

No. 1-11-3803

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

V.S. VEDAM , M.D.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 04 CH 11847
)	
C.U. REDDI, M.D.,)	Honorable
)	Peter Flynn
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court failed to award plaintiff his share of proceeds from the sale of real estate that he co-owned with defendant. In addition, where the parties' partnership issued plaintiff a check over the course of the partnership, the trial court properly deducted that sum from plaintiff's contributions in performing an accounting. Furthermore, the court did not err by failing to award plaintiff contractual interest where plaintiff did not establish the appropriate interest rate to be applied.
- ¶ 2 This appeal arises from a monetary dispute between two doctors, plaintiff V.S. Vedam, M.D., and defendant C.U. Reddi, M.D., concerning the calculation of three different sums. From 1981 to 1991, the parties were co-owners of a building for the purpose of

operating their individual medical practices, as well as partners for the purpose of purchasing and using the building itself. From 1992 to 2003, the parties remained co-owners of the building but the partnership had been dissolved. Finally, in 2003, the building was sold. Plaintiff sought a judgment awarding him (1) contributions from defendant as to expenses incurred while partners; (2) contributions from defendant as to expenses subsequently incurred while co-owners; and (3) plaintiff's share of the proceeds from the sale of the building. Plaintiff also sought prejudgment interest. Following a bench trial, the court awarded plaintiff a total of \$89,791.25 in contributions from defendant for expenses incurred between 1982 and 2003, to be paid from the sale proceeds held in an escrow account. Defendant was awarded the balance of the proceeds, \$47,822.49. On appeal, plaintiff asserts that the trial court (1) failed to award him 50% of the proceeds in addition to contributions owed by defendant; (2) erroneously calculated plaintiff's contributions to the partnership; and (3) failed to award plaintiff interest. We affirm in part and reverse in part.

¶ 3

I. BACKGROUND

¶ 4

In 2004, plaintiff filed a complaint alleging that on December 10, 1981, the parties entered into a partnership agreement, in anticipation of which, they had purchased a building located at 2751 West 51st Street in Chicago (the building) the week before. Attached to the complaint was the partnership agreement, which stated, in pertinent part, that the purpose of the partnership and agreement was to purchase, own, operate and/or lease the building. Title to the building was to be held in a land trust. In addition, the

agreement provided that the partners each held a 50% interest in the trust, assets, profits and losses. Furthermore, the partners agreed to immediately contribute \$16,000 and were equally responsible for contributing toward maintenance, operation, property improvement, and administration costs. If a partner were to fail to contribute his share of funds, the other partner could, among other things, make the contribution and subsequently deduct that sum, plus interest, from monies subsequently becoming due to the non-contributing partner. Moreover, if a partner's capital account were to become impaired, his share of subsequent partnership distributions was to be credited to his capital account. The agreement did not provide a specific termination date.

¶ 5 The complaint also alleged that the partnership agreement was amended the following year, on December 1, 1982, to "provide for employee expenses." The attached amendment was to expire on December 31, 1986. In addition, on December 2, 2003, the parties sold the building for \$137,613.74 and the sale proceeds were deposited into an escrow account. The complaint alleged that contrary to the partnership agreement, and despite plaintiff's requests, defendant failed to contribute to costs and expenses related to the building. As a result, prior to the sale of the property, plaintiff paid more than \$259,000 for building expenses. Plaintiff sought a judgment dissolving the partnership, an accounting and a judgment against defendant for any deficiency owed due to his failure to contribute as well as prejudgment interest. Plaintiff also sought an award for the building proceeds that were held in escrow.

¶ 6 The record indicates that in February 2008, a trial was held to establish the status of the

partnership and the parties' interests in the building. The report of those proceedings has not been included in the record on appeal, however. Following trial, the court found that the parties each paid half the purchase price for the building, which was placed in a land trust designating the parties as beneficiaries. The parties agreed that it would be used for their medical practices, but the partnership itself did not transact business or generate revenue. Nonetheless, the parties' individual practices operated under the umbrella of the partnership arrangement. The partners shared several expenses and did not pay rent. The court found that in 1982, the partnership agreement was amended to reflect that defendant used the property less than plaintiff. Essentially, the court found the amendment provided that the parties would pay for expenses with respect to employees in proportion to a partner's respective use and that all other expenses would be shared equally. In addition, the court found it appeared that some proportional allocation of expenses continued after 1986, even though there was not a formal agreement to that effect.¹ The court further found that defendant permanently left the premises in 1991. Accordingly, by the end of 1991, the partnership was dissolved, but not wound up. The court also found that issues with respect to winding up the partnership were not barred by the statute of limitations or *laches*, a finding that defendant has not appealed from. For accounting purposes, the

