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

TREVOR G. SOMMERFIELD,	:	
	:	
Appellee	:	
	:	
v.	:	No. 17-2695
	:	
BART SPRINGER, CONRAD FLYNN and ANNETTE GREEN,	:	
	:	
Appellants	:	

Adam R. Weaver, Esquire — Counsel for Appellee

Andrew J. Katsock, Esquire — Counsel for Appellants

MEMORANDUM OPINION

Serfass, J. - December 7, 2022

Here before the Court is the appeal of our Verdict of April 14, 2022 in favor of Trevor G. Sommerfield (hereinafter "Appellee") and against Bart Springer and Annette Green (hereinafter "Appellants") and our Order of September 16, 2022 denying the post-trial motion filed by Appellants. We file the following Memorandum Opinion pursuant to Pa.R.A.P. 1925(a), respectfully recommending that our Verdict of April 14, 2022 and our Order of September 16, 2022 be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant Bart Springer is the owner of real property situated at 66 Broadway, Jim Thorpe, Pennsylvania. Anthony Stella is the sole owner and operator of Antwon, Inc., a Pennsylvania corporation with its office located at 66 Broadway, Jim Thorpe, Pennsylvania. On November 25, 2015, Appellant Springer and Antwon, Inc. entered into

a commercial lease (hereinafter "the lease") to operate a restaurant known as Tony Stella's Encore on the property. The term of the lease was to expire on October 31, 2018. According to the provisions of the lease, written consent of the lessor was required to sublease the property and the lessee was entitled to fifteen (15) days' written notice from the lessor to remedy any defaults prior to termination. On July 24, 2017, Appellee and Antwon, Inc. entered into a Memorandum of Agreement permitting Appellee to purchase and operate the restaurant. Appellee and Mr. Stella testified that Appellee has experience in the operation and management of a restaurant business. That same day, Appellant Springer gave written authorization to Mr. Stella to sublease the property to Appellee until November 1, 2018.

On October 6, 2017, without any prior notice, Appellant Springer entered the property with a constable and provided Appellee with a letter stating that he was immediately evicted from the property and that he would be charged with trespass upon reentry. Anthony Roberti, Esquire testified that he drafted the letter at the request of Appellant Springer on the basis that Mr. Stella had given Appellant Springer permission to fire Appellee and have him removed from the property. Mr. Stella testified that he was unaware of Appellee's eviction. Appellee testified that he had not defaulted on the rental payments under the lease and that he did not receive notice from Appellant Springer of any defaults with the lease prior to his eviction. A legal eviction proceeding was never commenced by Appellant Springer against Appellee.

Defendant Conrad Flynn leased and operated a speakeasy restaurant, Albright Room, LLC, on the top floor of the subject property. Appellant Springer testified that he permitted Defendant Flynn to take over operation of Tony Stella's Encore following the eviction of Appellee. On September 14, 2018, a default judgment was entered against Defendant Flynn for failure to file an answer to Appellee's Amended Complaint. Appellant Annette Green was an employee of Appellant Springer and Mr. Stella and worked as a manager at Tony Stella's Encore.

On October 16, 2017, Appellant Springer permitted Appellee to access the property and assess what remained of the restaurant inventory. On that day, Appellee and Defendant Flynn came to an agreement regarding the value of the restaurant inventory and equipment purchased by Appellee and utilized by Defendant Flynn during operation of the business following Appellee's eviction on October 6, 2017. Appellee testified that Defendant Flynn agreed to pay the sum of nine thousand six hundred thirty-four dollars and twenty-three cents ($9,634.23) to account for the remaining inventory and equipment. Appellee testified that he never received payment from Defendant Flynn. Defendant Flynn and Appellant Green were present during the eviction and contributed to the restaurant inventory loss following Appellee's eviction on October 6, 2017.

Appellee testified that he incurred expenses in the amount of eighty-four thousand six hundred ten dollars and eighty-one cents ($84,610.81) related to acquiring and operating the restaurant from

August 2017 to October 2017. These expenses included twelve thousand dollars ($12,000.00) for rent paid from August 2017 to September 2017, six thousand five hundred dollars ($6,500.00) to stock the restaurant's inventory to begin operation, and sixty-six thousand one hundred ten dollars and eighty-one cents ($66,110.81) for operation expenses from August 2017 to October 2017.[1] Appellee testified that he anticipated the restaurant would earn profits in the amount of one hundred twenty thousand dollars ($120,000.00) between October 6, 2017 and November 1, 2018 when the sublease would end. Appellee testified that he incurred attorney's fees and costs in the amount of eighteen thousand six hundred sixteen dollars and thirteen cents ($18,616.13) during the course of litigation.

