2016 IL App (1st) 143621-U

SIXTH DIVISION
May 6, 2016

No. 1-14-3621

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LAKE VIEW TOWERS RESIDENTS ASSOCIATION, INCORPORATED, Plaintiff and Counterdefendant-Appellee, v. ALAN MILLS, as Independent Administrator of the Estate of Cara Taylor, deceased, Defendant and Counterplaintiff-Appellant.	)	Appeal from the Circuit Court of Cook County. No. 07 M1 711473 Honorable Nancy Arnold and Leonard Murray, Judges Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 ***Held:*** In this landlord-tenant dispute: (1) we dismiss the tenant's appeal regarding her claims for declaratory relief because those claims did not survive her death; (2) we find that her other claims did survive; (3) we hold that the trial court did not err in denying the tenant's motion for judgment notwithstanding the verdict on the retaliation claim she brought under the Chicago Residential Landlord and Tenant Ordinance; and (4) we vacate the order denying sanctions against the landlord and remand for an evidentiary hearing on, among other things, the factual issue of whether the landlord knew that, during the requisite 10-day notice period, the tenant had ceased the activity that precipitated the landlord's termination of the tenant's lease.

¶ 2 Cara Taylor was a tenant in a 500-unit apartment complex owned by defendant Lake View Towers Residents Association, Incorporated (Lake View). Lake View is a not-for-profit corporation which purchased the building in 1992 with the assistance of the United States Department of Housing and Urban Development, so the complex is home to many individuals, such as Taylor, whose rent is subsidized under various governmental programs. The corporation is governed by a board of directors and its members consist of the tenants living in the complex. When Lake View originally acquired the property, the corporate by-laws provided that the members would elect the directors through annual elections, essentially creating a resident-run management system similar to that used by condominiums. However, Lake View held no board elections for a number of years, and the holdover board amended the by-laws to extend the terms of the incumbent board members, establish stringent eligibility requirements for board membership, and eliminate the voting rights of the tenants, all of which resulted in the establishment of an entrenched self-perpetuating board. In essence, the changes allowed the board to hand-pick its own partisans to fill any vacancies on the board as they arose, without input from the tenants who were the members of the corporation.

¶ 3 Taylor was unhappy about these changes, so she and others solicited fellow tenants' signatures on a petition urging Lake View's board to hold elections as required by the original by-laws. Under the original by-laws, the tenant-members could call a special meeting of the board by filing a petition containing signatures of 10% of the members. Confined to a wheelchair, Taylor solicited signatures by moving throughout the complex and knocking on residents' individual unit doors. The management asked her to stop, citing Rule 32 of the complex's rules and regulations, which stated that "tenants shall not solicit, canvas [sic], or conduct any door-to-door activities in, on or about the premises without prior written approval

from management." Section 14 of the lease provided that every tenant must obey the rules and regulations.

¶ 4 On April 27, 2007, Lake View served Taylor with a 10-day notice of termination based on Taylor's "material non-compliance with the terms of [her] lease," more specifically, that "on or about April 23, 2007, April 26, 2007, and continuing you have repeatedly conducted door-to-door solicitation, canvassing or similar activities by which you have breached Section 14 of your lease *** and Rule 32 of the rules and regulations." The notice indicated that Taylor's tenancy was terminated effective May 11, 2007, and that she could discuss the notice with management up to 10 days from delivery of the notice.

¶ 5 On May 16, 2007, more than 10 days after Taylor received the notice of termination, Lake View filed a forcible entry and detainer lawsuit (eviction case) against Taylor alleging that she violated the rules and regulations by circulating the petition door-to-door. The complaint was verified under penalty of perjury by Tristan Barnett, the site manager, and signed by an unidentified attorney for the law firm that then represented Lake View; the attorney's signature is illegible.

¶ 6 The parties then engaged in contentious litigation against each other for almost 10 years. For the sake of brevity, we recite only those proceedings relevant to this appeal.

¶ 7 On August 24, 2007, Taylor filed a counterclaim seeking, among other things, various forms of equitable relief. She alleged that Lake View failed to comply with her demand that it convene an annual tenants' meeting as required by the association by-laws.

¶ 8 On December 6, 2007, Lake View filed a motion to voluntarily dismiss the eviction lawsuit. The trial court granted the motion on December 12, 2007, leaving only Taylor's counterclaim pending. On August 25, 2008, Taylor amended her counterclaim, and Lake View

then moved to dismiss certain counts of it pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2006)).

