2016 IL App (4th) 150284-U

NOS. 4-15-0284, 4-15-0458, 4-15-0459 cons.

FILED
May 18, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TED GIANNOPOULOS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Champaign County
PITAYA, INC.,	)	Nos. 11LM1635
Defendant-Appellee.	)	12MR448
	)	13LM90
	)	
	)	Honorable
	)	Charles McRae Leonhard,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in finding in defendant's favor in plaintiff's forcible entry and detainer action.

¶ 2 Plaintiff, Ted Giannopoulos, owned and leased a property to defendant, Pitaya, Inc. (Pitaya), which operated a retail store on the premises. Following a fire, which severely damaged the premises, a dispute arose concerning Giannopoulos' duty to repair the property and Pitaya's obligation to pay rent while the repairs were being made. Giannopoulos filed a complaint for forcible entry and detainer, seeking termination of the lease and possession of the premises based on Pitaya's refusal to pay rent. In response, Pitaya filed counterclaims for (1) declaratory judgment, arguing it did not have to pay rent where the property had not been

repaired to the condition existing immediately prior to the fire; and (2) damages for, *inter alia*, lost profits. Following a bench trial, the trial court found in favor of Pitaya and awarded it damages.

¶ 3 Giannopoulos appeals, arguing the trial court erred in finding (1) Giannopoulos' duty to repair and Pitaya's duty to pay rent were not independent obligations under the lease, (2) Giannopoulos' breach of his duty to repair the premises after the fire was the first material breach of the lease, and (3) Pitaya's counterclaims for monetary damages were germane to the forcible entry and detainer action. We reverse.

¶ 4 I. BACKGROUND

¶ 5 Because the parties are familiar with the extensive history of this litigation, we summarize only the facts necessary to explain our decision. As such, references to the voluminous procedural machinations unnecessary to the ultimate disposition of this appeal are intentionally omitted.

¶ 6 A. Prologue

¶ 7 On July 27, 2006, the parties entered into a commercial lease agreement for the premises located at 625 East Green Street in Champaign, Illinois. The lessee, Pitaya, is an Indiana corporation which operates women's clothing stores.

¶ 8 The first floor of the premises had previously been used as a Mexican restaurant. As a result, it required changes to accommodate Pitaya's needs. The lease provided Pitaya a 75 day "build-out" period, during which time it would make renovations to the premises. Pitaya's changes to the first-floor space included installation of laminate flooring over the existing asbestos tiling flooring, installing bracing in the walls for shelving, and painting the walls and

ceiling. Pitaya also installed an automatic door and specialized lighting consistent with the retail store's specific "look." The second floor included a space which had previously been used as an apartment but required work before it could be rented out. Pitaya eventually restored the second floor and rented the apartment.

¶ 9 On March 23, 2011, a fire damaged the premises. As a result, Pitaya was unable to operate its business on the first floor and the second-floor tenant was displaced. Giannopoulos began renovating the property. His renovations accommodated Pitaya's requests for bracing in the walls for shelving, relocation of the heating and air conditioning system, and modifications to the electrical system. During the renovations, it became apparent Giannopoulos did not have sufficient funds from the insurance proceeds to renovate the second floor. Pitaya was unsatisfied with the renovations. Giannopoulos proposed a rent reduction but the parties were unable to reach an agreement.

¶ 10 On October 20, 2011, Giannopoulos served Pitaya a notice of breach, alleging it violated the lease agreement for, *inter alia*, nonpayment of rent and late fees since April 2011.

¶ 11 B. Champaign County Case No. 2011-LM-1635

¶ 12 On March 7, 2012, Giannopoulos filed an amended complaint for forcible entry and detainer, seeking termination of the lease and possession of the premises based on Pitaya's breach of the lease agreement when it (1) failed to pay rent from April 2011 to November 2011; (2) failed to pay late fees related to those late rent payments; and (3) subleased the second-floor apartment without obtaining the required permits and inspections, and without immediately notifying him of the sublease (Champaign County case No. 2011-LM-1635).

