

2014 IL App (2d) 130527-U  
No. 2-13-0527  
Order filed May 16, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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STAR FORGE, INC.,	)	Appeal from the Circuit Court
	)	of Stephenson County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 02-L-54
	)	
THE F.C. MASON CO., RELIABLE	)	
ENGINEERING SALES & SERVICES,	)	
INC., SDS, INC., and JANICE WARD,	)	
	)	
Defendants	)	Honorable
	)	Charles T. Beckman,
(Carson Ward, Defendant-Appellant.)	)	Judge, Presiding.

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JUSTICE SCHOSTOK delivered the judgment of the court.  
Presiding Justice Burke and Justice Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court did not err in granting summary judgment in favor of plaintiff on claims of breach of fiduciary duty, breach of contract, and fraud, and did not err in awarding plaintiff \$711,050 in damages.

¶ 2 The plaintiff, Star Forge, Inc., sued its former president, Carson Ward, and others, alleging among other things that Ward breached his fiduciary to Star, breached his employment contract, and committed fraud. The trial court granted summary judgment in favor of Star on these claims, and ordered Ward to pay \$711,050 in damages to Star. Ward appealed. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 Star is in the business of forging and forming steel parts for inclusion primarily in agricultural machinery and equipment. It sells directly to manufacturers such as John Deere and J.I. Case. Ward was the president of Star from 1973 until his termination in 2000. Janice Ward, Ward's wife, also worked for Star for about 10 years in various capacities.

¶ 5 In 1990, Ward and Star entered into a written employment contract. Under paragraph 1 of the employment contract, Ward agreed to "devote his best efforts and attention to the business of Star." The parties also agreed that Ward would continue to serve as president of Star, carrying out the duties of that office as set forth in Star's by-laws. Under paragraph 9 of the agreement, titled "Non-Solicitation," Ward agreed that, during the period of his employment and for two years thereafter, he would not "directly or indirectly, and in any capacity other than as an employee of Star acting on behalf of Star, sell or solicit the sale of products competitive with those of Star to any customer or prospective customer."

¶ 6 In August 1992, Ward entered into an agreement with another company, the F.C. Mason Co. (FCM). According to Ward's statement of facts on appeal, FCM "was also in the business of forming and welding steel parts primarily for the agricultural industry." Under his agreement with FCM, Ward was to act as a sales representative for FCM, soliciting sales of FCM products. In return, he would receive five percent of the net invoice price of any products sold substantially through his efforts. About the same time, Ward and FCM entered into another agreement under which Ward would receive commissions on sales to Reliable Engineering, another company that manufactured and sold component parts for agricultural machinery. Ward did not tell Star about either of these agreements. Pursuant to these agreements, Ward secured sales of FCM products to, among others, John Deere.

¶ 7 In 1994, Ward and his wife Janice formed a corporation, SDS, Inc. Janice was the president of SDS, and Ward was its vice president. According to Janice, SDS was a sales representative for the agricultural industry. One of its customers was John Deere, which Janice knew was also one of Star's customers. In 1995, Ward entered into another agreement with FCM on behalf of "JKWard, Inc." (doing business as SDS, Inc.), under which SDS would receive commissions on sales of FCM products to various manufacturers of agricultural machinery including John Deere, J.I. Case, and Reliable. SDS also assisted Reliable in selling products to John Deere in return for commissions ranging from two to five percent. Ward did not tell Star that he had assisted Janice in forming SDS or that, through SDS, he was soliciting sales for and receiving commissions from FCM and Reliable. Star terminated Ward in June 2000.

¶ 8 In 2002, Star filed a complaint against Ward, FCM and Reliable. It later added SDS and Janice Ward as defendants. In its third amended complaint, Star alleged that Ward participated in several schemes to divert business away from Star to FCM and Reliable, among others. (These allegations will be discussed in greater detail below.) Ward filed a counterclaim, claiming that Star breached his employment contract by failing to pay him as a consultant after he was terminated. In 2008, Star settled with FCM and Reliable.

