

STATE OF MICHIGAN
COURT OF APPEALS

CIT TECHNOLOGY FINANCIAL SERVICES,

Plaintiff-Appellee,

v

DETROIT BOARD OF EDUCATION,

Defendant-Appellant,

and

DETROIT SCHOOL DISTRICT,

Defendant.

UNPUBLISHED

March 26, 2013

No. 305127

Wayne Circuit Court

LC No. 05-511500-PD

Before: GLEICHER, P.J., and SAWYER and FORT HOOD, JJ.

PER CURIAM.

This breach of contract dispute between plaintiff CIT Technology Financial Services (CIT) and defendant Detroit Board of Education (the “Board”) is before this Court for the second time. In a prior appeal, this Court reversed a judgment for CIT and remanded for further proceedings after determining that the trial court had erred in granting summary disposition in CIT’s favor with respect to liability. *CIT Tech Fin Servs v Detroit Bd of Ed*, unpublished opinion per curiam of the Court of Appeals, issued July 27, 2010 (Docket No. 288164) (*CIT I*). After a full bench trial on remand, the court entered a judgment awarding CIT \$601,329.03.

The majority of the Boards’ appellate challenges lack merit. However, the Board has established on appeal that CIT failed to support with admissible evidence the reasonableness of the attorney fees it incurred, and which the Board was required to reimburse pursuant to the parties’ contracts. While we generally affirm the lower court’s judgment, we reverse that portion awarding CIT’s attorney fees and costs and remand for reconsideration of that damages element.

I. BACKGROUND

This case involves 22 multi-year lease agreements executed in 2001 and 2002 between Canon Business Solutions-Northeast, Inc. (“Canon”), as lessor, and the Detroit Public School District, whereby Canon agreed to provide copy equipment to several Detroit schools. Each lease agreement was signed by a school principal, but named the Board as the lessee. The

evidence at trial indicated that the lease agreements were not signed by a school principal, and the equipment at issue was not delivered to the specified schools, until after Canon first received an advance payment pursuant to a purchase order issued by the Board itself. After the lease agreements were signed and the equipment delivered to the schools, Canon purportedly sold the equipment and assigned the lease agreements to CIT to finance the transaction. CIT thereafter billed the Board for the remaining lease payments.

CIT filed this action after the Board stopped making lease payments. CIT sought monetary damages under theories of breach of contract, account stated, and conversion, and sought possession of the leased equipment under a theory of claim and delivery. In June 2007, the trial court granted summary disposition in CIT's favor on the issue of liability. After a trial on damages alone, the court entered a judgment in CIT's favor in the amount of \$398,570.45. In *CIT I*, this Court determined that the trial court erred in granting summary disposition in CIT's favor with respect to liability and remanded for further proceedings. With respect to CIT's breach of contract claim, this Court upheld the trial court's determination that MCL 380.373(4)¹ did not preclude CIT's recovery, but found that "it is not clear that there are facts in the record to support the trial court's conclusion that the school principals were ostensible agents" of the Board. *CIT I*, slip op at 4. This Court also concluded that a genuine issue of material fact existed regarding whether the Board had ratified the lease agreements, notwithstanding the school principals' lack of authority to enter into them. *Id.* at 4. The trial court's grant of summary disposition in CIT's favor with respect to the account stated claim was reversed because the parties did not mutually agree regarding the amount due. *Id.* at 5-6. Lastly, this Court determined that the trial court erred in granting summary disposition in CIT's favor on "16 counts of conversion" because "[t]here is no evidence from which to conclude that [CIT] purchased the equipment from 16 of the 22 lease agreements by Canon." According to the evidence, the equipment underlying those agreements still belonged to Canon and only Canon could raise a conversion claim. *Id.* at 5. Because this Court concluded that summary disposition in CIT's favor was improper, it declined to consider whether the trial court improperly admitted certain testimony and exhibits in evidence at the trial on damages. *Id.* at 6.

