THIRD DIVISION
June 28, 2019

No. 1-17-2922

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARGARET S. EKMAN,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CH 21029
	)	
DEBORAH FRIEDMANN, BARBARA STEINHAUSER, and SABBIA FINE JEWELRY,	)	
	)	
Defendants	)	
	)	
(DEBORAH FRIEDMANN and SABBIA FINE JEWELRY,	)	
	)	Honorable
	)	Neil H. Cohen,
Defendants-Appellants).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed in part and reversed in part; the trial court's finding the parties entered an oral agreement for a partnership is not against the manifest weight of the evidence; defendant is personally liable for damages associated with plaintiff's disassociation from the partnership because defendant personally agreed to enter the partnership rather than on behalf of her limited liability corporation; plaintiff proved her damages with specificity and did not rely on improper documentation; the trial court properly denied defendant's motion to reconsider its rulings on damages; the trial court's judgment allowing compound rather than simple interest on damages is reversed and the cause remanded for entry of an order granting plaintiff simple interest on her damages.

¶ 2 Plaintiff filed an amended complaint against Deborah Friedmann, Barbara Steinhauser, and an alleged partnership named Sabbia Fine Jewelry for breach of partnership (count I) and for violations of the Sales Representative Act (count II) and Illinois Wage Payment and Collection Act (count III). Following a bench trial, the circuit court of Cook County found that plaintiff, Margaret Ekman, and defendant, Deborah Friedmann, entered into a partnership to sell jewelry and that plaintiff was owed money pursuant to the partnership agreement. The court found defendant personally liable for the amount owed to plaintiff and ordered an accounting. After an evidentiary hearing on the accounting, the court entered judgment in favor of plaintiff for $16,570.17 from partnership proceeds and for $48,052.44 in prejudgment interest. The court denied defendant's motion to reconsider. Defendant appeals, arguing the trial court erred in (1) finding that a partnership existed, (2) finding defendant personally liable, (3) entering judgment based on plaintiff's accounting, and (4) adding compound prejudgment interest. For the following reasons, we affirm in part, and reverse in part.

¶ 3 BACKGROUND

¶ 4 Ekman alleged that in August 2004, she, Friedmann, and Steinhauser entered into a partnership known as Sabbia Fine Jewelry "by oral agreement between the partners." Ekman's complaint alleged the parties agreed to share all profits in the partnership with 40% to Friedmann, 40% to Steinhauser, and 20% to Ekman and that at all times Ekman "was regarded and held out to the public as a partner in Sabbia." Ekman alleged each partner contributed an equal share to the build out of a retail space located on Walton Street in Chicago where the partnership operated and to the advance on the lease of that space. The complaint alleged the partnership was profitable from its inception, but the partners did not draw their share of the profits until November 2004. Ekman alleged she received her 20% share of profits for

November and December 2004 and January 2005. In February 2005, according to the complaint, Friedmann and Steinhauser "sought to reduce Ekman's partnership interest in Sabbia from twenty percent to twelve percent." Ekman alleged the partnership did not make a net profit in February 2005 and she received 12% of the net profits for March 2005. Ekman alleged that in April 2005 Friedmann informed her that Friedmann and Steinhauser wanted to end their business relationship with Ekman. Ekman allegedly did not receive a share of the profits for April 2005 or thereafter. Ekman's complaint sought an accounting of all of the partnership's transactions and an order that Friedmann, Steinhauser, and Sabbia Fine Jewelry be ordered to pay Ekman the amount found to be due from the accounting. Ekman pled counts II and III of her complaint in the alternative to count I. Counts II and III are not at issue in this appeal.

¶ 5 We recount only that testimony from the trial that is necessary to the resolution of the issues on appeal. At trial,[1] Ekman testified that since 1993 or 1994 Friedmann was Ekman's client in Ekman's personal training business and they became friends. During that time Friedmann opened a jewelry store in Chicago and then a second store in Florida but Friedmann later decided to close the Chicago store. Ekman testified Friedmann had been partners with someone else in the Chicago store, but that partnership ended. In June 2004 Friedmann began talking about a new business venture to Ekman. Ekman testified Friedmann told Ekman that Friedmann had spoken to Steinhauser about opening a store and Friedmann asked Ekman if Ekman wanted to be involved. Ekman, Friedmann, and Steinhauser began having meetings in July 2004 about the new business. Ekman testified that Tina Vasiliauskaite was also present for some of those meetings. Tina became the office manager for the Walton Street business. Ekman testified that she and Steinhauser sometimes talked further after the meetings between the three

[1] Steinhauser and Friedmann appeared *pro se* at trial.

of them about the business. Ekman testified she and Steinhauser discussed that the business should be a partnership and what percentage of the business each should receive. Ekman testified that at a meeting between herself, Friedmann, and Steinhauser in a coffee shop near the Walton Street location Friedmann told Ekman that Ekman "could be a 20% partner." Friedmann used the term "partner." Friedmann and Steinhauser would each receive 40%. The percentages were of "net profits less expenses" from the sale of jewelry. Ekman knew Friedmann still had her store in Florida at that time, but it was Ekman's understanding that no profits or expenses from the Florida store would be added to or deducted from the Walton Street business's profits. Although the parties did not discuss it expressly, Ekman assumed that in any given month in which expenses exceeded income she would be "on the hook for it" because "if you are an owner in a business, then you have to share the losses as well as the profits."

¶ 6 Ekman testified that each of them would be contributing to the new business in different ways. For her part, Ekman knew a lot of people from her personal training business that she could bring to the new business, and she had business experience. Ekman testified she made a contribution of $2,666.70 toward the initial deposit on the lease for the Walton Street location by check dated August 5, 2004. Ekman also testified Friedmann asked Ekman to contribute to the cost of converting the new business location from its previous use to its new use in their business. Ekman testified "it actually worked out to a third because we were all—all of the moneys that were coming in were being utilized for the purpose of the build-out." Later in her testimony Ekman testified that her contribution to the expenses to build out the business's space occurred "by not taking any of my 20% profit until all expenses that involved the build-out were paid in full." Ekman testified the business made a profit right away. Profit was determined by deducting certain operating expenses from total sales. Ekman testified that starting in August the

20% of the profit she was supposed to receive went back into the business until the cost of the build-out, which totaled approximately $58,000, was recouped.

¶ 7 Ekman testified Friedmann referred to Ekman as a "partner" to the owner of a business that was above theirs. The parties made decisions for the business by discussing it between the three of them. Friedmann and Steinhauser consulted Ekman about their ideas and Ekman consulted them about her ideas. The business had a line of credit in Friedmann's name. The business did not open any credit, but Ekman made purchases for the business on her credit card and she was reimbursed. Ekman also negotiated contracts for the corporate events she created and located vendors. She also located the painter for the build out of the business location.

¶ 8 Ekman testified the business had some income between the meeting at the coffee shop and the time when operations started in earnest at the Walton Street location. That income came from sales outside of the physical location as a way "to get some income in for the beginning—to pay out some of the build-out." Ekman testified the business made sales by hosting parties at their business location and that she was involved in all aspects of planning those parties. She also contributed names to be invited to these parties. Ekman contributed the names of her personal training clients and names she got from her clients.

¶ 9 Ekman received a check for 20% of net profits in November and December but asked that it not be paid to her until January 2005. Ekman testified that the business suffered a loss in February and that loss was carried as an expense to March. The business did have a profit in March after the deduction of March expenses and the February loss, but by March, Ekman's percentage distribution was reduced from 20% to 12%. Ekman testified that sometime in March she, Friedmann, and Steinhauser had a conversation in which Friedmann informed Ekman that Friedmann did not want to pay Ekman 20% of the net profits anymore. Ekman testified she did

not agree to the reduction. Ekman testified that in March she scheduled a meeting to discuss the reduction, but the meeting could not occur until April because of the parties' schedules working for the business. In April, Ekman received a check for 12% of the March profit.

¶ 10 Ekman testified the April meeting did not occur because of a conversation that occurred between Ekman and Friedmann as they were working together in the office. Ekman testified Friedmann told Ekman that Ekman did not have to come into work the following week. Ekman testified she responded that she could come in next week but Friedmann said she did not want Ekman to come in and that she would pay Ekman whatever she was owed. Ekman testified she called Steinhauser and the following week while Friedmann was out of town Ekman and Steinhauser discussed how to maintain the partnership. Ekman, Friedmann, and Steinhauser held a meeting at the end of April 2005 at Walton Street. The bookkeeper for the business, Tina, was in the office but did not participate in the meeting. Ekman testified that at that meeting, she expressed that she did not see how a partnership could be ended unilaterally without explanation and if that were to be the case she wanted to be paid for her investment. After that meeting the parties explored going to mediation but never engaged in any mediation.

