

building from Siglo. After a bench trial, Kathmandu was found liable to Siglo in the amount of \$75,000. The circuit court subsequently allowed Siglo to amend the pleadings to conform to the proofs, adding additional allegations against Agnihotri and adding her as an additional defendant in count II. Defendants now appeal, contending that the circuit court erred in: (1) entering judgment against Agnihotri on count II; (2) allowing plaintiff to amend its complaint after trial; and (3) denying Agnihotri's motion to reconsider. We affirm.

¶ 3 On September 19, 2007, Siglo entered into a contract to sell a parcel of commercial real estate in Chicago to "KE Management" (which is not a party to this appeal). Agnihotri signed the contract on behalf of KE Management and subsequently assigned the contract to New Year. When the transaction closed on May 30, 2008, Kathmandu issued a promissory note in favor of Siglo for \$75,000 (the Note). The Note initially listed Agnihotri and Kathmandu as borrowers, but Agnihotri's name as a borrower was manually stricken from the document. Agnihotri, however, signed the Note as president of Kathmandu. The Note required monthly payments of \$3,125 beginning on October 1, 2008, but it provided that, for the first year, if any tenant defaulted on its rent, Kathmandu could deduct that amount from the required monthly payment.

¶ 4 In its complaint, Siglo alleged that Kathmandu was involuntarily dissolved on September 12, 2008, and no payments were made on the Note. Siglo further alleged that Kathmandu never acted as a formal business entity and never filed an annual report. After trial, the circuit court found in favor of plaintiff and against Kathmandu and Agnihotri on count II.

¶ 5 On April 21, 2016, plaintiff filed a motion to file a second amended complaint "to conform the pleadings to the proofs." The motion alleged that, at trial, the proofs showed that Kathmandu was an Illinois corporation solely owned and operated by Agnihotri as its sole director, but it neither conducted any business (beyond executing the Note) nor observed any

corporate formalities. Plaintiff further claimed that Kathmandu executed the Note at Agnihotri's direction but for no known reason, and although Agnihotri removed her name from the Note (leaving only Kathmandu as a party), Agnihotri received the money "into her personal account(s)." Plaintiffs further noted that Kathmandu was "administratively dissolved" on September 12, 2008, for having never filed an annual report. On June 13, 2016, the circuit court issued another written order granting the motion. The order refers to a "hearing" having taken place. No transcript or bystander's report of this hearing, or of the trial, appears in the record.

¶ 6 On July 8, 2016, defendants filed a motion to reconsider. Defendants' motion challenged the finding of liability under count II, claiming that defendants "introduced evidence" showing that defendants received only \$31,415 in rent during the twelve-month period beginning June 2008, and since the terms of the Note indicated that plaintiff guaranteed the \$10,000 monthly rent during that time period and any shortfall could be deducted from the Note payments, "there is no balance due under the Note." Defendants attached an exhibit to their motion consisting of photocopies of various checks. In addition, defendants argued that plaintiff "knew that it was contracting with a limited liability entity [Kathmandu], and *** was presumed to have known and accepted the risk inherent therein," and that plaintiff "presented no evidence to rebut this presumption." Finally, defendants asserted that the circuit court erroneously entered judgment against them on count II because plaintiff's complaint "did not contain a request to pierce the corporate veil," and plaintiff could not prove that it was entitled to that relief. Following a hearing, the trial court denied defendants' motion. This appeal follows.

¶ 7 On appeal, defendants claim that the trial court erred in entering judgment on count II against Agnihotri because plaintiff did not name her or seek relief against her in its complaint. Defendants further claim that the trial court erred in allowing plaintiff to amend its pleadings

(namely, adding Agnihotri as a defendant in count II) to conform to the proofs presented at trial, and in denying their motion to reconsider the trial court's prior judgment that "pierced the Kathmandu's corporate veil and [found] her personally liable on the note signed by Kathmandu." We must reject defendants' claims, however, because they failed to provide a sufficient record.