¶ 9 In April 2011, Star filed a motion for summary judgment on all of the remaining claims and the counterclaim. Ward, Janice and SDS filed a motion for partial summary judgment on certain claims. Ward sought summary judgment in his favor on the fraud claim, arguing that no evidence supported it. Janice sought summary judgment on the claims against her, arguing that she had no knowledge of the alleged misconduct, and SDS and Janice both argued that the statute of limitations barred the claims against them. On January 31, 2012, the trial court issued a memorandum decision in which it found that Star was entitled to summary judgment on three

of its claims against Ward: breach of fiduciary duty (count II), breach of employment contract (count VII), and fraudulent misrepresentation (count V). The trial court found that factual issues precluded the entry of summary judgment on Star's other claims and also prevented the application of the statute of limitations.

¶ 10 The parties then briefed the issues of damages and whether Ward should receive setoff in the amount of the payments already received by Star from FCM and Reliable through settlement. No evidentiary hearing on damages was held. On January 28, 2013, the trial court issued a memorandum decision regarding damages, finding that Star was entitled to recoupment of the amount it had paid Ward as salary during the years of 1992 through his termination in 2000. (In the same decision, the trial court entered judgment against Ward on his counterclaim. That ruling is not at issue in this appeal.) On April 9, 2013, the trial court entered an order denying Ward's motion for contribution and setoff. On April 18, 2013, the trial court entered an order setting the final amount of damages. That order contained a finding pursuant to Supreme Court Rule 304(a) (eff. Feb. 1, 2010) that there was no just reason to delay enforcement or appeal of the orders entering summary judgment against Ward, denying the motion for setoff, and setting damages in the amount of \$711,050. Ward timely appealed.

¶ 11

## II. ANALYSIS

¶ 12 On appeal, Ward argues that the trial court erred in granting summary judgment in Star's favor on its claims for breach of fiduciary duty, breach of contract, and fraud. He also argues that the damages award was improper because the trial court should have held an evidentiary hearing on the issue of damages and because it should have applied a setoff. We first address the issues relating to Ward's liability.

¶ 13

### A. Summary Judgment on Liability

¶ 14

#### 1. General Principles

¶ 15 “The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact.” *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Therefore, summary judgment is proper only when the pleadings, depositions and admissions on record, together with any affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2008); *Gaylor v. Village of Ringwood*, 363 Ill. App. 3d 543, 546 (2006). Although summary judgment has been called a “drastic measure,” it is an appropriate tool to employ in the expeditious disposition of a lawsuit in which “ ‘the right of the moving party is clear and free from doubt.’ ” *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001) (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). In reviewing a trial court’s grant of this relief, we do not assess the credibility of the testimony presented but, rather, only determine whether the evidence presented was sufficient to create an issue of fact. See *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001). We review the grant of summary judgment under a *de novo* standard (see *Morris*, 197 Ill. 2d at 35), and will reverse if we find that a genuine issue of material fact exists. We apply these standards in the context of each of the three claims on which summary judgment was granted, beginning with breach of fiduciary duty.

¶ 16 2. Breach of Fiduciary Duty

¶ 17 In order to succeed on a claim of breach of fiduciary duty, a plaintiff must show that a fiduciary duty existed between the parties, the defendant breached that duty, and that breach damaged the plaintiff. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 69. Here, Ward does not dispute that, as president of Star, he owed Star a fiduciary duty. Instead, he argues that there are questions of material fact as to whether he breached that duty. We therefore review the evidence regarding this claim to see whether genuine questions of material fact exist.

¶ 18 A fiduciary such as a corporate officer “has the duty ‘to act with utmost good faith and loyalty in managing the corporation’ and is prohibited from enhancing his or her ‘own personal interests at the expense of corporate interests.’ ” *Maecker Point Villas Condominium Association v. Szymiski*, 275 Ill. App. 3d 481, 484 (1995), quoting *Coduti v. Hellwig*, 127 Ill. App. 3d 279, 292 (1984). In this case, the evidence is undisputed that Ward, while serving as the president of Star, entered into contracts and commission-based sales arrangements for his own personal benefit with Star’s competitors, FMC and Reliable, without the knowledge of Star. This evidence, by itself, demonstrates a breach of Ward’s fiduciary duty of loyalty. See *Cooper Linse Hallman Capital Management, Inc. v. Hallman*, 368 Ill. App. 3d 353, 357 (2006) (fiduciaries have been found to have breached their duty of loyalty where they solicited for their own benefit the business of even one customer before leaving the company, used the company’s facilities or resources to assist them in competing with the company, or failed to inform the company that they were competing with the company or engaging in other fiduciary breaches).

