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2026 IL App (3d) 250558-U

Order filed November 17, 2026

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2026

NUCOR STEEL KANKAKEE, INC.,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-25-0558
	)	Circuit No. 22-LA-1
	)	
TEREX USA, LLC, and THOESEN	)	Honorable
TRACTOR & EQUIPMENT CO., INC.	)	Lindsay Parkhurst,
	)	Judge, Presiding.
Defendants	)	
	)	
(Terex USA, LLC,	)	
	)	
Defendant-Appellant).	)	

JUSTICE BERTANI delivered the judgment of the court.
Presiding Justice Hettel and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in refusing to award a set off in damages associated for incidental damages where the settlement to be set off did not include an allocation of the damages and the party requesting the set off did not meet its burden to prove the settlement was attributable to the incidental damages; sanctions imposed for discovery violations were not an abuse of discretion.

¶ 2 This appeal arises from several breach of warranty claims plaintiff, Nucor Steel Kankakee, Inc. (Nucor) brought against defendants, Terex USA, LLC (Terex) and Thoesen Tractor & Equipment Co., Inc. (Thoesen) arising out of the purchase of two cranes. While Nucor and Thoesen reached a settlement, damages were awarded against Terex following a jury trial wherein the jury awarded amounts for breach of express warranty and incidental damages. Terex appeals and argues that the circuit court erred for not awarding a higher set off against its incidental damages to account for the damages Thoesen agreed to pay pursuant to the settlement. It also appeals the sanctions imposed by the court that barred the use of certain in-cab camera videos that it intended to use in its case in chief. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Nucor operates a steel mill that manufactures steel products in Bourbonnais, Illinois. Nucor began negotiations for the purchase of handler cranes from Terex and Thoesen. Nucor intended to use the handlers to move scrap steel in its steel recycling yard. Terex was the manufacturer of the handlers, and Thoesen was the distributor.

¶ 5 During negotiations Nucor requested warranties from Terex and Thoesen to ensure the handlers functioned as needed. Both agreed to provide those warranties. On January 5, 2017, the parties conducted a "Buy Day" meeting wherein Terex provided a final presentation for purchase to Nucor that included representations regarding warranty coverage for its product. Nucor purchased two material handlers which were delivered later in 2017.

¶ 6 Each of the machines experienced cracks and required repairs less than a year after delivery. Nucor requested assistance from Terex and Thoesen to repair the machines pursuant to their warranties. Terex requested the video footage from the second machine's in-cab video camera from the time period that the machine first failed. Nucor's employee Rickey Macari sent a flash

drive of the video files to Terex in late 2018 but did not retain a copy for Nucor's records. Terex reviewed the videos and subsequently denied Nucor's warranty claims, refusing to replace the machines or to pay for the attempted repairs. The videos were never returned to Nucor.

¶ 7 Nucor filed a complaint against Thoesen and Terex on January 5, 2022, alleging breaches of express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose against both parties.

¶ 8 Nucor served Terex with a notice to produce pursuant to Illinois Supreme Court Rule 214 (eff. July 1, 2018), requesting all documents and video recordings related to the machines and their failures and any affirmative defenses Terex intended to raise. Terex produced approximately 72 hours of video recordings from Nucor's in-cab camera it received from Macari in 2018. The initial case management schedule required the parties to complete discovery by December 17, 2023. An agreed order entered on March 6, 2024, indicated fact discovery had been completed, additional expert discovery and depositions were still being conducted and that all discovery would close on August 2, 2024.

¶ 9 A jury trial began on December 2, 2024. Terex briefly mentioned the in-cab videos in its opening statement when counsel stated Terex only received 72 hours of video from Nucor following the failures of one of its machines and insinuated that Nucor had been less than forthcoming. On December 3, 2024, during Nucor's case in chief, Macari testified that he sent Terex seven to ten days' of in-cab videos in 2018 at Terex's request. He also testified that he was advised by a Terex employee that the videos showed "nothing out of the ordinary." Terex questioned him on cross examination regarding his opinions and what he observed on the videos but did not use or play any of the videos. Macari reiterated his claim that he had sent Terex more than a week's worth of video recordings.

