FIRST DIVISION
April 20, 2015

No. 1-14-0621
2015 IL App (1st) 140621-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TUCKAWAY DEVELOPMENT LLC, an Illinois limited liability corporation,	)	
Plaintiff-Appellant,	)	Appeal from the Circuit Court of Cook County
v.	)	
SCHAIN, BURNEY, ROSS & CITRON, LTD., an Illinois involuntarily dissolved corporation; and JOHN D. MALARKEY, individually,	)	No. 11 L 4653
Defendants-Appellees.	)	The Honorable Thomas R. Mulroy, Jr. and Lorna E. Propes, Judges Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: Damages award was proper; trial court did abuse its discretion in instructing the jury as to the proper valuation of damages; trial court did not abuse its discretion in reopening discovery and allowing defendants' expert to be deposed; trial court did not abuse its discretion in allowing appraisal expert to

testify as an expert witness; trial court did not abuse its discretion in allowing defendants to argue that lot was encumbered prior to closing; trial court did not abuse its discretion in granting motion *in limine* to bar evidence of lost profits relative to construction on the lot; and trial court did not abuse its discretion in granting motion *in limine* to bar evidence of loss of security interest in lot.

¶ 1 Plaintiff Tuckaway Development LLC (Tuckaway) filed a complaint against the law firm of Schain, Burney, Banks, & Citron, Ltd. and attorney John D. Malarkey (defendants) seeking compensatory relief relating to the preparation and handling of a mortgage that was given by Charles Allenson (Allenson) to Tuckaway. Tuckaway alleged the following facts in its complaint.

¶ 2 In 2006, Premier Land Company, LLC (Premier) entered into purchase agreements relative a golf course, wherein Premier was the seller and Tuckaway was the purchaser. Allenson was the managing member of Premier. On October 26, 2006, Tuckaway, represented by defendants, paid $4 million for the golf course property. Tuckaway alleged in the complaint that before it purchased the golf course, it discovered inconsistencies with the appraised value of the subject property and the amount stated on the purchase agreements for the subject property. Tuckaway alleged that to compensate for these inconsistencies, Allenson and Tuckaway agreed that Allenson would provide a promissory note for $250,000 contemporaneously with the closing, a written agreement as to their relationship as to the subject property, and a mortgage against a different property that Allenson owned (Lot 62).

¶ 3 Tuckaway alleged that defendants prepared and tendered (1) a mortgage note, (2) a mortgage, assignment of leases and security agreement, and (3) a promissory note in consideration for the partnership interest. Allenson executed the note, mortgage, and promissory

note on October 23, 2006. Tuckaway alleged that the mortgage was intended to be recorded as a mortgage lien against Lot 62.

¶ 4 Tuckaway further alleged that unbeknownst to it, defendants made errors relative to the note, mortgage, and promissory note on Lot 62. Namely, Tuckaway contended that the defendants failed to promptly record the mortgage in October 2006, and instead recorded it in June 2008, and failed to properly conduct due diligence with regard to signatures on the purchase agreement documents. Tuckaway alleged that in July 2009, it came to its attention that its lien against Lot 62 was in jeopardy due to a competing lien claim brought by Sabre Group, LLC (Sabre) for foreclosure of its tax lien against Lot 62. Tuckaway alleged that attorney John Malarkey told Tuckaway that he would attempt to cure the errors that defendant made relative to the mortgage by intervening and defending the mortgage.

¶ 5 Tuckaway alleged that Malarkey filed a petition for leave to intervene and vacate the tax deed of Sabre by asserting that the mortgage had priority over Sabre's interest in Lot 62. The court allowed briefing and then dismissed Malarkey's petition, finding that the mortgage was outside the chain of title and that the tax deed to Sabre was proper because the mortgage did not give proper constructive notice to third parties such as Sabre.

¶ 6 Tuckaway alleged that defendants had a duty to provide competent legal services to Tuckaway and to exercise reasonable care, skill, and diligence on behalf of their client. Tuckaway further alleged that defendants breached that duty, and that as a result of that breach, suffered approximately $1 million attributable to the loss of Lot 62.

¶ 7 On November 13, 2013, the jury found in favor of Tuckaway relative to the issue of liability. The jury awarded Tuckaway $1,125 in damages. In response to this verdict and award, Tuckaway filed a motion for judgment notwithstanding the verdict, and alternatively, a new trial

relative to damages. Both were denied. On appeal, Tuckaway only argues that the damages were insufficient and that they should have amounted to, at the very least, $250,000. Accordingly, the only issue before this court is the amount of damages. The following facts regarding the pleadings and trial testimony are only those relative to damages.

