2015 IL App (2d) 130840-U
Nos. 2-13-0840 & 2-14-0455, cons.
Order filed March 23, 2015
Modified upon denial of rehearing May 4, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FULL HOUSE PRODUCTIONS, INC., d/b/a SHAPES BAR AND BILLIARDS, INC.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellant,	)	
v.	)	No. 01-CH-1484
AMERICAN NATIONAL BANK AND TRUST OF CHICAGO, as Trustee Under Trust Number 107957-06; TOWER CROSSING ASSOCIATES L.L.C.; and NAPELTON INVESTMENT PARTNERSHIP, L.P.,	)	
Defendants-Appellees	)	
(Metropolitan Life Insurance Co., individually and by and through its agents, Broadacre Management Co., Inc. and Urban Retail Properties Co., Defendants).	)	Honorable Bonnie M. Wheaton, Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court (1) did not err in granting defendants' motion for a directed finding on plaintiff's claim for breach of contract; (2) properly granted the defendants

summary judgment on their counterclaim for breach of contract and (3) did not err in awarding the defendants attorney fees.

¶ 2 The plaintiff, Full House Productions, Inc., d/b/a Shapes Bar and Billiards, Inc., filed a complaint against the defendants, Napleton Investment Partnership, L.P. (Napleton) and Tower Crossing Associates L.L.C. (Tower), sounding in breach of commercial lease.[1] The defendants filed a counterclaim, seeking unpaid rent and attorney fees. Following a bench trial, the trial court granted the defendants' motion for a directed finding on the plaintiff's complaint. The trial court subsequently granted the defendants' motion for summary judgment on their counterclaim and awarded the defendants $190,742.12 for unpaid rent and $384,650.45 for attorney fees. The plaintiff filed two appeals from those orders, which have been consolidated. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 This is the second time that this case is before us. See *Full House Productions v. American National Bank*, No. 2-08-0105 (2010) (unpublished order pursuant to Supreme Court Rule 23) (*Full House I*). We briefly restate the facts from that case that are relevant to the instant appeals.

¶ 5 In 1998, the plaintiff entered into a contract with American National Bank (ANB) to lease space at the Tower Crossing Shopping Center (the Center) in Naperville in order to operate a bar and billiards hall. The parties' contract also included a rider, executed on June 24, 1998. This rider provided in pertinent part:

[1] Although the plaintiff filed suit against numerous entities, Napleton and Tower were the only remaining defendants at the time of trial.

> "3. The lease is expressly contingent and conditioned upon the following contingencies:
>
> * * *
>
> B. A satisfactory agreement between Ba[c]ino[']s Restaurant and Tenant for the providing and serving of food on the subject premises and providing for sharing common use of the rest rooms and sharing of costs for its operation, such agreement to be agreed to in writing within 90 days."

Bacino's was a restaurant in the Center that leased space adjacent to the plaintiff's.

¶ 6 The plaintiff took possession of the property in the summer of 1999. On September 5, 1999, the plaintiff and Bacino's entered into an agreement. This agreement was entitled "Restroom Agreement." The agreement provided that the plaintiff would pay Bacino's $250 per month and the parties would share the men's and women's restrooms that were located between the two retail spaces. The agreement additionally stated that "The Landlord has delineated the spaces as leased to the respective Parties, as shown in the attached letter and drawing." (The attached letter and drawing are not part of the record). Pursuant to the agreement, Bacino's was responsible for cleaning the restrooms and purchasing all restroom supplies. Payment for cleaning services would be made by the plaintiff to Bacino's only when cleaning services were provided and upon the plaintiff receiving an invoice from Bacino's. Additionally, the agreement provided that it would last throughout the term of either party's lease and the renewals thereof.

¶ 7 On or about December 11, 1998, ANB sold the Center and assigned its interest in the lease to Metropolitan Life Insurance Company (Met Life). Met Life sold the Center on November 23, 1999 and assigned its interest in the lease on December 2, 1999 to Tower as

successor landlord. Tower conveyed its interest in the Center on May 28, 2004, and assigned its interest in the Lease to Napleton as the successor and landlord of the premises.

