2012 IL App (3d) 110056-U

Order filed March 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

DAVID CARLSON and MARILYN CARLSON,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit
	)	Knox County, Illinois
Plaintiffs-Appellants,	)	
	)	
v.	)	
	)	
MAURICE LYON, JEFFREY LYON and SUSAN LYON,	)	
	)	
	)	
Defendants-Appellees,	)	Appeal No. 3-11-0056
	)	Circuit No. 07-L-4
MAURICE LYON and SUSAN LYON,	)	
	)	
Counter-plaintiffs-Appellees,	)	
	)	
v.	)	
	)	
DAVID CARLSON and MARILYN CARLSON,	)	
	)	Honorable
	)	James B. Stewart
Counter-defendants-Appellants.	)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly dismissed plaintiffs' breach of contract action, entered judgment in favor of defendants on plaintiffs' breach of fiduciary duty claim, and ordered plaintiffs to pay defendants' attorney fees; however, trial court's award of attorney fees under the Business Corporation Act could not be assessed against plaintiffs' attorney, and plaintiffs would not be required to pay fees for a hearing that their attorney was unable to attend.

¶ 2 Plaintiffs David and Marilyn Carlson and defendants Maurice and Susan Lyon owned a corporation together, Cornucopia-Galesburg, Inc. (Cornucopia), that operated a natural foods store and bakery. When the parties could no longer agree on how to run the corporation, plaintiffs filed a three-count complaint against Maurice and Susan Lyon, and Maurice's brother, Jeffrey Lyon. The first count sought dissolution of Cornucopia. The second count alleged breach of fiduciary duty against Maurice and Susan Lyon. The third count alleged breach of contract against Jeffrey Lyon. Maurice and Susan Lyon filed a counterclaim, seeking a valuation of Cornucopia and an order allowing them to buy plaintiffs' share in the corporation. Maurice and Susan later added a second counterclaim, seeking attorney fees from plaintiffs under the Illinois Business Corporation Act of 1983 (Business Corporation Act) (805 ILCS 5/1.01 et seq. (West 2008)).

¶ 3 The trial court dismissed the third count of plaintiffs' complaint and ordered plaintiffs and their attorney to pay Jeffrey Lyon's attorney fees as a sanction. Plaintiffs filed a motion for summary judgment with respect to count II of their complaint. The trial court denied the motion. The parties proceeded to trial on counts I and II. After plaintiffs presented their evidence, Maurice and Susan Lyon filed a motion for judgment on count II. The trial court granted defendants' motion for judgment at the close of plaintiffs' case. With respect to count I of the complaint, the trial court valued Cornucopia and gave Maurice and Susan Lyon the option to buy plaintiffs' share in the corporation. The trial court then ruled in favor of Maurice and Susan Lyon on their counterclaim

and found plaintiffs and their attorney jointly and severally liable for $108,615 in attorney fees and costs.

¶ 4 On appeal, plaintiffs argue that the trial court erred in (1) ordering them to pay Jeffrey Lyon's attorney fees, (2) denying their motion for summary judgment, (3) limiting their presentation of evidence at trial, (4) granting Maurice and Susan Lyon's motion for judgment at the close of evidence, (5) denying their motion to stay the proceedings, to re-open discovery and for leave to amend their complaint, (6) valuing Cornucopia, (7) holding a hearing when their attorney was in the hospital, (8) denying their petition for disqualification of judge, (9) ordering them and their attorney to pay Maurice and Susan Lyon's attorney fees, and (10) denying their motion for mistrial. We affirm all of the trial court's rulings, except the order holding plaintiffs ' attorney jointly and severally liable for Maurice and Susan Lyon's attorney fees. We vacate the portion of the order that holds plaintiffs' attorney liable and reduce the amount of fees.

¶ 5 BACKGROUND

¶ 6 David and Marilyn Carlson are husband and wife; Maurice and Susan Lyon are husband and wife; David and Susan are siblings. In 1989, the Carlsons and the Lyons opened a natural foods retail store, Cornucopia-Galesburg, Inc. and formed a corporation with the same name.

¶ 7 Jeffrey Lyon is an attorney and Maurice Lyon's brother. He drafted and filed the incorporation documents for Cornucopia and named himself as registered agent. In 1996, Jeffrey left the law firm where he had been working. The corporate documents continued to be sent to Jeffrey's old work address. In November 1997, the Secretary of State filed a certificate of dissolution of Cornucopia for failure to file corporate annual reports and pay annual franchise taxes.

¶ 8 In 1997, Susan, Maurice, David and Marilyn purchased Uncle Bill's Bakery. They began

operating it as part of Cornucopia. In June 2005, Maurice purchased Kaldi's Coffeehouse & Tea Room a few blocks from Cornucopia. Susan began working at Kaldi's. In January 2007, plaintiffs stopped working at Cornucopia, but Maurice and Susan continued to operate the business.

¶ 9 Plaintiffs' Complaints and Jeffrey Lyon's Motions to Dismiss

¶ 10 On January 24, 2007, plaintiffs filed a three-count complaint against Maurice, Susan and Jeffrey Lyon. Count I sought dissolution of Cornucopia. Count II alleged breach of fiduciary duty against Maurice and Susan Lyon, alleging that they usurped a corporate opportunity by opening Kaldi's, a competing business, plundered products from Cornucopia and mismanaged Cornucopia. Count III alleged a breach of fiduciary duty and verbal contract against Jeffrey Lyon. Maurice and Susan filed an answer and counterclaim. In their counterclaim, they requested that Cornucopia be appraised and that they be permitted to purchase the Carlsons' share of Cornucopia.

¶ 11 Jeffrey filed a motion to dismiss the count against him. Thereafter, Maurice and Susan filed a motion to appoint an appraiser to value the corporate stock. The trial court granted the motion and appointed an appraiser, Adrian Graber, to value the corporate stock. In October 2007, an agreed order was entered, whereby Jeffrey withdrew his motion to dismiss and plaintiffs were allowed to amend the count against him.

¶ 12 In November 2007, the Carlsons filed an amended four-count complaint against Maurice, Susan and Jeffrey Lyon. Counts I and II were the same as in the previous complaint. Counts III and IV were directed against Jeffrey Lyon. Count III alleged breach of contract; count IV alleged breach of fiduciary duty. Jeffrey filed a motion to dismiss. The trial court granted Jeffrey's motion to dismiss, without prejudice, finding that the Carlsons failed to "sufficiently plead the formation of a verbal contract between Jeffrey Lyon and them."

