

No. 1-17-1943

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEXANDER KALIAKMANIS)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	Nos. 14 L 10491 &
)	14 CH 11652, cons.
GROSSINGER AUTOPLEX, INC., GROSSINGER)	
NORTH AUTOCORP., INC., a/k/a GROSSINGER)	
TOYOTA; and CAROL GROSSINGER,)	Honorable
)	Raymond W. Mitchell,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justice Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 **Held:** We affirmed the judgment of the circuit court in favor of defendants-appellees on the claims of plaintiff-appellant made under the Wage Payment and Collection Act that he was entitled to unpaid commissions and reimbursement for illegal payroll deductions upon his resignation. We reversed the judgment of the circuit court in favor of defendants-appellees on claims of plaintiff-appellant that he was entitled to vacation pay.

¶ 2 Plaintiff-appellant, Alexander Kaliakmanis, filed an action against his former employer, Grossinger Autoplex, Inc. (Grossinger), and his supervisor, Caroline Grossinger (collectively

referred to as defendants), to recover wages and compensation pursuant to the Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.* (West 2018)). In pertinent part, plaintiff asserted that defendants breached his employment contract and miscalculated the commissions owed to him, underpaying him hundreds of thousands of dollars, by basing their calculations on financial information contained in monthly financial statements of the dealership, instead of basing their calculations on more accurate financial information contained in certain tax documents prepared by their outside accountants. Plaintiff also claimed that he was entitled to an unpaid bonus of an indeterminate amount for meeting certain sales quotas in 2013, and that he was owed \$9,616 in vacation pay for his unused vacation time. Finally, plaintiff contended that he should be refunded \$11,850, which defendants had illegally deducted from his paychecks for his use of the company demo vehicle. After a six-day bench trial, the trial court rendered a verdict for defendants on all counts.¹

¶ 3 Plaintiff appeals, contending that the court erred in denying his claims for vacation pay, unpaid commissions, an unpaid bonus, and illegal payroll deductions. Plaintiff also contends that the court abused its discretion by quashing his document subpoenas on non-parties and denying his motions to compel, and in denying him leave to file a second-amended complaint. We affirm the court's judgment in favor of defendants on plaintiff's claims for unpaid commissions and his bonus and for reimbursement of illegal payroll deductions. We reverse the court's judgment in favor of defendants on plaintiff's claim for vacation pay.²

¶ 4

I. TRIAL TESTIMONY

¹Grossinger also filed a complaint against plaintiff, alleging that plaintiff took confidential documents and owed Grossinger money based on "draws" he received (advances on future commissions). The trial court consolidated Grossinger's action with plaintiff's action, and, following the bench trial, the court entered judgment in favor of plaintiff on Grossinger's complaint. Grossinger does not appeal the court's judgment in plaintiff's favor.

²In adherence with the requirements of Illinois Supreme Court Rule 352(a)(eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 5 A. Evidence Regarding Plaintiff's Commission Payments

¶ 6 At trial, Caroline Grossinger testified that she is president of the Autoplex Corporation, which is the corporate head for Grossinger Kia; Grossinger Hyundai; and the Grossinger General Motors (GM) dealership located in Lincolnwood, Illinois. Ms. Grossinger hired plaintiff in 2010 to be the general manager of the GM dealership. As general manager of the GM dealership, plaintiff was responsible for the dealership's operations, including business development, sales of new and used vehicles, and servicing of those vehicles. Plaintiff was "head of the whole store," and had many different employees working for him, including salespeople and support staff.

¶ 7 In 2010, the parties agreed that plaintiff would be paid an annual salary of \$100,000, plus a commission of 15% of the net profits of the GM dealership. Plaintiff received a \$150,000 draw on his commission, paid at a weekly rate of \$2,885 (meaning that, each week, he received a \$2,885 advance on his commission that would be repaid out of future commissions earned). In 2011 and 2012, plaintiff continued to receive a \$100,000 salary and a \$150,000 draw on his commission, but his commission rate was reduced to 12.5% of the net profits of the GM dealership. From January through July 2013, plaintiff took the job of general manager of the Grossinger Toyota (Toyota) dealership, in addition to retaining his job as general manager of the GM dealership. Plaintiff received 10% commission of the net profits of both the GM and Toyota dealerships, with a \$250,000 draw (paid at a weekly rate of \$4,808), but he no longer received a salary. In August 2013, plaintiff returned to the general manager position of only the GM dealership. From August 2013 to the end of his employ in April 2014, he received a 20% commission of the net profits of the GM dealership, with a \$250,000 draw paid at a weekly rate of \$4,808, but he did not receive a salary.