¶ 13 On February 7, 2013, Pitaya filed its answer to the amended complaint as well as

affirmative defenses and counterclaims. In its answer, Pitaya stated, although it had not paid rent from April through November 2011, it had, in fact, done so, under protest, on November 3, 2011. However, Pitaya also maintained it never owed that rent in the first instance because it "was not in possession of the property, as the property was not repaired by [Giannopoulos] and was incapable of [Pitaya] occupying it for any purpose."

¶ 14 In its third affirmative defense, Pitaya argued no rent or late fees could be due because it had been constructively evicted from the premises due to Giannopoulos' failure to repair the property. According to Pitaya's fourth affirmative defense, after the fire, Giannopoulos did not offer the property in an acceptably repaired state. Pitaya also asserted several counterclaims. One of the counterclaims sought a declaratory judgment on the issue of whether it owed any rent.

¶ 15 Pitaya also asserted a breach of contract counterclaim, arguing Giannopoulos breached the lease agreement by, *inter alia*, failing to make the repairs required by the lease. Pitaya's claimed damages included (1) lost profits, (2) rent paid during the time it had no access to the premises, and (3) lost rent from the second-floor sublease.

¶ 16 On August 1, 2013, Giannopoulos filed his reply to Pitaya's answer, affirmative defenses, and counterclaims. He disputed Pitaya's claim it was not in possession of the premises or that it was incapable of being occupied. According to Giannopoulos, it was Pitaya's choice not to occupy the premises. He also argued Pitaya's counterclaims should be stricken as not germane to his forcible entry and detainer complaint.

¶ 17 On August 22, 2013, Giannopoulos filed a motion for leave to file an affirmative defense regarding Pitaya's failure to mitigate its damages, which the trial court granted.

Thereafter, the matter proceeded to trial. See *infra* ¶ 28.

¶ 18 C. Champaign County Case No. 2012-MR-448

¶ 19 The initial lease term began on August 1, 2006, and ended on July 31, 2009. Paragraph 22 of the lease agreement provided Pitaya the option to extend the lease for up to six successive three-year terms. Pitaya presumably exercised its option to renew the lease for another three-year term at the conclusion of the original term as the fire took place in 2011. In a March 13, 2012, letter to Giannopoulos, Pitaya's attorney stated the following: "This notice is given to you pursuant to [paragraph] 22 of the lease agreement in which my client is exercising his right to extend the lease."

¶ 20 On June 11, 2012, Giannopoulos filed a complaint for declaratory judgment, seeking a declaration the March 13, 2012, letter from Pitaya's counsel was insufficient to extend the term of the lease beyond July 31, 2012, where, *inter alia*, it was not sent by certified mail or signed by Pitaya (Champaign County case No. 2012-MR-448). As a result, Giannopoulos maintained he was entitled to immediate possession as of August 1, 2012.

¶ 21 On August 17, 2012, Pitaya filed its answer, in which it generally admitted Giannopoulos' allegations regarding service. Pitaya also alleged several affirmative defenses, including the fact Giannopoulos received the letter and was not prejudiced by counsel's failure to send it by certified mail.

¶ 22 On September 12, 2012, Giannopoulos filed a motion for summary judgment, arguing there was no genuine issue of material fact as to the absence of proper notice to extend the lease beyond July 31, 2012.

¶ 23 Following a November 1, 2012, hearing, the trial court denied Giannopoulos'

motion for summary judgment. Thereafter, the matter was set for trial. See *infra* ¶ 28.

¶ 24 D. Champaign County Case No. 2013-LM-90

¶ 25 On February 4, 2013, Giannopoulos filed a second separate complaint for forcible entry and detainer, arguing he was entitled to possession of the premises due to Pitaya's failure to pay rent from December 2011 through July 2012 (Champaign County case No. 2013-LM-90).

