

No. 1-11-0977

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AJAZ A. KHAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 10 M1 719301
MOHAMMAD S. KHAN, SHUMAILA KHAN,)	
and UNKNOWN OCCUPANTS,)	
)	
Defendants-Appellants.)	Honorable
)	Sheldon C. Garber,
)	Judge Presiding.

ORDER

JUSTICE SALONE delivered the judgment of the court.
Justice Neville and Murphy concurred in the judgment.

HELD: Where circuit courts are courts of original jurisdiction over all justiciable matters, except for matters, confessed by statute, the trial court had subject matter jurisdiction to enter an order for possession.

¶ 1 Following a bench trial, defendant Mohammad S. Khan appeals from an order of the

1-11-0977

circuit court granting possession of commercial rental premises and a money judgment for past-due rent in the amount of \$26,300.00 to plaintiff, Ajaz A. Khan. Defendant also appeals from the court's denial of his motion to reconsider. On appeal, defendant contends that the circuit court lacked subject matter jurisdiction because of plaintiff's failure to comply with the notice provisions in the parties' lease agreement and the requirements set forth in the Forcible Entry and Detainer Act (FEDA) (735 ILCS 5/9-101, *et. seq.* (West 2010)). For the following reasons, we affirm the judgment of the circuit court.

¶ 2

BACKGROUND

¶ 3 On June 15, 2008, defendant entered into a four-year commercial lease with plaintiff for the premises located at 2433 W. Devon Avenue in Chicago. Defendant was allowed to use the premises for his business, "Sweet & Snacks," and was to pay plaintiff \$4,500.00 per month in rent. The lease provides that if the lessee defaults in the payment of rent, the lessor may give the lessee notice of such default and an opportunity to cure default within 30 days. If the lessee fails to cure the default, then the lessor may terminate the lease with not less than 10 days notice to the lessee.

¶ 4 In September 2008, defendant defaulted on his rent payments to plaintiff. Thereafter, plaintiff served defendant with a 30-day notice of termination, demanding rent in the amount of \$27,300.00.

¶ 5 After defendant's failure to cure the default, plaintiff filed an original complaint pursuant to FEDA, and, subsequently, an amended complaint for possession and past due rent in the amount of \$27,300.00. The circuit court conducted a hearing. No transcript of the proceedings

1-11-0977

is provided in the record. The circuit court certified defendant's Bystander's Report with no objection from plaintiff. Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005). The following trial testimony is taken from the Bystander's Report provided in the record.

¶ 6 Plaintiff testified on his own behalf. Plaintiff stated that he issued a written 30-day notice of termination, demanding payment for past-due rent in the amount of \$27,300.00. Notice was served on Shumaila Khan, defendant's wife, at the rental property. Plaintiff further testified that prior to issuing the written notice of termination, he gave defendant an oral notice and separate written notice regarding the default.

¶ 7 Defendant testified on his own behalf and stated that he was not personally served with the 30-day notice of termination.

¶ 8 Younus Siddiqi and Mahboob Ali testified for defendant that they were present at a meeting in April 2009 with plaintiff, defendant, and other members of the community. Siddiqi also testified that plaintiff and defendant discussed lowering the rent.

¶ 9 At the close of the proceedings, the circuit court entered an order granting plaintiff possession of the premises and ordered defendant to pay \$26,300.00 in past due rent, plus court costs, and \$3,500.00 in attorney's fees.

¶ 10 Thereafter, defendant filed a motion to reconsider, arguing that plaintiff served only one of the two notices mandated by paragraph 15 of the lease, the 30-day notice of default. Because plaintiff failed to serve a subsequent, 10-day notice of intent to terminate, also mandated by paragraph 15, plaintiff did not effect a proper termination of the lease, and the circuit court therefore lacked subject matter jurisdiction in this case. The circuit court denied defendant's

motion to reconsider, finding that "a valid and proper notice of termination was not required for the Court to be conferred with subject matter jurisdiction." This timely appeal followed.

¶ 11 DISCUSSION

¶ 12 Before this court, defendant argues, similar to his motion to reconsider, that because plaintiff failed to comply with the notice provisions of paragraph 15 of the lease, plaintiff did not effect a proper termination of the lease, and thus failed to comply with the pertinent provisions of the FEDA.

¶ 13 Section 102(a)(4) of the FEDA provides, in relevant part:

"(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:

* * *

(4) When any lessee of the lands or tenements, or any person holding under such lessee, holds possession without right *after the termination of the lease or tenancy* by its own limitation, condition or terms, or by notice to quit or otherwise." (Emphasis added.) 735 ILCS 5/9–102(a)(4) (West 2010).

According to defendant, "the plain language of the statute predicates the right to sue and to obtain relief under the [FEDA] on the existence and termination of the lease." It follows that where a plaintiff fails to effect a proper termination of the lease, and thus fails to comply with section 102(a)(4), he has no "basis to evoke the power of the court under the [FEDA] nor [is] he entitled

1-11-0977

to relief under the [FEDA]." In defendant's view, the trial court here "never acquired the necessary jurisdiction to enter a judgment in this matter and the judgment entered in [p]laintiff's favor is void."

¶ 14 Cases involving issues of statutory construction or questions as to whether there was substantial compliance with a statutory provision involve questions of law subject to *de novo* review. *Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (2009); *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 463 (2010). The absence or presence of jurisdiction is also a question of law which is reviewed *de novo*. *In re Luis R.*, 239 Ill. 2d 295, 299 (2010), citing *In re Detention of Hardin*, 238 Ill. 2d 33, 39 (2010).

¶ 15 Defendant's argument here is without merit. In Illinois, a circuit court's subject matter jurisdiction is defined not by the authorizing statute but by the state constitution. *In re Luis R.*, 239 Ill. 2d at 302, citing *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35 (2002); see also *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001) ("[A] circuit court is a court of general jurisdiction, which need not look to the statute for its jurisdictional authority"). The only exception is the court's power to review administrative action, which is conferred by statute. Ill. Const. 1970, art. VI, §9; *Belleville Toyota*, 199 Ill. 2d at 334. Thus, with the exception of administrative review, which is not relevant here, a circuit court possesses subject matter jurisdiction as a matter of law over all "justiciable matters" brought before it. Ill. Const. 1970, art. VI, §9; *In re Luis R.*, 239 Ill. 2d at 301. In determining whether a claim is a "justiciable matter," the only consideration is "whether the alleged claim falls within

the general class of cases that the court has the inherent power to hear and determine." *In re Luis R.*, 239 Ill. 2d at 301. Stated differently, the question is whether "the asserted claim, legally sufficient or not, was filed in the proper tribunal. If it was, subject matter jurisdiction is present, whether or not the claim is legally defective." *Luis R.* 239 Ill. 2d at 303.

¶ 16 Applying these principles to the case at bar, we conclude the circuit court had jurisdiction to hear and determine plaintiff's claim, which was among the general class of cases—those presenting a claim under the FEDA, a justiciable matter—to which the court's constitutionally granted original jurisdiction extends. See *Belleville Toyota*, 199 Ill. 2d at 340. We reject defendant's argument to the contrary, and affirm the judgment of the circuit court.

¶ 17

CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 19 Affirmed.