

Nos. 1-13-2907 & 1-13-3005 (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------------|---|------------------|
| ADVANCE STEEL ERECTION, INC., |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Cook County |
| |) | |
| v. |) | |
| |) | |
| URBANSCAPE DEVELOPMENT, LLC and ELSTON |) | No. 10 CH 38503 |
| INDUSTRIAL LOFTS, LLC, |) | |
| |) | |
| Defendants-Appellees, |) | |
| |) | |
| ELSTON ADVENTURES, INC., SPANCRETE OF |) | Honorable |
| ILLINOIS, INC., COMMUNITY BANK OF OAK PARK |) | Robert J. Quinn, |
| RIVER FOREST, HARRIS N.A., and UNKNOWN |) | Judge Presiding. |
| OWNERS AND NON-RECORD CLAIMANTS, |) | |
| |) | |
| Defendants. |) | |

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff was entitled to receive full amount of interest owed on judgment because defendant's offer to pay a lower sum was conditional and, therefore, was not a legally sufficient tender and did not stop the accrual of interest. We vacate the trial court's award of interest and remand for recalculation. Where trial court determined that attorney fees were reasonable, court abused its discretion in reducing attorney fee award to make it proportionate to judgment. We vacate the trial court's order reducing its award of attorney fees to \$4500, and remand.

¶ 2 This appeal addresses the amount of interest owed to a subcontractor under its contract with a general contractor and the Illinois Mechanics Lien Act (the Act) (770 ILCS 60/1 *et seq.* (West 2008)). After a bench trial, the trial court found in favor of the subcontractor, plaintiff Advance Steel Erection, Inc., and against defendants Elston Industrial Lofts, LLC, who was the property owner (the Property Owner), and its general contractor, Urbanscape Development, LLC, (Urbanscape) (collectively, defendants). In addition to awarding damages to plaintiff, the trial court awarded plaintiff interest arising both out of its contract and the Act. At a subsequent hearing, the trial court awarded plaintiff attorney fees pursuant to its contract with defendant.

¶ 3 Plaintiff appeals the trial court's awards of interest and attorney fees, asserting that it was entitled to additional interest and fees under its contract and the Act. Defendants respond that this court lacks jurisdiction to entertain this appeal and that the trial court properly exercised its discretion in setting the amount of interest and fees owed to plaintiff. For the reasons that follow, we vacate the trial court's award of interest and remand for recalculation, and vacate the trial court's order reducing its award of attorney fees, and remand.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff is an Illinois corporation engaged in installing and erecting steel at construction projects. Urbanscape is an Illinois corporation engaged in the contracting business.

¶ 6 On or before November 24, 2009, the Property Owner entered into a contract with Urbanscape, as general contractor, for a construction project at the Property Owner's property located at 1430 W. Willow Avenue in Chicago (the Property). At that same time, Urbanscape entered into a written contract with plaintiff (the Contract).

¶ 7 The Contract provided that, in the event of a breach, "the breaching party shall pay the non-breaching party all reasonable attorneys' fees and litigation costs incurred as a result of the

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breach." The Contract further stated that all invoices submitted by plaintiff "shall be due within thirty days of the date of the invoice." Additionally, the Contract stated: "If not paid within thirty days, the outstanding amounts shall bear interest and service charges at the rate of 3% per month."

¶ 8 Pursuant to the Contract, plaintiff was to provide, among other things, labor and a crane to install various components for the remodeling of a multi-level building. Plaintiff substantially performed all of the obligations required under the Contract by December 2, 2009. Plaintiff returned to the worksite on December 3, 2009, but left when it saw Urbanscape's non-union employees performing plaintiff's steelwork, apparently in violation of union rules.

¶ 9 On December 14, 2009, plaintiff sent Urbanscape an invoice for \$11,718.20. Urbanscape contested this amount and, in response to a letter of demand from plaintiff, offered instead to pay plaintiff \$8,775.74 as full and final payment. Plaintiff declined. Urbanscape paid nothing to plaintiff.

