2017 IL App (2d) 160419-U
No. 2-16-0419
Order filed March 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BYRNE BUILDERS, INC.,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff and Counterdefendant-Appellant,	)	
	)	
v.	)	No. 13-MR-255
	)	
TODD NELSON and MEG NELSON,	)	
	)	
Defendants and Counterplaintiffs-Appellees	)	
	)	Honorable
	)	Robert G. Gibson,
(Peter Byrne, Counterdefendant-Appellant).	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's failure to find that defendants anticipatorily repudiated a home-building contract was not against the manifest weight of the evidence. However, the trial court erred in finding Byrne individually liable for returning a portion of defendants' deposits; that ruling should have been against only Byrne Builders, as there were no pleadings or proofs justifying piercing the corporate veil. Therefore, we affirmed in part and reversed in part.

¶ 2 Plaintiff and counterdefendant-appellant, Byrne Builders, Inc. (Byrne Builders), entered into a contract to build a custom home in Western Springs for defendants and counterplaintiffs-

appellees, Todd and Meg Nelson. Due to a series of events we outline below, defendants never moved into the home, and it was sold to a third party. Byrne Builders brought a declaratory judgment seeking to retain defendants' deposits, and defendants brought a counterclaim against Byrne Builders and appellant, Peter Byrne, individually, seeking the return of their deposits and additional damages. The trial court ruled that although defendants defaulted on the contract, Byrne Builders was not entitled to retain the deposits because it never provided the contractually-required notice. It further ruled that Byrne Builders was still entitled to damages, and it allowed Byrne Builders to keep a portion of the funds.

¶ 3 On appeal, Byrne[1] argues that the trial court erred in: (1) failing to find that defendants anticipatorily repudiated the contract and forfeited their deposits; and (2) entering judgment against him individually where defendants' pleadings did not seek such relief, and there was no evidentiary basis to pierce the corporate veil of Byrne Builders. We conclude that the trial court's failure to find anticipatory repudiation was not against the manifest weight of the evidence. However, we agree with Byrne's second argument, and we reverse the judgment against him individually.

¶ 4 I. BACKGROUND

¶ 5 The events leading up to this litigation are unusual and merit some detail. On November 3, 2009, defendants entered into a contract (First Contract) with Byrne Builders for the construction and sale of a custom home in Clarendon Hills, Illinois (Clarendon Hills Property), for $1,092,000. The price consisted of $342,000 for the lot and $750,000 for the house. Defendants paid a 20% deposit, $218,400. Byrne purchased the lot, obtained architectural

[1] At times, we use "Byrne" to collectively refer to Byrne Builders and Peter Byrne. Even when using "Byrne" collectively, we use the pronoun "he" for readability purposes.

drawings and a building permit, and demolished the existing house on the property. In August 2010, defendants informed Byrne that they would rather live in Western Springs, Illinois, where they had been renting a home. The parties agreed that Byrne would sell the Clarendon Hills Property and that defendants' money would be applied to a future build in Western Springs. In January 2011, Byrne Builders contracted with another family for a different custom home on the Clarendon Hills Property.

¶ 6 On March 15, 2011, defendants entered into another contract with Byrne Builders (Second Contract) for the construction and sale of a custom home in Western Springs (Central Avenue Property); the Second Contract superseded the First Contract. The price for constructing the home was $750,000, just as with the First Contract, and the lot price was $312,000, thus totaling $1,062,000. However, Byrne claimed that he had lost $110,000 on the Clarendon Hills Property, and the loss was built into the price of the home's construction on the Central Avenue Property.[2] That is, the home's construction remained at $750,000, but the home was to be smaller and have less expensive features than the Clarendon Hills Property. Byrne applied the $218,400 deposit from the First Contract to the Second Contract, and defendants paid Byrne an additional deposit of $60,000, thus bringing the total deposits to $278,400. The Second Contract required that the balance be paid at closing.

