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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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EL and BE, INC., an Illinois Corporation,	)	Appeal from the Circuit Court of Kane County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 13-CH-13
	)	
HASNAA HUSSEIN, personally and individually, and NEW FASHIONS, INC., an Illinois Corporation	)	
	)	Honorable
	)	Christine Downs,
Defendants-Appellants.	)	Judge, Presiding

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Presiding Justice Schostok and Justice Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court correctly: (1) granted summary judgment to plaintiff on its amended complaint for breach of contract; (2) granted summary judgment in favor of plaintiff on defendants' counterclaims for breach of contract and fraud; and (3) found plaintiff entitled to full amount of money judgment entered.

¶ 2 Defendants, Hasnaa Hussein and New Fashions, Inc., appeal the trial court's order granting summary judgment to plaintiff, EL and BE, Inc., on its amended complaint for breach of contract. Defendants also appeal the trial court's order granting summary judgment in favor of plaintiff on defendants' counterclaims. Finally, defendants argue in the alternative that, even

if summary judgment is affirmed, plaintiff is not entitled to the full amount of the money judgment entered. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On October 30, 2011, plaintiff and defendants entered into an asset purchase agreement (APA) wherein plaintiff agreed to sell a business known as Mother's Pancake House to defendants. The APA includes certain assets listed in the agreement including the business' goodwill. The APA expresses that defendants would not assume any liabilities of the seller, of any nature whatsoever, by reason of the APA. The APA listed the total purchase price of \$460,000. The APA requires defendants to deposit \$20,000 of earnest money within three days of acceptance, with which defendants complied. The APA set a closing date of November 17, 2011. Article VI of the APA lists as conditions precedent to the purchase that the representations and warranties contained in the APA were true in "all material respects" as of the closing date, and that plaintiff and defendants had complied in "all material respects" with the covenants of the APA to be performed before the closing date. The APA contains a provision at Article XIV which provides that plaintiff will indemnify defendants from "any claims, demands, damages, and liabilities of any kind involving the business", as asserted against the plaintiff "which occurred or existed before the closing, whether or not then known, due or payable, and regardless of whether or not the existence thereof is disclosed to Purchaser in this Agreement or any exhibit hereto, including any debt or liability of Seller assumed by Purchaser."

¶ 5 On November 10, 2011, six days before the closing, defendants received a UCC financing statement which named plaintiff, d/b/a Mother's Pancake House, as debtor to a secured party known as Pony Leasing and Supply. The financing statement granted Pony Leasing and Supply a first priority security interest in certain property of plaintiff including equipment

contained in the restaurant. A state and federal tax lien search performed on October 31, 2011, revealed no outstanding tax liens against plaintiff. On November 17, 2011, closing took place between the parties.

¶ 6 At closing, plaintiffs were issued \$20,000 in earnest money from the defendants as dictated by the APA as well as \$280,000 toward the \$460,000 purchase price for the business. The parties also negotiated a “Stop Tax Hold Back” of \$14,000 as a charge to plaintiff. The “Stop Tax Hold Back” existed to pay any outstanding taxes plaintiff may have still owed in connection with Mother’s Pancake House. Defendants agreed via promissory note to finance the remaining principal of \$160,000 by making two equal installment payments of \$80,000. The first payment was due on or before February 1, 2012, and the remaining payment was due on or before April 1, 2012. The promissory note was issued pursuant to and subject to the provisions of the APA. It contains a provision stipulating that if any installment payment is not paid when due, the entire unpaid balance of principal will accrue interest at the rate of 12% per annum until paid in full. Additionally, the promissory note contains a provision “that in the event of nonpayment, defendants shall pay costs, expenses, and attorney fees incurred” by plaintiff.

