2018 IL App (1st) 163150-U

No. 1-16-3150

Order filed August 24, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PETER J. KONOPKA, as Member and Manager of Crest Hill Land Development LLC, Plaintiff and Counter Defendant, v. ROGER DUBA, Defendant and Counter Plaintiff, CREST HILL LAND DEVELOPMENT, LLC, DIVISION-GAYLORD, LLC, THE RED TRUST, and MICHAEL ANDERSON, Defendants (CROWLEY & LAMB, P.C., Intervenor and Third-Party Plaintiff-Appellee; and DIVISION-GAYLORD, LLC, and THE RED TRUST, Third-Party Defendants-Appellants).	)	Appeal from the Circuit Court of Cook County. No. 10 CH 49052 Honorable David B. Atkins, Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: The law firm did not have a conflict of interest based on its concurrent representation of one of two loan guarantors and the note-holder of the defaulted mortgage loans because the note-holder was created as a vehicle to enable the guarantor client to recoup his investment in the property securing the mortgage loans. Also, the trial court did not abuse its discretion by denying the discovery request of the law firm's former clients or by granting the law firm attorney fees, costs and interest.

¶ 2 Intervenor and third-party plaintiff, the law firm of Crowley & Lamb, P.C. (C&L), petitioned the trial court for adjudication of its attorney's lien, seeking over $200,000 in fees and costs from its former clients, third-party defendants Division-Gaylord, LLC (Division) and the Red Trust. After a hearing, the trial court awarded C&L $177,722 in attorney fees and $56,822.34 in interest.

¶ 3 Appellants Division and the Red Trust argue that C&L is not entitled to any attorney fees because their retainer agreement is void *ab initio* based on C&L's representation of both appellants and Roger Duba when Division foreclosed on the property securing mortgage loans. According to appellants, C&L's representation constituted a conflict of interest because Roger, who was one of two guarantors of those loans, and appellants, who had acquired the notes on those mortgage loans, had adverse interests. Appellants also argue that the trial court improperly denied their discovery request and granted C&L attorney fees, which were unreasonable because C&L had engaged in block billing and overstaffing.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.[1]

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

¶ 5 I. BACKGROUND

¶ 6 This appeal concerning the adjudication of C&L's attorney lien arose from litigation between the members of Crest Hill Land Development, LLC (Crest Hill). Crest Hill was primarily engaged in the development of an industrial park and adjacent land and the operation of two rental buildings. Peter Konopka and Roger were the sole members of Crest Hill. Crest Hill had purchased the property with a mortgage loan from First National Bank in 2007, and Konopka and Roger were the guarantors of that loan (the First National loan). Konopka managed Crest Hill and supervised the construction without drawing a salary. Roger contributed cash funding to Crest Hill to start the project. When Crest Hill developed two parcels of the property, it obtained a construction loan in 2010 from Home State Bank (the Home State loan), and Konopka and Roger personally guaranteed that loan.

¶ 7 The First National loan required a balloon payment in March 2010, which Crest Hill did not make due to a lack of funds. In July 2010, First National Bank sued Konopka and Roger for approximately $5 million as the guarantors of the First National loan (the First National guaranty lawsuit). Konopka proposed using the proceeds of a settlement award Crest Hill had received to attempt to satisfy both First National Bank and Home State Bank and reach forbearance agreements with them, but Roger did not agree.

¶ 8 In October 2010, Roger purchased in his own name the mortgage and note for the Home State loan. Shortly thereafter, Konopka filed a complaint in the instant case against Roger, seeking a temporary restraining order and preliminary injunction and alleging breach of fiduciary duty and breach of contract. Ultimately, Konopka amended his complaint to add, *inter alia*, Crest Hill, Division, and the Red Trust. Roger filed a counterclaim against Konopka, alleging fraud,

breach of fiduciary duty, and conversion and seeking an accounting and a preliminary injunction. Meanwhile, in January 2011, Crest Hill transferred about $2.15 million in settlement funds to First National Bank to pay down the principal amount of the First National loan. In March 2011, the Home State loan was in default.

