

STATE OF MICHIGAN
COURT OF APPEALS

TAE KYONG KIM and MYONG KIM, doing
business as CHERRY HILL BEAUTY SUPPLY,
CHERRY HILL DOLLAR TOWN, and CHERRY
HILL WHOLESALE,

UNPUBLISHED
August 3, 1999

Plaintiffs-Appellants-Cross-Appellees,

v

No. 204892
Wayne Circuit Court
LC No. 95-522029 NZ

DEARBORN HEIGHTS ASSOCIATES, J. R.
DALY & SONS, AND PUZZLECRAFT, INC.,

Defendants-Appellees-Cross-
Appellants.

Before: Sawyer, P.J. and Griffin and Talbot, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting defendants' motion for a directed verdict. We affirm.

Plaintiffs owned a "dollar store" located in a mall in the City of Inkster. This case arises from the collapse of the roof over their store and the resulting water damage to their inventory. Plaintiff sued defendants, their landlords, on a theory of negligence. At the close of trial, the trial court granted defendants' motion for a directed verdict on the ground that plaintiffs' damages were not ascertainable.

On appeal, plaintiffs argue that the trial court erred in granting defendant's motion for a directed verdict. We disagree. This Court reviews de novo a trial court's decision regarding a motion for a directed verdict. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). When evaluating a motion for a directed verdict, a court must consider the evidence, and all legitimate inferences arising from the evidence, in a light most favorable to the nonmoving party. A directed verdict is appropriate only when no material factual question exists upon which reasonable minds could differ. *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975).

A party asserting a claim has the burden of proving its damages with reasonable certainty. Damages based on speculation or conjecture are not recoverable. Damages are not speculative merely because they cannot be ascertained with mathematical precision. It is sufficient if a reasonable basis for computation exists, although the result may be approximate. E.g. *Berrios v Miles, Inc*, 226 Mich App 470, 478; 574 NW2d 677 (1997). In this case, it is undisputed that the proper measure of damages was the difference between the fair market value of the property before the occurrence of the water damage and the fair market value of the property after the occurrence of the water damage. Because there was no evidence of the salvage value of plaintiffs' property after the occurrence of the water damage, the jury was left with no reasonable basis for computing plaintiffs' damages.

Plaintiffs boldly state in their brief on appeal that "at all relevant times" they "have declared a 'total loss.'" Although Tae Kyong Kim testified that it looked like a hurricane had passed through the store, at no time was any evidence of a "total loss" ever put before the jury. To the contrary, Kim testified that "some" of the inventory was not destroyed. Moreover, plaintiffs' expert (an accountant) testified that two years after the damage occurred he viewed several garbage bags full of non-perishable inventory from plaintiffs' store that had not been totally destroyed. Finally, plaintiffs' expert testified that he could not offer an opinion as to the salvage value of the saved inventory because he was not an expert in evaluating salvage value. Considering the state of the evidence presented at trial, we hold that defendant was entitled to a directed verdict for the reasons given by the trial court.

On cross appeal, defendants argue that the trial court erred in denying their motion for summary disposition brought prior to trial. Given our resolution of plaintiffs' appeal, we need not address defendants' cross appeal.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael J. Talbot