IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

PALAU PUBLIC LANDS AUTHORITY and NGERDUBECH CORPORATION, LTD., Appellants, v. VALENTINO EMESIOCHEL, et al., Appellees.	CIVIL APPEAL NO. 14-002 Civil Action No. 12-120 **OPINION**

Decided: September 16, 2015

Counsel for Appellant Palau Public Lands Authority: Vameline Singeo
Counsel for Appellant Ngerdubech Corporation, Ltd.: Oldiais Ngiraikelau
Counsel for Appellees: Yukiwo P. Dengokl

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LOURDES F. MATERNE, Associate Justice; and R. ASHBY PATE, Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

This appeal concerns the Trial Division's judgment invalidating a lease agreement between Appellant Palau Public Lands Authority ("PPLA") and Appellant Ngerdubech Corporation, Ltd. ("NCL") (collectively "Appellants"), ordering NCL to vacate the Ngatpang State Milkfish Aquaculture premises, and holding Appellants jointly and

severally liable for damages. For the reasons set forth below, we affirm in part, vacate in part, and remand for a new determination of damages.

BACKGROUND

During the 1980s, the construction of a causeway along the shores of Ngatpang State cut off the flow of sea water into a mangrove area. In the ensuing years, a variety of proposals were considered for utilizing this area, which is owned by the Ngatpang State Government. Ultimately, Ngatpang State decided to convert the area into a milkfish aquaculture project. This project is variously referred to as the Ngatpang State Milkfish Aquaculture ("NSMA"), Sers ra Aol, and the Ngatpang State Milkfish Farm. In 2007, Ngatpang State Public Law ("NSPL") No. 1-07-09 was enacted, which created the Ngatpang State Marine Resources Authority ("NSMRA") and gave it authority over, and responsibility for managing, the milkfish farm. The farm became operational in 2010.

NSMRA used a modular system for its operations, whereby fish were rotated through various ponds and cages depending on their stage of growth. The milkfish farm was comprised of four nurseries, four stunting ponds, and six grow-out ponds. Stocking cages were also constructed in the bay outside of the farm, which were used to hold the fish stock when they reached a certain maturity, until marketable fish could be harvested. The fish were fed with algae at some stages and commercial feed at other stages. In addition, baby milkfish known as "fry" were occasionally purchased to stock the ponds.

On March 4, 2012, without receiving authorization from Ngatpang State, PPLA executed a document that purported to lease half of the milkfish farm to NCL, a private corporation. Shortly thereafter, NCL entered the farm and began conducting its own milkfish aquaculture project. As part of its efforts, NCL removed some of NSMRA's fish stock from the ponds, drained ponds, and performed other activities not authorized by NSMRA.

In July 2012, NCL transferred some of NSMRA's fish stock from one of the ponds to another area. Approximately 260 of NSMRA's milkfish died shortly after being moved. In November of 2012, NCL intentionally destroyed 10,372 of NSMRA's milkfish and cleared them out to make room for NCL's own stock. NCL ultimately took over five of the six larger, grow-out ponds, leaving NSMRA with only a single grow-out pond and very little space to conduct its operations. Due to NCL's intrusion, NSRMA was forced to keep its stock in a reduced number of ponds, crowd fish into each pond, and purchase expensive commercial feed to maintain a healthy fish stock, rather than growing algae in the ponds.

Valentino Emesiochel, NSRMA's General Manager; Ellabed Rebluud, a member of the Ngatpang council of chiefs; and three former directors of the aquaculture project filed suit against PPLA and NCL. Subsequently, NSMRA intervened as an additional plaintiff. Plaintiffs collectively sought declaratory and injunctive relief, as well as damages.

On June 27, 2013, the Trial Division granted partial summary judgment in favor of Appellees, holding that the lease agreement between PPLA and NCL was invalid because it exceeded the scope of PPLA's authority. The matter then proceeded to trial, primarily on the issue of damages. On December 13, 2013, the Trial Division issued a judgment declaring the lease to be void, requiring NCL to remove its personnel, equipment and debris from the premises, and awarding Plaintiffs $38,690.81 in damages. On December 27, 2013, the Trial Division amended its judgment to award damages for lost profits in the amounts of $40,924.98 for 2012 and $20,093.23 for 2013, for a total award of $61,018.21.

PPLA and NCL timely appeal.