¶ 9 In May 2011, Roger and his son Douglas Duba retained C&L to provide legal services regarding the Crest Hill investment and the First National guaranty lawsuit against Roger. Accordingly, C&L organized Division, which was formed by Douglas and wholly owned by the Red Trust, its sole member. The Red Trust was an irrevocable trust created by Roger and his wife Sandra Duba. C&L organized Division to be a vehicle for Roger and Douglas to recoup the money Roger had invested in Crest Hill. Specifically, Division would purchase the First National loan, which was secured by the Crest Hill property, and then foreclose on that property.

¶ 10 When Division acquired the First National loan, Division used money that came from Roger using the Red Trust funds. C&L also prepared documents and assisted Roger and Douglas in assigning the Home State loan acquired in Roger's name to Division. Division paid no consideration to Roger for the assignment of the Home State loan. The loan notes were acquired by or transferred to Division, a separate entity with no fiduciary obligation to Konopka, to prevent Konopka from basing his defenses in the foreclosure and subsequent guaranty lawsuits on any alleged breach of fiduciary duty Roger owed Konopka as the other member of Crest Hill.

¶ 11 In July 2011, Division filed in the Circuit Court of Will County the foreclosure action against Konopka on his guaranty of Crest Hill's loans.

¶ 12 After William Healey was made the Red Trust trustee and manager of Division, he signed a retainer agreement with C&L in June 2012 to provide legal services for Division and the

Red Trust. Although C&L had filed an appearance on behalf of Division and the Red Trust in the instant case, Roger was represented in this matter by other counsel.

¶ 13 Thereafter, C&L, at the direction and instruction of Roger, Douglas, Division, and the Red Trust, represented the interests of these parties, either separately or jointly, in the First National guaranty lawsuit, the instant case, the Will County foreclosure lawsuit, Konopka's unsuccessful attempt to move the instant case to McHenry County, defending against fraudulent mechanic lien claims against Crest Hill in Will County, intervening in federal bankruptcy court concerning a mechanics lien claim against Division, and intervening on behalf of Division to assert its rights to escrowed funds in citation proceedings concerning a foreign judgment obtained against Crest Hill.

¶ 14 The parties terminated the services of C&L in April of 2013, and C&L withdrew from the instant case as counsel for Division and the Red Trust in July 2013. In November 2013, C&L moved to intervene in this matter, seeking adjudication of its lien for attorney fees prior to distribution of any escrowed funds to Division and the Red Trust. C&L sought over $200,000 in unpaid fees and costs in addition to the $178,355.45 Division and the Red Trust had already paid.

¶ 15 After the parties submitted briefs on the attorney lien matter, the court held a hearing in July 2016. On October 13, 2016, the trial court found that Division and the Red Trust failed to meet their burden to establish the existence of a conflict of interest based on C&L's representation of them and Roger. Also, the court conducted a detailed review of C&L's billing and found that certain entries totaling $26,831 were excessive. However, the court found that the remaining $177,722 owed to C&L was reasonable, stating that this litigation was extremely

complex, spanned five years, and involved several court proceedings in three different counties. The court also awarded C&L $56,822.34 in interest, which was provided for in the parties' retainer agreement. Thereafter, the trial court found that there was no just reason to delay the enforcement or appeal of this judgment.

¶ 16 Third party defendants Division and the Red Trust timely appealed.

¶ 17 II. ANALYSIS

¶ 18 A. Conflict of Interest

¶ 19 Appellants Division and the Red Trust argue that C&L is not entitled to recover any attorney fees because the parties' retainer agreement is void due to a conflict of interest. Appellants contend that the conflict of interest arose when C&L represented both the lender and the guarantor of the loans. Specifically, appellants assert that when Division purchased or acquired Crest Hill's First National and Home State loans, Roger's interest as one of the two guarantors of those loans was adverse to Division's interest as the holder of the note entitled to recover on those loans. When Crest Hill defaulted on the loans, both Roger and Konopka were liable to make payments on the loans to Division. However, when Division filed its foreclosure action against Konopka due to his guaranty of the loans, C&L never advised Division to bring a claim against Roger as the other guarantor. Based on the evidence before us, we find that there was no conflict of interest here.