¶ 9 On February 27, 2009, the trial court granted that motion and dismissed counts I through III of the counterclaim with prejudice. Those counts all pertained to the election of board members and the annual meeting. When it dismissed those counts, the court specifically found both that they failed to state a valid causes of action, and that they were barred by Taylor's lack of standing because she sued individually, and not derivatively as a member of the Lake View corporation. The court later certified several questions under Illinois Supreme Court Rule 308 for interlocutory appeal by permission. See Ill. S. Ct. R. 308 (eff. Feb. 26, 2010). The questions essentially asked whether the trial court had correctly dismissed these counts. On March 12, 2013, this court denied the application for leave to appeal.

¶ 10 Count IV of Taylor's second amended counterclaim alleged that Lake View retaliated against her for her petitioning activities in violation of the Residential Landlord and Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-010 *et seq.*) when it filed the eviction case. Counts V and VI alleged that Lake View discriminated against her due to her status as a disabled person, in violation of the federal Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*) and the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (West 2008)), respectively.

¶ 11 Counts IV, V, and VI were tried before a jury in 2014. Because the trial was only held on Taylor's counterclaims, the court realigned the parties so that Taylor was referred to before the jury as the plaintiff, and Lake View as the defendant. In addition to the undisputed evidence supporting the facts which is summarized above, the following evidence relevant to this appeal was presented in Taylor's case-in-chief.

¶ 12 Tristan Barnett testified that he was the property manager during the times in question. He attended monthly board meetings and knew that the rules and regulations prohibited door-to-door activities for any reason. He identified the 10-day notice served on Taylor, which listed April 23 and 26, 2007 as days on which Taylor violated the rules by circulating petitions in the buildings. He stated that no other tenant was evicted for similar activities. He also identified his signature on the verification page of the eviction lawsuit. He stated that when he confronted Taylor regarding her activities, "her response was that she would not stop unless she is ordered by a court to do so." He also testified that the content of the petition was "immaterial" to his role in the process leading up to the filing of the eviction lawsuit.

¶ 13 Evelyn Thomas, a former tenant and board president, testified that under established practice, decisions on whether to evict tenants were made by the board after receiving a referral from management. She did not know who decided to file Taylor's eviction lawsuit, as she was no longer on the board at that time.

¶ 14 Taylor testified on her own behalf that she had passed petitions door-to-door in the buildings. No tenant whom she approached ever asked her to refrain from passing the petitions, but some declined to sign. Many others, however, signed happily, and still others expressed concerns to her about other issues in the building, which she noted in writing. At one point, Tristan Barnett called security guards to stop her from circulating the petitions. The guards tried to physically impede her access to various parts of the buildings. She specifically denied circulating the petitions during the 10-day period after receiving the pre-eviction notice, or at any time thereafter.

¶ 15 At the conclusion of Taylor's case-in-chief, the trial court directed a verdict in Lake View's favor on counts V and VI, which related to Taylor's status as a disabled person. At this

time, the court also commented that there had been no evidence presented that anyone from Lake View actually knew what the content of Taylor's petition was. In Lake View's case-in-chief, the following additional evidence was adduced regarding count IV, the remaining retaliation claim.

¶ 16 Michael Levine, the president of the management company hired to run the complex, stated that Barnett told him that plaintiff was circulating a petition door-to-door. He stated that the purpose of Rule 32, which was a common type of rule in buildings he managed, was to ensure tenant privacy and prevent disturbances. He testified that evictions based on a tenant's violation of rules, as opposed to non-payment of rent, were directed by and communicated to him by the board itself. The instructions he received in Taylor's case did not mention the content of her petitions. He testified that the board offered to provide Taylor a table in the lobby where she could solicit petition signatures. He also stated that Taylor never contacted him during the 10-day notice period. The notice itself suggested that Taylor could call him to follow-up on the notice if she desired. He also testified that Taylor stopped circulating the petition "as soon as" he served the notice upon her.

¶ 17 In rebuttal, Taylor testified that after receiving the 10-day notice, she requested to use a table in the lobby, but received no response from management.

¶ 18 After all testimony was presented, the court excused the jury. Lake View moved for a directed verdict, arguing that there was no evidence presented that anyone from Lake View knew what the contents of Taylor's petition were. Taylor cross-moved for a directed verdict, arguing that the evidence established a rebuttable presumption of retaliation in her favor which Lake View never rebutted (an issue which we explain in detail below). The trial court denied both motions.

¶ 19 During closing arguments, Taylor's counsel requested that the jury award her nominal damages of $1.00 on the retaliation claim. Counsel also focused on the petition's content, arguing to the jury that "the only reason they [Lake View] were doing this was because of the content of the petition." In contrast, Lake View's counsel argued that the evidence showed that her client was not motivated by the petition's content, but rather to foster a good residential environment by keeping peace in the building. The jury instructions specifically directed the jury to award nominal damages "such as $1.00" if it decided in favor of Taylor but determined she had not established that she suffered any damages. After deliberations, the jury found in favor of Lake View on the retaliation claim.

