

**NOTICE**  
Decision filed 06/01/17. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2017 IL App (5th) 150117-U

NO. 5-15-0117

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**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).

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KATHLEEN C. BONE, f/k/a Kathleen Levy,	)	Appeal from the
and MELISSA FAVIER,	)	Circuit Court of
	)	Madison County.
Plaintiffs-Appellants and Cross-Appellees,	)	
	)	
v.	)	No. 09-CH-416
	)	
COYLE MECHANICAL SUPPLY, INC., d/b/a	)	
Coyle Supply, Inc., COYLE SUPPLY, INC.,	)	
PATRICK COYLE, MICHAEL COYLE,	)	
JEROME COYLE, JR., and BRIAN COYLE,	)	Honorable
	)	Barbara L. Crowder,
Defendants-Appellees and Cross-Appellants.	)	Judge, presiding.

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PRESIDING JUSTICE MOORE delivered the judgment of the court.  
Justices Welch and Overstreet\* concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court did not err in finding that the majority shareholders in a closely held corporation acted in an oppressive manner toward the minority shareholders within the meaning of section 12.56 of the Business Corporation Act (805 ILCS 5/12.56 (West 2010)). The circuit court did err in awarding the plaintiffs employee bonuses where issues surrounding the plaintiffs' employment agreement with the corporation were subject to

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\*Justice Schwarm was originally assigned to participate in this case. Justice Overstreet was substituted on the panel subsequent to Justice Schwarm's retirement and has read the briefs and listened to the tape of oral argument.

mandatory arbitration. The circuit court did not err in requiring that the plaintiffs be bought out for the fair value of their shares, but did err in its determination of the value of those shares, in not specifying whether the corporation or the shareholders be required to purchase the shares, and making other provisions surrounding the sale of the shares that the Act requires. The circuit court did not err in requiring that the corporation pay each plaintiff \$250,000 as their share of the profits from the years that the majority shareholders were paid large employment bonuses but the plaintiffs were subjected to "freeze-out." The circuit court did err in not providing for the removal of the plaintiffs as directors where the corporate bylaws provide that directors need not be shareholders. The circuit court did err in ordering the defendants to pay an additional sum of \$200,000 to each plaintiff in "additional damages" where there was no basis for such an award. The circuit court did not err in awarding attorney fees and costs pursuant to the Act, but did err in requiring that the corporation be held liable, along with the majority shareholders, for the fees and costs. The circuit court did not err in refusing to award punitive damages. The circuit court did not err in refusing to require the majority shareholders to forfeit their employment bonuses where the circuit court did not find that the majority shareholders breached their fiduciary duties to the corporation. The circuit court did not err in refusing to award the plaintiffs profit sharing for 2014 and 2015 where the circuit court ordered that the plaintiffs' shares in the corporation be purchased at their value as of 2013.

¶ 2 In this dispute between shareholders in a closely held family corporation, the plaintiffs, Kathleen C. Bone, formerly known as Kathleen Levy, and Melissa Favier, appeal, and the defendants, Coyle Mechanical Supply, Inc., doing business as Coyle Supply, Inc., Coyle Supply, Inc., Patrick Coyle, Michael Coyle, Jerome Coyle, Jr., and Brian Coyle, cross-appeal, from the February 26, 2015, final judgment order of the circuit court of Madison County, entered after a bench trial on the various claims of the parties. The parties raise numerous issues on appeal and cross-appeal, to be discussed in detail throughout this order. For the reasons that follow, we affirm in part, vacate in part, modify in part, and remand with directions.

¶ 3

## FACTS

¶ 4

### 1. The Operative Pleadings

¶ 5 We begin our discussion of the various claims of the parties with a discussion of the operative pleadings at the time of the bench trial. On January 4, 2011, the plaintiffs<sup>1</sup> filed their third amended complaint (complaint) in the circuit court of Madison County, consisting of eight counts. In count I, the plaintiffs allege that they are shareholders of Coyle Mechanical Supply, Inc., doing business as Coyle Supply, Inc. (the corporation). The corporation is a closely held and family owned corporation and operates a business serving the pipe fitting and valve industry. In count I, the plaintiffs request an accounting of the corporation's assets and liabilities.

¶ 6 In count II, the plaintiffs seek shareholder remedies pursuant to section 12.56 of the Business Corporation Act of 1983 (the Act) (805 ILCS 5/12.56 (West 2010)). Therein, the plaintiffs allege that defendants Pat Coyle, Michael Coyle, Jerome Coyle, Jr., and Brian Coyle are also shareholders in the corporation (the majority shareholders).<sup>2</sup> The plaintiffs allege that the majority shareholders, acting in control of the corporation, have acted, were acting, and would act in a manner that is illegal, oppressive, or

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<sup>1</sup>Throughout this order, when we refer to both of the plaintiffs, we use the term "plaintiffs." When we refer to the individual plaintiffs, we use their first names, Melissa or Kathleen.

<sup>2</sup>Throughout this order, when we refer to all of the defendants, we use the term "defendants." When we refer to the individual defendants collectively, we use the term "majority shareholders." When we refer to the individual defendants individually, we use that defendant's first name. When we refer to the corporate defendant, we use the term "corporation."

fraudulent with respect to the plaintiffs as minority shareholders. The plaintiffs further allege that the corporate assets are being misapplied and/or wasted and that the majority shareholders have individually and/or collectively engaged in conduct relating to the corporation's business that makes it not reasonably practicable to carry on that business in the future. Specifically, the plaintiffs allege that the majority shareholders locked the plaintiffs out of the premises of the corporation, refused to communicate with the plaintiffs in a meaningful manner, withheld information from the plaintiffs, and acted in a manner that may be illegal and that is oppressive with respect to the plaintiffs.

¶ 7 Count II of the complaint further alleges that Pat, the majority shareholder whom the complaint alleges is president and CEO of the corporation, has bullied, intimidated, and otherwise conducted himself in an oppressive manner toward the plaintiffs, as well as the other shareholders, so that he could have *de facto* control of the corporation and dispose of its assets without proper corporate oversight and input from all of the shareholders and/or directors. Count II requests one or more of the following remedies pursuant to section 12.56 of the Act (805 ILCS 5/12.56 (West 2010)):

- a. That the corporation be dissolved and the corporation's assets be distributed;
- b. That Pat and one or more of the other majority shareholder defendants be removed as directors and/or officers of the corporation;
- c. That the plaintiffs be appointed as directors and officers;
- d. An accounting with respect to all transactions while the plaintiffs have been removed as officers and/or directors;
- e. The award of damages to each plaintiff;

- f. In the alternative, the purchase by the corporation or one or more of the majority shareholder defendants of all, but not less than all, of the shares of the plaintiff shareholders for their fair value and on the terms determined by the court to be consistent with the applicable provisions of the Act<sup>3</sup>;
- g. In the alternative, the appointment of a receiver to take control of the corporation and liquidate and distribute its assets; and
- h. Payment of the plaintiffs' reasonable attorney fees.

¶ 8 Counts III and IV allege a breach of contract with respect to each of the plaintiffs' employment contracts with the corporation. These counts allege that each plaintiff was employed by the corporation under a written employment agreement. Pursuant to each agreement, the plaintiffs could only be terminated by the corporation "for cause." Counts III and IV allege that the plaintiffs were terminated in 2008 without just cause, causing the plaintiffs to be deprived of their wages, compensation, bonuses, and benefits. Counts III and IV seek money damages from the corporation and reasonable attorney fees pursuant to the employment contracts. In response to these counts in earlier versions of the complaint, the defendants filed a motion to compel arbitration based on an arbitration provision in the employment agreements, and that motion was granted on October 23, 2009.

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<sup>3</sup>At some point in the proceedings, the plaintiffs retracted their request that the circuit court order the corporation to buy their shares.

