[Cite as *D.A.N. Joint Venture III, L.P. v. Med-XS Solutions, Inc.*, 2012-Ohio-980.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

D.A.N. JOINT VENTURE III, L.P.,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NO. 2011-L-056**
MED-XS SOLUTIONS, INC., et al.,	:	
Defendants,	:	
BLUE LAKE SERVICES, LLC, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 09 CV 002817.

Judgment: Affirmed.

John M. Manos, John M. Manos Co., L.P.A., 739 East 140th Street, Cleveland, OH 44110 (For Plaintiff-Appellee).

Joseph Daniel Datchuk, 100 North Center Street, Newton Falls, OH 44444 (For Plaintiff-Appellee).

Peter Turner, Meyers, Roman, Friedberg & Lewis, 28601 Chagrin Boulevard, #500, Cleveland, OH 44122 (For Defendants-Appellants).

DIANE V. GRENDELL, J.

{¶1} Defendants-appellants, Kevin Tenkku, Joseph Guerra, Janet Tenkku, Blue Lake Services, LLC, and Continuum Medical Equipment Services, LLC (collectively "appellants"), appeal from the judgment of the Lake County Court of Common Pleas, denying their Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for

New Trial. Plaintiff-appellee, D.A.N. Joint Venture III, L.P. (D.A.N.) obtained a Judgment in the total amount of $2,197,391.20, following a trial in which the jury found that appellants committed a fraudulent transfer of property. The issues to be determined in this case are whether a party which receives a full judgment for a contractual debt may receive additional damages on a separate claim and whether the jury's award of damages was speculative. For the following reasons, we affirm the decision of the court below.

{¶2} Med-XS Solutions, Inc. (Med-XS) was a corporation located in Mentor, Ohio, formed by Kevin Tenkku and Joseph Guerra in 1997. Med-XS bought and sold used medical equipment to hospitals and provided other services, such as refurbishment of medical equipment.

{¶3} On January 5, 2005, Med-XS took out a $2 million revolving line of credit and a $1 million five-year term loan from FirstMerit Bank, N.A. (FirstMerit). In order to secure these loans, FirstMerit received an interest in certain collateral, including all equipment, business assets, and receivable accounts of Med-XS. Med-XS was required to submit monthly borrowing base reports to FirstMerit which included, among other things, information about its total amount of accounts receivable, total inventory at cost, and prior advances. These loans were refinanced on September 13, 2005. At that time, FirstMerit loaned Med-XS $6 million on a revolving line of credit, with advances limited to the amount of 80% of accounts receivable plus 50% of qualified inventory, with a main purpose of the loan being to assist in the purchase of Health Quip, Inc. Med-XS was also loaned a $2 million term loan and a separate $200,000 term loan. In 2006, two additional term loans were taken out, in the amounts of

$700,000 and $419,115.57. Tenkku and Guerra signed personal guarantees on all loans from FirstMerit.

{¶4} On October 2, 2006, Tenkku and Guerra formed Continuum Medical Equipment Services (Continuum).

{¶5} On October 19, 2006, D.A.N., a company which purchases distressed or troubled loans, and FirstMerit executed an Asset Sale Agreement, whereby FirstMerit sold to D.A.N. all of its rights under the Med-XS loan documents. At the time of this purchase, the unpaid balance of the loans totaled $8,983,916.75. D.A.N. purchased the loans for 80% of the amount owed, which totaled $7,187,133.40.

{¶6} Subsequent to the purchase of the loans, D.A.N. informed Med-XS that it had purchased the right to collect on the outstanding loans. D.A.N. worked with Med-XS to set up a payment plan. In November of 2006, Med-XS agreed to make weekly payments to D.A.N. According to testimony from both sides, a breakdown in this relationship occurred.

{¶7} On January 24, 2007, Tenkku and Guerra formed Blue Lake Services (Blue Lake), located in Painesville, which also was a company that dealt with hospitals and medical equipment.