¶ 10 On or about March 2, 2010, plaintiff timely recorded a subcontractor's claim for lien and sent notice to defendants. Plaintiff satisfied all of the conditions for a valid mechanics lien on the Property.

¶ 11 On September 3, 2011, plaintiff filed a four-count verified complaint. Count I was for foreclosure of mechanics lien; Count II was for breach of contract against Urbanscape; Count III (in the alternative to Count II) was for unjust enrichment against Urbanscape; and Count IV was for a personal judgment against defendants pursuant to section 28 of the Act (770 ILCS 60/28) (West 2010)). On October 21, 2010, defendants filed an answer and a three-count counterclaim. Count I sounded in breach of contract as between Urbanscape and plaintiff; Count II sounded in

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breach of contract as between the Property Owner and plaintiff; and Count III was for slander of title as between the Property Owner and plaintiff.

¶ 12 A bench trial was held on August 23, August 24, and September 5, 2012. Defendants did not dispute that plaintiff was entitled to some payment but the parties disagreed over certain amounts included in the labor charges. Seven witnesses testified.

¶ 13 On May 6, 2013, the trial court issued its twelve-page written opinion and judgment entering judgment in favor of plaintiff on Counts I and II. The trial court found that the proper amount due plaintiff under the Contract was \$9,786.20. No issue regarding the merits of that decision is raised on appeal. Instead, this appeal involves the interest and attorney fees that the trial court awarded plaintiff.

¶ 14 The trial court acknowledged that interest is awarded at 10% under section 1 of the Act. The pertinent language of the Act states that the person entitled to the lien on property, has it "for the amount due to him *** and interest at the rate of 10% per annum from the date the same is due." Nonetheless, the trial court did not award interest on the amount due of \$9,786.20. Instead, the trial court noted that "within approximately a month, Defendants were willing to pay \$8,775.74." The trial court noted that the judgment was only \$1,010.45 above "the tendered amount offered by Urbanscape of \$8,775.74."¹ The court therefore did not award interest on the amount owed, *i.e.*, the judgment amount of \$9,786.20, but instead awarded interest on the amount of \$1,010.45, *i.e.*, the difference between the judgment amount and the amount defendants had been "willing to pay." The court based its authority for doing so on the fact that plaintiff had refused to accept that lesser amount of \$8,775.74 and had "stubbornly, filed a claim for lien and pursued this litigation through trial for a verdict balance in his favor." Accordingly,

¹ Although irrelevant to our analysis, we do note that correct amount of the difference is \$1,010.46.

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the trial court entered judgment in favor of plaintiff against defendants on Count I (claim for Mechanics Lien) in the amount of \$10,129.30 (\$9,786.20 plus \$343.10 in interest) and on Count II (claim for breach of contract) in the amount of \$9,957.75 (\$9,786.20 plus \$171.55 interest). Judgment in favor of plaintiff on Counts I and II obviated recovery under Count III (claim for unjust enrichment), which was therefore entered in favor of defendants. The trial court entered judgment on Count IV (claim for personal judgment under the Act) against defendants, jointly in the amount of \$10,129.30.

¶ 15 The court also found that plaintiff was entitled to its reasonable attorney fees and gave plaintiff leave to file its petition for attorney fees and costs. The court reserved the issue of attorney fees and costs for presentment of the appropriate posttrial motion. The court also included Rule 304(a) language in the final order. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 16 On May 31, 2013, plaintiff filed a posttrial motion to modify the May 6, 2013 judgment to include both: (1) prejudgment interest under the Act on the "entire amount" that the court had found due and payable, instead of on the amount representing the difference between the amount due and payable and the amount defendants had offered to settle the matter; and (2) contractual prejudgment interest at 3% per month commencing January 13, 2010 (30 days after due date).