¶ 11 Ekman testified she received an Internal Revenue Service (IRS) form 1099 (1099) for 2005 in the mail. The 1099 stated Ekman received "Nonemployee Compensation" in 2005 totaling $17,757.55. Ekman confirmed that was the total amount of distributions she received in 2005. The payor listed on the 1099 was "Alex Sepkus LLC." Ekman testified she never had any business relationship with Alex Sepkus LLC.

¶ 12 On cross-examination by Friedmann Ekman testified she never read the lease for the business space. Ekman stated she knew the $2,666 check she wrote was for the lease because Friedmann and Steinhauser told her it was. Ekman was present when Friedmann and

Steinhauser signed the lease. Ekman did not sign the lease. Ekman testified on cross-examination that the name of the partnership she claims to have entered was Sabbia Fine Jewelry. She admitted she did not "file as a partner of Sabbia Fine Jewelry with the State of Illinois" or Cook County and she did not procure a business license to sell jewelry. Ekman testified there was a checking account for the "alleged partnership" but Ekman was not on the account and could not write company checks. Ekman later testified she did not know the "official name" of the account or who at the bank managed the account, but "Sabbia" was on the check. Ekman further testified on cross-examination that the business had employees—specifically an office manager named Tina—but Ekman did not have authority to hire and fire employees. Ekman did not make bank deposits and she did not know who paid sales taxes on jewelry sales to the State.

¶ 13 On cross-examination by Steinhauser, Ekman testified she did not have any credentials that would allow her to enter a jewelry show to buy jewelry to sell in the business. Ekman testified that Friedmann purchased the inventory for the business. When the jewelry sold, the business would pay Friedmann back the purchase price as an expense and the remainder was profit for the business. Ekman never personally committed to make a minimum purchase from a designer who was coming to the business to display their jewelry, although some designers required such commitments. Ekman testified she did not feel that she was in a position to "singularly" bind the partnership. Ekman testified that her responsibilities in the business included selling jewelry, implementing parties, promoting new business, planning luncheons and events. She was not required to look up jewelry designers or to "look up opportunities to make the business better." When asked on cross-examination by Steinhauser what she did in a partnership capacity for the business Ekman responded that she, Friedmann, and Steinhauser

discussed the initial concept, how the business would evolve, and what it would look like. Ekman testified she was directly involved in the build-out of the business space, planning every party and bringing people in, and marketing the business and that she did those things as a partner.

¶ 14 During cross-examination by Steinhauser, Ekman testified that Friedmann owned or was part of a separate company named Sabbia LLC which formerly operated a jewelry store at another location in Chicago and continued to operate Friedmann's Florida jewelry store. Some of the jewelry the partnership sold had been purchased by the LLC. Ekman testified that Friedmann became a partner in the new business and that "part of what she [(Friedmann)] brought to that partnership was the fact she had some jewelry." Those assets were Friedmann's contribution to the partnership.

¶ 15 Ekman testified she could not borrow money on behalf of the partnership. Ekman testified she did not believe she had the authority to do an act that binds the partnership on her own. Ekman testified one person would not unilaterally decide to purchase something without a discussion. Ekman did not have a business credit card with her name on it and she did not have the authority to hire people to work for the partnership. Ekman added that Friedmann did not have the ability to hire anyone without conferring with the partners. Friedmann did hire people to work at the business and Ekman did not disagree.

¶ 16 When Ekman did a corporate sale the contract was between the purchaser and "Sabbia." Ekman discussed how much to mark up the corporate gift items with Friedmann and Steinhauser. Ekman testified on cross-examination that if Friedmann left the business and took everything the LLC contributed to the partnership the partnership would be left with the location because the LLC owned all of the inventory. Ekman did not believe that the partnership was issued a

business license. Steinhauser's cross-examination suggested that in a deposition Ekman testified she never had a conversation with Friedmann and/or Steinhauser discussing that if the business did not turn a profit then Ekman would be personally responsible for disbursing some portion of the build-out cost. She testified her personal assets were exposed as a partner. Ekman testified that, for example, if the liability insurance lapsed she could be personally responsible for damages.

¶ 17 Ekman testified she did not know whether "this [was] a general partnership that was established." Steinhauser showed Ekman a document that Ekman agreed was a business license for the city of Chicago. Ekman testified the license said that the LLC was operating out of the Walton Street location since 2004.

¶ 18 In her re-direct examination Ekman testified that Friedmann's contributions to the new business partnership included her existing business licenses and sales tax numbers. Ekman also testified that Friedmann did not purchase jewelry for the partnership in every circumstance because the partnership purchased jewelry from designers at the shows the partnership set up at the business site when a guest at the show was interested in purchasing the jewelry. In those instances, when a guest wanted to buy jewelry at one of the partnership's shows, the partnership would buy the jewelry from the designer and then sell the jewelry to the guest. Ekman testified the members of the partnership decided collectively how much to mark up the jewelry before the partnership sold it. The partnership sometimes gave discounts and Ekman testified she felt that she could offer the partnership's standard discount on her own.

¶ 19 Tina Visiliauskaite testified she started working with Friedmann in Friedmann's former partnership with Alex Sepkus as a salesperson. Visiliauskaite later moved into bookkeeping and then served as an office manager. When Visiliauskaite was a salesperson she was not paid a

percentage of the net profits; rather, she was paid a salary. Visiliauskaite testified she was aware of a 40/40/20 agreement between Friedmann, Steinhauser, and Ekman but she did not know when that agreement developed. Visiliauskaite learned of those numbers from Friedmann. The 40/40/20 represented percentages of the net profits after deducting expenses from sales. Sales for that purpose did not include sales from Friedmann's Florida store but only included sales at the business location or sales brought in by Ekman, Steinhauser, or Friedmann. If Visiliauskaite had a question as to whether something was a business expense or not she would rely on Friedmann for clarification because "[s]he is the business owner." When the partnership held events at the business Visiliauskaite worked those events. At no time while working at the partnership did Visiliauskaite receive a percentage of the net profit from the operations. Visiliauskaite received a salary the entire time. Half of Visiliauskaite's salary was an expense of the partnership in calculating the 40/40/20 split of net profits because half of her work was for Friedmann's Florida store. (Visiliauskaite used QuickBooks to record sales and expenses, and her entire salary was recorded in QuickBooks.) Visiliauskaite testified she performed the calculation to determine the percentage of profits Ekman, Friedmann, and Steinhauser should receive but there was nothing to distribute in those months expenses exceeded income, and Visiliauskaite thought the expenses for those months included contributions towards the building out of the space for the business.

¶ 20 On cross-examination Visiliauskaite testified Friedmann and Steinhauser signed the lease for the Walton Street location. Visiliauskaite also testified that Friedmann did not always take a check for 40% of the profits but Friedmann did always give Ekman and Steinhauser a check if there were profits. Visiliauskaite testified Friedmann put money into the business more than once and often made large jewelry purchases that did not go into the expense numbers for the

business. Friedmann made jewelry purchases that did not reduce Ekman's 20% of net profits or Steinhauser's 40% of net profits. Visiliauskaite testified that sheets of paper she used to calculate the percentages at issue were not "official books and records of Sabbia" and that all sales and expenses were recorded in QuickBooks as a Sabbia LLC sale. Visiliauskaite believed that she worked for Sabbia LLC. Visiliauskaite testified that in her capacity as office manager she applied for a change of address on behalf of Sabbia LLC to move into the Walton location but she did not have to apply for a change of name or a new business license. Visiliauskaite was not aware of any other applications for a business license for any other company. The checks Visiliauskaite wrote to Ekman and Steinhauser were paid by Sabbia LLC from its bank account at Northern Trust. All of the checks Visiliauskaite wrote to Ekman have the word "commission" written in the memo field. Visiliauskaite recorded all of the sales at the business as sales of Sabbia LLC. Visiliauskaite testified Friedmann approved all outgoing moneys and signed all of the checks. Friedmann had control of the bank account, decided what jewelry to buy, and made the final decision about the operation of the business. On re-direct examination Visiliauskaite stated Friedmann had the final say because she owned Sabbia LLC but Visiliauskaite also agreed that she did not participate in discussions between Friedmann, Steinhauser, and Ekman that occurred before the new business location opened. Steinhauser worked at Friedmann's prior jewelry store in Chicago and at that time Steinhauser was not paid a percentage of the net profits; instead when she worked as a salesperson in Friedmann's old store Steinhauser was paid hourly.

