MEMORANDUM DECISION

APPELLANT *PRO SE*

David Paul Allen
Hammond, Indiana

IN THE COURT OF APPEALS OF INDIANA

David Paul Allen,

Appellant-Plaintiff/Cross-Claim Defendant,

v.

Hammond Hohman LLC,

Appellee-Defendant/Cross-Claim Plaintiff.

February 5, 2024

Court of Appeals Case No. 23A-PL-1936

Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-2207-PL-411

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] David Paul Allen entered into a lease ("the Lease") of office space from Hammond Hohman LLC ("Hohman") in 2010. The Lease provided, in part, that, should Allen become a holdover tenant upon expiration, it would not result in a lease renewal. At the end of April of 2022, the Lease expired because Allen had not exercised his option to renew it; Allen, however, continued to pay, and Hohman continued to accept, rent payments. After a series of events over the next couple of months disrupted Allen's ability to conduct business in the office, he sued Hohman for alleged violations of the implied warranty of fitness and violations of the Lease, and both parties moved for summary judgment. Allen appeals from the entry of summary judgment in favor of Hohman. We affirm.

Facts and Procedural History

[2] In 2010, Allen began renting office space from Hohman pursuant to the Lease, which provided, in part, as follows: "Should the Tenant or any party claiming under Tenant hold over in possession at the expiration of the Term by lapse of time or otherwise, such holding over shall not be deemed to exceed the Term or renew this Lease[.]" Appellant's App. Vol. II p. 30. Additional underlying facts appear in the trial court's order:

> The Lease […] expired April 30, 2012. Pursuant to Article 22 of the Lease, Allen executed Options to extend the Lease for additional two-year terms so that the Lease remained in effect to and including April 30, 2022. On May 1, 2022, although Allen had not timely exercised his option to renew the Lease for an

> additional two-year period, he continued to pay rent which Hohman accepted.
>
> Allen alleges that during the months of May, June and July of 2022, roof leaks through an irreparable flat roof caused damage to the Office space. To add insult to injury, the air conditioning in the office space failed and, notwithstanding some temporary repairs, the summer heat in the office space that lacked windows that could be opened, together with the damage caused by the leaks and a one-day power outage, adversely affected Allen's law practice and caused him damages.
>
> Two months later, on July 12, 2022, Hohman served upon Allen a written document entitled "INDIANA LEASE TERMINATION 30-Day Notice to Vacate" advising him that he must deliver possession of the leased office space within 30 days.

Appellant's App. Vol. II pp. 10–11.

[3] In July of 2022, Allen filed an amended complaint against Hohman, in which he alleged that (1) he had been a holdover tenant pursuant to the Lease during May, June, and July of 2022; (2) Hohman had breached an implied warranty of fitness and the terms of the Lease; and (3) he had suffered damages for the period during which the office space had been unfit for business use. In August of 2022, Hohman answered Allen's complaint and filed a counterclaim for ejectment. Both parties moved for summary judgment, and, on August 18, 2023, the trial court entered summary judgment in favor of Hohman.

Discussion and Decision

[4] Allen contends that the trial court erred in entering summary judgment in favor of Hohman. As an initial matter, we note that Hohman has not filed an appellee's brief:

> Indiana courts have long applied a less stringent standard of review with respect to showings of reversible error when the appellee fails to file a brief. [The appellant] need only establish the lower court committed prima facie error to win reversal. In this context, "prima facie" means at first sight, on first appearance, or on the face of it. Likewise, the statement of facts contained in [the appellant's] brief is deemed by us to be accurate and sufficient for the disposition of this appeal.

Johnson Cnty. Rural Elec. Membership Corp. v. Burnell, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985) (citations omitted).

[5] With that in mind, we apply the same standard as the trial court when reviewing the grant or denial of a summary-judgment motion. *Merchs. Nat'l Bank v. Simrell's Sports Bar & Grill, Inc.*, 741 N.E.2d 383, 386 (Ind. Ct. App. 2000). Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Id.*; Ind. Trial Rule 56(C). To prevail on a motion for summary judgment, a party must demonstrate that the undisputed material facts negate at least one element of the other party's claim. *Merchs. Nat'l Bank*, 741 N.E.2d at 386. Once the moving party has met this burden with a prima facie showing, the burden shifts to the nonmoving party to establish that a genuine issue does in fact exist. *Id*. The party appealing the summary judgment bears the burden of persuading us that the trial court erred. *Id*.

[6] Allen contends that the trial court erred in concluding that the Lease had not been renewed when, after its expiration, he had paid rent that Hohman had accepted. While it is true that payment of rent by a holdover tenant that is accepted generally operates to renew the lease, this is true only in cases in

which there is no agreement to the contrary. *See Houston v. Booher*, 647 N.E.2d 16, 19 (Ind. Ct. App. 1995) ("*In the absence of an agreement to the contrary*, when a tenant holds over beyond the expiration of the lease and continues to make rental payments, and the lessor does not treat the tenant as a trespasser by evicting him, the parties are deemed to have continued the tenancy under the terms of the expired lease.") (citations and footnote omitted, emphasis added).

[7] The question, then, is whether the parties had an agreement to the contrary, and we conclude that they did. "We review questions of contract interpretation de novo[,]" *Spalding v. Utica Twp. Vol. Fire Ass'n*, 209 N.E.3d 483, 485 (Ind. Ct. App. 2023) (citation omitted), and, as the Indiana Supreme Court has explained, "[a] contract's clear and unambiguous language is given its ordinary meaning." *WellPoint, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 29 N.E.3d 716, 721 (Ind. 2015). Article 19.02 of the Lease provides, in part, as follows: "Should the Tenant or any party claiming under Tenant hold over in possession at the expiration of the Term by lapse of time or otherwise, *such holding over shall not be deemed to exceed the Term or renew this Lease*[.]" Appellant's App. Vol. II p. 30 (emphasis added). This language could hardly be clearer that a holdover tenancy will *not* result in a renewal of the Lease. Moreover, even though Article 19.02 does not mention rent, it must apply in such cases in which rent has been tendered and accepted because there would be no need for it in cases where that did not occur. In other words, if we accepted the proposition that Article 19.02 only applies in cases where rent is not paid, it would be mere surplusage, and we avoid such interpretations whenever possible. *See Spalding*,

209 N.E.3d 485 ("A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless.") (citation omitted).

[8] Allen does not actually dispute the clarity of Article 19.02, arguing only that "the actions of the parties in paying post-expiration rent and accepting the same **defeat** the expiration clause of the lease such that it is extended[.]" Appellant's Br. p. 13 (emphasis in original). As explained above, however, the payment and acceptance of post-expiration rent does not *defeat* Article 19.02, it *triggers* it. Allen's post-expiration payment of rent, and Hohman's acceptance of it, did not renew the Lease. Consequently, Allen's claims based on alleged breaches of a warranty of fitness or on alleged violations of the terms of the Lease fail as a matter of law. The trial court did not err in entering summary judgment in favor of Hohman.

[9] We affirm the judgment of the trial court.

Vaidik, J., and Brown, J., concur.