¶ 7 After closing, defendants took over possession and management of the restaurant. Defendants became concerned about plaintiff’s outstanding debt obligations to a number of different creditors existing before closing. Defendants received notice of claims, including a claim from the Illinois Department of Economic Security of \$6167; a claim by Nicor Gas for \$30,085.02; a City of Aurora water bill for \$1720.70; a Fox Metro Water Reclamation District bill for \$1248; a Bulk Sale Stop Order from the Illinois Department of Revenue \$44,453; statements from Plaza Bank showing amounts owed of \$32,393.20 and \$77,189.59; an invoice from Royal Publishing for an amount due of \$90; a collection notice from Groot Industries in the

amount of \$308.77; an invoice from Chicago Sweet Connection Bakery in the amount of \$183.65; five invoices from Ecowater showing an outstanding balance of \$282.25; and invoices from Alarm Detection Systems showing an outstanding balance of \$589.96. Defendants' deposition testimony suggests that at least some of the charges included in the invoices from Alarm Detection Systems, Chicago Sweet Connection Bakery, Ecowater, and Groot Industries were incurred after defendants took over the restaurant.

¶ 8 In January 2012 a party known as Express Working Capital, LLC ("Express"), filed an action in Texas against plaintiff d/b/a/ Mother's Pancake House, Theodore Liakatis and George Brales (plaintiff's shareholders), under a "Future Receivables Sale Agreement" regarding credit card receivables. Express does business as Pony Leasing and Supply, the grantee of the first priority security interest listed in the UCC Financing Statement received by defendants on November 11, 2011. Express sought recovery for breach of contract, promissory estoppel, fraud, and fraudulent inducement against plaintiff. Plaintiff and defendants in this action both concede that a judgment was entered against plaintiff in the Texas action. Plaintiff asserts that Express sought only money damages in the Texas lawsuit. Defendants assert that the Texas judgment resulted in a \$35,000 lien foreclosure on defendants' equipment. The record contains neither an order from the district court in Texas nor evidence of a lien against equipment. Defendants were not a party to the action in Texas.

¶ 9 February 1, 2012, came and went without defendants' first installment payment on the promissory note to plaintiff. Defendants justified the nonpayment to plaintiff by citing concerns about the aforementioned debts that remained outstanding. On February 15, 2012, plaintiff sent a letter to defendants demanding the first installment payment. In this letter, plaintiff attempted to ease defendants' concerns by enumerating each outstanding debt and assuring that plaintiff

was in the process of negotiating with the creditors about a payoff. Plaintiff also explained that of the funds received via the first installment payment on the promissory note, \$44,453 would be held in trust until a “Bulk Sale Stop Release” was issued from the Illinois Department of Revenue. Plaintiff’s letter reiterated to defendants that payment on the promissory note was necessary to accomplish the satisfaction of all outstanding debt. Defendants failed to make the first installment payment after receipt of the letter. On April 1, 2012, the date for the second installment payment on the promissory note, defendants made no payment to plaintiff.

¶ 10 On January 3, 2013, plaintiff filed suit against defendants with a complaint for foreclosure of a security interest in personal property. On April 26, 2013, plaintiff filed a two-count first amended complaint. Count I sought foreclosure of a security interest in personal property, alleging defendants breached the APA by not making the \$160,000 in payments as required under the promissory note. Count II claimed the defendants breached the APA, further noting the 12% interest rate listed in the promissory note in support of their claim that defendants owed \$183,513.42 from February 1, 2012, through date of filing. Accordingly, plaintiff’s prayer for relief included \$183,513.42, plus interest from the filing date of the complaint through date of judgment, plus reasonable attorney fees.

¶ 11 On May 31, 2013, defendants filed a two-count counterclaim against plaintiff. Count I claims that plaintiff had breached the APA because plaintiff was to deliver clear UCC and tax lien searches to defendants and hold them harmless from any debts and liabilities in connection with the APA through the indemnity provision. Count I further alleges that plaintiff represented that it had filed and paid all taxes required of it before the closing date. Count I enumerates the claims that existed prior to closing, most of which have been discussed above. Count I alleges that these enumerated claims constituted a material breach of contract by plaintiff, and that

defendants suffered monetary damages in excess of \$50,000. Defendants' prayer for relief in Count I requests compensatory damages in an amount to be proven at trial.

