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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CHRISTIAN K. NARKIEWICZ- LAINE,)	Appeal from the Circuit Court
)	of Jo Daviess County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11-SC-114
)	
AER LINGUS GROUP PLC,)	Honorable
)	William A. Kelly,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* Although the trial court failed to evaluate whether plaintiff established a valid claim on a bailment between him and defendant (as opposed to a bailment between defendant and a third party), we affirmed the judgment for defendant: plaintiff did not make a *prima facie* case, as he did not establish that defendant redelivered the property to the third party in a damaged condition; plaintiff failed to establish a value for the damage; and plaintiff's action was barred by two provisions of his contract with defendant.

¶ 2 Plaintiff, Christian K. Narkiewicz-Laine, appeals from a finding against him and in favor of defendant, Aer Lingus Group PLC, following a bench trial on his bailment claim for damage to his

luggage and its contents. Plaintiff contends that the trial court erred in failing to address the issue of whether he established a *prima facie* case of bailment as to defendant. While the trial court failed to address this aspect of plaintiff's claim, we affirm because plaintiff failed to establish a *prima facie* case, because plaintiff failed to prove damages, and because the written contract between the parties bars any claim for bailment under the facts of this case.

¶ 3

I. BACKGROUND

¶ 4 Plaintiff filed a *pro se* small claims complaint in the circuit court of Jo Daviess County against defendant. The complaint sought the following: (1) compensation for the purchase of two unused airline tickets for flights from Chicago to Dublin, Ireland, and from Dublin to Helsinki, Finland; (2) compensation for expenses related to the cancellation of the Chicago-Dublin flight and plaintiff's resulting inability to make the Dublin-Helsinki flight; (3) compensation for the purchase of new clothing and a new suitcase related to the flight cancellation; (4) compensation for out-of-pocket expenses in Chicago in the amount of \$56.68; (5) compensation for damage to two suitcases and their contents, which plaintiff originally checked with defendant but which were subsequently shipped from Chicago to Athens, Greece, as a result of the flight cancellation; and (6) compensation for two unused airline tickets purchased from defendant on another occasion in 2008.

¶ 5 The trial court conducted a bench trial pursuant to Illinois Supreme Court Rule 286 (eff. Aug. 1, 1992). The following facts, primarily pertaining to the sole issue on appeal, are based on the evidence developed at the bench trial.

¶ 6 Plaintiff testified that he purchased two airline tickets from defendant in August 2009, one for a flight from Chicago to Dublin and the other for a connecting flight from Dublin to Helsinki. Unfortunately for plaintiff, the flight to Dublin was cancelled due to a mechanical problem on the

scheduled aircraft. Because of the cancellation, plaintiff was unable to make the Dublin-Helsinki flight. As a result, plaintiff stayed over in Chicago so that he could take an alternate flight.

¶ 7 Plaintiff did not want to have to carry his luggage around with him while he spent the night in Chicago so, according to him, he accepted defendant's offer to pay for the luggage to be shipped via Federal Express (Fed Ex) directly to Athens, his ultimate destination. Defendant's representative took plaintiff's luggage, which had previously been checked, and provided plaintiff with two Fed Ex shipping documents, one for each suitcase. These two documents show that the sender/payor was defendant and the recipient was plaintiff.

¶ 8 According to plaintiff, when he eventually obtained his luggage in Athens, he discovered that containers of liquid had leaked on the clothing and suitcases and that other household items were broken. He called Fed Ex on August 18, 2009, and reported the damage. Fed Ex denied his claim because he was not the shipper.

¶ 9 Plaintiff later sent a letter to defendant, dated February 17, 2011, seeking reimbursement for his various claims, including the damage to his luggage. According to plaintiff, he never received any response from defendant and ultimately filed his small claims action.