¶ 8 Pleadings

¶ 9 Prior to trial on December 11, 2012, the trial court ordered that defendants' appraisal expert was to be disclosed by February 8, 2013. Defendants apparently failed to meet this deadline because on February 26, 2013, the trial court stated in an order that defendants' request to disclose liability and appraisal experts was "denied" and would be reconsidered at the next status date on April 3, 2013.

¶ 10 On April 3, 2013, defendants filed a Rule 213(f)(3) disclosure disclosing Michael McCann as a witness who would testify as to the fair market value of Lot 62. Specifically, defendants stated that McCann would testify that the fair market value of Lot 62 was $90,000 in October 2006, $78,000 in October 2008, and $45,000 in March 2013.

¶ 11 On May 10, 2013, Tuckaway filed a motion *in limine* to bar the testimony of McCann, stating that the trial court had barred defendants from filing disclosures of expert witnesses. Also on May 10, 2013, defendants filed a motion to clarify the court's February 26, 2013 order denying their request to disclose expert witnesses. The trial court denied defendants' motion to clarify.

¶ 12 On September 19, 2013, in response to Tuckaway's motion *in limine* to bar the testimony of McCann, defendants made an oral motion requesting the trial court to allow McCann to be deposed and to continue the trial. Tuckaway's counsel objected based in part on the order of February 26, 2013, and based on the lack of any motion to reopen expert discovery by

defendants. The court granted defendants' oral motion and postponed the trial until November 4, 2013.

¶ 13 On September 26, 2013, Tuckaway filed a renewed motion *in limine* to bar defendants' appraisal expert McCann from testifying. Tuckaway alleged that two days prior, during the discovery deposition of McCann, McCann produced what Tuckaway referred to as a "redwell" of materials which had not been previously disclosed, so counsel for Tuckaway terminated the deposition. Tuckaway also alleged that McCann had not prepared a report or appraisal from which Tuckaway could review McCann's conclusions and analysis. The court found that any documents that defendants sought to rely on at the deposition of McCann had to be tendered by 5 p.m. on September 27, 2013, and that the continued deposition of McCann should take place on October 1, 2013.

¶ 14 On October 3, 2013, Tuckaway filed a second renewed motion *in limine* to bar McCann's testimony at trial. Tuckaway argued that on the morning of McCann's scheduled deposition, defense counsel attempted to tender three additional reports that McCann intended to rely on. Tuckaway objected to these reports and once again terminated the deposition of McCann. The trial court denied Tuckaway's motion to bar McCann's testimony, but limited his testimony to the disclosures contained in defendants' Rule 213(f) disclosures.

¶ 15 The trial in this case began on November 6, 2013. After opening remarks from both attorneys, a short break was given to the jury. The next entry in the report of proceedings is for the afternoon of November 7, 2013, and then November 12, 2013, with no witness testimony transcripts contained therin. The appendix to Tuckaway's brief indicates that trial testimony of Charles Allenson and George Bonomo (one of Tuckaway's partners) is contained in Volume 14 of the record, but the dates given in the appendix for both of those proceedings indicate

"February 21, 2014," well after trial concluded in this case. Volume 14 shows that on February 21, 2014, Tuckaway filed with the Clerk of the Court the "Trial testimony of Charles Allenson (Day 1), a copy of which is attached hereto." The record also contains the second day of Allenson's testimony, as well as Bonomo's testimony. However, there is no indication from the appendix that the record contains any other transcripts from any other witness testimony.

¶ 16 Illinois Supreme Court Rule 341(h)(9) (eff. Feb. 6, 2013), mandates that an appellant's brief contain an appendix as required by Rule 342 (Ill. S. Ct. R. 342 (eff. Jan. 1, 2005)). Rule 342 states that the appendix to the appellant's brief shall include, as an appendix, a copy of the judgment appealed from, the notice of appeal, and a complete table of contents, with page references, of the record on appeal. Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005). The table of contents shall state: (1) the nature of each document, order, or exhibit, (2) in the case of pleadings, motions, notices of appeals, orders, and judgments, the date of filing or entry, and (3) the names of all witnesses and the pages on which their direct examination, cross examination, and redirect examination begin. *Id*.

