2017 IL App (1st) 162929-U

No. 1-16-2929

Order filed September 29, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TAMARA GRBUSIC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 M1 127121
	)	
JASON YAO and JINHONG ZENG,	)	Honorable
	)	Joyce Marie Murphy Gorman,
Defendants-Appellants.	)	Judge presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's grant of summary judgment in favor of plaintiff where the court did not abuse its discretion by rescinding the parties' settlement agreement. Further, the court did not abuse its discretion in awarding plaintiff reasonable attorney fees. We also find that plaintiff is entitled to costs and reasonably attorney fees for defending this appeal and remand the matter to the trial court for the purpose of allowing her to file petitions for them.

¶ 2 I. BACKGROUND

¶ 3 Defendants Jason Yao and Jinhong Zeng purchased an apartment in a building located in Chicago in which plaintiff Tamara Grbusic had an existing lease. Defendants and plaintiff signed a new lease for the remainder of time on her original lease. Pursuant to the new lease, plaintiff gave defendants a security deposit of $1,150. When plaintiff moved out at the end of her lease, defendants assessed significant damages against her security deposit, returning only $430. The parties unsuccessfully attempted to settle the dispute over the alleged damages.

¶ 4 On November 16, 2015, plaintiff filed a three-count complaint against defendants alleging that they violated the Chicago Residential Landlord and Tenant Ordinance (RLTO) in several ways. Count I alleged that defendants violated section 5-12-080 of the RLTO (Chicago Municipal Code § 5-12-080 (amended July 28, 2010)) in that they: (1) never provided the name and address of the financial institution holding plaintiff's security deposit; (2) commingled the security deposit with their own assets; (3) did not timely pay plaintiff interest on the security deposit and failed to tender her deposit within 45 days; and (4) never provided plaintiff the estimated costs to repair the alleged damages in the apartment or any receipts for the repairs. Count II alleged that defendants violated section 5-12-100 of the RLTO (Chicago Municipal Code § 5-12-100 (amended Nov. 6, 1991)) by failing to disclose that the building had been cited for multiple violations of the Chicago Municipal Code. Count III alleged that defendants violated section 5-12-170 of the RLTO (Chicago Municipal Code § 5-12-170 (amended Nov. 26, 2013)) by failing to attach to their lease with plaintiff a summary of the RLTO and a current interest rate summary. As relief, plaintiff sought $720 (the remainder of her security deposit) and $2,300 (two times her security deposit) under Count I, $1,150 (one month's rent) under Count II, and $100 under Count III. Common to all three counts, plaintiff sought court costs and reasonable attorney fees.

¶ 5 On May 2, 2016, the parties reached a settlement requiring defendants to pay plaintiff $4,500 within two weeks. Defendants, however, did not pay the agreed amount. Instead, defendants wrote a note to their attorney, asserting that they could not pay the entire settlement amount in one lump sum because the amount was "high and difficult for" them, as senior citizens, to pay. They stated that they would pay plaintiff $1,000 in May, $500 each of the next six months and $270 in December, for a grand total of $4,270. Attached to the note, defendants provided a check for $1,000. Both the note and check bore the date of May 11, 2016.

¶ 6 On May 18, 2016, plaintiff filed a motion to rescind the settlement agreement and requested leave to proceed on a motion for summary judgment that, earlier in the proceedings, the trial court had denied leave to file.[1] In the combined motion, plaintiff stated that her attorney received the note and check from defendants' attorney on May 18, two days after the deadline agreed to in the settlement agreement, and without any prior communication on the matter.

¶ 7 On June 1, 2016, the hearing date on plaintiff's motion, neither defendants nor their attorney appeared. In a written order, the trial court rescinded the settlement agreement, allowed plaintiff leave to proceed on her motion for summary judgment and granted summary judgment in favor of her for $3,120 as well as $469.91 in costs and reasonable attorney fees. The written order does not contain the court's reasoning. The court set a briefing schedule and hearing date on plaintiff's petition for attorney fees. Lastly, the court allowed plaintiff to accept the $1,000 payment from defendants as partial satisfaction of the judgment.

