

respects, the judgment of the circuit court of Carroll County is affirmed.

¶ 15 Affirmed as modified.

Justices HUDSON and BIRKETT concurred in the judgment and opinion.



2011 IL App (2d) 101143

355 Ill.Dec. 173

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, as Subrogee of Michael Markowitz, Plaintiff-Appellant,

v.

T AND N MASTER BUILDER AND RENOVATORS, d/b/a TN Construction, and Tony Deligio, Individually and d/b/a TN Construction, Defendants-Appellees.

No. 2-10-1143.

Appellate Court of Illinois,
Second District.

Oct. 25, 2011.

Background: Property insurer brought action, as subrogee of insured, against commercial tenants of property after there was a fire on the property. The Circuit Court, Lake County, Margaret J. Mullen, J., granted judgment on the pleadings in favor of tenants. Insurer appealed.

Holdings: The Appellate Court, Hudson, J., held that:

- (1) insured could not maintain action against tenants, and
- (2) tenants were not liable for damage under lease.

Affirmed.

1. Appeal and Error ⚡893(1)

The Appellate Court reviews a grant of a motion for judgment on the pleadings de novo. S.H.A. 735 ILCS 5/2-615(e).

2. Pleading ⚡350(5)

When a defendant makes a motion for judgment on the pleadings, he concedes the truth of the well-pled facts of the plaintiff's complaint. S.H.A. 735 ILCS 5/2-615(e).

3. Appeal and Error ⚡916(1)

In reviewing a motion for judgment on the pleadings, the Appellate Court must draw all reasonable inferences in favor of the nonmovant and construe the allegations strictly against the movant. S.H.A. 735 ILCS 5/2-615(e).

4. Appeal and Error ⚡863

When reviewing the grant of a motion for judgment on the pleadings, the Appellate Court must determine whether there is an issue of material fact presented by the pleadings. S.H.A. 735 ILCS 5/2-615(e).

5. Appeal and Error ⚡863

When reviewing a grant of a motion for judgment on the pleading, if no genuine issue of material fact is presented, then the Appellate Court determines whether the movant is entitled to judgment. S.H.A. 735 ILCS 5/2-615(e).

6. Equity ⚡15

Subrogation ⚡1

Subrogation is an action in chancery; it is designed to place the ultimate responsibility for the loss upon the one on whom in good conscience it ought to fall and to reimburse the innocent party who is compelled to pay.

7. Subrogation ⚡1

As an action in equity, a claim may be subrogated only in order to prevent injus-

tice or unjust enrichment and will not be maintained when it would be inequitable to do so.

8. Insurance ⚡3510

Subrogation is not allowed against a tenant where the tenant is considered a coinsured under the landlord's insurance policy.

9. Insurance ⚡3510

Commercial tenants of property were coinsured under property insurance policy, and therefore property insurer could not maintain action, as subrogee of insured, against commercial tenants of property following fire on insured property, where lease provided that landlord was to provide insurance for loss by fire, and tenants contributed to the insurance premiums by virtue of paying rent.

10. Insurance ⚡3510

An insurer may not subrogate against a coinsured.

11. Courts ⚡91(1)

The Appellate Court is bound by decisions of the Supreme Court.

12. Landlord and Tenant ⚡37

Leases are a type of contract and are therefore generally governed by the rules of contract law.

13. Landlord and Tenant ⚡37

The Appellate Court's chief goal in analyzing a lease is to ascertain the intent of the parties.

14. Landlord and Tenant ⚡42

Where the language of a lease is unambiguous, the parties' intent must be ascertained from the lease alone.

15. Landlord and Tenant ⚡37

A lease must be construed in such a manner that no part of it is rendered meaningless.

16. Landlord and Tenant ⚡37

Portions of a lease should not be considered in isolation, for to ascertain the intent of the parties, a court must consider the lease as a whole.

17. Appeal and Error ⚡173(14)

Property insurer failed to preserve for appellate review its assertion that lease agreement rendered commercial tenants liable for damage to property caused by fire, where insurer did not raise issue to the trial court.

