

**OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS EASTERN DISTRICT**

**DIVISION TWO**

FANNIE MAE,	)	
	)	No. ED101796
Appellant/Cross-Respondent,	)	
	)	
vs.	)	Appeal from the Circuit Court of
	)	the City of St. Louis
UNIVERSITY VILLAGE APARTMENTS,	)	
UVA PARTNERS L.L.C., RICK YACKEY,	)	
MIDLAND MANAGEMENT, L.L.C.,	)	Honorable Thomas C. Grady
WOODSMILL MANAGEMENT COMPANY,	)	
and BILL L. BRUCE,	)	
	)	
Respondents/Cross-Appellants.	)	Filed: October 27, 2015

Fannie Mae appeals the judgment of the Circuit Court of St. Louis City awarding it \$161,816.08 for the breach of the obligation to pay net rents and \$194,146.96 in attorney and expert fees. In four points on appeal, Fannie Mae claims that the trial court erred by reducing Fannie Mae’s net rents damages because (1) reduction of damages is an affirmative defense that was not pleaded or tried by consent; (2) the loan documents allowed a credit only for “current operating expenses;” (3) the amounts credited were unrelated to the borrower’s failure to pay net rents and, thus, do not reduce liability; and (4) even if the reduction was warranted, \$142,060.66 of that amount was improperly credited twice. University Village Apartments, L.P. (Borrower), UVA Partners, L.L.C (Partner), Bill L. Bruce, Rick Yackey, Midland Management L.L.C., and Woodsmill Management Company (Defendants) cross-appeal. In two points, Defendants claim that the trial court erred by (1) awarding Fannie Mae any net rents damages because payments made from rents collected post default were made for “reasonable operating expenses;” and (2) assessing attorney and expert fees against Bruce and Yackey.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division II Holds: The trial court erred by reducing Fannie Mae’s net rents damages because the affirmative defense of offset was not pleaded and was not tried by consent. The loan documents provide for the deduction of default-period operating expenses from net rents and the amount of Fannie Mae’s net rents damages is supported by substantial evidence. The loan documents do not contemplate an award of attorney and expert fees against Bruce and Yackey. Fannie Mae’s motion taken with the case, for attorney fees incurred in post-judgment proceedings and on appeal, is granted against Borrower and Partner, but denied as to Bruce and Yackey.

Opinion by: Philip M. Hess, P.J.  
Gary M. Gaertner, Jr., J. and Angela T. Quigless, J. concur.

Attorney for Appellant: Edward T. Bullard  
Christopher J. Aikin – Co-Counsel  
Elizabeth C. Burke – Co-Counsel  
Todd W. Ruskamp – Co-Counsel

Attorney for Respondents: Michael J. Parnas  
Donald R. Carmody  
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