2015 IL App (1st) 133713-U

FIFTH DIVISION
September 25, 2015

Nos. 1-13-3713, 1-14-2373 (Consolidated)

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

TIFFANY PRIMUS, Plaintiff-Appellee, v. ANDREW McKENNA and MARY McKENNA Defendants-Appellants (Central Street Ventures, LLC, Defendant).	)	Appeal from the Circuit Court of Cook County
----------	)	No. 12 M1 154188
TIFFANY PRIMUS, Plaintiff-Appellant, v. ANDREW McKENNA, MARY McKENNA, and CENTRAL STREET VENTURES, LLC, Defendants-Appellees.	)	Honorable Rhoda Davis Sweeney, Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the judgment of the circuit court in a landlord-tenant dispute and remanded the matter to the circuit court. The appellate court ruled that the premises in question were exempt from the Chicago Residential Landlord and Tenant Ordinance where the building contained six or fewer units and was owner-occupied when the lease was signed. The appellate court also affirmed the circuit court ruling declining to consider the tenant's petition for additional attorney fees, as the circuit court had no jurisdiction to consider the petition after the first notice of appeal was filed.

¶ 2 This case involves two consolidated appeals. In appeal number 1-13-3713, defendants Andrew and Mary McKenna (Andrew, Mary, McKennas) appeal from an order of the circuit court of Cook County entering judgment against them on a verified amended complaint filed by plaintiff Tiffany Primus (Primus) in a landlord-tenant dispute. On appeal, the McKennas argue: (1) they were improperly named as defendants; (2) the leased premises in question were not subject to the Chicago Residential Landlord and Tenant Ordinance (Ordinance) (Chicago Municipal Code § 5-12-010 *et seq*.); (3) Primus judicially admitted the McKennas could not have violated the relevant provisions of the Ordinance; and (4) the trial court violated the McKennas' due process rights by proceeding with a formal trial after initially indicating it would conduct an informal hearing pursuant to Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992). Central Street Ventures, LLC (Central Street), also a defendant, is not a party to this appeal. In appeal number 1-14-2373, Primus appeals from an order of the circuit court denying her motion to set a hearing on a motion for additional attorney fees against Central Street. All three defendants are parties to this second appeal. For the following reasons, we reverse the judgment appealed from in appeal number 1-13-3713, affirm the order of the circuit court in appeal number 1-14-2373, and remand the case for further proceedings consistent with this order.

¶ 3 BACKGROUND

¶ 4 On September 12, 2012, Primus filed a verified complaint against the McKennas and Thomas McGrath (McGrath) in the circuit court of Cook County. Primus alleged that from August 1, 2010, through May 31, 2011, she rented a dwelling at 1620 North Honore Street in Chicago, pursuant to a lease entered into between Primus and McGrath. The form lease, attached as an exhibit to the complaint provided in part:

> "The term 'Chicago Residential Landlord and Tenant Ordinance' as used herein shall mean the Chicago Residential Landlord and Tenant Ordinance (Chicago Municipal Code, ch. 5-12) as the same as heretofore been, and may from time to time hereafter be, amended. In the event of an express conflict between the terms and provisions of this Lease and the terms of the Chicago Residential Landlord and Tenant Ordinance, the terms and provisions of the latter shall control."

The lease included a disclosure of building code citations issued regarding the premises, consistent with the Ordinance. See Chicago Municipal Code § 5-12-100 (amended Nov. 6, 1991). The lease also provided:

> "Tenant's covenant to pay rent is and shall be independent of each and every other covenant of this Lease; provided, however that nothing herein shall preclude Tenant from exercising the rights contained in the Chicago Residential Landlord and Tenant Ordinance."

Regarding the nonwaiver of remedies, the lease provided:

> "Except as expressly prohibited by the Chicago Residential Landlord and Tenant Ordinance, no express waiver shall affect any breach other than the breach specified in the express waiver and such express waiver shall be effective only for

the time and to the extent therein stated."

The lease further provided that the tenant, by executing the lease, acknowledged the receipt of summaries of both the Ordinance and the security deposit. The tenant also acknowledged a receipt for the security deposit, "if any, as required by said Ordinance." The lease additionally provided the landlord would generally give the tenant 30 days' notice of the application of any portion of a security deposit, and that "[u]pon termination of this Lease full payment of all amounts due and performance of all Tenant's covenants and agreements ***, the Security Deposit or any portion thereof remaining unapplied shall be returned to Tenant in accordance with applicable law."

¶ 5 The lease also contained two riders: a security deposit agreement and a pet/animal rider. The security deposit agreement provided that "[t]o the extent of any conflict in terms, the terms and conditions of this rider shall govern over the terms and conditions of the aforesaid lease." The security deposit agreement provided that the security deposit for the premises would be refunded within 45 days after the expiration of the lease, if the tenant complied with 21 enumerated conditions. If any of the conditions were not satisfied, the tenant was to be charged according to a schedule for cleaning, repairing or replacement, depending on the type or size of the leased premises or the nature of the item to be replaced. The pet/animal rider, which set forth rules governing pet ownership, similarly provided that its language would govern over contrary terms of the lease.

