

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Morgan A. Decker
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Craig R. Patterson
Brian C. Heck
Fort Wayne, Indiana

Jason A. Scheele
Jordan S. Huttenlocker
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

Diana Tran,
Appellant-Defendant,

v.

Greg Armbruster, et al.,
Appellees-Plaintiffs

August 8, 2023

Court of Appeals Case No.
22A-CC-2325

Appeal from the Allen Superior
Court

The Honorable David J. Avery,
Judge

Trial Court Cause No.
02D09-1904-CC-999

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] After a bench trial, the trial court determined that Diana Tran defaulted on two commercial lease agreements. The trial court, however, awarded damages to Greg and Cynthia Armbruster (the Armbrusters) only as to the second lease. The Armbrusters appealed, and this court concluded that the Armbrusters were also entitled to damages for Tran's default on the first lease and remanded for a recalculation of damages. Tran appeals from the trial court's recalculation of damages, arguing that it is not supported by evidence in the record.
- [2] We affirm.

Discussion & Decision

- [3] On April 22, 2019, the Armbrusters filed a complaint against Tran alleging that she owed them damages resulting from her default on two lease agreements for commercial space she rented to operate her nail salon. Tran, by counsel, answered the complaint and filed a counterclaim. Due to a failure to file and exchange certain documents in accordance with the trial court's case management order, sanctions were imposed against Tran. Specifically, the trial court ordered that Tran would not be permitted to present any evidence or call witnesses at trial and that she would not be permitted to testify on her own behalf.
- [4] On January 15, 2021, the trial court conducted a bench trial on the issues of (1) whether Tran was in default under the lease agreements and (2) if so, the amount of damages. At the beginning of trial, the Armbrusters offered and the

trial court admitted into evidence Exhibits 1 through 23 without objection from Tran. In addition to the lease agreements and tax documents, the exhibits also include a ledger setting forth the schedule of payments, interest charges, and other expenses (Trial Exhibit 10). The Armbrusters argued that Tran defaulted under both lease agreements by failing to pay rent, late fees, and her pro rata share of taxes, insurance, and common area maintenance (CAM) expenses. As set out in Trial Exhibit 10, the Armbrusters claimed that the principal balance owed by Tran under the first lease was \$48,986.03, and the principal balance owed under the second lease was \$13,906.73. In addition, the Armbrusters requested prejudgment interest and attorney's fees. They included interest calculations in Trial Exhibit 10.

[5] On April 30, 2021, the trial court entered judgment in favor of the Armbrusters (April 2021 Judgment), finding that Tran defaulted on both leases but awarding damages only as to the second lease.¹ In total, the court awarded \$59,635.70 in damages.² The Armbrusters appealed, challenging the trial court's decision not to award damages for Tran's default on the first lease and the holdover period.

¹ The trial court concluded that the doctrine of accord and satisfaction and/or the doctrine of waiver applied to relieve Tran of any liability related to the first lease.

² The damage award included \$23,103.04 in past due rent, late fees, interest, and CAM expenses related to the second lease, plus \$36,532.66 in attorney's fees. The trial court relied on Trial Exhibit 10 for its determination of the principal amount owed by Tran. With regard to attorney's fees, the trial court relied on Trial Exhibit 21, which set out attorney's fees through December 31, 2020 of \$22,098.16, and a supplemental attorney's fee affidavit filed on February 22, 2021 (after the bench trial) that outlined additional attorney's fees incurred in the amount of \$14,434.50.

Tran cross-appealed, arguing that the trial court abused its discretion in sanctioning her for violating pre-trial orders.

[6] On December 28, 2021, this court issued a memorandum decision holding:

The trial court did not err in concluding that Tran was liable pursuant to the Second Lease but did err in concluding that she was not liable pursuant to the First Lease. Moreover, the trial court did not err in imposing sanctions on Tran for violation of court orders to file her list of witnesses and exhibits and her list of final contentions by certain dates. Consequently, we affirm in part, reverse in part, and *remand for recalculation of damages* in light of this memorandum decision.

