2022 IL App (2d) 210447
No. 2-21-0447
Opinion filed November 14, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHAEL INENDINO, Individually and on Behalf of All Others Similarly Situated,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellant,	)	
v.	)	No. 16-L-695
EQUITY PROPERTY MANAGEMENT, LLC, and BENSENVILLE EQUITY ASSOCIATES, LLC,	)	Honorable David E. Schwartz,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices Hudson and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Michael Inendino, appeals the trial court's ruling after a bench trial that defendants, Equity Property Management, LLC (EPM), and Bensenville Equity Associates, LLC (BEA), did not willfully violate the Security Deposit Interest Act (Act) (765 ILCS 715/0.01 *et seq.* (West 2014)). For the following reasons, we affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Complaint and Pretrial Proceedings

¶ 4 Plaintiff rented an apartment at 950 West Irving Park Road in Bensenville. BEA owned the apartment building, and EPM managed the rental unit. On December 9, 2016, plaintiff, individually and on behalf of all others similarly situated, filed an amended class action complaint, alleging that defendants violated the Act when they did not pay interest on security deposits in the manner and time frame provided by the statute. Specifically, prior to January 1, 2016, section 1 of the Act required that, for any residential property containing more than 25 units, a lessor was obligated to pay a lessee interest on any security deposit (*id.* § 1) and section 2 of the Act, titled "Time for payment; penalty for *refusal* to pay" specified:

> "The lessor shall, within 30 days after the end of *each 12 month rental period*, pay to the lessee any interest, by cash or credit to be applied to rent due, except when the lessee is in default under the terms of the lease. [1]
>
> A lessor who *willfully fails or refuses to pay* the interest required by this Act shall, upon a finding by a circuit court that he [or she] has *willfully failed or refused to pay*, be liable for an amount equal to the amount of the security deposit, together with court costs and reasonable attorney's fees." (Emphases added.) *Id.* § 2.

¶ 5 Plaintiff alleged that defendants willfully failed to comply with the Act, because he had completed three, 12-month tenancy periods in his apartment but did not receive interest on his $880 security deposit within 30 days after the end of each 12-month period. Plaintiff further alleged

[1] Effective January 1, 2016, the Act was amended to require that interest be paid in the same manner and time frame but only if it has accumulated to an amount of $5 or more. 765 ILCS 715/2 (West 2016). Further, all interest that has accumulated but remains unpaid, regardless of amount, shall be paid upon termination of the tenancy. *Id.*

that defendants utilized property management accounting software but their standard practice was not to account for or pay interest within 30 days of the end of each 12-month lease.

¶ 6 Various motions and pleadings followed. Ultimately, on February 21, 2019, the court granted plaintiff's motion for class certification. Further, on December 10, 2019, the court denied the parties' cross-motions for summary judgment.

¶ 7 B. Bench Trial

¶ 8 On April 26, 2021, the case proceeded to a bench trial and the following evidence was received.

¶ 9 1. Plaintiff

¶ 10 Plaintiff previously lived in an apartment complex that BEA owned and EPM managed. Plaintiff testified that, in 2013, he paid EPM $880 as a security deposit for his initial lease, and he then renewed his lease in 2014 and again in 2015. He did not receive within 30 days after any of the 12-month periods, or at all prior to moving out of the building, a credit for interest on the security deposit. Around May 2016, after he moved out, plaintiff received from EPM a check that incorporated his returned security deposit (offset by miscellaneous fees) and the interest that had been earned on the deposit held throughout 2014 and 2015: that interest totaled nine cents. Plaintiff agreed that he never requested or demanded security deposit interest on an annual basis, EPM never refused him interest, and he had not previously been aware of a statute that required defendants to pay interest.