¶ 12 Count II of defendants' counterclaim alleges that plaintiff had committed fraud by representing that all required taxes had been paid and business been had conducted in a manner that did not result in encumbering assets with debts and liabilities. Defendants allege that plaintiff's representations were false and plaintiff knew those representations were false when made. Further, defendants allege that plaintiff's false representations were made with the purpose of inducing defendants into entering into the purchase agreement and purchasing the restaurant. Defendants claim that their justifiable reliance on plaintiff's misrepresentations caused significant, special, and general damages. Count II also alleges that plaintiff's actions were willful and wanton, creating entitlement to punitive damages. As in defendants' Count I of the two-count counterclaim, the prayer for relief in Count II requests damages in an amount to be proven at trial.

¶ 13 On June 10, 2014, plaintiff moved for summary judgment. The motion referenced several statements made by defendants during depositions. Defendants acknowledged that not only did they have the obligation to pay \$160,000 under the promissory note, but neither of the two \$80,000 installment payments was ever made. Defendants also admitted that they refused to make the payments required by the promissory note because they had received notices for outstanding bills. Finally, defendants admitted that none of their business' services were interrupted and no lawsuits had been initiated against them or the restaurant as a result of nonpayment on plaintiff's bills.

¶ 14 Plaintiff argued that defendants had suffered no monetary damage as a result of debts allegedly owed by plaintiff and offered no explanation for their failure to pay the balance of

promissory note, apart from “stress” from receipt of notice of the alleged debts. Finally, plaintiff asserted that defendants’ counterclaim for fraud presented no issue of material fact, in large part because plaintiff agreed under the APA to defend and hold defendants harmless against any claims which may be presented.

¶ 15 Defendants responded to plaintiff’s motion for summary judgment by arguing that there was a lien affecting the equipment in the restaurant as a result of debt left behind by plaintiff. Defendants also claimed that they had paid the Illinois Department of Employment Security \$3109.31 for taxes incurred by plaintiff, and there remained a very real possibility that defendants would continue to incur costs resolving outstanding debt left by plaintiff.

¶ 16 Defendants’ response also claimed genuine issues of material fact as to both of their counterclaims. For their breach of contract counterclaim, defendants asserted that they clearly suffered an injury and continued to suffer injury because of a lien on their equipment and outstanding debt left by plaintiff that defendants will continue to incur. As to their counterclaim for fraud, defendants claimed genuine issues of material fact existed as to plaintiff’s alleged misrepresentations. Defendants argued that plaintiff’s misrepresentations caused their detrimental reliance leading to damages suffered in the same manner as asserted in their counterclaim for breach of contract.

¶ 17 On October 22, 2014, the trial court ordered summary judgment in favor of plaintiff and against defendants on counts I and II of plaintiff’s first amended complaint, in the amount of \$183,513.42, plus pre-judgment interest, costs and attorney fees. The trial court also ordered summary judgment in favor of plaintiff on defendants’ counterclaim. The trial court did find that defendants were entitled to a credit against the judgment in the amount of \$3,109.31 for the Illinois Department of Employment Security tax bill defendants paid.

¶ 18 On November 20, 2014, defendants moved to reconsider and vacate the trial court's summary judgment order against them by reiterating plaintiff's alleged misrepresentations of no lawsuits affecting the restaurant and no outstanding taxes. Defendants pointed again to the judgment against plaintiffs in the Texas lawsuit that defendants claimed resulted in a lien on their equipment at the restaurant.

