IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

BELLAS ARTES DE MEXICO, INC., *Plaintiff/Appellee*,

v.

ARGENTO LLC, an Arizona limited liability company; MARIA PAPAGNO and JORGE A. PAPAGNO, as wife and husband,
Defendants/Appellants.

No. 1 CA-CV 16-0090
FILED 12-19-2017

Appeal from the Superior Court in Maricopa County
No. CV2013-070402
The Honorable Dawn M. Bergin, Judge

AFFIRMED

COUNSEL

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kenton D. Jones and Chief Judge Samuel A. Thumma joined.

T H O M P S O N, Judge:

¶1 This matter stems from a commercial lease. Landlord Argento, LLC, and Maria and Jorge Papagno (collectively, here, Argento) appeal from the judgment in favor of tenant Bellas Artes de Mexico, Inc. (Bellas Artes) following a four-day bench trial. Finding no error by the trial court, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Lease and Property History

¶2 Many of the underlying facts are undisputed. Bellas Artes imported, manufactured, and sold high-end home furniture and decorative items starting in 2000.[1,2] In or around August 2010, Bellas Artes began considering moving from its then-current location and leasing commercial space from Argento.[3]

¶3 Argento and Bellas Artes entered into a lease. The original lease, in October 2010, was for Suite 104 (the Showroom). The monthly rent on the Showroom was $ 1,676.15 with $1,197.25 in common area maintenance (CAM) fees. Bellas Artes moved in during the last week of October 2010. An amended lease entered into approximately two weeks

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[1] Bellas Artes was owned and operated by Felipe and Christina Guzman.

[2] For example, former Diamondback Randy Johnsen purchased a door from Bellas Artes for $15,000. A French bar would retail at $25,000.

[3] Argento is a small family business run by Maria Papagno and owned by Maria and her husband Jorge. Her daughter Ariadna manages the building and does the paperwork.

later added in an omitted warehouse and workshop space -- Space 6 -- here Bellas Artes intended to store and customize its inventory. Argento charged Bellas Artes monthly rent for Space 6 of $583.45 with $416.75 CAM fees starting in November 2010. [4]

¶4 At the time the amended lease was signed Space 6 did not yet have access to the Showroom and was not in a usable condition for Bellas Artes.[5] Argento kept promising that Space 6 would be ready for occupation, but never completed the required work.

¶5 During some portion of the time Bellas Artes was waiting for Space 6 it stored inventory outside of the building or, later after a complaint from the City of Scottsdale, in another area called Space 4. Space 4, being another showroom, was not appropriate as a warehouse and workshop space. Bellas Artes could store furniture in Space 4, but could not customize furniture there. Bellas Artes declined a request from Argento to lease Space 4; Bellas Artes continued to indicate in person and by email it still wanted Space 6.

¶6 Over the approximately two years Bellas Artes stored furniture in Space 4, Space 4 remained available for rent and Argento's real estate agent showed the space multiple times. Bellas Artes paid five monthly payments of $500 for Space 4 from March 2011 to August 2011 and then stopped paying.[6] Argento stopped billing Bellas Artes for Space 4.

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[4] The amended lease provided for three increases in rent, for both the Showroom and Space 6, though 2014.

[5] For Space 6 to be useable by Bellas Artes the access from Space 6 to Suite 102 needed to be closed, access to the Showroom needed to be opened, and other work needed done including Space 6's cement floors cleaned up. The floor still had glue where carpet had previously been laid; Bellas Artes needed the floor smooth so that it could easily move its heavy furniture around.

[6] Although these numbers are undisputed, Argento asserts the $500 was "the difference" between what Space 4 would rent for and what Space 6 would rent for. It asserts Space 4, as it was a showroom, was a better space than Space 6.

¶7 For two years ending November 1, 2012, Argento submitted invoices to Bellas Artes that Bellas Artes paid even when there was a dispute over the amount. In total, Bellas Artes paid Argento $95,486.86.

