2011 IL App (1st) 100355-U

Nos. 1-10-0355 & 1-10-1517 (Consolidated)

SIXTH DIVISION
December 2, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHARLES E. WESLEY and BETTYE J. WESLEY,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees/Cross-Appellants,	)	Cook County.
	)	
v.	)	No. 06 M1 179103
	)	
RUSSELL E. HILEY, Individually and d/b/a Realty Services Group,	)	The Honorable
	)	Moira S. Johnson,
Defendant-Appellant/Cross-Appellee.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

O R D E R

¶ 1 *HELD*: Summary judgment was proper where the landlord violated section 5-12-080(a) of the Chicago Residential Landlord Tenant Ordinance when he commingled the tenants' security deposit with personal assets. The trial court did not abuse its discretion in awarding a reduced amount of statutory attorney fees to plaintiffs.

¶ 2 Defendant, Russell Hiley, appears *pro se* to appeal the trial court's finding that he violated section 5-12-080(a) of the Chicago Residential Landlord Tenant Ordinance (RLTO) (Chicago Municipal Code § 5-12-080(a) (amended Nov. 6, 1991)) by commingling a security deposit with personal assets and awarding plaintiffs, Charles Wesley and Bettye Wesley, $3,630.78 pursuant to section 5-12-080(f) of the RLTO ((Chicago Municipal Code § 5-12-080(f) (amended Nov. 6, 1991)) as a result. Defendant additionally contends the trial court erred in failing to impose sanctions against plaintiffs for manipulating the legal process. Plaintiffs cross-appeal the trial court's order granting in part and denying in part their request for attorney fees pursuant to section 5-12-180 of the RLTO (Chicago Municipal Code § 5-12-180 (amended Nov. 6, 1991)). Based on the following, we affirm.

¶ 3 FACTS

¶ 4 On July 15, 2005, plaintiffs entered into a lease agreement with defendant to rent a single-family home. Plaintiffs paid a security deposit of $1,800, which defendant deposited into his bank account number ending in 4116. Defendant was also the lessor of up to 20 other properties. Defendant deposited rental fees as well as other security deposits into his account ending in 4116. On September 8, 2005, defendant deposited $15,662 into account number ending in 7837, consisting of a $13,000 transfer from his account ending in 4116 and the remainder transferred from his personal account, namely, account number ending in 3427. The account ending in 4116 was designated as belonging to "Russell Hiley d/b/a RSG Realty Services Grp a Sole Proprietorship" and was not designated as an escrow, trust, or security deposit account. The account ending in 7837 was a money market account designated as belonging to Russell Hiley up

until October 2005, when the designation was changed to a "security deposit" account.

¶ 5 On October 11, 2006, plaintiffs filed their verified complaint alleging various violations of the RLTO. The complaint was amended on May 8, 2007, and the trial court granted summary judgment on August 25, 2008, finding there was no genuine issue of material fact where the pleadings demonstrated defendant had commingled plaintiffs' security deposit with his personal assets in violation of section 5-12-080(a) of the RLTO. Plaintiffs were awarded $3,630.78 pursuant to section 5-12-080(f) of the RLTO and given leave to file a petition for statutory attorney fees and costs. Defendant filed a motion to reconsider the trial court's August 25, 2008, order. Plaintiffs filed a fee petition on September 8, 2008, requesting $34,923.75 in fees and $1,017 in costs for the period of September 11, 2006, through September 8, 2008. Plaintiffs updated their fee petition twice before a hearing was held on January 6, 2010, on both the fee petition and defendant's motion to reconsider. As of the date of the hearing, plaintiffs requested a total of $54,068.25 in attorney fees and costs. The trial court denied defendant's motion to reconsider and granted plaintiffs' fee petition in the reduced amount of $20,350 with additional costs of $674.50. Defendant appealed and plaintiffs cross-appealed.

¶ 6 DECISION

¶ 7 I. Violation of RLTO

¶ 8 Defendant contends the trial court's finding that he commingled plaintiffs' security deposit with his own assets in violation of section 5-12-080(a) of the RLTO was against the manifest weight of the evidence. Defendant provides the wrong standard for our review. The trial court granted summary judgment in favor of plaintiffs. We, therefore, review the legal contention *de*

novo. *Harnacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 25 (2011).

¶ 9 Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005© (West 2004). On review, we construe the evidence strictly against the moving party to determine whether summary judgment was proper. *AYH Holdings, Inc. v. Avreco, Inc.*, 357 Ill. App. 3d 17, 31, 826 N.E.2d 1111 (2005).

¶ 10 Section 5-12-080(a) of the RLTO at the relevant time[1] provided:

> "A landlord shall hold all security deposits received by him in a federally insured interest-bearing account in a bank, savings and loan association or other financial institution located in the State of Illinois. A security deposit and interest due thereon shall continue to be the property of the tenant making such deposit, shall not be commingled with the assets of the landlord, and shall not be subject to the claims of any creditor of the landlord or of the landlord's successors in interest, including a foreclosing mortgagee or trustee in bankruptcy." Chicago Municipal Code §5-12-080(a) (amended Nov. 6, 1991).

