

No. 1-18-0457

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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MOHAMMAD R. REZAI, M.D.; THE ESTATE OF	)	Appeal from the
ARTHUR M. HEATH, M.D; JAMES YIU-TIN CHING,	)	Circuit Court of
M.D.; ADDISON RADIOLOGY ASSOCIATES, S.C.;	)	Cook County
MORRIS RADIOLOGY ASSOCIATES, S.C.; and	)	
MIDWEST RADIOLOGY ASSOCIATES. S.C.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 8440
	)	
JOSEPH PORADA, M.D.; PARAMOUNT	)	
CONSULTING SERVICES, INC.; and FLORENCE	)	
PORADA, individually, and as Trustee,	)	
	)	
Defendants	)	
	)	
(Mohammad R. Rezai, M.D., Arthur M. Heath, M.D.,	)	The Honorable
and James Yiu-Tin Ching, M.D., Plaintiffs-Appellees;	)	Thomas More Donnelly,
Joseph Porada, M.D., Defendant-Appellant).	)	Judge Presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Justices Griffin and Walker concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirm the circuit court’s judgment in all respects. The parties’ settlement agreement did not contain an exclusive remedies provision, and thus plaintiffs were not limited to seeking specific performance following defendant’s breach. The circuit court did not abuse its discretion in awarding plaintiffs breach of

contract damages, and the damages award was not against the manifest weight of the evidence. The circuit court did not abuse its discretion by imposing prejudgment interest on equitable grounds. We remand to the circuit court to allow plaintiffs to pursue additional attorney fees and costs as provided for in the parties' settlement agreement.

¶ 2 Plaintiffs Mohammad R. Rezai, M.D., the Estate of Arthur M. Heath, M.D. (Heath),<sup>1</sup> and James Yiu-Tin Ching, M.D. (along with the entities named in the caption above, none of which are parties to this appeal) sued defendant Joseph Porada<sup>2</sup> to enforce a settlement agreement with respect to defendant's interests in four real estate entities. Following a bench trial, the circuit court entered judgment in favor of plaintiffs, granted specific performance with respect to two of the entities, and awarded plaintiffs a total of \$1,205,640 in compensation for the other two entities. In addition to granting Rezai and Heath's request for attorney fees, the circuit court awarded plaintiffs \$47,037.40 in prejudgment interest. The trial court denied an award of costs due to lack of proof. Defendant appeals the portions of the circuit court's monetary judgment compensating plaintiffs for two of the real estate entities and awarding prejudgment interest. Plaintiffs ask that we affirm the circuit court's judgment and remand so that they may seek additional attorney fees permitted under the settlement agreement for defending this appeal. We affirm the circuit court's judgment and remand for additional proceedings.

¶ 3 **BACKGROUND**

¶ 4 Plaintiffs and defendant are members of a radiology practice. In 2008, plaintiffs filed two lawsuits against defendant for allegedly misappropriating over \$10 million from the practice, and the actions were consolidated (2008 action). Defendant admitted to transferring the funds but

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<sup>1</sup>In the circuit court, the caption of plaintiffs' complaint named Arthur M. Heath, M.D. as a plaintiff, although the body of plaintiffs' complaint indicates that the suit was brought on behalf of the Estate of Arthur M. Heath, M.D. We have amended the caption of this order to reflect the true party in interest.

<sup>2</sup>Paramount Consulting Services, Inc. and Florence Porada were also named as defendants, but are not parties to this appeal.

denied any wrongdoing. In October 2011, the parties entered into a written settlement agreement. In paragraphs 1 and 3 of the settlement agreement, defendant agreed to make an upfront payment of over \$1.6 million in cash to plaintiffs, along with nearly \$700,000 payable over five years in the form of a salary reduction. No issue is raised in this appeal regarding these provisions or payments.

