SECOND DIVISION
May 17, 2010

No. 1-10-1439

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANGELO S. HAREAS and SHERRY ELKHALDY, Individually and as next friends for Jamal Elkhaldy and Alexis Elkhaldy,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellees,	)	
v.	)	No. 05 L 1237
JOHN HERMAN, Individually and as Agent for European American Association, a Corporation,	)	Honorable Allen S. Goldberg,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Cunningham and Justice Connors concurred in the judgment.

HELD: Defendant's failure to object at trial resulted in forfeiture of their argument that the court erred in directing the issue of damages under the Illinois Residential Property Disclosure Act (765 ILCS 77/1 *et seq.* (West 2008)) to the jury. Court did not err in allowing valuation expert to testify, entering judgment on jury verdict awarding $285,000 in damages to plaintiffs, denying defendant's motion for remittitur and denying defendant's motion to bar assorted plaintiffs from asserting claims under the Disclosure Act.

ORDER

Plaintiffs Angelo S. Hareas and Sherry Elkhaldy, individually and on behalf of Elkhaldy's children Jamal Elkhaldy and Alexis Elkhaldy, filed an action against

defendant John Herman, individually and as agent for European American Association (EAA), for fraud and breach of the Illinois Residential Property Disclosure Act (765 ILCS 77/1 *et seq.* (West 2008)) (the Disclosure Act). Defendant appeals from a jury verdict awarding $285,000 to plaintiffs on their Disclosure Act claim. He argues the court erred in (1) having the jury decide the Disclosure Act claim; (2) allowing the jury to hear testimony on unsupported damages from plaintiffs and their expert; (3) denying him a new trial because the expert's testimony was improperly admitted; (4) denying him a remitter [*sic*]; and (5) denying his motions *in limine* and for a directed verdict seeking to bar Elkhaldy and her children's claims. We affirm.

Background

Defendant was the founder and executive director of EAA, a non-profit organization. Among other activities, EAA bought and rehabilitated distressed properties and resold them to low income individuals. In 2001, EAA purchased a residential property at 1757 Locust Street, Des Plaines, Illinois and rehabilitated it. On September 21, 2001, defendant, on behalf of EAA, sold the home to Hareas for $181,500. Elkhaldy, Hareas's wife, attended the closing but did not sign the closing documents.

In August 2002, plaintiffs filed a complaint against defendant. They voluntarily dismissed the complaint in 2005. On November 2, 2005, plaintiffs refiled their complaint against defendant alleging common law fraud and violation of the Disclosure Act. They asserted defendant fraudulently misrepresented to them that the property

was completely rehabilitated and deliberately concealed defects in the property prior to sale. They also alleged defendant violated the Disclosure Act by failing to provide them with a Residential Real Property Disclosure Report of the condition of the property and by hiding the condition of the property. Plaintiffs requested a jury trial. Only the Disclosure Act claim is at issue here.

The Disclosure Act requires that, before closing on a residential sale, the seller of residential property must provide a prospective buyer with a report disclosing material defects in the property about which the seller has knowledge. 765 ILCS 77/20 and 77/35 (West 2008); *Curtis Investment Firm Ltd. Partnership v. Schuch*, 321 Ill. App. 3d 197, 200 (2001). The legislature intended mandatory liability for a seller's failure to comply with the Act. *Curtis Investment Firm Ltd. Partnership,* 321 Ill. App. 3d at 200. If a seller fails to provide a form or knowingly violates the Act by disclosing false information, he is liable "in the amount of actual damages and court costs." 765 ILCS 77/55 (West 2008).

Defendant, in its answer to the complaint, admitted that it did not tender a written disclosure form to plaintiff. A week before trial was to commence, the court entered an order stating that the parties agreed to a jury of six jurors and one alternate.