¶8 In Summer 2012, Bellas Artes became aware that Argento was showing Space 4 to a company called Cantera Stone Source, LLC (Stone Source). Felipe, Bellas Artes' owner, sent Maria an email saying he hoped this meant that Argento would soon provide Space 6 to Bellas Artes "clean and in good condition." He clarified that if Stone Source was moving into Space 4 there also needed to be a wall built to separate the Showroom from Space 4, as well as separating the then-concurrent electrical and restrooms. Maria promised that it would be done.

¶9 Stone Source became aware that for them to rent Space 4, Space 6 needed to be completed for Bellas Artes. Felipe obtained a quote from a contractor to clean the glue residue off the floor; he relayed the quote to Maria, his contact at Argento, who declined the quote as too expensive. Instead, Argento gave Stone Source's manager, Gregory Mortimer, access to Space 6 via Suite 102. Argento did not pay Mortimer, did not pay his assistant, or provide the materials or tools for the work. It did let Mortimer into Space 6, giving him access via another tenant's space. However, on cross-examination, when asked if she "had Mr. Mortimer go in there and grind the cement," Maria replied "correct." Over the next few weeks, Mortimer created an access door to the Showroom, closed the doorway to Suite 102, and began trying to clean the glue from the Space 6 floor without much success.[7]

¶10 On December 9, 2012 Felipe complained to Maria, in a meeting at the building, that there was dust coming into the Showroom from Mortimer's work in Space 6. As of December 17, 2012, Bellas Artes still had not occupied Space 6. On that date, Mortimer tried to clean the floor by grinding it. Felipe stated that Mortimer was using sand to grind the floors. This new method created a "dust tsunami" that invaded the Showroom, coating Bellas Artes' furniture, upholstery, and decorative items with a fine covering of cement dust.

[7] Stone Source also applied for, and was issued, building permits for tenant improvements to Space 4. In the end, Stone Source did not end up leasing from Argento.

¶11 Afterward, Felipe emailed Argento that the dust covered the furniture and customers were refusing to enter. He demanded that Argento do something immediately. Felipe testified that it was nearly impossible to clean the fine dust off of the wood furniture as it was embedded in the wax polish and, where it had settled on upholstery, wetting the dust turned it into cement.

¶12 Bellas Artes closed the business that day and never reopened. Bellas Artes did not pay any further rent to Argento. Bellas Artes did not retrieve its damaged inventory.

¶13 Argento did not continue to mail Bellas Artes monthly invoices for rent. Argento did not try to remediate the dust issue. Bellas Artes eventually settled with Stone Source for $65,000 for damage to the furniture. The furniture was unable to be restored and the settlement did not cover Bellas Artes true losses.

¶14 Months later, in May 2013, Argento mailed Bellas Artes a Notice to Pay or Quit Possession. In early June 2013, Argento locked Bellas Artes out and took possession of the inventory, equipment, and fixtures, and gave notice to Bellas Artes of its intent to sell the property. It gave a second notice of its intent to sell on August 6, 2013. Argento's decision to sell the inventory was a joint decision between Maria and Jorge Papagno and their daughter Ariadna, who did the company's paperwork.

¶15 On August 9, 2013 Bellas Artes filed a complaint in superior court against Argento asserting, among other things, breach of contract and conversion. Argento's counsel accepted service.

¶16 On August 24, 2013, Argento sold the inventory at auction for $111,931, of which $70,750.86 was profit after sales expenses. Argento applied the remaining funds as follows: Space 6 garage door replacement ($1,968), exterior painting ($2,300), removal of trash ($950), asbestos report ($975), locksmith ($1,310), lock ($150), APS turn-on for auction ($1,193.50), cleaning duct work ($4,177), and attorneys' fees and expenses ($8,028.96). Argento further claims losses of $36,062.81 for unpaid rent and interest, through June 2013, and lost rents from June 2013-December 2013 ($27,698.19). No portion of the sales proceeds were paid to Bellas Artes.

