SIXTH DIVISION
April 20, 2018

No. 1-17-1167
2018 IL App (1st) 171167-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| GORIANA ALEXANDER and CHRISTOPHER ALEXANDER, individuals and derivatively on behalf of JEFFERSON & MONROE, LLC, | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiffs and Counterdefendants, | ) | |
| (Goriana Alexander, Plaintiff and Counterdefendant-Appellant), | ) | |
| v. | ) | No. 11 L 7515 |
| CANDELARIO MARTINEZ, PATRICIA MARTINEZ, individually, and JEFFERSON & MONROE, LLC as a nominal defendant, | ) | |
| Defendants and Counterplaintiffs | ) | |
| (JEFFERSON & MONROE, LLC, Defendant and Counterplaintiff-Appellee). | ) | Honorable David Atkins, Judge Presiding. |

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* LLC was properly granted summary judgment on counterclaim for dissolution/wind-up and accounting; trial court's monetary judgment was proper; affirmed.

¶ 2 Plaintiff and counterdefendant, Goriana Alexander, appeals two orders of the circuit court: one that entered summary judgment on the issue of liability in favor of defendant and counterplaintiff, Jefferson & Monroe, LLC, and another that, after a bench trial, entered a judgment for damages against Goriana totaling $473,072.95. On appeal, Goriana asserts that: (1) the court erred in granting summary judgment and (2) the court's subsequent judgment for damages should be reversed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2002, spouses Patricia and Candelario Martinez started a company to perform consulting services. In 2009, Patricia sought to have the company, eventually known as Jefferson & Monroe, LLC (the LLC or the company), do business as a beauty salon in Chicago. While looking for rental space, Patricia was introduced to Goriana, who became an investor in the salon along with her husband, Christopher.[1] The salon stopped operating around July 2012. This appeal concerns the parties' dispute about addressing the salon's capital needs while the salon was operating.

¶ 5 On July 20, 2011, the Alexanders filed a complaint against the Martinezes and the LLC. On July 9, 2013, the Alexanders filed a verified amended complaint against the same parties that stated in part as follows. In fall 2009, the Alexanders made an initial capital contribution of $12,500 to the LLC, which was doing business as a beauty salon. Patricia was in charge of the books and records, and beginning in April 2011, Goriana noticed a number of questionable transactions. The Alexanders brought claims for breach of contract, breach of fiduciary duty, and misappropriation and waste of company assets.

[1] For clarity, when discussing the parties individually, we refer to Goriana Alexander, Christopher Alexander, Patricia Martinez, and Candelario Martinez by their first names.

¶ 6 The record contains a copy of the limited liability company agreement for the LLC (agreement), which states that the agreement and any claims or disputes relating to the agreement are governed by and construed in accordance with Delaware law. Goriana signed the agreement and accompanying form of joinder on November 12, 2009, but Christopher did not. An exhibit to the agreement indicates that four capital contributions of $6,250 were to be made to the LLC.[2] Also, an appended membership interest certificate indicated that Goriana owned 25% of the membership interests of the LLC. By accepting the certificate, Goriana was "deemed to have agreed to comply with and be bound by all of the terms and conditions" of the agreement.

¶ 7 On July 31, 2013, the Martinezes and the LLC filed an answer, affirmative defenses, and counterclaim, which stated in part as follows. It was agreed that each couple would own 50% of the LLC and the salon, or 25% per person. Per an attached Internal Revenue Service schedule K-1 form, however, the LLC was treated as owned by Patricia and Goriana 50/50. In contrast to the Alexanders' version of events, the Martinezes and the LLC asserted that the Alexanders paid only $10,000 as a capital contribution to the LLC. Further, the LLC was harmed when the Alexanders refused to acknowledge and pay capital calls, took personal loans that were never repaid, demanded investment repayments, and forced the LLC to incur attorney fees and costs, for which the Alexanders were personally liable as members of the LLC.

¶ 8 Turning to the specific relief sought by the counterclaim, count I sought a declaratory judgment that the Alexanders breached the agreement, stating in part that they rejected Patricia's requests for additional capital and Goriana committed various wrongful acts. Count II sought a declaratory judgment that the Martinezes did not violate the agreement. Count III, which was a claim for dissolution/wind-up and accounting, stated that the Alexanders' conduct rendered the LLC incapable of carrying on its business. In July 2012, the Martinezes were forced to close the

[2] The exhibit to the agreement lists Candelario's name twice, along with Goriana and Christopher.

business and sold its assets to another company for $25,000, of which $11,727.36 went to the salon's landlord. Count III sought a judicial decree that dissolved the entity and ordered an accounting against the Alexanders for their failure to honor their obligations under the agreement.

¶ 9 The record includes a letter from the Martinezes' counsel that was dated November 10, 2011, and informed Goriana of a capital call, stating that Patricia's capital contributions exceeded Goriana's by $76,678. The letter noted that the agreement provided that each member must pay her *pro rata* share of any capital contribution. According to the letter, Goriana had two options: (1) she could contribute $76,678 directly to the LLC, or (2) she could reimburse Patricia for $38,399. If Goriana did not satisfy the capital call by December 31, 2011, then per the agreement, Goriana's interest would be reduced to 15.3% and would continue to be reduced for every additional capital call she failed to satisfy.

¶ 10 On October 29, 2013, the Martinezes and the LLC filed a motion for summary judgment on the Alexanders' amended complaint. The LLC also moved for summary judgment on the counterclaim. In part, the LLC sought an accounting of all monies invested by the parties, a re-allocation of liabilities pursuant to the agreement, and all damages caused to the LLC by the Alexanders' conduct.

¶ 11 After briefing on the motions for summary judgment, a hearing was held on April 24, 2014. There, counsel for the Alexanders stated that summary judgment should "probably" be granted with regard to dissolution "and with regard to an accounting, we don't necessarily object to that either, because that's exactly what we're trying to do is get into the meat of this thing and where the money was, where it went, and where it is now."

