

2013 IL App (2d) 121140-U
No. 2-12-1140
Order filed June 24, 2013

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

| | | |
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| SEATER CONSTRUCTION COMPANY, INC., and SEATER CONSTRUCTION OF ILLINOIS, |) | Appeal from the Circuit Court of Lake County. |
| |) | |
| Plaintiffs-Appellants, |) | |
| |) | |
| v. |) | No. 07-CH-514 |
| |) | |
| DEKA INVESTMENTS, LLC, HOME STATE BANK, COMMUNITY TRUST CREDIT UNION, DEANO VASS, and KAREN VASS, |) | |
| |) | |
| Defendants-Appellees, |) | Honorable |
| |) | Mitchell L. Hoffman, |
| (Unknown Owners, Defendants). |) | Judge, Presiding. |

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court's two summary judgment orders were affirmed where plaintiffs failed to preserve for appeal their challenge to the first order and where plaintiffs failed to cite any legal authority to support their argument related to the second order; (2) the trial court's judgment on plaintiffs' two veil-piercing counts was affirmed where the judgment was not against the manifest weight of the evidence.

¶ 2 Plaintiffs, Seater Construction Company, Inc., and Seater Construction of Illinois (collectively, “Seater”), filed an action against defendants, Deka Investments, LLC (“Deka”), Home State Bank, Community Trust Credit Union, Karen and Deano Vass, and Unknown Owners. Seater sought to enforce a mechanics lien recorded against a parcel of property, part of which was owned by Deka and mortgaged by Home State Bank, and part of which was owned by Community Trust Credit Union. Alternatively, Seater sought to recover damages from Deka for breaching two contracts for construction management and carpentry services, and to pierce Deka’s veil of limited liability to recover damages against Karen and Deano, the two members¹ of Deka. The trial court granted summary judgment in favor of Deka, Community Trust Credit Union, and Home State Bank on Seater’s mechanics lien claims. Following a bench trial, the court entered judgment in the amount of \$148,460 against Deka on Seater’s breach of contract claims but entered judgment in favor of Karen and Deano on Seater’s veil-piercing claims. On appeal, Seater challenges the summary judgment orders entered on its mechanics lien claims and the judgment entered on its claims to pierce Deka’s limited liability veil. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Karen and Deano Vass, who were married, formed Deka for the purpose of purchasing and developing a parcel of unimproved property located at the southwest corner of Grass Lake Road and Deep Lake Road in Lake Villa, Illinois. They funded Deka by each contributing \$1,000. Deka purchased the property in September 2004 for \$1,600,000 with a mortgage from Home State Bank

¹Under Illinois law, a limited liability company must have one or more members. 805 ILCS 180/5-1(b) (West 2008).

in the amount of \$1,225,000.² Karen and Deano planned to develop the land and to construct a retail complex to be called Lake Tower Crossing. The development included construction of a new road called Tower Drive. Deka obtained construction loans from Home State Bank in the amounts of \$2,500,000 and \$429,933.75. Deka also entered into an escrow agreement with Chicago Title Insurance Company (“Chicago Title”) naming it as escrow trustee and making it responsible for disbursing all payments to contractors during the course of construction.

¶ 5 Deka entered into two contracts with Seater. The first contract, dated March 15, 2005, was for construction management services and required Seater, among other things, to develop schedules and cost estimates, to solicit bids from subcontractors, and to schedule and attend regular meetings with Deka. Deka was to pay Seater a construction management fee equal to 8% of the total construction value of the on-site improvements, plus 3% of the total construction value of the roadway improvements. The second contract, dated March 7, 2006, was for carpentry services. The total amount of the carpentry contract was \$195,345.

¶ 6 Although Karen and Deano disputed whether Seater fulfilled all of its obligations under the contracts, Deka never terminated the contracts. Seater last performed work at Lake Tower Crossing in December 2006. Upon finishing work, Seater contended that Deka owed it \$272,664.32, which included \$134,571.65 for carpentry work, \$89,770.63 for Seater’s construction management fee related to on-site improvements, \$733.37 for Seater’s construction management fee related to roadway improvements, and \$47,588.67 for general conditions.

