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**IN THE
COURT OF APPEALS OF INDIANA**

LIEU B. HOANG,)
)
Appellant-Plaintiff,)
)
vs.) No. 02A03-0603-CV-112
)
JAMESTOWN HOMES, INC., PGPM, INC.,)
FORT WAYNE POLICE DEPARTMENT, and)
CITY OF FORT WAYNE,)
)
Appellees-Defendants.)

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Nancy Eshcoff Boyer, Judge
Cause No. 02D01-0304-CT-127

September 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION
NAJAM, Judge

STATEMENT OF THE CASE

Lieu B. Hoang appeals from the trial court's order denying his motion to correct error following the court's dismissal of his complaint for damages against Jamestown Homes, Inc. ("Jamestown"); PGPM, Inc. ("PGPM"); National Moving Systems, Inc. ("NMS"); Fort Wayne Police Department ("FWPD"); and the City of Fort Wayne ("City") (collectively "the Appellees"). Hoang presents several issues for our review, which we consolidate and restate as two dispositive issues:

1. Whether the trial court erred when it denied his summary judgment motion.
2. Whether the trial court abused its discretion when it dismissed his complaint as a sanction for discovery violations.

We affirm.

FACTS AND PROCEDURAL HISTORY

We set out the facts and procedural history underlying this appeal in Hoang v. Jamestown Homes, Inc., 768 N.E.2d 1029, 1031-32 (Ind. Ct. App. 2002):

The facts most favorable to Jamestown follow. Jamestown owns a cooperative housing project, which is managed by PGPM. On August 10, 1976, Hoang and his mother signed a "Subscription Agreement" with Jamestown. Appellant's Appendix at 21-22. The Subscription Agreement provided that Hoang and his mother would "subscribe for membership in Jamestown" by paying a "\$140.00 Subscription Price" and a "\$136.00 Indemnity Deposit." Id. at 21. Hoang and his mother received a "Membership Certificate" for Jamestown on August 10, 1976. Id. at 33-34. Then, after Hoang's mother passed away, Hoang retained the membership certificate and signed an "Occupancy Agreement" with Jamestown on January 6, 2000. Id. at 10-20. Pursuant to the Articles of the Occupancy Agreement, Jamestown conducts biannual inspections of each housing unit.

When Jamestown attempted to inspect Hoang's unit in September of 2000, they discovered that Hoang had changed the lock to the back door of his

unit and that the front door was bolted shut. Jamestown sent a letter to Hoang to inform him that he could change the lock, but he had to give Jamestown a key to enter his unit for inspections. Eventually Jamestown was able to enter and inspect the unit; however, it was only able to inspect the first floor of the unit because boxes blocked access to the stairs.

On January 15, 2001, Jamestown sent a letter to all of its members to inform them that maintenance was again going to begin internal inspections. When Jamestown went to Hoang's unit, Jamestown found that it still did not have a working key to the back door lock that Hoang had changed in 2000. In addition, Jamestown had a front door key that worked, but the front door was blocked shut by a piece of wood propped against the stairway. Consequently, Jamestown sent a letter to Hoang on January 18, 2001 informing him that it was unable to inspect his unit because the locks had been changed and that it needed working keys to the unit by January 24, 2001. On January 25, 2001, Jamestown sent a letter to Hoang to inform him that his inspection was rescheduled, per his request, for February 1 at 10:00 a.m. and that access to his unit was expected at that time.

On February 1, 2001, the maintenance workers were unable to enter the back door because they still did not have the correct key and were unable to enter the front door because it was again blocked or bolted from the inside. On February 16, 2001, Jamestown's attorney informed Hoang via certified mail that if Hoang did not allow Jamestown to inspect his apartment, then Jamestown would consider Hoang in breach of the Occupancy Agreement and would have him evicted. On March 19, 2001, Jamestown sent a letter to Hoang informing him that he was scheduled for inspection at 1:30 p.m. on both March 23 and March 26. In addition, the letter informed him that Jamestown needed a correct key to his back door pursuant to the Occupancy Agreement. Nevertheless, Jamestown was unable to gain access to Hoang's unit for inspection on either March 23 or 26.

