TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00088-CV

Grayco Town Lake Investment 2007 LP, Appellant

v.

Coinmach Corporation, Appellee

FROM THE COUNTY COURT AT LAW NO. 1 OF TRAVIS COUNTY
NO. C-1-CV-08-009655, HONORABLE ERIC SHEPPERD, JUDGE PRESIDING

MEMORANDUM OPINION

Grayco Town Lake Investment 2007, LP, appeals from the trial court's judgment in favor of Coinmach Corporation in its suit for breach of a laundry-room lease for the Regatta Apartments in Austin, Texas. Coinmach sued when Grayco cancelled the lease and demolished the apartments. Grayco, which did not own the Regatta Apartments when the laundry-room lease was executed in 2002 and claims it had no notice of the lease when it purchased the apartment complex in 2006, asserted an affirmative defense as a bona fide purchaser. Following a bench trial, the trial court rendered judgment for Coinmach. On appeal, Grayco raises evidentiary-sufficiency challenges to the trial court's findings on Grayco's affirmative defense of bona fide purchaser, material breach, and damages. For the reasons set forth below, we affirm the district court's judgment.

BACKGROUND

The agreement principally at issue in this case is a 2002 laundry-room lease between Coinmach and Bridge Management Company as agent for the then-owner of the Regatta Apartments. Resolving Grayco's challenge to the trial court's finding on its affirmative defense, however, requires discussion of a related laundry-room lease executed in March 1992 and background on Grayco's 2007 purchase of the Regatta Apartments.

In March 1992, Coinmach's predecessor, McNair's Coin Laundry Company, entered into a laundry-room lease with De Narde Construction Company, then owner of the Regatta Apartments. The March 1992 lease, which was filed in Travis County's real-property records, gave McNair's, as lessee, the right to establish and maintain coin-operated laundry-room facilities at the apartment complex. In return, McNair's agreed to split evenly with De Narde any profits realized from the laundry-room machines. The term was for ten years, but the lease included an automatic renewal for another ten years unless cancelled at least ninety days before expiration.

Between March 1992 and March 2002, ownership of the apartment changed hands, Bridge Management Company became the management company and authorized agent for the new owner of the apartments, and Coinmach succeeded to McNair's interest in the 1992 laundry-room lease. In early 2002—in fact, shortly before the ten-year term of the original 1992 laundry-room lease was set to automatically renew—Bridge and Coinmach executed a ten-year "extension, renewal, and modification of" the 1992 lease, giving Coinmach "exclusive installation and operation of the [laundry-room] equipment" at the Regatta Apartments until March 4, 2012. The 2002 lease did not provide lessor, the owner of the apartments, with the ability to terminate the lease before the end of the ten-year term.

As compensation under the 2002 lease, Coinmach agreed to pay Bridge 50% of the gross receipts, but only after Coinmach received a minimum compensation of $45 per machine, per month. In a related "Supplemental Agreement" for all "coin operated laundry space" executed on the same date as the 2002 lease, Coinmach agreed to pay Bridge an up-front $14,000 "lease/decoration bonus," any "unearned" portion of which Bridge had to refund if Coinmach had to remove the laundry machines before the contract expired. Unlike the 1992 lease, neither the 2002 lease nor the supplemental agreement was recorded in the Travis County property records. Coinmach and Bridge did, however, execute and record a "Memorandum of Lease" indicating that a lease had been executed between Bridge and Coinmach and stating that copies of that executed lease were on file at their respective offices.

In December 2006, Grayco[1] entered into a contract to buy the Regatta Apartments from Foley Capital Asset, LLC. Under a provision in the contract requiring Foley to give Grayco "[c]opies of all current leases pertaining to the Property, including any modifications, supplements, or amendments to the leases," Foley provided Grayco with copies of the 1992 lease between De Narde and McNair's and the April 2002 memorandum of lease, but it did not provide copies of the 2002 lease or supplemental agreement. Accordingly, when the sale of Regatta Apartments closed in May 2007, the general warranty deed conveying the property to Grayco included the following permitted exceptions:

> 8. Contract for Services and Lease Agreement dated March 11, 1992, by and between De[N]arde Construction Co., as owner, and McNair's Coin Laundry Co., recorded in . . . the Real Property Records of Travis County, Texas.

