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2013 IL App (3d) 120960-U

Order filed October 11, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

JUAN JAIME and MARIA JAIME, Plaintiffs-Appellees, v. ALFONSO SAUCEDO and ISANDREA CARRILLO SAUCEDO, Defendants-Appellants.	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois Appeal No. 3-12-0960 Circuit No. 09–L–57 Honorable Raymond Rossi, Judge Presiding.
ALFONSO SAUCEDO and ISANDREA CARRILLO SAUCEDO, Counter-Plaintiffs, v. JUAN JAIME and MARIA JAIME, Counter-Defendants.	

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Lytton and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial judge erred by granting judgment *n.o.v.* where the jury's verdicts were supported by evidence and did not constitute a compromise verdict.

¶ 2 In 2007, defendants/counter-plaintiffs Alfonso and Isandrea Saucedo (collectively "defendants") entered into a ten-year lease of an unfinished space in a strip mall owned by plaintiffs/counter-defendants Juan and Maria Jaime (collectively "plaintiffs"). In addition, plaintiffs loaned defendants $100,000, documented by a mortgage note, to modify the unfinished space into a suitable space for a grocery store.

¶ 3 Plaintiffs filed a complaint on January 23, 2009, alleging defendants did not repay the mortgage note in full, as agreed, by April 4, 2008. Defendants filed an affirmative defense of partial satisfaction of $42,000 on the note, and filed a four-count second amended counterclaim.

¶ 4 The jury returned a verdict finding defendants failed to perform the terms of the mortgage note, but found plaintiffs did not suffer any monetary damages. The jury found against defendants on their counterclaim. Plaintiffs filed a motion for judgment notwithstanding the verdict (judgment *n.o.v.*) on the issue of damages. The court granted plaintiffs' motion and entered judgment against defendants in the amount of $58,000 plus interest, costs, and attorney's fees. Defendants appeal this decision of the court. We reverse and remand.

¶ 5 BACKGROUND

¶ 6 In 2007, plaintiffs Juan and Maria Jaime owned property they were renovating and developing into a strip mall on Ohio Street in Joliet, Illinois. In 2007, defendants Alfonso and Isandrea Saucedo entered into a ten-year lease with plaintiffs to develop and operate a grocery store in plaintiffs' developing strip mall. On April 4, 2007, plaintiffs loaned defendants

$100,000 and executed a "Mortgage Note," secured by a "Junior Encumbrance Mortgage." The terms of the mortgage note included an 8.25% per annum interest rate on the full $100,000 balance, with said interest payable monthly in the amount of $687.50 beginning the last day of April 2007, and continuing each month thereafter until the principal balance was paid in full. The note further required payment of the $100,000 principal in full by April 4, 2008, and provided for default interest at a rate of 12% per annum and attorney fees for collection and enforcement of the note.

¶ 7 Plaintiffs filed a complaint on January 23, 2009, alleging defendants did not pay the note in full by April 4, 2008, and failed to pay monthly interest payments "since October 2008." On April 20, 2009, defendants filed an affirmative defense of partial satisfaction in the amount of $42,000 on the note along with a counterclaim. On May 27, 2010, defendants filed a four-count second amended counterclaim based on four alternate counts of breach of an oral contract.

¶ 8 The jury trial began on May 2, 2012. Plaintiffs' first witness, Isandrea Saucedo , testified she and her husband currently operated the Super Rio Grande grocery store, in Joliet, Illinois. She said this store was originally located in plaintiffs' strip mall on Ohio Street in 2007 and 2008. Isandrea testified she signed the $100,000 mortgage note and separate mortgage at issue, but stated she did not take part in any negotiations. She understood she and her husband were borrowing $100,000 to modify the unfinished space to make it suitable for a grocery store.

¶ 9 Next, as plaintiffs' witness, Alfonso testified he and his wife currently owned the Super Rio Grande grocery store, which was originally located at plaintiffs' Ohio Street strip mall. Alfonso said, in 2007, he and Juan spoke several times about opening a grocery store at the Ohio Street mall, but Alfonso told Juan he did not have the money at that time to open a grocery store.