¶ 17 In the case at bar, the appendix does not contain either a copy of the judgment appealed from, or the notice of appeal. It also does not contain a complete table of contents because the table does not include a list of names of witnesses and pages on which their direct examination, cross examination, and redirect examination begin. The only names of witnesses included in the table of contents are Allenson and George Bonomo, but the table of contents does not indicate on which pages their direct, cross, and redirect examination begin. While it seems that several other witnesses testified at trial, those transcripts do not appear in the table of contents. Rather, it appears that at least some of those testimony transcripts have been submitted as exhibits to Tuckaway's motion for a judgment notwithstanding the verdict (JNOV). The table of contents

indicates that there are two volumes of exhibits relative to Tuckaway's motion for JNOV. Within those two volumes, along with relevant case law, it appears that there is trial testimony from several witnesses. However we do not know from the table of contents what order those witnesses testified in in relation to Allenson and Bonomo, whether their entire testimony or just an excerpt is included in the exhibits, or on what pages direct, cross, and redirect appear examination appear on.

¶ 18 We note that the Illinois Supreme Court Rules governing the content and format of appellate briefs are mandatory. *People v. Garstecki*, 382 Ill. App. 3d 802, 811 (2008). Tuckaway's brief fails to conform to the mandatory requirements of both Illinois Supreme Court Rules 341 and 342. Based upon such noncompliance, Tuckaway's appeal is subject to dismissal. *La Grange Memorial Hospital v. St. Paul Insurance Company*, 317 Ill. App. 3d 863, 876 (2000). Although these violations justify dismissing Tuckaway's appeal, we will nevertheless attempt to address the merits of Tuckaway's issues on appeal, but note that if the record is incomplete in any way, any doubts arising from the incompleteness of the record will be construed against the appellant and in favor of the judgment rendered in the lower court. *People v. Barker*, 403 Ill. App. 3d 515, 523 (2010).

¶ 19 The following is the trial testimony relative to damages that we could glean from various exhibits to Tuckaway's motion for JNOV as well as the three volumes of trial proceedings contained in the record.

¶ 20 Allenson testified that Lisu Tan was an independent investor who had loaned him substantial sums of money over the years. He testified that in 2004, his wife issued a letter directing their bank to have their trust execute a mortgage and note in the amount of $160,000

with respect to Lot 62 in favor of Tan. Allenson further testified that there was a $4,000 tax encumbrance on Lot 62 which he knew about prior to the golf course closing.

¶ 21 Both Vahooman Mirkhaef (another one of Tuckaway's partners) and Bonomo testified that they did not know of the Tan mortgage on Lot 62 before closing, and that if they had known, they would not have closed the golf course transaction.

¶ 22 Allenson testified that Tuckaway filed suit against him in a separate case in 2008, to recover on the two promissory notes he had executed but did not pay in relation to Lot 62. The two promissory notes totaled $350,000. Tuckaway obtained a judgment against Allenson in the amount of $656,183.74, but had yet to collect any of the judgment from Allenson because Allenson did not have the money.

¶ 23 Hugh Edfors, Tuckaway's appraisal expert, testified that after his analysis, his overall opinion of Lot 62's value in 2006 and 2007 was $215,000. Edfors testified that he looked at six different golf courses and looked at all the sales of lots on each course. In most of the sales, the sales were improved properties with houses built on them. Edfors testified that very few were sales of vacant lots.

¶ 24 McCann, defendants' appraisal expert, testified that the value of Lot 62 in October 2008 was $78,000. McCann testified that he arrived at this number using the "sales comparison approach," which is a recognized appraisal approach that encompasses finding sales of properties as similar to the subject as reasonably possible. McCann testified that location was the most important criteria, and then adjustments to be made for differences in certain features between the properties. McCann testified that he used vacant comparable lots in arriving at his figure, and provided a list of sales of property, most of which were adjacent to a golf course.

¶ 25 At the close of all the evidence, the jury found defendants negligent in the recording of the mortgage on Lot 62 and awarded damages in the amount of $1,125 to Tuckaway. Tuckaway filed a motion for JNOV arguing that damages should have been either $250,000 or $215,000 for loss of a valid security interest and first lien on Lot 62. The trial court denied this motion, and Tuckaway now appeals.

