2018 IL App (1st) 172362-U

FIRST DIVISION
December 31, 2018

No. 1-17-2362

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PANIT HOMPLUEM and SARAH CHANG,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County.
	)	
v.	)	No. 2009 CH 17375
	)	
FRED CHAMANARA,	)	Honorable
	)	Anna Demacopolous,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant in a suit for an accounting was not entitled to offset payments he allegedly made but did not adequately document. The trial court did not err by awarding prejudgment interest to plaintiffs or by failing to conduct an evidentiary hearing. The trial court did err by failing to credit defendant the statutory interest on unpaid rent owed to him by plaintiffs. In addition, the trial court erred in calculating prejudgment interest on the entire amount owed to plaintiffs from October 26, 2006, when at that point they would have been owed $100,000 less than they were owed seven months later. Accordingly, we recalculate the amount of interest owed, for a modified award to plaintiffs of $200,720.47.

¶ 2 Defendant Fred Chamanara appeals from a judgment against him in the amount of $215,049.10, which culminated a suit filed against him by plaintiffs Panit Hompluem and Sarah

Chang regarding the payment of proceeds from the sale of the parties' business. Mr. Chamanara argues the trial court erred by denying him credit for certain offsets that he claims he paid on behalf of the corporation, by awarding Mr. Hompluem and Ms. Chang prejudgment interest, and by summarily issuing plaintiffs an award when an evidentiary hearing was needed. For the reasons that follow, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 A. Factual Background

¶ 5 Fred Chamanara was the sole shareholder in the Lautrec Corporation until April 3, 2002, when he entered into a stock purchase agreement (SPA) with Panit Hompluem. As part of the SPA, Mr. Hompluem bought the shares in Lautrec and thus became the owner of a bar (with a liquor license) located on the 1200 block of North State Street in Chicago. Mr. Hompluem, with his business partner Sarah Chang, also entered into a lease agreement to rent space from Mr. Chamanara at that location, in which Mr. Hompluem and Ms. Chang would open a restaurant and bar called "Dragonfly." Under the SPA, Mr. Hompluem would pay monthly rent until 2013.

¶ 6 By November 2004, Mr. Hompluem and Ms. Chang had fallen behind on their rent payments, and Mr. Chamanara filed two law suits: (1) a forcible entry and detainer action for roughly $130,000 in unpaid rent and (2) a declaratory judgment action seeking, among other relief, an order transferring the stock in Lautrec back to Mr. Chamanara. In these cases, Mr. Chamanara secured interim relief for use and occupancy of the premises and an injunction barring Mr. Hompluem from transferring any assets.

¶ 7 The trial in the eviction case was set for June 13, 2005, but the parties instead reached an agreement to settle all litigation between them (Agreement). The Agreement consisted of one typed page, the last two paragraphs of which were stricken, and three handwritten pages signed

by Mr. Chamanara, Mr. Hompluem, and Ms. Chang. The unstricken typed portion of the Agreement recounted the parties' business dealings with each other and stated their desire "to obtain a third party purchaser for the stock of Lautrec Corporation" and to "equitably distribute the proceeds among themselves resulting from the sale of said stock."

¶ 8 In a single paragraph, the three handwritten pages detailed which expenses would be deducted from the sale of Lautrec before the parties divided the remaining monies. That paragraph stated as follows:

> "All past due rent or use and occupancy shall be taken out plus all rent that is accruing or present use and occupancy till the date of closing. All other bills of Lautrec or Sarah Chang or Panit Hompluem on behalf of Lautrec shall also be taken out, including but not limited to credit card debts, liquor, food, taxes (sales and otherwise), plus all of Fred's attorney's fees for these matters versus Lautrec or Sarah or Panit and interest on the outstanding amount owed to him. No payments are to be made for loans to Sarah or Panit or Lautrec or Dragonfly from friends or relatives. Any balance from this sale process shall be divided 50% to Fred and 50% to Sarah Chang from the proposed sale to Sullivan or any other buyer that Chang obtains only, and Sarah represents that all of these loans are to be released or forgiven or have been already. No other agreement between the parties is to [be] affected by this agreement."