¶ 19 The trial court denied defendants' motion for reconsideration on December 23, 2014. The court reiterated that the indemnity clause in the parties' contract covered all issues raised by defendants and therefore plaintiff did not breach the contract such that defendants could withhold payment. Defendants timely filed notice of appeal.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendants contend that the trial court erred when it (1) granted summary judgment to plaintiff on counts I and II of its amended complaint; (2) granted summary judgment in favor of plaintiff on counts I and II of defendants' counterclaims for breach of contract and fraud; and 3) found plaintiff was entitled to full amount of money judgment entered.

¶ 22 Summary judgment will be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue [of] material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517 (1993). We review *de novo* the trial court's summary judgment ruling. *Barba v. Village of Bensenville*, 2015 IL App 2d 140337, ¶ 31.

¶ 23 Whether analyzed as foreclosure of a security interest or as a claim for breach of contract, plaintiff alleged in its first amended complaint that defendants were in breach of the agreement



by failing to make the required installment payments under the promissory note and the APA. Under a claim for breach of contract, a plaintiff needs to establish the existence of a valid contract, substantial performance by the plaintiff, defendants' breach, and resultant damages. *Kelly v. Orrico*, 2014 IL App (2d) 13002, ¶ 23. Defendants here argue that plaintiff did not substantially perform its obligations upon the sale of the restaurant, leaving defendants with undue debt incurred by the plaintiff. Defendants assert that there is a genuine issue of material fact as to whether plaintiff fully complied with its own portion of the agreement.

¶ 24 What constitutes substantial performance is difficult to define, and whether substantial performance occurred will depend upon the relevant facts of each case. *Brewer v. Custom Builders Corp.*, 42 Ill. App. 3d 668 (1976). When examining whether substantial performance has occurred, the question of whether there has been a receipt and enjoyment of benefits is an important one to consider. *Joray Mason Contractors, Inc. v. Four J's Construction Corp.* 61 Ill. App. 3d 410 (1978). Substantial performance by plaintiff will sustain a cause of action for breach by defendant[s] when that performance was done in reliance upon the parties' contract. *Thilman & Co. v. Esposito*, 87 Ill. App. 3d 289, 296 (1980).

¶ 25 In the instant case, there is no question that defendants received and enjoyed the benefits of the restaurant. Defendants took possession of the restaurant immediately after closing took place on November 17, 2011, and began managing the day-to-day operations. Defendants received not only the restaurant but assets listed in the agreement as well as the business goodwill of the plaintiff. Thus, plaintiff substantially performed its duties under the APA.

¶ 26 We reject defendants' assertion that there is a genuine issue of material fact as to whether plaintiff substantially complied with its portion of the agreement. The promissory note required defendants to make installment payments of \$80,000, with the first due February 1, 2012, and the

second due April 1, 2012. The note also incorporated the terms of the parties' APA, including an indemnification clause providing that plaintiff would indemnify defendants as purchaser from "any claims, demands, damages, and liabilities of any kind involving the business, as asserted" against the plaintiff "which occurred or existed before the closing, whether or not then known, due or payable, and regardless of whether or not the existence thereof is disclosed to Purchaser in this Agreement or any exhibit hereto, including any debt or liability of Seller assumed by Purchaser." Defendants made a payment of \$3,109.31 to the Illinois Department of Employment Security for taxes owed by plaintiff and the trial court rightly credited defendants for that payment. Defendants admitted in deposition testimony that have not made any other payments owed by plaintiff nor has any action been taken by plaintiff's creditors against defendants.

¶ 27 The primary goal of contract interpretation is to give effect to the parties' intent. *Joyce v. DLA Piper Rudnick Gray Cary LLP*, 382 Ill. App. 3d 632, 636-37 (2008). To this end, we interpret a contract as a whole and apply the plain and ordinary meaning to unambiguous terms. *Id.*, 382 Ill. App. 3d at 637. Based on the parties' APA and promissory note, the trial court found no genuine issue of material fact on plaintiff's complaint for breach of contract against the defendants and properly granted summary judgment. Nothing in either the APA or the promissory note allowed defendants to withhold payment from plaintiff. The installment payment dates came and went with plaintiff receiving nothing from defendants while defendants enjoyed continued possession of the restaurant. Defendants' remedy for any outstanding debts of plaintiff was contemplated in the APA through the indemnification clause. Indeed, the trial court credited defendants for just that sort of claim for payment to the Illinois Department of Employment Security. Therefore, we affirm the trial court's grant of summary judgment on plaintiff's first amended complaint.

