was "clearly distraught because of all the violations and visits from the city," and she "often referred to [plaintiff] Morris as a 'trouble maker' and cursed at him on repeated occasions." The plaintiffs also expressed their belief that the defendant had Morris arrested in order to "get even" for their complaints about the heat and for causing the city to become involved in the issue.

¶ 14 The defendant acknowledged that she had caused Morris to be arrested. The bystander's report reflects that the trial court "asked [the] Defendant to tell her side of the story[,] and she refused. The court then asked [her] questions." In particular, the court inquired as to what the defendant had told the police and stated in her police complaint. The defendant answered that she told the officer Morris had threatened her. In response to the court's question as to when this occurred, the defendant stated that she did not know but thought that it happened on April 3, 2010. She also stated that Morris had threatened her many times. When the court asked her to elaborate

as to specific threats and dates and further inquired as to whether Morris had ever threatened to kill her, the defendant said she did not know. The trial judge found that the defendant had provided conflicting testimony and was not a credible witness.

¶ 15 The documentary evidence tendered to the court included (1) a copy of the lease, (2) photographs of the apartment, (3) an envelope addressed to the defendant from Mazur, (4) copies of letters to the defendant from the plaintiffs' attorney in March and May 2010 regarding the need for repairs to the apartment and the early termination of the lease, (5) a typed summation of two voicemail messages left by the defendant on the plaintiffs' cell phone, (6) invoices, receipts, and copies of checks from the plaintiffs representing payment for rent and moving and legal expenses, (7) a copy of the misdemeanor complaint for assault filed against Morris and naming the defendant as the complainant, (8) a certified statement of the disposition of the criminal charge against Morris, (9) documentation regarding cancellation of the plaintiffs' satellite television service and their payment of the contractual penalty, (10) documentation of the plaintiffs' calls for service requests and the status of various building-code violations found by the City of Chicago, and (11) the hand-written note that had been taped near the thermostat in the plaintiffs' apartment.

¶ 16 At the conclusion of the trial, the trial court found that the defendant was liable to the plaintiffs on their claims for malicious prosecution and breach of contract. The court entered judgment in favor of the plaintiffs and awarded damages of $10,183.04 plus costs of $224. In particular, the court awarded $2550 for the failure to return the $850 security deposit, $850 as a refund of the first month's rent, $379.70 as reimbursement for the plaintiffs' moving costs, $328.34 as reimbursement for the penalty incurred for cancelling their contract for satellite television service,

$1,075 for the cost to defend against the assault charge initiated by the defendant, and $5,000 as "punitive damages" for the filing of a "false police report" and causing a "false arrest."

¶ 17 The defendant timely filed a motion to vacate the judgment. The circuit court denied the defendant's postjudgment motion, finding that it contained "various misrepresentations." The judgment was stayed pursuant to Supreme Court Rule 305(a) (eff. June 15, 2004), and this appeal followed.

¶ 18 In reviewing a judgment entered after a bench trial, the trial court's findings will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 251, 779 N.E.2d 1115 (2002); *International Capital Corp. v. Moyer*, 347 Ill. App. 3d 116, 121, 806 N.E.2d 1166 (2004). A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or when findings appear to be arbitrary, unreasonable, or not based on the evidence presented at trial. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154, 839 N.E.2d 524 (2005); *Eychaner*, 202 Ill. 2d at 252.

¶ 19 We initially address the defendant's argument that the trial court erred in finding her liable on the malicious prosecution claim brought by Morris. To recover for the tort of malicious prosecution, the plaintiff must prove the following: (1) the commencement or continuation of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff in a manner indicative of the plaintiff's innocence; (3) the absence of probable cause for the proceeding; (4) the presence of malice on the part of defendant; and (5) damages resulting to the plaintiff. *Swick v. Liautaud*, 169 Ill. 2d 504, 512, 662 N.E.2d 1238 (1996); *Allen v. Berger*, 336 Ill. App. 3d 675, 677, 784 N.E.2d 367 (2002). If any one of these elements is

absent, the plaintiff is barred from recovering on the claim. *Swick*, 169 Ill. 2d at 512.

¶ 20 A cause of action for malicious prosecution does not accrue until the criminal proceeding on which it is based has been terminated in the plaintiff's favor. *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99, 820 N.E.2d 455 (2004). Where a case is stricken with leave to reinstate, the matter has not been disposed; the charges continue to lie against the accused, albeit in a dormant state. *Ferguson*, 213 Ill. 2d at 100. The matter may still be placed on the docket and brought to trial if there is a subsequent motion to reinstate. *Ferguson*, 213 Ill. 2d at 100. Illinois courts have consistently recognized that the striking of charges with leave to reinstate does not terminate the proceedings against the accused. *Ferguson*, 213 Ill. 2d at 100.

¶ 21 Here, because the assault charge against Morris was stricken with leave to reinstate, that ruling did not terminate the criminal proceedings against him. Consequently, Morris' malicious prosecution claim did not accrue until such time as the State was precluded from seeking reinstatement of the charges, as determined by the expiration of the statutory speedy-trial period. See *Ferguson*, 213 Ill. 2d at 104. The report of the criminal proceedings reflects that Morris made a speedy-trial demand immediately after the charges were stricken on August 4, 2010. The State had 160 days from that time to bring him to trial. See 725 ILCS 5/103-5(b) (West 2010)). The 160-day period would have expired on January 11, 2011, and, if no further action were taken by the State or the court, the criminal proceedings against Morris would have been terminated as of that date. See *Ferguson*, 213 Ill. 2d at 104. Accordingly, Morris' cause of action for malicious prosecution would have accrued on January 11, 2011, and not before. Yet, Morris filed his *pro se* complaint on October 6, 2010, and the trial court entered judgment on December 6, 2010. Based on the foregoing, we

conclude that Morris' claim for malicious prosecution had not accrued as of the date on which he filed his complaint or the date on which the trial court entered judgment.

