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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--|---|-------------------------------|
| JOSEPH M. GAMBINO, Independent |) | Appeal from the Circuit Court |
| Administrator of the Estate of Joseph J. |) | of Cook County. |
| Gambino, and NORTH STAR TRUST |) | |
| COMPANY, as Trustee u/t/a Nos. 13534, |) | |
| 23985, 23994, |) | |
| |) | |
| Plaintiffs-Appellees, |) | |
| |) | |
| v. |) | No. 05 CH 4303 |
| |) | |
| W.W. FUNDING, LLC, an Illinois Corp., |) | |
| 21st CENTURY FINANCIAL PLANNERS, |) | |
| INC., an Illinois corporation; DENNIS D. |) | |
| KOONCE; ENZO DI BENEDETTO, |) | |
| SALVATORE DI BENEDETTO; TITLE |) | |
| AMERICA, INC.; WASHINGTON |) | |
| MUTUAL BANK, a Federal Association; |) | |
| STEPHEN WOLF; ROSS WAXMAN, and |) | |
| PLAZA BANK, |) | |
| |) | |
| Defendants-Appellants. |) | |
| |) | |
| |) | |
| (IVAN CICO, JR., |) | Honorable |
| |) | Nancy Arnold, |
| |) | Judge Presiding. |
| Third-Party Respondent-Appellant.) |) | |

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* When Cico drew checks on corporate accounts that he controlled payable to a judgment debtor's wife without valid explanation, the trial court properly entered sanctions and judgment against Cico for those monies in favor of the creditor.

¶ 2 On this direct appeal, third-party respondent Ivan Cico, Jr., asks this court to (1) vacate the trial court's order of sanctions in the amount of \$165,787.79 or (2) reverse the trial court's denial of Cico's motion to vacate.

¶ 3 **BACKGROUND**

¶ 4 **I. Citation to Discover Assets**

¶ 5 Following a judgment to quiet title and for slander of title, plaintiffs Joseph M. Gambino, independent administrator of the estate of Joseph H. Gambino, and North Star Trust Company, as trustee u/t/a/ Nos. 13534, 23985, 23994 were awarded a monetary judgment in the amount of \$595,574 for compensatory damages and \$675,000 for punitive damages as follows: (1) \$500,000, jointly and severally, against defendants Salvatore DiBenedetto, Vincenzo DiBenedetto, Dennis Koonce, Boulevard Mortgage Corporation, and Title America, Inc.; and (2) \$175,000, jointly and severally, against defendants Stephen Wolf and W.W. Funding, L.L.C. The trial court's judgment was affirmed by this court on direct appeal. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 25 (2009).

¶ 6 Third-party respondent Ivan Cico, Jr. (Cico) is a business associate of judgment debtor Stephen Wolf (Wolf). Plaintiffs noticed a citation to discover assets upon Cico on January 21, 2010 (citation) individually and as co-owner of Infinity Realty Group, Inc. Cico's wife is the other co-owner of Infinity Realty Group, Inc. The citation's purpose was to determine whether

Cico was holding property belonging to judgment debtor Wolf. The citation sought production of documents pertaining to Cico's business dealings with Wolf, as follows:

“Citation respondent is required to produce, for the period from January 1, 2007, to date, all documents pertaining to any business dealings between Ivan Cico, Jr., or any company with which he is affiliated, including Infinity Realty Group, Inc., and Stephen Wolf, whether as principal or agent, or whether acting on behalf of Wolf Real Estate Partnership or any other entity. This request for documents includes, without limitation, all documents pertaining to any real estate transaction, whether potential, consummated or abandoned, in which Stephen Wolf either had a direct interest or was acting on behalf of anyone else that would have had a direct interest in such transaction.”

¶ 7 II. Plaintiffs' Motions

¶ 8 A. Plaintiffs' First Motion

¶ 9 Although plaintiffs claim that they filed a motion to compel the citation of Cico shortly after the January 21, 2010, citation, the parties' briefs do not provide cites to the record for this first motion, nor is the first motion found in the appellate record. According to plaintiffs' appellate brief, their first motion claimed that Cico failed to comply with the requirements of the January 21 citation. No response by Cico to the first motion is in the record, nor is it cited to by the parties. Cico claimed that he appeared and was examined on a date mutually agreed upon by plaintiffs and himself. Cico admits that, at the examination, he refused to respond to questions pertaining to business dealings with persons other than Stephen Wolf. There is no transcript or bystander's report of an examination in the record. Cico's refusal to respond to questions

pertaining to business dealings with persons other than Stephen Wolf is a fact identified in Cico's response, filed on April 14, 2010, to plaintiffs' amended motion to compel Cico's citation.

¶ 10 B. Plaintiffs' Amended Motion

¶ 11 Plaintiffs claim that on April 8, 2010, they filed an amended motion to compel the citation of Cico, but the parties' briefs do not provide citation to the record for this amended motion and this amended motion is not found in the appellate record. According to plaintiffs' appellate brief, this second motion claimed that Cico failed to comply with the requirements of the January 21 citation. Plaintiffs also claim in their appellate briefs that this second motion sought additional information about the specific business dealings between Cico and the judgment debtor's wife, Susan Wolf. Plaintiffs claim in their third motion filed April 29, 2010, that the amended motion

“sought to compel Cico to provide information concerning his dealings with members of Stephen Wolf's family because of the substantial evidence that Wolf had used his family members to circumvent the processes of this Court. In their amended motion to compel, plaintiffs showed the Court that over the past year, Cico made substantial undisclosed payments to Susan Wolf, *** plaintiffs' request that Cico provide all documents concerning all business relationships between him and any of Wolf's family members and that he 'answer all questions pertaining to these business relations.' ”

¶ 12 On April 14, 2010, Cico responded to plaintiffs' amended motion to compel. Cico claimed in his response that, at the examination following plaintiffs' first motion, he “refused to

respond to questions pertaining to business dealings with persons other than Stephen Wolf.”

Specifically, Cico claimed in his response to plaintiffs’ amended motion that:

“Rather than litigate the issue of Cico responding to questions concerning his business dealings with members of Stephen Wolf’s family, Cico is prepared to respond to these questions. In this regard, however, Cico is not conceding that these business dealings are anything but business dealings with the specific family member. Basically, there is nothing nefarious with Cico’s business dealings with members of Stephen Wolf’s family, and Cico is entitled to do business with any person or entity that he chooses and in any manner that he chooses, as long as he acts lawfully. Cico asserts that he is acting lawfully in transacting business, in general, and specifically with any member(s) of Stephen Wolf’s family.”

Cico’s response to the amended motion also claimed that “Cico offered to be examined on April 21, 2010 *** in the trial court judge’s witness interview room.”

¶ 13 On April 15, 2010, the trial court granted plaintiffs’ amended motion to compel an examination of Cico under oath. The trial court, by agreement, ordered Cico to “be examined *** and he shall produce all documents in his possession responsive to the document request.”

¶ 14 On April 21, 2010, Cico’s citation examination went forward. Cico testified to the different purposes in which he uses Infinity Realty Group, Inc., and Infinity Property Management, Inc., as follows:

“A. *** Infinity Realty Group has two purposes: It’s a general contractor, and we have general contractor license. We operate in the city of Chicago. We are licensed in the city of Chicago. We operate anywhere

in the state. And it has a real estate license. So Infinity Realty Group is a licensed real estate broker under my name. Infinity Property Management is a management company that I use for any property that we own personally to manage the properties.”

Cico clarified that “we” referred to the management “strictly” of properties owned by himself and his wife. Infinity Realty Group, Inc., and Infinity Property Management, Inc., has only two shareholders: Cico and his wife.

¶ 15 Cico testified that he heard of Tac-Tic, LLC, but does not know what they do. Yet, as is explained later, he was the signature on checks payable to this company. Cico’s counsel stated at the citation examination:

“I think that if it has anything to do with Steven Wolf or the Wolf family, not that I’m stipulating to that, then he can testify to it. But if it’s anything else, it’s really none of your business.”

Cico testified that Susan Wolf was in his office “three or four times” and that Stephen Wolf used a desk in his office. Cico testified that he and Susan Wolf have a business relationship and “[Susan] refers clients to us for construction, and I did pay her some referral fees for those services.”