¶ 9 According to the parties' later testimony, Mr. Chamanara, Mr. Hompluem, and Ms. Chang were all present with their attorneys when the Agreement was negotiated and signed. After entering into the Agreement, the parties settled and dismissed both the eviction suit and the declaratory judgment action.

¶ 10 On September 9, 2005, Mr. Chamanara proceeded with the sale of the Lautrec stock and

licenses for $600,000 to John Sullivan. Mr. Sullivan made an initial escrow deposit of $400,000 that day, and Mr. Chamanara was able to retrieve from the escrow $200,000 on September 6, 2006, and another $200,000 on October 26, 2006. Mr. Chamanara represents on appeal that the "closing for the Lautrec shares dragged on for approximately two years" due to revocation of the restaurant's liquor license for municipal violations, as well as a negotiation with the federal Department of Treasury regarding unpaid taxes. Ultimately, the sale to Mr. Sullivan closed for the full $600,000 and Mr. Chamanara retrieved the remaining monies seven months after the second disbursement.

¶ 11 B. Procedural History

¶ 12 On May 29, 2009, Mr. Hompluem sued Mr. Chamanara for an accounting of his share of the Lautrec sale proceeds. The parties engaged in discovery throughout the first half of 2010 and, on June 25, 2010, Mr. Hompluem filed his first amended complaint—the operative complaint in this appeal—adding Ms. Chang as additional plaintiff. Mr. Chamanara filed an answer and affirmative defenses shortly thereafter. Although the case was briefly dismissed for want of prosecution, that dismissal was vacated and the parties engaged in further discovery.

¶ 13 On January 9, 2015, Mr. Hompluem and Ms. Chang filed a motion for partial summary judgment, seeking an order that Mr. Chamanara account for their share of the proceeds from the Lautrec sale, which the trial court granted on June 15, 2015. Mr. Chamanara filed his first accounting on July 27, 2015, but sought time to obtain records from the parties as to payments he allegedly made under the Agreement that he claimed should be deducted from a potential award.

¶ 14 Mr. Chamanara filed a second accounting on November 15, 2016, and the trial court conducted an extensive hearing on January 9, 2017. At that hearing, the trial court instructed Mr. Chamanara to provide greater specificity and documentation of the additional amounts for which

he sought credit, including payments he claimed to have made for corporate taxes, for settling a dram shop suit, and for various legal fees. Both at this hearing and throughout the case, Mr. Chamanara emphasized that he owned multiple restaurant businesses, had not necessarily kept detailed records over the several years, and that parsing-out which payments were made in service of which of his businesses was difficult.

¶ 15 On April 20, 2017, the trial court granted Mr. Chamanara leave to file *instanter* his third accounting (and the operative accounting in this case). We discuss the documents attached to this accounting, where relevant, in our analysis below. When the adequacy of the accounting was fully briefed, the trial court entered its order and decision on July 31, 2017. Mr. Chamanara sought reconsideration of this order, which did not divide the proceeds remaining after offsets evenly, but gave the full lump sum of $430,098.21 to Mr. Hompluem and Ms. Chang. In a corrected order and decision filed *nunc pro tunc* on August 31, 2017, the trial court halved this award and made several findings.

¶ 16 First, the trial court referenced its January 9, 2017, statement on the record allowing Mr. Chamanara to file a third accounting "identif[ying] items and categories in which greater specificity was necessary." The court noted that, at that hearing, it had asked Mr. Chamanara for details regarding "taxes allegedly paid to the State of Illinois" such as "which taxes were paid, when they were paid, who they were paid to and how they were paid specifically by Mr. Chamanara." Regarding the settlement of the dram shop action, the court had admonished Mr. Chamanara that he was "obligated to show with specificity that, in fact, he paid that settlement agreement." As to legal fees Mr. Chamanara allegedly paid, the trial court had clarified that the Agreement allowed for legal fees for "matters versus Lautrec or Sarah or Panit" to be deducted from the proceeds of the sale, but not "legal fees for the sale of the business between Lautrec and