{¶8} On March 21, 2007, D.A.N. filed a Complaint in the Cuyahoga County Court of Common Pleas regarding the four term loans, asserting that Med-XS, Guerra, and Tenkku failed to repay the loans, and requesting payment of the loan balance and interest. The court entered a judgment by confession, or cognovit judgment, in favor of D.A.N. against Med-XS, Guerra, and Tenkku, totaling $3,264,631.30.

{¶9} On August 2, 2007, D.A.N. filed a Complaint regarding the $6 million revolving line of credit in the Cuyahoga County Court of Common Pleas, asserting that Med-XS, Guerra, and Tenkku defaulted on the loan, and requesting the balance of the loan plus interest. Default judgment was granted against Med-XS, Guerra, and Tenkku, in the amount of $6,357,141.07.

{¶10} On November 7, 2007, D.A.N. filed suit against FirstMerit, asserting that FirstMerit failed to reveal certain information to D.A.N. regarding its loans to Med-XS and the value of the inventory and receivables serving as collateral. D.A.N. requested that the October 19, 2006 Asset Sale Agreement be rescinded. This suit was subsequently settled by the parties and FirstMerit paid a $5 million settlement to D.A.N.

{¶11} On August 28, 2009, D.A.N. filed a Complaint in the Lake County Court of Common Pleas against various employees of Med-XS, including appellants. The Complaint contained three counts: Count 1, Fraud; Count 2, Fraudulent Conveyance; and Count 3, Enterprise Liability. The Complaint alleged that the defendants, working in the scope of their employment with Med-XS, submitted false and misleading financial documents to FirstMerit. It asserted that the documents misrepresented the value of Med-XS's accounts receivable and inventory, thereby overstating the amount of collateral against which it could borrow from FirstMerit by several million dollars. The Complaint also alleged, under the Fraudulent Conveyance count, that the defendants improperly transferred the physical assets of Med-XS to Continuum and Blue Lake.

{¶12} On November 20, 2009, defendants Guerra and Tenkku filed Motions to Dismiss the Complaint, asserting that it was barred by res judicata, since judgments on

the loan had already been obtained in the Cuyahoga County Court of Common Pleas. These motions were denied by the trial court.

{¶13} During the pendency of the lawsuit, various defendants were voluntarily dismissed by D.A.N. At the time the matter went to trial, the remaining parties were Med-XS, Kevin Tenkku, Joseph Guerra, Janet Tenkku, Blue Lake, Continuum, and Diana King, who was dismissed during the course of the trial.

{¶14} A jury trial was held in this matter on January 24 through January 27, 2011. The following pertinent testimony was presented.

{¶15} Guerra, an owner of Med-XS, testified that the company bought equipment from hospitals and resold it to other hospitals. He explained that the company offered other services, such as conducting inventory for hospitals. He testified that, regarding the allegations that Med-XS's equipment had been fraudulently transferred to his other businesses, any equipment moved to Blue Lake no longer belonged to Med-XS because the inventory or equipment moved was to "finish orders" made by Med-XS customers.

{¶16} Tenkku, the other owner of Med-XS, also testified that "the only thing that was moved [to Painesville] was equipment that was already paid for by customers" of Med-XS. A video taken by Tenkku of the Med-XS warehouse in Mentor was presented, showing inventory that was left behind. Tenkku testified that the warehouse in Mentor was 25,200 square feet, while the warehouse in Painesville was only 500 square feet.

{¶17} Daniel Cadle, the owner of D.A.N., testified that his company was contacted by FirstMerit to purchase Med-XS's loans because "management wanted to sell the note" and because Med-XS had "bounced a bunch of checks." Cadle testified

that after purchasing the loan, Med-XS failed to make the required payments. He also explained that at some point, he became aware that Med-XS had moved to Painesville. He went to the address in Painesville and saw equipment similar to that in Med-XS's Mentor warehouse, "just stacked full." Based on these observations, he believed that the collateral on the loans D.A.N. purchased was moved from Mentor to Painesville.