¶ 17 Also on May 31, 2013, plaintiff filed its petition for attorney fees and costs seeking \$25,490.50 in fees and \$1,580.67 in costs. On August 12, 2013, the trial court modified its May 6, 2013 opinion and order. Instead of the previous award of \$171.55 for contractual interest, the court awarded \$1,273.17. The court otherwise denied plaintiff's motion. The order further states that the court denied defendants' cross motion and set the matter for status and settlement conference on September 9, 2013.

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¶ 18 On September 9, 2013, plaintiff filed a notice of appeal from the May 6, 2013 order and the August 12, 2013 order, requesting this court to reverse and award plaintiff the prejudgment interest sought or remand to the trial court for further proceedings.

¶ 19 Also on September 9, 2013, the trial court held a hearing, and entered an order, on plaintiff's petition for attorney fees and costs. In its written order, the trial court made two findings: "(1) the hourly rate charged by plaintiffs' counsel and the time spent for the tasks described in the fee petition are reasonable, however (2) the amount of reasonable fees and costs, relative to the amount of the judgment is \$4500." The trial court's order entered judgment for plaintiff and against Urbanscape "for fees and costs per the contract in the amount of \$4500." The order also included Rule 304(a) language.

¶ 20 On September 10, 2013, plaintiff filed a notice of appeal from the September 9, 2013 order that denied in part the attorney fees sought by plaintiff, requesting this court reverse and award plaintiff all the attorney fees it sought or remand to the trial court for further proceedings.

¶ 21 II. ANALYSIS

¶ 22 A. Jurisdiction

¶ 23 We first address defendants' argument that we lack jurisdiction as a result of plaintiff filing two separate notices of appeal in one case. Defendants argue that "[t]here is no provision in the Supreme Court Rules allowing a single party to bring two separate appeals arising out of the same case, and then consolidating them into one appeal." We conclude that plaintiff's notices of appeal properly preserved all issues and we have jurisdiction.

¶ 24 As plaintiff notes, the trial court attached 304(a) language to its May 6, 2013 opinion and order while retaining jurisdiction to award attorney fees and costs at a later date. Accordingly, the time to appeal the May 6, 2013 order began to accrue immediately (as extended by plaintiff's

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timely filed post-trial motion to modify). The time to appeal the subsequent September 9, 2013, final judgment for attorney fees and costs accrued on an independent track. We agree with plaintiff that, to appeal the September 9, 2013 order awarding attorney fees, plaintiff had the choice of either filing an amended notice of appeal, or filing an additional notice of appeal in order to invoke this court's jurisdiction over the attorney fee and cost award of the trial court. See *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 178 (2011) (to confer appellate jurisdiction over matters arising subsequent to the initial notice of appeal, a party is required to either amend the notice of appeal or file an additional notice of appeal). Contrary to defendants' novel argument, which plaintiff properly characterizes as a "disjointed analysis," the second notice of appeal did not somehow render the first notice ineffective nor was plaintiff *required* to amend the first notice of appeal. Each appeal was timely filed, neither was defective, and each properly invoked this court's jurisdiction.

¶ 25 This court subsequently consolidated the appeals. "Illinois courts favor consolidation of causes where it can be done as a matter of judicial economy." *Edwards v. Addison Fire Protection District Firefighters' Pension Fund*, 2013 IL App (2d) 121262, ¶ 41. "[A]ctions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." 735 ILCS 5/2-1006. Plaintiff correctly notes that "[d]efendants do not claim surprise, lack of notice, or prejudice when they self-servingly construe [Illinois Supreme Court] Rules 303 and 304. [Ill. S. Ct. R. 303 (eff. Jun. 4, 2008), Ill. S. Ct. R. 304 (eff. Feb. 26, 2010)]." Defendants' jurisdictional argument is meritless.