¶ 6 On July 10, 2010, Primus provided a security deposit of $1,950 to McGrath, in accordance with the terms of the lease. While Primus was a tenant, McGrath allegedly assigned his rights and obligations under the lease to the McKennas.

¶ 7 Based on these allegations, the verified complaint asserted that McGrath and the

McKennas committed six violations of the Ordinance. Count I of the verified complaint alleged McGrath violated section 5-12-170 of the Ordinance (Chicago Municipal Code § 5-12-170 (amended Nov. 19, 2008)) by failing to attach a copy of a summary of the Ordinance to her lease, and the McKennas failed to do the same when they accepted McGrath's rights and obligations under the lease. Count II alleged McGrath also violated section 5-12-170 of the Ordinance (Chicago Municipal Code § 5-12-170 (amended Nov. 19, 2008)) by failing to attach a copy of a security deposit summary to the lease, and the McKennas failed to do the same when they accepted McGrath's rights and obligations under the lease. Count III alleged McGrath and the McKennas violated section 5-12-080(a) of the Ordinance (Chicago Municipal Code § 5-12-080(a) (amended May 12, 2010)) and commingled funds by failing to hold the security deposit submitted by Primus in a federally insured, interest bearing account. Count IV alleged McGrath violated section 5-12-080(b)(1) of the Ordinance (Chicago Municipal Code § 5-12-080(b)(1) (amended May 12, 2010)) by failing to provide Primus with a receipt for the security deposit at the time McGrath received the funds, and the McKennas failed to provide a receipt to Primus when they received the security deposit funds from McGrath. Count V alleged the McKennas violated section 5-12-080(c) of the Ordinance (Chicago Municipal Code § 5-12-080(c) (amended May 12, 2010)) by failing to pay interest on the security deposit funds to Primus at the conclusion of her leasehold. Count VI alleged the McKennas violated section 5-12-080(d) of the Ordinance (Chicago Municipal Code § 5-12-080(d) (amended May 12, 2010)) by failing to return the security deposit to Primus within 45 days of the date on which Primus vacated the leased premises.[1]

[1] The heading of count VI refers to section 5-12-080(c), but the allegations in count VI quote and cite section 5-12-080(d). In addition, count VI is directed against "defendant" without specification, but defendants did not raise the lack of specificity as an issue in this case.

¶ 8 On February 5, 2013, Primus moved to voluntarily dismiss McGrath as a defendant pursuant to section 2-1009(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1009(a) (West 2012)), asserting she was unable to locate McGrath.

¶ 9 On February 25, 2013, the McKennas filed a motion to dismiss the verified complaint against them pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)). The McKennas argued that they were not lessors because McGrath assigned all of his interest in the lease to Central Street for one dollar. The McKennas also argued that the Ordinance did not apply to this case because the building in question had fewer than six units and was owner-occupied when the lease was signed. The McKennas further argued that while Primus claimed she did not receive documents she was due under the Ordinance, she acknowledged receiving the documents when she signed her lease. Lastly, the McKennas argued that Primus was not entitled to a return of her security deposit because she was delinquent in her rent and abandoned the premises, which were in need of repair. The McKennas supported their motion with an assignment and supporting affidavit from Andrew McKenna indicating McGrath's interest in the lease was assigned to Central Street on or about October 28, 2010.

¶ 10 On April 8, 2013, Primus filed her response to the McKennas' motion to dismiss, arguing that the McKennas were landlords under the terms of the Ordinance. Primus also argued that the premises in question were not exempt from the Ordinance based on owner-occupancy. Primus contended that the McKennas failed to establish the premises were occupied by McGrath. Primus also noted that the McKennas never occupied the premises and contended they were bound by the Ordinance upon accepting the assignment of ownership. Primus further argued that the verified complaint should not be dismissed merely because the McKennas disputed some of the facts alleged therein. Lastly, in her response, Primus sought leave to file an amended

complaint adding Central Street as a defendant.

¶ 11 On April 22, 2013, the McKennas filed their reply in support of their motion to dismiss the verified complaint. In addition to reiterating their initial arguments in support of dismissal, the McKennas sought leave to issue to Primus a request to admit or deny McGrath lived in the building in question when she entered into the agreement with McGrath. On April 24, 2013, the circuit court entered an order: (1) denying the McKennas' motion to dismiss the verified complaint; (2) granting Primus leave to file an amended complaint adding a party defendant and voluntarily dismissing McGrath as a defendant; and (3) denying the McKennas' request to propound a request to admit.