[1] Grayco's parent company actually obtained the contract and later assigned it to Grayco.

> 9. The terms, conditions and stipulations set out in that certain Lease as evidenced by the Memorandum of Lease dated March 18, 2003, recorded [in] the Official Public Records of Travis County, Texas.

Relatedly, in the Assignment and Assumption of Leases and Service Contracts executed by the parties in connection with the sale, Foley assigned to Grayco the "Contract for Services and Lease Agreement dated March 11, 1992, with Coinmach Corporation (as successor-in-interest of McNair's Coin Laundry Co.)." No other laundry-room leases were referenced in the deed or other sale documents.

A few months later, after it had decided to close the Regatta Apartments and demolish the buildings, Grayco sent a letter to Coinmach "cancel[ing] its service with [Coinmach]" and notifying Coinmach that "Regatta is currently closed with zero occupancy, and it is pending demolishment." Grayco's letter also stated that its action "constitutes early termination of the contract between Regatta Apartments and Coinmach" and acknowledged that Grayco was aware "of the associated lost revenue and termination fee that may be assessed as a result of this action." Coinmach responded by email that it would not remove its laundry-room equipment from the Regatta Apartments until Grayco paid it $93,103.09 for its lost revenue and the unused part of the lease/decoration bonus. Grayco did not pay.

Coinmach filed the underlying suit asserting that Grayco had breached the terms of the January 2002 lease between it and Bridge Management Company, as agent for then-owner of the Regatta Apartments. Coinmach also sought the return of the unused portion of the $14,000 lease/decoration bonus it had paid to Bridge Management under the terms of the "Supplemental Agreement," executed on the same date. Grayco answered and asserted, among other defenses, that

it had no notice of the 2002 lease or supplemental agreement and, therefore, it was a bona fide purchaser of the real property not subject to the terms of either. After a bench trial, the trial court rendered judgment in favor of Coinmach, awarding it $67,122.19 in damages. It is from this judgment that Grayco appeals.

Discussion

In four issues that it characterizes as evidentiary-sufficiency challenges, Grayco asserts that the trial court erred in (1) finding that Grayco had notice of the 2002 lease and, thus, was not entitled to its affirmative defense of bona fide purchaser; (2) determining that Grayco materially breached that lease; (3) finding that Coinmach sustained damages; and (4) finding that Coinmach incurred damages of $67,122.19.

Bona fide purchaser

Grayco's first issue challenges the trial court's rejection of Grayco's assertion that it was a bona fide purchaser not subject to the terms of the 2002 lease. Status as a bona fide purchaser is an affirmative defense to certain claims and defenses including, relevant here, claims involving unrecorded encumbrances of third parties.[2] To be entitled to this protection, a purchaser must have acquired the real property in question in good faith, for valuable consideration, and without actual or constructive notice of any third-party claim or interest.[3] In the underlying trial, the only disputed

[2] *See Madison v. Gordon*, 39 S.W.3d 604, 606 (Tex. 2001).

[3] *Id*. at 606 (citing *Houston Oil Co. v. Hayden of Tex.*, 135 S.W. 1149, 1152 (Tex. 1911); *Carter v. Converse*, 550 S.W.2d 322, 329 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.)).

issue was the fact question of whether Grayco had notice of the 2002 lease.[4] By rendering judgment in favor of Coinmach, the trial court necessarily found that Grayco had notice of the 2002 lease, and thus was not entitled to judgment on its affirmative defense of bona fide purchaser.[5] On appeal, Grayco asserts the there is no evidence to support the trial court's implied finding that it had notice of the 2002 lease and, further, that the only evidence in the record establishes that it did not have notice of the 2002 lease when it purchased the Regatta Apartments. Grayco also challenges the factual sufficiency of the evidence supporting the trial court's finding that it had notice of the 2002 lease and supplemental agreement.