¶ 8 After taking possession of the property, the plaintiff had numerous problems with its unit. Such problems included damage from a burst water pipe on two different occasions, garbage being left uncollected in front of its property, and nearby trees were unkempt which covered the signage used by the plaintiff. Due to these problems and others, the plaintiff filed a complaint against its landlord in October 2001. That complaint was dismissed without prejudice. The plaintiff filed an amended complaint on June 21, 2002.

¶ 9 Bacino's vacated its space in May 2003. In approximately October 2003, Tower rented the space to a new tenant, Butterfield's Pancake House (the Pancake House). On October 3, 2003, Stephanie Ireland, on behalf of the defendants' management company, sent a letter to the plaintiff. That letter stated:

> "The space next door to you, formerly occupied by Bacino's, has been leased to the Butterfield Pancake House. We have been informed that the demolition will commence very soon. This letter is to inform you that the current men's washroom will be demolished along with the old Bacino's space. The men's room, as it stands, is in the pancake house space. The women's room as it currently stands, is in your space. The new tenant desires to separate the spaces and his architect has informed him that the city will require him to provide public restrooms for men and women in his space. The landlord will absorb the cost of creating washroom accommodations within your space with the intention that both businesses will be up to code in their separate facilities.

> Please contact our office as soon as possible to discuss exactly where you want the men's room within your space. Obviously, your men's room will have to be near the current women's room to utilize the existing plumbing.
>
> Your immediate attention to this matter is critical to reducing any inconvenience in this matter. We will need only 2-3 weeks to complete the project."

¶ 10 In response to the letter, the plaintiff filed a motion for a temporary restraining order, and preliminary and permanent injunction so as to prevent losing access to the existing men's restroom. The trial court denied those motions.

¶ 11 Over the next several years, the plaintiff filed several amended complaints. Finally, on December 19, 2007, the plaintiff filed its seventh amended complaint. In that complaint, the plaintiff alleged that, pursuant to the terms of the lease, it was provided with 4,107 square feet of commercial space. The property consisted of approximately 3,630 square feet occupied by a previous tenant and approximately 477 square feet consisting of two restrooms, a hallway and foyer adjacent to the space previously occupied by the former tenant. The complaint alleged that, on February 7, 2004, the defendants intentionally entered the space leased by the plaintiff and constructed a wall, and took away the plaintiff's men's restroom. The plaintiff thereafter requested that the defendants construct a men's restroom for the plaintiff's patrons, but the defendants refused to provide an additional men's restroom which would not substantially reduce the size of the leased space available for the entertainment use of its patrons. The complaint further alleged that after the plaintiff lost access to the men's restroom, it used its women's restroom as a unisex restroom. The City of Naperville issued a citation against the plaintiff for

not having separate gender restrooms for its patrons in violation of a local ordinance. The plaintiff closed its business, effective April 30, 2005.

¶ 12 On September 25, 2008, the trial court dismissed the plaintiff's seventh amended complaint, explaining that the lease did not obligate the defendants to provide a second bathroom to the plaintiff. We reversed the trial court's decision and remanded for additional proceedings. We stated:

> "Considering the plaintiff's complaint in the light most favorable to the plaintiff [citation], the most reasonable inference is that the plaintiff's having access to the existing two restrooms in the space it would rent was a condition precedent to the contract between the plaintiff and the landlord." *Full House I,* No. 2-08-0105.

¶ 13 Between November 13 and November 19, 2012, the trial court conducted a bench trial on the plaintiff's seventh amended complaint. John Neron, the sole owner of the plaintiff, acknowledged receiving the October 3, 2003, letter regarding the demolition of the men's restroom. He did not call anyone at the defendant's management company in response to the letter. Instead, he sent a letter claiming that the men's restroom was not within the pancake house's premises and that the destruction of that restroom would constitute a breach of the lease.