¶ 12 On May 1, 2013, Primus filed a verified amended complaint against the McKennas and Central Street. The essential factual allegations of the verified amended complaint were substantially identical to those in the verified complaint. The verified amended complaint, however, additionally alleged that McGrath assigned his rights and obligations to the McKennas and Central Street. The verified amended complaint again included six counts alleging substantially similar violations of the Ordinance by the McKennas, which were also attributed to Central Street.

¶ 13 On May 30, 2013, Primus filed and served upon defendants' attorneys a notice to produce the McKennas at trial, pursuant to Illinois Supreme Court Rule 237 (eff. July 1, 2005), for the purposes of testifying as adverse witnesses pursuant to section 2-1102 of the Code (735 ILCS 5/2-1102 (West 2012)).

¶ 14 On June 6, 2013, the McKennas and Central Street filed their answer, affirmative defenses and counterclaims to the verified amended complaint. The McKennas and Central Street asserted as affirmative defenses that: (1) the Ordinance also did not apply because the

building in question had fewer than six units and was owner-occupied when the lease was signed; (2) Primus was estopped from asserting she failed to receive copies of documents because by signing the lease she acknowledged receipt; (3) Primus was barred by laches from asserting she failed to receive copies of documents, where she delayed notifying the McKennas or Central Street of McGrath's failure to provide Primus with the documents; (4) the McKennas and Central Street were not landlords under the Ordinance at the time Primus entered into the lease with McGrath, and they did not offer a new lease to Primus; and (5) the McKennas and Central Street never received the funds for the security deposit submitted by Primus, claiming Central Street merely received a credit against the purchase price when it purchased the premises from McGrath.[2] The McKennas and Central Street also sought declaratory judgments that the Ordinance did not apply to this case, and claimed Primus violated the security deposit rider and pet rider to the lease, resulting in damages exceeding the amount of the security deposit.

¶ 15 On June 24, 2013, the McKennas and Central Street filed a trial brief stating in part that Andrew McKenna is Central Street's manager and sole member. The McKennas and Central Street denied that Mary McKenna was a manager or member of Central Street.

¶ 16 The case was tried on June 13 and October 1, 2013. The trial judge indicated the case involved less than $10,000 and Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992) permitted the judge to adjudicate the dispute at an informal hearing. The trial judge wanted the record to indicate that this was how she was "more or less proceeding." During the trial, Primus indicated she was not proceeding on counts I, II and IV of her verified amended complaint (which concerned whether Primus was provided various documents when she executed the lease with

[2] Although the McKennas referred to the assignment of McGrath's interest in the lease to Central Street in their motion to dismiss and all defendants refer to the assignment in their answer to the verified amended complaint, defendants expressly refer to the purchase of the premises in asserting this affirmative defense.

McGrath). Accordingly, these counts were dismissed with prejudice by the trial judge. The trial proceeded on counts III, V, and VI of the verified amended complaint (which concerned the treatment of the security deposit).

¶ 17 Andrew McKenna testified that the address of the property in question was 1620 North Honore Street. Andrew McKenna also testified the building in question had three units and the McKennas did not live in the building. Primus testified that McGrath did not live in the building at any time. According to Primus, McGrath lived in California and obtained employment at Stanford University (Stanford), which was why he was selling the building. Primus also testified McGrath had a business partner who she believed lived at the premises when she moved in, but this individual's name did not appear on the lease. She believed she left the premises in fairly good condition, and paid the rent through May 2011.

¶ 18 William Kay (Kay), a real estate broker and friend of McGrath, testified he assisted McGrath in purchasing the building at issue in 1999. Kay also testified that he visited McGrath at the building for both social and business purposes. Some of these visits occurred between August 1, 2010 and the closing of the sale of the building. Kay was the broker of record for the sale, which closed in October or November of 2010. On cross-examination, Kay acknowledged McGrath accepted a position at Stanford that "possibly" started in August.

¶ 19 Exhibits including the lease, the assignment from McGrath to Central Street, an email appointing Shawn McKenna as Central Street's contact person for Primus, a $725 bill for repairs to the leased premises, a LinkedIn profile for McGrath stating his employment in California commenced on September 1, 2010, McGrath's airplane ticket and lease, and an email from McGrath regarding his moving date were admitted into evidence.[3] The email indicated that

[3] The record does not disclose any other relationship of Shawn McKenna to the

McGrath lived at 1620 N. Honore Street full-time until August 31, 2010, and McGrath's co-owner, John Heintz (Heintz), lived full-time at 1620 N. Honore Street full-time until October 28, 2010.

¶ 20 Andrew McKenna testified the closing date for the sale of the building was extended to October 28, 2010. Defense counsel asserted Mary McKenna wrote letters on behalf of Central Street. A colloquy ensued regarding whether a foundation could be laid for the admission of these letters if Mary McKenna was not present in court. According to the defense, Mary McKenna was not present in court on October 1, 2013, because it was inconvenient to her employment as a school teacher. Defense counsel opined that he did not think this was an issue because Mary McKenna acted under Andrew McKenna's direction and the matter was being tried informally. The trial judge responded that the proceedings were not informal because the amount involved exceeded $10,000.[4] Defense counsel responded that he probably could have secured Mary McKenna's appearance had he realized Primus sought to question her.