¶ 26 **B. Interest Award**

¶ 27 Turning to the merits, plaintiff first argues that it is entitled to contractual interest on the full \$9,876.20 owed since January 14, 2010. Defendant counters that plaintiff has failed to

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preserve this issue for review because the record contains no transcript, nor a bystander report, of the proceedings on plaintiff's motion to reconsider the interest calculation.

¶ 28 It is well-settled that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). However, before we apply the *Foutch* principles, we must clarify our standard of review in this appeal.

¶ 29 The parties disagree as to the standard of review. Plaintiff contends that the issue of whether defendants made a tender that was legally sufficient to stop the accrual of interest involves the "legal effect" of a given set of facts. Thus, citing *Knorst v. State Universities Civil Service System*, 325 Ill. App. 3d 858 (2001), plaintiff contends that the "clearly erroneous" standard applies to this mixed question of fact and law. Defendant, citing *Joel R. by Salazar v. Board of Education of Mannheim*, 292 Ill. App. 3d 607, 613 (1997), counters that the amount of interest owed was a "finding of fact" which is reviewed under the deferential, manifest weight of the evidence standard.

¶ 30 "The appropriate standard of review in situations that involve underlying determinations of both factual and legal issues is a question that has been the subject of a great deal of attention and analysis. [Citations.]" *Madison Miracle Products, LLC v. MGM Distribution Co.*, 2012 IL App (1st) 112334, ¶ 38. The Illinois Supreme Court has noted that it has only applied the clearly erroneous standard when reviewing decisions of administrative agencies. *Samour, Inc. v. Board of Election Comm'rs of City of Chicago*, 224 Ill. 2d 530, 542 (2007) (citing *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 153 (2005)). As the *Samour* court noted: "In all other civil cases, [it] review[s] legal issues *de novo* and factual issues under a manifest weight of the

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evidence standard." *Id.* The *Corral* court, after noting that the issue on appeal involved the trial court ruling on the legal effect of its factual findings, described the proper standard of review as "a two-step analysis," which we believe applies here. *Corral*, 217 Ill. 2d at 154. "First, the trial court's underlying factual findings are reviewed deferentially." *Id.* "A trial court's findings of fact will not be disturbed on review unless those findings are against the manifest weight of the evidence." *Id.* "Second, the trial court's conclusion[s] of law [are] reviewed *de novo*." *Id.*

¶ 31 With this standard of review in mind, we now address defendants' contention that, without any transcript or bystander's report of the August 12, 2013 hearing, this court "is asked to guess as to the rationale of the trial court, or why it modified its original ruling the way it did." As the *Foutch* court explained: "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. "From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch*, 99 Ill. 2d at 391. However, the failure of an appellant to include a transcript of proceedings is not necessarily fatal where the record contains sufficient documents to allow meaningful review of the merits of the appeal. See, e.g., *Whitmer v. Munson*, 335 Ill. App. 3d 501, 511-12 (2002) (and cases cited therein).

¶ 32 "The sufficiency of the record to address a claim of error turns on the question presented on appeal." *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 15. In this case, the issue on appeal is whether defendants made a tender that was legally sufficient to stop the accrual of interest. The trial court's decision to award plaintiff a lesser amount of interest was not based on a disputed factual finding. Rather, the trial court made a legal determination that Urbanscape's conditional offer was a valid tender sufficient to stop the accrual of interest. Our

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review is *de novo*. Here, the record contains sufficient documents for us to conduct a meaningful review of the merits of the appeal.

¶ 33 The record contains the trial court's written opinion and judgment of May 6, 2013, detailing the undisputed findings of fact, in which the trial court *expressly recognized* that Urbanscape's tender was conditional noting that it "tendered an offer of \$8,775.74 as full and final payment of the outstanding amount, conditioned upon receipt of final waivers of lien and release form [*sic*] [plaintiff]." The trial court's written opinion also details its reasoning, including its basis for awarding the reduced amount of interest, *i.e.*, plaintiff's "stubborn" refusal to settle. The record also contains a copy of the trial court's August 12, 2013 order modifying its May 6, 2013 opinion and judgment.