¶ 10 Plaintiff admitted to being aware that when he purchased his tickets he was entering into, and accepting the terms of, a written contract with defendant. That contract was admitted into evidence. Relevant to the issue on appeal, Article 16.1 of the contract provides, in pertinent part, that when a person accepts checked baggage "without complaint at the time of delivery [it] is sufficient evidence that the Baggage has been delivered in good condition and in accordance with the contract of carriage, unless [he] prove[s] otherwise." It further states that, to pursue a "claim or an action"

regarding damage to baggage, a person “must notify [defendant] as soon as [he] discover[s] the Damage, and at the latest, within seven (7) Days of receipt of the Baggage.”

¶ 11 Following the close of evidence, the trial court denied all of plaintiff’s claims except for his claim for out-of-pocket expenses of \$56.68 plus court costs. In doing so, the court relied on an express disclaimer of liability in the written contract as to all claims except for the one related to the damaged luggage. As to that latter claim, the court ruled that a bailment existed between defendant and Fed Ex for the benefit of plaintiff. Based on that ruling, the trial court denied plaintiff’s claim because, on that bailment, plaintiff could only recover from Fed Ex, a nonparty to the case. The trial court did not expressly rule on the issue of whether plaintiff had a valid bailment claim against defendant.

¶ 12 Following the denial of plaintiff’s posttrial motion, plaintiff filed this timely appeal. The only issue raised on appeal pertains to the denial of plaintiff’s bailment claim. Defendant has not cross-appealed from the finding against it for the out-of-pocket expenses and court costs.

¶ 13

II. ANALYSIS

¶ 14 Plaintiff, who is represented by counsel on appeal, raises one issue: whether the trial court erred in failing to rule on the question of whether he established a *prima facie* case of bailment as to defendant. In that regard, he tersely contends that “his luggage was under the exclusive control of Defendant from the time he checked in on August 10, 2009, through August 13, 2009 when it was forwarded via federal express to Athens, Greece.” Therefore, he asserts that he established a *prima facie* case of bailment but that the trial court failed to rule on that issue “as it pertained to [defendant].”

¶ 15 Defendant initially responds that the trial court expressly considered the issue of bailment and correctly ruled that a bailment existed between it and Fed Ex for the benefit of plaintiff and that, because the damage occurred while the luggage was being transported by Fed Ex, plaintiff's claim is against Fed Ex and not defendant. Alternatively, defendant contends that this court may affirm the trial court on any basis in the record and in that regard plaintiff never proved the value of the damaged luggage. Defendant further maintains that plaintiff was barred from bringing an action against defendant by Article 16.1 of the contract, because he did not overcome the presumption of good condition based on his acceptance of the luggage without complaint and because he failed to timely notify defendant of the condition of the luggage.

¶ 16 As a threshold matter, this court will accept the trial court's factual findings unless we determine that they are contrary to the manifest weight of the evidence. *Village of Woodridge v. Board of Education of Community High School District 99*, 403 Ill. App. 3d 559, 570 (2010). A decision is contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Village of Woodridge*, 403 Ill. App. 3d at 570. Additionally, this court is not bound by the trial court's reasoning and may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper grounds. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 33.

¶ 17 To recover under a bailment theory, a plaintiff must establish: (1) an express or implied agreement to create a bailment; (2) a delivery of the property in good condition; (3) the bailee's acceptance of the property; and (4) the bailee's failure to return the property or the bailee's redelivery of the property in a damaged condition. *Wausau Insurance Co. v. All Chicagoland Moving & Storage Co.*, 333 Ill. App. 3d 1116, 1121 (2002). A *prima facie* case of bailment creates a rebuttable

presumption that a bailee acted negligently. *Wausau Insurance Co.*, 333 Ill. App. 3d at 1121. Whether a bailee has met the burden of showing that damage to the bailed property occurred without the bailee's fault is ordinarily a question of fact for the trier of fact. *Wausau Insurance Co.*, 333 Ill. App. 3d at 1121.

¶ 18 In this case, the trial court ruled that a bailment existed between defendant and Fed Ex for the benefit of plaintiff. Based on that conclusion, the trial court found for defendant because plaintiff had effectively sued the wrong party. According to the trial court, plaintiff's only legal recourse was to bring a bailment claim against Fed Ex.