{¶18} Belinda Grassi, a CPA testifying for D.A.N., reviewed Med-XS's records and testified that the value of Med-XS's inventory value had been overstated in financial records submitted to FirstMerit, due to trades or "inventory swaps" that were conducted and improperly recorded. She believed that the value of the inventory in 2005 was overstated by $2 million and was overstated by $3 million in 2006. As of August 31, 2006, she believed the value of Med-XS's inventory would be around $4 million, instead of the over $9 million stated in its inventory records.[1]

{¶19} Karl Yurchiak, a former salesperson at Med-XS, testified that in 2006, he made some sales to customers while he was still working for Med-XS but, pursuant to instructions from Tenkku and Guerra, told customers that he was working for Blue Lake. He testified that he made sales from Med-XS's inventory using the name Blue Lake.

{¶20} Darryl Bammerlin was a warehouse employee at Med-XS, as well as at Blue Lake and Continuum. He testified that in early 2007, a move occurred from the Mentor Med-XS location to Painesville. He explained that the business in Painesville was operating as Blue Lake, not Med-XS. He believed between eight to twelve trailers of inventory were moved from the Mentor location to Painesville over the course of three

---

1. Although D.A.N. states in its brief that Grassi testified her best estimate of the inventory value on August 31, 2006, was $4 million less than the total amount listed on the balance sheet, her testimony does not indicate this. She was asked to give her "best opinion of what the inventory value was as of August 31st, 2006," to which she replied "I would venture to say four million dollars."

or four days. He explained that once the inventory was moved to Blue Lake in Painesville, he was instructed to re-label or renumber all of the inventory, which included a couple thousand items.

{¶21} Paul Seibyl, a former Med-XS employee, testified that everything, including inventory and computer equipment, was moved from Med-XS in Mentor to Painesville, in two or three truckloads.

{¶22} The jury returned a verdict in favor of all defendants on count one, Fraud. Regarding count two, Fraudulent Conveyance, the jury returned a verdict in favor of D.A.N. and awarded actual damages in the amount of $439,478.24 against each individual defendant, for total damages of $2,197,391.20. On count three, the jury found in favor of D.A.N. against all defendants, but awarded no money judgment.

{¶23} On February 15, 2011, the defendants filed a Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial. They asserted that D.A.N. failed to prove the fair market value of the transferred assets, the award of damages was speculative, and the award was duplicative of the judgments already rendered in favor of D.A.N in the Cuyahoga County Court of Common Pleas.

{¶24} The trial court issued a Judgment Entry on April 4, 2011, denying the Motion. It held that, in construing the evidence most strongly in favor of the plaintiff, there was evidence of substantial probative value in support of the claim of fraudulent transfer and that a new trial should not be granted.

{¶25} Appellants timely appeal and raise the following assignments of error:

{¶26} "[1.] The trial court erred in failing to grant Appellants' Motion for Judgment Notwithstanding the Verdict, or, In the Alternative, for a New Trial.

{¶27} "[2.] The judgments against Appellants on Appellee's fraudulent transfer claim are against the manifest weight of the evidence.

{¶28} "[3.] The trial court erred as a matter of law in entering judgments against Appellants in violation of the rule against duplication of judgments."

{¶29} "[N]ot later than fourteen days after entry of judgment [following a jury trial], a party may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion; or if a verdict was not returned, such party, within fourteen days after the jury has been discharged, may move for judgment in accordance with his motion." Civ.R. 50(B); *Freeman v. Wilkinson*, 65 Ohio St.3d 307, 309, 603 N.E.2d 993 (1992).

{¶30} "A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative." Civ.R. 50(B). "A new trial may be granted to all or any of the parties and on all or part of the issues," where "[t]he judgment is not sustained by the weight of the evidence." Civ.R. 59(A)(6).

