

No. 1-17-0345

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

THE PATRIOT GROUP, LLC,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County
)
 v.)
) No. 10 L 03914
 HILCO FINANCIAL, LLC, n/k/a 1310 FINANCIAL,)
)
 LLC, HILCO TRADING, LLC, HILCO APPRAISAL)
)
 SERVICES, LLC, HILCO ENTERPRISE VALUATION) Honorable
 SERVICES, LLC and HILCO INC.,) Brigid Mary McGrath,
) Judge Presiding.
 Defendants-Appellees.)

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Affirming the judgment of the circuit court of Cook County granting summary judgment in favor of the defendants on fraud and negligent misrepresentation claims.

¶ 2 The Patriot Group, LLC (Patriot) appeals from orders of the circuit court of Cook County granting summary judgment to various “Hilco” defendants – described below – on claims of fraud and negligent misrepresentation. For the reasons discussed herein, we affirm.

¶ 3

BACKGROUND

¶ 4 The operative complaint is the second amended complaint¹ which provides, in part, as follows. Hilco Trading, LLC (Hilco Trading) was an Illinois-based company comprised of twenty subsidiaries which offered an array of business and financial services. In 2004, Hilco Trading decided to launch a new company focusing on asset-based lending, *i.e.*, providing loans to companies collateralized by their inventory, equipment, accounts receivable, or other assets. The new company, Hilco Financial, LLC (Hilco Financial)² began operations in 2005. Hilco Trading directly or indirectly owned approximately 84% of Hilco Financial.

¶ 5 In April 2005, Jeffrey Hecktman (Hecktman), the chief executive officer of Hilco Trading, approached Charles Forbes (Forbes), the managing partner and president of a division of Patriot, to determine whether Patriot would be interested in participating in a joint venture with Hilco Trading to fund the startup of Hilco Financial. Although the joint venture did not materialize, Patriot agreed to provide a junior secured loan to Hilco Financial. Hecktman represented that Hilco Trading would closely supervise the activities of Hilco Financial.

¶ 6 In November 2005, Hilco Financial was capitalized with: (a) a \$30 million senior secured facility provided by LaSalle Bank National Association (LaSalle) and Wells Fargo Bank, N.A. (Wells Fargo); (b) a \$20 million junior secured revolving mezzanine facility from Patriot pursuant to a subordinated credit agreement; and (c) a \$5 million equity contribution from Hilco Trading. The loan proceeds from Patriot were to be used by Hilco Financial to enter into asset-based loans to third-party borrowers that satisfied the criteria established in the subordinated credit agreement.

¶ 7 According to the operative complaint, Hilco Financial was “completely influenced,

¹ The second amended complaint was filed on June 20, 2011.

² Hilco Financial is now known as 1310 Financial, LLC.

dominated, and controlled by” Hilco Trading, despite holding itself out as an independent subsidiary. Patriot alleged that Hilco Financial was required to clear all prospective transactions through Hilco Trading and to obtain its approval of the structure and pricing of any deal. Patriot further alleged that through the accounting services provided by Hilco Trading to Hilco Financial, Hilco Trading prepared fraudulent financial statements, compliance certificates, and collateral reports that misrepresented the quality of Hilco Financial’s investment portfolio and the overall health of Hilco Financial itself. The fraudulent documents purportedly induced Patriot to continue to approve new – and risky – third-party loans that it would not have otherwise approved. Patriot further alleged that Hilco Trading directed two of its subsidiaries – Hilco Appraisal Services, LLC³ and Hilco Enterprise Valuation Services, LLC (together, the Appraisal Entities) – to perform inflated appraisals for Hilco Financial.