¶ 16 Cico brought a list of seven checks with him to the citation examination on April 15, 2010, in response to the trial court’s order. The seven checks at issue drawn by Cico on the account of Infinity Property Management, Inc., or Infinity Realty Group, Inc., payable to Susan Wolf, Stephen Wolf, and Wolf Real Estate were as follows:

| | Check Date | Pay to | Amount | For [on check] | Signed by | In the name of |
|--|------------|--------|--------|----------------|-----------|----------------|
|--|------------|--------|--------|----------------|-----------|----------------|

| | | | | | | |
|---|-------------------|------------------|-------------|--------------------------|------|------------------------------------|
| 1 | April 16, 2009 | Susan Wolf | \$21,425.00 | Consulting fee | Cico | Infinity Property Management, Inc. |
| 2 | September 9, 2009 | Stephen Wolf | \$2,668.00 | [N/A] | Cico | Infinity Realty Group, Inc. |
| 3 | October 28, 2009 | Susan Wolf | \$5,000.00 | [N/A] | Cico | Infinity Realty Group, Inc. |
| 4 | October 29, 2009 | Stephen Wolf | \$48.00 | [3 words, but illegible] | Cico | Infinity Realty Group, Inc. |
| 5 | December 7, 2009 | Wolf Real Estate | \$1,000.00 | [N/A] | Cico | Infinity Realty Group, Inc. |
| 6 | December 7, 2009 | Susan Wolf | \$2,024.50 | [N/A] | Cico | Infinity Realty Group, Inc. |
| 7 | January 11, 2010 | Susan Wolf | \$7,664.58 | [N/A] | Cico | Infinity Realty Group, Inc. |

¶ 17 However, only five of the seven check payments were discussed at the citation examination on April 21, 2010: the dates of these checks were April 16, 2009, October 28, 2009, October 29, 2009, two checks on December 7, 2009, and January 11, 2010. Cico claimed at the hearing that (1) the \$21,425 check to Susan Wolf was for a referral fee for the referral of Unison Management Company, (2) the \$2,668 check to Stephen Wolf is not explained in the appellate record, (3) the \$5,000 check to Susan Wolf was for designing the decorations to several (two, maybe three) of Cico’s properties, (4) the \$48 check to Stephen Wolf was explained at a hearing where there is no bystander’s report, (5) the \$1,000 check to Wolf Real Estate is not explained in the appellate record, (6) the \$2,024.50 check to Susan Wolf was a referral fee from a Deerfield construction project, and (7) the \$7,664.58 check to Susan Wolf was a referral fee from a West Diversey construction job.

¶ 18 As to the first check, Cico testified that the April 16, 2009, payment to Susan Wolf for \$21,425 was signed by him and drawn on the account of Infinity Property Management, Inc., but that his office manager, Diana Poppa, made out the check. Cico testified to the purpose of the check as follows:

"A. Susan referred us to a company by the name of Unison Management, okay. This company entered into a deal where they buy ad rights and they installed cell towers on our buildings."

The following relevant testimony occurred:

"Q. So what was *** the 21,425 check?

A. That was a referral fee for the introduction.

Q. How was this amount determined?

A. I think it was 10 or 15 percent of our first year, I think.

Q. Did she give you a bill?

A. No.

Q. Give you any documentation concerning this referral fee?

A. No.

Q. Did you give her any documentation concerning this referral fee?

A. Other than a check, no other documentation."

Cico then testified that the Unison deal had not yet been completed:

"Q. When did you enter into your contract with Unison?

A. Well, there is a hiccup with contract, lender is not signing a nondisturbance agreement. So now we are the last stage where we're supposed to receive a lump sum check of \$150,000. And it was scheduled to be disbursed, but we have an issue with the nondisturbance letter. ***

Q. So not all the documents have yet been signed, as I

understand, for your deal with Unison?

A. As far as us, yes, but not as a bank. ***

Q. So prior to April the 16th, 2009, you signed a contract with Unison?

A. We signed – a letter of intent first and they did the research and then follow through the lawyers.

Q. Have you brought any of the documents regarding Unison to this conference room?

A. No. That's my business, correct? ***

Q. *** It relates to this payment you made to Susan Wolf, but you haven't brought those documents here; is that correct?

A. Let me be very clear. I got the referral for a great venture and I paid the referral. The end. ***

Q. The contract, though, your testimony it was definitely not signed before April 16, 2009?

A. No.

Q. Do you know when it was signed?

A. I don't remember.

Q. So it may have been signed before April 16, 2009, as well?

A. I don't remember the date. Maybe."

¶ 19 As for the third check, Cico testified that the October 28, 2009, check payable to Susan Wolf for \$5,000 was signed by him drawn on the account of Infinity Realty Group, Inc., but that

his office manager, Diana Poppa, made out the check. Cico testified to the purpose of the check as follows:

"Q. And what's this check for?

A. For decorating several properties. I don't remember exactly which one, but I remember *** Albany, *** Glenn Lake. There might have been a *** Honore. ***

Q. Is this one of the Honores that was related to that check for the recording fee to Mr. Wolf?

A. Might have been. Might have been. ***

Q. So you hired her or employed her to do what?

A. To decorate, decorate properties to stage so we can sell them. We have a hard time selling properties and we have some issues with the property values, as you know. The market is stagnant, so we try to do whatever we can to make them presentable.

Q. These were model apartments then?

A. Yes.

Q. Has she run a decorating business that you're aware of?

A. I know that she did in the past for a few friends she always talks about. Her house always looks neat when I'm there. She has great taste, you know. That's – how do you know – it's something I think you have to be born with. I can't do it. That's for sure.

Q. When did you hire Susan to do this decorating?

A. I don't remember the exact date, but it was probably sometime in

September of last year.

Q. Any contracts between you and Susan?

A. No contracts.

Q. Do you have any documents at all between you and Susan regarding this decorating?

A. No, just a check.

Q. How was this amount arrived at?

A. I think it was \$1,000 per property or \$1,500 per property or something.

I don't remember exactly.

Q. Did she do the purchasing for the decorating?

A. No, no. I did.

Q. She just gave you advice as to what to buy?

A. Yes.

Q. Is that correct? Tell you what stores to go to?

A. Yes.

Q. Tell you what to look at?

A. She would give me the item numbers.

Q. Do you have that information in writing?

A. No.

Q. With you?

A. No. ***

Q. *** [T]his check comes out of Infinity Realty Group. Can you tell me why?

A. Because we run a general contracting business under the [the] realty group. So anything relating to like a general contracting fee that I can count as under the construction expense, I use that.

Q. Do you have any correspondence, bills, anything between yourself and Susan Wolf regarding this payment of \$5,000?

A. No."

¶ 20 As for the sixth check, Cico testified that the December 7, 2009, check payable to Susan Wolf for \$2,024.50 was signed by him drawn on the account of Infinity Realty Group, Inc. Cico testified to the purpose of this check:

"Q. *** And on December the [7]th I have a check to Susan Wolf for \$2,024.50. What was that for?

A. That was for – she recommended us construction in Deerfield on *** Carol Lane *** And we did construction on that house. It was a rental property. The owner lived in Florida, so that might be the relationship. I didn't ask her how she knew the fellow. But the payments, why it came from Florida, they wired us the money for the job to start with. And then that check came also from Florida, the final payment. So it was a referral on a construction. ***

Q. So how was this amount determined \$2,024.50?

A. It was probably 10 percent.

Q. Did Susan tell you how she knew these people?

A. I didn't ask.

Q. Got a name for these people?

A. Somewhere, yes.

Q. But you can't recall what it is now?

A. No."

¶ 21 As for the seventh check, Cico testified that the January 11, 2010, check payable to Susan Wolf for \$7,664.58 was signed by him and drawn on the account of Infinity Realty Group, Inc. Cico testified to the purpose of this check:

"Q. Let's go to the check dated January 11, 2010 *** It's a check for 7664.58 to Susan Wolf.

A. That was for the jobsite – a referral job construction on *** West Diversey. It was a commercial storefront and it was – we basically finished up the store for retail client.

Q. Who was the client?

A. *** Milk and Moore, LLC. ***

Q. How did Susan come across this opportunity?

A. I don't know. I didn't ask her.

Q. Do you know how she knew these people?

A. If somebody refers you work, you going to be questioning why you bringing this business to me? Today's world, believe me, [Plaintiffs' counsel], is tough economy. If you come with a business opportunity to me, bring your business, I'm not going to be questioning how do you know these people. If I can get it, yes, you know. Money is tough out there now.

Q. So you entered into a contract with *** Milk and Moore, LLC?

A. Yeah.

Q. And when did you enter into that contract in relation to this check?

A. That was – I think that one was probably sometime in December too.

Q. And how was this amount, 7,664.58, determined?

A. It was probably 10 percent.***

Q. Any bills, anything that Susan Wolf submitted to you to support this payment?

A. No. I think it's a good business practice if you are struggling in business and somebody brings you business opportunity, in order for to keep the business flow if you pay referral fees, you will get more business. Word of mouth is the best business. And if – like Susan being around the business for a long time, she knows a lot of people, and for sure I appreciate her opening her referrals.”