¶ 21 During the colloquy, counsel for the parties disputed whether the premises in question had been owner-occupied. The defense counsel asserted that McGrath lived on the premises until August 31, 2010, and Heintz lived on the premises until October 28, 2010. Defense counsel acknowledged that Heintz did not sign the lease at issue, but argued that Heintz was subject to the Ordinance as a title owner. Counsel for Primus maintained the premises were never owner-occupied.

¶ 22 The trial judge then stated "the question is whether—if this is appealed—whether living there, having a—the person who took the security deposit lived there for two months, was it?"

McKennas.

[4] The trial judge did not elaborate on this comment, but the record suggests the amount at issue would exceed $10,000 due the amount of attorney fees Primus might recover.

Counsel for Primus stated that the trial judge would first have to find that disputed fact was proven. The trial judge stated, "Okay. I'll give him that. I will give him that." The trial judge observed that even if the premises were owner-occupied for two months, the purpose and intent of the Ordinance was to protect the tenant and that the Ordinance applied to the defendants.

¶ 23 The trial judge indicated she would enter judgment in favor of Primus on counts III, V, and VI of the verified amended complaint. During the trial judge's discussion of count VI, which alleged the defendants failed to return the security deposit to Primus within 45 days of the date on which Primus vacated the leased premises, defense counsel claimed Primus had not disputed the defense regarding the termination of the tenancy and the failure of Primus to pay the final installment of rent. The trial judge responded that Mary McKenna was not present to testify regarding any conversation with Primus regarding whether there was an agreement that the tenancy would terminate in May 2011. The trial judge then asked Primus about her discussions with Mary McKenna. Primus stated that she had a conversation with Mary McKenna regarding the heating bill and Mary McKenna offered to let Primus vacate the premises, which she did. The trial judge then inquired of Andrew McKenna whether he ever had a direct conversation with Primus, to which he replied in the negative.

¶ 24 Primus was then sworn in as a witness. Primus testified that Mary McKenna accepted the keys to the premises from Primus. The trial judge declared she found the testimony "very credible." On cross-examination, Primus acknowledged receiving an email from Mary McKenna on June 5, 2011, providing a five-day notice of overdue rent and further stating Primus was required to return the keys and provide written notice that she was breaking the lease. On redirect examination, Primus stated she vacated the premises in reliance on Mary McKenna's statements prior to the June 5, 2011, email.

¶ 25 Following further argument from counsel for both sides, the trial judge found for Primus in the amount of $5,850 and stated the matter would be continued to hear the attorney fee petition for Primus. Also on October 1, 2013, the trial judge entered an order: (1) granting judgment in the amount of $5,850 against Andrew McKenna, Mary McKenna, and Central Street, jointly and severally; (2) granting Primus leave to file an attorney fee petition; and (3) setting the matter for a proveup of attorney fees on November 12, 2013.

¶ 26 On November 5, 2013, Primus filed a petition for attorney fees requesting $14,210, plus $350 per hour for time spent on posttrial motions. On November 7, 2013, counsel for the parties exchanged emails regarding a proposed order, in which defense counsel indicated that the defense intended to preserve for appeal the issue of whether any attorney fees should be awarded, but would not be objecting to the total fee sought or individual entries in the petition.

¶ 27 On November 12, 2013, the trial judge entered an "uncontested order" providing:

> "1. Judgment on October 1, 2013, is vacated and supplanted by the judgment reflected herein.
>
> 2. Judgment is entered in the total amount of $20,060.00, representing the original $5850 [*sic*] judgment on the Amended Complaint plus $14,210.00 for reasonable attorneys fees, in favor of Plaintiff, TIFFANY PRIMUS and against Defendants ANDREW McKENNA and MARY McKENNA, jointly and severally.
>
> 3. By not contesting the hours spent by attorney Richard M. Craig or that his hourly rate is reasonable, Defendants do not waive any other arguments, including jurisdictional arguments, and expressly preserve their right to appeal same."

On November 22, 2013, the McKennas filed a notice of appeal to this court, which was docketed under appeal number 1-13-3713.

¶ 28 On April 24, 2014, Primus filed a motion in the circuit court seeking the entry of a judgment order *nunc pro tunc*. Primus asserted that Central Street was not included in the November 12, 2013, order due to a clerical error. On May 14, 2014, the defendants filed a response to the motion for a judgment order *nunc pro tunc*. While not conceding the circuit court's jurisdiction, given that the McKennas already filed a notice of appeal, the response argued that the November 12, 2013, order was negotiated by the parties, the order supplanted the court's prior judgment order, and the absence of Central Street from the November 12, 2013, order was not a clerical error. On May 19, 2014, the circuit court entered an order that stated:

" 1. The October 1, 2013 judgment against Central Street Ventures, LLC, stands.