¶ 8 The senior secured facility matured in September 2007, and LaSalle and Wells Fargo elected not to renew the loan. Pursuant to a senior credit agreement dated September 27, 2007, Bayerische Hypo-Und Vereinsbank, AG, New York branch (HVB) – a bank that replaced LaSalle and Wells Fargo as the senior lender – agreed to extend credit to Hilco Financial in an amount not to exceed \$75 million. On the same date, Hilco Financial and Patriot executed an amended subordinated credit agreement which increased the credit facility to \$30 million.⁴ The borrowing formula in the agreement was intended to ensure that Hilco Financial’s obligations to Patriot were fully collateralized plus a minimum 10% equity cushion. In a subordinated pledge and security agreement, Hilco Financial granted Patriot a security interest in substantially all of Hilco Financial’s assets, subject to the senior position of HVB.

¶ 9 On January 31, 2008, Hilco Financial delivered a collateral report to Patriot which

³ Hilco Appraisal Services, LLC is now known as Hilco Valuation Services, LLC.

⁴ As part of the amended agreement, Patriot agreed to the replacement of the senior lender.

indicated that a loan issued by Hilco Financial to Colorado Railcar Manufacturing (CRM), with a principal balance of \$14 million, was in default. Following a meeting in late February 2008 to discuss the CRM default, Patriot allegedly learned of various false representations made in the disclosures, including the collateral reports of the eligible financed transactions. Patriot and HVB notified Hilco Financial of multiple events of default under their respective agreements. Hilco Financial did not make interest payments to Patriot after March 2008, and subsequently ceased operations and surrendered possession of the collateral to HVB, as the senior lender. Patriot sought approximately \$32 million in damages, representing principal and unpaid interest and expenses.

¶ 10 For purposes of this appeal, the key counts of the operative complaint were Counts I, II, III, and VIII. In Count I – a breach of contract count against Hilco Financial – Patriot alleged that Hilco Financial breached various obligations under the amended subordinated credit agreement by, among other things: failing to make loans that conformed to the required criteria in the agreement; failing to provide Patriot with information regarding material adverse changes; and effectuating modifications and waivers of financing documents for impaired borrowers that were materially adverse to Patriot’s interests. The circuit court entered an order granting summary judgment in favor of Patriot on Count I.⁵

¶ 11 In Count II against Hilco Financial and Count III against Hilco Trading, Patriot alleged fraud. According to Patriot, the Hilco entities intentionally failed to disclose loan impairments and knowingly prepared and/or delivered financial statements, compliance certificates, and

⁵ The transcript from circuit court proceedings on April 28, 2016, provides in part: “[T]he Court enters judgment in favor of the plaintiff and against Hilco Financial, now known as 1310 Financial LLC, on Count I of the second amended complaint in an amount to be determined at prove-up with the proviso that the defendant is not required to pay said judgment until further order of court and that the judgment may not be executed against any property of 1310 Financial LLC until there is a determination that the payment blockage referred to in the subordination and intercreditor agreement is no longer in effect.”

collateral reports that materially overstated Hilco Financial's assets, income and total equity.

After the circuit court initially granted partial summary judgment in favor of the defendants on Counts II and III, the parties moved for reconsideration and the defendants were ultimately granted complete summary judgment on those counts.

¶ 12 In Count VIII against the Appraisal Entities, Patriot alleged negligent misrepresentation, *i.e.*, that the defendants significantly overstated the value of the collateral of the underlying borrowers. Patriot contended that it suffered damages by relying on such inflated valuations in approving new third-party loans. Patriot further alleged that the defendants failed to adhere to the Uniform Standards of Professional Appraisal Practice or other applicable standards in the relevant industries. The circuit court granted summary judgment in favor of the Appraisal Entities on Count VIII.

¶ 13 After the circuit court entered an order pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), Patriot timely filed the instant appeal.

¶ 14 ANALYSIS

¶ 15 Patriot challenges the grant of summary judgment in favor of Hilco Financial and Hilco Trading on the fraud counts (Counts II and III respectively) and in favor of the Appraisal Entities on the negligent misrepresentation count (Count VIII).

