

2011 IL App (2d) 100497-U
No. 2-10-0497
Order filed October 28, 2011

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
SECOND DISTRICT

CAMEO MANAGEMENT SERVICES, INC., as Agent for the Beneficiaries of U.S. Bank Trust Agreement dated August 14, 1997, known as Trust No. 3347-GE,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-L-1314
)	
LAGUNDINO'S CORPORATION, d/b/a Lagundino's Natural Health Foods Market and Cuisine; MARTIN L. LAGUNDINO, and JOCELYN E. LAGUNDINO,)	
)	Honorable
)	Hollis L. Webster,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Bowman and Birkett concurred in the judgment.

ORDER

Held: (1) The trial court properly granted plaintiff summary judgment on its breach-of-contract claim: the plain language of the contract defeated defendants' assertions as to why they were not in breach; defendants signed the contract as individuals and thus were not subject to corporate protection; plaintiff had standing as a party to the contract and as agents for others with a clear interest; defendants' affirmative defenses were negated by plaintiff's complaint such that plaintiff's late reply to the defenses did not result in their admission; (2) the trial court did not abuse its discretion in awarding attorney fees, as the court was entitled to find that plaintiff's counsel himself had done the work and that the charges were reasonable.

¶ 1 In this breach-of-contract action, defendants, Lagundino's Corporation and Martin L. and Jocelyn E. Lagundino, appeal the trial court's order granting plaintiff, Cameo Management Services, Inc., summary judgment. We affirm.

¶ 2 I. BACKGROUND

¶ 3 This appeal involves the lease of commercial property held in trust by U.S. Bank for the benefit of Carl, Carole, Ronald, and Julie Formento (the beneficiaries), with Cameo Management acting as the leasing agent and suing on behalf of the beneficiaries. On June 1, 2007, U.S. Bank, as trustee, and the beneficiaries, through Cameo Management, leased the property to Lagundino's Corporation and the Lagundinos, who each individually signed the lease (collectively, defendants). The lease was to commence immediately and end in May 2012. Defendants were required to pay rent, real estate taxes, and insurance, obtain required permits, and complete various renovations to the building.

¶ 4 Paragraph 4.1 of the lease stated that defendants acknowledged that the property was delivered in good and satisfactory condition "with Landlord's obligations under the Work Letter, Exhibit B completed" and that they accepted the property in its "as is" condition. The work letter was attached to the lease as an exhibit and stated a list of repairs and improvements that Cameo Management would perform on the property. Paragraph 25.5 of the lease stated that it included all agreements of the parties and that no prior agreements would be effective.

¶ 5 On November 13, 2008, Cameo Management filed a complaint alleging breach of contract. It alleged that defendants failed to pay rent, taxes, and insurance and failed to obtain the necessary permits or initiate renovations. In May 2008, defendants terminated the contract and surrendered possession to Cameo Management.

¶ 6 Cameo Management alleged that, when the lease was signed, defendants acknowledged that the premises were delivered as promised and that they accepted the condition of the premises. However, as a show of good faith, Cameo Management agreed to forgo two months' rent in order to coordinate completion of work in the work letter. Later, because of unexpected delays, it agreed to forgo all rent from June 1 through December 31, 2007, and defendants were expected to finalize their renovation plans. Cameo Management alleged that, by the end of December, all of its obligations were completed, but defendants continued to refuse to pay rent or perform their other obligations under the lease. Instead, defendants submitted a list of additional repair demands, but Cameo Management made no further offers to forgo collection of rent. It sought judgment for the amounts due under the lease and other costs associated with breach of the lease.

¶ 7 Defendants initially did not respond, and Cameo Management moved for default. Defendants then appeared and were given until February 12, 2009, to file an answer. On February 13, 2009, defendants filed an answer generally denying the allegations and, without providing specific facts, asserting the following as affirmative defenses: (1) "Plaintiff failed to perform the conditions precedent as agreed by the parties to the lease agreement"; (2) Cameo Management lacked standing; (3) Cameo Management waived any objection to noncompliance with the lease terms; and (4) individual defendants were entitled to corporate protection because the only party to the lease was Lagundino's Corp.

¶ 8 On March 30, 2009, Cameo Management filed answers to the affirmative defenses, denying the allegations. Discovery then commenced, and defendants never made any motions based on the sufficiency of the pleadings.

¶ 9 On November 17, 2009, Cameo Management moved for summary judgment and attached the lease and Martin Lagundino's deposition as evidence. In the deposition, Lagundino admitted

that he and his wife signed the lease individually and on behalf of the corporation and that they did not pay rent and other amounts due under the lease.