No further documents were presented by Cico to substantiate the underlying business relationships of these checks.

¶ 22 C. Plaintiffs' Third Motion

¶ 23 On April 29, 2010, plaintiffs filed their third motion to compel Cico to substantiate with documentation the seven previously produced check payments, as well as two newly identified check payments to Tac-Tic, LLC, established by Susan Wolf a week after Cico was served with his January 21, 2010, citation. On February 4, 2010, a bank account with Bank of America was

opened by Susan Wolf. On February 8, 2010, a check to Tac-Tic, LLC, in the amount of \$161,787.79 was signed by Cico and drawn on the account of Landlord Man, Inc., a Nevada and Illinois company in which Cico is the sole shareholder. On March 11, 2010, a second check to Tac-Tic, LLC, in the amount of \$4,000 was signed by Cico and drawn on the account of Infinity Realty Group, Inc.

| | Check Date | Pay to | Amount | For [on check] | Signed by | In the name of |
|---|------------------|--------------|--------------|----------------|-----------|-----------------------------|
| 8 | February 8, 2010 | Tac-Tic, LLC | \$161,787.79 | [N/A] | Cico | Landlord Man, Inc. |
| 9 | March 11, 2010 | Tac-Tic, LLC | \$4,000.00 | [N/A] | Cico | Infinity Realty Group, Inc. |

Plaintiffs claim in their third motion that the nature of these two newly identified checks are suspect because Cico was specifically asked in his citation examination as to whether he had heard of an entity called Tac-Tic, LLC, and he testified as follows:

“Q. Have you heard of an entity called Tac-Tic, T-A-C hyphen T-I-C?

A. Yes.

Q. What is Tac-Tic?

A. I don't know.

Q. How have you heard of them?

A. How have I heard of it?

Q. Yes.

A. I think it's – Susan mentioned that company or [attorney]'s – or maybe [attorney]'s office I heard it. [Attorney]'s office, maybe [attorney]'s office.”

Plaintiffs argued that “Cico’s evasion of the citation and of this Court’s order is plainly contemptuous. *** [H]is lack of candor is thwarting plaintiffs’ ability to tie these payments back to Wolf.”

¶ 24 On May 4, 2010, the discovery deposition of Susan Wolf occurred. Susan Wolf testified about the April 16, 2009, payment of \$21,425 signed by Cico and drawn on the account of Infinity Property Management, Inc., to Tac-Tic, LLC, as follows:

“Q. *** It’s a check to you from Infinity Property for \$21,425?

A. Yes.

Q. April 16th, 2009?

A. Yes.

Q. What was this for?

A. This was for a cell tower. I gave him – I gave him a number to call if he could use it. *** I was by my uncle’s, he was talking to somebody, and I thought of Ivan. ***

Q. And what was his company that you gave him?

A. The company name? It was for cell towers.

Q. Right, but what was the name of the company?

A. I don’t remember the name of the company. ***

Q. But you don’t remember the name of the company?

A. No.

Q. Or the contact you gave?

A. My uncle wrote it on a piece of paper. He handed it to me ***

Q. Does the name ‘Unison’ mean anything to you? ***

A. I don't know. I don't remember. It's a long time ago."

"Q. Did you ever see any of the documents concerning that deal?

A. No.

Q. Did [Cico] ever say, 'I was going to give you a finder's fee or a referral fee for this deal?'

A. He said, 'I'll give you something.' I said, 'Don't worry about it.' I've known Ivan for years.

Q. Do you have any documents at all that support the payment of this check?***

A. No."

Susan Wolf testified about the October 28, 2009, payment of \$5,000 signed by Cico drawn on the account of Infinity Realty Group, Inc., as follows:

"Q. ***That's a check to you for \$5,000 dated October 28th, 2009?

A. Yes.

Q. And what's that for?

A. I think that might have been – I was helping Ivan do some staging for his condos. I didn't expect to get paid for that. I've done that before. I did it with George, and he never paid me anything. I went in and helped him decorate his house. I never thought I'd get paid.***

A. I did it as a friend. I did it as a friend for Ivan.

Q. How was this amount of \$5,000 arrived at?

A. I didn't arrive at it. He sent me a check. He said, 'Thank you.' I called him and said, 'Thank you. This wasn't necessary.'

Q. Did you give him any documentation concerning your efforts, like a plan?

A. No***.'

Susan Wolf testified about the December 7, 2009, payment of \$2,024.50 signed by Cico and drawn on the account of Infinity Realty Group, Inc., as follows:

“[CICO’S COUNSEL]: It’s a \$2,024.50 check dated December [7], 2009.

THE WITNESS: I think this was for helping him with paint colors and stuff. ***

Q. It’s an odd number, \$2,024.50. Did you give him any documents saying, ‘This is what I’m owed?’

A. No. ***

Q. How was the amount arrived at, if you know?

A. I don’t know. I didn’t choose that number. ***

Q. Did you keep records of your time and what you did?

A. No. ***

Q. Do you have any documents at all that support this payment?

A. No.”

Susan Wolf testified about the January 11, 2010, payment of \$7,664.58 signed by Cico and drawn on the account of Infinity Realty Group, Inc., as follows:

“[CICO’S COUNSEL]: It’s a check in the amount of \$7,664.58, dated January 11, 2010.

BY [PLAINTIFFS’ COUNSEL]:

Q. What’s that for?

A. Ivan gave me this check with a referral fee. I told him about somebody that needed some work done in their house.

Q. Who was that person?

A. I don’t know the person. I got the name from my uncle, who in turn just gave me the name. I used to give names to other people too. Nobody ever gave me any money.

Q. So what did your uncle tell you?

A. He gave me the name of somebody. He said – he gave me the name, and said – this maybe was a friend of his. I don’t know. He gave me the name of somebody and said, ‘They need work done,’ and do I know anybody in Deerfield. I gave the name to Ivan, because he’s the only one at that time that has a construction company. ***

Q. So you gave the name to Ivan and then you received a check from Ivan?

A. This was a long, long time ago. I gave him the name.

Q. No, it’s not. It’s January of 2010.

A. He gave me the check at that time. But when I gave him the name it was over a year ago.

Q. I see. ***

Q. Do you have any documentation at all to support this check for \$7,664.58?

A. No, I wasn't expecting it. It was a shock. Just, 'Thank you.' "

Susan Wolf testified about the February 8, 2010, payment of \$161,787.79 signed by Cico and drawn on the account of Landlord Man, Inc., as follows:

“Q. *** [Y]ou received this check, right?

A. Yes.

Q. And what's Landlord Man, Inc.?

A. I guess that's one of Ivan's businesses.

Q. And what was this check for?

A. That I believe was for the money that I was going to lend him that he never really needed.

Q. You were going to lend him money?

A. I had the money.

Q. But you didn't lend him money?

A. No, I did not give him the money.

Q. So why is he giving you \$161,787.79?

A. Because he felt that because I was going to lend the money on the chance that they couldn't get the money, I had the money ready for him, that he felt I should get the money.

Q. That's a lot of money.

A. I thought so too. ***

Q. Well, I asked to have documents produced concerning this payment. Do you have any documents at all concerning this payment, the money you were going to lend him, anything?

A. No, because I wasn't sure if I was going to lend it, so I wasn't going to make up documents. Nothing was set in stone.

Q. So you have no papers whatsoever that relate in any way to this payment, other than what your counsel has produced – which we're going to get to in a minute – which appears to be the filing for Tactic Investments. Is that correct?

A. Correct. ***

Q. How did you receive this check?

A. I think I got it – I think I physically got it in the mail. I was, like, stunned.

Q. Was there a cover letter?

A. I don't remember.

Q. Well, did you know what Landlord Man, Inc. was?

A. I knew it belonged somewhat to Ivan, but I didn't know – I knew it was Ivan's. I didn't know in what way.

Q. So you received this check. What did you do?

A. I called Ivan.

Q. And what did he tell you?

A. He told me it was my portion of the money that I was supposed to lend him that I didn't need to lend him.

Q. And this had to do with the Hon[ore] properties?

A. The three properties.***

Q. *** All I want to know is if you have a discussion with your husband? Apparently you did, but did you ask him what this check was for? Yes or no.

A. Yes, I asked him what the check was for.

Q. And what did he tell you, if anything?

A. The same thing Ivan told me.

Q. Which was – what did Stephen say?

A. Stephen said it was probably a portion of what – the money that he was supposed to give Ivan. I don't know anymore. You are confusing me.***

Q. Did you ever ask for any documents from Ivan concerning this payment?

A. No, I did not. ***

Q. So you're telling me when you created [Tac Tic Investments, LLC] you had no idea that shortly after the creation of this vehicle you were going to receive over \$161,000. Is that what you're telling me?