At trial, Plaintiffs testified that, throughout the time they lived in the home, they experienced numerous problems with the property. They asserted that, within a few weeks of moving in, the problems started. Among other things, the heater and clothes dryer did not properly vent, forcing exhaust into the house; the pilot light on the water

heater leaked gas; the kitchen sink leaked, causing the kitchen floor to rot and mold; the space beneath the bathtub was completely rotted; the bathtub drain was not connected and drained into a ditch dug into the crawlspace under the house; an electrical fire started in the garage; the ceiling in the livingroom collapsed and they lost everything in the room; part of the family room ceiling collapsed; water got into the roof causing leaks all over the house; and the house was settling toward the center.

Plaintiffs testified that the contractor showing them through the house told them the home was fully rehabilitated with a new roof and air conditioning unit. They also stated Herman told them at closing that the home was fully rehabilitated, that everything was practically new. Plaintiffs testified they spent tens of thousands of dollars on repairs and contractors to fix the damage but there was no keeping up with it. Hareas testified he and Elkhaldy and the children still lived in the house because they had nowhere else to go. They could not sell the house because it was not saleable in its current condition and three real estate agents had declined to list it for him. On a bankruptcy petition he filed in 2003, Hareas claimed the value of the property to be $270,000. Hareas refinanced the property in 2004 for $225,000. He claimed the valuation was set by the lender and based on how much he owed the lender rather than the value of the house.

Defendant testified he did not give Hareas a disclosure statement as required by statute. He testified he bought the house as a foreclosure from the Department of Housing and Urban Development at a discount but that the house was not a distressed

property when he bought it. He stated he was not aware of any material defects or unsafe conditions. He knew there was a water leakage problem when he bought the house but not when he sold it.

The contractor hired by Herman to fix up the house testified that the house was not in bad shape. It had minor water leaks and dirty carpets and walls so most of the work he did was cosmetic. He replaced the furnace, replaced some flooring, replaced carpet, plastered and painted walls and fixed the leaking roof.

Plaintiffs' valuation expert, real estate salesperson John Spadaro, testified regarding the value of the property. It was Spadaro's opinion that the house was a "teardown," that it had no value and the only value was in the land. He toured the house in 2007 in order to set a value. He saw walls made of flimsy plywood, water damage, unsafe floors, a collapsed ceiling and a settling foundation. He would not accept a listing on the house because it was unsaleable. Based on an analysis of comparable listings and tax records, Spadaro estimated that, in its then current condition in 2007, the property was worth between $20,000 to $40,000, the value of a comparable cleared vacant lot. Spadaro testified that, although he had not seen the house in 2001, at the time of purchase, it was obvious from the pictures presented at trial that the problems had been there for a long time. He opined that the home did not look like it had been rehabilitated any time after 1990. His opinion was that in 2001 the home would have been in similar condition and also valued at $20,000 to $40,000.

After the close of evidence, the court instructed the jury that the court had found

defendant liable on the Disclosure Act count and the jury was to decide actual damages on that count.[1] The jury awarded plaintiffs $285,000 in damages on the Disclosure Act claim.[2] The court denied defendant's posttrial motion for a judgment notwithstanding the verdict, a new trial, remitter [*sic*] and other relief. Defendant timely appealed.

Analysis

Defendant argues the jury's award of damages on the Disclosure Act claim should be vacated because plaintiffs had no right to a jury trial under the Act and, in the alternative, there was no evidentiary support for the jury's award and there were numerous erroneous evidentiary rulings leading to the award. Defendant asserts the court erred in denying his posttrial motion for (1) a new trial because the Disclosure Act claim should never have gone to the jury; (2) a judgment notwithstanding the verdict because (a) Spadaro's testimony regarding valuation of the property was inadmissable and tainted the jury's valuation and (b) plaintiffs' other damages were unsupported and the jury's award of those damages thus baseless; (3) a new trial because Spadaro was not an expert and his testimony deviated from that disclosed previously, thus prejudicing the jury; and (4) remittur [*sic*]. He also argues (5) the court erred in denying

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[1] There is nothing in the record to show when the court made the determination that defendant was liable on the Disclosure Act claim. It did, apparently, make this decision prior to trial because plaintiffs, in their opening statement, noted that "[o]n Count 2 the defendants admit that they did not provide the Residential Disclosure Act compliance that is required so the Court is going to instruct you relative to that." The court entered an order finding defendant liable on the Disclosure Act claim on July 15, 2009, the same day it entered judgment on the jury verdict.