¶ 19 The trial court's ruling was correct that, to the extent plaintiff's claim depended on a bailment between defendant and Fed Ex, plaintiff's only recourse was to file an action against Fed Ex. However, there was also a bailment between defendant and plaintiff, which was created when plaintiff turned his luggage over to defendant. See *Wausau Insurance Co.*, 333 Ill. App. 3d at 1121. That bailment did not end until defendant passed control and custody of the luggage on to Fed Ex. Therefore, the trial court was incorrect in failing to rule on plaintiff's claim as based on the bailment between him and defendant.

¶ 20 Although it is not entirely clear from the record, it appears that the trial court assumed that the alleged damage to the luggage must have occurred while under the care and control of Fed Ex. This assumption, however, overlooked that part of the evidence which shows that plaintiff delivered the luggage to defendant on August 9, 2009, and that for a period of time, possibly as long as until August 13, 2009, defendant possessed plaintiff's luggage. Thus, it is possible the damage occurred while the luggage was in the care and custody of defendant. Because the trial court never expressly considered this possibility or that defendant might be liable to plaintiff on this basis, plaintiff is

correct in asserting that the trial court “failed to rule on the bailment issue as it pertained to [defendant].”

¶ 21 Such an error does not necessarily mean that plaintiff is entitled to relief in this appeal. As discussed above, this court may affirm the ruling of the trial court on any basis in the record.

¶ 22 The record reveals that plaintiff never established a *prima facie* case of bailment as to defendant. While the record shows an agreement to create a bailment, that plaintiff delivered the luggage in good condition, that defendant, as bailee, accepted the luggage, and that the luggage was redelivered to plaintiff in a damaged condition, there is no evidence that defendant redelivered the luggage to Fed Ex in a damaged condition. Thus, plaintiff did not make out a *prima facie* case of bailment against defendant. This conclusion alone is a sufficient basis to affirm the trial court.

¶ 23 Even if plaintiff did establish a *prima facie* case of bailment against defendant, he failed to establish the value of the damaged luggage sufficient to support any award of damages. While plaintiff did show that the luggage was in fact damaged, the record is devoid of any evidence as to the value of the loss. See *Wilson v. DiCosola*, 352 Ill. App. 3d 223, 226 (2004) (a plaintiff must not only prove he sustained damages but must also establish a reasonable basis for computing those damages). Absent any evidence as to the amount of actual loss, plaintiff’s claim was properly denied on this basis.

¶ 24 Finally, we may also affirm the trial court for the alternative reason that the written contract between plaintiff and defendant defeats his bailment claim in two respects. First, plaintiff did not overcome the presumption that the goods were delivered in good condition. Second, plaintiff failed to timely notify defendant of the damage.

¶ 25 Article 16.1 of the contract, pertaining to notice of baggage-related claims, provides, in part, that acceptance of baggage without any complaint at the time of delivery is sufficient evidence that the baggage was delivered in good condition unless the claimant proves otherwise. While plaintiff complained to Fed Ex upon acceptance of the luggage, he failed to do so to defendant, which triggered the presumption of good condition under Article 16.1. Further, he failed to overcome the presumption by proving that defendant caused any of the damage or otherwise violated the contract. Thus, his claim for bailment against defendant was barred by this provision.

¶ 26 Article 16.1 further provides that to “file a claim or an action” regarding damage to luggage, plaintiff was required to “notify [defendant] as soon as [he] discover[ed] the Damage, and at the latest, within seven (7) Days of receipt of the Baggage.” It is undisputed that plaintiff did not notify defendant until well after the seven-day period had expired. Therefore, any “action” for bailment against defendant was expressly barred by this part of Article 16.1 as well.

¶ 27 Therefore, despite the trial court’s error in failing to address the bailment claim as it applied to defendant, we affirm the ruling of the trial court because plaintiff never established a *prima facie* case of bailment as to defendant. Further, even if he had, he failed to prove the value of his loss. Finally, his claim is barred by the express provisions of the written contract between him and defendant.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the finding in favor of defendant on plaintiff’s bailment claim.

¶ 30 Affirmed.