¶ 28 Defendants also contend that the trial court erred when it entered summary judgment in plaintiff's favor on defendants' two part counterclaim. We review *de novo* the trial court's summary judgment ruling. *Barba v. Village of Bensenville*, 2015 IL App 2d 140337, ¶ 31.

¶ 29 Count I of defendants' counterclaim alleges breach of contract by plaintiff. For defendants to assert a claim for breach of contract, they must establish the existence of a valid contract, substantial performance by the defendants, plaintiff's breach, and resultant damages. *See Kelly*, 2014 IL App (2d) 13002, ¶23. Defendants' assertions as to plaintiff's breach have been discussed above but defendants are still unable to show any damages as a result of plaintiff's breach, if a breach even existed. It is difficult to find substantial performance by defendants here since their performance under the contract required payment on the promissory note, which they failed to provide. Nevertheless, to prevail on a claim for a breach of contract, a party must also show resultant damages due to the other party's breach. *Id.*, at ¶23. Defendants maintain that their "damages" here are the amounts left unpaid by the plaintiff, that remain unpaid, and a lien placed on defendants' equipment, and therefore on its ability to do business.

¶ 30 "Damages" connotes money one must expend to remedy an injury for which he or she is responsible, irrespective of whether that expenditure is compelled by a court of law in the form of compensatory damages or by a court of equity in the form of compliance with mandatory injunctions. *Outboard Marine Corp. v. Liberty Mutual Ins. Co.*, 154 Ill. 2d 90, 116 (1992). Pursuant to the parties' APA, plaintiff agreed to "defend and indemnify defendants against any all \*\*\* damages \*\*\* of any kind and nature whatsoever which may be asserted by anyone against Purchaser \*\*\*." Defendants here have not been called upon to expend money to remedy an injury for which plaintiff is responsible, except the payment of \$3,109.31 to the Illinois Department of Employment Security for taxes owed by plaintiff. Defendants were allowed a

credit in that amount by the trial court via the APA indemnification provision. But defendants still claim “damages” from the existence of a lien on their equipment arising out of a judgment entered against plaintiff in a Texas action. Defendants assert that the Texas judgment resulted in a \$35,000 lien foreclosure on defendants’ equipment.

¶ 31 The record contains neither an order from the district court in Texas nor evidence of a lien against equipment. *See Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984) (An appellant has the burden to present a sufficiently complete record of the proceedings, 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. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant). Defendants were made aware six days prior to closing that a UCC financing statement granted Pony Leasing and Supply a first priority security interest in certain property of plaintiff including equipment contained in the restaurant.<sup>1</sup> Illinois has adopted the “notice filing” system for secured transactions, and the purpose of the financing statement is to put third parties on notice that the secured party who filed it may have a perfected security interest in the collateral described, and that further inquiry into the extent of the security interest is prudent. *Magna First Nat. Bank and Trust Co. v. Bank of Illinois in Mt. Vernon*, 195 Ill. App. 3d 1015, 1019 (1990). The fact that the plaintiff’s financing statement contained the term “equipment,” coupled with the purpose of the financing statement of simply providing notice, was sufficient to place the defendants on notice that Pony Leasing and Supply may have a security interest in the plaintiff’s equipment, and it was the defendants’ obligation to check further to confirm the extent of the plaintiff’s secured interest.

