

**REVERSE and RENDER and REMAND and Opinion Filed March 25, 2026**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

**No. 05-24-00631-CV**

**JM-RB PROPERTIES, LLC D/B/A JM-RB PROPERTIES, INC., Appellant  
V.  
HARRIS VENTURES, INC. D/B/A STAFF ZONE, Appellee**

**On Appeal from the 471st Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 471-02724-2021**

**MEMORANDUM OPINION ON REHEARING**

Before Justices Goldstein, Breedlove, and Kennedy  
Opinion by Justice Kennedy

On the Court's own motion, we withdraw our January 8, 2026 opinion and vacate the judgment of that date.<sup>1</sup> This is now the opinion of the Court.

Harris Ventures, Inc. d/b/a Staff Zone ("Tenant") sued JM-RB Properties, LLC d/b/a JM-RB Properties, Inc. ("Landlord") for breach of a commercial lease agreement by failing to properly maintain the leased premises. A jury returned a verdict in favor of Tenant finding Landlord failed to comply with the lease and awarding Tenant lost profit damages and attorney's and expert fees. On appeal,

<sup>1</sup> We note that our prior opinion, in error, contained the date of January 8, 2025.

Landlord challenges the jury's finding of breach and the sufficiency of the evidence to support the award of lost profits damages and attorney's and expert fees. For the reasons set forth herein, we reverse the trial court's judgment and render judgment that Tenant take nothing on its breach of contract claim and remand to the trial court to determine whether Landlord is a prevailing party in the first instance and, if so, to determine the amount of attorney's fees to be awarded. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

### **BACKGROUND**

Tenant is a temporary staffing agency that hires day laborers for various construction projects. Landlord owns and leases a three-suite commercial building in Plano. Landlord and Tenant entered into a lease for one of the suites commencing on December 1, 2016, with an initial term of three years, and providing two separate two-year options to renew the lease. On October 22, 2019, Tenant exercised its first two-year option to renew the lease through November 30, 2021.

On March 17, 2021, Tenant notified Landlord of an odor of rat waste permeating its suite. In response, Landlord sent an exterminator to the site to distribute rat poison. Nevertheless, the problem persisted, and Tenant demanded that Landlord pay for its extermination expenses and new ceiling tiles to replace those damaged by rats. It appeared that a food pantry that occupied one of the other two suites was the draw for the rats and that the rats were entering through holes in the exterior walls of the building. Tenant suggested that Landlord seal the exterior

of the building and build a firewall in the plenum space between Tenant's space and the food pantry to cut off travel of any rats between those adjacent units. Tenant also requested that Landlord consent to Tenant placing a modular building or a job trailer type structure, with utility hookups, on the parking lot in front of the building for the duration of the lease at Landlord's expense. Landlord denied Tenant's requests claiming Tenant was responsible for extermination and pest control and that the City of Plano would not authorize an outbuilding on the property. Tenant vacated the leased premises in July of 2021 and did not resume full scale operations in Plano until it opened a self-owned location in 2023.

On September 7, 2021, Tenant filed suit against Landlord. Tenant asserted claims for breach of contract, breach of the warranty of suitability, and private nuisance and sought declaratory and injunctive relief and an award of attorney's fees under Section 38.001 of the Texas Civil Practice and Remedies Code and under the lease agreement.<sup>2</sup>

A jury trial commenced on February 14, 2024, with Tenant pursuing only its breach of contract claim and claiming damages in excess of \$1.3 million in lost profits. The jury found in favor of Tenant and awarded Tenant \$1,332,514 in lost profits, \$151,000 in expert fees, and \$450,000 in attorney's fees. The trial court

---

<sup>2</sup> The lease included an attorney's fee provision providing, "Any person who is a prevailing party in any legal proceeding brought under or related to the transaction described in this lease is entitled to recover prejudgment interest, reasonable attorney's fees and all other costs of litigation from the nonprevailing party."

rendered judgment in accordance with the jury's verdict. The trial court denied Landlord's motion for judgment notwithstanding the verdict or a new trial. This appeal followed.

## DISCUSSION

We begin with Landlord's second issue challenging the legal sufficiency of the evidence to support the lost profits damage award as it is dispositive of this appeal.

### I. Standard of Review

When, as here, an appellant attacks the legal sufficiency of an adverse finding on an issue on which it did not have the burden of proof, it must demonstrate that no evidence supports the finding. *Doyle v. Kontemporary Builders, Inc.*, 370 S.W.3d 448, 453 (Tex. App.—Dallas 2012, pet. denied) (citing *Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983)). There is “no evidence” when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *See City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). “The final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review.” *Id.* at 827. We review the evidence in the light most favorable to the verdict, crediting favorable evidence if reasonable

jurors could and disregarding contrary evidence unless reasonable jurors could not. *See id.* at 820–21.