18. Appeal and Error ⚡169

Issues raised for the first time on appeal are forfeited.

19. Landlord and Tenant ⚡55(1)

Provision of lease agreement that provided that commercial tenants that held over were liable for all damages sustained to property while in tenants' possession did not render tenants liable for damages caused by fire, where lease specifically excepted losses caused by fire.

20. Landlord and Tenant ⚡90(1), 119(2)

When a tenant remains in possession of premises after the expiration of a lease, either a tenancy at sufferance or a hold-over tenancy will result.

21. Landlord and Tenant ⚡90(2)

The original terms of the lease apply when a tenant holds over.

22. Landlord and Tenant ⚡117

No privity exists between a tenant at sufferance and the former landlord when a tenant holds over.

23. Landlord and Tenant ⚡90(1)

There is a presumption, absent evidence to the contrary, that a tenant is holding over.

24. Contracts ⇌156

Where an inconsistency exists in a contract, a more specific provision controls over a more general one.

Stuart M. Brody, Sneckenberg, Thompson & Brody, LLP, Chicago, for Michael Markowitz, Nationwide Mutual Fire Insurance Company.

Daniel P. Costello, James C. Barrow, Daniel P. Costello & Associates, Chicago, for Tony Deligio, T&N Master Builder and Renovators.

OPINION

Justice HUDSON delivered the judgment of the court, with opinion.

¶ 1 Plaintiff, Nationwide Mutual Fire Insurance Company (as subrogee of Michael Markowitz), appeals an order of the circuit court of Lake County granting judgment on the pleadings (735 ILCS 5/2–615(e) (West 2008)) in favor of defendants T & N Master Builder and Renovators and Tony Deligio. Plaintiff had issued an insurance policy covering property owned by Markowitz. Defendants were tenants upon the property. While the property was occupied by defendants, a fire occurred, damaging the building. The trial court determined that plaintiff could not maintain an action as subrogee against defendants, because they were coinsureds under Markowitz's policy with plaintiff. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 On February 9, 2007, a fire occurred in a building rented by defendants. The property was insured under a policy issued by plaintiff. As a result of the fire, plaintiff was obligated to pay the owner of the property \$140,328.98. Plaintiff now brings

this action in subrogation to recover the \$140,328.98 from defendants. Plaintiff alleges that the fire resulted from defendants' negligence.

¶ 4 On December 11, 2005, Markowitz entered into a commercial leasing agreement with defendants. At the time of the fire, the lease was expired. A holdover tenancy resulted. Plaintiff alleges 11 counts in all, including negligence, spoliation of evidence, and breach of contract. Defendants filed a motion for judgment on the pleadings pursuant to section 2–615(e) of the Civil Practice Law (735 ILCS 5/2–615(e) (West 2008)), which the trial court granted. It found that defendants were coinsureds under the terms of the lease and therefore plaintiff could not maintain an action against them, relying on *Dix Mutual Insurance Co. v. LaFramboise*, 149 Ill.2d 314, 173 Ill.Dec. 648, 597 N.E.2d 622 (1992).

¶ 5 The relevant provisions of the lease are as follows:

“4. REPAIR. The Lessee covenants and agrees with Lessor to take good care of and keep in clean and healthy condition the Premises and their fixtures, and to commit or suffer no waste therein; that no changes or alterations of the Premises shall be made or partitions erected, nor walls papered without the consent in writing of Lessor; that Lessee will make all repairs required to the walls, windows, glass, ceilings, paint, plastering, plumbing work, pipes, and fixtures belonging to the Premises, whenever damage or injury to the same shall have resulted from misuse or neglect; and Lessee agrees to pay for any and all repairs that shall be necessary to put the Premises in the same condition as when he entered therein, reasonable wear and loss by fire excepted, and the

expense of such repairs shall be included within the terms of the lease.