¶ 10 The court entered a directed verdict at the close of Nucor's case in Thoesen's favor on Nucor's breach of implied warranty claims, concluding that Thoesen's purchase agreement excluded implied warranties. Specifically, paragraph 4(e) of Exhibit A to Nucor's and Thoesen's purchase agreement provided:

> "Nucor's exclusive remedy and Seller's sole liability for breach of the foregoing warranties shall be limited to Seller correcting nonconformities and defects as set forth above in Section 4(c) of this Exhibit A; however, should circumstances cause Nucor's limited remedy to fail of its essential purpose, Nucor shall have all of its remedies provided by law."

As such, the only surviving claim against Thoesen was for breach of express warranty.

¶ 11 On December 6, 2024, three days after Macari testified and the day after Nucor rested, Terex informed Nucor and the court that it had contacted its offices in Germany given Macari's testimony that he had sent Terex many more videos than it had produced in discovery. Terex disclosed to the court that additional videos were located on the German servers that had not been located during the discovery process. Counsel stated that he was informed "the night before last" that the videos existed and that he requested Terex forward all the videos to him "immediately." He represented that he would send copies of the additional videos to Nucor upon receipt.

¶ 12 Terex began its case in chief, which included the testimony of a Nucor operator and maintenance mechanic and its own expert engineer. It did not attempt to introduce any of the videos that had been produced in discovery.

¶ 13 The trial was not scheduled to resume until December 16. Terex received the videos from its Germany office on December 10, and Nucor received them on December 12. The videos included approximately 500 hours of recordings that had not been produced during discovery.

¶ 14 On December 13, Nucor filed a motion for sanctions under Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) and requested the court bar Terex from introducing evidence related to any and all of the videos. It also requested that Terex's affirmative defense of misuse be stricken and that the jury be given a curative instruction regarding Terex's opening statement in which it blamed Nucor for the paucity of videos.

¶ 15 Nucor argued that it would be prejudiced if Terex was permitted to use any videos during trial, including those properly produced during discovery. It asserted it would not have the time to review the additional 500 hours of recordings and determine how Terex had chosen the 72 hours it had timely produced. It also pointed out to the court that Terex stated it was aware of the existence of additional videos the day before Nucor rested its case but did not notify the parties or the court until after Nucor had rested.

¶ 16 Terex argued for permission to use four or five ten-minute videos from among those that were properly produced during discovery and indicated that it did not intend to use any of the additional videos that been produced during trial. It argued that Nucor's employee Macari knew additional videos were sent to Terex, therefore, Nucor should have known to request a discovery conference or file a motion to compel.

¶ 17 The court ruled that none of the videos could be used, concluding that it was Terex's duty, not Nucor's, to make sure it provided a complete response to discovery requests. While Terex argued that it did so and notified the parties of the additional videos immediately upon learning of their existence, the court concluded the disclosure was untimely in that it should have happened during discovery and not in the middle of trial. It also noted that Terex had not explained why it had not produced the videos sooner and that it would be prejudicial to Nucor to allow them at this point, stating:

> "So I can't—I can't let any of that in. I think it's too—it's—it's unfair, and it's prejudicial at this point because it was in the middle of trial after they even rested their case that you found those videos.
>
> And then I know that you had the other ones that you wanted to play but you can't—you can't realize, Oh, we only gave you 2,000 videos, and now we—now we accidentally forgot to give you 23,000 videos, and some of those videos are in the same time as the videos we want to play of the ones that we gave you.
>
> I mean, that just—that just seems fundamentally unfair to me."

¶ 18 Terex presented its two remaining witnesses—an executive and an employee of the German affiliate. The executive testified regarding how the machines are manufactured, the company's warranties, and how Terex came to reject Nucor's warranty claims. The employee from Germany testified regarding his communications with Nucor concerning the machinery failures and claims for damages. The videos were not mentioned, and Terex did not make an offer of proof relating to the videos.