B. At Trial

¶17 At trial Bellas Artes asserted Argento breached the lease by failing to deliver Space 6 and by creating a hazardous situation that

caused them to vacate the Showroom, leaving their damaged inventory behind and excusing future rent payments. Bellas Artes asserted that it overpaid rent in the amount of $26,329.77 on Space 6. It asserted lost profits, lost inventory, and lost business value.

¶18 Argento claimed the lease was modified by the offer and use of Space 4 in lieu of Space 6, or that Bellas Artes waived any breach by occupying and paying rent on Space 4. Argento asserted that it had a valid landlord lien for unpaid rents. It alleged Bellas Artes failed to mitigate its damages by having proper insurance coverage, in breach of the lease, or by failing to remediate the damage to the inventory. It argues Bellas Artes waived any claim of conversion because it failed to take reasonable steps to prevent Argento's sale of the inventory—including failing to timely respond to the notice of sale. Argento's expert Kenneth Sandhaus asserted the maximum net loss to Bellas Artes was $157,833. He found no lost profits and no loss of business value. Sandhaus' analysis was entered into evidence.

¶19 After the parties waived their right to a jury trial, the matter was tried to the court over four days. The trial court heard testimony from Felipe and Christina Guzman of Bellas Artes, from Maria and Ariadna Papagno for Argento, from Argento's former real estate agent, and each side's damages expert. Brendan Kennedy, Bellas Artes' expert, asserted total damages of $1,266,281 and pointed out flaws in Argento's expert's reasoning. Kennedy's report was entered into evidence. The trial court explicitly found Bellas Artes' expert Kennedy "considerably more credible."[8]

¶20 The trial court found in favor of Bellas Artes and against Argento in the amount of $378,765 for the breach of the lease and loss of business value. It awarded Bellas Artes $822,516 against Argento and the Papagnos, joint and severally, for the conversion of the inventory. The court ordered an offset of the $65,000 recovery from Stone Source. It found, citing *Maloof v. Raper Sales*, 113 Ariz. 485, 488 (1976), that Maria

[8] Argento's calculation of the damages Bellas Artes owed it included unpaid rent and charges for interest and late fees. However, the testimony at trial was that Argento had never before imposed late fees or interest on Bellas Artes. Further, the evidence was that Argento charged Bellas Artes the $500 per month for Space 4 for five months and then never again listed it on the invoice.

Papagno, as an officer of the company who directed or participated in the tort, was liable for conversion and Jorge Papagno was liable under community property law. The trial court found against Bellas Artes on a constructive eviction claim, and a breach of the implied covenant of good faith and fair dealing claim. Bellas Artes was awarded $241,206.14 in attorneys' fees, $5449 in costs, and their reasonable expert fees of $8,539.07.[9] Argento filed a timely appeal.

ISSUES

¶21 Argento raises the following issues:

A. Whether Argento can be liable for breach of the lease when the dust intrusion was caused by a third party;

B. Whether the Papagnos had a valid landlord's lien and whether the trial court erred in awarding Bellas Artes lost inventory damages based solely on Bellas Artes' expert testimony;

C. Whether the Papagnos can be liable for conversion when Maria Papagno was acting solely on behalf of Argento in a lawful exercise of lessor's rights;

D. Whether Argento can be liable for breach of the lease for failure to deliver Space 6 when Bellas Artes occupied Space 4, and, if so whether the trial court erred in awarding Bellas Artes damages stemming from its failure to deliver Space 6;

E. Whether the trial court erred in awarding Bellas Artes lost profits and lost inventory, because the award resulted in a prohibited duplicative recovery or "double dip;" and,

F. Whether the trial court erred in awarding Bellas Artes attorneys' fees pursuant to the lease that terminated on March 1, 2011, for fees incurred to prosecute post--termination claims and Bellas Artes' claims against the Papagnos.

STANDARD OF REVIEW

[9] Argento turned down a November 2014 offer of judgment of an amount less than the verdict.