On remand, the matter was assigned to a different judge and the court conducted a bench trial on the issues of liability and damages. Based on additional evidence presented, the court found that CIT had purchased the lease agreements and the equipment underlying those agreements. The court found it unnecessary to resolve a conflict regarding whether Hildred Pepper, a former executive director and chief contracting officer in the Board's purchasing department, had agreed to make the remaining lease payments. The trial court instead

¹ MCL 380.373 is part of the Revised School Code involving school reform boards appointed by a mayor. *Craig v Detroit Pub Sch Chief Executive Officer*, 265 Mich App 572, 576; 697 NW2d 529 (2005). Under this statutory scheme, the chief executive officer (CEO) appointed by a school reform board essentially stands in the shoes of the former school board. *Id.* at 577; see also MCL 380.374. The CEO was given the authority to delegate the "chief executive officer's powers and duties to 1 or more designees, with proper supervision by the school reform board." MCL 380.373(4).

determined that the Board was liable for the amounts due under the lease agreements because the school principals were ostensible agents of the Board when they executed the leases. The court further found that the Board had ratified the lease agreements by making lease payments after the leases were executed and retaining the benefits of the lease agreements after “the issue about the authority” was known.² CIT was awarded a total judgment of \$601,329.03, which included contract damages, costs, attorney fees, and statutory interest.

II. DISCOVERY SANCTIONS

On appeal, we first address the Board’s argument that the trial court erred by failing to impose an appropriate sanction for CIT’s failure to comply with its discovery requests. The Board points to CIT’s alleged misdeeds dating back to the discovery phase before the first trial. The Board argues that the trial court should have excluded CIT’s trial exhibits 23 through 27 and the testimony of two CIT witnesses, Linda Vandenburg and Sharon Smith-Onwaka (“Smith”). The Board also argues that it was unjust for the trial court to deny it the opportunity to call its only two proposed defense witnesses, Mark Schrupp and Oreese Collins, after admitting CIT’s evidence.

We review for an abuse of discretion a trial court’s evidentiary rulings and decisions whether to impose discovery sanctions. *KBD & Assocs, Inc v Great Lakes Foam Techs, Inc*, 295 Mich App 666, 676-677; 816 NW2d 464 (2012). “An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes.” *Id.* at 677, quoting *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010).

A. CIT’s Proposed Witnesses

The Board has not established that the trial court abused its discretion by admitting Vandenburg’s testimony at trial. The Board’s objection was based on CIT’s failure to summarize Vandenburg’s proposed testimony in response to the Board’s pretrial discovery request. The record indicates that both parties had named Vandenburg in witness lists filed in October 2005. The Board had submitted interrogatories requesting that CIT provide a summary of its proposed witnesses’ expected testimony, but CIT failed to provide such a summary in relation to Vandenburg.

The problem with the Board’s request to exclude Vandenburg’s testimony is that the sanctions available to a trial court for a discovery violation apply only where a party fails to comply with a discovery *order*. MCR 2.313(B)(2); *KDB & Assocs*, 295 Mich App at 677. The Board never moved to compel discovery or sought a discovery order. Absent the violation of a discovery order, the court could not consider the factors relevant to fashioning a discovery sanction set forth in *Bass v Combs*, 238 Mich App 16, 26-27; 604 NW2d 727 (1999), as suggested by the Board. Moreover, on remand, the Board vehemently opposed reopening

² The trial court found no cause of action with respect to CIT’s conversion claim, and also denied relief with respect to the claim and delivery count. Those claims are not at issue in this appeal.

discovery despite CIT's repeated motions. Had the Board acquiesced in discovery, it could have learned the content of Vandenburg's proposed trial testimony.

With respect to witness Smith, the Board similarly challenged that CIT failed to summarize her expected testimony in its interrogatory answers. The Board also argued that CIT had previously removed Smith from its witness list and presented the testimony of Lizabeth Burns at the first trial instead. The Board's actual objection on this point is not clear from the record as the Board did not contest that Smith was the correct person to testify regarding the subject matter. And, in any event, Burns was no longer available to testify as she had left CIT's employ and CIT could not locate her. At the second trial in May 2011, CIT's counsel reaffirmed that Smith was the best witness because "her name is on every single exhibit." Considering that the Board was aware of Smith's identity as a witness well before trial and never moved to compel discovery or to obtain a discovery order, the trial court did not abuse its discretion by refusing to exclude Smith's testimony at trial. The same is true of Vandenburg.