¶ 14 Neron did not allow the defendant to build a men's restroom in the plaintiff's space. Indeed, when Ireland attempted to enter Shapes to discuss the restroom issue, Neron asked her "what in the hell" she wants from him, denied her entrance to the premises, and physically "redirected" her out of Shapes. He then closed and locked the door so she could not re-enter

Shapes. He later told the defendants that he would no longer deal with Ireland. Neron thereafter did not talk to anyone else representing the defendants about installing a new restroom.

¶ 15 Neron testified that he believed that the plumbing in Shapes made the installation of two restrooms an impossibility. Additionally, he was concerned that an additional restroom may result in lost revenue from the dart boards. He did not present an alternative plan for the restrooms to the defendant.

¶ 16 John Tsarpalas testified that he was hired by the defendants to serve as general contractor for the installation of a men's restroom. He testified that the new restroom would be built in space that was occupied as the restroom hallway, and that he built flexibility into the price quotation so that Shapes could choose the restroom finishes. The proposed plan may have repurposed janitorial closet space, but would not have diminished or affected Shapes' commercial space.

¶ 17 Tsarpalas additionally testified that he visited Shapes and measured it for the installation of a men's restroom. He hired an architect, plumber, electrician, carpentry contractor, and tile contractor for the project. He purchased a building permit. He communicated regularly with the defendants' property managers regarding the installation of the men's restroom. He did not report his progress to Neron because Neron was not his customer.

¶ 18 Robert Borth testified that he was the manager of a comedy club which occupied the property at issue prior to Shapes. He testified that the men's restroom was not part of the property. He explained that the comedy club shared the restrooms with Bacino's. Specifically,

the women's restroom was in the comedy club and the men's restroom was across the hall on Bacino's side.

¶ 19 At the close of the plaintiff's case, the defendants moved for a direct finding. The trial court granted the motion. The trial court explained that "[t]his case stands or falls on whether the space that constituted the men's room was a part of the leased premises under the lease." The trial court found that Borth's testimony established that the men's restroom was not part of Shapes' property. Although Neron claimed that the square footage of the lease necessarily included the men's restroom, he nonetheless took the space "As-Is." The trial court explained that this demonstrated the square footage was not a material term of the lease but rather the specific space and the rent were.

¶ 20 Following the trial court's ruling, the defendants filed a motion for summary judgment on their counterclaim for breach of contract. In support of their motion, the defendants relied on the parties' lease and the trial court's judgment on the plaintiff's complaint. On July 17, 2013, the trial court granted summary judgment to the defendants and awarded them unpaid rent ($194,849.12) plus reasonable attorney fees. On August 14, 2013, the plaintiff filed a notice of appeal. That appeal was docketed in this court as appeal No. 2-13-0840.

¶ 21 On February 7, 2014, the plaintiff filed a motion for reconsideration as to the grant of summary judgment, arguing that the defendants did not provide adequate evidence that they had mitigated their damages. The defendants subsequently filed a petition requesting that their award of attorney fees and costs be set.

¶ 22 On April 7, 2014, the trial court granted the plaintiff's motion for reconsideration and ordered an evidentiary hearing on the defendants' efforts to mitigate their damages. The trial court granted the petition for attorney fees and costs and awarded reasonable fees from the date the counterclaim was filed on November 17, 2010 to July 29, 2013.

¶ 23 On May 7, 2014, the trial court conducted a hearing as to the defendants' efforts to mitigate the damages and the reasonableness of the attorney fees incurred since November 17, 2010. Richard Brandstatter, the defendants' director of real estate, testified that: (1) the property had been listed for leasing by a broker since the plaintiff vacated the premises; (2) the property was difficult to lease because of the poor visibility from Ogden Avenue; (3) he had spoken to three or four potential tenants about the space; and (4) while the property meets code currently with one restroom, if a potential tenant desired a second restroom, the defendants would install one. He further testified that, at the time of the hearing in 2014, the property remained vacant, seven years after the lease with the plaintiff expired.

¶ 24 As to the issue of attorney fees, the defendants argued that, pursuant to section 17(f) of the lease, they were entitled to all of the attorney fees they had incurred since they filed their counterclaim in November 2010. Section 17(f) of the parties' lease provided:

> "Tenant shall pay all of the Landlord's costs, charges and expenses, including the fees of counsel, agents and other retained by Landlord, incurred in enforcing or seeking to enforce Landlord's rights and remedies under this Lease. Tenant agrees that Landlord, may from time to time, file suit to recover any sums falling due under the terms of this Paragraph."