When a party attacks the legal sufficiency of an adverse finding on an issue on which it had the burden of proof at trial—as Grayco did here[6]—it must demonstrate on appeal that the evidence establishes, as a matter of law, all vital facts in support of the issue.[7] In reviewing a "matter of law" challenge, we first examine the record for evidence that supports the fact finder's finding while ignoring all evidence to the contrary.[8] If there is no evidence to support the adverse finding,

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[4] *See O'Ferral v. Coolidge*, 228 S.W.2d 146, 148 (Tex. 1950) (notice is question of fact).

[5] *See id.*; *see also, e.g.*, *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002) ("When a trial court does not issue findings of fact and conclusions of law . . . , all facts necessary to support the judgment and supported by the evidence are implied) (citing *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990))).

[6] *See Ryle v. Davidson*, 115 S.W.3d 28, 28–29 (Tex. 1909) (holding that party claiming bona-fide-purchaser status has burden of proof to show it was bona fide purchaser for value without notice); *Forister v. Coleman*, 418 S.W.3d 550, 564 (Tex. Civ. App.—Austin 1967, writ ref'd n.r.e.) (noting same).

[7] *See Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001).

[8] *Id.*; *see also PlainsCapital Bank v. Martin*, 459 S.W.3d 550, 557 (Tex. 2015) (party challenging legal sufficiency of issue on which it bore burden of proof must first establish that there is no evidence to support adverse finding (citing *Dow Chem.*, 46 S.W.3d at 241–42)).

we then examine the entire record to determine if the contrary proposition is established as a matter of law.[9] We may sustain the challenge only if the contrary position is conclusively established.[10] Thus, Grayco's first task on appeal is to show that there is no evidence to support the trial court's adverse finding that Grayco had notice of the 2002 lease.[11] Grayco has not done so.

Notice is information concerning a fact that is actually communicated to a person, derived by him from a proper source, or presumed by law to have been acquired.[12] Notice can be actual or constructive.[13] Constructive notice is notice the law imputes to a person not having personal information or knowledge.[14] Actual notice results from personal information or knowledge, as well as those facts which reasonable inquiry would have disclosed.[15] Under Texas law, actual notice includes not only known information, but also facts that a reasonably diligent inquiry would have disclosed, sometimes referred to as inquiry notice.[16] The duty of inquiry extends only to matters that are fairly suggested by the facts really known, namely, the facts contained in the recorded deed.[17]

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[9] *Dow Chem.*, 46 S.W.3d at 241.

[10] *Id.*

[11] *See Madison*, 39 S.W.3d at 606.

[12] *Id.* at 606 (citing *Flack v. First Nat'l Bank of Dalhart*, 226 S.W.2d 628, 631 (Tex. 1950)).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Portman v. Earnhart*, 343 S.W.2d 294, 299 (Tex. Civ. App.—Dallas 1960, writ ref'd n.r.e.).

[17] *Flack*, 226 S.W.2d at 631.

Coinmach contends, and we agree, that the evidence supporting the trial court's finding that Grayco had notice of the 2002 lease is legally sufficient. That evidence includes, among other things, Grayco's pre-closing knowledge of the memorandum of lease, the memorandum of lease itself, and the general warranty deed for the apartment sale. Regarding Grayco's pre-closing knowledge of the memorandum of lease, the evidence in the record demonstrates that the seller provided Grayco with a copy in advance of the sale; that Grayco obtained a copy of it during its own pre-closing research; and as described above, that the general warranty deed conveying the Regatta Apartments to Grayco lists as a permitted exception the "terms, conditions and stipulations set out in that certain Lease as evidence by the Memorandum of Lease dated March 18, 2003, recorded . . . [in] the Real Property Records of Travis County." The memorandum of lease, in turn, states as follows:

COINMACH CORPORATION
Memorandum of Lease

STATE OF **TEXAS** DATE: **April 22, 2002**
COUNTY OF **TRAVIS**

> This instrument will evidence and when recorded serve **BRIDGE MANAGEMENT CO.** owner or acting with full authority as owners agent, hereinafter called **LESSOR** of the premises commonly known as **REG[A]TTA APTS** . . . .
> Lessor and **COINMACH CORPORATION**, as Lessee did execute a written Lease Agreement of real estate which provides in part that during the period therein set forth, Lessee has the right to occupy the real estate on which all laundry rooms are or will be situated on the land and premises named above under the terms and conditions of said lease.
>
> Copies of said Lease (which is incorporated herein by reference) are on file at the respective offices of Lessor and Lessee.

Even if the memorandum of lease had a purpose other than to give notice of the 2002 lease at issue here, the memorandum of lease's date and specific description of a lease between Coinmach and Bridge Management concerning the laundry facilities at the Regatta Apartments belies Grayco's assertion that it had no notice of the 2002 lease. Although not the lease itself, the memorandum of lease explicitly gives notice of the 2002 lease. Grayco's pre-closing knowledge of the memorandum of lease necessarily means that it had at least inquiry notice, if not actual notice, of the lease the memorandum sought to memorialize.[18] Further, the warranty deed includes permitted exceptions for both the 1992 lease and the memorandum of lease, foreclosing any reasonable argument that Grayco believed the leases were the same. Accordingly, we hold that the evidence supporting the trial court's finding that Grayco had notice is legally sufficient.[19]

Considering the entire record,[20] we likewise hold that the evidence supporting the trial court's notice finding is factually sufficient. To succeed on its factual-sufficiency challenge to the trial court's notice finding, Grayco must demonstrate on appeal that the finding is against the great weight and preponderance of the evidence.[21] The record here precludes such a demonstration. Even disregarding that Grayco's pre-closing knowledge of the memorandum of lease likely

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[18] *See Memorandum*, *Black's Law Dictionary* (10th ed. 2014) ("An informal written note or record outlining the terms of a transaction or contract . . . .").

[19] *See PlainsCapital Bank*, 459 S.W.3d at 557 (party challenging issue on which it had burden must first show there is no evidence to support trial court's adverse finding).

[20] *Id.* (citing *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986)).

[21] *Dow Chem.*, 46 S.W.3d at 242 (standard of review for factual-sufficiency challenge to adverse finding on issue on which challenger has burden of proof).

conclusively establishes the notice element, there is simply very little, if any, evidence in the record to contradict the trial court's finding.

Grayco argues that because the memorandum of lease does not "identify" the 2002 lease, Grayco cannot have had actual notice of that lease and, further, that the evidence supports its argument that it reasonably believed the 1992 lease governed the parties' relationship because it had simply renewed in 2002. First, we disagree that the memorandum of lease does not "identify" the 2002 lease. It is dated 2002 and it states on its face that there is a laundry-room lease between Coinmach and Bridge Management concerning the Regatta Apartments. But even if that was not clear enough identification, the fact that Coinmach and Bridge Management were not the parties to the 1992 lease forecloses any reasonable reliance on the lease referenced in the memorandum of lease being the same as the 1992 lease. Finally, even if it would have been reasonable for Grayco to believe that the lease referenced in the memorandum of lease was a renewal of the 1992 lease, it would not have been reasonable to assume, without further inquiry, the names were the only things changed. This is simply not enough to overcome the difficult burden facing Grayco in a factual-sufficiency challenge. Accordingly, we hold that the trial court's finding that Grayco had notice of the 2002 lease is not so against the great weight and preponderance of the evidence as to be unjust.

We overrule Grayco's first issue.