¶ 20 Courts strongly favor the freedom of parties to contract. *Chandra v. Chandra*, 2016 IL App (1st) 143858, ¶ 25. Consequently, demonstrating that a contract is void and unenforceable as violating public policy "is a difficult burden on a party seeking to challenge a contract's validity." *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*,

215 Ill. 2d 121, 129 (2005). Courts will declare a contract unenforceable as violative of public policy only when it expressly contravenes the law or a known public policy of our state, including contravention of our rules of professional conduct. *In re Marriage of Newton*, 2011 IL App (1st) 090683, ¶ 39. The party claiming that a contract is void due to a conflict of interest bears the burden of proving the existence of a conflict of interest. See *Kensington Wine Auctioneer's and Brokers, Inc. v. Joan Hart Fine Wine Ltd.*, 392 Ill. App. 3d 1, 13 (2009). Attorney fees generally will be denied when the represented parties had "adverse, conflicting, and antagonistic interests in the litigation." *In re Estate of Halas*, 159 Ill. App. 3d 818, 831 (1987); see also *McMillen v. First American Trust Co.*, 309 Ill. App. 3d 435, 441 (1999). Whether a contract is unenforceable as violative of public policy is a question of law, which we review *de novo*. *Chandra*, 2016 IL App (1st) 143858, ¶ 25.

¶ 21 Appellants' citation to Illinois Rules of Professional Conduct of 2010 Rule 1.7 (eff. Jan. 1, 2010) does not support the inference that there was a question of a conflict of interest from C&L's concurrent representation of appellants and Roger. Rule 1.7 states that an attorney is not to represent a client "if the representation involves a concurrent conflict of interest," which exists when "the representation of one client will be directly adverse to another client" or when "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer." Ill. R. Prof'l Conduct (2010) R. 1.7. There must be a substantial basis for believing that an actual conflict of interest exists in order to disqualify an attorney from representing multiple clients, not merely a potential or speculated basis. *Chandra*, 2016 IL App (1st) 143858, ¶ 34. "Critically, Rule 1.7 and its concerns regarding conflict of interest apply

when an attorney is representing one client in a lawsuit against another individual who is also a client of that attorney, thereby resulting in the same attorney being on both sides of the lawsuit." *Id*.

¶ 22 Here, there was no conflict of interest in C&L's concurrent representation of both appellants and Roger because these clients were on the same side of the lawsuit in the instant case. Furthermore, Roger was never directly adverse to appellants in this or any of the related actions during C&L's representation because Division was created as a vehicle for Roger and Douglas to recoup the money Roger had invested in Crest Hill and end the First National guaranty lawsuit against Roger. Consequently, C&L, under the direction and approval of Roger, Douglas, Division, and the Red Trust pursued a strategy whereby Douglas formed Division with the Red Trust as its sole member, Roger used his money or his funds from the Red Trust to acquire Crest Hill's mortgage loans and notes, and those mortgages and notes were ultimately held by Division, which brought a foreclosure lawsuit to recover the money Roger had invested in Crest Hill.

¶ 23 It is clear that there was no conflict of interest in C&L's representation of the parties because the aim and scope of that representation was the same for all the parties involved: to recover the funds Roger had invested in Crest Hill and end the First National guaranty lawsuit against him. For the duration of C&L's representation, Roger, Douglas, Division, and the Red Trust shared the same interest. Roger's status as the other guarantor on the loans in addition to Konopka did not change C&L's strategy, interest or responsibility to any of the parties.

¶ 24 Appellants speculate that a conflict of interest could have arisen if Roger was sued as the other guarantor of loans. Such speculation, however, is irrelevant because the facts establish that

Roger and Douglas drove the creation of Division and Division's foreclosure action to recover Roger's investment in Crest Hill. Although unforeseeable developments, such as changes in corporate affiliations or the realignment of parties in litigation, might create conflicts in the midst of a representation, no such development occurred here. Consequently, there was no significant risk that C&L's representation of appellants and Roger would have been limited by C&L's responsibilities to one or the other client. See Ill. R. Prof'l Conduct (2010) R. 1.7 Committee Comments 8 (adopted July 1, 2009) (When identifying conflicts of interest, "[t]he mere possibility of subsequent harm does not itself require disclosure and consent[; t]he critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client."). The creation of Division as a vehicle for Roger and Douglas to purchase the loan protected the property securing the loan from a third-party bank's foreclosure, which would have resulted in a 100% loss of the investment of Roger, Douglas and the Red Trust. At no time during C&L's representation of the parties was there a likelihood that Division or the Red Trust would pursue a claim against Roger on the guaranty because it was Roger's funds that were used to acquire the loans at issue.