¶ 9 Counts V and VII allege claims for breach of fiduciary duty with respect to each plaintiff and are asserted against all of the majority shareholders. Counts VI and VIII assert a claim for punitive damages against the majority shareholders based on the same claims for breach of fiduciary duty. According to these counts, the majority shareholders have operated and controlled the corporation in a manner that caused personal and specific injury to the plaintiffs while extending unwarranted and unjustified benefits to themselves, specifically intending to deprive the plaintiffs of their interests in the corporation with respect to salary, compensation, dividends, bonuses, and benefits. These counts allege that the majority shareholders improperly removed the plaintiffs from the board of directors and deprived them of significant directors' compensation previously enjoyed by all of the shareholders. More specifically, counts V and VII allege that the majority shareholders breached their fiduciary duties to the plaintiffs in the following ways, causing damage to the plaintiffs by diminishing their financial interests in the corporation:

- a. Making or permitting to be made financial benefits to certain of the majority shareholders while withholding funds and compensation from the plaintiffs;
- b. Making expenditures for the purpose of paying the personal and/or recreational expenses to certain of the majority shareholders while withholding funds and dividends previously paid to the plaintiffs;
- c. Increasing the compensation and/or bonuses paid to the majority shareholders and diverting corporate funds that were previously equitably distributed to all of the shareholders in the form of directors' fees and dividends in order to

specifically decrease and eliminate the funds previously distributed to the plaintiffs;

- d. Diverting corporate assets to the majority shareholders to the damage of the plaintiffs;
- e. Permitting CEO/president Pat to treat the corporation as his alter ego and failing to exercise reasonable business judgment to protect the assets of the corporation from this one individual who has embarked upon a specific vendetta to cause financial harm to the plaintiffs; and
- f. Engaging in a personal vendetta against the plaintiffs by making financial decisions and paying unearned bonuses and compensation to the majority shareholders for the explicit purpose of driving down the value of the corporation so that when the plaintiffs are compensated for their interests in the corporation the value of the plaintiffs' interests will be wrongfully decreased by the amounts the majority shareholders have plundered from the corporation to their own unique financial benefit.

¶ 10 On January 28, 2011, the majority shareholders filed an answer to the complaint along with a one-count counterclaim brought by the corporation alleging a breach of fiduciary duty against Kathleen. In the counterclaim, the corporation alleges that in her capacity as secretary, treasurer, and human resource administrator for the corporation, Kathleen breached her fiduciary duty to the corporation by removing corporate records and documents, including financial and accounting records, from the corporate offices and refusing to return them, failing to update and maintain the corporate books, failing to

provide minutes of shareholder/director meetings, failing to report to the board of directors on the corporation's finances, failing to prepare required financial reports, and failing to properly manage corporate accounts. In its counterclaim, the corporation seeks damages against Kathleen for her breaches of fiduciary duty.

¶ 11           2. Summary Determination of the Value of the Plaintiffs' Shares

¶ 12   On September 14, 2012, the defendants filed a motion for a summary judgment. In their motion for a summary judgment, the defendants argued that, for various reasons, most of which they have raised in their cross-appeal, they are entitled to a summary judgment on the vast majority of the plaintiffs' claims. According to the defendants' motion, the sole remedy available to the plaintiffs pursuant to section 12.56 of the Act (805 ILCS 5/12.56 (West 2010)), is a redemption of the plaintiffs' shares in the corporation for fair value to resolve an ongoing disagreement between the majority shareholders and the plaintiffs as to the future of the corporation. On that issue, the defendants submitted the affidavit of Kevin S. Carlie, a member in charge of valuation services for Stone Carlie & Company.

¶ 13   According to the Carlie affidavit, Stone Carlie & Company performed a valuation calculation analysis of the corporation, concluding that as of December 31, 2011, the value of the corporation was \$1,444,000, and the fair value of a one-sixth interest in the corporation was \$240,000. Because the plaintiffs had disclosed no expert witness on the issue of valuation, and the deadline for such disclosure had passed, the defendants requested a summary determination that \$240,000 is the fair value of each of the plaintiffs' interests in the corporation. In addition, the defendants requested that the



circuit court enter a summary judgment in favor of the defendants on all counts of the complaint and deny the plaintiffs all of their requested relief except their alternative request in count II that they be granted redemption of their shares. The majority shareholders, in accordance with the alternative request by the plaintiffs for redemption of their shares, requested that the circuit court order the plaintiffs to redeem their shares in the corporation to the majority shareholders for \$240,000 pursuant to section 12.56 of the Act (805 ILCS 5/12.56 (West 2010)). Further, the majority shareholders requested that the circuit court remove the plaintiffs as directors of the corporation, arguing that these measures were the only way to resolve the shareholder disagreements at issue and avoid continuing controversy and possible future litigation. Appendices to the defendants' motion for summary judgment included, *inter alia*, the affidavit of Kevin Carlie attesting to the facts surrounding Stone Carlie's valuation of the corporation and each shareholder's interest, as well as a detailed report and supporting documentation.

¶ 14 After full briefing and a hearing on the defendants' motion for a summary judgment, the circuit court entered a detailed order on February 28, 2013. In this order, the circuit court found that although the timeline of events and basic facts surrounding the plaintiffs' claims were not in dispute, the reasons and inferences to be drawn from the facts, and whether the defendants had breached their fiduciary duties, were "hotly contested." Accordingly, the circuit court denied the defendants' motion for a summary judgment as to all counts of the plaintiffs' complaint. However, the circuit court did find that based on the submissions made by the defendants in their motion for a summary judgment, it could make a summary determination of the value of the interests of the

shareholders of the corporation. Accordingly, the circuit court made a summary determination, pursuant to section 12.56(e) of the Act (805 ILCS 5/12.56(e) (West 2012)), that the value of a one-sixth share in the corporation was established for purposes of trial at \$240,000 as of December 31, 2011.

¶ 15                    3. Bench Trial and Additional Evidentiary Hearing

¶ 16    A bench trial commenced on April 3, 2013. On March 5, 2014, the circuit court entered a judgment order that made findings of fact and conclusions of law. This judgment order, *inter alia*, ordered a new determination of the fair market value of the corporation as of April 30, 2013.<sup>4</sup> Following that order, additional pleadings were filed, including a motion by the plaintiffs to clarify and reconsider, in part, the March 5, 2014, order, and two petitions filed by the plaintiffs for a rule to show cause why the defendants should not be held in contempt for failing to abide by the March 5, 2014, order. In addition, the defendants twice attempted to appeal the March 5, 2014, order to this court, and this court dismissed both appeals for a lack of finality.<sup>5</sup> The circuit court held an additional hearing, which commenced on December 15, 2014, regarding the new appraisal of the corporation it had ordered, as well as the other pending motions.

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<sup>4</sup>Because the circuit court ultimately filed a final judgment order that superseded the March 5, 2014, order in all other respects, for the sake of brevity, we will not outline the remaining terms of the March 5, 2014, judgment here.

<sup>5</sup>We note that attorney fees and costs were taxed against the defendants as a result of these appeals, with judgment entered against the defendants in the amount of \$7,180. The defendants have not appealed this judgment, and it is not affected by the outcome of this appeal.

¶ 17 Ultimately, the circuit court entered a detailed final judgment order on February 26, 2015. After a full review of the evidence introduced during the bench trial and the December 15, 2014, hearing, this court finds that the circuit court succinctly and accurately set forth the facts relevant to this appeal in its February 26, 2015, final judgment order. Accordingly, we borrow heavily from the final judgment order in restating the relevant facts for the purposes of reviewing the many issues raised by the parties on appeal.