A. Yes.”

Susan Wolf testified about the March 11, 2010, payment of \$4,000 signed by Cico and drawn on the account of Infinity Realty Group, Inc., as follows:

“Q. It's another payment to Tactic for \$4,000? ***

THE WITNESS: I called Ivan on it, because I didn't know why I

got it, and he said it was to finish up the other deal.

BY [PLAINTIFFS' COUNSEL]:

Q. So this is basically additional moneys that the thought he owed you that pertained to that \$161,787.79 you received in February of 2010?

A. Yes. ***

Q. You have no files on this business relation?

A. Nothing right now.”

At the conclusion of Susan Wolf's testimony she testified that she has no documents in her possession, dominion, or control pertaining to Tac-Tic Investments, LLC, that would substantiate the payments to her signed by Cico and drawn on the accounts of Infinity Property Management, Inc., Infinity Realty Group, Inc., or Landlord Man, Inc.

¶ 25 On May 6, 2010, the trial court heard and granted plaintiffs' third motion pursuant to Supreme Court Rule 201(c)(2) to compel examination under oath of Cico, and it ordered Cico to produce in open court “all records in his possession, custody, and control pertaining” to the pertinent business transactions. Ill. S. Ct. R. 201(c)(2) (eff. July 1, 2002). Pursuant to the May 6 order, Cico's examination under oath was taken by plaintiffs' counsel in the presence of the trial court on May 24, 2010. Cico testified as to his compliance with the order:

“Q. And you've attempted to comply with the order of May 6th in terms of the documents you produced here today?

A. Yes. Actually, not today. I gave you those documents the last time we were in court. *** I don't have any other documents.”

Upon request for further documents regarding the April 16, 2009, payment to Susan Wolf in the amount of \$21,425, Cico stated at the May 24, 2010, hearing:

“A. [Plaintiffs’ Counsel], I don’t expect you to understand my culture, how we do business. I write a number on a napkin. The other side writes a number on a napkin. We go back and forth, shake their hand. That is our contract. We don’t put things in writing. We shake a hand and that is the contract. That’s how we operate.”

Plaintiffs also asked Cico to explain unsubstantiated payments to himself and their connection to payments made to Stephen Wolf. The first check Cico testified to was a check paid to Ivan Cico for the amount of \$3,718 on September 9, 2009, signed by Cico and drawn on the account of Infinity Realty Group, Inc. The second check discussed was paid to Ivan Cico for the amount of \$1,050 on September 9, 2009, signed by Cico and drawn on the account of Infinity Realty Group, Inc. Cico testified that “Stephen asked for and I lent him the money. I didn’t have him sign a promissory note. It was a handshake deal. There is no documents.”

¶ 26 Plaintiffs’ counsel asked Cico to testify about an October 28, 2009, payment to Susan Wolf and an October 28, 2009, payment to Ross Waxman for \$5,000 signed by Cico and drawn on the account of Infinity Realty Group, Inc.:

“Q. Is it your testimony that the documents – that there never were any documents pertaining to the transaction of that \$5,000 payment on October the 28th of 2009?

A. No. There is no documents.

Q. There are no documents?

A. No.”

Cico testified again about the December 7, 2009, payment to Susan Wolf, as follows:

“Q. Can you produce a document that explains this payment in

December of 2009 of \$2,024.50 to Susan Wolf?

A. [Plaintiffs' Counsel], I don't have any documents. Whatever I had I produced to you."

Cico testified to the March 11, 2010, payment to Tac-Tic, LLC, in the amount of \$4,000 signed by Cico and drawn on the account of Infinity Realty Group, Inc.:

"Q. *** It's a check dated March 11th for \$4,000 to Tac-Tic, LLC from Infinity Realty Group, what is that for?

A. I am not sure. I am not sure. This could be [Honore], but I'm not sure if it's for the construction portion of it."

¶ 27 Plaintiffs note that the check copies written by Tac-Tic, LLC, and signed by Susan Wolf have the same West Sherwin Avenue address as the office space shared by Cico and Stephen Wolf. Cico admitted to having a desk in the West Sherwin Avenue office which Stephen Wolf "sometimes uses." Cico admitted that it was Stephen Wolf who went to the Hermes bank with him to negotiate a business deal he had with Susan Wolf a "couple of times."

¶ 28 D. Plaintiffs' Fourth Motion for Direct Civil Contempt

¶ 29 On July 29, 2010, plaintiffs filed a fourth motion which included sanctions against Cico pursuant to section 2-1402 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2010)). This was plaintiffs' fourth attempt to enforce their citation against Cico. Plaintiffs requested amongst other things a judgment against Cico in the sum of \$165,787.79, claiming this amount reflects the amount of money Cico disbursed for the benefit of Stephen Wolf through Susan Wolf, Stephen's wife, after service of the citation upon him on January 21, 2010.

¶ 30

III. Order for Sanctions

¶ 31 On October 13, 2010, the trial court heard oral arguments on plaintiffs' fourth motion for sanctions against Cico. During the hearing Cico had the opportunity to rebut the charges. A transcript of the oral arguments is not present in the appellate record. The trial court entered judgment in favor of plaintiffs for sanctions against Cico in the amount of \$165,781.79, pursuant to Supreme Court Rule 277(h) (Ill. S. Ct. R. 277 (eff. July 1, 1982)) and section 2-1402(f) of the Code (735 ILCS 5/2-1402(f) (West 2010)). The amount of the judgment represented the payments acquired by Tac-Tic, LLC, after Cico's citation was served on January 21, 2010. The first payment, dated February 8, 2010, was drawn from Cico's Landlord Man, Inc., and payable to Tac-Tic, LLC, for \$161,787.79. The second payment, dated March 11, 2010, was drawn from Cico's Infinity Realty Group, Inc., and payable to Tac-Tic, LLC, for \$4,000.

¶ 32 Before reaching a decision, the trial court stated that it had considered "the pleadings, arguments and testimony of Ivan Cico, Jr. on 5/24/10." The trial court then made the following findings of fact and conclusions of law:

"THE COURT: All right. I am ready to rule on this.

I've reviewed everything and I did preside over one of the citation proceedings in which Mr. Cico was here in this courtroom. So I've reviewed my notes from that as well as the transcript and I am ready to rule as follows. The Court had heard live and disbelieves Mr. Cico's testimony that the two checks he wrote to 'Tac-Tic, LLC dated February 8, 2010 in the amount of \$161,787.79 and the second check March 11, 2010 in the amount of \$4,000,' the court disbelieves that those – his testimony that those checks were anything other than checks he wrote

representing Stephen Wolf's share in the transaction involving certain property on Honore Street.

In initial sworn testimony Mr. Cico had said he never heard of Tac-Tic, LLC. In subsequent sworn testimony he said it was a new LLC set up by Attorney ***. [The attorney is also] Stephen Wolf's attorney. While Mr. Cico in his subsequent sworn testimony attempted to portray Susan Wolf as a person he did this deal with, he also admitted that it was Stephen Wolf who went to the bank with him to negotiate it. The court disbelieves having observed this testimony and observed the witness' demeanor, disbelieves Mr. Cico's testimony that this was not Stephen Wolf's deal. The Court finds this witness to be totally lacking in credibility.

Further, Susan herself had no knowledge of why checks in the amounts so described were written to Tac-Tic, supposedly her new LLC. Further, the evidence shows that the address on the checks written by Tac-Tic is the same address as the office space shared by Mr. Cico and Stephen Wolf.

In response to the present motion Mr. Cico has filed an answer but the Court considers it to include no accounts of prevailing facts at all. Therefore, according to [section] 2-1402(m)(2) [735 ILCS 5/2-1402(m)(2) (West 2010)], the service of a citation to discover assets upon a third party, here Mr. Cico, is a lien on all property belonging to the judgment debtor in the possession of the cited third party as well as on any such

property thereafter acquired. Both of these checks described a minute ago represent funds acquired by Stephen Wolf and coming into the possession of Mr. Cico after his citation was served.

Because the citation respondent, Mr. Cico, paid these funds out, judgment in the amount of the funds will be entered against him personally today. In support of this ruling, the Court cites to Supreme Court Rule 277(h) [(Ill. S. Ct. R. 277 (eff. July 1, 1982))], which provides authority for the Court to enter sanctions against the respondent in citation proceedings who fails to obey a citation.

The last sentence of that rule reads as follows: The Court may also enforce this order against the real and personal property of that person. I also cite to the case of Kennedy versus Four Boys Labor Services, Inc., 279 Ill. App. 3rd, 361 2nd District, 1996. At page 367, the Court says that ‘Section 2-1402 gives the Court broad powers to compel the application of discovered assets to satisfy a judgment.’