On March 30, 2001, Hoang finally allowed Jamestown representatives to enter his unit for the inspection. However, they were not permitted to inspect two of the three upstairs bedrooms. Rather, Hoang had padlocked closed one of the bedroom doors and had blocked access to the other bedroom door by piling large amounts of personal property in front of the door.

On April 4, 2001, Jamestown filed a claim in Allen Superior Court, Small Claims Division, requesting ejectment of Hoang from Jamestown based upon his violation of the Occupancy Agreement. In response, Hoang filed a claim for damages against PGPM. At some point prior to a hearing on the

merits, the small claims court bifurcated the proceedings on Jamestown's claim for ejectment from Hoang's claim for damages.

The small claims court held a trial on the merits of Jamestown's claim for ejectment of Hoang. On April 23, 2001, the small claims court entered judgment for Jamestown and ordered Hoang to vacate the premises within seven days of receiving the order. On May 1, 2001, Hoang filed a motion to correct error. On May 8, 2001, because the sheriff had already arrived at Hoang's unit to evict him, the small claims court denied Hoang's request for a stay of ejectment. On June 26, 2001, the small claims court denied Hoang's motion to correct error.

On appeal, this court affirmed the small claims court's denial of Hoang's motion to correct error.

Thereafter, Hoang filed a complaint with the Allen Superior Court seeking compensation for his "vested ownership interest in his cooperative housing unit" and for damaged and stolen personal property. Appellant's App. at 165. Hoang also filed a motion for summary judgment alleging that he was entitled to almost two million dollars in damages on his claims as a matter of law. FWPD, the City, Jamestown and PGPM filed separate cross-motions for summary judgment. The trial court denied Hoang's motion; granted FWPD's motion; granted the City's motion; and denied Jamestown's motion following a hearing. Then, after Hoang repeatedly failed to comply with court-ordered discovery, the trial court dismissed his complaint with prejudice. Hoang filed a motion to correct error, which the trial court also denied. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Summary Judgment

Hoang first contends that the trial court erred when it denied his summary judgment motion. When reviewing summary judgment, this court views the same

matters and issues that were before the trial court and follows the same process. Estate of Taylor ex rel. Taylor v. Muncie Med. Investors, L.P., 727 N.E.2d 466, 469 (Ind. Ct. App. 2000), trans. denied. We construe all facts and reasonable inferences to be drawn from those facts in favor of the non-moving party. Jesse v. Am. Cmty. Mut. Ins. Co., 725 N.E.2d 420, 423 (Ind. Ct. App. 2000), trans. denied. Summary judgment is appropriate when the designated evidence demonstrates that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Ind. Trial Rule 56(C). The purpose of summary judgment is to terminate litigation about which there can be no material factual dispute and which can be resolved as a matter of law. Zawistoski v. Gene B. Glick Co., 727 N.E.2d 790, 792 (Ind. Ct. App. 2000).

Hoang's sole contention on appeal with regard to this issue is that the trial court erred when it did not "direct proceedings for the sale of Hoang's vested interest [in his housing unit] which will insure that his rights are adequately protected pursuant to the Court[of Appeals' Cunningham v. Georgetown Homes, Inc., 708 N.E.2d 623 (Ind. Ct. App. 1999)] decision." Brief of Appellant at 14. Hoang maintains that allowing a jury to determine the amount of his vested interest is improper. We cannot agree.

In Cunningham, a member of a housing cooperative, similar to that involved in this case, sought interlocutory relief from a trial court's order that she post a possessory bond pending resolution of the housing cooperative's complaint for ejectment. In our discussion, we addressed the issue of an appropriate remedy for the member's breach of the occupancy agreement. We held in relevant part:

Because we conclude that Cunningham is neither an owner nor a tenant of the real estate, we hold that neither statutory foreclosure nor forfeiture

through eviction is an appropriate remedy to protect the interests of both parties. Rather, because the relationship is a legal hybrid, we think it appropriate that the remedy as well be of a hybrid nature. First, although it was not correctly utilized in this case, we find that ejectment . . . is an appropriate remedy for removing a violating member from possession of a unit in a cooperative community. However, as well, we caution the trial court to remember that Cunningham does have a vested interest in relation to the unit, and she cannot be forced to simply forfeit that interest in the event that the court concludes in its final judgment that Cunningham did indeed breach the provisions of the Occupancy Agreement. Instead, the trial court may direct proceedings for the sale of Cunningham's interest which will insure that her rights are adequately protected.