¶ 8 Plaintiff's commission earnings while he was general manager at the GM dealership from 2010 to 2014 were calculated based on net profits reported on the financial statements of the GM dealership prepared each month by Grossinger's accounting manager, Richard Roy. Plaintiff's additional commission earnings while also working as general manager at the Toyota dealership from January to July 2013 were calculated based on net profits reported on the monthly financial statements of the Toyota dealership. Mr. Roy testified that the financial statements of the dealership are an "overall [monthly] view of the operation of the dealership," which showed the sales of new and used vehicles, as well as all dealership expenses, from which net profits or losses are reported. To calculate plaintiff's monthly commission earnings, Mr. Roy took the net profit from that month's financial statement, and then multiplied it by the agreed-upon commission percentage.

¶ 9 At trial, Ms. Grossinger was questioned whether plaintiff's commissions while working as general manager at the GM and Toyota dealerships should have been derived from net profits reported on tax reconciliation reports for the years 2010 to 2014 that were prepared by Grossinger's outside accountants. The tax reconciliation reports list a book balance, *i.e.*, financial data that Grossinger recorded on its books, then a middle column showing adjustments to the balance made by the outside accountants, and finally a column showing the adjusted tax balance, which represents what goes on the tax return.

¶ 10 The total net profits reported on the tax reconciliation reports for 2010 to 2014 were more than \$2 million higher than the net profits reported on the financial statements of the GM and Toyota dealerships, meaning that plaintiff would have received hundreds of thousands of dollars more in commissions had Mr. Roy calculated them using the net profits reported in the tax

reconciliation reports instead of using the net profits reported in the financial statements of the dealership.

¶ 11 Ms. Grossinger testified, though, that it would be “preposterous” to base plaintiff’s commissions on the net profits reported in the tax reconciliation reports for 2010 through 2014 because those reports included net profits for Grossinger Kia and Grossinger Hyundai, in addition to net profits for the GM and Toyota dealerships. Since plaintiff was only the general manager of the GM dealership from 2010 to 2014, and the Toyota dealership from January to July 2013, and was not general manager of either the Grossinger Kia or Hyundai dealerships, his commissions were properly based on the financial statements of the dealership from 2010 through 2014 reflecting only the net profits of the GMC and Toyota dealerships.

¶ 12 Plaintiff’s expert, Michael Mader, a certified public accountant (CPA), and a certified fraud examiner with experience working in the automobile industry, testified that he examined Grossinger’s tax reconciliation reports for 2010 through 2014. Mr. Mader determined that those reports did not contain any financial information for the Kia and Hyundai dealerships. Mr. Mader testified that the tax reconciliation reports from 2010 through 2014, which showed over \$2 million more in net profits than what was reported in the financial statements of the GM and Toyota dealerships, were a more reliable indicator of the net profits of the GM and Toyota dealerships because they reflected the accounting adjustments made by the outside accountants. Mr. Mader concluded that plaintiff’s commissions, while working as general manager at the GM and Toyota dealerships, should have been calculated using the net profits reported in the tax reconciliation reports.

¶ 13 Defendants’ expert, JoAnne Beringer, a CPA with experience working in the automobile industry, testified contrary to Mr. Mader that the tax reconciliation reports from 2010 through

2014 contained profit information for certain (unidentified) dealerships other than just the GM and Toyota dealerships and, therefore, they could not be used to determine the net profits of the GM and Toyota dealerships for purposes of calculating plaintiff's commissions. Ms. Beringer testified that, in her experience in the automobile industry, she had never seen a general manager whose compensation was based on net profits reported in tax documents. Ms. Beringer further noted that the financial information contained in the financial statements of the GM and Toyota dealerships (including the net profits of the dealerships) were likely accurate, as they had to be reported to the corporate headquarters every month, and any inaccuracies or misrepresentations in them could result in the loss of the franchise agreement. Accordingly, Ms. Beringer concluded that Mr. Roy properly used the net profits reported in the financial statements of the GM and Toyota dealerships when calculating plaintiff's commissions.