[2] The jury returned a verdict in favor of defendant on the fraud claim.

his motion *in limine* and his motion for a directed verdict seeking to bar claims by Elkhaldy and her children. We address plaintiffs' arguments *seriatim*.

1. Right to a Jury Trial

Defendant argues the court erred in denying his posttrial motion for a new trial on the basis that the court improperly sent the Disclosure Act claim to the jury. Plaintiffs respond that defendant failed to object to the claim going to the jury and, therefore, the issue is forfeit. The Illinois Constitution guarantees the right to a jury trial in actions that carried such a right under the common law when the Constitution was adopted in 1970. *Catania v. Local 4250/5050 of Communications Workers of America*, 359 Ill. App. 3d 718, 722 (2005) (citing *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 72-73 (1994)). In all other actions, there is no right to a jury trial unless the legislature specifically provided for one by statute. *Catania,* 359 Ill. App. 3d at 722. A party's right to a jury trial is a legal determination which we review *de novo*. *Catania*, 359 Ill. App. 3d at 722; *Anderson v. Klasek*, 393 Ill. App. 3d 219 (2009).

There is no right to a jury trial under the Disclosure Act. *Anderson*, 393 Ill. App. 3d at 225. The Disclosure Act did not exist at common law at the time the Constitution was adopted in 1970 and is purely a statutory creation, presenting a cause of action separate and distinct from one filed under common law fraud. A*nderson*, 393 Ill. App. 3d at 224. The Act specifically provides that it is " 'not intended to limit or modify any obligation to disclose created by any other statute or that may exist in common law in order to avoid fraud, misrepresentation, or deceit in the transaction.' " A*nderson*, 393

Ill. App. 3d at 224 (quoting 765 ILCS 77/45 (West 2002)). This section makes clear that a plaintiff retains the rights which existed at common law but now can sue under the Disclosure Act as well. A*nderson*, 393 Ill. App. 3d at 224. Therefore, since the Disclosure Act presents a new cause of action, unless the legislature specifically provided for a right to a trial by jury for this new action, none exists. A*nderson*, 393 Ill. App. 3d at 224-25. There is no mention of a jury trial in the Act. Accordingly, because the Disclosure Act created a cause of action unknown at common law and the language of the Act does not specifically provide for a jury trial, plaintiffs were not entitled to a jury trial on their Disclosure Act claim. A*nderson*, 393 Ill. App. 3d at 225.

Citing *Anderson,* 393 Ill. App. 3d 219, defendant argues that, because there is no right to a jury trial under the Disclosure Act, the court should have vacated the jury award and remanded the case for a bench trial. In *Anderson*, in relevant part, the jury decided a claim under the Disclosure Act, finding the defendant not liable under the Act. On appeal, after holding that there was no right to a jury trial under the Disclosure Act, the court reversed the jury's finding and remanded for a bench trial on the Disclosure Act claim. *Anderson*, 393 Ill. App. 3d at 224-25.[3]

[3] Of particular note is the fact that neither the plaintiff nor the defendant in the Disclosure Act action had requested a jury trial on that claim nor objected to the jury trial. The trial court appears to have sent the Disclosure Act claim to the jury *sua sponte* because a second defendant, not named on the Disclosure Act claim, had requested a jury trial on a Consumer Fraud Act claim and a Real Estate License Act claim. The plaintiffs had objected to a jury trial on those claims but had not objected to a jury trial on the Disclosure Act claim.

Following *Anderson*, it is clear that there is no right to a jury trial for a claim under the Disclosure Act. However, notwithstanding defendant's assertion to the contrary, there was not a "jury trial" on the Disclosure Act claim at issue here. Unlike in *Anderson*, the jury did not decide liability. The court itself determined liability under the Act and then directed the jury to decide only the issue of damages under the Act. The question, therefore, is not whether the court erred in holding a jury trial on the entire claim but rather whether it erred in sending the damages determination to the jury.