2. The Motion for entry of Nunc Pro Tunc Order is denied."

¶ 29 On May 20, 2014, Primus filed a motion to set a hearing on a pending motion for attorney fees. Primus asserted that her petition for attorney fees remained unresolved as against Central Street. On June 4, 2014, the defendants filed an objection to the motion to set a hearing on attorney fees, arguing that plaintiff's counsel drafted the November 12, 2013, order, defendants did not contest that order, and the order left no issue unresolved. On July 1, 2014, the circuit court denied the motion to set a hearing on the issue of attorney fees. On July 25, 2014, Primus filed a notice of appeal from the July 1 order, which was docketed under appeal number 1-14-2373.

¶ 30 On March 16, 2015, Primus filed a motion in this court to consolidate the two appeals. On March 18, 2015, this court granted the motion to consolidate.[5]

[5] On December 24, 2014, defendants filed a motion for leave to file a revised reply brief.

¶ 31 ANALYSIS

¶ 32 Jurisdiction

¶ 33 Primus initially asserts that this court lacks jurisdiction to hear these appeals. "Article VI, section 6, of the 1970 Illinois Constitution provides that final judgments may be appealed as a matter of right from the circuit court to the appellate court." *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994) (citing Ill. Const. 1970, art. VI, § 6). "There is no corresponding constitutional right to appeal from interlocutory orders of the circuit court." *Almgren*, 162 Ill. 2d at 210. Rather, article VI, section 6, vests our supreme court with the authority to provide for such appeals, by rule, as it sees fit. *Id*. (citing Ill. Const. 1970, art. VI, § 6). "Except as specifically provided by those rules, the appellate court is without jurisdiction to review judgments, orders or decrees which are not final." *Almgren*, 162 Ill. 2d at 210 (citing *Flores v. Dugan*, 91 Ill. 2d 108, 112 (1982). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp*., 356 Ill. App. 3d 760, 765 (2005). Illinois Supreme Court Rule 304(a) expressly provides that "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010); see also *In re Marriage of Jensen*, 2013 IL App (4th) 120355, ¶ 34 (without a finding under Illinois Supreme Court Rule 304(a), an order disposing of fewer than all claims is not appealable).

On January 14, 2015, this court entered an order taking the motion with the case. We now grant defendants' motion to submit their revised reply brief.

¶ 34 Primus argues that the trial court's November 12, 2013, order does not include a final judgment against Central Street or a Rule 304(a) finding. Primus observes the October 1, 2013, judgment specifically named Central Street, while the November 12, 2013, referred only to the McKennas. In considering this argument, we observe "[t]he intention of the court is determined by the order entered, and where the language of the order is clear and unambiguous, it is not subject to construction." *Won v. Grant Park 2, L.L.C.*, 2013 IL App (1st) 122523, ¶ 33; see *Comdisco, Inc. v. Dun & Bradstreet Corp*., 285 Ill. App. 3d 796, 799 (1996); *Governale v. Northwest Community Hospital*, 147 Ill. App. 3d 590, 593 (1986). Where the language of an order is ambiguous, however, it is subject to construction. *In re Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28. Language in an order will be deemed ambiguous where it can reasonably be interpreted in two different ways. *People v. Davit*, 366 Ill. App. 3d 522, 527 (2006). "An ambiguous order 'should be interpreted in the context of the record and the situation that existed at the time of [its] rendition.' " *Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28 (quoting *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 512 (2001)). "The relevant sources include 'pleadings, motions and issues before the court; the transcript of proceedings before the court; and arguments of counsel.' " *Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28 (quoting *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 858 (2000)).

¶ 35 The interpretation of the November 12, 2013, order proffered by Primus is reasonable. The November 12, 2013, order, however, may also be reasonably read as reiterating the "original $5850 [*sic*] judgment on the Amended Complaint" entered against all defendants (including Central Street), and awarding an additional $14,210, representing reasonable attorney fees, in favor of Primus and against the McKennas. Accordingly, the order is ambiguous and requires construction in the context of the record. *Marriage of Heasley*, 2014 IL App (2d) 130937, ¶ 28.

¶ 36 In this case, the November 12, 2013, order refers to the original judgment and there is nothing in the record surrounding the entry of this order indicating an intent to not impose a judgment against Central Street. The amount awarded in attorney fees is the amount sought in the petition for attorney fees (minus the indeterminate amount sought in the petition for posttrial matters) and was uncontested in the circuit court. The May 19, 2014, order also indicates the judgment was imposed against Central Street. It is thus clear from the records submitted in these appeals that the parties and the trial court intended the November 12, 2013, order to enter a final judgment resolving all issues before the court. Accordingly, we conclude the November 12, 2013, order was a final and appealable order, which has consequences for both appeals.

