2015 IL App (2d) 150018-U
No. 2-15-0018
Order filed September 28, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ADDISON LAKE LLC, Plaintiff-Appellee, v. PETER DRAVILAS, GEORGE DRAVILAS, YSP INC., MPONTIA, INC., and ALL UNKNOWN OCCUPANTS, Defendants-Appellants.	)))))))))))	Appeal from the Circuit Court of Du Page County. No. 14-LM-2510 Honorable Bonnie M. Wheaton, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order granting plaintiff possession of the leased property was not against the manifest weight of the evidence.

¶ 2 Plaintiff, Addison Lake LLC, filed an action under the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-101 *et seq.* (West 2014)) against defendants, Peter Dravilas (Peter), George Dravilas (George), YSP Inc., Mpontia, Inc., and all unknown occupants. The court granted possession of the subject property to plaintiff and denied defendants' motion for a new trial. Defendants appeal, and for the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 It is undisputed that from 1990 to 2012, an entity controlled by Peter owned the property located at 715 West Lake Street in Addison, Illinois. The record contains a lease dated December 1, 1990, ("the 1990 lease") pertaining to unit 201 of that property. The lessor was "715 Preferred Center Peter Dravilas – agent" and the lessee was "Y.S.P. Inc., D.B.A. Re/Max Preferred Properties," both of which were entities that Peter controlled. Peter signed the 1990 lease on behalf of both the lessor and the lessee. The lease term was December 1, 1990, through March 30, 1998. The lessor had the option of terminating the 1990 lease by giving 30-days' notice to the lessee. The 1990 lease also prohibited the lessee from subleasing the property without the lessor's consent and contained certain rules and regulations pertaining to signs on the property.

¶ 5 The lessor and lessee apparently operated under the terms of the 1990 lease until a document entitled "LEASE MODIFICATION AGREEMENT AND MUTUAL GENERAL AGREEMENT" ("the lease modification agreement") was executed on April 1, 2010. The lessor was designated as "715 Preferred Center and Peter Dravilas, agent and Illinois Real Estate Broker." The lessee was "Y.S.P. Inc., d.b.a. Re/Max Preferred Properties." Peter signed the lease modification agreement as both lessor and lessee. George also signed the lease modification agreement as secretary of the lessee. Unlike the 1990 lease, the lease modification agreement did not specifically mention the prohibition against subleasing. Nor did it specifically mention the rules and regulations or the lessor's 30-day termination option.

¶ 6 It is undisputed that plaintiff purchased the property in 2012 as part of a foreclosure proceeding, thereby inheriting any leases in effect. In May and June 2014, plaintiff issued a series of lease termination notices to Peter, George, Mpontia, Inc., "Remax Preferred Properties,"

and unknown occupants. Although the lessee under both the 1990 lease and the lease modification agreement was Y.S.P. Inc., d.b.a. Re/Max Preferred Properties, none of these notices were specifically directed to that entity as such.

¶ 7 Plaintiff first issued a five-day notice dated May 16, 2014. Plaintiff declared that defendants owed rent in the amount of $1,800 and that their possession would be terminated unless payment was made on or before May 21. An affidavit of service attached to that notice indicates that it was served on May 15, 2014—one day earlier than the date on the actual notice. The affidavit does not specify the manner of service.

¶ 8 On June 10, 2014, plaintiff issued a 30-day notice, apparently attempting to exercise the termination option outlined in the 1990 lease. The notice stated that the tenancy would be terminated as of July 11, 2014. Defendants were purportedly served with that notice on June 23, 2014.

¶ 9 Also on June 10, 2014, plaintiff issued a 10-day notice asserting that defendants violated the terms of the lease by "[o]perating and acting as a Re/Max Northern Illinois franchisee" and "[p]lacing signage and other materials acting as a Re/Max Northern Illinois franchisee without the consent of Re/Max Northern Illinois." The notice provided that the lease would be terminated as of June 21, 2014. An attached affidavit of service indicated that it was sent to defendants via certified mail on June 11, 2014.

¶ 10 On August 4, 2014, plaintiff filed a forcible entry and detainer complaint alleging that it was entitled to possession of unit 201. Plaintiff also alleged that defendants owed $5,170.80 for rent and damage to the property for failing to remove a Re/Max sign.

