

No. 1-17-0451

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS <i>ex rel.</i>)	
THE ILLINOIS DEPARTMENT OF CHILDREN)	Appeal from the
AND FAMILY SERVICES, THE ILLINOIS)	Circuit Court of
DEPARTMENT OF COMMERCE AND)	Cook County.
ECONOMIC OPPORTUNITY, THE ILLINOIS)	
CRIMINAL JUSTICE INFORMATION)	
AUTHORITY, THE ILLINOIS DEPARTMENT)	
OF PUBLIC HEALTH, THE ILLINOIS)	No. 13 L 13930
DEPARTMENT OF HUMAN SERVICES,)	
and THE ILLINOIS DEPARTMENT OF)	
EMPLOYMENT SECURITY,)	
)	
Plaintiff-Appellee,)	Honorable
)	John C. Griffin,
v.)	Judge Presiding.
)	
DBCC ORGANIZATION, GEORGE SMITH,)	
DIVERSIFIED BEHAVIOR SERVICES, INC.,)	
MANAGEMENT PLANNING INSTITUTE, INC.,)	
THE INSTITUTE FOR POSITIVE CHILD AND)	
FAMILY DEVELOPMENT, INC., and ED'S)	
INVESTMENT MANAGEMENT-REAL)	
STATE, INC.,)	
)	
Defendants-Appellants.)	

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Gordon concurred in the judgment.

ORDER

Held: We affirm the circuit court's order granting the State's motion for summary judgment. The State presented sufficient, un rebutted evidence to affirmatively establish that (1) the corporate veil of the defendant corporations should be pierced and (2) the State was entitled to a judgment in the amount of \$8,774,174.39.

¶ 1 Defendants George Smith (Smith), DBCC Organization (DBCC), Diversified Behavior Services, Inc. (DBS), Management Planning Institute, Inc. (MPI), The Institute for Positive Child and Family Development, Inc. (IPCFD), and Ed's Investment Management-Real Estate, Inc. (EIM-RE), appeal following entry of summary judgment against them in the amount of \$8,744,174.39. On appeal, defendants contend that the circuit court erred in (1) determining that the corporate veil should be pierced because defendants failed to observe corporate formalities, and (2) erred in determining the amount of the judgment entered against them. Defendants contend that they presented sufficient evidence to show that material questions of fact existed as to both issues, such that summary judgment was improper. We affirm.

¶ 2

I. BACKGROUND

¶ 3 On December 9, 2013, the State¹ filed a verified complaint against defendants in the circuit court of Cook County for the return of public monies pursuant to the Illinois Grant Funds Recovery Act (the Act) (30 ILCS 705/1 *et seq.* (West 2012)).² The State alleged that between 2005 and 2012, the State Agencies awarded to DBCC over \$18 million dollars in grant contracts

¹ The Illinois Attorney General instituted suit on behalf of the Illinois Department of Children and Family Services (DCFS), the Illinois Department of Commerce and Economic Opportunity (DCEO), the Illinois Criminal Justice Information Authority (CJIA) as successor in interest to the Illinois Violence Prevention Authority (VPA), the Illinois Department of Public Health (DPH), the Illinois Department of Human Services (DHS), and the Illinois Department of Employment Security (DES) (hereinafter collectively referred to as the State Agencies).

² Under the Act, "[a]ny grant funds which have been misspent or are being improperly held are subject to recovery by the grantor agency which made the grant or alternatively by the Attorney General." 30 ILCS 705/6 (West 2012). Moreover, "[e]ach grantee is under an affirmative duty to keep proper, complete and accurate accounting records of all grant funds the grantee administers." 30 ILCS 705/11 (West 2012). Failure to keep proper books and records gives rise to a presumption of recovery in favor of the State. 30 ILCS 500/20-65(c) (West 2012).

to provide services to at-risk youth and families. Based on investigations and audits by various state agencies into DBCC's conduct and use of the grant funds, the State alleged that defendants had improperly received over \$8 million in unduplicated, disallowed, and recoverable program grant awards and that defendants failed to comply with applicable state law, agency rules, and the provisions of the grant contracts. According to the complaint, Smith essentially used the corporate defendants as alter egos to misappropriate public funds as he was their president and chief executive officer (CEO). The State alleged that, through Smith, defendants commingled funds; made undocumented and unauthorized loans to one another; paid for improper and undocumented fees, services, and goods; failed to maintain required records of financial and programmatic compliance; and DBCC's board of directors failed to exercise independent oversight. As such, the State argued that the corporate veil of the defendant corporations should be pierced and defendants should be jointly and severally liable.

¶ 4 The State alleged that the State Agencies took steps to cancel contracts and obtain reimbursement from DBCC, but their efforts were stayed for a time due to DBCC filing for bankruptcy. The bankruptcy stay was subsequently lifted, enabling the State to commence this lawsuit.

¶ 5 Accordingly, in count I, the complaint alleged that DCFS awarded 35 contracts to DBCC between July 1, 2005, and June 30, 2011, totaling approximately \$15,854,554, to provide administrative and support services to various DCFS programs and centers. In 2010 and 2011, the DCFS Office of Internal Audits (DCFS-OIA), the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG), and the DCFS Office of the Inspector General (DCFS-OIG), commenced investigations and audits of these contracts. Ultimately, DCFS sought

recovery of \$8,195,274 from defendants for programs activities, costs, and services, which were unsupported, unauthorized, and not allowable under the contracts and applicable regulations.

¶ 6 In count II, the State sought recovery of \$138,901 on behalf of DHS for funds DBCC improperly received under a grant contract DBCC entered into with DHS's Division of Alcohol and Substance Abuse (DHS-DASA), alleging that DBCC made false statements in the documents that it submitted to DHS-DASA for reimbursement. In count III, the State sought recovery for CJIA, as successor in interest to VPA, of \$71,130 that DBCC was liable to return due to lack of support for DBCC's claimed costs and fees. In count IV, the State sought recovery for DPH of a \$250,000 judgment entered against DBCC for misappropriating grant funds where DBCC submitted duplicate invoices to DPH and the Illinois Department of Healthcare and Family Services (DHFS) for the same HIV- and AIDS-related education and services.³ In count V, the State sought recovery for DCEO of a \$93,767.67 judgment entered against DBCC where DBCC failed to provide supporting documentation or provided conflicting documentation concerning use of grant funds to provide education and mental health services to Chicago youth.⁴ Lastly, in count VI, the State sought recovery on behalf of DES for \$42,046.05 in unpaid unemployment taxes, penalties, and interest for the first three quarters of 2012.