¶ 7 A. Mechanics Lien

²The record does not disclose the source of the additional \$375,000 used to purchase the property.

¶ 8 On January 18, 2007, Seater recorded its original mechanics lien in the amount of \$272,664.32 with the Lake County Recorder of Deeds. The mechanics lien was recorded against the undivided parcel of property encompassing the entire Lake Tower Crossing development located at 850 Tower Drive, and contained the perimeter metes and bounds legal description of the property. On February 23, 2007, Seater filed its original three-count complaint in the circuit court of Lake County. Count I, which named Deka, Home State Bank, and Unknown Owners as defendants, sought to enforce the mechanics lien. The count referenced the mechanics lien but described the property subject to the lien by using the updated legal description as described by a plat recorded with the Recorder of Deeds on August 24, 2005. The plat subdivided the parcel of property into five lots. Seater alleged that it provided construction services and materials to improve the property and that it completed work on December 18, 2006.

¶ 9 On June 17, 2008, Seater filed a first amended complaint, which was nearly identical to its original complaint, but which named Community Trust Credit Union as an additional defendant in count I. Seater alleged that Community Trust Credit Union had obtained an interest in the property by virtue of a deed recorded on May 2, 2007.

¶ 10 Deka, Home State Bank, and Community Trust Credit Union all filed motions for summary judgment on count I of Seater's first amended complaint. The defendants argued that Seater's mechanics lien was defective because it did not include a completion date for work on the property and because it contained a perimeter metes and bounds legal description of the property, rather than an updated description reflecting the subdivisions. The trial court granted summary judgment in favor of all three defendants; however, it granted Seater leave to file an amended count I as to Deka.

¶ 11 On January 29, 2009, Seater filed its second amended complaint. Count I named Deka and Unknown Owners as defendants and sought to enforce an amended mechanics lien that Seater recorded with the Recorder of Deeds on December 9, 2008. The amended mechanics lien contained the updated legal description of the subdivided property, as well as the date Seater completed work.

¶ 12 Deka again moved for summary judgment on count I. Deka argued that count I of the second amended complaint was barred by the Act's statute of limitations, which provides that any suit to enforce a mechanics lien must be commenced within two years after work is completed (see 770 ILCS 60/9 (West 2008)). Deka contended that the mechanics lien claim was untimely because Seater completed its work on the property in December 2006, but did not file its second amended complaint until January 2009, more than two years later. Seater responded that its second amended complaint was timely because it related back to its original complaint, filed in February 2007. Deka disagreed, arguing that the "relation back" doctrine did not apply because the second amended complaint was based on a different mechanics lien than the original complaint. The trial court agreed with Deka and granted summary judgment in its favor on count I.

¶ 13 Seater went on to file third and fourth amended complaints, both of which contained the heading "Count I" followed by the word "DISMISSED." Otherwise, the third and fourth amended complaints contained no mechanics lien claims.

¶ 14 **B. Piercing the Veil**

¶ 15 The matter proceeded to a bench trial on counts II through V of Seater's fourth amended complaint. Count II alleged breach of contract against Deka; count III sought recovery in the alternative under the doctrine of *quantum meruit*; count IV sought recovery against Deano under a veil-piercing theory; and count V sought recovery against Karen under a veil-piercing theory. The

following evidence relevant to the veil-piercing counts, which are the only counts at issue on appeal, was presented at trial.

¶ 16 Deka was the general contractor on the Lake Tower Crossing project. Karen, as a member of Deka, oversaw the day-to-day construction and was on site nearly every day. Although Seater solicited bids from subcontractors pursuant to its obligations under the construction management contract with Deka, it was Deka that entered into contracts with the subcontractors.

¶ 17 Payment of all construction expenses was handled through the escrow account held by Chicago Title. For each payment, either Karen or Deano would submit a sworn statement and a lien waiver to Chicago Title, which would obtain approval from the lender, Home State Bank, before disbursing the payment. Karen testified that all of Deka's subcontractors were paid in full, with the sole exception of Seater. Both Karen and Deano testified to their belief that Seater failed to fulfill its obligations under the construction management and carpentry contracts.