¶ 26 ANALYSIS

¶ 27 On appeal, Tuckaway only disputes damages. Relative to damages, Tuckaway contends: (1) the trial court abused its discretion in instructing the jury as to damages; (2) the trial court abused its discretion when it reopened discovery; (3) the trial court abused its discretion in allowing defendants' appraisal expert to testify; (4) the trial court abused its discretion by allowing defendants to argue that liens on Lot 62 should be used as a setoff to damages; (5) the trial court abused its discretion in granting defendants' motion *in limine* to bar evidence of loss profits; and (6) the trial court abused its discretion in granting defendants' motion *in limine* to bar evidence of loss interest . Tuckaway also contends on appeal that the trial court erred in denying its motion for JNOV. However, as defendants note, a trial court cannot grant a JNOV to increase the damages awarded "because a JNOV is limited to liability issues." *State Farm Mutual Insurance v. Ellison*, 354 Ill. App. 3d 387, (2004) (citing *Allstate Insurance Co. v. Mahr*, 328 Ill. App. 3d 915, 916 (2002)). Here, the amount of damages, not liability, is at issue; therefore, the trial court properly denied Tuckaway's motion for a judgment notwithstanding the verdict.

¶ 28 Damages

¶ 29 The determination of damages is a question of fact that is within the discretion of the jury. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 247 (2006). A reviewing court will not overturn a jury award unless it is against the manifest weight of the evidence. *Nilsson v.*

NBD Bank of Illinois, 313 Ill. App. 3d 751, 761 (1999). A reviewing court will not overturn a jury's award, finding it to be against the manifest weight of the evidence, merely because it can be characterized as less than generous or because a party is dissatisfied with the award. *Id*. "Rather, it is of no consequence that the award differs from an estimate of damages made by an expert, for a jury may reduce an expert's damage calculation without invalidating its verdict." *Id*. The mere fact that the verdict is less than the claimed damages does not mean the award is inadequate, particularly since the jury is free to determine the credibility of the witnesses and to assess the weight accorded to their testimony. *Id*.; *Maple v. Gustafson*, 151 Ill. 2d 445, 452 (1992). "To the contrary, a reviewing court will affirm verdicts, however low, which are sustained by evidence or the absence of particular evidence." *Nilsson*, 313 Ill. App. 3d at 761-62. "Absent some indication that the jury failed to follow some rule of law, considered some erroneous evidence, or an indication in the record that the verdict was the obvious result of passion or prejudice, we cannot upset the verdict." *Perry v. Storzbach*, 206 Ill. App. 3d 1065, 1069 (1990). Damages are the "jury's prerogative, not the appellate courts'." *Nilsson*, 313 Ill. App. 3d at 762.

¶ 30 In our view, the jury's verdict was supported by the evidence presented at trial. A successful legal malpractice claim places the plaintiff in the same position that he or she would have been in but for the attorney's negligence. *Gaylor v. Campion, Curran, Rausch, Gummerson and Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 61. Accordingly, the question is whether there is evidence in the record to support the jury's finding that $1,125 would put Tuckaway in the same position it would have been in had defendants not been negligent in recording the mortgage. We find that there is. Tuckaway's appraisal expert Edfors testified that the market value of Lot 62 in 2006 and 2007 was $215,000. Defendants' appraisal expert

McCann testified that the market value of Lot 62 in October 2008 was $78,000. Accordingly, the jury could have found that the fair market value of Lot 62 was anywhere from $78,000 to $215,000.

¶ 31 However, evidence also showed that Lot 62 was encumbered by a prior mortgage in the amount of $160,000, and taxes in the amount of $4,000. Knowing the lot was encumbered in the amount of $164,000, it would be reasonable for the jury to find that the value of the lot could be reduced by $164,000. Accordingly, because Tuckaway's expert testified that the fair market value of the lot was $215,000 without encumbrances, it would have been reasonable for the jury to find that actual the value of the property, applying the $164,000 of encumbrances, was now $51,000. Applying that same formula to defendants' appraisal expert's testimony, who testified that the fair market value of the land without encumbrances was $78,000, we find that it would have been reasonable for the jury to find that the actual value of the land was now $-86,000. Taking into account the expert testimony of both parties, as well as the amount of encumbrances on the property, it would therefore be reasonable for the jury to find that the value of the land was $-86,000, $51,000, or somewhere in between those two valuations. In other words, if Tuckaway had a properly recorded mortgage and a security interest in Lot 62, it would need somewhere between $-86,000 and $51,000 to put it in the same place it would have been in but for defendants' negligence. *Gaylor*, 2012 IL App (2d) 110718 at ¶ 61 (a successful legal malpractice claim puts the plaintiff in the same position he would have been in but for the attorney's negligence). Because $1,125 falls between $-86,000 and $51,000, we find that the jury award of $1,125 was not against the manifest weight of the evidence. *Nilsson*, 313 Ill. App. 3d at 761 (it is of no consequence that the jury award differs from estimate of damages made by experts, for a jury may reduce an expert's damage calculation without invalidating its verdict,