¶ 13 In March 2008, the Carlsons filed a second amended complaint. Like the original complaint, count I sought dissolution of Cornucopia-Galesburg, Inc., count II alleged breach of fiduciary duty against Maurice and Susan, and count III alleged breach of contract against Jeffrey. Jeffrey filed a motion to dismiss count III. The trial court granted Jeffrey's motion to dismiss with prejudice, finding that the action was not brought within the applicable statute of limitations and that there was no attorney-client relationship between Jeffrey Lyon and plaintiffs.

¶ 14 Discovery Issues

¶ 15 In August 2008, the Lyons served supplemental interrogatories on plaintiffs, which required plaintiffs to disclose their trial witnesses and their opinions. Six weeks later and less than one week before discovery was scheduled to close, plaintiffs provided answers to defendants' interrogatories. Plaintiffs' answers listed 29 occurrence witnesses. Plaintiffs stated that 14 of those witnesses would "testify to factual occurrences and events, *** opinions and impressions, *** understanding and *** interpretation of everything and anything do with Cornucopia-Galesburg, Inc., Uncle Billy's Bakery, Maurice Lyon, Susan Lyon, Kaldi's Coffeehouse and Tearoom and any other matters raised in this litigation or at trial." Plaintiffs identified Marilyn Carlson as a potential witness and stated that she:

> "Will testify to factual occurrences and events, her opinions and impressions, her understanding and her interpretation of everything and anything that has to do with Cornucopia-Galesburg, Inc, Uncle Billy's Bakery, Maurice Lyon, Susan Lyon, Kaldi's Coffee House and Tea Room and any other matters raised in this litigation or at trial. Will testify in regards to all financial matters concerning the above named businesses."

Plaintiffs did not identify Maurice or Susan Lyon as potential witnesses. Plaintiffs never

supplemented their discovery answers.

¶ 16 Motions for Sanctions

¶ 17 After the trial court granted his motion to dismiss, Jeffrey filed a motion for sanctions against the Carlsons, arguing that the claims against him were made without conducting a reasonable inquiry as to whether they were well grounded in fact and warranted by existing law and/or brought for an improper purpose. Thereafter, the Carlsons filed their own motion for sanctions. The trial court denied the Carlsons' motion for sanctions and granted Jeffrey's motion for sanctions. The court gave Jeffrey leave to file a petition for attorneys fees and costs.

¶ 18 Jeffrey Lyon's attorney, Mark Gross, filed a petition for attorney fees, seeking $24,009.70 in fees and costs. Plaintiffs filed an objection and motion to strike the petition for attorney fees, arguing that it was "inflated and unreasonable." Following a hearing on the petition, the trial court granted the petition for attorney fees and costs. The court found that the fee petition filed by Gross was "largely fair and reasonable and sufficiently descriptive" with "some exceptions." However, the court denied Gross compensation for his travel time and reduced his hourly rate from $275 to $245. The court entered an award of $14,185 in fees and $62.13 in costs in favor of Jeffrey Lyon and against David and Marilyn Carlson and their attorney, Jude Redwood, jointly and severally.

¶ 19 Plaintiffs' Motion for Summary Judgment

¶ 20 Two months before the trial was scheduled to begin, plaintiffs filed a motion for partial summary judgment, seeking summary judgment on count II of their second amended complaint. The trial court denied plaintiffs' motion for partial summary judgment, finding there were contested issues of material fact.

¶ 21 The Trial

¶ 22 The bench trial was held over a period of nine days from December 2008 to August 2009. On the first four days of trial, Marilyn Carlson testified. She testified that she moved to Galesburg in 1989, because Susan and Maurice asked her and her husband, David, to open Cornucopia, a natural food store, with them. In 1997, Marilyn, David, Susan and Maurice purchased Uncle Bill's Bakery and operated it as part of Cornucopia. They sold baked goods and drinks but did not serve coffee drinks.

¶ 23 In 2004, Crackpots, a coffee shop, opened near Cornucopia. In approximately May 2005, Marilyn learned that Crackpots was closing. She discussed with Susan the idea of buying the espresso machine from Crackpots after it closed. Susan said she would get back to her. After that, Susan told her that she and Maurice bought Crackpots and renamed it Kaldi's. Susan told Marilyn that Kaldi's was none of her business. Maurice never talked to Marilyn about his purchase of Kaldi's.

¶ 24 In 2005, Cornucopia sold its baked goods to other shops, restaurants and cafes, including Landmark Café, Packing House, Chez Willy's, Carolyn's Café and Crackpots. When the establishments preordered baked goods, Cornucopia charged them 20 percent below retail. If those establishments purchased something off the shelves at Cornucopia, they were charged full retail price. The businesses that purchased items off the shelves from Cornucopia had "charge books," which were kept by the registers at Cornucopia. In the "charge books," Cornucopia employees recorded the products purchased and their prices.

¶ 25 Marilyn believed that the same pricing scheme and procedure would apply to Kaldi's. Kaldi's had its own charge book, listing items that it purchased directly from the shelves at Cornucopia. No prices were written down for the products in Kaldi's charge book. When a Cornucopia employee attempted to write down a price in Kaldi's charge book, Susan reprimanded the employee. Kaldi's

preordered baked goods from Cornucopia almost every day from June 2005 to December 2006. Marilyn did not know what price Kaldi's was being charged for baked goods. Susan refused to talk to Marilyn about Kaldi's paying Cornucopia for products.

¶ 26 After Kaldi's opened, Marilyn observed Susan, Maurice and their daughter, Hannah, take non-food items, including napkins, straws, bakery tissue, coffee stirrers, cups, toilet paper, paper towels and "just about every dry good" to Kaldi's. Marilyn never observed them pay for those items.

¶ 27 In 2005, Maurice left several payments from Kaldi's in the register at Cornucopia. Those payments totaled $3,407.70. In 2006, Kaldi's paid Cornucopia nothing. After Marilyn and David filed their lawsuit against Maurice and Susan, they received a "big payment" from Susan and Maurice in late 2007 or early 2008. Maurice deposited a check for more than $10,000 into Cornucopia's bank account.

¶ 28 Marilyn testified that Susan began failing to bill customers for orders after Kaldi's opened in 2005. In 2006, Marilyn went into Susan's office and found many stale checks payable to Cornucopia that were never cashed or deposited.

