2016 IL App (2d) 151004-U
No. 2-15-1004
Order filed September 12, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

VILLA VENETO CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellant,	)	
v.	)	No. 14-LM-3082
MICHAEL MEILAHN and ALL UNKNOWN OCCUPANTS,	)	Honorable Brian J. Diamond, Judge, Presiding.
Defendants-Appellees.	)	

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's determination that the condominium association did not satisfy its burden to prove that it was entitled to possession of the condominium unit and to a judgment of assessments, fees, and costs.

¶ 2 Plaintiff-appellant, Villa Veneto Condominium Association, filed a complaint pursuant to section 9-102(7) the Forcible Entry and Detainer Act (Act) (735 ILCS 5/9-102(7) (West 2014)). It sought possession of defendant-appellee's, Michael Meilahn's, condominium. It also asked for a judgment of assessments, fees, and costs, based on a partial non-payment of assessments

over a nine-month period between January and September 2014. The trial court determined that the Association failed to prove its case, and it entered a judgment in favor of Meilahn.

¶ 3 The Association moved to reconsider, arguing that it proved a *prima facie* case for possession and the "burden should have shifted" to Meilahn to prove that the Association was not entitled to possession. It also argued that, even if the trial court accepted as true all of Meilahn's testimony and evidence, there was still a $91 shortfall, and, therefore, it was entitled to possession and judgment in the amount owed and for additional fees and costs. The court denied the motion to reconsider, again stating that the Association failed to prove its case. It explained that it found the Association's records unreliable and its witness's testimony "vague," and, in contrast, it found Meilahn credible.

¶ 4 On appeal, the Association raises the same arguments that it raised in its motion to reconsider. In each of its arguments, the Association fails to appreciate that it bore the burden of proof. As we will explain, in a forcible entry and detainer case, it is not enough for the party seeking possession to establish a *prima facie* case. Rather, even after establishing a *prima facie* case, the party seeking possession continues to carry the burden of proving, in light of all the evidence, that it is entitled to possession. A defendant does not need to prove his or her right to possession. Because Meilahn was not required to prove that he was entitled to possession, the alleged $91 shortfall does not control the outcome. The court found dispositive the weaknesses in the Association's case, not the alleged weaknesses in Meilahn's case. The weaknesses in the Association's case are further compounded on appeal by its failure to cite adequate authority and present an adequate record. Particularly troubling is the absence of Meilahn's exhibit No. 2, which was admitted at trial in support of Meilahn's assertion that he made a critical $1,242.68

payment to the Association. Thus, we reject the Association's arguments, and we affirm the court's judgment in favor of Meilahn.

¶ 5 I. BACKGROUND

¶ 6 Broadly, Meilahn purchased his condominium in 2013. The Association's management changed in 2014, and, due to various communication failures, there is a dispute as to whether Meilahn paid the full assessments due between January and September 2014. From the scant record and testimony, we set forth the following key dates and events.

¶ 7 In July 2013, Meilahn purchased a condominium unit in the Villa Veneto complex in Bloomingdale. Meilahn arranged through Chase bank for an approximate $300 monthly assessment payment to be sent automatically to the Association's management company (first management company). The Association ended its affiliation with the first management company on December 31, 2013.

¶ 8 Meanwhile, in November 2013, a second management company, Associa Vanguard Community Management (Vanguard), informed the condominium owners that it would take over management beginning January 1, 2014. Vanguard, as an agent of the Association, sent a form letter, dated November 14, 2013, to all condominium units within the complex. The letter had *no* inside name and address, such as "Michael Meilahn, 330 Veneto, Unit 16-3." Its generic salutation read: "Dear Association Members at the Villa Veneto Condominium Association." As Vanguard's Lisa Evans testified, "It was a mass mailing." The letter provided the owners with contact information, and it set forth three payment methods. Meilahn averred that he never received the letter. (No sample envelopes are in the record, and it is unclear whether there were envelopes. If so, it is unclear whether the envelopes set forth specific names and addresses.)