¶22 In an action for breach of contract, the plaintiff bears the burden to prove the contract was breached and damages resulted. *Thomas v. Montelucia Villas, LLC*, 232 Ariz. 92, 96, ¶ 16 (2013). We apply a de novo standard of review to the trial court's legal conclusions. *P.M. v. Gould*, 212 Ariz. 541, 544, ¶ 12 (App. 2006).

¶23 Whether a contract has been breached is generally a question for the finder of fact. *See Great Western Bank v. LJC Development, LLC*, 238 Ariz. 470, 477, ¶ 23 (App. 2015) (construction loans). The trial court's factual findings will be "accepted on appeal unless they are 'clearly erroneous.'" *Davis v. Zlatos*, 211 Ariz. 519, 523, ¶ 18 (App. 2005) (citation omitted). We view the evidence in the light most favorable to supporting the trial court's decision and must affirm if any evidence supports the judgment. *In re Estate of Pouser*, 193 Ariz. 574, 576, ¶ 2 (1999). We do not reweigh the evidence on appeal. *CSA 13-101 Loop, L.L.C. v. Loop 101, L.L.C.*, 233 Ariz. 355, 364, ¶ 29 (App. 2013).

DISCUSSION

A. Liability of Stone Source

¶24 Argento asserts that, as a matter of law, it cannot be liable for Stone Source's actions in causing the "dust tsunami" that damaged Bellas Artes' property. It argues that Stone Source was acting "of its own accord" in undertaking the changes to Space 6. To this end Argento cites *Stewart Title & Trust v. Pribbeno*, 129 Ariz. 15, 16 (App. 1981) and *Dillon-Malik, Inc. v. Wactor*, 151 Ariz. 452, 454 (App. 1986) for the proposition that because the dust was not the result of intentional conduct by Argento or undertaken by third-parties on behalf of it, Argento cannot be liable. Argento emphasizes that it never hired Stone Source, never paid Stone Source, never directed Stone Source, and never provided tools or an assistant to Stone Source for the work in Space 6. Bella Artes asserts that Argento assumed the duty to make Space 6 tenantable and Stone Source was working at the behest of Argento when the dust occurred.[10] We agree.

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[10] To this end, Bella Artes cites the Restatement (Second) of Torts, § 419 and the Restatement (Second) of Property, § 6.1.

§ 6.1 Landlord's Conduct Interferes with Permissible Use, provides in relevant part:

¶25 Although Argento cites *Stewart Title*, that case is unavailing in this circumstance. In *Stewart Title*, the commercial tenant failed to establish that the complained of conditions, which it asserted caused a constructive eviction, were the result of intentional conduct by the landlord. 129 Ariz. at 16. Likewise, *Malik* states that "A landlord's obligation under a covenant of quiet enjoyment does not extend to acts of other tenants or third parties unless such acts are performed on behalf of the landlord or by one claiming paramount title." 151 Ariz. at 454, citing *Thompson v. Harris,* 9 Ariz.App. 341 (1969) ("Cases from other jurisdictions clearly indicate . . that the landlord's obligation under a covenant of quiet enjoyment . . . does not extend to acts of other tenants or third parties unless such acts are performed on behalf of the landlord or by one claiming paramount title.").

¶26 The record here does support the trial court's conclusion that Mortimer was working on behalf of Argento.[11] Mortimer understood from Maria that the only way he could take possession of Space 4 was if Bellas Artes could take over Space 6. Argento showed Mortimer the work that needed to be done and allowed him access to the locked space.

Except to the extent the parties to a lease validly agree otherwise, there is a breach of the landlord's obligations if, during the period the tenant is entitled to possession of the leased property, the landlord, or someone whose conduct is attributable to him, interferes with a permissible use of the leased property by the tenant.

§ 419 Repairs Which Lessor Is Under a Duty to His Lessee to Make, provides:

A lessor of land who employs an independent contractor to perform a duty which the lessor owes to his lessee to maintain the leased land in reasonably safe condition, is subject to liability to the lessee, and to third persons upon the land with the consent of the lessee, for physical harm caused by the contractor's failure to exercise reasonable care to make the land reasonably safe.

