



increase the risk that the guarantors undertook when they signed the personal guaranty.

¶ 2 The plaintiffs, Edmund G. Urban, as trustee of the revocable living trust of Edmund G. Urban, and Camille P. Altay, as trustee of the revocable living trust number 3 of Camille P. Altay, filed a complaint for breach of lease against the defendants, Drain Management & Investment Services, LLC (Drain Management), Winston Drain and Vieshena Drain. Prior to trial, the trial court granted plaintiffs' motion *in limine* and barred the defendants' expert witness from testifying at the trial. At the conclusion of the trial, the court found in favor of the plaintiffs and entered judgments for \$10,189 against Winston Drain and Vieshena Drain, individually, as guarantors of the lease.

¶ 3 The defendants appeal and argue that the trial court erred (A) when it granted the plaintiffs' motion *in limine* because the disclosure of their expert witness was timely and granting the motion denied them due process and a fair trial, and (B) when it entered a judgment against the individual defendants as guarantors because plaintiffs materially breached the lease when they failed to put Drain Management's name on the outdoor sign. We find that (A) the defendants' disclosure of their expert witness was untimely, and (B) the plaintiffs' breach of the lease was not material and it did not increase the risk that the defendants undertook when they signed the personal guaranty. Therefore, we affirm the trial court's decision to bar the testimony of defendants' expert witness and the trial court's judgment in the amount of \$10,189 against Winston Drain and Vieshena Drain, individually, as guarantors of the lease.

¶ 4

Background

¶ 5 In March 2007, Drain Management entered into a lease with the revocable living trust of Edmund G. Urban and the revocable living trust number 3 of Camille P. Altay for suite 101, at 5320 West 159<sup>th</sup> Street. The rent was \$1,400 a month, for the period beginning April 1, 2007, and ending March 31, 2010. Winston Drain signed the lease on behalf of Drain Management as its manager, and his daughter, Vieshena Drain, signed the lease in her individual capacity.

¶ 6 In addition to signing the lease, Winston Drain and Vieshena Drain executed a personal guaranty that guaranteed "the payment of rent and performance by LESSEE \*\*\* of all covenants and agreements of the \*\*\* Lease."

¶ 7 The parties also executed a rider to the lease which contained a provision regarding the placement of signs and it provided:

"Signs: No signs on windows, one strip on outside sign for Drain Management & Investment Services, L.L.C., sign for Drain Management \*\*\* on door. Signs shall be paid for by Lessee and must comply with building regulations."

¶ 8 Winston Drain signed the rider on behalf of Drain Management as its manager, and Vieshena Drain signed the rider as Drain Management's owner.

¶ 9 On April 29, 2010, the plaintiffs filed a complaint against the defendants and alleged that the defendants failed to pay rent from July 2009 to March 2010. The defendants filed an answer and affirmative defenses. In their affirmative defenses, defendants alleged, *inter alia*, that plaintiffs violated section 28 of the lease rider when they failed to add Drain

Management's name to the outdoor sign, which prevented defendants from operating their business.

¶ 10 On September 28, 2010, plaintiffs mailed written interrogatories to Winston Drain and Vieshena Drain.

¶ 11 On November 11, 2010, in response to defendants' first request for admission of facts, plaintiffs admitted that defendants were not allowed to use their own vendor or contractor to affix Drain Management's name to the outdoor sign.

¶ 12 On December 17, 2010, the trial court entered an order closing discovery on January 17, 2011, and the case was set for mandatory arbitration. On March 3, 2011, the arbitrators entered an award in plaintiffs' favor, but the defendants rejected the arbitrators' award. The case was then set for trial on May 26, 2011.

¶ 13 The defendants filed an emergency motion on May 25, 2011,<sup>1</sup> seeking an extension of the trial date. The motion also stated that defendants' counsel informed plaintiff on May 20, 2011, that they had retained an expert witness, Jetta Bates of Twist Communications, to testify at trial. The motion stated that "Ms. Bates will testify as to impact [*sic*] that the lack

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<sup>1</sup>The bystander's report indicates that the motion for extension of time was filed on May 23, 2011. We note, however, that the proof of service for the notice of motion in the record indicates that the motion was served on May 23, 2011, and the circuit court's file stamp indicates that the motion was filed in the trial court on May 25, 2011. Therefore, we will use May 25, 2011, as the filing date for the motion.

of signage will have on a small business."