¶ 29 After Marilyn and David filed their complaint, they learned through discovery that Susan was charging Kaldi's wholesale prices for the products bought from Cornucopia. This was less than any other business was charged. Marilyn never agreed to charge Kaldi's less than other businesses. Marilyn attempted to introduce exhibits and testimony that Kaldi's still owed Cornucopia for products it never paid for.

¶ 30 On the fourth day of Marilyn's testimony, defendants orally moved to strike all of Marilyn's damage computations, calculations and opinions because plaintiffs failed to disclose them during discovery. The trial court orally granted defendants' request but directed the parties to submit written

arguments on the admissibility of specific exhibits and opinions offered by Marilyn Carlson.

¶ 31 On the fifth day of the trial, plaintiffs filed an emergency motion for stay of proceedings, to re-open discovery and for leave to amend the complaint to name a respondent in discovery due to new material evidence, being Maurice's sale of Kaldi's. The trial court denied the motion, finding that the sale of Kaldi's had nothing to do with plaintiffs' case against defendants.

¶ 32 Marilyn's testimony continued on the fifth and sixth days of trial. During cross-examination, Marilyn testified that she did not know if Kaldi's received any invoices from Cornucopia from 2005 to 2007. From July 2005 to December 31, 2007, Kaldi's paid Cornucopia a total of $19,481.41.

¶ 33 David Carlson also testified on the sixth day of trial. He testified that he began working full time for Cornucopia in approximately 1991. In 1997, after Cornucopia purchased the bakery, he became very involved in baking. Kaldi's ordered baked goods from Cornucopia "practically every single day they were open." When David asked Susan about Kaldi's bills, she would tell him, "I'll get to it when I get to it." David admitted that Kaldi's paid Cornucopia a large sum in early 2008, after plaintiffs filed suit.

¶ 34 Less than a week before the seventh day of trial was scheduled to begin, plaintiffs issued subpoenas to Maurice and Susan Lyon to appear and give testimony. Maurice and Susan filed a motion to quash the subpoenas because plaintiffs never identified them as potential witnesses in their case. On the seventh day of trial, David Carlson testified that he believed that both Susan and Maurice owned Kaldi's because Susan often left Cornucopia to take things to Kaldi's.

¶ 35 On the eighth day of trial, the court granted defendants' motion to quash the subpoenas issued to Maurice and Susan. The trial court also entered a written order with respect to Marilyn Carlson's valuation testimony, finding that (1) defendants were surprised by Marilyn Carlson's opinion and

calculation evidence because it had not been disclosed by plaintiffs in discovery, (2) defendants were prejudiced by the evidence because they were deprived of the ability to obtain testimony to rebut, impeach or qualify the calculations and opinions, (3) the nature of the testimony was material and important, (4) defendants were diligent in seeking disclosure of opinions, conclusions and calculations of damages, (5) defendants consistently objected to the testimony, and (6) plaintiffs were not in good faith in that it was their intent not to disclose the evidence and surprise defendants to their disadvantage. Thus, the court struck various opinions presented by Marilyn Carlson during her testimony, including four exhibits or portions thereof.

¶ 36 On the eighth day of trial, defendants made an oral motion to bar four of plaintiffs' occurrence witnesses from testifying because plaintiffs' disclosures regarding the witnesses were overbroad and failed to disclose the matters about which the witnesses would be testifying. The trial court granted the motion and barred the witnesses from testifying.

¶ 37 On the ninth and final day of trial, plaintiffs presented three witnesses. Mary Bennison testified that she is the bookkeeper for Landmark Café, a restaurant that purchased products from Cornucopia. According to Bennison, Susan Lyon took care of the finances at Cornucopia until early 2006. Bennison stated that Susan was often behind in sending bills to Landmark and cashing Landmark's checks. In 2006, when Marilyn took over Cornucopia's finances, "[t]hings moved faster." When Marilyn left Cornucopia in January 2007, Bennison did not receive any bills from Cornucopia for "a period of time." At some point in 2007, Cornucopia obtained a new accounting program and hired a bookkeeper, and things began running more smoothly. Bennison did not believe that Maurice or Susan Lyon misrepresented the finances of Cornucopia or "cooked the books" in any way.

¶ 38 Deborah Moreno testified that she hired Cornucopia for a catering job on May 6, 2006. She testified that she did not receive a bill from Cornucopia for the catering until May 2007. Laura Collins testified that she is a liaison for the Timber Framers Guild, which hired Cornucopia to cater an event in 2005. She did not believe that the Timber Framers Guild had received a bill from Cornucopia for the catering event as of April 2008.

¶ 39 The parties then presented joint exhibits that were admitted into evidence. The first was the report prepared by the appraiser, Adrian Graber. The report concluded "as of December 31, 2007, the fair value of the corporate stock of Cornucopia-Galesburg, Inc., was approximately $80,000." Another exhibit was a letter from Graber, dated 11 months after he filed his report, explaining that he continued to believe that the value of the corporation was as stated in his report.

¶ 40 Defendants' Motion for Judgment and Trial Court's Decision

¶ 41 The day after the trial concluded, Maurice and Susan Lyon filed a motion for judgment at the close of plaintiffs' case, seeking dismissal of count II of plaintiffs' complaint because plaintiffs failed to (1) present competent evidence that Cornucopia was damaged by any of defendants' actions, (2) establish that Kaldi's was a competing business and an actionable lost corporate opportunity for Cornucopia, and (3) establish plundering of corporate assets or theft by defendants.

¶ 42 The trial court orally granted defendants' motion for judgment at the close of the case and dismissed count II, finding that plaintiffs failed to prove that defendants breached their fiduciary duties and caused harm to the corporation. On the same date, the trial court ruled that the value of Cornucopia, based on the only evidence presented, was $80,000. The court gave defendants the first option to buy plaintiffs' stock for 50% of that sum, not including a $5,000 debt the corporation owed plaintiffs, and interest on that debt. The trial court later entered a written order, memorializing its

oral ruling.

¶ 43 Defendants' New Counterclaim

¶ 44 During the trial, Maurice and Susan filed a motion for leave to amend their counterclaim to add count II, seeking attorney fees against plaintiffs under the Business Corporation Act. After the trial concluded, the trial court granted defendants' motion. Thereafter, defendants filed a second amended answer and amended counterclaims. Count II of their amended counterclaim sought attorney fees and litigation expenses under the Business Corporation Act.