¶ 25 The cases appellants cite to support their conflict of interest claim are wholly distinguishable. For example, *In re Marriage of Newton*, 2011 IL App (1st) 090683, involved a divorce case where the attorneys at one point consulted with a man regarding a divorce and then went on to represent that man's wife in that divorce action, thereby creating a conflict of interest. The instant case is nothing like *Newton* and we find no conflict of interest here.

¶ 26 Appellants also cite *In re Twohey*, 191 Ill. 2d 75 (2000), and *In re Demuth*, 126 Ill. 2d 1 (1988), but their reliance on those distinguishable cases is misplaced.

¶ 27 In *In re Twohey*, 191 Ill. 2d 75, the attorney convinced his client, a widow, to invest money in a startup sand processing company, which was another client of the attorney. Based on the attorney's advice, the widow loaned the company about $40,000 over three separate transactions and ultimately lost all of that money. The attorney did not challenge the finding that he had engaged in a conflict of interest; the sole issue on appeal was the appropriate sanction to impose upon the attorney. *Id*. at 85. In assessing the appropriateness of the imposed sanction, the reviewing court stated that the attorney's failure to recognize such a clear conflict of interest in his representation of both the lender and borrower to a loan transaction revealed a lack of understanding of his ethical obligations as an attorney. *Id*. at 89.

¶ 28 In *In re Demuth*, 126 Ill. 2d 1 (1988), attorney Demuth arranged an $18,000 loan between two men, deposited the lender's check in an escrow account, and kept $2,000 from the loan as a finder's fee. Demuth dispensed to the borrower $16,000 "in dribbles and drabbles" so that the borrower could finance repairs to a building he owned. However, at one point before the borrower had received all of the $16,000, the escrow account had a balance of only 11 cents. Prior to arranging this loan, Demuth had befriended the borrower, who was represented by the law firm that employed Demuth. Demuth was also the business partner and friend of the lender and had performed various legal services for him.

¶ 29 When Demuth discovered that he had failed to file the necessary documents to perfect the lender's security interest, Demuth attempted to remedy the situation by convincing the lender to consent to a transaction where the property was deeded out of a land trust and into the name of a

contractor, who had an interest in the property and applied for a $70,000 loan. The lender, however, never received any of the proceeds from the transaction with the contractor, and the borrower never repaid the lender. The lender obtained a judgment against the borrower but was not able to collect on that judgment. The court rejected as "simply erroneous" Demuth's assertion that all the parties shared a common interest and stated it was "obvious that a lender and borrower have conflicting interests." *Id*. at 9-10.

¶ 30 The instant case is distinguishable from *Twohey* and *Demuth*, and we find no conflict of interest here regarding C&L's representation of both appellants and Roger. In both *Twohey* and *Demuth*, a conflict arose because the attorney represented both the lender and borrower in the initial transaction that created the loan and, thus, those clients clearly had adverse interests concerning the payment of that loan. Here, in contrast, C&L did not represent Roger, Crest Hill or the lending banks when Crest Hill, with Roger as one of the guarantors, borrowed funds from First National Bank and Home State Bank. Rather, C&L represented Roger (and Douglas) after Crest Hill had defaulted on the loans. Moreover, C&L then created Division as a vehicle to recoup Roger's investment and end the First National guaranty lawsuit against him. Unlike the lenders and borrowers in *Twohey* and *Demuth*, appellants and Roger's interests, despite their respective status as the mortgage note-holder and a loan guarantor, were not adverse during C&L's representation of these parties.