¶ 37 In appeal number 1-13-3713, our conclusion that the November 12, 2013, order was final and appealable means this court has jurisdiction to consider the merits of that appeal. Regarding appeal number 1-14-2373, we observe that the trial court loses jurisdiction after 30 days from the time the final judgment is entered when: (1) a posttrial motion directed against the judgment is not filed; (2) 30 days pass from the time the trial court disposes of a timely filed posttrial motion; or (3) a notice of appeal is timely filed. *Won*, 2013 IL App (1st) 122523, ¶ 20. "At any time, however, a court may modify its judgment *nunc pro tunc* to correct a clerical error or matter of form so that the record conforms to the judgment actually rendered by the court." *Beck v. Stepp*, 144 Ill. 2d 232, 238 (1991), abrogated on other grounds by *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24 (2002). This is because "[t]he purpose of a *nunc pro tunc* order is to correct the record of judgment, not to alter the actual judgment of the court." *Beck*, 144 Ill. 2d at 238.

¶ 38 In this case, more than 30 days passed from the entry of the final judgment on November 12, 2013, before any party filed a motion in the circuit court. The motion seeking the entry of a judgment order *nunc pro tunc* does not seek to alter the actual judgment of the court. See *Beck*,

144 Ill. 2d at 238. Accordingly, such a motion is not a posttrial motion directed against the judgment. See *Won*, 2013 IL App (1st) 122523, ¶ 20. Thus, the circuit court had no jurisdiction to consider any additional award of attorney fees against Central Street after the first notice of appeal was filed. See *id*. Therefore, we conclude that the circuit court did not err in denying the defendants' motion to set a hearing on the issue of additional attorney fees and we affirm the order of the circuit court in appeal number 1-14-2373.

¶ 39 1-13-3713

¶ 40 Regarding appeal number 1-13-3713, the applicable standard of review regarding a judgment from a bench trial is whether the order or judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). "We will reverse the trial court's decision only where the appealing party presents evidence that is strong and convincing enough to overcome, completely, the evidence and presumptions existing in the opposing party's favor." *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 116. "As a reviewing court, we may not overturn a judgment merely because we disagree with it, or as the trier of fact, we might have come to a different conclusion." *Id*. The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive. *Bazydlo v. Volant*, 164 Ill. 2d 207, 214-15 (1995). Consequently, where the testimony is conflicting in a bench trial, the trial court's findings will not be disturbed unless they are against the manifest weight of the evidence. *Id*. at 215 (citing *In re Application of the County Treasurer*, 131 Ill. 2d 541, 549 (1989)).

¶ 41 In reviewing the trial court's conclusions of law, however, this court applies a *de novo* standard of review. *Eychaner*, 202 Ill. 2d at 252. Interpreting or construing a municipal ordinance is a matter of law. *Starr v. Gay*, 354 Ill. App. 3d 610, 613 (2004). The rules of statutory construction apply to municipal ordinances. *LeCompte v. Zoning Board of Appeals*, 2011 IL App (1st) 100423, ¶ 22. Thus, the best indication of legislative intent is the language of the Ordinance, given its plain and ordinary meaning. See *id*. When the language of an ordinance is clear and unambiguous, reviewing courts should not depart from the plain language by reading into it exceptions, limitations or conditions that the legislature did not express. See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). "We give each word, clause, and sentence reasonable meaning and, to the extent possible, we do not render any statutory language superfluous." *Scott v. City of Chicago*, 2015 IL App (1st) 140570, ¶ 11.

¶ 42 On appeal, the McKennas argue: (1) they were improperly named as defendants; (2) the leased premises in question were not subject to the Ordinance; (3) Primus judicially admitted the McKennas could not have violated the relevant provisions of the Ordinance; and (4) the trial court violated the McKennas' due process rights by proceeding with a formal trial after initially indicating it would conduct an informal hearing pursuant to Illinois Supreme Court Rule 286(b) (eff. Aug. 1, 1992). We turn to address the McKennas' second contention, which is determinative of the appeal.

¶ 43 The Status of the Property Under the Ordinance

¶ 44 The McKennas argue they could not be liable under the Ordinance because the premises Primus leased from McGrath were in an owner-occupied building containing six or fewer units. Section 5-12-020 of the Ordinance provides in part:

"Rental of the following dwelling units shall not be governed by this chapter,

> unless the rental agreement thereof is created to avoid the application of this chapter:
>
> (a) Dwelling units in owner-occupied buildings containing six units or less; provided, however, that the provisions of Section 5-12-160 shall apply to every rented dwelling unit in such buildings within the City of Chicago."
>
> Chicago Municipal Code § 5-12-020 (amended June 11, 2008).

