

No. 1-12-2801

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHARLES C. HATTER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	
VICTOR DARAMOLA,)	No. 11 M1 715409
)	
Defendant-Appellant)	
)	
(Unknown Tenants and Occupants,)	Honorable
)	Leonard Murray,
Defendants).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: We hold the circuit court abused its discretion when it stopped trial before plaintiff rested his case and entered judgment in plaintiff's favor. In doing so, the circuit court violated defendant's due process rights because it did not give defendant a full and fair opportunity to litigate the case.

¶ 1 Plaintiff, Charles C. Hatter, filed an amended complaint against defendants, Victor Daramola (defendant), and any unknown tenants and occupants¹ of property located at 9200 South Ashland Avenue, in Chicago, Illinois. Plaintiff alleged he was entitled to possession of the property at 9200 South Ashland Avenue and that defendants were unlawfully withholding possession of the premises from him. Plaintiff asked for \$18,000 in rent or damages. At the bench trial on plaintiff's complaint, during defendant's cross-examination of one of plaintiff's witnesses during plaintiff's case-in-chief, the circuit court stopped trial and entered judgment in plaintiff's favor. Defendant appeals, arguing that his due process rights were violated when the circuit court stopped the trial before plaintiff rested his case because it did not allow him to present his own case. We hold defendant's due process rights were violated because the circuit court did not give defendant a full and fair opportunity to litigate the case. Accordingly, the circuit court abused its discretion when it stopped trial before plaintiff rested his case and entered judgment for plaintiff without defendant being given opportunity to present his defense.

¶ 2 BACKGROUND

¶ 3 On July 13, 2011, plaintiff filed his complaint against defendant alleging he is entitled to possession of the property located at 9200 South Ashland Avenue, in Chicago, Illinois. Plaintiff asked for possession of the property and \$18,000 in damages.

¶ 4 On September 9, 2011, defendant filed his answer, affirmative defenses, and counterclaims. Defendant raised the following affirmative defenses: (1) plaintiff failed to perform all of his obligations under an August 17, 2004, contract to purchase the property which defendant alleged was "part and parcel to the lease arrangement between the parties;" (2) that any

¹ Defendant Victor Daramola is the only party defendant to this appeal. To avoid confusion, we will simply refer to him as "defendant."

money he owes to plaintiff be set-off against the amount of improvements he made to the property; (3) that any money owed to plaintiff be set-off against deposits and earnest money payments he made to plaintiff; (4) that plaintiff's possession of the property would result in a "windfall" due to the improvements to the property made by defendant; and (5) that plaintiff breached the purchase contract. By way of counterclaim, defendant alleged plaintiff breached the August 17, 2004 purchase contract. Alternatively, and also by way of counterclaim, defendant alleged unjust enrichment.

¶ 5 On October 6, 2011, plaintiff filed a motion to dismiss and strike defendant's counterclaim and affirmative defenses. Plaintiff alleged that in September of 2009, he filed a complaint to quiet title addressing the same property and against defendant under case number 09 CH 32722 in the chancery division of the circuit court of Cook County. Defendant answered, filed affirmative defenses, and counterclaims. The circuit court held a three day trial on the complaint to quiet title and defendant's counterclaims. On May 31, 2011, the circuit court entered a final judgment quieting title to the real estate located at 9200 South Ashland in favor of plaintiff and found against defendant on his counterclaims. Plaintiff contended that defendant's affirmative defenses and counterclaims in the current action were barred by *res judicata*, or alternatively, waiver or judicial estoppel because a final judgment had already been entered on the claims under case number 09 CH 32722.

¶ 6 On October 12, 2011, plaintiff filed an amended complaint against defendant adding unknown tenants and occupants as defendants. In his complaint, plaintiff re-alleged he is entitled to possession of the premises located at 9200 South Ashland Avenue; and that defendant owed him, after allowing credits, deductions, and set-offs, \$18,000 for rent and damages for

withholding possession of the property. Plaintiff alleged that defendant withheld possession of the property from him during the time period of July 1, 2010 to July 1, 2011.

¶ 7 The circuit court considered plaintiff's motion to dismiss defendant's counterclaims and strike his affirmative defenses as a motion *in limine* and found defendant appeared to be making "similar, if not identical assertions" in the case at bar. The court explained that *res judicata* barred the relitigation of those contentions at trial and issued the following finding:

"[T]o the extent that [defendant's] claims and/or defenses relate to facts that existed at the time of the initiation of the chancery case they are hereby barred. However, to the extent that such claims or defenses relate to fact[s] not in existence at the time [plaintiff] brought his action to quiet title against [defendant], he is permitted to prosecute or assert such a defense or claim in this case."