¶ 14 Plaintiff testified similarly to Ms. Grossinger regarding the commissions he was paid while in Grossinger's employ. Plaintiff further testified that, after leaving Grossinger in 2014, he worked first as a general manager at Napleton Chrysler Dodge, and then as a general manager at St. Charles Chrysler Dodge Jeep. At both the Napleton and St. Charles dealerships, he was paid commissions based on the respective financial statements of the dealerships (just as he was paid commissions at Grossinger). Plaintiff also testified that he formerly owned his own dealership, and that he had paid his general manager commissions based on a percentage of the profits of the dealership. In calculating the commissions of his general manager, plaintiff did not use tax documents to determine the net profits of the dealership.

¶ 15 B. Evidence Regarding Plaintiff's Bonus

¶ 16 Plaintiff testified that, in 2013, Ms. Grossinger agreed to pay him a bonus if the GM and Toyota dealerships met certain sales quotas. The dealerships met the quotas, and Ms. Grossinger

agreed to pay the bonus by making the lease payments on plaintiff's BMW. Ms. Grossinger made some of the lease payments, but plaintiff was still owed an indeterminate amount of money.

¶ 17 Ms. Grossinger denied such an agreement to make plaintiff's lease payments as a bonus to him.

¶ 18 C. Evidence Regarding Payroll Deductions

¶ 19 Plaintiff testified that, when he was hired by Grossinger in 2010, he received an employee packet containing a so-called "demonstration agreement" that he was expected to sign, and which he did sign. Pursuant to the demonstration agreement, plaintiff was given the use of a GM vehicle (demo vehicle), in return for which \$75 per week (\$11,850 in total) was deducted from his paycheck.

¶ 20 Ms. Grossinger testified that, if plaintiff sold the demo vehicle with less than 4,500 miles on it, he would be reimbursed for all the monies that had been deducted from his paycheck.

¶ 21 Ms. Grossinger testified that the demonstration vehicle program benefited the dealership, in that it showed off cars that were for sale, but it also benefited the employee, who had the use of the car. Ms. Grossinger further testified that no employee was required to sign the demonstration agreement; the demonstrator vehicle program was a "voluntary benefit."

¶ 22 D. Evidence Regarding Vacation Pay

¶ 23 Plaintiff testified to his understanding that, as a full-time employee with more than two years of service, he was entitled to two weeks of paid vacation. As plaintiff was receiving a weekly draw of \$4,808 at the time of his resignation, the vacation pay owed to him was \$9,616.

¶ 24 Ms. Grossinger testified that she followed the "Grossinger Dealerships Employee Handbook" (the Handbook) for determining the vacation days and pay of the employees. The

Handbook states that, full-time employees with two years of service, are entitled to two weeks of vacation, and that “[v]acation pay will be calculated based on the rate in effect when vacation benefits are used.” However, the Handbook further states that “[c]ommissioned [s]alespeople are exempt from vacation pay.”

¶ 25 Ms. Grossinger testified that, as a commissioned employee who was not receiving a salary in 2013 and 2014, upon his resignation in April 2014, plaintiff was not entitled to any vacation pay under the Handbook.

¶ 26 **II. THE TRIAL COURT’S RULING**

¶ 27 With respect to plaintiff’s claim that he was owed hundreds of thousands of dollars in unpaid commissions based on the net profits reported in the tax reconciliation reports from 2010 to 2014, the trial court ruled in favor of defendants, finding that plaintiff was correctly paid all commissions owed to him based on the net profits reported in the monthly financial statements of the dealership.

¶ 28 With respect to plaintiff’s claim for an unpaid bonus for meeting certain sales quotas in 2013, the trial court ruled in favor of defendants, finding that plaintiff had failed to prove the necessary elements of his claim, including that he was underpaid or the amount he was owed by defendants.

¶ 29 With respect to plaintiff’s claim that defendants illegally deducted \$11,850 from his pay for the use of demo vehicles, the trial court ruled in favor of defendants, finding that the deductions were valid under the vehicle demonstration agreement signed by plaintiff.

¶ 30 With respect to plaintiff’s claim that he was owed \$9,616 in payment for unused vacation time, the trial court ruled in favor of defendants, finding that, as a commissioned employee, plaintiff was not entitled to any vacation pay.