B. CIT's Trial Exhibits

The Board also contends that the trial court should have excluded CIT's trial exhibits 23 through 27 as a discovery sanction. These exhibits include invoices for CIT's attorney fees, a "certification" that Canon had assigned the relevant leases to CIT, and an amendment to the contract between Canon and CIT after Canon reorganized its business operations. At trial, however, the Board only objected to the admission of these exhibits on hearsay grounds. Its appellate attack is therefore not preserved for our review. *Westland v Okopski*, 208 Mich App 66, 72; 527 NW2d 780 (1994). Moreover, as already noted, CIT did not violate a discovery order so no discovery sanction was warranted. *KDB & Assocs*, 295 Mich App at 677.

C. The Board's Proposed Witnesses

The Board argues that the trial court acted unfairly by precluding its proposed witnesses, Collins and Schrupp, while imposing no discovery sanctions against CIT. The Board had not previously identified Collins and Schrupp as potential witnesses and claimed that CIT's failure to disclose its witnesses' proposed testimony prevented the Board from doing so. The trial court did have the discretion to allow the Board's undisclosed witnesses to testify. *Hayes-Albion v Kuberski*, 421 Mich 170, 188; 364 NW2d 609 (1984); see also MCR 2.401(I)(2). However, the Board has not shown that it was prejudiced by the exclusion.

The Board offered Collins for the limited purpose of establishing a foundation for the admission of documents regarding the Board's contracting procedures. Even if Collins could have established a proper foundation for the admission of the documents, because the Board had an opportunity to present evidence regarding its contracting procedures through Pepper's testimony, and the trial court did not find that the school principals had actual authority to enter into the lease agreements, any error in excluding Collins' testimony was harmless. MCR 2.613(A).

Similarly, while the Board offered Schrupp for the limited purpose of rebutting Smith's testimony regarding whether Schrupp had agreed to make the lease payments, that factor was not germane to the trial court's decision. Indeed, there was no evidence that Schrupp had authority

to approve the payments on behalf of the Board. The disputed issue identified by the trial court was whether *Pepper*, who did have the proper authority, approved the payments. Any error in excluding Schrupp's proposed testimony was also harmless. MCR 2.613(A).

III. EVIDENTIARY ISSUES

We next consider the Board's claims of evidentiary error in the admission of CIT's exhibits 1 through 27. We review the trial court's evidentiary decisions for an abuse of discretion. *KBD & Assocs*, 295 Mich App at 676.

CIT's exhibits 1 through 22 had also been introduced at the first trial. They included the lease agreements and related documents. Smith, as CIT's litigation manager or litigation specialist, established a foundation for admitting the exhibits. According to Smith, she received the materials from CIT's collection department to review for litigation. The materials also included lease summary worksheets that Smith used to compute the amounts owed and the payment histories for the leases.

The Board now contends that the exhibits contain inadmissible hearsay and were not properly authenticated. Yet, the Board below raised only a broad hearsay objection without identifying the statements that it believed were hearsay. Pursuant to MRE 103(a)(1), to properly preserve an issue for appeal, the party must state "the specific ground of objection, if the specific ground was not apparent from the context." We review unpreserved claims of evidentiary error for plain error affecting substantial rights. MRE 103(d).

Hearsay is inadmissible except as provided by the rules of evidence. MRE 802. "'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." MRE 801(a). "Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules." MRE 805. A written contract memorializing the fact of a legal agreement and defining the parties' rights and liabilities falls outside the definition of hearsay. *Stuart v UNUM Life Ins Co of America*, 217 F3d 1145, 1154 (CA 9, 2000); *United States v Bellucci*, 995 F2d 157, 161 (CA 9, 1993); see also 2 McCormick, Evidence (6th ed), § 249, p 133 ("When a suit is brought for breach of a written contract, no one would think to object that a writing offered as evidence of the contract is hearsay[.]").

Whether a writing was authenticated presents a distinct issue. Pursuant to MRE 901(a), "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." MRE 1002 provides that "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Under MRE 1003, "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." As explained in *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 73; 577 NW2d

150 (1998), “even if authenticated, proffered evidence may be excluded because of some other bar to admissibility such as lack of relevancy, undue prejudice, confusion, or waste of time.”