¶ 7 Regarding default, the Second Contract stated:

> "If [defendants] fail to make deposit or payment at Closing when due *or otherwise default in performance under this Agreement*, such will be deemed an [*sic*]

[2] Byrne testified that defendants asked him to not specifically list the $110,000 as a loss in the Second Contract for financing reasons. In his testimony, Todd Nelson acknowledged that Byrne's $110,000 claimed loss on the First Contract was incorporated into the Second Contract.

> default by [defendants], for which Contractor shall have all remedies available at law or in equity. If a default remains uncured fourteen (14) days after the effective date of a notice of default given to [defendants] and if such default is not resolved by Mediation as under Section 17 below, Contractor may terminate this Agreement by notice to the Nelsons and retain all deposits made to that date as liquidated damages." (Emphasis added.)

¶ 8 After Byrne submitted the architectural drawings for permits, defendants stated that they wanted to make some changes to the plans. Byrne stated that it would require new architectural and engineering plans, new permits, and expenses for delay, totaling $20,000. Todd testified that defendants received the invoice for the additional expenses on December 16, 2011.

¶ 9 Also in December 2011, defendants told Byrne that they had an opportunity to purchase a larger lot in Western Springs at a good price and would love to sell the Central Avenue Property and build a home on the larger lot. On December 28, 2011, defendants purchased a property at 5225 Fair Elms in Western Springs (Fair Elms Property) through a short sale for $226,000 cash. They listed it for sale on January 10, 2012, for $399,000. Todd testified that they had bought the Fair Elms Property as a potential investment and listed it for sale because they did not want to be left with two properties if they had to close on the Central Avenue Property. Todd testified that he did not tell Byrne about the purchase until January 15, 2012, when Todd again asked him about selling the Central Avenue Property. Byrne agreed to list the Central Avenue Property but did not agree to terminate the Second Contract. Byrne listed the Central Avenue Property for sale on January 31, 2012.

¶ 10 On February 15, 2012, Byrne, Todd, and Dawn McKenna, a real estate agent who represented both parties, had a meeting. Todd gave Byrne a check for $15,000 towards the

December 16, 2011, invoice for $20,000; Todd testified that he had previously paid $5,000 of the invoice. According to McKenna and Byrne, Todd said that he had started a new career and did not have the funds to be able to close on the Central Avenue Property. McKenna described Todd as "in tears." The parties discussed the sale of the Central Avenue Property, but the deposits were not mentioned at the meeting. Todd testified that Byrne stated that defendants could either close on the house and sell it, or they could give up their beneficial interest, and Byrne would sell it. They agreed to the latter. Todd testified that he preferred to build on the Fair Elms Property but still would have been financially able to close on the Central Avenue Property at the time; he denied saying that he would not be able to close. Todd testified that at the end of the meeting, he did joke that defendants could not afford both "his" and "hers" properties in Western Springs. He assumed that the deposits would be rolled over to the construction on the Fair Elms Property.

¶ 11 In late February 2012, the parties signed an agreement entitled "RELEASE OF COLLATERAL ASSIGNMENT OF LAND TRUST BENEFICIAL INTEREST." This allowed Byrne to sell the Central Avenue Property without needing defendants to sign off on the conveyance. The release also included the following language:

> "The undersigned acknowledge that the value received for the Release includes cancellation of that certain Residential Construction and Property Sale Agreement between the Parties dated March 15, 2011[,] regarding a new home on Trust Property located at 4732 Central, Western Springs, IL 60558 and agreed resolution as to deposits thereunder made by the undersigned in the total amount of $278,400.00."

¶ 12 On April 9, 2012, Byrne Builders signed a contract with another family for the purchase of the Central Avenue Property. The closing price was $1,028,800, which was $33,200 less than the value of the Second Contract. Byrne claimed "a loss of $62,000" because he had added a lot

of features to the house that were not in defendants' contract so that it would appeal to the general public and sell quickly. The new buyer also wanted a home audio system and other upgrades, and Byrne agreed in order to be able to sell it.