¶ 7 The State filed a motion for entry of a default judgment against all defendants. Ultimately, Smith filed an answer on September 24, 2014, and the corporate defendants filed a joint answer on October 24, 2014. The parties engaged in discovery.

¶ 8 On November 12, 2015, the State filed a motion for summary judgment under section 2-1005(c) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1005(c) (West 2014)). The State argued that summary judgment was appropriate because the evidence showed that under

³ *People ex rel. IDPH v. DBCC Org.*, No. 2012 L 001926

⁴ *Illinois ex rel. IDCEO v. DBCC Org.*, No. 11 L 7314.

the Act, the State Agencies were entitled to recover a total of \$8,774,174.39 in misappropriated funds related to grant contracts with DBCC. The State contended that the evidence from the audits and discovery showed Smith funneled DBCC grant funds to his for-profit entities and himself. The State asserted that the corporate form of the defendant corporations should be disregarded because Smith used the defendant corporations as “alter egos,” comingled funds, failed to observe corporate formalities, failed to have a functioning board of directors, and failed to maintain arm’s length relationships.

¶ 9 With its motion, the State filed a “statement of uncontroverted material facts in support of motion for summary judgment” (statement of facts). The State also attached several exhibits upon which the statement of facts was based, including six affidavits, each of which also included numerous attached exhibits.⁵ The State provided an index of exhibits listing each affidavit and their attached exhibits. The affidavits were from (1) Denise Caldwell, DCFS Acting Chief Internal Auditor who participated in the DCFS audit and who attached 12 exhibits, including the final audit report by DCFS; (2) paralegal John DiDomenico of the Office of the Illinois Attorney General, who attached 63 exhibits; (3) Joanna Sharp, Ethics Counsel and Complex Investigations Specialist for DCFS-OIG who participated in the DCFS-OIG investigation and attached 29 exhibits; (4) Kevin King, volunteer with 100 Black Men of Chicago; (5) Carl Pearson, president of PRC Learning Center; (6) Reshma Desai, Special Projects Program Advisor for CJIA. The exhibits attached to the affidavits included the DCFS’s final audit report regarding DBCC; DBCC’s corporate documents such as bylaws and articles of incorporation, meeting minutes, tax documents, and corporate/nonprofit annual reports filed with the state; the contracts between defendants and the State Agencies; payroll reports;

⁵ As the parties on appeal observe, these affidavits and exhibits were not included in the record on appeal. We therefore summarize the evidence presented in support of the State’s motion for summary judgment based on the State’s detailed statement of facts filed with its motion.

interrogatories and requests for admissions; numerous bank and credit card statements of defendants; general ledger account lists from various defendant corporations, tax forms for Smith and Carolyn Sain (an individual employed by DBCC); Smith's deposition; timesheets; numerous documents that defendant submitted as required by the grant contracts or DCFS regulations (such as DHS-DASA grant expenditure confirmation reports and client verification sheets submitted by DBCC to DHS); articles of incorporation for DBS; documents filed in the DBCC bankruptcy proceeding; copies of the final judgments and complaints in the other cases against DBCC; a proof of claim by DES filed in the bankruptcy case; and invoices submitted by DBCC to DCFS, ISBE, and DPH.

¶ 10 In its statement of facts, the State asserted that in 2011, DCFS-OIA investigation audit selected 1,223 representative DBCC programmatic and financial transactions from a total of 8,818 transactions that occurred during the audit period, although the audit later added additional transactions as additional problems were identified. Sharp participated in the DCFS-OIG investigation as Ethics Counsel and Complex Investigations Specialist. The auditors reviewed the transactions to determine whether they complied with DCFS regulations, state law, and the grant contracts' provisions. The DCFS final audit report found that DBCC was obligated to return to DCFS \$8,195,273.55 in unduplicated, disallowed costs.

¶ 11 With respect to the DHS-DASA claim, the State set forth in its statement of facts examples of Smith's false statements and misrepresentations to obtain grant funds. For example, the State indicated that DBCC reported that King, on behalf of an organization called 100 Black Men of Chicago, provided drug and substance abuse training on various dates in February, March, April, and May of 2009. However, King averred in his affidavit that he was never a DBCC consultant, he did not sign the verification sheets submitted by Smith, and neither King

nor 100 Black Men of Chicago provided any programming on several of the dates identified in the verification sheets. Similarly, Smith submitted client service verification sheets purportedly signed by Pearson, president of PRC Learning Center, but Pearson averred in his affidavit that he did not teach any of the classes that were purportedly provided by DBCC through PRC Learning Center, and PRC Learning Center's own daily sign-in sheets for the same period reflect different services times and different numbers of clients. Additionally, the State argued that the affidavits of Sharp and DiDomenico and the deposition of Sain showed that Smith submitted client services verification sheets signed by Sain as a "consultant" on behalf of the Alliance for Community Peace, but Sain was employed by DBCC in the fiscal operations area and never worked with DBCC clients in that capacity.

¶ 12 Concerning the CJIA claim, the State contended that its evidence established that DBCC and Smith failed to support the claimed costs and fees and failed to return unspent grant funds it received in March 2011 for a counseling program. The State asserted that there were several errors in DBCC's final close out report, which was signed by Smith. The State also presented the two judgments that entered against DBCC in different cases, one for DPH and one for DCEO; DBCC never appealed those judgments. Finally, the State provided DES's proof of claim from the bankruptcy proceeding in asserting that DBCC failed to make unemployment insurance contributions

¶ 13 After the State filed the motion for summary judgment, Smith was charged in federal court in March 2016 with two counts of mail fraud and one count of money laundering in connection with his and the corporate defendants' use of grant funds from DCFS, DHS-DASA, and the Illinois State Board of Education (ISBE). The charges alleged that Smith defrauded these agencies to obtain money under false pretenses, he induced DCFS and ISBE to issue two

separate grants totaling \$450,000 and \$342,500, respectively, for identical services, he converted the funds for his personal use, he submitted false documentation to DHS regarding the services that DBCC provided under the DHS-DASA contract, and this caused DHS to pay DBCC \$138,901. Smith pleaded guilty to the three charges and he was sentenced to two years' imprisonment and three years of supervised release. He was ordered to pay restitution in the amount of \$480,901 (\$138,901 to DHS-DASA and \$342,000 to ISBE).