STANDARD OF REVIEW

We review de novo the Trial Division's conclusions of law. *Pamintuan v. ROP*, 16 ROP 32, 36 (2008). The Trial Division's factual findings are reviewed for clear error. *Id.* "'Under the clear error standard, the lower court will be reversed only if the findings so lack evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion.'" *Id.* (quoting *Dilubech Clan v. Ngeremlengui State Pub. Lands Auth.*, 9 ROP 162, 164 (2002)).

ANALYSIS

Appellants raise several claims on appeal, most of which pertain only to the amount of damages awarded by the Trial Division. However, PPLA and NCL each also

assert a separate claim of error that appears to concern the Trial Division's liability determination. As the existence of liability is a necessary precursor to an award of damages, we begin by addressing these claims.

I. The Nature of the Milkfish Farm Premises and Appellees' Right to Possess this Property

A. Whether the Milkfish Farm Is Located on Seabed or Filled Land

PPLA argues that the Trial Division erred when it determined, as a factual matter, that the milkfish farm is located below the high tide line and is thus part of the seabed. PPLA maintains that the Trial Division should have found that the milkfish farm was located on filled land. PPLA does not, however, make any attempt to explain how this allegedly erroneous factual determination had any effect on the outcome of the case.

A review of the relevant case law, as correctly referenced and applied by the Trial Division, shows that this particular factual finding had no bearing on the outcome of the case. Specifically, whether or not the site of the milkfish farm is seabed or filled land, PPLA lacked the authority to lease this property without the approval of Ngatpang State. *See Palau Pub. Lands Auth. v. Ngatpang State Pub. Lands Auth.*, 20 ROP 174, 177 (2013) ("PPLA lacks the authority to sell, lease, exchange, use, dedicate for public purposes or make other disposition of public lands *without* the approval of the government of the state within whose geographical boundaries the subject lands are situated."). In applying this rule, the Trial Division found that it was undisputed that PPLA executed the lease with NCL without obtaining the approval of Ngatpang State.

Accordingly, the Trial Division concluded that this lease exceeded PPLA's authority and was, therefore, invalid and unenforceable. These conclusions are not contingent, even in part, on whether the milkfish farm is located on seabed or filled land.

Consequently, whether the Trial Division was correct in stating that the milkfish farm is located on seabed as opposed to filled land is immaterial, as this finding had no affect on the disposition of the case. If, as the Trial Division found, the area is seabed, then it belonged to Ngatpang State and PPLA had no authority to lease it. *See Kual v. Ngarchelong State Public Lands Authority*, 20 ROP 232, 234 (2013). On the other hand, even assuming, *arguendo*, that the area is filled land, PPLA still had no authority to lease this land without the approval of Ngatpang State. *See Ngatpang State Pub. Lands Auth.*, 20 ROP at 177. The Trial Division found that it was undisputed that PPLA did not obtain such approval and PPLA does not challenge this conclusion.[2] It is thus unnecessary to further consider the propriety of this particular factual finding, because even if the Trial Division did err in this respect, it could only be deemed harmless. *Ngiraiwet v. Telungalek Ra Emadaob*, 16 ROP 163, 165 (2009) ("Harmless errors are those that do not prejudice a particular party's case.").

B. Appellees' Superior Right to Possess the Area

[2] Although we recognize that Ngatpang State was not operational, and therefore potentially unable to approve the lease, during the time period relevant to this case, neither PPLA nor NCL has argued on appeal that this extraordinary circumstance provides cause to revisit our holding in *Ngatpang State Public Lands Authority*. Accordingly, we do not do so here.

NCL argues that Appellees had no legal authority to file suit to eject NCL from the milkfish farm premises, because Appellees did not prove that they have title or a right to possess the land on which the farm is located. The crux of NCL's position is that Ngatpang State owns the relevant land, such that only Ngatpang State could maintain a suit for ejectment against NCL.

In an ejectment action, however, the plaintiff need not establish the superiority of her interest in the property "as against the whole world." 25 Am. Jur. 2d Ejectment § 7 (2014). Rather, "[a]ll that is necessary is proof of a title *or right* superior to that of the defendant." *Id.* (emphasis added). Accordingly, an action for ejectment may be maintained by a party with a superior right to possess the subject property, for example a tenant seeking to oust a stranger who has wrongfully taken actual possession of even a portion of the property. *Id.* at §§ 2, 16, 19.

