

No. 1-11-1961

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

PENROD PREMIUM CONSIGNMENT	)	
CIGARS LTD.,	)	
	)	
Plaintiff-Appellant,	)	Appeal from the
	)	Circuit Court of
v.	)	Cook County.
	)	
	)	No. 08 M1 20938
JAMIE VALLE,	)	
	)	The Honorable
Defendant-Appellee.	)	Casandra Lewis,
	)	Judge Presiding.
	)	
	)	

---

JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* In a small claim for property damage to plaintiff's vehicle arising from a collision with defendant's vehicle, the trial court's directed verdict in favor of defendant and against plaintiff was proper because certified bystander's reports reflected that plaintiff had failed to present proof of monetary damages or an offer of proof at trial and thus failed to prove the

1-11-1961

damage element of the case.

¶ 2 Plaintiff, Penrod Premium Consignment Cigars Ltd., filed a small claim (see Illinois Supreme Court Rule 281 (eff. Jan. 1, 2006)) against defendant, Jamie Valle, for \$3,588.61 in property damage and court costs arising out of a vehicular accident that occurred on December 7, 2008, near the intersection of Foster and Cicero Avenues in Chicago. The trial court entered a directed verdict in favor of defendant and against plaintiff because plaintiff presented no evidence of monetary damages.

¶ 3 Plaintiff appeals, contending that the trial court erred in denying his pretrial motion to present cost estimates and supporting affidavits as proof of damages, and that the trial court therefore erred in granting the directed verdict.

¶ 4 The record on appeal contains the common law record, as well as two bystander's reports regarding the trial on June 15, 2011.

¶ 5 On December 22, 2009, the trial court denied plaintiff's June 25, 2009, pretrial motion to admit certain evidence, namely, a Sign-A-Rama cost estimate dated December 29, 2008, for \$373.56, to repair lettering on plaintiff's pickup truck, and a Euro Collision preliminary estimate dated December 8, 2008, itemizing damages to plaintiff's pickup truck in the total amount of \$3,015.50. Plaintiff had sought to have the estimates allowed as nontestimonial evidence under the business record exception to the hearsay rule.

¶ 6 The first bystander's report, which the trial court certified as a true and accurate statement of the proceedings that transpired during the trial on June 15, 2011, reflects the following. At

1-11-1961

trial, plaintiff "offered no evidence of cost to repair Plaintiff's vehicle." From the diagrams of the accident, the police officer believed that plaintiff was the driver at fault, although the officer could not remember the circumstances of the accident. Plaintiff then rested. The trial court asked plaintiff's counsel "a minimum of two times" if he rested or if he had other evidence to offer. Plaintiff's counsel responded each time that plaintiff had rested. Plaintiff did not present any motions prior to resting. Defense counsel moved for a sidebar. During the sidebar, defense counsel moved for a directed verdict based on plaintiff's failure to present any evidence of monetary damages on which the jury could reach a verdict without speculation. Plaintiff's counsel argued that the photographs of the pickup truck depicted damages, but plaintiff did not present any motions or any offers of proof. The trial court directed a verdict in favor of defendant and against plaintiff.

¶ 7 The second bystander's report, which the trial court also certified as a true and accurate statement of the proceedings that transpired during the trial on June 15, 2011, reflects the following. Plaintiff did not make any motions prior to resting, and plaintiff "presented no evidence of money damages prior to resting." Furthermore, plaintiff "made no motion or attempt to offer evidence of money damages prior to resting his case in chief, by way of live testimony nor by any business records exception to the hearsay rule, at the trial of this case." Defense counsel moved for a sidebar, during which he made a motion for a directed verdict based on plaintiff's failure to present evidence of monetary damages on which the jury could reach a verdict without speculation. Plaintiff responded that the jury saw damage in the photographs of

1-11-1961

plaintiff's vehicle. Plaintiff neither made nor renewed any motions during the sidebar conference to offer evidence of monetary damages through live testimony or through the business records exception to the hearsay rule. Nor did plaintiff present any offers of proof. The trial court granted defendant's motion for a directed verdict.

¶ 8 On appeal, plaintiff contends that the trial court erred in granting a directed verdict because the trial court erroneously denied plaintiff's pretrial motion to present nontestimonial evidence of its repair costs in the form of the Sign-A-Rama and Euro Collision cost estimates and supporting affidavits prepared by third parties near the time of the collision. Plaintiff argues that the estimates are business records admissible as an exception to the hearsay rule, especially now given the codification of the rules of evidence in Illinois, and the codification's adoption of the federal hearsay rules. Plaintiff argues that he presented the cost estimates on June 25, 2009, and during the sidebar on June 15, 2011, in response to defendant's motion for a directed verdict, and that they were self-authenticating because they contained the requisite certification. Plaintiff argues that it (plaintiff) was the third party custodian of the cost estimates and should have been permitted to submit them as evidence.