particularly since the jury is free to determine credibility of witnesses and assess the weight accorded to their testimony). See also *Webber v. Wright & Co.*, 368 Ill. App. 3d 1007, 1030 (2006) (credibility determinations, the resolution of inconsistencies and conflicts in testimony, and the weight to be given to evidence lie exclusively within the province of the jury, and a reviewing court may not usurp the jury's function).

¶ 32 To the extent that Tuckaway contends that it would not have accepted the mortgage to Lot 62 had it been aware that Lot 62 was already encumbered, and in fact would not have completed the acquisition of the golf course at all, Tuckaway did not present any evidence at trial that there were financial losses sustained as a result of the acquisition of the golf course. We agree with the trial court when it stated that Tuckaway's partners testified that they would not have gone through with the golf course acquisition had they known of the prior encumbrances on Lot 62, but introduced no evidence of the damages they would have avoided had they not purchased the golf course property. In fact, Allenson testified that the golf course property was worth $5.1 million a year after the closing.

¶ 33 Jury Instructions

¶ 34 Tuckaway also argues that the court abused its discretion in refusing to "allow the IPI 20.01 jury instruction to pose the question of whether [defendants] were also negligent in their failure to secure a lenders' policy on behalf of [Tuckaway]." The argument seems to be that if the jury had been instructed that defendants should have secured a lenders' policy, the jury would have returned a higher damages award. Tuckaway only cites to *Howat v. Donelson*, 305 Ill. App. 3d 183 (1999), to support its contention. In *Howat*, the trial court found that the instruction given to the jury contained boilerplate allegations that were vague, conclusory, and misleading. *Howat*, 305 Ill. App. 3d at 187. Tuckaway makes no such argument regarding the

jury instructions in this case and instead merely argues that the jury should have been instructed about defendants' failure to secure a lenders' policy. Without more, we cannot address this argument and find that it has been forfeited on review. *Vilardo v. Barrington Community School District*, 406 Ill. App. 3d 713, 720 (2010) (mere contentions, without argument or citation of authority, do not merit consideration on appeal; a reviewing court is entitled to have issues clearly defined with pertinent authority cites; issue forfeited).

¶ 35 Moreover, we agree with the trial court that Tuckaway introduced no evidence that a lenders' policy would have been obtained in this case. It seems likely that a title insurance company would have detected the back taxes and preexisting mortgage on Lot 62, and would not have issued a policy. Accordingly, it was not an abuse of discretion for the trial court to refuse to instruct the jury that defendants were negligent in failing to secure a lenders' policy. See *Webb v. Angell*, 155 Ill. App. 3d 848, 855 (1987) (while a party has the right to have a jury instruction on his theory of the case, it is reversible error for court to give an instruction that is not supported by the evidence).

¶ 36 Reopening of Discovery

¶ 37 Tuckaway argues in the alternative that the trial court abused its discretion when it allowed defendants' oral motion to disclose McCann as an expert and to postpone trial in order to depose him. Here, the trial court set a deadline for damages experts to be disclosed on or before February 8, 2013. Defendants did not file any damages expert disclosures by that deadline. On February 26, 2013, defendants asked for additional time to disclose expert witnesses. The trial court denied the motion but stated that it would be reconsidered at the next status date. Meanwhile, on April 3, 2013, defendants filed a Rule 213(f)(3) disclosure of McCann. Defendants included McCann on their witness list that they filed in June 2013. Trial

was then rescheduled for October 2, 2013. On September 19, 2013, defendants made an oral motion to allow the disclosure of McCann and to postpone the trial until November 4, 2013, so McCann could be deposed. The trial court granted the motion. Tuckaway now argues that it was an abuse of discretion for the trial court to grant this motion reopening discovery. We disagree.