¶ 14 At the emergency hearing on May 25, 2011, the plaintiffs' attorney made oral objections to defendants' request for extension of the trial date and to defendants' supplemental response to plaintiffs' interrogatories. The trial court *sua sponte* continued the trial date until July 6, 2011, because of a scheduling conflict and instructed the plaintiffs to object in writing to defendants' supplemental response.

¶ 15 On June 27, 2011, plaintiffs filed a written motion to bar the testimony of defendants' expert witness. Plaintiffs alleged that defendants failed to provide them with prior notice that they would be calling an expert witness.

¶ 16 On June 30, 2011, defendants filed a memorandum of law which maintained (1) that Winston Drain repeatedly complained about not having Drain Management's name on the outdoor sign, and (2) that plaintiffs promised that Drain Management's name would be added to the sign. According to the memorandum, Winston Drain received a proposed display and a bill in April 2009, delineating the charges defendants would have to pay to have Drain Management's name added to the sign.

¶ 17 On July 6, 2011, prior to trial, the trial court held a hearing on plaintiffs' motion *in limine* to bar the testimony of defendants' expert witness. At the hearing on the motion, defendants stated that plaintiffs had previously served them with interrogatory number 16 requesting the name and address of each witness who would testify at trial. Defendants' attorney contacted plaintiff by phone on May 19, 2011, to indicate that defendants would be supplementing their witness list with an expert witness. On May 20, 2011, defendants

supplemented their response to plaintiffs' interrogatory number 16 and identified Jetta Bates as their expert witness. Defendants argued that plaintiffs acted in bad faith by waiting until June 27, 2011, to file their objections to their request to have the expert testify. Defendants also argued that they were unable to obtain an expert witness prior to the close of discovery on January 17, 2011, but that they acted in good faith when they notified the plaintiffs as soon as they were able to retain the expert witness.

¶ 18 The trial court found that the defendants did not act in bad faith when they disclosed their expert witness, but the court determined that defendants' disclosure of their expert witness was untimely. Therefore, the court granted plaintiffs' motion *in limine* and barred the testimony of defendants' expert.

¶ 19 During the bench trial, Winston Drain testified that he knew that not having Drain Management's name on the outdoor sign hurt his business reputation because his clients would ask him why his company's name was not on the sign, but he testified that he could not quantify the damages. Mr. Drain also testified that he spent at least an additional \$10,000 on advertising because of the lack of outside signage, but on cross-examination, Mr. Drain testified that he did not have any receipts evidencing his advertisement expenditures. On redirect, Mr. Drain testified that he budgeted \$6,500 for advertising and his actual expenses totaled \$11,000. Finally, Mr. Drain testified that he remained in the unit for the entire lease term.

¶ 20 At the end of trial, the court found that the plaintiffs breached the lease when they failed to "install outside signage" for Drain Management, that the breach was not material,

that it did not increase the risk of the guarantors so as to discharge the guaranty, and that defendants should have taken additional steps concerning the installation of their business sign. The court entered a judgment for plaintiffs in the amount of \$10,189 against Winston Drain and Vieshena Drain, individually, as guarantors of the lease.

¶ 21 The defendants filed a motion for retrial. Plaintiffs filed a response and conceded that defendants sent an email to them on May 20, 2011, which contained defendants' supplemental response naming their expert witness.

¶ 22 The defendants' motion for retrial was denied and the defendants timely filed a notice of appeal pursuant to Supreme Court Rule 301. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994).

¶ 23 Analysis

¶ 24 I. Motion *In Limine*

¶ 25 On appeal, defendants first contend that the trial court erred when it granted plaintiffs' motion *in limine* and barred the testimony of their expert witness. "A motion *in limine* is addressed to the trial court's inherent power to admit or exclude evidence" and a trial court's decision on a motion *in limine* will not be reversed on appeal absent an abuse of discretion. *Chicago Exhibitors Corp. v. Jeepers! Of Illinois, Inc.*, 376 Ill. App. 3d 599, 606 (2007); see *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 92 (1995). A trial court abuses its discretion only when "no reasonable person would take the view adopted by the trial court." *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003).