A security deposit is money deposited with a landlord as security for the tenant's performance of the lease terms and remains the tenant's property while it is held by the landlord in a "trust" for the tenant's benefit. *Starr v. Gay*, 354 Ill. App. 3d 610, 613, 822 N.E.2d 89 (2004). "Security deposit provisions like section 5-12-080(a) are designed to keep tenant monies out of the reach of

[1]The statute was amended effective July 28, 2010.

creditors of landlords and prevent risks inherent in commingling, such as a landlord's intentional or inadvertent personal use of tenant funds contained in a commingled account." *Id.* at 613-14. The RLTO provides a remedy for violations of section 5-12-080(a), such that:

> "If the landlord or landlord's agent fails to comply with any provision of Section 5-12-080(a)-(e), the tenant shall be awarded damages in an amount equal to two times the security deposit plus interest at a rate determined in accordance with Section 5-12-081. This subsection does not preclude the tenant from recovering other damages to which he may be entitled under this chapter."
>
> Chicago Municipal Code §5-12-080(f) (amended Nov. 6, 1991).

¶ 11 The record before us demonstrates that defendant violated section 5-12-080(a) of the RLTO where he commingled personal assets in his account ending in 4116, which held plaintiffs' security deposit from July 15, 2005, until September 8, 2005. Plaintiffs wrote two separate checks on July 15, 2005, one for their security deposit and one for their first month of rent, which defendant deposited into the account ending in 4116. Defendant subsequently deposited plaintiffs' August and September rent checks into the account ending in 4116, along with numerous other rent checks. After September 8, 2005, defendant further commingled plaintiffs' security deposit when he transferred $13,000 from the account ending in 4116 into the account ending in 7837, along with $2,662 from his personal account.

¶ 12 The supreme court has instructed that a landlord's duty to comply with the RLTO is absolute and without exception. *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 9-10, 754 N.E.2d 334 (2001). Sections 5-12-080(a) and (f) are clear and unambiguous; therefore, they

must be enforced as written using their plain language and without reading exceptions, limitations, or conditions into the statutes. *Id*. at 10. Nothing in section 5-12-080(f) requires a demonstration that the landlord's failure to comply with section 5-12-080 was knowing or willful. *Id*. at 9. Rather, "subsection (f) of section 5-12-080 imposes automatic liability for a violation of its terms." *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 13, 919 N.E.2d 300 (2009). Therefore, defendant's argument that he used rental checks and "other assets" to build the security deposit account in order to bring into compliance the other properties rented prior to his learning of the RLTO is of no import. Additionally, there is no *de minimis* exception to the prohibition against commingling a security deposit with personal assets. *Plambeck v. Greystone Management & Columbia National Trust Co.*, 281 Ill. App. 3d 260, 272, 666 N.E.2d 670 (1996). We, therefore, conclude the trial court properly granted plaintiffs' motion for summary judgment, awarding $3,630.78, or "two times the security deposit plus interest." Chicago Municipal Code § 5-12-080(f) (amended Nov. 6, 1991).

¶ 13 II. Sanctions

¶ 14 Defendant next contends the trial court erred in failing to impose sanctions pursuant to Supreme Court Rules 137 (eff. Feb. 1, 1994) and 219© (eff. Mar. 28, 2002) where plaintiffs' counsel manipulated the court processes to increase attorney fees. Defendant additionally contends the trial court erred in failing to report plaintiffs' counsel to the Illinois Attorney Registration and Disciplinary Commission (ARDC).

¶ 15 Supreme Court Rule 137 allows trial courts to impose sanctions against any party or counsel for filing a motion or pleading not well grounded in fact or supported by existing law, or

that lacks a good-faith basis for modification, reversal, or extension of the law or that is interposed for any improper purpose. *Krawczyk v. Livaditis*, 366 Ill. App. 3d 375, 378, 851 N.E.2d 862 (2006). Rule 137 purports to prevent the filing of frivolous and false lawsuits, but does not attempt to penalize litigants and their attorneys for zealous yet unsuccessful actions. *Id*. at 379. The rule is penal in nature and must be strictly construed. *Id*. Rule 219© allows a trial court to impose sanctions for the violation of discovery rules. Ill. S. Ct. R. 219© (eff. Mar. 28, 2002). A trial court's determination whether to impose sanctions is within its discretion and will not be reversed absent an abuse of that discretion. *Id.* An abuse of discretion will be found only where no reasonable person could take the view adopted by the trial court. *Id*.