¶ 18 The corporation is a closely held corporation that was incorporated in Illinois in 1968 by Jerome Coyle, Sr., and another individual.<sup>6</sup> Later, Jerome Coyle, Sr., and his wife Lois owned all of the shares until 1980, when they gifted equal shares of stock to each of their seven children totaling 49% of the corporation's outstanding stock. The seventh child (Chris) sold his shares back, which left Jerome Coyle, Sr., and Lois with 51% and the remaining six children (the plaintiffs and the individual defendants) each owning one-sixth of the remainder.

¶ 19 Michael began to work for the corporation on January 1, 1977, and Pat began working there in January of 1978 after finishing college. Kathleen's husband, Jack Levy, began working for the corporation in 1978 and worked there through 1998 when he and Kathleen divorced. Jerome Jr. graduated from college in 1987 and attended law school for a semester before becoming employed full time at the corporation. Brian has been

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<sup>6</sup>The corporation was initially incorporated as Metro-East Industrial Supply, Inc., but in 1990 the articles of incorporation were amended to change the corporation's name to Coyle Mechanical Supply, Inc.

employed by the corporation for 32 years. On April 22, 1980, the shareholders elected Pat executive vice-president of the corporation, effective June 15, 1980, and on April 25, 1985, Pat was elected to the board of directors.

¶ 20 In 1996, Jerome Coyle, Sr., began speaking of retirement and resigned from employment with the corporation and the board of directors effective December 31, 1997. Jerome Coyle, Sr., and Lois continued to own 51% of the corporation's stock and Jerome Coyle, Sr., remained involved in the corporation in an informal capacity. Pat became president of the corporation and he and the other individual parties to this action constituted the board of directors. Kathleen became employed by the corporation in May of 2000. Prior to that she had been hired as an independent contractor to do some bookkeeping for the corporation and had been on the board of directors. Melissa became employed by the corporation in September of 2000. Both Kathleen and Melissa signed written employment agreements with the corporation in May of 2006.

¶ 21 In 2007, Jerome Coyle, Sr., and Lois sold their 51% of the shares back to the corporation. The sales agreement was for \$1.25 million, or \$118.32 per share for 10,564 shares. The corporation paid Jerome Coyle, Sr., and Lois \$250,000 and executed a promissory note for the remaining \$1 million. The individual parties to this action each became one-sixth owners of the corporation and remained as such at the time of the bench trial. The shares are subject to a restrictive covenant that requires the parties to offer the shares to the corporation and the other parties in order to sell them.

¶ 22 A great deal of the evidence presented at the bench trial centered on issues between and among the plaintiffs and the individual defendants as employees of the

corporation. The circuit court characterized the work environment as "dysfunctional and disturbing." By October 2007, both plaintiffs were threatening to leave the employ of the corporation and/or sell their shares. In addition, a dispute arose about whether Jerome Coyle, Sr., had promised to subordinate the promissory note for the sale of his shares to a bank loan taken out by the corporation.

¶ 23 For at least fiscal years 2001 through 2007, the board of directors determined its net operating profit at the end of the fiscal year, retained working capital, and then distributed bonuses equally to all of the individual parties by vote. These bonuses, sometimes referred to as "profit-sharing," were treated as employment compensation on the parties' tax returns. In addition, for the years 2003, 2004, 2005, and 2006, the corporation issued dividends at \$2.50 per share to its stockholders by resolution of the board of directors. Kathleen testified that dividends were disfavored to avoid taxation by the shareholders after corporate taxation. Finally, for a period of years prior to 2008, the corporation paid director's fees to the parties in the amount of \$3,000 per month or \$36,000 per year.

¶ 24 As of March 2008, the parties were all shareholders, directors, and employees of the corporation acting in the following capacities: Pat - president/CEO; Michael - inside sales/manager; Jerome Jr. - senior project manager; Brian - senior account manager; Kathleen - human resources/payroll/bookkeeping; Melissa - purchasing/inventory control. By this time, however, relationships between the plaintiffs and the majority shareholders, and especially Kathleen and Pat, had deteriorated to the point that Kathleen

indicated she would no longer answer e-mails and that she wanted outside witnesses when she delivered documents to Pat.

¶ 25 The majority shareholders voted to terminate Kathleen's employment with the corporation at a March 19, 2008, meeting. Testimony at trial was that the vote to terminate Kathleen was based on her insubordination and failure to perform her job duties. The majority shareholders also sent Melissa a letter reminding her of her fiduciary duties because of a concern she would feel aligned with Kathleen. Melissa also testified that around this time, the majority shareholders had the code changed on the office door without advising Melissa of this change. The majority shareholders voted to terminate Melissa's employment at a special meeting of the board of directors called for April 4, 2008. Testimony at trial was that this was based on Melissa's failure to report to work or perform any functions of her position between March 19, 2008, and April 4, 2008. On April 19, 2008, the plaintiffs requested payment of their wages, bonuses, monthly director's fees, and accrued vacation.

¶ 26 On April 23, 2008, the majority shareholders voted to terminate director's fees beginning in fiscal year 2009. Testimony at trial, corroborated by a letter from the plaintiffs to the majority shareholders dated June 7, 2008, was that the suspension of director's fees was related to issues the corporation was having with the bank handling its line of credit due, at least in part, to Jerome Coyle, Sr.'s refusal to confirm subordination of his promissory note.

¶ 27 The plaintiffs sent a letter seeking to call a special meeting of the board of directors between June 16 and June 27, 2008. On June 23, 2008, a special meeting of the

board of directors took place, but the majority shareholders placed their agenda ahead of that of the plaintiffs and the plaintiffs left the meeting after voting on one motion and without having their agenda items addressed. At the June 23, 2008, special meeting, the majority shareholders reelected Pat as president and elected Michael as secretary. Thereafter, Jerome Coyle, Sr., declared his promissory note in default and the corporation paid off the promissory note on September 4, 2008, paying Jerome Coyle, Sr., \$897,771.43 for all outstanding principal and interest, thereby redeeming his stock in full.

¶ 28 For fiscal year 2008 and thereafter, the end of the year bonus was calculated differently and was not calculated equally as in prior years. According to Pat's testimony, he had been recommending a merit-based, end-of-year bonus plan since 2000, which was finally implemented beginning in fiscal year 2008. He testified generally that the bonus plan provided an objective formula and criteria upon which annual bonus payments could be made to employees, and included individual and team results components. However, the defendants were unable to provide a document explaining the policy or formula for calculating these bonuses. In addition, the majority shareholders did not have an annual meeting between 2008 and the time of the bench trial and had not adopted any resolutions regarding the change in bonus payments or increases in compensation that the majority shareholders received during that time frame. Also, the majority shareholders did not provide financial statements to the plaintiffs between the time of their discharge from employment in the corporation and the time they filed suit. Finally, there is support in the evidence for the conclusion that the change in the bonus calculation was applied only to employee/shareholders and not to employees generally.