[1] In small claims court, parties are required to obtain leave from the trial court before filing motions for summary judgment. See Ill. S. Ct. R. 287(b) (eff. Aug. 1, 1992).

¶ 8 A week later, plaintiff filed a petition for attorney fees in the amount of $5,450, including a detailed log of her attorney's time spent on the case and an affidavit from another attorney attesting to the reasonableness of the fees.

¶ 9 On June 10, 2016, defendants sent plaintiff a check for $3,500, which, in conjunction with the previous $1,000 check, constituted the remainder of the payment due under the settlement agreement. Defendants subsequently filed a motion to vacate the order rescinding the settlement agreement.

¶ 10 On July 25, 2016, in a written order, the trial court granted plaintiff's petition for attorney fees, but reduced the amount to $4,370, and denied defendant's motion to vacate the order rescinding the settlement agreement. The court's written order does not contain its reasoning. Thereafter, defendants filed an unsuccessful motion to reconsider. This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 A. Rescission of the Settlement Agreement

¶ 13 Defendants first contend that the trial court erred in rescinding the parties' settlement agreement.

¶ 14 Initially, we note that, although the record on appeal includes the trial court's written order which rescinded the parties' settlement agreement, there is no transcript of the proceedings from the hearing on plaintiff's motion to rescind or a bystander's report of the hearing included in the record on appeal. See Ill. S. Ct. R. 323(c) (eff. July 1, 2017). It is well-established that the appellant has the burden to present the reviewing court with a sufficiently complete record to support a claim of error on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). When the record on appeal is incomplete, the reviewing court must apply every possible presumption in favor of the trial court's judgment. *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006).

¶ 15 In Illinois, settlements of disputes are encouraged. *Condon & Cook, L.L.C. v. Mavrakis*, 2016 IL App (1st) 151923, ¶ 56. Settlement agreements are construed and enforced under principles of contract law. *Id.* If one party to the settlement breaches the agreement, "the other party may be entitled to rescission and to be restored to his or her status before the agreement was reached." *Swiatek v. Azran*, 359 Ill. App. 3d 500, 503 (2005). Not every breach, however, entitles the other party to a rescission. *Id.* "A party may be entitled to rescission only where there has been a substantial nonperformance or breach by the other party." *Id.* A substantial nonperformance or breach occurs when a party has not performed a matter that "is of such a nature and importance that the agreement would not have been entered into without it." *Id.* The decision whether to rescind a settlement agreement is firmly within the discretion of the trial court. *Id.* The court only abuses its discretion when its decision is arbitrary and unreasonable such that no reasonable person would adopt the same view. *Sentry Insurance v. Continental Casualty Co.*, 2017 IL App (1st) 161785, ¶ 32. This is "the most deferential standard of review recognized by the law." *Pekin Insurance Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 69.

¶ 16 The parties' settlement agreement required defendants to pay plaintiff $4,500 on or before May 16, 2016. This was not a complicated legal missive. The agreement clearly stated the amount required to be paid and the date by which it had to be paid. Defendants did not pay the amount required or by the date required. Instead, they sent a check for $1,000 to plaintiff's attorney, accompanied by a note, stating that they could not pay the entire settlement amount in one lump sum. Rather, they would pay $1,000 now, then $500 a month for six months and $270 on the seventh month. The resulting total from this proposed payment plan was $4,270, or $230 less than the amount required by the settlement agreement. In essence, defendants' note

summarily stated that they would not give plaintiff the amount they agreed to pay and would not do so within the agreed time. This was clearly a breach of the parties' settlement agreement, a fact defendants even concede in their brief where they state that their "*intention of breaching the agreement* was not to deprive the Plaintiff of her main objective of the settlement which was the payment of the 4500.00." (Emphasis added.)