¶ 38 We first note that the trial court is afforded great latitude in ruling on discovery matters. *Maxwell v. Hobart Corp.*, 216 Ill. App. 3d 108, 110 (1991). The decision as to whether to reopen discovery rests in the sound discretion of the circuit court and this court will not disturb such rulings on appeal absent a showing of abuse of discretion. *Ruane v. Amore*, 287 Ill. App. 3d 465, 471 (1997). Here we find it was not an abuse of discretion for the trial court to reopen discovery because it did not prejudice Tuckaway. Trial was postponed to November 4, 2013, and both parties were given more than one opportunity to depose the witness. Furthermore, McCann was ultimately confined in his testimony to his Rule 213(f)(3) disclosures.

¶ 39 To the extent that Tuckaway argues that the trial court abused its discretion by allowing McCann to testify beyond the scope of the Rule 213(f)(3) disclosures, we note that Tuckaway does not expound on this argument and does not explain *how* McCann went beyond the scope of his Rule 213 disclosures. Tuckaway specifically states in its brief that McCann was "given the unfettered right to testify to matters well outside of the Rule 213(f)(3) disclosures. (Substantive examples will be addressed in the next section)." However, no substantive examples were addressed in the next section. Accordingly, this issue is forfeited. *Vilardo*, 406 Ill. App. 3d at 720 (mere contentions, without argument or citation of authority, do not merit consideration on appeal; a reviewing court is entitled to have issues clearly defined with pertinent authority cites; issue forfeited).

¶ 40 McCann's Expert Testimony

¶ 41 Tuckaway's next argument is that the trial court abused its discretion in allowing McCann to testify as an expert witness in general. The decision of whether to admit expert testimony is within the sound discretion of the trial court, and a ruling will not be reversed absent an abuse of discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003). Expert testimony is admissible if the expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence. *Id.*

¶ 42 McCann testified that he was a real estate appraiser with 33 years of experience, he had been retained to value properties often and had occasion to appraise virtually all property types ranging from residential property, vacant property, commercial property, and industrial property. He also testified that he had been qualified and testified as an expert in over 21 states. McCann testified that in addition to the continuing education that he must undergo to maintain his state license as a real estate appraiser, he had taken a wide range of additional courses. He also testified that he was a Certified Review Appraiser, certified by the National Association of Review Appraisers and Mortgage Underwriters, as well as a State Certified General Real Estate Appraiser in Illinois and in Michigan. Based on these facts, we find that it was not an abuse of discretion for the trial court to allow McCann to testify as an expert.

¶ 43 Moreover, while Tuckaway contends that McCann's opinions were not adequately supported, the basis for a witness' opinion generally does not affect his standing as an expert; such matters go only to the weight of the evidence, not its sufficiency. *Snelson*, 204 Ill. 2d at 26. The 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. *Id.* at 27. An expert is free to give an opinion without disclosing the underlying facts or date; rather, the burden is upon the adverse party

during cross-examination to elicit the facts underlying the expert opinion. *Wilson v. Clark*, 84 Ill. 2d 186, 194 (1981). Tuckaway's counsel conducted a vigorous cross-examination of McCann, challenging the bases and soundness of his opinions during his evidence deposition. Accordingly, we find that the trial court did not err in allowing McCann's testimony.

¶ 44 Evidence of Setoff

¶ 45 Tuckaway's next contention is that the trial court abused its discretion when it allowed defendants to argue that the encumbrances on Lot 62 that existed before the mortgage could be considered a set-off to Tuckaway's damages. Tuckaway does not identify when or how defendants used the existence of a prior mortgage as a setoff for damages anywhere in its argument. Looking back at Tuckaway's fact section pertaining to this argument, Tuckaway states that evidence of the prior mortgage first arose during the trial in defendants' cross-examination of Allenson over Tuckaway's objections, and that thereafter Mirkhaef and Bonomo both testified that they would not have entered into the deal if they had known about outstanding mortgages or tax issues on Lot 62. Tuckaway contends that defendants never called any witnesses to challenge Tuckaway's testimony that its partners expected to have a first lien position relative to Lot 62. At no point does Tuckaway identify when or how defendants argued that this number should be used as a setoff for damages. See Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013) (argument must contains to the pages of the record relied upon) and *Weisman v. Schiller, Ducanto & Fleck, Ltd.*, 368 Ill. App. 3d 41, 57 (2006) (arguments must be supported by citation to record; we need not sift through the record to find support for plaintiff's contentions). Moreover, we note that the weight to be given to evidence lies exclusively with province of the jury. *Webber v. Wright & Co*., 368 Ill. App. 3d 1007, 1030 (2006). Accordingly,

once the evidence of the mortgage came into evidence, it is up to the jury to decide what weight to give that evidence. Therefore, the trial court did not abuse its discretion here.