The defendants maintained that the fees they incurred to defend against the plaintiff's complaint were directly related to the fees they incurred prosecuting their counterclaim. Attorney James McCluskey testified as to the reasonableness of the fees that he had charged the defendants. The defendants submitted the statements for the fees and costs they had incurred from January 2012 through April 2014. The defendants requested $384,732.95 for their fees and costs.

¶ 25 The plaintiff responded that the defendants were only entitled to those costs and fees related exclusively to the eviction. It was the defendants' burden to separate and identify what fees they had incurred solely to prosecute the counterclaim. Because they could not, the plaintiff insisted that the defendants were not entitled to any recovery.

¶ 26 Following the hearing, the trial court found that the defendants had made reasonable efforts to mitigate their damages. The trial court explained that the property was difficult to lease, evident by the defendants' inability to find someone to lease the property in the seven years after the parties' lease agreement had ended. The trial court entered judgment of $190,742.12 ($194,849,12 minus $4,107 for the return of the plaintiff's security deposit) for the defendants.

¶ 27 As to the issue of attorney fees, the trial court agreed with the defendants' argument, explaining:

> "The issues in this case, in the underlying complaint and the counter-claim, are inextricably intertwined.
>
> I believe, after hearing all of the evidence and testimony, that it would be impossible—literally impossible to separate out what fees were incurred in the

prosecution of the counter-claim and what were incurred in the defense of the underlying claim.

The issues are two sides of the coin. I believe that it would be proper to award attorney's fees that were reasonably and necessarily incurred from the filing of the counter-claim, in November 2010; and as I said, *** the issues are so intertwined that those fees would be attributable, in whole or in part, to all of the issues in the case."

¶ 28 The trial court awarded the defendants attorney fees of $384,650.45 that they had incurred from January 2012 through May 2014. On May 12, 2014, the plaintiff filed a notice of appeal. That appeal was docketed in this court as appeal No. 2-14-0455.

¶ 29 On June 3, 2014, this court consolidated appeal No. 2-13-0840 with appeal No. 2-14-0455 for review.

¶ 30 ANALYSIS

¶ 31 The plaintiff's first contention on appeal is that the trial court erred in granting the defendants' motion for a directed finding. The plaintiff insists that the evidence established that the defendants breached the lease by taking away a restroom that had been leased to the plaintiff. Alternatively, the plaintiff argues that the defendants breached the lease by taking away the plaintiff's access to a second restroom. Further, the plaintiff contends that the trial court's ruling is inconsistent with this court's decision in *Full House I*.

¶ 32 On a motion for a directed finding, if the trial court finds that the plaintiff has failed to establish a *prima facie* case as a matter of law, our standard of review is *de novo*. *People ex. rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). However, if the trial court moves on to consider

the weight and quality of the evidence and finds that no *prima facie* case remains, we will not disturb the trial court's judgment unless it is against the manifest weight of the evidence. *Id.* For a judgment to be against the manifest weight of the evidence, it must appear that a conclusion opposite to that reached by the trier of fact is clearly evident. *Camosy, Inc. v. River Steel, Inc.*, 253 Ill. App. 3d 670, 674-75 (1993).

¶ 33 Here, the trial court's comments demonstrate that it considered the weight and quality of the evidence that the plaintiff presented. This is evident from such comments that it considered Borth's testimony to be "unbiased" and "the most credible." Accordingly, our review of the trial court's decision is whether it was against the manifest weight of the evidence. *Cryns*, 203 Ill. 2d at 275.