In that case the Appellate Court affirmed the trial court which entered judgment against the respondent to a citation proceedin[g] [*sic*] for the amount of the judgment debtor’s property that the respondent in the citation proceedings had transferred to yet another third party. Same as this situation. So that will be the first part of my ruling. I’ll enter judgment today against Mr. Cico in the amount of – I have added it up, \$165,787.79.”

¶ 33 On November 8, 2010, the trial court denied Cico's motion to vacate. The appellate record does not contain a transcript or bystander's report of the motion to reconsider. On November 12, 2010, Cico filed a timely notice of appeal. The appeal was from both (1) the trial court's October 13, 2010, order which imposed sanctions and (2) its November 8, 2010, denial of the motion to reconsider.

¶ 34 This appeal is pursuant to Illinois Supreme Court Rules 301(eff. Feb. 1, 1994) and 304(b) (eff. Feb. 26, 2010).

¶ 35 ANALYSIS

¶ 36 On direct appeal, Cico argues that (1) the imposition of sanctions in the amount of \$165,787.79 were improper and that (2) the trial court should have granted Cico's motion to vacate (which is identified by Cico's appellate brief as "in effect, a motion to reconsider"). The trial court imposed sanctions pursuant to Supreme Court Rule 277(h) (Ill. S. Ct. R. 277 (eff. July 1, 1982)).

¶ 37 Cico claims on appeal that (1) "the trial court committed reversible error by entering the \$165,787.79 judgment against Cico" and (2) "Cico's motion to vacate was improperly denied."

¶ 38 Since the record is not clear as to whether the orders appealed from are final orders, this Court has jurisdiction to hear the instant appeal pursuant to Illinois Supreme Court Rule 304(b)(4) in that the orders appealed from are orders "entered in a proceeding under section 2-1402 of the Code of Civil Procedure." Ill. S. Ct. R. 304(b)(4) (eff. Feb. 26, 2010). We affirm.

¶ 39 I. Citation Proceedings

¶ 40 We first consider Cico's arguments concerning the propriety of the citation proceedings which resulted in sanctions against Cico.

¶ 41

A. Standard of Review

¶ 42 Illinois Supreme Court Rule 277(h) provides authority for the Court to enter sanctions against the respondent in citation proceedings who fails to obey a citation. Illinois Supreme Court Rule 277(h) provides:

“(h) Sanctions. Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule *may be punished for contempt.*^[1] Any person who refuses to obey any order to deliver up or convey or assign any personal property or in an appropriate case its proceeds or value or title to lands, or choses in action, or evidences of debt may be committed until he has complied with the order or is discharged by due course of law. The court may also enforce its order against the real and personal property of that person.” (Emphasis added.) Ill. S. Ct. R. 277(h) (eff. July 1, 1982).

A sanction is invalid and against the manifest weight of the evidence when “(1) it provides no viable means of purging the contempt; (2) it impermissibly punishes defendants for their past conduct; and (3) the investigatory authority granted to the receiver is not permitted under section 2–1402 of the Illinois Code of Civil Procedure (735 ILCS 5/2–1402 (West 2008)) or Illinois Supreme Court Rule 277 (eff. July 1, 1982).” *Bank of Am., N.A. v. Freed*, 2012 IL App (1st) 113178, ¶ 1. Monetary fines can be assessed at a civil contempt proceeding. *Multiut Corp.*, 359 Ill. App. 3d at 542.

¶ 43

B. Authority and Compliance in Citation Proceedings

¶ 44 “Citation proceedings are designed to assist a judgment creditor in discovering the assets of a judgment debtor to satisfy an unpaid judgment.” *Windcrest Development Co. v. Giakoumis*,

¹ Cico is not appealing the order of indirect civil contempt.

359 Ill. App. 3d 597, 601 (2005) (citing *Mid-American Elevator Co. v. Norcon, Inc.*, 287 Ill. App. 3d 582, 587 (1996)). “During such proceedings, the court is empowered to compel discovered assets or income to satisfy the judgment.” *Windcrest*, 359 Ill. App. 3d at 601; *City of Chicago v. Air Auto Leasing Co.*, 297 Ill. App. 3d 873, 878 (1998). Under section 2-1402 of the Code, once a citation has been served on a third-party, a third-party citation “respondent [is required] to hold property of the judgment debtor in its possession in *status quo* until the judgment creditor's rights can be determined.” *Vendo Co. v. Stoner*, 108 Ill. App. 3d 51, 57 (1982). Under section 2-1402(f)(1) of the Code, the trial court is authorized to enter judgment against a third-party respondent who violates its restraining provisions in the amount of the value of the property he transfers.

¶ 45 Section 2-1402(f)(1) provides:

“The citation may prohibit the party to whom it is directed from making or allowing any transfer or other disposition of, or interfering with, any property not exempt from the enforcement of a judgment therefrom, a deduction order or garnishment, belonging to the judgment debtor or to which he or she may be entitled or which may thereafter be acquired by or become due to him or her, and from paying over or otherwise disposing of any moneys not so exempt which are due or to become due to the judgment debtor, until the further order of the court or the termination of the proceeding, whichever occurs first. The third party may not be obliged to withhold the payment of any moneys beyond double the amount of the balance due sought to be enforced by the judgment creditor. *The court may punish any party who violates the*

restraining provision of a citation as and for a contempt, or if the party is a third party may enter judgment against him or her in the amount of the unpaid portion of the judgment and costs allowable under this Section, or in the amount of the value of the property transferred, whichever is lesser.” (Emphasis added.) 735 ILCS 5/2-1402(f)(1) (West 2010).

¶ 46 The procedure for conducting citation proceedings is set forth in section 2-1402(a) of the Code, which provides:

“A judgment creditor, or his or her successor in interest when that interest is made to appear of record, is entitled to prosecute supplementary proceedings for the purposes of examining the judgment debtor or any other person to discover assets or income of the debtor not exempt from the enforcement of the judgment, a deduction order or garnishment, and of compelling the application of non-exempt assets or income discovered toward the payment of the amount due under the judgment.” 735 ILCS 5/2-1402(a) (West 2010).

Trial courts’ authority to enter judgment in a citation proceeding is set forth in section 2-1402(m) of the Code, which provides:

“The judgment or balance due on the judgment becomes a lien when a citation is served in accordance with subsection (a) of this Section. The lien binds nonexempt personal property, including money, choses in action, and effects of the judgment debtor as follows:

(1) When the citation is directed against the judgment debtor, upon all personal property belonging to the judgment debtor in the possession or control of the judgment debtor or which may thereafter be acquired or come due to the judgment debtor to the time of the disposition of the citation.

(2) When the citation is directed against a third party, upon all personal property belonging to the judgment debtor in the possession or control of the third party or which thereafter may be acquired or come due the judgment debtor and comes into the possession or control of the third party to the time of the disposition of the citation.

The lien established under this Section does not affect the rights of citation respondents in property prior to the service of the citation upon them and does not affect the rights of bona fide purchasers or lenders without notice of the citation. The lien is effective for the period specified by Supreme Court Rule.” 735 ILCS 5/2-1402(m) (West 2010).

¶ 47 Illinois Supreme Court Rule 277(h) authorizes the trial court to enforce the restraining provision of a citation against the personal property of a third party if the third party has disregarded them. *Bank of Aspen v. Fox Cartage, Inc.*, 126 Ill. 2d 307, 314 (1989). Illinois Supreme Court Rule 277(h) provides:

“Sanctions. Any person who fails to obey a citation, subpoena, or order or other direction of the court issued pursuant to any provision of this rule *may be punished for contempt*. Any person who refuses to obey any order to deliver up or convey or assign any personal property or in an appropriate case its proceeds or value or title to lands, or choses in action, or evidences of debt may be committed until he has complied with the order or is discharged by due course of law. The court may also enforce its order against the real and personal property of that person.” (Emphasis added.) Ill. S. Ct. R. 277(h) (eff. July 1, 1982).

¶ 48 The “provisions of section 2–1402 [of the Code] are to be liberally construed, and the burden lies with the petitioner to show that the citation respondent possesses assets belonging to the judgment creditor.” *Schak v. Blom*, 334 Ill. App. 3d 129, 133 (2002) (citing *Mid–American Elevator Co. v. Norcon, Inc.*, 287 Ill. App. 3d 582, 587 (1996)). Plaintiffs’ burden is explained in *Schak*:

“Before a judgment creditor may proceed against a third party who is not the judgment debtor, the record must contain some evidence that the third party possesses assets of the judgment debtor. Only then does the citation court have the jurisdiction to order that party to produce those assets to satisfy the judgment.” *Schak*, 334 Ill. App. 3d at 133 (citing *Ericksen v. Rush Presbyterian St. Luke’s Medical Center*, 289 Ill. App. 3d 159 (1997)).