¶ 14 Defendants filed a combined response to the State's motion for summary judgment on November 7, 2016. Smith invoked the Fifth Amendment⁶ regarding factual allegations not covered by the federal charges. Defendants asserted that piercing the corporate veil was not appropriate because DBCC observed corporate formalities as it had articles of incorporation and bylaws and its board of directors met several times a year and set policies and rules; DBCC had corporate documents such as formal job descriptions and a policy manual; and it had employees, such as an executive director, office manager, and accountant. Defendants observed that the State issued subpoenas for depositions of eight individuals besides Smith who had significant roles in DBCC as board members or employees (Carol Coleman, Diane Grant, Pleschette Hamb, Frank Page, Regina Perry, Erika Robinson, Charles Smith, and Sain). In addition, defendants argued that piercing the corporate veil would promote an injustice because the State did not allege and could not show that Smith personally possessed \$8 million, and because DBCC did, in fact, provide services.

¶ 15 With respect to the amount of the judgment requested by the State, defendants asserted that "DBCC does not contest that it may owe *some* money to the State. In fact, Dr. Smith already acknowledged in his criminal case that he owes some money to the State in connection with

⁶ U.S. Const., amend. V.

DBCC. The *material* issue is the amount of money owed.” (Emphasis in original.) Defendants argued that it should be reduced by the \$480,901 in restitution Smith was ordered to pay in his federal criminal case. Defendants argued that the State failed supply an “independent” audit to verify the claimed amount and Smith denied that he ever personally received this amount.

¶ 16 In support, defendants cited exhibits that were attached to the State’s motion, such as DBCC’s bylaws and articles of incorporation, meeting minutes, job descriptions, and policy manual. Defendants also attached as exhibits the federal charges against Smith, the electronic PACER case docket printout of his federal case, the deposition subpoenas submitted by the State for the depositions of several DBCC employees or officers, and a declaration by Smith.

¶ 17 In Smith’s declaration, he avers that DBCC had “several employees who performed high-level and decision-making functions.” In particular, Smith averred that Hamb was the Executive Director of DBCC and she was responsible for daily operations of DBCC’s offices in Chicago, Springfield, Champaign, and Bloomington, for such things as payroll, contract compliance, and staff issues; Grant was the office manager of DBCC and responsible for personnel matters and clerical issues at one of DBCC’s Chicago offices, and Coleman was DBCC’s accountant. Smith further averred that DBCC’s board of directors met several times per year and set “policies, rules, and regulations for DBCC.” Smith averred that DBCC was a non-profit which contracted with DCFS to provide counseling, outreach, and advocacy, while his other for-profit entities previously contracted with public agencies to provides services, but currently provided services to private individuals, and EIM-RE was a real estate investment company from which DBCC rented office space. Smith further averred:

“15. The ‘Revised Recoverable Costs’ were not, upon information and belief, verified by an independent auditor.

16. Thus, I have no information to admit or deny the accuracy of the \$8,195,273.55 referred to by Plaintiff and, I therefore, deny the accuracy of that number.

17. Moreover, at no time did I personally receive or obtain \$8,195,273.55.

18. Plaintiff has my personal bank statements, or could have obtained my personal bank statements, to establish that I personally received \$8,195,273.55, or any figure close to that amount, and Plaintiff has not done so, and for good reason, because I never personally received that type of money.”

¶ 18 In the State’s reply brief, it argued that Smith’s assertions were vague, irrelevant, unsupported, and failed to contradict affirmative evidence; that defendants failed to provide any affirmative counter-evidence or affidavits; and that any “independent” audit was not required. The State agreed that count II of its complaint was based on the same grant and underlying misconduct by Smith and DBCC that was outlined in Smith’s federal criminal case involving DHS-DASA where he was ordered to pay restitution of \$138,901, and therefore recovery by the State would be duplicative. However, the State argued that defendants should not receive a reduction for the \$342,000 in restitution that the federal court order Smith to pay to ISBE because Smith was simultaneously billing DCFS, ISBE, and the Chicago Board of Education for the same services and DCFS has not been made whole by the federal court’s restitution order. The State argued that in all other respects, recovery would not be duplicative.⁷

⁷ We note that the second to last page of the State’s reply was omitted from the lower court record, and we therefore do not know all that the State asserted in its response regarding the allegation that recovery was duplicative.

¶ 19 On January 20, 2017, the circuit court granted plaintiff’s motion for summary judgment and entered judgment against defendants in the total amount of \$8,774,174.39.⁸ In its written order, the circuit court found sufficient grounds to pierce the corporate veil as the evidence showed there was a unity of interest among defendants. In support, the circuit court observed that Smith held signature authority over the bank accounts of all the corporate defendants; Smith used the corporate defendants “to issue cash disbursements that he had paid to himself, either directly or through various Affiliated Entities”; that “DBCC’s Board failed to ensure that DBCC adhered to the purposes and goals for which it was incorporated, and failed to exercise the independent and effective oversight that is required by principles of sound corporate governance, DBCC’s own by-laws, and DCFS rules”; and that DBCC failed to properly oversee the expenditure of funds, comply with administrative regulations, and adhere to the provisions of the grant contracts. The court found this showed that defendants comingled funds, failed to have functioning corporate officers and directors, failed to observe corporate formalities, and failed to maintain arms-length relationships.

¶ 20 The circuit court determined that defendants failed to provide any contradictory evidence or counteraffidavits. The court held that Smith’s affidavit did not set forth any facts specifically contesting the State’s evidence, and defendants’ contention that the corporations had articles of incorporation, bylaws, other corporate documents, and multiple employees was insufficient to counter the State’s evidence and affidavits. Additionally, the circuit court found a “compelling

⁸ We observe that the State filed a motion to strike Smith’s declaration on grounds that he improperly invoked the Fifth Amendment because he voluntarily waived any privilege by providing his affidavit, and he cannot invoke the Fifth Amendment in his corporate capacity. In its summary judgment order, the court held that it was unnecessary to strike Smith’s declaration because the declaration “provides no facts specifically contesting Plaintiff’s factual assertions.” The circuit court held that defendants could not invoke the Fifth Amendment because the privilege does not apply to or on behalf of corporations.

public interest” was involved, that is, the misuse of State funds intended to provide mental health services to at-risk children and families in Illinois.