¶ 16 On January 4, 2010, defendant filed a *pro se* pleading requesting a hearing on a number of claims of attorney misconduct against plaintiffs' counsel. In the pleading, defendant requested sanctions in the form of attorney fees and punitive damages. On January 6, 2010, the trial court held a hearing on defendant's motion to reconsider the summary judgment finding in favor of plaintiffs and on plaintiffs' petition for attorney fees and costs. Defendant was represented by counsel at the hearing. Our review of the transcript reveals that neither defendant nor counsel raised the motion before the trial court and did not receive a ruling. Thereafter, on January 20, 2010, defendant filed a motion to clarify the court's January 6, 2010, order. Defendant did not raise the matter of the January 4, 2010, pleading at that time. Defendant additionally did not raise the January 4, 2010, pleading in his notice of appeal. We, therefore, lack jurisdiction to consider a pleading that was not considered by the trial court. *American Insurance Service Co. v. Jones*, 401 Ill. App. 3d 514, 527, 927 N.E.2d 840 (2010); *King v. Paul J. Krez Co.*, 323 Ill. App.

3d 532, 534, 752 N.E.2d 605 (2001).

¶ 17 To the extent the general substance of defendant's January 4, 2010, *pro se* motion was raised while objecting to plaintiffs' fee petition, the trial court considered the allegations of attorney misconduct and did not *sua sponte* impose Rule 137 or 219© sanctions. We cannot say the trial court abused its discretion.

¶ 18 In regard to defendant's argument that the trial court was duty bound to report plaintiffs' counsel to the ARDC, defendant fails to request and fails to identify any relief that may be granted. We need not address the claim further.

¶ 19 III. Attorney Fees

¶ 20 In their cross-appeal, plaintiffs contend the trial court erred in awarding a reduced amount of attorney fees where the court failed to provide an objective basis for its award.

¶ 21 Section 5-12-180 of the RLTO provides:

> "Except in cases of forcible entry and detainer actions, the 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; provided, however, that nothing herein shall be deemed or interpreted as precluding the awarding of attorney's fees in forcible entry and detainer actions in accordance with applicable law or as expressly provided in this ordinance." Chicago Municipal Code §5-12-80 (amended Nov. 6, 1991).

The amount of attorney fees awarded by a trial court is within its sound discretion and will not be disturbed absent a finding that the trial court abused that discretion. *Pitts v. Holt*, 304 Ill. App. 3d 871, 872, 710 N.E.2d 155 (1999). Records provided by the petitioner should be scrutinized for their reasonableness. *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314, 873 N.E.2d 570 (2007). Whether a fee petition is reasonable depends on a variety of factors, including the nature of the case, the novelty and difficulty of the case, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, the connection between the litigation and the fees, and the court's own knowledge and experience. *Id*. at 314-15. "When a trial court reduces the amount requested in a fee petition, the court's ruling should include the reasons justifying a particular reduction." *Id*. at 315.

¶ 22 In this case, plaintiffs submitted a petition for $53,051.25 in fees and $1,017 in costs for all services rendered from September 11, 2006, until September 15, 2009. The fee petition included over 165 hours of work performed. On January 6, 2010, the trial court awarded reduced fees in the amount of $20,350 "based upon an assessment of 67.83 hours" and reduced costs in the amount of $674.50, which was the amount awarded in mandatory arbitration "based upon a reduction perhaps in the filing of a jury demand, which by law you're not entitled to in an RLTO case." The court specified that 67.83 hours were awarded at an hourly rate of $300, which it found reasonable and customary within the community. No fees were awarded for paralegal time. Thereafter, on May 4, 2010, on defendant's motion to clarify the January 6, 2010, order, the trial court reviewed the transcripts and found that it had "made sufficient findings during the hearing on January 6th, based on the briefs, arguments and the court's evaluation of what amount

of time was sufficient."

¶ 23 We cannot say the trial court's award of attorney fees and costs was an abuse of discretion. It is clear from the record that the trial court scrutinized the records submitted by plaintiffs' counsel and determined what was reasonable in this case, noting, prior to issuing its ruling, that "the Court has read the briefs and the Court understands what the billing statement says and the Court has its own opinion about the validity of the time spent for the hours that are recorded there." Although *Richardson* advises a trial court to include its reasons justifying particular reductions, the trial court here provided its overall judgment of the requested fees using its own knowledge and experience. *Richardson* is distinguishable where the trial judge denied the fee petition in its entirety and awarded the minimum fee award of $350. *Richardson*, 375 Ill. App. 3d at 314. In reversing and remanding the cause, this court advised that "the trial court should either award those fees it decides are reasonable or clearly state the reasons for the particular reductions, rather than denying the attorney fee petition in its entirety." *Id.* at 315. The instant trial judge awarded fees that it deemed reasonable. We find no error.

¶ 24 CONCLUSION

¶ 25 We affirm the judgment of the trial court granting summary judgment in favor of plaintiffs where there was no genuine issue of material fact that defendant commingled plaintiffs' security deposit with his personal assets in violation of section 5-12-080(a) of the RLTO and awarding plaintiffs $3,630.78 pursuant to section 5-12-080(f) of the RLTO as a result. We further affirm the trial court's award of attorney fees and costs.

¶ 26 Affirmed.