¶ 12 On October 8, 2014, the court entered a written order that addressed both motions for summary judgment. The court granted summary judgment to the Martinezes and the LLC on the Alexanders' amended complaint. The court found that the uncontested facts established that the Martinezes and the LLC did not violate particular subsections of the agreement and did not breach their fiduciary duties. Further, the Martinezes and the LLC sufficiently demonstrated that they did not waste or misappropriate company assets. The court then denied summary judgment on the LLC's counterclaim. Discussing count III of the counterclaim, which sought dissolution/wind-up and an order for an accounting, the court stated that based on comments from the Alexanders' counsel, the court did not find that the Alexanders consented to judgment. However, the court "[encouraged] the parties to meet and confer regarding resolution of the counterclaim in light of this order."

¶ 13 Subsequently, the Martinezes and the LLC filed a motion to voluntarily dismiss counts I and II of the counterclaim. On November 3, 2014, the court entered an order that dismissed counts I and II of the counterclaim without prejudice. Only count III, the claim for dissolution/wind-up and accounting, remained.

¶ 14 On March 27, 2015, the LLC filed a motion for summary determination as to the issue of liability on count III of its counterclaim for dissolution/wind-up and accounting, noting that the LLC did not seek to determine the exact dollar amount of damages.[3] In part, the LLC stated that after the court denied summary judgment on the counterclaim, the parties agreed to allow the LLC's public accounting firm, Plante Moran, to independently analyze the LLC's books and records. The analysis had been provided to the court and the parties on March 9, 2015.

[3] The motion was brought under section 2-1005(d) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005(d) (West 2012)). The circuit court thereafter treated it as a motion for summary judgment under section 2-1005(c) of the Code (735 ILCS 5/2-1005(c) (West 2012)).

¶ 15 The LLC continued that at the outset of her participation, Goriana wrote a $10,000 check to the company and contributed furnishings valued at $2,142.39. Meanwhile, Patricia contributed over $111,000 in cash. The salon struggled, and between December 2009 and November 2011, Patricia asked Goriana to contribute funds for supplies and made a written capital call as prescribed in the agreement. However, Goriana ignored all capital calls and refused to contribute any further funds. Plante Moran's analysis corroborated that Goriana did not contribute further capital after November 2009. Further, Goriana dissociated from the LLC in April 2011 and severed all communication.

¶ 16 The LLC asserted that per the agreement, Goriana was bound to contribute more capital, and her refusal to do so violated the agreement and the Delaware Limited Liability Company Act (Act) (Del. Code Ann. tit. 6, § 18-101 *et seq*. (West 2012)). Citing article 4.2 of the agreement, titled "Withdrawals or Resignations," the LLC contended that the court must determine that Goriana's withdrawal or dissociation was a breach of the agreement and she must account for any damages that resulted.

¶ 17 In response, the Alexanders asserted in part that there was no evidence of a dissociation. Further, even if there were a dissociation, there was no breach of contract claim at issue and the alleged breaches had nothing to do with the remaining accounting claim. The Alexanders also characterized Plante Moran's work as "thoroughly deficient and prejudiced."

¶ 18 In reply, the LLC stated in part that Plante Moran's findings were not at issue. Instead, the issue was whether the agreement required the Alexanders to contribute additional capital to sustain the LLC, and if so, whether they contributed the capital or wrongfully dissociated. The LLC maintained that it sought a summary determination as to the Alexanders' liability to account to the LLC as part of the dissolution and winding-up sought in count III of the counterclaim.

¶ 19 On August 18, 2015, the court entered a written order that granted the LLC's motion for summary judgment as to the issue of liability. In its ruling, the court referred to the form of joinder that Goriana signed, Goriana's certificate of membership interest, and the agreement's provisions about capital contributions and withdrawals and resignations. The court also cited section 18-603 of the Act (Del. Code Ann. tit. 6, § 18-603 (West 2012)), which provided that a member may not resign from a limited liability company before the dissolution and wind-up of the company. The court found that the agreement stated that members "shall pay their *pro rata* share of additional capital when called" and Goriana was contractually obligated to contribute more capital to sustain the LLC. Yet, Goriana failed to contribute additional capital when called in November 2011, and further, Plante Moran's analysis corroborated that Goriana did not contribute any additional capital after November 2009. The court also stated that Goriana dissociated herself from the company in violation of the agreement and therefore must account for any resulting damages. Ultimately, the court found in favor of the LLC and against Goriana on the issue of liability and ordered an accounting to the LLC and any other members damaged by Goriana's violation of the agreement, as well as a subsequent dissolution/wind-up.

¶ 20 Both parties submitted pretrial memoranda before a bench trial on damages. In its memorandum, the LLC stated that the only remaining issues were: (1) how much the Alexanders must account or pay to the LLC to put the parties' respective capital accounts on equal footing; (2) how much the Alexanders must account or pay to the LLC so that the Martinezes can be indemnified by the LLC; (3) the amount of damages the LLC sustained from Goriana's wrongful withdrawal from the LLC; and (4) whether the Alexanders acted in bad faith in bringing and prolonging this action. The LLC maintained that the Alexanders should be ordered to pay $98,655 to the LLC to account for the difference between the Martinezes' and the Alexanders'

capital contributions. The LLC further stated that per Plante Moran's accounting, the LLC lost $132,655 in three years of operation, and the LLC would not have lost that amount of money if Goriana had contributed needed capital when called and not brought this action. Additionally, the LLC asserted that per the agreement, the Alexanders must pay the LLC the amount of legal fees owed by the Martinezes so that the LLC could indemnify them.

¶ 21 In her pretrial memorandum, Goriana asserted that the facts would show that Patricia failed to keep accurate books and records and used LLC funds for her and her family's benefit. As a result, there could not be a reliable accounting and no recovery from Goriana. Goriana further contended that the agreement's indemnification provision protected her and the court should allow her to submit her expenses, including attorney fees, for reimbursement by the LLC.

¶ 22 At trial, the LLC first presented the testimony of Karen Osmolski, who was an accounting manager at the law firm where the LLC's counsel worked. In that capacity, Osmolski oversaw the billing of clients and collecting payments for those bills. Using a billing summary and credit report, Osmolski noted the amount that had been billed and paid by Patricia to date and stated that fees continued to accrue. The court admitted into evidence the billing summary, credit report, and invoices that were issued to Patricia. On cross-examination, Goriana's counsel asked Osmolski if she had an opinion about the reasonableness of the fees. Osmolski replied, "I would have no clue what it should be" and that she did not have an opinion.