¶ 21 The circuit court further determined that defendants had also failed to establish a genuine issue of material fact existed as to the amount of recovery the State sought. The court observed that defendants stated:

“DBCC does not contest that it may owe *some* money to the State. In fact, Dr. Smith already acknowledged in his criminal case that he owes some money to the State in connection with DBCC. The *material* issue is the amount of money owed.”

¶ 22 The circuit court held that the State provided “detailed affidavits calculating the claimed funds Plaintiff may recover from Defendants,” but defendants failed to provide any affidavits or other evidence contradicting these amounts. The court observed that although Smith asserted that he did not “personally receive or obtain” this amount, he failed to show under the Act any provision that would limit recovery to what he personally received or obtained.

¶ 23 Defendants filed a timely appeal.

¶ 24 II. ANALYSIS

¶ 25 A. Record on Appeal

¶ 26 We first address the State’s contention that this appeal should be dismissed because defendants failed to provide a sufficiently complete record on appeal. The State argues that the record does not include the exhibits which were attached to its motion for summary judgment.

¶ 27 Defendants respond that they included in the record on appeal all documents that were part of the common law record, and that the record on appeal includes all relevant transcripts, motions, briefs, and orders. Defendants note that plaintiff’s motion for summary judgment

included an “index to exhibits,” and the index noted that a computer disc containing digital versions of the State’s exhibits was attached. Defendants assert that a disc of materials was either never filed in the circuit court or was inadvertently omitted. Defendants maintain that, regardless, the record contains sufficient information to review its arguments on appeal and the grant of summary judgment, but if this court finds the exhibits necessary, defendants should be granted leave to supplement the record.

¶ 28 “[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984). “Where it is alleged that the evidence presented was actually insufficient to support the court’s finding, the burden of preserving said evidence rests with the party who appeals from said order.” *Id.* at 394. Failure to include a portion of the record “does not require automatic dismissal or affirmance where issues can be resolved on the record as it stands.” (Internal quotation marks omitted.) *In re County Treasurer & ex officio County Collector of Kane County, Illinois*, 2018 IL App (2d) 170418, ¶ 23.

¶ 29 As stated, the common law record in the present case contains an extensive eleven-page “index of exhibits” attached to the State’s motion for summary judgment which lists all of the exhibits the State submitted in support of its motion. The index states that a “USB flash drive containing the exhibits cited therein” is attached. No USB flash drive was contained in the lower court record that this court received.

¶ 30 However, the record does contain the State’s statement of facts submitted with its motion, and in which the State extensively cites and discusses these exhibits. What is more, defendants do not dispute on appeal the authenticity or veracity of these numerous exhibits or the information contained therein. Rather, defendants maintain that the record is sufficient to allow review of their appeal. They also argue that their evidence was sufficient to rebut the State’s evidence and give rise to a triable issue of fact as to whether the corporate entities were operating as alter-egos of one another. Defendants cite Smith’s declaration, which is included in the record before this court. They also cite various corporate documents of DBCC, such as articles of incorporation, bylaws, meeting minutes, a handbook, and job descriptions. These documents were attached to the State’s motion as exhibits, and defendants did not attach them as their own exhibits in their response. There is no dispute about the existence of such corporate documents; their physical absence from the record on appeal is therefore irrelevant. Defendants also contend that Smith’s affidavit created a triable issue of fact regarding the amount of the judgment as he averred that he never personally received \$8,195,273.55. This does not specifically contradict the State’s documentary evidence or the amount claimed by the State and ordered by the circuit court.

¶ 31 In light of the fact that arguments defendants raise on appeal do not directly dispute the missing documentary evidence submitted by the State in support of its motion, and considering the record available, we find the record is sufficient to permit review of defendants’ arguments on appeal. To the extent any doubts arise from the incompleteness of the record, we resolve them against defendants, and we will presume the circuit court’s order was in conformity with the law and was properly supported by the evidence. *Foutch*, 99 Ill. 2d at 391-92.

¶ 32

B. Summary Judgment

¶ 33

We now address defendants' argument that the circuit court erred in granting summary judgment in favor of the State.

¶ 34

“Summary judgment is appropriate when ‘the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ ” *Shapich v. CIBC Bank USA*, 2018 IL App (1st) 172601, ¶ 15 (quoting 720 ILCS 5/2-1005(c) (West 2016)). “We review the trial court’s grant of summary judgment *de novo*, construing the record strictly against the movant and liberally in favor of the nonmoving party.” *Jordan v. The Kroger Co.*, 2018 IL App (1st) 180582, ¶ 17. “Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt.” *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). “The party moving for summary judgment bears the initial burden of proof.” *Rico Industries, Inc. v. TLC Group, Inc.*, 2018 IL App (1st) 172279, ¶ 44. “The movant may meet his burden of proof either by affirmatively showing that some element of the case must be resolved in his favor or by establishing “that there is an absence of evidence to support the nonmoving party's case.” (Internal quotation marks omitted.) *Id.* “[I]f the plaintiff is the moving party, to satisfy the initial burden of production, the plaintiff must establish through its pleadings and supporting documents the validity of its factual position on all of the contested elements of the cause of action.” *Performance Food Group Co., LLC v. ARBA Care Ctr. of Bloomington, LLC*, 2017 IL App (3d) 160348, ¶ 18. Only if the movant “satisfies its initial burden of production does the burden shift to the [nonmovant] to present some factual basis that would arguably entitle them to a judgment under the applicable law.” *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 689 (2000). In ruling, we are not

bound by the trial court's reasoning and may affirm on any basis in the record. *Rico Industries*, 2018 IL App (1st) 172279, ¶ 44.