¶ 26 A. Supreme Court Rules

¶ 27 Supreme Court Rule 213(f) requires a party answering an interrogatory to disclose

the following information:

"Upon written interrogatory, a party must furnish the identities and addresses of witnesses who will testify at trial and must provide the following information:

\* \* \*

*Controlled Expert Witnesses.* A 'controlled expert witness' is a person giving expert testimony who is the party, \*\*\* or the party's retained expert. For each controlled expert witness, the party must identify: (i) the subject matter on which the witness will testify; (ii) the conclusions and opinions of the witness and the bases therefor; (iii) the qualifications of the witness; and (iv) any reports prepared by the witness about the case." Ill. S. Ct. R. 213(f) (eff. Jan. 1, 2007).

¶ 28 Supreme Court Rule 213(d) requires a party to answer or object to an interrogatory within 28 days after service of the interrogatory (Ill. S. Ct. R. 213(d) (eff. Jan. 1, 2007)), and Rule 213(i) imposes on each party a duty to "seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to that party." Ill. S. Ct. R. 213(i) (eff. Jan. 1, 2007).

¶ 29 Case law makes it clear that the Rule 213 disclosure requirements are mandatory and subject to strict compliance by the parties. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004); *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 79. The committee comments to Rule 213(f) explain that the purpose of the rule is to avoid unfair surprise at trial. Ill. S.

Ct. R. 213(f), Committee Comments (adopted Mar. 28, 2002). Our Supreme Court explained in *Sullivan* that "[t]o allow either side to ignore Rule 213's plain language defeats its purpose and encourages tactical gamesmanship." *Sullivan*, 209 Ill. 2d at 109-10; see also *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 37 (2010). The *Sullivan* court further explained that Rule 213 establishes more exacting standards than its predecessor, Rule 220, which formerly governed expert witnesses. *Sullivan*, 209 Ill. 2d at 110. Therefore, trial courts should be more reluctant under Rule 213 than they were under former Rule 220 " '(1) to permit the parties to deviate from the strict disclosure requirements, or (2) not to impose severe sanctions when such deviations occur.' " *Sullivan*, 209 Ill. 2d at 110.

¶ 30 The defendants disclosed Jetta Bates as their expert witness, for the first time, on May 20, 2011, 234 days after being served with plaintiffs' interrogatories. Defendants' disclosure violated Rule 213(d) because defendants failed to disclose their expert witness within 28 days after being served with plaintiffs' interrogatories on September 28, 2010 (see Ill. S. Ct. R. 213(d) (eff. Jan. 1, 2007)).

¶ 31 Defendants argue, however, that their disclosure was timely under Rule 213(i) because the trial court did not set a cutoff date for the parties to supplement their answers to interrogatories. Defendants maintain that the trial court abused its discretion when it failed to address whether defendants had "seasonably" supplemented their response to plaintiffs' interrogatories, pursuant to Rule 213(i).

¶ 32 The committee comments to Rule 213(i) state that the definition of "seasonable" varies with the facts of each case and with the type of case, but in no event should it allow

a party or an attorney to fail to comply with the spirit of the rule by either negligent or wilful noncompliance. Ill. S. Ct. R. 213(i), Committee Comments (revised June 1, 1995). While Rule 213(i) does not contain any requirement that the trial court set a cutoff date for the parties to supplement their answers to interrogatories, Rule 218(c) provides that all discovery must be completed no later than 60 days before the trial date. Ill. S. Ct. R. 218(c) (eff. Oct. 4, 2002).

¶ 33 We note that the defendants did not include their answers to plaintiffs' interrogatories in the record, so this court does not know when the defendants filed their answers to plaintiffs' interrogatories or if defendants previously identified their witnesses. Accordingly, we rely on the bystander's report which referred to defendants' disclosure of Jetta Bates as a supplemental response.

¶ 34 A reviewing court may affirm the decision of the trial court on any basis appearing in the record, whether or not the trial court relied on that basis. *Geisler v. Everest National Insurance Co.*, 2012 IL App (1st) 103834, ¶ 62. Here, given the fact that defendants did not disclose their expert within 28 days after being served with plaintiffs' interrogatories (see Ill. S. Ct. R. 213(d) (eff. Jan. 1, 2007)), or supplement their answers sixty days prior to the May 26, 2011, trial date (see Ill. S. Ct. R. 218(c) (eff. Oct. 4, 2002)), but disclosed their expert witness six days before trial, the trial court strictly adhered to the Supreme Court Rules and did not abuse its discretion when it found that the defendants' disclosure of their expert witness was untimely.

