NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COLLEEN SILKY Appellee v. SAAD IBRAHIM Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1080 WDA 2013

Appeal from the Judgment Entered August 2, 2013
In the Court of Common Pleas of Allegheny County
Civil Division at No(s): AR12-002150

BEFORE: GANTMAN, P.J., ALLEN, J., and STABILE, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED JULY 2, 2014**

Appellant, Saad Ibrahim, appeals from the judgment entered in the Allegheny County Court of Common Pleas, in favor of Appellee, Colleen Silky, in this breach of contract case. We affirm.

The relevant facts and procedural history of this case are as follows. Appellee contacted Appellant regarding an apartment rental ad for an apartment in Pittsburgh, Pennsylvania. Appellee and Appellant exchanged information and set up a date for Appellee to view the apartment. On September 21, 2011, the day of the meeting, Appellant and Appellee discussed the prospective rental agreement, which included the rental premises, the term of the rental, the monthly rent, and the initial rental security deposit. Appellant warned Appellee that she must act fast and asked her for $400.00 that day. Appellee paid Appellant $400.00 and

received a receipt from Appellant that contained "non-refundable" language. Appellee asked Appellant how much she would be required to pay him on move-in day, and Appellant stated, "The rest." Appellee and her friend understood Appellant's statement to mean the remaining $30.00 to complete a full month's rent as a security deposit. Appellant and Appellee did not sign a lease at that time.

On move-in day, October 1, 2011, Appellant demanded the first and last month's rent, as well as three additional months' rent as Appellee's security deposit. Appellee was unable to pay a security deposit that was five times larger than the agreed-upon monthly rent of the apartment. Appellant refused to permit Appellee to move-in, so Appellee asked for the return of her $400.00. Appellant maintained the $400.00 was non-refundable, and Appellee was not entitled to a refund.

On February 13, 2013, Appellee sued Appellant for breach of contract, claiming $1,660.28 in incidental and consequential damages. The calculation of damages included food, fuel, toll, hotel, and parking expenses that Appellee had incurred by having to move twice. In addition, Appellee requested reimbursement of the $400.00 as well as additional damages pursuant to 68 P.S. § 250.512, due to Appellant's failure to return in a timely manner the money Appellee paid him.

Following a bench trial on May 23, 2013, the court found the parties had formed an oral contract for the rental of the Pittsburgh apartment unit

and Appellant had breached the oral contract when he unilaterally changed the terms of the agreement and increased the security deposit on move-in day. Additionally, the court found Appellee's consequential damages were a result of Appellant's breach of the oral contract. Likewise, the court found Appellant had no substantive legal basis to withhold the money Appellee had already paid to him. The court denied Appellee certain consequential damages, such as the cost of furniture and higher utility bills. Thus, the court concluded Appellant must pay Appellee a total of $1,695.38. The court entered its verdict in favor of Appellee on May 28, 2013. Appellant timely filed a motion for post-trial relief on June 3, 2013. The court denied relief on June 4, 2013. Appellant filed a notice of appeal on July 2, 2013.[1] By order entered on July 9, 2013, the court ordered Appellant to file a concise statement of errors complained of on appeal, per Pa.R.A.P. 1925(b), which Appellant timely filed on July 18, 2013.

---

[1] Ordinarily, an appeal properly lies from the entry of judgment, not from the order denying post-trial motions. ***See generally Johnston the Florist, Inc. v. TEDCO Constr. Corp.***, 657 A.2d 511, 516 (Pa.Super. 1995). Nevertheless, a final judgment entered during the pendency of an appeal is sufficient to perfect appellate jurisdiction. ***Drum v. Shaull Equipment and Supply, Co.***, 787 A.2d 1050 (Pa.Super. 2001), *appeal denied*, 569 Pa. 693, 803 A.2d 735 (2002). Here, the court denied Appellants' post-trial motion on June 4, 2013. Appellant filed his notice of appeal on July 2, 2013, prior to the entry of final judgment. The court entered final judgment on August 2, 2013. Thus, Appellant's notice of appeal was actually premature when filed, but it related forward to August 2, 2013, the date a final judgment was entered. ***See*** Pa.R.A.P. 905(a) (stating notice of appeal filed before entry of appealable order or judgment shall be treated as filed on day of entry). Hence, there are no jurisdictional impediments to our review.

Appellant raises the following issues for our review:

> THE TRIAL COURT ERRED IN FINDING THAT THERE WAS AN ORAL CONTRACT TO LEASE THE APARTMENT.
>
> THE TRIAL COURT ERRED IN FINDING THAT APPELLEE WAS ENTITLED TO CONSEQUENTIAL DAMAGES AND ERRED IN DETERMINING THE AMOUNT OF THE CONSEQUENTIAL DAMAGES.
>
> THE TRIAL COURT ERRED IN FINDING THAT APPELLANT WAS REQUIRED TO PROVIDE A WRITTEN EXPLANATION FOR WITHHOLDING ESCROW FUNDS AND FAILING TO RETURN THOSE FUNDS. THE EVIDENCE WAS CLEAR THAT THE FUNDS PAID BY APPELLEE WERE MERELY TO HOLD THE APARTMENT PENDING THE EXECUTION OF A LEASE AND PAYMENT OF THE SECURITY DEPOSIT AND RENT.

