



Appellants.

OPINION FILED: June 26, 2018

The Honorable Robert D. Schollmeyer, Judge

Before Division Three: Victor C. Howard, Presiding Judge, Cynthia L. Martin, Judge
and Gary D. Witt, Judge

Mario De La Cruz ("De La Cruz") and Deanna James ("James") (collectively "Tenants") appeal from the trial court's judgment on a rent and possession case filed by MJDZ, L.L.C. ("MJDZ") against the Tenants. Because the trial court's judgment was not final for purposes of appeal, the appeal is dismissed.

Factual and Procedural Background

MJDZ filed a petition for rent and possession against the Tenants on November 18, 2015.¹ The petition alleged that the Tenants leased residential premises located at 3820 Candlelight Drive in Jefferson City, Missouri from MJDZ. The petition further alleged that the Tenants failed to pay rent as outlined in the lease agreement so that MJDZ was entitled to judicial termination of the lease agreement, recovery of possession of the premises, and recovery of unpaid rent and late fees. At trial, MJDZ orally amended its petition to include a breach of contract claim against the Tenants. Michael D. Ziehmer ("Ziehmer"), member-manager of Landlord, testified that MJDZ was seeking judgment in the amount of \$2,075, which included the rent due and owing, the late fees incurred, and the attorney's fees incurred by MJDZ.

The Tenants filed an initial responsive pleading on January 8, 2016, but they filed a first amended answer, affirmative defenses and counterclaims ("First Amended Answer") on September 12, 2016. The First Amended Answer asserted five affirmative defenses, one of which was that MJDZ "breached the implied warranty of habitability by failing to provide a property fit for human occupation and endangering the life, health, and/or safety of [the Tenants]."² The First Amended Answer also set forth three counterclaims: (1) damages resulting from MJDZ's breach of the implied warranty of habitability; (2)

¹Michael D. Ziehmer ("Ziehmer"), member-manager of MJDZ, initially filed a petition for rent and possession against the Tenants in his own name. On the day of trial, Ziehmer filed a motion for leave to amend the petition, asserting that the proper plaintiff for the rent and possession case against the Tenants was MJDZ. The trial court presumably granted the motion because it denominated MJDZ as the plaintiff on its judgment. As such, we refer to MJDZ as the plaintiff throughout this Opinion.

²None of the other four affirmative defenses are relevant to the disposition of this appeal.

damages to the Tenant's personal property resulting from the conditions of the residential property and MJDZ's subsequent failure to make adequate repairs; and (3) damages resulting from MJDZ's wrongful withholding of the Tenants' security deposit.

A bench trial was held on September 22, 2016, during which Ziehmer, De La Cruz, and James testified. MJDZ's position at trial was that the residential premises leased by the Tenants were in suitable condition while the Tenants occupied the residence, and that mold developed in the residence after the Tenants moved out of the premises. The Tenants' position at trial was that they were forced to move from the premises in November 2015 after the residence flooded and mold developed because, despite the Tenants' requests, MJDZ refused to make adequate repairs. The evidence adduced at trial concerned the unpaid rent and late fees, the condition of the residential premises both while Tenants occupied the premises and after the Tenants moved, the damages to the Tenants' personal property as a result of flooding, and MJDZ's inspection of the residence and later withholding of the Tenants' security deposit. At the conclusion of evidence, the trial court took the matter under advisement and requested that the parties file proposed judgments.