¶ 35 1. Piercing the Corporate Veil

¶ 36 “A corporation is an entity separate and distinct from its shareholders, directors, and officers. [Citation.] Indeed, the primary purpose of corporations is to insulate stockholders from unlimited liability.” *Buckley v. Abuzir*, 2014 IL App (1st) 130469, ¶ 12. “Piercing the corporate veil is not a cause of action but, rather, a means of imposing liability in an underlying cause of action.” *Id.* ¶ 9. “Piercing the corporate veil is a remedy that permits aggrieved plaintiffs to attach liability to the individual or entity that uses a corporation merely as an instrumentality to conduct that person's or entity's business.” (Internal quotation marks omitted.) *Steiner Electric Co. v. Maniscalco*, 2016 IL App (1st) 132023, ¶ 45. “[W]here the corporation is merely the alter ego or business conduit of the person responsible for damages, a court may disregard the corporate entity and pierce the corporate veil to impose liability on that person.” *Id.*

¶ 37 “Illinois courts will pierce the corporate veil ‘where: (1) there is such a unity of interest and ownership that the separate personalities of the corporation and the parties who compose it no longer exist, and (2) circumstances are such that adherence to the fiction of a separate corporation would promote injustice or inequitable circumstances.’ ” *Abuzir*, 2014 IL App (1st) 130469, ¶ 13 (quoting *Tower Investors, LLC, v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1033-34 (2007)). The party seeking to apply the doctrine “must make a substantial showing that one corporation is a dummy or sham for another.” *Id.* ¶ 12.

¶ 38 Initially, we observe that at oral argument, the parties discussed whether case law exists wherein a court has granted summary judgment in favor of a claim to pierce the corporate veil. We note that the court granted summary judgment to the plaintiff seeking to pierce the

defendant's corporate veil in *Federal Insurance Co. v. Maritime Shipping Agencies, Inc.*, 64 Ill. App. 3d 19, 22 (1990), *abrogated on other grounds by Harris v. Harris*, 196 Ill. App. 3d 815 (1990). There, the plaintiff obtained a default judgment against the defendant corporation and instituted supplementary proceedings to collect the judgment amount. The plaintiff moved for summary judgment, arguing that the supplementary defendants were the alter ego of the defendant based on the fact that the defendant was insolvent, the defendant had transferred its assets and money to one of the supplementary defendants, and that the two had the same shareholders, officers, directors, employees, and office space. *Id.* at 25. This court affirmed the grant of summary judgment on appeal, finding that the evidence showed the defendants were engaged in similar types of business; occupied the same office space; had the same or similar officers, directors, and shareholders; had the same signators on the defendants' accounts; and the defendant's employees and office furniture and supplies were transferred to the supplementary defendant. *Id.* at 30-31.

¶ 39

a. Unity of Interest

¶ 40

When evaluating the first prong, that is, whether there was a unity of interest, courts focus on several factors, including:

“ (1) inadequate capitalization; (2) failure to issue stock; (3) failure to observe corporate formalities; (4) nonpayment of dividends; (5) insolvency of the debtor corporation; (6) nonfunctioning of the other officers or directors; (7) absence of corporate records; (8) commingling of funds; (9) diversion of assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors; (10) failure to maintain arm's-length relationships among related entities; and (11) whether, in fact, the corporation is a mere

façade for the operation of the dominant stockholders.’ ” *Abuzir*, 2014 IL App (1st) 130469, ¶ 15 (quoting *Gass v. Anna Hospital Corp.*, 392 Ill. App. 3d 179, 186 (2009)).⁹

¶ 41 “The decision to disregard the corporate entity does not generally rest on a single factor but involves the consideration of many factors[.]” *Hills of Palos Condominium Association, Inc. v. I-Del, Inc.*, 255 Ill. App. 3d 448, 480 (1993). “When such variables are coupled with some element of injustice or fundamental unfairness,” the corporate form will be disregarded. *Ted Harrison Oil Company, Inc. v. Dokka*, 247 Ill. App. 3d 791, 795 (1993).

¶ 42 i. *Failure to Observe Corporate Formalities*

¶ 43 Courts “might pierce the corporate veil because of a ‘failure to observe corporate formalities.’” (Internal quotation marks omitted.) *Gillespie Community Unit School District No. 7, Macoupin County v. Union Pacific R. Co.*, 2015 IL App (4th) 140877, ¶ 146. The underlying reasons is that “ ‘incorporation [is] a privilege conferred by the State, rather than as an ordinary incident of doing business. Since the State, by statute, authorizes the creation of a corporation and, pursuant to the same statute, sets forth certain rules for its operation, observance of such rules is a condition precedent to the benefit of limited liability.’ ” *Id.* (quoting 7 Ill. Prac., *Business Organizations* § 8:17 (2d ed. 2015)).

¶ 44 It is undisputed that DBCC observed some corporate formalities, such as having bylaws and articles of incorporation. The State’s evidence, however, showed that Smith and DBCC failed to abide by the requirements of their contracts with the State Agencies and the requirements of DCFS regulations and the law, in the use of grant funds. The evidence showed

⁹ Piercing the corporate veil is an equitable remedy which may be applied to a nonprofit corporation despite the lack of shareholders. *Macaluso v. Jenkins*, 95 Ill. App. 3d 461, 465 (1981). As the circuit court observed, defendants identified DBCC as a nonprofit, while Smith identified DBS, MPI, IPCFD, and EIM-RE as for-profit entities.

that grant funds were used for unauthorized or unallowable expenses, that defendants failed to obtain prior DCFS approval for various expenses and payments to third parties (such as other defendant corporations or individuals), that Smith and DBCC double-billed State Agencies, that DBCC failed to control administrative costs within required limits, and that defendants commingled funds. The State's evidence also showed that DBCC failed to comply with DCFS rules and IRS guidelines relating to public charities regarding development of a conflict of interest policy and preventing a nonprofit's earnings from insuring to the benefit of another individual or entity. DBCC also failed to observe corporate formalities in that, although DBCC board held meetings, the board failed to exercise oversight over DBCC's and Smith's use of grant funds and other activities, and there were no resolutions passed by the board regarding payments to Smith or other entities.

¶ 45 *ii. Commingling of Funds*

¶ 46 The State's evidence showed that Smith, the president and CEO of the corporate defendants, opened bank accounts and credit card accounts for them and held signature authority over all of them. The evidence further established numerous related-party transactions between Smith, DBCC, and other corporate defendants for fees and expenses that were not allowed under the contract terms or DCFS regulations, or for which proper prior approval was not obtained. There were also loans and funds exchanged among the defendants and Smith, personally, without proper authorization or documentation.