¶ 11 On August 6, 2014—two days after filing the complaint—plaintiff issued a second five-day notice. This notice added YSP, Inc. to the service list and identified the unit as 102 instead

of 201.[1] The notice stated that defendants owed rent in the amount of $5,170.80 and indicated that their possession would be terminated if payment was not made on or before August 13, 2014. The notice was served on August 8, 2014.

¶ 12 The matter proceeded to a bench trial on October 31, 2014. Daris[2] Yuksel testified that he was a managing member of plaintiff, which acquired the property located at 715 West Lake Street in June 2012. Plaintiff inherited the lease modification agreement as landlord, and the lease was still in force and effect. The rent had "been typically late," but it was eventually paid most months. However, defendants currently owed $9,000 for rent. Yuksel also testified that defendants had used the property for a commercial real estate brokerage business with Re/Max. Defendants had a Re/Max sign on the property, which Yuksel, as landlord, did not approve. According to Yuksel, defendants "still have some ReMax signage, even though they lost their franchise, on the property." Yuksel also said that plaintiff exercised its option pursuant to the 1990 lease to regain possession of the premises upon providing 30-days' notice.

¶ 13 On cross-examination, Yuksel testified that both the 1990 lease and the lease modification agreement were still in effect. He acknowledged that Peter had tendered the rent every month, although it was usually late. Yuksel stated that he had a five-day notice prepared on August 6, 2014, which was after the complaint was filed. He also said that he had all of the money that was owed as of the date of the hearing in his possession, but that he refused to deposit the funds.

[1] It appears that the unit number was a mistake, and the parties have not made an issue of this discrepancy on appeal.

[2] Some documents in the record indicate that Mr. Yuksel's name is Baris, not Daris.

¶ 14 Plaintiff then called Peter as a witness. Peter testified that he was the president of Mpontia, Inc. and was currently the occupant of unit 201. Asked whether Mpontia, Inc. was a company that he ran at unit 201, Peter responded: "It's an entity. My real business is YSP, Inc." Peter explained that he owned the property from 1990 until Yuksel purchased it at auction. He acknowledged that both the lessor and the lessee in the 1990 lease and the lease modification agreement were entities that he controlled. He operated as a Re/Max facility from 1990 until May 30, 2014, when he "decide[d] to terminate" himself from the Re/Max system. However, Peter was shown a letter (which is not in the record on appeal) apparently indicating that he owed in excess of $4,800 in fees to Re/Max and that his license was revoked. That letter instructed Peter to no longer operate as a Re/Max franchise and to take down the Re/Max sign. According to Peter, he took down the Re/Max sign. Peter also testified that in 2014, he issued a subtenancy for unit 201 to a third party. The subtenant was currently paying him rent in the amount of $600 per month. He did not obtain Yuksel's permission to enter into the subtenancy.

¶ 15 After plaintiff rested its case, defendants moved for a directed finding. They argued that they tendered all the rent that was owed, that Yuksel testified that "the second [l]ease was still in effect," and that the five-day notice served on August 8, 2014, reinstated the tenancy. The court denied the motion, explaining that it did not "think that the service of another five-day notice serves to reinstate the lease or acknowledge the tenancy." As to the argument that the lease was still in effect, the court explained: "Your argument would be persuasive if Mr. Yuksel had deposited the checks. They have not been deposited, so I don't think that this is evidence of an acceptance of the [l]ease terms."

¶ 16 Defendants then called Yuksel as an adverse witness. Yuksel testified that he was in possession of the rent checks for July through October 2014. Furthermore, he said that the

Re/Max sign referred to in the complaint was not "taken down within the ten-day period." Yuksel explained that he asked Peter in May to take the sign down, and it was finally taken down in September.

¶ 17 Defendants also called Peter as a witness. He testified that he had tendered all rent that was owed through October 30, 2014, and that no money had ever been returned to him. No rent was owed when the second five-day notice was served on August 8, 2014. Additionally, the second five-day notice listed unit 102, which Peter had never occupied. Furthermore, Peter said that the Re/Max sign was removed about 40 days after he was told to do so by Re/Max Northern Illinois.