¶ 11 2. Kevin Donohue

¶ 12 Kevin Donohue testified that, since 2008, he has been EPM's executive vice president. EPM's property managers report to a regional manager, the regional manager reports to Donohue, and he, in turn, reports to John Cox, EPM's principal. As executive vice president, Donohue's

duties primarily concern acquiring and refinancing properties, supervising regional employees, and working on capital improvements and budgets; he does not personally have day-to-day involvement with security deposits, issuing account statements, or reviewing leases, although he is familiar with EPM's applicable procedures and/or policies. Prior to joining EPM, Donohue had 19 years of property management experience, but only around 1½ of those years involved Illinois properties. In his previous experience, Donohue never had any involvement with, discussions about, or meetings concerning the Act. Indeed, Donohue testified that, prior to this lawsuit, he was not aware that Illinois had a statute addressing security deposit interest, although he was "aware there was [a] rule or regulation." Donohue agreed that EPM is a property manager for 22 properties in four states, with 3 of those properties located in Illinois, but he noted that Illinois is the only state that requires payment of interest on security deposits. He understood that, in Illinois, residents are "entitled" to interest on security deposits without having to demand it.

¶ 13 Donohue further testified that, when he started working for EPM in 2008, the company paid accrued interest on security deposits within 30 days after a resident moved out. Each year, Donohue received an e-mailed circular from an Illinois real estate trade organization that identified the appropriate interest rate to be applied to security deposits in Chicago, Evanston, and the rest of the state. Donohue e-mailed those circulars to EPM's regional managers, property managers, and accounting department. The circulars included the word "law" but did not reference the Act or another statute. The interest rate for all three years of Inendino's leases was 0.005%.

¶ 14 Prior to the lawsuit and upon his arrival at EPM, Donohue adopted and continued to follow the procedure that was already in place. He thought the procedure was "good" and did not, prior to this lawsuit, seek legal advice or look up the Act. Donohue was never alerted by anyone at EPM that the procedure was flawed, nor did he ever receive a complaint from a resident about security

deposit interest. According to Donohue, EPM never intentionally failed to pay a resident interest when interest was due. "I mean, we had a line on the security deposit reconciliation for interest. We knew they were entitled to interest, and we calculated it at move-out." Donohue testified that EPM made a mistake in the procedure for paying interest. He now knows the procedure did not comply with the Act. In 2016, after EPM was made aware of the flawed procedure, it modified its procedures, educated employees, and adopted a written policy for paying interest. Further, when he joined EPM, onsite property managers manually calculated the interest for each resident upon move-out. When EPM purchased new software in 2016, it was informed that the software would automatically calculate interest; however, a specific module setting needed to be turned on before it would do so and, initially, EPM did not realize the module was not turned on. After this lawsuit, EPM realized the mistake and corrected the software.

¶ 15 Donohue testified that he was "absolutely not" aware of an intent by anyone at EPM to deprive residents of interest, nor was there any intent to use policies and procedures that did not comply with the Act. Further, Donohue testified that, according to his calculations and based on the 0.005% interest rate applicable during the period at issue, the total amount of interest due to the class was $6.75. However, EPM paid the class $73.87 and, thus, overpaid by $67.11. While Donohue agreed that property managers probably saved time by performing the interest calculation only when a resident moved out, instead of annually, he noted that applying the interest rate to the security deposit amount is roughly a 15 to 20 second calculation.

¶ 16 According to Donohue, for the period at issue, defendants had held $83,092 in security deposits from the 109 class members.

¶ 17 3. John Cox

¶ 18 John Cox testified that he is the principal for defendants as well as for the law firm representing defendants at trial. Cox is an attorney, licensed in Illinois since 1980, but he has not practiced law in a "good long time." He is also a certified public account and owns C&P Cox Financial Group, which manages around "150 million of various clients' accounts." Cox has lived in California for 11 years and is a California citizen. For the past 10 years, Cox has focused on politics and, on two occasions, ran for Governor of California.

¶ 19 Cox explained that, since 1985, he has owned the property where plaintiff lived. EPM was formed in 1997, and it succeeded another "top" management company Cox used, called Habitat. To Cox's knowledge, after EPM took over, all Habitat employees, including the onsite property managers who had been trained by Habitat and managed the Illinois properties, continued working with EPM. Habitat had also created most of the procedures and training that the properties followed. Cox "absolutely" wanted the law followed. While nothing (other than the fact, Cox claimed, that he kept Donohue very busy) prohibited Donohue from consulting with a lawyer or trade organization to determine EPM's obligations with respect to security deposit interest, Cox reiterated that the procedure used was simply the way things had been done for years and had been established long ago with Habitat. "It was just [one] of those things on automatic pilot."