{¶31} When considering a motion for judgment notwithstanding the verdict, "[t]he evidence adduced at trial and the facts established by admissions in the pleadings and in the record must be construed most strongly in favor of the party against whom the motion is made, and, where there is substantial evidence to support his side of the case, upon which reasonable minds may reach different conclusions, the motion must be denied." *Posin v. A.B.C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 275, 344 N.E.2d 334 (1976). "In considering a motion for judgment notwithstanding the verdict, a court does not weigh the evidence or test the credibility of the witnesses." *Osler v. Lorain*, 28 Ohio St.3d 345, 504 N.E.2d 19 (1986), syllabus; *Posin* at 275. Thus, the

question is whether there is sufficient evidence regarding a particular issue for the trial court to submit the issue to the jury for determination. *O'Day v. Webb*, 29 Ohio St.2d 215, 280 N.E.2d 896 (1972), paragraph four of the syllabus. "The question of whether a party is entitled to judgment notwithstanding the verdict is a question of law and, thus, requires a de novo review." *Arrow Machine Co., Ltd. v. Array Connector Corp.*, 11th Dist. No. 2010-L-115, 2011-Ohio-6513, ¶ 34, citing *Environmental Network Corp. v. Goodman Weiss Miller, L.L.P.*, 119 Ohio St.3d 209, 2008-Ohio-3833, 893 N.E.2d 173, ¶ 23.

{¶32} This court reviews a trial court's judgment on a Civ.R. 59 motion for new trial under the abuse of discretion standard. *Effingham v. XP3 Corp.,* 11th Dist. No. 2006-P 0083, 2007-Ohio-7135, ¶ 18. "[I]n reviewing a motion for a new trial we do so with deference to the trial court's decision, recognizing that 'the trial judge is better situated than a reviewing court to pass on questions of witness credibility and the surrounding circumstances and atmosphere of the trial.'" *Lanzone v. Zart*, 11th Dist. No. 2007-L-073, 2008-Ohio-1496, ¶ 67, quoting *Malone v. Courtyard by Marriott L.P.*, 74 Ohio St.3d 440, 448, 659 N.E.2d 1242 (1996) (citation omitted).

{¶33} We will consider the first and third assignments of error jointly.

{¶34} In their first assignment of error, appellants assert that the trial court improperly denied the Motion for Judgment Notwithstanding the Verdict as to the damages on the fraudulent transfer claim because D.A.N. failed to present any evidence of the fair market value of Med-XS's inventory. They argue that there was insufficient evidence in the record to support the jury's award of $2,197,391.20 in damages and that it was speculative.

{¶35} "As a general rule, once a plaintiff establishes a right to damages, that right will not be denied because the damages cannot be calculated with mathematical certainty." (Citation omitted.) *Barker v. Sundberg*, 11th Dist. No. 92-A-1756, 1993 Ohio App. LEXIS 5112, *4 (Oct. 25, 1993) (citation omitted); *Anderson v. Snyder*, 11th Dist. No. 98-P-0013, 1999 Ohio App. LEXIS 3092, *7 (June 30, 1999). "However, damages will not be awarded based on mere speculation and conjecture" and must be "ascertainable with reasonable certainty." *Barker* at *4; *Bokar v. Lax*, 8th Dist. No. 75929, 2000 Ohio App. LEXIS 1654, *13 (Apr. 13, 2000) (a compensatory damages award in a fraudulent transfer case must not be speculative).