¶ 23 Patricia testified that at the outset, she and Goriana agreed that Goriana would pay half of the expenses needed for the build-out for the salon and the salon in general. The plan was that each couple would contribute $12,500, but Goriana gave Patricia a check for $10,000 and stated that she would give Patricia the remaining $2,500 later. Goriana never gave Patricia the additional $2,500 because "she was already buying stuff." Further, Goriana never contributed

any cash to the company other than the initial $10,000. Goriana bought items for the salon, but never bought any supplies or equipment for which she was not reimbursed.

¶ 24 Patricia also testified about asking Goriana for additional capital. On one such occasion in March 2010, Goriana stated that she did not have any more money to contribute. Another time, Patricia relayed to Goriana that the salon was struggling and it would be great if Goriana would contribute some money, to which Goriana replied "[t]hat it was my half a** business and that it was my problem." All told, Patricia spoke with Goriana about the need for more capital "[d]ozens of times." Ultimately, the LLC made a written demand for capital in November 2011, but Goriana did not respond.

¶ 25 Patricia discussed the salon's specific financial struggles. At one point, the salon owed more than $16,000 in late rent. Patricia asked Goriana for help, but Goriana did not contribute any money. Ultimately, Patricia paid the rent with money from her husband. Patricia also stated that the salon lost its biggest vendor because of late charges and the salon's inability to order and pay for a required monthly minimum. When Patricia spoke to Goriana about the issue, Goriana suggested that Patricia "find something else to sell." Patricia stated that if Goriana had contributed needed funds, Patricia would have been able to pay the vendor, pay rent, and avoid late costs with the landlord. Patricia further recalled that the salon sustained over $1,200 in late charges with a bank, which Patricia attributed to a lack of capital. At one time, the salon's electricity was cut off, so all appointments had to be canceled until the bill was paid, which Patricia did using personal funds. Patricia further testified that the salon struggled to pay for the smallest advertisement in a magazine, which cost $1,500. Additionally, in 2010, Goriana had a disagreement with the salon's main hair colorist, which caused the colorist and the main hairstylist to leave the salon. The makeup artist also left. As a result, the salon lost $4,000 a

month that the colorist had paid to rent a chair, plus all the income that came from the makeup artist and hairstylist. Patricia further stated that she would not have incurred her legal fees had Goriana not withdrawn from the LLC and filed a lawsuit. As of Patricia's testimony, the Martinezes had been billed $206,215.95 in legal fees to defend this case and obtain the accounting. She sought indemnification from the LLC, but the LLC could not indemnify her without capital contributions from Goriana.

¶ 26 Patricia also testified that she and her husband contributed over $98,000 more to the LLC than the Alexanders. Patricia stated that if the LLC had an additional $98,000, the salon would not have been behind in rent, incurred late charges from the landlord and bank fees for overdrafts, and the electricity would not have been cut off. Further, the salon would have been able to advertise as planned, hire other stylists to generate additional revenue, and buy better equipment. Patricia admitted that some withdrawals from a bank account were for personal expenses. Patricia sold the salon in July 2012 for $25,000, of which around $12,000 went to pay past due rent, around $7,000 went to final payroll and to close various accounts, and around $5,000 went to Patricia to pay back some of her investment.

¶ 27 Goriana was also called to testify by the LLC. In part, Goriana stated that she spoke to Patricia frequently between December 2009 and April 2011, but did not think that she spoke to Patricia about the salon in 2011. Goriana did not recall the number of times that Patricia asked if the Alexanders would provide more money. Goriana further stated that she contributed around $20,000 in cash to the LLC.

¶ 28 Martin Terpstra, a partner in the forensic and valuation services group at Plante Moran, testified that the parties engaged Plante Moran to provide forensic accounting services, which are accounting services that are designed to be presented to a court or used in the legal process.

Terpstra stated that Plante Moran was not engaged to do an audit. While preparing the forensic accounting, Terpstra asked the parties multiple times to supply all financial documents that they wanted reviewed. In all, Plante Moran was given over 5,600 pages of documents. Terpstra stated that the LLC's financial statements in QuickBooks matched its tax returns, which was significant because the tax returns were signed under penalty of perjury.

¶ 29 Terpstra confirmed that per his review, the Martinezes contributed approximately $98,000 more in capital to the LLC than Goriana. The LLC's counsel asked Terpstra if the company was damaged by Goriana's failure to contribute capital, to which Goriana's counsel objected. The court sustained the objection because the issue was not addressed in Terpstra's report. Terpstra further testified that the company sustained losses of $132,655 over the course of its existence. Later, overruling an objection from Goriana's counsel, the court permitted Terpstra to state that Goriana's failure to provide needed capital could have contributed to the failure of the company and the damages it sustained because the salon suffered from a shortage of liquidity from its inception. Terpstra continued that the salon was always short on money, and to the extent that the Alexanders did not contribute funds, the Martinezes had to raise whatever money the salon had. According to Terpstra, the "salon never had as much cash as it could have if the Alexanders had put in their money[.]" Terpstra qualified his comment as speculative. Terpstra also stated that he was not engaged to give his opinion about the cause of the company's alleged failure. Plante Moran's letter summarizing the nature of its analysis and accompanying documents were admitted into evidence.

¶ 30 At the end of the trial, each party filed proposed findings of fact and conclusions of law. In its filing, the LLC stated that according to Plante Moran's accounting, Patricia contributed $115,655 in capital and Goriana contributed $17,000, amounting to a difference of $98,655.

Further, Terpstra concluded that the LLC lost $132,655 during its three years in operation. The LLC also asserted that Patricia was entitled to be indemnified under the agreement. Patricia incurred losses in the form of legal fees to defend against Goriana's lawsuit and to have Goriana account for the damages caused by her wrongful dissociation and violations of the agreement. The LLC stated that currently, $217,770.33 must be accounted for from Goriana for the company to indemnify Patricia for the legal and accounting fees incurred as a direct result of Goriana's breach of the agreement. Further, expenses continued to grow and sworn copies of new invoices would be provided to the court.