¶ 47 *iii. Nonfunctioning of Officers and Directors*

¶ 48 The evidence showed that DBCC had a board of directors and that meeting minutes existed. However, the minutes were inadequate and failed to show that the board exercised any oversight over DBCC's financial and operational affairs. The evidence showed that Smith

essentially made all decisions for all defendants. When he failed to adhere to the nonprofit purposes for which DBCC existed, the board failed to exercise oversight over DBCC's compliance with DCFS regulations, the law, and the terms of the grant contracts.

¶ 49 *iv. Failure to Maintain Arm's Length Relationships*

¶ 50 In considering the failure to maintain arm's-length relationships among related entities, the primary question of concern is “ ‘whether the corporation [was] a mere facade for the operation of the dominant shareholder[].’ ” *Gillespie*, 2015 IL App (4th) 140877, ¶ 168 (quoting *Cosgrove Distributors, Inc. v. Haff*, 343 Ill. App. 3d 426, 429 (2003)). Defendants all shared the same address, fax number, and telephone number, which suggests a failure to abide by separate corporate forms. In addition, as stated, the State's evidence also showed that DBCC, via Smith, made payments from grant funds it received to Smith personally and to the defendant corporations without authorization or proper documentation.

¶ 51 *v. Inadequate Capitalization and Insolvency of DBCC*

¶ 52 Requiring adequate capitalization reflects Illinois' policy that “shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for the corporation's prospective liabilities, and moreover, that it is inequitable to allow shareholders to set up a flimsy organization just to escape personal liability.” *Bank of America v. WS Management, Inc.*, 2015 IL App (1st) 132551, ¶ 106. “A corporation's capitalization is a major consideration in deciding whether a legitimate separate corporate entity was maintained.” *Id.* “That the subsidiary is insolvent *can* be a sign that the subsidiary is a mere instrumentality of the parent if the parent's policy is to exploit the subsidiary into oblivion.” *Gillespie*, 2015 IL App (4th) 140877, ¶ 152.

¶ 53 Although the circuit court did not specifically address these two factors in its written opinion, we observe that the State’s evidence showed that DBCC filed for bankruptcy when the State Agencies began to cancel their contracts and attempted to obtain reimbursement from DBCC for misused grant funds, which supports that DBCC lacked adequate capitalization and was insolvent.

¶ 54 *vi. Failure to Issue Stock or Dividends*

¶ 55 “Another factor that routinely shows up in the list is the nonpayment of dividends, the implication apparently being that if the subsidiary has paid dividends, it is less likely to be a mere instrumentality of the parent.” *Gillespie*, 2015 IL App (4th) 140877, ¶ 149. However, this factor can be “a two-edged sword,” as the payment of dividends may show that the corporation was allowed to act in its own self-interest to make a profit, but hefty dividends mean those amounts are not then reinvested back into the corporation. *Id.* ¶ 150. In addition, the fact that a defendant is the sole or primary shareholder is “insufficient as a matter of law to pierce the corporate veil. There is no minimum number of stockholders for a valid corporate existence, and a corporation with only one shareholder is entirely permissible.” *Melko v. Dionisio*, 219 Ill. App. 3d 1048, 1063 (1991). “[T]hat a corporation is under the domination and control of a principal stockholder who is entitled to all the corporation's profits does not violate Illinois law or policy *Amsted Industries, Inc. v. Pollak Industries, Inc.*, 65 Ill. App. 3d 545, 549-50 (1978).

¶ 56 These factors were not specifically addressed by the parties or the circuit court. DBCC is a non-profit entity. Smith is the president and chief executive officer of DBCC and the other for-profit corporate defendants. While it was not surprising that Smith exercised control over the defendant organizations, the State’s allegations and evidence showed more than merely the exercise of control within the bounds of the law, *i.e.*, that Smith “disregarded [defendants’]

corporate entity, such as by intermixing its finances with his own or using it as a thinly capitalized sham to avoid liability.” *Melko*, 219 Ill. App. 3d at 1064.

¶ 57 *vii. Absence of Corporate Records*

¶ 58 It was undisputed that some corporate records existed, such as bylaws, article of incorporation, and a policy manual. That aside, the State’s evidence overwhelming showed a failure to keep proper corporate records. This included the failure to keep proper records or documentation as required by the State contracts, failure to submit proper forms to DCFS regarding the use of grant funds and clients served under the State contracts, failure to maintain proper payroll, personnel, and subcontractor records, failure to obtain required background checks, the submission of forms which contained falsified or fraudulent information, and failure to have adequate documentation regarding payments to Smith and the other defendant corporations from DBCC. See *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 506 (2005) (corporation failed to keep corporate records where there were no corporate resolutions for certain loans, no records for claimed indebtedness or for amounts borrowed for transactions, no written contracts or bids from subcontractors, no records for other payments).

¶ 59 *viii. Diversion of Assets*

¶ 60 “A ‘diversion of assets from the corporation by or to a shareholder’ ([citation]) is an ‘unauthorized use’ of corporate assets (Black’s Law Dictionary 491 (7th ed. 1999) (definition of ‘diversion’)).” *Gillespie Cmty. Unit Sch. Dist. No. 7, Macoupin County v. Union Pac. R. Co.*, 2015 IL App (4th) 140877, ¶ 162. Certainly, Smith’s misuse of the grant funds under the State contracts, which we have extensively detailed, shows that he diverted grant fund assets from DBCC to Smith personally or to his related for-profit entities or other individuals involved with defendants.

¶ 61 ix. *Whether DBCC was a Mere Façade for Smith*

¶ 62 The State's evidence showed that Smith, with his control and decision-making authority over DBCC and the other corporate defendants, used their accounts to issue cash disbursements to himself directly or indirectly through the other corporate defendants; that DBCC failed to maintain proper records of and failed to properly use grant funds for allowed goods, services, activities, personnel matters, and administrative costs; and that DBCC's board of directors failed to exercise proper independent oversight over its operations and finances. As such, the State's evidence established that Smith used DBCC as a mere façade for obtaining public monies for his benefit.

¶ 63 Thus, the State's evidence established that defendants commingled funds, failed to observe corporate formalities, failed to maintain arm's-length relationships, failed to have a functioning board of directors, failed to maintain proper corporate records, diverted grants funds to improper uses and expenses, that DBCC became insolvent when the State Agencies attempted to obtain reimbursement on their grant contracts, and that Smith essentially operated DBCC as a mere façade for his personal gain. *Rico Industries*, 2018 IL App (1st) 172279, ¶ 44. Based on the record available before this court, we find that the State made a substantial showing that "there [was] such a unity of interest and ownership that the separate personalities of the corporation and the parties who compose it no longer exist." *Abuzir*, 2014 IL App (1st) 130469, ¶ 13.