* * *

8. HOLDING OVER. If the Lessee retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then the Lessor may at Lessor's option within thirty days after the termination of the term serve written notice upon Lessee that such holding over constitutes either (a) renewal of this lease for one year, and from year to year thereafter, at double the rental specified under Section 1 for such period, or (b) creation of a month to month tenancy, upon the terms of this lease except at double the monthly rental specified under Section 1, or (c) creation of a tenancy at sufferance, at a rental of \$75.00 dollars per day for the time Lessee remains in possession. If no such written notice is served then a tenancy at sufferance with rental as stated at (c) shall have been created. In such a case if specific per diem rental shall not have been inserted herein at (c) such per diem rental shall be one-fifteenth of the monthly rental specified under Section 1 of this lease. Lessee shall also pay to Lessor all damages sustained by Lessor resulting from retention of possession by Lessee.

* * *

15. FIRE AND CASUALTY. In case the Premises shall be rendered untenable [*sic*] by fire or other casualty, Lessor may at his option terminate this lease, or repair the Premises within thirty days, and failing so to do, or upon the destruction of the Premises by fire, the term hereby created shall cease and determine."

¶ 6 II. ANALYSIS

¶ 7 Plaintiff raises two main issues on appeal. First, it contends that the rule

announced by the supreme court in *Dix*, 149 Ill.2d 314, 173 Ill.Dec. 648, 597 N.E.2d 622, should not apply in this case, because *Dix* involved a residential lease and the instant case involves sophisticated, commercial parties. Second, plaintiff asserts that certain provisions of the lease make defendants liable for the damages to the building. We find neither contention well founded.

[1-5] ¶ 8 As this appeal comes to us following a grant of a motion for judgment on the pleadings (735 ILCS 5/2-615(e) (West 2008)), review is *de novo*. *Wakulich v. Mraz*, 203 Ill.2d 223, 228, 271 Ill.Dec. 649, 785 N.E.2d 843 (2003). When a defendant makes a motion for judgment on the pleadings, he concedes the truth of the well-pled facts of the plaintiff's complaint. *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill.App.3d 435, 442, 346 Ill.Dec. 215, 940 N.E.2d 215 (2010). In reviewing the motion, we must draw all reasonable inferences in favor of the nonmovant (*Parkway*, 406 Ill.App.3d at 442, 346 Ill.Dec. 215, 940 N.E.2d 215) and construe the allegations strictly against the movant (*Pioneer Bank & Trust Co. v. Austin Bank of Chicago*, 279 Ill.App.3d 9, 13, 215 Ill.Dec. 785, 664 N.E.2d 182 (1996)). We must determine whether there is an issue of material fact presented by the pleadings. *Pioneer*, 279 Ill.App.3d at 13, 215 Ill.Dec. 785, 664 N.E.2d 182. If no such issue is presented, then we determine whether the movant is entitled to judgment. *Pioneer*, 279 Ill.App.3d at 13, 215 Ill.Dec. 785, 664 N.E.2d 182.

[6-8] ¶ 9 We further note that this is an action in subrogation. As the supreme court explained in *Dix*, subrogation is an action in chancery. *Dix*, 149 Ill.2d at 319, 173 Ill.Dec. 648, 597 N.E.2d 622. It is "designed to place the ultimate responsibility for the loss upon the one on whom in

good conscience it ought to fall and to reimburse the innocent party who is compelled to pay.” *Reich v. Tharp*, 167 Ill. App.3d 496, 500–01, 118 Ill.Dec. 248, 521 N.E.2d 530 (1987). As an action in equity, a claim may be subrogated only in order to prevent injustice or unjust enrichment and will not be maintained when it would be inequitable to do so. *Dix*, 149 Ill.2d at 319, 173 Ill.Dec. 648, 597 N.E.2d 622. Subrogation is not allowed against a tenant where the tenant is considered a coinsured under the landlord’s insurance policy. *Reich*, 167 Ill.App.3d at 501, 118 Ill.Dec. 248, 521 N.E.2d 530. With these principles in mind, we now turn to the issues raised by plaintiff.