The McKennas note that the three-unit building in question was occupied by McGrath when the lease to Primus was executed. The McKennas argue that the subsequent assignment to Central Street transferred the identical, exempt interest in the premises. See, *e.g.*, *American National Trust Co. of Chicago v. Kentucky Fried Chicken of Southern California, Inc.*, 308 Ill. App. 3d 106, 118 (1999) ("Where an assignor assigns all of its interest and title to real estate and the assignee accepts the corresponding obligations pursuant to the assignment, as between them, the assignee holds the identical interest the assignor did prior to the assignment.")

¶ 45 Primus first responds that McGrath never lived in the premises during her tenancy. Primus relies on her own statement during the hearing that McGrath did not reside in the building at any time. Primus, however, also asserted during the hearing that McGrath had a business partner who she believed lived at the premises when she moved in.[6] Kay testified that McGrath lived in the building and that Kay visited him socially at the building between August 1, 2010 and the closing of the sale. On cross-examination, Kay acknowledged McGrath accepted a position at Stanford that "possibly" commenced in August 2010. Based on this evidence, the trial judge ultimately stated that she would "give" the defendants the finding that

[6] Although Primus testified this individual's name was not on her lease, Primus does not argue on appeal that all owner-occupiers must sign the lease to fall within the exemption of the Ordinance.

McGrath occupied the premises during Primus's tenancy. The trial judge then framed the legal issue as whether the Ordinance applied when an owner occupied the building at the formation or commencement of Primus's tenancy. Given the record on appeal, we conclude that the trial judge's finding was not against the manifest weight of the evidence.

¶ 46 Primus also contends that the exemption in the Ordinance for owner-occupied buildings containing six or fewer units ceased to apply when McGrath ceased occupying the premises. The McKennas respond that the language of the Ordinance, particularly the term "rental," indicates that the exemption is to be determined at the time the lease is formed. The Ordinance, however, does not expressly define "rental." Accordingly, we consider the plain language of the Ordinance. *LeCompte,* 2011 IL App (1st) 100423, ¶ 22. Read in the context of the statutory exemption at issue, the term "rental" is first used to describe the act of renting, then to describe an agreement of or relating to rent. The proviso that the described rentals are exempt "unless the rental agreement thereof is created to avoid the application of this chapter" unambiguously relates the rental to the creation of the rental agreement. Thus, we conclude the exemption from the Ordinance depends upon whether the building was owner-occupied when the rental agreement was created.[7]

¶ 47 Primus argues the Ordinance should be interpreted to impose obligations on successor landlords upon the transfer of ownership. Primus maintains this would be consistent with the intent to exempt "owners who live in the same building as the unit of the tenant seeking to

[7] In addition, "[i]t is appropriate to employ a dictionary to ascertain the meaning of an otherwise undefined word or phrase." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 8 (2009). We observe the term "rental," when used as a noun, may be defined as: an amount paid or collected as rent; something that is rented; an act of renting; or a business that rents something. Merriam-Webster's Collegiate Dictionary 1054 (11th ed. 2003). When used as an adjective, "rental" may be defined as: of or relating to rent; available for rent; or dealing in rental property. *Id.* These definitions are consistent with our reading of the plain language of the Ordinance.

invoke the protections afforded by the [Ordinance]." *Berven v. Marquette National Bank*, 394 Ill. App. 3d 22, 27 (2009). The stated purpose of the Ordinance, however, is "to establish the rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and the tenant to maintain and improve the quality of housing" in the City of Chicago. Chicago Municipal Code § 5-12-010 (amended Mar. 31, 2004). The Ordinance "regulates and determines rights, obligations and remedies *under every rental agreement* for a dwelling unit located within the City of Chicago, regardless of where the agreement is made, subject only to the limitations contained in Section 5-12-020." (Emphasis added.) *Id.* This court has thus considered the purpose of the Ordinance is " 'to fix more clearly the rights and obligations which landlords and tenants have *vis-a-vis* each other.' " *Detrana v. Such*, 368 Ill. App. 3d 861, 869 (2006) (quoting *Meyer v. Cohen*, 260 Ill. App. 3d 351, 356 (1993)). Although the specific ruling in *Detrana* rejected the argument that the owner-occupier must also exercise control over the building, the court's underlying logic similarly suggests that altering the obligations imposed by a rental agreement based solely on a *bona fide* transfer of ownership would not clearly fix the rights and obligations resulting from the agreement. See *Detrana*, 368 Ill. App. 3d at 869.

¶ 48 Primus's argument also overlooks that the relationship between the act of renting and the creation of the rental agreement is established by the Ordinance's exemption before identifying the various types of buildings exempted. Chicago Municipal Code § 5-12-020 (amended June 11, 2008). The best indication of legislative intent is the language of the Ordinance, given its plain and ordinary meaning. See *LeCompte*, 2011 IL App (1st) 100423, ¶ 22. In this case, the plain language of the Ordinance establishes exemptions based upon the act of renting as indicated by the creation of the rental agreement. Accordingly, the trial court erred in

concluding the exemption did not apply in this case.