A trial court is justified under section 2-1402 of the Code and Illinois Supreme Court Rule 277 in disregarding a defendant’s testimony if it was impeached, contradicted by positive testimony

or by circumstances, or found to be inherently improbable. *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 354 (1983). “Under Illinois law, a witness' testimony is inherently improbable if it is ‘contrary of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony.’ ” *Bucktown Partners v. Johnson*, 119 Ill. App. 3d 346, 354 (1983) (quoting *Kelly v. Jones*, 290 Ill. 375, 378 (1919)). The trial court’s authority as the trier of fact must as a “matter of law, reject testimony which is so inherently improbable as to be contrary to the common experience of mankind.” *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 657 (1992); *People ex rel. Brown v. Baker*, 88 Ill. 2d 81, 85 (1981); see also *Old Second National Bank of Aurora v. Gould*, 75 Ill. App. 3d 839, 844 (1979).

¶ 49 “Once a judgment creditor discovers assets of the judgment debtor in the hands of a third party, the trial court may order the third party to deliver up those assets to satisfy the judgment.” *Kennedy v. Four Boys Labor Service, Inc.*, 279 Ill. App. 3d 361, 366 (1996). Upon discovery of assets, section 2-1402(c)(6) of the Code:

“[a]uthorize[s] the judgment creditor to maintain an action against any person or corporation that, it appears upon proof satisfactory to the court, is indebted to the judgment debtor, for the recovery of the debt****”. 735 ILCS 5/2-1402(c)(6) (West 2010).

The trial court’s evaluation of a third-party citation issued to an individual and his or her business dealings may disregard the corporate form when the “corporation is merely the alter ego or the business conduit of another dominating personality.” *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1033 (2007). Procedurally, “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.” *Tower Investors*, 371 Ill. App. 3d at 1033-34. Furthermore, a company’s owner or “director is chargeable with knowledge of the facts that corporate books and records disclose.” *Semande v. Estes*, 374 Ill. App. 3d 468, 472 (2007).

¶ 50 C. Possession of Assets Belonging to the Judgment Debtor Stephen Wolf

¶ 51 In the case at bar, plaintiffs showed that the citation respondent, Cico, possessed assets belonging to the judgment debtor, Stephen Wolf. See *Schak*, 334 Ill. App. 3d at 133. The trial court determined that two checks totaling \$165,787.79 to Tac-Tic Investments, LLC, represented Stephen Wolf’s share in the transaction involving certain property on Honore Street. The first check was payable to Tac-Tic, LLC, for \$161,787.79 drawn on February 8, 2010, signed by Cico drawn on the account of Landlord Man, Inc. The second check was payable to Tac-Tic, LLC, for \$4,000 drawn on March 11, 2010, signed by Cico and drawn on the account of Infinity Realty Group, Inc.

¶ 52 A week after Cico was served with his January 21, 2010, citation, Tac-Tic Investments, LLC, was established by Susan Wolf. However, Susan Wolf testified in her deposition that she knew little or nothing about the formation of the company and her testimony as to what the check was for made no sense and appeared to be contrived. In February and March 2010, Cico wrote two checks totaling \$165,787.79 to Tac-Tic Investments, LLC. Second, although Cico was the signatory on the two checks to Tac-Tic, LLC, he testified in his April 21, 2010, citation examination that he first did not know what Tac-Tic, LLC, did or what its business entailed. Cico then subsequently testified that it may be a new LLC set up by “Attorney ***.” The attorney named was also Stephen Wolf’s attorney.

“Q. Have you heard of an entity called Tac-Tic, T-A-C hyphen T-I-C?

A. Yes.

Q. What is Tac-Tic?

A. I don't know.

Q. How have you heard of them?

A. How have I heard of it?

Q. Yes.

A. I think it's – Susan mentioned that company or [attorney]'s – or maybe [Attorney]'s office I heard it. [Attorney]'s office, maybe [attorney]'s office.”

Third, Susan Wolf testified that she received a \$161,787.79 payment by Cico drawn on the account of Landlord Man, Inc., and that it was repayment for a loan that she never gave:

“Q. *** [Y]ou received this check, right?

A. Yes.

Q. And what's Landlord Man, Inc.?

A. I guess that's one of Ivan's businesses.

Q. And what was this check for?

A. That I believe was for the money that I was going to lend him that he never really needed.

Q. You were going to lend him money?

A. I had the money.

Q. But you didn't lend him money?

A. No, I did not give him the money.

Q. So why is he giving you \$161,787.79?

A. Because he felt that because I was going to lend the money on the chance that they couldn't get the money, I had the money ready for him, that he felt I should get the money.

Q. That's a lot of money.

A. I thought so too. ***

Q. Well, I asked to have documents produced concerning this payment. Do you have any documents at all concerning this payment, the money you were going to lend him, anything?

A. No, because I wasn't sure if I was going to lend it, so I wasn't going to make up documents. Nothing was set in stone.

Q. So you have no papers whatsoever that relate in any way to this payment, other than what your counsel has produced – which we're going to get to in a minute – which appears to be the filing for Tactic Investments. Is that correct?

A. Correct. ***"

Fourth, Susan Wolf testified that she received a \$4,000 payment by Cico drawn on the account of Landlord Man, Inc., and that she did not know why she received it other than that Cico told her it was to provide additional moneys owed pertaining to the \$161,787.79 check received in February of 2010:

“Q. It's another payment to Tactic for \$4,000? ***

THE WITNESS: I called Ivan on it, because I didn't know why I got it, and he said it was to finish up the other deal.

BY [PLAINTIFFS' COUNSEL]:

Q. So this is basically additional moneys that the thought he owed you that pertained to that \$161,787.79 you received in February of 2010?

A. Yes. ***

Q. You have no files on this business relation?

A. Nothing right now."

Fifth, at the conclusion of Susan Wolf's testimony she testified that she had no documents in her possession, dominion, or control pertaining to Tac-Tic Investments, LLC, that would substantiate the payments to her signed by Cico and drawn on the accounts of Infinity Property Management, Inc., Infinity Realty Group, Inc., or Landlord Man, Inc. Sixth, check copies written by Tac-Tic, LLC, and signed by Susan Wolf have the same West Sherwin Avenue address as the office space shared by Cico and Stephen Wolf. Seventh, Cico testified that he has a desk in his West Sherwin Avenue office which Stephen Wolf "sometimes uses." Eighth, Cico testified that Stephen Wolf went with him to the Hermes bank to negotiate a business deal he solely had with Susan Wolf a "couple of times." Ninth, Cico filed an answer, but no accounts of prevailing facts were made. Plaintiffs' showed that Cico failed to obey the citation served on him on January 21, 2010, by claiming he had no written records of the transactions and his testimony appeared to be contrived.

¶ 53 D. Waiver of Issues in Response to the Motion for Sanctions

¶ 54 Additionally, plaintiffs claim that several of Cico's arguments on appeal have been waived. These arguments that could have and should have been raised prior to the entry of the court order are waived. *Continental Casualty Co. v. Security Insurance Co. of Hartford*, 279 Ill. App. 3d 815, 821 (1996). "Issues not raised in the trial court are waived, for purposes of appeal." *People v. Wheeler*, 392 Ill. App. 3d 303, 309 (2009).

¶ 55 In regards to plaintiffs' burden to show that Cico possessed assets belonging to the judgment debtor, Cico claimed in his appellate brief that the trial court had no authority to sanction him under section 2-1402(m)(2) of the Code based on his claim that Landlord Man, Inc., and Infinity Realty Group, Inc., were not under citation, no proceedings to pierce the corporate veil occurred, nor were there any findings or evidence that Landlord Man, Inc., or Infinity Realty Group, Inc., were alter egos of Cico. See *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1033 (2007).

¶ 56 Cico's arguments are all issues which could have and should have been raised in either Cico's response to plaintiffs' motion for sanctions or during his presentation at the October 13 hearing. Cico's contention that Landlord Man, Inc., and Infinity Realty Group, Inc., were not under citation could have and should have been addressed through a motion to quash the citation, which Cico did not file. Cico was represented by counsel at the citation proceeding.

¶ 57 Cico's citation sought production of all documents from any company with which Cico is affiliated for which Stephen Wolf either had a direct interest or was acting on behalf of anyone else with a direct interest:

"Citation respondent is required to produce, for the period from January 1, 2007, to date, all documents pertaining to any business dealings *between*

Ivan Cico, Jr., or any company with which he is affiliated, including Infinity Realty Group, Inc., and Stephen Wolf, whether as principal or agent, or whether acting on behalf of Wolf Real Estate Partnership or any other entity. This request for documents includes, without limitation, all documents pertaining to any real estate transaction, whether potential, consummated or abandoned, in which Stephen Wolf either had a direct interest or was acting on behalf of anyone else that would have had a direct interest in such transaction.” (Emphasis added.)