¶ 10 A. Whether This Action Can Proceed in Light of *Dix*

[9, 10] ¶ 11 The first issue presented in this appeal is rather straightforward. If the rule our supreme court announced in *Dix*, 149 Ill.2d 314, 173 Ill.Dec. 648, 597 N.E.2d 622, controls, as the trial court held, this action cannot proceed. Quite simply, it is well settled that an insurer may not subrogate against a coinsured. *Chubb Insurance Co. v. DeChambre*, 349 Ill.App.3d 56, 60, 283 Ill.Dec. 487, 808 N.E.2d 37 (2004). In *Dix*, 149 Ill.2d at 323, 173 Ill.Dec. 648, 597 N.E.2d 622, our supreme court held that a “tenant, by payment of rent, has contributed to the payment of the insurance premium, thereby gaining the status of co-insured under the insurance policy.” Hence, unless *Dix* does not apply for some reason, defendants are coinsureds and plaintiff cannot subrogate against them.

¶ 12 Plaintiff believes that it has identified such a reason. It points out that *Dix* involved a residential lease, while in the instant case, a commercial lease is at issue. As sophisticated parties, plaintiff and defendants could have allocated risks and

costs of insurance as they saw fit. Moreover, as commercial tenants, defendants were in a better bargaining position to negotiate the question of insurance coverage. It is certainly true that the law often distinguishes between sophisticated and nonsophisticated parties. See, e.g., *McRaith v. BDO Seidman, LLP*, 391 Ill. App.3d 565, 575–76, 330 Ill.Dec. 597, 909 N.E.2d 310 (2009); *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill.App.3d 1019, 1037, 309 Ill.Dec. 686, 864 N.E.2d 927 (2007); *Topps v. Unicorn Insurance Co.*, 271 Ill.App.3d 111, 115, 207 Ill.Dec. 758, 648 N.E.2d 214 (1995). Thus, the distinction plaintiff seeks to draw finds support in the law. Indeed, plaintiff calls our attention to substantial foreign authority in support of its position. See, e.g., *State Farm Florida Insurance Co. v. Loo*, 27 So.3d 747, 750 n. 4 (Fla.Dist.Ct.App. 2010) (collecting cases).

¶ 13 Defendants respond that the supreme court drew no such distinction in *Dix*. Moreover, they point out, *Dix* relies extensively on *Cerny–Pickas & Co. v. C.R. Jahn Co.*, 7 Ill.2d 393, 131 N.E.2d 100 (1955), which involved a commercial lease. In that case, the court stated:

“While the cases are not in accord, we believe that the result here reached is supported by better reasoned decisions. Seventy years ago in *Lothrop v. Thayer*, 138 Mass. 466, 475 [(1883)], the court said: ‘The ancient law has been acquiesced in, and consciously or unconsciously, the cost of insurance to the landlord, or the value of the risk enters into the amount of rent.’ And in the leading case of *General Mills v. Goldman*, 184 [F.2d 359, 366 (8th Cir.1950)], the court said * * *: ‘They necessarily consciously figured on the rentals to be paid by the tenant as the source of the fire insurance premiums and intended that the cost of insurance was to come from the tenants. In practical effect the

tenant paid the cost of the fire insurance.’ *Day Wood Heel Co. v. Rover*, 123 Ohio St. 349 [175 N.E. 588 (1931)], also supports our conclusion.

The principal cases to the contrary are *Carstens v. Western Pipe and Steel Co.*, 142 Wash. 259 [252 P. 939 (1927)]; *Morris v. Warner*, 207 Cal. 498 [279 P. 152 (1929)], and *Winkler v. Appalachian Amusement Co.*, 238 N.C. 589 [79 S.E.2d 185 (1953)]. In the first two of these cases it does not appear that the leases contained provisions with respect to insurance like those in the lease before us. In the third case, similar insurance provisions were involved, but the court relied upon the dissenting opinion in the *General Mills* case and upon the first opinion of the Appellate Court in the present case.” *Cerny-Pickas & Co.*, 7 Ill.2d at 398–99, 131 N.E.2d 100.

Thus, not only did the court favorably cite foreign authority supporting the proposition that a tenant, through the payment of rent, effectively pays to insure rented property, it expressly rejected a contrary rule. Moreover, it did so in the commercial realm.