¶ 18 Karen testified that Home State Bank approved payment to her of a \$150,000 developer's fee for her services. Karen testified that a developer's fee ordinarily would equal 10% of the construction budget and that hers was less than that. Chicago Title disbursed the developer's fee to Karen in periodic payments. For each payment, Karen would submit a sworn statement and a lien waiver to Chicago Title, which would obtain approval from Home State Bank to disburse the payment. Karen's \$150,000 developer's fee was paid in full by July 2007. Karen testified that the developer's fee was her only source of income during the construction project.

¶ 19 Karen further testified that Chicago Title reimbursed her for expenses she paid on Deka's behalf. At trial, documentation was presented for each reimbursement, including receipts and

invoices, except for one reimbursement of \$4,290.48. The reimbursements to Karen totaled approximately \$180,000.

¶ 20 Deano testified that he and Karen budgeted \$100,000 for leasing fees, which Home State Bank approved. Deano and Karen budgeted that amount because \$5 per square foot was a typical leasing fee, and the retail complex was 20,000 square feet. Deano further testified that he had a commercial real estate and broker's license and operated a real estate company called Deano Vass Company, Inc. During the Lake Towers Crossing project, Deano earned leasing fees of \$6,500 for leasing a 1,300 square foot space to a dry-cleaners; \$9,500 for leasing a 1,900 square foot space to a salon; \$17,090 as half of the fee for leasing a 6,838 square foot restaurant space; and \$10,500 for leasing a 2,100 square foot space to a tutoring company. Deano further testified that he shared one leasing fee totaling \$31,280 with Karen, who also held a commercial real estate license.

¶ 21 Deano also received a check for \$5,300 as reimbursement for payments he made on Deka's behalf. At trial, documentation for the payments Deano made was admitted into evidence.

¶ 22 In April 2007, Deka sold one of the out-lots within the Lake Tower Crossing development to Community Trust Credit Union for \$914,034. Because Seater already had recorded its mechanics lien in the amount of \$272,664 against the property, Chicago Title required Deka to hold in a title indemnity fund an amount sufficient to cover the lien. Karen and Deano shared equally the \$54,842 brokers' commission on the sale, which equaled 6% of the purchase price.

¶ 23 Meanwhile, Karen and Deano were divorced, and, in 2008, Karen transferred her interest in Deka to Deano. Her agreement with Deano provided, "If the Seater lawsuit is void or settled without a payment or with a partial payment to Seater, Karen will receive the balance of the money plus interest in escrow." On August 12, 2009, which was after the trial court in this case granted

summary judgment in Deka's favor on count I (mechanics lien) of Seater's first and second amended complaints, Chicago Title disbursed to Karen the balance of the title indemnity fund, which had grown to \$274,583.65 with interest.

¶ 24 Following trial, the court issued its memorandum opinion and order. On count II (breach of contract), the court entered judgment in Seater's favor in the amount of \$148,460, which consisted of \$90,504 on the construction management contract and \$57,956 on the carpentry contract. In light of its ruling on count II, the court dismissed count III (*quantum meruit*). Finally, the court declined to pierce Deka's limited liability veil and entered judgment in Karen's and Deano's favor on counts IV (Deano) and V (Karen). Seater timely appealed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, Seater challenges (1) the orders entering summary judgment against it on the mechanics lien claims in its first and second amended complaints and (2) the judgment entered in Karen's and Deano's favor on Seater's claims to pierce Deka's limited liability veil.

¶ 27 A. Mechanics Lien Claims

¶ 28 Seater argues that the trial court erred in entering summary judgment in Deka's favor on count I of its first and second amended complaints. Seater argues that the perimeter metes and bounds legal description of the property did not invalidate its original mechanics lien, on which count I of its first amended complaint was based. Seater further argues that count I of its second amended complaint was not untimely, because the court granted it leave to file the amended count.

¶ 29 Because Deka has not filed an appellee's brief, we review Seater's arguments pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). In *Talandis*, our supreme court held that, when no appellee's brief has been filed, a reviewing court cannot

reverse a trial court's judgment *pro forma*. *Talandis*, 63 Ill. 2d at 131. Rather, a reviewing court has three distinct, discretionary options:

“(1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record.” *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009) (citing *Talandis*, 63 Ill. 2d at 133).

