

[Cite as *Prater v. Bui*, 2011-Ohio-2876.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

John C. Prater,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-990
v.	:	(M.C. No. 2009CVG-038693)
	:	
Mai Bui et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 14, 2011

Percy Squire Co., LLC, and Percy Squire, for appellant.

Fred Thomas, for appellee.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Plaintiff-appellant, John C. Prater, appeals the judgment of the Franklin County Municipal Court, which found in favor of defendants-appellees, Mai Bui, Van Bui, and Bui and Company, Inc. (collectively, "appellees"). Having concluded that the trial court's judgment was not contrary to the manifest weight of the evidence, we affirm.

{¶2} On September 2, 2009, Prater filed a complaint against appellees. In it, Prater alleged that appellees defaulted on a lease agreement with him. Specifically, they owed six months rent at \$675 per month, and they removed shelving, gates, and

other property belonging to Prater. Prater asked for damages in "an amount not less than \$6,750.00." Prater filed an amended complaint on September 21, 2009, making the same allegations and asking for the same damages.

{¶3} On September 29, 2009, appellees filed an answer and a counter-claim against Prater. The counter-claim was ultimately dismissed, however, because it exceeded the jurisdictional limit of the court.

{¶4} The court held a bench trial on August 31, 2010. Following trial, the court issued a written decision, which it issued by entry dated September 26, 2010. In its decision, the court concluded, first, that Prater was the real party in interest and had authority to bring the complaint. Second, the court concluded that Mai Bui and Bui and Company, Inc. were not proper defendants because neither was a party to the lease. Finally, the court concluded that Prater had not sustained his burden of proof to establish damages.

{¶5} Prater filed a timely appeal, and he raises the following assignment of error:

The trial court erred when it determined that [Prater] did not sustain his burden of proof concerning damages for unpaid rent and property loss.

{¶6} In his assignment, Prater contends that the trial court's ruling is contrary to the manifest weight of the evidence. We will not disturb a judgment as against the manifest weight of the evidence if it is supported by competent, credible evidence going to all of the essential elements of a claim. *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶7} In his complaint, and before the trial court, Prater contended that appellees left the leased premises without paying six months of rent at \$675 per month. In his testimony, Van Bui stated that he could not remember if he paid rent after August 2008, and he could not recall when he left the premises.

{¶8} Prater testified that he could not recall when appellees vacated the premises, but that "at least" six months of rent went unpaid. (Tr. 26.) When asked whether they left with his permission, he said, "Yeah." (Tr. 26.) But when they left, they took shelving and metal gates that belonged to Prater and also damaged the walls while doing so. When asked how much money he lost as a result of the removed property and the damage to the property, he said that it was "\$6,000 some." (Tr. 27.)

{¶9} On cross-examination, Prater testified that he took photos at the time, but he no longer had them. Although Prater talked to Van Bui a few days before Bui left the premises, Prater could not recall the details of the conversation.

{¶10} On re-direct, Prater's counsel asked if he knew "for a fact" that appellees owed him "six months of unpaid rent." (Tr. 39.) Prater responded, "Right." (Tr. 39.) On re-cross, Prater said that he had not brought any accounting books or other records with him to the trial to substantiate his claim for damages.

{¶11} The court asked Prater whether appellees were six months behind in rent when they left. He said that they were "behind probably around three months or something," but then it took him "that much longer" to get another renter in the property. (Tr. 42.)

{¶12} It is axiomatic that every plaintiff bears the burden of proving the nature and extent of his damages in order to recover. *Akro-Plastics v. Drake Industries* (1996),

115 Ohio App.3d 221, 226. The plaintiff must show these damages with reasonable certainty, and he cannot base them on mere speculation or conjecture. *Wagenheim v. Alexander Grant & Co.* (1983), 19 Ohio App.3d 7, 17, citing *Rhodes v. Baird* (1866), 16 Ohio St. 573, 580-81. An owner's testimony as to the value of property belonging to him is not conclusive proof of actual damages, and a trier-of-fact need not accept that testimony as the property's true value. *Walls v. Wildermuth* (1998), 10th Dist. No. 98AP-400, citing *Shimola v. Nationwide Ins. Co.* (1986), 25 Ohio St.3d 84, 87.

{¶13} Here, the trial court concluded that Prater had not met his burden of proving damages, and we agree. Although Prater established that the rent was \$675 per month, he did not establish when appellees left the premises, whether they left with his permission or when a new tenant began to pay rent for the space. He had no photos or other records to show that appellees took shelving and metal gates from the property and, even if wrongfully removed, no records or other proof to establish their value. Nor did he have photos or other records to establish the alleged damage that resulted from their removal. Instead, Prater provided only his testimony, which was speculative, at best. The trial court's conclusion that Prater did not meet his burden of proving damages was not against the manifest weight of the evidence.

{¶14} For all these reasons, we overrule Prater's sole assignment of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN and TYACK, JJ., concur.