¶ 10 Defendants responded, alleging that there were genuine issues of fact whether Cameo Management completed conditions precedent under the work letter, that Cameo Management lacked standing, that the Lagundinos as individuals were subject to corporate protection, and that Cameo Management admitted the affirmative defenses by failing to file responses within 21 days. Defendants did not provide any evidence in connection with their response.

¶ 11 In their reply and at a hearing on the matter, Cameo Management argued that defendants accepted the property “as is” in the contract, that it had standing as agent for the beneficiaries of the trust, that the Lagundinos were individually named on the lease, and that Cameo Management timely responded to the affirmative defenses. The trial court agreed that the contract was unambiguous and found that there were no issues of material fact that defendants breached the contract and no issues of fact that the affirmative defenses lacked merit. Accordingly, the court entered summary judgment in favor of Cameo Management.

¶ 12 At a hearing on attorney fees under the contract, defendants objected that counsel for Cameo Management failed to differentiate between when an equity partner as opposed to a non-equity partner worked on the case. Counsel for defendants also briefly argued that the amount of fees was unreasonable based on what he charged defendants and what lower-level attorneys in his office charged them. Counsel for Cameo Management responded that, with the exception of one hearing where he was not present, he personally did all of the work in the case. The court awarded attorney fees, stating that it found the amount of fees and time spent on the case to be reasonable. Defendants appeal.

¶ 13

II. ANALYSIS

¶ 14 Defendants first argue that summary judgment was improper because Cameo Management did not perform all conditions precedent under the contract. They point to the work letter and note that Cameo Management agreed to forgo rent.

¶ 15 Cameo Management has not filed a brief. However, we observe that its failure to file a brief does not preclude us from considering the matter on review. *Levy v. Skilling*, 136 Ill. App. 3d 727, 730 (1985) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976)). The judgment of a trial court should not be reversed *pro forma* for the appellee's failure to file his brief as required by rule. *Talandis Construction Corp.*, 63 Ill. 2d at 131. "A considered judgment of the trial court should not be set aside without some consideration of the merits of the appeal." *Id.* If the record is simple and the claimed errors are such that they may be decided without the aid of an appellee's brief, the reviewing court should decide the merits of the appeal. *Id.* at 133. Such is the case here. Therefore, we address the issues on appeal.

¶ 16 Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Whether the entry of summary judgment was appropriate is a matter we review *de novo*. *Id.*

¶ 17 To state a claim for breach of contract, a plaintiff must allege (1) offer and acceptance, (2) consideration, (3) definite and certain terms, (4) performance by the plaintiff of all required conditions, (5) breach, and (6) damages. *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 940 (2004). When contract terms are clear and unambiguous, the intent of the parties must be discerned only from the language used in the contract itself. *Continental Mobile Telephone Co. v. Chicago S M S A Limited Partnership*, 225 Ill. App. 3d 317, 323 (1992).

“Language in a contract is not rendered ambiguous simply because parties do not agree upon its meaning.” *Id.* “When contract terms are clear and unambiguous, they must be given their ordinary and natural meaning.” *Id.* An integration provision contained in a contract indicates that the parties intended this agreement to be their final expression, superseding all prior discussions and agreements between the parties. See *id.*

¶ 18 Averments made in an affidavit or deposition in support of a motion for summary judgment that are not controverted by a counteraffidavit or counterdeposition will be taken as true, notwithstanding the opposing party’s contrary allegations in his or her complaint or answer that merely purport to establish *bona fide* issues of fact. *In re Estate of Allen*, 365 Ill. App. 3d 378, 387 (2006). “[W]here a movant in a summary judgment proceeding supplies uncontradicted facts that would entitle the movant to a judgment as a matter of law, the nonmovant cannot rely on [the] complaint or answer alone to raise a genuine issue of material fact.” *Rumford v. Countrywide Funding Corp.*, 287 Ill. App. 3d 330, 335 (1997). “Construction of a clear and unambiguous contract is a matter of law appropriate for summary judgment.” *USG Interiors, Inc. v. Commercial & Architectural Products, Inc.*, 241 Ill. App. 3d 944, 947 (1993).

¶ 19 Here, the contract clearly stated that it included all agreements of the parties and that no prior agreements would be effective. Defendants do not argue that the contract was ambiguous and they did not present any of their own evidence to counter that of Cameo Management showing that they were in breach of the contract. Thus, the language of the contract controlled and there were no genuine issues of material fact as to defendants’ breach of the contract.