Here, the issue of the enforceability of Seater's mechanics lien is difficult on its merits. Nevertheless, because of considerations of waiver and forfeiture, the issue can be easily decided without the aid of an appellee's brief.

¶ 30 Regarding Seater's arguments pertaining to count I of its first amended complaint, the record reflects that Seater has failed to preserve this issue for appeal. As the party claiming error, Seater had the burden to preserve for review all matters necessary for disposition of the appeal. *In re Marriage of Holem*, 153 Ill. App. 3d 1095, 1100 (1987). Even a cursory review of the record reveals that Seater failed to preserve for review any objection to the trial court's order entering summary judgment in Deka's favor on count I of Seater's first amended complaint.

¶ 31 Our supreme court has held that, if a party files an amended complaint that is complete in itself and does not refer to or adopt a prior pleading, the party has waived any challenge to the trial court's rulings on the prior complaint. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 154-55 (1983). The “ ‘earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.’ ” *Foxcroft*, 96 Ill. 2d at 154 (quoting *Bowman*

v. County of Lake, 29 Ill. 2d 268, 272 (1963)). A party has three methods available to it for avoiding waiver and preserving dismissed claims for appellate review. *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 719 (2010). First, a party can stand on the dismissed counts, take a voluntary dismissal of any remaining counts, and argue the matter at the appellate level. *Vilardo*, 406 Ill. App. 3d at 719. Second, a party can file an amended pleading that realleges, incorporates by reference, or refers to the dismissed counts. *Vilardo*, 406 Ill. App. 3d at 719. A “simple paragraph or footnote” is sufficient for this purpose. *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 114 (1996). Third, a party can perfect an appeal from the dismissal order prior to filing an amended pleading that does not refer to or adopt the dismissed counts. *Vilardo*, 406 Ill. App. 3d at 719. The *Foxcroft* rule applies to summary judgment rulings. See, e.g., *Gilley v. Kiddell*, 372 Ill. App. 3d 271, 274 (2007) (holding that the plaintiff waived the issue of the propriety of the trial court’s grant of summary judgment on an earlier complaint, where the plaintiff filed an amended complaint that did not reference the earlier pleading).

¶ 32 Here, count I of Seater’s first amended complaint named Deka, Home State Bank, Community Trust Credit Union, and Unknown Owners as defendants and sought to enforce the mechanics lien recorded on January 18, 2007. By contrast, count I of Seater’s second amended complaint named Deka and Unknown Owners as defendants and sought to enforce the mechanics lien recorded on December 9, 2008. Count I of the second amended complaint did not in any way incorporate or reference count I of Seater’s first amended complaint. Additionally, count I of the second amended complaint did not in any way reference the mechanics lien recorded on January 18, 2007. Nor did it reference Home State Bank or Community Trust Credit Union. In sum, Seater failed to either (1) stand on count I of its first amended complaint after summary judgment was

granted; (2) file an amended pleading that realleged, incorporated by reference, or referred to the earlier count; or (3) perfect an appeal from the summary judgment order prior to filing an amended pleading. Therefore, when Seater filed its second amended complaint, it waived any challenge to the trial court's summary judgment ruling on count I of its first amended complaint.³

¶ 33 Regarding Seater's arguments pertaining to count I of its second amended complaint, we need not decide whether Seater preserved this issue for appeal by inserting the heading "Count I" followed by the word "DISMISSED" in each of its third and fourth amended complaints. Whether or not Seater preserved this issue for appeal, it has forfeited the issue on appeal by failing to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). That rule requires an appellant's brief to include argument supported by "citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). In its one-page argument addressing the trial court's entry of summary judgment on count I of its second amended complaint, Seater does not cite a single legal authority. The record reflects that the issue before the trial court—whether count I of Seater's second amended complaint related back to its original complaint—was a complicated issue fully briefed by the parties. Ultimately, the trial court agreed with Deka that the second amended complaint did not relate back to the original complaint and was untimely. On appeal, Seater's brief does not even mention the "relation back" doctrine, let alone cite relevant legal authority. Accordingly, plaintiff has forfeited this issue on appeal. See *In re Marriage of Petrik*, 2012 IL App

³It is on this basis that a different panel of this court previously granted the motions filed by Home State Bank and Community Trust Credit Union and dismissed those two parties from this appeal.