¶ 26 On March 26, 2013, Giannopoulos filed a "Combined Motion to Strike and Dismiss Affirmative Matters in Answer, Affirmative Defenses, and Counterclaim, for Judgment on the Pleadings and for Summary Judgment." The motion was directed at Pitaya's "Answer, Affirmative Defenses, and Counterclaims," filed in response to his complaint in consolidated case No. 2011-LM-1635, which Giannopoulos stated he considered "responsive to the Complaint filed herein." Giannopoulos contended the affirmative matters raised by Pitaya in its answer were not germane to his claim for possession and were also insufficient as a matter of law to defeat his claim for possession. With regard to the motion for judgment on the pleadings, Giannopoulos argued Pitaya had sufficiently admitted the allegations in his complaint to allow a judgment for possession to be entered in his favor. Finally, Giannopoulos contended summary judgment was proper where there was no genuine issue of material fact he was entitled to possession as a result of Pitaya's failure to pay rent.

¶ 27 Following an April 30, 2013, hearing on Giannopoulos' combined motion, the trial court denied the motion for summary judgment. The court found there were genuine issues of material fact as to who breached the lease first. The court also declined to strike Pitaya's affirmative defenses and counterclaims. The court then went on to admonish the parties it would not entertain any further motion practice and the matter would have to proceed to trial or be

settled.

¶ 28 Thereafter, the three consolidated cases were set for an August 2013 bench trial.

¶ 29 E. Bench Trial

¶ 30 During trial, Giannopoulos testified regarding the condition of the premises at the time he entered into the lease with Pitaya. According to Giannopoulos, the first floor was very dirty and missing tiles. The second-floor apartment had damaged walls and floors and the efficiency apartment was in very bad shape as well. At the time, the second floor was not in any condition to be rented. Giannopoulos explained the 75 day build-out period provided for in the lease was to give Pitaya the opportunity to make repairs and restore the premises. Giannopoulos testified Pitaya put in new walls, a new floor, and an electrical system. After the build-out period, Pitaya also made changes to the second floor.

¶ 31 After the fire, Giannopoulos undertook repairs to the first floor. Giannopoulos incorporated Pitaya's requests for extra bracing in the walls to accommodate shelving, a relocation of the heating and air conditioning system, and modifications to the electrical system. Giannopoulos called Michael Mazor, Pitaya's president, in November 2011 to inform him everything was done on the first floor and he could pick up the new keys. While Mazor told Giannopoulos he would call him right back, Mazor never did.

¶ 32 Giannopoulos admitted not repairing the second floor. Giannopoulos testified the estimates he received for repairing the second floor were around $100,000 to $110,000, plus the cost of the plans, which were estimated at another $11,000. Giannopoulos testified he had already spent approximately $380,000 of the $405,000 insurance proceeds renovating the first floor and could not afford repairs to the second floor. The parties discussed amendments to the

lease, including a reduction in rent, to account for the premise's post-fire condition. However, the parties never came to any such agreement. Giannopoulos testified, at the time of trial, Pitaya had not made any rent payments in almost two years.

¶ 33 Giannopoulos called Mazor as an adverse witness. Mazor was unsatisfied with the scope of Giannopoulos' repairs to the first floor. Mazor testified the conditions of the second floor also contributed to his decision to refuse the new keys to the premises. Although he had not personally viewed the second floor, Mazor testified Giannopoulos told him he "hadn't touched the upstairs" after the fire and there were "no apartments there." Mazor emphasized he leased the entire building, not just the first floor. Mazor agreed the lease required late charges for unpaid rent and admitted Pitaya never paid any late fees. Mazor testified Pitaya exercised its option to extend the lease in March 2012 even though the premises had not been satisfactorily repaired and the store was not in business at the time. However, he did not explain why Pitaya did so.

