

STATE OF MICHIGAN
COURT OF APPEALS

BAHJAT INVESTMENT, INC.,

Plaintiff-Appellant,

v

PARK N'JET AIRPORT PARKING, INC.,

Defendant-Appellee,

and

JOSEPH ORAM and JOANN ORAM
REVOCABLE TRUST,

Defendants.

UNPUBLISHED

September 27, 2007

No. 269875

Wayne Circuit Court

LC No. 02-238510-CH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment granting his request for injunctive relief but denying his request for damages, following an order of remand by this Court in a prior appeal. See *Bahjat Investment, Inc v Park N'Jet Airport Parking, Inc*, unpublished opinion per curiam of the Court of Appeals, issued February 7, 2006 (Docket No. 256650). We affirm, but remand for entry of an award of nominal damages in plaintiff's favor.

The salient facts have previously been detailed by this Court. See *Bahjat Investment, Inc, supra*. We remanded this matter after concluding that there were material issues of fact to be decided by the trial court, including whether plaintiff had standing to sue. Although it does not appear that these matters were decided on remand, neither party raised an objection. Because defendant, the aggrieved party, apparently conceded the material issues of fact, we turn to whether the trial court properly denied plaintiff's request for damages. We conclude that it did.

Plaintiff claims on appeal that he was entitled to recover damages as a consequence of defendant's trespass. "Recovery for trespass to land in Michigan is available only upon proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right of exclusive possession. Once such an intrusion is proved, the tort has been established and the plaintiff is presumptively entitled to at least nominal damages," which may be awarded "even absent any proof of actual injury." *Adams v Cleveland-Cliffs Iron Co*,

237 Mich App 51, 67, 73; 602 NW2d 215 (1999). The plaintiff may also recover “any additional, actual damages proved.” *Id.* at 72. In the case of an injury to land that is reparable, e.g., the trespassing object can be removed, actual damages are “the cost of restoration of the property to its original condition, if less than the value of the property before the injury.” *Kratze v Independent Order of Oddfellows*, 442 Mich 136, 149; 500 NW2d 115 (1993).

In this case, plaintiff presented no evidence of actual damages incurred. And, although plaintiff requests that this Court remand this matter for an evidentiary hearing on the issue, no request for an evidentiary hearing was made in the trial court.¹ Further, plaintiff has completely failed to demonstrate that an evidentiary hearing would support his claim of actual damages. See MCR 7.211(C)(1)(a)(ii). We conclude that an evidentiary hearing is unwarranted and we deny that request.

Regarding general damages, the trial court’s order directed that the trespassing objects “be removed at the cost and expense of the Defendant” If the objects were not removed, the order authorized plaintiff to “restore the property and charge the Defendant . . . for such removal and restoration.” Further, there is no evidence that plaintiff is entitled to statutory damages under MCL 600.2919(1). Therefore, plaintiff would be entitled only to nominal damages. Accordingly, we reverse the trial court’s denial of plaintiff’s request for damages and order that an award of nominal damages be entered in plaintiff’s favor.

Affirmed, but remanded for entry of an award of nominal damages in plaintiff’s favor. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto

¹ Plaintiff refers to the trial court’s denial of his request for an evidentiary hearing with regard to the issue of damages but no such request could be found in the lower court record. And, plaintiff has failed to refer us to the location in the record where this issue was raised and preserved for appeal. See MCR 7.212(C)(7).