¶ 5 In paragraph 2, defendant further agreed that on or before October 15, 2014, he would pay plaintiffs \$1.8 million or, upon failure to make this payment, he would transfer to plaintiffs his ownership interests in four real estate investment entities (collectively, real estate entities): his 44% membership interest in KKJJ, LLC, which owned a strip mall in Antioch, Illinois; his 95% membership interest in JJPRidgelandKKJJ (Ridgeland), which held a 67% beneficial interest in a land trust that owned a strip mall in Berwyn, Illinois; his 49.9% membership interest in RFREINV, LLC, which owned vacation properties near Hayward, Wisconsin; and his 30.46% limited partnership interest in Sharon Estates Limited Partnership (Sharon Estates), which owned a partially completed residential development in Sharon, Wisconsin. Defendant “represent[ed] and warrant[ed] that his best estimate of the current valuation of his \*\*\* interest[s] in [the real estate entities] is \$2,469,000, net of encumbrances.” Defendant’s valuation was “solely based on his best estimate of current [*sic*] value of the real estate owned by [the real estate entities] and his attendant interest in that real estate by reason of his membership interest.” Furthermore, defendant agreed that “to the extent [his] obligations to transfer his interests \*\*\* require the consent or authorization of any other entity or member, [defendant] represents that he has obtained or will obtain such consent and or authorization by October 14, 2014.” Defendant promised that he would “not further encumber his interest in the [real estate entities] without the consent of [plaintiffs].”

¶ 6 Paragraph 2 further provided, “[i]n the event that [defendant] fails to transfer his membership or ownership interests in [the real estate entities], [plaintiffs] may file an action, in accordance with the terms of paragraph 8 below, to obtain specific performance of [defendant’s] obligation to transfer his interests[.]” Paragraph 8 provided in relevant part,

“In the event that [defendant] fails to honor any of his obligations under this agreement, [plaintiffs], may file an action seeking to enforce their rights and [defendant’s] obligations under this agreement including seeking specific performance of [defendant’s] obligation to pledge and/or transfer his membership interests as described in paragraph 2 above, a judgment for any amounts not paid in accordance with paragraphs 1 or 3 above, compelling answers to reasonable questions posed by any forensic accountant, as described in paragraph 6 above and or seeking the turn over [*sic*] of any assets identified in paragraph 7 above. [Defendant] shall reimburse [plaintiffs] their reasonable attorneys’ fees and costs expended in enforcing their rights herein.”

¶ 7 Based on the settlement agreement, the circuit court dismissed plaintiffs’ claims in the 2008 action and retained jurisdiction to enforce the settlement. Defendant did not make the \$1.8 million payment to plaintiffs described in paragraph 2 of the settlement agreement by October 15, 2014. Defendant executed assignments of his interests in real estate entities, but plaintiffs refused to accept the assignments because defendant had failed to secure the necessary consents from the other members, managers, and general partners of those entities. In August 2015, plaintiffs filed a motion in the 2008 action to enforce the settlement and requested that the circuit court enter judgment in their favor for \$1.8 million. On January 14, 2016, the circuit court denied plaintiffs’ motion. In a written order, the circuit court found that plaintiffs were not entitled to a

money judgment under the settlement agreement and were only entitled to seek specific performance. Plaintiffs did not appeal the circuit court's denial of their motion to enforce the settlement.

¶ 8 Plaintiffs initiated this action in June 2016 by filing a two-count complaint for specific performance and money damages. Count I alleged that defendant breached the settlement agreement by failing to obtain the consents necessary to transfer his interests in the real estate entities to plaintiffs and by failing to pay the real estate taxes for KKJJ's property in Antioch. Plaintiffs requested a judgment of specific performance requiring defendant to convey his interests in the real estate entities with the required consents, and requested attorney fees. Count II alleged that as a result of defendant's breach of the settlement agreement, plaintiffs "were damaged in the amount of \$2,469,000, [defendant's] interest in the real estate owned by [the real estate entities]." Plaintiffs requested a judgment of \$2,469,000, attorney fees, and prejudgment interest. Defendant moved to dismiss count II of the complaint on the basis of *res judicata*, which the circuit court denied.<sup>3</sup> Defendant then answered the complaint and the parties engaged in discovery. While the case was pending, defendant obtained consents from the other members of KKJJ, Ridgeland, and RFREINV, but could not obtain the unconditional consent of Sharon Estates's general partner.