¶ 31 In her proposed findings of fact and conclusions of law, Goriana challenged the reliability of Plante Moran's report. Goriana further contended that based on exhibits in evidence, Patricia made withdrawals and transfers to personal accounts that led the LLC to have less money than was needed to operate. Goriana also stated that Patricia did not make an adequate accounting to demonstrate any damage to herself or the LLC, and moreover, Patricia could not show that Goriana's dissociation led to damage. Goriana further maintained that the agreement provided that all members or former members were entitled to indemnification by the LLC.

¶ 32 The parties presented closing arguments, and on January 25, 2017, the court issued a written order and ruling that entered judgment for the LLC and against Goriana in the amounts of: (1) $98,655 for uncontributed capital creating a shortfall and damages to the LLC; (2) $132,655 in damages; and (3) $239,130.75 in attorney fees and $2,632.20 in costs.

¶ 33 In its ruling, the court found that Goriana's initial contribution of $10,000 was her only cash contribution to the LLC. On multiple occasions, Patricia asked Goriana for more capital to fund operating expenses, but Goriana refused to contribute and withdrew and dissociated from the LLC. The court continued that the parties agreed to jointly retain the accounting firm of

Plante Moran as an "independent expert" to conduct a forensic accounting of the LLC's financial operations, which included reviewing over 5,600 documents. Although efforts were made on the cross-examinations of Patricia and Terpstra to challenge the accuracy of the LLC records kept by Patricia, the court found Patricia's and Terpstra's testimony to be credible on issues relating to the financial operation of the LLC. The court stated that as determined by Plante Moran, the LLC was damaged by Goriana's refusal to contribute the $98,655 in additional capital that was requested. The court stated that Goriana did not present any credible evidence at trial refuting Plante Moran's accounting. Based on that accounting, Goriana's failure to contribute capital when called damaged the LLC and caused $132,655 in losses.

¶ 34 The court turned to the "extensive attorney fees and costs incurred in this litigation," citing several sections of the agreement. The court noted that section 4.2 of the agreement precluded either member from withdrawing from the LLC without the approval of the other members. Further, if a member wrongfully withdraws, that member " 'shall be liable to the Company and the other members for any damages' " caused thereby. The court also cited section 10.4, entitled "Order of Payment of Liability Upon Dissolution," and Article 11.1, which provided for "Indemnification of Agents." Based on those sections of the agreement and section 18-108 of the Act (Del. Code Ann. tit. 6, § 18-108 (West 2012)), the court found that Patricia was entitled to indemnification from the LLC "for her reasonable attorney fees and costs" in the amount of $241,762.95 "incurred during the 5+ years of this litigation."

¶ 35 Goriana filed a motion to reconsider, contending that there was no evidence that Patricia ever contributed any initial capital. Goriana further asserted that the court failed to conduct an accounting and recognize certain restrictions on distributions and limitations on the LLC's power to borrow money. Also, the court's determination on the accounting was based on entirely

uncertain records. Goriana further stated that based on the records in evidence, Patricia's gross contributions totaled $79,027.23, and she took out more money from the LLC than she put in. Goriana additionally contended that the court improperly relied on Plante Moran's calculation of damages when it found Goriana liable for $132,655 because Plante Moran did not offer an opinion about whether the LLC was damaged by Goriana. Moreover, the court misapplied the law in calculating damages where there was nothing to support a finding of proximate cause or establish specific damages based on a finding of proximate cause.

¶ 36 Lastly, Goriana asserted that the court erred in awarding attorney fees because the agreement did not include an express provision for payment of attorney fees and costs. Goriana continued that if the agreement included indemnification for attorney fees and costs, the court should have allowed Goriana to recover fees. Further, Patricia did not submit a fee petition and the court did not analyze whether the fees and expenses were reasonable. Goriana also maintained that the court improperly shifted the entire burden of attorney fees and costs onto her even though the LLC provided the indemnification and she was only a 25% member. Moreover, the court awarded fees and costs allegedly incurred for the entire case even though only one count of the counterclaim was decided.

¶ 37 In response, the LLC asserted that the court correctly found that Patricia contributed $98,000 more in capital than Goriana. As for Goriana's arguments about proximate cause, the LLC stated that Goriana did not establish that the court's findings or application of law were inconsistent with Delaware law. Further, the record was replete with evidence that the LLC would not have struggled to stay in business and incurred late charges and penalties if it had sufficient capital. The LLC further maintained that the court satisfied its obligation to inquire into the reasonableness of Patricia's attorney fees. Moreover, the award for attorney fees was an

element of the consequential damages to the LLC that were caused by Goriana's wrongful dissociation and vexatious litigation, and so the court correctly found that Goriana had to reimburse the LLC for the obligation to indemnify Patricia.

¶ 38 In her reply, Goriana asserted that the capital call letter she received in November 2011 gave her a choice: make the contribution or the agreement would be amended to specify the consequences of her failure to make an additional contribution, which were to reduce Goriana's interests in the LLC. According to Goriana, the agreement was thus amended. Goriana further stated that the court incorrectly calculated Goriana's required capital contribution. She provided an alternate method for determining the amount she owed based partly on her reduced membership interest. Goriana also contended that it was improper for the court to burden her with all fees and expenses because she did not agree as a member to indemnify the LLC or any other manager or member. Further, she could not be responsible for any portion of the fees and costs beyond her percentage ownership interest. Goriana also noted the elements that must be examined under Delaware law to determine if a fee is reasonable.

¶ 39 On May 2, 2017, the court denied Goriana's motion to reconsider in a written order and ruling. The court stated that Goriana had the opportunity to cross-examine Terpstra at trial and the court found Terpstra's testimony credible. Further, when determining damages, the court relied on the totality of evidence presented at trial, including testimony that it deemed credible. The court noted that the $132,655 damage award was based on the difference between losses and gains incurred by the company due to Goriana's failure to contribute capital when called. Also, Goriana's wrongful refusal to contribute capital and dissociation violated the agreement and caused damage to the LLC, which was sufficient legal cause to incur liability.