¶ 19 Once Terex rested, the court entered a directed finding in favor of Nucor on Terex's misuse affirmative defense. The court indicated that finding was an additional sanction for Terex's discovery violation and that no evidence was presented that would support a finding of misuse. Instead of granting Nucor's request for a curative jury instruction, the court ordered that neither party could mention the videos during closing arguments.

¶ 20 Nucor settled its claim against Thoesen before the case was submitted to the jury but after the bulk of the jury instruction conference. Thoesen agreed to forgive $305,216.24 (the remaining balance Nucor owed to it for the machines) and pay $750,000 in damages in exchange for the dismissal. The only claim remaining against Thoesen at the time of settlement was for breach of

express warranty. When discussing the settlement with the court, the parties acknowledged that any verdict amount returned against Terex could be set off by Thoesen's settlement.

¶ 21 During jury instruction conference held prior to the Thoesen settlement, Nucor's counsel stated that "Nucor's position [regarding damages] is that it's joint and several liability because there is one indivisible injury from Nucor insofar as they received machines that were not fit for legal purpose." The court questioned counsel regarding this stance and reminded counsel that because Thoesen was not liable for the implied warranty claims the parties were not actually joint and severally liable. Nucor responded:

> "[T]he case law on joint and several liability says when there is a concurrent breach of two separate obligations, two separate theories of liability that creates one indivisible injury, that it's appropriate to apply joint and several liability. And that's—that's the position that we're going to take with the verdict form as well, because, even though there are separate obligations—a breach of express warranty from Thoesen, a breach of express warranty and the implied warranties from Terex—those concurrent breaches caused one indivisible injury."

¶ 22 The instructions that were ultimately presented to the jury after settlement removed references to Thoesen and defined breaches of express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose as the claims against Terex. They also explained that Nucor sought three different categories of damages—damages for the breach of express warranty claim, consequential damages, and incidental damages. Incidental damages were defined as:

> "[E]xpenses reasonably incurred by the buyer as a result of the seller's breach. These include any commercially reasonable charges or expenses or any other reasonable expense incident to the delay or other breach."

The instructions did not state whether the consequential or incidental damages were associated with or limited to any one or more claims. They also provided that the jury could award incidental and consequential damages if it found that the limited remedy under the warranty failed its essential purpose. They did not, however, include an instruction or form on which the jury could indicate whether it found a failure of essential purpose. This is in contrast to those instructions proposed prior to Nucor's settlement with Thoesen in which the verdict form asked whether Thoesen breached an "express warranty," and if so, did the remedy promised fail "of its essential purpose." By contrast, the jury was simply asked if Terex had breached an "express warranty" without the second query.

¶ 23 The jury returned a verdict in Nucor's favor on all counts and awarded Nucor $251,680 for the breach of express warranty claim and $1,190,860 in incidental damages. It did not award consequential damages.

¶ 24 Terex filed a motion to set off the verdict against it with the amount of Thoesen's settlement requesting the court deduct $750,000 from the award for incidental damages. The court instead reduced Terex's breach of express warranty damages to $0 and declined to apply the remaining settlement funds as a set off against the incidental damages. The court's written order stated that any setoff must be for the same claims and that damages for breach of express warranty and breach of implied warranty were two separate and distinct injuries. The court found that the setoff did not apply to the incidental damages because they were awarded on Nucor's breach of implied warranty

claims and Thoesen could not be liable on implied warranty claims given the court's directed verdict in its favor on such claims.

¶ 25 Terex also filed the appropriate post-trial motion for a new trial based on the court's decision to exclude the in-cab videos. The court denied the motion, and Terex appealed.

¶ 26 II. ANALYSIS

¶ 27 Terex raises two issues on appeal. First, it contests the court's decision not to grant a setoff on the incidental damages. It also challenges the sanction imposed that prohibited the parties from referencing or using any of the in-cab videos even though the videos Terex wished to use were properly produced during discovery. We address each of these arguments in turn.