¶ 31 Appellants also contend that a conflict of interest arose because C&L simultaneously represented Division and Roger when these clients had adverse claims for escrow funds. Specifically, in early 2012, Crest Hill was ordered by the chancery court to exercise its option to purchase an adjacent parcel of land from Roger and sell it to third-party buyers. At the time,

Division had recorded liens on that property and had to partially release its mortgage lien to allow Crest Hill to consummate the sale. The proceeds from the sale to the third-party buyers were placed in escrow accounts.

¶ 32 Appellants contend that C&L filed appearances in the chancery court on behalf of Division and Roger separately, seeking to recover the amounts each client was owed from the escrow funds. Specifically, Roger was claiming money owed from the land he sold to Crest Hill, and Division was claiming money based on its foreclosure action on Crest Hill's loans. Appellants argue that Roger and Division's competing interests in the escrow funds created a conflict of interest that caused Division, which continues to have a secured position on other Crest Hill property for the remaining debt, to suffer "material financial losses from unrealized sales proceeds."

¶ 33 C&L responds that Roger and Division received substantial benefits from C&L's representation, including the recovery of all of the approximately $6 million in escrow funds. According to the terms of the March 14, 2014 agreed order entered pursuant to the parties' settlement agreement, Roger received about $3.75 million and Division received over $2.5 million of the escrow funds. The agreed order also provided that the reserve funds, which totaled approximately $445,829.28 at the time, would be dispersed to Division after the resolution of pending matters.

¶ 34 We conclude that appellants' escrow funds conflict of interest argument lacks merit. The record establishes that C&L did not file an appearance on behalf of Roger, who always was represented independently by his three attorneys. Furthermore, as discussed above, Division was created as a vehicle for Roger to recover his investment in Crest Hill, and Division's sole owner

was Roger's Red Trust, so a recovery from escrowed funds by either Roger for the sale of his land or Division as the note holder of Crest Hill's defaulted loans was not adverse to either Roger or Division under the particular facts of this case.

¶ 35 Appellants also contend that a conflict of interest arose in the fee arrangement because Roger made all the decisions and paid Division's legal fees. To support this claim, appellants cite Rule 1.8 of the American Bar Association Model Rules of Professional Conduct (adopted by the ABA House of Delegates in 1983), and argue that a conflict "exists if there is significant risk that the attorney's representation of the client will be materially limited by the attorney's own interest in the fee arrangement or by the attorney's responsibilities to the third-party payor." Appellants argue that C&L could not comply with its duty to exercise the utmost good faith because Roger was an adverse party to Division and was paying Division's legal bills from C&L.

¶ 36 C&L responds that Roger and Douglas agreed, pursuant to their retainer agreement, that each was "jointly and severally" personally responsible for the payment of C&L's attorney fees. C&L argues that the record on appeal and public records establish that C&L's fees were initially paid by either the Churchill Cabinet Company, where Roger was the president and Douglas was the vice president, or the Duba Real Estate Fund. Furthermore, Roger and Douglas worked together in the same office space and jointly interacted in various legal and business roles in multiple entities, trusts or companies. Also, Roger and Douglas made the tax or accounting choices favorable to them when they paid C&L, which had no authority to dispute their choices about which entity they used to pay their legal fees.

¶ 37 We conclude that appellants' fee arrangement conflict of interest argument lacks merit. As discussed above, appellants have failed to establish that Roger and Division were adverse

parties during C&L's representation of these parties. Furthermore, our above analysis of Rule 1.7 of the Illinois Rules of Professional Conduct, rather than the American Bar Association's Model Rules of Professional Conduct, is relevant to our analysis of the conflict of interest issue in this case. Finally, appellants improperly raise for the first time an argument in their reply brief that Illinois Rules of Professional Conduct of 2010 Rule 1.8(f) (eff. Jan 1, 2010) supports their fee arrangement conflict of interest claim. An appellant's arguments must be made in the appellant's opening brief and cannot be raised for the first time in the appellate court by a reply brief. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017). Consequently, we do not address appellants' forfeited assertions regarding Rule 1.8(f). See *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29.

¶ 38 Because we have determined that C&L's representation of appellants and Roger was not a conflict of interest, we do not address appellants' assertions that C&L violated Rule 1.7 by not obtaining written conflict waivers from Roger and appellants, that the parties' retainer agreements were void *ab initio*, and that C&L must forfeit its attorney fees because it breached its fiduciary duties to its clients.