¶ 31

III. PLAINTIFF'S APPEAL

¶ 32

A. Standard of Review

¶ 33 After a bench trial, the trial court's factual findings will not be disturbed unless they are against the manifest weight of the evidence. *Jameson Real Estate, LLC v. Ahmed*, 2018 IL App (1st) 171534, ¶ 59. A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the findings are unreasonable, arbitrary, or not based on the evidence. *Id.* The manifest weight of the evidence standard affords great deference to the trial court because it is in the best position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony. *Id.* Under this standard, the reviewing court will not reweigh the evidence or make an independent determination of the facts. *Id.*

¶ 34

B. Vacation Pay

¶ 35 First, plaintiff contends that the court erred in ruling in favor of defendants on his claim under the Wage Act for \$9,616 in vacation pay. Section 5 of the Wage Act states:

“Every employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee. ***

Unless otherwise provided in a collective bargaining agreement, whenever a contract of employment or employment policy provides for paid vacations, and an employee resigns or is terminated without having taken all vacation time earned in accordance with such contract of employment or employment policy, the monetary equivalent of all earned vacation shall be paid to him or her as part of his or her final compensation at his or her

final rate of pay and no employment contract or employment policy shall provide for forfeiture of earned vacation time upon separation.” 820 ILCS 115/5 (West 2018).

¶ 36 The parties agree that Grossinger’s vacation policy is set forth in the Handbook, which states that full-time employees with two years of service are provided with two weeks of paid vacation (which, for plaintiff, was worth \$9,616 at the time of his resignation based on his weekly draw of \$4,808). Plaintiff argues that the trial court erred by failing to award him the \$9,616 in vacation pay for his unused vacation time.

¶ 37 Defendants counter that the trial court committed no error, because it correctly found that, as a commissioned employee working at the GM dealership at the time of his resignation in April 2014,³ plaintiff was not entitled to vacation pay under the Handbook. We disagree. The Handbook provides only that “[c]ommissioned [*s*]alespeople are exempt from vacation pay.” (Emphasis added.) Ms. Grossinger testified that plaintiff was hired to be the general manager of the GM dealership, *not* a salesperson. Ms. Grossinger further testified that, as general manager, plaintiff was responsible for the operation of the entire store including, not only sales, but also business development and servicing of vehicles, and that the salespeople and other support staff were “underneath him.” Ms. Grossinger drew a clear distinction between the salespeople who sell the cars on the floor, and the general manager, who is the “head of the whole store” and in charge of all of its operations. As plaintiff was the general manager of the GM dealership at the time of his resignation and was not a salesperson himself, he was not exempt from vacation pay under the Handbook.

¶ 38 Defendants argue, though, that Ms. Grossinger herself testified that plaintiff was not entitled to vacation pay because at the time of his resignation he was a commissioned employee. Ms. Grossinger specifically testified as follows:

³ Plaintiff had discontinued working as the general manager of Toyota in July 2013.

“Q. Now, Ms. Grossinger, are you familiar with Grossinger’s vacation policy?”

A. Yes, I am.

Q. How is that vacation policy determined?

A. So it’s in our employee Handbook and—which [plaintiff] received as do all of our employees receive and sign off that they received and we have orientations on a regular basis as well, and the Handbook says that the only salary—people who receive vacation are salaried employees. Commissioned employees do not receive vacation according to the Handbook.

Q. In 2013 and 2014, was [plaintiff] salaried?

A. No. That is when his pay plan had no salary.

Q. So he was all commissioned based?

A. Yes.

Q. So vacation wouldn’t apply to [plaintiff]?

A. No, not according to the Handbook.”

¶ 39 However, Miss Grossinger’s construction of the Handbook as exempting plaintiff from vacation pay was incorrect, because she misread it as providing that all “commissioned *employees* do not receive vacation [pay].” (Emphasis added.) In fact, though, the Handbook expressly exempts only a subset of commissioned employees, specifically, “commissioned salespeople” from receiving vacation pay. Plaintiff was the general manager of the GM dealership and was paid on a commission basis at the time of his resignation, but he was not a commissioned *salesperson* and, therefore, he was not exempt from receiving his vacation pay (which amounted to \$9,616) upon leaving Grossinger’s employ. Accordingly, we reverse the

portion of the trial court's judgment in favor of defendants on plaintiff's claim for \$9,616 in vacation pay and enter judgment in favor of plaintiff.