¶ 28 A. Set Off

¶ 29 Terex first argues that the circuit court erred in not allowing a complete setoff of the Thoesen settlement for the damages assessed against it. The circuit court awarded a $251,680 setoff for damages related solely to the breach of express warranty claims, eliminating Terex's liability under those claims. However, it declined to award any setoff related to Terex's incidental damages, leaving the final judgment against Terex $1,190,860.10. Terex argues that the remaining $498,320 of Thoesen's settlement that was not applied should be set off against the award for incidental damages because Thoesen could have been found liable for incidental damages under the failure of essential purpose theory. In short, while its express warranty was limited to repair or replacement and excluded implied warranties, Thoesen could have been liable for incidental and consequential damages if the trier of fact concluded that the remedy provided failed of its essential purpose. Terex thus argues that the incidental award of the jury should be subject to setoff as well.

¶ 30 Nucor responds that Terex must first demonstrate that the settlement covered the same set of damages as those awarded against Terex before the court may award a setoff to any particular

award. Where, as here, the settlement was not allocated to specific measures of damages, the court should not speculate as to the allocation or treat the totals of each claim as one. Rather than demonstrating how the settlement funds relate to specific types of damages, Terex simply argues that the full settlement should be deducted from its own total damages, while Nucor contends Terex did not meet its burden to establish that the settlement is attributable to any claim for incidental damages.

¶ 31 In its written order as well as during argument, the circuit court referenced the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2(c) (West 2024), stating that the Act governed setoff requests. Terex asserts that the application of this Act and corresponding caselaw interpreting it are inapplicable to breach of warranty claims because the Act relates solely to tort claims. While Terex is correct in that regard, it is evident that the circuit court based its decision on several other bases outside of the Act. Accordingly, we reject this argument as a basis for reversal.

¶ 32 Moving on to the setoff itself, it is well settled that an injured plaintiff may receive compensation for its injuries only once, and a double recovery is not an acceptable outcome. *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 368 (1995). Where a plaintiff has suffered a single injury caused by multiple defendants, anything received for that same injury from any other defendant as the result of a judgment or settlement must be deducted, or set off, from the total amount of damages the plaintiff sustained. See *Barkei v. Delnor Hospital*, 207 Ill. App. 3d 255, 265 (1990). A setoff refers to a defendant's request for a reduction of the damage award because a third party, or in this case a co-defendant, has already compensated the plaintiff for the same injury. *Thornton v. Garcini*, 237 Ill. 2d 100, 113-14 (2010). This may be raised at any time and prevents the plaintiff from receiving a double recovery. *Pasquale,* 166 Ill. 2d at 368.

¶ 33 Whether a setoff is permissible is reviewed *de novo*. *Thornton*, 237 Ill. 2d at 116. However, the determination as to which of several claims a settlement award should be attributed to for setoff purposes is a matter within the sound discretion of the circuit court and should not be reversed on appeal absent an abuse of discretion. *Pasquale*, 166 Ill. 2d at 369. The defendant seeking a setoff has the burden of proving what portion of a prior settlement was allocated or attributable to the claim for which it is liable. *Thornton*, 237 Ill. 2d at 116. A court considering a request for setoff will not speculate about such matters and will deny the request if the party seeking the setoff has failed in meeting that burden. See *Dolan v. Gawlicki*, 256 Ill. App. 3d 153, 156-57 (1994).

¶ 34 Nucor settled all claims with Thoesen for $750,000. However, the settlement was not allocated to any particular claim or measure of damages. At the time the court entered the settlement order only one count remained against Thoesen for breach of express warranty, which by the terms of the warranty limited a claim to repair or replace absent that limited remedy "fail of its essential purpose." That very possibility was discussed prior to the settlement during the jury instruction conference and is not in dispute. Moreover, it is not in dispute that Terex's liability was not so limited and that it was subject to incidental and consequential damages if the evidence supported them.