The trial court issued its original judgment ("Original Judgment") on November 3, 2016, awarding MJDZ possession of the premises, damages for unpaid contractual rent and late fees in the amount of \$1,575, and attorney's fees in the amount of \$500. In addition, the Original Judgment ordered the Tenants to pay costs. The Tenants filed a motion to vacate, reopen, correct, amend, and/or modify the judgment, and a motion for new trial ("Post-Trial Motion"). The Post-Trial Motion asserted that good cause existed for the trial court to vacate, reopen, amend, or modify the Original Judgment or grant a new trial in that

(1) the award for rent and late fees was against the weight of the evidence because the Tenants satisfied all elements required for finding that MJDZ breached the implied warranty of habitability, and because the trial court did not rule on that counterclaim in its Original Judgment; and (2) the Original Judgment improperly assessed costs against the Tenants because, pursuant to section 514.040,³ the trial court may not assess costs or fees against persons represented by a legal aid society or a legal services organization. The trial court filed an amended judgment and order ("Amended Judgment") on January 19, 2017, to reflect that costs would be taxed to MJDZ. In all other respects, the Amended Judgment was identical to the Original Judgment.

The Tenants appeal.

Analysis

Before we examine the merits of the Tenants' appeal, we must *sua sponte* determine whether we have jurisdiction over the appeal. *Crest Constr. II, Inc. v. Hart*, 439 S.W.3d 246, 249 (Mo. App. W.D. 2014). "Generally an appellate court only has jurisdiction over final judgments disposing of all issues and parties, which leave nothing for future determination." *Id.* (quoting *Davis v. St. Luke's Home Health Care*, 200 S.W.3d 592, 594 (Mo. App. W.D. 2006)). "Any judgment as to fewer than all claims or all parties does not end the action, which makes it subject to the trial court's revision at any time until final judgment." *Steelhead Townhomes, L.L.C. v. Clearwater 2008 Note Program, LLC*, 504 S.W.3d 804, 806 (Mo. App. W.D. 2016). Rule 74.01(b) sets forth an exception to the rule

³All statutory references are to RSMo 2016 as amended unless otherwise noted.

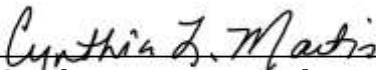
requiring that the judgment dispose of all issues and parties, providing that "[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may enter a judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." If the trial court does not either resolve all claims as to all parties or expressly designate that "there is no just reason for delay," then the appeal must be dismissed. *Crest Constr. II*, 439 S.W.3d at 249.

Here, the Tenants alleged three counterclaims in their First Amended Answer and adduced evidence at trial to support each of the three counterclaims. "Generally, if a party files a counterclaim, the judgment must contain a finding that fully disposes of the counterclaim; otherwise, the judgment is not final and appealable." *Lane House Constr., Inc. v. Sithole*, 504 S.W.3d 102, 105 (Mo. App. E.D. 2016). The trial court did not address the counterclaims in its Original Judgment. Even after the Tenants' Post-Trial Motion argued that the trial court "did not rule on [the Tenants' breach of the implied warranty of habitability] counterclaim," the trial court made no reference to any of the Tenants' counterclaims in its Amended Judgment. The Amended Judgment thus failed to expressly or implicitly resolve the issues raised by the Tenants' counterclaims. *Short v. S. Union Co.*, 372 S.W.3d 520, 528-29 (Mo. App. W.D. 2012) (holding that pending counterclaims negate finality of a judgment unless the judgment by its nature implicitly resolves the issues raised by the counterclaims). Further, the trial court did not make an express determination

that there was no just reason for delay in bringing this appeal.⁴ As such, the Amended Judgment is subject to the trial court's revision at any time until final judgment. The Tenants' appeal must be dismissed for want of a final judgment.

Conclusion

The appeal is dismissed.


Cynthia L. Martin, Judge

All concur

⁴We need not determine whether a Rule 74.01(b) determination by the trial court would have been appropriate here. However, we note that "[a] trial court's designation of a judgment as final under Rule 74.01(b) 'is effective only when the order disposes of a distinct judicial unit.'" *ABB, Inc. v. Securitas Sec. Servs. USA, Inc.*, 390 S.W.3d 196, 200 (Mo. App. W.D. 2012) (quoting *Gibson v. Brewer*, 952 S.W.2d 239, 244 (Mo. banc 1997)).