¶ 20 Taylor filed a motion for new trial or, in the alternative, judgment notwithstanding the verdict (*n.o.v.*). The motion relied on section 5-12-150 of the RLTO, which provides that when a tenant engages in certain protected conduct within one year of the landlord terminating her lease, that evidence creates a rebuttable presumption that the lease termination was retaliatory and therefore against public policy. Chicago Municipal Code § 5-12-150 (amended Nov. 6, 1991).

¶ 21 Taylor argued that there was undisputed evidence that she circulated petitions within a year of being sued by Lake View, and that circulating petitions among the tenants was a protected activity under section 5-12-150. Accordingly, she contended that this evidence created a presumption that Lake View's actions were retaliatory. She argued that Lake View bore the burden of rebutting that presumption, and never did so by presenting any evidence that its lawsuit against her was grounded in some basis other than her protected activity. Accordingly, she concluded that she should have prevailed solely by virtue of the presumption. The trial court denied Taylor's request for a new trial or judgment *n.o.v.*, and entered judgment on the jury's verdict in favor of Lake View.

¶ 22 Taylor also asked the court to revisit the original eviction case that Lake View had voluntarily dismissed seven years earlier. She filed a motion for sanctions against Lake View under Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)), arguing that the eviction lawsuit was "frivolous as a matter of law," since she had heeded the 10-day notice and stopped circulating petitions within the 10 days following her receipt of it. She claimed that her breach of the door-to-door circulation rule was curable, and that she in fact cured it simply by ceasing her circulation of petitions. Accordingly, she concluded, Lake View must have filed the case without first determining whether she persisted in circulating petitions notwithstanding the warning in the 10-day notice. The trial court denied this motion, as well, stating:

> "I think ultimately I would conclude that her activities were not a violation of a house rule, but I don't believe that's the standard for grant of a petition under 137. I think the standard is whether or not there's a reasonable basis to bring the action. And *** while I disagree with the interpretation of the Association here, it wasn't so far removed from the language in – the governing rules relative to activity by residents and guests that it should be sanctionable under 137."

The court did not address the issue of whether Lake View undertook any actions to determine whether Taylor continued circulating petitions within the 10-day period before filing the eviction case. This appeal followed.

¶ 23 In her briefs before this court, Taylor seeks: (1) reversal of the dismissal of her claims regarding the composition of the board of directors and its failure to call an annual meeting; (2) reversal of the trial court's denial of her motion for a directed verdict and her motion for

judgment *n.o.v.*; (3) reversal of the trial court's order denying her motion for sanctions against Lake View.

¶ 24 After this appeal had been fully briefed, Taylor died, and her attorneys filed a suggestion of death. We spread her death of record and requested that the parties submit additional memoranda addressing the issue of which claims survived Taylor's death. Pursuant to section 27-6 of the Probate Act of 1975 (the Survival Act) (755 ILCS 5/27-6 (West 2014)), we have substituted Alan Mills, as independent administrator of Taylor's estate, as a party in Taylor's stead.[1] See *Real v. Kim*, 112 Ill. App. 3d 427 (1983) (the right to bring a cause of action transfers to the decedent's estate's representative by operation of law). Mills is also one of the attorneys representing Taylor throughout this litigation.

¶ 25 We first address which claims survive Taylor's death. Lake View contends none of the claims involved in this appeal survived and that the appeal should be dismissed in its entirety. The Survival Act provides that:

> "In addition to the actions which survive by the common law, the following also survive: actions of replevin, actions to recover damages for an injury to the person (except slander and libel), actions to recover damages for an injury to real or personal property or for the detention or conversion of personal property, actions against officers for misfeasance, malfeasance, nonfeasance of themselves or their deputies, actions for fraud or deceit, and actions provided in Section 6-21 of 'An Act relating to alcoholic liquors.' " 755 ILCS 5/27-6 (West 2014).

[1] For simplicity of expression, we will refer to Taylor's administrator as "Taylor."

¶ 26 Counts I, II, and III of Taylor's second amended counterclaim raised claims with respect to Lake View's failure to hold annual board meetings as required by its by-laws for a number of years. Taylor sought a declaratory judgment that the improperly selected board's by-law amendments and the new board itself were invalid. Taylor also sought relief relating to her voting rights as a tenant under the original by-laws. The circuit court dismissed these counts pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) because they failed to state a claim upon which relief could be granted, and also for lack of standing, because Taylor brought these claims individually rather than derivatively. Taylor appealed the dismissal order before her death.