## II. Applicable Law

Lost profits are damages for the loss of net income to a business, reflecting income from the lost business activity, less expenses that would have been attributable to that activity. *Miga v. Jensen*, 96 S.W.3d 207, 213 (Tex. 2002); *Examination Mgmt. Servs., Inc. v. Kersh Risk Mgmt., Inc.*, 367 S.W.3d 835, 840 (Tex. App.—Dallas 2012, no pet.). The calculation of lost-profit damages must be based on net profits, not on gross revenue or gross profits. *Holt Atherton Indus. v. Heine*, 835 S.W.2d 80, 83 n.1 (Tex. 1992).

The rule concerning adequate evidence of lost profit damages is well established:

Recovery for lost profits does not require that the loss be susceptible of exact calculation. However, the injured party must do more than show that they suffered some lost profits. The amount of the loss must be shown by competent evidence with reasonable certainty. What constitutes reasonably certain evidence of lost profits is a fact intensive determination. As a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data from which the amount of lost profits can be ascertained. Although supporting documentation may affect the weight of the evidence, it is not necessary to produce in court the documents supporting the opinions or estimates.

*ERI Consulting Eng'rs, Inc. v. Swinnea*, 318 S.W.3d 867, 876 (Tex. 2010) (quoting *Holt Atherton Indus.*, 835 S.W.2d at 84).

If no evidence is presented to prove lost profits with reasonable certainty, the trial court must render a take-nothing judgment as to lost-profits damages. *See, e.g., Tex. Instruments, Inc. v. Teletron Energy Mgmt., Inc.*, 877 S.W.2d 276, 281 (Tex. 1994) (concluding there was no evidence to prove lost profits with reasonable certainty and affirming trial court's order granting judgment notwithstanding the verdict as to the lost-profits damages); *Examination Mgmt. Servs., Inc.*, 367 S.W.3d at 847–48.

### **III. Application of Law to Facts**

The trial court awarded \$1,332,514 in lost profits constituting the loss of income Tenant suffered as a result of its inability to operate in the Plano market from the time it vacated the leased premises until it opened its own building. Our legal sufficiency analysis thus reviews whether competent evidence establishes this amount with reasonable certainty. *See Swinnea*, 318 S.W.3d at 876.

An expert's simple ipse dixit is insufficient to establish a matter; rather the expert must explain the basis of his statement to link his conclusions to the facts. *Earle v. Ratliff*, 998 S.W.2d 882, 890 (Tex. 1999). Conclusory or speculative evidence of lost profits cannot support an award. *Szczepanik v. First S. Trust Co.*, 883 S.W.2d 648, 649–50 (Tex. 1994).

Tenant's lost profits damage expert was Stephen Jaquess, a Certified Public Accountant. The direct examination of Jaquess is contained in approximately 28 pages of the trial transcript, during which three documents were admitted into

evidence. They were Jaquess's curriculum vitae, a summary of the information Jaquess considered in connection with his analysis, and a four-page summary of his testimony. The first page of the four-page summary includes Jaquess's opinion that out-of-pocket costs were \$6,819 and lost profits were \$1,332,514. The summary does not indicate how Jaquess calculated these numbers or whether the lost profit figure is net profits or gross profits or any indication that expenses were considered in reaching that number. The remaining three pages of the summary contain graphs of labor pools at Tenant's Irving and Plano locations and a graph of lost profits. Tenant offered Jaquess's 167-page report into evidence as exhibit 22-c. The trial court sustained Landlord's hearsay and cumulative objections to same and excluded the exhibit. While Jaquess explained the methodology that he used in reaching his lost profit amount, the record is devoid of any objective facts, figures, or data explaining how he arrived at his \$1,332,514 figure. *See Szczepanik*, 883 S.W.2d at 650 ("There is nothing in the record to show how [the appellant] determined the amount of lost profits."). We hold Tenant's lost profits evidence was conclusory and cannot support an award of lost profits. Accordingly, we sustain Landlord's second issue.