¶ 9 The only issues at trial that are relevant to this appeal relate to KKJJ and Sharon Estates. The matter proceeded to a bench trial. Defendant testified that he believed that the time he entered the 2011 settlement agreement, his interest in KKJJ was worth between \$900,000 and \$1 million, and his interest in Sharon Estates was worth \$321,615. Defendant testified that he did not know how much his interests in KKJJ and Sharon Estates were worth in October 2014. He testified that the anchor tenant at KKJJ's strip mall in Antioch left in 2013, that the space

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<sup>3</sup>Defendant does not raise any *res judicata* arguments on appeal.

remained empty, and that KKJJ's manager, defendant's ex-wife, failed to pay approximately \$12,000 in real estate taxes, resulting in a tax sale with a redemption date in 2019. Defendant stated that his 2011 estimates of the value of his interests, net of encumbrances, in the KKJJ (\$900,000 - \$1,000,000), Ridgeland (\$375,000), and Sharon Estates (\$325,000) were based on the 2009 property valuations used in his divorce, which he modified for 2011 based on market conditions. He testified that his ownership percentages in the real estate entities had not changed since 2011 and he had not received any distributions from the real estate entities after October 15, 2014.

¶ 10 Robert Lee, the general partner of Sharon Estates, testified that prior to plaintiffs' complaint, he offered to consent to defendant's transfer of his interest if plaintiffs agreed to sign a partnership agreement, but plaintiffs never responded to his offer. Lee testified that he received a \$600,000 appraisal for Sharon Estates's property, which was encumbered by a \$350,000 mortgage, making defendant's 30.46% equity interest worth approximately \$75,000. Lee was willing to pay \$50,000 for defendant's interest in Sharon Estates.

¶ 11 Defendant's expert real estate appraiser, Charles Argianas, testified that KKJJ's real estate was worth roughly \$3.5 million in October 2011, and roughly \$2.8 million in June 2017. He opined that the value of this property did not materially change between 2011 and 2017 except for the loss of a major tenant, which is reflected in his valuation opinion showing a 21.37% reduction in value during this period. Argianas did not value defendant's membership interest. He testified that Sharon Estates' real estate was worth \$610,000 in October 2011, and roughly \$590,000 in June 2017.

¶ 12 On July 20, 2017, the circuit court heard closing arguments, during which plaintiffs made it clear that they were no longer seeking specific performance with respect to defendant's

interests in KKJJ, since the delinquent property taxes had been sold, or in Sharon Estates, since defendant could not provide an unconditional consent from Lee. The circuit court made findings on the record and entered judgment in favor of plaintiffs. On count I of plaintiffs' complaint, the circuit court granted specific performance and ordered defendant to transfer his interests in RFREINV and Ridgeland to plaintiffs in equal shares. On count II, the circuit court awarded each plaintiff \$234,630, for a total of \$703,890, "as compensation for the non-performance of [defendant's] transfer of his interests in KKJJ." The damages award represents a valuation of defendant's interest in KKJJ's real estate at \$900,000 reduced by 21.79%, representing the loss in value attributed to the loss of the major tenant, as testified to by defendant's expert appraiser, between October 2011 and June 2017. The circuit court further awarded each plaintiff \$107,205, for a total of \$321,615, "as compensation for the non-performance of [defendant's] transfer of his interests in Sharon Estates." The damages award was based on defendant's admissions as to his valuation of his interest in KKJJ and Sharon Estates. Defendant's subsequent motion to reconsider was denied.

¶ 13 Plaintiffs filed a fee petition seeking attorney fees, costs, and prejudgment interest on the money judgment, and the circuit court took the petition under advisement. On December 6, 2017, defendant filed a petition for chapter 11 bankruptcy, triggering an automatic stay. On December 17, 2017, the circuit court, apparently unaware of the automatic stay, entered a final judgment order granting plaintiffs a total of \$47,037.40 in prejudgment interest on equitable grounds, and awarding Rezai and Heath attorney fees. The bankruptcy court lifted the automatic stay on January 24, 2018, in order to allow this matter to proceed. On January 31, 2018, the circuit court reentered a final judgment order incorporating by reference the December 17, 2017, order. Defendant filed a timely notice of appeal.

¶ 14

ANALYSIS

¶ 15 On appeal, defendant first argues that the settlement agreement provided plaintiffs with an exclusive remedy for specific performance in the event of defendant's failure to convey his interests in the real estate entities, and that the circuit court misconstrued the parties' settlement agreement and improperly allowed plaintiffs to seek money damages. Second, defendant argues that the circuit court could have and should have ordered specific performance with respect to defendant's interests in KKJJ. Third, and in the alternative to his first two arguments, defendant argues that the circuit court did not properly calculate damages. Finally, defendant argues that the circuit court improperly awarded prejudgment interest. We address these arguments in turn.