any future buyer." In its order, the trial court noted that it had instructed Mr. Chamanara in his third accounting to "be specific as to the cases involving the eviction and the dec[laratory] action and the transfer" of Lautrec shares back to Mr. Chamanara from Mr. Hompluem. The court also questioned whether it was reasonable for the plaintiffs to be charged for legal fees that Mr. Chamanara claimed to have paid to two law firms and directed Mr. Chamanara in his third accounting "to show proof that he paid those bills, either to [Fagel] Haber or Mr. Brustin, but it will not be both." Finally, the court noted its January 9 admonishment to Mr. Chamanara regarding several miscellaneous bills attached to his second accounting that, for the final accounting, he must "produce form of payment by him that they were actually paid."

¶ 17 With its prior admonitions in mind, the trial court reviewed Mr. Chamanara's third and final accounting and credited him as follows:

> "1. May 10, 2006 payment to the Department of Treasury: $106,911.62.
>
> 2. Attorney Marvin Brustin's fees consisting of $26,997.50 (for the eviction action); $9,362.50 (for the declaratory judgment action); and $3000 ([for the] dram shop action): $39,360.00 [in total]. Defendant failed to provide proof of payment and the specificity for additional fees requested as ordered by the Court on January 9, 2017.
>
> 3. Settlement of *Turano v. Lautrec Corp.*, 05 L 13609 (dram shop action): $4,500.00.
>
> 4. Judgment for rent: $129,399.00.
>
> 5. Rent for July and August 2005: $22,064.52.
>
> 6. Taxes paid to the State of Illinois: $1,031.00. Defendant failed to demonstrate proof of payment with the required specificity as ordered by the Court on January 9, 2017.

7. Fee to Defendant's accountant, Donald DelSalvo, to negotiate Department of Treasury debt: $2,100.00.

8. Fine to City of Chicago related to sale of liquor without selling meals: $3,000.00.

9. Settlement of lawsuit, *Rewards Network v. Lautrec*, 05 L 8384: $15,000.00.

10. Legal fees to Chang's attorney, David Goodrich for work negotiating settlement for *Rewards Network v. Lautrec*, $2,750.00.

Total credits owed to Defendant: $326,116.14.

Given a sale price of $600,000.00 for the business, before any prejudgment interest, Plaintiffs' share is $136,941.93."

¶ 18 Citing its discretionary authority under *In re Estate of Wernick*, 127 Ill. 2d 61, 87 (1989), the trial court then stated it would apply equitable interest "at the rate of 5.3%, which represents the average prime rate for the past ten years." The trial court calculated interest beginning on October 26, 2006—the date "upon which the parties agree the Defendant received a disbursement of at least $400,000 of the sale proceeds" from the Lautrec sale to Mr. Sullivan. The total amount of equitable interest the trial court awarded to Mr. Hompluem and Ms. Chang was $78,107.17, bringing the total award in plaintiffs' favor to $215,049.10.

¶ 19 In its corrected order and decision, the trial court addressed Mr. Chamanara's claim in his third accounting that he was owed statutory interest on unpaid rent and monies he advanced for the payment of bills prior to the disbursement of the Lautrec sale proceeds. The trial court found that Mr. Chamanara began collecting rent from Mr. Sullivan in September 2005, and any advances he may have made were "likely offset by the rent he received." According to the trial court, Mr. Chamanara was not entitled to statutory interest because he "had the full use of the

[$400,000 of] proceeds of the sale as of the October 26, 2006 disbursement."

¶ 20 The trial court also addressed Mr. Chamanara's reference in his third accounting to a "possible need" for an evidentiary hearing in order to "explain the many issues" that allegedly caused him prejudice, including the unavailability of supporting documentation for many of the payments he made, the plaintiffs' decision to wait years to file suit, and a host of other allegedly prejudicial conduct by the plaintiffs. The trial court found that "[t]estimony of the proposed nature would either address only [an] issue previously decided by [the originally assigned judge] (whether an accounting was required) or not compensate for Defendant's inability to provide proof of payment." The court noted that "[c]ounsel for Defendant further indicated in open court that he was in possession of multiple banker boxes worth of documents obtained from defendant and/or his prior attorneys," and held that "[t]o the extent Defendant has not presented proof of his payment with the specificity as required by the Court at the January 9, 2017 hearing, it must be concluded that Defendant does not have such evidence." The trial court denied Mr. Chamanara's request for an evidentiary hearing.