¶ 34 Based on that standard of review, we cannot say that the trial court erred in granting the defendants' motion for a directed finding. The evidence reveals that the defendants leased rental space to the plaintiff. This space included one women's restroom and access to an adjoining men's restroom. The plaintiff shared both restrooms with an adjoining tenant, Bacino's. In October 2003, the defendant informed the plaintiff that it was renting Bacino's space to a new tenant, the Pancake House. As part of that lease with the Pancake House, the defendant would be reconfiguring the restrooms so that both the plaintiff and the Pancake House would have their own two restrooms. The plaintiff's new men's restroom would be next to the existing women's restroom. The plaintiff would not lose any existing business space due to the reconfiguration of the restrooms as the new restroom would take the place of a former janitorial closet. However, the defendants never constructed a new restroom because the plaintiff would not cooperate with

the defendants' efforts to install that restroom. The plaintiff subsequently moved out of its rental space, claiming that it had been constructively evicted because it now only had access to one restroom. The trial court's rejection of this claim was not against the manifest weight of the evidence because the trial court could properly find that the plaintiff had lost access to a second restroom due to the plaintiff's own actions in not cooperating with the defendants' attempts to build a second restroom.

¶ 35 In so ruling, we reject the plaintiff's argument that in fact its lease included both restrooms. In support of this argument, the plaintiff points out that the lease specifically indicated that it included 4,007 square feet. The plaintiff's president Neron testified that he measured 4,007 square feet and that square footage included two restrooms. However, Neron's testimony was in conflict with Borth's testimony and the contract's language that the plaintiff was taking the property "As Is." Borth testified that, prior to the plaintiff renting the space at issue, he had rented that same space. That space included one restroom and access to a second restroom. Thus, the trial could reasonably find that when the plaintiff rented the space from the defendants, that space did not include two restrooms.

¶ 36 Further, the plaintiff's argument that its lease actually included two restrooms is undermined by that part of the parties' contract which provided that a condition precedent to the agreement was that the plaintiff enter into an agreement with Bacino's to share the two restrooms. The trial court could reasonably find that the plaintiff's lease did not include two restrooms, because if it did, there would have been no need for the plaintiff to enter into an agreement with Bacino's to gain access to a second restroom.

¶ 37 We also reject the plaintiff's alternate argument that, even if the lease did not provide it with two restrooms, the "As Is" provision of the lease provided that the plaintiff would have access to the existing two restrooms. We believe that the evidence supports a reasonable inference that a condition precedent to the parties' agreement was that the plaintiff would have access to two restrooms during the duration of the lease. The defendants did not interfere with that expectation because at the same time it was removing the plaintiff's access to one restroom, it offered to build the plaintiff another restroom to replace the one that the plaintiff was losing access to. Although the restroom was never built, a reasonable inference is that it was not built because of the plaintiff's actions and not those of the defendants.

¶ 38 We note that the plaintiff objects to this inference. The plaintiff claims that Neron never refused to cooperate with the defendants regarding the installation of a new restroom. The plaintiff points to Tsarpalas' testimony that Tsarpalas never talked to Neron about the restroom. Because Tsarpalas did not talk with Neron, it was not possible for Neron to be uncooperative with the defendants' agent. In so arguing, the plaintiff overlooks Neron's refusal to talk to Ireland about the installation of a new restroom. As such, the plaintiff is essentially arguing that it should have been able to dictate to the defendants which one of their agents it would negotiate with. There is nothing in the parties' contract that afforded such a right to the plaintiff. Thus, its argument is without merit.

¶ 39 We next turn to the plaintiff's argument that it was to have access to the "existing" restrooms during the duration of the lease. In so arguing, the plaintiff essentially contends that the lease allowed it to dictate to the defendants how it could use their property that they were not

leasing to the plaintiff. We do not believe that any reasonable interpretation of the parties' agreement gives the plaintiff, the tenant, such tremendous power over its landlord, the defendants.

¶ 40 We also reject the plaintiff's argument that its access to its existing restrooms is controlled by the law of the case doctrine. The plaintiff insists that in *Full House I*, this court "made it clear that having access to two restrooms was a condition precedent and that [its] expectation in leasing the space was to have access to the *existing* two restrooms." The plaintiff contends that because the trial court did not comply with our ruling in *Full House I*, its decision should be reversed.