While it is undisputed that Ngatpang State owns the land on which the milkfish farm is located, it is equally undisputed that Ngatpang State, in enacting NSPL No. 1-07-09, gave NSMRA responsibility and control over this area for the purposes of operating the farm. This grant of authority necessarily includes a right to possess the land on which the milkfish farm is located. By contrast, NCL had no legal right to enter or possess the land in question. Accordingly, the Trial Division did not err in finding that NSPL No. 1-07-09 gave NSMRA a superior right to possession as compared to NCL. This is all that was required for NSMRA to maintain a suit for ejectment against NCL.

II. Damages

Appellants' remaining claims all concern the Trial Division's damages award. Each of these claims is addressed, in turn, as follows.

A. Whether Appellants Proximately Caused the Deaths of 260 Milkfish in July 2012

PPLA argues that no evidence supported the Trial Division's conclusion that NCL caused the death of 260 milkfish in July 2012. Accordingly, PPLA maintains that it cannot be held liable for compensatory damages arising from this loss. As with other factual determinations, "a finding of fact concerning damages will not be set aside unless it is clearly erroneous." *Palau Marine Indus. Corp. v. Seid*, 11 ROP 79, 81 (2004).

Here, the testimony at trial showed that NCL transferred NSMRA's milkfish from one pond to a different pond by dragging them in nets. Shortly thereafter, the fish died. One of NCL's workers testified that the water in the pond to which the fish had been transferred might have been of poor quality, and that this could have caused the deaths. It was also suggested that rainstorms in July might have desalinized the pond water. No direct evidence was offered to determine the cause of the deaths, but it was clear that the fish died soon after they were relocated. It was also shown that, a few months later, NCL workers purposefully poisoned over 10,000 of Appellees' milkfish. From the temporal proximity between the move and the deaths, coupled with NCL's general disregard towards Appellees' fish (as evidenced by poisoning over 10,000 of them a few months

later), the Trial Division inferred that NCL was responsible for the deaths of the 260 milkfish in July 2012.

The Trial Division's inference was a permissible one. In light of the ample circumstantial evidence as to the cause of the deaths, we cannot say that this finding so lacks "evidentiary support in the record that no reasonable trier of fact could have reached the same conclusion," *Dilubech Clan*, 9 ROP at 164. *See also Roman Tmetuchl Family Trust v. Whipps*, 8 ROP Intrm. 317, 318 (2001) ("When reviewing for clear error, if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless the Appellate Division is left with a definite and firm conviction that a mistake has been committed."). Accordingly, the Trial Court did not commit clear error in finding that NCL proximately caused the deaths of 260 milkfish in July 2012.

B Duty to Mitigate

Appellants argue that the trial court should have reduced the amount of damages awarded for the lost fish based on Appellees' failure to mitigate these losses. Specifically, Appellants claim that, before the milkfish were killed, NCL offered to share the area with NSMRA, assist NSMRA's operations, and purchase the fish from NSMRA. Appellants maintain that, had NSMRA accepted any of NCL's offers, it could have avoided the damages that resulted when NCL later destroyed the fish.

Appellants' position rests on the questionable proposition that a business has an obligation to accept the offers of a known trespasser, or else forfeit all or some of its right to recover damages in the event that the trespasser destroys its property. We decline to adopt such a rule. "Under the doctrine of mitigation of damages, 'one injured by the tort of another is not entitled to recover damages for any harm that he could have avoided by the use of reasonable effort or expenditure *after* the commission of the tort.'" *Klsong v. Orak*, 7 ROP Intrm. 184, 188 (1999) (quoting Restatement (Second) of Torts § 918(l) (1979)) (emphasis added); *see also Tkel v. Hanpa Indus. Dev. Corp.*, 14 ROP 74, 78-79 (2007). In this case, Appellants' proposed means of mitigation existed before, but not after, the commission of the tortious act, namely the destruction of NSMRA's fish.[3] To hold that Appellees had an *ex ante* obligation to cooperate with or sell their fish to NCL is thus contrary to the basic premise of the duty to mitigate.