¶ 40 The court's written order and ruling continued that as for attorney fees, Goriana was not entitled to indemnification. Further, the LLC demonstrated that it was entitled to attorney fees and costs under the agreement and Delaware law. The court was also not persuaded that damages should be limited by Goriana's ownership interest in the LLC. The court explained that whether she owned 25% or 50% of the LLC, she was found to be 100% liable for the damages incurred by the LLC. The court noted that Goriana did not provide any new facts, any law, or any errors of law as a basis for reconsidering limiting the damages by percentage of ownership. Turning to reasonableness of the fees, the court stated that it was presented evidence of legal bills that "outlined the services performed, who performed such services, the time expended, and hourly rates." Goriana had the opportunity to challenge the evidence at trial and the court found the fees were reasonable.

¶ 41 II. ANALYSIS

¶ 42 A. Summary Judgment

¶ 43 On appeal, Goriana first contends that the court erred in granting summary judgment on count III of the LLC's counterclaim and finding her liable to account for damages. Goriana argues that through the November 2011 capital call letter, the LLC's managers amended Article 3.2(b) of the agreement and specified that the consequence of Goriana's failure to contribute capital was to reduce her ownership interests to zero. Goriana further asserts that the capital call letter and her decision not to contribute constituted prior unanimous consent by the managers and members that Goriana could dissociate from the LLC and no longer be an owner. Thus, according to Goriana, the LLC agreed that she could choose not to contribute and suffer the consequence, which was to cease being a member.

¶ 44 Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with any affidavits, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). Summary judgment is a drastic way of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review appeals from summary judgment rulings *de novo*. *Id*.

¶ 45 The LLC correctly states that Goriana forfeited her amendment and consent arguments because they were not timely raised. Indeed, theories not raised during summary judgment proceedings are forfeited on review. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 15. Goriana's amendment argument was first raised in her reply to her motion to reconsider after trial. Goriana raises her consent argument for the first time on appeal.

¶ 46 Goriana urges this court to overlook forfeiture in this case. She notes that our review is *de novo* and cites the principle that " 'the responsibility of a reviewing court for a just result and for the maintenance of a sound and uniform body of precedent may sometimes override the considerations of waiver that stem from the adversarial nature of our system.' " *Catholic Charities of the Archdiocese of Chicago v. Thorpe*, 318 Ill. App. 3d 304, 311 (2000) (quoting *American Federation of State, County & Municipal Employees, Council 31 v. County of Cook*, 145 Ill. 2d 475, 480 (1991)). For clarity, we note that waiver is the intentional relinquishment of a known right, while forfeiture—which is at issue here—applies when an issue is not raised in a timely manner. See *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 26. Goriana also relies on Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), which provides that a reviewing court has the discretion to "enter any judgment and make any order that ought to

have been given or made, and make any other and further orders and grant any relief *** that the case may require."

¶ 47 None of the authority cited above convinces us that we should relax the forfeiture rule in this case. The principle that reviewing courts may sometimes override considerations of forfeiture does not "nullify standard *** forfeiture principles" and "is not and should not be a catchall that confers upon reviewing courts unfettered authority to consider forfeited issues at will." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶ 33. Beyond seeming to contend that *de novo* review trumps considerations of forfeiture, citing general principles about overlooking forfeiture, and asserting that we have relaxed the forfeiture rule in other, unrelated cases, Goriana has not provided a compelling reason why we should address the merits of her forfeited arguments here. See *In re Estate of Chaney*, 2013 IL App (3d) 120565, ¶ 9 (stating that a party had not provided a compelling reason to relax the forfeiture rule). As such, Goriana's arguments that the agreement was amended and that there was unanimous consent that she could dissociate are forfeited and we will not consider them.

¶ 48 Goriana raises another reason that the summary judgment ruling should be reversed, contending that the court went beyond the scope of relief that the LLC sought in its accounting claim. Goriana states that in July 2012, the LLC's assets were sold and distributed by the managers, which in turn dissolved and wound up the company per the agreement. As a result, the relief sought for dissolution and winding up the LLC was moot. Goriana also argues that in November 2014, the Martinezes non-suited counts I and II of the counterclaim, which included a claim for damages for Goriana's breach of the agreement. Thus, the breach of contract claim was not before the court when it granted summary judgment.

¶ 49 Goriana's argument that the relief sought was moot is forfeited because it is raised for the first time on appeal. *Id.* ¶ 8 (issues, theories, or arguments not raised in the trial court are forfeited and may not be raised for the first time on appeal); *Cochran v. George Sollitt Construction Co.*, 358 Ill. App. 3d 865, 873 (2005) (issues not raised during summary judgment proceedings are forfeited). However, Goriana's argument that the breach of contract claim was not before the court was raised in her response to the LLC's motion for summary judgment, and so we will address it on the merits.

¶ 50 Contrary to Goriana's assertion, the issue of whether Goriana breached the agreement was still before the court during summary judgment proceedings on the counterclaim for dissolution/wind-up and accounting. In its motion for summary judgment, the LLC stated in part that Goriana ignored all capital calls and refused to contribute any further funds. The LLC also asserted that Goriana dissociated and under article 4.2 of the agreement, the court must determine that Goriana's withdrawal or dissociation was a breach of the agreement and she must account for any damages that resulted.

¶ 51 Thus, looking at the substance of the motion for summary judgment, the LLC sought to enforce article 4.2 of the agreement, which requires a finding of a breach before a party must account for damages. Article 4.2, entitled "Withdrawals or Resignations," states:

> "No Member may withdraw, resign or dissociate from the Company without the prior unanimous consent of the Members and the Managers. Any Member withdrawing, resigning or dissociating from the Company in violation of this provision shall be liable to the Company and to the other Members for any damages caused by such withdrawal, resignation or

> dissociation. Such liability shall be in addition to any other obligation of the Member to the Company or to the other Members."

