

No. 1-14-3773

**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)

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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PERVAIZ BHATTI, individually and on behalf of )	Appeal from the
Implant Funding Solutions, LLC, )	Circuit Court of
)	Cook County
Plaintiff-Appellant, )	
)	
v. )	No. 11 L 1650
)	
MEDIPLANT FUNDING, INC., SETH MYERS, )	Honorable
MITCHELL GRUPP, and THOMAS RALEY, )	Eileen O'Neil Burke,
)	Judge Presiding.
Defendants-Appellees. )	

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JUSTICE HARRIS delivered the judgment of the court.  
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

¶ 1 **Held:** The entry of judgment in favor of defendants is affirmed. Plaintiff Bhatti's failure to first offer the other owner of the LLC a chance to purchase his interest violated their operating agreement. Further, Bhatti does not address the trial court's finding that any actions taken by the defendants after that point were not actionable. Accordingly, he has waived any argument on the matter.

¶ 2 In 2008, defendant, Dr. Thomas Raley and Dr. Nameer Haider discussed the formation of a corporation whose purpose would be to provide funding for the purchase of spinal cord stimulators. Neither wanted to be named owners of the corporation because manufacturers would not deal with a purchasing company owned by physicians due to probable conflicts of interest and federal regulation violations. To conceal their control of the proposed company, Implant Funding Solutions LLC (hereinafter IFS), Dr. Raley used defendant Mitchell Grupp as a surrogate while Dr. Haider used plaintiff Pervaiz Bhatti. While Grupp and Bhatti were the owners of record they were strictly surrogates and all parties understood that Dr. Raley and Dr. Haider made all the decisions and enjoyed all the benefits of IFS.

¶ 3 In 2009 IFS operated as Dr. Raley and Dr. Haider had envisioned. At the end of 2009, Dr. Haider informed Bhatti and defendants that he would be transferring Bhatti's interest to a company he controlled. Neither Dr. Haider nor Bhatti first offered Bhatti's interest to the other owner as required by the terms of their IFS operating agreement. Seth Myers, IFS's CEO and sole employee, believed that the transfer caused IFS to be in violation of provisions in the vendor contracts prohibiting physician ownership and requiring compliance with federal regulations. When Myers learned of the transfer, he informed the vendors of IFS's breach and handed in his letter of resignation. Shortly thereafter, Grupp wound down IFS's operations. Bhatti then brought this action alleging individual claims and derivative claims on behalf of IFS including breach of the IFS operating agreement, tortious interference with contract, breach of fiduciary duties owed to IFS, aiding and abetting these breaches, fraud and fraudulent transfer. At the conclusion of the four day bench trial, the court found in favor of defendants on all counts.

¶ 4 Before this court plaintiff raises the following issues: (1) whether the trial court erred when it held that the attempted transfer of Bhatti's membership interest was a breach of the

operating agreement that prevented Bhatti from recovering on his claims; (2) whether the trial court's findings of fact were against the manifest weight of the evidence, where it found a breach of the operating agreement occurred prior to the actions complained of in the complaint; (3) whether the trial court erred in finding that the structure of IFS was illegal; (4) whether the trial court's findings of fact regarding illegality were against the manifest weight of the evidence; (5) whether the trial court erred in failing to reach the merits of plaintiff's individual and derivative claims.

¶ 5 As set forth herein, we need only address the first issue raised by plaintiff. We hold that the trial court's finding that plaintiff breached the operating agreement was not against the manifest of evidence. Plaintiff has failed to argue whether the breach precludes his recovery and has therefore waived review of the issue. Accordingly, the entry of judgment in defendants' favor is affirmed.

¶ 6 JURISDICTION

¶ 7 The trial court entered judgment in favor of the defendants on November 6, 2014. Plaintiff filed his Notice of Appeal on December 8, 2014. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, §6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. Jan. 1, 2015).

¶ 8 BACKGROUND

¶ 9 Defendant, Thomas Raley M.D., (hereinafter Dr. Raley) is a physician specializing in spine and orthopedics. Namee Haider M.D. (hereinafter Dr. Haider) is a physician specializing in physical medicine and rehabilitation with a subspecialty in pain management. Shortly after

the two met, Dr. Haider proposed a business venture which would provide third-party billing for spinal cord stimulators (also known as spinal implants) (hereinafter stimulators).

¶ 10 A stimulator is a pacemaker like device that is implanted in a patient with chronic pain. Dr. Haider used stimulators in his practice and served as an expert consultant for companies that manufactured stimulators. Stimulators can range from \$20,000 to \$60,000 per device, and given the price, hospitals are reluctant to take on the financial risk of purchasing the device and not being reimbursed by the insurance company. With third party billing, a third party purchases the stimulator and assumes the financial risk of not being reimbursed by the patient's insurance company.