¶ 17 Defendants' main argument appears to be that the *sua sponte* modification of the settlement by them was not a substantial breach or nonperformance. However, the purpose for plaintiff consenting to the terms of the settlement agreement was to obtain a certain amount of money ($4,500) within a certain time period (two weeks of the agreement). Defendants' failure to pay the required amount of money in the required amount of time was undoubtedly a substantial breach or nonperformance. Furthermore, defendants argue that the breach should be considered "minimal" because, on June 10, 2016, they paid the remainder of the amount due under the settlement agreement. However, on June 1, 2016, at the time the trial court rescinded the agreement, it had no reason to think that defendants would pay the full amount in short order given that their stated payment plan would last over the course of several months. Therefore, on this record, we cannot say that the trial court's decision to rescind the settlement agreement was arbitrary or unreasonable to the degree that no reasonable person would adopt the same position.

¶ 18 Defendants' reliance on *Solar v. Weinberg*, 274 Ill. App. 3d 726 (1995), is unpersuasive. There, as part of a settlement agreement, the plaintiffs were required to turn over a quitclaim deed to the defendant in return for the defendant paying the plaintiffs certain monetary damages, including a $515,000 payment secured by a letter of credit by September 4. *Id.* at 728-30. By September 4, the defendant had not paid, but because that day was a Saturday and the following Monday was a holiday, the plaintiffs did not draw on the letter of credit until September 7 and

were not paid by the bank until September 11. *Id.* at 730. Thereafter, the plaintiffs refused to turn over the deed to the defendant until they obtained $575.33, or seven days of interest. *Id.* As a result of the plaintiffs' refusal, the defendant unsuccessfully moved the trial court to rescind the settlement agreement based on the plaintiffs' breach. *Id.* at 730-31.

¶ 19 In rejecting the defendant's argument that the trial court erred in not rescinding the settlement agreement, this court found that the plaintiffs' refusal to turn over the deed until they received the interest payment "was not so substantial, fundamental or material a breach as to defeat the purpose of the settlement agreement or to render it unattainable" and "did not manifest an intention to abandon the agreement or refuse to comply with its terms." *Id.* at 733-34. In the present case, contrary to *Solar*, defendants' payment plan was an attempt to pay less than what was required under the settlement agreement and over the course of seven months rather than two weeks, thus clearly demonstrating an intent to abandon the agreement and refuse to comply with its terms. Accordingly, the trial court did not abuse its discretion in rescinding the parties' settlement agreement.

¶ 20 B. Summary Judgment in Favor of Plaintiff

¶ 21 Although defendants have contended in a subheading in their brief that "the court erred in *** entering summary judgment against the defendants," they do not present any argument in the body of their brief on this point and cite no case law surrounding appellate review of summary judgment motions. Consequently, to the extent that defendants also challenge the propriety of the trial court's grant of summary judgment in favor of plaintiff, we find this contention forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Accordingly, we affirm the trial court's grant of summary judgment in favor of plaintiff.

¶ 22 C. The Attorney Fees

¶ 23 Defendants next contend that the trial court erred in finding that the $4,370 award of attorney fees was reasonable, arguing that the amount represents more than four times plaintiff's security deposit.

¶ 24 The RLTO provides that:

> "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 § 5-12-180 (added Nov. 6, 1991).