Material breach

In its second issue, Grayco challenges the trial court's determination that Grayco breached the lease, arguing that "[t]here is no evidence to support Coinmach's breach of

contract claim." More specifically, Grayco maintains that because the 2002 lease did not establish a minimum-occupancy level for the apartment complex or require "mandatory use of the laundry room by [apartment] tenants," its decision to close the Regatta Apartments and terminate the 2002 lease did not constitute a breach of the 2002 lease. We disagree.

Although Grayco characterizes this issue as a legal-sufficiency challenge, it is not. Evidentiary-sufficiency challenges, whether legal or factual, contest the sufficiency of the evidence supporting a *finding of fact*.[22] The issue of whether a party has breached a contract is a question of law.[23] More precisely, the question of what conduct the contract requires is a legal question determined by the trial court and, to the extent there is a dispute, whether the parties' conduct constituted breach or performance, is a question for the fact finder.[24] Grayco does not dispute its conduct here—to the contrary, it acknowledges (and the evidence is uncontroverted) that it cancelled the contract early, closed the apartments, and then demolished the buildings. Instead, Grayco challenges the trial court's implied legal interpretation of Grayco's options and obligations under the 2002 lease—namely, that Grayco could not cancel as it did without breaching the lease. We review a trial court's interpretation of a contract de novo.[25]

The 2002 lease was for a ten-year term, ending March 4, 2012, and provided that Coinmach was entitled to "exclusive and quiet use, possession and enjoyment" of the leased

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[22] *See, e.g.*, *City of Keller v. Williams*, 168 S.W.3d 802 (Tex. 2005) (applying legal-sufficiency standard to review of findings).

[23] *See Lafarge Corp. v. Wolff, Inc.*, 977 S.W.2d 181, 186 (Tex. App.—Austin 1998, pet. denied) (describing review of breach-of-contract claim).

[24] *See id.*

[25] *See id.*

premises during the lease term. Although the lease included a provision granting Coinmach the option to terminate before the end of the ten-year term, which Coinmach did not exercise, the lease did not include a similar provision allowing lessor to terminate early or exempting lessor from liability if its actions resulted in the early termination of the lease. Accordingly, it was not error for the trial court to conclude that Grayco was not entitled to terminate the lease early.

Damages

In its third and fourth issues, Grayco challenges the legal and factual sufficiency of the evidence supporting the trial court's finding that Grayco's breach caused Coinmach to incur damages and the trial court's finding as to the amount of those damages. Grayco argues that because the 2002 lease did not guarantee Coinmach any minimum monthly earnings, Coinmach could not show that it suffered any damages as a result of Grayco's breach. In making this argument, Grayco emphasizes that the absence of a revenue guarantee in the lease meant that any revenue Coinmach could expect to earn from the laundry machines was inherently uncertain and speculative. As such, Grayco argues, the trial court's award of $67,122.19 in damages was likewise speculative and not supported by the evidence. In response, Coinmach asserts that the lack of a provision guaranteeing some minimum revenue does not mean that Grayco's breach of the lease did not cause Coinmach to incur compensable damages. Coinmach also contends that the evidence in the record supporting the trial court's finding that Coinmach incurred damages in the amount of $67,122.19 is both legally and factually sufficient. We agree.

Because damages is a matter on which Coinmach bore the burden of proof at trial,[26] to be successful in its legal-sufficiency challenge Grayco must demonstrate on appeal that there is no evidence, or no more than a scintilla of evidence, supporting the trial court's adverse findings.[27] As for its factual-sufficiency challenges, Grayco must show that the evidence supporting the trial court's adverse findings is so weak as to make the findings clearly wrong and manifestly unjust.[28]

To recover damages for breach of contract, a plaintiff must show that he suffered a pecuniary loss as a result of the breach.[29] Here, the trial court found that Coinmach suffered damages in the amount of $67,122.19. According to the parties' pleadings and the evidence in the record, that amount included $5,950.17 as reimbursement for the lease bonus Coinmach paid under the supplemental agreement and $61,172.02 as Coinmach's "lost profits." To recover lost-profit damages, a plaintiff must show the loss by competent evidence and with reasonable certainty.[30] "What constitutes reasonably certain evidence of lost profits is a fact intensive determination."[31] "At a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data

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[26] *See, e.g.*, *Southern Elec. Servs., Inc. v. City of Houston*, 355 S.W.3d 319, 323–24 (Tex. App.—Houston [1st Dist.] 2011, pet. denied) (listing elements plaintiff must prove to succeed on breach-of-contract claim, including damages).