{¶36} Although appellants argue that the value of the damages awarded was speculative, the record in the present case contains several pieces of evidence supporting the jury's finding as to the value of the items transferred. D.A.N. presented Med-XS's borrowing base reports for 2005 through September of 2006, as well as an August 2006 Inventory Report. The Report, which contained detailed records as to each of the items in Med-XS's inventory and their value, showed Med-XS's inventory to be valued at approximately $9.7 million. D.A.N. also submitted an August 31, 2006 Balance Sheet, which listed an inventory value of the same amount. Appellants did not present any evidence disputing the value of the items contained in those reports, prepared by their own employees. In addition, an e-mail sent on December 5, 2006, from Kevin Tenkku to a D.A.N. employee confirmed that the inventory value contained in the August report was a "good number" and that any new inventory report in the future would not be "vastly different." Grassi, the CPA, also testified that after reviewing all of the records related to the inventory, and accounting for the value that she believed

to be overstated by Med-XS, the value of Med-XS's inventory as of August 31, 2006, was approximately $4 million.

{¶37} In addition, the testimony of several witnesses that all of the inventory from Med-XS had been moved around January of 2007 to Painesville, where Blue Lake and Continuum were located, supported a finding that all of the at least $4 million worth of inventory was fraudulently transferred. Both Bammerlin and Seibyl testified that the entire inventory was moved to Painesville, in several large truckloads. In addition, Yurchiak testified that he sold Med-XS inventory in Painesville under the name of Blue Lake. Although there was contrasting evidence presented through the testimony of Guerra and Tenkku as to whether the property was actually transferred, it was for the jury to make a decision as to whether such testimony was credible. *Osler*, 28 Ohio St.3d 345, 504 N.E.2d 19, at the syllabus (the credibility of witnesses is not for the court to determine when ruling on a motion for judgment notwithstanding the verdict). When considering both the testimony related to the value of the property and that all of the property had been transferred, the jury had substantial evidence before it to determine the value of damages to be awarded and did not award speculative damages.

{¶38} Appellants also argue that the records from August of 2006 cannot establish the value of property transferred in January of 2007, which is when the transfer of property allegedly occurred. A review of the record, however, shows that Med-XS, as well as Blue Lake and Continuum, failed to provide any records establishing the value of the inventory after August of 2006. Tenkku testified at trial that Blue Lake and Continuum did not have any inventory records. The instructions given to the jury stated that it could find that "the failure of the Defendant to provide evidence of

value under his control * * * places the risk of uncertainty" upon the defendant, not the plaintiff, which neither party argues was improper. In the present case, there was evidence to support a conclusion that appellants' transfer of the property and failure to provide inventory records of the transferred property made it difficult for D.A.N. to provide exact values of the property. *See Modic v. Modic*, 91 Ohio App.3d 775, 783-784, 633 N.E.2d 1151 (8th Dist.1993) (where the defendant's improper acts have caused a less than precise computation of damages, the plaintiff should be able to recover damages).

{¶39} In addition, the e-mail from Tenkku to D.A.N. in December of 2006 confirmed that the inventory value in the August 2006 reports was still "good," lending further support to a finding that the August 2006 records were valid evidence to support a finding of the value of the inventory. Based on the foregoing, and even in light of appellants' failure to present complete inventory records, there was still substantial evidence in the record to support the value of the jury's award of damages, and the trial court did not err by denying the Motion for Judgment Notwithstanding the Verdict on the issue of the amount of damages awarded.

{¶40} Finally, as asserted by D.A.N. and supported by the record, it argued to the jury that it requested damages only in the amount that it was out from the purchase of the loan from FirstMerit. Since D.A.N. purchased the loan for $7,187,133.40, the amount they had been damaged after the settlement of $5 million was $2,187.133.40. The jury's total award of damages was $2,197,391.20. Although it is not the exact amount, it appears consistent with the argument made by D.A.N. at trial, thus lending

further support to the finding that the jury believed the amount of the property transferred was at least the amount of its verdict, and was supported by the evidence.

{¶41} Appellants finally argue that D.A.N.'s failure to have a receiver appointed contributed to the speculative nature of the damages. However, appellants point to no case law requiring D.A.N. to have a receiver appointed in order to prove damages. Moreover, as we find that the jury's damages award was supported by substantial evidence, this argument is moot.