¶ 45 January 14, 2010 Hearing, Judgment and Vacature of Judgment

¶ 46 On January 14, 2010, an evidentiary hearing was scheduled to address count II of Maurice and Susan Lyon's amended counterclaim. At the beginning of the hearing, the trial court noted that neither plaintiffs nor their attorney were present and that there had been "a covert telephone call *** relating to an injury or an accident involving an attorney." The court, nevertheless, decided to hold the hearing, finding that "[t]his case has simply progressed too long given the value of the business and the hurt to these people to justify another continuance and another extension of time."

¶ 47 At the hearing, defendants' counsel, John Robertson, testified to his belief that plaintiffs' litigation against defendants was "arbitrary, vexatious and not in good faith." Robertson presented billing statements, reflecting the fees he charged Susan and Maurice Lyon for his representation. He also introduced into evidence letters sent throughout the litigation by himself and plaintiffs' counsel regarding offers to settle. Following the hearing, the court found that plaintiffs proceeded on their claim against Maurice and Susan Lyon in an arbitrary, vexatious fashion that was not in good faith.

¶ 48 On January 19, 2010, the trial court entered a "Final Judgment Order," finding that the conduct and continuation of the litigation by plaintiffs and their attorney was arbitrary, vexatious and

not in good faith. The trial court entered judgment in favor of defendants on count II of their amended counterclaim and found plaintiffs and their attorney jointly and severally liable for $86,490 in legal fees and $483 in expenses.

¶ 49 Plaintiffs filed a motion to vacate the trial court's "Final Judgment Order" and findings from the January 14, 2010, hearing because their attorney was unable to attend due to a medical emergency. Based on an agreement between the parties, the trial court vacated its January 19, 2010, judgment and re-opened the January 14, 2010, hearing for the cross-examination of witnesses and presentation of evidence by plaintiffs.

¶ 50 Petition to Disqualify Judge

¶ 51 In March 2010, plaintiffs filed a petition for disqualification of judge for cause, alleging that Judge James Stewart had "a personal bias and prejudice against the plaintiffs' attorney and against the plaintiffs." The case was reassigned to Judge Stephen Mathers to rule on plaintiffs' motion to disqualify. At the hearing on the motion, Marilyn Carlson testified that she "noticed Judge Stewart having a very negative attitude towards my lawyer." She claimed that Judge Stewart seemed to listen less intently to her attorney than defense counsel. She also testified that Judge Stewart would chat with defense counsel after hearings, making her "worried they were talking about the case without my lawyer present." Judge Mathers denied plaintiffs' motion to disqualify, finding plaintiffs failed to provide objective evidence of bias by Judge Stewart.

¶ 52 Plaintiffs' Motions for Mistrial and Exclusion of Evidence

¶ 53 In April 2010, plaintiffs filed a motion for mistrial and for attorney fees and costs to be assessed against defendants, arguing that "a culmination of a series of acts," including the January 14, 2010 hearing, showed that Judge Stewart and defendants' counsel acted unfairly. Thereafter,

plaintiffs filed a motion to exclude all evidence of settlement negotiations between the parties and to strike from the record all evidence of settlement negotiations that were admitted at the January 14, 2010, hearing. The motion also sought Judge Stewart to recuse himself from upcoming hearings because he had received inadmissible evidence of settlement negotiations at the January 14, 2010, hearing and "lost impartiality."

¶ 54 The trial court held a hearing on plaintiffs' motion for mistrial and motion to exclude. The court denied plaintiffs' motion for mistrial. The court did not rule on plaintiffs' motion to exclude, finding it untimely. The court instructed plaintiffs that they could object to any evidence of settlement negotiations presented at the hearing, and the court would determine at a later date if they were admissible.

¶ 55 Defendants' Counterclaim

¶ 56 The court reopened the hearing on defendants' counterclaim seeking attorney fees on October 1, 2010. On that date, Defendants' attorney presented his billing statements to defendants that showed total fees of $108,085, and costs of $1,040. Those bills included $1,350 in fees for the January 14, 2010, hearing.

¶ 57 The hearing continued on October 5, 2010, when plaintiffs' attorney testified. She stated that any discovery violations on her part were simply mistakes made because of inexperience. She explained: "Anything that I did that was wrong was not done with bad intent or evil intent."

¶ 58 On November 4, 2010, the trial court issued an order. In its order, the court explained that it considered evidence of settlement negotiations between the parties for the sole purpose of determining if defendants acted arbitrarily, unreasonably, vexatiously or in bad faith in conducting their litigation, as plaintiffs claimed. The court found that "the Lyons did not act arbitrarily and in

bad faith in their litigation and did attempt to resolve this case by settlement." The court, however, found that "Plaintiffs' action including that of their attorney was arbitrary and otherwise not in good faith ***."

¶ 59 The court found all of the fees requested by defendants' counsel, with the exception of $610, to be fair and reasonable. The court ordered plaintiffs and their attorney to pay a total of $107,575 in attorney fees and $1,040 in costs to defendants.

¶ 60 Final Judgment

¶ 61 On December 21, 2010, the trial court entered a "Corrected Final Judgment Order." The order reiterated the court's prior decisions regarding counts I and II of plaintiffs' second amended complaint. With respect to count II of defendants' amended counterclaim, the trial court entered judgment in favor of Maurice and Susan Lyon and against David Carlson, Marilyn Carlson and their attorney, Jude Redwood "jointly and severally, for $108,615.00. "

¶ 62 ANALYSIS

¶ 63 I. Sanctions Awarded to Jeffrey Lyon

¶ 64 Plaintiffs first argue that the trial court should not have granted Jeffrey Lyon's motion for sanctions because their action against him was not unreasonable or frivolous.

¶ 65 Illinois Supreme Court Rule 137 permits the trial court to impose sanctions against a party or its counsel where a motion or pleading is filed that is "not well grounded in fact, not supported by existing law, or lacks a good-faith basis for modification, reversal, or extension of the law, or is interposed for any improper purpose." *Yunker v. Farmers Automobile Management Corp.*, 404 Ill. App. 3d 816, 824 (2010). The party requesting the imposition of Rule 137 sanctions bears the burden of proving that the opposing party made untrue and false allegations without reasonable cause

for the mere purpose of invoking harassment or undue delay of the proceedings. *Webber v. Wright & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). Because of Rule 137's penal nature, courts must construe it strictly, and should reserve sanctions for the most egregious cases. *Id.*

¶ 66 The purpose of Rule 137 is to prevent parties from abusing the judicial process with actions unsupported by fact or law. Dunn v. Patterson, 395 Ill. App. 3d 914, 923 (2009). While they have a compensatory feature, Rule 137 sanctions are inherently penal in nature and are designed to punish wrongdoers and deter others from the same conduct. William J. Templeman Co. v. Liberty Mutual Insurance Co., 316 Ill. App. 3d 379, 384 (2000). The rule is not intended to penalize litigants and their attorneys because they were zealous but unsuccessful in pursuing an action. Yunker, 404 Ill. App. 3d at 824.