¶ 21 Friedmann testified the name "Sabbia Fine Jewelry" was used for advertising the Walton Street business as well as her prior jewelry business. Some of the Walton Street business's vendors may have called the business Sabbia Fine Jewelry. When Friedmann signed the lease for the space on Walton Street she signed in her individual capacity and not on behalf of Sabbia.

Friedmann asked Steinhauser to sign the lease because Friedmann wanted Steinhauser to commit to selling jewelry for Sabbia for five years. Friedmann testified she and Steinhauser agreed Steinhauser could operate an accessories business and work at Sabbia at the same time. The two of them did not discuss whether or how Friedmann would be involved in an accessories business run by Steinhauser. Friedmann testified that the agreement between herself, Steinhauser, and Ekman was that:

> "[Friedmann] would, after the proceeds from the sales came in, *** deduct Sabbia expenses just the running of the space, not the overall cost of an investment in jewelry, but obviously take out the cost of the piece of jewelry, and from that pot of money, [Friedmann] would give Ms. Ekman 20% and [Friedmann] would give Ms. Steinhauser 40%."

¶ 22 Friedmann testified neither Ekman nor Steinhauser contributed to the build out expense for the Walton Street location. Ekman's attorney showed Friedmann an answer to an interrogatory that asked, "What was the source of funds for the initial build out of the Sabbia Space, inclusive of furnishings and office equipment," in which Friedmann wrote as follows:

> "Defendants state that Deborah Friedmann and Barbara Steinhauser each initially contributed in excess of 9,000 which was placed in a separate bank account at the Northern Trust Company for use in establishing a jewelry business at 66 East Walton, Chicago, Illinois.
>
> Defendants Deborah Friedmann and Barbara Steinhauser subsequently contributed 4,000 each which funds were placed in the Northern Trust Company account. Until the overall expenses exceeded the funds contributed by Deborah

Friedmann and Barbara Steinhauser, all expenses and deposits but for the 2,666 paid by plaintiff were paid from that account.

After overall expenses exceeded the amounts contributed by Deborah Friedmann and Barbara Steinhauser, but for the 2,666 paid by plaintiff, expenses were paid from the net profits, if any, of sales of Sabbia, LLC Chicago location."

After reading the answer to the interrogatory, Friedmann testified the answer to the interrogatory was not correct.

¶ 23 Friedmann testified that she asked Ekman not to take any commission while Friedmann was doing the build out of the Walton Street location until the expenses for the build out were met. Friedmann agreed that the money she asked Ekman to forego was money Friedmann had agreed to pay Ekman.

¶ 24 Friedmann testified that when she and Ekman had the conversation at the Walton Street location in which Friedmann told Ekman their arrangement was not working out Ekman indicated that she would leave the business. Friedmann testified she did not tell Ekman not to bother coming in anymore. Friedmann agreed that the two of them discussed mediation. Steinhauser was not involved in the mediation discussions between Ekman and Friedmann.

¶ 25 Danielle Winkle testified that the payor on Ekman's 1099 was Sabbia LLC. Winkle stated that Friedmann asked Winkle to come to the Walton Street location to "have a meeting to talk to Ms. Steinhauser and Ms. Ekman about how the—compensation they were going to be paid would be reported." Winkle testified that Steinhauser and Ekman were present for the meeting and that a partnership was not discussed. Winkle stated no one asked questions about partnership. Winkle discussed how "we would be reporting income to her." Winkle testified: "The conversation was that she [(Steinhauser)] would be considered an independent contractor

and would receive a form 1099 at the end of the year for the amounts that were paid to her." Winkle testified with regard to Ekman that "the conversations were the same. I mean it was just one conversation." Winkle stated Ekman did not have any questions about how she would be compensated. On cross-examination, Winkle agreed that discussion was regarding the tax treatment of compensation received, and "some of the theory behind how it would be calculated, and, you know, the reporting of that information." Winkle also testified on cross-examination that 1099s are not limited to independent contractors. Winkle testified that a "K-1" is "the form that is given to partners that is attached to the partnership tax return and it indicates their share of income losses and their reconciliation of their capital account and liabilities." Winkle never prepared a K-1 for anyone who worked at Sabbia LLC. Winkle never saw that Steinhauser or Ekman made a capital contribution to the company.

¶ 26 Winkle further testified that the expenses were not broken down in QuickBooks between Florida and Illinois. She stated the sales were broken down so that the appropriate sales tax could be paid, but "there was no need for the expense to be broken down because they were all filed as just one company, one entity for income tax purposes." Winkle did not audit the QuickBooks records. Therefore, she testified, she would not know if sales were omitted or personal expenses were included.

¶ 27 Friedmann testified in the defense presentation of evidence on her own behalf. Friedmann testified that she owns jewelry stores in a single-member LLC and has never entered an oral partnership to her knowledge. Friedmann testified she has employees and with only one exception she has never made an arrangement with one of her employees to do a special event where Friedmann compensated the employee by sharing proceeds minus expenses. Friedmann testified that at no point in time did she tell anyone they would be a partner of Sabbia. Prior to

this lawsuit Steinhauser, Ekman, Mary Kay Demaio, and Tina were working at Sabbia, and Konah Horler came in monthly to do the books. Friedmann testified the 40% of net profit Steinhauser received was a commission and Friedmann never told Steinhauser she was Friedmann's business partner. When Friedmann hired Ekman to work at Sabbia, Friedmann initially was going to pay Ekman by commission but Friedmann, after talking with Steinhauser, became concerned with how to determine which customer belonged to which employee because they all knew the same people. Friedmann testified: "So I came up with a very misguided, apparently, concept of paying the two of you from the total proceeds of the sale from this location." Friedmann still considered those payments commissions determined by a different formula.

¶ 28 Friedmann testified the first time she felt Ekman had a misunderstanding about their arrangement was when she received an email from Ekman in December in response to which Friedmann wrote Ekman that Friedmann was not conveying an ownership interest to Ekman. Friedmann testified the calculation used to determine the 20% paid to Ekman did not really represent profit because it did not account for Friedmann's jewelry purchases. Friedmann stated certain expenses were deducted but those expenses did not "come from QuickBooks. They came from invoices on the shelves." Friedmann testified that Sabbia LLC paid Ekman. The original agreement with Ekman that began in July 2004 ended in February when a new agreement began for 12% of sales and 33% of new customers Ekman brought in. The new agreement ended in April.

¶ 29 On cross-examination Friedmann testified that a meeting, at which her accountant, Danielle Winkle, explained to Steinhauser and Ekman about becoming independent contractors for purposes of their compensation, occurred after Friedmann entered into an association with

Ekman for 20% of net profits. Friedmann agreed the business had profits in August, September, and October 2004 and that profit was used to pay a portion of the expense to build out the Walton space and that had those profits not been used to pay that expense those profits would have been distributed pursuant to the 40/40/20 arrangement between herself, Steinhauser, and Ekman. Before the Walton Street location opened, Steinhauser sold jewelry for Friedmann out of Friedmann's home. At that time, Friedmann paid Steinhauser a 30% commission only on Steinhauser's sales regardless of any expenses; but after the Walton Street location opened, Friedmann paid Steinhauser based on all sales rather than her individual sales and only after expenses had been deducted. Friedmann admitted Ekman wrote a check to Sabbia for $2,666 but she could not recall what the check was for.

¶ 30 Friedmann also called Ekman as a witness in the presentation of the defense's case. During questioning by Friedmann, Ekman testified she never placed an order to a jewelry vendor; she did not have the authority to borrow money from Sabbia on behalf of the partnership; she did not have the authority to withdraw funds from the Sabbia bank account; she was not a signatory to any contract on behalf of the partnership; she was not allowed to hire or fire anyone; and she did not have the power to bind the partnership. Ekman did testify that she, Friedmann, and Steinhauser came to agreements on business decisions. Ekman also testified that she and Steinhauser could override Friedmann if the two of them disagreed with Friedmann, and she provided one example. Friedmann asked Ekman what words Friedmann used that led Ekman to believe she was a partner and Ekman responded that Friedmann told her that Ekman would be a 20% partner and Friedmann would be a 40% partner and Steinhauser would be a 40% partner. However, at Ekman's deposition Ekman testified she did not recall Friedmann's exact words that led her to believe she was a partner in the business.

¶ 31 Ekman testified that she, Steinhauser, and Friedmann discussed who would incur losses from liabilities for the partnership and it was Ekman's understanding that they would all bear the losses and that they were all responsible for those losses. That discussion did not occur in summer 2004 when the parties were discussing formation of the business but it did occur later. Ekman knew there was an insurance policy for the Walton Street location but did not know who's name the policy was in or who the beneficiary of the policy was. Ekman did not have a discussion in which she discussed reimbursing Friedmann or Steinhauser for losses of the business. The business did not file a certificate of partnership with the state nor did it have a business license. Ekman did not mention being a member of a partnership or Sabbia Fine Jewelry on her personal tax return. Ekman testified she did not have a responsibility to pay for jewelry inventory whether it sold or not. Friedmann would usually pay the invoices for unsold jewelry but later Steinhauser did as well. Other than the split of the net profits the parties did not discuss any other terms and conditions of the partnership. Ekman was not certain what type of partnership was being formed but thought it was a general partnership.