(Appellant's Brief at 1).

The relevant standard and scope of review are as follows:

> [We are] limited to a determination of whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in the application of law. Findings of the trial judge in a non-jury case must be given the same weight and effect on appeal as a verdict of a jury and will not be disturbed on appeal absent error of law or abuse of discretion. When this Court reviews the findings of the trial judge, the evidence is viewed in the light most favorable to the victorious party below and all evidence and proper inferences favorable to that party must be taken as true and all unfavorable inferences rejected.
>
> ***Hart v. Arnold***, [884 A.2d 316, 330–31] (Pa.Super. 2005), *appeal denied*, 587 Pa. 695, 897 A.2d 458 (2006). The [trial] court's findings are especially binding on appeal, where they are based upon the credibility of the witnesses, unless it appears that the court abused its discretion or that the court's findings lack evidentiary support or that the court capriciously disbelieved the evidence. Conclusions of law, however, are not binding on an

> appellate court, whose duty it is to determine whether there was a proper application of law to fact by the [trial] court. With regard to such matters, our scope of review is plenary as it is with any review of questions of law.

Shaffer v. O'Toole, 964 A.2d 420, 422-23 (Pa.Super. 2009), *appeal denied*, 602 Pa. 679, 981 A.2d 220 (2009) (quoting ***Christian v. Yanoviak***, 945 A.2d 220, 224–25 (Pa.Super. 2008)) (some internal citations and quotation marks omitted).

In his issues combined, Appellant claims the $400.00 Appellee paid to Appellant was a non-refundable "option contract," by which Appellant would keep the rental offer open to Appellee. Appellant complied with the terms of the option contract by keeping the offer open to Appellee, but Appellee failed to exercise the option to rent when she did not provide the requisite deposit money on move-in day. In the absence of a lease or lease contract, Appellant maintains he is not obligated under any law to pay consequential or other damages under any landlord-tenant relationship statutes, which would require him to give Appellee a written statement explaining why he refused to return her money or pay double the amount she paid him. Appellant concludes the court erred in finding in favor of Appellee and requests this Court to vacate the judgment. We disagree.

In the instant case, the court entered the following verdict:

ORDER OF COURT

> AND NOW, this 24th day of May 2013, following trial in the above-captioned matter, the [c]ourt finds in favor of [Appellee] and against [Appellant] in the total amount of

> $1,695.38. The verdict. amount represents consequential damages flowing from [Appellant's] breach of an oral contract to lease an apartment to [Appellee] in the nature of food, fuel, toll, hotel, and parking charges incurred by [Appellee's] movers as a result of [Appellant's] breach totaling $495.38. [Appellee's] damage claim for furniture expenses is denied. The [c]ourt further finds that [Appellant's] demand for what was essentially a five-month's rent security deposit to be in violation of [68 P.S. § 250.511a].[2] In light of this violation, and [Appellant's] further breach of his oral agreement to rent the apartment to [Appellee], the [c]ourt awards [Appellee] the return of the $400.00 paid as a deposit and an additional $800.00 based upon [Appellant's] failure to either provide a written, itemized explanation for the basis for the withholding of the escrow funds and/or return the same to [Appellee] pursuant to [68 P.S. § 250.512(a)-(c)].

(Trial Court Order, dated May 24, 2013, filed May 28, 2013). In response to Appellant's issues, the trial court reasoned:

> [Appellant] raised three issues in post-trial motions. First, [Appellant] asserts that this [c]ourt erred in finding that there was an oral agreement between the parties. This assertion is unsupported. The record reflects that

---

[2] **§ 250.511a. Escrow funds limited**

> (a) No landlord may require a sum in excess of two months' rent to be deposited in escrow for the payment of damages to the leasehold premises and/or default in rent thereof during the first year of any lease.
>
> * * *
>
> (e) This section applies only to the rental of residential property.
>
> (f) Any attempted waiver of this section by a tenant by contract or otherwise shall be void and unenforceable.