A non-jury trial was held before the undersigned on October 20, 2021.[2] On April 14, 2022, we entered a verdict in favor of Appellee and against Appellants, jointly and severally, in the amount of two hundred forty-five thousand six hundred twenty-nine dollars and sixty-three cents ($245,629.63), the sum of which included: (1) damages related to expenses Appellee incurred acquiring the restaurant and operating the restaurant from August 2017 to October 2017, (2) lost profits between October 6, 2017 and November 1, 2018

[1] We found that Appellee was not entitled to recover damages or seek reimbursement for the $6,500.00 sum he expended to stock the restaurant's protein and produce inventory to begin operation in July-August 2017. We note that any such inventory remaining on the premises after Appellee's eviction on October 6, 2017 was accounted for in the document admitted into evidence as Appellee's Exhibit No. 8 as part of the agreed upon sum of $9,634.23 (representing liquor, wine, equipment and food remaining on premises post-eviction).

[2] Appellant Green failed to appear at the non-jury trial.

when the sublease would have ended, (3) treble damages under the Pennsylvania Landlord and Tenant Act (hereinafter "PLTA") related to Appellants' improper exercise of control over the restaurant inventory and equipment purchased by Appellee and utilized in the operation of the business following Appellee's eviction from the premises, and (4) reasonable attorney's fees and costs under the PLTA. (Court's Verdict of 4/14/22).

On April 25, 2022, Appellants filed a post-trial motion arguing that this Court erred: (1) in awarding Appellee damages for lost profits which included lost liquor sales when Appellee did not have a valid liquor license, (2) in finding that Appellant Springer wrongfully evicted Appellee from the property, (3) in awarding Appellee damages related to expenses Appellee incurred acquiring the restaurant and operating the restaurant from August 2017 to October 2017, (4) in awarding Appellee attorney's fees and costs, (5) in awarding Appellee treble damages, (6) in failing to find that Appellee's action was barred by the doctrine of unclean hands, (7) in finding Appellee's testimony more credible, and (8) in failing to apply the collateral source rule in the instant matter. (Appellants' Post-Trial Motion, 4/25/22). On September 16, 2022, we entered an order denying Appellants' post-trial motion. (Court's Order of 9/16/22).

On October 14, 2022, Appellants filed an Appeal to the Superior Court of Pennsylvania seeking review and reversal of this Court's Verdict of April 14, 2022 and Order of September 16, 2022. On October

17, 2022, we entered an order directing Appellants to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). In compliance with our order, Appellants filed their "Concise Statement of Errors Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b)" on November 1, 2022.

ISSUES

In their Concise Statement, Appellants raise the following issues which we summarize as follows:

1. Whether this Court erred in finding in favor of Appellee; and
2. Whether this Court erred in awarding Appellee damages.

DISCUSSION

1. This Court's verdict in favor of Appellee and against Appellants is supported by the evidence.

A new trial based on weight of the evidence issues will not be granted unless the verdict is so contrary to the evidence as to shock one's sense of justice; a mere conflict in testimony will not suffice as grounds for a new trial. Nemirovsky v. Nemirovsky, 776 A.2d 988, 993 (Pa.Super. 2001). A trial court's decision on a weight of the evidence claim will not be reversed unless the trial court acted capriciously or palpably abused its discretion. Wagner v. Anzon, Inc., 684 A.2d 570, 578 (Pa.Super. 1996).

Appellants argue that this Court erred in finding that Appellant Springer wrongfully evicted Appellee from the property. Under Pennsylvania law, landlords are enjoined from self-help evictions. Kuringer v. Cramer, 498 A.2d 1331, 1337 n.14 (Pa.Super. 1985). To

properly evict a tenant, a landlord must follow the legal procedures defined under the Pennsylvania Landlord and Tenant Act and the Pennsylvania Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges. Id. The PLTA applies to both residential and commercial leases. In re McJonathan, 533 B.R. 440, 447-48 (Bankr. M.D.Pa. 2015).

Personal property remaining on the premises may be deemed abandoned if "[a]n eviction order or order for possession in favor of the landlord has been entered and the tenant has vacated the unit and removed substantially all personal property" or "[a]n eviction order or order for possession in favor of the landlord has been executed." 68 P.S. §250.505a(b)(2)-(3). "Under no circumstances may a landlord dispose of or otherwise exercise control over personal property remaining upon inhabited premises without the express permission of the tenant." 68 P.S. §250.505a(f).

Appellant Springer did not file an ejectment action or summary process to properly remove Appellee from the subject premises on October 6, 2017, but instead utilized a constable to evict Appellee from the property without an executable order. *See* Pa.R.C.P.M.D.J. 411. Appellee was rightfully occupying the premises pursuant to the Memorandum of Agreement dated July 24, 2017 between Appellee and Mr. Stella and the written consent of Appellant Springer permitting Mr. Stella to sublease the property to Appellee. Therefore, we found that Appellee was wrongfully evicted under the PLTA and in breach of the parties' commercial lease agreement.