¶ 11 Dr. Haider knew that the manufacturers of stimulators would not deal with a purchasing company owned by a physician due to a conflict of interest and the possibility of violating federal regulations. In order to avoid this, the parties used surrogates to own the company. Dr. Haider chose plaintiff, Pervais Bhatti (hereinafter Bhatti), as his surrogate while Dr. Raley chose defendant, Mitchell Grupp (Grupp). Both Bhatti and Grupp signed the operating agreement to form Implant Funding Solutions, LLC. They were the only members of IFS and Grupp was named member-manager. Both Grupp and Bhatti recognized that they would not have to operate IFS nor receive any benefit from their ownership interest. Each knew they were solely representing the interest of the doctors. After the formation of IFS, Dr. Haider and Dr. Raley hired defendant Seth Myers (hereinafter Myers) to run IFS.

¶ 12 IFS commenced operations around January 2009. While IFS operated Myers had no contact with Bhatti or Grupp. With Dr. Haider's assistance, IFS signed vendor agreements with three stimulator manufactures: Boston Scientific, St. Jude Medical, and Medtronic. Each vendor agreement contained provisions that IFS would comply with all applicable laws and regulations.

¶ 13 By all accounts IFS was successful in its first year of operation. However, the issue of how Dr. Haider and Dr. Raley were going to get money out of IFS despite not being owners soon became a problem. About the same time, a dispute arose between Dr. Haider and Dr. Raley concerning Dr. Raley's compensation. This led to a breakdown in communication between the two and with Myers. By December 2009, Myers had low expectations that IFS would be able to function as a going concern given the lack of communication between Dr. Haider and Dr. Raley.

¶ 14 On December 30, 2009, Dr. Haider asked Bhatti to transfer his interest in IFS to Gasnar Private Holdings, LLC, a company owned by Dr. Haider. Bhatti sent an email to Myers unequivocally stating that his interest in IFS had been fully assigned to Gasnar Private Holding Company. Bhatti did not offer his share of IFS to Grupp per the right of first refusal provided for in IFS's operating agreement. Following up on Bhatti's email, Dr. Haider emailed Myers that Bhatti's interest had been transferred. Dr. Haider also sent Myers Gasnar's tax ID number in order to complete IFS's taxes.

¶ 15 Myers knew that the transfer of ownership meant the pre-text that IFS was not owned by doctors was gone and that IFS was now in violation of all three of its vendor agreements. Myers submitted his resignation from IFS on January 5, 2010. As member-manager, Grupp was left to run IFS. Having no knowledge or experience in running a company like IFS, Grupp began to wind it down. Grupp hired Dana Bowen to help collect IFS's outstanding receivables from insurance companies, and made sure all outstanding bills were paid. Shortly after leaving IFS, Myers started Mediplant, another defendant in this action.

¶ 16 In February 2011, plaintiff Bhatti brought this action. Bhatti's amended complaint asserted the following claims: breach of contract against Grupp (Count I); tortious interference with contract against Dr. Raley (Count II); violation of the LLC Act against Grupp (Count III);

breach of fiduciary duty against Grupp (Count IV); breach of fiduciary duty against Grupp and Myers (Count V); aiding and abetting breach of fiduciary duty against Dr. Raley (Count VI); fraud against Dr. Raley, Grupp and Myers (Count VII); intentional fraudulent transfer of IFS property against Myers and Mediplant (Count VIII); fraudulent transfer of IFS property against Mediplant and Myers (Count IX). Counts VIII and IX were abandon at trial.

¶ 17 A four-day bench trial was held in November 2014. The trial court entered judgment in favor of defendants on all counts. In ruling, the trial court admonished the parties on the structure of IFS. It appeared to the court IFS was set up to intentionally skirt certain federal regulations and provisions in the vendor agreements. However, judgment in defendants' favor was based on Bhatti's failure to first offer his interest to Grupp as provided for in IFS's operating agreement. In entering judgment for defendants, the court stated:

¶ 18 So once the agreement is breached, I don't think the plaintiff can now recover and claim that there was a breach by the defendants. Any actions taken from the defendants from that point on is not actionable by the plaintiff. I think the breach of the operating agreement precludes that. So therefore I find on counts 1 through 7 in favor of the defendants.

¶ 19 Plaintiff timely filed a Notice of Appeal on December 8, 2014.

¶ 20 ANALYSIS

¶ 21 Plaintiff raises the following issues on appeal: (1) whether the trial court erred when it held that the attempted transfer of Bhatti's membership interest was a breach of the operating agreement that prevented Bhatti from recovering on his claims; (2) whether the trial court's findings of fact were against the manifest weight of the evidence, where it found a breach of the operating agreement occurred prior to the actions complained of in the complaint; (3) whether the trial court erred in finding that the structure of IFS was illegal; (4) whether the trial court's findings of fact regarding illegality was against the manifest weight of the evidence; (5) whether

the trial court's ruling was against the manifest weight of the evidence where plaintiff established a right to relief on his individual and derivative claims. Due to our conclusion in this matter, we need only address the first claim raised by plaintiff.