¶ 34 Mazor testified again on Pitaya's behalf. Mazor obtained a bid of approximately $36,000 to finish returning the first-floor space to its pre-fire condition. Mazor also testified he thought the work could be done for less than $36,000. That work would have been done on top of the work Giannopoulos had already done to the space. According to Mazor, he could have reopened the store after the additional work was completed. Mazor had testified he wanted the store to be up and running as soon as possible. Mazor testified he had the funds to do the work. However, he did not believe it was his responsibility to return the space to its pre-fire condition.

¶ 35 Pitaya received $54,611 from the insurance company for the contents of the premises. Mazor explained he had "a standard business policy that covered damages, including

renovations and contents all in one." Mazor acknowledged "it was [his] mistake to be underinsured" and he "didn't receive enough to cover everything." Mazor testified Pitaya also received a business interruption insurance payment in the amount of $147,740.86.

¶ 36 On September 19, 2013, the parties submitted their written closing arguments.

¶ 37 F. Trial Court's Judgment

¶ 38 On February 6, 2015, approximately 17 months after the bench trial, the trial court issued its memorandum of opinion and order finding against Giannopoulos and in favor of Pitaya in each of the consolidated cases.

¶ 39 With regard to case Nos. 2011-LM-1635 and 2013-LM-90, the trial court found paragraph 14 of the lease "assigns exclusively to [Giannopoulos] the duty to 'repair, replace[,] or rebuild the premises or any portion thereof damaged by fire *** occurring during the term of [the lease] or an extension thereof.' " The court reasoned the lease, read as a whole, required Giannopoulos "to restore the premises to the condition they were in immediately prior to the fire; not to the condition that existed at the time the lease was first signed." According to the court, Giannopoulos' position to the contrary lacked support as the lease contemplated he would make improvements and repairs to the premises during the lease. The court held Giannopoulos' failure to restore the premises to its pre-fire condition discharged Pitaya from its duty to pay rent.

¶ 40 With regard to case No. 2013-LM-90, the trial court found Pitaya successfully exercised its option to extend the lease in March 2012 where Giannopoulos admitted he received a timely written notice, despite the fact it was not sent by certified mail.

¶ 41 The trial court noted Pitaya was seeking the following damages: (1) $300,334.32 for lost profits through September 5, 2013, *i.e.*, the last day of the bench trial; (2) $28,000 for the

rent it paid under protest during the pendency of the underlying dispute; (3) $904 for prepaid rent for the month the fire occurred; and (4) $21,750 for lost rent from the second-floor apartment. The court rejected Giannopoulos' argument he could not be held liable for lost profits and awarded Pitaya damages in the amount of $350,980.32, plus court costs.

¶ 42 On March 6, 2015, Giannopoulos filed a motion to reconsider, which the trial court denied on March 16, 2015.

¶ 43 G. Notice of Appeal

¶ 44 On April 13, 2015, Giannopoulos filed his notice of appeal. Thereafter, we granted his motion to consolidate Champaign County case Nos. 2011-LM-1635, 2013-LM-90, and 2012-MR-448, which we docketed as appellate court case Nos. 4-15-0284, 4-15-0458, and 4-15-0459, respectively.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 A. Appellate Court Case Nos. 4-15-0284 and 4-15-0458

¶ 48 On appeal, Giannopoulos argues the trial court erred in finding (1) Giannopoulos' duty to repair and Pitaya's obligation to pay rent were not independent obligations under the lease, (2) Giannopoulos' breach of his duty to repair the premises and not Pitaya's failure to pay rent was the first material breach of the lease, and (3) Pitaya's counterclaims for monetary damages were germane to his forcible entry and detainer action. Specifically, Giannopoulos contends (1) it is well settled a tenant's duty to pay rent and a landlord's duty to repair are independent obligations; (2) his obligation under the lease was to return the premises to its "vanilla box" state, which he did; and (3) Pitaya's refusal to pay rent and late fees, as well as its

sublease of the second floor without prior approval, were actually the first material breaches of the lease.