68 P.S. § 250.511a(a), (e), (f).

> [Appellee] and a witness who testified on her behalf each were present when [Appellee] and [Appellant] entered into an oral agreement which substantially identified all of the material terms of the ensuing rental agreement, including the premises to be rented, the term of the rental, the monthly rent, and the initial rental security deposit. It was only at the time of [Appellee's] move in that [Appellant] changed the terms of the agreement demanding a much higher rental security deposit.
>
> Second, [Appellant] asserts that this [c]ourt erred in finding that incidental and/or consequential damages including payments to movers and moving expenses were warranted because, [Appellant] contends, [Appellee] would have been required to hire movers and pay those expenses even in the absence of any alleged breach of contract by [Appellant]. [Appellant] simply misses the point in this assertion. [Appellee] testified that because [Appellant] did not permit [Appellee] to move in on the date she arrived ready to move in with the assistance of friends and family who incurred costs and expenses in order to assist her with moving, she was required to move again at a later date, at additional expense. Accordingly, all of the costs and expenses incurred by [Appellee] and her friends and family as moving helpers were wasted and of no material value or benefit to [Appellee]. As such, these costs and expenses constitute real and recoverable incidental and consequential damages as result of [Appellant's] breach of the oral agreement to rent the apartment to [Appellee].
>
> Finally, and perhaps most substantively, [Appellant] takes issue with this Court's conclusion that [Appellee] was entitled to the reimbursement of the $400 security deposit and an additional $800 pursuant to [68 Pa.C.S. § 250.512(a)-(c)].[3] [Appellant] appears to be asserting

---

[3] **§ 250.512. Recovery of improperly held escrow funds**

(a) Every landlord shall within thirty days of termination of a lease or upon surrender and acceptance of the leasehold premises, whichever first occurs, provide a tenant with a written list of any damages to the leasehold premises for which the landlord claims the

(Footnote Continued Next Page)

> that the $400 advanced payment by [Appellee] was intended to be a non-refundable down payment to hold the apartment until such time as [Appellee] paid the appropriate rental and security deposit fees. While [Appellant] offered rather inconsistent testimony, some of which might, if believed, support this contention, the [c]ourt did not conclude that this was the nature of the agreement between the parties. This [c]ourt accepted the testimony of [Appellee] who testified that the $400 payment was a prepaid security deposit and that it was in no material respect a non-refundable down payment. In

(Footnote Continued) ———————————

> tenant is liable. Delivery of the list shall be accompanied by payment of the difference between any sum deposited in escrow, including any unpaid interest thereon, for the payment of damages to the leasehold premises and the actual amount of damages to the leasehold premises caused by the tenant. Nothing in this section shall preclude the landlord from refusing to return the escrow fund, including any unpaid interest thereon, for nonpayment of rent or for the breach of any other condition in the lease by the tenant.
>
> (b) Any landlord who fails to provide a written list within thirty days as required in subsection (a), above, shall forfeit all rights to withhold any portion of sums held in escrow, including any unpaid interest thereon, or to bring suit against the tenant for damages to the leasehold premises.
>
> (c) If the landlord fails to pay the tenant the difference between the sum deposited, including any unpaid interest thereon, and the actual damages to the leasehold premises caused by the tenant within thirty days after termination of the lease or surrender and acceptance of the leasehold premises, the landlord shall be liable in assumpsit to double the amount by which the sum deposited in escrow, including any unpaid interest thereon, exceeds the actual damages to the leasehold premises caused by the tenant as determined by any court of record or court not of record having jurisdiction in civil actions at law. The burden of proof of actual damages caused by the tenant to the leasehold premises shall be on the landlord.
>
> * * *

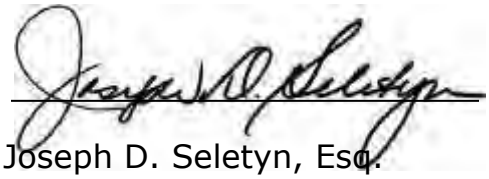
68 P.S. § 250.512(a)-(c).

> any case, the $400 pre-payment is clearly refundable if the only reason [Appellee] did not follow through on renting the apartment was because [Appellant] refused to permit [Appellee] to rent the apartment, which is what occurred in this case. I concluded that, consistent with [Appellee] and [Appellee's] witness' testimony, that [Appellant] changed the material terms and conditions of the agreement between the parties immediately prior to the time of [Appellee's] move in. Withholding [Appellee's] $400 security deposit under those circumstances is completely unreasonably and untenable.
>
> Given that [Appellant] had no substantive legal basis to withhold the $400 security deposit, this [c]ourt's award of an additional $800 pursuant to [68 P.S. § 250.512(a)-(c)] based upon [Appellant's] failure to either return the security deposit and/or provide a written explanation to [Appellee] for why the security deposit was not returned within thirty days is completely supported by the facts of record in this case and the statutory authority that applies to the circumstances of this case.
>
> For all of the reasons set forth above, this [c]ourt's May 24, 2013 Order/Bench Verdict in favor of [Appellee] and again[st] [Appellant] in the amount of $1.695.38, and this [c]ourt's subsequent June 4 2013 denial of [Appellant's] post-trial motions should not be disturbed.

(Trial Court Opinion, dated July 18, 2013, at 2-4). The record supports the court's decision, and we see no reason to disturb it on the grounds alleged. Accordingly, we affirm.

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/2/2014