¶ 19 Ward argues that Star failed to produce evidence that FCM and Reliable were competitors. This argument is baseless. Star submitted deposition testimony from Joseph Hurst, an FCM employee who worked with Ward, that he would consider Star and FCM to have been competitors on at least one job for which John Deere asked Star to bid, and Lornell Grayson, the president of Reliable, testified that Reliable was in competition with Star on certain jobs.

¶ 20 Moreover, to prove a breach of fiduciary duty through the diversion of a business opportunity, a plaintiff need not show that the other companies being aided by the defendant competed across the board with the plaintiff, but only that the plaintiff and the other companies were within the same line of business. See *Anest v. Audino*, 332 Ill. App. 3d 468, 478 (2002). Star, FCM and Reliable were in the same line of business: all three companies manufactured parts primarily for manufacturers of agricultural machinery and equipment. Further, FCM and

Reliable agreed that they were competitors with Star on production jobs. We therefore reject Ward's argument that there was any genuine factual dispute about whether FCM and Reliable were competitors of Star.

¶ 21 Under the corporate opportunity doctrine, a fiduciary cannot take advantage of business opportunities that belong to the corporation unless he or she first presents the opportunity to the corporation. *Id.* A business opportunity “belongs” to the corporation if it is a “ ‘proposed activity [that] is reasonably incident to the corporation’s present or prospective business and \*\*\* in which the corporation has the capacity to engage.’ ” *Id.*, quoting *Dremco, Inc. v. South Chapel Hill Gardens, Inc.*, 274 Ill. App. 3d 534, 538 (1995).

¶ 22 In its complaint, Star alleged that Ward's breaches of his fiduciary duty included several instances in which Ward intentionally diverted business opportunities away from Star to other companies such as FCM and Reliable. For instance, Star alleges a “flight scheme” in which Ward diverted a business opportunity with John Deere to FCM instead of retaining it for Star. According to Ward's appellate brief, in 1997, John Deere approached him to ask if Star could make a new part called a “flight” for a combine. Ward testified in deposition that he was told that the flight was to be made by a casting method. Neither Star nor FCM made parts by casting; rather, both companies used a forging or hot forming process.

¶ 23 There is a dispute over whether Star (through Ward) submitted a bid on the flight job. (Star's vice president, John Lehnhard, testified in deposition that, in March 1997, Ward told him that Star was not to bid on the flight job because the flights were to be made by casting. Ward testified that, despite the fact that Star could not make parts by casting, he submitted a verbal bid for the flight job on Star's behalf about a week after John Deere told him about it. There is no written record of this bid. Ward also cites to written notes of an October 1997 meeting at which FCM staff discussed the flight job; the notes reflect that, at the meeting, Ward apparently said

that he made a bid for the flight job on behalf of Star in September 1996.) However, it is undisputed that, although John Deere had approached *Star* about bidding on the flight job, Ward directed *FCM* to bid on the flight job and offer to develop the prototype. *FCM* did so, and its bid was based on manufacturing the part by forging (like *Star*, *FCM* could not manufacture parts by casting). *FCM* became John Deere's supplier for the flights, which ultimately became a large volume business.

¶ 24 Ward admits that he “provided [*FCM*] an opportunity to manufacture the flights using a forged method” that *Star* also could have used. However, he argues that his decision to steer the flight job away from *Star* was justified by his business judgment that *Star* should not take the risk of incurring the development costs for the part, because it was uncertain whether John Deere would accept flights made by forging. But the law is clear that a fiduciary may not usurp or divert a business opportunity merely because the fiduciary believes the corporation cannot or should not take advantage of the opportunity. *Id.* (when a fiduciary wants to take advantage of or divert a business opportunity that is within the company's line of business, “the fiduciary must first disclose and tender the opportunity to the corporation, notwithstanding the fiduciary's belief that the corporation is legally or financially incapable of taking advantage of the opportunity.”); see also *Graham v. Mimms*, 111 Ill. App. 3d 751, 765 (1982). It is undisputed that Ward did not tender the flight job to *Star* and obtain permission to divert the opportunity to *FCM*. Accordingly, there is no genuine issue that Ward breached his fiduciary duty toward *Star* with respect to the flight job.