¶ 29 Although the plaintiffs were paid wages, director's fees, comp time, and Christmas bonuses following their termination near the end of fiscal year 2008, they did not receive an end of the year bonus in 2008, and no payments in any form at any time thereafter. The majority shareholders were paid between 2008 and 2014, excluding holiday pay and director's fees, as follows:

**2008**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$44,827	\$22,570	\$76,400	\$143,797
<b>Michael</b>	\$47,815	\$44,901	\$85,700	\$178,416
<b>Pat</b>	\$64,470	\$90,453	\$100,100	\$255,023
<b>Jerome Jr.</b>	\$32,266	\$22,350	\$75,500	\$130,116

**2009**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$44,827	\$35,293	\$122,500	\$202,620
<b>Michael</b>	\$47,631	\$84,176	\$124,000	\$255,807
<b>Pat</b>	\$80,290	\$182,250	\$140,500	\$403,040
<b>Jerome Jr.</b>	\$41,958	\$37,571	\$121,060	\$200,589



**2010**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$46,787	\$26,128	\$25,000	\$97,915
<b>Michael</b>	\$63,392	\$14,543	\$45,000	\$122,935 <sup>7</sup>
<b>Pat</b>	\$133,700	\$60,420	\$61,500	\$255,620
<b>Jerome Jr.</b>	\$47,490	\$33,011	\$41,000	\$121,501

**2011**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$46,020	\$22,241	\$70,000	\$138,261
<b>Michael</b>	\$62,400	\$26,343	\$75,000	\$163,743
<b>Pat</b>	\$132,600	\$68,572	\$98,000	\$299,172
<b>Jerome Jr.</b>	\$46,020	\$28,011	\$70,000	\$144,031

**2012**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$46,020	\$46,199	\$149,000	\$241,219
<b>Michael</b>	\$62,400	\$59,029	\$157,000	\$278,429
<b>Pat</b>	\$132,600	\$144,952	\$190,000	\$467,552

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<sup>7</sup>The circuit court miscalculates this total in its order, stating that Michael's wages, commission, and bonus totaled \$123,325.

<b>Jerome Jr.</b>	\$46,020	\$49,949	\$149,000	\$244,969
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**2013**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$46,020	\$39,120	\$224,000	\$309,140
<b>Michael</b>	\$62,400	\$93,325	\$232,000	\$387,725
<b>Pat</b>	\$132,600	\$217,682	\$265,000	\$615,282
<b>Jerome Jr.</b>	\$46,020	\$130,405	\$224,000	\$400,425

**2014**

	<b>Wages</b>	<b>Commission</b>	<b>Bonus</b>	<b>Total</b>
<b>Brian</b>	\$46,020	\$45,455	\$70,000	\$161,475
<b>Michael</b>	\$62,400	\$35,595	\$75,000	\$172,995
<b>Pat</b>	\$132,600	\$103,219	\$98,000	\$333,819
<b>Jerome Jr.</b>	\$46,020	\$24,505	\$70,000	\$140,525

¶ 30 The circuit court also made the following factual determinations, which are supported by the record. The plaintiffs complained of loans to Pat and other officers and made other allegations regarding the use or reimbursement of St. Louis Cardinals baseball tickets and a country club membership, which the circuit court found was not

established in the evidence. In addition, the circuit court made the following factual observation:

"It is abundantly clear that [the corporation] has continued to grow and operate successfully. It is a successful local business, which employs approximately thirty people and continues to generate profits and serve its customers in the pipe valve and fitting industry. It has received awards in the industry. The positive operational and financial performance of [the corporation] has continued (and improved, apparently) since 2008. There is no reason to find fault with current management for their running of the business from a business standpoint. Further, this court would rarely second guess or interfere with wage, commission[,] or bonus determinations for those in charge of a successful and growing business absent oppression of minority shareholders."

¶ 31 The updated Stone Carlie report, valuing a one-sixth interest of the corporation as of April 30, 2013, showed an indicated fair market value of the corporation of \$1,787,000 "before discounts," making a one-sixth interest worth \$297,000. However, the report deducted discounts for "lack of marketability" and deducted all of the damages and payments that the circuit court had indicated would be awarded when it issued its March 5, 2014, judgment order, including those assessed against the individual defendants. The report concluded that the fair market value of the corporation, after discounting for a lack of marketability and all the prior court ordered payments, is \$35,000 and a one-sixth interest is \$0.

¶ 32 4. The Circuit Court's February 26, 2015, Final Judgment Order

¶ 33 As previously stated, the circuit court entered a final judgment order on February 26, 2015. The circuit court found that the plaintiffs established that the majority shareholders breached their fiduciary duties by failing to have annual meetings, by issuing profit-sharing bonuses to the majority shareholders without board action, and by paying themselves bonuses in 2008 but not issuing any to the plaintiffs, who were employees during that fiscal year. Accordingly, the circuit court stated that it was entering judgment in favor of the plaintiffs on counts V through VIII.<sup>8</sup> Further, the circuit court found that the majority shareholders acted in a manner that is oppressive with respect to the plaintiffs in violation of section 12.56(a)(3) of the Act (805 ILCS 5/12.56(a)(3) (West 2010)). Finally, the circuit court found that the plaintiffs were individually harmed by the majority shareholders' refusal to pay director's fees, dividends, or bonuses to them and by their actions in paying themselves bonuses over and above those set by official action of the board of directors in the years following 2008. The circuit court then awarded the plaintiffs relief as follows in paragraph 76 of the final judgment order<sup>9</sup>:

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<sup>8</sup>We note that the circuit court later denied the plaintiffs' claim for punitive damages, which were stated in counts VI and VIII of the complaint. Accordingly, we find that the circuit court's statement was a scrivener's error, and the intent of the circuit court was to state that it was entering judgment on counts V and VII of the complaint, which embodied the plaintiffs' claims against the majority shareholders for breach of fiduciary duty.

<sup>9</sup>For easy reference, each item is preceded by the paragraph number to which it corresponds in the final judgment order.

- A. \$74,553 plus 5% prejudgment interest from April 30, 2008, to March 5, 2014, and postjudgment interest of 9%, in favor of Kathleen and against the corporation, for the employment bonus the circuit court found Kathleen was entitled to for fiscal year 2008;
- B. \$78,281 plus 5% prejudgment interest from April 30, 2008, to March 5, 2014, and postjudgment interest of 9%, in favor of Melissa and against the corporation, for the employment bonus the circuit court found Melissa was entitled to for fiscal year 2008;
- C. That each plaintiff be paid \$375,000 for her share of the corporation;
- D. \$250,000 in favor of each plaintiff and against the corporation for profit-sharing/bonuses/dividends covering the years 2009-2013;
- E. That the majority shareholders not be required to forfeit any part of their bonuses or salaries;
- F. That there will be no removal of directors;
- G. \$200,000 in favor of Kathleen and against the majority shareholders individually, jointly, and severally, pursuant to section 12.56(b)(10) of the Act (805 ILCS 5/12.56(b)(10) (West 2014));
- H. \$200,000 in favor of Melissa and against the majority shareholders individually, jointly, and severally, pursuant to section 12.56(b)(10) of the Act (805 ILCS 5/12.56(b)(10) (West 2014));
- I. That no punitive damages are awarded;

- J. \$139,292.64 in favor of the plaintiffs and their counsel and against all defendants for attorney fees and costs;
- K. That the court previously ordered arbitration of the plaintiffs' claims for wrongful termination of their employment with the corporation in October 2009;
- L. That the court finds in favor of Kathleen and against the defendants on the defendants' counterclaim;
- M. That the court finds in favor of the defendants on the plaintiffs' petitions for rule to show cause;
- N. That the clerk send a copy of the order to counsel of record.

¶ 34 On March 30, 2015, the plaintiffs filed a notice of appeal. On that same date, the defendants filed a postjudgment motion pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2014)), seeking modification of the final judgment order. On May 28, 2015, this court entered an order holding this appeal in abeyance pending the circuit court's ruling on the defendants' postjudgment motion. On July 28, 2015, the circuit court entered an order denying the defendants' postjudgment motion, and on August 14, 2015, the defendants filed a notice of cross-appeal. Additional facts may be set forth as needed to analyze the many issues raised on appeal and cross-appeal.

¶ 35

#### ANALYSIS

¶ 36 The parties raise a myriad of issues on appeal and cross-appeal. On appeal, the plaintiffs argue that the circuit court erred in: (1) failing to award punitive damages against the majority shareholders for breach of fiduciary duty; (2) failing to order the

majority shareholders to forfeit all interests in the corporate year-end profits and to disgorge all sums paid to the majority shareholders during the periods where the court found the majority shareholders breached their fiduciary duties; (3) requiring the plaintiffs to sell their shares of stock; and (4) failing to award the plaintiffs any interest in the profits of the corporation for the years 2014 and 2015.