Appellants argue that this Court erred by failing to find that Appellee's action was barred by the doctrine of unclean hands. "The doctrine of unclean hands generally operates only to deny equitable, and not legal, remedies." Morgan v. Morgan, 193 A.3d 999, 1004 (Pa.Super. 2018) (*citing* Universal Builders, Inc. v. Moon Motor Lodge, Inc., 244 A.2d 10, 14 (Pa. 1968)). We found that the doctrine of unclean hands was not applicable in the instant matter because Appellee sought a legal remedy in monetary damages.

Appellants argue that this Court erred by finding the testimony of Appellee and his witnesses more credible. We note that "[w]hen the trial court sits as fact finder, the weight to be assigned the testimony of the witnesses is within its exclusive province, as are credibility determinations, and the court is free to choose to believe all, part, or none of the evidence presented. ..." M.E.W. v. W.L.W., 240 A.3d 626, 634 (Pa.Super. 2020) (*quoting* Mackay v. Mackay, 984 A.2d 529, 533 (Pa.Super. 2009)).

Appellants also argue that this Court erred by failing to apply the collateral source rule in the instant matter. The collateral source rule "prohibits a defendant in a personal injury action from introducing evidence of the plaintiff's receipt of benefits from a collateral source for the same injuries which are alleged to have been caused by the defendant." Simmons v. Cobb, 906 A.2d 582, 585 (Pa.Super. 2006) (*quoting* Collins v. Cement Express, Inc., 447 A.2d 987, 988 (Pa.Super. 1982)). We found that the purpose

underlying the collateral source rule was not implicated in this case and was therefore inapplicable.

We found that Appellee provided sufficient evidence to establish that he was wrongfully evicted by Appellant Springer in violation of the PLTA and in breach of the lease. Based upon the testimony and evidence presented, we find that our verdict in favor of Appellee and against Appellants is supported by the weight of the evidence and is in accordance with the established law of this Commonwealth.

2. This Court's award of damages to Appellee is supported by the evidence.

We first note that:

> The determination of damages is a factual question to be decided by the fact-finder. The fact-finder must assess the testimony, by weighing the evidence and determining its credibility, and by accepting or rejecting the estimates of the damages given by the witnesses. Although the fact-finder may not render a verdict based on sheer conjecture or guesswork, it may use a measure of speculation in estimating damages. The fact-finder may make a just and reasonable estimate of the damage based on relevant data, and in such circumstances may act on probable, inferential, as well as direct and positive proof.

Judge Technical Services, Inc. v. Clancy, 813 A.2d 879, 885 (Pa.Super. 2002) (*citing* Penn Elec. Supply Co., Inc. v. Billows Elec. Supply Co., Inc., 528 A.2d 643, 644 (Pa.Super. 1987)).

Appellants argue that this Court erred in awarding Appellee damages in the amount of one hundred twenty thousand dollars ($120,000.00) for lost profits which included lost liquor sales when

Appellee did not have a valid liquor license. "The 'general rule of law applicable for loss of profits' in a contract action permits recovery of lost profits when 'there is evidence to establish them with reasonable certainty,' 'there is evidence to show that they were the proximate consequence of the wrong' and if 'they were reasonably foreseeable.'" Quinn v. Bupp, 955 A.2d 1014, 1021 (Pa.Super. 2008) (*quoting* Company Image Knitware, Ltd. v. Mothers Work, Inc., 909 A.2d 324, 336 (Pa.Super. 2006)). "[G]enerally, an 'owner is competent to testify to the value of his property ... since he has at least a general knowledge of what he owns.'" Guntrum v. Citicorp Trust Bank, 196 A.3d 643, 648 (Pa.Super. 2018) (*quoting* Sgarlat Estate v. Commonwealth, 158 A.2d 541, 545 (Pa. 1960)).

Mr. Stella testified that he agreed to sublease the property with the intent that Appellee would obtain the liquor license from Antwon, Inc. Appellee was in the process of applying for the liquor license transfer prior to his eviction from the property. Appellee testified that he anticipated the restaurant would earn profits in the amount of one hundred twenty thousand dollars ($120,000.00) between October 6, 2017 and November 1, 2018 when the sublease would end. Therefore, we found that Appellee was entitled to recover damages for lost profits in the amount of one hundred twenty thousand dollars ($120,000.00) which would have included lost liquor sales.