Id. at 627.

Contrary to Hoang's assertions, we do not read Cunningham to require the trial court in this case to direct proceedings for the sale of Hoang's interest. While a trial court "may" direct such a sale, see id., it is equally appropriate to permit a jury to determine the value of Hoang's interest.¹ The trial court did not err when it denied Hoang's summary judgment motion.²

Issue Two: Discovery Violations

Hoang next contends that the trial court abused its discretion when it dismissed his complaint as a sanction for discovery violations. The rules of discovery are designed to allow a liberal discovery process, the purposes of which are to provide parties with information essential to litigation of the issues, to eliminate surprise, and to promote settlement. Brown v. Katz, 868 N.E.2d 1159, 1165 (Ind. Ct. App. 2007). The trial court has broad discretion in ruling on issues of discovery, and we will reverse only when the

¹ The designated evidence shows a question of fact exists regarding the amount of Hoang's vested interest. But that issue is moot since the trial court dismissed his complaint.

² Hoang does not challenge the trial court's denial of his summary judgment motion regarding any other issues raised in that motion.

trial court has abused its discretion. Id. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or when the trial court has misinterpreted the law. Id. The decision to impose the sanction of dismissal for a party's failure to comply with a discovery order is a matter within the trial court's discretion. Id.

Here, Hoang committed several discovery violations before the trial court issued an order to compel on May 31, 2005. That order directed Hoang to prepare a detailed list of the items of personal property for which he sought compensation, and the order directed Hoang to appear at his deposition. And on June 29, the trial court issued an order compelling Hoang to answer certain interrogatories and certified questions. Thereafter, when Hoang showed up for his deposition on July 22, he refused to answer any questions and left. Accordingly, NMS filed a motion to dismiss Hoang's complaint for failure to comply with the trial court's order to compel. The other defendants joined in that motion.

On August 3, following a hearing, the trial court issued an order that provided in relevant part:

The Court finds that Plaintiff has failed to comply with the previous Orders of the Court regarding discovery including, but not limited to, Plaintiff's failure to provide an itemized list of property either missing or damaged, and Plaintiff's refusal to answer any questions, whatsoever, at Plaintiff's July 22, 2005 deposition.

Attached to the Defendants' Motion to Dismiss is a copy of the deposition of Lieu B. Hoang taken on July 22, 2005, wherein Mr. Hoang refused to answer any questions. In response to Mr. Kammeyer's statement that he was going to ask questions about the missing items document, Mr. Hoang responded, "Okay, that will be it. Then the deposition is over."

The Plaintiff exited the deposition without answering any questions including, but not limited to, the questions which the Court ordered Plaintiff to answer in its June 29, 2005 Order. Defendants have requested that the Court dismiss Plaintiff's complaint in its entirety, pursuant to Trial Rule 37(B).

The Court, after considering its options, ORDERS that the Jury Trial hereto set for August 29, 2005, is VACATED. Instead, Plaintiff is ORDERED to appear at the law offices of Kathryn Brogan on August 29, 2005 at 9:00 a.m. for the deposition of Plaintiff. Plaintiff is ORDERED to answer any and all questions put to Plaintiff by any and all of the Defendants. Plaintiff is ORDERED to remain at the deposition until such time as he is informed by the Defendants that the deposition is concluded.

The Court resets this Motion to Dismiss Plaintiff's Complaint to September 1, 2005, at 10:00 a.m. Should Plaintiff fail or refuse to answer any question put to the Plaintiff by any one of the Defendants, Plaintiff's Complaint will be dismissed with prejudice. Should Plaintiff fail to appear or leave the deposition prior to its completion, Plaintiff's Complaint will be dismissed with prejudice pursuant to Trial Rule 37(B). Plaintiff does not have the authority to determine the conclusion of the deposition.

Plaintiff is ORDERED to remain at the deposition until the Defendants inform Plaintiff that the deposition has been completed. Plaintiff is ORDERED to answer all questions asked by the Defendants without exception.

Failure to comply with this Court's Order shall result in a dismissal of Plaintiff's Complaint pursuant to Trial Rule 37(B).

Appellees' App. at 123-25 (emphases original).