¶ 9 Vanguard began its management January 1, 2014. According to Meilahn, between January 1, 2014, and April 30, 2014, the automatic payments continued to be delivered to the first management company. The first management company forwarded the payments to Vanguard. Vanguard acknowledged that it received at least some of these payments, but it denied receiving all the payments. Vanguard did not notify Meilahn that he should stop sending payments to the first management company. According to Meilahn, in May 2014, he received a letter from Vanguard, telling him that he was behind in his payments. Therefore, he contacted Vanguard telephonically and, later, arranged with Chase to have the assessment paid automatically to Vanguard. Prior to May 2014, Meilahn did not know that Vanguard managed the community.

¶ 10 According to Evans, this telephone conversation took place in April 2014, not May 2014. Someone at Vanguard documented the conversation, but it was not she. The trial court asked to see Vanguard's notes regarding the April conversation, but the Association declined to submit them, explaining that the notes also contained privileged information that it did not want to disclose. The court sustained Meilahn's objection to further testimony concerning the telephone call.

¶ 11 Between May and August 2014, the payments meant for Vanguard were returned to Meilahn's account. The testimony is scant, but, according to Meilahn, he made approximately six phone calls to determine why the payments were returned. It is not clear from the testimony whether Meilahn placed these calls to Chase or to Vanguard. Meilahn submitted exhibit No. 1, which was a computer printout of his Chase account history. The exhibit corroborated Meilahn's

testimony, because it showed the returned payments.[1] The Association objected to exhibit No. 1, arguing lack of foundation. The trial court asked to review the exhibit, and it decided to admit the exhibit.

¶ 12 In June 2014, the Association sent another overdue letter to Meilahn. Evans testified that Vanguard sent overdue letters for amounts over $5 on the 15th of each month. Per this practice, Meilahn should have received overdue notices months before the alleged debt grew to over $1,000. Evans acknowledged, however, that she only had a record of the June 2014 letter, not the other letters.

¶ 13 On August 18, 2014, the Association served Meilahn with a 30-Day Notice and Demand for Possession letter, signed by the Association Board and composed by the Association's law firm pursuant to section 9-104.1 of the Act. 735 ILCS 5/9-104.1 (West 2014). The letter informed Meilahn that he owed the Association $1,710.01 in assessments through August 12, 2014, and an additional $240.76 in legal fees and costs. The letter informed Meilahn that, if he did not pay the full amount, including fees and costs, within 30 days, the Association would file a complaint for possession and judgment for the amount owed.

¶ 14 Between August 26, 2014, and September 3, 2014, Meilahn sent a series of e-mails to the Association's law firm. In the e-mails, Meilahn stated that, in May 2014, Vanguard must have provided him with the wrong account information. Therefore, Meilahn corrected the account information, calculated that he owed $1,242.68 for returned payments between May and August 2014, and paid it. Meilahn asked for a corrected accounting. While he was willing to pay the balance owed, he was not willing to pay fees and costs. In Meilahn's view, the fees and costs

[1] The returned payments represented in the exhibit do not precisely match with the dates referenced in the testimony.

accrued due to Vanguard's poor communication, not his: "I feel that I put [in a] reasonable amount of effort to clear [up] the issues[,] but there's nothing I could do without Vanguard's cooperation and their unwillingness to help."

¶ 15 On September 3, 2014, the Association's law firm responded via e-mail that, per Vanguard's phone records, Vanguard notified Meilahn of the new management information in April 2014, not May 2014. The law firm instructed Meilahn to pay the full amount set forth in the demand. However, the law firm also directed, "the balance is owed no matter what and they cannot even discuss waiving late fees with the board until the balance is satisfied first."

¶ 16 On September 23, 2014, despite having just implied that it was willing to negotiate following the payment of assessments, the Association filed its complaint for possession. In its complaint, the Association now alleged that Meilahn owed $2,485.36 in assessments,[2] plus additional fees and costs, bringing the total to $3,017.11. The total did not take into account the $1,242.68 payment that Meilahn stated he had made in satisfaction of the May through August 2014 returned payments.