¶ 34 The record also contains a copy of plaintiff's written posttrial motion in which plaintiff asserted that defendant's willingness to pay \$8,775.74 on January 18, 2010, did not suspend plaintiff's right to interest on this amount. Plaintiff noted that defendants never actually tendered any money to plaintiff. Plaintiff further emphasized that defendants' offer to pay \$8,775.74 was contingent upon plaintiff agreeing to a final waiver of lien and full release. Plaintiff cited cases that stand for the proposition that a defendant's tender of a sum less than full payment is ineffective to suspend the accrual of interest when the tender is conditional. See *Copalman v. Frawley*, 182 Ill. App. 3d 821, 825-26 (1989); *MXL Industries, Inc. v. Mulder*, 252 Ill. App. 3d 18, 29 (1993).

¶ 35 The record also contains defendants' response to plaintiff's motion. Defendants argued generally that the court, being a court of equity, should decline plaintiff's request for interest under the Contract. Defendants also responded that plaintiff's mechanics lien claim should be defeated based on equitable considerations. Defendants' response contained no legal basis for

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denying plaintiff's request for interest. In their conclusion, defendants requested that the court reverse its *judgment* in favor of plaintiff on Counts I and IV.

¶ 36 In its reply, plaintiff noted that defendants' "improperly attempted to piggy-back" their own posttrial motion 36 days after the statutory deadline. Plaintiff also noted that defendants' response "improperly attempt[ed] to impeach [the trial court's] findings of fact and conclusions of law." As plaintiff noted, the court found that plaintiff's lien was valid, did not find that plaintiff grossly overcharged Urbanscape, and did not find fraud against plaintiff. Plaintiff noted defendants' contentions in response, *i.e.*, the claims of unclean hands and fraud, were affirmative defenses that were never pleaded here. Most importantly, plaintiff further noted that defendants made no attempt to refute plaintiff's arguments that the trial court should have awarded contractual interest and statutory interest on the full amount due.

¶ 37 The August 12, 2013 order contains no reasoning but states that the award for contractual interest is \$1,273.17 instead of the previous award of \$171.55. The court did not modify the amount of interest it had awarded under the Act. Thus, although the trial court agreed with plaintiff's argument that contractual prejudgment interest at 3% per month was the proper amount of interest, the court rejected the argument in plaintiff's motion that the accrual of interest should have commenced January 13, 2010 (30 days after due date). The court also rejected plaintiff's argument that it was entitled to interest under the Act on the full amount due. We conclude that the trial court erred.

¶ 38 This court has noted that only a valid tender can stop the accrual of interest. See, *e.g.*, *Niemeyer v. Wendy's International, Inc.*, 336 Ill. App. 3d 112, 115 (2002) (citing *Pinkstaff v. Pennsylvania Railroad Co.*, 31 Ill. 2d 518, 525 (1964) (discussing judgment creditor's right to draw interest on the judgment during pendency of the appeal). "Tender is defined as '[a]n

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unconditional offer of money or performance to satisfy a debt or obligation ***.' " *Niemeyer*, 336 Ill. App. 3d at 116 (quoting Black's Law Dictionary 1479-80 (7th ed. 1999)). "Generally, a tender must include everything to which the creditor is entitled, and a tender of any less sum is nugatory and ineffective as a tender." *Id.* Additionally, plaintiff, as it did in the trial court, cites cases that stand for the proposition that a defendant's tender of a sum less than full payment is ineffective to suspend the accrual of interest when the tender is conditional. See *Copalman v. Frawley*, 182 Ill. App. 3d 821, 825-26 (1989); *MXL Industries, Inc. v. Mulder*, 252 Ill. App. 3d 18, 29 (1993). It is undisputed that defendants' tender was conditional.