¶ 39 B. Denial of Additional Discovery

¶ 40 Appellants contend that the trial court erred when it denied their request for additional pretrial discovery before conducting the hearing to adjudicate C&L's attorney fee lien. Appellants argue that the trial court denied them an opportunity to conduct appropriate discovery, including deposing attorneys assigned to the case to determine what actions were taken and for what purpose. Appellants assert that the trial court's decision unfairly deprived their expert of sufficient time and access to sworn testimony in the preparation of her opinion regarding C&L's fees. Appellants also argue that the trial court failed to provide an adequate

justification for finding that their expert's report "was not entirely persua[sive]" aside from the facts that she had not practiced law in several years and had not practiced in Illinois. Furthermore, appellants claim that they should have been allowed to depose C&L partner Patrick Lamb because he testified about the reasonableness of his firm's fees and thus acted as a controlled expert witness by offering his opinion.

¶ 41 C&L responds that because appellants failed to file an answer to C&L's fee petition, the allegations of the petition are deemed admitted and, thus, appellants failed to raise a material issue of fact that would have entitled them to any discovery. Also, appellants cannot complain that the discovery process was insufficient or limited because they failed, pursuant to Illinois Supreme Court Rule 191(b) (eff. Jan. 4, 2013), to file an affidavit setting forth why discovery was necessary. Furthermore, C&L states that the trial court took judicial notice of discovery orders entered in the Circuit Court of Cook County, case No. 14 L 928, which was a legal malpractice action Division and the Red Trust had filed against C&L and Patrick Lamb. That action asserted, *inter alia*, that C&L overbilled its fees in its representation of Division and the Red Trust. C&L filed a petition in that action seeking recovery of the same fees C&L ultimately sought in this matter.

¶ 42 C&L states that the discovery orders in that legal malpractice action showed that Division and the Red Trust's attorneys had over 18 months to pursue discovery in connection with C&L's fee petition. Nevertheless, despite the extension of discovery deadlines, Division and the Red Trust did not conduct discovery or inspect the records and documents that C&L made available for inspection, aside from one instance in September 2015, when one of Division and the Red Trust's attorneys appeared at C&L's offices and sat in its conference room filled with documents

for about 45 minutes to inspect over 11,000 documents. After that review, counsel for Division and the Red Trust did not follow up with C&L to obtain copies of any of the documents, seek additional time to continue its review, or schedule a deposition of any person from C&L. Furthermore, although C&L offered the depositions of Patrick Lamb and others on multiple dates, Division and the Red Trust did not pursue those depositions. When C&L served notices and re-notices for the depositions of Roger, Douglas and Sandra Duba, none of those parties appeared. Ultimately, Division and the Red Trust dismissed the malpractice action in January 2016 and never refiled it.

¶ 43 A trial court may award attorney fees and determine the reasonableness of those fees without discovery when affidavits and detailed billing documents are submitted to the trial court. See *Raintree Health Care Center v. Illinois Human Rights Comm'n*, 173 Ill. 2d 468, 495 (1996). Furthermore, the right to discovery is limited to disclosures regarding matters that are relevant to the subject matter involved in the pending action, and discovery requests should be denied when there is insufficient evidence that the requested discovery is relevant. *Schneiderman v. Kahalnik*, 200 Ill. App. 3d 629, 636 (1990); *Rokeby-Johnson v. Derek Bryant Insurance Brokers, Ltd.*, 230 Ill. App. 3d 308, 317 (1992). Trial courts have broad discretion in ruling on discovery matters and do not abuse their discretion by denying discovery of a subject not relevant to the action or where the requested information lacks probative value or no issue of fact exists. *Schneiderman*, 200 Ill. App. 3d at 637; *U.S. Bank, N.A. v. Avdic*, 2014 IL App (1st) 121759, ¶ 39. An abuse of discretion exists where no reasonable person would take the position adopted by the trial court or where the trial court acts arbitrarily, fails to employ conscientious judgment, and ignores

recognized principles of law. *In re Marriage of Knoche*, 322 Ill. App. 3d 297, 308 (2001); *Castro v. Brown's Chicken & Pasta, Inc.*, 314 Ill. App. 3d 542, 554 (2000).