¶ 21 The trial court entered a memorandum of judgment for $215,049.10 against Mr. Chamanara on September 1, 2017. Mr. Chamanara filed a motion for reconsideration of the corrected order and decision that was stricken on September 11, 2017, for failure to state a proper basis for reconsideration. This appeal followed.

¶ 22 II. JURISDICTION

¶ 23 Mr. Chamanara timely filed his notice of appeal on September 25, 2017, challenging, among other orders, the trial court's corrected order and opinion of August 31, 2017, and its later denial of his motion to reconsider the corrected order and opinion. We have jurisdiction under Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered by

the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 24 III. ANALYSIS

¶ 25 A. Accounting and Offsets

¶ 26 The right to an accounting is not absolute, but is within the trial court's discretion and will be reversed only for abuse of that discretion. *Newton v. Aitken*, 260 Ill. App. 3d 717, 722 (1994). Our standard of review for the accounting itself is less clear, but when a trial court applies the law to undisputed facts itemized in financial documents, our review is *de novo*. *Parks v. CNAC-Joliet, Inc.*, 381 Ill. App. 3d 586, 588 (2008), *mod. on denial of reh'g* (Apr. 9, 2008). We need not resolve the exact standard of review because, even granting no deference to the trial court, we affirm its findings on the substance of the accounting, with the exception of its denial of credit to Mr. Chamanara for interest on the plaintiffs' unpaid rent and its calculation of interest on the amount due to the plaintiffs, which we address below and in reference to which we do believe that the trial court abused its discretion.

¶ 27 "An accounting is a statement of receipts and disbursements." *Polikoff v. Levy*, 132 Ill. App. 2d 492, 499 (1971); *Laurence*, 206 Ill. App. 3d at 786. "A final account of a partnership or co-venture should *** show all of the detailed financial transactions of the business and the true status of the firm's assets." *Polikoff*, 132 Ill. App. 2d at 499. "[I]n order for the account to be of any value or to fulfill the duty of accounting it cannot be merely a summary or lump listing of types of items." *Id.* at 500. Instead, the original source documents (vouchers, bills, cancelled checks) should be tendered or made available so that the items listed in the accounting may be verified. *Id.* And "[s]imply because a matter has become complicated or voluminous does not excuse the duty of giving true and full information." (Internal quotation marks omitted.) *Id.* "If a party seeks credits against the accounting, such party has the burden to prove them." *Kennedy v.*

Miller, 221 Ill. App. 3d 513, 521 (1991) (citing *Clapp v. Emery*, 98 Ill. 523, 536 (1881)).

¶ 28 When a plaintiff seeks an accounting, the trial court must make two separate and distinct determinations—(1) that an accounting is required and (2) that a sum certain is due—and these determinations are traditionally made in separate hearings. *McCormick v. McCormick*, 118 Ill. App. 3d 455, 462 (1983). "[W]hether an accounting is ordered is largely a matter within the discretion of the trial court." *Laurence v. Flashner Medical Partnership*, 206 Ill. App. 3d 777, 786 (1990). Although Mr. Chamanara listed in his notice of appeal the trial court's partial summary judgment order of June 15, 2015, he offers no argument in his appellate brief for why the trial court may have erred in ordering an accounting. See *Marquez v. Martorina Family, LLC*, 2016 IL App (1st) 153233, ¶ 10 (affirming summary judgment for one defendant in a negligence suit because, although the plaintiff listed the judgment in that defendant's favor in his notice of appeal, he forfeited the issue by only arguing against the judgment for the other defendant). Mr. Chamanara thus forfeited any challenge he may have had to the June 15, 2015, accounting order.