¶ 17 After Meilahn was served with the September complaint, he contacted Vanguard to again dispute its accounting. In November 2014, Meilahn asked via e-mail why he had not been credited for his $1,242.68 payment. As recorded in the trial transcripts during direct examination:

[2] We note upfront that the allegation of $2,485 in assessments is curious, where the 30-Day Demand alleged $1,710.01 in assessments, and only the September 1, 2014, $310 assessment came due in the interim.

"Q. And, sir, did you tender to that Association a payment [in August 2014][3] in the amount of $1,242.68?

A. Yes.

Q. And what happened to that payment?

A. They had no record of it.

Q. And was that online payment sent from your account to [Vanguard]?

A. Yes ***.

* * *

Q. Did you inquire of the current management company what happened to that $1,200 [payment]?

A. Yes

Q. And what response did you get when you contacted them?

A. They told me I needed to make a copy of it and e-mail it to them or send it to them.

Q. And did you do that?

A. Yes.

Q. And when did you do that?

A. I did that on—I did that in November of 2014.

* * *

Q. But, in any event, it's never been credited to your account?

[3] The attorney mistakenly said November 2014. Meilahn sent the e-mail "proof" of the August $1,242.68 in November 2014. This is supported by Meilahn's first reference to the payment in the August 26, 2014, to September 3, 2014, e-mails.

A. No.

Q. But what you sent them was proof, and I will mark that as Defendant's exhibit No. 2, is that the letter you sent them with regard to that payment?

A. Yes."

Meilahn moved to admit exhibit No. 2. The Association reviewed exhibit No. 2 and stated that it had no objection. However, exhibit No. 2 is absent from the appellate record.

¶ 18 After the September 23, 2014, complaint, there was no dispute that Meilahn paid his monthly assessments. Thus, there was no controversy regarding Meilahn's payment to the first management company in 2013, and there was no controversy regarding Meilahn's payment to Vanguard from October 2014 through the date of hearing in June 2015.

¶ 19 At the hearing in June 2015, the Association called one witness, Evans. Meilahn testified in his own case. The witnesses testified as set forth above.

¶ 20 The trial court denied the Association's request for possession and judgment. It stated:

"All right. Well, it is the burden of the plaintiff. I think the evidence is inconclusive at this point. I find that the plaintiff has not met their burden in this case given the proofs that have been offered by the defense and by the plaintiff.

I am going to deny, I am going to find that there haven't been proper proofs on the plaintiff's behalf."

¶ 21 The Association moved to reconsider, arguing that it proved a *prima facie* case for possession and the "burden should have shifted" to Meilahn to prove that the Association was not entitled to possession. It also argued that, even if the trial court accepted as true all of Meilahn's testimony and evidence, there was still a $91 shortfall, and, therefore, it was entitled to possession and judgment in the amount owed and for additional fees and costs.

¶ 22 The trial court rejected the Association's arguments:

> "You [Association] presented your records. I found the records that were presented were not reliable, simple as that. That given the testimony of your witness, who was vague on what she knew and didn't know firsthand, given the fact that she took over, her associat[ion] took over for the prior management[.]"

The court also stated that this case was largely one of credibility. It found Meilahn credible, particularly when he averred that he did not receive notice of the change in management and that he made the payments. ("Particularly that he did not receive notice that the change that the payments were made…" [*sic*]) In the court's view, Meilahn's testimony on these points further undermined the reliability of the Association's records. It explained:

> "[Meilahn's testimony] *** undermined the records that you depended on in your case which is why I found a failure to the burden of proof. So you can't prove that he didn't make payments unless you have reliable records to show that he didn't make them. And I find that the records that you had in this case were not reliable, both those that existed before associate [*sic*] and the ones that you presented because there was doubt as to their accuracy. It's as simple as that. And it really was just a credibility case. So[,] I'm going to deny your motion."