Consequently, Alfonso and his wife borrowed $100,000 from defendants to improve the mall space so they could open the grocery store. Alfonso said he and Isandrea signed a mortgage note to secure the $100,000 loan, and also signed a mortgage using their house as collateral. Additionally, Alfonso stated he and his wife signed a 10-year lease for the portion of the mall where the grocery store was located.

¶ 10 Prior to signing the note, Alfonso said he and Juan reached a separate verbal agreement that Juan would have the option to purchase the grocery store from defendants after it became a successful business, offsetting the $100,000 "loan" against the purchase price. Alfonso said he wanted to put that purchase agreement in writing but Juan said Maria would not agree to it. Alfonso testified he repaid the full $100,000 principal amount back to plaintiffs and paid monthly interest payments as well.

¶ 11 Plaintiff Maria Jaime testified she and Juan now owned and operated the grocery store at their Ohio strip mall. In August or September of 2008, Maria said defendants moved out of the strip mall and established their business at another location.

¶ 12 Maria testified she took care of the finances during the construction of the strip mall. Maria stated defendants never repaid the $100,000 loan. Maria agreed, before the loan, the space was basically an "empty shell" which allowed renters to finish the space according to their needs.

¶ 13 Maria explained she and Juan secured a construction loan to finance the original development of the strip mall, under the business name of Three Brothers, Inc., and the bank appointed the title company to pay the contractors. Maria testified the title company required a sworn statement regarding work completed at the mall before the funds from plaintiffs' construction loan could be disbursed to the provider of that work.

¶ 14 Maria testified she and Juan loaned an additional $42,000 to Alfonso which he received in the form of $1,700 in cash and four separate title company disbursement checks delivered directly to Alfonso, in August and September of 2007, in the amounts of $2,000, $30,000, $6,300, and $2,000. The exhibits in the record reveal Maria submitted sworn statements to the title company stating that Alfonso completed certain work in the amounts disbursed. However, Maria testified Alfonso did not do the work listed in the sworn statements, and she submitted these statements to get the money released from the title company.

¶ 15 Maria said the parties had a separate verbal agreement, which was not reduced to writing, providing that the separate $42,000 loan from plaintiffs was to be repaid directly to Juan. Maria testified Alfonso repaid them the $42,000 loan in full, by check, in September of 2008,[1] but he paid nothing toward the $100,000 mortgage note.

¶ 16 Next, Juan testified he purchased the property at 10 Ohio Street, Joliet, Illinois, and, in 2006, he began construction on that property to convert it into a strip mall. Juan said he originally planned to operate a liquor store and a laundromat in the space where the grocery store opened. However, the city of Joliet would not issue Juan a liquor license for a liquor store.

¶ 17 Juan said Alfonso asked to lease the same space to open a grocery store but said he did not have enough cash to make the necessary improvements to open the grocery store. Consequently, Juan loaned Alfonso $100,000. The loan was secured with a mortgage note, dated April 4, 2007, and a mortgage on defendants' house. The mortgage note was to be repaid in full by April 4, 2008, with a 12% default interest rate if the note was not repaid by that date.

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[1] Although Maria testified the $42,000 check was paid in 2008, a copy of the check shows it was dated September 22, 2007, and cashed by Juan on September 24, 2007.

¶ 18 Juan stated he subsequently loaned Alfonso an additional $42,000 because Alfonso said he did not have enough money to purchase the inventory for the grocery store. Juan said most of the money for the $42,000 loan came from the title company. He acknowledged submitting sworn statements to the title company claiming Alfonso performed work at the mall when, in fact, Alfonso did not perform the work. Juan stated he was not supposed to do this with the title company money and when Alfonso paid him the $42,000, Juan returned it directly to the title company.