¶ 27 Taylor's counsel has conceded that counts I, II and III did not survive Taylor's death. We accept this concession. Since Taylor is deceased and no longer a tenant, this court cannot grant relief with respect to her voting rights as a tenant. The Survival Act does not list claims for injunctive relief, and precedent suggests that claims such as Taylor's do not survive the plaintiff's death. *Williams v. Palmer*, 177 Ill. App. 3d 799 (1948) (claim of pastor for reinstatement in his position abated upon his death due to the doctrine of impossibility). We therefore dismiss the appeal as to those counts.

¶ 28 In counts V and VI of her second amended counterclaim, Taylor contended that Lake View discriminated against her on the basis of her status as a disabled person. No appeal involving those counts is before us. The only remaining count, count IV, alleged that Lake View illegally retaliated against Taylor. It was not dismissed and was tried to verdict. Lake View contends that this claim did not survive Taylor's death, but we disagree.

¶ 29 This remaining claim is before us in the context of Taylor's appeal of the trial court's denial of her motion for directed verdict and her motion judgment *n.o.v.* on count IV, her retaliatory eviction claim under the RLTO.

¶ 30 Under section 5-12-150 of the RLTO, a tenant who is successful on a retaliatory eviction claim can recover, among other things, two times the monthly rent and twice the monetary damages sustained by her. Chicago Municipal Code § 5-12-150 (amended Nov. 6, 1991). At trial, she requested that the jury award nominal damages, but in this court, she seeks the two-month rent liquidated damage remedy established in section 5-12-150. She also requests attorney fees under section 5-12-180 of the RTLO, which provides that a "prevailing plaintiff in any action arising out of a landlord's or tenant's application of the rights or remedies made available in this ordinance shall be entitled to all court costs and reasonable attorney's fees." Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991). If we were to reverse the denial of Taylor's motions, it would require the entry of judgment in her favor on her retaliation claim and may result in awards for damages and attorney fees, which would inure to the benefit of her estate.

¶ 31 There is a dearth of authority regarding whether private causes of action created by an ordinance survive the plaintiff's death, but there is ample authority with respect to the survivability of causes of action created by statutes. An ordinance such as the RTLO, enacted pursuant to Chicago's constitutional home rule authority, supersedes any conflicting statute. *City of Evanston v. Create, Inc.*, 85 Ill. 2d 101, 108 (1981). Accordingly, the RTLO is the functional equivalent of a statute, and we will look to authority regarding survivability of statutory actions for guidance.

¶ 32 The Survival Act allows a decedent's administrator to maintain those common law or statutory actions which, as here, had already accrued to the decedent prior to her death. *Nat'l Bank of Bloomington v. Norfolk & W. Ry. Co.*, 73 Ill. 2d 160, 172 (1978). Illinois courts have found that claims for compensatory damages under a host of regulatory and remedial statutes survive the plaintiff's death. See, *e.g.*, *Myers v. Heritage Enterprises, Inc.*, 332 Ill. App. 3d 514 (2002) (claim for damages under the Nursing Home Care Act); *Baksh v. Human Rights Comm'n*, 304 Ill. App. 3d 995, 1001 (1999) (claim for damages under the Human Rights Act was "personal property" under the Survival Act and estate could properly substitute for the deceased plaintiff); *Sickler v. Nat'l Dairy Products Corp.*, 67 Ill. 2d 229, 235 (1977) (claim brought under the Structural Work Act survived).

¶ 33 The holdings in these cases were, in large part, commanded by our supreme court's determination that the term "personal property" in the Survival Act must be broadly construed:

> "Whatever may be the distinction between a property right in its most general sense and 'real or personal property,' we cannot consider property tangible merely because people usually thought of it that way in the 19th century. Such a rule of statutory construction would lead to absurd consequences and would largely defeat the object of the Survival Act in modern society. Broad terms like 'personal property' must be construed with reference to the conditions of present-day life. The fact that particular forms of it were not in existence at the time of enactment, or were not specifically contemplated by the lawmakers, does not limit the application of the statute. Legislative enactments which are

> prospective in operation, and phrased in terms comprehensive enough to include things of the same class subsequently coming into existence, should be held applicable where such is consistent with the general legislative purpose." *McDaniel v. Bullard*, 34 Ill. 2d 487, 490-91 (1966); see also *Bryant v. Kroger Co.*, 212 Ill. App. 3d 335, 342 (1991) (holding that the term "personal property" in the Survival Act "is a generic term which should not be limited to just tangible goods").

This authority supports our conclusion that Taylor's claim under the RTLO survived her death.