¶ 20 Cox does not handle day-to-day operations and is primarily involved with investors, budgets, and acquisitions, but he knew from balance sheets that tenant security deposits were held in trust for the tenants. His instruction to Habitat and, later, Donohue, was to follow the law. As to whether the procedure used to pay interest on security deposits to tenants complied with the Act,

> "[a]pparently, it wasn't [in compliance]. Although I understand that we overpaid a whole bunch of people. And there was never an intent, as I understand it now, looking at

things, that there was never an intent to cheat anybody or take anybody's interest away from them.

Apparently, again, finding out about it from this lawsuit, that we didn't do it properly, and that's regrettable."

Cox testified that, to his knowledge, at no time prior to this lawsuit had a resident complained about not receiving security deposit interest, nor did any employee at EPM bring this issue to his attention.

¶ 21 After Cox's testimony, defendants moved for a directed finding. The court denied the motion.

¶ 22 4. Scott Wisler

¶ 23 Scott Wisler testified on defendants' behalf that he worked as EPM's controller from 2010 to 2017. He oversaw accounting, while Donohue was in charge of operations. Donohue had explained to Wisler that, when a resident moved out, the property manager would calculate the security deposit interest due, add it to the security deposit, and send a form to the accounting department, which would then issue a check. Wisler had received from Donohue e-mails and circulars listing interest amounts for Chicago, Evanston, and the State of Illinois. He was aware that interest had to be paid: "It's a statute that they have to pay interest on monies held in the bank." He was not privy to the procedure of doing so at move-out, as opposed to annually, as that process concerned operations, not accounting.

¶ 24 Wisler was never aware of an EPM procedure not to pay security deposit interest to Illinois residents, nor did he ever have a conversation with anyone at EPM about a procedure concerning not paying security deposit interest. At some point in 2016, EPM went through an accounting software conversion. The new software was supposed to calculate the interest automatically

(instead of property managers manually making the calculation), but a setting had not been turned on appropriately and the system was not doing so. When made aware of the issue, EPM received technical assistance to turn on the correct module and fixed the problem.

¶ 25 At the conclusion of testimony, the trial court asked defendants' counsel to confirm the interest amounts at issue. Counsel explained that $6.75 in interest was owed to the class during the class period, but defendants had paid the class $73.87 at move-out. Therefore, according to counsel, defendants overpaid the class $67.11.

¶ 26 Defendants filed a written motion for a directed finding, which was also denied.

¶ 27 C. Trial Court's Judgment

¶ 28 On July 28, 2021, the court issued a written memorandum, ruling in defendants' favor. The court noted that the essence of the claim against defendants was that they failed to pay yearly interest on security deposits and that the parties agreed that the statute required a penalty upon a *willful* violation of the Act's yearly interest provision. As such,

> "[t]he evidence and testimony adduced at trial overwhelmingly establish[ed] that EPM did not willfully violate the statute. EPM simply was unaware of the requirement to pay yearly; this inadvertence does not equate to a willful violation of the statute. The court relies on numerous facts in reaching this conclusion; the defendants paid each and every tenant the full amount of interest owed on move[-]out (actually, far in excess of the full amount) and at no time refused to pay the interest owed on any security deposit. The *actual* damages incurred by not crediting the yearly interest are $6.75; this [was] clearly a simple mistake by the defendants and in no way reaches the level of any willful intent." (Emphasis in original.)

