

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

KYLE HADLEY,	)		
	)		
Plaintiff,	)		
	)		
v.	)	Case No.	2025-CH-05527
	)		
BRANDON MCGIVERN,	)	Judge	Eve M. Reilly
	)		
Defendant.	)	Courtroom	2405

**PLAINTIFF’S MOTION TO STRIKE DEFENDANT’S PRO SE PROVE-UP
MEMORANDUM AND FOR ENTRY OF A PROVE-UP HEARING**

Plaintiff, by and through undersigned counsel, respectfully moves this Court to strike Defendant’s pro se prove-up memorandum as procedurally noncompliant and prejudicial, and in support states as follows:

I. INTRODUCTION

1. Plaintiff respectfully moves to strike Defendant’s pro se prove-up memorandum as procedurally noncompliant and unsupported by sworn evidence. The memorandum seeks entry of judgment, including monetary relief, without submitting any affidavit or testimony verifying damages. As filed, the memorandum consists solely of unsworn argument.
2. The Court’s decision to take the prove-up memorandum under advisement, without conducting a hearing or requiring evidentiary support, effectively deprives Plaintiff of any opportunity to contest the damages alleged. Plaintiff has had no opportunity to present an argument, challenge the factual basis of Defendant’s claims, or test the accuracy of the amounts sought. This posture is inherently prejudicial.

3. Illinois law requires that damages—particularly unliquidated or discretionary damages—be established through competent evidence at a prove-up hearing. Neither a memorandum nor unsworn assertions substitute for sworn proof of damages. Fundamental fairness and due process require that Plaintiff be afforded an opportunity to be heard before judgment is entered.

II. LEGAL STANDARD

4. A prove-up is an evidentiary proceeding, not a briefing exercise. Under Illinois law, a party seeking judgment bears the burden of proving damages through competent evidence, and damages may not be awarded based on speculation, conjecture, or unsworn argument. *See Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 247 (2006) (damages must be proved with reasonable certainty); *Melton v. Millerschone*, 2012 IL App (2d) 120186-U (damages must be established by evidence, not assumption).

5. Argument of counsel or a party, standing alone, is not evidence and cannot support an award of damages. Illinois courts have repeatedly held that unsworn assertions and conclusory statements are insufficient to establish damages at prove-up. *See In re Marriage of Pratt*, 2014 IL App (1st) 130465, 24 (argument and unsworn assertions are not evidence); *King v. Ashbrook*, 313 Ill. App. 3d 1040, 247 Ill. Dec. 566, 732 N.E.2d 621 (2000) (damages must be supported by evidence, not conjecture).

6. *Pro se* litigants are held to the same procedural and evidentiary standards as parties represented by counsel. While courts may construe *pro se* filings liberally, they may not dispense with evidentiary requirements or deprive the opposing party of the opportunity to

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contest the relief sought. *See Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528 (2001); *People v. Fowler*, 222 Ill. App. 3d 157, 163 (4th Dist. 1991).

III. ARGUMENT

A. Defendant's Prove-Up Memorandum Is Not Competent Evidence

7. Defendant's pro se prove-up memorandum contains no affidavit, sworn testimony, or other admissible evidence establishing damages. It does not include a damages calculation, supporting documentation, or any verification of the amounts allegedly owed. As filed, it consists solely of unsworn argument.

8. A prove-up memorandum is not evidence and cannot, by itself, support entry of judgment. Illinois law requires that damages—particularly unliquidated or discretionary damages—be established through competent sworn proof. Courts may not rely on assumptions, conclusory statements, or legal argument as a substitute for evidence.

9. Permitting judgment to be entered based on Defendant's unsworn memorandum would improperly lower the evidentiary standard required at prove-up. It would also relieve Defendant of his burden to establish damages with reasonable certainty, contrary to well-settled Illinois law.

B. Taking the Prove-Up Memorandum Under Advisement Is Prejudicial to Plaintiff

10. By taking Defendant's prove-up memorandum under advisement without requiring sworn proof or conducting a hearing, Plaintiff is deprived of any meaningful

opportunity to contest the damages alleged. Plaintiff has not been permitted to present argument, challenge the factual basis of Defendant's claims, or address the relief sought.

11. A prove-up hearing serves a critical procedural function by allowing the opposing party to be heard and by ensuring that any damages awarded are supported by evidence. Where no hearing is held and no affidavit is submitted, Plaintiff is foreclosed from testing Defendant's assertions or exposing deficiencies in the claimed damages.

12. This posture effectively converts Defendant's unilateral submission into a one-sided adjudication of damages. Fundamental principles of fairness and due process require that Plaintiff be afforded an opportunity to challenge the evidentiary basis for any judgment before it is entered.

C. The Proper Remedy Is to Strike the Memorandum and Require a
Prove-Up Hearing

13. Because Defendant's prove-up memorandum is unsupported by sworn evidence and procedurally deficient, it should be stricken. At a minimum, the Court should decline to enter judgment based on the memorandum alone.

14. The appropriate course is to require Defendant to comply with Illinois prove-up requirements by submitting competent evidence of damages, either through affidavit or live testimony. This ensures that any judgment entered is grounded in evidence rather than assumption or argument.

15. Plaintiff respectfully requests that the Court set the matter for a prove-up hearing at which Defendant must meet his evidentiary burden and Plaintiff may contest the damages and relief sought. Such a hearing will protect the integrity of the proceedings and avoid prejudice to Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court:

- (a) strike Defendant's pro se prove-up memorandum;
- (b) decline to enter judgment absent proper sworn proof of damages;
- (c) set the matter for a prove-up hearing at which Plaintiff may be heard; and
- (d) grant such other and further relief as this Court deems just and proper.

Dated: January 26, 2026

Respectfully Submitted,

By: /s/Mason Cole
Attorney for the Plaintiff

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