This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 The Association argues, as it did in its motion to reconsider, that it proved a *prima facie* case for possession and the "burden should have shifted" to Meilahn to prove that the Association was not entitled to possession. It also argues that, even if the trial court accepted as true all of Meilahn's testimony and evidence, there was still a $91 shortfall, and, therefore, it was

entitled to possession and judgment in the amount owed and for additional fees and costs. For the reasons that follow, we cannot say that the trial court's determination that the evidence was "inconclusive," such that the Association was not entitled to possession, was against the manifest weight of the evidence. See, *e.g.*, *Harper Square Housing Corp. v. Hayes*, 305 Ill. App. 3d 955, 964 (1999).

¶ 25 We reject the Association's arguments, because the Association fails to fully appreciate that it carried the burden of proof. After reviewing forcible entry and detainer procedure and discussing the Association's burden of proof, we address two weaknesses in the Association's case: its inadequate notice and its contradictory payment directives. Each of these weaknesses is compounded on appeal due to the Association's failure to cite adequate authority and to present a complete record.

¶ 26 We remind the Association that "a reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Issues that are ill-defined or insufficiently presented may be forfeited. *Gandy*, 406 Ill. App. 3d at 875. Additionally, an appellant has the burden to present a sufficiently complete record of the trial proceedings to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). In the absence of an adequate record, it will be presumed on appeal that the trial court's order was in conformity with the law and had a sufficient factual basis. *Id.* at 392. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Id.*

¶ 27 A. The Cause of Action

¶ 28 We begin with a review of the instant cause of action. The purpose of the Forcible Entry and Detainer Act is to provide a speedy remedy to allow a person or entity who is entitled to possession to be restored to possession. *Wells Fargo Bank v. Watson*, 2012 IL App (3d) 110930, ¶ 14. The Act sets forth a mechanism for a peaceful adjudication of possession rights. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 608 (2007). The Act prescribes statutory procedures exclusive of the common law, and, thus, courts must strictly comply with the Act's procedure. *Id.* That procedure is as follows.

¶ 29 Section 9-102(a)(7) provides:

> "(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:
>
> * * *
>
> (7) When any property is subject to the provisions of the Condominium Property Act, the owner of a unit fails or refuses to pay when due his or her proportionate share of the common expenses of such property, or of any other expenses lawfully agreed upon or any unpaid fine, the Board of Managers or its agents have served the [30-Day] demand set forth in Section 9-104.1 of this Article in the manner provided for in that Section and the unit owner has failed to pay the amount claimed within the time prescribed in the demand; or ***." 735 ILCS 5/9-102(a)(7) (West 2015).

¶ 30 As to the 30-Day letter, section 9-104.1 provides:

> "(a) In case there is a contract for the purchase of such lands or tenements or in case of condominium property, the demand shall give the purchaser under such contract, or to the condominium unit owner, as the case may be, at least 30 days to satisfy the

terms of the demand before an action is filed. In case of a condominium unit, the demand shall set forth the amount claimed which must be paid within the time prescribed in the demand and the time period or periods when the amounts were originally due ***. The amount claimed shall include regular or special assessments, late charges or interest for delinquent assessments, and attorneys' fees claimed for services incurred prior to the demand. Attorneys' fees claimed by condominium associations in the demand shall be subject to review by the courts in any forcible entry and detainer proceeding under subsection (b) of Section 9-111 of this Act. The demand shall be signed by the person claiming such possession, his or her agent, or attorney.

(b) In the case of a condominium unit, the demand is not invalidated by partial payment of amounts due if the payments do not, at the end of the notice period, total the amounts demanded in the notice for common expenses, unpaid fines, interest, late charges, reasonable attorney fees incurred prior to the initiation of any court action and costs of collection. The person claiming possession, or his or her agent or attorney, may, however, agree in writing to withdraw the demand in exchange for receiving partial payment. To prevent invalidation, the notice must prominently state:

> ['']Only FULL PAYMENT of all amounts demanded in this notice will invalidate the demand, unless the person claiming possession, or his or her agent or attorney, agrees in writing to withdraw the demand in exchange for receiving partial payment.['] " 735 ILCS 5/9-104.1 (West 2014).