¶ 35 B. Sanctions

¶ 36 As a sanction for defendants' untimely disclosure, the trial court barred defendants' expert witness from testifying. Rule 219 empowers the trial court to impose sanctions, including barring a witness from testifying, for a party's failure to comply with the rules or court orders regarding discovery. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). The decision whether or not to impose sanctions lies within the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. *Sullivan*, 209 Ill. 2d at 110.

¶ 37 In determining whether the exclusion of a witness is an appropriate sanction for non-disclosure, a court must examine the following factors: (1) the surprise to the adverse party; (2) the prejudicial effect of the witness' testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timeliness of the objection to the witness' testimony; and (6) the good faith of the party seeking to offer the testimony. *Sullivan*, 209 Ill. 2d at 110.

¶ 38 Regarding the first factor, plaintiffs served the defendants with their interrogatories on September 28, 2010. The defendants supplemented their answer to plaintiffs' interrogatory number 16 by email on May 20, 2011, and identified Jetta Bates as their expert witness. Therefore, we find that plaintiffs were clearly surprised when defendants disclosed their expert witness, for the first time, 234 days after being served with plaintiffs' interrogatories and six days before trial.

¶ 39 Regarding the second and third factors, defendants' expert was to testify about the impact that a "lack of signage will have on a small business." The expert's testimony would

be prejudicial to the plaintiffs' case because it is unlikely that the plaintiffs would be able to depose defendants' expert and retain their own expert to rebut the testimony of defendants' expert six days before trial.

¶ 40           Regarding the fourth factor, the record reveals that the plaintiffs were diligent in sending their Rule 213 interrogatories to defendants.

¶ 41           Regarding the fifth factor, defendants contend that plaintiffs' objections were untimely because plaintiffs waited until June 27, 2011, to object to defendants' request to have their expert witness testify at trial. We disagree. Defendants emailed plaintiffs their supplemental response naming their expert witness on May 20, 2011. Plaintiffs orally objected to defendants' disclosure of their expert witness at the emergency hearing on May 25, 2011, and they filed written objections on June 27, 2011. Therefore, plaintiffs' objections were timely because plaintiffs objected five days after receiving defendants' supplemental response to plaintiffs' interrogatories.

¶ 42           Regarding the sixth factor, the trial court found that the defendants' untimely disclosure was not done in bad faith. Based on the record before us, we are unable to find that defendants' untimely disclosure of their expert witness indicated a lack of good faith.

¶ 43           Because five of the six factors weigh in favor of the trial court's decision to bar the testimony of defendants' expert witness, we do not find that the trial court abused its discretion.

¶ 44           Moreover, we will not reverse a judgment of the trial court based on its failure to admit evidence without an indication of the substance of the excluded evidence. *A. W.*

*Wendell & Sons, Inc. v. Qazi*, 254 Ill. App. 3d 97, 117-18 (1993). "While an informal but specific offer of proof is acceptable, an offer of proof which merely summarizes the witness' proposed testimony in a conclusional manner does not preserve the error." *A. W. Wendell & Sons*, 254 Ill. App. 3d at 118. To preserve for review evidence excluded at trial, the offer of proof must specify the nature and substance of the proposed testimony. *A. W. Wendell & Sons*, 254 Ill. App. 3d at 118; see also *Zickuhr*, 2011 IL App (1st) 103430, ¶ 63. Counsel for the defendants summarized the expert's proposed testimony during the hearing on the motion *in limine*, but the summary was conclusory because it did not specify the nature and substance of the expert's proposed testimony. Therefore, the expert's proposed testimony was not preserved for our review.

¶ 45 Accordingly, because the trial court strictly adhered to the Supreme Court Rules and, thus, did not abuse its discretion when it barred the testimony of defendants' expert witness, we find that defendants' claim that they were denied due process and a fair trial to be devoid of merit.

¶ 46 II. Material Breach of Lease

¶ 47 Next, defendants contend that plaintiffs' failure to affix Drain Management's name to the outdoor sign constituted a material breach of the lease. Whether or not a material breach of contract has occurred is a question of fact and the trial court's determination will not be disturbed unless it is against the manifest weight of the evidence. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72 (2007). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or when the trier of facts' findings

prove to be unreasonable, arbitrary or not based on the evidence. *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 179 (2006).