The RLTO was enacted "with a recognition of the historical disparity of bargaining positions between landlord and tenants and to protect tenants from overreaching by residential landlords." *Pitts v. Holt*, 304 Ill. App. 3d 871, 873 (1999). The RLTO's attorney-fee provision is intended to provide "a financial incentive to attorneys to litigate on behalf of those clients who have meritorious cases but who, due to the limited nature of the controversy, would not normally consider litigation as being in their client's financial best interest." *Id.*

¶ 25 When a party requests attorney fees, the trial court must scrutinize the supporting documents to determine whether the requested amount is reasonable. *Richardson v. Haddon*, 375 Ill. App. 3d 312, 314 (2007). Whether fees are reasonable depend on several considerations, 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. The amount of attorney fees awarded by a trial court is within its sound discretion. *Pitts*, 304 Ill. App. 3d at 872. As previously discussed, the court only abuses its discretion when its decision is arbitrary and unreasonable such that no reasonable person would adopt the same view. *Sentry*, 2017 IL App (1st) 161785, ¶ 32.

¶ 26 In this case, plaintiff requested attorney fees in the amount of $5,450. The petition included a four-page memorandum detailing the history of her attorney's time spent on the case and her attorney provided an affidavit attesting to her billable hour rate ($350) as well as that of her associate ($200). According to the affidavit, plaintiff's attorney spent 15 billable hours on the case and her associate spent 1 billable hour. The petition also included an affidavit of David Morris, an attorney with 38 years of legal experience and "considerable experience" in the area of landlord-tenant law. He attested that his billable hour rate was $410 and the rate had been approved in multiple cases in the Chicago area. Morris stated that the rate of plaintiff's attorney and her associate were reasonable and well within the range of rates charged in the Chicago market for similar work. Morris even opined that the rate for plaintiff's attorney was actually low compared to other attorneys in the same field with the same level of experience.

¶ 27 Defendants simply argue that, because they are being forced to pay the settlement amount, plaintiff is incurring a windfall because of the attorney fees, rendering the amount awarded by the court unreasonable. We fail to follow defendants' reasoning. Notably, in the trial court, despite being given an opportunity to respond to plaintiff's fee petition, defendants did not provide any evidence that would contradict the amount of time plaintiff's attorney spent on the case or would cause the court to question the appropriateness of the charged rate. Moreover, defendants caused unnecessary legal fees to be incurred by plaintiff by agreeing to settle their

dispute and then later reneging on the settlement agreement. Given the unrebutted affidavit that plaintiff's attorney fees were reasonable and the history of litigation in this case, we have no basis to find that the trial court's decision was arbitrary or unreasonable to the degree that no reasonable person would adopt the same position. Accordingly, the trial court did not abuse its discretion in awarding attorney fees in the amount of $4,370.

¶ 28 D. Appellate Attorney Fees and Costs

¶ 29 Lastly, plaintiff has requested "her attorney fees and costs incurred in defending this appeal." As previously mentioned, the RLTO provides that "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." Chicago Municipal Code § 5-12-180 (added Nov. 6, 1991). In *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶¶ 42-43, this court found that a tenant-plaintiff who prevailed in the trial court under the RLTO could successfully obtain attorney fees related to opposing a section 2-1401 petition for postjudgment relief filed by her landlords. In our holding, we took guidance from appellate fee cases involving statutory fee-shifting provisions, noting that "[t]ypically, where a party that prevails in the trial court is required to defend that victory on appeal, courts award attorney fees to that party for their work on the appeal, too, provided they prevail on appeal as they did at trial." *Id.* ¶ 35.

¶ 30 In light of this, we find that plaintiff is entitled to reasonable attorney fees and court costs for defending this appeal, as they relate to her original dispute under the RLTO. See *id.* ¶ 40 (finding that the RLTO's fee-shifting provision covers "*any* litigation related to the RLTO") (emphasis in original.) We therefore remand plaintiff's claim for appellate costs and attorney fees to the trial court for its initial review. See *id.* ¶¶ 47, 49 (remanding the matter to the trial

court so the plaintiff could file petitions for costs and reasonable attorney fees for appellate work).

¶ 31 III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgments of the circuit court of Cook County, but remand the matter to the trial court for the purposes of allowing plaintiff to file petitions for court costs and reasonable attorney fees for work performed on this appeal.

¶ 33 Affirmed and remanded with directions.