¶ 49 In a bench trial, the trial judge weighs the evidence and makes findings of fact. *Falcon v. Thomas*, 258 Ill. App. 3d 900, 909, 629 N.E.2d 789, 795 (1994) (quoting *Chicago Investment Corp. v. Dolins*, 107 Ill. 2d 120, 124, 481 N.E.2d 712, 714 (1985)). A reviewing court will defer to the trial judge's findings of fact when they are dependent upon the credibility of witnesses, unless the findings are against the manifest weight of the evidence. *Kalata v. Anheuser-Busch Cos.*, 144 Ill. 2d 425, 433, 581 N.E.2d 656, 660 (1991). A judgment is against the manifest weight of the evidence "if the opposite conclusion is apparent from the record" or it "is unreasonable, arbitrary, or not based on evidence." *Leith v. Frost*, 387 Ill. App. 3d 430, 434, 899 N.E.2d 635, 639 (2008). Questions of law are reviewed *de novo*. *Statler v. Catalano*, 293 Ill. App. 3d 483, 486, 691 N.E.2d 384, 386 (1997). The proper interpretation of a lease is a question of law. *Harris Trust & Savings Bank v. LaSalle National Bank*, 208 Ill. App. 3d 447, 453, 567 N.E.2d 408, 412 (1990).

¶ 50 "The purpose of a forcible entry and detainer action is to adjudicate the party's rights to possession of the premises and the proceedings should not be burdened with matters not directly related to the issue of possession." *Poulos v. Reda*, 165 Ill. App. 3d 793, 798-99, 520 N.E.2d 816, 820-21 (1987) (citing *Bismark Hotel Co. v. Sutherland*, 92 Ill. App. 3d 167, 174, 415 N.E.2d 517, 522 (1981)). It is well settled matters not germane to the distinctive purpose of the forcible entry and detainer proceeding shall not be introduced by joinder, counterclaim or otherwise. 735 ILCS 5/9-106 (West 2014). "Germane" has been held to mean "closely allied," "closely related," "closely connected" or "appropriate." *Rosewood Corp. v. Fisher*, 46 Ill. 2d

249, 256, 263 N.E.2d 833, 838 (1970). "Where a forcible action is based on unpaid rent, whether the tenant, in fact, owes rent is germane to that proceeding." *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342, ¶ 16, 12 N.E.3d 1 (citing *Jack Spring, Inc. v. Little*, 50 Ill. 2d 351, 358-59, 280 N.E.2d 208, 213 (1972)). Here, the crux of Pitaya's argument is it did not have to pay rent because Giannopoulos breached his duty to repair the premises.

¶ 51 In general, a commercial landlord has no common law duty to repair the premises. *Zion Industries, Inc. v. Loy*, 46 Ill. App. 3d 902, 915, 361 N.E.2d 605, 614 (1977). Instead, such a duty must arise by agreement. *Ing v. Levy*, 26 Ill. App. 3d 889, 892, 326 N.E.2d 51, 54 (1975). "Even if a lessor agrees to repair, however, that covenant is independent of the lessee's duty to pay rent." *City of Chicago v. American National Bank*, 86 Ill. App. 3d 960, 962, 408 N.E.2d 379, 381 (1980) (citing *McArdle v. Courson*, 82 Ill. App. 3d 123, 125-26, 402 N.E.2d 292, 295 (1980)). It is the general rule in Illinois a landlord's failure to repair does not discharge a tenant's duty to pay rent. *McArdle*, 82 Ill. App. 3d at 125-26, 402 N.E.2d at 295; *Reda*, 165 Ill. App. 3d at 798-99, 520 N.E.2d at 820-21; *Zion Industries*, 46 Ill. App. 3d at 906, 361 N.E.2d at 608 (in Illinois, the obligation to pay rent and the covenant to make repairs are separate and independent covenants and the failure to make repairs does not discharge the obligation to pay rent).