¹See *IMC Global v. Continental Insurance Co.*, 378 Ill. App. 3d 797, 806 (2007) (the general rule that a contract "amended to read as follows" (Internal quotation marks omitted) entirely displaces the original contract will not be applied where contrary to the parties' intentions); see also *Joyce v. DLA Piper Rudnick Gray, LLC*, 382 Ill. App. 3d 632, 638 (2008) (court found that contract amendments merely modified terms that differed from the prior agreement and did not alter the force and effect of unmodified terms).

court found that the period from the inception of the partnership through 1991 would be based on the partnership agreement and partnership law.

¶ 7 Between 1992 and 2003, the parties remained tenants in common with regard to the building. Thus, certain common building expenses were to be shared equally. In addition, the court found plaintiff did not owe defendant rent for the period in which plaintiff alone occupied the building because (1) defendant never asked for rent; (2) there was the possibility that defendant would return; (3) the property was never intended to be a rental property; and (4) defendant had not offered permission to rent out his share. In a written order entered in June 2008, the trial court essentially reiterated those findings, adding with respect to the period in which the parties were only co-tenants, that "Plaintiff shall have no obligation to account to Defendant for use and occupancy or for the payment of rental, actual or constructive, for use of the premises in that at no time did Plaintiff usurp or oust Defendant from the right to occupy the premises." In furtherance of an accounting, the court ordered plaintiff to submit a verified claim.

¶ 8 Plaintiff's verified claim alleged that his contributions from 1982 to 1991 equaled \$249,019, while defendant's total contributions in that period equaled only \$122,298, leaving a balance of \$52,215 $((\$249,019 - \$122,298)/2)$ owed to plaintiff. Pertinent to this appeal, plaintiff alleged that his contributions to the partnership in 1982 amounted to \$57,866, while defendant's 1982 contributions equaled \$24,613. Thus, the verified claim stated that plaintiff overpaid by \$33,253 $(\$57,866 - \$24,613)$ in 1982, leaving \$16,626.50 $(\$33,253/2)$ owed by defendant for that year. We note that the verified claim did not

specify that the amounts listed were *net* contributions, which would have deducted any subsequent repayments to the parties. Moreover, the verified claim alleged that the total of building-related expenses paid by plaintiff from 1992 through 2003 equaled \$115,256, leaving \$57,628 due from defendant, who apparently made no contribution during those years.

¶ 9 At the trial regarding the sums claimed by plaintiff, the parties stipulated to numerous exhibits. Our review of the parties' exhibits and testimony pertaining thereto has been made arduous by the lack of clear and consistent identification markings. Nonetheless, among the exhibits was the partnership's 1982 financial statements, which included a schedule of contributions and advances (1982 schedule). The 1982 schedule reflects that both partners initially each contributed \$16,000, as contemplated by the partnership agreement. The 1982 schedule also states that plaintiff individually made cash advances of \$41,866, and his company, V.S. Vedam, M.D., S.C., made cash advances equaling \$40,000. Defendant's cash advances equaled \$24,613. The 1982 schedule further shows that in 1982, plaintiff was repaid \$24,000, but defendant received no payment. Accordingly, the 1982 schedule indicates that the net cash advances made by plaintiff and his company in 1982, excluding the initial \$16,000 contribution, equaled \$57,866 ($\$40,000 + \$41,866 - \$24,000$).² In contrast, defendant's net advances equaled \$24,613.