¶ 19 Juan testified the space leased to Alfonso was 5,000 square feet, and an "empty shop" when Alfonso leased the space. Juan stated he installed some of the drywall but, other than that, the space was unfinished and each tenant finished the property according to his own needs. Juan denied he agreed to reimburse Alfonso for the costs of permanent improvements to the building. Juan testified Alfonso did not pay any money toward the principal or the interest on the $100,000 loan.

¶ 20 Juan testified defendants signed a 10-year lease for the grocery store. According to the written lease agreement, Juan stated the monthly rent was $8,000, but Alfonso did not pay $8,000 per month. Subsequently, Juan modified the written lease by reducing the rent to $6,000 per month, which was documented in a letter signed by Juan, so Alfonso could qualify for his own loan through his bank. Juan said Alfonso verbally agreed to pay him an additional $2,000 per month on the side, outside the terms of the $6,000 per month lease. After Alfonso fell behind in rent payments, Juan said he gave notice to Alfonso to vacate the grocery store.

¶ 21 Juan testified he filed a complaint to collect unpaid rent, in a separate proceeding, and the judge ordered Alfonso to pay the balance of the rent. During cross-examination, Juan admitted

the parties reached an agreement outside of court. After Alfonso paid the agreed amount, the court dismissed the separate rent case with prejudice.

¶ 22 Juan testified Alfonso removed everything from the store when he left, including "part of the electricity, the breakers, *** the dropped ceiling, more things." Juan spent $240,000 of his own money to reopen the grocery store, including the purchase of new equipment, because Alfonso took all of the equipment with him when he left.

¶ 23 After plaintiffs rested, defendants presented evidence regarding their defense and counterclaims. Alfonso testified he met Juan in 1993. In 2007, Alfonso told Juan that a specific area of the strip mall would make a great grocery store and a good anchor for the mall. According to Alfonso, after about 10 conversations of this nature, Juan asked what it would take to open a grocery store in his strip mall. Alfonso said he told Juan it would take over $200,000 cash up front to make improvements to the property because there was no cement, plumbing, or drywall in the store space and only gravel flooring. According to Alfonso, he told Juan it would take approximately $750,000 to make the improvements to the building, install refrigeration, and buy inventory to open the grocery store.

¶ 24 Alfonso told Juan he did not have enough capital, at that time, to develop the store himself. Alfonso agreed to open a grocery store in plaintiffs' mall, in exchange for Juan's promise to buy the grocery store, after it became well-established, in an amount equal to Alfonso's expenses plus a $200,000 profit. Alfonso said he also wanted a 10-year lease, to give him time to reimburse his own investment in the grocery store, in the event Juan did not buy the store from Alfonso.

¶ 25 Alfonso testified plaintiffs loaned him $100,000, which he used to install plumbing, the

cement floor, and the interior walls. Alfonso said he invested substantial amounts of his own money to complete the improvements, by borrowing from friends and family members. He also obtained his own bank loan for $125,000, for equipment and inventory, using that equipment and inventory as collateral to secure the bank loan.

¶ 26 Alfonso said the original agreed amount of rent was $4,000 per month, but the actual written lease said it was $8,000 per month to help plaintiffs obtain their own financing. Alfonso said he and Juan agreed to change the lease to the correct amount at a later date. Therefore, Juan did not charge Alfonso the full $8,000 in rent. According to Alfonso, as long as Juan did not charge Alfonso late fees or demand more rent, it did not matter. Eventually, Juan brought a new lease to Alfonso with rent at $6,000 per month which, when Alfonso again questioned the amount, Juan said his attorney made a mistake and he would change it again. Alfonso said he continued to pay $4,000 per month as rent without Juan demanding more rent or charging late fees.

¶ 27 Alfonso described the initial condition of the commercial space as "just a shell." Alfonso said he personally expended his own money to obtain and pay for permits to install the following improvements: the cement flooring, plumbing, bathrooms, interior walls, ceiling tiles, some drywall, and the duct work and thermostats. Alfonso said it personally cost him about $350,000 to make the space suitable for a grocery store.