¶ 35 The judgment against Terex included sums allocated specifically to breach of express warranty and incidental damages. When Terex requested the setoff, the circuit court reasoned that incidental damages were unavailable under the breach of express warranty claim—the only claim against Thoesen. It thus concluded that the remaining unallocated settlement sum could not be used to offset the incidental damages verdict. While that reasoning was erroneous, it does not end our consideration of the setoff issue.

¶ 36 The first step to determining whether a setoff should be applied to Terex's damages requires a determination of whether the damages all apply to the same claim. Terex repeatedly asserts that Nucor's claims against it and Thoesen are single and indivisible. Indeed, counsel for Nucor asserted its damages were indivisible during the pre-settlement instruction conference. However, implied and express warranty claims are typically not indivisible. *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 326 (1999) ("A cause of action asserted for breach of an express warranty does not extinguish a concurrent cause of action for breach of implied warranties arising from the express warranty. Such causes of action are separate and distinct from each other."); *Lara v. Hyundai Motor America*, 331 Ill. App. 3d 53, 63 (2002). While *Sorce* does not address the exact issue before us, it discusses the main concern in this case—whether express and implied warranty claims are single, indivisible claims. *Id.* It clearly stands for the theory that they are two separate claims that would not affect a setoff of the other. *Id.*

¶ 37 Thoesen's settlement can only be allocated to damages related to a breach of express warranty claim. The circuit court correctly awarded a setoff of the damages against Terex specifically related to its breach of express warranty. Thus, we must now decide whether the incidental damages awarded are related to the express warranty claim or the implied warranty claims to determine whether an additional setoff should have been awarded.

¶ 38 The circuit court clearly associated the incidental damages in this case solely to the breach of implied warranty counts. That blanket determination is incorrect—there is no authority excluding incidental damages from being collected for breach of express warranty claims. It is also apparent from the jury instruction conference that the parties operated under the assumption that all damages could be applied to all the warranty claims under the appropriate circumstances.

¶ 39 Terex argues that the jury could have found the limited remedies available against Thoesen under its express warranty failed in their essential purpose and thus could have awarded incidental damages. The jury instructions considered prior to the settlement indicated that incidental damages could be awarded against Thoesen if the jury found the limited remedy of the express warranty failed of its essential purpose. In fact, the pre-settlement instructions include one in which the jury would be required to conclude if Thoesen breached its express warranty, and if so, the remedy failed of its essential purpose.

¶ 40 However, Terex relies on damages that *could have been* awarded, not damages that were actually awarded. While the discussion among the parties and the court demonstrated that the jury could find Thoesen liable for incidental damages under the failure of essential purpose theory, the record and settlement order in no way reflects an allocation of the settlement funds among the various measure of damages. Absent such an allocation, further proof is necessary to demonstrate that the settlement contemplated compensation for incidental damages so that further setoff would be warranted. See *Thornton*, 237 Ill. 2d at 117 (holding that the allocation of settlement proceeds cannot be justified without supporting proof). As already discussed, we cannot speculate as to how the damages should be allocated if it is not specified in the order awarding the damages. See *Dolan*, 256 Ill. App. 3d at 156-57. Moreover, a court should not speculate as to how the damages *could* have been allocated—the damages must actually be awarded and allocated to a specific type in order to allow for a setoff. To grant Terex's request for a setoff here would require the court to inappropriately speculate as to whether the jury could have and should have made such a finding.

¶ 41 Thoesen's settlement can only set off damages associated with a breach of express warranty claim, which the court did when it reduced Terex's damages for that specific count to zero. The incidental damages awarded were not clearly allocated to a specific express or implied warranty

claim. However, considering Terex was found liable for all three breaches and the jury rendered a separate amount of damages specifically for the breach of express warranty claim, the incidental damages could apply to the implied warranty claims, at least in part. It was then Terex's burden to demonstrate how much was attributable to which claim. See *Thornton*, 237 Ill. 2d at 117. Terex failed to do so and now argues that it all is attributable to the same indivisible claim. Terex did not meet its burden of proof, and the court may not speculate as to what damages are attributable to which claims. *Dolan*, 256 Ill. App. 3d at 156-57. Applying a setoff to the incidental damages would require speculating as to how much is attributable to the breach of express warranty claim and the breach of implied warranty claims. The court's decision to decline further setoff was therefore not an abuse of discretion.