¶ 18 The record reflects that on cross-examination, Peter was shown a picture of the marquee at 715 Lake Street, which still indicated that unit 201 was being operated as a Re/Max Preferred property. That picture is not in the record on appeal. Peter explained that he did not have the key to remove the sign, but he had requested that the landlord remove it.

¶ 19 At the conclusion of the evidence, the court granted possession of the leased property to plaintiff. The court found that the lease modification agreement was "not a new [l]ease," but was instead "a modification of the previous lease." Accordingly, "the terms, which are not modified in the original [l]ease, remain in full force and effect," including the 30-day termination provision and the prohibition against subletting. Additionally, the court explained, "[i]f the rent payment is not made within the five-day period, the landlord is under no obligation to negotiate the checks and accept the payments." Nor did plaintiff's actions "establish an acceptance of the [l]ease after the five-day notice." Instead, the court found, Yuksel had "done everything he could possibly do to show that the [l]ease is no longer in full force and effect." The court determined that plaintiff proved its case as to "the nonpayment of rent within five days, the

failure to remove the sign within ten days, the 30-day termination of the [l]ease, [and] the failure of the defendant [*sic*] to obtain the permission of the plaintiff to sublease the premises." The court also found that the rent that was tendered by defendants but not accepted by plaintiff was "adequate payment for the occupancy that the defendant [*sic*] has enjoyed during the pendency of this matter."

¶ 20 On November 12, 2014, defendants filed a motion for a new trial, which the court construed as a motion to reconsider. The court denied the motion on January 7, 2015, and defendants timely appeal.

¶ 21 II. ANALYSIS

¶ 22 Defendants challenge the propriety of each of the notices that plaintiff issued prior to filing the complaint. To reverse the trial court's judgment, we would have to hold that none of the notices terminated the tenancy. Because we affirm the trial court's judgment on the basis of the five-day notice that was purportedly served on May 15, 2014, we need not address defendants' arguments regarding the 30-day and 10-day notices.

¶ 23 Defendants raise three arguments that pertain to the initial five-day notice: (1) plaintiff failed to name and serve the notice upon Y.S.P. Inc., the named lessee; (2) the notice was improper because it was allegedly served before it was even created; and (3) the second five-day notice, which was served after the complaint was filed, reinstated the tenancy. Defendants did not raise the first two arguments in the trial court until their reply brief in support of their motion for a new trial. "Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal." *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36. The purpose of a motion to reconsider is not to raise issues that could have been addressed earlier but, rather, "to bring to the court's attention newly discovered evidence that was not

available at the time of the original hearing, changes in existing law, or errors in the court's application of the law." *Riseborough*, 2014 IL 114271, ¶ 36. Accordingly, the arguments are forfeited.

¶ 24 Defendants' first two arguments are also subject to forfeiture due to defendants' failure to cite pertinent authority. See Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) (an appellant's brief must contain argument with citation of authorities). Section 9-104 of the Act provides, in relevant part: "The demand required by Section 9-102 of this Act may be made by delivering a copy thereof to the tenant ***." 735 ILCS 5/9-104 (West 2014). The essence of defendants' first argument is that the initial five-day notice was defective because it was directed to and served upon "Remax Preferred Properties" instead of Y.S.P. Inc., d.b.a. Re/Max Preferred Properties. However, defendants leave it to this court to find case law supporting the proposition that this was not service to the "tenant" under the statute. For their second argument, defendants note that the five-day notice was dated May 16, 2014, but that the affidavit of service indicates that the notice was served on May 15. Defendants contend that "[t]his discrepancy makes the Five-Day Notice ineffective as to all served parties because it was allegedly delivered before it was created." However, defendants cite only the statute itself, and the statute does not state that a discrepancy such as the one at hand renders service ineffective. Moreover, defendants' entire argument on this point consists of a single paragraph. Once again, defendants leave it to this court to find authority to support their position. " 'The appellate court is not a depository into which a party may dump the burden of research.' " *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 13 (quoting *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046 (2005)).