¶ 20 Defendants’ next argument, that the Lagundinos are individually protected by corporate protection, also lacks merit. The contract on its face clearly shows the Lagundinos as individual parties to the contract. Martin Lagundino also admitted in his deposition that they signed the

contract both as individuals and for the corporation. Defendants have not presented evidence to the contrary. Thus, the uncontradicted facts show that the Lagundinos were individually liable, making it appropriate for the court to enter summary judgment against them.

¶ 21 Defendants also argue that Cameo Management lacks standing, in that the contract implies that Cameo Management is an agent of the trustee when the beneficiaries are the only parties with sufficient interest in the property to have standing. But the lease designated U.S. Bank, the Formentos, and Cameo Management as parties to the contract, and the lawsuit was brought by Cameo Management as agent of the beneficiaries. Defendants have not cited authority for the proposition that an agent of the beneficiaries cannot bring suit on their behalf, and they also have not alleged or attempted to show that Cameo Management lacked authority to act on behalf of the beneficiaries. Accordingly, the argument that Cameo Management lacks standing has no merit. See *Handelman v. London Time, Ltd.*, 124 Ill. App. 3d 318, 319-20 (1984) (discussing the requirement that the defendant plead and prove lack of authority).

¶ 22 Defendants next contend that Cameo Management admitted the affirmative defenses when it filed its reply late. Section 2-602 of the Code of Civil Procedure requires a reply to be filed when a new matter by way of a defense is pleaded in an answer, and every allegation not explicitly denied is admitted. 735 ILCS 5/2-602 (West 2008). Illinois Supreme Court Rule 182(a) (eff. Jan. 1, 1967) requires that the reply be filed within 21 days after the last day allowed for the filing of the answer. However, it is well settled that, if the complaint itself negates the affirmative defense, no reply is necessary. *Central Illinois Public Service Co. v. Molinarolo*, 223 Ill. App. 3d 471, 473 (1992); *State Farm Mutual Automobile Insurance Co. v. Haskins*, 215 Ill. App. 3d 242, 246 (1991). Further, when admission because of a failure to reply occurs, only the facts plainly set forth in the alleged defense are admitted. *Andrews v. Cramer*, 256 Ill. App. 3d 766, 769-70 (1993).

¶ 23 Here, the reply to the defenses was filed more than 21 days from the last day that was allowed for the filing of the answer. However, those defenses were also negated by the complaint. The defenses were that Cameo Management failed to perform the conditions precedent as agreed by the parties to the lease agreement; that it waived any objection to non-compliance with lease terms; that it lacked standing; and that there was corporate protection. In general, the defenses were stated as plain assertions with no specific factual allegations given and, in any event, the complaint negated each defense. Cameo Management initially pleaded that it performed under the work letter and that the property was accepted “as is.” It further pleaded that it later agreed to forgo rent as an act of good will. In regard to standing and corporate protection, the complaint was clearly captioned as Cameo Management as agent for the beneficiaries, and the exhibit attached clearly showed the Lagundinos’ individual signatures on the lease as tenants. Thus, the defenses listed were simply contrary assertions to facts already alleged in the complaint, and they were not admitted by the late filing of the reply. See *Haskins*, 215 Ill. App. 3d at 246.

¶ 24 Defendants further assert that the trial court erred in awarding damages for a time period during which Cameo Management failed to establish it was damaged. They maintain that Cameo Management failed to establish the time when the conditions precedent were performed pursuant to the work letter. Because this is the sum total of defendants’ argument, they have forfeited the argument. See *Lozman v. Putnam*, 379 Ill. App. 3d 807, 826 (2008) (stating that a party’s failure to offer argument or cite relevant legal authority results in forfeiture).

¶ 25 Finally, defendants argue that the amount of the attorney fee award was unreasonable, contending that Cameo Management’s counsel failed to show the status of the people who charged the fees and stating, with no specific factual support, that the total amount of fees was unreasonable. “A trial court’s award of attorney fees will not be disturbed on appeal unless it amounts to an abuse

of discretion.” *Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511, 515 (2001). Here, counsel for Cameo Management told the court at the hearing on the matter that he was the person who represented the parties throughout the proceedings and the court found that the specific charges were reasonable. We determine that the court did not abuse its discretion when it awarded fees.

¶ 26

III. CONCLUSION

¶ 27 The trial court properly entered summary judgment in favor of Cameo Management and did not abuse its discretion in its award of fees. Accordingly the judgment of the circuit court of Du Page County is affirmed.

¶ 28 Affirmed.