²We note that coincidentally, plaintiff's initial 1982 capital contribution (\$16,000) plus his 1982 individual cash advancements (\$41,866) also equal \$57,866, potentially creating confusion. Nonetheless, it appears that the \$57,866 representing plaintiff's 1982 contributions on his verified claim does not represent this calculation, but rather, the verified claim excluded the original \$16,000 contribution made by each of the parties in 1982. Thus, the verified claim alleges that

Thus, plaintiff's net contributions were \$33,253 (\$57,866-\$24,613) more than defendant's net contributions in 1982. Furthermore, we note that the 1982 schedule is consistent with plaintiff's verified claim, suggesting that the verified claim had taken the \$24,000 repayment into account. The exhibits also included a spreadsheet created by defendant's expert witness, Robert Silverman, a certified public accountant. The spreadsheet reduced plaintiff's claimed 1982 contributions by \$24,000, from \$57,866 to \$33,866.

Accordingly, as reflected in the spreadsheet, plaintiff's adjusted overpayment became \$9,253 (\$33,866 - \$24,000), leading to an adjusted credit of \$4,626.50 (\$9,253/2).

¶ 10 At the commencement of trial, Silverman testified, in pertinent part, that he was hired to look at the underlying documentation and make sure it supported the amounts reflected in the verified claim, but was not engaged to recreate an accounting of the partnership's records. At plaintiff's attorney's office, Silverman was presented with deposit slips, canceled checks, bank statements, tax returns, and other financial statements. Silverman identified a document he prepared that summarized the changes he made to plaintiff's recitation of the parties' contributions (Silverman document). Some adjustments resulted in an increase to plaintiff's contributions in a given year while other adjustments resulted in a deduction. Among other adjustments, the Silverman document reduced plaintiff's 1982 contribution by \$24,000. Silverman testified that the adjustment was based on a

defendant contributed \$24,613 in 1982, not \$40,613 (\$24,613 (cash advances) + \$16,000 (initial contribution)). Similarly, the verified claim alleges that plaintiff contributed \$57,866 in 1982, not \$73,866 (\$57,866 (cash advances by plaintiff and his company) + \$16,000 (initial contribution)).

check written to plaintiff in December 1982. Silverman also identified a letter, in which he essentially explained that the entries in the verified claim were not properly added so that the total sought by plaintiff for 1982 through 1991 should have been \$63,360.50, rather than \$52,215. Nonetheless, Silverman testified that based on his adjustments, the balance owed to plaintiff for 1982 through 1991 was \$31,641.25. Furthermore, the total of expenditures for 1991 through 2003, as calculated by Silverman, equaled \$85,145.48, rather than \$115,256, as alleged in the verified claim. Accordingly, defendant was responsible for \$42,572.74 ($\$85,145.48/2$). Silverman concluded that for the years 1982 through 2003, plaintiff was entitled to a total of \$74,213.99.

¶ 11 On cross-examination, Silverman testified that he did not review bank statements, federal income tax returns, or statements prepared by the partnership's accountant for 1982, but examined deposit slips. In addition, he identified a bank statement for the partnership, showing deposits made were made into the partnership account on December 13, 1982 (\$7,000), and December 30, 1982 (\$3,000 and \$25,000). Those sums were not included in Silverman's calculations, however. On redirect examination, Silverman testified that there was no need for him to review 1982 bank statements, financial statements, or tax returns because his assignment was to review the claim that was submitted for reasonableness and accuracy. Silverman essentially testified that if plaintiff failed to include a cash advance, Silverman was not required to correct the understatement. He further testified that in 1982, plaintiff contributed \$57,866 but Silverman nonetheless deducted the \$24,000 that was returned to plaintiff, for a total 1982 contribution of

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\$33,866.

¶ 12 Plaintiff testified that a bank statement showed he made deposits of \$3,000, \$25,000, and \$7,000 in December 1982. He also testified that those amounts were not reflected in Silverman's calculations but were reflected in the 1982 partnership statement. In addition, the 1982 partnership statement, which included the 1982 schedule, showed that plaintiff contributed \$41,866 personally, and contributed \$40,000 through his company, while defendant contributed \$24,613. Plaintiff further testified that after defendant discontinued using the building in 1992, plaintiff went there twice a week, staying about two hours each time. On cross-examination, plaintiff acknowledged taking money out of the partnership from time to time. When the trial court asked plaintiff for the total of funds he had withdrawn, he answered, "[S]24,000 in '82. And [S]24,000 in - - whatever is reflected."