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<sup>1</sup> Defendant, Hasnaa Hussein, acknowledged during deposition testimony that Express had not filed a lawsuit against defendants nor filed a foreclosure action to enforce any liens on equipment on equipment.

*See Id.*, at 1019. Since there is no evidence in the record of any lien against defendants' equipment and no one has sought to collect any money or equipment from defendants, they cannot effectively plead damages through breach of contract. Without evidence of a lien against defendants' equipment, defendants' claim of breach of contract against plaintiff cannot survive summary judgment.

¶ 32 Count II of defendants' counterclaim seeks recovery based on fraud. To state a cause of action for common-law fraud, a plaintiff must plead the following: (1) a false statement of material fact; (2) knowledge or belief by the maker that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance. *Lagen v. Balcors Co.*, 274 Ill. App. 3d 11, 17 (1995). Defendants maintain that all these elements were met, sufficient to withstand a motion for summary judgment.

¶ 33 In count II of defendants' counterclaim against plaintiff, defendants list the outstanding debts of plaintiff (discussed above) and allege plaintiff represented that all required taxes had been paid, and promised to indemnify defendants against any outstanding liabilities. Defendants claim that they relied on plaintiff's representations that plaintiff knew to be false when made for the purpose of inducing defendants into purchasing the assets and entering into the agreement. Defendants claim they suffered, and continue to suffer, significant special and general damages. Additionally, they claim that plaintiff's actions were willful and wanton, entitling defendants to an award of punitive damages.

¶ 34 This court has had occasion in the past to discuss the clarification of "damage" (an element of common-law fraud) and "damages" (a remedy). A revisiting of that clarification would be helpful here. "The word 'damage' is to be distinguished from its plural, 'damages',

which means a compensation in money for a loss or damage”. *Giammanco v. Giammanco*, 253 Ill. App. 3d 750, 758 (1993) (quoting Black’s Law Dictionary 351 (5th ed. 1979)). In determining whether defendants’ allegations were sufficient to survive a motion for summary judgment, the correct inquiry is whether damage has been alleged. *Id.*, at 758. It is likewise true that damages must be proved to be recovered. *Poeta v. Sheridan Point Shopping Plaza Partnership*, 195 Ill. App. 3d 852, 858 (1990). Absolute certainty about the amount of damage is not necessary to justify a recovery if damage is shown, but damages may not be predicated on “mere speculation, hypothesis, conjecture or whim.” *In re Application of Busse*, 124 Ill. App. 3d 433, 438–39 (1984). The evidence must show a basis for computing damages with a “fair degree of probability.” *Barnett v. Caldwell Furniture Co.*, 277 Ill. 286, 289 (1917). See also *Posner v. Davis*, 76 Ill.App.3d 638, 645 (1979). A presumption of nominal damages follows from proof of a legal wrong and a liability for nominal damages is sufficient to sustain a cause of action. *Brewer v. Custom Builders Corp.* 42 Ill.App.3d 668, 678 (1976).

¶ 35 Defendants’ allegation of damages in count II of their counterclaim is predicated on speculation. Additionally, defendants have suffered no legal wrong to give rise to nominal damages. In defendants’ brief, they claim they are damaged by plaintiff’s debts that defendants should not be responsible for, and the liens placed on defendants’ business. Yet there is no evidence in the record of a lien of any kind on defendants’ business. Defendants have paid none of plaintiff’s outstanding debts (outside of the Illinois Department of Economic Security, for which defendants were allowed a credit) and have had none of their services interrupted as a result of plaintiff’s outstanding debts. Defendants’ brief reads, “[i]f plaintiff does not pay its debts, defendants would also be damaged to the extent they may be held responsible.” While this statement may be true, it is premised on the speculation that plaintiff will not pay its debts

and defendants will be damaged. The parties also contracted in their agreement for the existing debts of plaintiff through the indemnification clause in the APA. The indemnification specifically contemplates a remedy for defendants in the event of a situation that defendants speculate will become a reality. The indemnification clause covers “any untrue representation or non-fulfillment of any covenant or agreement of Seller contained in this Agreement and any misrepresentations or material omissions from any certificate or document delivered by Seller to Purchaser hereunder and in connection with this Agreement or the transaction herein.”