(2d) 110495, ¶ 38 (“The appellate court is not a depository in which the appellant may dump the burden of argument and research.” (Internal quotation marks omitted.)).

¶ 34 Based on the foregoing, we affirm the trial court’s orders entering summary judgment in Dekka’s favor on count I of Seater’s first and second amended complaints.

¶ 35 **B. Piercing the Veil Claims**

¶ 36 Seater next argues that the trial court erred in failing to pierce Dekka’s limited liability veil to hold Karen and Deano personally liable for Dekka’s breaches of the construction management and carpentry contracts. Seater contends that the court should have pierced Dekka’s veil because (1) Dekka was undercapitalized; (2) Karen and Deano commingled Dekka’s funds with their personal funds; (3) Karen and Deano diverted assets away from Dekka to Seater’s detriment; (4) Dekka operated as an alter ego of Karen and Deano; and (5) adherence to the fiction of Dekka’s separate existence would sanction a fraud, promote injustice, and promote inequitable consequences.

¶ 37 Before addressing Seater’s arguments, we must comment on the quality of the brief filed by the appellees, Karen and Deano. The argument section of the brief consists primarily of boilerplate law followed by a recitation of the trial court’s factual findings. Except for a single issue, the brief contains no argument, in violation of Supreme Court Rule 341, which requires an appellee’s brief to include argument consisting of the appellee’s contentions with citations of the pages of the record and the authorities relied on. Ill. S. Ct. R. 341(h)(7), (i) (eff. Feb. 6, 2013). We would be within our authority to strike the brief and to address Seater’s contentions under *Talandis* as if no appellee’s brief had been filed. *Plooy v. Paryani*, 275 Ill. App. 3d 1074, 1088 (1995). However, because the record on the issue of piercing the veil is simple, and because the claimed errors are such that this court can easily decide them on the merits, we would reach the same result whether or not we

considered the brief. See *Plooy*, 275 Ill. App. 3d at 1088. However, we caution Karen and Deano and their attorney that the rules governing the content of briefs are mandatory and apply with equal force to both appellants and appellees. *Plooy*, 275 Ill. App. 3d at 1088.

¶ 38 The doctrine of piercing the corporate veil is an equitable remedy that permits a court to impose liability on an individual or entity that uses a corporation merely as an instrumentality to conduct that individual's or entity's business. *Fontana v. TLD Builders, Inc.*, 362 Ill. App. 3d 491, 500 (2005). "A party seeking to pierce the corporate veil has the burden of making a substantial showing that one corporation is really a dummy or sham for another [citation], and courts will pierce the corporate veil only reluctantly [citation]." (Internal quotation marks omitted.) *Fontana*, 362 Ill. App. 3d at 500. "We employ a two-prong test in order to determine whether to pierce the corporate veil: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) circumstances must exist such that adherence to the fiction of a separate corporate existence would sanction a fraud, promote injustice, or promote inequitable consequences." *Fontana*, 362 Ill. App. 3d at 500. We will not reverse a trial court's finding regarding piercing the corporate veil unless it is against the manifest weight of the evidence.⁴ *Fontana*, 362 Ill. App. 3d at 500. A finding is against the manifest weight of the evidence when an opposite conclusion is apparent or when the judgment is unreasonable, arbitrary, or not based on evidence. *Dargis v. Paradise Park, Inc.*, 354 Ill. App. 3d 171, 177 (2004).

⁴In its opening brief, Seater incorrectly states that the standard of review is *de novo*. In its reply brief, Seater asserts that the trial court's judgment was erroneous "under any standard of review."

¶ 39 As an initial matter, we note that no Illinois case has held that the doctrine of piercing the corporate veil applies to an Illinois limited liability company (LLC). The Illinois Limited Liability Company Act (Act) (805 ILCS 180/1-1 *et seq.* (West 2008)) provides that an LLC is a legal entity distinct from its members. 805 ILCS 180/5-1(c) (West 2008). The Act further provides:

“(a) *** the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.

(c) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.” 805 ILCS 180/10-10(a), (c) (West 2008).