¶ 13 According to Byrne, in July 2012 defendants asked him to build a house for them on the Fair Elms Property. In October 2012, Byrne drafted a contract to build a house for $525,000, identical to one he had built in LaGrange. The agreement was never executed. Todd testified that he did not agree to the contract because he wanted a custom home, and he had expected that the home's final cost would be $750,000, including the deposit. Instead, the proposed home was a duplicate and had far fewer features than the specifications for the Central Avenue Property. In December 2012, Todd told Byrne that defendants would not proceed with the proposed contract, and he asked for a return of their deposit.

¶ 14 On February 15, 2013, Byrne Builders filed a complaint for a declaratory judgment to determine the parties' rights and liabilities, alleging that defendants had released their deposits by virtue of the February 2012 agreement.

¶ 15 On April 2, 2013, defendants filed an answer and counterclaim alleging that Byrne owed them $245,400 of the deposits, as well as punitive damages. On June 24, 2014, defendants filed a second amended counterclaim. Count I sought a declaratory judgment that Byrne Builders was obligated to return all of the deposits. Counts II and III were directed against Byrne Builders. Count II alleged breach of contract, and count III, pled in the alternative to count II, sought rescission. Counts IV through VI were directed against both Byrne Builders and Byrne individually. Count IV alleged unjust enrichment; count V alleged violations of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2012)); and count VI alleged fraud in the inducement.

¶ 16 In September 2013, defendants sold the Fair Elms Property for $349,000.

¶ 17 On July 16, 2014, Byrne Builders and Byrne filed a motion to dismiss counts IV, V, and VI of the second-amended counterclaim pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). On September 4, 2014, defendants withdrew count IV as to Byrne individually. The trial court dismissed count VI as to Byrne Builders and Byrne. Subsequently, on October 2, 2014, it denied the motion to dismiss as to both Byrne Builders and Byrne on count V.

¶ 18 A bench trial took place on October 27 through 29 and November 3, 2015. We summarize the trial court's findings from its January 11, 2016, memorandum order. The testimony from Byrne and McKenna was credible regarding the February 2012 meeting. "Ms. McKenna testified that Mr. Nelson was distraught, in tears, and made it clear that he could not afford the home and could not perform under the Second Contract." Byrne did not send out a default notice seeking a forfeiture of the deposits, as the Second Contract required, and defendants did not demand the return of the deposits. That is, despite the language contained in the February 2012 release, the parties failed to address the disposition of the deposits. They verbally agreed that defendants would not close on the Second Contract, that Byrne would finish construction of the home without further input from defendants, and that Byrne would sell the home through McKenna. "The parties' unstated agreement based on their actions and inactions and the discussion at the February 2012 meeting was that Byrne would sell the subject property to a third party[,] and the deposits would be assessed at that time." The parties also discussed Byrne building a home for defendants pursuant to a third contract, and the issue of the deposits was addressed by "incorporation of a resolution" into a draft contract.[3] However, the parties

[3] The draft contract stated that the "Initial Deposit" was "[t]he monies already received."

could not reach an agreement on the third contract's terms.

¶ 19 Byrne's complaint sought a declaration of forfeiture of the $278,400 that defendants made in deposits. Illinois courts did not look at contract forfeiture favorably. A party seeking to enforce a forfeiture provision had to prove that the right to forfeiture clearly and unequivocally existed, and that exercising that right would not cause injustice. "Here, Byrne's failure to send a notice of forfeiture of the deposits as required by the Second Contract [was] extremely problematic." If Byrne had done so, defendants would have had 14 days to cure. Also, Byrne induced them to execute the release without notice of forfeiture, so they changed their position in reliance on the lack of a forfeiture notice. Thus, forfeiture of the deposits would be inconsistent with the contract terms requiring a forfeiture notice and would result in an injustice.