¶ 34 We find further support for that conclusion in the "actions for fraud or deceit" clause in the Survival Act. " 'Generally, fraud means "anything calculated to deceive, including acts, omissions and concealments involving a breach of legal or equitable duty, trust or confidence resulting in damage to another." ' " *Duffy v. Orlan Brook Condominium Owners' Ass'n*, 2012 IL App (1st) 113577, ¶ 33, (quoting *Vermeil v. Jefferson Trust & Savings Bank of Peoria*, 176 Ill. App. 3d 556, 564 (1988)). Since the gist of a retaliatory eviction claim is that a landlord proffered a false basis as a pretext to justify the tenant's eviction, so as to conceal the actual basis, it fits within the rubric of "fraud or deceit" and can therefore survive the tenant's death.

¶ 35 We also agree with Taylor that her claim for sanctions under Illinois Supreme Court Rule 137 survived her death. Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994). The purpose of the rule is "to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions based upon unsupported allegations of fact or law. It is not intended to simply penalize litigants for the lack of success; rather, its aim is to restrict litigants who plead frivolous or false matters without any basis in law." *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15

(citing *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074 (1995)). Unlike a cause of action which the plaintiff can present or withdraw as she wishes, Rule 137 sanctions do not belong solely to a party; a court can impose sanctions on its own motion. Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994). Accordingly, the rule is a tool to vindicate the powers of the court, not merely to grant a personal right to an individual party. If we were to determine that the sanctions motion did not survive Taylor's death, that holding would thwart the remedial purposes of the rule by allowing those responsible for filing a lawsuit which was allegedly filed without good faith to go unpunished. Additionally, the sanctions motion seeks attorney fees that Taylor incurred for her defense of the eviction claim. Those fees would inure to the benefit of her estate. (The motion does not seek fees for the counterclaim.) Accordingly, we find that Taylor's death does not prevent us from reviewing her claim that the trial court improperly denied sanctions under Rule 137.

¶ 36 We now review the merits of the surviving claims. As noted above, Taylor moved for a directed verdict at the close of all the evidence, and the trial court denied that motion. After the jury returned its verdict in favor of Lake View, Taylor made similar arguments in her motion for judgment *n.o.v.* She was required to do so to preserve her right to appeal the denial of the motion for directed verdict. 735 ILCS 5/2-1202(a) ("If the court denies the motion or reserves its ruling thereon, the motion is waived unless the request is renewed in the post-trial motion.")

¶ 37 A judgment *n.o.v.* is warranted "in those limited cases" where all of the evidence adduced at trial, " 'when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.' " *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992) (quoting *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967)). In making this determination, a trial court weighs neither the evidence nor the

credibility of the witnesses. *Id.* "Most importantly, a judgment *n.o.v.* may not be granted merely because a verdict is against the manifest weight of the evidence." *Id.* The identical rules apply with respect to motions for directed verdict at the close of all the evidence. *Maple v. Gustafson*, 151 Ill. 2d 445, 453, n. 1 (1992). Our standard of review on both issues is *de novo*. *Lawlor*, 2012 IL 112530 at ¶ 37.

¶ 38 Taylor's arguments on these issues focus on shifting burdens of proof. She contends that the RLTO establishes a rebuttable presumption that the eviction lawsuit was retaliatory, if the lawsuit chronologically followed a tenant's exercise of an RLTO-protected activity. Here, there was undisputed evidence that Lake View sued to evict her immediately after she exercised petitioning activities. She argues that since she duly established the requisite presumption, Lake View was required to rebut it to prevail. Taylor claims that Lake View presented no evidence whatsoever rebutting the presumption by showing that it had some other basis to evict Taylor, the jury's verdict cannot stand.

¶ 39 Resolving this issue requires us to review the principles governing both retaliatory evictions and the operation of rebuttable presumptions in jury cases. The Retaliatory Eviction Act (765 ILCS 720/1 *et seq*. (West 2012)) prohibits landlords from terminating or refusing to renew a tenant's lease because she complained to governmental authorities about the condition of the leased property. Accordingly, retaliation can be an affirmative defense to an otherwise valid eviction complaint. *American National Bank by Metroplex, Inc. v. Powell*, 293 Ill. App. 3d 1033, 1044 (1997). Interpreting the predecessor to the Retaliatory Eviction Act, our supreme court stated that if "the landlord's action is retaliatory, the landlord is not entitled to possession of the property and the action cannot be maintained." *Clore v. Fredman*, 59 Ill. 2d 20, 27 (1974). Chicago tenants such as Taylor enjoy even greater protections than the statute provides, because

the RLTO expands the doctrine of retaliatory eviction to include not only complaining to government authorities, but also to reporting issues to the news media, joining a tenants' union, and testifying in court about the landlord. Chicago Municipal Code § 5-12-150(b), (e), (f) (amended Nov. 6, 1991). And, unlike the statute, the RTLO establishes a rebuttable presumption that an eviction is retaliatory if it occurs within one year of the tenant's exercise of an activity protected by the RTLO. .

