

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION**

SCOTT LEVINE t/a LEVINE'S AUTO SALVAGE SITE,	:	
	:	
Plaintiffs/Appellants	:	
	:	No. 10-3734
vs.	:	
	:	
I & D AUTO SALVAGE, INC.	:	
Defendant/Appellee	:	

Frank R. Cori, Esquire
Robert S. Frycklund, Esquire

Attorney for Plaintiffs/Appellants
Attorney for Defendant/Appellee

MEMORANDUM OPINION¹

Webb, S.J. – April 5th, 2012

A verdict in a non-jury trial was entered in favor of Plaintiff, Scott Levine t/a Levine's Auto Salvage Site, and against Defendant, I & D Auto Salvage, Inc., on August 31, 2011, for monetary damages in the amount of \$27,272.24, plus interest and costs. By an Order of Court, dated December 27, 2011, this Court denied Defendant's Motions for Post-Trial Relief and entered the judgment on the verdict of August 31, 2011 for possession of real property and money damages.

Defendant thereafter paid Plaintiff \$27,996.87, representing the sum of the judgment, and interest and costs, on January 24, 2012. Plaintiff subsequently filed an appeal of the verdict arguing damages should be awarded up to the time Plaintiff recovered actual possession of the real property, January 18, 2012, and not when the verdict was entered on August 31.

In Pennsylvania it is well established that a tenant who, without the consent of the landlord, retains possession of all or part of the premises is deemed to be considered a hold-over tenant and is thus subject to the same terms, conditions, and covenants as the previous lease

¹ This opinion is prepared and filed in accordance with Pa. R.A.P., Rule 1925(b).

agreement. *Harvey v. Gunzberg*, 148 Pa. 294, 23 A. 1005 (1892); *see also Clairton Corporation v. Geo-Con. Inc.*, 431 Pa. Super. 34, 37, 635 A.2d 1058, 1059 (1993).

Applying that principle to the instant case, Defendant, being deemed a hold-over tenant in the August 31 verdict, is subject to the terms of the lease agreement it executed with the Plaintiff. Although the August 31, 2011 verdict did not expressly state that Defendant is a hold-over tenant, this Court did consider the Defendant to be a hold-over tenant as evidenced by the damages assessed against Defendant in granting Plaintiff the remainder of the monthly rental amount, which per the lease agreement between Plaintiff and Defendant is double rent, for the time period during which Defendant remained in possession of the property past the termination of the lease. Furthermore, the Verdict explicitly granted immediate possession of the real estate to Plaintiff, and thus the presumption that Defendant was a hold-over tenant must also apply to the period of time commencing with the Verdict and ending with the date of actual possession. Therefore, we find that Plaintiff is entitled to the double rental amount per month, less the single rental amount already paid during the period from the date of Verdict to the date of actual possession of the land.

Plaintiff argues that he is entitled to double monthly rent payments, as per the lease agreement, from July 1, 2010 to January 18, 2012. Although we agree with Plaintiff's end date of January 18, 2012, when actual possession of the land was gained by the Plaintiff, Defendant was deemed not to be a hold-over tenant until mid-November 2010. From testimony elicited at trial, this Court believes there was an oral agreement between Plaintiff and Defendant in that the parties agreed Defendant can remain on the property after the lease expired and still only pay the single monthly rental amount to give the Defendant more time to consider the option of buying the property from Plaintiff. Once Defendant decided not to exercise his option to buy the property, Plaintiff sent Defendant a note, on October 12, 2010, informing Defendant it had thirty

days to vacate the property. On November 12, 2010, the Defendant, still on the property of the Plaintiff, became a hold-over tenant and thus the Court found that Defendant should have been charged the effect of the verdict which was a retroactive charge of double rent.

In applying the same principle as stated above, a hold-over tenant is subject to the same terms, conditions, and covenants as the previous lease agreement, Defendant is also responsible for the payment of all real estate taxes assessed to the property while in possession of the property. Therefore, Defendant is liable for any unpaid real estate taxes that have accrued up until January 18, 2012, when Plaintiff regained actual possession of the property.

In item #4, Plaintiff claims entitlement to attorney fees based on the Guaranty executed between Plaintiff and Defendant. A landlord can recover attorney fees incurred by the landlord in procuring a hold-over tenant's removal from the premises if breach of the covenant to surrender the premises is provided for in the lease. *City of Pittsburgh v. Charles Zubik & Sons, Inc.*, 404 Pa. 219, 171 A.2d 776 (Pa 1961). In accordance with the Guaranty, Plaintiff should be awarded attorney fees in the amount of 5% of the judgment on appeal, not the 10% Plaintiff claims entitlement to.

Based on the guiding principles and the lease executed between Plaintiff and Defendant, this Court believes Plaintiff is entitled to damages for unpaid real estate taxes, double monthly rental amount during the period from date of the Verdict to date of actual possession of the land less the single rental amount already paid by Defendant, and attorney fees in the amount of five percent of the judgment amount on appeal.

BY THE COURT:

Richard W. Webb, S.J.