Plaintiffs argue defendant waived the issue because he did not object to plaintiff's jury demand and agreed to a six juror panel to hear the claims. Defendant responds that *Anderson* is the only authority on whether there is a right to trial by jury under the Disclosure Act and the *Anderson* opinion was not filed until shortly after the court issued its judgment on the jury verdict here. We agree that neither defendant nor the trial court had the benefit of the *Anderson* decision at the time of trial. However, the fact that there is no previous authority addressing an issue does not mean that a party could not have raised it. If every litigant waited to raise an issue until there was a precedent to follow, no law would ever be created because there would never be a new issue raised.

It is fairly obvious that the Disclosure Act does not present a cause of action available at common law when our Constitution was passed and that it does not specifically provide for a trial by jury. Defendant should have objected at trial to plaintiffs' jury demand. He did not. Instead, he agreed to a six-person jury prior to trial.

He raised the argument regarding the jury for the first time in his posttrial motion. "[W]here, as here, a party acquiesces in proceeding in a given manner, he is not in a position to claim he was prejudiced thereby." People v. Schmitt, 131 Ill. 2d 128, 137 (1989). A party forfeits an issue for appellate review unless he has raised the issue both at trial and in a posttrial motion. *Thornton v. Garcini*, 237 Ill. 2d 100, 106, 112 (2010). Accordingly, defendant's argument raised for the first time in his posttrial motion is forfeit. *Thornton*, 237 Ill. 2d at 112.

2. Judgment Notwithstanding the Verdict

Defendant argues the jury's award was baseless and unrelated to the evidence presented. He asserts the court erred in denying his posttrial motion for a judgment notwithstanding the verdict on the bases that (a) Spadaro's testimony regarding valuation of the property was inadmissable and tainted the jury's valuation and (b) plaintiffs' other damages were unsupported and the jury's award of those damages thus was baseless. A court may enter a judgment notwithstanding the verdict only where "all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand." *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). We review the court's decision to deny plaintiff's motion for a judgment notwithstanding the verdict *de novo*. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 132 (1999).

a. Inadmissibility of Spadaro's Testimony

Defendant asserts the admission of Spadaro's testimony tainted the jury verdict. He argues Spadaro's testimony regarding the value of the property should have been barred because it was not properly disclosed prior to trial pursuant to Illinois Supreme Court Rule 213 and Spadaro is not a valuation expert. He also argues the court erred in reopening the proofs to allow plaintiffs to elicit Spadaro's opinion regarding the value of the property in 2001. Defendant raised all these arguments in assorted motions to the court before and during trial, seeking to bar or limit Spadaro's testimony. The court denied the motions and allowed the evidence to be heard.

The admission of evidence is within the sound discretion of a trial court. *Stapleton ex rel. Clark v. Moore*, 403 Ill. App. 3d 147, 156 (2010). We will not reverse such a ruling absent an abuse of that discretion, *i.e.*, where its decision is arbitrary, fanciful or unreasonable or when no reasonable person would take the same view. *Stapleton ex rel. Clark*, 403 Ill. App. 3d at 156; *Lisowski v. MacNeal Memorial Hospital Ass'n*, 381 Ill. App. 3d 275, 288 (2008). However, a party is not entitled to reversal unless the error in the evidentiary rulings was substantially prejudicial and affected the outcome of the trial. *Stapleton ex rel. Clark*, 403 Ill. App. 3d at 156.

Defendant first asserts that Spadaro's testimony that the value of the property was $20,000 to $40,000 should have been barred because it was not disclosed in plaintiffs' Rule 213 disclosures or Spadaro's deposition. The purpose of Rule 213 is to avoid surprise and allow litigants to ascertain and rely upon the opinions of experts

retained by their opponents. *Iaccino v. Anderson*, 940 N.E.2d 742, 749 (2010). Pursuant to Rule 213(f)(3), upon written interrogatory, each party must disclose the subject matter, conclusions, opinions, qualifications and reports of any witness who will offer opinion testimony. *Iaccino*, 940 N.E.2d at 749. We will not reverse a trial court's determination that an opinion has been adequately disclosed under Rule 213 absent an abuse of the court's discretion. *Iaccino*, 940 N.E.2d at 749.

