

NEBRASKA SUPREME COURT

Pan v. IOC Realty Specialist Inc. and Bernard M. Tompkins

301 Neb. 256 (2018) · No. No. S-17-815 · Decided October 12, 2018

SUMMARY

The Nebraska Supreme Court affirmed a judgment against a property-management company and its principal for wrongfully retaining a former commercial tenant’s personal property under the Disposition of Personal Property Landlord and Tenant Act. The court held that the Act applies to commercial leases, that the defendants qualified as landlords, and that the former tenant was entitled to damages and attorney fees. The court also addressed reasonable belief regarding ownership, necessary parties, damages, and the defendants’ claim for storage fees.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	October 12, 2018
DOCKET	No. S-17-815
DISPOSITION	affirmed
PROCEDURAL POSTURE	IOC Realty Specialist Inc. and Bernard M. Tompkins appealed a district court judgment entered after a bench trial that awarded Samuel Pan damages and attorney fees for violation of Nebraska's Disposition of Personal Property Landlord and Tenant Act and rejected IOC's counterclaim for storage fees.
STANDARD OF REVIEW	Statutory interpretation is reviewed independently as a question of law. Factual findings in a bench trial are reviewed for clear error, with evidence viewed in the light most favorable to the successful party and without reweighing evidence. The amount of damages is reviewed for clear error, and an authorized attorney-fee award is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	IOC Realty Specialist Inc., Bernard M. Tompkins v. Samuel Pan, doing business as US World Daycare Center

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the parties impliedly consented to try the case as an action for damages under the Disposition of Personal Property Landlord and Tenant Act despite Pan's complaint being styled as a replevin action.
2. Whether the Disposition of Personal Property Landlord and Tenant Act applies to commercial leases.
3. Whether IOC qualified as a landlord and Pan as a former tenant under the Act.
4. Whether IOC reasonably believed that CNBA, rather than Pan, owned the personal property and therefore was protected from liability under the Act.
5. Whether the district court erred in admitting evidence concerning Pan's compliance with IOC's requests for ownership information.
6. Whether Chol, CNBA, and the Kleinschmits were necessary or indispensable parties.
7. Whether the evidence supported the \$10,000 actual-damages award and the attorney-fee award.
8. Whether IOC was entitled to storage fees.

HOLDINGS

1. When issues not raised in the pleadings are tried by express or implied consent, they are treated as though raised in the pleadings. The parties impliedly consented to try Pan's claim as an action for damages under the Act.
2. The Act is not narrowly confined to residential or self-storage arrangements; it applies to commercial lease cases.
3. IOC was a landlord under the Act, Pan was a former tenant, and IOC violated the Act by unreasonably withholding Pan's personal property after his request for its return.
4. The district court did not err in admitting and considering the exhibits because they were offered to show that Pan complied with IOC's requests and formed part of the circumstances supporting a reasonable belief in Pan's ownership, not to prove the truth of the statements.
5. Chol, CNBA, and the Kleinschmits, doing business as Millard Electronics, were not necessary or indispensable parties because none claimed or possessed an interest in the personal property at issue.
6. Under the Act, "value of the personal property" in relation to actual damages means the property's fair market value at the time the landlord improperly detains it. The evidence supported the district court's \$10,000 award.
7. The Act authorized Pan's reasonable attorney fees, and the district court did not abuse its discretion in awarding \$10,000. IOC was not entitled to storage fees because it failed to make the written demand

within the statutory five-day period.

KEY QUOTATIONS

“We find that the scope of the Act is not so narrowly confined as to exclude commercial leases. As such, the Act applies in commercial lease cases.” (268)

“All that is required under the Act is evidence that would lead a prudent person to believe the property belonged to the requesting party.” (271)

“we find that the phrase “value of the personal property” in its relation to “[a]ctual damages” is the fair market value of the property at the time the tenant’s property is improperly detained by the landlord.” (275-276)

FACTUAL BACKGROUND

Pan operated a daycare business in commercial premises managed by IOC Realty Specialist and its sole shareholder, Bernard M. Tompkins. Pan agreed to sell the daycare business and personal property on the premises to CNBA, but CNBA never paid the purchase price, and Pan never transferred possession of the premises or property. After CNBA failed to pay rent and was evicted, IOC retained or moved Pan's property and refused to return it despite receiving statements that CNBA disclaimed ownership. The district court awarded Pan \$10,000 in damages and \$10,000 in attorney fees under the Disposition of Personal Property Landlord and Tenant Act.

PROCEDURAL HISTORY

Pan sued IOC and Tompkins after they refused to return personal property remaining on commercial leased premises. Following a bench trial, the Douglas County District Court found that the Act applied to the commercial lease, that defendants wrongfully retained Pan's property, and that defendants were jointly and severally liable for damages and attorney fees. The district court dismissed defendants' counterclaim for storage fees. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Whipps Land & Cattle Co. v. Level 3 Communications, 265 Neb. 472, 658 N.W.2d 258 (2003)
- Funk v. Lincoln-Lancaster Cty. Crime Stoppers, 294 Neb. 715, 885 N.W.2d 1 (2016)
- Mays v. Midnite Dreams, 300 Neb. 485, 915 N.W.2d 71 (2018)
- ACI Worldwide Corp. v. Baldwin Hackett & Meeks, 296 Neb. 818, 896 N.W.2d 156 (2017)
- Zelenka v. Pratte, 300 Neb. 100, 912 N.W.2d 723 (2018)
- State v. Thompson, 294 Neb. 197, 881 N.W.2d 609 (2016)
- Dean v. State, 288 Neb. 530, 849 N.W.2d 138 (2014)

- Farmers Co-op v. State, 296 Neb. 347, 893 N.W.2d 728 (2017)
- Lang v. Sanitary District, 160 Neb. 754, 71 N.W.2d 608 (1955)
- Timberlake v. Douglas County, 291 Neb. 387, 865 N.W.2d 788 (2015)
- Blinn v. Beatrice Community Hosp. & Health Ctr., 270 Neb. 809, 708 N.W.2d 235 (2006)
- Koch v. Koch, 226 Neb. 305, 411 N.W.2d 319 (1987)
- Midwest Renewable Energy v. American Engr. Testing, 296 Neb. 73, 894 N.W.2d 221 (2017)
- American Nat. Bank v. Medved, 281 Neb. 799, 801 N.W.2d 230 (2011)
- Johnson v. Mays, 216 Neb. 890, 346 N.W.2d 401 (1984)
- State v. McCave, 282 Neb. 500, 805 N.W.2d 290 (2011)
- NJI2d Civ. 4.27
- Hickman-Williams Agency v. Haney, 152 Neb. 219, 40 N.W.2d 813 (1950)
- Oak Creek Valley Bank v. Hudkins, 115 Neb. 628, 214 N.W. 68 (1927)
- Peck v. Masonic Manor Apartment Hotel, 203 Neb. 308, 278 N.W.2d 589 (1979)
- Bedore v. Ranch Oil Co., 282 Neb. 553, 805 N.W.2d 68 (2011)
- Bass v. Boetel & Co., 191 Neb. 733, 217 N.W.2d 804 (1974)
- Lesiak v. Central Valley Ag Co-op, 283 Neb. 103, 808 N.W.2d 67 (2012)
- O'Connor v. Kaufman, 260 Neb. 219, 616 N.W.2d 301 (2000)
- Garza v. Garza, 288 Neb. 213, 846 N.W.2d 626 (2014)
- Boamah-Wiafe v. Rashleigh, 9 Neb. Ct. App. 503, 614 N.W.2d 778 (2000)