¶ 25 Ward also argues that there is a factual dispute over whether he received any commissions from *FCM* as a result of diverting the flight job. (Ward testified that he did not, but *FMC*'s president stated, in a document filed in connection with *FMC*'s settlement, that the flight job was among the deals on which Ward received a commission.) However, even if we assume

*arguendo* that diverting the flight job to FCM did not directly benefit Ward, it is undisputed that the diversion harmed Star, which lost the opportunity to compete for a valuable job. A breach of fiduciary duty occurs not only when a corporate officer exploits his or her position for personal benefit, but also when the officer hinders the ability of the corporation to carry on its business. *Veco Corp. v. Babcock*, 243 Ill. App. 3d 153, 160 (1993).

¶ 26 Star also produced evidence of several other instances in which Ward diverted business away from Star to FCM and Reliable, including the diversion of a “tube package” to FCM and the diversion of jobs for other parts to Reliable. Ward did not dispute the fact that he failed to present these business opportunities to Star, but he testified that his actions were justified because Star either did not want to or could not manufacture the parts. With respect to the tube package, Ward testified that the chief executive officer of Star, Bud Johnson, did not like tube production and made disparaging comments whenever he saw tubes being produced, and the company decided to get rid of one piece of equipment used for manufacturing certain tubes. Once again, however, this evidence is irrelevant in light of the uncontroverted evidence that: (1) Star had the capacity to take on the tube package (and the other jobs which Ward diverted), and thus Ward had the obligation to present these jobs to Star before diverting them (*Anest*, 332 Ill. App. 3d at 478); and (2) Ward never presented these jobs to Star so that Star could determine whether it wished to bid on the jobs. The “failure to first disclose the opportunity to the corporation, which would then allow the corporation to act upon it,” demonstrates a breach of fiduciary duty. *Goldberg v. Michael*, 328 Ill. App. 3d 593, 599 (2002). We affirm the trial court’s grant of summary judgment in favor of Star on the claim that Ward breached his fiduciary duty.

¶ 27

### 3. Breach of Employment Contract

¶ 28 We next turn to the question of whether the trial court properly granted summary judgment against Ward on the claim that he breached his employment contract with Star. Star alleged that Ward breached both the “best efforts” provision of the contract (because his work on behalf of FCM and Reliable necessarily meant that he was not working as fully as possible on behalf of Star) and the non-compete provision. The trial court found that there was no factual dispute that Ward breached the contract, because he entered into agreements to work on behalf of Star’s competitors and diverted business opportunities away from Star.

¶ 29 On appeal, Ward directs most of his energy to arguing about whether he breached the “best efforts” provision, asserting that “best efforts” does not necessarily mean “exclusive efforts.” We find it unnecessary to address this assertion, as there is no genuine factual dispute that Ward breached the non-compete provision. On this point, Ward’s sole argument on appeal is that Star did not submit evidence that FCM and Reliable were its competitors. We have already rejected this argument. Accordingly, the trial court properly entered judgment in favor of Star on the breach of contract claim.

¶ 30 4. Fraud

¶ 31 The final claim on which the trial court granted summary judgment against Ward was Star’s claim of fraud. Ward argues that the trial court overlooked several respects in which Star’s evidence about the alleged misrepresentations identified in its third amended complaint did not make out a *prima facie* case of fraud. However, Ward’s argument fails to recognize that Star (in seeking summary judgment) and the trial court (in granting summary judgment on the fraud claim) focused on a different basis for fraud than the one he addresses.

¶ 32 In its third amended complaint, Star alleged that “Ward made numerous misrepresentations of material fact to [John] Deere” in order to defraud Star. It then listed three statements that Ward made, allegedly while knowing that they were false. The first two

statements were allegedly made by Ward to John Deere. The last statement was that the flights for John Deere were to be made by casting, a statement Ward allegedly made to Star employees on three different occasions. However, Star's fraud claim also incorporated by reference all of the previously-made general allegations and allegations relating to the breach of fiduciary duty claim, including Ward's failure to disclose his relationship with competitors.