¶ 37 On cross-appeal, we restate the issues raised by the defendants. The defendants argue that the circuit court erred in: (1) finding that the plaintiffs' claims were not derivative claims; (2) finding that the majority shareholders breached their fiduciary duty to the plaintiffs; (3) finding oppression under the Act; (4) awarding employment bonuses to the plaintiffs for 2008 when the plaintiffs' breach of employment contract claims are subject to mandatory arbitration; (5) ordering the corporation to pay dividends to the plaintiffs; (6) reducing or eliminating earned employment bonuses paid to the individual defendants; (7) awarding each plaintiff \$200,000 in unspecified damages; (8) awarding prejudgment interest on the 2008 bonus payments; (9) awarding attorney fees to the plaintiffs; (10) inflating the price at which the plaintiffs are required to sell their shares; and (11) finding in favor of Kathleen on the defendants' claim that she breached her fiduciary duty to the corporation. We will address all of these issues in the order in which they logically arise as we review all aspects of the circuit court's final judgment order. In addition, we will identify each issue with the number that corresponds to the numbering set forth above in our restatement of the issues, as well as the paragraph number of the final judgment order to which the issue relates.

¶ 38 1. Issues Regarding the Circuit Court's Finding of Breach of Fiduciary Duty

¶ 39 The plaintiffs, in counts V through VIII, brought common law claims for breach of fiduciary duty, and punitive damages on account of such breach, against the majority shareholders. The circuit court, in its final judgment order, made a finding that the majority shareholders breached their fiduciary duty to the plaintiffs by failing to have annual meetings, by issuing profit-sharing bonuses to the majority shareholders without board action, and by paying themselves bonuses in 2008 without paying bonuses to the plaintiffs, who were employees most of that fiscal year. However, the circuit court found that the very same conduct on the part of the majority shareholders constituted a basis for its finding of oppression under section 12.56 of the Act (805 ILCS 5/12.56 (West 2010)), resulting in an entry of judgment in favor of the plaintiffs on count II. Additionally, the circuit court specifically stated that the damages it ordered the majority shareholders to pay to the plaintiffs were pursuant to section 12.56(b)(10) of the Act (805 ILCS 5/12.56(b)(10) (West 2014)). Thus, the circuit court elected to utilize the remedies set forth in the Act to provide redress to the plaintiffs for the conduct of the majority shareholders. The remedies set forth in the Act are nonexclusive, and, in addition, specifically include any and all remedies that the circuit court could order to redress a breach of fiduciary duty. See 805 ILCS 5/12.56(c) (West 2014) ("The remedies set forth in subsection (b) shall not be exclusive of other legal and equitable remedies which the court may impose.").

¶ 40 We find that the fact that the circuit court chose to avail itself of the remedies in the Act to provide redress to the plaintiffs for the conduct it found to constitute both a breach of fiduciary duty and oppression under the Act aids in our disposition of two



issues raised by the defendants on cross-appeal. We begin by addressing the defendants' argument, stated in issue number one on cross-appeal, that the plaintiffs' claims are derivative, rather than direct, and therefore the plaintiffs lacked standing to pursue those claims that resulted in the circuit court's final judgment order. Under Illinois common law, a shareholder seeking relief for an injury to the corporation, rather than a direct injury to the shareholder himself, must bring his suit derivatively on behalf of the corporation. *Small v. Sussman*, 306 Ill. App. 3d 639, 643 (1999). However, no such requirement exists with regard to a cause of action brought pursuant the Act, which clearly gives a shareholder standing to proceed directly. 805 ILCS 5/12.56(a) (West 2014); see also *Toscano v. Koopman*, 148 F. Supp. 3d 679, 688 (N.D. Ill. 2015).

¶ 41 Because the circuit court imposed no remedies against the majority shareholders based upon the plaintiffs' claims for breach of fiduciary duty, we find no reason to make a finding regarding the first issue raised by the defendants on cross-appeal, which is whether the plaintiffs had standing to bring those claims directly. Likewise, because the circuit court imposed no remedies against the majority shareholders based upon the claims for breach of fiduciary duty, we decline to address issue two, raised by the defendants on cross-appeal, that the evidence did not support a finding of breach of fiduciary duty. Accordingly, we turn to issue three of defendants' cross-appeal, that the circuit court erred in finding that the majority shareholders engaged in oppression.

¶ 42 2. "Oppression" Under the Act

¶ 43 The Act provides remedies to shareholders of closely held corporations where "directors or those in control of the corporation \*\*\* act [ ]\*\*\* in a manner that is illegal,

oppressive, or fraudulent with respect to" the other shareholders. 805 ILCS 5/12.56(a)(3) (West 2014). Here, the circuit court, following a bench trial, found that the conduct of the majority shareholders was "oppressive" to the plaintiffs within the meaning of the Act. Generally, the standard of review in a bench trial is whether the judgment is against the manifest weight of the evidence. *Green v. Papa*, 2014 IL App (5th) 130029, ¶ 32. A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.* Mindful of this standard of review, we begin our analysis of issue three, raised by the defendants on cross-appeal, by examining the concept of "oppression" in the context of the Act.

¶ 44 Our Illinois Supreme Court has stated as follows with regard to the concept of oppression in the context of the Act:

"We have held that the word 'oppressive' as used in this statute, does not carry an essential inference of imminent disaster; it can contemplate a continuing course of conduct. The word does not necessarily savor of fraud, and the absence of 'mismanagement, or misapplication of assets,' does not prevent a finding that the conduct of the dominant directors or officers has been oppressive.<sup>10</sup> It is not synonymous with 'illegal' and 'fraudulent.' " *Gidwitz v. Lanzit Corrugated Box*

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<sup>10</sup>Accordingly, the defendants' arguments in their brief regarding the "business judgment rule" are irrelevant to the analysis of oppression under the Act.

*Co.*, 20 Ill. 2d 208, 214-15 (1960) (quoting *Central Standard Life Insurance Co. v. Davis*, 10 Ill. 2d 566, 573-74 (1957)).

¶ 45 With regard to what type of conduct does constitute oppression, our courts have found that conduct is oppressive if it is "arbitrary, overbearing and heavy-handed." *Compton v. Paul K. Harding Realty Co.*, 6 Ill. App. 3d 488, 499 (1972). Oppression has been found where the majority shareholder(s) solely controlled and directed the operations and policies of the corporation (*id.* at 493), violated bylaws, failed to call board meetings, reacted to the plaintiff's requests in a dilatory fashion, or simply where a continuing course of refusal of the controlling group to agree with the plaintiffs existed. See *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 208, 218-20 (1960). Here, the circuit court found that the majority shareholders acted in an oppressive manner toward the plaintiffs by failing to have annual meetings, by issuing profit-sharing bonuses to the majority shareholders without board action in violation of corporate bylaws, and by paying themselves bonuses in 2008 without paying bonuses to the plaintiffs, who were employees most of that fiscal year. On cross-appeal, the defendants do not dispute these facts, but instead assert that they do not constitute oppression. However, after careful review, and despite the arguments made by the defendants on cross-appeal, we cannot say an opposite conclusion than that reached by the circuit court in this regard is clearly apparent.

¶ 46 The defendants essentially argue that the failure of the majority shareholders to observe corporate formalities in issuing bonuses to themselves and failing to issue dividends or other profit sharing to the plaintiffs for the years 2008-2013 does not

constitute oppression because even if the formalities had been observed, the majority shareholders would be entitled to vote their strength. However, our court has held that even where corporate formalities are observed, the payment of a high amount of compensation to corporate officers, while refusing to pay dividends to benefit minority shareholders, can be considered oppressive conduct, depending on the corporation's overall financial picture. *Gray v. Hall*, 10 Ill. App. 3d 1030, 1034 (1973). Here, the circuit court found, based on the financial data in evidence, that the majority shareholders' payment of high bonuses to themselves for the years 2008-2013, while paying no dividends or other profit sharing to the plaintiffs, was essentially a "freeze-out" of the plaintiffs.<sup>11</sup> We find that this factual scenario fits within the definition of "oppression" as it has developed under Illinois law. Accordingly, the circuit court's finding of oppression under the Act is not against the manifest weight of the evidence.