¶ 13 On January 6, 2011, the trial court entered a memorandum order and judgment, finding that although plaintiff claimed to have contributed a total of \$249,019 between 1982 and 1991, a check for \$24,000 was issued to plaintiff on December 28, 1982. "Thus[,] that amount should be deducted from plaintiff's contribution for 1982, because the amount of that contribution *** did not, per [the 1982 schedule], take into account the \$24,000 repayment." The court found it was arguable that this sum should not be deducted in light of testimony that plaintiff also contributed an additional \$7,000, \$3,000 and \$25,000 in 1982, but "[w]ithout those deposits, the \$24,000 payment could not have been made." The court then subtracted \$24,000 for the 1982 repayment as well as \$20,542 for a 1983

deduction, which is not at issue on appeal. Accordingly, the court found plaintiff's net contribution for those years equaled \$204,977 (\$249,019- \$24,000 - \$20,542).³ The court also accepted Silverman's determination that defendant's contributions for those years equaled \$128,194.50. Thus, each partner's appropriate share of contributions would have been \$166,585.75 (($\$204,977 + \$128,194.50$)/2). As a result, the court found plaintiff over paid by, and was entitled to a credit of, \$38,391.25 ($\$204,977 - \$166,585.75$).

¶ 14 With regard to the period from 1992 through 2003, the court concluded that plaintiff was entitled to credit for contributions in the amount of \$51,400. The court found that "plaintiff cannot sensibly be charged rent for using property plaintiff himself owns. That is particularly true in this case, where the initial purpose of acquiring the building was not as a cash-generating investment, but rather to give both plaintiff and defendant a place to work." The court further found that defendant had acknowledged abandonment of the premises for more than a decade and that his silence was "eloquent evidence that he had no expectation of receiving rental income."

Adding both credits for contributions owed by defendant, the court ordered that plaintiff was entitled to \$89,791.25 ($\$38,391.25 + \$51,400$), to be paid from the sale proceeds held in escrow. The court did not, however, award plaintiff any credit based on his 50% ownership interest in the building and sale proceeds, \$68,806.87 ($\$137,613.74 / 2$). Instead, the court ordered that the balance of the funds held in escrow, \$47,822.49 ($\$137,613.74 - \$89,791.25$) would be awarded to defendant. The court did not address the partnership agreement's interest provision but ordered

³We note that those calculations equal \$204,477, rather than \$204,977.

that if any interest had accrued on the escrowed sale proceeds, 65% of such interest would be awarded to plaintiff and 35% would be awarded to defendant.

¶ 15 Plaintiff then filed a motion to reconsider pursuant to section 2-1203 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-1203 (West 2010)), essentially arguing that each party should be credited with his respective 50% ownership interest in the sale proceeds held in escrow, \$68,806.87. He also argued that the amount owed by defendant for failing to contribute should be paid from defendant's share of the escrow funds plus an additional \$20,984.38 from defendant's own assets to satisfy the difference, rather than charging plaintiff's part of the sale proceeds with the amount owed by defendant. In addition, plaintiff argued that although the court deducted \$24,000 from his 1982 contribution, the court failed to consider the \$40,000 contribution made by plaintiff's company, which more than offset the \$24,000 repayment. Plaintiff further argued that the court's order failed to consider plaintiff's right to interest on unpaid balances of advanced sums pursuant to the partnership agreement.

¶ 16 The trial court denied plaintiff's motion, finding, in pertinent part, that plaintiff merely reargued allocation issues. As to plaintiff's contention that he was entitled to his share of building proceeds, \$68,806.87, in addition to the credits for his overpayments from 1982 through 2003, \$89,791.25, the court made the following findings:

"Plaintiff's argument is breathtaking. He thinks he, though only a one-half owner, should be paid *more* than the value of the *entire* building - of which he had sole possession and use for over a decade. *** Plaintiff forgets that after 1991 his

claimed expenses were essentially for his own benefit, since he alone was using the building, rent-free. Further, if Plaintiff's approach to expenses were adopted, simple arithmetical evenhandedness would then require that Plaintiff be charged for use and occupancy of (at least) the half of the building which did not belong to him. At root, Plaintiff wants *Defendant* to pay for *Plaintiff's* decade-long use of the building. The Court does not agree."

We note that despite these findings, the court had earlier specifically rejected defendant's argument that plaintiff should be charged rent for the time in which he alone occupied the building.