¶ 32 On cross-examination by her attorney Ekman testified she did not have authority to bind the partnership on her own but she could bind the partnership acting with the other partners.

¶ 33 At the close of evidence Friedmann and Steinhauser moved for directed verdicts. The trial court found Ekman had not sustained her burden of proof by a preponderance of the evidence to show an agreement between Ekman and Steinhauser and granted Steinhauser's motion. The court also found that no entity called Sabbia Fine Jewelry existed and directed the alleged entity out of the case as a defendant. The court denied Friedmann's motion for a directed verdict. The court directed the parties to submit written arguments. Following arguments the trial court found Friedmann entered into a partnership with Ekman "for 20% partnership

interest." The court found that there was a six-month review period that was made a part of the deal. The court found Friedmann admitted she asked Ekman not to take any money until the build-out expenses were met. The court found that the effect was that Ekman was paying a portion of those expenses and that "ended up being a capital contribution to the business." The court found that a meeting did occur at which Winkel told Friedmann, Steinhauser and Ekman that Ekman and Steinhauser would be considered independent contractors and get 1099s. Winkel also testified that a partnership was never discussed. However, the court noted that Friedmann testified that meeting occurred after the agreement had been entered with Ekman.

¶ 34 The trial court also found that Friedmann admitted asking Ekman for money in August because the expenses for the build out were greater than expected, and that a check for $2,666.70 to Sabbia was admitted into evidence. Steinhauser referred to Ekman as a partner in shows and to Sam Corey George and Brian Kilroy. The court found Steinhauser was impeached and is "not to be believed with regard to never having held Ms. Ekman out as a partner." The court found that what was most important was Friedmann's testimony that she did not think of Ekman as a partner while Friedmann admitted she agreed to share the profits with Ekman, and Friedmann called the relationship a profit sharing partnership. The court noted there were no partnership agreements and Ekman did not reference a partnership in her tax filings. The court found Ekman shared in the losses because each partner was going to share in the losses regardless of their contributions to the sales and because a given month's losses were subtracted from the following month's gain "yielding a sharing of losses."

¶ 35 The trial court found the deal between Ekman and Friedmann began in July 2004 and ended as of February 28, 2005, and a new deal began on March 1 and lasted until April 2005. The court found that Friedmann entered into separate deals with Steinhauser and Ekman. The

court found Friedmann and Ekman joined together to carry on a venture for their common benefit; each contributed property or services; each had a community of interest in the profits; and there was a meeting of the minds with regard to the deal, specifically there being a 40/40/20 split of the net profits. The court held these factors "mitigate in favor of finding that there was a partnership that existed between Deborah Friedmann and Margaret Ekman." The court found there was a partnership and as a result Ekman is entitled to an accounting. The trial court noted that the testimony revealed discrepancies with regard to whether expenses reflected in the business's QuickBooks statements and the amounts deducted from sales to determine Ekman's share of net profits from Walton Street were just for operations at the Walton Street location or for Walton Street and Friedmann's Florida location. The court found: "I have no faith in the money that [Ekman] was given as being accurate because they were based on inaccurate books." The true expenses were reflected in invoices kept at the business (as opposed to what was in QuickBooks) and the court found Ekman was "entitled to an accounting from the invoices for the period at which she was [Friedmann's] partner," from July 2004 to February 28, 2005 for 20% of net profits and "a separate accounting of 12% of the profits from March [2005] to the end of April [2005] when the deal was over." The court ordered

> "Friedmann, to do an accounting through those invoices of the whole deal and use the whole deal as a—as the equation, to figure out the expenses, the profits, from the invoices, and give that accounting to the Plaintiff. I also instruct you to give copies of all those invoices to the Plaintiff so that they could do their own accounting as well."

¶ 36 On September 24, 2014, Friedmann filed her accounting with the trial court. Ekman filed a response to Friedmann's accounting. On January 16, 2015, Ekman filed her accounting and

alleged Friedmann failed to provide a complete and accurate accounting. Friedmann filed a motion for an evidentiary hearing. The trial court granted the motion and held an evidentiary hearing on the accounting. After the hearing the parties submitted written closing arguments. On October 1, 2015 the court also held oral closing arguments. Following oral closing arguments the trial court entered an order directing Friedmann to file a calculation of goods sold and ordered Ekman to reply to Friedmann's response to Ekman's closing argument. Friedmann filed her calculation of the cost of goods sold and Ekman filed her reply to Friedmann's closing argument and response to Friedmann's calculation of cost of goods sold. Following a hearing the court ordered the parties to submit written findings of fact and rulings of law.

¶ 37 On February 7, 2017 the parties appeared for the trial court's oral ruling on the evidentiary hearing. The court stated it only calculated 20% of the net profits, as determined from Friedmann's numbers, and did not calculate 20% of the net profit for the first part of the parties' deal and 12% for the latter part of the parties' deal because the parties had failed to include those calculations in their submissions to the court. The court stated:

> "And I accept [Friedmann's] number of $9,039.04. Of course that's considering that 20% number, not parsing it with the 12% for the last two months.
>
> If there's something more about that, you can bring it to my attention, clearly. But that's my number and that's the Judgment I enter against Miss Friedmann, that Miss Ekman is owed, plus interest."

¶ 38 The court noted additionally that the amount Ekman was owed under the agreement that was in effect during the last two months of the partnership had to be calculated along with interest.

¶ 39 The parties submitted their calculations based on the trial court's order and Friedmann also filed what the court deemed a motion to reconsider the trial court's judgment that Ekman is entitled to any damages. The court found that it accepted Ekman's calculation and issued a final judgment for $16,570.17. The court turned to the issue of interest and imposed accrued interest from May 1, 2005 at the statutory 9% interest rate in the sum of $48,052.44. The court noted it had no discretion in this regard. The trial court imposed a total judgment in favor of Ekman and against Friedmann of $66,559.61. Friedmann filed a motion to reconsider the judgment. The motion to reconsider was fully briefed, and the trial court denied the motion.

¶ 40 This appeal followed.

¶ 41 ANALYSIS

¶ 42 On appeal Friedmann argues the trial court erred in finding that a partnership existed; if there was a partnership, Friedmann cannot be held personally liable for the judgment in favor of Ekman; the trial court erred in relying on Ekman's calculations of sales and expenses because Ekman miscalculated them; and the trial court erroneously denied Friedmann's motion to reconsider because the trial court misapplied the law in accepting Ekman's calculation of damages, and the trial court erroneously applied compound interest to the judgment. We address each argument in turn.

¶ 43 Existence of Partnership

¶ 44 "Where, as here, the parties have not entered into a written agreement defining the alleged partnership, we review the intent of the parties, as well as the facts and circumstances surrounding the alleged formation, to ascertain whether a partnership was formed." *Snyder v. Snyder*, 265 Ill. App. 3d 891, 893 (1994). "The burden of establishing the existence of a partnership is upon the party asserting its existence." *Id.* Written articles of agreement are not

necessary to form a partnership, "for a partnership may exist under a verbal agreement, and circumstances may be sufficient to establish such an agreement." *Rizzo v. Rizzo*, 3 Ill. 2d 291, 299 (1954). In this case, because the record does not contain, and Friedmann has not alleged the existence of, any writings that *contradict* a partnership, Ekman only needed to prove the existence of a partnership by a preponderance of the evidence. *Snyder*, 265 Ill. App. 3d at 893. "We will not disturb the trial court's decision unless it is against the manifest weight of the evidence." *Id*.

> "A trial court's determination is against the manifest weight of the evidence when an opposite conclusion is apparent or when the judgment appears to be unreasonable, arbitrary, or not based on evidence. [Citations.] Moreover, where there is a factual basis for a judgment, it cannot be said that the judgment is contrary to the manifest weight of the evidence. [Citations.]" *Trapani Construction Co. v. Elliot Group, Inc.*, 2016 IL App (1st) 143734, ¶ 37.

