

No. 1-12-0840

**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

---

HORIZON MANAGEMENT,	)	Appeal from the Circuit Court of
	)	Cook County, Illinois.
Plaintiff-Appellee,	)	
	)	
v.	)	07 M1 707000
	)	
BOGUMILA LOBROW d/b/a BEAUTY OF	)	
FLOWERS and ANY AND ALL UNKNOWN	)	
OCCUPANTS and UNKNOWN TENANTS,	)	The Honorable Sheldon C. Garber,
	)	Judge Presiding.
Defendants-Appellants.	)	

---

Justice Simon delivered the judgment of the court.  
Justices Quinn and Connors concurred in the judgment.

**ORDER**

- ¶ 1 *HELD:* As defendant has not included a report of the trial proceedings or an acceptable substitute in the appellate record, we presume that following a bench trial in an action under the Forcible Detainer Act, circuit court's ruling the property was not untenable and defendant was in breach of the parties' lease and liable for rents thereunder was supported by the evidence at trial and was not against the manifest weight of the evidence.
- ¶ 2 Plaintiff Horizon Management filed the underlying complaint against defendant lessee Bogumila Lobrow, d/b/a Beauty of Flowers, and any and all unknown occupants and tenants

No. 1-12-0840

pursuant to the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2006)).

Plaintiff sought possession of the premises commonly described as 836 South Elmhurst Road, Des Plaines, Illinois, unpaid rents, and reasonable attorney fees from defendant lessee.

Following a bench trial, the trial court entered a verdict for plaintiff, awarding plaintiff a \$15,097.38 judgment and leave to file a petition for attorney fees. Defendant filed this appeal, asserting that the circuit court's findings were against the manifest weight of the evidence. For the following reasons, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4 Plaintiff property management company managed the subject property that is located within the Wishing Well Plaza in Des Plaines, Illinois. On April 10, 2000, defendant, Bogumilla Lobrow, entered into a five-year lease agreement beginning May 1, 2000, to rent the commercial unit located at 836 South Elmhurst Road. The lease rider contained provisions for two five-year lease renewal options. Defendant operated her flower shop, Beauty of Flowers, from this location and exercised the first renewal option on January 28, 2005.

¶ 5 On November 28, 2006, a fire broke out in the unit adjacent to defendant's causing smoke and water damage to defendant's unit. Defendant did not operate her business out of the unit after that point. On March 27, 2007, plaintiff filed a complaint against defendant pursuant to the Act for possession of commercial rental property located at 836 South Elmhurst Road, Des Plaines, Illinois, from defendant. Plaintiff also sought judgment for unpaid rents and reasonable attorney fees. On August 22, 2007, the court entered an order restoring plaintiff to possession of the property, defendant having already surrendered keys to the premises.

¶ 6 The case proceeded to a bench trial held over the course of several days of testimony

No. 1-12-0840

between June 8, 2010, and September 9, 2011. Pursuant to paragraph 6 of the lease, the lessee is responsible for repairs and maintenance of the subject property. At issue at the bench trial was whether the unit was untenable under paragraph 11 of the lease, which reads in full:

"In case the Premises shall be rendered untenable by fire, explosion or other casualty, Lessor may, at his option, terminate this lease or repair the Premises within sixty days. If Lessor does not repair the Premises within said time, or the building containing the Premises shall have been wholly destroyed, the term hereby created shall cease and determine."

Following the trial the court entered judgment for plaintiff, finding "that the water and smoke damage occurring to the subject premises were caused by the fire on November 28, 2006, but that the subject premises were not rendered untenable as a result of such fire, and therefore defendant was in breach of the lease and liable for rents thereunder for the premises through August, 2007, when defendant surrendered possession thereof." The circuit court awarded plaintiff a \$15,097.38 judgment and leave to file a petition for attorney fees. This appeal followed

¶ 7

#### ANALYSIS

¶ 8 "Untenantability exists when the destruction is of such a nature that the property cannot be used for the purposes for which it was rented and cannot be restored to a fit condition by ordering repairs made without unreasonable interruption of the lessee's use. [Citation.] Whether or not a property is untenable is a question of fact." *RNR Realty, Inc. v. Burlington Coat Factory Warehouse, Inc.*, 168 Ill. App. 3d 210, 219 (1988). In an appeal from a bench trial, we will not disturb the circuit court's judgment unless it is against the manifest weight of the

No. 1-12-0840

evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008).

¶ 9 We initially note that the record on appeal does not contain a report of trial proceedings or an acceptable substitute, such as a bystander's report or an agreed statement of facts (see Ill. S. Ct. R. 323(b), (c) (eff. Dec. 13, 2005)). Defendant, as the appellant, was required to present a sufficiently complete record, and we will presume the trial court's holding had a sufficient factual basis and conformed with the law where the record is inadequate. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Id.* at 156.

¶ 10 Defendant contends that the circuit court's finding was against the manifest weight of the evidence. However, without a report of trial proceedings, this court cannot determine whether the evidence presented at trial established that the subject property was untenable or whether the circuit court's judgment was against the manifest weight of the evidence. Defendant claims that this court may review the parties' trial briefs and exhibits from trial that are of record, but we cannot determine what the circuit court was properly presented, reviewed or accepted in forming its opinion. As such, we cannot review the circuit court's findings of fact or the legal conclusions arising therefrom and must presume that the court's ruling had a sufficient factual basis and conformed with the law.

¶ 11 CONCLUSION

¶ 12 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 13 Affirmed.