¶ 28 Alfonso testified the parties agreed Alfonso would sell the store to Juan when the store reached at least $1 million in gross annualized sales. In 2008, when annual sales started reaching the $1 million annualized sales mark, Juan sent a letter to Alfonso offering to purchase the store from Alfonso for $350,000, providing Alfonso would leave everything behind. According to

Alfonso, he refused this written offer because Alfonso had $735,000 invested in the store and he wanted full reimbursement and to make an additional $200,000 profit. Therefore, Alfonso felt Juan should pay approximately $950,000 for the store.

¶ 29 Alfonso said, in August 2008, Juan stopped coming to the store everyday. Alfonso learned Juan had been talking to Alfonso's employees about whether they would stay on and work for Juan. Slowly, Alfonso said he and Juan started losing trust in each other.

¶ 30 In September 2008, Juan served Alfonso with a 10-day eviction notice. Alfonso then relocated his store to another location and removed only his equipment and current inventory. These items served as collateral for Alfonso's own loans, including: the refrigeration units and their compressors, shelving, counters, meat cases, and part of the grease hood. Alfonso said he left all of the plumbing, tile and flooring, duct work, and electrical work. Alfonso said there was no damage to Juan's building.

¶ 31 Alfonso stated he suffered significant financial losses when Juan gave him the 10-day notice to vacate the grocery store. Alfonso testified he lost $30,000 in meat alone because meat cannot be returned to a vendor and has an expiration date. Many other items had to be discarded because of shelf life and expiration dates. Alfonso also had to hire professionals to remove all of his coolers and compressors within the 10 days, place them in temporary storage, and then relocate them to the new store. Alfonso estimated he paid, or lost, a total of $344,000 to quickly close his store in Juan's mall and eventually relocate to a different location.

¶ 32 Alfonso clarified he only received one loan from Juan for $100,000. He testified he repaid $42,000 by check (dated September 22, 2007) toward that loan. According to Alfonso, the other checks issued to him from defendants were for work he performed or for Alfonso's

expenditures Juan agreed to pay. Alfonso described some exhibits as examples of purchases he picked up and paid for on behalf of Juan, and one was in the amount of $1,924.56 from Menards which Juan reimbursed him $2,000 for this transaction alone. Alfonso testified he made well over $200,000 of improvements to Juan's building which remained at the site after he left and for which Alfonso was not reimbursed.

¶ 33 Alfonso called Jill Gassensmith, a CPA in Joliet, as a witness. Gassensmith prepared Alfonso's monthly financial statements, sales tax returns, payroll tax returns, and annual corporate tax returns. Specifically, for the month of August 2008, Gassensmith said Alfonso's gross monthly sales were approximately $90,000 making his annualized sales amount over $1 million.

¶ 34 Ronelia Mendoza testified she currently worked for Alfonso and had been working for him for four years, both at the Ohio Street store and at Alfonso's new store. Mendoza said she remembered Juan asking Alfonso how sales were going at the store. Mendoza stated she recalled Juan also made statements to her about purchasing the grocery store from Alfonso. Upon cross-examination, Mendoza admitted Alfonso told her to come to court to testify in this case.

¶ 35 Gloria Gonzales next testified she previously worked for Alfonso at the grocery store in Juan's mall. Gonzales stated she usually saw Juan at the store every morning while she was working and Juan would ask Gonzales how the sales were going.

¶ 36 Salvador Ramirez testified he worked for Alfonso for four years and was employed at Alfonso's new grocery store as well as the Ohio Street store. Ramirez said he usually saw Juan at the Ohio Street grocery store two or three mornings each week. During the few months prior to Alfonso relocating his grocery store, Juan talked to Ramirez about staying on as Juan's

employee after Alfonso left. Ramirez said he thought Juan asked him about that because Alfonso was going to sell the store to Juan.