¶ 45 "The requisites of a partnership are that the parties must have joined together to carry on a trade or venture for their common benefit, each contributing property or services, and having a community of interest in the profits." *Rizzo*, 3 Ill. 2d at 299; see also 805 ILCS 206/202(a) (West 2014) (Under the Uniform Partnership Act (1997) (Act), "the association of 2 or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.").[2] Factors the court considers in determining whether a partnership exists include "the mode in which the parties have dealt with each other, the mode in which each has, with the knowledge of the others, dealt with other people, [citation], and the use of a firm name, [citation]." *Id*. at 299-300. "The essential test, however, is the sharing of the

[2] The Uniform Partnership Act (1997) applies to this partnership. See 805 ILCS 206/1206 (West 2014).

profits, [citation], but it is not necessary that there be a sharing of the losses in order to constitute a partnership." *Id*. at 300. The Act provides:

> "(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
>
> (i) of a debt by installments or otherwise;
>
> (ii) for services as an independent contractor or of wages or other compensation to an employee;
>
> (iii) of rent;
>
> (iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
>
> (v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
>
> (vi) for the sale of the goodwill of a business or other property by installments or otherwise." 805 ILCS 206/202(c)(3) (West 2014).

Nonetheless, "[m]ere participation in the profits *** does not of itself create a partnership." *Rizzo*, 3 Ill. 2d at 300; see also *nClosures Inc. v. Block and Co., Inc.*, 770 F.3d 598, 603 (7th Cir. 2014) ("Sharing of profits is instructive but not always conclusive evidence of a partnership.").

¶ 46 Friedmann first argues there was no partnership because Ekman could not recite key partnership terms "such as who had power to bind the partnership, who had the power to hire or fire, voting rights, and who would be responsible for the losses of the partnership, and who would borrow money on behalf of the partnership." In support of that argument Friedmann cites

the transcript of Steinhauser's deposition and the same argument in her own posttrial motion. In the cited portion of Steinhauser's deposition, Steinhauser testified neither she nor Ekman was given "any percentage vote in Sabbia LLC," neither she nor Ekman could make a decision "that was against what [Friedmann] would have wanted," that Friedmann and no one else made hiring decisions, and Ekman could not remember the exact words used to convey her offer to join a partnership. Friedmann also argues Ekman did not have equal rights in the management and conduct of Sabbia LLC. In addition to the foregoing argument, Friedmann also separately argues the parties' different roles show that Ekman was not a partner. Friedmann argues Ekman worked part time, had to procure her own insurance, and "had no ability to control the business, make binding decisions, or access Sabbia LLC's bank accounts." Friedmann also argues the fact she and Ekman did not share profits equally refutes Ekman's claim that she believed she was a general partner. Friedmann also argues that despite Ekman's claim the name of the partnership was Sabbia Fine Jewelry the trial court found Sabbia Fine Jewelry did not exist as an entity. Friedmann argues this shows there was no meeting of the minds as to creating a new entity called Sabbia Fine Jewelry.

¶ 47 None of Friedmann's arguments have merit. "[T]he formalities of a written partnership agreement are unnecessary to prove the existence of a partnership. [Citations.] A partnership arises when (1) parties join together to carry on a venture for their common benefit, (2) each party contributes property or services to the venture, and (3) each party has a community of interest in the profits of the venture." *In re Marriage of Hassiepen*, 269 Ill. App. 3d at 564-65. Friedmann's arguments do not refute the existence of these necessary elements of a partnership. Ekman admitted in her testimony that she did not know the specifics of the different types of partnerships. The fact she described herself as a "general partner" does not undermine the

parties' intent and agreement to carry on a venture to sell jewelry for their common benefit, to each contribute to that venture, and to have a shared interest in the profits, regardless of what that venture was called.

¶ 48 Friedmann and Ekman could agree that Friedmann would have decision making authority and receive a greater share of the net profits. Under the Act "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 805 ILCS 206/103(a) (West 2014). The partnership agreement is not required to be in writing. The partnership agreement "means the agreement, whether written, oral, or implied, among the partners concerning the partnership." 805 ILCS 206/101(g) (West 2014). Additionally, *Argianas v. Chestler*, 259 Ill. App. 3d 926 (1994), which Friedmann cited in support of her argument Ekman's inability to access the business's bank accounts weighs in favor of finding that no partnership existed, is distinguishable. In that case, the parties' written agreement provided that the purported partner was to receive a salary. *Argianas*, 259 Ill. App. 3d at 943. Additionally, in that case, the parties had formed a partnership in the past at which time they registered the partnership and formally dissolved it, which they did not do with the venture at issue. *Id*. Thus, there were several factors in *Argianas* that led the court to hold that the trial court had not erred in determining that a partnership did not exist beyond the issue regarding distributions without the other partner's consent. Friedmann's argument about control of the business and the split of the net profits is what the parties agreed to and cannot serve to sever the partnership relationship.

¶ 49 Friedmann also argues "there was no meeting of the minds between the parties" because Ekman believed she was in a three-way partnership with Friedmann and Steinhauser but the trial court found Steinhauser was not a partner with Friedmann and Ekman. Friedmann cites

McCorkle v. Tyler Reporting Co., 159 Ill. App. 3d 62, 69 (1987), for the proposition that "[t]he absence of a meeting of the minds relating to *** critical terms [of the partnership agreement] leads irresistibly to the conclusion that the parties did not have the intent necessary to create a partnership." In *McCorkle*, one of the "critical terms" the parties failed to agree upon was the scope of the alleged partnership's operations. *Id*. In that case, the first purported partner asserted that he told the second purported partner that the second would merely act as a consultant to the business, while the second testified he "envisioned [a partnership] arrangement." *Id*. at 64-65. Later, the first purported partner allegedly told the second that their existing relationship would have to be terminated so that the business would be a minority-owned enterprise. *Id*. at 67.

¶ 50 We do not find Friedmann's reliance on *McCorkle* persuasive, as that case is wholly distinguishable. First, we find there was a meeting of the minds between Friedmann and Ekman on what their relationship would be to each other, which is all that is required. *In re Marriage of Hassiepen*, 269 Ill. App. 3d 559, 564 (1995) ("The existence of a partnership is a question of the parties' intent and is based upon all the facts and circumstances surrounding the formation of the relationship at issue."). The relationship at issue is the one between Friedmann and Ekman, and the trial court found only that Steinhauser was not a party to Friedmann's agreement with Ekman because Friedmann entered into a relationship with Steinhauser before Ekman came into the picture. In *McCorkle*, the parties had opposing views of the nature of their relationship in the business and the evidence conflicted as to how each represented that relationship (see *id*. at 64-67); but, more importantly, the evidence failed to establish that the parties agreed how profits would be split (see *id*. at 65-66). In this case, the trial court found that Friedmann and Ekman agreed that they would jointly sell jewelry and share the profits of that enterprise 40% to

Friedmann and 20% to Ekman after expenses were paid. The court found Friedmann and Ekman joined together to carry on a venture for their common benefit, specifically, selling jewelry; each contributed property or services with Ekman contributing primarily her contacts and also trying to obtain corporate sales; each had a community of interest in the profits; and there was a meeting of the minds with regard to the deal, specifically there being a 40/40/20 split of the net profits. Friedmann's argument as to whether Ekman believed Steinhauser was also their partner does not refute any of these facts. The trial court's finding as to what the relationship was and that Friedmann intended to create that relationship, regardless of whether she understood its full implications, is not against the manifest weight of the evidence.

¶ 51 Next, Friedmann argues that Sabbia LLC's corporate documents show that Ekman was not a partner because Friedmann did not file any partnership certificates; instead, Friedmann filed limited liability company certificates for Sabbia LLC. However, Friedmann cites no authority expressly holding that such filing formalities are a prerequisite to the formation of a partnership. *Cf. Classic Hotels, Ltd. v. Lewis*, 259 Ill. App. 3d 55, 59 (1994) ("Under the Illinois Limited Partnership Act ([citation]) a certificate is required to create a limited partnership."). Friedmann also argues that because Friedmann filed her tax return as a sole proprietor and Ekman filed her tax return as an independent contractor then, *ipso facto*, Ekman was an independent contractor. Neither of the cases Friedmann cites stand for the proposition that how a person decides to file their tax returns definitively determines the structure of their business. In *Snyder*, 265 Ill. App. 3d at 894, the court found that the evidence failed to establish a partnership. The facts indicated that the parties did not hold themselves out as a partnership, they filed separate tax returns, they had no partnership certificate on file with the county clerk, and they did not maintain a joint checking account or business cards. *Id*. Accepting that the filing of separate

tax returns was one factor the court considered in finding that the evidence failed to establish a partnership, the court also noted several other factors. Similarly, in *Urban v. Brady*, 86 Ill. App. 2d 158 (1967), also cited by Friedmann, the court found the evidence did support the finding that a partnership existed, noting, in part, that the purported partner filed partnership tax returns, in addition to several other facts. *Urban*, 86 Ill. App. 2d at 160-61. Moreover, in *Snyder* the "sole basis upon which the trial court found a partnership" was the deposit of money by one party into the other party's corporate account. *Snyder*, 265 Ill. App. 3d at 894. The *Snyder* court held that even assuming those deposits constituted profits "the sharing of this nominal income alone is insufficient evidence that a partnership was created." (Internal quotation marks omitted.) *Id*.

