[Cite as *Juergens v. Strileckyj*, 2010-Ohio-5159.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

JACQUELYN R. JUERGENS	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2010 CA 36
v.	:	T.C. NO. 09CVF2785
WOLODYMYR STRILECKYJ	:	(Civil appeal from Municipal Court)
Defendant-Appellant	:	
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O P I N I O N

Rendered on the 22nd day of October, 2010.

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DONOVAN, P.J.

{¶ 1} Defendant-appellant Wolodymyr (Walt) Strileckyj appeals from a judgment of the Clark County Municipal Court. The trial court adopted the decision of the magistrate which sustained plaintiff-appellee Jacquelyn R. Juergens' complaint in forcible entry and

detainer for failure to pay rent and for money damages. Juergens filed her complaint on July 17, 2009. Strileckyj filed a timely notice of appeal with this Court on March 25, 2010.

I

{¶ 2} On March 1, 1999, Strileckyj and Valerie Wilt, acting together as partners in the law firm of Juergens, Wilt and Strileckyj, entered into a lease agreement for commercial office space located at 200 N. Fountain Ave., in Springfield, Ohio. The owners of the commercial property, and lessors under the lease agreement, were Wilt's parents, U. Timothy Juergens (Timothy) and plaintiff-appellee Jacquelyn Juergens. Prior to March 1, 1999, Timothy had been in a partnership with Wilt and Strileckyj called "Juergens & Wilt." Their practice was located in the commercial building at 200 N. Fountain Ave., in Springfield, Ohio.

{¶ 3} The rent provisions of the lease required Wilt and Strileckyj to pay as rent the sum of $375.00 a month for each attorney office used in the building; $20.00 a month for each parking space; and $500.00 a month for use of the computer/file room, secretarial area, hallway storage closet, and one half of the basement and furnace room. The lease also contained a provision for periodic rent increases associated with building maintenance and property taxes. It is undisputed that Wilt and Strileckyj utilized three attorney offices in the building, as well as six parking spots in the lot connected to the building. Thus, their monthly rent payment for the building was $1745.00, plus any additional periodic increases.

{¶ 4} The term of the lease was for ten years with an option to renew at the end of the term for an additional ten years at the option of the lessee. The lease also provided that if the renewal option were exercised, the lease payments for the common areas of the

building would be removed.

{¶ 5} Separately, on March 1, 1999, the parties executed an asset buyout agreement whereby Timothy sold Strileckyj and Wilt all of the assets from his law practice from which he had recently retired. The assets of the law practice, as identified in the buyout agreement, were comprised of "furniture and equipment at the business location and Seller's Good Will." The buyout agreement defined "Seller's Good Will" as "(1) the name of 'Juergens' in the name of the Buyer's business and (2) the name and image of U. Timothy Juergens in all stationery, supplies, advertising and promotional items associated with Buyer's business." "Buyer" as used in the buyout agreement referred to the newly formed law firm of "Juergens, Wilt and Strileckyj." The buyout agreement specified that Wilt and Strileckyj were required to pay Timothy $500.00 per month for a period of 120 months (ten years) from the date that the agreement was executed for the use of his name in conjunction with the new law firm. The buyout agreement, unlike the lease agreement, did not contain an option to renew once the ten year term expired. We also note that the lease agreement and the buyout agreement were separately executed agreements, neither of which mentioned the other.

{¶ 6} In early 2006, Wilt terminated the partnership with Strileckyj, and she vacated the offices located at 200 N. Fountain Ave. Strileckyj continued to occupy the premises and took sole responsibility for payment of the monthly rent which totaled $1962.00. That amount was comprised of $375.00 for each of three attorney offices, $120.00 for six parking spaces, $500.00 for use of the common areas, and an additional $217.00 for periodic rent increases.