[11] It is worth reiterating that at the same time Mortimer was working on Space 6, Argento was also working to make it tenantable by moving stairs and taking down the mezzanine.

Mortimer made tenant improvements in Space 6. These improvements included closing up a door to Suite 102 and creating a doorway into the Showroom. It is undisputed that Mortimer ultimately caused the dust that damaged Bellas Artes' inventory. Thus, the trial court properly concluded the resulting damage is attributable to Argento. We affirm the trial court's ruling.

B. Argento's "Lien" and Inventory Damages

¶27 We next address whether Argento had a valid lien against Bellas Artes. Argento asserts it had a valid landlord lien on Bellas Artes' property after it stopped paying rent in December 2012. It asserts all the property was sold, under the landlord's statutory rights, when there was no timely objection.[12]

¶28 Conversion is "an act of wrongful dominion or control over personal property in denial of or inconsistent with the rights of another." *Case Corp. v. Gehrke*, 208 Ariz. 140, 143, ¶ 11 (App. 2004) (citation omitted). To prove conversion, Bellas Artes was required to demonstrate that Argento: (1) intentionally exercised dominion or control over its personal property, and (2) interfered with Bellas Artes' right to control the property to an extent that Argento may justly be required to pay for the full value of the inventory. *See Focal Point, Inc. v. U–Haul Co. of Ariz., Inc.*, 155 Ariz. 318, 319 (App. 1986). We agree that if there was a valid lien for unpaid rents there could not be a conversion, and damages for the seized inventory in the Showroom would necessarily fail.

¶29 Section 33–361(A) (2014) of Arizona's Landlord Tenant Act, provides "When a tenant neglects or refuses to pay rent when due and [is] in arrears . . . the landlord . . . may reenter and take possession . . .." Section 33–362 further provides

> A. The landlord shall have a lien on all property of his tenant not exempt by law, placed upon or used on the leased premises, until the rent is paid . . ..

[12] Although we need not address the issue, we are not convinced that Bellas Artes' having made its position known through the filing and service of a complaint does not count as an "objection" to the sale.

> B. The landlord may seize for rent any personal property of his tenant found on the premises . . . and may hold or sell the property for the payment of the rent.

¶30 However, Bellas Artes counters, citing Arizona Revised Statutes (A.R.S.) § 33-343, that it owed no rent after the December 17th incident because the Showroom had become untenantable.

> The lessee of a building which, without fault or neglect on the part of the lessee, is destroyed or so injured by the elements or any other cause as to be untenantable or unfit for occupancy, is not liable thereafter to pay rent to the lessor or owner unless expressly provided by written agreement, and the lessee may thereupon quit and surrender possession of the premises.

A.R.S. § 33-343.

¶31 The trial court found the Showroom had become untenantable due to the dust, therefore there was no valid landlord lien for rents accruing after December 2013. Argento has failed to show this finding was clearly erroneous or not supported by the record. Thus, because Argento had no valid landlord lien, Argento converted Bellas Artes' property.

¶32 We next address the value of that inventory. Brendan Kennedy, Bellas Artes' expert witness, testified that the inventory was valued at $887,516. Rule 702, Arizona Rules of Evidence, allows expert testimony when "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." Argento did not dispute Kennedy's validity as an expert witness.

¶33 An expert's opinion may rely upon facts and data from three types of sources: "(1) facts admitted into evidence at trial, (2) facts personally perceived by the expert, [or] (3) facts of a type reasonably relied upon by experts in the particular field." *Lynn v. Helitec Corp.*, 144 Ariz. 564, 568 (App. 1984); see also Ariz. R. Evid. 703. Here, Kennedy relied on the auction list and Felipe's statements as to costs. These were compared to cost values in the company financial records. It was the finder of fact's duty to weigh the facts. We find evidence in the record to support the trial courts adoption of Kennedy's inventory valuation.