In *Westmeyer v. Flynn*, 382 Ill. App. 3d 952 (2008), the First District Appellate Court addressed the issue of whether Delaware law permitted a plaintiff to pierce the veil of a Delaware LLC and held that it did. *Westmeyer*, 382 Ill. App. 3d at 960. In *dicta*, the court briefly discussed Illinois law and stated, “while the [Illinois Limited Liability Company] Act provides specifically that the failure to observe the corporate formalities is not a ground for imposing personal liability on the members of an LLC, it does not bar the other bases for corporate veil piercing, such as alter ego, fraud or undercapitalization.” *Westmeyer*, 382 Ill. App. 3d at 960. Here, because neither party contends that the doctrine of piercing the corporate veil does not apply to an Illinois LLC, for purposes of this case, we will apply the doctrine.

¶ 40

1. Unity of Interest and Ownership Prong

¶ 41 Ordinarily, in determining whether the “unity of interest and ownership” prong of the piercing-the-corporate-veil test is met, a court considers many factors, including: (1) inadequate capitalization; (2) failure to issue stock; (3) failure to observe corporate formalities; (4) nonpayment of dividends; (5) insolvency of the debtor corporation; (6) nonfunctioning of the other officers or directors; (7) absence of corporate records; (8) commingling of funds; (9) diversion of assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors; (10) failure to maintain arm’s-length relationships among related entities; and (11) whether, in fact, the corporation is a mere facade for the operation of the dominant stockholders. *Fontana*, 362 Ill. App. 3d at 503. Several of the factors are inapplicable to piercing the veil of an LLC, because they deal with adherence to corporate formalities. 805 ILCS 180/10-10(c) (West 2008). Seater offers argument with respect to factors (1), (8), (9), and (10).

¶ 42

a. Undercapitalization

¶ 43 Seater first argues that Deka was undercapitalized. Seater contends that Deka’s only capital was the initial \$2,000 investment from Karen and Deano and that the only asset Deka owned was the Lake Tower Crossing property, which was encumbered in excess of \$4 million. Seater argues that Deka’s debts far exceeded the value of its only asset and that Deka therefore was “extremely undercapitalized.”

¶ 44 “To determine whether a corporation is adequately capitalized, one must compare the amount of capital to the amount of business to be conducted and obligations to be fulfilled.” *Fiumetto v. Garrett Enterprises, Inc.*, 321 Ill. App. 3d 946, 959 (2001). The consideration is based on the policy that “it is inequitable that shareholders should set up such a flimsy organization to escape personal

liability.” (Internal quotation marks omitted.) *Fiumetto*, 321 Ill. App. 3d at 959. Rather, “shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for the corporation’s prospective liabilities.” *Fontana*, 362 Ill. App. 3d at 504.

¶ 45 Seater’s arguments relating to undercapitalization suffer from several flaws. Most importantly, Seater does not challenge the trial court’s finding that Dekka had “substantial equity” in the Lake Tower Crossing property at the time of purchase. The record reflects that Dekka purchased the unimproved parcel of property for \$1,600,000 with a mortgage from Home State Bank in the amount of \$1,225,000. Thus, the record supports the trial court’s finding, since, based on the record, Dekka had equity of \$375,000 in the property at the time of purchase.

¶ 46 Further, Seater offered no testimony at trial regarding what would have been an adequate level of capitalization. This court would be speculating were it to conclude that Dekka was inadequately capitalized.

¶ 47 Moreover, “undercapitalization is less significant in a contract case, where the claim arises from a consensual transaction, than in a tort case, where there is no voluntary dealing.” *Fontana*, 362 Ill. App. 3d at 505. “Where there is no evidence of any misrepresentation, no attempt to conceal any facts, and the parties possess a total understanding of all of the transactions involved, Illinois courts will not pierce the corporate veil in a breach of contract situation.” *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1034 (2007). Here, nothing in the record suggests that Dekka misled Seater in any way when the parties entered into the contracts for construction management and carpentry services. Furthermore, the record reflects that Seater was an experienced construction company that had completed numerous commercial construction

projects in Illinois and Wisconsin at the time it entered into the contracts with Deka. It is unlikely that Seater misunderstood the potential consequences of contracting with a limited liability company.