¶ 22 Plaintiff has failed to comply with Illinois Supreme Court Rule 341(h)(3), which requires the plaintiff, as appellant, to provide this court with a concise statement of the applicable standard of review for each issue, with citation to authority. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Plaintiff has only provided a generic standard of review section that fails to identify the standard of review applicable to each issue he raises. Failure to comply with the rules regarding appellate briefs is not an inconsequential matter. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶7. The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292 (1991). While we do not strike plaintiff's brief, the aforementioned deficiency must not be repeated.

¶ 23 The first issue raised by plaintiff on review is whether the trial court erred when it held that the attempted transfer of Bhatti's membership interest was a breach of the operating agreement that prevented Bhatti from recovering on his claims. Generally, an LLC operating agreement is to be enforced according to general contract principles, unless it conflicts with a statute. See, e.g., *Downs v. Rosenthal Collins Group, L.L.C.*, 385 Ill. App. 3d 47, 52 (2008) (operating agreement to be treated as a contract). Whether a breach of contract has occurred generally is not a legal question subject to *de novo* review, but rather a question of fact which will not be disturbed unless the finding is against the manifest weight of the evidence. *Covinsky v. Hannah Marine Corp.*, 388 Ill. App. 3d 478, 483 (2009). A judgment in a bench trial is only against the manifest weight of the evidence when the findings are arbitrary, unreasonable and not

based on the evidence or when the opposite conclusion is clearly evident from the record. *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 24 The trial court's finding that Bhatti breached IFS's operating agreement by failing to first offer his share to Grupp as the other owner was not against the manifest weight of the evidence. Paragraph 11 of IFS's operating agreements states, "[p]rior to the sale, assignment, or transfer of a Member's Interest to a prospective third-party Permitted Transferee, the Member seeking to transfer such Interest (the "Transferring Member") must first offer his Interest in writing to those Members not seeking to transfer their Interest (the "Non-Transferring Member")." This contractual language placed an obligation on Bhatti, as the Transferring Member, to offer his interest to Grubb, as the Non-Transferring Member, before transferring his interest a third-party. The record demonstrates before attempting the transfer to Dr. Haider's company, Bhatti failed to first offer his interest to Grubb, as the Non-Transferring Member. In his brief before this court, Bhatti admits he failed to comply with this provision. Bhatti admits he never made an offer to Grupp.

¶ 25 On appeal, Bhatti argues that the transfer was invalid and a nullity, and as such the transfer could not have constituted a breach. However, such an argument must fail given the plain language of Paragraph 11. Paragraph 11 requires Bhatti to make an offer to Grubb prior to transferring to a third party. Whether the transfer to the third-party is completed is of no consequence because the operating agreement required Bhatti to make the offer to Grubb before the alleged assignment to a third-party. Since Bhatti admittedly did not comply with Paragraph 11, the trial court did not abuse its discretion when it determined Bhatti breached the operating agreement.



¶ 26 Normally, our analysis would not end there, as a question remains as to whether Bhatti's breach excused the actions of the defendants after Bhatti breached the operating agreement. However, Bhatti does not address this issue in his main brief. The remainder of Bhatti's main brief is devoted to the legality or illegality of IFS.

¶ 27 Illinois Supreme Court Rule 341(h)(7) states, "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or in a petition for rehearing." S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented, and it is not a repository into which an appellant may foist the burden of argument and research; it is neither the function nor the obligation of this court to act as an advocate or search the record for error." *People v. Universal Public Transp., Inc.*, 2012 IL (1st) 073303-B, ¶50 citing *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

¶ 28 The trial court found Bhatti's failure to comply with the transfer provision meant that any actions by defendants after that point were not actionable. Bhatti does not raise any argument to contest this finding. Accordingly, he has waived review of the issue.

¶ 29 Bhatti raises the issue of whether the trial court erred in finding that breach of the operating agreement occurred prior to the actions complained of in the amended complaint, but does not address this issue in his argument section. He also raises the issue whether the trial court's ruling was against the manifest weight of the evidence where he had established a right to relief on his individual claims. Again, Bhatti does not address this in the argument section of his main brief. Bhatti does argue this in his reply brief, but his failure to argue it in his main brief means he had waived the issue and we need not consider it. See S. Ct. R. 341(h)(7) (points not argued are waived and shall not be raised in the reply brief).

¶ 30 We find that that the trial court's ruling that Bhatti breached the operating agreement by failing to first offer his ownership share to Grupp as required under Paragraph 11 of the operating agreement was not against the manifest weight of the evidence. We further find that Bhatti has waived any argument concerning the trial court's ruling that this breach precluded Bhatti from recovering from any of defendants' subsequent actions. Accordingly, the entry of judgment in favor of defendants is affirmed.

¶ 31

#### CONCLUSION

¶ 32 For the foregoing reasons, the trial court's entry of judgment in favor of defendants on all counts is affirmed.

¶ 33 Affirmed.