¶ 17 The court also rejected plaintiff's argument that the court's decision to reduce his 1982 contributions by \$24,000 was erroneous because it failed to take into account his company's \$40,000 contribution, as reflected in the 1982 schedule. As to plaintiff's argument that the court failed to award interest under the partnership agreement, the court noted that the parties abandoned that agreement in 1991. The court also found that it had awarded plaintiff a form of prejudgment interest as to the sale proceeds in escrow and found no basis to award plaintiff interest under equitable principles.

¶ 18

II. ANALYSIS

¶ 19 On appeal, plaintiff first asserts that the trial court erred by failing to award him 50% of the sale proceeds, \$68,806.87 (\$137,613.74 /2) in addition to the credits he received for 1982 through 1991, \$38,391.25, and 1992 through 2003, \$51,400. The parties dispute the appropriate standard of review with respect to this issue. The trial court's ruling on a

motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (1st Dist. 2007); cf. *Nissan Motor Acceptance Corp. v. Abbas Holding I, Inc.*, 2012 IL App (1st) 111296, ¶ 16 (where a motion to reconsider is based solely on the trial court's application or purported misapplication of law, we review the denial of the motion *de novo*). Following a bench trial, however, the judgment will be reversed where it is against the manifest weight of the evidence. *Wolinsky v. Kadison*, 2013 Ill App (1st) 111186, ¶ 115. In addition, the trial court's judgment is against the manifest weight of the evidence where the opposite conclusion is apparent or where the court's findings appear to be arbitrary, unreasonable, or not based on evidence. *Id.* ¶ 115. We find that under any standard of review, the court erred in this instance.

¶ 20 As a threshold matter, defendant suggests that the written partnership agreement, as amended, has no bearing on our review because that agreement expired in 1986. Specifically, he argues that "[plaintiff] cannot now attempt to exercise his rights under an agreement that lapsed over 20 years ago." We note that the trial court found the agreement, by its terms, expired in 1986 but nonetheless determined that the partnership created through that agreement continued to exist through 1991 by virtue of the parties' continuing adherence to its terms. The trial court also ordered that as to the period from 1982 through 1991, plaintiff's verified claim would be governed by the partnership agreement. Moreover, defendant did not appeal from the trial court's determination that plaintiff's claim based on the partnership agreement was not barred by the statute of

limitations or *laches*. Accordingly, we consider the terms of the agreement with regard to that period as well as the Uniform Partnership Act (1997) (the Act). See 805 ILCS 206/103 (West 2010) ("relations among the partners and between the partners and the partnership are governed by the partnership agreement").

¶ 21 With the exception of the amendment's alteration to employee related costs, the partnership agreement provided that the partners were equally responsible for costs and expenses. See 805 ILCS 206/401(b) (West 2010) ("Each partner *** is chargeable with a share of the partnership losses."). The agreement provided that where a partner failed to make the requisite contribution, leading the other partner to contribute an additional sum, that additional sum could be deducted from any money subsequently coming due to the non-contributing partner. See 805 ILCS 206/807(b) (West 2010) ("The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account," and "[a] partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.") Moreover, the trial court found that plaintiff over paid by, and was entitled to a credit of, \$38,391.25. See 805 ILCS 206/401(d) (West 2010) ("A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute."). It follows that defendant owed the same amount pursuant to the partnership agreement.

¶ 22 As to the period from 1992 through 2003, the court found that the parties were tenants in common. As a result, each party had an undivided one-half interest. *Simon v. Wilson*,

291 Ill. App. 3d 495, 505 (1997). In addition, tenants in common have the right to financial contributions from one another. *NAB Bank v. LaSalle Bank*, 2013 IL App (1st) 121147, ¶ 22. Specifically, a cotenant may claim contribution to the extent that his own payments have exceeded his share of expenses. *Carlyle v. Jaskiewicz*, 124 Ill. App. 3d 487, 498 (1984). Accordingly, the trial court found that plaintiff was entitled to contributions in the amount of \$51,400 for his overpayments as a co-tenant. Plaintiff's decision to enforce his right to contribution did not, however, require him to forgo the sale proceeds he was entitled to based on his 50% interest in the building, \$68,806.87.