¶ 37 David Saucedo, Alfonso's cousin, testified he worked for Alfonso for the last five years, at both the mall grocery store and Alfonso's current grocery store. David said Alfonso employed him to do construction work at the strip mall prior to opening the grocery store. David said he helped install the walk-in coolers, the floors, and the ceiling. David said he also worked separately for Juan at the same time, and Juan gave him a master key for the mall in case deliveries needed to be made to other unleased units under construction in the mall. According to David, after the grocery store opened, Juan asked David how the business was doing, what items produced the best sales, and Alfonso's vendors.

¶ 38 On May 4, 2012, at the close of the evidence, the court granted plaintiff's motion for directed verdict regarding counts II, III, and IV of defendant's second amended counterclaim. In part, the trial court instructed the jury as follows:

> "If you find in favor of [plaintiffs], you must decide how much, if any, would fairly compensate [plaintiffs] for [defendants'] breach of contract. [Plaintiffs] have the burden of proving each element of damages claimed and that they occurred as a direct and natural result of [defendants'] breach of contract.
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> 'Direct Damages' are the amount of gain [plaintiffs] would have received if both the parties had fully performed the contract. You calculate the amount of this gain by determining the value of the contract benefits [plaintiffs] did not receive because of [defendants'] breach and the subtracting from that value, the amount you calculate the

value of whatever expenses [plaintiffs'] saved because of the breach."

¶ 39 The jury instructions asked the jury to determine whether plaintiffs performed their obligations under the contract and whether plaintiffs proved defendants breached the contract.[2] The jury answered those two questions in the affirmative. The next jury instruction read: "Did [plaintiffs] prove they sustained damages result[ing] from [defendants'] breach?" The jury checked the box labeled, "No." The instructions then told the jury, if its answer was "no," it should sign "Verdict B" which stated, "We, the jury, find for [defendants] and against [plaintiffs]." The jury signed Verdict B in the instructions.

¶ 40 With respect to count I of defendants' amended counterclaim, the jury found defendants did not prove a verbal contract existed requiring the plaintiffs to purchase the store from defendants. Therefore, the jury found for plaintiffs and against defendants on that counterclaim.

¶ 41 On May 29, 2012, plaintiffs filed a "Motion for Judgment Notwithstanding the Verdict or New Trial," claiming the overwhelming evidence adduced at trial showed defendants did not repay the $100,000 mortgage note, therefore, the court should enter judgment *n.o.v.* against defendants for $100,000 plus interest and costs. In the alternative, plaintiffs contended the jury's award of no damages was contrary to the evidence and the court should grant a new trial if it did not enter judgment *n.o.v.*. At most, plaintiffs argued defendants may be entitled to a set off of $42,000, if the jury believed defendants' testimony, and plaintiffs would then be entitled to judgment for $58,000 plus interest. Plaintiffs filed an additional petition asking for "all costs, expenses, and reasonable attorney's fees" as allowed in the mortgage note, specifically,

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[2] Regarding the issue of whether defendants breached the contract, the jury was instructed that, to show breach of contract, plaintiffs must prove defendants failed to "Pay the principal amount of $100,000 plus interest accrued on April 4, 2008."

$28,293.96 for plaintiffs' attorney fees and expenses of $2,008.47.

¶ 42 Defendants' responded to this motion claiming defendants paid $42,000 by check toward the $100,000 loan. For the balance of the loan, defendants argued they made more than $100,000 in improvements to plaintiffs' mall property, leaving behind in plaintiff's building over $200,000 of non-reimbursed improvements that defendants could not recoup after plaintiffs evicted defendants with a 10-day notice. Defendants argued plaintiffs directly benefitted from those improvements when plaintiffs began operating a grocery store in the same space. Therefore, according to defendants, the jury properly determined plaintiffs did not suffer monetary damages according the jury instructions the court provided.

¶ 43 After a hearing on the pending motions, on October 25, 2012, the court granted plaintiffs' motions and entered judgment *n.o.v.* for plaintiffs in the amount of $58,000 in principal plus $27,840 in interest and penalties, $18,799.46 for attorney's fees, and $2,008.47 in expenses, totaling $106,647.93. Defendants filed a timely appeal of this court order.