¶ 22 Morris has argued on appeal that entry of judgment on his claim was proper because the judge who presided over the criminal proceedings ordered that the assault charge be reinstated within 120 days and that period had expired as of December 6, 2010. In support of this assertion, Morris relies on the bystander's report, which indicates that he provided testimony to that effect. We note, however, that Morris' assertion and the bystander's report are contradicted by both the statement of disposition of the assault charge and the August 4, 2010, report of proceedings. Neither of these certified public records indicates that the criminal court required that the assault charge be reinstated within 120 days. In light of the fact that Morris failed to present evidence establishing that his malicious prosecution claim was timely, we find that the entry of judgment on that claim was improper. Accordingly, that portion of the trial court's judgment is reversed and the corresponding award of damages is vacated.

¶ 23 We next consider whether the trial court erred in entering judgment against the defendant on the plaintiffs' breach of contract claim. To recover on a claim for breach of contract, the plaintiff must prove (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff. *Asset Exchange II, LLC v. First Choice Bank*, 2011 IL App (1st) 103718, ¶ 37.

¶ 24 In this case, the breach-of-contract claim asserted in the plaintiffs' *pro se* complaint requested damages of $850, based on the defendant's failure to return their security deposit. The complaint also sought damages of $708.04 for moving expenses and the penalty imposed for the cancellation

of their satellite television service, both of which apparently were premised on wrongful termination of the lease agreement. The trial court awarded the plaintiffs $2550 for the failure to return the security deposit, $850 as a refund of the rent for February 2010, and the full amount of the damages claimed for moving costs and the satellite-television penalty.

¶ 25 Initially, we observe that the terms of the lease permitted the defendant to terminate the lease upon 5, 10, or 30 days' notice if the plaintiffs "behave disrespectfully or violently." The evidence established that the defendant verbally informed the plaintiffs on May 3 and May 4, 2010, that she was releasing them from the agreement because she felt "unsafe," and she requested that they vacate the premises "as soon as possible." In response, the plaintiffs' attorney sent the defendant a letter on May 10, 2010, giving notice of their termination of the lease and advising that they would move out by May 31, 2010. Thus, the record demonstrates that the defendant had the right under the lease to terminate the lease agreement early based on disrespectful or violent behavior, and the plaintiffs agreed to the early termination. There is no evidence in the record supporting a finding that the defendant wrongfully terminated the lease. Consequently, the award of damages for the plaintiff's moving expenses and satellite-television penalty is unwarranted and must be vacated.

¶ 26 With regard to the damages of $2550 for failure to return the security deposit, we note that this award equals triple the amount of the $850 security deposit paid by the plaintiffs. We also observe that the plaintiffs did not present any evidence to support the award of three times the amount of their security deposit, nor did the trial court explain the basis for its decision to triple the amount of damages requested by the plaintiffs in their complaint. Although section 1 of the Security Deposit Return Act (765 ILCS 710/1 (West 2010)) and section 5-12-080(f)(1) of the Chicago

Residential Landlords and Tenants Ordinance (Chicago Municipal Code § 5-12-080(f)(1) (amended July 28, 2010)) allow a court to award damages constituting twice the amount of an unreturned security deposit, neither the statute nor the ordinance applies in this case because the subject property contained only two units, one of which was occupied by the property owner. See 765 ILCS 710/1 (West 2010) (imposing obligations on lessors of residential real property containing five or more units); Chicago Municipal Code § 5-12-020(a) (amended June 11, 2008) (excluding from the ordinance the rental of dwelling units in owner-occupied buildings containing six units or less). Moreover, punitive damages generally are not recoverable for breach of contract, even where the breach was willful. See *Morrow v. L.A. Goldschmidt Associates, Inc.*, 112 Ill. 2d 87, 94-95, 492 N.E.2d 181 (1986); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 926, 654 N.E.2d 483 (1995). In light of these circumstances, the security deposit award of $2550 is not justified under the facts or the law, and it must be vacated. However, because the defendant failed to present any evidence of valid deductions based on damage to the property, the cause is remanded with directions that the court award the plaintiffs $850 as reimbursement of the full amount of their security deposit.

¶ 27 With respect to the award of $850 as reimbursement of the rent paid for February 2010, the trial court apparently allowed the plaintiffs to orally amend their complaint on the day of trial to include this element of damage. The record indicates that the defendant did not present any evidence refuting the plaintiffs' testimony that they could not move into the apartment until February 20 because the defendant had decided to hang dry wall, making the apartment uninhabitable until that date. Yet, the record establishes that the plaintiffs took possession of and occupied the apartment for the last eight days of that month. We conclude that the award of damages in the amount of $850,

the full amount of the rent for February 2010, is against the manifest weight of the evidence. Consequently, that award is vacated, and the cause is remanded with directions that the trial court enter an award corresponding to the prorated amount of rent to which the plaintiffs are entitled.

¶ 28 For all of the foregoing reasons, the judgment of the circuit court is affirmed in part, reversed in part, and the cause is remanded with directions.

¶ 29 Affirmed in part, reversed in part, and remanded with directions.