¶ 16 Defendant's first argument is that the parties' settlement agreement expressly and unambiguously provides that plaintiffs' sole and exclusive remedy for defendant's breach of paragraph 2 was for specific performance. We disagree.

¶ 17 A settlement agreement is a contract, the construction and enforcement of which are governed by principles of contract law. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 18. In construing a contract, the primary objective is to give effect to the intent of the parties. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). We first look to the plain language of the contract in order to ascertain the parties' intent. *Id.* We construe a contract as a whole and view each provision in light of the other provisions. *Id.* A contract provision is not ambiguous merely because the parties disagree as to what that provision means; the provision must be susceptible to more than one reasonable interpretation. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 22. It is well-settled that parties to a contract may agree to an exclusive remedy under the contract. *O'Shield v. Lakeside Bank*, 335 Ill. App. 3d 834, 839 (2002). A remedy provision "will be deemed exclusive if the contract



warrants this interpretation, even if the word ‘exclusive’ does not expressly appear within the contract.” *Id.* The interpretation of a contract is a question of law, and our review is *de novo*. *Avery v. State Farm Mutual Auto Insurance Co.*, 216 Ill. 2d 100, 129 (2005).

¶ 18 We conclude that the settlement agreement does not contain an exclusive remedy provision. Paragraph 2 provides that if defendant “fails to transfer his membership or ownership interests in [the real estate entities], [plaintiffs] *may* file an action, in accordance with the terms of paragraph 8 below, to obtain specific performance of [defendant’s] obligation to transfer his interests[.]” (Emphasis added.) Paragraph 8 provides that if defendant “fails to honor any of his obligations under this agreement, [plaintiffs], *may file an action seeking to enforce their rights* and [defendant’s] obligations under this agreement *including* seeking specific performance of [defendant’s] obligation to pledge and/or transfer his membership interests as described in paragraph 2 above.” (Emphases added.) The permissive and inclusive language used by the parties does not reflect an intent to limit plaintiffs’ remedy to specific performance, but instead provides that specific performance is one remedy available to plaintiffs in the event of defendant’s breach. Simply because the parties identified an available remedy in the event of the breach does not require a court to interpret the available remedy as an exclusive remedy.

¶ 19 Defendant argues that paragraph 8 expressly provides that plaintiffs may seek “a judgment for any amounts not paid in accordance with paragraphs 1 or 3,” but made no similar provision in the event that defendant breached his obligations in paragraph 2. He contends that we must apply the maxim of *expressio unius est exclusio alterius* to conclude that the parties did not contemplate a judgment for damages in the event of defendant’s breach of paragraph 2. But simply because the parties contemplated a damages judgment for the failure to pay specific sums under the agreement—for which money damages are the obvious remedy—does not require us to

read the permissive and inclusive language in paragraph 8 as creating an exclusive remedy of specific performance for defendant's breach of his obligation to transfer his interests in the real estate entities with the required consents of the other members of the real estate entities.

¶ 20 Our view is bolstered by the authorities that defendant relies on in support his arguments. In *Hicks v. Airborne Express, Inc.*, 367 Ill. App. 3d 1005 (2006), the plaintiff purchased an express shipment envelope from the defendant to ship a package. The defendant guaranteed that shipment would arrive on time or the defendant "will give you another \*\*\* express envelope free of charge." *Id.* at 1006. The plaintiff's package did not arrive on time, and the plaintiff sued, seeking the difference in value between the express service requested and the nonexpress service received. *Id.* We concluded that the contract "clearly provides that the replacement of the [express] envelope was [the plaintiff's] exclusive remedy if [the defendant] breached the contract by failing to deliver the package by noon the next day." *Id.* at 1011. The contract in *Hicks* clearly set forth the plaintiff's only remedy in the event of the defendant's breach, whereas here, the settlement agreement merely identifies an available remedy.