¶ 29 The court continued that it found misplaced plaintiff's reliance on *Gittleman v. Create, Inc.*, 189 Ill. App. 3d 199, 204 (1989), because the landlord in that case was aware of the legal obligation to pay interest and specifically sought to circumvent the Act by modifying the lease to avoid doing so. As such, the appellate court had found the manipulation of lease terms reflected a willful attempt to circumvent the statute. In contrast, the court here found the facts and evidence at trial were "completely the opposite—EPM was simply unaware of the requirement to credit the interest monthly [*sic*] and was in no way intending to avoid the statute." The court entered judgment in defendants' favor and against plaintiff. Plaintiff appeals.

¶ 30 II. ANALYSIS

¶ 31 A. Plaintiff's Arguments

¶ 32 On appeal, plaintiff's primary argument is that the trial court erred in finding that defendants' violation of the Act was not willful. He argues that the court wrongly interpreted the Act to require him to prove that defendants were motivated by a bad purpose or an intent to retain monies wrongfully. Relying on *Gittleman*, plaintiff argues that the Act does not require proof of bad intent or damages, but requires proof only that a landlord act willfully, which, plaintiff asserts, means "voluntarily and intentionally, not because of mistake or accident." Here, he contends, defendants voluntarily and intentionally, pursuant to a consistent business procedure, did not pay interest on the tenants' security deposits within 30 days after each 12-month rental period.

> "In other words, it was not a mistake or an accident that Plaintiff and every other tenant in the certified class was not paid interest on the tenant's security deposit within 30 days after each 12-month rental period; rather, it was intentional, voluntary and exactly according to Defendants' standardized policy and practice."

¶ 33 Further, plaintiff argues that the court erred in considering as an important element of its decision the amount of actual damages resulting from defendants' conduct. Plaintiff notes that one of defendants' "favorite" arguments at trial was that, because they overpaid the tenants, they could not have intended harm. Plaintiff disagrees, asserting that the idea of overpayment is a "falsehood," because defendants' violation of the Act triggered a penalty of the amount of the security deposits, costs, and attorney fees, *not* just the interest. As such, although defendants paid the class $73.97 at move-out, their violation of the Act actually required them to pay the class $83,092. Further, from a business perspective, plaintiff notes, by minimizing the time their property managers spent calculating interest every year, defendants benefited in an amount "far in excess of the $67.11 defendants claim to have overpaid." Noting that the Act regulates landlords and protects tenants, who generally have little or no leverage or economic power, plaintiff argues that the Act aims to protect tenants *regardless* of whether they lose money, particularly where the landlords hold in trust money that is not their own. Plaintiff urges that, given that the Act's purpose is to protect consumers, the trial court's addition of a "monetary loss" element to the statute was erroneous because it would render the Act unenforceable, as the dollar amounts of interest, particularly on small security deposits and low interest rates, are almost always small.

¶ 34 Plaintiff finally notes that defendants are sophisticated, multistate real-estate entities and, although aware that interest payments were required and that there existed some regulatory scheme requiring payment of interest at a particular rate, they simply chose not to research the Act, a short and concise statute, to understand their legal obligations. Plaintiff asserts that the trial court here essentially found that ignorance of the law was a defense, which plaintiff contends is an erroneous interpretation of the Act. Overall, plaintiff's position may be summarized by his assessment that,

> "if the failure to pay Plaintiff interest had been a mistake, then Defendants would not be liable for the statutory damages. But such is the opposite of the facts of this case; rather, the failure to pay Plaintiff security deposit interest within 30 days after each 12-month rental period *** was not a mistake, it was intentional and voluntary, *i.e.*, willful, as required by Defendants' standard process and practice to only pay a tenant security deposit interest when the tenant moved out."

For the reasons detailed below, we disagree.

¶ 35 B. Standard of Review

¶ 36 "Generally, the standard of review in a bench trial is whether the order or judgment is against the manifest weight of the evidence." *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. A finding is against the manifest weight of the evidence only if the finding itself is unreasonable. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Moreover, "under the manifest weight standard a trial court's credibility decision is subject to great deference in a bench trial." *Samour, Inc. v. Board of Election Commissioners of the City of Chicago*, 224 Ill. 2d 530, 548 (2007). To the extent the question before us is not whether the evidence sufficiently supports the court's judgment but, rather, whether the court correctly interpreted a statute, our review is *de novo*. See *Reliable Fire*, 2011 IL 11871, ¶ 13.