[27] *See City of Keller*, 168 S.W.3d at 827.

[28] *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

[29] *See Southern Elec. Servs., Inc.*, 355 S.W.3d at 323–24.

[30] *See ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 876 (Tex. 2010); *Texas Instruments, Inc. v. Teletron Energy Mgmt., Inc.*, 877 S.W.2d 276, 279 (Tex. 1994).

[31] *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 84 (Tex. 1992).

from which the amount of lost profits can be ascertained."[32] Lost profits cannot be based on pure speculation or wishful thinking.[33]

The record before us shows that Coinmach presented evidence in support of its damages claim in the form of expert testimony. Regarding the reimbursement for the lease bonus Coinmach paid under the supplemental agreement, Coinmach's expert testified that he based that figure on evidence that Coinmach had paid the $14,000 bonus as required by the supplemental agreement and on the terms of the supplemental lease. Specifically, the expert testified that it was his opinion that Coinmach was entitled to $116.67 for each month remaining on the original term of the lease based on a provision in the supplemental agreement setting that amount as the value in the event the equipment was removed:

> LESSOR warrants that the unearned pro rata share of the lease bonus/decoration allowance will be refunded to LESSEE if LESSEE, for any reason should be required to remove its laundry equipment from these premises prior to the expiration of the original term of the Lease. The Original Lease was for a period of 120 months. Its monthly value is $116.67 for pro-ratio determination. . . . The formula for pro rata determination delineated herein relates only to calculating pro rata return of the lease bonus/decoration allowance paid to LESSOR by LESSEE.

With this provision as a guide, Coinmach's expert noted that there are fifty-one months between October 31, 2007 and March 4, 2012, did the required math, and testified that Coinmach was entitled to reimbursement of $5,950.17 on the lease/decoration bonus.

Regarding its claim for lost profits, Coinmach submitted collection and cost data demonstrating that Coinmach's laundry machines produced substantial income and profits

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[32] *Id*.

[33] *Texas Instruments*, 877 S.W.2d at 279.

before Grayco purchased the Regatta Apartments and began winding down leasing operations. It also introduced evidence showing that after Grayco entered into an agreement to purchase the apartment complex, Grayco required that the apartment cease entering into new leases or renewing previous leases. There was also evidence showing Grayco failed to clean and maintain the laundry rooms. Finally, the evidence in the record demonstrates that Grayco demolished the apartment complex, including the laundry room and its machines.

Coinmach's expert testified that it was his opinion that Coinmach lost profits in the amount of $99.81 per day from March 14, 2006 through the end of the lease's term. The expert based this amount on his calculation of the average daily collections generated by the laundry machines at the Regatta Apartments during the period December 22, 2004 through March 1, 2006, a period which he described as representing "normal" laundry-room operations for the Regatta Apartments. The expert explained that he chose December 22, 2004, because that was as far back as the records went, and he chose March 1, 2006, because it was "the date closest to Grayco's indication of a change of use in the property," which in turn was based on a March 7, 2006 email stating that "the buyer has requested that the laundry lease be terminated as the buyer intends to change use of the property." Documentary evidence in the record—a November 2007 letter from Grayco's agent to Coinmach—establishes that Grayco terminated the lease as of October 31, 2007. And, absent the early termination or continuation by the parties, the lease itself establishes that it would have otherwise ended as of March 4, 2012.

