

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Jason T. Myers
Lafayette, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jason Tye Myers,

Appellant-Plaintiff,

v.

Chaofeng Liu,

Appellee-Defendant.

May 12, 2022

Court of Appeals Case No.

21A-SC-1217

Appeal from the Tippecanoe
Superior Court

The Honorable Daniel J. Moore,
Judge

Trial Court Cause No.

79D07-2104-SC-277

Weissmann, Judge.

- [1] When Jason Myers viewed a Lafayette rental home, the property manager, Brad Vaughn, assured Myers that the property would be repaired and rid of cockroaches before Myers moved in. Myers paid a \$1,200 deposit and signed a lease that day. When the repairs were not completed to Myers' satisfaction by the next day, he immediately asked for a refund and rescission of the lease. The property owner, Chaofeng Liu, agreed to the rescission, but the property manager returned only \$1,000 to Myers. Unhappy with that result, Myers sued the owner nearly a year later in small claims court.
- [2] Myers' complaint alleged the owner committed fraud and constructive fraud and violated the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5. The court ordered the owner to return the remaining \$200 of Myers' deposit but otherwise denied all of Myers' claims for damages. Myers appeals, claiming he was entitled to more. We find he is not and affirm the trial court's judgment.

Facts

- [3] Myers and his girlfriend were shopping for a new rental home when they spied Liu's property. They stopped and spoke with the property manager, who promised to remove the cockroaches and repair the property before their anticipated move four days later. Myers and his girlfriend gave the property manager \$1,200 to hold the property and signed the lease that day.
- [4] The lease contained the following provision:

5. CONDITION OF PREMISES: Lessee has examined the premises prior to accepting the same and prior to the execution of this lease, and is satisfied with the physical condition thereof, including but not limited to the heating, plumbing and smoke detectors. Lessee's acceptance of possession shall constitute conclusive evidence of Lessee's receipt of the premises in good order and repair as of the commencement of the lease term. Lessor or his agent has made no promises as to condition or repair to Lessee, unless they are expressed in this lease or a rider hereto signed by Lessee and lessor or his agent, and no promises to decorate, alter or repair the premises have been made by Lessor or his agent, unless expressed herein.

App. Vol. II, p. 20.

- [5] The next day, Myers inspected the property and observed a mixture of live and dead cockroaches as well as new repairs that he viewed as inadequate. The property manager refused to make additional repairs and asked Myers whether he still wanted to lease the property. Myers said he did not and requested that the manager return the \$1,200. After conferring with the owner, the manager refunded \$1,000 to Myers later that day but kept \$200 as a lease processing fee. *Id.* at 7.
- [6] Myers later sued the owner in small claims court, alleging he violated the Indiana Deceptive Consumer Sales Act (Act). Myers sought damages of \$3,200 plus unspecified punitive and emotional distress damages. Both Myers and the owner, Liu, proceeded pro se. The owner

contended at trial that Myers should have sued the property manager instead because he made representations about the property conditions that the owner never authorized.

- [7] The trial court found the manager, as the owner’s agent, had apparent authority to make the representations. Noting that the owner may not have known that the manager was retaining the \$200, the court determined that the return of \$1,000 to Myers was not a settlement of the dispute. The court denied all of Myers’ claims except his request for the return of the remaining \$200 and \$125 in court costs. Claiming the award was inadequate, Myers filed a motion to correct errors, which the trial court summarily denied.

Discussion and Decision

- [8] Myers claims the trial court should have awarded him damages under the Act as well as fraud-related emotional distress and punitive damages. We find the trial court did not err, as Myers failed to meet his burden of proving, first, that the Act applied and, second, that he was entitled to any damages other than the \$200 he was awarded.
- [9] On appeal, we are particularly deferential to small claims judgments, given the informality of the proceedings and their “sole objective of dispensing speedy justice between the parties according to the rules of substantive law.” *Mayflower Transit, Inc. v. Davenport*, 714 N.E.2d 794, 797 (Ind. Ct. App. 1999) (quoting Ind. Small Claims Rule 8(A)). We view the evidence, and its reasonable inferences, in the light most favorable to Liu and reverse only if the judgment departs from law. See *LTL Truck Serv., LLC v. Safeguard, Inc.*, 817 N.E.2d 664, 667 (Ind. Ct. App. 2004). As Liu has not filed an appellee’s brief, Myers need only establish prima face error—that is, error “at first sight, on first appearance, or on the face of it.” *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006) (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).

I. The Act

- [10] Myers first claims that he was entitled to damages under the Act. But the Act “does not contemplate an aggrieved person suing for damages when the alleged deception concerns real property.” *Rainbow Realty Grp., Inc. v. Carter*, 131 N.E.3d 168, 178 (Ind. 2019) (citing Ind. Code § 24-5-0.5-4(a), which expressly states the Act “does not apply to a consumer transaction in real property”). Therefore, the Act is not applicable.

II. Damages

A. Emotional Distress Damages

- [11] Myers also claims that he was entitled to damages for alleged emotional distress caused by the manager’s purported fraudulent representations that the home would be made habitable. Even assuming Myers could recover damages for emotional distress under these circumstances, he offered no evidence of such damages. Myers even acknowledged in his motion to correct error his difficulty in articulating his emotional distress. App. Vol. II, p. 35. A trial court cannot award unproven damages. See *MAPCO Coal, Inc. v. Godwin*, 786 N.E.2d 769, 778 (Ind. Ct. App. 2003) (noting that a damages award must fall within the evidence).

B. Punitive Damages

- [12] Myers' final claim is that the trial court erroneously denied punitive damages under Indiana Code § 34-51-3-4. That statute limits punitive damages to the greater of three times the amount of compensatory damages awarded in the action or \$50,000. But the only damages that the trial court awarded appear to relate to Myers' rescission of the lease based on Vaughn's purported fraud. See *Hart v. Steel Prods., Inc.*, 666 N.E.2d 1270, 1275 (Ind. Ct. App. 1996) (fraud in the inducement of a contract is a basis for rescission), *reh. denied, trans. denied*.
- [13] A party who has sued for fraud must choose between two remedies: 1) affirming the contract, retaining any benefits, and seeking damages; or 2) rescinding the contract, returning any benefits received, and being returned to the status quo. *Id.* As Myers elected to rescind the contract the day after signing it, Myers cannot recover punitive damages. See *Stevens v. Olsen*, 713 N.E.2d 889, 891 (Ind. Ct. App. 1999) ("If a party seeks to rescind a contract, she 'may not recover general damages, but is only entitled to be returned to the status quo, which usually necessitates a return of money or other things received or paid under the contract[.]'" (quoting *Hart*, 666 N.E.2d at 1275)). The trial court did not err in awarding Myers only the \$200 necessary to return him to the status quo.
- [14] We affirm the small claims court's judgment.

Najam, J., and Vaidik, J., concur.