¶ 37 The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. See *Kunkel v. Walton*, 179 Ill. 2d 519, 533 (1997). In doing so, we look first to the statutory language and, when the legislature's intent is clear from the plain and ordinary language of the statute, "we are without authority to construe it otherwise." *Gittleman*, 189 Ill. App. 3d at 202.

¶ 38 C. Definition of "Willful"

¶ 39 As previously noted, the Act provides that a "lessor who willfully fails or refuses to pay the interest required by this Act" shall, upon the court's finding that the "failure" or "refusal to pay" was willful, be liable for a penalty. 765 ILCS 715/2 (West 2014).[2] We agree with *Gittleman* that section 2 is unambiguous (see *Gittleman*, 189 Ill. App. 3d at 203), and therefore, we consider the ordinary definition of "willful." Although the Act does not define the term, Black's Law Dictionary provides several general definitions. While it includes portions of plaintiff's suggested interpretation, such as "voluntary; knowingly; deliberate," and "not accidental or involuntary," it also includes definitions such as: "[p]roceeding from a conscious motion of the will," "[i]ntending the result which actually comes to pass"; "purposeful"; "done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification." Black's Law Dictionary 1599 (6th ed. 1990). Further,

> "An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. It is a word of many meanings, with its construction often influenced by its context. Screws v. United States, 325 U.S. 91, 101 [(1945)].
>
> A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly,

[2] The parties here apparently do not dispute that the lessor may be subject to a penalty not just for a willful failure or refusal to pay interest, but also for a willful failure or refusal to pay in the *time frame*, *i.e.*, every 12 months, set forth by the Act.

heedlessly, or inadvertently. A willful act differs essentially from a negligent act. The one is positive and the other negative." *Id.*

¶ 40 These definitions convince us that, while the court here did not expressly define "willful," it implicitly and correctly found that, to trigger a section 2 penalty, the conduct must rise to more than a mistaken procedure. Indeed, while the Act is meant to protect consumers, it is also a penal statute, which requires strict construction and must not be interpreted "to embrace matters beyond its terms." (Internal quotation marks omitted.) See *Jackim v. CC-Lake, Inc.*, 363 Ill. App. 3d 759, 765 (2005) (also noting that the Act is a penal statute). Here, plaintiff's interpretation of the Act would embrace matters beyond its terms, because it would essentially eliminate the statute's requirement that the violation be "willful" and would instead render section 2 akin to a strict-liability provision when a lessor uses a procedure that mistakenly does not comply with the Act. Thus, given the foregoing definitions and that the term "willful" is being used in a penal context, we disagree with plaintiff that the Act's "willful" requirement requires *only* that an act be performed "voluntarily and intentionally." We note that courts in other contexts have similarly defined "willfully." See, *e.g.*, *Schroeder v. Post*, 2019 IL App (3d) 180040, ¶ 12 (noting that a penalty under section 9-202 of the Code of Civil Procedure (735 ILCS 5/9-202 (West 2016)) did not apply unless the willful behavior was both intentional and *knowingly* wrongful); *People ex rel. City of Chicago v. LeMirage, Inc.*, 2013 IL App (1st) 093547-B, ¶¶ 95-108 (thoroughly analyzing the definition of "willfully" in multiple contexts to assess whether the court should have provided a jury instruction on the term; noting the difficulty to "pin down" the term in a legal sense, such that an instruction should have been provided; but rejecting the argument that the error rose to plain error and seemingly acknowledging that a willful act, at a minimum, involves knowledge).

Thus, to the extent that the court here determined that "willful" failure or refusal required more than a mistake, it did not err in its interpretation of the Act.