¶ 49 Primus argues that even if the exemption from the Ordinance applied to the building, the Ordinance nevertheless applies in this case because the lease executed by Primus and McGrath incorporated the Ordinance. The verified amended complaint, however, alleged violations of the Ordinance, not a breach of the lease. As this court has ruled, "[a] party must recover, if at all, according to the case [s]he has made for [her]self by [her] pleadings. [Citation.] Proof without pleadings is as defective as pleadings without proof. [Citation.]" *American Standard Insurance Co. v. Basbagill*, 333 Ill. App. 3d 11, 15 (2002). Primus also has failed to explain how her lease incorporated the Ordinance in its entirety, but did not incorporate the exemption included in the Ordinance. Furthermore, even if Primus had pleaded a breach of her lease, she has failed to explain why the plain language of the security deposit agreement, which provided that "[t]o the extent of any conflict in terms, the terms and conditions of this rider shall govern over the terms and conditions of the aforesaid lease," would not defeat any claim that the references to the Ordinance in the lease are controlling on the subject of the security deposit. See, *e.g.*, *Artoe v. Cap*, 140 Ill. App. 3d 980, 992 (1986) (construing lease as a whole and applying rider with language stating it would control over provisions of the lease).

¶ 50 Primus additionally argues that the defendants' willful failure to produce Mary McKenna at trial should preclude the McKennas from asserting the exemption to the Ordinance—or any other issue—on appeal. Supreme Court Rule 237(b) provides in pertinent part:

> "The appearance at the trial of a party or a person who at the time of trial is an officer, director, or employee of a party may be required by serving the party with a notice designating the person who is required to appear. *** Upon a failure to comply with the notice, the court may enter any order that is just, including any

> order provided for in Rule 219(c) that may be appropriate." Ill. S. Ct. R. 237(b) (eff. July 1, 2005).

"Where counsel presents his adversary with a Rule 237 notice to produce, he has the right to assume that his opponent will comply." *Nasrallah v. Davilla*, 326 Ill. App. 3d 1036, 1044 (2001). "The remedy for noncompliance with Rule 237(b) is within the sound discretion of the trial court." *Id.* "Where a plaintiff requires testimony of a defendant who failed to appear after proper notice, a presumption of liability arises, and it is within the trial court's discretion to enter a sanction of default judgment." *Id.* at 1045.

¶ 51 In this case, however, the trial court did not enter a default judgment against the defendants for failing to produce Mary McKenna on the second trial date. Indeed, Primus has not identified any request on her part for the imposition of a default judgment as a sanction. The transcript of proceedings suggests the trial court considered that Mary McKenna was not present to testify to any conversation with Primus regarding whether there was an agreement that the tenancy would terminate in May 2011. We conclude the trial judge did not abuse her discretion on this point. *Nasrallah*, 326 Ill. App. 3d at 1044. The trial judge's treatment of the defense's failure to produce Mary McKenna on the second trial date does not affect our conclusion that the building was exempt from the Ordinance in this case.

¶ 52 Having concluded that the building was exempt from the Ordinance as owner-occupied when the rental agreement was created, the judgment against the McKennas must be reversed. The remaining issue, therefore, is whether the judgment against Central Street, which is not a party to appeal number 1-13-3713, should also be reversed. Generally, "a nonappealing defendant may not benefit from the efforts of an appealing defendant." *Downs v. Rosenthal*, 2013 IL App (1st) 121406, ¶ 20. " '[W]hen a judgment or decree against two or more defendants

is vacated as to one of them, it need not for that reason alone be vacated as to any of the others, and should not be vacated as to any of the others unless it appears that because of an interdependence of the rights of the defendants or because of other special factors it would be prejudicial and inequitable to leave the judgment standing against them.' " *Id*. (quoting *Chmielewski v. Marich*, 2 Ill. 2d 568, 576 (1954). "Therefore, *Chmielewski* does not require enforcement of a judgment against the nonappealing defendants if the circumstances demonstrate that it would be prejudicial and inequitable to impose the judgment where there is an interdependence of the defendants' substantive rights." *Downs*, 2013 IL App (1st) 121406, ¶ 20 (citing *Chmielewski*, 2 Ill. 2d at 576). In this case, Central Street's liability is based on the statutory violations alleged to have been committed by the McKennas. It would thus be inequitable and prejudicial to reverse the judgment against the McKennas while leaving the judgment against Central Street in place.

¶ 53 CONCLUSION

¶ 54 For all of the aforementioned reasons, the judgment of the circuit court in appeal number 1-13-3713 is reversed and the case is remanded for further proceedings consistent with this order. The order of the circuit court in appeal number 1-14-2373 is affirmed.

¶ 55 Affirmed in part, reversed in part and remanded for further proceedings.