¶ 52 Here, the trial court heard the evidence regarding how the parties filed their taxes and found those facts did not outweigh the other facts indicating the parties' intent to enter a partnership arrangement. The trial court's judgment is supported by ample evidence, and we cannot say the existence of this fact concerning taxes causes the trial court's judgment to be unreasonable or makes it apparent that no partnership existed. See *Kroot v. Chan*, 2017 IL App (1st) 162315, ¶ 19 ("A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.").

¶ 53 Friedmann failed to support with citation to any authority her argument that Ekman's lack of capital contributions shows that she was not a partner. Friedmann also asserts without citation to authority that "the statements of the parties show that Ekman was not a partner." "The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7) (210 Ill. 2d R. 341(h)(7)), resulting in waiver." *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 804 (2009). Even if not waived, the statements to which

Friedmann refers are statements that were before the trial court and which it weighed. This "argument" does nothing to refute the facts found by the trial court that weigh in favor of a partnership; nor does simply restating them demonstrate that the opposite conclusion is apparent or that the trial court's judgment is unreasonable. Moreover, the argument that no partnership was formed simply because Ekman did not make a capital contribution toward it lacks merit. There is no authority for finding that such a contribution is *required* to form a partnership. See 805 ILCS 206/202 (West 2014).[3]

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[3] Section 202 of the Act reads in its entirety as follows:

"Formation of partnership.
(a) Except as otherwise provided in subsection (b), the association of 2 or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
(b) An association formed under a statute other than this Act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this Act.
(c) In determining whether a partnership is formed, the following rules apply:
(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
(i) of a debt by installments or otherwise;
(ii) for services as an independent contractor or of wages or other compensation to an employee;
(iii) of rent;
(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
(vi) for the sale of the goodwill of a business or other property by installments or otherwise." 805 ILCS 206/202 (West 2014).

¶ 54 Friedmann argues her 2000 partnership was "vastly different" from the partnership at issue in this case and, "based on Friedmann's prior experience with a partnership, her arrangement with Ekman clearly was not a partnership." Friedmann correctly argues courts have considered whether parties took the same steps with regard to the partnership that they did with a former partnership in determining whether the parties intended to form the partnership at issue. See *Argianas*, 259 Ill. App. 3d at 943; *supra* ¶ 57. However, Friedmann's reliance on *Argianas* is misplaced. In that case, the court compared a current alleged partnership and a former partnership between the same parties. See *id*. Here, Friedmann attempts to make the same comparison between the partnership the trial court found existed between Friedmann and Ekman and the partnership between Friedmann and Alex Sepkus. This argument is not persuasive because Friedmann has failed to provide factual or legal grounds on which we may find the fact Friedmann took different steps with one partner than she did with a subsequent partner is indicative of a lack of intent to form a partnership with the subsequent partner. It may be reasonable to infer that Alex Sepkus has more business acumen than Friedmann; but in light of all of the evidence this fact is not a basis for finding that Friedmann did not intend to jointly sell jewelry with Ekman and share the profits of that enterprise 40% to Friedmann and 20% to Ekman after expenses were paid; or that each did not contribute property of services, with Ekman contributing primarily her contacts and also trying to obtain corporate sales; or that there was not a meeting of the minds with regard to the deal.

¶ 55 Friedmann's final argument as to why there was no partnership is that the parties did not share profits. Her claim that the parties did not share profits is premised on the assertion that "[p]usuant to her role *as an independent contractor*, [Ekman] received commission payment from Sabbia LLC—not profits." (Emphasis added.) Friedmann failed to establish that the trial

court's finding that Ekman was in fact Friedmann's partner is against the manifest weight of the evidence. Thus, this assertion is unsubstantiated. Accordingly, this argument fails.

¶ 56 For the foregoing reasons, we hold the trial court's judgment Friedmann and Ekman entered into a partnership is not against the manifest weight of the evidence.

¶ 57 Personal Liability

¶ 58 Friedmann argues she cannot be personally liable for the judgment in this case because "the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company" and a member or manager of an LLC "is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager." 805 ILCS 180/10-10(a) (West 2014). Friedmann argues Ekman failed to "pierce the corporate veil" and the judgment against her should be reversed. See *Snyder*, 265 Ill. App. 3d at 895-96. In *Snyder*, the court wrote as follows:

> "A corporation is an entity separate from its shareholders, officers, directors, and employees in that these parties cannot generally be held liable for the debts or obligations of the corporation. [Citation.] The corporate form may be disregarded only when a court can conclude that the corporation is merely the alter ego or business conduit of a dominant personality. [Citation.]
>
> Where a person seeks to pierce the corporate veil to reach the dominant individual, he must show that '(1) there is such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) circumstances are such that adhering to the fiction of a separate corporate existence would promote injustice or inequity.' [Citation.] In order to

> establish a unity of interest, we look to numerous factors, including: (1) whether the corporation is inadequately capitalized; (2) whether the dominant individual has failed to observe corporate formalities in conducting his business; (3) whether corporate funds have been commingled with personal funds. [Citation.]" *Snyder*, 265 Ill. App. 3d at 895-96.

¶ 59 We construe Friedmann to argue that if Ekman entered into a partnership it was a partnership with Sabbia LLC, not Friedmann individually, and therefore she is not personally liable for the judgment. This argument fails. The trial court found that Ekman entered into a partnership with Friedmann individually, not with Sabbia LLC. The evidence supports the trial court's findings. The evidence failed to establish that the parties intended their agreement to be between Ekman and the LLC. Friedmann testified the LLC included both the Florida and Walton Street locations. However, the evidence established that Friedmann agreed to share with Ekman profits after expenses were deducted from operations at the Walton Street location only. When Friedmann signed the lease for the space on Walton Street she signed in her individual capacity and not on behalf of the LLC. Thus, the evidence supports the trial court's finding that the deal between Friedmann and Ekman was for a new business operating out of the Walton Street location. The trial court's judgment against Friedmann individually is not against the manifest weight of the evidence. Thus, Friedmann's argument she is not personally liable for that judgment fails.

¶ 60 Calculation of Sales and Cost of Goods

¶ 61 First, Friedmann argues the trial court erroneously relied on Ekman's calculation of the partnership's total sales because, according to Friedmann, Ekman made her calculation of total sales "using documents that the trial court determined were hearsay namely handwritten sheets

and QuickBooks records of the business." Friedmann asserts the trial court should have rejected Ekman's calculation of total sales and accepted Friedmann's calculation, which she asserts "was based on each sale, organized by customer, and supported by an original invoice and proof of payment."

¶ 62 Friedmann is correct that when the parties appeared before the trial court for its ruling following the evidentiary hearing on the accountings, the trial court found that Ekman had used improper figures in that Ekman used QuickBooks and handwritten notes taken from QuickBooks as well as her memory where there was a lack of documentation. The court found that Ekman used improper figures in performing her accounting. The court held "that was unreliable, because I've already held the handwritten sheets to be hearsay and totally unreliable, and the QuickBooks were also totally unreliable." The court found, on the contrary, Friedmann's "numbers were based on invoices." The court stated it relied on Friedmann's numbers so that it could make an assessment of Ekman's damages with certainty. However, because the parties had not determined the amount Ekman was owed under the second deal under which Ekman only received 12% of net profits, the parties had to resubmit their calculations.

¶ 63 Admittedly, the trial court informed the parties they should calculate the 12% number based on the profit and expense figures *Ekman* submitted. The reason the court ordered the parties to do so was that during the trial court's entry of its judgment on the accounting, the court noted that Ekman's attorney pointed out an expense that had been improperly charged to the partnership that should not have been, which the trial court meant to exclude from its calculations but mistakenly had not—thus increasing the profit "to Miss Ekman's number of $35,373.34." The court stated: "That is the correct number." The court later stated, in response to an inquiry about expenses from Friedmann's attorney, that the court found Ekman's

calculation of the expenses "to be more appropriate, and I find them to be more supported by the documents that I looked at." The trial court was aware of issues regarding Ekman's use of QuickBooks data and her own written notes from the data and initially rejected Ekman's calculations for that reason. The court only reverted to "Ekman's number" to compensate for an expense the court found Friedmann erroneously included in her calculations. The trial court apparently found that adding that improperly included expense to the calculations of sales, costs of goods sold, and other expenses determined by Friedmann yielded the same result Ekman reached and held, therefore, the parties should rely on "Ekman's number" to adjust the amount Ekman was owed under the latter portion of the parties' agreement. During its oral ruling, the trial court stated as follows:

> "Miss Friedmann's numbers were based on invoices according to the submissions of her attorney. And so I choose that, doing my job to make it not so uncertain that it's impossible for this Court to determine whether anything is due Miss Ekman. And I accept her number of $9,039.04. [(The trial court's calculation sheet establishes that this was Friedmann's calculation of the amount Ekman was owed.)] Of course that's considering that 20% number, not parsing it with the 12% for the last two months."