¶ 52 "While it is true that in some instances a landlord's breach of his covenants under a lease has been held germane to a forcible entry and detainer action [citation], this holding has been confined to residential dwellings and has not been extended to commercial leases. [Citation]." *Reda*, 165 Ill. App. 3d at 799, 520 N.E.2d at 821. Instead, "[w]here a commercial lease is involved, matters which are considered germane to the issue of possession are construed

more strictly [citation], and a commercial occupant cannot raise a landlord's failure to repair as a defense in a forcible entry and detainer action for the nonpayment of rent. [Citation]." *Reda*, 165 Ill. App. 3d at 799, 520 N.E.2d at 821. Simply put, "[w]hen a [commercial] landlord breaches its lease with a tenant, the tenant continues to owe the rent." *Quincy Mall v. Kerasotes Showplace Theatres, LLC*, 388 Ill. App. 3d 820, 826, 903 N.E.2d 887, 892 (2009).

¶ 53 In this case, paragraph 14 of the lease provided Giannopoulos was "to promptly repair, replace[,] or rebuild the premises or any portion thereof damaged by fire or any other casualty occurring during the term of this Lease or any extension hereof." Regardless of whether he restored the first floor to Pitaya's liking, it is undisputed Giannopoulos did not repair the second floor. Thus, a credible argument could be made he in fact breached his duty to repair the leased building.

¶ 54 However, paragraph 3 of the lease explicitly provides, without exception, "Rent is due on the first day of each month *** and [Pitaya] agrees to pay a late fee of $50 per day of each month for every day that rent is still not paid in full (including any accrued late fees)." Paragraph 15 specifically states, "damage or destruction [to the property] shall in no way annul or void this lease." Thus, Pitaya's obligation to pay rent and late fees under the lease was not excused following the fire. The trial court's ruling to the contrary was error. Pitaya materially breached the lease by failing to pay rent and late fees. Giannopoulos' forcible entry and detainer complaint sought possession based on that breach. As such, Giannopoulos was entitled to succeed on his complaint.

¶ 55 We find Pitaya's argument it was dispossessed of the premises to the extent it should not have to pay rent unpersuasive. "Constructive eviction is something of a serious and

substantial character done by the landlord with the intention of depriving the tenant of the enjoyment of the premises." *Shaker & Associates, Inc. v. Medical Technologies Group, Ltd.*, 315 Ill. App. 3d 126, 134, 733 N.E.2d 865, 872 (2000). Constructive eviction relieves the tenant of the responsibility to pay rent after the tenant vacates the premises. *Shaker & Associates*, 315 Ill. App. 3d at 134, 733 N.E.2d at 872. A tenant is justified in abandoning the premises if the landlord's breach of the covenant to repair makes them unfit for the purpose for which they were leased. *Dell'Armi Builders, Inc. v. Johnston*, 172 Ill. App. 3d 144, 148, 526 N.E.2d 409, 411 (1988). However, "[w]here a tenant fails to surrender possession after the landlord's commission of acts justifying the abandonment of the premises, the liability for rent will continue so long as possession of the premises is continued." *Automobile Supply Co. v. Scene-In-Action Corp.*, 340 Ill. 196, 200-01, 172 N.E. 35, 38 (1930); see also *McArdle*, 82 Ill. App. 3d at 126, 402 N.E.2d at 295 ("We are unaware of any authority in this state for permitting a commercial tenant to both remain in possession and refuse to pay rent when a landlord breaches a covenant of the lease, unless the terms of the lease so provide.").

¶ 56 Here, Pitaya waived any claim of constructive eviction as it consistently insisted throughout the proceedings it had the legal right to possess the premises by virtue of the lease. Further, Pitaya exercised its option to renew the lease in March 2012. Exercising the option to renew the lease shows Pitaya had no intention of abandoning the premises or its possessory claim thereto. As such, Pitaya's argument in that regard fails.