¶ 48 The rider in the lease entitled Drain Management to have its name on the outdoor sign, but Drain Management was responsible for the costs associated with affixing its name to the sign. The lease did not permit Drain Management to employ its own contractor to affix its name to the sign. During the first two years of the lease, plaintiffs did not take any action to have Drain Management's name added to the sign, but in April 2009, plaintiffs sent defendants a bill, which defendants ignored, itemizing defendants' costs to have Drain Management's name affixed to the sign. Defendants maintain that because plaintiffs failed to affix Drain Management's name to the sign, they materially breached the lease and plaintiffs were not entitled to recover any damages for the unpaid rent and the individual defendants should be released from their obligation as guarantors of the lease.

¶ 49 The test of whether a breach is material is whether it is so fundamental as to defeat the parties' objective in making the agreement, or whether the failure to perform renders performance of the rest of the contract different in substance from the original agreement. *Village of Fox Lake v. Aetna Casualty & Surety Co.*, 178 Ill. App. 3d 887, 900-01 (1989). The breach must be so material and important to justify the injured party's conclusion that the whole transaction is at an end. *Village of Fox Lake*, 178 Ill. App. 3d at 901. Only a material breach of a contract provision by one party will justify nonperformance by the other party. *William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 346 (2005).

¶ 50 Here, the parties' primary objective for entering into the lease was for the plaintiffs

to provide space for Drain Management to conduct its business, and in consideration for plaintiffs' providing the space, Drain Management was responsible for paying rent. See 49 AM. JUR. 2D *Landlord and Tenant* § 1 (2006); see also *Board of Directors of Warren Boulevard Condominium Ass'n v. Milton*, 399 Ill. App. 3d 922, 926 (2010). While plaintiffs fulfilled their primary obligation by providing the office space and Drain Management occupied the space for the entire lease term, Drain Management failed to make all its rental payments.

¶ 51 The rider to the lease required the plaintiffs to affix Drain Management's name to the outdoor sign, but we agree with the trial court that defendants should have taken additional steps to have Drain Management's name added to the outdoor sign. Because the defendants failed to pay the April 2009, bill so plaintiffs could arrange for Drain Management's name to be affixed to the sign, we find that defendants are responsible for Drain Management's name not being on the outdoor sign from April 2009 to the end of the lease in March 2010.

¶ 52 We find that plaintiffs' failure to add Drain Management's name to the outdoor sign was a breach of the lease, but it did not prevent the defendants from occupying the space or operating their business during the three years of the lease. Therefore, the trial court's finding that plaintiffs' breach of the lease was not material was not against the manifest weight of the evidence. Accordingly, Drain Management was not relieved of its obligation to pay rent.

¶ 53 III. Guarantors

¶ 54 Next, we must determine whether Winston Drain and Vieshena Drain will be held liable as guarantors. Under Illinois law, "the liability of a guarantor is limited by and is no

greater than that of the principal debtor and \*\*\* if no recovery could be had against the principal debtor, the guarantor would also be absolved of liability." *Riley Acquisitions, Inc. v. Drexler*, 408 Ill. App. 3d 397, 400-01 (2011). The general rule is that " 'discharge, satisfaction, or extinction of the principal obligation also ends the liability of the guarantor.' " *Riley Acquisitions*, 408 Ill. App. 3d at 401 (quoting *Palen v. Cullom Capital Woodworking, Inc.*, 154 Ill. App. 3d 685, 687 (1987)). Based on our finding that plaintiffs' breach of the lease was not material and that Drain Management was not discharged from its obligations under the lease, the guarantors, Winston Drain and Vieshena Drain, will not be relieved of their obligations under the contract of guaranty based on plaintiffs' breach of the lease.

¶ 55 In Illinois, there is a general principle that " 'a guarantor is not released unless the essentials of the original contract have been changed and the performance required of the principal is materially different from that first contemplated.' " *Chicago Exhibitors Corp.*, 376 Ill. App. 3d at 607 (quoting *Roels v. Drew Industries, Inc.*, 240 Ill. App. 3d 578, 581 (1992)). " 'Unless there is some material change in the business dealings between the debtor and the creditor-guarantee and some increase in the risk undertaken by the guarantor, the obligation of the guarantor is not discharged.' " *Chicago Exhibitors Corp.*, 376 Ill. App. 3d at 607. " 'Whether a guarantor is exposed to an increase in the risk it originally undertook is a key variable in determining whether there has been a material change in the guaranty agreement.' " *Chicago Exhibitors Corp.*, 376 Ill. App. 3d at 607.