¶ 44 According to the record, the trial court denied appellants' request to conduct discovery prior to responding to C&L's fee petition because the appellants had the relevant invoices from C&L, access to C&L's entire file relating to its representation in this matter, and all the documents relevant to adjudication of the attorney fee lien. The trial court found that C&L's invoices were detailed and appellants failed to sufficiently state why they were unable to respond to the fee petition, what additional documents they sought, why the depositions of attorney Lamb and other lawyers were necessary, and why their expert could not conduct an audit from the produced records and bills. The trial court also found that appellants failed to cite any relevant authority to support the depth of discovery they sought or their allegation that a possible conflict of interest negated C&L's right to attorney fees.

¶ 45 We conclude that the trial court did not abuse its discretion by denying appellants' discovery request. The record establishes that appellants had an ample opportunity to evaluate C&L's invoices and records and failed to sufficiently state why they needed additional discovery.

¶ 46 C. Attorney Fee Award

¶ 47 Appellants contend that the trial court erred when it failed to reduce C&L's attorney fee award because those fees were excessive and unreasonable based on the firm's practices of block billing and overstaffing. According to appellants, their expert's audit established that C&L's legal work was overpriced, insufficiently documented, and block-billed. (Appellants describe "block billing" as the practice of showing on a bill one amount of time for work done on more

than one discrete task.) Appellants also claim that C&L's fee petition shows that 60% of the time billed to Roger and Division was by partners, senior attorneys, or senior associates and there was significant duplication of effort because two or more senior attorneys worked on various matters or drafted documents.

¶ 48 A trial court has broad discretionary powers to determine the reasonableness of an award for attorney fees, and its decision will not be reversed absent an abuse of discretion. *Wendy and William Spatz Charitable Foundation v. 2263 North Lincoln Corp.*, 2013 IL App (1st) 122076, ¶ 40. The trial court may use its own knowledge and experience in assessing the time required to complete particular services or activities. *Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 48. Factors the trial court may consider include the nature of the case, its difficulty level, the skill and standing of the attorney, the degree of responsibility required, the usual and customary charges for similar work, and the connection between the litigation and the fees charged. *Wendy and William Spatz Charitable Foundation*, 2013 IL App (1st) 122076, ¶ 40. Generally, matters about the value of legal services and the reasonableness of attorney fees implicate the specialized knowledge of experts and are shown by the expert testimony of either the petitioning attorney, an outside attorney or both. *Todd W. Musburger, Ltd. v. Meier*, 394 Ill. App. 3d 781, 800 (2009); *Timothy Whelan Law Associates, Ltd. v. Kruppe*, 409 Ill. App. 3d 359, 367 (2011).

¶ 49 According to the record, C&L presented the expert testimony of an independent Illinois attorney experienced in the fields of litigation and foreclosure and five C&L litigation attorneys, who opined that C&L's fees and costs were reasonable. Division presented as its expert, New York attorney Judith Bronsther, who had not practiced law in over 24 years, never practiced in

Illinois, did not practice in the field of litigation when she had practiced law for about seven years, and did not rely on the experience of an attorney with recent and relevant experience when she formed her opinion about the reasonableness of C&L's fees. Furthermore, Bronsther did not review either the thousands of documents C&L made available evidencing its work or C&L's files related to the underlying matters.

¶ 50 We find no abuse of discretion in the trial court's decision to award C&L $177,722 in attorney fees and $56,871.03 in interest. The trial court was in the best position to observe the attorneys' work and conduct in this case and to assess the credibility of the expert witnesses. Our review of the record establishes that the trial court conducted a detailed review of C&L's invoices, and the record supports the trial court's observations that Bronsther's testimony was not persuasive and this litigation was extremely complex, had spanned five years, and involved several court proceedings in three different counties.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we conclude that appellants failed to establish the existence of a conflict of interest regarding C&L's representation of appellants and Roger. We also conclude that the trial court did not abuse its discretion by denying appellants' discovery request and awarding C&L attorney fees and interest. Accordingly, we affirm the judgment of the trial court.

¶ 53 Affirmed.