¶ 44 ANALYSIS

¶ 45 On appeal, defendants argue the trial court erred by granting judgment *n.o.v.* because the evidence of damages did not overwhelmingly favor plaintiffs. Alternatively, defendants contend the jury appeared to enter compromise verdicts warranting a new trial. Finally, defendants argue that, by re-weighing the facts of the case, the trial court effectively deprived defendants of their right to have a jury trial.

¶ 46 A trial court's grant of a judgment *n.o.v.* is reviewed *de novo. Ries v. City of Chicago*, 242 Ill. 2d 205, 215 (2011). A motion for judgment *n.o.v.* should be granted only when the evidence and inferences therefrom, viewed in the light most favorable to the nonmoving party, so

overwhelmingly favors the moving party that no contrary verdict based on that evidence could ever stand. *Id*.; *York v. Rush-Presbyterian-St. Luke's Medical Center*, 222 Ill. 2d 147, 178 (2006); *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992). A court should not re-weigh the evidence, in ruling on a motion for judgment *n.o.v.*, nor is it concerned with the credibility of the witnesses; but a court may only consider the evidence and any of its inferences the light most favorable to the party resisting the motion. *Maple*, 151 Ill. 2d at 453. It is the province of the jury to resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide the weight to be given to the witnesses' testimony. *Id*. at 452. A reviewing court should not usurp the function of the jury or substitute its judgment on questions of fact fairly submitted, tried, and determined from the evidence. *Id*. at 452-53.

¶ 47 "Most importantly, a judgment *n.o.v.* may not be granted merely because a verdict is against the manifest weight of the evidence." *Id.* at 453. Moreover, a court cannot enter a judgment *n.o.v.* "if there is any evidence, together with reasonable inferences to be drawn therefrom, demonstrating a substantial factual dispute, or where the assessment of credibility of the witnesses or the determination regarding conflicting evidence is decisive to the outcome." *Id*. at 454.

¶ 48 In the case at bar, plaintiffs and defendants agreed Juan loaned Alfonso $100,000. Alfonso testified he repaid the loan and interest in full, and offered proof of payment of $42,000 to Juan by a check admitted into evidence, as well as testimony regarding oral agreements to offset any remaining amount due on the loan if the parties agreed on a suitable price for Juan to purchase the business from Alfonso on a future date. The jury, as factfinder, had the duty to judge the credibility of the witnesses regarding whether Alfonso repaid $42,000 toward the

original note or paid a separate, subsequent loan in that amount as plaintiff suggested. By agreement of the parties, the trial court instructed the jury, concerning their task at hand, as follows:

> "If you find in favor of [plaintiffs], you must decide how much, if any, would fairly compensate [plaintiffs] for [defendants'] breach of contract. [Plaintiffs] have the burden of proving each element of damages claimed and that they occurred as a direct and natural result of [defendants'] breach of contract.
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> 'Direct Damages' are the amount of gain [plaintiffs] would have received if both the parties had fully performed the contract. You calculate the amount of this gain by determining the value of the contract benefits [plaintiffs] did not receive because of [defendants'] breach and the subtracting from that value, the amount you calculate the value of whatever expenses [plaintiffs'] saved because of the breach."

The jury instructions asked the jury to determine, "Did [plaintiffs] prove they sustained damages result[ing] from [defendants'] breach?" The jury checked the box labeled, "No." The instructions then told the jury, if its answer was "no," it should sign "Verdict B" which stated, "We, the jury, find for [defendants] and against [plaintiffs]."

¶ 49 It is well-established the trial court should have granted judgment *n.o.v.* only if the evidence, viewed in a light most favorable to defendants, so *overwhelmingly* favored plaintiffs, demonstrating they suffered $58,000 in monetary damages, such that no contrary verdict based on that evidence could ever stand. See *York*, 222 Ill. 2d at 178.