¶ 40 Here, the situation is especially complicated because the allegedly improper pretext and the landlord's stated basis for eviction are so closely related. The specific basis of the lease termination, according to both the 10-day notice and the eviction lawsuit itself, was Taylor's petition circulation in violation of the rules. That leaves us with the somewhat metaphysical question of how Lake View could have ever rebutted the presumption of retaliation under Taylor's view of the case. Section 5-12-140(a) of the RLTO makes it clear that a lease cannot abrogate rights granted under the RLTO. Chicago Municipal Code § 5-12-140(a) (amended Nov. 6, 1991). Taylor's retaliation claim asserts that the RLTO protects her right to circulate petitions door-to-door, because it is the functional equivalent of forming a tenants' union or that is encompassed by the ordinance's protection for a tenant who has "exercised any right or remedy provided by law." Chicago Municipal Code § 5-12-150(g) (amended Nov. 6, 1991). Lake View contends that tenants' rights under the RLTO are not so broad as to encompass disturbing residents by knocking on their doors, even if that activity was for the purpose of forming a tenants' union or for some other purpose protected by the RLTO. For the reasons we explain below, we need not resolve whether Taylor's petitioning activity was protected by section 5-12-150 of the RTLO.

¶ 41 The "bursting bubble" principle that generally applies to rebuttable presumptions in civil cases and applies to the landlord's burden under the RTLO. Under this principle, "a presumption operates until it is rebutted, and when rebutted, it evaporates and has no further effect on the action." *Franciscan Sisters Health Care Corp. v. Dean*, 102 Ill. App. 3d 61, 70 (1981).

¶ 42 The pattern jury instructions for a common rebuttable presumption scenario, the presumption of undue influence in a will contest, are illustrative here. The comments to instruction 200.03 provide that if:

> "the court determines that the defendant has produced sufficient evidence to overcome the presumption, then the 'bubble bursts' and the presumption disappears from the case. ***. The jury is given the usual issues and burden of proof instructions, but the presumption is gone and the jury is told nothing about the presumption.
>
> If the defendant's evidence is insufficient to rebut the presumption, then the presumption remains operative. If the defendant has not attacked the basic facts or if the evidence of the basic facts is so favorable to the plaintiff that it satisfies the *Pedrick* standard, then the court will direct a verdict for the plaintiff. Otherwise, the case will be submitted to the jury under this instruction for the jury to determine the basic facts. " Illinois Pattern Jury Instructions, Civil, No. 200.03 cmt. (2008).

If the presumption is rebutted as a matter of law, what remains is a factual question for the finder of fact to resolve. *In re Estate of Pawlinski*, 407 Ill. App. 3d 957, 965 (2011).

¶ 43 In this case, the parties acted in apparent ignorance of the requirements for jury instructions in cases involving a rebuttable presumption. Once the trial court denied both parties' respective motions for a directed verdict at the close of the case, they left the entire question to the jury to resolve with no reference whatsoever to the applicable presumption.

¶ 44 This background allows us to examine the jury instructions to place the jury's verdict in proper context and resolve whether the trial court correctly denied the motion for directed verdict and the motion for judgment *n.o.v.* The jury was instructed that section 5-12-150 of the RLTO, which we will call the "exception clause," provided: "It is declared to be against public policy of the City of Chicago for a landlord to take retaliatory action against a tenant, *except for violation of a rental agreement* or violation of a law or ordinance." (Emphasis added.) A copy of the lease containing the prohibition against door-to-door circulation was admitted into evidence and published to the jury.

¶ 45 The jury instructions characterized Taylor's claim under section 5-12-150 as follows:

> "Cara Taylor claims that Lake View Towers Residents Association, Inc. violated the Chicago Residential Landlord Tenant Ordinance by attempting to terminate her tenancy in retaliation for her attempt to circulate a petition calling for the Association to hold a long overdue election for the Board of Directors."

The wording of that particular instruction focused on Taylor's act of circulating a petition, rather than the petition's content.

¶ 46 However, the jury was then instructed that:

> "If you find that the Defendant tried to evict Plaintiff *because of the contents of Plaintiff's petition*, then you must find in favor of

> Plaintiff on Count IV. If you find that defendant tried to evict Plaintiff *without regard to the content of her petition*, then you must find in favor of Defendant on Count IV." (Emphasis added).