¶ 48 Finally with respect to undercapitalization, the policy underlying this factor is that corporate shareholders (or LLC members) should not be permitted to set up a flimsy organization merely to escape personal liability. *Fiumetto*, 321 Ill. App. 3d at 959. Undoubtedly, when Deka initiated construction of the Lake Towers Crossing retail complex, which was before the collapse of the real estate market in 2007-2008, its members believed that the project would be profitable. Though the venture ultimately ended with Deka signing a deed in lieu of foreclosure, nothing in the record suggests that Karen and Deano formed Deka for the sole purpose of avoiding personal liability. Rather, the record reflects that, with the sole exception of Seater, Karen and Deano paid all of Deka's subcontractors in full. Karen and Deano both testified that they believed Deka paid Seater what it earned under the contracts because, in their view, Seater had not fully performed its obligations. This is evidence of a contract dispute, not of a sham company.

¶ 49 Based on the foregoing, we cannot say that the trial court's finding that Deka was not undercapitalized was against the manifest weight of the evidence.

¶ 50 **b. Commingling of Funds**

¶ 51 Seater next argues that Karen and Deano commingled Deka's funds with their personal funds. Seater points to evidence that Karen directed disbursements from the construction escrow account of \$380,337 to herself; \$5,300 to Deano; \$43,950 to Deano Vass Company, Inc.; and \$500 to the University of Illinois, her son's college. Finally, Seater points to the disbursement, in August 2009, of \$274,583.65 in title indemnity funds to Karen.

¶ 52 The only authority on which Seater relies regarding the commingling-of-funds factor is *Fontana*. There, the court affirmed the trial court's decision to pierce a construction company's corporate veil. *Fontana*, 362 Ill. App. 3d at 509. With respect to the commingling of funds, the court noted that the construction company had no employees, paid no salaries or wages, and paid no dividends or other formal distributions. *Fontana*, 362 Ill. App. 3d at 507. Rather, the company's sole shareholder testified, funds were deposited into her and her husband's personal bank account by " 'cut[ing] a check from the business.' " *Fontana*, 362 Ill. App. 3d at 507. The court concluded that this demonstrated the commingling of company and personal funds. *Fontana*, 362 Ill. App. 3d at 507.

¶ 53 Here, every payment from Deka to Karen or Deano was documented and explained at trial. Regarding the payments to Karen, the record reflects that she received a developer's fee of \$150,000 in exchange for her work overseeing the day-to-day construction of the project. For every disbursement of the developer's fee, Karen submitted a sworn statement and lien waiver to Chicago Title, which then received approval from the lender, Home State Bank, to disburse the funds. Karen also received reimbursements for expenses she incurred on Deka's behalf. For each reimbursement, she submitted documentation to Chicago Title in the form of receipts and invoices. The only exception was one reimbursement in the amount of \$4,290.48, for which no documentation was introduced at trial. Karen also received half of the broker's commission for the sale of the out-lot to Community Trust Credit Union, and half of the leasing fee for the lease of one of the units of the retail complex.

¶ 54 Regarding the payments to Deano, the record reflects that he received leasing fees totaling \$59,230. Deano testified that Home State Bank approved the leasing fees, and that he received

payment only after he earned the fee by leasing space within the retail complex. Deano further testified that he received one payment of \$5,300 reimbursing him for expenses he paid on Deka's behalf, and documentation of those expenses was introduced into evidence at trial. Deano also received half of the broker's commission for the sale of the out-lot to Community Trust Credit Union.

¶ 55 The trial court found that each of the payments to Karen and Deano was for a legitimate business expense and that Seater presented no evidence that the broker, leasing, or developer fees were anything other than reasonable compensation for the work Karen and Deano performed. The trial court's findings were not against the manifest weight of the evidence. The thorough documentation of each payment to Karen and Deano—along with the process of using an escrow trustee to disburse payments—suggests a clear delineation between company and personal funds. It was far different than simply “ ‘cut[ing] a check from the business’ ” to fund a personal bank account. *Fontana*, 362 Ill. App. 3d at 507.

