NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1787

CLEVE A. WILLETT
DBA CLEVE WILLETT RENTALS

VERSUS

LEE HAWKINS, LILLIE DOMINIQUE

Judgment Rendered: SEP - 5 2007

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 521615

Honorable Timothy E. Kelly, Judge

KUHN, J DISSENTS & ASSIGNS REASONS

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BEFORE: WHIPPLE, KUHN, GUIDRY, GAIDRY, AND WELCH, JJ.

WELCH, J.

This is an appeal of a judgment rendered in favor of Cleve A. Willett, a lessor, ordering Lee Hawkins, his lessee, to pay for damages caused by a fire at the rental premises pursuant to the terms of a written lease agreement. We reverse.

BACKGROUND

On November 1, 2003, Lee Hawkins signed a rental agreement to lease a residence at 1940 Fuqua Street, occupied by Lillie Dominique, from Cleve Willett Rentals. The rental agreement provided that the "[r]enter is responsible for damages caused by themselves, their children or visitors." In November of 2003, a fire erupted at the residence. Thereafter, on June 25, 2004, Cleve A. Willett, d/b/a Cleve Willett Rentals (Cleve Willett), filed this lawsuit against Mr. Hawkins and Ms. Dominique, alleging they intentionally set the fire. Cleve Willett sought to recover the sum of $22,748.53, the alleged cost of repairing the damage caused by the fire, along with attorney fees.

At trial, plaintiff's case consisted of the testimony of Cleve Willett, the owner of the rental property, and four exhibits, including the subject rental agreement, prior rental agreements pertaining to the rental property, a computer-generated fire report, and a repair estimate prepared by Paul Davis Restoration. The defense objected to the introduction of the fire report and repair estimate; however, the trial court overruled the objection and admitted the documents into evidence.

Mr. Willett testified that he initially refused to lease the dwelling to Ms. Dominique because she had "something questionable in her background," and he only agreed to lease the property to her after Mr. Hawkins agreed to sign the lease. Regarding the origin of the fire, Mr. Willett acknowledged that he had no reason to believe Mr. Hawkins set the fire. Instead, he asserted that Mr. Hawkins' "girlfriend" set the fire because she was mad at Mr. Hawkins.

Following the presentation of the plaintiff's case, the defense moved for a directed verdict on the basis that there was no evidence that Mr. Hawkins, or anyone for whom he was responsible for under the terms of the lease, had anything to do with starting the fire. The trial court denied the motion, finding that under the language of the lease, Mr. Hawkins was responsible for damages to the leased property.

Thereafter, Mr. Hawkins, who was 49 years old at the time he signed the lease, testified that 72-year old Ms. Dominique, who never was his girlfriend, leased the residence and lived there. He attested that he only signed the lease so that Ms. Dominique could rent the unit. Mr. Hawkins testified that he never lived at the rental property, he was not there when the fire broke out, and he had no knowledge how the fire started. Additionally, Mr. Hawkins testified that he found someone to repair the damage at a cost of $2,500.00.

Following the conclusion of the evidence, the trial court found that although Mr. Hawkins did not live at the residence and had nothing to do with the fire, he signed a lease making him responsible for damages to the leased premises and was therefore liable for the damages caused by the fire. The court awarded Cleve Willett damages in the amount of $22,748.53 in accordance with the repair estimate and assessed attorney fees in the amount of $5,500.00.[1] Mr. Hawkins' motion for a new trial was denied, and this appeal followed.

DISCUSSION

In this appeal, Mr. Hawkins contends that there was no valid lease binding him to pay for damages to the rental unit because the owner did not sign the document. Additionally, Mr. Hawkins contends that the trial court erred in finding him liable based on the language of the lease agreement because there was no evidence introduced at trial that he or anyone for whom he was legally responsible

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[1] The judgment states that plaintiff reserved his causes of action as to Ms. Dominique.

caused the damage. In his third and fourth assignments of error, Mr. Hawkins urges that the damages were excessive and argues that the trial court erred in admitting the computer-generated fire report and the repair estimate into evidence without having a qualified person lay a foundation for the introduction of the evidence.