¶ 56 Therefore, we must determine whether plaintiffs' failure to affix Drain Management's

name on the outdoor sign increased the risk originally undertaken by the guarantors under the contract of guaranty. See *Chicago Exhibitors Corp.*, 376 Ill. App. 3d at 607.

¶ 57 Here, the defendants assert that plaintiffs' failure to install the outdoor sign as required by the lease increased the risk that they originally undertook under the lease. Defendants cite *Lawndale Steel Co. v. Appel*, 98 Ill. App. 3d 167 (1981) to support their argument. In *Lawndale Steel*, Appel, a steel broker, structured an agreement between Lawndale Steel and Modular Technology, and the agreement required Modular to purchase steel from Lawndale at \$13/cwt with payment due upon delivery. *Lawndale Steel*, 98 Ill. App. 3d at 168. The agreement also provided that "Buyer and Joe Appel shall personally guarantee the obligation it undertakes by corporate signature on appropriate notes." *Lawndale Steel*, 98 Ill. App. 3d at 169. Lawndale and Modular modified the agreement increasing the price of the steel from \$13/cwt to \$17.56/cwt. Appel did not sign the modification, neither was he asked to do so. *Lawndale Steel*, 98 Ill. App. 3d at 169. When Modular failed to make payments for the final three orders of steel at the new price, Lawndale brought the action against Appel to collect on the contract of guaranty. *Lawndale Steel*, 98 Ill. App. 3d at 168, 169. Appel argued that he should be discharged because the increase in the price of the steel materially altered the terms of the parties' agreement. *Lawndale Steel*, 98 Ill. App. 3d at 172. The court found that the increase in price substantially altered Lawndale's obligation under the contract because it was entirely possible that such a considerable increase in price could contribute to Lawndale's default. *Lawndale Steel*, 98 Ill. App. 3d at 174. Therefore, the *Lawndale Steel* court held that the substantial

increase in price was sufficiently material to release Appel from his contract of guaranty. *Lawndale Steel*, 98 Ill. App. 3d at 174.

¶ 58 We find *Lawndale Steel* distinguishable from the facts in this case because there was no modification or amendment of the lease. We find that plaintiffs' failure to affix Drain Management's name to the sign did not change the essential terms of the lease because there was no increase in the rent or extension of the lease term. Therefore, plaintiffs' failure to affix Drain Management's name to the sign did not increase the risk that the guarantors undertook when they signed the guaranty. Accordingly, Winston Drain and Vieshena Drain will not be released from their personal guaranty.

¶ 59 IV. Damages

¶ 60 Finally, defendants argue that the trial court erred when it failed to award them damages for plaintiffs' breach of the contract. A partial breach by one party does not justify the other party's subsequent failure to perform; however, both parties may be guilty of breaches, and each may have a right to damages. *Israel v. National Canada Corp.*, 276 Ill. App. 3d 454, 460 (1995). While plaintiffs may still be liable to defendants for damages even when the breach is not material, defendants must prove damages to a "reasonable degree of certainty, and evidence of damages cannot be remote, speculative, or uncertain." *Carey v. American Family Brokerage, Inc.*, 391 Ill. App. 3d 273, 277 (2009).

¶ 61 Here, Mr. Drain testified that he spent \$11,000 on advertisement because Drain Management's name was not affixed to the outdoor sign, but he did not present any evidence, checks or receipts, to prove his advertisement costs. With respect to other potential damages,

Mr. Drain testified that he knew that not having Drain Management's name on the outdoor sign hurt his business, but he did not present any evidence to quantify his other damages. Therefore, because defendants failed to present checks or receipts to prove their advertising costs, we find that defendants' claim for damages is speculative and uncertain. Accordingly, defendants will not be awarded damages for plaintiffs' breach of contract.

¶ 62

#### Conclusion

¶ 63

We find that the defendants violated the Supreme Court Rules when they disclosed their expert witness six days before the initial trial date, that plaintiffs' failure to add Drain Management's name to the outdoor sign was a breach, but not a material breach of the lease, and that plaintiffs' breach of the lease did not increase the risk that the defendants undertook when they signed the guaranty. Therefore, we hold that the trial court did not err when it granted plaintiffs' motion *in limine* and barred the testimony of defendants' expert witness, or when it entered judgments for \$10,189 against Winston Drain and Vieshena Drain, individually, as guarantors of the lease. Accordingly, we affirm the decision of the trial court.

¶ 64

Affirmed.