¶ 56 Regarding the disbursement, in August 2009, of \$274,583.65 in title indemnity funds to Karen, the trial court found that Seater did not present any evidence that this was not fair compensation for her share of ownership in Deka. We agree. The record contains no evidence of the value of Deka at the time Karen transferred her ownership interest to Deano. Ultimately, Deka signed a deed in lieu of foreclosure when a balloon payment on its mortgage became due and it could not obtain refinancing, but this does not show that Deka had no value at the time Karen gave up her interest in the company in 2008. Moreover, the title indemnity funds were held in order to cover the potential liability arising out of Seater's mechanics lien. The title company disbursed the funds to Karen only after the trial court entered summary judgment in Deka's favor on count I (mechanics

lien) of Seater's first and second amended complaints. Releasing the funds after recovery on the mechanics lien was no longer a possibility (albeit, the orders were subject to appeal) does not establish the commingling of company and personal funds.

¶ 57 Regarding the \$500 payment to the University of Illinois, the college attended by Karen's son, Seater does not develop an argument with respect to this payment. At the very least, we cannot say that the trial court's judgment was against the manifest weight of the evidence due to the payment of a single personal expense (if that is what the payment was) out of the escrow account.

¶ 58 Based on the foregoing, we cannot say that the trial court's finding that Karen and Deano did not commingle company and personal funds was against the manifest weight of the evidence.

¶ 59 c. Diversion of Assets

¶ 60 Seater next argues that Karen and Deano diverted assets away from Deka to Seater's detriment. Seater contends that over \$110,000 of the disbursements to Karen and Deano took place after Seater filed its original mechanics lien on January 18, 2007. Seater further points out that the disbursement of \$274,583.65 in title indemnity funds to Karen took place after its mechanics lien was recorded. Finally, Seater argues that Deka paid all of its subcontractors except for Seater.

¶ 61 Seater's arguments on this factor miss the mark. As we discussed above, the trial court's finding that the payments to Karen and Deano were reasonable and proper was not against the manifest weight of the evidence. Nor was the disbursement of the title indemnity funds to Karen improper. While Seater was the only party not paid during the course of the construction project, the record reveals the reason—Karen and Deano disputed the amount that Seater claimed it was owed. Further, during the pendency of the litigation on Seater's claims, Deka failed as a company. It signed a deed in lieu of foreclosure when it could not refinance its balloon mortgage, and it was

involuntarily dissolved by the Illinois Secretary of State. Simply because Seater now has a judgment against a dissolved company with no assets does not mean that Karen and Deano improperly diverted assets from Deka to Seater's detriment. The trial court's judgment on this factor was not against the manifest weight of the evidence.

¶ 62 d. Failure to Maintain Arm's Length Relationships

¶ 63 Seater next argues that Karen, Deano, and Deka "were and are interrelated and in some instances the alter ego for another." However, Seater's entire argument on this factor consists of four sentences with no citation to authority. Therefore, Seater has forfeited this argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Petrik*, 2012 IL App (2d) 110495, ¶ 38 ("The appellate court is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.)).

¶ 64 2. Fraud, Injustice, or Inequitable Consequences Prong

¶ 65 Because we have determined that the trial court's finding on the first prong of the piercing-the-corporate-veil test was not against the manifest weight of the evidence, we need not address Seater's arguments with respect to the second prong. Nevertheless, our discussion of the factors under the first prong dictates what our conclusion under the second prong would be. Seater contends that allowing Karen and Deano to walk away with no personal liability would sanction a fraud, promote injustice, and promote inequitable consequences. Yet, as we discussed under the first prong, nothing in the record suggests that Karen and Deano drained Deka of all funds in order to avoid paying Seater. Rather, Karen and Deano paid all of their subcontractors and attempted to continue operating Deka as a viable business, but failed when refinancing of a balloon mortgage proved impossible. The trial court found as follows:

“Whether [the failure of the venture] was due to mismanagement by Deka or Seater, or whether the project was ultimately doomed by collapse of the commercial real estate market and plummeting property values, cannot be determined with any certainty on the record before the court. However, the fact that the project ended in foreclosure does not establish that the business was a sham, or that its members should be subjected to personal liability.”

The trial court’s finding was not against the manifest weight of the evidence.

¶ 66

III. CONCLUSION

¶ 67 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 68 Affirmed.