[11] ¶ 14 Accordingly, we are compelled to agree with defendants’ argument on this issue. The law is well settled that we are bound by the decisions of our supreme court. *In re Clifton R.*, 368 Ill. App.3d 438, 440, 306 Ill.Dec. 444, 857 N.E.2d 843 (2006). Both *Dix* and *Cerny-Pickas* remain good law. Moreover, we do not believe they are distinguishable as plaintiff suggests. Though *Dix* did involve a residential lease, *Cerny-Pickas* did not. Accordingly, we conclude that these cases control in the present case. Parenthetically, we note that the approach set forth in *Dix* appears to be the approach followed in the majority of American jurisdictions. See *Dattel Family Ltd. Partnership v.*

Wintz, 250 S.W.3d 883, 888 (Tenn.Ct.App. 2007) (collecting cases).

¶ 15 Plaintiff correctly points out that the *Dix* court did not rely exclusively on the fact that the defendant in that case had paid rent in finding subrogation unavailable to the insurance company under the circumstances of that case. It also looked to the lease as a whole and concluded that the parties intended that the tenant would not be responsible for damages caused by fire and that the landlord would look solely to the insurer for compensation for such a loss. See *Dix*, 149 Ill.2d at 321–23, 173 Ill.Dec. 648, 597 N.E.2d 622. Plaintiff contends that the lease at issue in this case does not manifest a similar intent.

[12–16] ¶ 16 Leases are a type of contract and are therefore generally governed by the rules of contract law. *Napleton v. Ray Buick, Inc.*, 302 Ill.App.3d 191, 201, 235 Ill.Dec. 291, 704 N.E.2d 864 (1998). Accordingly, our chief goal in analyzing a lease is to ascertain the intent of the parties. *Midland Management Co. v. Helgason*, 158 Ill.2d 98, 104, 196 Ill.Dec. 671, 630 N.E.2d 836 (1994). Where the language of a lease is unambiguous, the parties’ intent must be ascertained from the lease alone. *Napleton*, 302 Ill.App.3d at 201, 235 Ill. Dec. 291, 704 N.E.2d 864. The lease must be construed in such a manner that no part of it is rendered meaningless. *Fontana v. TLD Builders, Inc.*, 362 Ill.App.3d 491, 510–11, 298 Ill.Dec. 654, 840 N.E.2d 767 (2005). Moreover, portions of the lease should not be considered in isolation, for “to ascertain the intent of the parties, we must consider the lease ‘as a whole.’” *Dix*, 149 Ill.2d at 320, 173 Ill.Dec. 648, 597 N.E.2d 622.

¶ 17 Plaintiff asserts that the lease contains no language exculpating defendants from negligent acts and that it does not expressly identify defendants as coin-

sureds. Plaintiff here attempts to distinguish *Dix*. The lease in *Dix* expressly made the tenant responsible for his own personal property without mentioning responsibility for the premises. *Dix*, 149 Ill.2d at 322, 173 Ill.Dec. 648, 597 N.E.2d 622. From this provision, the supreme court inferred an intent that the landlord would provide his own insurance against fire. *Dix*, 149 Ill.2d at 322, 173 Ill.Dec. 648, 597 N.E.2d 622. Conversely, plaintiff contends, in this case, the lease is completely silent as to the tenant's responsibility for its own negligence.

¶ 18 We disagree with plaintiff's reading of the relevant portions of the lease. As defendants point out, section four of the lease states:

"The Lessee covenants and agrees with Lessor to take good care of and keep in clean and healthy condition the Premises and their fixtures, and to commit or suffer no waste therein; that no changes or alterations of the Premises shall be made or partitions erected, nor walls papered without the consent in writing of Lessor; that Lessee will make all repairs required to the walls, windows, glass, ceilings, paint, plastering, plumbing work, pipes, and fixtures belonging to the Premises, whenever damage or injury to the same shall have resulted from misuse or neglect; and Lessee agrees to pay for any and all repairs that shall be necessary to put the Premises in the same condition as when he entered therein, reasonable wear and *loss by fire excepted*, and the expense of such repairs shall be included within the terms of the lease." (Emphasis added.)