¶ 23 Despite correctly finding that plaintiff was not required to pay rent during the period in which defendant had ceased occupying the building by his own free will, the trial court inexplicably found that awarding plaintiff his share of the sale proceeds in addition to contribution from defendant would require plaintiff to pay rent. Defendant urges us to adopt the latter of these two inconsistent findings, relying on section 4a of the Illinois Joint Tenancy Act, which states as follows:

"When one or more joint tenants, tenants in common or co-partners in real estate, or any interest therein, shall *take* and use the profits or benefits thereof, in greater proportion than his or their interest, such person or persons, his or their executors and administrators, shall account therefor to his or their cotenants jointly or severally." (Emphasis added.) 765 ILCS 1005/4a (West 2010); see also *NAB Bank*, 2013 IL App (1st) 121147, ¶ 22 (a tenant in common is not entitled to exclude another cotenant or designate one portion of the real estate as his own).

¶ 24 Here, the trial court found that defendant abandoned the building and demonstrated through his silence that he did not expect to receive rent. Thus, the record shows only that defendant decided to forgo the benefits of his interest in the building, not that plaintiff took defendant's portion of the property to the exclusion of defendant. In addition, the record does not show that plaintiff increased his own use of the building after defendant's departure, or otherwise prevented his return. Moreover, this court has previously rejected the assertion that one co-tenant was required to account for rent during the period in which she alone possessed the property, finding that the co-tenant was entitled to the exclusive use of the property after the other co-tenant abandoned it. *Anderson v. Anderson*, 62 Ill. App. 3d 468, 473 (1978); *cf. Sajdak v. Sajdak*, 224 Ill. App. 3d 481, 483 (1992) (where siblings owned a two-flat building and one sibling occupied one of the two units, she was required to account for the rental value of that). Accordingly, rent has no bearing on plaintiff's entitlement to contribution or sale proceeds.

¶ 25 Plaintiff was entitled to his share of proceeds in addition to contribution from defendant, for a total of \$158,598.12 (\$38,391.25 + \$51,400 + \$68,806.87). Notwithstanding the court's disbelief that the amount owed to plaintiff could possibly be more than the sale price of the building (\$137,613.74), the outcome here is hardly unexpected. The parties created a relationship requiring regular expenditures over approximately 20 years without producing any revenue. As a result, it was highly likely that this venture would operate at a loss, a loss which must be shared equally. The trial court's order, however, would have

plaintiff bear more than his share of the loss, by charging plaintiff's entitlement to contribution against plaintiff's share of the proceeds. Instead, plaintiff's entitlement to contribution should have been charged against defendant's share of the proceeds.

Because defendant owed plaintiff \$89,791.25 (\$38,391.25 + \$51,400) more money than his share of the sale proceeds (\$68,806.87), defendant must pay the difference from other assets. Accordingly, the trial court erred by failing to award plaintiff all of the proceeds in escrow and by failing to order defendant to pay an additional \$20,984.38 (\$89,791.25 - \$68,806.87).

- ¶ 26 Next, plaintiff asserts the trial court erred in determining that his alleged 1982 contribution, \$57,866, should be reduced by the \$24,000 repayment. Specifically, plaintiff asserts that in determining that the repayment should be deducted, the court failed to credit him with a \$40,000 contribution made by his company. Although plaintiff states this court reviews contract interpretation *de novo* (*Midway Park Saver v. Sacro Putty Co.*, 2012 IL App (1st) 110849, ¶ 14), the issue before us concerns factual findings, not contract interpretation. Where, in a bench trial, the court is presented with conflicting testimony, the court's findings will be disturbed only if they are against the manifest weight of the evidence. *Flynn v. Cohn*, 154 Ill. 2d 150, 166-67 (1993). As stated, the trial court's judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or where the court's findings appear to be arbitrary, unreasonable, or not based on evidence. *Wolinsky*, 2013 IL App (1st) 111186, ¶ 115.
- ¶ 27 Here, Silverman examined the deposit slips and compared them with the verified claim.