¶ 42 We are mindful in reaching our conclusion that Nucor requested an award of nearly $3.5 million with some $1,007,200 representing the diminution in value of the machines as calculated by its expert premised on the percentage of expected useful life remaining after failure of the machines. As such it sought express warranty damages in excess of the settlement reached with Thoesen. We also recognize that the final jury instructions ultimately provided to the jury discussed failure of essential purpose. They did not, however, contain an instruction similar to the proposed verdict forms related to Thoesen and discussed above in which the jury was asked to consider whether such a failure occurred. See *supra* ¶ 22. As such, the record does not establish that the jury found such a failure, and we are precluded from speculation on the issue.

¶ 43 B. Discovery Sanctions

¶ 44 Next Terex challenges the sanctions imposed against it for two reasons. Terex first argues that it did not commit a discovery violation because it notified the court and opposing counsel of the potential of additional video evidence as soon as it became aware of its existence. It then argues

that, even if a discovery violation occurred, the sanctions imposed were an abuse of the court's discretion.

¶ 45 Illinois Supreme Court Rule 214 governs the production of documents during the discovery process. Ill. S. Ct. R. 214(c) (eff. July 1, 2018). Specifically, Rule 214(c)(1) requires a party that has received a written production request to "identify all materials in the party's possession responsive to the request and copy or provide reasonable opportunity for copying or inspections." *Id.* Terex asserts no discovery violation occurred here because it immediately disclosed to the court and Nucor as soon as it became aware there may be additional discovery items. This, it argues, is sufficient to "seasonably supplement" discovery as required under the rule. See Ill. S. Ct. R. 214(d) (eff. July 1, 2018).

¶ 46 A violation of our discovery rules occurs when a party exhibits noncompliance or fails to make timely disclosures. See *In re Marriage of Daebel*, 404 Ill. App. 3d 473, 487-88 (2010). Disclosure of the additional videos did not occur until the middle of trial, after Nucor had rested its case. Before issuing sanctions, the circuit court noted that Terex had not provided an explanation for its failure to collect and produce all of the videos. Even now, it fails to explain how or why it produced only a small subset of the videos to which it had access. Rather, it simply maintains that it seasonably supplemented its production as soon as it became aware that additional materials existed. While the record is clear that Terex did not disclose the existence of additional videos until the day after learning of them and before Nucor rested its case, the passage of a single day or two is not the crux of the issue. Rather, the record demonstrates that Terex had, and does not dispute that it had, access to the videos located in its affiliate's servers. It is reasonable to consider that someone must have selected the videos produced from the whole. Accordingly, it

was not an abuse of discretion for the circuit court to find that Terex's mid-trial production of the additional videos was untimely.

¶ 47 We must now consider if the sanction imposed was appropriate. Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), authorizes a court to impose such sanctions as are "just" under the circumstances of the case when there has been an unreasonable refusal or failure to comply with the discovery rules. Punishment of litigants is not the goal of the discovery rules. *Campen v. Executive House Hotel, Inc.*, 105 Ill. App. 3d 576, 588 (1982). The sanctions provided by Rule 219(c) are a necessary means to reach our ultimate goals of speed, efficiency, and just resolutions. *Boettcher v. Fournie Farms, Inc.*, 243 Ill. App. 3d 940, 947 (1993). The discovery rules further this goal by improving the process used for obtaining the truth in each case. *Campen*, 105 Ill. App. 3d at 588. As our supreme court instructs:

> "Our discovery procedures are meaningless unless a violation entails a penalty proportionate to the gravity of the violation. Discovery for all parties will not be effective unless trial courts do not countenance violations, and unhesitatingly impose sanctions proportionate to the circumstances." *Buehler v. Whalen*, 70 Ill. 2d 51, 67 (1977).