¶ 29 It appears that Mr. Chamanara may still be taking the position on appeal that the plaintiffs are owed nothing because all unpaid expenses were supposed to be deducted from the plaintiffs' 50% of the proceeds of the sale. In Mr. Chamanara's view, those expenses exceeded the plaintiffs' $300,000 share and therefore they were entitled to nothing. The Agreement plainly does not support such a reading. The Agreement first requires the deduction of expenses incurred by the Lautrec Corporation generally, followed by the splitting of "[a]ny balance from this sale process [to be] divided 50% to Fred and 50% to Sarah Chang." Mr. Chamanara's attorney, who represents him on this appeal, acknowledged as much in an email to a law firm sent as part of a subpoena for records of legal fees, stating "[w]e're trying to show what the expenses are that

should be deducted from the sales [sic] price for the business *before divvying the remainder*." (Emphasis added.) It is not clear whether Mr. Chamanara is making this argument but, to the extent he is, we reject it.

¶ 30 We turn now to whether the amounts deducted from the $600,000 sales price were proper. Mr. Chamanara challenges the trial court's refusal to credit him certain offsets in the accounting. These include legal fees he claims to have paid for work on the eviction and declaratory judgment actions against the plaintiffs and the sale of Lautrec, state and federal taxes that he says that he paid, and unpaid rent by the plaintiffs. We address each of these in turn.

¶ 31 1. Legal Fees

¶ 32 The Agreement states that Mr. Chamanara is to be credited for "all of [his] attorney's fees for *these matters* versus Lautrec or Sarah or Panit." (Emphasis added.) The trial court determined Mr. Chamanara was entitled to a credit of $36,360 for legal fees he paid to his attorney Marvin Brustin to bring the eviction and declaratory suits against Mr. Hompluem and Ms. Chang, as well as a credit of $3000 for his settlement of a dram shop suit against Lautrec, but that he "failed to provide proof of payment and the specificity for additional fees."

¶ 33 In the hearing on January 9, 2017, the trial court found that if Mr. Chamanara "chose to pay both [Mr. Brustin and attorneys at Fagel Haber LLC], that's his decision to make, but I don't think it's *** reasonable for Ms. Chang and Mr. Hompluem to pay the legal fees for both of them because Mr. Brustin wasn't capable of performing his duties," and that it would give Mr. Chamanara a chance in his third accounting "to show proof that he paid those bills, either to [Fagel] Haber or Mr. Brustin, but it will not be both." The trial court found that, based on its understanding of the prior accountings, "Fagel and Haber's [] client was Mr. Brustin; not Mr. Chamanara." Mr. Chamanara argues he is entitled to a credit of $60,661.31, for legal fees that he

paid to Fagel Haber, as well the fees to Mr. Brustin that the trial court credited him.

¶ 34 Mr. Chamanara acknowledges that some of this $60,661.31 in fees to Fagel Haber was incurred to secure the sale of Lautrec to Mr. Sullivan, but argues that the sale was among the "matters versus Lautrec" contemplated in the Agreement. We disagree with this interpretation of the parties' Agreement. The sale of Lautrec was simply not a matter "versus Lautrec."

¶ 35 It appears from the Fagel Haber bills that Mr. Chamanara submitted that some of the legal fees were also for the eviction and the declaratory judgment action which were, in fact, "matters versus Lautrec." But at the January 9, 2017, hearing, Mr. Chamanara was specifically admonished to do three things to establish the credits for legal fees he sought: (1) show why it was reasonable to pay both Mr. Brustin and Fagel Haber for the legal services in the eviction and declaratory judgment actions; (2) show that he himself paid those legal fees; and (3) delineate his payments for the properly credited eviction and declaratory action fees as separate from the Lautrec sale fees that could not be credited. Mr. Chamanara failed to supply documentation to satisfy these three requirements, and the trial court properly excluded the Fagel Haber fees, even as it properly crediting him for the $39,360 in legal fees he paid to Mr. Brustin.