¶ 21 In *Intrastate Piping & Controls, Inc. v. Robert-James Sales, Inc.*, 315 Ill. App. 3d 248 (2000), the plaintiff placed an order for pipe with the defendant Robert-James Sales, Inc. (Robert-James), which in turn purchased pipe from the defendant Bristol Metals, Inc. The plaintiff sued the defendants when the pipe it received began leaking, and sought over \$200,000 in labor costs it incurred to replace the leaky pipes. *Id.* at 252. Robert-James's terms and conditions provided that it would not be liable for consequential, incidental, indirect, or contingent damages, and Bristol Metals's terms and conditions provided that "if material is defective, the limit of damage is the price of the defective material." *Id.* at 256-57. We concluded that the plaintiff's exclusive remedy was the price of the defective material. *Id.* at 257. Like the

contract in *Hicks*, the plaintiff's exclusive remedy was clearly articulated in the parties' agreement and thus was the plaintiff's only remedy.

¶ 22 Here, unlike the contracts in *Hicks* and *Intrastate Piping*, the settlement agreement did not expressly limit plaintiffs' remedies. Instead, the settlement agreement specified an available remedy that was not to the exclusion of all other available remedies. We conclude based on the plain language of the settlement agreement here that the parties did not agree on an exclusive remedy in the event of defendant's breach of paragraph 2.

¶ 23 Next, defendant argues that the circuit court could have ordered specific performance of defendant's promise to transfer his interest in KKJJ. He argues that, at the time of trial, his interest in KKJJ was the same as it was in 2011 and that the circuit court erred by finding that the unpaid taxes on KKJJ's real estate rendered specific performance impractical. We note that defendant does not raise any argument regarding the circuit court's refusal to order specific performance with respect to Sharon Estates. We find that because plaintiffs were not limited to seeking specific performance, the circuit court had the discretion to fashion an appropriate remedy based on the particular circumstances of this case, and did not abuse that discretion in awarding plaintiffs damages instead of ordering specific performance.

¶ 24 "Specific performance is an equitable remedy and is a matter of sound judicial discretion controlled by established principles of equity and exercised upon a consideration of all the facts and circumstances of a particular case." *Omni Partners v. Down*, 246 Ill. App. 3d 57, 62 (1993). The circuit court should balance the equities between the parties when determining whether to exercise its equitable powers, and "may refuse to grant specific performance where the remedy would cause a peculiar hardship or inequitable result." *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 477 (2004). The circuit court's decision to deny specific performance will not

be disturbed absent an abuse of discretion. *Id.* The circuit court abuses its discretion only if it acts arbitrarily without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law, or if no reasonable person would take the position adopted by the circuit court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 25 We find no abuse of the circuit court’s discretion. Defendant’s argument amounts to little more than a claim that the circuit court should have done something that it had the discretion to not do. With respect to KKJJ’s property in Antioch, it was undisputed that the unpaid taxes had been sold at a tax sale to a third party and that, while the redemption period for those taxes was still open, no redemption had been made. Thus, defendant’s first contention—that his interest in KKJJ was the same as it was in 2011—overlooks the fact that KKJJ’s property was, at the time of trial, subject to an encumbrance that arose after the settlement agreement. To compel specific performance would not have put plaintiffs in the same position that they would have been in had defendant performed under the contract. Instead, the practical effect of ordering specific performance would have been to put plaintiffs in a position in which they would immediately be required to pay some or all of the redemption price in order to keep the property or risk losing it. After hearing closing arguments, the circuit court specifically considered defendant’s failure to do anything regarding the unpaid taxes, stating “it was within [defendant’s] power to get [KKJJ’s property] in shape that [*sic*] he could tender it and I would have awarded specific performance. He chose not to do it.” It is evident that the circuit court considered the equities and determined that ordering specific performance would be inequitable under the circumstances. In urging this court to reach a different result, defendant is essentially arguing that if he failed to pay \$1.8 million by October 15, 2014, plaintiffs would be left with an exclusive remedy for specific performance, regardless of whether the real estate had additional encumbrances, which defendant

specifically agreed not to allow, and regardless of whether plaintiffs would obtain the benefits of the actual bargain. But if defendant breached his obligations to “not further encumber his interests” in the property without plaintiffs’ consent, and was therefore not capable of transferring his unencumbered interests in the real estate entities as promised, plaintiffs would be left with no remedy at all. The evidence supports the circuit court finding that the equities did not weigh in favor of ordering specific performance. The circuit court therefore did not abuse its discretion by refusing to order specific performance with respect to defendant’s interest in KKJJ.