¶ 20 Still, the Second Contract also provided that if defendants defaulted, Byrne would have all remedies available at law or in equity. A default occurred at the February 2012 meeting. The parties did not expressly discuss the disposition of the deposits arising out of the default, and their actions reflected a determination to defer the issue of whether Byrne sustained actual damages until after the sale of the Central Avenue Property and possible execution of a third contract.

¶ 21 The evidence that Byrne presented as to actual damages was "problematic." The difference in the Second Contract price and the sale price was $33,200. Byrne did not produce admissible evidence for the vast majority of the alleged additional construction costs and upgrades. The only additional costs adequately proven totaled $14,300. Added to the $33,200 difference in the sale price, the appropriate deductions from the deposits totaled "$47,500," meaning that defendants should be returned "$230,900" of their deposits.

¶ 22 Regarding Byrne Builder's complaint and count I of defendants' second amended

counterclaim, the trial court ordered that Byrne Builders and Byrne individually should remit to defendants "230,500" [*sic*] of their deposits and retain "47,900" [*sic*] of the deposits. Based on this resolution, it dismissed counts II, III, IV, and V of defendants' second amended counterclaim.

¶ 23 On February 10, 2016, Byrne filed a motion to vacate or modify the judgment, which the trial court denied on May 5, 2016. Byrne timely appealed.

¶ 24 II. ANALYSIS

¶ 25 On appeal, Byrne first argues that the trial court erred by failing to find that defendants anticipatorily repudiated the Second Contract, thereby nullifying Byrne Builder's notice and cure obligations.

¶ 26 Defendants argue that Byrne forfeited any reliance on the theory of anticipatory repudiation by failing to allege this theory or such conduct in the complaint and first raising the argument in his post-trial motion. Defendants cite *Kelly v. Orrico*, 2014 IL App (2d) 130002, ¶ 23, where the court stated that anticipatory repudiation is a distinct theory of relief from that of breach of contract, and that the plaintiffs were required to plead anticipatory repudiation in their complaint in order to succeed on such a claim. Defendants point out that Byrne's complaint alleged that "[i]n February 2012, when the home was 50% completed, the Defendants approached [Byrne] and wanted to terminate the contract. [Byrne] initially refused." Byrne sought a declaration that, among other things, "the two agreements between the parties were terminated in February 2012 by the agreement of the parties." Defendants assert that these statements fail to allege that defendants showed a "clear manifestation of an intent not to perform." *In re Marriage of Olsen*, 124 Ill. 2d 19, 24 (1988). Defendants argue that although

Byrne could have alternatively sought to amend the complaint to conform it to the proofs, he never did so.

¶ 27 We note that the cases relied on by defendants do not involve a declaratory judgment action, unlike the instant case. Section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2014)), which is also known as the Declaratory Judgment Act (*Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 304 (2003)), provides in relevant part:

> "No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any * * * contract * * * and a declaration of the rights of the parties interested." 735 ILCS 5/2-701(a) (West 2012).

The scope of the remedy in a declaratory judgment action is to be kept wide and liberal, unrestricted by technicalities. *Amoco Oil Co.*, 336 Ill. App. 3d at 310. The court has a right and a duty to grant declaratory relief where it should be granted in the proper administration of justice, regardless of how the particular action in which declaratory relief is sought may be classified. *Id.* The Declaratory Judgment Act does not supplant existing remedies but is instead an alternative or additional remedy to facilitate the administration of justice. *Id.*

¶ 28 Thus, as Byrne Builders brought an action for declaratory judgment, it clearly did not have to make a distinct claim of anticipatory repudiation. This is especially true given that Byrne Builders did allege that defendants sought to terminate the Second Contract in February 2012 and that it believed that it was entitled to retain their deposits. These considerations, along

with the wide scope of remedies that the trial court could engage in for a declaratory judgment action (*id.*), lead us to conclude that Byrne did not forfeit his argument regarding anticipatory repudiation.