¶ 9 Defendant responds that plaintiff has waived the issue whether the evidence was improperly excluded because plaintiff failed to make an offer of proof. Defendant alternatively argues that plaintiff failed to present any evidence of monetary damages at trial. Defendant observes that there was no paid repair bill, no repair estimate, and no evidence concerning the value of the vehicle. Defendant argues that estimates of repairs would not have been sufficient

1-11-1961

proof, but that plaintiff did not even present estimates.

¶ 10 Plaintiff replies that it submitted proof of monetary damages on June 25, 2009, and that the trial court abused its discretion in excluding it from evidence. Plaintiff argues that the June 25, 2009, pretrial motion submitting proof of monetary damages constituted an offer of proof. Plaintiff maintains that photographs of the vehicle prove that repairs had to be made to the tail light and the lettering on the rear panel that housed the tail light. Plaintiff argues that it presented sufficient proof of repairs on June 25, 2009, in the form of unpaid repair bills or cost estimates with an affidavit, in conjunction with photographs of the damaged vehicle and the police officer's damage diagrams that were offered during pretrial proceedings and at trial. Plaintiff complains that he has been held to a higher standard than defendant and that he had no choice but to incorporate his recollections into his brief because the trial court refused to certify his recollections for inclusion in the record on appeal. Plaintiff observes that the trial court refused to compel the appearance of an eyewitness to the accident, namely, defendant's fiancée, who had been a passenger, but the trial court compelled the appearance of a mere custodian to lay a foundation for the business records, which were nontestimonial hearsay evidence. Plaintiff observes further that the trial court also rejected the diagrams.

¶ 11 A directed verdict should be granted only when "all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors [the] 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 *de novo* the grant of a directed verdict. *Susnis v. Radfar*, 317 Ill.

1-11-1961

App. 3d 817, 825 (2000).

¶ 12 Supreme Court Rules 321 (eff. Feb. 1, 1994) and 323 (eff. Dec. 13, 2005) require a report of proceedings or an acceptable substitute, such as a bystander's report or agreed statement of facts, as well as the judgment appealed from and the entire original common law record. "In order for a [bystander's] report to have any value, we must assume that the court or an opposing party will correct any *misleading* omission in a proposed report. An omission is misleading if it would tend to counter the effect of something included in the report." (Emphasis in original.) *People v. Majka*, 365 Ill. App. 3d 362, 368, 369 (2006). Discovery and motions require prior leave of court in small claims cases. Illinois Supreme Court Rule 287 (eff. Aug. 1, 1992).

¶ 13 Here, plaintiff could have sought leave of court to reconsider the exclusion from evidence of the Sign-A-Rama and Euro Collision cost estimates at trial. Plaintiff alleges in its brief that counsel tried to present the cost estimates during the sidebar, but the bystander's reports clearly refute that allegation and disclose that plaintiff failed to present proof of monetary damages at trial and failed to present an offer of proof. "[W]e must assume a bystander's report is materially complete on the points it addresses." *Majka*, 365 Ill. App. 3d at 368; see also *People v. Hernandez*, 409 Ill. App. 3d 294, 301 (2011). The trial court certified the bystander's reports as true and accurate, and those certifications were conclusive and cannot be contradicted by extrinsic matters, such as plaintiff's allegation in its brief that counsel presented the cost estimates during the sidebar. See *Hrosik v. J. Keim Builders*, 37 Ill. App. 3d 352, 354 (1976). Plaintiff could have offered proposed amendments or a proposed alternative to the bystander's

1-11-1961

reports (see Supreme Court Rule 323(c)), but nothing in the record indicates that plaintiff did so.

Under these circumstances, the trial court's directed verdict was proper.

¶ 14 The cases cited by plaintiff are distinguishable. For example, in *Saunders v. Wilson*, 114 Ill. App. 2d 380, 382-83 (1969), the appellate court held that the trial court should have allowed a repair bill into evidence as proof of the reasonable value of the repairs even though it did not display a "paid" stamp or other notation of payment, because the owner testified that he paid the bill. In the present case, the bystander's reports do not indicate that plaintiff testified he paid the bills. We have considered, and rejected, plaintiff's arguments on appeal.

¶ 15 The judgment of the circuit court is affirmed.

¶ 16 Affirmed.