¶ 57 Giannopoulos also argues the trial court erred in (1) finding Pitaya's counterclaims for damages germane to the forcible entry and detainer proceeding, and (2) awarding it damages. We agree.

¶ 58 As stated, "[a] forcible entry and detainer proceeding is a summary statutory action to adjudicate possession rights and should not be burdened by other matters unrelated to the issue of possession." *People ex rel. Department of Transportation v. Walliser*, 258 Ill. App. 3d 782, 788, 629 N.E.2d 1189, 1194 (1994) (citing *Miller v. Daley*, 131 Ill. App. 3d 959, 961, 476 N.E.2d 753, 754-55 (1985)). As such, "[n]o matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS 5/9-106 (West 2014). "Claims seeking monetary damages and not possession are not germane to the distinct purposes of a forcible entry and detainer proceeding." *Walliser*, 258 Ill. App. 3d at 788, 629 N.E.2d at 1194 (citing *Sawyier v. Young*, 198 Ill. App. 3d 1047, 1053, 145, 556 N.E.2d 759, 763 (1990)).

¶ 59 In this case, Pitaya's counterclaim for damages was inappropriate in the context of Giannopoulos' forcible entry and detainer proceedings. If Pitaya wished to seek damages from Giannopoulos for his failure to restore the premises, it should have pursued alternative remedies. For example, "a tenant may bring an action against his landlord for breach of a covenant or may recoup for damages in an action brought to recover rent." *Quincy Mall*, 388 Ill. App. 3d at 826, 903 N.E.2d at 892 (quoting *Jack Spring*, 50 Ill. 2d at, 359, 280 N.E.2d at 213). In the meantime, "the tenant may meet its obligation to pay such rent by setting off the amount it spent to make its building fit for its commercial purpose." *Quincy Mall*, 388 Ill. App. 3d at 826, 903 N.E.2d at 892. Pitaya made no such attempt in this case despite having the funds with which to do so. Thus, we reverse the trial court's damage award. As a result, it is unnecessary to address whether Pitaya proved its damages with reasonable certainty.

¶ 60 In sum, we reverse the trial court's judgments in appeal Nos. 4-15-0284 and 4-15-

0458.

¶ 61 B. Appellate Court Case No. 4-15-0459

¶ 62 We note, in his brief on appeal, Giannopoulos does not argue the trial court erred in case No. 2012-MR-448 regarding Pitaya's March 2012 extension of the lease. Ordinarily, we would find he has forfeited review of that issue. See *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 55, 988 N.E.2d 984 (citing *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1046, 918 N.E.2d 586, 591 (2009) (appellant forfeits points not raised in the initial brief)). However, forfeiture is a limitation on the parties and not the reviewing court. *Smith v. Menold Construction, Inc.*, 348 Ill. App. 3d 1051, 1055, 811 N.E.2d 357, 361 (2004). More important, forfeiting the issue in the context of our other holdings in this case would produce an absurd result. As such, we briefly address the issue presented in appeal No. 4-15-0459.

¶ 63 The trial court found Pitaya successfully exercised its option to renew the lease in March 2012, *i.e.*, during the pendency of the forcible entry and detainer proceedings and during a time when it was not paying rent. Paragraph 22 of the lease states Pitaya had the right to extend the lease so long as it was not in default in the payment or performance of the lease. Because we have found Pitaya's failure to pay rent breached the lease and Giannopoulos was entitled to possession as a result, Pitaya was functionally unable to exercise its renewal option. Accordingly, the court's judgment in appeal No. 4-15-0459 is reversed.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we reverse the trial court's judgment.

¶ 66 No. 4-15-0284, Reversed.

¶ 67 No. 4-15-0458, Reversed.

¶ 68 No. 4-15-0459, Reversed.