¶ 29 Anticipatory repudiation takes place before the time for performance has arrived (*Mazurkiewicz v. Platinum Group Properties, LLC*, 2016 IL App (4th) 150258, ¶ 98) and occurs when a party clearly, definitely, and unequivocally manifests an intent not to perform the contract on the performance date (*In re Marriage of Olsen*, 124 Ill. 2d 19, 24 (1988)). "The failure of the breaching party must be a total one which defeats or renders unattainable the object of the contract." *Id.* The nonrepudiating party is then excused from performance or may continue to perform and seek damages for the breach. *Kelly*, 2014 IL App (2d) 130002, ¶ 27. Whether a repudiation has taken place is determined on a case-by-case basis, and we will not disturb a trial court's finding on this issue unless it is against the manifest weight of the evidence. *Id.*[4] A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based on the evidence. *Id.*

¶ 30 Byrne argues that Todd's statement at the February 15, 2012, meeting that "he wanted out at all costs" was a definite and unequivocal repudiation of the contract. Byrne maintains that

[4] Although Byrne Builders brought a declaratory judgment action (and defendants sought a declaratory judgment in count I), the standard of review depends on the underlying issue (see *Pekin Insurance Co. v. Hallmark Homes, L.L.C.*, 392 Ill. App. 3d 589, 592-93 (2009)), which in this instance calls for a manifest-weight-of-the-evidence standard. See also *Board of Education, Proviso Township High School District No. 209 v. Jackson*, 401 Ill. App. 3d 24, 31 (2010) ("A trial court's factual and credibility findings in a declaratory judgment action will not be disturbed unless such findings are against the manifest weight of the evidence.").

defendants took another affirmative action that was inconsistent with any intent to perform, in that they willingly executed a release to their rights to sell the Central Avenue Property to allow Byrne Builders to mitigate its damages.

¶ 31 Byrne argues that defendants' repudiation nullified Byrne Builder's notice and cure obligations. He cites *Stonecipher v. Pillatsch*, 30 Ill. App. 3d 140, 141 (1975), where the sellers of a home stated that they would not be able to move until after the agreed closing date. The court stated that this action could be treated as an anticipatory breach of the contract, and that the buyers could then properly rescind the contract and receive a return of their earnest money. *Id.* at 143. Byrne argues that as in *Stonecipher*, Byrne Builders was not required to perform contract obligations after defendants' repudiation. He argues that under the Second Contract's terms, a default triggering the notice and cure provisions could not have occurred until the scheduled closing date, and since defendants repudiated the contract well before that date, any obligations under the default provision were rendered a nullity.

¶ 32 Byrne additionally argues that the contract repudiation allowed Byrne Builders to retain the deposits paid. He cites *Linster v. Regan*, 108 Ill. App. 2d 459, 461-63 (1969), where the court held that a down payment is an assurance to the seller that the buyer will perform, and a defaulting purchaser cannot recover a down payment. Byrne further cites *Pruett v. La Salceda, Inc.*, 45 Ill. App. 3d 243, 247 (1977), where the court applied this principal to an anticipatory repudiation. Byrne argues that the trial court's finding presumes that a default occurred, but based on the trial court's crediting Byrne's and McKenna's testimony regarding the February 2012 meeting, there was no reasonable basis upon which to find that there was a default rather than a repudiation. Byrne argues that the parties' post-repudiation silence regarding the deposits was consistent with the belief that Byrne Builders was entitled to retain the deposits.

¶ 33 Defendants cite Black's Law Dictionary definition of "default," which is "[t]he omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due." Black's Law Dictionary 428 (7th ed. 1999). They note that the trial court found that they had defaulted and that Byrne could have pursued forfeiture of the earnest money as to either the First Contract or Second Contract, but he did not follow the contracts' notice provisions. Defendants argue that in contrast to a default, an anticipatory repudiation requires something more, namely an unequivocal manifestation of no intention to perform. Defendants assert that the trial court properly ruled that they defaulted under the Second Contract but did not anticipatorily repudiate it. Defendants argue that even Todd's alleged statement that "he wanted out at all costs" did not rise to the level of an unequivocal manifestation that they would not perform on the closing date. Defendants point to Todd's testimony that they were financially able to close and would have done so if they would otherwise forfeit the deposits. Defendants also note that at the February 2012 meeting, Todd gave Byrne a $15,000 check for the December 2011 invoice. They argue that it would have been irrational for Todd to have done so if he were walking away from the Second Contract and their significant deposits. Defendants argue that even if any conduct by Todd could rise to the level of anticipatory repudiation, Meg was not even at the meeting.