¶ 40 C. Illegal Payroll Deductions

¶ 41 Next, plaintiff contends that the trial court erred in denying his pretrial motion for summary judgment on his claim under section 9 of the Wage Act that defendants illegally deducted \$75 per week from his paychecks (a total of \$11,850) for use of the demo vehicle. Generally, when a case proceeds to trial after the denial of a summary judgment motion, the order denying the motion for summary judgment merges with the judgment entered and is not appealable. *Wheeler Financial, Inc. v. Law Bulletin Publishing Co.*, 2018 IL App (1st) 171495,

¶ 66. An exception exists when the issue raised in the summary judgment motion presents a question of law and, thus, would not be decided by the jury. *Id.* ¶ 67. In such a case, the denial of a summary judgment motion does not merge with the judgment and may be addressed *de novo* on appeal. *Id.*

¶ 42 In the present case, the trial court specifically found that the summary judgment motion raised "disputed issues of fact." Accordingly, it denied the motion, and the cause proceeded to trial. The order denying the summary judgment motion, based on the presence of genuine issues of material fact, merged with the judgment entered on the verdict and is not appealable. *Id.* ¶ 68.

¶ 43 Next, plaintiff contends that the trial court's judgment after trial on his section 9 claim for illegal payroll deductions was against the manifest weight of the evidence. Defendants do not dispute that they deducted \$11,850 from plaintiff's paychecks, but they contend that the deductions were allowable under the demonstration agreement (agreement), which plaintiff signed.

¶ 44 Section 9 of the Wage Act states in pertinent part:

“Except as hereinafter provided, deductions by employers from wages or final compensation are prohibited unless such deductions are (1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; (4) made with the express written consent of the employee, given freely at the time the deduction is made.” 820 ILCS 115/9 (West 2018).

¶ 45 The trial court found that the \$75 per week deductions for use of the demo vehicle were allowable under section 9 of the Wage Act because plaintiff gave express written consent to those deductions when he signed the agreement. The trial court’s finding was not against the manifest weight of the evidence, as it was supported by the written agreement, which contains plaintiff’s signature dated April 6, 2010, and which states that “[e]mployee agrees to pay \$75.00 or \$90.00 per week for his/her demo, reimbursable upon sale of vehicle.” The trial court’s finding was further supported by plaintiff’s testimony that the signature on the agreement was his, and that by signing the agreement, defendants deducted \$75 per week from his paycheck for the use of a demo vehicle. As the evidence at trial supported the court’s finding that plaintiff freely gave express written consent for the \$75 per week deductions, we affirm the judgment in favor of defendants.

¶ 46 Plaintiff contends, though, that the court’s judgment was in error because it was inconsistent with its earlier pretrial order denying defendants’ motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2018)). We disagree. The plaintiff is not required to prove his case at the pleading stage; rather, he merely must allege sufficient facts to state all the elements necessary to constitute his cause of action. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). By contrast, the later trial proceeding involved the submission of evidence *outside* the pleadings, and the trial court was required to consider

whether plaintiff proved his claim by a preponderance of the evidence. *Gataric v. Colak*, 2016 IL App (1st) 151281, ¶17. The earlier denial of the section 2-615 motion, which was based only on the pleadings, did not in any way foreclose the trial court from considering all the evidence at trial and rendering a judgment thereon in favor of defendants.

¶ 47 D. Unpaid Commissions

¶ 48 Next, plaintiff contends that the trial court erred by ruling in favor of defendants on his claims that defendants breached his employment contract by calculating his commissions based on the net profits reported in the monthly financial statements of the dealership, instead of calculating his commissions based on the net profits reported in the tax reconciliation reports from 2010 to 2014.

¶ 49 In considering plaintiff's argument, we note that his employment contract provided that he would be paid commissions based on the GM dealership's net profits for 2010-2014, and on the Toyota dealership's net profits for January-July 2013, but it did not provide *how* those net profits would be calculated. Defendants (through their accounting manager, Mr. Roy) used the net profit information in the financial statements of the GM and Toyota dealerships to calculate his commissions, and defendants sent plaintiff a copy of the financial statements of the dealership each month. Plaintiff never objected to their use in the calculation of his commissions.

¶ 50 Notwithstanding the contract's silence on how to calculate the dealerships' net profits, and his failure to object to defendants' use of the net profits contained in the financial statements of the dealership when calculating his commissions, plaintiff contends that the trial court should have ruled in his favor based on the testimony of his expert, Mr. Mader. Mr. Mader testified that defendants should have calculated plaintiff's commissions using the net profits reported in the

tax reconciliation reports from 2010 to 2014, as those reports were a more reliable indicator of the net profits of the GM and Toyota dealerships than the financial statements of the dealerships because they reflected the accounting adjustments made by the outside accountants.