¶ 48 Several factors exist to determine whether sanctions for a discovery violation are appropriate. The circuit court should consider:

> "(1) the surprise to the adverse party; (2) the prejudicial effect of the proffered testimony or evidence; (3) the nature of the testimony or evidence; (4) the diligence of the adverse party in seeking discovery; (5) the timeliness of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering

the testimony or evidence." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 124 (1998).

No single factor is determinative, and each should be applied and weighed on a case-by-case basis. See *id.* at 127. We review a circuit court's sanction order under the abuse of discretion standard. *Id.* at 123.

¶ 49 The circumstances here support the sanctions imposed. The circuit court noted that Terex had a duty to find and turn over the videos during discovery and failed to do so. Terex initially provided less than ten percent of the relevant videos during discovery and later produced the remaining videos in the midst of trial. Even had proofs been reopened, the 500 hours later produced were simply too voluminous to allow Nucor to use them in either its case in chief or to rebut any evidence Terex offered. A timely production might have also altered Nucor's trial strategy. Nucor sent the videos to Terex in 2018, nearly four years before litigation began and did not retain any copies itself. Moreover, it had no way of knowing what videos Terex had retained during that time. Nucor made a proper request for the materials, and Terex failed to timely produce them without justification for its delay. Allowing any videos to be used at trial would be substantially prejudicial, given the potential that Terex "cherry picked" the videos it had timely produced and precluded Nucor from using any other videos that could have been more favorable.

¶ 50 We find that the factors set forth in *Shimanovsky* clearly weigh in Nucor's favor and support the sanctions imposed. While the first factor, surprise to the adverse party, may have lesser weight in our analysis given Nucor originally had access to the videos, the sheer volume and contents of the videos produced in the middle of trial cannot be categorized as anything other than a surprise to the adverse party. The videos may very well have contained unimpeachable evidence of misuse or proper use. Thus, the nature of the evidence and its prejudicial effect clearly indicates

factors two and three favor Nucor. There is no dispute that Nucor timely and diligently requested production of the materials under factor four. Factor five, the timeliness of Nucor's objection, also weighs in its favor. It filed its motion for sanctions at the first available opportunity.

¶ 51 Terex contends that the sanctions were too harsh because they essentially eliminated Terex's entire defense of misuse. We find that prohibiting the use of all the in-cab camera videos was a reasonable sanction. When imposing this sanction, the circuit court explained that allowing any of the unproduced videos would constitute unfair surprise and prejudice. Further, the videos that were provided during discovery were incomplete and encompassed such a small fraction of what was actually recorded that it would be unfair for Terex to use them. Further, allowing Terex to use the videos it did produce when it created this problem would undermine Nucor's ability to effectively respond to the new evidence.

¶ 52 In determining whether there has been an abuse of discretion, the appellate court may not substitute its own judgment for that of the circuit court or even determine whether the circuit court exercised its discretion wisely. *Roach v. Union Pacific R.R.*, 2014 IL App (1st) 132015, ¶ 20; *Campbell v. Autenrieb*, 2018 IL App (5th) 170148, ¶ 26 ("[A] reviewing court's mere disagreement with the trial court's decision is not enough to make the decision an abuse of discretion."). Our role is only to determine whether a reasonable person could have ruled as the circuit court did. See *Peal v. Lee*, 403 Ill. App. 3d 197, 210 (2010). Given the gravity of the failure, and the thorough well-reasoned explanation provided by the circuit court, we cannot say that it was an unreasonable decision or that no reasonable person would have ruled the same way. Accordingly, we affirm the court's decision to impose its sanctions on Terex.

¶ 53 III. CONCLUSION

¶ 54 The judgment of the circuit court of Kankakee County is affirmed.

¶ 55 Affirmed.