¶ 67 A party's honest belief that his case was well grounded in law and fact is not enough to avoid Rule 137 sanctions. *Schneider v. Schneider*, 408 Ill. App. 3d 192, 200 (2011). Courts use an objective standard to determine whether the signing party made a reasonable inquiry before filing his pleadings based on the circumstances that existed at the time of filing. Yunker, 404 Ill. App. 3d at 824.

¶ 68 A trial court's decision to grant a motion for sanctions is reviewed under an abuse of discretion standard. Yunker, 404 Ill. App. 3d at 824. A court abuses its discretion when no reasonable person could take the view it adopted. *Krawczyk v. Livaditis*, 366 Ill. App. 3d 375, 379 (2006).

¶ 69 Here, the trial court's award of sanctions was not an abuse of discretion. Plaintiffs filed breach of fiduciary duty and breach of contract claims against Jeffrey Lyon that were not supported by facts or law. Jeffrey Lyon was not plaintiffs' attorney and owed no duty to them; thus, he could not be liable for breach of fiduciary duty. Additionally, there was no contract that could have

supported plaintiffs' breach of contract claim against Jeffrey Lyon. Plaintiffs' conduct in continuing to pursue their baseless claims against Jeffrey Lyon amounted to egregious, bad-faith, and harassing conduct, and it was within the trial court's discretion to impose sanctions against them.

¶ 70 II. Plaintiffs' Motion for Partial Summary Judgment

¶ 71 Next, plaintiffs argue that the trial court erred in denying their motion for summary judgment on count II of their second amended complaint.

¶ 72 An order denying a motion for summary judgment is interlocutory in nature and not appealable. Rush University Medical Center v. Sessions, 2011 IL App (1st) 101136, ¶ 24. The denial of a motion for summary judgment is not reviewable following an evidentiary trial because the result of any error in such denial is merged by law in the subsequent trial. Toftoy v. Rosenwinkel, 2011 IL App (2d) 100565, ¶ 28.

¶ 73 Here, counts I and II of plaintiffs' complaint went to trial, and the very issues raised by plaintiffs in their motion for summary judgment came out at trial. Thus, plaintiffs' motion for partial summary judgment is not reviewable.

¶ 74 III. Trial Court's Exclusion of Plaintiffs' Evidence

¶ 75 Plaintiffs argue that the trial court abused its discretion in limiting their presentation of evidence. Specifically, they argue that the trial court erred in (1) quashing the subpoenas issued to Maurice and Susan Lyon, (2) barring four of plaintiffs' trial witnesses, and (3) striking some exhibits and testimony offered by Marilyn Carlson at trial.

¶ 76 Supreme Court Rule 219(c) empowers the trial court to enter sanctions, including barring witnesses from testifying, for a party's failure to comply with discovery rules. *Bill Marek's The Competition Edge, Inc. v. Mickelson Group, Inc.*, 346 Ill. App. 3d 996, 1008 (2004). In determining

whether exclusion of evidence is a proper sanction for a party's failure to comply with discovery rules, the court must consider the following factors: (1) the surprise to the adverse party; (2) the prejudicial effect of the testimony; (3) the nature of the testimony; (4) the diligence of the adverse party; (5) the timely objection to the testimony; and (6) the good faith of the party calling the witness. *Id*.

¶ 77 The imposition of sanctions for a party's non-compliance with discovery rules is a matter within the trial court's discretion. *People ex rel. Hartigan v. Organization Services Corp.*, 147 Ill. App. 3d 826, 832 (1986). This discretion is broad, and will not be disturbed unless abused. *Id.* at 832-33.

¶ 78 A. Quashing Subpoenas

¶ 79 Illinois Supreme Court Rule 213 requires a party, upon written interrogatory, to furnish the identity and location of witnesses who will testify at trial. An adverse party qualifies as a witness and must be identified in Rule 213(f) responses if the answering party intends to call the adverse party as a witness in its case-in-chief. *Garden View, LLC v. Fletcher*, 394 Ill. App. 3d 577, 588 (2009).

¶ 80 Here, defendants propounded their written interrogatories to plaintiffs in August 2008. Less than a week before discovery closed, plaintiffs provided answers to defendants' interrogatories. Plaintiffs did not identify Maurice or Susan as potential witnesses in their answers to interrogatories and never supplemented those answers to include defendants. Because plaintiffs did not disclose Maurice and Susan as potential witnesses, plaintiffs could not require them to testify in their case-in-chief. See *Fletcher*, 394 Ill. App. 3d at 588. The trial court did not abuse its discretion in quashing the subpoenas plaintiffs issued to defendants.

¶ 81 B. Barring Plaintiffs' Occurrence Witnesses

¶ 82 Supreme Court Rule 213 requires the party answering interrogatories to identify "the subjects on which the witness will testify." Ill. S. Ct. R. 213(f)(1) (eff. Jan. 1, 2007). "An answer is sufficient if it gives reasonable notice of the testimony, taking into account the limitations on the party's knowledge of the facts known by and the opinions held by the witness." *Id.* The committee comments for Rule 213(f) explain that the purpose of the rule is "to prevent unfair surprise at trial, without creating an undue burden on the parties before trial." Ill. S. Ct. R. 213(f), Committee Comments (adopted March 28, 2002). The committee comments further explain that "[a]n answer must describe the subjects sufficiently to give 'reasonable notice' of the testimony, enabling the opposing attorney to decide whether to depose the witness, and on what topics." Id. The committee comments state that an "answer would not be proper if it said only that the witness will testify about: 'the accident.' " Id.