¶34 Although Argento presented their own expert to rebut Kennedy's valuation, the trial court explicitly found Bellas Artes expert's

testimony and opinions to be the more credible. "The weight and credibility to be given expert testimony are matters to be decided by the factfinder." *State v. Moyer*, 151 Ariz. 253, 255 (App. 1986). There is evidence in the record to support the trial court's inventory damage award. The trial court is affirmed.

C. Individual Liability of the Papagnos

¶35 Argento insists that even if it could be liable for conversion, the Papagnos cannot be individually liable because Maria was acting in lawful exercise of Argento's landlord rights. It argues that under A.R.S. § 29-651 (2014) a member, manager, officer, or agent of a limited liability company is not liable for the debts of the organization, whether it arises out of contract or tort.

¶36 That section reads "[A] member . . . of a limited liability company is not liable, solely by reason of being a member . . . for the debts, obligations and liabilities of the limited liability company whether arising in contract or tort, under a judgment, decree or order of a court or otherwise." A.R.S. § 29-651.

¶37 This court has previously addressed this issue in the corporate setting relation to conversion.

> Corporate directors are not personally liable for conversion committed by the corporation or one of its officers merely by virtue of the office they hold. To be held liable, the directors must participate or have knowledge amounting to acquiescence or be guilty of negligence in the management and supervision of the corporate affairs causing or contributing to the injury. A director who actually votes for the commission of a tort is personally liable, even though the wrongful act is performed in the name of the corporation. Good intentions are no defense to a conversion.

Jabczenski v. Southern Pac. Memorial Hospitals, 119 Ariz. 15, 20 (App. 1978) (citations omitted) (president of a non-profit could be personally liable where he knew certain annuity contracts were converted by another); see also *Maloof*, 113 Ariz. at 488 ("It is well settled that an officer, director or shareholder of a corporation may not be held liable for the torts of the corporation unless (1) he authorized or participated in the actions or (2) the corporation is an alter ego.").

¶38 This personal liability is not solely based on the Papagnos' roles in Argento. It was clear from the testimony that Maria made the decisions and her daughter implemented them. Maria and her daughter testified that it was Maria's signature on the notice to pay or quit, which stated if Bellas Artes didn't pay back rent that it would seize and sell their property. The seizure and sale was a conversion. That Maria may have believed Argento had a valid landlord lien is not a defense. The trial court is affirmed.

D. Liability and Damages Related to the Failure to Deliver Space 6

¶39 The trial court found Argento breached the lease when it failed to make Space 6 available.[13] This failure, according to the trial court, caused Bellas Artes to lose revenue in the amount of $378,765, and clientele because of its inability to build and customize furniture as it had previously done in its prior location. The trial court found "Argento repeatedly promised to deliver Space 6 over the course of . . . two years and was aware that Plaintiff needed it for a workshop" and Bellas Artes "acted reasonably in remaining in Suite 104 and using Space 4 given Argento's promises to deliver Space 6 and the fact that moving its business to another location would have resulted in higher rent and a major disruption in its operations."

¶40 Argento argues Bellas Artes occupied Space 4 in lieu of Space 6 and acquiesced to that change. It asserts that Bellas Artes should be estopped from claiming Argento failed to deliver Space 6 because it was a month to month tenant, based on a verbal agreement, for more than two years. Further, it argues both that Space 4 was a more desirable space and that Bella Artes failed to mitigate its damages.

¶41 Again, it was the trial court's role to determine whether the contract was breached. *See Great Western Bank*, 238 Ariz. at 477, ¶ 23 (App. 2015) (construction loans). The trial court's factual findings will be "accepted on appeal unless they are 'clearly erroneous.'" *Davis v. Zlatos*,

[13] The lease provided that if delivery of the premises did not occur within four months, the lease would terminate unless another written agreement was executed. The trial court found the whole lease terminated on March 1, 2011 and became a month to month tenancy based on a verbal agreement.