¶ 16 Summary Judgment Standards

¶ 17 Summary judgment is proper whenever the pleadings, depositions, admissions, and affidavits on file, viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact between the parties and that the moving party is entitled to judgment as a matter of law. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 228 (2007); 735 ILCS 5/2-1005(c) (West 2016). In determining whether a genuine issue as to any material

fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162 (2007). “Summary judgment is a drastic measure and should only be granted if the movant’s right to judgment is free and clear from doubt.” *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 48. We review a circuit court order granting summary judgment *de novo*. *Murray*, 224 Ill. 2d at 228.

¶ 18 Fraud Counts (Counts II and III)

¶ 19 In Counts II and III of the operative complaint, Patriot alleged that Hilco Financial and Hilco Trading committed fraud. The elements of common law fraud are: (1) a false statement of material fact; (2) the defendant’s knowledge that the statement was false; (3) the defendant’s intent that the statement induce the plaintiff to act; (4) the plaintiff’s reliance on the truth of the statement; and (5) the plaintiff’s damages resulting from reliance on the statement. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496 (1996). See also *Doe v. Dilling*, 228 Ill. 2d 324, 342-43 (2008) (describing the elements of fraudulent misrepresentation as: “(1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance”). “A successful common law fraud complaint must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made.” *Connick*, 174 Ill. 2d at 496-97.

¶ 20 We initially observe that Patriot’s fraud allegations largely arise from the defendants’ purported failure to comply with the terms of the amended subordinated credit agreement.

Under Illinois law, however, injury from fraud must be more than just damages arising from a

breach of contract. See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 169 (2005) (stating that “simple breaches of contractual promises” did not support the plaintiffs’ consumer fraud count). As noted above, Patriot was granted summary judgment on its breach of contract count against Hilco Financial (Count I). Presumably unable to pursue a breach of contract claim against Hilco Trading – because Hilco Trading was not a party to the amended subordinated credit agreement – Patriot appears to assert a breach of contract claim dressed up in the language of fraud. See *Turner v. Orthopedic and Shoulder Center, S.C.*, 2017 IL App (4th) 160552, ¶ 45 (affirming the grant of summary judgment in favor of the defendant where “the purported consumer fraud is a dressed-up breach of contract”).

¶ 21 Patriot cites *Burress-Taylor v. American Security Insurance Co.*, 2012 IL App (1st) 110554, wherein the appellate court held that because the plaintiff properly stated a claim under the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.* (West 2008)) that was “separate and independent” of her breach of contract claim, her claim was not preempted by a specified section of the Illinois Insurance Code. *Burress-Taylor*, 2012 IL App (1st) 110554, ¶ 34. Unlike in *Burress-Taylor*, the fraud claims in the instant case do not appear to be “separate and independent” of the breach of contract claim, but instead are based on the financial statements and other documentation that Hilco Financial was contractually obligated to provide. To the extent that Patriot’s fraud allegations arise from the defendants’ alleged failure to comply with contractual promises, such allegations are not supported. See *id.* ¶ 32.

¶ 22 Even assuming that the fraud claims were separate and independent of the breach of contract claim, the first element of a fraud claim has not been satisfied, *i.e.*, a false statement of material fact. Patriot identifies four categories of purported false statements:

(1) misrepresentations regarding an additional \$4 million loan made to CRM in August 2007;

(2) misrepresentations regarding the value of warrants received from underlying borrowers;

(3) misrepresentations regarding the compliance of Hilco Financial's financial statements with generally accepted accounting principles (GAAP), specifically as to loan loss reserves; and

(4) misrepresentations regarding the absence of loan defaults and changes to the terms and eligibility of the underlying loans. We address each category below.

¶ 23 As to the CRM loan, the exhibits produced by the defendants reflect that Patriot was advised of the loan by Hilco Financial. For example, the Hilco Financial financial statements as of August 31, 2007, included information regarding a four-month "Additional Term Loan" to CRM in the amount of \$4 million. Furthermore, Patriot has not pointed to any evidence in the record that Hilco Trading made *any* statement with respect to this loan. *E.g. Addison v. Distinctive Homes, Ltd.*, 359 Ill. App. 3d 997, 1000 (2005) (requiring "a false statement of material fact *by the defendant*" (emphasis added)).