{¶42} In their first and third assignments of error, appellants also argue that the judgment against them is in violation of the rule against duplication of judgments because D.A.N. already recovered judgments for the full value of the balance owed on the loans and also obtained a $5 million settlement from FirstMerit. Appellants assert that D.A.N. has suffered no additional loss from the fraudulent transfer above and beyond what has already been awarded in the other judgments.

{¶43} D.A.N. argues that the damages were not duplicative because they were awarded for the actual taking of the property, not for the debt owed on the loans.

{¶44} In the present case, the jury found that appellants made a fraudulent transfer of property from Med-XS to Blue Lake. Pursuant to R.C. 1336.04(A)(1), "[a] transfer made or an obligation incurred by a debtor is fraudulent as to a creditor, whether the claim of the creditor arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation * * * [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor."

{¶45} On a fraudulent conveyance claim, a creditor may recover both compensatory and punitive damages, along with other forms of relief. *Blood v.*

Nofzinger, 162 Ohio App.3d 545, 2005-Ohio-3859, 834 N.E.2d 358, ¶ 59-60 (6th Dist.). *See* R.C. 1336.07(A)(3)(c) (a creditor may obtain "[a]ny other relief that the circumstances may require").

{¶46} The amount of damages recoverable on a fraudulent transfer claim "will depend on the facts of each case and what is necessary to compensate the creditor for harm flowing from the fraud." *Blood* at ¶ 59. A party injured by a fraudulent transfer "is entitled to recover such damages as will fairly compensate him for the wrong suffered; that is, the damages sustained by reason of the fraud or deceit, and which have naturally and proximately resulted therefrom." *Id.*, citing *Aristocrat Lakewood Nursing Home v. Mayne*, 133 Ohio App.3d 651, 671, 729 N.E.2d 768 (8th Dist.1999) (citation omitted). Regarding duplicative damages, "the fact that a plaintiff has separate and independent causes of action in contract and in tort does not permit him to recover more than the amount of damage actually suffered as a consequence of the injury resulting from the wrongful breach of his contract." *Davison Fuel & Dock Co. v. Pickands Mather & Co.*, 54 Ohio App.2d 177, 182, 376 N.E.2d 965 (1st Dist.1977) (citations omitted). A plaintiff must "allege and prove the existence of *additional* damages attributable" to the defendant to be awarded damages on each of the separate claims. (Emphasis sic.) *Id.*

{¶47} In the present case, D.A.N. received two judgments against Med-XS, Tenkku, and Guerra in 2007, in the Cuyahoga County Court of Common Pleas. Together, those judgments totaled $9,621,772.37, which accounted for the entire amount of the loan balance owed, plus interest, at the time D.A.N. purchased the loans from FirstMerit. In addition, D.A.N. received a $5 million settlement from FirstMerit, which, when applied against the $7,187,133.40 paid to FirstMerit to purchase the loan,

decreased the final amount D.A.N. failed to recover on its purchase price of the loan to $2,187,133.40.

{¶48} Although appellants argue that the award of compensatory damages in the present case is duplicative since judgment has already been entered as outlined above, we note that courts have allowed creditors to recover compensatory damages in fraudulent transfer cases where a judgment has already been rendered against a debtor and has not been paid. *See Profeta v. Lombardo*, 75 Ohio App.3d 621, 626, 600 N.E.2d 360 (11th Dist.1991) (a compensatory damages judgment was upheld on a fraudulent transfer even where creditor already had a judgment for damages on the underlying debt); *Conley v. Smith*, 6th Cir. No. 08-8021, 2008 Bankr. LEXIS 3447, *4 (Bankr.2008) (where a fraudulent transfer occurred, the plaintiff was awarded the value of the property transferred in the amount of the unpaid judgment). In such cases, even though a full judgment was already awarded on the underlying debt, the amount of damages awarded on the fraudulent transfer claim was not treated as duplicative.