¶ 46 Loss of Profits

¶ 47 Tuckaway's next argument on appeal is that the trial court erred in granting defendants' motions *in limine* to bar Tuckaway from presenting evidence on the issue of lost profits relative to Lot 62. Our standard of review of a trial court's decision to grant or deny a motion *in limine* is the abuse of discretion standard. *Alm v. Loyola University Medical Center*, 373 Ill. App. 3d 1, 4 (2007). A trial court abuses its discretion only if it exceeds the bounds of reason and ignores recognized principles of law or if no reasonable person would take the position adopted by the court. *Id.* Here, defendants filed motions *in limine* seeking to bar the introduction of evidence of lost profits. Specifically, defendants wanted to prevent Tuckaway from arguing that its inability to build on Lot 62 due to the existing encumbrances prevented it from making a profit.

¶ 48 The trial court postponed ruling on the motion until it heard more evidence in the case. After hearing testimony from Allenson and Merkhaef, the trial court noted that had defendants not been negligent, the mortgage would have been properly recorded, but that the encumbrances against Lot 62 would still have existed. The recording of the mortgage would not have removed the prior encumbrances. To the extent that Tuckaway argued that if defendants had done a title search prior to recording the mortgage and discovered the encumbrances it would not have entered into the deal, the trial court found that then Tuckaway would not have built a home on Lot 62 either, and therefore would not have had any profits. The trial court found that there was no testimony or evidence introduced that indicated that had Tuckaway known of the encumbrances on Lot 62, it would have cleared the encumbrances, paid them off, and then built a home on the property and made a profit. This was far too speculative, and thus the trial court

properly granted defendants' motion in *limine* with regards to loss of profits. *Alm*, 373 Ill. App. 3d at 4; *People v Wheeler*, 226 Ill. 2d 92, 133 (2007) (trial court properly excluded speculative evidence).

¶ 49 Loss of Interest

¶ 50 Tuckaway's final contention on appeal is that the trial court erred when it granted defendants' motion *in limine* to bar Tuckaway from eliciting testimony relative to interest at trial. Tuckaway argues that as a result of defendants' negligence, not only did it lose the right to collect on the principle of the mortgage, but also on the interest. We reiterate that our standard of review of a trial court's decision to grant or deny a motion *in limine* is the abuse of discretion standard. *Alm*, 373 Ill. App. 3d at 4. A trial court abuses its discretion only if it exceeds the bounds of reason and ignores recognized principles of law or if no reasonable person would take the position adopted by the court. *Id*.

¶ 51 Defendants argued that evidence of interest was not relevant since this was a malpractice lawsuit to recover damages for the value of Tuckaway's security interest in Lot 62 if it had been properly recorded, and that therefore the only element of damages relevant for the jury's consideration was the damages caused by the loss of the property. It is true that irrelevant evidence is not admissible. *Downey v. Dunnington*, 384 Ill. App. 3d 350, 387 (2008). Relevant evidence is evidence that has any tendency to make the existence of a fact that is of consequence to the determination of the action either more or less probable than it would be without the evidence. *Id*.

¶ 52 Here, the trial court found that interest was not relevant to the issue of damages since Tuckaway had already recovered on the notes in a prior judgment. The trial court found that the only issue in this case was the mortgage and the property, and that therefore the only measure of

damages was the loss of the mortgage and the loss of the property. We find that the trial court did not abuse its discretion in barring testimony relative to loss of interest where such testimony would not have been relevant to the issue in this case. *Downey*, 384 Ill. App. 3d at 387 (irrelevant evidence is inadmissible).

¶ 53 CONCLUSION

¶ 54 Ultimately, because we find that the damages were not against the manifest weight of the evidence, and that the trial court did not abuse its discretion in ruling on both discovery issues and trial issues pertaining to damages, we find that there is no need for a new trial on damages. *Merrill v. Hill*, 335 Ill. App. 3d 1001, 1006 (2002) (a new trial on damages may be ordered only if the damages are manifestly inadequate or if it is clear that proved elements of damages have been ignored or if the amount awarded bears no reasonable relationship to the loss suffered by the plaintiff).

¶ 55 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 56 Affirmed.