Armbruster v. Tran, No. 21A-CC-887, slip op. at 6 (Ind. Ct. App. Dec. 28, 2021) (emphasis added).

[7] On August 22, 2022, the trial court held a hearing for the purpose of determining damages. Before the hearing, the Armbrusters filed with the trial court the exhibits they would be using at the damages hearing, which they also served upon Tran. These exhibits included the April 2021 Judgment; selected documents that were entered into evidence during the bench trial, including Trial Exhibit 10; the supplemental attorney's fee affidavit filed on February 22, 2021 and relied upon by the court in determining the award of attorney's fees in the April 2021 Judgment; an updated ledger for the first lease that contained the same principal figures found in Trial Exhibit 10 but with new prejudgment interest calculations through August 22, 2022 (Exhibit 33); and a second

supplemental attorney's fee affidavit for the timeframe of February 22, 2021 through August 11, 2022 (Exhibit 34).

[8] At the damages hearing, the Armbrusters appeared in person and by counsel via zoom, and Tran, pro se, appeared in person.³ The court explained that the purpose of the hearing was to determine damages related to the first lease. The Armbrusters directed the trial court to Trial Exhibit 10, which was admitted during the bench trial and showed that the principal balance owed on the first lease was \$48,986.03. This same document also included the pre-judgment interest calculated through the date of the bench trial. The Armbrusters then referred the court to Exhibit 33, which showed that the updated amount of interest owed under the first lease as of the date of the damages hearing was \$86,144.50.

[9] With regard to attorney's fees, the Armbrusters referenced Exhibit 34, which showed that attorney's fees accrued from February 22, 2021, through August 11, 2022, were \$28,439.00. The Armbrusters' attorney also informed the court that the Armbrusters had incurred an additional \$1943 in attorney's fees up to that morning, bringing the total of attorney's fees owed to \$30,382.00.

[10] After the Armbrusters set out their damages calculation, the trial court gave Tran the opportunity to "speak her mind." *Transcript* at 16. Tran did not challenge the documents that had been submitted to the court for the

³ A Vietnamese interpreter was provided for Tran.

determination of damages stemming from her default on the first lease agreement. Rather, Tran argued to the court that “it was not fair” and that she “never breached the contract.” *Transcript* at 7, 8.

[11] On August 30, 2022, the trial court issued an Amended Order of Judgment in favor of the Armbrusters and against Tran. The trial court determined damages for breach of the first lease to be \$165,969.22, calculated as follows:

\$48,986.03 (principal balance as shown in Trial Exhibit 10)
\$86,328.19 (interest as shown in Exhibit 33)
\$30,382.00 (attorney’s fees as shown in Exhibit 34)
\$165,969.22 Total Damages for breach of first lease.

The trial court added this amount to the original judgment of \$59,635.70 plus post-judgment interest on this amount of \$6,744.12, for a total judgment against Tran of \$232,349.04. Tran now appeals.

Discussion & Decision

[12] This court may not reverse a damage award unless it is based on insufficient evidence or is contrary to law. *City of Jeffersonville v. Env'tl. Mgmt. Corp.*, 954 N.E.2d 1000, 1015 (Ind. Ct. App. 2011). “In determining whether an award is within the scope of the evidence, we may not reweigh the evidence or judge the credibility of witnesses.” *Fischer v. Heymann*, 12 N.E.3d 867, 870 (Ind. 2014). If the award of damages is supported by the record, “[t]he computation of damages is a matter within the sound discretion of the trial court.” *Id.* (quoting *Berkel & Co. Contractors, Inc. v. Palm & Assocs., Inc.*, 814 N.E.2d 649, 658 (Ind. Ct. App. 2004)).