¶ 31 As to a plaintiff's remedy, section 9-111 provides:

"[W]hen the action is based upon the failure of an owner of a unit therein to pay when due his or her proportionate share of the common expenses of the property, or of any

> other expenses lawfully agreed upon or the amount of any unpaid fine, and if the court finds that the expenses or fines are due to the plaintiff, the plaintiff shall be entitled to the possession of the whole of the premises claimed, and judgment in favor of the plaintiff shall be entered for the possession thereof and for the amount found due by the court including interest and late charges, if any, together with reasonable attorney's fees, if any, and for the plaintiff's costs." 735 ILCS 5/9-111 (West 2014).

Further as to remedy, section 9-111.1 provides:

> "[U]pon delivery of possession of the premises by the sheriff or other authorized official to the board of managers pursuant to execution upon the judgment, the board of managers shall have the right and authority, incidental to the right of possession of a unit under the judgment, but not the obligation, to lease the unit to a *bona fide* tenant (whether the tenant is in occupancy or not) pursuant to a written lease for a term which may commence at any time within 8 months after the month in which the date of expiration of the stay of judgment occurs. The term may not exceed 13 months from the date of commencement of the lease. The court may, upon motion of the board of managers and with notice to the dispossessed unit owner, permit or extend a lease for one or more additional terms not to exceed 13 months per term. The board of managers shall first apply all rental income to assessments and other charges sued upon in the action for possession plus statutory interest on a monetary judgment, if any, attorneys' fees, and court costs incurred; and then to other expenses lawfully agreed upon (including late charges), any fines and reasonable expenses necessary to make the unit rentable, and lastly to assessments accrued thereafter until assessments are current. Any surplus shall be remitted to the unit owner. The court shall retain jurisdiction to determine the

reasonableness of the expense of making the unit rentable." 735 ILCS 5/9-111.1 (West 2014).

¶ 32 B. The Burden of Proof

¶ 33 In a forcible entry and detainer action, the plaintiff has the burden to prove its right to possession by a preponderance of the evidence. *Circle Management*, 378 Ill. App. 3d at 609; *Harper Square*, 305 Ill. App. 3d at 964 (rejecting the defendant's claim that the trial court improperly shifted the burden of proof to her and holding that the plaintiff's evidence established its right to possession). The burden of proof rests throughout the proceedings on the party suing under the Act. See, *e.g.*, *Brunton v. Habel*, 333 Ill. App. 3d 333 (1948). "One suing under the forcible entry and detainer act must show a right of possession in himself, and he cannot rely upon a lack of right in those whom he seeks to dispossess." *Id.* The defendant may, under a general denial of the allegations of the complaint, offer in evidence any matter in defense of the action. 735 ILCS 5/9-106 (West 2014). When a defendant exercises his right to present evidence to defeat the plaintiff's claim, it does not mean that the burden of proof has shifted.

¶ 34 Here, the Association seems to misunderstand that it carried the burden to prove by a preponderance of the evidence that it is entitled to possession. The Association refers to its *prima facie* case, and we have seen courts use this phrase in forcible entry and detainer actions. See, *e.g.*, *Noe v. Clemons*, 174 Ill. App. 3d 223, 233 (1988) (where the plaintiffs presented a *prima facie* case that they were entitled to possession, and none of the evidence presented to that point negated their *prima facie* case, the trial court should have denied the defendant's motion for a directed finding and continued with the trial).

¶ 35 In this case, however, Meilahn never moved for a directed finding. Even if he had, the Association overstates the strength of its case. For example, when the Association points to its

accounting books as *prima facie* proof of the balance due, it presumes them reliable. To the contrary, the trial court expressly stated that the accounting records were not reliable and that Evans was vague in her testimony. The court also expressly stated that it believed that Meilahn made payments that were not documented in the Association's records.