¶ 34 Defendants further argue that their signing of the February 2012 release was not inconsistent with their intent to perform. They contend that this action was instead consistent with the parties' agreement to give Byrne and McKenna the latitude needed to meet marketplace design tastes and effectuate a sale, and then work towards a future build. Defendants additionally point out that the third draft contract stated that the "Initial Deposit" was "[t]he

monies already received," and they argue that this provision would not make sense if they had anticipatorily repudiated the contract and Byrne was entitled to keep their deposits.

¶ 35 Defendants maintain that the notice and cure provision in the Second Contract ensured that, prior to any forfeiture, they would be notified that: (1) they were in default of the agreement, and (2) they would forfeit their deposits if they did not cure the default within 14 days. Defendants argue that the trial testimony showed that they had no idea that Byrne considered them in default, as: they never received notice of default; the parties did not discuss the deposits; and the release and third draft contract referenced the deposits as if they were being incorporated into the future build.

¶ 36 We conclude that it was not against the manifest weight of the evidence for the trial court to not find that defendants anticipatorily repudiated the contract. As stated, anticipatory repudiation occurs when a party clearly, definitely, and unequivocally manifests an intent not to perform the contract on the performance date. *In re Marriage of Olsen*, 124 Ill. 2d at 24. We agree with defendants that Todd's statement at the February 2012 meeting that "he wanted out at all costs" does not rise to the level of anticipatory repudiation because the testimony showed that he was looking for alternatives to closing on the Central Avenue Property as opposed to unequivocally disavowing the Second Contract. Indeed, handing Byrne a $15,000 check at that meeting is diametrically opposed to an intent to completely walk away from the Second Contract. Moreover, as defendants point out, they were both signatories on the Second Contract, but Meg was not even present at the meeting. The release does not aid Byrne's position, as it is consistent with evidence that the parties agreed that the release was necessary for Byrne and McKenna to sell the house. Also, the release refers to an "agreed resolution as to deposits *** of $278,400" whereas the testimony clearly showed that there was no explicit agreement regarding

the deposits. Rather, the evidence, including the third draft contract's reference to money that was already received, supports the trial court's finding that the "parties' actions reflect a determination to defer the issue and determine whether Byrne sustained actual damages and in what amount after the sale of the subject property to a third party buyer as well as the possible execution of a third contract between the parties for construction and sale of a different property." Indeed, such a course of action would be consistent with what the parties did after the First Contract, in that Byrne's claimed loss of $110,000 was incorporated into the Second Contract. "Pursuant to principles of waiver and estoppel, 'a party to a contract may not lull another party into a false assurance that strict compliance with a contractual duty will not be required and then sue for noncompliance.' " *Kelly*, 2014 IL App (2d) 130002, ¶ 33 (citing *Vandevier v. Mulay Plastics, Inc.*, 135 Ill. App. 3d 787, 792 (1985)).