¶ 51 However, there was contrary testimony presented at trial, specifically, Ms. Grossinger and defendants' expert, Ms. Beringer, each testified that the tax reconciliation reports for 2010 to 2014 contained profit information for dealerships other than the GM and Toyota dealerships and therefore they could not properly be used to determine the net profits of the GM and Toyota dealerships for purposes of calculating plaintiff's commissions. Both Ms. Grossinger and Ms. Beringer testified that the monthly financial statements of the GM and Toyota dealerships accurately reflected the net profits of the GM and Toyota dealerships during plaintiff's employ and, therefore, that they were properly utilized by Grossinger's accounting manager, Mr. Roy, when calculating plaintiff's commissions. Further, Ms. Beringer testified that, in her experience in the automobile industry, she had never seen a general manager whose compensation was based on net profits reported in tax documents. Also, plaintiff himself testified that, in his subsequent employment as a general manager at Napleton Chrysler Dodge and at St. Charles Chrysler Dodge Jeep, he was paid commissions based on the net profits contained in the respective financial statements of the dealerships (just as he was paid commissions at Grossinger). Plaintiff also admitted that in his own dealership, he did not use tax documents when calculating his general manager's commissions.

¶ 52 The trial court, as the trier of fact, was in the best position to weigh the conflicting testimony and to make credibility determinations. *Ahmed*, 2018 IL App (1st) 171534, ¶ 59. The court ultimately concluded from the testimony of Ms. Grossinger, Ms. Beringer, and from plaintiff himself, that the parties never agreed to calculate his commissions based on the net

profits reported in the tax reconciliation reports from 2010 to 2014, and that plaintiff's commissions had been properly calculated using the net profits reported in the monthly financial statements of the dealership. The trial court's finding was not against the manifest weight of the evidence, and accordingly we affirm the judgment in favor of defendants on plaintiff's claims for unpaid commissions.

¶ 53 Plaintiff next argues that defendants improperly modified his employment contract without his agreement when it calculated his commissions based on the net profits reported in the monthly financial statements of the dealership, instead of calculating them based on the net profits reported in the tax reconciliation reports from 2010 to 2014. See *Richard W. McCarthy Trust Dated September 2, 2004 v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 534 (2011) (a valid modification of a contract must satisfy all the criteria essential for a valid original contract, including offer, acceptance, and consideration). Plaintiff failed to plead an improper modification of his contract and, as such, he may not now make that argument for the first time on appeal. See *Wheeler*, 2018 IL App (1st) 171495, ¶¶ 74-75 (a party must recover according to the case he has made for himself in his pleadings, and cannot receive a judgment on another and different ground). Even if plaintiff had pleaded an improper modification, his claim would have failed where there was no evidence presented at trial showing that the parties ever agreed to derive net profit numbers from any source other than the financial statements of the dealership.

¶ 54 Plaintiff also argues that by calculating his commissions based on the net profits in the monthly financial statements of the dealership, defendants violated the covenant of good faith and fair dealing that was implied in his employment agreement. See *Hentze v. Unverfehrt*, 237 Ill. App. 3d 606, 610 (1992) (“A covenant of fair dealing and good faith is implied in every contract absent express disavowal.”). Plaintiff failed to plead that defendants violated the

covenant of good faith and fair dealing in calculating his commissions based on the monthly financial statements of the dealership and, as such, he may not now make that argument for the first time on appeal. *Id.* Even if plaintiff had pleaded the violation of the covenant of good faith and fair dealing, his claim would have failed where the testimony of Ms. Grossinger, Ms. Beringer, and plaintiff showed that defendants acted in good faith and in accordance with industry standards when they calculated his commissions based on the net profits reported in the financial statements of the dealership.

¶ 55 Plaintiff cursorily argues that we should reverse the trial court's ruling on his motions *in limine* that sought to bar the testimony of Ms. Grossinger and Ms. Beringer with respect to his commission payments, and that also sought to bar Ms. Beringer's expert report. Plaintiff provides insufficient argument, and cites no case law, supporting this request. Accordingly, plaintiff has forfeited review of the issue. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017); *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56.