The Board has not shown that it was prejudiced by the admission of CIT’s exhibits 1 through 22. With respect to the Board’s claim that the litigation summary worksheets were inaccurate, we note that those worksheets were prepared by Smith. While reports prepared in anticipation of litigation have been found inadmissible under the hearsay exception in MRE 803(6) for business records, *People v Jambor (On Remand)*, 273 Mich App 477, 482; 729 NW2d 569 (2007), the Board had an opportunity to cross-examine Smith regarding her calculations and testimony that the worksheets best summarized damages. Under these circumstances, the admission of the worksheets, even if plain error, did not affect the Board’s substantial rights.

The Board also asserts that CIT did not authenticate the “assignment and bill of sale” documents in exhibits 2 through 7. While there may have been gaps in the chain of custody for the assignment documents and how they came to be placed in records received by Smith, the record does not demonstrate that there was an insufficient foundation to determine that the assignment documents were what Smith claimed they were, namely, assignment documents provided to CIT by Canon. “Once a proper foundation has been established, any deficiencies in the chain of custody go to the weight afforded to the evidence, rather than its admissibility.” *People v White*, 208 Mich App 126, 133; 527 NW2d 34 (1994).

Even absent sufficient foundation for the “assignment and bill of sales,” the evidence was only relevant in determining whether CIT had a right to enforce the lease agreements entered into by Canon. An assignee stands in the shoes of its assignor. *Burkhardt v Bailey*, 260 Mich App 636, 652-653; 680 NW2d 453 (2004). The trial court had the benefit of uncontradicted testimony from Vandenburg and Smith regarding the business relationship between CIT and Canon to determine whether assignments were made. Although Vandenburg could not recall seeing an assignment for each lease agreement, there was no logical reason for CIT to possess the lease agreements and undertake collection activities unless it was an assignee of the agreements. Therefore, absent a showing that a written assignment was necessary for CIT to step into the shoes of Canon to enforce the lease agreements, the Board’s substantial rights were not affected by the admission of the assignment documents.

The Board preserved its hearsay challenge to the February 1, 2011 “certificate of assignment” for 15 lease agreements in CIT’s exhibit no. 26. Smith testified that CIT obtained this certificate from Canon to show that the lease agreements were actually assigned. Because CIT did not establish that it was a regular practice for Canon to issue the certificate, we agree with the Board that the trial court erred in admitting the evidence under the hearsay exception for business records. MRE 803(6). We also reject CIT’s argument that MRE 803(15) provides an alternative basis for admitting the statement in the certificate regarding past assignments. MRE 803(15) only applies to “[a] statement contained in a document purporting to establish or affect an interest in property.” Nonetheless, because the existence of the assignment was clear from CIT’s and Canon’s actions, the trial court’s error in admitting exhibit 26 was harmless.

The Board failed to preserve its appellate challenge to the relevancy of exhibit no. 27 because it did not object on that basis in the trial court. *Westland*, 208 Mich App at 72. Exhibit no. 27 is an amendment to an agreement entered into by CIT and Canon in April 2004,

addressing the effect of Canon's business reorganization on the existing vendor agreement. The document does not specify that any of the lease agreements in this case were assigned to CIT and does appear to be irrelevant to the issues before the trial court. However, the information in no way prejudiced the Board and any error in its admission was harmless.

However, we do find merit in the Board's argument that the trial court abused its discretion in admitting exhibits 23, 24, and 25 under the hearsay exception for business records. Exhibit 24 contains an itemization of CIT's attorney fees and costs for the period April 1, 2005, to May 9, 2008. Exhibits 23 and 25 contain itemizations of additional attorney fees and costs for subsequent periods through May 24, 2011. CIT presented these documents because the lease agreements allow it to seek reimbursement of its attorney fees and costs.

In a contract action, "[a] party claiming the right to recover attorney fees under a contract must introduce evidence of the reasonableness of the attorney fees to establish a prima facie case and to avoid a directed verdict." *Zeeland Farm Servs, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 196; 555 NW2d 733 (1996). Contrary to the trial court's ruling, the mere fact that attorney fees and costs are part of the lease agreements does not establish a sufficient foundation for admitting the proffered exhibits. CIT failed to establish a proper foundation for admitting the exhibits under the hearsay exception for business records, through the custodian of the writing or another qualified witness. Accordingly, the trial court abused its discretion in admitting the exhibits. MRE 803(6); *People v Fackelman*, 489 Mich 515, 536; 802 NW2d 552 (2011).