¶ 33 Star's arguments in its motion for summary judgment were based partly on the third alleged misstatement identified in its complaint: that Ward told Star that the flights were to be made by casting. However, the main thrust of its motion for summary judgment was that Ward's conduct in failing to disclose his relationships with FCM, Reliable, and SDS, and in failing to disclose the fact that he was diverting business to those companies, was fraud by omission—the intentional concealment of material facts. Ward, in his response, addressed only the first argument and ignored the second. This second argument was the basis upon which the trial court granted summary judgment in favor of Star on the fraud claim.

¶ 34 On appeal, Ward renews his arguments regarding the affirmative misrepresentations alleged in the third amended complaint. He notes that the first two statements were allegedly made to John Deere rather than to Star, and he argues that thus they cannot form the basis for a fraud claim by Star. As to the third alleged misrepresentation about the flights, Ward asserts that, as to the first time Ward allegedly made the statement, Star cannot show that it was false or that Ward knew it was false; and that Star itself knew the statement was false by the time of the second and third occasions on which Ward allegedly made the statement, so any reliance by Star on the statement at those times was unreasonable, and any damages were not proximately caused by the statement. However, none of Ward's arguments on appeal address whether he committed fraud by omission, as the trial court found in granting summary judgment.

¶ 35 Fraud encompasses both the intentional misrepresentation of a material fact and the intentional concealment of a material fact. *McCarthy v. Pointer*, 2013 IL App (1st) 121688, ¶ 17. To prove a claim of fraudulent concealment or fraud by omission, a plaintiff must show that: “(1) the defendant concealed a material fact under circumstances that created a duty to speak; (2) the defendant intended to induce a false belief; (3) the plaintiff could not have discovered the truth through reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and justifiably relied upon the defendant’s silence as a representation that the fact did not exist; (4) the concealed information was such that the plaintiff would have acted differently had he or she been aware of it; and (5) the plaintiff’s reliance resulted in damages.” *Bauer v. Giannis*, 359 Ill. App. 3d 897, 902-03 (2005).

¶ 36 Star asserts that the evidence it presented met the requirements to show that Ward committed fraud by omission in failing to disclose his relationships with (and work on behalf of) Star’s competitors. First, Ward had a duty to speak because he was an officer of Star, and therefore owed it a fiduciary duty. *Anest*, 332 Ill. App. 3d at 477 (a corporate officer owes a fiduciary duty to shareholders and to the corporation); *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 345 (2011) (the existence of a fiduciary duty creates a duty to speak regarding material facts). Despite this fiduciary duty to disclose material facts to Star, it is undisputed that Ward did not disclose his relationships with, or work on behalf of, Star’s competitors. Second, through this nondisclosure, Ward intended to induce in Star the false belief that Ward was acting solely in Star’s best interests when carrying out his duties as president of Star. Third, Star argues that it justifiably relied on Ward’s silence as a representation that Ward was not involved in any relationships with or work on behalf of Star’s competitors. Fourth, Star would have acted differently in deciding which jobs to pursue with customers such as John Deere had it known the truth about Ward’s relationships with competitors. Finally, its reliance on Ward’s concealment

of these material facts damaged Star by causing it to lose substantial business to its competitors FCM and Reliable.

¶ 37 Neither in his opening brief nor in his reply brief does Ward point to any contrary evidence on any of these elements. Although he argues generally that the transactions he participated in were “equitable and just” toward Star, because (in his business judgment) it was not appropriate for Star to pursue the business opportunities he diverted, he does not actually argue that Star did not sustain any damage from his diversions of business, which he concealed by not revealing his relationships with Star’s competitors. Further, our own review of the record does not disclose the existence of any issue of fact regarding these elements. Accordingly, we hold that the trial court properly granted summary judgment in favor of Star on its fraud claim.

¶ 38 **B. Award of Damages**

¶ 39 Ward also argues on appeal that the trial court erred in setting Star’s damages at \$711,050. After the trial court granted summary judgment on the three claims discussed above, Star moved for an award of damages. In its motion, Star argued that an appropriate measure of damages for Ward’s breaches of his fiduciary duty and his employment agreement would be forfeiture (disgorgement) of the full amount that Star paid Ward during the period in which he was engaged in those breaches. Star attached various exhibits to its motion, including W-2 forms, pay stubs, and an affidavit by Star’s vice president, Lehnhard, regarding the amount Ward was compensated during each year from 1990 through his termination in 2000. Star sought \$866,850 in damages, which it asserted represented the total amount paid to Ward from 1990 to 2000.