¶ 41 We also agree with the court that plaintiff's reliance on *Gittleman* is misplaced and that *Gittleman*'s reasoning is consistent with the above definitions and interpretation. In *Gittleman*, tenants sued a landlord for their security deposit refunds and interest. The trial court entered judgment in the tenants' favor, ordering a return of the deposits and the interest earned thereon, but finding that they were not, under section 2 of the Act, entitled to the statutory penalty in an amount equal to their deposits or attorney fees. On appeal, the court reversed. *Gittleman*, 189 Ill. App. 3d at 204. Although the court distinguished a case upon which the defendant relied as having dealt with a statute that required "bad faith," the court disagreed that the defendant's refusal to pay was not willful where its proffered explanation for not paying, *i.e.*, the language in the relevant lease provisions, appeared to be a means of circumventing the Act's mandates. *Id.* at 203.

> "In essence, the legislative purpose was to impose a statutory penalty at a severity level that would secure statutory compliance by lessors.
>
> It is evident from [the] plaintiffs' leases that [the] defendant was fully aware of its legal obligation to pay interest on security deposits. *** Clearly, the stamped [*i.e.*, lease] provision and [the] defendant's explanation of its meaning are *an attempt to avoid paying the interest*. We conclude that, to the extent that [the] defendant *tried to circumvent the mandates of the statute*, it *willfully refused to pay* the required interest." (Emphases added.) *Id.* at 204.

As such, the court held that the plaintiffs were entitled to the full statutory penalty of costs, attorney fees, and an amount equal to their security deposits. *Id.*

¶ 42 Further, the dissenting opinion in *Gittleman* is also instructive. There, the dissenting justice primarily disagreed with the majority's determination that the defendants' conduct was willful, when the trial court had determined that it was not. *Id.* at 205 (Jiganti, J., dissenting). In addition, however, the dissent referenced Black's Law Dictionary's definitions of "willful," as well as a scholarly article in which the author discussed "willful" as used in the context of security deposits and concluded that "willful" connotes an intention to wrongfully retain. *Id.* at 205-06. The dissenting justice noted that there was ample support in the record for the trial court's finding that the defendant had not been motivated by a bad purpose or an intent to wrongfully retain and, further, the dissenting justice believed that, in order to penalize the landlord, there must be an intention to wrongfully retain. *Id.* at 206. "The trial court found none and I would defer to the judgment of the trial court." *Id.*

¶ 43 As such, contrary to plaintiff's position, *Gittleman* does not stand for the proposition that, to trigger a penalty under the Act, no bad intent is required and the only thing necessary to establish willfulness is knowledge of the obligation to pay interest and a failure to do so properly. Both the majority and dissenting opinions in *Gittleman* recognized that an *intent* to circumvent the Act's mandates or wrongfully retain is necessary.

¶ 44 We note that plaintiff's reliance on *Wang v. Williams*, 343 Ill. App. 3d 495, 499 (2003), is also misplaced. There, the lessor never returned any security deposits or paid any interest, it claimed that the tenant had contractually waived the right to interest, and the appellate court did not make findings or define willfulness but, instead, remanded for reinstatement of the complaint counts that had been dismissed. Finally, plaintiff's reliance on *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 9 (2001), does not aid our analysis, because he fails to recognize that the issue

before the court there concerned a local city ordinance and whether that ordinance, like the Act here, required a *willful* violation before the tenant could recover damages.

¶ 45 We note that our interpretation of the Act's willfulness requirement is not contradictory to the Act's overall purpose to protect consumers, because it still protects tenants when the lessor seeks to intentionally evade obligations. Plaintiff does not dispute that the amounts of interest owed for violations of the Act will frequently be small; as such, consumers would receive a windfall if every *mistaken* violation of the Act, without more, resulted in a statutory penalty. Rather, the Act requires a penalty only if the lessor *willfully* refuses or fails to pay interest. We further disagree that requiring willful conduct in this manner will render the Act unenforceable because plaintiffs will typically be unable to demonstrate bad intent. Indeed, the plaintiffs in *Gittleman* were able to establish willful behavior because the defendant was aware of its obligations and *deliberately* modified the lease terms to *avoid* them. Here, there was no such evidence, nor was there any evidence of prior complaints from tenants that defendants' procedure did not credit interest as prescribed by the Act, or that defendants were ever on notice that their procedure violated the Act. Hypothetically, if a plaintiff *were* able to demonstrate any of those or other similar circumstances, he or she might be able to establish that the lessor's refusal or failure to pay was willful. While we acknowledge that establishing willful conduct may not always be easy, we simply cannot ignore the plain language and penal nature of the statute.