The citation was broadly written to include “any company with which [Cico] is affiliated.” Such a definition includes citation of Landlord Man, Inc., and Infinity Realty Group, Inc. Thus, Cico waived his arguments concerning the proper party under citation.

¶ 58 Moreover, even if it was not waived, we do not find Cico’s argument persuasive, because it was shown that the check to Susan Wolf was a subterfuge and the real person in interest was Stephen Wolf.

¶ 59 In the case at bar, the trial court held that the two checks written by Cico to Tac-Tic, LLC, dated February 8, 2010, in the amount of \$161,787.79 and March 11, 2010, in the amount of \$4,000 represented the judgment debtor’s share in the transaction involving certain property on Honore Street. Cico’s claims that he did not possess nor control any of the judgment debtor’s assets was found to be totally lacking in credibility after observing Cico’s testimony and demeanor determining his fabricated testimony. Because Cico paid these funds out as the sole shareholder of Landlord Man, Inc., and co-shareholder of Infinity Realty Group, Inc., and could not substantiate any element of

them, nor did he maintain records of business for either company, the trial court properly ordered judgment against him in the amount of \$165,787.79.

¶ 60 II. Motion to Vacate

¶ 61 Next, we consider Cico's argument that the trial court should have granted his motion to vacate the sanctions in the amount of \$165,787.79.

¶ 62 A. Standard of Review

¶ 63 "The decision to grant or deny a Section 2-1203 motion invokes the sound discretion of the trial court." *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010) (citing *Regas v. Associated Radiologists, Ltd.*, 230 Ill. App. 3d 959, 967 (1992)). This court "may find an abuse of discretion only where the trial court acted arbitrarily such that no reasonable person would take the position it adopted." *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010).

¶ 64 "Motions for reconsideration are intended to bring newly discovered evidence to the trial court's attention which was unavailable at the time of the original hearing." *Armstrong v. Hedlund Corp.*, 316 Ill. App. 3d 1097, 1102 (2000) (citing *Continental Casualty Co. v. Security Insurance Co. of Hartford*, 279 Ill. App. 3d 815, 821 (1996)). "In order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Where an "issue on appeal relates to the conduct of a hearing or proceeding, [the] issue is not subject to review absent a report or record of the proceeding." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). Absent a record, it is presumed that the order entered by the court below is in conformity with the law and had a sufficient basis. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Redelmann v. K.A. Steel Chemicals, Inc.*, 377 Ill. App. 3d 971, 977 (2007); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 459 (1984).

The decision to grant or deny a motion for reconsideration lies within the trial court's discretion and will not be reversed absent an abuse of its discretion. *Chelkova v. Southland Corp.*, 331 Ill. App. 3d 716, 729 (2002). Thus, failure to provide a report or record of the proceeding constitutes an independent basis for rejection of defendants' argument. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Redelmann v. K.A. Steel Chemicals, Inc.*, 377 Ill. App. 3d 971, 977 (2007); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 459 (1984). Furthermore, "a reviewing court will not reverse the finding of the trial court regarding piercing the corporate veil unless it is against the manifest weight of the evidence." *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 500 (2005).

¶ 65 B. Sufficiency of Cico's Motion to Vacate

¶ 66 The motion to vacate will be treated as a motion to reconsider, being a motion after judgment in a non-jury case, pursuant to section 2-1203(a) of the Code:

"In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, *** a motion for a rehearing or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (eff. Jan. 1, 2011).

¶ 67 A motion to reconsider is intended " 'to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law.' " *Langone v. Schad, Diamond & Shedden, P.C.*, 406 Ill. App. 3d 820, 829 (2010) (quoting *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009)). No newly discovered evidence was found. No changes in the law were found. No error in the court's previous application of existing law was found. Thus, Cico's motion must fail.

¶ 68 Cico claims his corporations should be liable not him, because the corporate veil was not pierced. However, the corporate veil was pierced by the trial court:

“Limited liability will ordinarily exist even when the corporation is closely held or has a single shareholder. *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 526, (2002). ‘However, a court may disregard a corporate entity and pierce the veil of limited liability where the corporation is merely the alter ego or business conduit of another person or entity.’ *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527 (2002). This doctrine imposes liability on the individual or entity that uses a corporation merely as an instrumentality to conduct that person's or entity's business. *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527 (2002). ‘Such liability arises from fraud or injustice perpetrated not on the corporation but on third persons dealing with the corporation.’ *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527 (2002). ‘The doctrine of piercing the corporate veil is an equitable remedy; it is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract.’ *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527 (2002).”

Fontana v. TLD Builders, Inc., 362 Ill. App. 3d 491, 500 (2005).

A two-prong test must be employed to pierce the corporate veil:

“(1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) circumstances must exist such that adherence to the fiction of a separate corporate existence would sanction a fraud, promote

injustice, or promote inequitable consequence.” *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 500 (2005).

¶ 69 Landlord Man, Inc., is a Nevada and Illinois company in which Cico is the sole shareholder. The different purposes of Infinity Realty Group, Inc., and Infinity Property Management, Inc., were testified to by Cico as follows:

“A. *** Infinity Realty Group has two purposes: It’s a general contractor, and we have general contractor license. We operate in the city of Chicago. We are licensed in the city of Chicago. We operate anywhere in the state. And it has a real estate license. So Infinity Realty Group is a licensed real estate broker under my name. Infinity Property Management is a management company that I use for any property that we own personally to manage the properties.”

Cico clarified that “we” referred to the management “strictly” of properties owned by himself and his wife. Infinity Realty Group, Inc., and Infinity Property Management, Inc., has only two shareholders: Cico and his wife.

¶ 70 Two checks signed by Cico were impacted by the trial court’s piercing of the corporate veil. The first payment, dated February 8, 2010, was drawn from Cico’s Landlord Man, Inc., and payable to Tac-Tic, LLC, for \$161,787.79. The second payment, dated March 11, 2010, was drawn from Cico’s Infinity Realty Group, Inc., and payable to Tac-Tic, LLC, for \$4,000. The nature of these two checks were suspect because Cico was specifically asked in his citation examination as to whether he had heard of an entity called Tac-Tic, LLC, and he testified as follows:

“Q. Have you heard of an entity called Tac-Tic, T-A-C hyphen T-

I-C?

A. Yes.

Q. What is Tac-Tic?

A. I don't know.

Q. How have you heard of them?

A. How have I heard of it?

Q. Yes.

A. I think it's – Susan mentioned that company or [attorney]'s – or maybe [attorney]'s office I heard it. [Attorney]'s office, maybe [attorney]'s office.”

Cico's testimony was also suspect, because Cico testified that he and Susan Wolf have a business relationship and “[Susan] refers clients to us for construction, and I did pay her some referral fees for those services.” In further efforts to establish the corporate purposes of the February 8, 2010, and March 11, 2010, Landlord Man, Inc., checks, depositions were taken. Susan Wolf testified about the February 8, 2010, payment of \$161,787.79 signed by Cico and drawn on the account of Landlord Man, Inc., as follows:

“Q. *** [Y]ou received this check, right?

A. Yes.

Q. And what's Landlord Man, Inc.?

A. I guess that's one of Ivan's businesses.

Q. And what was this check for?

A. That I believe was for the money that I was going to lend him that he never really needed.

Q. You were going to lend him money?

A. I had the money.

Q. But you didn't lend him money?

A. No, I did not give him the money.

Q. So why is he giving you \$161,787.79?

A. Because he felt that because I was going to lend the money on the chance that they couldn't get the money, I had the money ready for him, that he felt I should get the money.

Q. That's a lot of money.

A. I thought so too. ***

Q. Well, I asked to have documents produced concerning this payment. Do you have any documents at all concerning this payment, the money you were going to lend him, anything?

A. No, because I wasn't sure if I was going to lend it, so I wasn't going to make up documents. Nothing was set in stone.

Q. So you have no papers whatsoever that relate in any way to this payment, other than what your counsel has produced – which we're going to get to in a minute – which appears to be the filing for Tactic Investments. Is that correct?