¶ 41 The law of the case doctrine bars relitigation of an issue that has already been decided in the same case such that resolution of an issue presented in a prior appeal is binding and will control upon remand in the circuit court and a subsequent appeal before the appellate court. *American Service Insurance Co. v. China Ocean Shipping Co.*, 2014 IL App (1st) 121895, ¶ 17. The doctrine applies to questions of law and fact and encompasses a court's explicit decisions, as well as those decisions made by necessary implication. *Id.* The law of the case doctrine does not apply when the legal issues, standards of proof, and parties are different. *Gauger v. Hendle*, 2011 IL App (2d) 100316, ¶ 107.

¶ 42 In *Full House I*, we reviewed the trial court's decision to dismiss the plaintiff's complaint. The standard of proof in that case was not the same as in this case. Compare *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 404-05 (2008) (in reviewing motion to dismiss, court is to view all the well-pleaded allegations and the reasonable inferences in the light most favorable to the

plaintiff) with *Law Offices of Collen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 40 (in reviewing a defendant's motion for a directed finding, court looks to whether plaintiff has proved his case by a preponderance of the evidence). Thus, the law of the case doctrine is not applicable here. See *Aguilar v. Safeway Ins. Co.*, 221 Ill. App. 3d 1095, 1101 (1991) (where appellate court determined that complaint was legally sufficient and remanded for further proceedings, appellate court did not purport to enter judgment beyond directing reinstatement of plaintiff's complaint and did not limit further proceedings in anyway).

¶ 43 The plaintiff's second contention on appeal is that the trial court erred in granting the defendants' motion for summary judgment on their counterclaim. Specifically, the plaintiff argues that questions of fact remained as to whether (1) it had been constructively evicted; (2) the rent it was being charged was excessive and (3) the defendants had not mitigated their damages.

¶ 44 The purpose of a motion for summary judgment is to determine whether a genuine issue of triable fact exists (*People ex rel. Barsanti v. Scarpelli*, 371 Ill. App. 3d 226, 231 (2007)), and such a motion should be granted only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law" (735 ILCS 5/2-1005(c) (West 2010)). An order granting summary judgment should be reversed if the evidence shows that a genuine issue of material fact exists or if the judgment was incorrect as a matter of law. *Clausen v. Carroll*, 291 Ill. App. 3d 530, 536 (1997).

¶ 45 The defendants' counterclaim sounded in breach of contract. The elements of a breach of contract action are (1) the existence of an enforceable contract; (2) breach of that contract and (3) damages resulting from that breach. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 940 (2004).

¶ 46 Here, the trial court properly granted the defendants' motion for summary judgment. There is no dispute that the parties had a valid contract. The contract provided that the defendants would provide business space to the plaintiff in exchange for the plaintiff paying the defendants rent. The plaintiff acknowledges that, from March 1, 2005, to July 31, 2007, it did not pay the defendants the rent required under the contract. The plaintiff's failure to pay rent constituted a breach of the contract. See *Rubloff CB Machesney, LLC v. World Novelties, Inc.*, 363 Ill. App. 3d 558, 564 (2006) (non-payment of rent in accordance with a lease is a material breach of the lease). The defendants submitted an affidavit that listed the damages they incurred due to the plaintiff's breach of the contract. The trial court did not err in awarding the defendants those damages.

¶ 47 In so ruling, we find unpersuasive the plaintiff's argument that a question of fact remained as to whether it had been constructively evicted from the property. The trial court considered this precise argument at the trial on the plaintiff's complaint for breach of contract. The trial court did not err in relying on that evidence in rejecting the plaintiff's argument that it had been constructively evicted.

¶ 48 We also find without merit the plaintiff's argument that a question of fact remains as to whether it was paying for more of the common area than the lease required. The plaintiff's argument is based on the premise that the men's restroom and part of the space between it and the adjoining restaurant were already part of its lease. Thus, the plaintiff insists that it should not

have been paying common area maintenance for an area that was already within its leased space. As this is just another variation of the plaintiff's argument that its lease really did include the men's restroom, the trial court did not err in rejecting it.