¶ 83 A disclosure that a witness will testify at trial "about the matters alleged in [p]laintiff's complaint" is a generalized statement akin to the committee comments' "accident" example. *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 454 (2004). Providing only a generalized statement describing witness testimony creates unfair surprise and fails to provide reasonable notice of the proposed testimony. *Id.* Thus, it is an improper disclosure pursuant to Rule 213(f). *Id.* A trial court does not abuse its discretion by excluding the testimony of a witness whose opinions have not been properly disclosed. *Id.*

¶ 84 Plaintiffs' answers to defendants' interrogatories listed many occurrence witnesses and indicated that they would "testify to factual occurrences and events, *** opinions and impressions, *** understanding and *** interpretation of everything and anything to do with Cornucopia-

Galesburg, Inc., Uncle Billy's Bakery, Maurice Lyon, Susan Lyon, Kaldi's Coffeehouse and Tearoom and any other matters raised in this litigation or at trial." Plaintiffs' generalized statements of the occurrence witnesses' testimony were insufficient under Rule 213(f) and thus improper. See *Kim*, 353 Ill. App. 3d at 454. Thus, the trial court did not err in excluding the testimony of these witnesses. See *id.*

¶ 85 C. Exclusion of Marilyn Carlson's Valuation Evidence

¶ 86 If a party fails to comply with discovery rules, the court, on motion, may enter an order barring a witness from testifying concerning certain issues. Ill. S. Ct. R. 219(c)(iv) (eff. June 1, 1995). A failure to produce documents pursuant to discovery may justify the sanction of exclusion of the evidence at trial. *People ex rel. Hartigan*, 147 Ill. App. 3d at 832.

¶ 87 In their answers to interrogatories, plaintiffs stated that Marilyn Carlson would testify to "factual occurrences and events, her opinions and impressions, her understanding and her interpretation of everything and anything that has to do with Cornucopia-Galesburg, Inc, Uncle Billy's Bakery, Maurice Lyon, Susan Lyon, Kaldi's Coffee House and Tea Room and any other matters raised in this litigation or at trial" as well as "all financial matters concerning the above named businesses." At Marilyn Carlson's deposition, plaintiffs' counsel asked Marilyn Carlson if she had any "computation of damages that you may claim at trial." She responded, "No" and did not produce any exhibits at her deposition reflecting any computations she had made. At trial, Marilyn Carlson attempted to introduce testimony and exhibits regarding damages Cornucopia allegedly suffered. She did not disclose those opinions or documents to defendants in her answers to interrogatories, during her deposition, or at any other time.

¶ 88 In ruling on defendants' motions to exclude Marilyn's testimony and exhibits regarding

valuation that had not been previously disclosed, the trial court examined the appropriate factors and determined that (1) defendants were surprised by Marilyn Carlson's opinion and calculation evidence because it had not been disclosed in discovery, (2) defendants were prejudiced by the evidence because they were deprived of the ability to obtain testimony to rebut, impeach or qualify the calculations and opinions, (3) the nature of the testimony was material and important, (4) defendants were diligent in seeking disclosure of plaintiffs' opinions, conclusions and calculations of damages, (5) defendants consistently objected to the testimony, and (6) plaintiffs did not act in good faith in that it was their intent not to disclose the evidence and to surprise defendants to their disadvantage. In light of these factors, the court's decision to exclude the evidence was not an abuse of discretion. See *Bill Marek's The Competition Edge,* 346 Ill. App. 3d at 1008.

¶ 89 IV. Defendants' Motion for Judgment at the Close of Evidence

¶ 90 Plaintiffs argue that the trial court erred in granting defendants' motion for judgment at the close of evidence because they presented evidence that defendants breached their fiduciary duty.

¶ 91 In a bench trial, section 2-1110 of the Code of Civil Procedure (Code) allows the defendant, at the close of the plaintiff's case in chief, to move for a directed finding in his or her favor. 735 ILCS 5/2-1110 (West 2010). In ruling on such a motion, a court must engage in a two-step analysis. *527 S. Clinton, LLC v. Westloop Equities, LLC,* 403 Ill. App. 3d 42, 52 (2010). First, the court must determine as a matter of law whether the plaintiff has presented a *prima facie* case, that is to say, did the plaintiff present some evidence on every element essential to the cause of action? *Id*. Second, if the plaintiff has presented some evidence on each element, the court then must consider and weigh the totality of the evidence presented, including the evidence which is favorable to the defendant. *Id*. After weighing all the evidence, the court should determine whether sufficient evidence remains

to establish the plaintiff's *prima facie* case. *Id.*

¶ 92 If the circuit court finds that the plaintiff has failed to present a *prima facie* case as a matter of law, the standard of review is *de novo*. *Id.* If, however, the court considers the weight and quality of the evidence and finds that no *prima facie* case remains, the circuit court's decision will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Id.* at 53.

¶ 93 In order to recover for a breach of fiduciary duty, the plaintiff must prove (1) the existence of a fiduciary duty, (2) that defendant breached the duty, and (3) the breach proximately caused the injury of which plaintiffs claim. *Tully v. McLean*, 409 Ill. App. 3d 659, 681-82 (2011).

¶ 94 Here, the trial court considered the evidence and testimony presented by plaintiffs and found that plaintiffs failed to establish that defendants breached any fiduciary duty or that Cornucopia was damaged by any acts of defendants. The court stated that while plaintiffs presented evidence that raised suspicions that defendants may have plundered Cornucopia by theft, plaintiffs "never proved the theft or economic harm to the corporation."

¶ 95 Because the court considered the weight and quality of the evidence presented by plaintiffs, we may reverse the court's ruling on defendants' motion for judgment at the close of the evidence only if it is against the manifest weight of the evidence. We find the court's decision is not against the manifest weight of the evidence.

¶ 96 Here, plaintiffs presented evidence that Susan did not efficiently manage the finances of Cornucopia; however, they did not prove that Susan or Maurice stole from Cornucopia. David and Marilyn testified that Susan and Maurice were taking products from Cornucopia without paying for them. However, the evidence showed that Kaldi's paid Cornucopia nearly $20,000 for products over a two-and-a-half year period. There was no testimony or evidence admitted establishing that Kaldi's

obtained more than $20,000 worth of products from Cornucopia during that period of time. Additionally, plaintiffs failed to establish any damage to Cornucopia based on defendants' alleged acts. Since plaintiffs could not prove that defendants breached their fiduciary duty or damaged Cornucopia, the trial court's decision to grant defendants' motion for judgment at the close of evidence was not against the manifest weight of the evidence.

¶ 97 V. Plaintiffs' Motion for Stay, to Reopen Discovery and to Amend Complaint

¶ 98 Plaintiffs argue that the trial court should have granted their motion for stay, to reopen discovery and to amend their complaint, which plaintiffs filed in the midst of trial after they learned that Maurice Lyon sold Kaldi's to a third party.

¶ 99 The party seeking a stay has the burden of proving adequate justification for it. *CHB Uptown Properties, LLC v. Financial Place Apartments, LLC*, 378 Ill. App. 3d 105, 109 (2007). We review the trial court's denial of a motion to stay under the abuse of discretion standard. *Id*. at 106.

