

STATE OF MICHIGAN
COURT OF APPEALS

LORI C. HERING,

Plaintiff-Appellee,

v

WILDWOOD CONDOMINIUM ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 187514

St. Clair Circuit Court

LC No. 94-001622-AV

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

PER CURIAM.

Defendant appeals by leave granted a circuit court order affirming a district court judgment of \$1,089.91 entered following a jury trial in favor of plaintiff. Because there was insufficient evidence of damages presented at trial, the district court erred in denying defendant's motions for a directed verdict and JNOV, and then the circuit court erred in affirming these rulings. We reverse and remand for entry of judgment in favor of defendant.

Plaintiff rented a basement unit in a condominium complex which was owned by the Spradlins. Unknown to plaintiff, the water seal foundation in the condominium had been leaking for some time, and two previous attempts had been made to repair the seal. After plaintiff noticed mold in a closet and on the foot of an antique table, Susan Spradlin offered to relocate plaintiff to another unit on an upper floor. During the move, plaintiff discovered that her mattress, box springs and bedroom furnishings were molded through.

Plaintiff sued defendant condominium association in district court seeking to recover for the damage to her furniture on the basis of defendant's negligent failure to maintain the building. At trial, plaintiff introduced three photographs: (1) the moldy bottom of the leg of the headboard, (2) mold on the back of a drawer, and (3) mold on the leg of an antique nightstand. There were no photographs of the desk, mattress or box springs, or the dresser, and no other evidence of damages. Defendant moved first for a directed verdict and then for a JNOV because the jury speculated on the value of plaintiff's furniture. The motions were denied, and a jury returned a verdict in favor of plaintiff for \$1,000; with

* Circuit judge, sitting on the Court of Appeals by assignment.

court costs of \$47 and interest of \$42.31, a judgment was entered for \$1,089.91. Although defendant raises two issues on appeal, we find the second one dispositive and therefore address it alone.

Defendant contends that the circuit court erred in affirming the district court's denial of defendant's motions for a directed verdict and JNOV because in light of the lack of proofs on damages, the jury necessarily speculated on the value of plaintiff's furniture. We agree.

Although mathematical precision is not required, a plaintiff bears the burden of proving the amount of damages with reasonable certainty. *Hofman v ACIA*, 211 Mich App 55, 108; 535 NW2d 529 (1995). There is no fixed rule for measuring compensation for damages to personal property; however, proof of the amount of damages may not be founded on speculation or conjecture. *Strzelecki v Blaser's Lakeside Ind's of Rice Lake, Inc*, 133 Mich App 191, 196-197; 348 NW2d 311 (1984).

Here, the only evidence introduced was three photographs which depicted a small portion of the furniture allegedly damaged. Because this was insufficient to provide the jury with a reasonable basis for computation of the value of plaintiff's furniture, the jury was forced to impermissibly speculate as to the value. For example, there was no evidence introduced as to the original value or purchase price of the furniture, the market value before or after the damage and the like. Consequently, the district court erred in denying defendant's motions for a directed verdict and JNOV. See *Strzelecki*, 133 Mich App at 193, 196-197. The circuit court erred in affirming the district court's ruling.

Reversed and remanded with directions for entry of judgment in favor of defendant in accordance with this decision. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Thomas S. Eveland