{¶ 7} On May 15, 2006, Jacquelyn Juergens sent Strileckyj a letter which stated the following:

{¶ 8} "Since you have agreed to release Timothy from the use of his name, we will remove you from the $500.00 buyout built into the monthly rent making your monthly payments (unless a cost of living increase is necessary) for the next three years:

{¶ 9} "Rent: $1342.00

{¶ 10} "Parking 120.00

{¶ 11} "Total $1462.00"

{¶ 12} From June of 2006 until March of 2009, Strileckyj occupied the leased premised and paid rent for use of the commercial building in the amount of $1462.00 per month. In March of 2009, Strileckyj chose to exercise the renewal option built into the lease for a second ten year term. Strileckyj, however, interpreted the renewal option to permit him to deduct an additional $500.00 from his rental obligation under the lease, thus reducing his rental payment to $962.00 per month. Beginning in March of 2009, Strileckyj tendered checks to Jacquelyn Juergens in the amount of $962.00 as payment for his rental obligation under the lease renewal.

{¶ 13} Juergens took possession of the rent checks but did not cash any of them because she disputed the amount of rent being paid by Strileckyj. Juergens served Strileckyj with a notice to vacate the premises on June 30, 2009, but he refused to leave. On July 17, 2009, she filed a complaint in forcible entry and detainer for failure to pay rent and for money damages against Strileckyj. On September 23, 2009, a hearing was held before the magistrate in order to rule upon Juergens' claim for restitution of the premises.

The magistrate filed a decision on November 6, 2006, recommending that the trial court order restitution of the premises to Juergens by November 30, 2009.

{¶ 14} On November 19, 2009, Strileckyj filed objections to the magistrate's decision. Strileckyj filed supplemental objections on December 3, 2009. On February 24, 2010, the trial court filed a decision and entry adopting the magistrate's decision and ordering restitution of the premises to Juergens.

{¶ 15} It is from this judgment that Strileckyj now appeals.

II

{¶ 16} Strileckyj's sole assignment of error is as follows:

{¶ 17} "A COURT ERRS WHEN IT GRANTS A COMPLAINT FOR FORCIBLE ENTRY AND DETAINER THAT IS NOT SUPPORTED BY THE MANIFEST WEIGHT OF THE EVIDENCE AND WHICH IS BASED ON PAROL EVIDENCE OF LEASE TERMS EXTRINSIC TO THE LEASEHOLD CONTRACT."

{¶ 18} In his sole assignment, Strileckyj contends that the trial court's decision to award restitution of the premises to Juergens was against the manifest weight of the evidence. Specifically, Strileckyj argues that Juergens waived the notice to vacate the premises sent on June 30, 2009, by accepting and not returning the reduced rent payment of $962.00 tendered by Strileckyj. Strileckyj also argues that the trial court erred by finding that he was not entitled to a $500.00 rent reduction upon renewal of the lease agreement in 2009 in addition to the $500.00 rent reduction he received in May of 2006 from Juergens.

{¶ 19} With respect to the appropriate standard to be employed by the trial court when reviewing a magistrate's decision, we stated the following in *Quick v. Kwiatkowski,*

Montgomery App. No. 18620, 2001-Ohio-1498:

{¶ 20} "Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court. Therefore, magistrates do not constitute a judicial tribunal independent of the court that appoints them. Instead, they are adjuncts of their appointing courts, which remain responsible to critically review and verify the work of the magistrates they appoint. *** Civ.R. 53(E)(4)(b) contemplates a *de novo* review of any issue of fact or law that a magistrate has determined when an appropriate objection is timely filed. The trial court may not properly defer to the magistrate in the exercise of the trial court's *de novo* review. The magistrate is a subordinate officer of the trial court, not an independent officer performing a separate function."

{¶ 21} "The 'abuse of discretion' standard that the trial court applied to review the decision of its magistrate is an appellate standard of review. It is applicable to the review performed by a superior court of the judgments and orders of inferior courts. Inherent in the abuse of discretion standard are presumptions of validity and correctness, which acknowledge the independence of the inferior courts by deferring to the particular discretion they exercise in rendering their decisions. Because its magistrate does not enjoy that independence, such presumptions are inappropriate to the trial court's review of a magistrate's decisions. Therefore, a trial court errs when it applies the abuse of discretion standard of review in ruling on Civ.R. 53(E)(3) objections to the decision of the appointed magistrates * * *." Id.