¶ 24 Patriot also contends that in May 2007, Hilco Financial's independent auditor, Grant Thornton, required a change in the accounting for warrants which had been received by Hilco Financial from certain underlying borrowers. A warrant is an instrument granting the holder a long-term option to buy shares of a company at a fixed price. Black's Law Dictionary 1820 (10th ed. 2014). According to Patriot, the decrease in Hilco Financial's equity caused by the accounting change resulted in a lower maximum borrowing base than had been applied using the incorrect valuation of the warrants.

¶ 25 Based on our review of the record, there is no indication that there was any misrepresentation regarding the value of the warrants themselves. Furthermore, as the circuit court recognized, Hilco Financial kept Patriot informed regarding Grant Thornton's requirements concerning the valuation of the warrants. As a general rule, a fraud claim cannot be based on a

matter of opinion. *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶ 19. To the extent that the initial valuations of the warrants – and Grant Thornton’s subsequent valuations – constitute matters of opinion, Patriot’s fraud claim is unsupported. *Id.* ¶ 20 (noting that “[w]hen the speaker expresses only his own belief about a matter, without certainty, his statement is one of opinion, not fact”).

¶ 26 Patriot also contends that the defendants misrepresented that Hilco Financial’s financial statements were prepared in accordance with GAAP. Specifically, Patriot asserts that the defendants created an “after the fact” year-end loan loss reserve of more than \$12 million in April 2008. Loan loss reserves refer to the amount set aside to cover expected defaults or losses on loans. *Fait v. Regions Financial Corp.*, 655 F.3d 105, 108 n.1 (2d Cir. 2011). Loan loss reserves “reflect management’s opinion or judgment about what, if any, portion of amounts due on the loans ultimately might not be collectible.” *Id.* at 113. “Such a determination is inherently subjective,” and “estimates will vary depending on a variety of predictable and unpredictable circumstances.” *Id.*

¶ 27 As noted above, an expression of opinion generally will not support an action for fraud. *Illinois Non-Profit Risk Management Ass’n v. Human Service Center of Southern Metro-East*, 378 Ill. App. 3d 713, 723 (2008). Financial projections are in fact considered to be statements of opinion, not fact. *Id.* Furthermore, statements concerning future intent or conduct are not actionable as fraud. *Id.* At its core, the creation of a loan loss reserve is premised on both financial projections and future events – *i.e.*, the ability to collect on a loan – and thus will not support a fraud-related claim. See *Abazari*, 2015 IL App (2d) 140952, ¶ 28. See also *DiLeo v. Ernst & Young*, 901 F.2d 624, 627 (7th Cir. 1990) (noting that “[i]f all that is involved is a dispute about the timing of the writeoff, based on estimates of the probability that a particular

debtor will pay, we do not have fraud”); *LoggerHead Tools, LLC v. Sears Holding Corp.*, 19 F. Supp. 3d 775, 782 (N.D. Ill. 2013) (providing that a statement which relates to future or contingent events, expectations, or probabilities, rather than preexisting or present facts, ordinarily does not constitute an actionable misrepresentation under Illinois law). Although Patriot’s expert, Gene Deetz (Deetz), opined regarding the timing and the amount of the loan loss reserves taken by Hilco Financial, such a differing opinion “does not make [defendant’s] valuation a statement of fact.” *Sirazi v. Panda Express, Inc.*, No. 08 C 2345, 2011 WL 6182424, at *5 (N.D. Ill. Dec. 13, 2011). In his deposition testimony, Deetz acknowledged that the determination of whether or not to present a loan loss reserve involves an “exercise [of] judgment.” Even assuming Hilco Financial’s failure to take a loan loss reserve could constitute a factual misstatement, there is no indication that it knowingly failed to record loan loss reserves on the financial statements. *E.g., All American Roofing, Inc. v. Zurich American Insurance Co.*, 404 Ill. App. 3d 438, 451 (2010) (noting that the plaintiff failed to identify any evidence in the record that the defendant’s representative “made the statement at issue knowing or believing it to be untrue”).