¶ 39 As noted, the trial court earlier, the trial court *expressly recognized* that Urbanscape's tender was conditional noting that it "tendered an offer of \$8,775.74 as full and final payment of the outstanding amount, conditioned upon receipt of final waivers of lien and release form [*sic*] [plaintiff]." As a matter of law, the conditional offer to pay a lesser amount than that demanded by plaintiff was not a valid tender sufficient to stop the accrual of interest. The trial court's award of interest is vacated and this cause is remanded to the trial court for a recalculation of interest as requested by plaintiff in its posttrial motion.

¶ 40 C. Attorney Fee Award

¶ 41 Plaintiff next argues that the trial court erred in its award of attorney fees and costs. Defendants argue that plaintiff has failed to preserve the record sufficiently for review by failing to furnish a transcript of the hearing on plaintiff's fee petition, or a bystander's report. As noted earlier, "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient

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factual basis." *Foutch*, 99 Ill. 2d 389, 391-92 (1984). Again, before we apply the *Foutch* principles, we must clarify our standard of review in this appeal.

¶ 42 This court has noted that issue that, in determining the proper standard of review when a trial court's judgment awarding attorney fees is challenged, "it is critical that we first isolate the procedural mechanism through which plaintiff sought relief." *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 594 (2000). Here, the Contract expressly stated that, in the event of a breach, "the breaching party shall pay the non-breaching party *all reasonable attorneys' fees and litigation costs incurred as a result of the breach.*" (Emphases added.) There is no dispute that plaintiff was entitled to attorney fees. As the trial court concluded in its May 6, 2013 opinion and judgment, plaintiff proved that Urbanscape breached the subcontract. The court further concluded that "[u]nder the Contract, Plaintiff is also entitled to its reasonable attorney fees, to be determined by a later evidentiary hearing set by motion." (Emphasis added.)

¶ 43 On May 31, 2013, plaintiff filed its "Petition For Attorney Fees And Costs And Affidavit Of [Plaintiff's Counsel] Marty J. Schwartz." Plaintiff requested \$25,490.50 in fees and \$1,580.67 in costs.

¶ 44 On September 9, 2013, the court held a hearing on plaintiff's fee petition, and entered a written order which contains the court's findings. The court found that the hourly rate charged, and the time spent, by plaintiff's counsel was reasonable. The court entered judgment in favor of plaintiff for fees and costs "per the contract." Nonetheless, the court awarded only \$4,500 in attorney fees "relative to the amount of the judgment."

¶ 45 Contrary to the court's order awarding interest, the issue of attorney fees was adequately preserved for review. As was the case in *Whitmer v. Munson*, 335 Ill. App. 3d 501 (2002), the

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record here contains sufficient documents which adequately apprise this court of the evidence presented to the trial court. The record contains the copy of the fee petition.

¶ 46 More importantly, however, plaintiff is not challenging the factual findings of the trial court. The "reasonableness" of the attorney fees is not at issue. The court found the fees "reasonable." Thus, defendants' various arguments regarding the trial court's familiarity with the underlying litigation, the court's broad discretionary powers in assessing the necessity and reasonableness of the legal services rendered, and the stricter scrutiny by the trial court in cases involving fee-shifting provisions may be accurate but are irrelevant. Plaintiff does not challenge the court's finding that the attorney fees and costs are reasonable.

¶ 47 Plaintiff's appeal challenges the legal basis for the trial court's decision to reduce plaintiff's attorney fee award based on the amount of the judgment. The record on appeal is sufficient for this court "to determine whether there was the error claimed by the appellant." *Foutch*, 99 Ill. 2d at 391.

¶ 48 Contrary to defendants' assertions, we are not "asked to guess as to the rationale of the trial court and why it modified its fixed [*sic*] the attorneys fee award in the amount that it did." The trial court's reasoning and the basis for its decision is apparent from the record. The court order clearly expressed its rationale: the reduced \$4500 amount was awarded "relative to the amount of the judgment."