¶ 36 Outside of speculation on damages that may occur if plaintiff fails to satisfy debt obligations, defendants have not met the burden of pointing to an actual element of damage, however nominal, upon which the court can find factual evidence of damages for a fraud claim to survive plaintiff’s motion for summary judgment. *See Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 132 (2008). In *Kirkpatrick*, this court upheld an award of nominal damages even though plaintiffs failed to provide a sufficient basis for the computation of actual damages, because the trial court made a specific finding of fact that the plaintiffs “did indeed prove actual damages for the purpose of proving their consumer-fraud claims.” *Id.* Defendants here are not able to prove actual damages because there is no evidence of a lien against them nor have they paid any of plaintiff’s debts that would not be covered under the indemnification clause of their agreement. Therefore, we affirm the trial court’s order of summary judgment for plaintiff on both counts of defendants’ counterclaim.

¶ 37 Finally, defendants ask this court to consider, if summary judgment is affirmed in all respects, whether plaintiff is entitled to the full amount of the money judgment entered. Defendants contend that the trial court’s award to plaintiff when rendering summary judgment was in error because the judgment entered failed to comport with the nature of the judgment

itself, for \$183,513.42, “plus pre-judgment interest, costs and attorney fees provided in the parties’ contract.” Additionally, defendants argue that the judgment fails to articulate the amount of costs or attorney fees being awarded and plaintiff failed to offer the trial court any proofs of the attorney fees incurred to be awarded.

¶ 38 Prejudgment interest is recoverable where contracted for or authorized by statute. *Department of Transportation v. New Century Engineering and Development Corp.*, 97 Ill. 2d 343, 352 (1983). Here, the parties’ promissory note states “[t]hat if any installment of principal or interest is not paid when due, the entire unpaid balance of principal and interest shall bear interest thereafter at the rate of Twelve Percent (12%) per annum until such delinquent payment is paid in full.” Plaintiff’s first amended complaint prayed for judgment in the amount of unpaid principal, \$160,000, plus pre-judgment interest calculated at the contractual interest rate of twelve percent from February 1, 2012, through the judgment date of the action’s filing, April 23, 2013, for the total amount of \$183,513.42. On October 22, 2014, the trial court’s order of summary judgment in favor of plaintiff reflected that amount.

¶ 39 An award for attorney fees pursuant to a summary judgment is a *de novo* standard. *Daniel v. Aon Corp.*, 2011 IL App (1<sup>st</sup>) 101508 ¶ 15. Provisions in contracts for award of attorney fees will be enforced by the courts. *Abdul-Karim v. First Federal Savings and Loan Ass’n*, 101 Ill. 2d 400, 411–12 (1984). We are required to strictly construe a contractual provision for attorney fees. *Grossinger Motorcorp, Inc. v. American National Bank and Trust*, 240 Ill. App. 3d 737, 752 (1993). A petition for fees must specify the services performed, who performed them, the time expended, and the hourly rate charged. *Sandholm v. Kuecker*, 405 Ill. App. 3d 835, 870 (2010).



¶ 40 On November 19, 2014, following the order granting summary judgment, plaintiff filed a petition for attorney fees and costs. The petition was supported by an itemization of services by date, hours billed, attorneys that provided the services and hourly rate charged, and costs expended. The parties' promissory note provided for an award of attorney fees and costs "in the event this note is not paid when due." On December 23, 2014, the trial court awarded plaintiff fees in the amount of \$11,305.70 for attorney fees and costs. The trial court received sufficient evidence of the reasonableness of attorney fees and we affirm that award.

¶ 41

### III. CONCLUSION

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 43 Affirmed.