{¶49} Although appellants assert that there are no additional damages above and beyond those that would already be satisfied if Tenkku, Guerra, and Med-XS made payment on the Cuyahoga County judgment, we note that neither party disputes that D.A.N. has not been able to recover on the judgments previously entered. In fraudulently transferring the physical inventory of Med-XS, the appellants have taken away D.A.N.'s ability to sell these assets and recover a portion of the prior judgment. Under appellants' line of reasoning, any time a judgment is obtained, the creditor will not have recourse against the debtor for fraudulently transferring property, since they already had received a full judgment against the debtor. The purpose of the fraudulent

transfer statute is to allow creditors to collect on the debts owed to them by debtors, not reward debtors for fraudulently transferring property.

{¶50} Moreover, as noted by D.A.N., awarding damages on a fraudulent transfer claim is proper, even in light of an already existing judgment, because such an award raises separate concerns, such as being non-dischargeable in bankruptcy proceedings. *See McClellan v. Cantrell*, 217 F.3d 890, 895 (7th Cir.2000) (the court of appeals noted that, if the debtor had rendered a debt uncollectible by making a fraudulent transfer of the property that secured it, his actual fraud would give rise to a new debt, nondischargeable because it was created by fraud). To find the damages award duplicative would potentially prevent D.A.N. from being able to collect on the individual judgments in the future.

{¶51} Therefore, D.A.N. was entitled to a judgment to recover for the collateral that was fraudulently transferred to the extent that it could not execute against that collateral to collect on the Cuyahoga County Court of Common Pleas judgments. Since neither of the parties assert that any payment has been made on such judgments, D.A.N. is entitled to recover up to that approximately $9.6 million award, provided that such a value of collateral was proven. In the present case, only $2,197,391.20 was awarded, and is therefore not duplicative.

{¶52} We note that even if the $5 million settlement with FirstMerit was taken into account as being applicable to the judgments against Tenkku, Guerra, and Med-XS for the purposes of determining whether the present judgment is duplicative, this would still leave D.A.N. with $4.6 million in damages unpaid under the Cuyahoga County judgments, well above the damages awarded by the jury.

{¶53} Based on the foregoing, D.A.N. must be able to recover the amount of damages suffered due to the fraud, which in the present case is the value of the property D.A.N. was unable to sell in order to satisfy a portion of the debt owed to it by appellants. *See Blood,* 162 Ohio App.3d 545, 2005-Ohio-3859, 834 N.E.2d 358, at ¶ 59.

{¶54} Appellants raise a similar argument in their third assignment of error, asserting that the trial court erred by failing to find that the rule against duplicative judgments was applicable. As addressed above, the law supports a finding that the judgment against appellants was not duplicative, and the trial court did not err in entering and accepting such a judgment.

{¶55} The first and third assignments of error are without merit.

{¶56} In their second assignment of error, appellants assert that the jury's award of damages on the fraudulent transfer claim was against the manifest weight of the evidence.

{¶57} Under the civil manifest weight of the evidence standard, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co*., 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. This presumption arises because the trier of fact has had the opportunity "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶58} Appellants raise the same argument as in the first assignment of error, that the fair market value of the inventory was not established by the evidence. However, the weight of the evidence supports a finding that D.A.N. proved the damages with reasonable certainty, as discussed extensively above. When weighing the testimony of the Med-XS employees that all of the inventory had been moved, as well as the records showing the value of the inventory, against Tenkku and Guerra's testimony that such property had not been moved, we cannot find that the jury's verdict was against the weight of the evidence. The jury was in the best position to make a determination as to which parties were most credible. *Id.*

{¶59} The second assignment of error is without merit.

{¶60} Based on the foregoing, the judgment of the Lake County Court of Common Pleas, denying appellants' Motion for Judgment Notwithstanding the Verdict, or in the Alternative, for New Trial, is affirmed. Costs to be taxed against appellants.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.