¶ 50 Both parties agreed the space was a "shell" before Alfonso undertook the task of

converting the space into a grocery store. Alfonso testified he spent approximately $344,000 to improve the space by installing concrete flooring, inside walls, plumbing, and electrical and duct work to make the store operational. Plaintiffs did not dispute this evidence regarding Alfonso's improvements to the space totaling more than $300,000.

¶ 51 In addition, Juan testified after Alfonso was evicted, Juan spent $240,000 of his own money to replace equipment, such as refrigerators, which Alfonso took with him when he left. This evidence supported the view that plaintiffs were saved the expense of making the initial improvements to the "shell" which ultimately allowed plaintiffs to operate a grocery business in the same space, after just one year and a half, without paying for the initial and permanent improvements, including cement floors, walls, electrical and duct work.

¶ 52 The jury heard testimony regarding discussions about Alfonso's desire for Juan to purchase the store after it became successful, and Alfonso's back up plan to recoup his investment over the course of the 10-year lease in the event Juan did not purchase the business for a fair price as contemplated. The jury also heard many versions of the questionable side agreements the parties discussed regarding inflated rent amounts, and then deflated rent prices set out in a modified lease agreement, to help to each man manipulate their expenses and or income for the purpose of facilitating loan agreements with their respective banks.

¶ 53 Based on the evidence, the jury could fairly infer the improvements to the property, such as cement, interior walls, plumbing, electrical work, duct work and other improvements left behind, saved plaintiffs considerable expenditures and were worth more than the balance due on the loan. Thus, the evidence did not overwhelmingly favor plaintiffs or conclusively establish plaintiffs suffered $58,000 in "direct damages" as defined in the jury instructions. Here, we

conclude the jury's finding that plaintiffs did not suffer monetary damages from defendants' breach of the mortgage note was soundly based on the evidence, or reasonable inferences from the evidence, and was neither unreasonable nor arbitrary. Based on our *de novo* review of this case, we conclude the trial judge erred in granting plaintiffs' motion for judgment *n.o.v.*

¶ 54 While jury verdicts, which indicate that the jury made compromises on damages and liability, cannot be allowed to stand, it is well-established that a verdict of $0 damages is proper if there is evidence that no damages were suffered. *Cardona v. Del Granado*, 377 Ill. App. 3d 379, 385 (2007); *Svetanoff v. Kramer,* 80 Ill. App. 3d 575, 578 (1979). Even though the jury concluded the pre-loan discussions did not create a binding agreement for Juan to buy the store once annual sales reached a certain level, there was ample evidence establishing Alfonso used the $100,000 plus his own money to make permanent improvements to the "shell," ultimately benefitting plaintiffs who evicted defendants from the grocery store less than 1 ½ years into the 10-year lease. Thus, we conclude the jury's decision, finding plaintiffs suffered $0 damages resulting from the breach of the mortgage note, did not result from a compromise verdict.

¶ 55 Finally, defendants contend the trial court violated defendants' right to a jury trial in granting a judgment *n.o.v.* where there were disputed facts presented to the jury. Years ago, our supreme court decided the case of *Hughes v. Bandy*, 404 Ill. 74 (1949), wherein the court held that the entry of a judgment *n.o.v.*, under the facts of that case, constituted a wrongful exercise of judicial power and authority which effectively deprived the defendant of the right to a jury trial. *Id.* It is well-established that the jury is to resolve conflicts in the evidence, to pass upon the credibility of the witnesses, and to decide the weight to be given to the witnesses' testimony. *Maple*, 151 Ill. 2d at 452. This case involved a factual dispute as to whether defendants paid off

the full note and interest, whether defendants paid $42,000 towards the note, and whether plaintiffs suffered any damages from defendants' failure to repay the full $100,000 mortgage note in cash. Under these circumstances, we conclude the trial court usurped the function of the jury by deciding defendant repaid only $42,000, and plaintiffs did, in fact, *overwhelmingly* prove they sustained direct damages in the amount of $58,000.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, we reverse the judgment of the circuit court of Will County and remand this case for the trial court to enter judgment in accordance with the jury verdicts.

¶ 58 Reversed and remanded.