¶ 36 Mr. Chamanara maintains that he "didn't keep the records [of his legal fees and payments] because his understanding of the agreement was that half of the proceeds would be allocated to the Plaintiffs and the monies they owed would be deducted from that," and "[b]ecause he spent far more than the $300,000 allocated to them on their bills, he thought he owed them nothing." As noted above, we reject that interpretation of the agreement and Mr. Chamanara's misunderstanding of the agreement does not excuse him from maintaining appropriate records. Indeed, even if the agreement meant what he claims it meant, Mr. Chamanara would be required to demonstrate that he had paid the plaintiffs whatever they were

due. The party seeking credits against the accounting has the burden to prove them. *Kennedy*, 221 Ill. App. 3d at 521. Mr. Chamanara did not prove that he was entitled to this offset and the trial court did not err in declining to credit Mr. Chamanara for these additional legal fees.

¶ 37 2. Taxes

¶ 38 Mr. Chamanara also argues he was improperly denied credit for his payment of state and federal taxes incurred by the Lautrec Corporation. We consider each in turn.

¶ 39 The parties seem to agree that, as of September 30, 2005, Mr. Chamanara's accountant had successfully negotiated reductions in the state taxes owed by Lautrec to $1031. However, Mr. Chamanara claims there were further tax assessments after that date that he was obligated to pay as part of the closing of the sale of Lautrec to Mr. Sullivan. In his third accounting, Mr. Chamanara claimed he paid "$39,332.46 or $31,143.41" in state taxes. Noting that "[s]earch systems for county records aren't perfect," he attributed the discrepancy between the two figures to different tax lien searches he undertook on the Cook County Recorder's webpage. Mr. Chamanara acknowledged that he could not locate records showing he paid the liens. He nevertheless attached to his third accounting an affidavit stating that he "paid $42,803.34 for taxes owed to the State of Illinois but must have used Cashier's checks." The trial court found that Mr. Chamanara "failed to demonstrate proof of payment with the required specificity" as to the additional state taxes he claimed. Seeing that Mr. Chamanara could not even say with any certainty which of the three five-figure amounts referenced above he paid, we agree and affirm the trial court on this finding.

¶ 40 Mr. Chamanara also argues that, in addition to the $106,911.62 he was credited for paying to the federal Department of the Treasury, he ought to have been credited an additional $11,556.91 in federal taxes. In support of this argument, he relies on a carbon copy of a check for

that amount made out to "United States Treasury" with his Taxpayer Identification number included. Nothing indicates, however, that this payment was for a Lautrec liability, and no other document in the record matches the claimed amount. As with the state taxes, we cannot find that the trial court erred when it declined to award him credit for this additional tax payment.

¶ 41 3. Unpaid Rent

¶ 42 Mr. Chamanara's entire argument for unpaid rent credits consists of two sentences—that he was "only allowed a credit of $22,064.52 for rent unpaid by Hompluem for July and August 2005," but that "the rent was $38,172.74 for those two months," with a cite to his affidavit reiterating this point. With no supporting documentation or explanation of how he arrived at that figure, we cannot say the trial court erred in awarding him the credit it did. We affirm the trial court's determination of Mr. Chamanara's deductable credits in the accounting, with the exception of his claimed credit for unpaid interest, which we address next.

¶ 43 B. The Parties' Interest Claims

¶ 44 Mr. Chamanara challenges the trial court's rejection of his claim for statutory interest on the judgment that he had against Mr. Hompluem for unpaid rent and its award of equitable interest to Mr. Hompluem and Ms. Chang for 10 years and 278 days at the prime rate of 5.3%. For the following reasons we reverse in part the trial court's rulings on prejudgment interest.

¶ 45 Prejudgment interest is awarded as a matter of "fairness and equity and not as a sanction against the defendant, on the basis that "[when] money has been wrongfully withheld the victim [is entitled to] interest for the wrongdoer's retention of his money." *Wernick*, 127 Ill. 2d at 88. "Illinois law permits the award of prejudgment interest, at the prime rate" where warranted, and the decision "to award prejudgment interest is within the circuit court's sound discretion, subject to reversal only upon abuse of discretion." *United States Fidelity & Guaranty Co. v. Alliance*

Syndicate Inc., 286 Ill. App. 3d 417, 419-20 (1997) (citing *Wernick*, 127 Ill. 2d 61). "[A] reviewing court ought not substitute its judgment for that of the trial court [on the awarding of prejudgment interest] unless no reasonable person could adopt the trial court's position." (Internal quotation marks omitted.) *National Union Fire Insurance Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶ 83.