¶ 100 A trial court is afforded great latitude in ruling on discovery matters. *Ruane v. Amore*, 287 Ill. App. 3d 465, 471 (1997). The decision as to whether to reopen discovery rests in the sound discretion of the court, and this court will not disturb such rulings on appeal absent a showing of abuse of discretion. *Id*.

¶ 101 A motion to amend a complaint is a matter that lies within the trial court's sound discretion, and the court's decision will not be disturbed on review in the absence of an abuse of discretion. *Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1032 (2008). A primary consideration in determining whether the court abused its discretion by denying leave to amend is whether the proposed amendment would cure a defective pleading. *Id*.

¶ 102 Here, in the midst of trial, plaintiffs filed a motion to stay the proceedings, reopen discovery

and amend their complaint after they learned that Maurice Lyon sold Kaldi's to a third party. Plaintiffs asserted that the change in ownership of the business had some effect on their case against defendants. However, plaintiffs' complaint did not name Kaldi's as a party. The only parties named as defendants were Susan and Maurice Lyon. Any change in ownership of Kaldi's had no bearing on the claims plaintiffs asserted against Maurice and Susan Lyon. Because plaintiffs' claims were against Maurice and Susan only, the trial court's decision denying plaintiffs' motion to stay the proceedings, reopen discovery and amend their complaint was not an abuse of discretion.

¶ 103 VI. Trial Court's Valuation of Cornucopia

¶ 104 Plaintiffs argue that the trial court erred in finding that Cornucopia's fair value was $80,000.

¶ 105 Following a bench trial, a trial court's finding of the fair value of a corporation will not be set aside unless it is against the manifest weight of the evidence. *Brynwood Co. v. Schweisberger*, 393 Ill. App. 3d 339, 354 (2009). A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, or not based on the evidence presented. *Id*.

¶ 106 Here, the only evidence presented at trial regarding the fair value of Cornucopia was the report prepared by the independent appraiser, Adrien Graber. According to Graber's report, Cornucopia had a fair value of $80,000. Since the trial court's finding that Cornucopia had a value of $80,000 was based on the only valuation evidence presented at trial, it was not against the manifest weight of the evidence.

¶ 107 VII. January 14, 2010 Hearing

¶ 108 Plaintiffs argue that the trial court erred in holding an "*ex parte*" hearing on January 14, 2010, when plaintiffs' counsel was unable to attend due to a medical emergency.

¶ 109 The term "*ex parte*" means "'a judicial proceeding brought for the benefit of one party only and without notice to or contest by any person adversely interested.'" *Parks v. McWhorter*, 106 Ill. 2d 181, 185 (1985), quoting *Stella v. Mosele*, 299 Ill. App. 53, 56 (1939). When a party argues that a trial court has held an improper *ex parte* hearing, the issue becomes moot if the trial court later holds a hearing in which the complaining party participates. See *In re D.S.*, 217 Ill. 2d 306, 321 (2005). The fact that a later hearing is held renders any earlier errors inconsequential. *Id.*

¶ 110 Here, the hearing held on January 14, 2010, was not "*ex parte*" because plaintiffs received notice of the hearing and were given the opportunity to attend. Nevertheless, plaintiffs did not attend because their attorney was unavailable due to a medical emergency. At the time of the hearing, neither plaintiffs nor their attorney had directly informed the court of the medical emergency, so the court proceeded with the hearing. When the court later received confirmation that plaintiffs' attorney was in the hospital at the time of the January 14, 2010, hearing, the court vacated its findings from that hearing and held a new hearing on defendants' counterclaim on October 1 and 5, 2010.

¶ 111 Because the court held hearings in October 2010 on defendants' counterclaim and vacated its findings from the January 14, 2010, hearing, any error in holding the January 14, 2010, hearing is rendered moot. See *In re D.S.*, 217 Ill. 2d at 321.

¶ 112 VIII. Motion to Disqualify Judge

¶ 113 Plaintiffs argue that the trial court should have granted their petition to disqualify Judge Stewart because he articulated "actual, ad hominem bias and hatred towards trial counsel."

¶ 114 A trial judge is presumed to be impartial, and the burden is on the party alleging partiality to overcome this presumption. Sessions, 2011 IL App (1st) 101136, ¶ 16. The party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal

bias. Id. Where bias or prejudice is invoked as the basis for seeking disqualification, it must normally stem from an extrajudicial source and not from what the judge learned from his participation in the case before him. Id. at ¶ 17. Opinions formed by the judge based on facts introduced or events occurring in the course of the current proceedings do not constitute a basis for a bias or partiality motion "unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Id. at ¶ 18. A reviewing court will not reverse a determination on allegations of judicial prejudice unless the finding is against the manifest weight of the evidence. Id. at ¶ 19.

¶ 115 Marilyn Carlson testified at the hearing on plaintiffs' motion to remove Judge Stewart about her belief that Judge Stewart had "a very negative attitude towards my lawyer" and her fear that Judge Stewart and defense counsel "were talking about the case without my lawyer present." As Judge Mathers pointed out following the hearing, Marilyn failed to present objective evidence of bias by Judge Stewart.

¶ 116 There was no allegation that Judge Stewart was biased against plaintiffs because of an extrajudicial source of information. Additionally, plaintiffs failed to present evidence of any comments made by Judge Stewart that were "so extreme as to display clear inability to render fair judgement" or showed a "deep-seated favoritism or antagonism that would make fair judgment impossible." See Sessions, 2011 IL App (1st) 101136, ¶ 18. Plaintiffs did not meet their burden of proving that Judge Stewart lacked impartiality. Thus, the trial court properly denied plaintiffs' request to remove Judge Stewart.

¶ 117 IX. Fees Awarded to Maurice and Susan Lyon

¶ 118 Plaintiffs argue that the Business Corporation Act does not authorize the court to assess attorney fees against its attorney. They also argue that the amount of fees was excessive. Finally,

they argue that the court should not have considered settlement negotiation letters as evidence in support of the fees.

¶ 119 A. Propriety of Fee Award

¶ 120 Section 12.60(j) of the Business Corporation Act provides: "If the court finds that a party to any proceeding *** acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding." 805 ILCS 5/12.60(j) (West 2010).

¶ 121 A statute that allows attorney fees is penal in nature and must be strictly construed. *Bouhl v. Gross*, 133 Ill. App. 3d 6, 13 (1985). "[L]iability should not be imposed on a party's attorney for the other party's litigation expenses in the absence of clear statutory authority." *Evans v. Stoval*, 83 Ill. App. 3d 257, 260 (1980).