¶ 25 Defendants' final argument is that the second five-day notice reinstated the tenancy. The parties dispute the applicable standard of review. Defendants assert that we should review the

trial court's order for abuse of discretion, while plaintiff proposes that the proper standard is whether the judgment was against the manifest weight of the evidence. We agree with plaintiff. See *Wendy & William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 27 ("In determining whether the trial court erred in entering a judgment in favor of plaintiff in an action brought under the Forcible Entry and Detainer Act [citation], the standard of review is whether the ruling was against the manifest weight of the evidence."); *Chicago Housing Authority v. Taylor*, 207 Ill. App. 3d 821, 824 (1990) (the issue of whether a landlord waived its right to assert a forfeiture of the lease was "essentially a question of intent to be determined by the trier of fact"). Despite their insistence that the trial court did not make findings of fact, defendants are indeed challenging the court's factual finding, following a bench trial, that plaintiff did not waive its right to rely on prior breaches of the lease. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the finding was unreasonable, arbitrary, and not based on the evidence. *Spatz Charitable Foundation*, 2013 IL App (1st) 122076, ¶ 27. It is not our role to reinterpret the evidence, but to determine whether the trial court's judgment is supported by the evidence. *Spatz Charitable Foundation*, 2013 IL App (1st) 122076, ¶ 27.

¶ 26 "It has long been established that any act of a landlord which affirms the existence of a lease and recognizes a tenant as his lessee after the landlord has knowledge of a breach of lease results in the landlord's waiving his right to forfeiture of the lease." *Midland Management Co. v. Helgason*, 158 Ill. 2d 98, 102 (1994). "[E]vidence of acts inconsistent with a declaration of a termination of the lease," such as accepting rent that accrued subsequent to the breach, may indicate that the breach has been waived and that the lease was reinstated. *Midland Management Co.*, 158 Ill. 2d at 102. In *Midland Management Co.*, the supreme court held that a landlord that

accepted housing assistance payments did not waive its right to assert a forfeiture of the lease, because such payments did not constitute "rent." *Midland Management Co.*, 158 Ill. 2d at 106.

¶ 27 Defendants insist that "[t]here could not be a tenancy to terminate through the second Five-Day Notice unless the tenancy was still in existence when the [second] Five-Day Notice was served on August 8, 2014." However, they do not cite any authority specifically addressing the issue of whether a subsequent termination notice serves to reinstate the tenancy, although such authority indeed exists. See *e.g.*, *Shelby County Housing Authority v. Thornell*, 144 Ill. App. 3d 71, 74 (1986) (although the landlord issued multiple notices, the court determined that the tenant "could not reasonably be led to believe that [the landlord] was recognizing the existence of [*sic*] tenancy and setting a new date for termination"); *Mitchell v. Tyler*, 335 Ill. App. 117, 119 (1948) (the landlord did not waive the first notice by issuing a second notice while the case was on appeal, because the tenant could not have been misled by the second notice); *Taylor*, 207 Ill. App. 3d at 827 (question of fact existed as to whether the landlord intended for a second notice to operate as a waiver of its rights under the first notice, so the trial court erroneously granted the tenant's motion to dismiss the complaint). It is clear from these cases that a landlord's act of issuing a subsequent notice does not *ipso facto* reinstate the tenancy. Instead, the matter requires a factual analysis of the landlord's intent; another relevant consideration is whether the tenant was misled by the multiple notices. To the extent that defendants could have used this line of cases to present a cogent argument, we decline to do their work for them. See *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 30 ("[I]t is not the role of the court to search the record and develop arguments on a party's behalf."); see also Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued in the appellant's brief are forfeited).

¶ 28 Defendants also appear to argue that plaintiff accepted all of the rent owed, thereby waiving defendants' prior breaches of the lease and reinstating the tenancy. They rely on *Okey, Inc. v. American National Bank & Trust Co.*, 96 Ill. App. 3d 987 (1981), *Weiss v. Johnson*, 28 Ill. 2d 259 (1963), and *La Salle National Bank v. Khan*, 191 Ill. App. 3d 41 (1989).