¶ 46 Mr. Chamanara argues he was entitled to "statutory interest at the rate of 9%" for "unpaid rent in the amount of $129,399" from June 13, 2005 (the date the parties entered into the Agreement to settle the litigation), to September 6, 2006 (the date he was able to retrieve the first $200,000 for the sale of Lautrec to Mr. Sullivan). This would entitle him to $14,330.93 in credit offsetting the award to Mr. Hompluem and Ms. Chang. Plaintiffs respond that the trial court already factored his claim for statutory interest in its corrected order and decision, where it held that "[a]ny advances Defendant may have made were likely offset by the rent he received" from Mr. Sullivan and that he "then had full use of the [$400,000] proceeds of the sale as of October 26, 2006 disbursement." This rationale (that he had the benefit of the $400,000) was used to punish Mr. Chamanara twice—once by denying him statutory interest on the unpaid rent and again by awarding equitable interest to Mr. Hompluem and Ms. Chang.

¶ 47 That Mr. Chamanara withheld paying plaintiffs from the proceeds of the Lautrec sale does not change the fact that he was owed $129,399 in back rent and never received his interest on that money. The error in denying him this credit is all the clearer because the Agreement contemplated that he would receive "interest on the outstanding amount owed to him" when the parties entered into the Agreement. We find that the trial court abused its discretion by denying Mr. Chamanara this interest credit and find that the credits deducted from the $600,000 sale proceeds should have included the $14,330.93 in statutory interest owed to him. The total credits

deducted from the sale proceeds should have been $340,447.07. This would leave $259,552.93 to be divided evenly, meaning that plaintiffs were entitled to a pre-interest award of $129,776.47.

¶ 48 Mr. Chamanara also challenges the trial court's award of equitable interest to Mr. Hompluem and Ms. Chang on three grounds: (1) it should not have been awarded, (2) the wrong interest rate was used, and (3) the interest was calculated from too early a date. Only the last of these is persuasive.

¶ 49 Citing to our decision in *Gold Realty Group Corp. v. Kismet Café, Inc.*, 358 Ill. App. 3d 675, 679 (2005) for the proposition that "[a] plaintiff fixes the issues in controversy and the theories upon which recovery is sought by the allegations in his complaint," Mr. Chamanara points out that Mr. Hompluem and Ms. Chang "didn't even pray for interest" in their complaint. But this concerns not a theory of recovery, but the discretionary relief a trial court may award to make an injured party whole. See *National Union Fire*, 2015 IL App (1st) 122725, ¶ 87 (finding the trial court did not abuse its discretion in awarding prejudgment interest to plaintiff insurer after defendant withheld payment for years, even though he knew the parties' earlier stipulation required him to pay).

¶ 50 Nor does Mr. Chamanara cite any authority in support of his argument that the trial court abused its discretion by awarding Mr. Hompluem and Ms. Chang interest at the rate of 5.3%. See Ill. S. Ct. R. 341(h)(7) (eff. May 24, 2006) (points not argued (i.e., supported by authority) are forfeited). We cannot say that "no reasonable person could adopt the trial court's position" applying that rate. See *National Union Fire*, 2015 IL App (1st) 122725, ¶ 83.

¶ 51 As for the date from which the interest should run, we agree with Mr. Chamanara that the trial court abused its discretion in starting interest running on the entire amount owed to plaintiffs on October 26, 2006. The 5.3% interest should have been applied to different balances based on

the disbursements that Mr. Chamanara had received from the Lautrec sale and what would have been owed to plaintiffs at that time. Instead, the trial court multiplied the 5.3% annual interest for 10 years and 278 days to the full original $136,941.93 award.