211 Ariz. 519, 523, ¶ 18 (App. 2005). It is undisputed that Space 6 was never delivered. The trial court heard the testimony of the fact witnesses. There was evidence in the record, including emails and invoices, to support the trial court's conclusions that Bellas Artes reasonably believed Argento's continued promises of the delivery of Space 6 and that it never accepted Space 4 as a valid substitute for a warehouse and workroom. We will not reweigh the evidence. *CSA 13-101 Loop*, 233 Ariz. at 364, ¶ 29.

¶42 Further, the amount of damages is also a question for the trier of fact and will not be disturbed on appeal except for the most convincing of reasons. *Fernandez v. United Acceptance Corp.*, 125 Ariz. 459, 464 (App. 1980) (citing *Meyer v. Ricklick*, 99 Ariz. 355, 357 (1965)). We find no such convincing reason here.

¶43 Fashioning a remedy is within the court's discretion. *Tom Mulcaire Contracting, L.L.C. v. City of Cottonwood*, 227 Ariz. 533, 537, ¶ 15 (App. 2011) (citation omitted). To prove damages in lost profits, plaintiff must "establish[ ] a reasonably certain factual basis for computation of lost profits." *See Rancho Pescado, Inc. v. Northwestern Mut. Life Ins. Co.*, 140 Ariz. 174, 184 (App. 1984). The standard is "that the existence of the profits cannot be nebulous, although there can be some uncertainty in fixing the measure or extent of those profits which certainly would exist." *Schuldes v. National Surety Corp.*, 27 Ariz.App. 611, 616 (1976). In the case of an established business, damages may be proved with some reasonable method of computing its net profit or loss. *Lininger v. Dine Out Corp.*, 131 Ariz. 160, 162-63 (App. 1981).

¶44 Kennedy opined that Bellas Artes lost from $239,065 to $359,587 in profits from the lack of use of Space 6 and $139,700 in lost business value. Lost profits were calculated by subtracting incremental expenses and costs from lost revenues. In coming to a "but for" result, Kennedy considered various data points including prior earnings by Bellas Artes, customer lists, and historic industry growth. Having been provided ample evidence to support its decision, we will not disturb the trial court's determination in this regard.

E. The "Double Dip" Damages Argument

¶45 Argento argues that Kennedy's calculations create a "double dip" by (1) calculating both lost profit and lost inventory damages, and (2) including, in the lost inventory calculation, lost profit on the inventory. The alleged double dip was explored at length during the examination of Kennedy. The trial court properly asked its own questions and,

ultimately, was apparently satisfied with Kennedy's analysis. The law merely requires "a reasonable basis in the evidence for the trier of fact to fix compensation when a dollar loss is claimed." *Nelson v. Cail*, 120 Ariz. 64, 67 (App. 1978). There is evidence in the record to support the trial court's damage award and, therefore, the trial court is affirmed.

F. Attorneys' Fees In the Trial Court

¶46 Finally, Argento asserts that the trial court erroneously awarded attorneys' fees under the expired lease. The trial court awarded Bellas Artes $241,206.14 in attorneys' fees. We will not disturb an award of fees if it is supported by "any reasonable basis." *Desert Mountain Props. Ltd. P'ship v. Liberty Mut. Fire Ins. Co.*, 225 Ariz. 194, 213 (App. 2010). Bellas Artes requested fees before the trial court under both the lease and under A.R.S. § 12-341.01 (2016). Even assuming the lease did not provide a basis for the fee award, Bellas Artes was certainly entitled to fees as the successful party in a contract action pursuant to A.R.S. § 12–341.01. There being no error, the fee award is affirmed.

Attorneys' Fees on Appeal

¶47 On appeal Argento seeks attorneys' fees under *Wagenseller v. Scottsdale Mem. Hosp.*, 147 Ariz. 370, 389 (1985). Bellas Artes seeks attorneys' fees pursuant to A.R.S. § 12-341.01. As Bellas Artes is the successful party on appeal, we award it reasonable fees in an amount to be determined after compliance with ARCAP 21.

CONCLUSION

¶48 For the above stated reasons, the judgment is affirmed in all respects.

AMY M. WOOD • Clerk of the Court
FILED: AA