¶ 47                    3. Remedies Ordered by the Circuit Court Under the Act

¶ 48    All of the remaining issues, both on appeal and on cross-appeal, take issue with the remedies the circuit court afforded the plaintiffs under the Act. Once the predicate

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<sup>11</sup>Black's Law Dictionary defines "freeze-out" as a process, usually in a closely held corporation, by which minority shareholders are prevented from receiving any direct or indirect financial return from the corporation in an effort to persuade them to liquidate their investment in the corporation on terms favorable to the controlling shareholders or the use of corporate control vested in the statutory majority of shareholders or the board of directors to eliminate minority shareholders from the enterprise or to reduce the relevant insignificance of their voting power or claims on corporate assets. Black's Law Dictionary 666 (6th ed. 1990).

oppressive conduct under the Act is established, the circuit court may, in its discretion, determine which, if any, remedy is equitable and appropriate for the plaintiffs under the Act. 805 ILCS 5/12.56(b) (West 2014); *Schirmer v. Bear*, 174 Ill. 2d 63, 75 (1996). The Act provides a vast array of potential remedies to be utilized by the court in fashioning an appropriate remedy, including the following remedies that are relevant here:

"(b) The relief which the court may order in an action [for oppression under the Act] includes[,] but is not limited to[,] the following:

(1) The performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceedings;

\* \* \*

(5) An accounting with respect to any matter in dispute;

\* \* \*

(9) The payment of dividends;

(10) The award of damages to any aggrieved party;

(11) The purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value \*\*\*." 805 ILCS 5/12.56(b) (West 2014).

¶ 49 In determining the appropriate relief to order pursuant to the Act, the court, in exercising its discretion to fashion a remedy for oppression, may take into consideration "the reasonable expectations of the corporation's shareholders as they existed at the time the corporation was formed and developed during the course of the shareholders'

relationship with the corporation and with each other." 805 ILCS 5/12.56(d) (West 2014). When this court reviews the circuit court's exercise of its discretion, we will not reverse the circuit court's determination unless it has clearly abused its discretion. *United States Steel Corp. v. Illinois Pollution Control Board*, 384 Ill. App. 3d 457, 461 (2008). The circuit court abuses its discretion when it makes an arbitrary decision, without using conscientious judgment, or when, in view of all the circumstances, the circuit court oversteps the bounds of reason, ignores the law, and thereby causes substantial prejudice. *Id.* The question is not whether the reviewing court would have made the same decision if it were the circuit court. *Id.* With these standards in mind, we will address the circuit court's choice of remedies in turn, and the issues on appeal and cross-appeal that correspond to each remedy.

¶ 50

a. *Award of Bonuses for 2008*

¶ 51 In paragraphs 76A and 76B of the final judgment order, the circuit court ordered the corporation to pay the plaintiffs bonuses for 2008 based on its finding that they were entitled to said bonuses by virtue of the fact that they were employed by the corporation for the majority of that fiscal year. Pursuant to paragraph 76A, Kathleen was awarded a bonus of \$74,553. Pursuant to paragraph 76B, Melissa was awarded a bonus of \$78,281. Both Kathleen and Melissa were awarded prejudgment interest calculated from April 30, 2008, to March 5, 2014, and 9% postjudgment interest, on these bonus awards. Issue four, raised by the defendants on cross-appeal, is that these awards were in error because the plaintiffs' claims for the corporation's breach of employment contract were ordered to

arbitration pursuant to a mandatory arbitration clause in the plaintiffs' employment contract. After a review of the plaintiffs' employment contracts, we agree.

¶ 52 In counts III and IV of the complaint, the plaintiffs allege that the corporation wrongfully discharged them from employment and wrongfully deprived them of, *inter alia*, their bonus payments. Section 5 of the plaintiffs' employment contracts with the corporation governs compensation and section 5.2 governs bonuses and profit sharing in particular. This section states that, "[t]he Employee is eligible for performance-based bonuses, but there is no assurance or expectation that bonuses will be paid. Bonuses will be paid, if at all, in the sole discretion of the board of directors." The arbitration provision, located at section 14 of the contracts, requires arbitration of "any dispute, difference[,] or disagreement \*\*\* in respect of the Agreement, and the meaning and construction [t]hereof." Pursuant to this provision, the circuit court ordered counts III and IV of the complaint to arbitration in October 2009. Because the issue of whether Kathleen and Melissa were entitled to bonuses by virtue of their employment with the corporation in 2008 is within the scope of the arbitration clause of the employment contract, as well as part of the relief requested in counts III and IV of the complaint, this issue is required to be arbitrated. Accordingly, we find that the circuit court abused its discretion with regard to paragraphs 76A and 76B of the final judgment order, and vacate those paragraphs of the final judgment order. Because we vacate the award stated in paragraphs 76A and 76B in their entirety, and this is the only place in the final judgment order where the circuit court mentions prejudgment interest, issue eight, raised by the

defendants on cross-appeal, in which they argue that an award of prejudgment interest is improper, is moot.

¶ 53 b. *Requiring Plaintiffs to Sell Their Shares in the Corporation for \$375,000*

¶ 54 Turning to paragraph 76C of the final judgment order, we begin with issue three, raised by the plaintiffs on appeal, in which they argue the circuit court erred in requiring them to sell their shares of stock in the corporation. The only argument in their brief on this issue, however, is that a fiduciary should not benefit from his wrongdoing. This argument is misplaced, because, as we have discussed above, the ordering of a share purchase is a remedy clearly stated in the Act as available, in the circuit court's discretion, when the circuit court has made a finding of oppression. See 805 ILCS 5/12.56(b)(11) (West 2014). In addition, as we have previously determined, the circuit court's finding of oppression was not against the manifest weight of the evidence in this case. Based on the level of acrimony between the plaintiffs and the majority shareholders that was established in the evidence, we cannot say that the circuit court's determination that the plaintiffs should be required to sell their shares in the corporation is an abuse of discretion.

¶ 55 Having found that it was not an abuse of discretion for the circuit court to require the plaintiffs to sell their shares in the corporation, we turn to issue 10, raised by the defendants on cross-appeal, which is that the circuit court erred in inflating the price at which the plaintiffs are required to sell their shares. Section 12.56(e)(i) of the Act (805 ILCS 5/12.56(e) (West 2014)) provides that if the court orders a share purchase, it shall, "[d]etermine the fair value of the shares, with or without the assistance of appraisers,



taking into account any impact on the value of the shares resulting from the actions giving rise to a petition under this Section." Here, the circuit court made a summary determination, based on the Stone Carlie valuation, that a one-sixth interest in the corporation was valued at \$240,000 as of December 31, 2011. However, following the bench trial, the circuit court ordered a new appraisal, to be paid for by the corporation, valuing the plaintiffs' one-sixth interest in the corporation as of April 30, 2013. That valuation, also conducted by Stone Carlie, valued a one-sixth interest in the corporation at \$297,000, but after discounts for lack of marketability and the corporation's liability based upon the instant action, this value was stated as \$0. The circuit court, in paragraph 76C of its final judgment order, refused to give credence to these discounts. The circuit court concluded that the fair value of the plaintiffs' one-sixth interest in the corporation was \$375,000 and ordered that the plaintiffs sell their shares for that amount.