After additional discussion with the parties, the court stated as follows:

> "Mr. Geller [(Ekman's attorney)] pointed out something that I did mean to take off, but thus increasing the net profit, that I didn't do. So that would bring it back to Miss Ekman's number of $35,373.34. [(The trial court's calculation sheet establishes that this was Ekman's calculation of net profit. The parties agreed on the amount Ekman had already been paid.)]

> You're exactly right, Mr. Geller. [Already paid] is $17,758.00, leaving the money owed of $17,615.34. That is the correct number.
>
> My apologies, Miss Ekman and Miss Friedmann. That is what I meant to do and I didn't say. However, I need to also parse those last two months. And interest, of course."

¶ 64 Friedmann has failed to refute or even to address the conclusion by the trial court regarding the effect of the improperly included expense.[4] Therefore, we cannot say its judgment is against the manifest weight of the evidence.

¶ 65 Second, Friedmann argues the trial court miscalculated the cost of goods sold by the partnership because it relied upon Ekman's calculation of the cost but Ekman's calculation is "disproved based on Ekman's own testimony." Friedmann argues that Ekman testified that the business applied a "1.2 mark up" on goods it sold and applying that mark up to Ekman's cost of goods calculation, the total sales would be "far less than Ekman claimed in her sales calculation without counting any discounts." Friedmann thus concludes Ekman's cost of goods calculation is too low. We agree with Ekman's response on appeal that this argument by Friedmann is "a hypothetical argument not supported by the record." Despite the testimony as to how the parties determined what to charge for jewelry Friedmann has pointed to no evidence that the mark up Ekman testified to was consistently applied to every piece of jewelry. Moreover, the trial court ordered the parties to base their accountings on invoices and original documentation, not a

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[4] Nor is it clear from the parties' arguments or the record exactly what expense the trial court was referring to. "Our supreme court rules mandate that the appellant's opening brief must set out all of that party's arguments on appeal and the legal and record support for those arguments." *In re County Treasurer & ex officio County Collector of Kane County, Illinois*, 2018 IL App (2d) 170418, ¶ 47. In the absence of a sufficient record and pertinent argument, we cannot say the trial court abused its discretion. *Short v. Pye*, 2018 IL App (2d) 160405, ¶ 50.

reverse-engineering of what the costs must have been based on how the business sometimes marked them up. Friedmann has pointed to no evidence Ekman did not comply with the trial court's order. Ekman's calculation of the cost of goods sold states it is based on documentation Friedmann produced and Friedmann has not pointed to evidence it is not. We do not construe Friedmann to argue that Ekman failed to base her calculation of the cost of goods sold on the documents Friedmann provided because Friedmann goes on to argue that "[t]he reason that Ekman under reports the cost of goods is because she erroneously removed several items from her cost of goods calculation" because of a *lack* of supporting documentation. Ekman detailed the reasons she did not include the costs of certain goods in her calculations in an attachment she submitted to the trial court with her "Surreply to Defendant Friedmann's Response to Closing Argument and Calculation of Cost of Goods Sold." Friedmann points to three items she argues she provided documentation for as to their cost and argues that if those costs of goods are included Ekman's cost of goods calculation would match Friedmann's calculation.

¶ 66 "The admission of evidence is within the sound discretion of the trial court and we will not reverse the court unless that discretion was clearly abused." (Internal quotation marks omitted.) *Klesowitch v. Smith*, 2016 IL App (1st) 150414, ¶ 41. "The circuit court abuses its discretion when its ruling on the admissibility of evidence rests on an error of law." (Internal quotation marks omitted.) *Id.* ¶ 47. The evidence on which Friedmann relies as providing the true cost of the goods at issue includes: (1) a memorandum dated November 5, 2014 from a person who did not testify stating what the wholesale price of the goods would have been in 2003 which was attached as an exhibit to Friedmann's closing argument after the evidentiary hearing; (2) her own accounting; and (3) a credit card bill that lists the name of a company but not what the specific items purchased were. Ekman argues "Friedmann fails to identify how the

[trial] court was wrong in excluding those costs of goods sold without an original vendor invoice." We agree. Friedmann has not argued or cited legal authority for why it was error for the trial court to exclude this evidence.

> "Rule 341(h)(7) requires the appellant to present reasoned argument and citation to legal authority and to specific portions of the record in support of his claim of error. [Citation.] This rule is especially important because, when reviewing a case, the appellate court starts with the presumption that the circuit court's ruling was in conformity with the law and the facts. [Citations.] The appellant bears the burden of overcoming that presumption. [Citation.] Moreover, it is well established that appellate courts are entitled to have the issues clearly defined, [and] to be cited pertinent authorities. [Citations.]" (Internal quotation marks omitted.) *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 15.

¶ 67 Friedmann failed to meet her burden of demonstrating error in the trial court's reliance on Ekman's calculation of the cost of goods sold and her argument is, nonetheless, waived, as is her unsupported argument that Ekman's "differing accounting calculations" show that Ekman failed to prove her damages with specificity. *Sakellariadis*, 391 Ill. App. 3d at 804.

¶ 68 The plaintiff bears the burden of proving damages with reasonable certainty. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise, Ltd. USA*, 384 Ill. App. 3d 849, 864 (2008). At the same time, "[a] question of damages is to be determined by the trier of fact, and a reviewing court will not lightly substitute its opinion for the judgment rendered in the trial court." (Internal quotation marks omitted.) *Baumrucker v. Express Cab Dispatch, Inc.*, 2017 IL App (1st) 161278, ¶ 67. "Furthermore, in making a determination of damages, absolute certainty is not required, and all that the law requires is that there be an adequate basis in the record for the

court's determination." (Internal quotation marks omitted.) *Hanson-Suminski v. Rohrman Midwest Motors, Inc.*, 386 Ill. App. 3d 585, 595 (2008). In this case, the record is more than sufficient to establish Ekman's damages with the requisite specificity. Further, we find no error in the exclusion of the aforementioned items from the calculation of the cost of goods sold for the purpose of determining Ekman's damages.

¶ 69 Motion to Reconsider

¶ 70 Finally, Friedmann argues the trial court should have granted her motion to reconsider. "The purpose of a motion to reconsider is to bring to the court's attention a change in the law, an error in the court's previous application of existing law, or newly discovered evidence that was not available at the time of the hearing." *People v. $280,020 U.S. Currency*, 372 Ill. App. 3d 785, 791 (2007). "Where the motion to reconsider is based on new evidence, facts, or legal theories not presented in the prior proceedings, our standard of review is abuse of discretion." *Illinois Insurance Guaranty Fund v. Nwidor*, 2018 IL App (1st) 171378, ¶ 39.

> "When reviewing a motion to reconsider that was based only on the trial court's application (or purported misapplication) of existing law, as opposed to a motion to reconsider that is based on new facts or legal theories not presented in the prior proceedings, our standard of review is *de novo*. [Citation.] 'Where a party's motion for reconsideration merely asks the trial court to reexamine its earlier application of existing law,' this court's review is *de novo*. [Citation]" *$280,020 U.S. Currency*, 372 Ill. App. 3d at 791.

¶ 71 First, Friedmann argues Ekman used improper hearsay in her calculations and thereby Ekman "increased the amounts she was owed for each pay period." Friedmann asserts that "if an item was place [*sic*] on layaway, Ekman could claim a sale on an item prior to it being paid in

full, and then she counted that layaway sale again by using the handwritten sheets, which showed when the item was paid." Friedmann points to no instance in Ekman's accounting where she alleges such double-counting occurred. Her argument is nothing more than speculation and, therefore, must fail. *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 225 (2007) ("Where the record is incomplete or does not demonstrate the alleged error, a court of review will not speculate as to what errors may have occurred below."). Second, Friedmann argues that Ekman miscalculated total sales because she used both the QuickBooks records and her own handwritten notes. We have already addressed the propriety of the trial court's reliance on Ekman's calculation of damages, and Friedmann offers nothing new in support of her claim. Accordingly, this argument fails.