¶ 52 " '[T]he *** agreement is the cornerstone of a Delaware [limited liability company].' " *Elf Atochem North America, Inc. v. Jaffari*, 727 A.2d 286, 291 (Del. 1999) (quoting Martin I. Lubaroff & Paul Altman, *Delaware Limited Partnerships* § 2 (1999)). Here, article 4.2 required the court to determine whether Goriana wrongfully withdrew, resigned, or dissociated, which would then trigger Goriana's liability for damages. The parties contracted for this procedure and the court's summary judgment decision was consistent with the agreement. Further, a court has broad latitude to exercise its equitable powers to craft a remedy, and an accounting for damages is an appropriate remedy for a party's wrongdoing. *Grove v. Brown*, No. 6793-VCG, 2013 WL 4041495, at *10 (Del. Ch. 2013).[4] The court did not exceed the permissible scope of relief when it addressed whether Goriana breached the agreement. Thus, the court properly granted summary judgment for the LLC as to liability on count III of its counterclaim.

¶ 53 B. Monetary Judgment

¶ 54 Next, Goriana challenges the three elements of the monetary judgment that the court awarded to the LLC after trial: (1) $98,655 for uncontributed capital; (2) $132,655 in damages; and (3) $239,130.75 in attorney fees and $2,632.20 in costs. We will address Goriana's arguments about each element in turn.

¶ 55 1. $98,655 for Uncontributed Capital

¶ 56 Goriana states that the judgment for $98,655 for uncontributed capital was improper for two reasons. First, Goriana argues that through the November 2011 capital call letter, the LLC elected its remedy, which was to reduce Goriana's interests to zero when she failed to contribute

[4] In Delaware, unreported orders may be cited as precedent in unrelated cases. See Del. S. Ct. R. 17, Committee Comments (adopted 1984).

additional capital. Having made that choice, the LLC could not also assess Goriana for unpaid capital as if she were still a 50% owner. Second, Goriana argues that even if she were liable for a capital contribution, the court's decision failed to consider that her capital contribution had to be in proportion to her ownership in the LLC.

¶ 57 Goriana did not raise these arguments until her reply in support of her motion to reconsider, which was too late. " 'The purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence that was not available at the time of the hearing, changes in the law[,] or errors in the court's previous application of existing law." ' *Neighborhood Lending Services, Inc. v. Callahan*, 2017 IL App (1st) 162585, ¶ 26. A motion to reconsider is not the place " 'to raise a new legal theory or factual argument.' " *Jones v. Live Nation Entertainment, Inc.*, 2016 IL App (1st) 152923, ¶ 29. Arguments raised for the first time in a motion to reconsider in the circuit court are forfeited on appeal. *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36. However, the trial court has discretion to allow a party to raise new matter in a motion to reconsider, though that should not be permitted without a reasonable explanation of why it was not raised during the original hearing. *Jones*, 2016 IL App (1st) 152923, ¶ 29.

¶ 58 Here, the court's ruling on Goriana's motion to reconsider did not address either of Goriana's arguments related to the judgment for uncontributed capital. " 'A trial court is well within its discretion to deny [a motion to reconsider] and ignore its contents when it contains material that was available before the hearing at issue but never presented.' " *In re Estate of Agin*, 2016 IL App (1st) 152362, ¶ 28. The trial court properly exercised its discretion when it did not address Goriana's new arguments about the judgment for uncontributed capital. Further, because they were not timely raised, we will not address the merits of those arguments either and they are forfeited on appeal.

¶ 59 2. $132,655 in Damages

¶ 60 Next, Goriana contends that the judgment for $132,655 in damages was improper because there was no admitted testimony or analysis to link that amount of loss to any action by Goriana. According to Goriana, neither Terpstra nor Patricia provided any facts to support proximate cause. Goriana asserts that the court barred Terpstra's testimony on causation, yet the court improperly used his accounting as the basis for its finding that Goriana damaged the LLC by not contributing capital. Goriana also states that Patricia's testimony was too general and speculative to prove that Goriana's failure to contribute capital was the cause of the salon's problems. Further, because the salon's capital issues were met by Patricia, there could be no damages caused by Goriana's failure to supply additional capital.

¶ 61 The LLC states that Goriana never raised this argument before a final judgment. We disagree and we will address the argument on the merits. At trial, Goriana's counsel objected when Terpstra was asked whether the company was damaged by Goriana's failure to contribute capital. Further, Goriana stated in her proposed findings of fact and conclusions of law that Patricia could not show that Goriana's dissociation led to damage.

¶ 62 "Where an award of damages is made after a bench trial, the standard of review is whether the trial court's judgment is against the manifest weight of the evidence." *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 63 Under Delaware law, where a party seeks pecuniary damages, there must be evidence of the damages' existence and extent, and " 'some data from which they may be computed.' "

*Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 570 (Del. Super. Ct. 2005), *aff'd*, 886 A.2d 1278 (Del. 2005). A plaintiff must demonstrate with reasonable certainty that the defendant's breach of contract caused the loss. *Tanner v. Exxon Corp.*, No. 79C-JA-5, 1981 WL 191389, at *1 (Del. Super. Ct. 1981).

¶ 64 Those standards were met here. Terpstra testified that the Martinezes contributed approximately $98,000 more in capital to the LLC than Goriana. Terpstra further stated that the company sustained losses of $132,655 over the course of its existence. Terpstra's report, which included a summary of how he arrived at the amount of losses, was admitted into evidence. The court permitted Terpstra to testify that the salon was always short on money and did not have as much cash as it could have if the Alexanders had contributed funds. At the same time, Terpstra noted that his statement was speculative and he was not engaged to give his opinion as to a causal basis for the alleged failure of the company.

¶ 65 In her testimony, Patricia stated that she spoke with Goriana about the need for more capital "[d]ozens of times," but Goriana did not contribute more capital. Patricia described the salon's financial struggles, which included owing more than $16,000 in late rent, losing its biggest vendor, and owing over $1,200 in late charges with a bank. Patricia also stated that the salon struggled to pay for the smallest possible magazine advertisement and at one point, the salon's electricity was cut off, requiring all appointments to be canceled until the bill was paid. According to Patricia, with additional capital, the salon would not have been behind in rent, would not have incurred late charges from the bank or fees for overdrafts, and the electricity would not have been cut off. Further, the salon would have been able to advertise as planned, hire other stylists to generate additional revenue, and buy better equipment.