¶ 36 The Association further misunderstands the burden of proof when it states that, even under Meilahn's version of events, which the trial court credited, Meilahn continued to owe the Association $91. The Association reads section 9-111 of the Act to state that, if Meilahn owes the Association *any* amount, then the Association is entitled to possession and costs. 735 ILCS 5/9-111 ("[I]f the court finds that *the expenses* or fines are due to the plaintiff, the plaintiff shall be entitled to the possession of the whole of the premises claimed." (Emphasis added.))

¶ 37 We leave for another day the statutory interpretation question of whether "*the* expenses" means "*any* expenses" or "the expenses *set forth in the complaint*." The parties do not brief this issue. The point here is not the existence of any alleged expense, but the discrepancy between the Association's accounting and Meilahn's accounting. The Association was not able to establish whether Meilahn owed over $3,000, as alleged in the complaint, or $91. That discrepancy cast doubt upon the Association's case and contributed to the trial court's determination that the Association's evidence was inconclusive. Meilahn was not required to prove that he was entitled to possession, so an alleged $91 gap in his accounting, even if true, would not be controlling.

¶ 38 C. Additional Weaknesses in the Association's Case

¶ 39 Mindful that the Association has the burden of proof, we highlight two significant weaknesses in the Association's case: its inadequate notice and its contradictory payment

directives. Evidence of these weaknesses supports the trial court's determination that the evidence was "inconclusive."

¶ 40 1. Notice

¶ 41 Evidence supported that the Association failed to notify Meilahn of Vanguard's new role as manager. The Association allowed for its agent, Vanguard, to send the November 2013 letter in "mass mail" form, without any name or address. It is also unclear whether the Association, with *its* letterhead, provided Vanguard with a letter of introduction to alert owners of the new affiliation before owners, potentially, discounted Vanguard's forthcoming generic letter as "junk mail." Separately, Vanguard took no action after receiving forwarded payments from the first management company, and, thus, became cognizant that Meilahn was sending payments to the wrong entity.

¶ 42 The parties intensely contest the factual question of whether Vanguard adequately notified Meilahn of its new role as manager. The Association appears to concede the importance of this question. However, the Association does not point to any statutory provision or case law to explain why the question of adequate notice of the change in management is important to its case. By failing to explain why adequate notice matters, the Association risks forfeiture. At a minimum, the Association falls short in its task of persuading us that the trial court erred.

¶ 43 The trial court may have reasonably linked the Association's failure to adequately notify Meilahn to the key question in this case: whether Meilahn "fail[ed] or refus[ed] to pay when due his or her proportionate share of the common expenses." 735 ILCS 5/9-102(a)(7) (West 2014). According to Meilahn, who set up an automatic payment to the first management company, Meilahn did not "fail or refuse to pay" the assessments. Rather, due to the Association's poor notice, Meilahn's payments did not reach the appropriate entity.

¶ 44 We reject the Association's argument that Meilahn bore responsibility for the notification failure. The Association posits that, if Meilahn had more promptly notified it of his ownership, as required by the Association's declaration, the Association would have provided Vanguard with Meilahn's name, and the Vanguard would have mailed the November 2013 letter to Meilahn. We are not convinced. The Association claims, without ever proving, that, in November 2013, it was not aware of Meilahn's ownership. Also, the Association did not establish that it was prejudiced by its alleged inability to provide Vanguard with Meilahn's name. Vanguard did not include *any* owner names in its November 2013 letter. Vanguard did not address its letter to Meilahn, but it did not address the letter to the previous owner, either. Regardless of whether the Association provided Vanguard with Meilahn's name, Vanguard would not have used it.

¶ 45 2. Contradictory Payment Directives

¶ 46 The evidence also supported that the Association issued contradictory payment directives. For example, the August 18, 2014, 30-Day Notice and Demand letter asked for both assessments, fees, and costs. However, in the subsequent September 3, 2014, e-mail, the Association's agent tacitly encouraged Meilahn to first pay only the assessments: "the balance is owed no matter what and they cannot even discuss waiving late fees with the board until the balance is satisfied first." Evidence supports that Meilahn made an attempt to fully satisfy the balance. Meilahn testified that he calculated the amount due to be $1,242.68, the amount that returned to his account from May to August 2014. He paid that amount. At trial, as proof of that payment, he submitted exhibit No. 2.