¶ 28 Patriot further alleged that the defendants made misrepresentations regarding the absence of loan defaults and changes to the terms and eligibility of the underlying loans. Even assuming that the defendants made false statements of material fact when reporting on the underlying loans, certain other elements of a fraud claim have not been satisfied. As observed by the Illinois Supreme Court, the reliance upon the misrepresentation must have been justified, *i.e.*, the other party had a right to rely on the statement. *Doe*, 228 Ill. 2d at 343. A “party is not justified in relying on representations made when ample opportunity exists to ascertain the truth of the representations before acting in reliance thereon.” *Commercial Nat’l Bank of Peoria v. Federal*

Deposit Insurance Corp., 131 Ill. App. 3d 977, 983 (1985). Accord *Miller v. William Chevrolet/GEO, Inc.*, 326 Ill. App. 3d 642, 651 (2001). “Generally, it is only where parties do not have equal knowledge or means of obtaining knowledge of the facts which are allegedly misrepresented that a person may justifiably rely on them.” *Seefeldt v. Millikin Nat’l Bank of Decatur*, 154 Ill. App. 3d 715, 719 (1987). Forbes testified that he did not read certain documents provided by Hilco Financial, some of which are the subject of Patriot’s action. He also acknowledged that Patriot was given broad authority under the amended subordinated credit agreement to examine Hilco Financial’s books and records regarding the underlying loans, yet failed to do so. “A person may not enter into a transaction with his eyes closed to available information and then charge that he has been deceived by another.” *Id.* at 719. In sum, while we recognize that whether a plaintiff’s reliance was reasonable is generally considered a question of fact (*Miller*, 326 Ill. App. 3d at 652), where, as here, “it is apparent from the undisputed facts that only one conclusion can be drawn, the question becomes one for the court.” *Kopley Group V, L.P. v. Sheridan Edgewater Properties, Ltd.*, 376 Ill. App. 3d 1006, 1018 (2007). See also *Dloogatch v. Brincat*, 396 Ill. App. 3d 842, 847 (2009) (noting that failure to prove justifiable reliance is fatal to a claim of fraudulent misrepresentation).

¶ 29 Hilco Trading also argues on appeal that the circuit court properly entered summary judgment because Patriot offered no evidence that its losses were caused by the alleged misrepresentations of Hilco Trading and Hilco Financial, as opposed to another cause, “including, most notably, the unprecedented recession that gripped worldwide markets and particularly impacted weak borrowers, like [Hilco Financial’s], at the exact same time.” As discussed below, we agree with this contention.

¶ 30 Case law in the securities fraud context is instructive on the issue of causation. Federal

courts have held that plaintiffs in securities actions must establish both actual causation (“transaction causation”) and proximate causation (“loss causation”). *Medline Industries, Inc. Employee Profit Sharing and Retirement Trust v. Blunt, Ellis & Loewi, Inc.*, No. 89 C 4851, 1993 WL 13436, at *11 (N.D. Ill. Jan. 21, 1993). Transaction causation has been defined as meaning that the investor would not have engaged in the transaction had the other party made truthful statements at the time required. *Martin v. Heinhold Commodities, Inc.*, 163 Ill. 2d 33, 60 (1994) (addressing Consumer Fraud Act claim). Loss causation, on the other hand, has been defined as meaning that the investor would not have suffered a loss if the facts were what he believed them to be. *Id.* See also *Adler v. William Blair & Co.*, 271 Ill. App. 3d 117, 129 (1995) (noting that “to properly allege loss causation, the plaintiffs must show that their investment loss was caused by the misrepresentation of the defendants”).