¶ 66 The court found the testimony of Terpstra and Patricia credible on the issues relating to the financial operation of the LLC. The court also stated that the LLC was damaged by Goriana's failure to contribute additional capital and that Goriana did not present any credible evidence at trial refusing Plante Moran's accounting. Based on that accounting, the court found that Goriana's failure to contribute capital when called caused losses in the amount of $132,655. In its ruling on Goriana's motion to reconsider, the court stated that the $132,655 damage award was based on the difference between losses and gains incurred by the company due to Goriana's failure to contribute capital when called.

¶ 67 Under the manifest weight of the evidence standard, we defer to the trial court as the finder of fact because it was in the best position to observe the conduct and demeanor of the parties and witnesses. *Best*, 223 Ill. 2d at 350. We will not substitute our judgment for that of the trial court about the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Id*. at 350-51. The court's finding that based on Patricia's testimony, Terpstra's testimony, and Plante Moran's report, Goriana's failure to contribute capital damaged the company and caused $132,655 in losses, was not unreasonable or arbitrary. The court's written rulings indicate that it weighed the evidence presented, and that evidence supports a finding that it was reasonably certain that Goriana's conduct caused the losses calculated by Plante Moran. We cannot say that the opposite conclusion is clearly evident. Thus, the court's conclusion that the LLC was entitled to $132,655 in damages was not against the manifest weight of the evidence.

¶ 68 3. Attorney Fees and Costs

¶ 69 Next, Goriana challenges the court's judgment for attorney fees and costs on multiple grounds, which we will address in turn. First, Goriana contends that the agreement's

indemnification provision does not permit the LLC or Patricia to recover attorney fees and costs against Goriana. Goriana argues that under the agreement, she did not agree to indemnify the LLC or any other manager or member. She asserts that the court's fee-shifting is contrary to article 4.1 of the agreement, which states that "[e]xcept as provided under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that debt, liability or obligation arises in contract, tort, or otherwise."

¶ 70 Whether the agreement provides for Goriana to pay for the LLC's fees and costs is a question of contract interpretation, which we would ordinarily review *de novo*. *Asset Recovery Contracting, LLC v. Walsh Construction Co. of Illinois,* 2012 IL App (1st) 101226, ¶ 57. However, Goriana raised her argument for the first time in her motion to reconsider, whereupon the court found that the LLC demonstrated it was entitled to attorney fees and costs under the agreement and Delaware law. When we review a trial court's denial of a motion to reconsider that was based on new matters, such as new arguments or legal theories that were not presented during the proceedings, we use an abuse of discretion standard. *Neighborhood Lending Services, Inc.*, 2017 IL App (1st) 162585, ¶ 26. A trial court's decision is an abuse of discretion "only when it is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Jones*, 2016 IL App (1st) 152923, ¶ 29.

¶ 71 Under Delaware law, a court interprets a contract's clear and unambiguous terms according to their ordinary meaning. *GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 780 (Del. 2012). A contract is not ambiguous because the parties do not agree on its proper construction. *Id.* Rather, ambiguity exists when the provisions in

controversy are fairly susceptible of different interpretations or may have two or more different meanings. *Id.*

¶ 72 The ordinary meaning of the agreement's relevant provisions and the Act supports the trial court's conclusion. Article 11.1 of the agreement states:

> "Indemnification of Agents. The Company shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such Person is or was a Member, Manager, employee or other agent of the Company *** to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit."

Thus, under the agreement, the LLC must indemnify members and managers, which includes Patricia.

¶ 73 Article 11.1 of the agreement is consistent with section 18-108 of the Act, which states:

> "Subject to such standards and restrictions, if any, as are set forth in its limited liability company agreement, a limited liability company may, and shall have the power to, indemnify and hold harmless any member or manager or other person from and against all claims and demands whatsoever." Del. Code Ann. tit. 6, § 18-108 (West 2012).

¶ 74 Goriana does not challenge the LLC's obligation to indemnify members and managers. Of note, at trial, Goriana sought to be indemnified for her fees and costs. Goriana instead challenges the shifting onto her of the LLC's obligation to pay fees and costs. Yet, the agreement provides for this remedy as a consequence of her wrongful dissociation. Goriana correctly notes that article 4.1 of the agreement states:

> "Limited Liability. Except as provided under the Act or as expressly set forth in this Agreement, no Member shall be personally liable for any debt, obligation, or liability of the Company, whether that debt, liability or obligation arises in contract, tort, or otherwise."

Goriana interprets article 4.1 to mean that she could never assume the LLC's obligation to indemnify a member or manager. Goriana's interpretation overlooks key language in article 4.1 that creates an exception to the provision that no member can be personally liable for a debt, liability, or obligation of the LLC: "[e]xcept *** as expressly set forth in this Agreement." And one such exception is article 4.2, which states:

> "Withdrawals or Resignations. No Member may withdraw, resign or dissociate from the Company without the prior unanimous consent of the Members and the Managers. Any Member withdrawing, resigning or dissociating from the Company in violation of this provision shall be liable to the Company and to the other Members for any damages caused by such withdrawal, resignation or dissociation. Such liability shall be in addition to any other obligation of the Member to the Company or to the other Members."

Thus, under article 4.2, a member who wrongfully dissociates is liable to the LLC and other members for "any damages" that result. It was not unreasonable for the court to find that "any damages" from Goriana's wrongful dissociation included the LLC's attorney fees and costs that resulted from indemnifying Patricia for the corresponding legal proceedings.

¶ 75 We note that Goriana's reliance on article 10.6 of the agreement is not helpful here. That article states that "each Member shall only be entitled to look solely at the assets of the Company for the return of such Member's positive Capital Account balance and shall have no recourse for

such Member's Capital Contribution and/or share of Net Profits (upon dissolution or otherwise) against any other Member." Goriana does not explain how article 10.6 relates to indemnification or any limits that can be assessed for wrongful dissociation. Overall, the court properly interpreted the agreement to find that Goriana was required to pay for the LLC's attorney fees and costs that resulted from indemnifying Patricia.