¶ 46 D. Trial Court's Finding

¶ 47 Here, the trial court found that defendants' procedure of paying security deposit interest at move-out, instead of annually, did not reflect willful intent to circumvent the Act's mandates. There is ample evidence to support the court's finding, and we cannot find it or the court's credibility determinations unreasonable. For example, while there is no dispute that defendants'

procedure for paying interest did not fully comply with the Act's mandates, there is also no dispute that defendants *fully* paid the interest required. Although defendants' procedure was performed with intention, *i.e.*, it was a routine procedure performed regularly, there is no evidence that the improper *timing* of performing that procedure was anything more than mistake, inadvertence, or negligence; none of which suffices to establish willfulness. Plaintiff acknowledges that a mistake does not trigger the penalty, but he essentially argues that a mistaken *procedure* does because procedures are selected voluntarily and are, therefore, intentional. We disagree. As discussed above, we believe that a willful refusal or failure to pay must include, as a component of intent, a purposeful evasion of known obligations under the Act. Indeed, we note that section 2's penalty provision is titled "penalty for *refusal* to pay," which implies a *knowing* disregard for the lessor's obligations, which was simply not established here with respect to the timing of interest payments and credit. (Emphasis added.) 765 ILCS 715/2 (West 2014). Rather, the trial evidence reflected only inadvertence and a mistaken procedure. Defendants inherited a procedure from a prior management company, and the witnesses, whom the court found credible, testified that they had no reason to believe that the procedure was unlawful. When notified of the flaw, defendants changed their procedure, modified their software, implemented a written policy, and trained their staff. The court listened to the witness testimony and found credible that defendants did not willfully violate the Act. The court's finding was supported by the evidence.

¶ 48 We briefly note that we disagree with plaintiff's argument that the court improperly required proof of significant damages for plaintiff to succeed on his claim. Rather, it appears that the court considered damages to assess whether defendants profited from their violation of the Act, and, ultimately, the absence of profit informed its overall assessment of whether defendants' conduct was willful. As to plaintiff's argument that defendants profited to the extent that their

property managers saved time calculating interest only at move-out, instead of annually, we are not convinced. Any time saved was relatively minimal, as Donohue testified that, even manually, the interest calculation could be performed within seconds (by multiplying the interest rate by the security deposit amount), and certainly that hypothetical amount of saved time is insufficient to render against the manifest weight of the evidence the court's finding that defendants' conduct overall was not willful.

¶ 49 Finally, plaintiff argues that ignorance of the law is not an excuse, but the court did not hold to the contrary. Rather, the court found credible defendants' statements that they were ignorant of the Act's timing requirement. As discussed above, ignorance is not willfulness. Further, the evidence did not demonstrate willful ignorance; rather, the evidence demonstrated that defendants inherited a procedure, it was continued on "autopilot," and there had never been any reason to believe that the procedure was not fully compliant with the Act. Plaintiff presented no evidence to the contrary, *e.g.*, such as that defendants were on notice that their procedure was incorrect but continued to implement it. The court listened to the witness testimony and found credible that there was no intent to violate the Act. Moreover, defendants paid all interest required of them under the Act, and, in that vein, their ignorance of the law did not evade their ultimate obligation.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 52 Affirmed.

***Inendino v. Equity Property Management, LLC,* 2022 IL App (2d) 210447**

Decision Under Review:	Appeal from the Circuit Court of DuPage County, No. 16-L-695; the Hon. David E. Schwartz, Judge, presiding.
Attorneys for Appellant:	Jeffrey Sobek, of JS Law, and Samuel A. Shelist, of Shelist & Pena, LLC, both of Chicago, for appellant.
Attorneys for Appellee:	Christopher D. Oakes, of Cox, Oakes & Associates, Ltd., of Schaumburg, for appellees.