[13] Tran argues that the damage award is not supported by sufficient evidence. She first asserts that there were “no examinations, no witnesses called, and no exhibits filed” during the damages hearing. *Appellant’s Brief* at 12. To the extent she is arguing that the trial court was required to hold an evidentiary hearing on remand, she cites no authority to support such position. Further, this court remanded the matter to the trial court for the limited purpose of “recalculation of damages” in light of its decision that the trial court erred in not awarding damages for breach of the first lease. *Armbruster v. Tran*, 21A-CC-887 slip op. at 6. We did not remand with specific instructions to hold an evidentiary hearing on the issue of damages. Indeed, evidence pertaining to damages resulting from the breach of the first lease was presented during the bench trial. The trial court did not need to hold any hearing to recalculate damages.

[14] The court, however, elected to hold a summary damages hearing. Prior to that hearing, the Armbrusters submitted to the trial court, and served the same on Tran, the documents they intended to rely upon at the hearing. These documents included exhibits that had been admitted into evidence during the bench trial without objection from Tran, most notably Trial Exhibit 10. Thus, they submitted the very evidence from which the trial court could have recalculated damages without a hearing.

[15] In arguing that the damage award is not supported by sufficient evidence, Tran presents a variety of arguments challenging the trial court’s findings and conclusions in its April 2021 Judgment. For example, Tran argues that the evidence does not support the trial court’s conclusion that she exercised a three-

year extension option in the first lease and was thereafter a holdover tenant until she executed the second lease. She thus asserts that the trial court's award of damages for this period of time was improper. However, the time for Tran to challenge the trial court's findings and conclusions in the April 2021 Judgment has well passed.

[16] Tran also argues that in calculating damages, the trial court should have considered her statute of limitations affirmative defense that she asserted in her answer. Other than in her answer, Tran never raised the statute of limitations as an affirmative defense during the bench trial, on direct appeal, or during the damages hearing on remand. Tran cannot now raise a statute of limitations argument that she did not make at any time before now.

[17] Further, we find that the trial court's calculation of damages is supported by the record. Specifically, the trial court clearly indicated in the April 2021 Judgment that it relied on figures in Trial Exhibit 10 in calculating damages for breach of the second lease. We emphasize that this evidence was admitted during the bench trial without objection from Tran and that Tran was afforded the opportunity to cross-examine witnesses as to the figures contained therein. On remand, in calculating damages for breach of the first lease, the trial court again relied on the principal figures contained in Trial Exhibit 10 as it pertained to that lease. The trial court also used the interest percentage reflected in Trial

Exhibit 10 in calculating interest damages.⁴ Tran has not presented any credible arguments as to why the trial court could not rely on this evidence.

[18] We further note that Trial Exhibit 10 included a computation of interest up to the time of the bench trial. Prior to the damages hearing, the Armbrusters submitted an updated calculation of interest owed on the principal amount up to the date of that hearing. The trial court's calculation of principal and interest damages is thus supported by sufficient evidence.

[19] Regarding attorney's fees, we note that in their complaint and at the bench trial the Armbrusters requested an award of attorney's fees. In the April 2021 Judgment, the trial court relied on Trial Exhibit 21, which reflected attorney's fees through December 31, 2020 in the amount of \$22,098.16. The trial court also considered a supplemental attorney's fee affidavit filed on February 22, 2021 (after the bench trial) that outlined additional attorney's fees incurred in the amount of \$14,434.50. At the damages hearing on remand, the Armbrusters submitted to the court and served on Tran documents detailing attorney's fees incurred since February 22, 2021. We find no abuse of discretion in the trial court's reliance on this supplemental attorney's fee affidavit in calculating the total attorney's fee award.

⁴ Contrary to Tran's claim, it is clear from Trial Exhibit 10 when interest started accruing on the principal balance.

[20] In short, the trial court's recalculation of damages on remand is supported by sufficient evidence.

Riley, J. and Pyle, J., concur.