A. Acceptance of Rent Payments

{¶ 22} The magistrate found that Juergens' decision to hold Strileckyj's rent checks without cashing the checks did not operate as a waiver of the notice to vacate the premises served on Strileckyj on June 30, 2009. The trial court held that the magistrate's decision in this regard was not contrary to law and was supported by substantial, probative, and reliable evidence.

{¶ 23} Under R.C. 1923.04, a landlord is required to give a tenant at least three days notice before beginning an action in forcible entry and detainer. Such an action cannot be maintained if the landlord has waived his notice to vacate to the tenant. *Shimko v. Marks* (1993), 91 Ohio App.3d 458, 463. "The generally accepted rule in Ohio is that, by accepting future rent payments after serving a notice to vacate, a landlord waives the notice as a matter of law, as such acceptance is inconsistent with the intent to evict." *Sholiton Ind., Inc. v. Royal Arms, Ltd.* (June 4, 1999), Montgomery App. No. 17480.

{¶ 24} "The courts are agreed that a landlord who has received from a holding over tenant a check for rent, but has not cashed the check, will not be held to have manifested his consent to a continuation of the tenancy." *Lindamood v. Clark* (June 18, 1981), Montgomery App. No. CA 7123. Prior to serving him with the notice to vacate, Juergens sent Strileckyj a letter in which she stated that she did not accept the $962.00 as payment of the rent obligation, she had not deposited the tendered checks, $1462.00 was the correct amount to be paid, and an eviction notice would be forthcoming if Strileckyj failed to pay the correct amount. It is undisputed that Juergens served Strileckyj with a notice to vacate the premises on June 30, 2009, based on Strileckyj's failure to pay the correct amount of rent as

specified by the lease agreement. After receiving the eviction notice, Strileckyj tendered another rent check to Juergens in the amount of $962.00 for the month of July. Juergens took possession of the check, but did not cash it. In fact, Juergens had not cashed any of the rent checks tendered to her by Strileckyj since March of 2009, when he began paying the reduced rent amount of $962.00.

{¶ 25} Pursuant to the notice to vacate and the prior letter, Strileckyj knew that Juergens was not accepting his rent payments. Even though she had retained all of the checks tendered to her since March of 2009, Juergens did not cash any of them. Juergens' decision to hold the checks without cashing them did not constitute an acceptance of the reduced rent payments, nor did her actions operate as a waiver of the notice to vacate the premises served upon Strileckyj.

B. Breach of the Rental Agreement

{¶ 26} Strileckyj argues that the plain language of the renewal provision in the lease agreement entitled him to a reduction of rent in the amount of $500.00 in addition to the $500.00 rent reduction he received in 2006 from Juergens shortly after the partnership between he and Wilt was terminated.

{¶ 27} "Where there is no relevant factual dispute, the construction of written contracts and instruments of conveyance is a question of law. See *Quill v. R.A. Investment Corp.* (1997), 124 Ohio App. 3d 653, 661. Appellate review of a trial court's interpretation, therefore, is conducted de novo. Generally, words in a written agreement will be given their plain ordinary meaning. However, it may be necessary to stray from a plain reading of the agreement's terms if such a reading produces an absurd result. See *Olmstead v. Lumbermens Mut. Ins. Co.* (1970), 22

Ohio St.2d 212, 216. Likewise, words in an agreement may be interpreted differently if the agreement itself evidences some other meaning. See *Zimmerman v. Eagle Mtge. Co.* (1996), 110 Ohio App.3d 762, 775." *Sholiton Ind., Inc. v. Royal Arms, Ltd.*, (June 4, 1999), Montgomery App. No. 17480.

{¶ 28} In the instant case, the magistrate found that by tendering rent payments in the amount of $962.00 per month upon renewal of the lease agreement in March of 2009, rather than $1462.00, Strileckyj was in default for payment of rent. Juergens was, therefore, entitled to restitution of the premises.