¶ 40 In response to the motion, Ward argued that the exhibits were not properly authenticated and were hearsay, and that Star had not proved the time period of his breach. Ward did not contest Star’s argument that forfeiture of his full salary was an appropriate measure of damages.

In its reply, Star argued that Ward's breaches of the "best efforts" provision of the employment agreement began on the date the agreement was signed in 1990, and alternatively argued that the breaches of fiduciary duty began no later than 1992, when Ward entered into the agreements to solicit business on behalf of FCM. Star also submitted an additional affidavit by an employee in its payroll and benefits office that authenticated Star's earlier exhibits.

¶ 41 At oral argument on the motion, Ward raised a new set of arguments: that the trial court could exercise its discretion to order the forfeiture of less than full compensation; that if it chose to do so, it should weigh the benefit Star received from Ward's employment against the detriment it suffered from his breaches of fiduciary duty; and that Star had not presented sufficient evidence to allow the court to undertake this weighing. Star responded that no weighing was necessary, as forfeiture of Ward's full compensation was a sanctioned measure of damages that was appropriate here.

¶ 42 On January 28, 2013, the trial court issued a memorandum decision in which it found that the forfeiture of full compensation during the period of the breach was a well-established measure of damages that was appropriately applied to Ward's breaches. The trial court also found that Ward's breaches of his fiduciary duty and his employment agreement began in 1992. Using the exhibits submitted by Star, the trial court determined that Ward's compensation from 1992 through his termination in 2000 was \$711,050.

¶ 43 Separately, Ward moved for contribution and setoff under the Joint Tortfeasor Contribution Act (Act) (740 ILCS 100/2(c) (West 2012)), arguing that FCM and Reliable were joint tortfeasors with him and that any award of damages against him should be reduced by the amounts paid by FCM and Reliable in settlement. Star responded that its injury at Ward's hands (the loss of his honest services and undivided loyalty) was different from the injuries done to it by FCM and Reliable (lost profits due to Ward's diversion of business to these competitors) and

so there would be no double recovery. It also argued that an intentional tortfeasor such as Ward could not seek contribution under the Act, citing *Gerill Corp. v. Jack. Hargrove Builders, Inc.*, 128 Ill. 2d 179, 204-06 (1989). Finally, by failing to file a contribution claim or third-party action against FCM and Reliable, Ward had waived any claim for contribution under the Act. In rebuttal, Ward argued that Star sustained only a single injury, and he distinguished the holding of *Gerill* as barring only a contribution claim by an intentional tortfeasor, not setoff. Ward asserted that he sought setoff rather than contribution, so *Gerill* and Star's waiver argument did not apply. On April 9, 2013, the trial court entered an order denying Ward's motion, finding that neither the Act nor common-law contribution and setoff applied to the case.

¶ 44 On appeal, Ward raises a variety of arguments relating to the trial court's award of damages. His first argument is that the trial court erred in "ritualistically" selecting full forfeiture of his compensation during the period of the breach as the appropriate measure of damages. He then argues that the trial court lacked sufficient evidence to determine the proper portion of his compensation that should be forfeited, and that it should have held an evidentiary hearing to cure this lack. We reject his argument entirely.

¶ 45 Illinois law is clear that full forfeiture of compensation is a permissible measure of damages for the breach of fiduciary duties. *Vendo Co. v. Stoner*, 58 Ill. 2d 289, 314 (1974); see also *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 90 Ill. App. 3d 817, 837-38 (1980) (an agent is entitled to compensation only when faithfully performing his duties to the principal). Ward cites *Monotronics Corp. v. Baylor*, 107 Ill. App. 3d 14 (1982), for the proposition that a trial court need not order full forfeiture where that would lead to a harsh and unwarranted result. The facts in *Monotronics* are different from those here, however; in *Monotronics*, the court found that there was evidence that the plaintiff corporation had acquiesced in the competitive activity of the defendant officer and that the officer had provided

the corporation with valuable service even while breaching his fiduciary duty, such that the corporation's sales and the incomes of its principals had increased. *Id.* at 19. The court therefore found that full forfeiture would be an extremely harsh and unjust result. *Id.* Here, by contrast, the trial court determined that Ward's deceit and faithlessness toward Star infected the full period of his work on behalf of Star's competitors, making full forfeiture a proper measure of damages.