¶ 64 Defendants contend their evidence raised an issue of material fact regarding whether Smith and the defendant corporations respected corporate formalities. In support, defendants cite Smith's statements in his affidavit that DBCC had articles of incorporation, bylaws, a handbook, job descriptions, a board of directors, meeting minutes, and other individuals who held "significant" roles within DBCC, in addition to Smith's statement that he never "personally

received or obtained” \$8 million. Defendants argue that the circuit court improperly relied on Caldwell’s affidavit because all evidence should be construed in defendants’ favor, Caldwell was biased because she was employed by a State Agency and had no firsthand knowledge of defendants, and Smith’s affidavit contradicted Caldwell.

¶ 65 While we agree with defendants that we must construe the record against the moving party, *Jordan*, 2018 IL App (1st) 180582, ¶ 17, the State met its initial burden of proof in affirmatively demonstrating that a “unity of interest” existed, and defendants have failed to raise any issues of material fact to contradict this. *Rico Industries*, 2018 IL App (1st) 172279, ¶ 44. The State supplied several affidavits and numerous documents which provided specific and detailed support of its claims. As noted, the State submitted five affidavits in support of its motion and voluminous exhibits were attached to each affidavit, including the DCFS audit report, bank and credit card records of defendants, the grant contracts with the State Agencies, other corporate documents and records, and various types of verification sheets and forms that DBCC submitted to DCFS pursuant to its contracts. Although the State’s numerous exhibits were not included in the record on appeal, defendants do not contest the validity of the exhibits or assert that any documents in particular were inaccurate. Moreover, we must resolve “any doubts which may arise from the incompleteness of the record” against defendants. *Foutch*, 99 Ill. 2d at 391-92.

¶ 66 Against this evidence, defendants failed to present “some factual basis that would arguably entitle them to a judgment under the applicable law.” *Williams*, 316 Ill. App. 3d at 689. As the circuit court found, defendants failed to provide any affirmative counter-evidence or affidavits to directly challenge the State’s evidence. Defendants’ assertion that the defendant

corporations had bylaws, articles of incorporation, or employees was not disputed and it did not suffice to raise a question of material fact.

¶ 67 More to the point, Smith’s affidavit was wholly insufficient to rebut the State’s evidence or raise a material question of fact. Pursuant to Supreme Court Rule 191(a), which governs affidavits offered in support of motions for summary judgment, such affidavits:

“shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto.” Ill. S. Ct. R. 191(a) (Eff. Jan. 4, 2013).

¶ 68 Smith’s affidavit failed to set forth any specific facts contesting the State’s evidence. Smith merely made conclusory statements regarding matters that were either uncontroverted, irrelevant, unsupported, or were contradicted by the State’s evidence. See *Federal Insurance*, 64 Ill. App. 3d at 28 (finding no error in striking defendants’ Rule 191 affidavit where it failed to conform with Rule 191 as supportive documents were not attached, statements were legal conclusions and hearsay). Accordingly, there was no genuine issue of material fact that the defendant corporations were Smith’s alter egos.

¶ 69 b. Promotion of an Injustice or Inequity

¶ 70 Turning to the second prong of the corporate veil-piercing test, this court “must determine whether the circumstances are such that adherence to the fiction of a separate corporation would promote injustice or inequitable circumstances. [Citations.] Specifically, we

must ask whether there is some unfairness, such as fraud or deception, or the existence of a compelling public interest that justifies piercing.” *Abuzir*, 2014 IL App (1st) 130469, ¶ 34.

¶ 71 We observe that defendants in their opening brief did not challenge the circuit court’s finding that maintaining the corporate forms would promote an injustice. The State therefore did not address this prong in its response brief, other than to note that a compelling public interest existed given the misuse of limited state funds. The State also asserts that defendants forfeited this issue. In their reply brief, defendants argue that the circuit court’s finding was erroneous because a material question of fact existed as to whether defendants misused state funds.

¶ 72 We agree with the State. “Under Illinois Supreme Court Rule 341(h)(7) [citation], an appellant forfeits points not raised in the initial brief and cannot argue them for the first time in the reply brief. *Sellers v. Rudert*, 395 Ill. App. 3d 1041, 1046 (2009). “[P]oints not argued in the appellant’s brief ‘are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.’ ” *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 43 (quoting Ill. S.Ct. R. 341(h)(7) (eff. Feb. 6, 2013)).

¶ 73 Even if defendants had not forfeited this issue, we would find no error in the circuit court’s determination. Adherence to corporate formalities under the circumstances would promote an injustice. The State has shown both a compelling public interest and “some unfairness, such as fraud or deception,” in the misuse of over \$8 million in state funds which were meant to provide services to at-risk Illinois family and youth. In their reply brief, defendants do not directly dispute that the misuse of state funds would constitute a public interest worthy of piercing the corporate veil. Rather, defendants essentially reiterate that they raised a question of fact as to whether defendants misused state funds based on Smith’s affidavit, an argument we have already rejected.

¶ 74

2. Judgment Amount

¶ 75

Defendants' final contention that the circuit court erred in determining the amount of damages to award the State is also without merit. Defendants reason that the fact that Smith was ordered to pay \$480,901 in restitution in his federal criminal case indicates that the State "could only establish that amount of losses" and this amount "calls into question" the State's calculation of over \$8 million in damages.

¶ 76

We disagree. In contrast to the numerous plaintiffs and thousands of transactions involved in the present case, Smith's criminal case only involved three specific transactions and two of the State agencies involved in here. Defendants' mere assertion that the federal restitution amount casts doubt on the judgment amount in the present case is insufficient to raise a genuine issue of material fact and ignores the substantial evidence the State provided in support of the judgment amount.