¶ 26 Defendant next argues that the circuit court erred in calculating damages with respect to both KKJJ and Sharon Estates. He contends that the circuit court’s judgment amounts were against the manifest weight of the evidence because plaintiffs failed to adduce any competent evidence at trial to establish with any certainty the value of the properties in October 2014. He argues that plaintiffs presented no expert valuations or appraisals of the properties and offered “no admissible evidence as to those values.” Defendant contends that Lee’s testimony that he would pay \$50,000 for defendant’s interest in Sharon Estates was the best evidence of the value of defendant’s interest in Sharon Estates, and that defendant’s interest in KKJJ was only worth \$357,720, which represents defendant’s 44% interest in the equity of KKJJ’s property in June 2017 as valued by Argianas (\$2.76 million) minus the total existing mortgages on the property (\$1,947,000). Defendant argues that the circuit court improperly relied on defendant’s own 2011 valuations of his interests in the real estate entities—which defendant now calls “inadmissible and irrelevant”—because at trial, defendant testified that he had no idea what the value of the properties were in October 2014, and he merely testified that the best information that he had about the value of the properties in October 2014 were his 2011 valuations. He contends that he had no foundation from which to offer opinions as to the value of the properties in October 2014.

¶ 27 We review a circuit court’s damages award following a bench trial under the manifest weight of the evidence standard. *Chicago’s Pizza, Inc. v. Chicago’s Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). An award of damages is not against the manifest weight of the evidence or manifestly erroneous if there is an adequate basis in the record to support the circuit court’s determination of damages. *Schatz v. Abbott Laboratories, Inc.*, 51 Ill. 2d 143, 147 (1972); *Aetna Insurance Co. v. Amelio Brothers Meat Co.*, 182 Ill. App. 3d 863, 865 (1989).

¶ 28 We conclude that the circuit court’s damages award is not manifestly erroneous. At trial, defendant testified that he valued his interests in the real estate entities set forth in the settlement agreement at \$2,469,000 based on his pro rata, unencumbered share of the real estate owned by those entities. He testified that he reached those valuations after consulting with “real estate individuals” and professionals, and that he “did no further estimates of the valuation of [his] interests.” Of the roughly \$2.4 million valuation, defendant testified at trial that he attributed between \$900,000 and \$1 million to equity in KKJJ’s property. At the time of trial, the best information that he had was that his equity interest as of October 15, 2014, was worth between \$900,000 and \$1 million, although he had “no idea” what the actual value was as of October 15, 2014. The best information that defendant had of the valuation of his interest in Sharon Estates as of October 15, 2014, was still \$350,000, although he testified that he had “no idea” what the actual value was as of October 15, 2014. The circuit court relied on defendant’s own valuation of his interests in KKJJ and Sharon Estates—reached after consulting with “real estate individuals” and professionals—that were used to entice plaintiffs into accepting the settlement agreement. This was a proper measure of contract damages, as it was designed to put plaintiffs in the position they would have been in had defendant performed under the settlement agreement. See *InsureOne Independent Insurance Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385, ¶ 82

(observing that the proper measure of damages for a breach of contract is the amount of money necessary to place the plaintiff in a position as if the contract had been performed). Plaintiff testified that the best information that he had as to the value of his interests in KKJJ and Sharon Estates in 2014 was the values he ascribed to those interests in 2011. And while defendant offered Argianas's testimony as to the value of the real estate owned by those interests in 2011 and 2017, Argianas offered no testimony as to the value of those properties as of 2014, when defendant failed to convey his interests in KKJJ and Sharon Estates. Plaintiffs were content to accept the valuations testified to by defendant and chose not to contest those valuations. Defendant's testimony concerning his valuations constitutes an admission, and his statements were admissible as statements by a party opponent. Ill. R. Evid. 801(a) (eff. Oct. 15, 2015). "When they are relevant to, and have a material bearing on, the issues in the case, admissions are ordinarily admissible as original or substantive evidence of the truth of the statements made or of the existence of any facts which they have a tendency to establish." *Security Savings & Loan Ass'n v. Commissioner of Savings & Loan Ass'ns*, 77 Ill. App. 3d 606, 610 (1979). Defendant was free to present other competent evidence to lower the value of the interests at issue and failed to do so. We therefore find that the circuit court's calculation of damages was reasonably based upon the evidence presented.