¶ 49 Although defendants assert that the trial court did not abuse its discretion in determining the award of attorney fees, defendants do not contest, nor even address, plaintiff's argument that the trial court should not have reduced its attorney fee award based on the amount of the judgment. "The trial court abuses its discretion when it applies improper legal standards or ignores recognized principles of law." *Save the Prairie Society v. Greene Development Group*,

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Inc., 338 Ill. App. 3d 800, 803 (2003). We conclude that the trial court erred in reducing the attorney fee award "relative to the amount of the judgment."

¶ 50 In support of its argument, plaintiff cites *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276 (2001), a case in which a contractor sued to foreclose a mechanics lien against a store owner for concrete and paving work. Similar to the instant case, in *J.B. Esker*, the parties' contract contained a fee-shifting provision whereby the prevailing party in litigation was entitled to its reasonable attorney fees and costs. *Id.* at 278, 280. The store owner, who had raised affirmative defenses and filed a counterclaim, was the prevailing party. *Id.* at 281. Nonetheless, the trial court denied the full amount of attorney fees submitted by two attorneys for the prevailing party. *Id.* at 280. The trial court awarded a total of \$13,532 in legal fees instead of the requested \$27,239.44. The appellate court reversed.²

¶ 51 As the *J.B. Esker* court noted, "[c]ontractual provisions for an award of attorney fees must be strictly construed, and the court must determine the intention of the parties regarding the payment of fees." *Id.* at 281. The court concluded that the trial court had no justification for reducing the award of attorney fees, "based on the results obtained by defendant's counsel." *Id.* Similar to the instant case, the trial court in *J.B. Esker* had not ruled "that any of the attorney fees were excessive, redundant, or otherwise unnecessary or unreasonable." *Id.* at 283. As the court explained: "attorney fees may be reasonable even if the fees are disproportionate to the monetary amount of an award." *Id.*; accord *Rexam Beverage Can Co. v. Bolger*, 620 F.3d 718, 738 (7th Cir. 2010) Therefore, "[w]hen a contract calls for the shifting of attorney fees, a trial court should award all reasonable fees." *Id.* at 282. The court further stated that "attorney fees may be

² The court affirmed in part. The court held that the trial court correctly denied the attorney fee award for one of the attorneys who had not properly itemized his time or signed his affidavit. *Id.* at 283-84.

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reasonable even if the fees are disproportionate to the monetary amount of an award." Thus, the court held that the prevailing party was entitled to the benefit of the fee-shifting clause in the contract and was entitled to the full amount of the reasonable attorney fees charged by one of the attorneys. *Id.* at 283. Defendants do not address *J.B. Esker*. We find the case well-reasoned and controlling.

¶ 52 As plaintiff notes, it executed the Contract with Urbanscape providing for its reasonable attorney fees. Urbanscape withheld payment and plaintiff had to file suit in order to pursue its remedy. To this end, it was required to retain an attorney that performed acts to recover the amounts due plaintiff. Each of these acts was deemed reasonable by the trial court, as were the hourly fees charged. We agree with plaintiff that the trial court's analysis should have ended there and it should have entered an award granting plaintiff all of its reasonable attorney fees. We hold that the trial court's blanket reduction of the reasonable attorney fees to make them proportionate ("relative to") the judgment was an abuse of discretion.

¶ 53

III. CONCLUSION

¶ 54 For the reasons stated, we vacate that portion of the trial court's order of August 12, 2013, awarding interest and remand for recalculation as requested by plaintiff in its posttrial motion: (1) prejudgment interest under the Act on the full amount the court found due; and (2) contractual prejudgment interest at 3% per month commencing January 13, 2010 (30 days after due date). We vacate the trial court's September 9, 2013 order reducing its award of attorney fees to \$4500, and remand this matter for further proceedings consistent with our decision.

¶ 55 No. 1-13-2907 – Vacated and remanded.

¶ 56 No. 1-13-3005 – Vacated and remanded.