¶ 8 The burden of providing a sufficient record on appeal rests with the appellant (here, defendants). *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we must presume the trial court acted in conformity with the law and with a sufficient factual basis for its findings. *Id.* Furthermore, any doubts arising from an incomplete record will be resolved against the appellant. *Id.*

¶ 9 Supreme Court Rules 321 and 324 require an appellant to provide a complete record on appeal, including a bound and certified copy of the report of proceedings. See Ill. S. Ct. R. 321 (eff. Feb. 1, 1994); Ill. S. Ct. R. 324 (eff. Jan. 1, 2016). If a verbatim transcript is unavailable, the appellant may file an acceptable substitute, such as bystander's report or an agreed statement of facts, as provided for in Rule 323. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 10 Defendants' claims all depend upon the evidence adduced at trial. Defendants first contend that we must vacate the finding of liability as to Agnihotri on count II. They argue, in substance, that since count II was directed only against Kathmandu, it was error for the circuit court to impose liability against Agnihotri. Section 2-616(c) of the Code of Civil Procedure (Code), however, plainly provides that pleadings may be amended "at *any time, before or after judgment*, to conform the pleadings to the proofs, ***." (Emphasis added.) 735 ILCS 5/2-616(c) (West 2016). Here, however, we have no proofs because the transcript is missing, so we are unable to determine whether the proofs supported the amended pleadings.

¶ 11 Defendants claim that the court erred merely by imposing a judgment against someone who was not listed as a defendant in the count at issue. This suggests that the issue might be reviewable even without a transcript. We do not find this to be the case. Based on the evidence adduced at trial, the circuit court apparently found it appropriate to pierce Kathmandu's corporate veil and thus find Agnihotri personally liable for the debt. The doctrine of piercing the corporate veil "is an equitable remedy; it is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract." *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527 (2002). The circuit court was within its authority to impose liability upon Agnihotri as a remedy under count II, even though she was not a defendant in that count.

¶ 12 Defendants' two remaining contentions suffer a similar fate. They challenge the circuit court's granting of plaintiff's motion to amend the complaint to conform the pleadings to the proofs pursuant to section 2-616(c) of the Code. Without a transcript, however, we are in the dark as to what evidence was admitted at trial. This leaves us unable to determine whether the granting of the motion was erroneous, so we must presume the trial court acted in conformity with the law and with a sufficient factual basis for its findings. See *Foutch*, 99 Ill. 2d at 391-92; see also *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985) (holding that, when the record on appeal is incomplete, a court of review "will indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.").

¶ 13 Defendants' final contention centers on the circuit court's denial of their motion to reconsider. In this motion, defendants argued that, based upon the trial evidence, the finding of liability under count II must be vacated. They also argued that piercing Kathmandu's corporate veil was error because plaintiff: (1) presumably knew that Kathmandu was a limited liability

entity but failed to present evidence “to rebut this presumption,” and (2) did not contain a request to pierce the corporate veil in its complaint, and plaintiff could not prove that it was entitled to that relief. All of defendants’ arguments, however, require an examination of the trial proceedings, the absence of which compels us to presume the trial court’s denial had sufficient legal and factual foundations. See *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we must reject defendants’ final claim of error.

¶ 14 In sum, without a complete record of the proceedings below, defendants’ claims of error are merely speculative. We cannot determine whether the evidence established Kathmandu was a valid corporate entity independent of Agnihotri or merely a corporation in name only that was used to improperly shield Agnihotri from personal liability. Where, as here, the record is incomplete, we may not speculate as to what errors may have occurred below. *Foutch*, 99 Ill. 2d at 391-92; see also *People v. Edwards*, 74 Ill. 2d 1, 7 (1978) (holding that a reviewing court may not “guess” at the harm to an appellant where a record is incomplete; rather it must “refrain from supposition and decide accordingly”). Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.