¶ 29 We also reject defendant's contention that Lee's \$50,000 offer to buy defendant's interest in Sharon Estates was the best evidence of the fair market value of defendant's interest, and that the damages award for Sharon Estates should be reduced to \$50,000. Defendant cites no authority suggesting that the circuit court was obligated to accept Lee's offer as the best measure of the value of defendant's interest in Sharon Estates in 2014, particularly where defendant

himself represented in the settlement agreement that his interest was worth over six times that amount.

¶ 30 Defendant further contends that the circuit court erred by reducing the value of his interest in KKJJ by roughly 22%, which represented the difference in value of KKJJ's real estate between October 2011 and June 2017. Defendant argues that the decline in value was based on the overall value of the KKJJ property without regard to the mortgages encumbering the property. He argues that the equity value of the property declined 48% over the same period, from \$1,563,000 to \$813,000. Defendant, however, fails to cite to the record in any manner to support this argument, or to show that it was advanced in the circuit court. We decline to consider defendant's argument, as he has not demonstrated that it was ever raised in the circuit court.

¶ 31 In sum, we find that the circuit court's damages award was not against the manifest weight of the evidence.

¶ 32 Defendant's final argument is that the circuit court erred in awarding plaintiffs prejudgment interest on equitable grounds. He argues that he had a "good faith justification" for not complying with the settlement agreement because he spent "considerable time" attempting to obtain the necessary consents to transfer his interests in the real estate entities, he was "hamstrung by the refusal of others" to execute the necessary consents, and he "had to juggle the desires \*\*\* of the three [p]laintiffs and several third-party co-owners." We reject defendant's contentions.

¶ 33 "Prejudgment interest is proper when authorized by statute, agreement of the parties or warranted by equitable considerations." *Tully v. McLean*, 409 Ill. App. 3d 659, 684-85 (2011). Here, the circuit court concluded that equitable considerations favored imposing prejudgment



interest. The determination of whether equitable circumstances support an award of interest lies within the discretion of the circuit court. *Id.* at 685 (citing *In re Estate of Wernick*, 127 Ill. 2d 61, 87 (1989)). “We will not disturb such a determination barring an abuse of that discretion.” *Id.*

¶ 34 Here, the circuit court made the following findings of fact:

“[Defendant] provided no good faith reason for his noncompliance [with the settlement agreement]. Moreover his testimony demonstrated his thorough understanding of his holdings, the agreement’s structure, and financial matters generally. In stark contrast with the plaintiffs, he possess[es] considerable acumen and savvy. Additionally, he could easily have prevented the circumstances that made specific performance impossible or inequitable. Based on the foregoing, an inference arises that he intentionally failed to comply with the agreement and deliberately sabotaged plaintiffs’ ability to obtain the memberships as promised. Equitable considerations strongly favor taxing interest.”

¶ 35 Defendant does not quarrel with any of the circuit court’s findings, nor does he assert that those findings were manifestly erroneous. Instead, he essentially asks this court to reweigh the evidence in order to reach a different result, which we will not do. The circuit court was well within its discretion to impose prejudgment interest based on its findings that defendant’s failure to comply with the settlement agreement was of his own making, resulting in plaintiffs being deprived of the benefits of the settlement agreement for over three years. We find no abuse of the circuit court’s discretion. The circuit court’s imposition of prejudgment interest is affirmed.

¶ 36 Finally, plaintiffs request that we remand this matter to the circuit court to allow them to pursue additional attorney fees and costs incurred in the defense of this appeal, as provided for under the settlement agreement. Defendant has not responded to plaintiffs’ request. Because the

settlement agreement provides that plaintiffs are entitled to reasonable attorney fees and costs expended in enforcing their rights under the agreement, we remand this matter to the circuit court for the limited purpose of allowing plaintiffs to petition for additional attorney fees and costs incurred in defense of this appeal.

¶ 37

#### CONCLUSION

¶ 38 For the foregoing reasons, the judgment of the circuit court is affirmed, and we remand for further proceedings consistent with this order.

¶ 39 Affirmed; remanded.