¶ 46 Moreover, the mere fact that the trial court could have required only partial forfeiture does not make its decision to order full forfeiture erroneous. As explained in *Levy v. Markal Sales Corp.*, 268 Ill. App. 3d 355, 373-74 (1994), the trial court's determination in *Monotronics* that less than full forfeiture was warranted is the exception, not the rule, and the weight of Illinois case law is that full forfeiture is not too harsh a result given conduct by a fiduciary that deliberately harms one to whom the fiduciary owes a duty. "[O]ne who breaches fiduciary duties has no entitlement to compensation during a wilful or deliberate course of conduct adverse to the principal's interests." *ABC*, 90 Ill. App. 3d at 838; see also *Graham*, 111 Ill. App. 3d at 762-63 (the uncompromising application of full forfeiture rests upon "wise public policy that, for the purpose of removing all temptation, extinguishes all possibility of profit flowing from a breach of the confidence imposed by the fiduciary relation."). Accordingly, we reject Ward's argument that the trial court should not have required full forfeiture as the measure of damages, and his related argument that additional evidence was necessary to determine the amount of the forfeiture.

¶ 47 Ward's remaining argument relating to the damages award is that the trial court should have applied a setoff in the amount of the settlement payments already received by Star. Ward argues that Star is seeking double recovery for the same injury, citing to Star's complaint, which incorporates by reference many of the allegations against Ward in the claims against FCM and Reliable. As Ward himself notes, however, the question is whether the plaintiff's claims against

various defendants seek recovery for the same injury, not the manner in which those claims are stated. *Dial v. City of O'Fallon*, 81 Ill. 2d 548, 558 (1980). The party seeking setoff bears the burden of proving that setoff is warranted, and if so, what portion of a prior settlement was attributable to the claim for which he is liable. *Pasquale v. Speed Products Engineering*, 166 Ill. 2d 337, 369 (1995).

¶ 48 Here, Star suffered two distinct injuries and thus the damages award against Ward did not provide Star with a double recovery for the same injury. The injury sustained by Star because of Ward's breaches of his fiduciary duty and employment contract was the loss of the value of Ward's honest and undivided services, which Star was entitled to receive. Recoupment of the compensation paid to Ward is, as we have discussed, an appropriate measure of damages for this injury. *Vendo*, 58 Ill. 2d at 314. The settlement by FCM and Reliable included claims that FCM and Reliable: interfered with Star's contract with Ward by offering him monetary inducements to divert Star's business to them; interfered with Star's contractual relations with John Deere; conspired with Ward to defraud Star; and violated the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2000)). The amounts Star received in settlement of these claims represented its lost profits (and its competitors' wrongfully obtained gains) on the business diverted to FCM and Reliable. In *Vendo*, 58 Ill. 2d at 314, the supreme court held that the recoupment of compensation paid to a faithless fiduciary in addition to the recovery of lost profits from competitors who benefitted from that faithlessness does not constitute a double recovery. See also *Hill v. Names & Addresses, Inc.*, 212 Ill. App. 3d 1065, 1086 (1991) (the purpose of requiring the forfeiture of compensation is to "deprive the wrongdoer of the gains resulting from a breach of duty," an injury distinct from the losses to the injured party). Ward has not cited any case law supporting his argument that the injury FCM and Reliable caused Star is the same as the injury caused by his breach of his fiduciary duties and his

employment contract. Accordingly, we find that the trial court properly denied Ward's motion for setoff.

¶ 49 Having rejected all of Ward's arguments relating to damages, we find that the trial court properly determined that Star was entitled to recoup \$711,050 of Ward's compensation as damages from his fraud and breaches of fiduciary duty and contract.

¶ 50

### III. CONCLUSION

¶ 51 For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed.

¶ 52 Affirmed.