¶ 77

Defendants further argue that the State should not be able to recover twice from Smith and any damages should be reduced by \$480,901. However, defendants presented no evidence to support their assertion that this would amount to a double recovery for the State. They also have not provided any evidence that Smith has satisfied the restitution amount in the federal criminal case. As such, the State has met its initial burden of proof in affirmatively demonstrating the amount defendants should be required to return to the State, and defendants have failed to rebut this with contradictory evidence. *Rico Industries*, 2018 IL App (1st) 172279, ¶ 44. Moreover, we observe that defendants may attempt to seek a setoff in the future due to any amounts paid. "A right to setoff in equity arises only if the indebtedness is certain and already reduced to a precise figure without a need for the intervention of a court or jury to estimate it." *Old Second National Bank v. Jafry*, 2016 IL App (2d) 150825, ¶ 13. A setoff is "in the nature of a supplementary or

enforcement proceeding within the inherent power of the judgment court.” *Star Charters v. Figueroa*, 192 Ill. 2d 47, 49 (2000).

¶ 78 Defendants next insist that they presented sufficient evidence via Smith’s affidavit to directly contradict the State’s damages calculation and raise a genuine question of material fact. They assert that the circuit court did not give Smith’s affidavit proper weight. Defendants maintain that Smith directly contradicted the State’s damages evidence when he averred that he “had no information to admit or deny the accuracy of the \$8,195,273.55,” that “at no time did I personally receive or obtain” this amount, and that the State has his personal bank statements and could have used them to show that he did receive this amount, but the State never did so. They further argue that the amount claimed by the State is questionable because the State auditor had “an obvious bias” and the amount was never verified by an independent auditor.

¶ 79 We conclude that Smith’s affidavit failed to raise an issue of material fact with respect to the judgment amount. Smith’s general, conclusory statements that he had no information to admit or deny the accuracy of the amount claimed by the State and that he never personally possessed this amount, is insufficient to present “some factual basis that would arguably entitle them to a judgment under the applicable law.” *Williams*, 316 Ill. App. 3d at 689. Defendants presented no evidence or affidavits to contradict the State’s documents, affidavits, or calculations, other than Smith’s conclusory statements. In that regard, there is no requirement that recovery must be limited to only what Smith personally received. Defendants point to no provision in the Act limiting recovery in this way. In any case, Smith’s assertion that he did not “personally receive” over \$8 million is irrelevant considering that the verified complaint, the State’s evidence, and the judgment reflected that the funds were misappropriated, not properly documented, and commingled by Smith and all of the corporate defendants. There is no

requirement that an independent auditor evaluate the judgment amount, nor have defendants provided any material factual basis for questioning the auditor, other than a bare assertion that there was an “obvious bias.”

¶ 80 In stark contrast, the State presented voluminous, detailed evidence to support the judgment amount. Caldwell averred that the DCFS audit found \$8,195,273.55 in unduplicated, recoverable costs. This included \$3,370,413.37 for costs unsupported by adequate documentation, contrary to the requirements under DCFS rules, such as \$720,749 for expenditures for two DCFS programs for which DBCC failed to provide any files for the clients it claimed to serve. The DCFS audit further found \$321,763.35 in expenses which were expressly not allowed under DCFS regulations. This included transactions with related parties for more than the expense to the related party, bad debts, discounts, rebates, allowances, and charity grants by the grantee, non-program related activities, awards or grants to individuals, fines or penalties, sales taxes, and other costs not reasonably related to services. In addition, DBCC improperly received \$2,959,760.61 for programs costs which were unauthorized under the DCFS contracts and DCFS regulations, as expenses were incurred before a DCFS funding agreement was in place. This figure included \$277,106.94 in expenses for equipment, furniture, salaries and wages, sales and FICA taxes, consulting fees to Smith, and fees paid to related-party IPCFD. It also accounted for \$2,682,653.67 in expenses that DBCC incurred before contract approval dates for programs. The DCFS audit report also showed that DBCC improperly incurred \$260,836.38 in administrative costs, which exceeded the 20% cap on such costs per DCFS regulations.

¶ 81 The State’s evidence further set forth personnel and payroll deficiencies, causing DBCC to improperly receive \$83,235 for salaries and related expenses where DBCC failed to obtain

mandatory background checks for employees it paid with grant funds, and failed to maintain complete, consistent personnel and payroll records. The State's evidence also showed that DBCC improperly received \$23,710.59 for subcontractor costs because DBCC failed to first submit subcontractor work applications to DCFS for review, authorization, and a background check. The State observed that the audit identified eight payments in particular to DBCC consultants in amounts ranging from \$100 to \$10,000 where the consultants were ineligible to receive DCFS funding. DBCC failed to prepare or submit to DCFS its subcontractor agreements, criminal history checks, and work history verifications, and its subcontractors and employee names were inconsistent with DBCC's own accounting and payroll records.

¶ 82 In addition, the amount owed to DCFS also included \$1,175,554.25 for failure to abide by Internal Revenue Service (IRS) guidelines and generally accepted accounting practices in that DBCC failed to implement a conflict of interest policy. Smith signed every check related to the transactions that the State identified in its complaint and the DCFS audit. Smith used DBCC to issue cash disbursements from DBCC to the other corporate defendants and to himself, either directly or through the other corporate defendants, and characterized the transactions as indirect budgeted costs, fiscal agent fees, administrative fees, and salaries, but failed to support or justify these transactions. The State identified six specific examples of such transactions between 2006 and 2011, totaling \$835,678.25, where Smith alone or Smith and MPI received such cash payments.

¶ 83 Concerning the count involving DHS-DASA, DiDomenico averred to the \$138,901 amount DBCC was liable for under the DHS-DASA grant and attached the comptroller voucher record report, the DHS-DASA expenditure reports, capacity initiative monthly reporting forms, and DBCC client verifications. With regard to the CJIA claim, Desai averred that DBCC failed

to return \$71,130.09 in unspent grant funds. Concerning the DPH claim, DiDomenico averred to the court order granting summary judgment in the amount of \$250,000 and also provided a copy of the judgment. Similarly, DiDomenico averred to the court order granting DCEO a judgment of \$93,767.67 against DBCC, and provided a copy of the judgment. Lastly, the State provided DiDomenico's affidavit and the proof of claim DES filed in the DBCC bankruptcy proceeding related to DBCC's failure to pay unemployment insurance contributions, with \$25,102.08 remaining.

¶ 84 Accordingly, the State affirmatively demonstrated the amount owed by defendants, and defendants failed to raise any issues of material fact to contradict the judgment amount. *Rico Industries*, 2018 IL App (1st) 172279, ¶ 44.

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated above, we affirm the circuit court's order granting summary judgment in favor of the State in the amount of \$8,774,174.39.

¶ 87 Affirmed.