In its amended Rule 213 response, plaintiffs disclosed:

> "We expect Mr. Spadaro to testify as to the value of the property at the time of purchase. He will base his opinion of the actual damage the purchaser and the subject real estate was subjected to based upon [Herman's deposition testimony], comparables and his observations of the premises and knowledge of the market and factors affecting the market and pictures taken by plaintiff ***. In particular, [he] is expected to testify that based upon the fact the subject property was purchased at a Housing and Urban Development sale by Mr. Herman *** and contained, according to Mr. Herman's deposition, substantial water leaks from the roof, floor, ceiling and wall damage, leaking pipes, substandard wall partitions and other deficiencies. [*Sic*] It is his opinion that the subject dwelling was sold at a price that was inflated.
>
> The witness is further expected to testify that absent the substantial damage, comparable homes in the area would sell for a price of approximately $141,000 (the plaintiff paid $181,000).

The witness is expected to give an opinion on the amount of actual damage the plaintiff suffered by not being accorded the disclosure statement." In his deposition, Spadaro testified that the property was worth $140,00 to $145,000.

At trial, Spadaro detailed the damage he saw when he toured the house in 2007 and testified that the house was a teardown. He stated the property's only value was as a vacant lot, worth between $20,000 and $40,000. In coming to this opinion, he reviewed the $182,000 appraisal done in 2001, tax records and MLS data and comparable sales for 2001. Defendant then moved to bar the testimony because it concerned only Spadaro's valuation in 2007 and not in 2001 as previously disclosed. The court allowed plaintiff to reopen the proofs in order to obtain Spadaro's testimony regarding the value in 2001, at the time of purchase. The court warned plaintiff that if Spadaro did not answer the questions regarding the value in 2001, the court would bar Spadaro's testimony.

Back on the stand, Spadaro testified that, based on the condition of the house and the pictures plaintiffs had taken of the damage, the problems had been there for a long time and his valuation for 2001 was the same as the valuation he had testified to: that the property had no value beyond a land value of $20,000 to $40,000. Defendant objected to the testimony, stating he was taken by complete surprise by it and could not proceed with the case because the deposition and Rule 213 disclosures stated that Spadaro's opinion was that the property was worth $145,000. The court denied the motion for a mistrial.

On cross-examination by defendant, Spadaro testified that, based on comparable sales in the area in 2001, the house, if in good condition, was worth $172,000. Based on the information on the 2001 sales listing, the house might have been worth $145,000. But, given what he knew now about its actual condition and what he could extrapolate regarding the home's condition in 2001, he thought the 2001 value was actually $20,000 to $40,000. Spadaro made little of a 2001 appraisal valuing the property at $182,000. He stated the appraisal was performed on behalf of the mortgage broker who had a vested interest in a high valuation and he questioned whether the appraiser had seen the inside of the home. He said it was the custom in 2001 to perform a drive-by appraisal.

The court did not abuse its discretion in admitting Spadaro's testimony. As the court stated in its order denying defendant's posttrial motion, the record shows that the values to which Spadaro testified in his deposition and which were disclosed under Rule 213 and the values to which he testified at trial were two different aspects in valuing the property. In Spadaro's deposition, he was testifying to the $145,000 value of the property with a habitable residence on it in 2001. At trial, he was testifying to the $20,000 to $40,000 value of the property without a habitable residence on it, the value of the property with a residence that was in such a poor condition that it was a teardown, in both 2001 and 2007. The fact that testimony at trial is more precise than originally disclosed does not necessarily mean that the trial testimony violates Rule 213. *Wilbourn v. Cavlenes*, 398 Ill. App. 3d 837, 849 (2010). An opinion stated at trial that is

a logical corollary or an elaboration to a previously disclosed opinion is appropriate within the parameters of Rule 213. *Wilbourn*, 398 Ill. App. 3d at 849. Spadaro's trial testimony was a breakdown of the value of the property into its different components, an elaboration on his previously disclosed opinion which defendant had ample opportunity to explore during the taking of Spadaro's deposition. The court did not err in admitting Spadaro's testimony.