¶ 56 We find that the circuit court was within its wide discretion to order an updated appraisal to determine the fair value of the plaintiffs' shares, and reject the defendants' argument that this was error. Although the circuit court made a summary determination of the value of the shares as of December 2011, it was not an abuse of discretion for the circuit court to require a valuation closer to the time of its judgment order. Additionally, we disagree with the defendants' argument that the circuit court erred in disregarding the discounts that were set forth in the April 30, 2013, appraisal, which resulted in the value of the plaintiffs' share to be discounted to zero. First, subsection (e) of the Act specifically states that "fair value" with respect to a petitioning shareholder's shares means the proportionate interest of the shareholder in the corporation, "*without any*

*discount for minority status or, absent extraordinary circumstances, lack of marketability.*" (Emphasis added.) 805 ILCS 5/12.56(e) (West 2014). Second, we find that the circuit court did not abuse its discretion when it determined that the value of the corporation should not be discounted for the sum total of the other aspects of the judgment to render a one-sixth interest in the corporation \$0, especially in light of the compensation the majority shareholders were able to pay themselves in the years 2008 through 2013. However, there is absolutely no evidence in the record that justifies the circuit court's inflation of the value of one-sixth interest in the corporation from \$297,000 to \$375,000. Accordingly, we modify paragraph 76C of the final judgment order to set the value to be paid to each plaintiff for their one-sixth interest in the corporation at \$297,000, which is the amount indicated in the appraisal in evidence, without the application of any discounts.

¶ 57 Although not raised by the parties, subsection (b)(11) of the Act provides that the circuit court may order "[t]he purchase *by the corporation or one or more other shareholders* of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection (e)." (Emphasis added.) 805 ILCS 5/12.56(b)(11) (West 2014). The final judgment order is silent as to whether the corporation, or one or more of the majority shareholders, are to purchase the plaintiffs' shares. In addition, subsection (e) provides that, in addition to determining the fair value of the shares, the circuit court should do as follows:

"(ii) Consider any financial or legal constraints on the ability of the corporation or the purchasing shareholder to purchase the shares;

(iii) Specify the terms of the purchase, including, if appropriate, terms for installment payments, interest at the rate and from the date determined by the court to be equitable, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;

(iv) Require the seller to deliver all of his or her shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price; and

(v) Retain jurisdiction to enforce the purchase order by, among other remedies, ordering the corporation to be dissolved if the purchase is not completed in accordance with the terms of the purchase order." 805 ILCS 5/12.56(e) (West 2014).

¶ 58 Paragraph 76C of the final judgment order does not provide a "purchase order" that comports with subsection (e) of the Act. 805 ILCS 5/12.56(e) (West 2014). Accordingly, we remand this matter to the circuit court to enter a purchase order that specifies whether it is the corporation, or one or more of the shareholders, that is to purchase each plaintiff's interest in the corporation for \$297,000, and the terms of that purchase in accordance with subsection (e) of the Act. 805 ILCS 5/12.56(e) (West 2014).

¶ 59 *c. Requiring Each Plaintiff to Receive a \$250,000 Dividend*

¶ 60 Paragraph 76D of the final judgment order awards each plaintiff \$250,000 from the corporation's coffers for the payment of profit-sharing/bonuses/dividends covering 2009-2013. In issue four on appeal, the plaintiffs argue that the circuit court erred in

failing to award them such payments for 2014 and 2015. In issue five on cross-appeal, the defendants argue that the circuit court erred in requiring the corporation to pay dividends. Section 12.56(b)(9) of the Act (805 ILCS 5/12.56(b)(9) (West 2014)) provides that the payment of dividends is a remedy that the circuit court, in its discretion, can order upon its finding of oppression, which, as set forth above, is not against the manifest weight of the evidence. Here, the circuit court heard evidence of the history of profit sharing enjoyed by the shareholders, the high compensation the majority shareholders were receiving at the end of each fiscal year, and the lack of any dividends or other profit sharing paid to the plaintiffs for the years 2009-2013. We cannot say that the circuit court abused its discretion in determining that the award of \$250,000 to each plaintiff as a dividend is proper. Likewise, the circuit court valued the plaintiffs' shares of the corporation as of 2013 in its final judgment order and therefore acted within its discretion in electing not to award the plaintiffs dividends for the years 2014 and 2015. Accordingly, we affirm paragraph 76D of the final judgment order.

¶ 61 *d. Paragraph 76E of the Final Judgment Order*

¶ 62 Based on issues raised in the appeal and cross-appeal, it appears that there is some confusion in the interpretation of paragraph 76E of the final judgment order. In paragraph 76E, the circuit court sets forth, in detail, the amount of compensation each majority shareholder was paid in the years between 2008 and 2013 that went beyond what had been approved by official board of directors action in 2008, and the total amount each majority shareholder would need to pay back if the court had decided to enter an order requiring the majority shareholders to disgorge such amounts. However,

in the last sentence of paragraph 76E, the circuit court states that "[t]he court considered this possibility in making its rulings and in its decision to simply award the plaintiffs \$250,000 each. The court determines it to be unfair to require [the majority shareholders] to forfeit the bonuses (and/or their salaries) and declines to do so."

¶ 63 Despite the foregoing, in issue six on cross-appeal, the defendants argue that the circuit court erred in reducing or eliminating earned employment bonuses paid to the majority shareholders. We find nothing in the final judgment order that requires the majority shareholders to pay back any compensation they have earned. In fact, as issue two on appeal, the plaintiffs argue that the circuit court erred in failing to order the majority shareholders to forfeit all interests in the corporate year-end profits and to disgorge all sums paid to the majority shareholders during the periods where the court found that the majority shareholders breached their fiduciary duties. This issue seems to conform with our reading of paragraph 76E of the final judgment order, which expressly declines to require the majority shareholders to pay back any compensation. Accordingly, we proceed to address issue two, which is raised by the plaintiffs on appeal.

¶ 64 As set forth above, although the circuit court found that the majority shareholders breached their fiduciary duties to the plaintiffs by failing to have annual meetings, and by issuing profit-sharing bonuses to the majority shareholders without board action, the circuit court also found that the very same conduct on the part of the majority shareholders constituted a basis for its finding of oppression under section 12.56 of the Act (805 ILCS 5/12.56 (West 2014)), and the circuit court elected to utilize the remedies set forth in the Act to provide redress to the plaintiffs for the conduct of the majority

shareholders. In so doing, the circuit court expressly found that the majority shareholders ran the business in a successful manner and that it took the compensation paid to the majority shareholders in the years 2008-2013 into consideration in requiring that each plaintiff receive a dividend payment of \$250,000 apiece for those years. This is precisely the discretion that is contemplated by the Act in fashioning a remedy for oppression, and we decline to disturb it.

¶ 65 We note that even if the conduct of the majority shareholders were to be viewed strictly as a breach of fiduciary duty to the plaintiffs, this does not require a disgorgement of the majority shareholders' salaries and/or bonuses, as the plaintiffs assert. The law permits disgorgement of compensation when a fiduciary breaches its duty to the corporation. See *Levy v. Markal Sales Corp.*, 268 Ill. App. 3d 355, 373 (1994). The circuit court made no such finding in this case as to the defendants' conduct toward the corporation, and the evidence does not support such a finding. Rather, the circuit court expressly found, and the evidence supports, that the majority shareholders in no way mismanaged corporate assets, usurped corporate opportunities, or did anything other than manage a successful corporation. Accordingly, we affirm paragraph 76E of the final judgment order, in which the circuit court declines to require the majority shareholders to forfeit any part of their bonuses or salaries.