Even assuming, for the sake of argument, that the duty to mitigate could arise prior to the commission of the tort, Appellant's argument is still unpersuasive, because only an unreasonable refusal or failure to prevent additional losses will justify a reduction in the amount of damages awarded. *See* Restatement (Second) of Torts § 918 cmt. c. In other words, the injured party "is required to exercise no more than reasonable judgment or fortitude; and, if different courses of action are open to him he is not required, as a

[3] While the initial trespass on the premises had already occurred prior to the destruction of the fish, the latter event would surely constitute a separate, tortious act, for instance trespass to chattels.

condition to obtaining full damages, to choose the course that events later show to have been the best." *Id.* We see no sound basis for holding that NSMRA, in the exercise of reasonable judgment, ought to have foreseen that, if it did not accept NCL's offer of assistance or purchase, NCL would destroy NSMRA's milkfish. Furthermore, considering that NCL was already trespassing on the milkfish farm property, over Appellees' objections, when it offered to cooperate with NSMRA and/or purchase the fish, it was not unreasonable for NSMRA to decline NCL's offers and instead pursue litigation, including preliminary injunctive relief to prevent any further harm from the ongoing intrusion. *See also id.* § 918 cmt. i ("[I]f the original act was intentionally wrongful or negligent, it may not be unreasonable for a person to decline to trust to the good will or skill of the tortfeasor."), § 901 cmt. c ("Originally the primary purpose of the law of torts was to induce the injured party . . . to resort to the courts for relief, ... This purpose still has significance today, and both compensatory and punitive damages may be utilized to promote it.").

Moreover, even where an injured party negligently failed to take action to mitigate its losses, damages will be reduced if, and only if, the failure to act constitutes "a legally contributing cause of the resulting harm." *Id.* § 918 cmt. c. An act or omission constitutes "a legal cause of" any resulting harm if it was "a substantial factor in bringing about the harm." *Id.* § 431. Thus, "[i]n order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent." *Id.* § 431 cmt. a.

Rather, the unreasonable conduct in question "must also be a substantial factor in bringing about the plaintiff's harm[,]" meaning it must have had "such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense." *Id.*

Yet, Appellants have wholly failed to show how NSMRA's refusal to cooperate with or sell its fish to NCL constitutes a legally contributing cause of NCL's ultimate destruction of the fish. *See Klsong v. Orak*, 7 ROP Intrm. 184, 188 (1999) ("Any alleged failure to mitigate is an affirmative defense upon which the defendant carries the burden of proof." (citing 22 Am. Jur. 2d *Damages* §§ 896, 908)); *see also Palau Marine Indus. Corp. v. Seid*, 11 ROP 79 (2004) ("[T]he burden of pleading and proving mitigation falls on the party in breach."). As we can discern no reasonable basis for finding that NSMRA's rejection of NCL's offers was a substantial factor in causing the destruction of the fish, Appellants' mitigation argument must fail.

In sum, we find no error in the Trial Division's decision not to reduce damages for failure to mitigate. NSMRA had no legal duty to cooperate with, or sell its property to, a known trespasser that was actively intruding upon and interfering with its operations; nor was it unreasonable to decline NCL's propositions and instead resort to the courts for relief. Accordingly, we reject Appellants' claims concerning mitigation.

C. Existence and Extent of Damages

Appellants assert a number of arguments that contest the Trial Division's award of damages for lost profits for 2012 and 2013. While Appellants' arguments overlap in many respects, PPLA appears to take the position that the evidence produced at trial was not sufficient to prove the existence of lost profits as a result of NCL's tortious conduct, such that these damages should not have been awarded at all. By contrast, NCL challenges only the amount of lost profits actually awarded by the Trial Division.

The same basic rules that govern other compensatory damages claims also apply to claims for lost profits. 22 Am. Jur. 2d §§ 456-58, 461. As a general matter, in order to recover damages, the plaintiff in a tort suit must prove the existence or nature of its damages with reasonable certainty. 22 Am. Jur. 2d Damages §§ 339, 340 (2013). This includes proof that the particular damages claimed were legally caused by the tortious conduct of the defendant. Restatement (Second) Torts §§ 430, 912 cmt. a; 22 Am. Jur. 2d Damages § 340. While often spoken of in terms of "reasonable certainty," this rule "means only that the fact that there are damages must be more than merely speculative and only requires that the plaintiff meet the usual preponderance burden of proof in a negligence case to prove the existence of damages." 22 Am. Jur. 2d Damages § 341. In other words, "the plaintiff can recover damages for the harm only by proving [that the harm occurred as the result of the tortious conduct] with the same degree of certainty as that required in proving the existence of the cause of action." Restatement (Second) Torts § 912 cmt. a; 22 Am. Jur. 2d Damages § 341.