¶ 122 Courts in this state have uniformly held that a statute requiring a "party" to pay attorney fees does not impose liability on the party's attorney. See *Berkin v. Orland Park Plaza Bank*, 191 Ill. App. 3d 1056, 1061 (1989); *Dunaway v. Ashland Oil, Inc.*, 189 Ill. App. 3d 106, 112 (1989); *People ex rel. West v. Herrendorf*, 187 Ill. App. 3d 777 (1989); *People v. King*, 170 Ill. App. 3d 409, 414 (1988); *Safeway Insurance Co. v. Graham*, 188 Ill. App. 3d 608, 613 (1989); *Prevendar v. Thonn*, 166 Ill. App. 3d 30 (1988); *Evans*, 83 Ill. App. 3d at 259-60. This court in *Evans* explained:

> " 'In connection with judicial proceedings, the term 'parties' is a technical word which has a precise meaning in legal parlance. It designates the opposing litigants in a judicial proceeding - the persons seeking to establish a right and those upon whom it is sought to impose a corresponding duty or liability ***.' " *Evans*, 83 Ill. App. 3d at 260, quoting 59 Am.Jur.2d Parties, section 7 (1971).

Applying the principle of strict construction, the term "party" does not include an attorney for a party. *Evans*, 83 Ill. App. 3d at 259.

¶ 123 Section 12.60(j) of the Business Corporation Act provides that "a party" may be required to pay the reasonable expenses, including attorney fees, to "one or more other parties." 805 ILCS 5/12.60(j) (West 2010). The term "party" must be strictly construed to mean only the litigants, not their attorney. See *Evans*, 83 Ill. App. 3d at 259-60. Thus, we vacate that portion of the court's order that holds plaintiffs' attorney jointly and severally liable for defendants' attorney fees. Plaintiffs alone are liable for Maurice and Susan Lyon's attorney fees under the Business Corporation Act.

¶ 124 B. Amount of Fees

¶ 125 A trial court's exercise of discretion in determining reasonable attorney fees is not reversed absent an abuse of discretion. *Baez v. Rosenberg*, 409 Ill. App. 3d 525, 533 (2011). Factors to be considered in determining the reasonableness of fees include good faith, diligence, time expended, the skills and qualifications of counsel, and the novelty and complexity of the issues confronted. *Id.* at 535.

¶ 126 Here, the trial court held hearings over several days to consider the amount of attorney fees that should be awarded to Susan and Maurice Lyon' attorney. At the hearing, defendants' attorney provided testimony and evidence regarding the time he spent on the case, the skills and qualifications of himself and his staff, and the issues he was required to confront in plaintiffs' suit. The trial court specifically examined the fees charged and determined that all, but $610, were proper.

¶ 127 We find that the trial court's award of attorney fees was not an abuse of discretion, with one small exception. The fees requested include $1,350 for time spent by defendants' attorney and his staff to attend the January 14, 2010, hearing. Since plaintiffs' counsel was unable to attend that

hearing due to a medical emergency and the trial court's judgment from that hearing was vacated, the trial court should not have awarded defendants' attorney fees for attendance at that hearing. Thus, we reduce the award of fees and costs to defendants by $1,350, for a total of $107,265.

¶ 128 C. Admissibility of Settlement Negotiation Letters

¶ 129 In Illinois, evidence regarding settlement negotiations or offers to settle are generally not admissible. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 649 (2010). However, when settlement offers are relevant, they are admissible. *Shimkus v. Board of Review of the Illinois Department of Labor*, 117 Ill. App. 3d 826, 832 n. 2 (1983). Illinois Rule of Evidence 408 provides that evidence of settlement negotiations may be admitted for "permissible purposes," one of which is "establishing bad faith." Ill. R. Evid. 408(b) (eff. Jan. 1, 2011).

¶ 130 Here, the trial court considered evidence of offers to settle by both parties. In its decision on defendants' counterclaim, the court explained that it considered the evidence of settlement negotiations only to determine if defendants acted in bad faith, as plaintiffs have asserted. The court found, based on the settlement negotiations, that defendants had not acted in bad faith. Because the court considered evidence of settlement negotiations only for a limited purpose authorized by Illinois law, we find no error.

¶ 131 X. Plaintiffs' Motion for Mistrial

¶ 132 Plaintiffs argue that the trial court should have granted their motion for mistrial for the reasons stated in their motion and refer us to the motion contained in the record on appeal.

¶ 133 Referring to a previously filed motion in an appellate brief is not an appropriate way to bring before an appellate court the matters contained therein. *Stenger v. Germanos*, 265 Ill. App. 3d 942, 952-53 (1994). Pursuant to Illinois Supreme Court Rule 341(h)(7), a reviewing court may disregard

any arguments raised by a party in a motion to the trial court that are not presented to the appellate court in a brief containing legal argument in conformity with supreme court rules. *Id.* Failure to cite legal authority in support of an argument is a violation of Rule 341(h)(7) and results in forfeiture of the issue. *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, ¶ 81.

¶ 134 Here, plaintiffs failed to cite to any legal authority in support of this issue and instead referred us to their motion for mistrial. This is a violation of Rule 341(h)(7). See *Sekerez*, 2011 IL App (1st) 090889, ¶ 81; *Stenger*, 265 Ill. App. 3d at 952-53. Plaintiffs have forfeited review of this issue on appeal, and we refuse to address it.

¶ 135 CONCLUSION

¶ 136 For the reasons set forth above, we find that the trial court did not err in (1) awarding sanctions to Jeffrey Lyon, (2) denying plaintiffs' motion for partial summary judgment, (3) excluding certain evidence plaintiffs sought to offer at trial, (4) granting defendants' motion for judgment at the close of evidence, (5) denying plaintiffs' motion for a stay, to reopen discovery and amend their complaint, (6) valuing Cornucopia, (7) holding a hearing on January 14, 2010, (8) denying plaintiffs' motion to disqualify Judge Stewart, and (9) denying plaintiffs' motion for mistrial. Finally, we affirm the trial court's grant of attorney fees to Susan and Maurice Lyon; however, we vacate the portion of the trial court's order holding plaintiffs' attorney jointly and severally liable for those fees and reduce the amount of fees awarded by $1,350.

¶ 137 The judgment of the circuit court of Knox County is affirmed in part, vacated in part, and modified in part.

¶ 138 Affirmed in part; vacated in part; modified in part.