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FIRST DIVISION
FILED: AUGUST 22, 2011

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LECHNER AND SONS, f/k/a A.W. ZENGELER, INC.,) APPEAL FROM THE
) CIRCUIT COURT OF
) COOK COUNTY
Plaintiff-Appellee,)
)
v.) No. 09 M1 166551
)
J.K. MANUFACTURING CO., f/k/a A.J. MACHINING CO.,)
) HONORABLE
) MARTIN P. MOLTZ,
Defendant-Appellant.) JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Hall and Justice Rochford concurred in the judgment.

ORDER

Held: Appellant presented insufficient record to support claims of error on appeal.

¶ 1 The defendant, J.K. Manufacturing Co. (formerly known as A.J. Machining Co.), appeals from the circuit court's order entering judgment against it for its breach of a contract with the plaintiff, Lechner and Sons (formerly known as A.W. Zengeler, Inc.). On appeal, the defendant argues that the trial court improperly enforced a liquidated damages provision of the parties' contract

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and that the trial court should have limited the plaintiff's damages to its lost profits during a termination period specified in the parties' contract. For the reasons that follow, we affirm the judgment of the trial court.

¶ 2 In its verified complaint, the plaintiff alleged that the defendant breached their contract and that the breach caused damages in the form of \$5,209.84 in unmade payments and lost or damaged goods, and "lost profits in an amount in excess of \$16,984.38." The complaint noted that the parties' contract contained a provision requiring the defendant to pay for damaged or lost merchandise, as well as a provision that provided as follows:

"If [the defendant] breaches this Agreement, [the defendant] shall pay [the plaintiff] the average of the previous 180 days weekly invoice, at the time of termination for the remainder of unused portion of the Agreement. All reasonable attorney's fees and court costs incurred by [the plaintiff] for said breach of Agreement will be paid for by [the defendant]."

In its answer, the defendant admitted that its predecessor company entered into the contract described in (and appended to) the plaintiff's complaint.

¶ 3 The cause proceeded to a bench trial for which no transcripts or other memorialization appears in the record on appeal. The only record of the trial court's judgment is the actual judgment order, which states without further explanation that judgment was to be entered for the plaintiff in the amount of \$21,930.56, plus costs. The defendant filed this timely appeal from the trial court's order.

¶ 4 After the appeal was filed, the defendant filed a motion for leave to file a supplemental record on appeal. This court denied the motion without prejudice to refile, granted the defendant leave to seek supplemental record materials from the circuit court, and ordered that the defendant's reply

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brief was due on June 30, 2011. On June 29, 2011, the defendant filed a motion requesting an extension of time, until August 29, 2011, to file its reply brief and a bystander's report. On July 6, this court denied the motion without prejudice to the defendant's submitting a motion to file a bystander's report *instanter*. To date, the defendant has filed no such motion. We therefore consider the appeal.

¶ 5 On appeal, the defendant argues that the trial court's judgment constituted enforcement of an invalid liquidated damages clause. However, as the plaintiff observes in its brief, we have no record of either the evidence adduced at trial or the reasoning for the trial court's damages calculation. We therefore cannot say that the trial court employed the purportedly improper liquidated damages clause or whether, as the plaintiff suggests, the trial court's judgment reflected an independent calculation of the plaintiff's damages.

¶ 6 It is well established that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. Here, without any explanation as to how the trial court came to its damages calculation, or even any indication of what evidence or testimony preceded the trial court's calculation, we have no way to determine whether the calculation was based on the contract provision the defendant now challenges. We must construe this shortcoming in the record against the defendant and presume that the trial court's judgment is proper, even if the contract provision is unenforceable.

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¶ 7 The defendant's second argument, that the trial court should have limited the plaintiff's damages to a particular time period, fails for the same reason as its first argument. Without a record of the trial court's damages calculation or the evidence that led to it, we have no way of knowing the time period over which the trial court assessed damages. Again, given the state of the record, we must affirm the trial court on this point.

¶ 8 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 9 Affirmed.