¶ 31 Forbes testified that “[t]here was definitely a change in market conditions” and a “more difficult economic environment as time went forward” from 2007 to 2009. Various courts have acknowledged the pervasive economic decline during such time period. *State of Illinois v. American Federation of State, County and Municipal Employees, Council 31*, 2016 IL 118422, ¶ 6 (referencing the “Great Recession”); *Thomas v. Chicago Transit Authority*, 2014 IL App (1st) 122402, ¶ 62 (noting that the “national and local economy was in the midst of the ‘Great Recession’ ” when the employee-plaintiff was unable to sell his home so as to comply with the employer-mandated residency requirement after his hiring in June 2008); *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 1, n. 2 (discussing federal legislation and programs addressing the collapse of the housing market in 2008). Even assuming that Patriot extended financing based on deceitful conduct by the defendants, Patriot is unable to prove loss causation where it has no ability to delineate whether volatile economic conditions were the more direct

cause of its investment losses than any purported misrepresentation. *E.g.*, *Martin*, 163 Ill. 2d at 64 (noting that “even intentional tortfeasors do not become the insurers of safety for wronged plaintiffs”). Patriot’s failure to adequately acknowledge the role of worldwide conditions is arguably fatal to its fraud claim. *E.g.*, *Waterford Township General Employees Retirement System v. Suntrust Banks, Inc.*, No. 1:09-CV-617-TWT, 2010 WL 3368922, at *4-6 (N.D. Ga. Aug. 19, 2010) (concluding that the plaintiff failed to adequately plead loss causation where the plaintiff did not allege facts sufficient to apportion its losses between the alleged fraud and the other factors that ultimately destroyed the investment).

¶ 32 For the foregoing reasons, the circuit court properly granted summary judgment in favor of Hilco Financial and Hilco Trading on Counts II and III of the second amended complaint. See *Mulligan v. QVC, Inc.*, 382 Ill. App. 3d 620, 625 (2008) (noting that if the plaintiff fails to establish any element of a cause of action, summary judgment for the defendant is proper).

¶ 33 Negligent Misrepresentation Count (Count VIII)

¶ 34 Patriot asserted a single count of negligent misrepresentation against the Appraisal Entities. To state a claim for negligent misrepresentation, a plaintiff must allege: (1) a false statement of material fact; (2) carelessness or negligence in ascertaining the truth of the statement by the party making it; (3) an intention to induce the other party to act; (4) action by the other party in reliance on the truth of the statement; (5) damage to the other party resulting from such reliance; and (6) a duty on the party making the statements to communicate accurate information. *First Midwest Bank, N.A. v. Stewart Title Guaranty Co.*, 218 Ill. 2d 326, 334-35 (2006). Negligent misrepresentation has essentially the same elements as a fraud claim, except that the defendant need not know that the statement is false; it is enough if the defendant is careless or negligent in ascertaining whether the statement is true. *Abazari*, 2015 IL App (2d)

140952, ¶ 21. See *Congregation of the Passion, Holy Cross Province v. Touche Ross & Co.*, 224 Ill. App. 3d 559, 583 (1991) (noting that a negligent misrepresentation is “a representation that the maker believes to be true, but because of negligent expression, is in fact false”).

¶ 35 Patriot’s negligent misrepresentation claim was based on four appraisal reports prepared by the Appraisal Entities for Financial: (1) an appraisal of a patent portfolio owned by a medical testing company, BIOSAFE Laboratories (Biosafe); (2) an appraisal of technical engineering drawings owned by a railcar manufacturer, CRM; (3) an appraisal of luxury railcars owned by a rail touring company, GrandLuxe Rail Journeys (GrandLuxe); and (4) an appraisal of the “Salon Selectives” trade name and related intellectual property owned by Selective Beauty Brands (SBB). Patriot’s expert witness on appraisal issues, Daniel Van Vleet (Van Vleet), opined that the appraisals were not credible because they did not comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and other valuation standards. The circuit court determined, however, that Patriot’s failure to present expert testimony regarding the value of the assets at the time of the appraisal meant that Patriot could not establish that the appraisals were inflated and could not establish proximate cause, *i.e.*, that the loss would not have occurred absent the allegedly false statements.