Plaintiff argues that this section, read as a whole, does not apply to negligent acts. However, the plain language of this section indicates that it is concerned with damages resulting from defendants' negligence. Indeed, it expressly imposes a duty upon

defendants to "make all repairs required to the walls, windows, glass, ceilings, paint, plastering, plumbing work, pipes, and fixtures" when the "damage or injury to the same shall have resulted from misuse or neglect." "[L]oss by fire" is specifically excluded, and the exclusion is clearly broad enough to encompass defendants' negligence.

¶ 19 Another passage confirms the parties' intent that the landlord provide insurance for loss by fire. Section 12 states:

"Lessee will in every respect comply with the ordinances of the municipality aforesaid, with the rules and orders of the health officers thereof, with the orders and requirements to the police department, with the requirements of any underwriters' association so as not to increase the rates of insurance upon the building and contents thereof, and with the rules and orders of the fire department in respect to any matters coming within their jurisdiction."

Initially, we note that this section imposes a duty upon the tenant to take steps that would prevent the rate of insurance on the building from increasing. Obviously, this would be of concern to the landlord only if the landlord were responsible for paying those rates. Further, it requires the tenant to comply with orders of the fire department. Such matters would be of no concern to the landlord if the landlord were not responsible for damages caused by fire.

¶ 20 Accordingly, given the plain language of the lease—taken as a whole—along with the fact that, in accordance with *Dix*, defendants contributed to the insurance premiums by virtue of paying rent, we hold that defendants were coinsured under the policy issued by plaintiff. As an insurance company cannot subrogate against a coinsured (*Chubb Insurance Co.*, 349 Ill.App.3d at 60, 283 Ill.Dec. 487, 808

N.E.2d 37), the trial court properly granted judgment on the pleadings. We therefore affirm its judgment.

¶ 21 B. Whether Other Provisions of the Lease Render Defendants Liable

¶ 22 Before closing, we must address one additional argument. Plaintiff points to section eight of the lease, titled “HOLDING OVER.” That section states as follows:

“If the Lessee retains possession of the Premises or any part thereof after the termination of the term by lapse of time or otherwise, then the Lessor may at Lessor’s option within thirty days after the termination of the term serve written notice upon Lessee that such holding over constitutes either (a) renewal of this lease for one year, and from year to year thereafter, at double the rental specified under Section 1 for such period, or (b) creation of a month to month tenancy, upon the terms of this lease except at double the monthly rental specified under Section 1, or (c) creation of a tenancy at sufferance, at a rental of \$75.00 dollars per day for the time Lessee remains in possession. If no such written notice is served then a tenancy at sufferance with rental as stated at (c) shall have been created. In such a case if specific per diem rental shall not have been inserted herein at (c) such per diem rental shall be one-fifteenth of the monthly rental specified under Section 1 of this lease. *Lessee shall also pay to Lessor all damages sustained by Lessor resulting from retention of possession by Lessee.*” (Emphasis added.)

Plaintiff argues that this provision renders defendants liable for all damages resulting from their continued possession of the premises.

[17, 18] ¶ 23 Defendants respond that this issue is forfeited, as plaintiff did not raise it before the trial court. It is cer-

tainly true that issues raised for the first time on appeal are forfeited. *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill.App.3d 669, 695, 346 Ill.Dec. 789, 941 N.E.2d 347 (2010). In its reply brief, plaintiff does not identify where it had previously raised this issue. Instead, it contends that there is “no reason whatsoever that the court on appeal with a *de novo* review cannot consider” this issue since the “contract and lease [are] part of the evidence and [r]ecord on [a]ppeal.” We find this assertion unsupported, and we are unaware of any such exception to the forfeiture doctrine. Such an exception would effectively eviscerate the rule. If all it took to preserve an issue were that pertinent material be present in the record and that review be *de novo*, under what circumstances would the failure to raise an issue in a case involving a dispositive pretrial motion ever result in forfeiture? Accordingly, we agree with defendants that this issue is forfeited. Moreover, it also lacks merit.