¶ 56 E. Unpaid Bonus

¶ 57 Next, plaintiff argues that the trial court erred in ruling in favor of defendants on his claim that defendants owed him bonus payments premised on his meeting certain sales quotas in 2013. Plaintiff testified that Ms. Grossinger agreed to pay the bonus by making his lease payments on a vehicle, and that she made six or seven of his lease payments and then stopped paying them, but he never specified how much monies were still owed to him. Ms. Grossinger denied agreeing to make his lease payments as payment of a bonus. The court found Ms. Grossinger credible and ruled in favor of defendants, finding that plaintiff had failed to show the existence of the bonus agreement or the amount allegedly owed to him. The court's judgment

was not against the manifest weight of the evidence. Accordingly, we affirm the trial court's judgment in favor of defendants on plaintiff's claim for an unpaid bonus.

¶ 58 F. Discovery Rulings

¶ 59 Plaintiff argues that the trial court erred by denying his motion to compel the production of all the monthly financial statements of the GM dealership from 2010 through 2014, and the monthly financial statements of the Toyota dealership from January through June 2013. "A trial court is afforded considerable discretion in ruling on matters pertaining to discovery, and thus its rulings on discovery matters will not be reversed absent an abuse of that discretion." *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 11 (2009).

¶ 60 Plaintiff was provided with the July financial statement of the Toyota dealership, which showed the net profits of the dealership for each of the months he had worked at the Toyota dealership, and he was also provided with the year-end (December) financial statements of the GM dealership, from 2010 through 2014, which reflected the total net profits for each year he had worked at the GM dealership. The trial court determined that the financial statements of the GM and Toyota dealerships provided to plaintiff were sufficient to inform him of the net profit figures used by defendants when calculating his commissions, and that the further production of the other monthly financial statements of the dealership would be unduly burdensome, duplicative, and facilitate a "fishing expedition." We find no abuse of discretion.

¶ 61 Next, plaintiff contends that the trial court erred by quashing his subpoenas on nonparties seeking financial information related to defendants. In so ruling, the trial court stated:

"In November 2015, [p]laintiff served a number of subpoenas on nonparties (including the [d]efendants' accountants) seeking financial information relating to the [d]efendants.

After a hearing, the [c]ourt requested that counsel refrain from pursuing those subpoenas until [d]efendants produced their income tax returns. The reason for that was that the information sought from the nonparties was largely duplicative of information that would be contained within the [d]efendants' tax returns (and other financial information to be produced). Defendants have since produced their tax returns and other financial documents, and [p]laintiff now seeks to pursue his subpoenas on the nonparties.

Plaintiff has failed to demonstrate that there is any relevant information in possession of the nonparties that has not already been obtained from the [d]efendants (or at least could have been obtained in party discovery). Assertions and arguments aside, [p]laintiff has not shown that there is some irregularity or gap in the information produced by [d]efendants that would justify pursuing numerous nonparties for much of the same information. Indeed, [p]laintiff appears to be engaged in little more than a fishing expedition. Further, the discovery deadlines set by agreement of the parties have passed. A plaintiff's failure to obtain timely discovery from a party is not an excuse to later seek the same information from a nonparty."

¶ 62 On appeal, plaintiff lists all the documents that he believes should have been produced by the nonparties, but he fails to make any cogent argument as to how the court's quashing of the subpoenas on the nonparties, and the stated reasons therefor, were an abuse of discretion. Accordingly, we affirm the trial court's discovery orders.

¶ 63 E. The Denial of Leave to Amend

¶ 64 Finally, plaintiff argues that the trial court erred by denying him leave to file a second-amended complaint. Plaintiff sought leave to file the second-amended complaint after certain counts in his earlier complaint relating to defendants' alleged failure to pay him appropriate

compensation in 2010, and 2012 through 2014, were dismissed. However, plaintiff acknowledges that, at trial, the court expressly considered all of his claims for the years 2010 and 2012 through 2014. Accordingly, plaintiff's argument regarding the court's denying him leave to file a second-amended complaint is moot, as any resolution of the issue would have no practical effect. *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 376 (2004).

¶ 65

IV. CONCLUSION

¶ 66 For all the foregoing reasons, we affirm the trial court's judgment in favor of defendants on plaintiff's claims under the Wage Act for unpaid commissions, his 2013 bonus payment, and the reimbursement of the payroll deductions for the use of the demo vehicle. We reverse the trial court's judgment in favor of defendants on plaintiff's claim for vacation pay. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 67 Affirmed in part and reversed in part.