The erroneous admission of these documents was not harmless. Despite contrary statements made by CIT's counsel at oral argument, Smith offered no testimony regarding the details of CIT's attorney fees that could assist the trial court in determining their reasonableness.³ Further, CIT did not show that Smith was able to testify regarding the amount of the attorney fees and costs without the aid of the documents, and it was necessary that CIT establish a proper foundation for admitting the documents. *People v Jenkins*, 450 Mich 249, 258 n 22; 537 NW2d 828 (1995); *People v Rodgers*, 388 Mich 513, 519; 201 NW2d 621 (1972). It would be inconsistent with substantial justice not to correct the trial court's evidentiary error. MCR 2.613(A); MRE 103(a). Accordingly, we reverse that portion of the trial court's judgment awarding CIT costs and attorney fees as contract damages and remand for a redetermination of those damages consistent with this opinion.

On remand, the trial court must determine the reasonableness of CIT's attorney fees based on properly admitted evidence. CIT is not required to present expert testimony to establish the reasonableness of the fees incurred. *Zeeland Farm Servs*, 219 Mich App at 196. As a litigation specialist for CIT whose "job [it] is to place [unpaid accounts] out for litigation," Smith

³ The sum total of testimony on this issue spans seven pages of transcript and yet pertains solely to the total cost of the fees. At the original trial on liability, witness Lizabeth Burns testified that CIT's counsel's hourly rate "probably" was reasonable, but admitted that she had never reviewed the matter. Beyond knowing that an attorney in New York charged higher fees than an attorney in Michigan, Burns completely failed to testify regarding any other factor pertinent to the reasonableness of the fees charged.

likely can testify regarding this issue. After all, Smith is a member of CIT's legal department and Burns previously indicated that department enters into attorney fee agreements on CIT's behalf. See *id.* at 197 (approving the use of testimony by the party's agent who "hires attorneys or firms for collection work, reviews their invoices, compares invoices from one attorney or firm with those of others, and evaluates the invoices for reasonableness and similarity with other attorneys' charges for similar debt collection matters"). CIT must first establish that Smith has the experience necessary to render such a judgment.

CIT must also present evidence from which the court can determine whether the fees were reasonable based on the factors outlined in MRPC 1.5(a). *Zeeland Farm Servs*, 219 Mich App at 198. MRPC 1.5(a) provides:

A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

IV. RATIFICATION

The Board also argues that the trial court erred in granting judgment in CIT's favor on its breach of contract claim on the basis of ratification. The Board argues that it could not have ratified 18 of the 22 lease agreements because the absence of competitive bidding renders the contracts void as a matter of law. The Board also asserts that, while the trial court did not address this issue, it would have been clear error for the trial court not to find that the competitive bidding requirement of MCL 380.1274 was violated.

School districts are municipal corporations. *La Porte v Escanaba Area Pub Schs*, 51 Mich App 305, 307; 214 NW2d 840 (1974). As our Supreme Court recognized in *Davis v Mayor, Recorder, & Aldermen of the City of Jackson*, 61 Mich 530, 540; 28 NW 526 (1886):

The doctrine is well established that a municipal corporation may ratify the unauthorized acts and contracts of its agents or officers, when the corporation might legally have authorized such acts and contracts in the first instance (1 Dill. Mun. Corp. § 463, and notes), subject to exception where the mode of contracting operates as a limitation upon the power to contract.

See also *Commercial State Bank v Sch Dist No 3 of Coe Twp, Isabella Co*, 225 Mich 656, 663-664; 196 NW 373 (1923) (school district's board had power to ratify what it could authorize in the first place).