Defendant next argues that Spadaro's testimony was inadmissible because he was not qualified to give an expert opinion regarding the value of the property at the time of purchase. He argues Spadaro was not an appraiser, did not become a real estate agent until two years after the sale closed, did not see the property at the time of purchase so had no idea of its condition at the time and had only completed 35 transactions at the time of trial.

An individual will be allowed to testify as an expert if his experience and qualifications afford him knowledge which is not common to lay persons, and where such testimony will aid the trier of fact in reaching its conclusions." *People v. Miller*, 173 Ill. 2d 167, 186 (1996) (citing *People v. Novak*, 163 Ill. 2d 93, 104 (1994)). In determining whether to allow a proposed expert to testify, the question is whether the expert's degree of knowledge or expertise is beyond that of the average person, regardless of how that specialized knowledge was acquired, and not whether he has a certain level of academic qualifications. *Novak*, 163 Ill. 2d at 104. The admission of expert testimony is in the trial court's discretion and we will not reverse the court's

decision allowing such evidence absent an abuse of that discretion. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 799 (1999); *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d 887, 896 (1995).

The court did not abuse its discretion in allowing Spadaro to testify. Although not a real estate appraiser, Spadaro was a real estate sales person with four years of experience in valuing property. He clearly had more experience in valuing property than a lay person and his valuation opinion would be of assistance to the jury in determining damages. Spadaro's lack of experience or credentials goes to the weight of his testimony, not his competency to testify. *Thompson v. Gordon*, 356 Ill. App. 3d 447, 459 (2005).

"[T]he weight to be assigned to an expert opinion is for the jury to determine in light of the expert's credentials and the factual basis of his opinion." *Snelson v. Kamm*, 204 Ill. 2d 1, 27 (2003). Defendant, as the adverse party, had the responsibility to challenge the sufficiency or reliability of Spadaro's opinion or the basis for that opinion through cross-examination. *Adams v. Family Planning Associates Medical Group, Inc.*, 315 Ill. App. 3d 533, 550 (2000). Defendant did cross-examine Spadaro on his qualifications, thus presenting Spadaro's lack of experience to the jury for its consideration. Defendant did not, however, present an expert to challenge Spadaro's opinions. It was then up to the jury to determine the weight to be given to Spadaro's testimony, taking into account his experience or lack thereof and any challenges to his testimony. The court did not err in denying defendant's motion to bar Spadaro's

testimony.

Defendant lastly argues that the court erred in reopening the proofs in order to allow Spadaro to testify regarding the value of the property in 2001. As he did in presenting this argument to the trial court in his posttrial motion, defendant cites no legal authority for his argument in his briefs on appeal. As the reviewing court, we are entitled to have the issues on appeal clearly defined with pertinent citations to authority and presentation of a cohesive legal argument. *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Bare contentions without argument or citation to relevant authority do not merit consideration on appeal. *Fitzpatrick v. ACF Properties Group, Inc.*, 231 Ill. App. 3d 690, 708 (1992). Accordingly, we will not address this argument.

Given our findings that the court did not err in admitting Spadaro's testimony, we necessarily hold that the admission of Spadaro's testimony did not taint the jury verdict. The court did not err in denying defendants' motion for judgment notwithstanding the verdict filed on that basis.

b. Unsupported Damage Award

Defendant argues plaintiffs did not prove damages greater than $6,300 and the court, therefore, should have granted a judgment notwithstanding the verdict on the jury's $285,000 damage award. We cannot set aside a jury verdict simply because the jury could have drawn different conclusions from conflicting testimony nor substitute our judgment for that of the jury in determining the weight of conflicting evidence. Becht v.