¶ 49 We also reject the plaintiff's argument that summary judgment was improper because the defendants failed to demonstrate that they mitigated their damages. The plaintiff points out that the defendants never constructed another restroom in the premises. The plaintiff contends that this made the area unsuitable for any future tenant. As the defendant failed to make the area suitable for any tenant, the plaintiff insists that the trial court could not have properly found that the defendants had mitigated their damages.

¶ 50 Under section 9-213.1 of the Illinois Forcible Entry and Detainer Act (735 ILCS 5/9-213.1 (West 2004)), "a landlord or his or her agent shall take reasonable measures to mitigate damages recoverable against a defaulting lessee." The landlord bears the burden of proving that it complied with the statutory duty of mitigation. *Snyder v. Ambrose*, 266 Ill. App. 163, 166 (1994). If a landlord cannot show that it took reasonable steps to mitigate its damages, the damages it could otherwise recover are reduced, and losses which reasonably could have been avoided are not recoverable. *Danada Square v. KFC National Management Co.*, 393 Ill. App. 3d 598, 608 (2009). The trial court's finding with respect to the mitigation of damages will not be overturned unless it is against the manifest weight of the evidence. *Pokora v. Warehouse Direct, Inc.*, 332 Ill. App. 3d 870, 880 (2001).

¶ 51 Here, Brandstatter explained that the property was difficult to rent and that the property had remained vacant since the plaintiff abandoned it in 2005. He testified that the property had been listed for leasing with a broker and that he had personally spoken to three or four potential tenants about the space. Brandstatter further testified that the defendants would have put in an

additional restroom had a new tenant requested one. Based on this testimony, the trial court found that the defendants had made sufficient efforts to mitigate their damages. We cannot say that this finding was against the manifest weight of the evidence. See *id*.

¶ 52 The plaintiff speculates that the defendants would have found a new tenant if only they had just installed an additional restroom. The trial court's implicit rejection of this argument was not against the manifest weight of the evidence. Rather, the evidence supports the trial court's conclusion that the property remained vacant not because of the lack of a second restroom but because the property was in a poor location and was difficult to rent. There is nothing unreasonable about the defendants wanting to wait to incur the cost of installing an additional restroom until they had found a tenant that actually wanted that space with two restrooms.

¶ 53 The plaintiff's final contention on appeal is that the trial court erred in awarding the defendants attorney fees pursuant to section 17(f) of the parties' contract. The plaintiff insists that the provision is not applicable. Alternatively, the plaintiff argues that the defendants could only recover under that provision for fees they incurred for prosecuting their counterclaim, not for defending against the plaintiff's complaint. As the defendants failed to establish what fees they incurred solely to prosecute the counterclaim, the plaintiff insists that the entire attorney fee award should be reversed.

¶ 54 A trial court's award of attorney fees will not be disturbed absent an abuse of its discretion. *Mountbatten Surety Co., Inc. v. Szabo Contracting, Inc.*, 349 Ill. App. 3d 857, 873 (2004). An abuse of discretion occurs only if no reasonable person could agree with the court's decision. *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 397-98 (2010).

¶ 55 Based on our review of the record, we cannot say that the trial abused its discretion in awarding the defendants the attorney fees they incurred after they filed their counterclaim in

November 2010. Pursuant to the parties' contract, the defendants had the right to those fees they incurred seeking to enforce their rights. The primary right that the defendants had under the contract was to be paid by the plaintiff. Thus, the defendants' counterclaim clearly fell within the parameters of that part of the parties' contract allowing the defendants to recover their attorney fees. On appeal, the plaintiff does not really dispute that. Rather, the plaintiff insists that the defendants should not be entitled to any fees they incurred defending against the plaintiff's complaint. We cannot say that the trial court's finding to the contrary was unreasonable. The trial court found that there was a direct correlation between the work the defendants' attorneys did defending against the plaintiff's complaint and prosecuting the counterclaim. Indeed, the defendants' attorneys were able to use the same evidence that was adduced at the trial to prevail on the defendants' motion for summary judgment. Accordingly, we decline to disturb the trial court's award of attorney fees.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 58 Affirmed.