{¶ 29} At the time that the partnership between Strileckyj and Wilt was terminated in early 2006, the total rent being paid for the use of the premises in question totaled $1962.00 per month. That amount was comprised of $375.00 for each of three attorney offices, $120.00 for six parking spaces, $500.00 for use of the common areas, and an additional $217.00 for periodic rent increases. On May 15, 2006, Juergens sent a letter to Strileckyj in which she reduced the rent for the premises by $500.00. Juergens stated that the $500.00 deduction represented the amount Strileckyj would no longer have to pay because Timothy's name was no longer being used for promotional purposes. Thus, Strileckyj's rent obligation was reduced to $1462.00 per month, and he paid that amount for the next three years until March of 2009.

{¶ 30} The 1999 buyout agreement states in pertinent part:

{¶ 31} "As and for the purchase of Seller's Goodwill, *including the continued use of the name and image of U. Timothy Juergens*[,] Buyers shall pay to Seller the sum of thirty-eight thousand six hundred ninety-three dollars and sixty-seven cents

($38,693.10).

{¶ 32} "*The purchase price shall be paid at the rate of $500.00 per month, beginning March 1, 1999, and in equal monthly installments by the fifth day of each succeeding calender month thereafter, for a period of 120 months*."

{¶ 33} Pursuant to the express terms of the buyout agreement, the term of the contract was to be for 120 months, or ten years, from March 1, 1999, until March 1, 2009. When the partnership ended prematurely in 2006, however, the buyout agreement was also effectively terminated because the Juergenses no longer wanted Strileckyj to use Timothy's name for any purpose. In order to compensate Strileckyj for the termination of the buyout agreement, Juergens reduced his rent in the amount of $500.00, or the amount he would have paid for the continued use of Timothy's name until the expiration of the buyout agreement on March 1, 2009. We also note that, unlike the lease agreement which contained an option to renew, the buyout agreement contained no provision for renewal upon its expiration. When the buyout agreement expired on March 1, 2009, Strileckyj's obligation to pay $500.00 for the use of Timothy's name would also cease. Thus, Juergens' decision to reduce Strileckyj's rent to $1462.00 per month was made merely to compensate him for the premature termination of the buyout agreement and had no effect on the terms of the lease agreement when and if Strileckyj chose to renew the lease on March 1, 2009.

{¶ 34} With respect to the option to renew, the 1999 lease agreement states as follows:

{¶ 35} "This lease shall automatically renew at the election of Lessees on

March 1, 2009. *This lease shall renew on the same terms and conditions, with the exception that there shall be no rent charge for the Lessees continued exclusive use of the computer/file room, large secretarial area, hallway storage closet and ½ of the basement and furnace room*. This lease shall automatically renew thereafter on a yearly basis unless otherwise terminated by the Lessors or Lessees with no less than 90 days advanced notice." (emphasis in original).

{¶ 36} Upon exercise of the renewal option, the terms and conditions of the lease were to remain the same as contemplated by the original lease, the sole exception being that Strileckyj would no longer be responsible for payment of rent for the common areas in the premises. On March 1, 2009, the terms of the renewed lease imposed an obligation on Strileckyj to pay $375.00 for each of three attorney offices, $120.00 for six parking spaces, and an additional $217.00 for periodic increases. The lease is specific regarding how the rent charge was to be calculated. As Strileckyj was no longer required to pay an additional $500.00 per month for the use of the common areas, his total rent obligation was $1462.00 per month. Upon renewal, the lease specifically states that no rent will be charged for the use of the common areas. There is no mention of a rent reduction for any other items in the lease; therefore, Strileckyj was not entitled to an additional $500.00 rent deduction for the expired buyout agreement.

{¶ 37} Thus, the trial court did not abuse its discretion when it adopted the magistrate's decision ordering restitution of the premises to Juergens in light of Strileckyj's breach of the renewed lease agreement for failure to pay the correct amount of rent.

{¶ 38} Strileckyj's sole assignment of error is overruled.

III

{¶ 39} Strileckyj's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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BROGAN, J. and FROELICH, J., concur.

Copies mailed to:

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