In its third issue, Landlord challenges the sufficiency of the evidence to support the trial court's award of attorney's fees and expert fees. Having determined there is no evidence of damages, we further conclude Tenant is no longer entitled to recover attorney's fees. *See Exel Transp. Servs., Inc. v. Aim High Logistics Servs.,*

*LLC*, 323 S.W.3d 224, 235 (Tex. App.—Dallas 2010, pet. denied) (award of attorney’s fees precluded when no damages are recoverable). Section 38.001(8) of the Texas Civil Practice and Remedies Code provides that a party may recover reasonable attorney’s fees, in addition to the amount of a valid claim and costs, if the claim is for . . . an oral or written contract.” TEX. CIV. PRAC. & REM. CODE § 38.001(8); *see also MBM Fin. Corp. v. Woodlands Operating Co., L.P.*, 292 S.W.3d 660, 666 (Tex. 2009). To recover attorney’s fees under section 38.001(8), a litigant must do two things (1) prevail on a breach of contract claim, and (2) recover damages. *MBM Fin. Corp.*, 292 S.W.3d at 666. Under a prevailing party provision, only a prevailing party is entitled to recover attorney’s fees. *See Intercontinental Group P’ship v. KB Home Lone Star L.P.*, 295 S.W.3d 650, 651 (Tex. 2009) (to be a prevailing party, a plaintiff must prove compensable injury and secure an enforceable judgment in the form of damages or equitable relief). Because we have concluded that Tenant is not entitled to lost profits, and the jury awarded Tenant nothing on its claim for out-of-pocket damages, it has recovered no damages, precluding any award of attorney’s fees pursuant to the lease agreement or Section 38.001(8). *See MBM Fin. Corp.*, 292 S.W.3d at 666; *Intercontinental Grp. P’ship*, 295 S.W.3d at 651, 655–56; *Green Int’l, Inc. v. Solis*, 951 S.W.2d 384, 390 (Tex. 1997).

We similarly conclude that Tenant is not entitled to recover expert fees under the prevailing-party provision of the lease agreement as it is not a prevailing party.

*See Intercontinental Grp. P'ship*, 295 S.W.3d at 651, 655–56. We sustain Landlord's third issue to the extent that we agree that Tenant did not establish any basis to support the trial court's award of attorney's and expert fees.

In light of our resolution of Landlord's second issue and our determination that Tenant is not entitled to recover attorney's and expert fees, we need not address its first issue challenging the breach of contract finding and the portion of its third issue challenging the sufficiency of the evidence to support an award of attorney and expert fees. TEX. R. APP. P. 47.1; *Pauliono v. Brownsville TX E. Price Big 22 LLC*, No. 13-19-00554-CV, 2021 WL 727384, at \*3 (Tex. App.—Corpus Christi—Edinburg Feb. 25, 2021, no pet.) (mem. op.) (“Because the lack of evidence of damages is dispositive, we need not address the remaining elements of a breach of contract claim.”); *In re M.G.G.*, No. 05-19-00777-CV, 2020 WL 4581646, at \*5 (Tex. App.—Dallas Aug. 10, 2020, no pet.) (mem. op.) (“Because we conclude the evidence is legally insufficient to support the damages element of Ms. Gatewood's claim for breach of fiduciary duty, we need not address Mr. Gustafson's remaining challenges to that claim.”); *Tex. Farm Bureau Mut. Ins. Co. v. Wilde*, 385 S.W.3d 733, 738–39 (Tex. App.—El Paso 2012, no pet.) (no need to address sufficiency of evidence to support award of attorney's fees when a party lacks prevailing party status).

## CONCLUSION

Based on the record and the appropriate standard of review, we conclude the evidence in this case is legally insufficient to support the jury's lost profits damage award. Additionally, we conclude Tenant is not entitled to recover attorney's and expert fees under either the lease agreement or Section 38.001(8) of the Texas Civil Practice & Remedies Code. Where the extent to which a party prevailed has changed on appeal, we may remand the issue of attorney's fee to the trial court. *See Farmers Grp., Inc. v. Geter*, 620 S.W.3d 702, 712 (Tex. 2021).

We reverse the judgment of the trial court and render judgment that Tenant take-nothing on its breach of contract claim against Landlord. We remand the case to the trial court to determine whether Landlord is a prevailing party in the first instance<sup>3</sup> and, if so, to determine the amount of attorney's fees to be awarded.

/Nancy Kennedy/  
NANCY KENNEDY  
JUSTICE

---

<sup>3</sup> Note that because we sustained Landlord's issue with respect to damages, we did not address Landlord's complaint on appeal regarding the jury's finding it breached the lease agreement. *See Bankcard Processing Int'l, L.L.C. v. United Bus. Servs., L.P.*, No. 01-10-01079-CV, 2012 WL 3776024, at \*9 (Tex. App.—Houston [1st Dist.] Aug. 30, 2012, pet. denied) (mem. op.) (concluding UBS was prevailing party because it successfully defended breach of contract claim and jury found it did not breach the contract).