The trial court agreed with Silverman's determination that the 1982 contribution attributed to plaintiff should have been reduced by \$24,000 in light of the repayment to plaintiff in the same amount. Thus, evidence presented to the court supported its determination. We cannot say that no trier of fact could find Silverman's testimony to be credible. See *Flynn*, 154 Ill. 2d at 167-69 (the trial court was in the best position to resolve conflicts in expert testimony regarding calculations upon the dissolution of a partnership). To the extent plaintiff presented evidence at trial suggesting that his 1982 contributions equaled more than what was alleged in his verified claim, plaintiff never amended his verified claim and the trial court was not required to attribute sums to plaintiff that he had not formally attributed to himself.

¶ 28 Although plaintiff argues the trial court's decision to deduct \$24,000 from his claimed contributions resulted from the court's failure to consider the \$40,000 contributed by his company, the trial court heard plaintiff's testimony that his company had indeed contributed \$40,000 and was clearly aware of that fact. To the extent that the trial court was unaware that plaintiff's verified claim alleged plaintiff contributed \$57,866 based on his personal contributions (\$41,866) as well as his company's contributions (\$40,000) less the \$24,000 repaid to plaintiff, plaintiff presented no testimony or argument which clearly explained how he arrived at the figure of \$57,866. In addition, plaintiff never explained that the 1982 schedule and verified claim had already taken the \$24,000 repayment into account and thus, under Silverman's calculations, that sum was effectively deducted twice. Plaintiff approached that explanation when, in closing arguments, his counsel

argued that plaintiff had used "a net number as opposed to a gross number, and that explains why the check that was taken out would gross up to the amount of deposits." Nonetheless, this statement was far too inarticulate to charge the court with knowledge of plaintiff's position as to how the foregoing sums were related. We will not fault the trial court for failing to meander through financial documents in order to deduce this fact, as we have felt compelled to do. Furthermore, plaintiff never amended the verified claim to allege that the amounts indicated were net contributions. Under these circumstances, the court's decision to deduct an additional \$24,000 pursuant to Silverman's testimony was effectively enabled by plaintiff and was not against the manifest weight of the evidence.

¶ 29 Finally, plaintiff asserts that the trial court erroneously denied him interest as an equitable matter, rather than considering his contractual right to interest pursuant to the partnership agreement. The plaintiff has the burden of proving a reasonable basis for calculating contractual damages. *Kirkpatrick v. Strosberg*, 385 Ill. App. 3d 119, 130 (2008). In addition, interest is an element of damages. See *Kaiser Agricultural Chemicals v. Rice*, 138 Ill. App. 3d 706, 712 (1985). Generally, prejudgment interest may be recovered only where authorized by statute or an agreement between the parties. *Kouzoukas v. Retirement Board of the Policemen's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 474 (2009). Moreover, section 103 of the Act provides that "relations among the partners and between the partners and the partnership are governed by the partnership agreement." 805 ILCS 206/103 (West 2010).

¶ 30 Here, the partnership agreement provided that if any partner failed to contribute his share

of funds, the other partner could "contribute the funds due from the Non-Contributing Partner and deduct such funds (plus interest on said amount at the prime rate then prevailing at The First National Bank of Chicago) from monies thereafter becoming due to such Non-Contributing Partner[.]" In plaintiff's closing argument, however, he did not inform the court that he was relying on this contractual provision. Although plaintiff's motion to reconsider clarified that he was seeking contractual, rather than equitable, interest, at no time did plaintiff provide the trial court with evidence of the governing contractual rate to be applied, *i.e.*, the prime rate prevailing at the First National Bank of Chicago when plaintiff's additional contributions were made. *Cf. Sterling Homes, Ltd. v. Raspberry*, 325 Ill. App. 3d 703, 708 (2001) (the trial court correctly calculated interest according to the governing contractual provisions). Furthermore, plaintiff did not suggest any alternative rate to be applied. Moreover, plaintiff's failure to provide the court with more specificity may very well have contributed to the court's belief that plaintiff was seeking equitable, rather than contractual, interest. Accordingly, under these circumstances, we find no error.

- ¶ 31 For the foregoing reasons, we reverse and remand for the trial court to enter a judgment awarding plaintiff \$158,598.12. Specifically, plaintiff is entitled to all of the funds held in escrow, \$137,613.74, and defendant must pay an additional \$20,984.38 from his own assets. We affirm the judgment in all other respects. In light of our decision, we need not consider the parties' remaining arguments.
- ¶ 32 Affirmed in part and reversed in part; cause remanded with directions.