Palac, 317 Ill. App. 3d 1026, 1035, 740 N.E.2d 1131, 1139 (2000).

The amount of damages to be assessed is peculiarly a question of fact for the jury to determine and great weight must be given to the jury's decision. *Snelson v. Kamm*, 204 Ill. 2d 1, 36-37 (2003). A reviewing court will not disturb the verdict unless all reasonable persons would agree that the amount is excessive. *Marchese v. Vincelette*, 261 Ill. App. 3d 520, 529 (1994). A verdict is excessive if it shows the jury was moved by passion or prejudice, it exceeds the flexible limits of fair and reasonable compensation or it is so large that it shocks the judicial conscience. *Martinez v. Elias*, 397 Ill. App. 3d 460, 474 (2009); *Marchese*, 261 Ill. App. 3d at 529 . A plaintiff has the burden to 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). However, absolute certainty with regard to damages is not required. *Razor v. Hyundai Motor America*, 222 Ill.2d 75, 107 (2006). Here, plaintiffs had to prove their "actual" damages under the Disclosure Act. 765 ILCS 77/55 (West 2008).

There is no question that, as defendant asserts, most of the amounts plaintiffs claimed they spent to repair the properly were unsupported by documentary evidence. There was no documentary support for Elkhaldy's testimony that she spent the $40,000 in her children's college fund and $20,000 of her own money on repairing the house. There was also no documentary support for Hareas's testimony that he paid $15,000 to repair the living room, $8,000 for the family room, $10,000 for the roof and $15,000 for

the bathroom. The only receipts plaintiffs presented, per defendant's calculations, totaled $6,279.98.

However, there was also testimony by Hareas and Elkhaldy about the chronically deteriorating condition of the house they thought had been rehabilitated shortly before they bought it. There was plaintiffs' testimony that the house became a problem almost immediately after they moved in and the problems intensified, escalating in severity as time passed. There was Spadaro's uncontradicted expert testimony that the house was valueless and the property, would be worth, at most, between $20,000 to $40,000 in 2007. There was Spadaro's testimony that, in 2001, the property would similarly have been worth only the value of the lot in 2001 if the house was in the same condition then as when he saw it in 2007. There was Spadaro's testimony that the condition in which he saw the house in 2007 was of long standing. There was Spadaro's testimony that Hareas overpaid for the property if he paid approximately $175,000 and that the appraiser overvalued the property at $182,000. There was Hareas' testimony that he now held a $225,000 mortgage on the property as a result of his having to refinance to avoid foreclosure resulting from his expending his funds on repairing the property.

It is for the jury to resolve conflicts in the evidence, determine the credibility of the witnesses and decide the weight to be given to the witnesses' testimony. *Stapleton ex rel. Clark v. Moore*, 403 Ill. App. 3d 147, 165 (2010). The jury apparently believed plaintiffs and Spadaro because they awarded plaintiffs $285,000 based almost solely on plaintiffs' testimony and Spadaro's expert opinion. Spadaro's testimony provides

ample evidence of the diminution in value of the property since the time Hareas bought it. Plaintiffs' anecdotal evidence supports any costs they incurred in repairing the home. The evidence supports findings of $6,300 in itemized receipts for repairs and supplies; $40,000 spent from Elkhaldy's children's college funds; $20,000 spent of Elkhaldy's own money; $48,000 spent by Hareas on repairs; $161,500 in diminution of value ($181,500 paid less $20,000 value); and $43,500 for the amount Hareas had to add to the mortgage when he refinanced it to make up the deficiency he owed on the home. These amounts total to $327,500. The jury's award was well within the parameters of the evidence presented. The court did not err in denying defendant's motion for judgment notwithstanding the verdict on this basis.