¶ 8 The matter proceeded to a bench trial on June 19, 2012. The court heard complete testimony from plaintiff's first two witnesses: defendant and Dina Hatter. Plaintiff then testified on his own behalf. During defense counsel's cross-examination of plaintiff, the circuit court interjected, stating " I don't mean to cut you all short," but in fact did so. The court held that plaintiff was entitled to possession. The court stated there was "an oral agreement that flowed out of the various defaulted sales contracts for land that were involved." The circuit court entered an order of possession in plaintiff's favor, and awarded plaintiff \$22,000.

¶ 9 On July 18, 2012, defendant filed a motion for a new trial. Relevant here, defendant stated that during plaintiff's case-in-chief, the circuit court "called the parties' counsel to the bench to sort through the issues in the case, whereupon [the circuit court] entered judgment in

favor of the plaintiff." Defendant argued no further testimony was heard, plaintiff never rested his case, and that he was denied opportunity to present a defense.

¶ 10 On August 21, 2012, the circuit court denied defendant's motion for retrial. Defendant filed his amended notice of appeal on September 20, 2012.

¶ 11 On March 4, 2014, this court, upon our own motion, found that plaintiff had been granted extensions to file a brief but failed to timely file one. We ordered that this matter be considered on the record and defendant's brief only.

¶ 12 ANALYSIS

¶ 13 Defendant argues before this court that the trial court abused its discretion when it stopped the trial during plaintiff's case-in-chief and entered judgment in plaintiff's favor. Defendant contends the circuit court violated his due process rights because he was not allowed to present his defense.

¶ 14 The right to due process is guaranteed by both the federal and Illinois constitutions. U.S. Const., amend. V ("No person shall be *** deprived of *** property, without due process of law[.]"); U.S. Const., amend XIV ("No State shall *** deprive any person of *** property, without due process of law[.]"); Ill. Const., art. I, §2 ("No person shall be deprived of *** property without due process of law[.]"). General due process "requires, at a minimum, that a party have a full and fair opportunity to litigate an issue before he is bound by that issue's resolution." *Central Illinois Public Service Co. v. Allianz Underwriters Insurance Co.*, 158 Ill. 2d 218, 225-26 (1994). "Due process of law is served where there is a right to present evidence and argument in one's own behalf, a right to cross-examine adverse witnesses, and impartiality in rulings upon the evidence which is offered." *Piotrowski v. State Police Merit Board*, 85 Ill. App. 3d 369, 373 (1980). The circuit court's decisions regarding maintaining the progress of

trial and its general oversight of its courtroom are reviewed for an abuse of discretion. *In re D.T.*, 212 Ill. 2d 347, 356 (2004).

¶ 15 We hold the circuit court abused its discretion when it stopped the trial during plaintiff's case-in-chief and entered judgment on plaintiff's behalf because it violated defendant's due process rights. In stopping the trial before plaintiff even rested his case, the court denied defendant the opportunity to present evidence on his own behalf. Our supreme court has held that before a party is bound by the circuit court's decision, the party must be given "a full and fair opportunity to litigate an issue." *Central Illinois Public Service Co.*, 158 Ill. 2d at 225-26. Defendant, however, was not given that chance because the circuit court stopped the trial before plaintiff even rested his case. Accordingly, defendant's due process rights were violated because the circuit court did not give defendant a full and fair opportunity to litigate the case.

¶ 16 We note that our decision is consistent with the circuit court's own ruling on plaintiff's motion to dismiss defendant's affirmative defenses and counterclaims, which the circuit court considered as a motion *in limine*. According to the circuit court's ruling, although defendant was barred by *res judicata* from raising issues that were or could have been decided in the previous chancery case, the court allowed defendant to present claims or defenses not in existence at the time of the prior chancery case. Specifically, the court found that "to the extent that such claims or defenses relate to fact[s] not in existence at the time [plaintiff] brought his action to quiet title against [defendant], he is permitted to prosecute or assert such a defense or claim in this case." Therefore, according to the circuit court's own ruling, defendant theoretically could have presented a defense as long as it was not barred by the circuit court's ruling on the motion *in limine*.

¶ 17 Similarly, before this court, defendant raises several issues addressing the court's ruling on the motion *in limine*. We find it would be premature for us to resolve those issues at this point in time because we do not know what defenses defendant would have brought consistent with the circuit court's pre-trial order because the circuit court stopped the trial before plaintiff rested his case. Therefore, we offer no opinion on whether the circuit court's ruling on the motion *in limine* was proper or not. We also offer no opinion on the strength or weaknesses of the parties' respective positions. We simply hold that defendant was not given a fair and full opportunity to litigate the matter due to the circuit court's decision to stop the trial before plaintiff even rested his case. Accordingly, we reverse the judgment of the circuit court and remand the matter to allow the trial to properly conclude.

¶ 18 **CONCLUSION**

¶ 19 The judgment of the circuit court of Cook County is reversed and the cause is remanded for proceedings consistent with this order.

¶ 20 Reversed and remanded.