¶ 72 Next, Friedmann argues Ekman's calculation to reduce her damages to reflect 12% of net profits rather than 20% was skewed because Ekman calculated the amount to be deducted from her original calculations based on Friedmann's calculation of net profits in March and April rather than Ekman's calculation of net profits. Friedmann asserts that this "technique allowed Ekman to earn more money than she was due in the second period." Friedmann also argues Ekman improperly added a commission for the latter part of the deal because the amount was already included in Ekman's sales totals "and should not have been counted again." Friedmann raised this issue for the first time in her reply in support of the motion to reconsider. Friedmann has provided no citation to the record to support her allegation as to what the 33% commission should have been, that this amount was already included in sales, or that Ekman's method of calculation inflated her damages. Friedmann has not stated what the proper method of calculating Ekman's share of the net profits during the second part of the parties' agreement is. Friedmann's argument presumes that the net profit for March and April would have been higher

under "Ekman's method of calculation" and thus the deduction to adjust her share to 12% rather than 20% should have been greater. But that necessary presumption is not supported by any citation to the record. "If any doubts arise from the incompleteness of the record, they will be resolved against the appellant." *Ladao v. Faits*, 2019 IL App (1st) 180610, ¶ 34. Friedmann's argument leaves many doubts as to whether an error occurred. Resolving those doubts against Friedmann, we cannot find the judgment is against the manifest weight of the evidence.

¶ 73 Next, Friedmann argues the trial court should have applied a $2,066.25 set off against the judgment. Friedmann did raise this argument in her motion to reconsider in which she argued Ekman admitted that she was reimbursed by the business for a purchase she made on her credit card and she also received a refund from her credit card company when the item was returned but she did not turn over that refund to the business. Friedmann asserted that Ekman admitted she owes this amount to the business. Ekman's only response on appeal is that Friedmann raised this issue in her calculation of damages and she cites no new facts or changes in law. As this argument does not involve new evidence, facts, or legal theories, our review is *de novo*. Nonetheless, Friedmann's argument fails.

¶ 74 Friedmann puts forth no legal theory as to why she would be entitled to this "set-off." Although Friedmann claims Ekman admitted she owes the business this money, Friedmann does not cite to what portion of the record contains this admission.

> "A reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which an appellant may dump the burden of argument and research, nor is it the obligation of this court to act as an advocate or seek error in the record." (Internal

quotation marks omitted.) *Northbrook Bank & Trust Co. v. Abbas*, 2018 IL App (1st) 162972, ¶ 34.

We are not obligated to make Friedmann's arguments for her. *Id*.

¶ 75 Regardless, we note that

> "a 'setoff' may refer to a situation when a defendant has a distinct cause of action against the same plaintiff who filed suit against him, which is subsumed procedurally under the concept of counterclaim. [Citation.] Under this meaning, a setoff may refer to a situation where the defendant claims that the plaintiff has done something that results in a reduction in the defendant's damages. [Citation.] When a defendant pursues this type of setoff, the claim must be raised in the pleadings. [Citation.]" *Stendera v. State Farm Fire & Casualty Co.*, 2012 IL App (1st) 111462, ¶ 19.[5]

¶ 76 The reimbursement at issue was the subject of a counterclaim filed by Friedmann, Steinhauser, and "Sabbia Fine Jewelry" with their answer to Ekman's original complaint. The counterclaim alleged unjust enrichment, fraud, and breach of fiduciary duty with regard to Ekman's retention of the refund. As noted by the trial court, Friedmann failed to renew her counterclaim in her answer to Ekman's amended complaint, but Steinhauser did. However, the trial court dismissed Steinhauser's claim for lack of standing. Steinhauser is not a party to this appeal. Friedmann's failure to file a counterclaim for the allegedly improperly retained reimbursement to Ekman negates her ability to seek a set off of that amount against the judgment

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[5] "In another sense, however, the term 'setoff' may refer to a defendant's request for a reduction of the damage award because a third party has already compensated the plaintiff for the same injury. This occurs, for example, when a codefendant who would be liable for contribution settles with the plaintiff." *Thornton v. Garcini*, 237 Ill. 2d 100, 113 (2010). This sense of the term is not applicable in this case.

against her. *Id*.; see also *Nadhir v. Salomon*, 2011 IL App (1st) 110851, ¶ 37 ("Defendants are not entitled to a setoff of any kind because they failed to counterclaim against plaintiffs.").

¶ 77 Finally, Friedmann argues the trial court improperly applied compound interest to the judgment. "Prejudgment interest can be awarded pursuant to statute, as agreed to by the parties or otherwise warranted by equitable considerations." *Chandra v. Chandra*, 2016 IL App (1st) 143858, ¶ 48. "[I]n chancery matters the decision to allow statutory interest lies within the sound discretion of the trial court." *Hadley Gear Manufacturing Co. v. Zmigrocki*, 152 Ill. App. 3d 358, 359 (1986). Ekman sought prejudgment interest pursuant to section 701(b) of the Act (805 ILCS 206/701(b) (West 2014) ("The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.")). Further, Ekman argued that where there is an obligation to pay interest under the Act without a specified rate the rate is that stated in section 4 of the Interest Act. 805 ILCS 206/104(b) (West 2014) ("If an obligation to pay interest arises under this Act and the rate is not specified, the rate is that specified in Section 4 of the Interest Act."). On appeal, Friedmann does not dispute Ekman's position on her statutory right to interest. Friedmann only argues that the language of section 4 of the Interest Act providing for an interest rate of "9% per annum" does not mean compound interest. Friedmann cites *Braden v. Weinert*, 97 Ill. App. 3d 929, 937-38 (1981), and *Helland v. Helland*, 214 Ill. App. 3d 275, 276 (1991), for the proposition that "per anum" in the Illinois Interest Act

(Interest Act) (815 ILCS 205/0.01 (West 2016)) does not mean compound interest. In *Helland*, the court wrote as follows:

> "Several statutory provisions provide for interest 'per annum.' [Citation.] However, such language has been interpreted as providing for only simple rather than compound interest. [Citation.] 'Per annum' merely denotes the frequency at which the applicable rate of interest is to be applied and does not permit a compounded annual method of computation. [Citation.]" *Helland*, 214 Ill. App. 3d at 277.

¶ 78 Ekman cites *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 920 (1995), in which this court found an award of compound interest was not an abuse of discretion. Ekman's reliance on *Ryan* is misplaced, where in that case the trial court "specifically found that compound interest was required in order to make full equitable restitution." *Id*. The *Ryan* court relied on our supreme court's decision in *In re Estate of Wernick*, 127 Ill. 2d 61, 87-89 (1989), where the court "held that in an action for breach of fiduciary duty, a court could award equitable interest to make an injured party whole since statutory prejudgment interest "does not provide an accurate measure of compensation for money wrongfully withheld." *Id*. at 919 (citing *Wernick*, 127 Ill. 2d at 87-89). This case does not involve an award of equitable interest awarded to make an injured party whole. Rather, this case involves purely statutory prejudgment interest. Therefore *Ryan* is inapplicable. See *West Suburban Bank v. Lattermann*, 285 Ill App. 3d 313, 317 (1996) (finding that *Ryan* court "held that compound interest was proper not as statutory prejudgment interest but as part of full restitution"). "Compound interest exists when accrued interest is added to the principal sum, and the whole is treated as a new principal for the calculation of the interest for the next period. Black's Law Dictionary 812 (6th ed.1990). Compound interest is

disfavored under Illinois law." *Reaver v. Rubloff-Sterling, L.P.*, 303 Ill. App. 3d 578, 582 (1999). "In general, compound interest is available only when there is no statutory bar and the parties specifically agree to compound interest." *Weigel Broad. Co. v. Smith*, 289 Ill. App. 3d 602, 612 (1996) (citing *Helland*). "In the absence of express statutory or contractual language providing for prejudgment interest to be compounded, interest must be computed on a simple basis." *Martin v. Heinold Commodities, Inc.*, 240 Ill. App. 3d 536, 545 (1992), reversed in part on other grounds, *Martin v. Heinold Commodities, Inc.*, 163 Ill. 2d 33, 82 (1994).

¶ 79 Ekman does not dispute that her interest calculation was based on compound interest, which was not permitted. Friedmann has not claimed what the simple interest should be. That portion of the trial court's judgment awarding Ekman interest based on her compound interest calculation is reversed. The cause is remanded for the trial court to enter a judgment based on a simple interest calculation. In all other respects, the judgment of the trial court is affirmed.

¶ 80 CONCLUSION

¶ 81 For the foregoing reasons, the circuit court of Cook County is affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this order.

¶ 82 Affirmed in part, reversed in part, and remanded with instructions.