3. New Trial

Defendant argues the court erred in denying his posttrial motion for a new trial on the basis that Spadaro was not an expert and his testimony deviated from that disclosed previously, thus prejudicing the jury. We will not reverse the court's decision to deny plaintiff's motion for a new trial unless the court abused its discretion. *McClure*, 188 Ill. 2d at 132-33, 720 N.E.2d at 257. As discussed previously, the court did not err in admitting Spadaro's testimony, whether on the basis that Spadaro was not an expert or that his opinions deviated from plaintiffs' pretrial disclosures. Further, any weaknesses in Spadaro's qualifications went to the weight of his testimony, not its admissibility. The jury heard his testimony, heard the challenge to his testimony on cross-examination, weighed this evidence and then rendered a verdict. The court did

not err in denying defendant's posttrial motion for a new trial on the basis of the admission of Spadaro's testimony.

4. Remittitur

In defendant's opening brief, he argues, in a single sentence devoid of any citation to authority or the record, that "EAA is entitled to a remittur [*sic*] to reflect the damages supported by the evidence, which are not in excess of $6,279.98, and subject to the offset of [a settlement with a contractor and of insurance proceeds]." In his reply brief, defendant restates essentially this same sentence. He then adds, again without citation to authority or the record, that the court did not allow the amounts of the settlement and insurance proceeds into evidence but that, because the amounts are not disputed as having been received, the court "improperly discounted those sums in off setting the damage award."

First, we assume that defendant is requesting a "remittitur," defined as "[a] court's order reducing an award of damages." Blacks Law Dictionary, 7th Ed. 1999, p. 1298. Second, pursuant to Supreme Court Rule 341(h)(7), bare contentions without argument or citation to relevant authority do not merit consideration on appeal. *Fitzpatrick v. ACF Properties Group, Inc.*, 231 Ill. App. 3d 690, 708 (1992); 210 Ill. 2d R. 341(h)(7). Defendant's argument regarding offset does not meet the requirements of Rule 341(h)(7) and, therefore, we need not consider it. Lastly, "[w]here the jury's award falls within the flexible range of conclusions reasonably supported by the evidence, the court should not grant a remittitur." *Martinez,* 397 Ill. App. 3d at 474. As held

previously, the damages were sufficiently supported by the evidence and no remittitur is required on that basis. We affirm the court's denial of defendant's request for remittitur.

5. Standing of Elkhaldy and Her Children

Defendant argues that the court erred in denying both his motion *in limine* and his motion for a directed verdict seeking to bar the Disclosure Act claims by Elkhaldy and her children. He asserts Elkhaldy and her children had no standing to pursue their Disclosure Act claim because they were not buyers under the Act, were not involved in the negotiations for the purchase of the home and were not parties to the sales contract between defendant and Hareas. He argues no one other than Hareas had standing to bring a claim under the Disclosure Act.

There is no copy of defendant's motion for a directed verdict in the record. As the appellant, it is defendant's burden to present a sufficiently complete record to support his arguments and any inadequacies in the record will be held against him. *Redelmann v. K.A. Steel Chemicals, Inc.,* 377 Ill. App.3d 971, 977 (2007). However, since defendant argued his motion before the court, we can glean from that argument that the motion for a directed verdict was directed to Elkhaldy's and her children's standing to pursue the fraud claim, not to their standing to pursue the Disclosure Act claim.

There are copies of defendant's assorted motions *in limine* in the record. However, the motion *in limine* to which defendant directs us, both on appeal and in his

posttrial motion, does not mention Elkhaldy and her children's standing under the Act. Indeed, none of defendant's motion *in limine* address this issue.

Given that the record contains neither a motion *in limine* nor a motion for a directed verdict that puts forth the argument that Elkhaldy and her children had no standing under the Disclosure Act, it is clear that defendant raised it for the first time in his posttrial motion. A party forfeits an issue for appellate review unless he has raised the issue both at trial and in a posttrial motion. *Thornton v. Garcini*, 237 Ill. 2d 100, 106, 112 (2009). Accordingly, defendant's argument that Elkhaldy and her children had no standing under the Disclosure Act is forfeit. *Thornton*, 237 Ill. 2d at 112.

For the reasons stated above, we affirm decision of the trial court.

Affirmed.