[19–23] ¶ 24 In their briefs, the parties refer to defendants as holdover tenants rather than tenants at sufferance. When a tenant remains in possession of premises after the expiration of a lease, either a tenancy at sufferance or a holdover tenancy will result. *Bransky v. Schmidt Motor Sales, Inc.*, 222 Ill.App.3d 1056, 1060, 165 Ill.Dec. 458, 584 N.E.2d 892 (1991). The original terms of the lease apply when a tenant holds over. *Roth v. Dillavou*, 359 Ill.App.3d 1023, 1027, 296 Ill.Dec. 391, 835 N.E.2d 425 (2005). Conversely, no privity exists between a tenant at sufferance and the former landlord. *Roth*, 359 Ill.App.3d at 1027, 296 Ill.Dec. 391, 835 N.E.2d 425. There is a presumption—absent evidence to the contrary—that a tenant is holding over. *Bransky*, 222 Ill.App.3d at 1061, 165 Ill.Dec. 458, 584 N.E.2d 892. Given the presumption along with the parties’ appar-

ent agreement on the subject, we will consider defendants to be holdover tenants for the purpose of resolving this issue. This is significant, as a landlord cannot enforce covenants of an original lease against a tenant at sufferance. *Troccoli v. L & B Products of Illinois, Inc.*, 189 Ill.App.3d 319, 322, 136 Ill.Dec. 695, 545 N.E.2d 219 (1989). However, as we are dealing with a holdover tenancy, the terms of the entire lease remain effective.

[24] ¶ 25 Therefore, plaintiff's attempt to read the final sentence of section eight in isolation is improper. Indeed, this is exactly the sort of analysis the supreme court counseled against in *Dix*, 149 Ill.2d at 320, 173 Ill.Dec. 648, 597 N.E.2d 622, where it explained, "In Illinois, courts must look to the lease 'as a whole' and the spirit of the agreement between the parties rather than search for an express provision in the lease." Plaintiff's analysis also conflicts with ordinary principles of contractual construction. While the language that plaintiff relies upon in section eight does place responsibility upon defendants to pay for all damages sustained due to their retention of the premises, section four specifically excepts losses caused by fire. It is well established that, where an inconsistency exists in a contract, a more specific provision controls over a more general one. *Jay v. United Defense Industries, Inc.*, 162 Ill.App.3d 1071, 1077, 114 Ill.Dec. 279, 516 N.E.2d 434 (1987). Hence, the more specific provision relating to damages resulting from fire controls over the provision that pertains to damages generally. Even if plaintiff had not forfeited this argument, we would not find it persuasive.

¶ 26 III. CONCLUSION

¶ 27 In light of the foregoing, the order of the circuit court of Lake County grant-

ing defendants' motion for judgment on the pleadings is affirmed.

¶ 28 Affirmed.

Presiding Justice JORGENSEN and Justice BIRKETT concurred in the judgment and opinion.



2011 IL App (5th) 100399
355 Ill.Dec. 181

Clint MASON, Plaintiff-Appellant,

v.

**JOHN BOOS & COMPANY, Westaff,
Inc., and Real Time Staffing Ser-
vices, Inc., Defendants-Appellees.**

No. 5-10-0399.

Appellate Court of Illinois,
Fifth District.

Oct. 28, 2011.

Background: Workers compensation claimant brought negligence action against employee leasing company and temporary employer related to accident in which claimant's right hand was caught in a molding machine, resulting in amputation of claimant's thumb and most of the four fingers on the right hand. The Circuit Court, Effingham County, Douglas L. Jarman, J., granted defendants' motion to dismiss, and claimant appealed.

Holdings: The Appellate Court, Welch, J., held that:

- (1) in a matter of first impression, the failure of employee leasing company to register under the Employee Leasing Company Act did not negate the exclusive remedy provision of the Workers' Compensation Act, and