Once the existence of damages is established, however, mere uncertainty as to the precise amount of those damages will not prohibit recovery. Restatement (Second) Torts § 912 cmt. a ("There is, however, no general requirement that the injured person should prove with like definiteness the extent of harm that he has suffered as a result of the tortfeasor's conduct."); 22 Am. Jur. 2d Damages § 343 ("The rule that uncertain damages will not be awarded applies to uncertainty with regard to the fact of damage and *not* as to its amount; where it is certain that damage has resulted, mere uncertainty about the amount will not preclude the right to recover them, ..."). Rather, the plaintiff need only prove "the extent of the harm and the amount of money representing adequate compensation with as much certainty as the nature of the tort and the circumstances permit." Restatement (Second) Torts § 912. Put differently, "the evidence need only be sufficient to . . . provide a reasonable basis for computing an approximate amount of damages." Am. Jur. 2d Damages § 340. This means something more than outright speculation, but less than "precise or mathematical certainty." *Id.*

Relatively greater uncertainty is permitted with respect to the amount of damages as opposed to their existence because, "while it is [] desirable that the amount of damage be as definitely proven as is reasonably possible, it is even more desirable that an injured person not be deprived of substantial compensation merely because he or she cannot prove with complete certainty the extent of the harm suffered." *Id.* § 339 cmt.; *accord* Restatement (Second) Torts § 912 cmt. a. This principle is particularly applicable "where

court should attempt to ascertain the net profit that the business would have earned during the relevant years had the tortious conduct not occurred and compensate it accordingly. *See* 22 Am. Jur. 2d *Damages* § 28 ("The proper calculation of damages focuses primarily on what would have happened absent the liable conduct, not what did happen with the liable conduct."); *see also id.* § 472. In other words, if, for example, the court determined that Appellees would have earned a net profit of $15,000 in 2012 but that, because of the tortious conduct, they actually experienced a net loss of $18,597.78, it should award damages for lost profits in the amount of $33,597.78.

In this analysis, the destruction of some of Appellees' inventory is relevant to why it posted losses in 2012 and 2013, but the market value of those fish cannot be added as additional damages on top of a proper lost profits calculation, because doing so would result in duplicative recovery. *See id.* § 470. The market value of these fish provides a seemingly reliable estimate of the lost revenue stemming from their destruction, but without any further discussion in the underlying opinion, we cannot discern how the Trial Division reached its conclusion regarding lost profits. In other words, the tortious conduct here decreased Appellees' overall profitability in a number of ways, including limiting the space available to Appellees, disrupting their operations, and killing their fish. Compensating Appellees for their lost profits is designed to put them in the position they would have been in had NCL never entered the premises or killed their fish. There is thus

2012 and $20,093.23 for 2013, for a total award of $61,018.21. The damages awarded for 2012 appear to reflect the actual net loss at which NSMRA operated plus the market value of the fish killed by NCL during this year, while the award for 2013 simply reflects the net loss at which NSMRA operated in this year.[5]

From the record and decision below, we cannot discern the basis for the Trial Division's lost profit estimates for 2012 and 2013, and they appear to be at odds with one another. The Trial Division's award for 2012 implies that, absent Appellants' tortious conduct, Appellees would have earned a net profit of $22,327.20.[6] The damages award for 2013, in contrast, suggests that, absent the tortious conduct, Appellees would have broken even.[7] The Trial Division offers no explanation for why Appellees would have been more profitable in 2012 than in 2011, or why their fortunes would be expected to decline so precipitously in 2013.

We also note that the Trial Division's 2012 damages award appears to be calculated by taking the net loss from 2012 and then adding the market value of the fish killed by NCL in 2012. This does not make sense. In calculating a lost profits award, the

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[5] The simple arithmetic would be: $18,597.78 in net losses for 2012 + $22,327.20 in lost fish in 2012 (which reflects 10,632 total dead fish, at an approximate market value of $2.10 per fish) = $40,924.98 in damages for 2012 + $20,093.23 in net losses for 2013 = $61,018.21.

[6] The calculation is as follows: $40,924.98 in total damages awarded for 2012 – $18,597.78 in actual net losses for 2012 = $22,327.20 in estimated profits for 2012.

[7] Estimated net profits for 2013 = $20,093.23 in total damages awarded for 2013 – $20,093.23 in actual net losses for 2013 = $0.

NCL's actions. Once this burden has been met, it is immaterial that the claim could have been proven with even more certainty if additional evidence had been available.