¶ 36 Patriot failed to identify a false statement of material fact in the appraisals. Other than a computation error which he characterized as “benign,” Forbes was unable to specify any statement in the appraisals that was false. Furthermore, while Van Vleet questioned certain assumptions or aspects of the written appraisal reports, he acknowledged that he did not actually conduct a valuation of the assets. Citing *Meriturn Partners, LLC v. Banner & Witcoff, Ltd.*, 2015 IL App (1st) 131883, Patriot contends that “to the extent Hilco Appraisal’s expert disagrees with Van Vleet’s testimony, that dispute is properly resolved by the trier of fact.” *Meriturn*, however,

involved an appeal from a jury verdict, not summary judgment. *Id.* ¶ 1. In any event, the experts herein did not present competing valuations, as Van Vleet did not present any valuation of the assets that were the subject of the challenged appraisals. *Torres v. Midwest Development Co.*, 383 Ill. App. 3d 20, 28 (2008) (noting that an expert’s opinion is only as valid as the basis and reasons for his opinion). In fact, Van Vleet specifically identified additional information regarding the underlying assets which he would have needed to perform appraisals of the assets and to opine on their value.

¶ 37 Patriot also did not present any evidence that any purported deviations from professional standards, *e.g.*, the USPAP, resulted in a false statement of material fact. As an initial matter, the Biosafe appraisal did not contain any certification indicating compliance with the USPAP. In any event, to the extent that there was no evidence presented regarding the “correct” valuations (as discussed above), Patriot could not establish the materiality of any non-compliance with the USPAP. See *First Midwest Bank, N.A.*, 218 Ill. 2d at 334-35 (requiring a false statement of material fact). While Patriot also contends that the appraisals used non-standard definitions of “orderly liquidation value,” the fact that the appraisers employed different definitions than Patriot’s expert does not render the appraisal definitions to be “misstatements” of fact.

¶ 38 Patriot also failed to meet its burden of establishing causation and the correct measure of damages. Patriot fails to articulate how any purported false statements in the appraisals caused its losses. As to damages, “[a] plaintiff need not prove the amount of damages to an absolute certainty; however, he must present enough evidence to create a genuine issue of fact pertaining to damages.” *Petty v. Chrysler Corp.*, 343 Ill. App. 3d 815, 823 (2003). See also *Valenti v. Mitsubishi Motor Sales of America, Inc.*, 332 Ill. App. 3d 969, 973 (2002).

¶ 39 In its complaint, Patriot sought more than \$32 million, including millions of dollars in

accrued contractual interest, *i.e.*, the full benefit of its bargain with Hilco Financial. Such amount, however, is not tied to the challenged appraisals. Although Patriot subsequently offered three alternative calculations of its damages, the Appraisal Entities accurately observe that all of the calculations significantly overestimate Patriot's out-of-pocket losses. Among other things, Patriot's calculations: include amounts advanced by Patriot to Financial before the appraisals were conducted; fail to account for substantial interest payments received by Patriot from Financial during the life of the loan; and include amounts owed to Hilco Financial from borrowers other than CRM, GrandLuxe, Biosafe, and SBB. Patriot's failure to establish a proper measure of the damages proximately caused by the Appraisal Entities' alleged misstatements provide another basis for affirming the grant of summary judgment on Count VIII. See *Mulligan*, 382 Ill. App. 3d at 625 (noting that summary judgment for the defendant is proper if the plaintiff fails to establish any element of the cause of action).

¶ 40

CONCLUSION

¶ 41 For the reasons discussed above, the judgment of the circuit court of Cook County granting summary judgment in favor of the Hilco defendants on Counts II, III, and VIII of the second amended complaint is affirmed.

¶ 42 Affirmed.