Coinmach's expert testified that, in reaching his final estimate of Coinmach's damages, he accounted for Coinmach's maintenance costs based on historical accounting records and discussions with Coinmach. He further explained that he discounted the lost profits back

to March 2006. Finally, Coinmach's expert explained, in summary, that it was his opinion that Coinmach was entitled to $5,950.17 as reimbursement for the lease bonus; $4,913.23 as lost profits during the period March 2006 through the end of October 2007 (Grayco's termination of the lease); and $61,172.02 as lost profits after Grayco's termination through February 2012 (lease's original term).

Grayco emphasizes that it elicited an acknowledgment from Coinmach's corporate representative that, before Grayco purchased the apartments, there were "many months when none of the machines made $45," that gross receipts had been declining since 2006, and that occupancy was declining. It likewise elicited testimony from Coinmach's expert that he had not taken into account the number of tenant-lease renewals during the relevant time periods. Thus, Grayco argues, it was unreasonable for the trial court to assume that there would be tenants at the apartments willing and able to use the laundry machines through to the lease's 2012 termination and, as such, its damages award was speculative.

Grayco argues that the expert's estimate of Grayco's lost-profits damages is "legally and factually untenable" because, in part, the expert's calculation assumes that Coinmach's damages began accruing before Grayco had breached the lease. While the expert did testify that it was his opinion that Coinmach's damages began to accrue in March 2006 when Grayco indicated that it had different plans for the property, he estimated damages as a daily amount—i.e., $99.81 per day—and more importantly here, he gave damages estimates for two separate time periods: one covering March 4, 2006 through Grayco's termination, for which he estimated $4,913.23 in lost profits; and the other for the period beginning on the date Grayco terminated through the end of the lease term, for which he estimated $61,172.02. The total amount of damages awarded by the trial court is equal

to $5,950.17—i.e., the expert's calculation of damages for the lease bonus—plus $61,172.02. Accordingly and given the absence of findings of fact, we may presume that the trial court found that Coinmach's damages began to accrue upon Grayco's termination of the lease and that its lost profits were $61,172.02.[34] In other words, the trial court did not include in its damages award any amounts from before Grayco breached.

Grayco complains that the trial court's award was speculative because the expert made assumptions regarding continuing tenancy but admitted that he had not reviewed tenant lease or renewal records, which showed that occupancy had been declining. However, the evidence in the record shows that the expert reached his calculation using data from a period covering December 2004 through March 2006. Although perhaps not specifically delineated or traceable, that data would necessarily reflect occupancy and use trends for the apartment complex, thus the damage calculation would likewise account for those trends. "It is not necessary that profits be susceptible to exact calculation; it is sufficient that there is evidence from which they can be determined with a reasonable degree of certainty."[35]

Finally, Grayco complains that there is insufficient evidence to support the lease-bonus damages amount because Grayco was not a party to the supplemental agreement between Coinmach and Bridge Management and because Coinmach did not pay the lease bonus to Grayco. Neither of these facts is relevant to our inquiry here, however. When Grayco became bound by the

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[34] *See BMC Software*, 83 S.W.3d at 796 (regarding implied fact findings).

[35] *Kerrville HRH, Inc. v. City of Kerrville*, 803 S.W.2d 377, 386 (Tex. App.—San Antonio 1990, writ denied).

terms of the 2002 lease with its purchase of the Regatta Apartments, as explained above, it likewise became bound to the *supplemental* agreement to that 2002 lease.

Having considered the evidence in the light most favorable to the judgment, we conclude that reasonable and fair-minded people could reach the finding that Grayco's breach of the lease caused Coinmach to incur damages and that those damages were in the amount of $67,122.19.[36] We likewise conclude, considering and weighing all the evidence in the record, that the evidence supporting the same finding is not so weak that it is clearly wrong and manifestly unjust.[37] Accordingly, we overrule Grayco's third and fourth issues.

CONCLUSION

Having overruled Grayco's issues, we affirm the trial court's judgment.

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Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Field

Affirmed

Filed: December 16, 2016

[36] *See City of Keller*, 168 S.W.3d at 807.

[37] *See Cain*, 709 S.W.2d at 176.