Taylor's counsel proffered this instruction and the court tendered it over Lake View's objection. In fact, during the jury instruction conference, Taylor's attorney stated that "the issue for the jury is was she being evicted because she was going door to door or was she being evicted because of the contents of the petition. I think that's clearly the issue before the jury." Taylor raises no claims regarding this instruction on appeal, but could not do so in any event because it was she who propounded it. We must, therefore, review her appeal in light of this instruction. As our supreme court has explained:

> "A party forfeits the right to challenge a jury instruction that was given at trial unless it makes a timely and specific objection to the instruction and tenders an alternative, remedial instruction to the trial court. [Citation.] These requirements ensure that the trial court has the opportunity to correct a defective instruction and to prevent the challenging party from gaining an unfair advantage by failing to act when the trial court could remedy the faulty instruction and then obtaining a reversal on appeal." *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 557-58 (2008).

¶ 47 During the almost decade-long course of the proceedings below, Taylor's theory of the case evolved considerably, but the pleadings did not reflect that evolution. She presented three different theories of recovery: (1) in the counterclaim, she characterized Lake View as a tenants'

union and invoked the tenants' union protection clause of the RLTO; (2) in the jury instructions, she focused on whether Taylor was evicted because of the content of her petition, instructions which also set forth the "exception clause"; and (3) in her post-trial motions and this appeal, she bypasses the fact that the jury instructions never addressed rebuttable presumptions but argues that she should prevail because Lake View never rebutted the presumption of retaliation.

¶ 48 The distinction in the last-mentioned instruction relating to the petition's content is crucial to our analysis. Because of the instruction's specific reference to the petition's content, the jury could have reasonably found that Taylor did not meet her burden of proof because it determined that Lake View was motivated by factors other than the actual *content* of her petition – for instance, merely by a desire to maintain peaceful hallways and limit disturbances to residents. It might also have determined that the petition circulation was not protected activity under the RTLO. As noted above, there was ample evidence presented that Lake View management was motivated by other tenants' complaints that Taylor's actions disturbed them in violation of the rules. Resolving any conflict in this evidence and deciding what weight to give each witness's testimony was for the jury to resolve, and it is not our role to usurp the function of the jury by substituting our own judgment for its. *Maple*, 151 Ill. 2d at 452.

¶ 49 The wording of these instructions compels us to find that the evidence viewed in the light most favorable to Lake View did not so overwhelmingly favor Taylor that no contrary verdict could ever stand. Accordingly, the trial court correctly rejected Taylor's motion for a directed verdict at the close of all the evidence and her motion for judgment *n.o.v.* on Count IV.

¶ 50 Taylor also contends that the trial court should have granted her motion for sanctions under Illinois Supreme Court Rule 137. The rule provides that:

> "(a) *** Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record ***. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. ***. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994).

The purpose of the rule is to prevent parties from abusing the judicial process by filing vexatious and harassing actions based upon unsupported allegations of fact or law. *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 285 (2001). Implicit in this rule is a requirement that an attorney promptly dismiss a lawsuit once it becomes evident that it is unfounded, and a violation of that continuing duty of inquiry is itself sanctionable. *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 13 (quoting *Rankin v. Heidlebaugh*, 321 Ill. App. 3d 255, 267 (2001)). If the rule is violated, the court may, upon motion or its own initiative, impose sanctions upon the individual who signed the filing, the represented party, or both. Ill. S. Ct. R. 137(a) (eff. Feb. 1, 1994); see also *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 13.

¶ 51 The rule is penal in nature and therefore must be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). The standard for evaluating a party's conduct under the rule is one of reasonableness under the circumstances existing at the time the pleading was filed. *In re Marriage of Schneider*, 298 Ill. App. 3d 103, 109 (1998). The decision of whether to impose sanctions rests within the discretion of the trial court, and we will not disturb the trial court's decision absent an abuse of discretion. *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487.

¶ 52 Taylor's sanction argument is centered on the 10-day pre-eviction notice Lake View served upon her. In a typical case where the notice is based on the failure to pay rent, the tenant's payment of rent in full during the notice period cures the default and prevents the landlord from suing on the basis of the late rent. 735 ILCS 5/9-209 (West 2012); see also *Okey, Inc. v. American National Bank & Trust Co. Under Trust Dated Nov. 30, 1964, Known as Trust No. 20912*, 96 Ill. App. 3d 987 (1981). Here, however, the pre-eviction notice was not based on non-payment of rent, but rather by Taylor's act of obtaining petition signatures door-to-door.

¶ 53 The evidence adduced at trial showed that Taylor did indeed circulate petitions door-to-door before receiving the 10-day notice. However, she specifically denied doing so after receiving the notice. The property manager corroborated that assertion, and no other witness contradicted that denial.