¶ 66 *e. Paragraph 76F of the Final Judgment Order*

¶ 67 Although not raised by the parties, we find it necessary to address an issue with paragraph 76F of the final judgment order. In that paragraph, the circuit court states that "[w]hile the court had the authority to remove directors and/or alter the number of

directors, the court declines to do so and resolves the internal conflict by having the plaintiffs bought out of the corporation." From this language it appears that the circuit court is referencing its decision not to remove any of the majority shareholders as directors of the corporation, and assuming that the plaintiffs are removed as directors by virtue of the share purchase order. However, according to article III, section 2 of the bylaws of the corporation, directors are not required to be shareholders of the corporation. As such, the circuit court's ordering a purchase of the plaintiffs' share in its final judgment order does not effectively remove the plaintiffs as directors, as the circuit court intended and had authority to effectuate pursuant to section 12.56(b)(3) of the Act. 805 ILCS 5/12.56(b)(3) (West 2014). Accordingly, we modify paragraph 76F of the final judgment order to provide for the removal of the plaintiffs as directors of the corporation.

¶ 68           f. *Additional Joint and Several Award of \$200,000 to Each Plaintiff*

¶ 69   In paragraphs 76G and 76H of the final judgment order, the circuit court awarded each plaintiff \$200,000, to be paid by the individual shareholders jointly and severally, pursuant to section (b)(10) of the Act. 805 ILCS 5/12.56(b)(10) (West 2014). In issue seven, raised by the defendants on cross-appeal, they argue that this award was made in error. After careful consideration of the evidence and findings of the circuit court, we find that these awards were an abuse of the court's discretion. We recognize that the Act authorizes the circuit court to make such an award. However, the circuit court expressly found that the basis for the oppression in this case was the failure of the majority shareholders to issue any corporate profits to the plaintiffs while increasing their own compensation without official board action. In paragraph 76D of the final judgment

order, the circuit court compensates the plaintiffs for this loss by requiring the corporation to issue a \$250,000 dividend to each plaintiff. Other than the failure to issue profit sharing to the plaintiffs, and the potential wrongful termination claims that have been referred to arbitration, there is no basis in the evidence for any other economic loss on the part of the plaintiffs. In addition, the circuit court expressly declined, in paragraph 76I of the final judgment order, to award punitive damages. Accordingly, we find the circuit court's decision to order the majority shareholders to pay the plaintiffs an additional \$200,000 each to be an abuse of discretion. Therefore, we vacate paragraphs 76G and 76H of the final judgment order.

¶ 70 *g. Failure to Award Punitive Damages*

¶ 71 We now turn to issue one, raised by the plaintiffs on appeal, which corresponds with paragraph 76I of the final judgment order. In paragraph 76I, the circuit court states that no punitive damages are awarded. The plaintiffs argue that the circuit court erred in refusing to award punitive damages. As with all of the other remedies at issue in this case, after a bench trial, the circuit court's decision as to whether to award punitive damages is reviewed for an abuse of discretion. *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1137 (2004). The purposes of punitive damages are punishment of a specific defendant and both general and specific deterrence, and such damages will be awarded only where the defendant's conduct is willful or outrageous due to evil motive or a reckless indifference to the rights of others. *Id.* at 1136. As such, they are not favored in the law. *Id.*



¶ 72 In this case, the circuit court found that the majority shareholders failed to hold annual meetings, failed to observe corporate formalities in increasing their bonuses and compensation, and effectively "froze-out" the minority shareholders. On the other hand, the circuit court found that the majority shareholders effectively managed the corporation, committed no waste or mismanagement, and usurped no corporate opportunities. Thus we find that reasonable minds could differ as to whether the majority shareholders' conduct should be considered to be outrageous, due to evil motive, or based on reckless indifference to the rights of others. Accordingly, we find no abuse of discretion in the circuit court's decision to deny the plaintiffs' request for punitive damages, and affirm paragraph 76I of the final judgment order.

¶ 73 *h. Attorney Fees and Costs*

¶ 74 The defendants argue, as issue nine on cross-appeal, that the circuit court erred in awarding attorney fees and costs to the plaintiffs. This issue corresponds to paragraph 76J of the final judgment order, in which the circuit court awards \$139,292.64 to the plaintiffs and their counsel, and against all defendants, for attorney fees and costs. The defendants point to section 12.60(j) of the Act (805 ILCS 5/12.60(j) (West 2014)), which states that in actions under, *inter alia*, section 12.56 of the Act (805 ILCS 5/12.56 (West 2014)), if the court finds that a party to the proceeding acted "arbitrarily, vexatiously, or otherwise not in good faith," it may award the other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding. According to the defendants, the circuit court made no such finding. Our

review of the final judgment order reveals otherwise, but only as it relates to the conduct of the majority shareholders.

¶ 75 Implicit in the circuit court's finding that the majority shareholders' conduct constituted both oppression and a breach of fiduciary duty toward the plaintiffs, is its finding that the majority shareholders failed to act in good faith. See *Jaffe Commercial Finance Co. v. Harris*, 119 Ill. App. 3d 136, 143 (1983) (explaining that the fiduciary duty of the directors of a corporation is a duty to act in good faith in their dealings with the corporation and its shareholders). However, the circuit court made no such finding as it relates to the corporation itself. For these reasons, we find that the circuit court did not abuse its discretion in awarding attorney fees and costs. However, we modify paragraph 76J of the final judgment order to provide that it is the majority shareholders, and not the corporation, who must pay the attorney fees and costs awarded in that paragraph.

¶ 76                   i. *The Defendants' Counterclaim Against Kathleen*

¶ 77 In paragraph 76L of the final judgment order, the circuit court found in favor of Kathleen and against the defendants on the defendants' counterclaim. As issue 11 on cross-appeal, the defendants argue that this was in error. As previously stated, the defendants' counterclaim alleges that Kathleen breached her fiduciary duty by removing corporate records and documents, including financial and accounting records, from the corporate offices and refusing to return them, failing to update and maintain the corporate books, failing to provide minutes of shareholder/director meetings, failing to report to the board of directors on the corporation's finances, failing to prepare required financial reports, and failing to properly manage corporate accounts. Our standard of review for

this issue is whether the circuit court's judgment was against the manifest weight of the evidence. See *Green v. Papa*, 2014 IL App (5th) 130029, ¶ 32.

¶ 78 Our review of the record reveals that the testimony at the bench trial conflicted as to the allegations in the defendants' counterclaim. It was within the province of the circuit court to resolve the conflicts in the evidence and make determinations regarding the credibility of the witnesses. See *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. For these reasons, we cannot say the circuit court's decision to deny the defendants' counterclaim against Kathleen was against the manifest weight of the evidence. Accordingly, we affirm paragraph 76L of the final judgment order.

¶ 79 CONCLUSION

¶ 80 For the foregoing reasons, we vacate the following paragraphs of the final judgment order: (1) paragraph 76A, awarding \$74,553 plus prejudgment and postjudgment interest to Kathleen for 2008 employment bonus; (2) paragraph 76B, awarding \$78,281 plus prejudgment and postjudgment interest to Melissa for 2008 employment bonus; (3) paragraph 76G, awarding \$200,000 to Kathleen; and (4) paragraph 76H, awarding \$200,000 to Melissa. We modify paragraph 76C of the final judgment order to reflect that the fair value of each plaintiff's share in the corporation is \$297,000 and remand with directions that the circuit court enter a purchase order that specifies whether the corporation, or one or more of the shareholders, is to purchase the shares, and includes all of the elements set forth in section 12.56(e) of the Act. 805 ILCS 12.56(e) (West 2014). We modify paragraph 76F of the final judgment order to specify that the plaintiffs are to be removed as directors of the corporation. Finally, we modify

paragraph 76J of the final judgment order to state that the \$139,292.64 in attorney fees and costs is to be paid by the majority shareholders, and not the corporation. We affirm the remainder of the final judgment order.

¶ 81 Affirmed in part; vacated in part; modified in part; remanded with directions.