¶ 37 Furthermore, we note that even a finding of anticipatory repudiation does not equate to Byrne automatically being able to keep the deposits. As stated, when a party anticipatorily repudiates a contract, the nonbreaching party is excused from performance or may continue to perform and seek damages for the breach. *Kelly*, 2014 IL App (2d) 130002, ¶ 27. Here, the trial court awarded Byrne damages for the breach. Byrne argues that he should be allowed to keep the deposits under *Linster* and *Pruett*, but those holdings were explicitly limited to situations where the contracts did not include specific provisions for the forfeiture of deposits upon a buyer's default. See *Linster*, 108 Ill. App. 2d at 460-61; *Pruett*, 45 Ill. App. 3d at 247 ("*[I]n the absence of an express contract provision to the contrary*, earnest money or down payment upon a contract should be accepted as the bargain and agreement of the parties and as an assurance to the seller that the buyer will perform." (Emphasis added.)). Unlike *Linster* and *Pruett*, here the Second Contract had a provision directly addressing forfeiture of the deposits. Moreover,

contrary to Byrne's argument that a default could occur only on the scheduled closing date, the provision included both the failure "to make deposit or payment at Closing when due" and a more general "otherwise default in performance under this Agreement." The trial court implicitly found that the latter occurred here and triggered the notice requirement.

¶ 38 Although we find no basis to disturb the substance of the trial court's ruling on the anticipatory breach/default issue, we do note that the trial court made a scrivener's error. The body of its memorandum order states that Byrne shall retain $47,500 of the deposits and return $230,900 to defendants, whereas its conclusion states that Byrne shall retain $47,900 of the deposits and return $230,500 to defendants. Should either party wish to correct this inconsistency, a motion to amend the ruling *nunc pro tunc* may be filed. See *U.S. Bank National Ass'n v. Luckett*, 2013 IL App (1st) 113678, ¶ 27 (discussing *nunc pro tunc* orders).

¶ 39 Byrne's second argument on appeal is that the trial court erred in entering judgment on count I against him individually, because defendants never sought to pierce the corporate veil. A corporation is a legal entity that typically shields individuals, shareholders, and other entities from liability based on the corporation's conduct. *Gajda v. Steel Solutions Firm, Inc.*, 2015 IL App (1st) 142219, ¶ 23. A court may disregard a corporate entity and pierce the veil of limited liability only where the corporation is simply the alter ego or business conduit of another person or entity. *Id.*

¶ 40 Defendants argue that Byrne has forfeited this issue by failing to raise it in a posttrial motion. However, as Byrne points out, in appeals from nonjury civil cases, "[n]either the filing of nor the failure to file a post judgment motion limits the scope of review." Ill. S. Ct. R. 366 (b)(3)(ii) (eff. Feb. 1, 1994).

¶ 41 Byrne argues that the trial court lacked jurisdiction to pierce the corporate veil because count I of defendants' second amended counterclaim, which was the only count that the trial court did not dismiss, was not directed at Byrne in his individual capacity, and because none of defendants' pleadings sought the equitable remedy of piercing the corporate veil. Byrne argues that even beyond the jurisdictional issue, there was no evidence to substantiate piercing the corporate veil.

¶ 42 Defendants argue that Byrne was on notice that he was a party to count I of their second amended counterclaim because it incorporated their general allegation that "Peter Byrne decided to retain the $278,400.00 deposit for his own benefit."

¶ 43 Defendants' argument is not persuasive, as count I specifically sought a declaration that Byrne Builders was obligated to return the deposit. The parties' pleadings "frame the issues in controversy and circumscribe the relief that the court is empowered to order." *City of Chicago v. Chicago Board of Education*, 277 Ill. App. 3d 250 (1995). Even otherwise, the Second Contract was signed by Byrne Builders, not by Byrne individually, and defendants did not plead nor was there any evidence that Byrne Builders was the alter ego or business conduit of Byrne individually. Indeed, the trial court went so far as to say that Byrne was "a credible witness and an honorable man." Accordingly, we reverse the portion of the trial court's order finding Byrne individually liable for returning a portion of the deposits to defendants; the judgment against Byrne Builders still stands.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the ruling of the circuit court of Du Page County insofar as it finds that defendants are entitled to the return of $230,900 of their deposits from Byrne

Builders, but we reverse the portion of the trial court's ruling that also holds Byrne individually liable for this amount.

¶ 46 Affirmed in part and reversed in part.