¶ 52 The entire first disbursement of $200,000 on September 6, 2006, would have gone to satisfy the $340,447.07 of deductible credits. Of the next $200,000 disbursement on October 26, 2006, $140,447.07 would have satisfied the remaining credits, leaving a balance that, when divided evenly for the parties, would entitle plaintiffs to $29,776.47 as of that date. Thus, interest should have begun to run only on that amount on that date. The record is unclear as to the exact date of the final $200,000 disbursement of Lautrec sale proceeds, but the parties agree it was seven months later, at the end of May 2007. Of that final disbursement, half would have gone to Mr. Chamanara and half would have gone to plaintiffs. The interest due to plaintiffs on that additional $100,000 should have been calculated from the end of May of 2007 through the trial court's judgment order.

¶ 53 Therefore, the correct calculation of interest owed to plaintiffs requires multiplying the 5.3% annual equitable interest to the $29,776.47 payment plaintiffs were owed on October 26, 2006, for a time period of 10 years, 9 months, and 5 days (October 26, 2006, to the final order on July 31, 2017). That interest amount is $16,987.06. We then add the interest on the $100,000 owed to plaintiffs from the final disbursement seven months later (taking the literal date of May 26, 2007, for convenience) by multiplying that amount by 5.3% for 10 years, 2, months, and 5 days (May 26, 2007, to July 31, 2007), equaling $53,956.94. The sum of these two interest calculations (and the total interest entitled to plaintiffs) is $70,944.

¶ 54 When interest is recalculated as outlined above and added to the total amount that should have been awarded to plaintiffs which we have calculated as $129,776.47, the total amount that

should have been awarded to plaintiffs is $200,720.47.

¶ 55 C. Evidentiary Hearing

¶ 56 Finally, Mr. Chamanara argues that he was entitled to an evidentiary hearing. The only authority relevant to this point that he cites, however, is *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, for the proposition that an "evidentiary hearing is conducted if there's a dispute about the legitimacy of [supporting] documents or the amounts [claimed]." However, *Concordia* concerned the specific fact question of whether a limited receiver's fees in a municipality's suit against a church were reasonable (*id.*, ¶¶ 1, 5-6), and our holding only addressed the burden-shifting process in that narrow context. *Id.*, ¶ 64; see also *Plote, Inc. v. Minnesota Alden Corp.*, 95 Ill. App. 3d 5, 7 (1981) (describing the reasonableness inquiry in connection with a receiver's petition for fees). *Concordia* does not support Mr. Chamanara's claim that the trial court erred by denying his request for an evidentiary hearing.

¶ 57 Furthermore, the points Mr. Chamanara sought to make through such a hearing—including his difficulty in "differentiating the bills between his former restaurants and his current restaurants and bars," and his claim that Ms. Chang "refused to provide information she had about Lautrec's bills that Mr. Chamanara believed he could establish he paid if he knew what they were"—were already contained in Mr. Chamanara's sworn affidavit attached to his third amended accounting. As for his contention that Ms. Chang could have helped clarify which bills were paid on behalf of Lautrec but she refused, Mr. Chamanara had the full range of discovery tools available to litigants and could have sought to compel production of those necessary documents he believed were improperly withheld. See Ill. S. Ct. R. 219 (eff. July 1, 2002).

¶ 58 What is clear is that Mr. Chamanara failed to keep adequate records to prove all of the

credits he sought. We fail to see how an evidentiary hearing allowing the parties an additional opportunity to blame each other for this lack of documentation would do anything to prove the credits Mr. Chamanara sought. The trial court did not err in denying Mr. Chamanara's request for an evidentiary hearing.

¶ 59 IV. CONCLUSION

¶ 60 For these reasons, we reverse the trial court's accounting with respect to Mr. Chamanara's credit for interest, recalculate the amount of equitable interest due to the plaintiffs, affirm the accounting in all other respects, and modify the award owed to Mr. Hompluem and Ms. Chang to $200,720.47.

¶ 61 Affirmed in part, reversed in part. Judgment modified to $200,720.47.