A lease, like any other contract, constitutes the law between the parties and will be enforced according to the true intent of the parties. **First Nat. Bank of Commerce v. City of New Orleans**, 555 So.2d 1345, 1348 (La. 1990). Under the express terms of the lease, Mr. Hawkins assumed liability for damage to the rental unit caused by him, Ms. Dominique, any of their children, or a visitor. In order to establish that Mr. Hawkins was contractually liable for the damage, Cleve Willett had the burden of establishing by a preponderance of the evidence that Mr. Hawkins, or someone for whom he was responsible under the terms of the rental agreement, caused the damage to the residence. See **Whitley v. Manning**, 623 So.2d 100, 102 (La. App. 1st Cir.), writ denied, 627 So.2d 656 (La. 1993).

A trial court is given great discretion in determining whether a plaintiff has discharged his burden of proof, and the trial court's determination will not be disturbed unless clearly wrong or manifestly erroneous. **Southern Message Service, Inc. v. Commercial Union Ins. Co.**, 26,311, p. 9 (La. App. 2nd Cir. 12/7/94), 647 So.2d 398, 403, writ denied, 95-0059 (La. 3/10/95), 650 So.2d 1180. In order to reverse a trial court's determination of fact, this court must review the record in its entirety and find that a reasonable factual basis does not exist for the finding, and further, that the factfinder is clearly wrong or manifestly erroneous. **Hanks v. Entergy Corp.**, 2006-477, p. 24 (La. 12/18/06), 944 So.2d 564, 580. The ultimate issue to be resolved by this court is not whether the factfinder was right or wrong, but whether the factfinder's conclusions were reasonable. **Stobart**

v. State through Dept. of Transp. and Development, 617 So.2d 880, 882 (La. 1993).

Although mindful of the great discretion vested in the trial court in determining liability, we nevertheless have a constitutional duty to determine whether the trial court's conclusions were clearly wrong based on the evidence or clearly without evidentiary support. **Hanks**, 2006-477, p. 22, 944 So.2d at 580. Upon reviewing the record in its entirety, we can only conclude that the trial court's imposition of contractual liability on Mr. Hawkins is clearly without evidentiary support. The only reference in the record regarding the origin of the fire is Mr. Willett's allegation that Mr. Hawkins' "girlfriend" set the fire because she was mad at him. There is no foundation for this unsubstantiated allegation in the record.[2] As the record is devoid of evidentiary support for the lessor's claim that the fire was caused by someone for whom Mr. Hawkins could be held legally responsible in accordance with the terms of the lease, we hold that the trial court committed manifest error in imposing liability on Mr. Hawkins for the damages caused by the fire.[3]

CONCLUSION

For the foregoing reasons, the judgment awarding damages and attorney fees is reversed, and this lawsuit is hereby dismissed. All costs of this appeal are assessed to appellee, Cleve A. Willett d/b/a Cleve Willett Rentals.

REVERSED AND RENDERED.

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[2] Although the court admitted a computer-generated fire report over the defendant's hearsay objection, we note that the report does not contain any conclusions regarding who was responsible for starting the fire.

[3] Moreover, the trial court committed legal error in awarding damages based on the repair estimate, which constituted inadmissible hearsay and lacked probative value, as there was no testimony from the witness who prepared the estimate. See **Harris v. Hamilton**, 569 So.2d 1, 4 (La. App. 4th Cir. 1990). Thus, Cleve Willett presented no viable proof of his damages, and is not entitled to recover from Mr. Hawkins.

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KUHN, J., dissenting.

I disagree with the majority's reversal of the trial court's judgment awarding damages to Willett. Under the plain language of the lease, Hawkins assumed responsibility for "damages caused by ... visitors." Although not an invitee, a trespasser is a visitor. The fire department's report indicates that the form of the heat ignition was "lighter, flame type." Thus, a reasonable inference of the facts is that a person -- whether an invitee as Willett suggested or a trespasser -- started the fire with the "lighter, flame type," and hence, Hawkins assumed responsibility for the damages under the plain language of the lease. Additionally, I disagree with the notation suggesting that the trial court committed legal error in awarding damages based on the repair estimate. Willett testified as to the total amount of his damages, which is sufficient evidence to support the award. Accordingly, I dissent.