¶ 29 In *Okey Inc.*, the parties entered a 15-year lease that contained both an option to purchase and a provision that the lease would terminate upon the tenant's insolvency. *Okey, Inc.*, 96 Ill. App. 3d at 988. The landlord filed a forcible detainer action against the tenant in 1971 and obtained a default judgment for possession and past-due rent. *Okey, Inc.*, 96 Ill. App. 3d at 989. The tenant filed for bankruptcy shortly thereafter. *Okey, Inc.*, 96 Ill. App. 3d at 989. However, the landlord subsequently accepted a lump sum rental payment from the tenant, and the parties continued their relationship under the lease. *Okey, Inc.*, 96 Ill. App. 3d at 989. When the tenant attempted to exercise its option to purchase in 1979, the landlord refused to convey the property, contending that the tenant had breached the lease by instituting bankruptcy proceedings in 1971 and by being tardy with rental payments from 1971 until 1976. *Okey, Inc.*, 96 Ill. App. 3d at 989. The tenant filed a declaratory judgment action to enforce its option to purchase, and the trial court granted judgment on the pleadings in favor of the landlord. *Okey, Inc.*, 96 Ill. App. 3d at 988. The appellate court reversed, holding that there was a genuine issue of material fact as to whether the landlord's actions constituted a waiver of the tenant's purported default of the lease. *Okey, Inc.*, 96 Ill. App. 3d at 993.

¶ 30 In *Weiss*, the parties entered into a lease that gave the tenant the option to renew for subsequent one-year periods by providing written notice prior to January 1 each year. *Weiss*, 28 Ill. 2d at 260. The lease also gave the tenant the option to purchase the property by notifying the landlord in writing. *Weiss*, 28 Ill. 2d at 260. Several years into the lease, the landlord served the

tenant with a notice demanding possession on April 1, 1961, because the option to renew had not been exercised by January 1 of that year. *Weiss*, 28 Ill. 2d at 261. On March 20, 1961, the tenant notified the landlord of his election to purchase the premises. *Weiss*, 28 Ill. 2d at 261. The landlord refused to sell, and the tenant filed an action seeking specific performance of the purchase option. *Weiss*, 28 Ill. 2d at 260. The trial court ruled in favor of the tenant, and the supreme court affirmed. The court rejected all of the landlord's arguments, including the argument that the tenant had breached the agreement in 1959 by failing to pay rent before the due date. *Weiss*, 28 Ill. 2d at 261. The court explained that although rent was due on April 1 of each year and the 1959 rent check was not delivered to the landlord until April 2, the landlord had immediately cashed the checked. *Weiss*, 28 Ill. 2d at 261. By accepting the payment, the court noted that the landlord "elected to treat plaintiff as a tenant under the terms of the lease." *Weiss*, 28 Ill. 2d at 261.

¶ 31 *Okey, Inc.* and *Weiss* are readily distinguishable, because they did not address the precise question at hand: whether a landlord "accepts" rent tendered by the tenant where the landlord does not deposit the checks. *Khan* answers this question and illustrates that a landlord waives a tenant's breach by *depositing* the tenant's rent checks, not merely by *possessing* them. In *Khan*, although the lease stated that rent was due on the first day of each month, the landlord routinely accepted late payments. *Khan*, 191 Ill. App. 3d at 43. However, in February 1988, the landlord sent a letter to the tenants advising them that it would no longer accept untimely payments. *Khan*, 191 Ill. App. 3d at 43-44. The tenants did not tender the check for the April 1988 rent until April 6, and the landlord filed a forcible entry and detainer action on April 7 (the lease contained a waiver of notice clause). *Khan*, 191 Ill. App. 3d at 44. The landlord then returned the rent check to the tenants on April 13. *Khan*, 191 Ill. App. 3d at 44. The appellate court

affirmed the judgment in favor of the landlord, rejecting the tenants' argument that the landlord had "accepted" the April rent check simply by having the check in its possession at the time suit was filed. *Khan*, 191 Ill. App. 3d at 44-45.

¶ 32 Pursuant to *Khan*, where the evidence in the present case showed that plaintiff did not deposit defendants' checks, the trial court reasonably found that the tenancy was not reinstated. Furthermore, the trial court determined that Yuksel did "everything he could possibly do to show that the [l]ease is no longer in full force and effect." Under the circumstances, and for the reasons stated above, we cannot say that this finding is against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 We affirm the judgment of the circuit court.

¶ 35 Affirmed.