Finally, Appellants argue that the Trial Division erred in its damages assessment because there was not sufficient evidence to provide a reasonable estimate of the market value of the fish killed by NCL. This claim does not pertain to the existence of the damages, as NSMRA indisputably lost a valuable material good, but rather the amount of damages incurred. As such, Appellees needed only to provide a reasonable basis for calculating the extent of the harm. *See* Am. Jur. 2d Damages § 340. In this case, the Trial Division credited the testimony of Emesiochel, who estimated that the killed fish had a market value of approximately $2.10 per fish, based on his considerable experience and firsthand observation of the dead fish. Considering that there was no countervailing evidence tending to suggest that the fish were worth less than this amount, we find no error in the Trial Division's reliance on this approximation in calculating the extent of the damages suffered by the loss of these fish. *See Klsong v. Orak*, 7 ROP Intrm. 184, 188-89 (1999) (injured party's uncontroverted testimony sufficient to prove damages).

We do not reach Appellants' remaining assertions of error,[4] however, because we cannot determine the basis for the Trial Division's lost profits calculations. The Trial Division ultimately awarded damages for "lost profits" in the amounts of $40,924.98 for

[4] These include PPLA's claim that the Trial Division failed to account for purported losses associated with NSMRA's unsuccessful bait fish operation and NCL's claim that the Trial Division improperly permitted double recovery by awarding Appellees damages for lost profits in 2012 as well as damages for the fish killed by NCL in the same year.

Nor do Appellants' arguments leave us with a definite and firm conviction that an error was made in this respect. PPLA maintains that the Trial Division erred in finding that NSMRA incurred lost profits because there was evidence that NSMRA's aggregate expenditures on commercial fish feed actually declined in 2012 and 2013. This argument, however, ignores the other factors that the Trial Division credited as contributing to NSMRA's lost profits, including, perhaps most tellingly, the significant and otherwise inexplicable decline in NSMRA's production and sales during the time of NCL's trespass. Furthermore, while the evidence cited by PPLA shows that NSMRA's commercial feed purchases declined in the aggregate, this does not, by itself, refute NSMRA's claim of increased resort to commercial feed as a result of NCL's intrusion. Considering the drastic decline in the number of fish produced and sold during this period, it is entirely possible that NSMRA's total commercial feed expenditures fell, while the amount spent per fish, or as a percentage of total revenue, nonetheless increased. Accordingly, the cumulative figures referenced by PPLA, without more, do little to call into question the Trial Division's decision.

PPLA also argues that it was not possible to determine whether NSMRA incurred lost profits due to the lack of records maintained by NSMRA. However, as discussed above, there was sufficient evidence actually produced at trial to support the Trial Division's finding that NSMRA more likely than not incurred lost profits as result of

the harm is of such a nature as necessarily to prevent anything approximating accuracy of proof, as when anticipated profits of a business have been prevented." Restatement (Second) Torts § 912 cmt. a.

With respect to the existence of damages, the Trial Division did not clearly err in finding that a preponderance of the evidence showed that NSMRA incurred lost profits as a result of NCL's interference with NSMRA's operations. The evidence showed that NSMRA was profitable in 2010 and again earned a profit of $17,696.79 in 2011. By contrast, in 2012—when NCL first entered and began conducting its own operations in the milkfish farm—and again in 2013—while NCL's trespass was ongoing—NSMRA operated at net losses of $18,597.78 and $20,093.23, respectively. The evidence similarly showed that NSMRA sold only 60,848 pounds of fish in 2012, as compared to 82,534 pounds in 2011. In addition, there was extensive testimony that the drop in production and sales was the result of NCL's actions, including occupying five of the six grow-out ponds, which forced NSMRA to crowd its fish into a reduced number of ponds and purchase expensive commercial feed to maintain a healthy stock of fish rather than relying on algae grown in the ponds. The evidence further showed that NCL directly killed 10,632 of NSMRA's milkfish, 260 in July 2012 and 10,372 in November 2012. Considering the sum of this evidence, we cannot find that no reasonable trier of fact could have determined that NSMRA suffered lost profits as a result of NCL's trespass.

no need to award additional separate damages for the killed fish unless Appellees can demonstrate some reason why a lost profits award does not suffice to make them whole.

With the above principles in mind, we remand for a new determination of damages.

CONCLUSION

For the foregoing reasons, we affirm in part, vacate in part, and remand so that the Trial Division can recalculate the damages award to Appellees in accordance with our discussion in Section II.C of this Opinion.

SO ORDERED, this 16th day of September, 2015.

ARTHUR NGIRAKLSONG
Chief Justice

LOURDES F. MATERNE
Associate Justice

R. ASHBY PATE
Associate Justice