Appellants argue that this Court erred in awarding Appellee damages in the amount of seventy-eight thousand one hundred ten

dollars and eighty-one cents ($78,110.81) related to expenses Appellee incurred acquiring the restaurant and operating the restaurant from August 2017 to October 2017. "A damage award should place the non-breaching party as nearly as possible in the same position [it] would have occupied had there been no breach." Davis v. Borough of Montrose, 194 A.3d 597, 612 (Pa.Super. 2018) (*quoting* Gamesa Energy USA, LLC v. Ten Penn Center Associates, L.P., 181 A.3d 1188, 1194 (Pa.Super. 2018)).

Appellee testified that he incurred expenses related to acquiring and operating the restaurant which included twelve thousand dollars ($12,000.00) for rent paid from August 2017 to September 2017 and sixty-six thousand one hundred ten dollars and eighty-one cents ($66,110.81) for operation expenses from August 2017 to October 2017. Appellant Green was present during the eviction and contributed to the restaurant inventory loss following Appellee's eviction on October 6, 2017. "[J]oint tortfeasors are jointly and severally liable to the Appellee to pay awards of damages arising out of the injury to which their activity contributed." Andaloro v. Armstrong World Industries, Inc., 799 A.2d 71, 78 (Pa.Super. 2002) (*citing* Baker v. ACandS, 755 A.2d 664, 668 (Pa. 2000)). Therefore, we found that Appellant Springer and Appellant Green were jointly and severally liable for damages in the amount of seventy-eight thousand one hundred ten dollars and eighty-one cents ($78,110.81) related to expenses Appellee incurred acquiring the restaurant and operating the restaurant from August 2017 to October 2017.

Appellants argue that this Court erred in awarding Appellee attorney's fees and costs in the amount of eighteen thousand six hundred sixteen dollars and thirteen cents ($18,616.13). "A landlord that violates the provisions of [Section 250.505a] shall be subject to ... reasonable attorney fees and court costs." 68 P.S. §250.505a(i).

Appellee testified that he incurred attorney's fees and costs in the amount of eighteen thousand six hundred sixteen dollars and thirteen cents ($18,616.13) during the course of litigation. Therefore, we found that Appellee was entitled to recover reasonable attorney's fees and costs under the PLTA in the amount of eighteen thousand six hundred sixteen dollars and thirteen cents ($18,616.13).

Appellants argue that this Court erred in awarding Appellee treble damages in the amount of twenty-eight thousand nine hundred two dollars and sixty-nine cents ($28,902.69). "A landlord that violates the provisions of [Section 250.505a] shall be subject to treble damages ..." 68 P.S. §250.505a(i). An award of treble damages is properly calculated by determining the amount of actual damages sustained under Section 250.505a of the PLTA and multiplying that figure by three. Sherwood v. Farber, No. 20 EDA 2021, 2021 WL 5027393, at *5 (Pa.Super. Oct. 29, 2021). A damage award under Section 250.505a(i) should include only those damages related to the landlord's improper disposal of or exercise of control over the tenant's personal property. Id. "Personal property" includes "goods and chattels." 68. P.S. §250.102.

We found that Appellee was entitled to recover treble damages under the PLTA in the amount of twenty-eight thousand nine hundred two dollars and sixty-nine cents ($28,902.69) related to Appellants' improper exercise of control over the restaurant inventory and equipment purchased by Appellee and utilized in the operation of the business following Appellee's eviction from the premises.

Appellants also argue that Appellee failed to mitigate his damages. "A party who suffers a loss has a duty to make a reasonable attempt to mitigate damages, but the burden is on the party who breaches the contract to show how further loss could have been avoided through the reasonable efforts of the injured party." Marion v. Bryn Mawr Trust Company, 253 A3d 682, 694 (Pa.Super. 2021) (*citing* Ecksel v. Orleans Construction Co., 360 519 A.2d 1021 (Pa.Super. 1987); Forest City Grant Liberty Assocs. v. Genro II, Inc., 652 A.2d 948, 952 (Pa.Super. 1995)).

Appellee was wrongfully evicted from the subject property as he was not in default of the lease and Appellant Springer did not utilize the proper eviction process. Appellee was evicted on October 6, 2017 and was unable to access the property and assess what remained of the restaurant inventory until October 16, 2017, when he and Defendant Flynn came to an agreement to account for the remaining inventory and equipment. We find that Appellee made reasonable efforts to mitigate his damages under the circumstances.

Upon review and consideration of the evidence and testimony presented at trial, we found that Appellee is entitled to recover

damages in the amount of two hundred forty-five thousand six hundred twenty-nine dollars and sixty-three cents ($245,629.63) against Appellants.

CONCLUSION

Based upon the foregoing, we respectfully recommend that the instant appeal be denied and that our Verdict of April 14, 2022 and our Order of September 16, 2022 be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.