Hoang appeared for his deposition on August 29, but he did not comply with the trial court's order that he answer "all questions." During the course of the approximately eight-hour long deposition, opposing counsel struggled to get Hoang to respond to even the simplest question. Hoang's answers were evasive and often nonresponsive. One example of his nonresponsiveness is as follows:

DEFENSE COUNSEL: Okay, so back to our question. How long would it take you to go download the information that would be responsive—

HOANG: I don't have it.

DEFENSE COUNSEL: . . . to the questions?

HOANG: I don't have that here with me, so I cannot download.

DEFENSE COUNSEL: Where would it be? Where is it at? Where's your computer at?

HOANG: Right here. This is my computer, but I have other computer—

DEFENSE COUNSEL: No, you said it was at the big computer. Where's your big—

HOANG: I have other system, you know.

DEFENSE COUNSEL: Where at?

HOANG: Are you talking of the one that was stolen by your client?

DEFENSE COUNSEL: The one that you said your financial records were on, Mr. Hoang.

DEFENSE COUNSEL: Where's that at?

HOANG: Let me finish turning it off right now. (Witness turns off laptop computer).

DEFENSE COUNSEL: I'm not breaking for lunch until I get that answer.

DEFENSE COUNSEL: Yeah.

HOANG: Okay, what is your answer? Wait until I bring it up.

DEFENSE COUNSEL: I want to know where the computer is at that you allegedly have all of these records stored on?

HOANG: Which computer are you talking about?

DEFENSE COUNSEL: Mr. Hoang, you're playing games with us.

HOANG: No, I'm not playing games.

DEFENSE COUNSEL: You testified—

HOANG: I have so many computers too, you know.

DEFENSE COUNSEL: I don't care.

DEFENSE COUNSEL: I don't care which computer—

HOANG: He accusing me—

DEFENSE COUNSEL: I don't care what—

HOANG: He accusing me, "He doesn't have any computer."

DEFENSE COUNSEL: I haven't accused—

HOANG: In fact, at other deposition, I have to make a note, but—

DEFENSE COUNSEL: Mr. Hoang, you testified that your financial records were on a big computer at home. You laughed at us when we asked you why you couldn't bring it with you. "It's a big computer. I couldn't carry it." So now, where is that computer located, Mr. Hoang?

HOANG: That's the main one—the main one?

DEFENSE COUNSEL: No—

DEFENSE COUNSEL: Wherever—

DEFENSE COUNSEL: . . . I don't care which computer.

DEFENSE COUNSEL: . . . wherever you say the records are.

HOANG: Did I say that I have somewhere the records on a computer?

DEFENSE COUNSEL: Yes, you did.

HOANG: Oh, yeah, I remember I download it in here, yeah.

DEFENSE COUNSEL: No, you specifically referred to another larger computer where the records were maintained. Where's that computer, Mr. Hoang?

HOANG: I have to think which one, okay, think which computer we're talking about.

Appellees' App. at 136-138.

Accordingly, on October 17, NMS, "on behalf of all Defendants," filed a brief in support of its previous motion to dismiss Hoang's complaint. Following a hearing, the trial court granted that motion. On appeal, Hoang contends that two of the counts in his complaint "are not connected with said discovery orders" and that, therefore, the trial court should not have dismissed his complaint in its entirety.³ But Hoang does not support that contention with citation to relevant case law. Trial Rule 37(B) clearly authorizes the trial court to dismiss Hoang's entire complaint for failure to comply with the court's August 3, 2005, Order. The record shows that the trial court gave Hoang every opportunity to comply with discovery and to cure his previous failures to comply, but that he steadfastly and deliberately defied the court's orders. Hoang has not demonstrated that the trial court abused its discretion when it dismissed his complaint.⁴

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.

³ Hoang asserts other arguments in support of his contention on this issue, but those other arguments are unsupported by cogent reasoning and do not warrant our review. See Ind. Appellate Rule 46(A)(8)(a). The evidence is clear that the trial court was justified in dismissing Hoang's complaint for his gross failure to comply with discovery orders. Hoang's assertions to the contrary are not well-taken.

⁴ Because we affirm the trial court on this issue, we need not address Hoang's contention that the trial court abused its discretion when it denied his petition for leave to amend his complaint.