¶ 47 Proof of the Association's contradictory payment directives is critical to this case, for reasons not mentioned by the trial court. However, mindful that we can affirm for any reason in

the record, we explain further. See, *e.g.*, *Rodriguez v. Sheriff's Merit Comm'n*, 218 Ill. 2d 342, 357 (2006). Actions for possession against condominium owners can be compromised when the association states in writing that it is willing to accept partial payment from an owner for the period covered by the demand. For example, section 9-104.1(b) states that, to "prevent invalidation" of the 30-Day demand, "the notice must prominently state: ['']Only FULL PAYMENT of all amounts demanded in this notice will invalidate the demand, unless the person claiming possession, or his or her agent or attorney, *agrees in writing to withdraw the demand in exchange for receiving partial payment*.['] " (Emphasis added.) 735 ILCS 5/9-104.1(b) (West 2014). A plaintiff cannot proceed to file a complaint for possession until satisfying the requirements of section 9-104.1. 735 ILCS 5/9-104.1(a) (West 2014). Thus, assuming Meilahn made the $1,242.68 payment to cover the May to August 2014 period, the Association, at least arguably, should not have proceeded with the complaint for possession, because its agent stated in writing via e-mail that partial satisfaction, in the form of paying the assessments only, could be enough to resolve the dispute.

¶ 48 Exhibit No. 2, which Meilahn submitted as proof of the $1,242.68 payment, is not in the record. The Association does not explain its absence, though the Association did not object to its admission at trial. None of the record's 256 pages are labeled "Ex. 2." There is no mention of exhibit No. 2 in the Association's brief, or in its appendix's table of contents to the record on appeal. To the contrary, in its reply brief, the Association goes so far as to imply exhibit No. 2's non-existence: "If Meilahn had presented any corroborating, admissible evidence of this payment ***, he would have, most definitely, bolstered his credibility and the Association's instant arguments would wane. However, Meilahn never presented *any* additional evidence to show that this payment was, in fact, received by the Association, thereby undermining his credibility with

regard to any of the payments he alleged to have made." (Emphasis in original.) The Association does state that Meilahn relied on e-mails as proof of payment, but the only November 2014 e-mails in the record are attached to the Association's own discovery response and pertain to Association contact information. In his brief, in turn, Meilahn mentions exhibit No. 2, but the citation leads to exhibit No. 1. While the Association complains of the trial court's decision to admit Meilahn's exhibit No. 1, we find the absence of exhibit No. 2 to be more problematic. We resolve our doubts associated with the absence of exhibit No. 2 against the Association. Thus, like the trial court, we credit Meilahn with the $1,242.68 payment.

¶ 49 III. CONCLUSION

¶ 50 In conclusion, the Association has not convinced us to reverse where it does not seem to fully appreciate that it carried the burden of proof at trial, its citation to authority is weak, and it presents an incomplete appellate record. Though there were gaps at trial in Meilahn's version of events, such as the alleged $91 shortfall, it was not Meilahn's burden to establish that he was entitled to possession. Rather, Meilahn successfully exercised his right to put forth evidence to undermine the Association's right to possession. The evidence supported that: (1) Vanguard bore significant responsibility for the failures in communication that occurred during the period in question; (2) Meilahn, nevertheless, made the majority, if not all, of his payments during that time; and, at least arguably, (3) the Association wrongfully proceeded with the complaint after its agent stated in writing that it would consider accepting a payment less than the total stated in the 30-Day Demand. The trial court's determination that the Association was not entitled to possession where the evidence was "inconclusive" was not against the manifest weight of the evidence. Accordingly, we affirm the trial court's judgment.

¶ 51 Affirmed.