¶ 54 The basic rule in Illinois is that a landlord may terminate the lease of a tenant who materially violates the lease for a reason other than non-payment of rent, after giving a 10-day notice to the tenant, regardless of whether the tenant cures the default within the 10-day period. See 735 ILCS 5/9-210 (West 2014). However, section 5-12-130(b) of the Chicago RLTO modifies that rule in a manner favorable to tenants. The relevant provision provides, in pertinent part:

> "If there is material noncompliance by a tenant with a rental agreement ***, the landlord of such tenant's dwelling unit may deliver written notice to the tenant specifying the acts and/or omissions constituting the breach and that the rental agreement will terminate upon a date not less than 10 days after receipt of the notice, *unless the breach is remedied by the tenant within that period of time*. If the breach is not remedied within the 10 day period, the residential rental agreement shall terminate as provided in the notice." (Emphasis added). Chicago Municipal Code § 5-12-130(b) (amended Nov. 6, 1991).

The italicized language allows Chicago tenants to cure breaches of their non-compliance with their leases simply by ceasing the complained-of activity. Applying this RLTO provision in the context of Supreme Court Rule 137, a landlord who seeks to terminate a tenancy based on non-compliance with a curable violation of the lease cannot file a lawsuit to evict the tenant without having a good faith belief that the tenant had neither cured nor remedied the breach during the 10-day notice period. It follows perforce that a landlord who files such a lawsuit without such a good-faith basis can be liable for sanctions under Rule 137.

¶ 55 The trial court summarily denied Taylor's sanctions request, apparently based only on the evidence presented at trial. In a recent case, our supreme court set forth standards governing our review of such a denial:

> "The plain language of Illinois Supreme Court Rule 137 imposes no requirement on a circuit court to explain its reasons for denying a motion for sanctions. The appellate court, when

> reviewing a circuit court decision to deny sanctions, should look to the record to determine whether the circuit court had an adequate basis for making its decision. In the event the appellate court finds that the record is insufficient for such purposes, then remanding the case may be appropriate." *Lake Environmental*, 2015 IL 118110 at ¶ 19; see also *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 570 (1993) (court should hold a hearing on both the merits and the claimed amount of recovery in a Rule 137 proceeding, unless the relevant issues may be resolved by an examination of the record as it already stands.)

¶ 56 Lake View's eviction complaint against Taylor had been voluntarily dismissed seven years before the trial that was held on the retaliation counterclaim. Accordingly, neither party would have been necessarily expected to produce evidence at the retaliation trial regarding the state of Lake View's or its attorneys' knowledge, on the date Lake View filed the eviction lawsuit, of whether Taylor remedied her violation during the 10-day notice period. That leaves us lacking a complete record regarding Lake View's good faith basis for filing the eviction lawsuit, something which would assist us in determining whether: (1) the trial court's decision was an informed one; (2) it was based on valid reasons that fit the case; and (3) it followed logically from the application of the reasons stated to the particular circumstances of the case. All of these determinations are required for us to make an informed review of the denial of Rule 137 sanctions. See, *e.g.*, *North Shore Sign Co. v. Signature Design Group, Inc.*, 237 Ill. App. 3d 782, 790-91 (1992). Two witnesses testified affirmatively that Taylor stopped circulating petitions during the 10-day notice period.

¶ 57 Accordingly, we vacate the order denying sanctions and remand for the trial court to develop an appropriate evidentiary record regarding whether the filing was grounded "in fact" or was "warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it [was] not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." In particular, the court should focus on what investigation, if any, those involved made regarding whether Taylor had cured her violation of the rules after receiving the 10-day notice. Upon doing so, the trial court should reconsider whether sanctions are appropriate, and if so, what they should be. The court may take judicial notice of all prior testimony presented at the trial. The court should also follow the standards for presentation and review of RLTO fee petitions that we adopted in *Plambeck v. Greystone Management & Columbia National Trust Co.*, 281 Ill. App. 3d 260, 273 (1996), and limit any awarded fees to those reasonably attributable to defending against the eviction lawsuit while it was still pending and the portion of this appeal related to the sanctions issue.

¶ 58 CONCLUSION

¶ 59 For these reasons, we affirm the circuit court's judgment on the jury verdict in favor of Lake View and against Taylor on the RLTO retaliation claim, vacate the order denying sanctions and remand for further proceedings on the sanctions motion, and dismiss the appeal of the orders denying Taylor's claims for declaratory relief.

¶ 60 Affirmed in part, vacated and remanded in part with instructions, and dismissed in part.