¶ 76 Goriana next contends that even if she is responsible for attorney fees and costs, that responsibility can only be in accordance with her percentage ownership interest. Goriana states that she never owned 100% of the company and her interest decreased between 2009 and 2012.

¶ 77 Goriana did not raise this argument until her motion to reconsider. As a result, we review the trial court's rejection of the argument for an abuse of discretion. See *Neighborhood Lending Services, Inc.*, 2017 IL App (1st) 162585, ¶ 26 (standard of review is abuse of discretion for a trial court's denial of a motion to reconsider that was based on new arguments or legal theories that were not presented during the course of the proceedings). In its ruling on Goriana's motion to reconsider, the court stated that it was not persuaded that the damages should be limited by her ownership interest in the LLC. The court added that whether she owned 25% or 50% of the LLC, she was found to be 100% liable for the damage incurred. The court further stated that Goriana did not provide any law to challenge the initial ruling. Goriana's argument suffers from the same problem on appeal. At most, she cites to articles 4.1 and 6.1 of the agreement. Neither of these articles supports her position. As stated above, article 4.1 states that, with exceptions, no member is personally liable for any debt, obligation, or liability of the company. Article 6.1 discusses allocations of net profit and net loss. Goriana does not explain how either article indicates that she is liable for attorney fees only in proportion to her ownership interest. The trial court properly rejected Goriana's argument.

¶ 78 We next turn to Goriana's contention that she cannot be responsible for any attorney fees and costs incurred after the Martinezes were granted summary judgment on all counts of the amended complaint, which occurred on October 8, 2014. Goriana argues that the scope of fees and costs subject to indemnification could only be those incurred during the time that the Martinezes were parties to the case.

¶ 79 In her motion to reconsider in the trial court, Goriana raised a different argument about limiting her responsibility for fees and costs. There, she asserted that "even if the assessment fees [*sic*] were proper, the Court awarded fees and costs allegedly incurred for the entire case, where only Count III of the Counterclaim was decided." Goriana's motion to reconsider did not mention cutting off fees and costs after summary judgment and instead posited that only fees and costs related to count III of the counterclaim could be awarded. Because Goriana presents an entirely new argument on appeal, that argument is forfeited. See *Vandenberg v. Brunswick Corp.*, 2017 IL App (1st) 170181, ¶ 39 (issues not raised in the trial court are forfeited and may not be raised for the first time on appeal).

¶ 80 Lastly, Goriana contends that the court did not analyze the reasonableness of the attorney fees and costs using the factors required under Delaware law. Goriana argues that the evidence includes only the raw hours worked, hourly rate, and costs expended and the court did not make any findings on any other required elements. Further, Goriana asserts that she was presented with the bills for the first time at trial and did not have an opportunity to contest them or bring forth contrary evidence. Goriana also notes that the only witness who testified about the bills was the accounting manager from the law firm of the LLC's counsel, who had "no clue" and no opinion on reasonableness.

¶ 81 The LLC states that this argument was not timely raised. We agree. Although Goriana's counsel asked the accounting manager at trial whether she had an opinion about the reasonableness of the fees, Goriana waited until her motion to reconsider to assert that the court should have analyzed whether the fees and expenses were reasonable. Still, we will review the court's rejection of Goriana's argument for an abuse of discretion. See *Neighborhood Lending Services, Inc.*, 2017 IL App (1st) 162585, ¶ 26 (standard of review is abuse of discretion for a trial court's denial of a motion to reconsider that was based on new arguments or legal theories that were not presented during the course of proceedings). We note that the same standard of review would apply if Goriana had raised her argument earlier. See *Grate v. Grzetich*, 373 Ill. App. 3d 228, 231 (2007) (where a court has authority to award attorney fees, we review the decision to award those fees for an abuse of discretion). The abuse of discretion standard is the most deferential standard of review, and a decision will be deemed an abuse of discretion only if the decision is unreasonable and arbitrary or where no reasonable person would take the view of the trial court. *Sentry Insurance v. Continental Casualty Co.*, 2017 IL App (1st) 161785, ¶ 32.

¶ 82 In the indemnification context under Delaware law, "an indemnitee may recover only those fees and legal expenses that are reasonably incurred." *O'Brien v. IAC/Interactive Corp.*, No. 3892-VCP, 2010 WL 3385798, at *5 (Del. Ch. 2010). Fees are reasonable if three inquiries are met:

> "[W]ere the expenses actually paid or incurred; were the services that were rendered thought prudent and appropriate in the good faith professional judgment of competent counsel; and were charges for those services made at rates, or on a basis, charged to others for the same or comparable services under comparable circumstances."

*Id*. (citing *Delphi Easter Partners Ltd. Partnership v. Spectacular Partners, Inc.*, No. 12409, 1993 WL 328079, at *9 (Del. Ch. 1993)).

Moreover, the party seeking indemnification must prove that the amount of indemnification sought is reasonable. *Id*.

¶ 83 Here, the court assessed the reasonableness of the fees and costs that were sought and applied the proper factors. In its ruling, the court stated that Patricia was entitled to indemnification from the LLC for her "reasonable attorney fees and costs." In its ruling that denied Goriana's motion to reconsider, the court noted that it was presented evidence of the Martinezes' legal bills, which "outlined the services performed, who performed such services, the time expended, and hourly rates." Though it did not quote word-for-word the language of *O'Brien*, the court's ruling indicates that it considered the factors outlined in *O'Brien*. The court also stated that Goriana had the opportunity to challenge the evidence at trial. We see no evidence to the contrary, as the billing summary and invoices were entered into evidence on the first day of a multi-day trial. The court's conclusion that the fees and costs were reasonable was not an abuse of discretion.

¶ 84 III. CONCLUSION

¶ 85 In sum, we conclude that the circuit court properly entered summary judgment on Count III of the LLC's counterclaim for dissolution/wind-up and accounting. We also find that the circuit court's monetary judgment was proper. The judgment of the circuit court is affirmed.

¶ 86 Affirmed.