An essential requirement of ratification is full knowledge of the facts. *Baker v Kalamazoo*, 269 Mich 14, 20; 256 NW 606 (1934). Where a person has knowledge of the essential facts, a person may impliedly ratify an act by conduct on his or her part that constitutes assent to the act. *David Stott Flour Mills v Saginaw Co Farm Bureau*, 237 Mich 657, 663; 213 NW 147 (1927); see also *Langel v Boscaglia*, 330 Mich 655, 659-660; 48 NW2d 119 (1951); *City Nat'l Bank of Detroit v Westland Towers Apartments*, 152 Mich App 136, 143-144; 393 NW2d 554 (1986) (ratification by retention of benefits).

While ratification is a means for a municipal corporation to bind itself to a contract that was entered into by a person without authority to do so, a municipal corporation may still attack the validity of the contract based on the manner in which it was entered into. Where it is claimed that the municipal corporation failed to comply with statutory provisions in the exercise of its authority, but the act is neither *malum prohibitum* nor *malum in se*, a municipal corporation may not defend on the basis of the manner in which the contract was made and retain its benefits, without tendering at least reasonable compensation for the benefits received. See *Hatch v Maple Valley Twp Unit Sch*, 310 Mich 516; 17 NW2d 735 (1945) (school board's failure to advertise and seek bids, as required by statute, did not defeat the plaintiff's recovery where there was no claim of fraud, collusion, overreaching, or excessive costs).

In this appeal, the Board's challenge to the trial court's determination that two acts of ratification occurred is raised only in its reply brief. "[R]aising an issue for the first time in a reply brief is not sufficient to present the issue for appeal." *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003); see also MCR 7.212(G).

In addition, whether an instrument or transaction is void is an affirmative defense. MCR 2.111(F)(3)(a). "The party asserting an affirmative defense has the burden of presenting evidence to support it." *Attorney General ex rel Dep't of Environmental Quality v Bulk Petroleum Corp*, 276 Mich App 654, 664; 741 NW2d 857 (2007). Yet, the Board has not established that MCL 380.1274 even required competitive bidding for the leases. Although the statute generally addresses acquisitions by purchases, leases, and rentals, the competitive bidding

provision, MCL 380.1274(2), applies only to *purchases* over \$20,959.⁴ Accordingly, we reject the Board’s argument on appeal that 18 of the lease agreements are void.

V. OSTENSIBLE AGENCY

The Board also argues that the trial court erred in granting judgment in CIT’s favor on its breach of contract claim based on the theory that the school principals signed the lease agreements as ostensible agents of the Board. Because the trial court’s judgment may be independently upheld on the basis that the Board ratified, it is unnecessary to reach this issue.

VI. STANDING

The Board argues that CIT lacks standing to assert claims based on the lease agreements because it failed to establish that it was the assignee of the agreements. We note that this issue is not set forth in the Board’s statement of questions presented contrary to MCR 7.212(C)(5). Thus, the issue is not properly before this Court. *Busch v Holmes*, 256 Mich App 4, 12; 662 NW2d 64 (2003). In any event, a litigant has standing whenever there is a legal cause of action. *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). A plaintiff’s failure to plead or prove facts sufficient to establish standing does not deprive a court of subject-matter jurisdiction, but rather constitutes a mistake in the exercise of jurisdiction. *Altman v Nelson*, 197 Mich App 467, 472-476; 495 NW2d 826 (1992). Under the preponderance of the evidence standard applicable to a breach of contract action, “the evidence must persuade the fact-finder that it is more likely than not that the proposition is true.” *Miller-Davis Co v Ahrens Constr, Inc (On Remand)*, 296 Mich App 56, 71; 817 NW2d 609 (2012). As previously indicated in section III of this opinion, the trial testimony supports a finding that CIT was the assignee of each lease agreement. Accordingly, the trial court did not clearly err in concluding that CIT could enforce the lease agreements. *Amb’s v Kalamazoo Co Rd Comm*, 255 Mich App 637, 651-652; 662 NW2d 424 (2003).

Affirmed in part, reversed in part, and remanded for further proceedings regarding damages consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ David H. Sawyer

/s/ Karen M. Fort Hood

⁴ If competitive bidding were required for the lease agreement, the record evidence suggests that such bidding did not occur in this case. Linda Vandenburg testified that a Detroit public school principal in need of leased office equipment would contact three vendors for competitive “proposals” or quotes. Vandenburg explained that a proposal is not synonymous with a bid—“A bid is a total different thing.”