A. Correct. ***

Q. How did you receive this check?

A. I think I got it – I think I physically got it in the mail. I was, like, stunned.

Q. Was there a cover letter?

A. I don't remember.

Q. Well, did you know what Landlord Man, Inc. was?

A. I knew it belonged somewhat to Ivan, but I didn't know – I knew it was Ivan's. I didn't know in what way.

Q. So you received this check. What did you do?

A. I called Ivan.

Q. And what did he tell you?

A. He told me it was my portion of the money that I was supposed to lend him that I didn't need to lend him.

Q. And this had to do with the Hon[ore] properties?

A. The three properties.***

Q. *** All I want to know is if you have a discussion with your husband? Apparently you did, but did you ask him what this check was for? Yes or no.

A. Yes, I asked him what the check was for.

Q. And what did he tell you, if anything?

A. The same thing Ivan told me.

Q. Which was – what did Stephen say?

A. Stephen said it was probably a portion of what – the money that he was supposed to give Ivan. I don't know anymore. You are confusing me.***

Q. Did you ever ask for any documents from Ivan concerning this

payment?

A. No, I did not. ***

Q. So you're telling me when you created [Tac Tic Investments, LLC] you had no idea that shortly after the creation of this vehicle you were going to receive over \$161,000. Is that what you're telling me?

A. Yes.”

Cico wrote on Landlord Man's corporate account to Tac-Tic, LLC, for the sole reasoning “that he felt [Susan Wolf] should get the money.”

¶ 71 Susan Wolf testified about the March 11, 2010, payment of \$4,000 signed by Cico and drawn on the account of Infinity Realty Group, Inc., as follows:

“Q. It's another payment to Tactic for \$4,000? ***

THE WITNESS: I called Ivan on it, because I didn't know why I got it, and he said it was to finish up the other deal.

BY [PLAINTIFFS' COUNSEL]:

Q. So this is basically additional moneys that the thought he owed you that pertained to that \$161,787.79 you received in February of 2010?

A. Yes. ***

Q. You have no files on this business relation?

A. Nothing right now.”

Cico testified to the March 11, 2010, payment to Tac-Tic, LLC, in the amount of \$4,000 signed by Cico and drawn on the account of Infinity Realty Group, Inc.:

“Q. *** It's a check dated March 11th for \$4,000 to Tac-Tic, LLC from Infinity Realty Group, what is that for?

A. I am not sure. I am not sure. This could be [Honore], but I'm not sure if it's for the construction portion of it."

Cico was not clear as to whether it was repayment for a loan, as Susan Wolf testified to, or a construction cost reimbursement. Furthermore, Cico did not have any documents to substantiate the corporate purposes of the two payments totaling \$165,787.79.

¶ 72 Although the trial court never used the term of piercing the corporate veil, the evidence showed that Cico used his various corporate accounts to pay for items that had no relationship to those corporations, and as a result the corporate veil was pierced. In order to pierce the corporate veil the trial court must find (1) unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) circumstances that exist such that adherence to the fiction of a separate corporate existence would sanction a fraud, promote injustice towards the judgment creditors, and promote inequitable consequences:

"THE COURT: ***

I've reviewed everything ***. The Court had heard live and disbelieves Mr. Cico's testimony that the two checks he wrote to 'Tac-Tic, LLC dated February 8, 2010 in the amount of \$161,787.79 and the second check March 11, 2010 in the amount of \$4,000,' the court disbelieves that those – his testimony that those checks were anything other than checks he wrote representing Stephen Wolf's share in the transaction involving certain property on Honore Street.

In initial sworn testimony Mr. Cico had said he never heard of Tac-Tic, LLC. In subsequent sworn testimony he said it was a new LLC set up by Attorney ***. [The attorney is also] Stephen Wolf's attorney.

While Mr. Cico in his subsequent sworn testimony attempted to portray Susan Wolf as a person he did this deal with, he also admitted that it was Stephen Wolf who went to the bank with him to negotiate it. The court disbelieves having observed this testimony and observed the witness' demeanor, disbelieves Mr. Cico's testimony that this was not Stephen Wolf's deal. The Court finds this witness to be totally lacking in credibility.

Further, Susan herself had no knowledge of why checks in the amounts so described were written to Tac-Tic, supposedly her new LLC. Further, the evidence shows that the address on the checks written by Tac-Tic is the same address as the office space shared by Mr. Cico and Stephen Wolf.

In response to the present motion Mr. Cico has filed an answer but the Court considers it to include no accounts of prevailing facts at all. Therefore, according to [section] 2-1402(m)(2) [735 ILCS 5/2-1402(m)(2) (West 2010)], the service of a citation to discover assets upon a third party, here Mr. Cico, is a lien on all property belonging to the judgment debtor in the possession of the cited third party as well as on any such property thereafter acquired. Both of these checks described a minute ago represent funds acquired by Stephen Wolf and coming into the possession of Mr. Cico after his citation was served.

Because the citation respondent, Mr. Cico, paid these funds out, judgment in the amount of the funds will be entered against him

personally today. In support of this ruling, the Court cites to Supreme Court Rule 277(h) [(Ill. S. Ct. R. 277 (eff. July 1, 1982))], which provides authority for the Court to enter sanctions against the respondent in citation proceedings who fails to obey a citation.

The last sentence of that rule reads as follows: The Court may also enforce this order against the real and personal property of that person. I also cite to the case of Kennedy versus Four Boys Labor Services, Inc., 279 Ill. App. 3rd, 361 2nd District, 1996. At page 367, the Court says that ‘Section 2-1402 gives the Court broad powers to compel the application of discovered assets to satisfy a judgment.’

In that case the Appellate Court affirmed the trial court which entered judgment against the respondent to a citation proceedin[g] [*sic*] for the amount of the judgment debtor’s property that the respondent in the citation proceedings had transferred to yet another third party. Same as this situation. So that will be the first part of my ruling. I’ll enter judgment today against Mr. Cico in the amount of – I have added it up, \$165,787.79.”

What the trial court did was to enforce its order of sanctions against Cico’s personal property which included his corporate structures under Supreme Court Rule 277(h) which allows enforcement of court orders against the real and personal property. In addition, Cico as the sole shareholder with his wife was the agent of the corporations whose accounts he drew the checks on. As agent he is responsible for his wrongful acts. See *Golden v. Ellwood*, 299 Ill. 73, 76 (1921).

¶ 73 III. Cico's Appellate Brief's Compliance with Illinois Supreme Court Rules 341 and 342

¶ 74 Finally, on November 3, 2011, plaintiffs moved to strike Cico's appellate brief on the ground that the appendix was omitted. On November 16, 2011, we agreed to consider the motion with the instant appeal. Illinois Supreme Court Rule 341(h)(9) requires an appellant to include "an appendix as required by Rule 342." Ill. S. Ct. R. 341 (eff. July 1, 2008). Illinois Supreme Court Rule 342(a) provides that the appendix at the end of an appellant's brief must include:

"a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

"Where an appellant's brief fails to comply with the rules, this court has inherent authority to dismiss the appeal for noncompliance with its rules." *People v. Kraft*, 277 Ill. App. 3d 221, 224 (1995) (quoting *Zadrozny v. City Colleges*, 220 Ill. App. 3d 290 (1991)); *People v. Mitchell*, 2012 IL App (1st) 100907; *Neiman v. Economy Preferred Insurance Co.*, 357 Ill. App 3d 786 (2005); *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993). "The purpose of the [Illinois Supreme Court] rules is to require parties to proceedings before a reviewing court to present clear and orderly arguments so that the court may properly ascertain and dispose of the issues involved." *People v. Kraft*, 277 Ill. App. 3d 221, 224 (1995); *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993).

¶ 75 “Noncompliance with [Illinois Supreme Court Rules] does not help us resolve appeals expeditiously.” *Passero v. Allstate Insurance Co.*, 196 Ill. App. 3d 602, 611 (1990). However, when the issues on appeal are “fairly straightforward and the opening brief is in all other respects adequate” this court has the discretion as to whether it will apply a sanction of dismissal which is warranted. *People v. Kraft*, 277 Ill. App. 3d 221, 224 (1995); see also *Steel Co. v. Morgan Marshall Industries, Inc.*, 278 Ill. App. 3d 241 (1996). In the case at bar, since Cico’s brief is otherwise adequate for us to review the issues on appeal, we decline to dismiss the appeal. We caution Cico and his attorneys that in the future, the appendix must be included in an appellant’s initial brief, not in the reply brief as occurred here. We also are compelled to note that the appendix filed was missing the information for an entire volume of the extensive record and has incorrect pages listed. This conduct “does not help us resolve appeals expeditiously” (*Passero v. Allstate Insurance Co.*, 196 Ill. App. 3d 602, 611 (1990)), and should not be repeated.

¶ 76 CONCLUSION

¶ 77 For the foregoing reasons, we find that there was sufficient evidence to support defendant’s (1) sanctions in the amount of \$165,787.79 and (2) the denial of defendant’s motion to vacate.

¶ 78 Affirmed.