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).

2018 IL App (3d) 170010-U

Order filed October 9, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

EDWARD BUTLER and ELAINE BUTLER,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Plaintiffs-Appellees and	)	La Salle County, Illinois.
Cross-Appellants,	)	
	)	
v.	)	Appeal No. 3-17-0010
	)	Circuit No. 90-CH-60
JAMES GORD and WENDY GORD,	)	
	)	
Defendants-Appellants and	)	Honorable Joseph P. Hettel,
Cross-Appellees.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justice O'Brien concurred in the judgment.
Justice Wright, concurred in part and dissented in part.

ORDER

¶ 1 *Held*: (1) The trial court did not err by (a) finding an apparent agency agreement terminated upon the filing of this lawsuit; (b) awarding plaintiffs rent based on their respective interests; (c) declining to impose sanctions against plaintiffs and their attorneys; (d) allowing an attorney to testify at trial; or (e) denying defendants' request to amend their complaint at the eleventh hour. (2) Defendants waived their claims regarding the trial court's (a) failure to award them rent or (b) alleged finding that defendant's knowledge of certain exhibits barred them from seeking sanctions. (3) The trial court erred by failing to award plaintiffs pre-judgment interest for unpaid rents between 1994 and 2007.

¶ 2 Defendants, James and Wendy Gord, appeal; plaintiffs, Edward, Stephen, and Elaine Butler, cross-appeal from the trial court's September 15, 2016, order that (1) awarded plaintiffs the sum of $14,674 for one-seventh of the stipulated land rents for 1990 through 1993 and the sum of $1097 for one-seventh of the stipulated rents for the east farmhouse for 1992 and 1993; (2) denied plaintiffs' claim for attorney fees; (3) denied plaintiffs' claim for prejudgment interest on the farm rents; (4) denied defendants' request for sanctions; and (5) denied defendants' request for an accounting. Stephen Butler is no longer a party to this appeal as he died on or about October 30, 2011.

¶ 3 Specifically, defendants assert that the trial court erred by (1) awarding plaintiffs rent where defendants did not take more than their proportional share of the property; (2) failing to award rents to them where plaintiffs took more than their proportional share of the common property; (3) finding plaintiffs were not bound by certain agreements made prior to the filing of the lawsuit; (4) declining to impose sanctions against plaintiffs and their attorneys; (5) allowing an attorney to testify as a witness at trial; (6) finding that defendants' alleged knowledge of certain exhibits prior to a December 2007 agreed order barred them from seeking sanctions; and (7) declining defendants' request to amend their complaint to (a) seek relief for the value of Wendy's interest transferred to plaintiffs immediately prior to the filing of the lawsuit and (b) add a conspiracy count.

¶ 4 In their cross-appeal, plaintiffs maintain that the trial court erred by denying their request for prejudgment interest on the farm rents for the years 1994 through 2007.

¶ 5 For the reasons that follow, we affirm in part and reverse and modify in part.

¶ 6 FACTS

¶ 7 This case dates back nearly 28 years when, in July 1990, plaintiffs filed their initial complaint for partition of the subject property located in La Salle County that includes 214 tillable acres and two houses (the farm). Prior to the filing of this lawsuit, the parties' grandparents, Rufus and Lillian, owned the farm. Rufus died intestate in December 1981. Lillian died intestate in August 1983. Following their deaths, six of their seven children, Allyn, Grace, Ruth, Julia, Phyllis and Lawrence, inherited a one-seventh interest in the farm. The other child, Marten, "disclaimed" his one-seventh interest in the farm in favor of his three children, plaintiffs Stephen and Edward and defendant Wendy, who each inherited a one-twenty-first interest.

¶ 8 In June 1986, Allyn and Lawrence each conveyed their one-seventh interests in the farm to defendants. In October 1989, Grace, Ruth, and Julia each conveyed their one-seventh interests in the farm to defendants.

¶ 9 On May 16 and May 18, 1990, Edward and Stephen respectively executed separate documents authorizing Marten to act on their behalf regarding their respective interests in the farm. On May 25, 1990, Wendy apparently conveyed her interest in the farm to plaintiffs as tenants in common. As of the filing of plaintiffs' October 1991 amended complaint for partition, the ownership interests were purportedly as follows: Edward owned an undivided one-fourteenth interest in the farm; Phyllis owned an undivided one-seventh interest in the farm subject to an option to purchase agreement between her and James; James owned an undivided five-fourteenths interest in the farm; Wendy owned an undivided five-fourteenths interest in the farm; Stephen owned an undivided one-twenty-eighth interest in the east 23 acres of the farm and an undivided one-fourteen interest in the rest of the farm; and Elaine Butler owned an undivided one-twenty-eighth interest in the east 23 acres of the farm.

¶ 10 In April 1993, the parties entered an agreed order that directed them to sell the farm at a public auction and that Edward and Stephen execute a corrective deed to Wendy for her one-twenty-first interest in the farm. In addition, the order stated, "In the event the property is sold as a whole, then Plaintiffs Edward, Stephen and Elaine Butler agree to collectively accept 1/7 of the proceeds of sale as their fractional interest in the property." The plaintiffs did not sign the order but Marten did.

¶ 11 In July 1993, the farm was sold at a public auction. James was the highest bidder. Prior to the auction, Marten removed a bathroom from the machine shed as compensation for money James apparently owed him. James never closed on the sale of the property.

¶ 12 On December 10, 2007, the parties entered an agreed order providing that (1) defendants shall pay plaintiffs the sum of $298,224 for their interests in the farm based on a value of $9000 per acre, less credit of $19,000 for plaintiffs' one-seventh share of real estate taxes for the years 1989 through 2007; (2) defendants shall pay plaintiffs the sum of $18,284 representing their one-seventh share of the building rentals on the farm for the years 1994 through 2007; and (3) defendants shall pay plaintiffs the sum of $19,671 representing plaintiffs' claim for cash rent for the years 1989 through 1993, and the sum of $6530 representing plaintiffs' claim for building rentals for years 1989 through 1993. The agreed order also provided that:

> "The remaining issues pending before the Court regarding [plaintiffs'] claim for cash rent and building rents for the years 1989 through 1993 and for attorney's fees and for interest owed on cash rent and building rentals shall be determined by the Court after hearing on those issues at such time as the Court may determine. Except for the remaining issues of interest and

attorney's fees, this order constitutes a full settlement of any and all claims either party has against the other."

¶ 13 Marten died in July 2002. After his death, defendants came into possession of his papers, which included the May 1990 documents authorizing Marten to act on Edward's and Stephen's behalf regarding their interests in the farm. In July 2012, defendants filed a second amended motion for sanctions pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) and a first amended motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 14 The trial court conducted a hearing on all remaining issues between the parties over five days in July 2016. On September 15, 2016, the court entered its order that (1) awarded plaintiffs the sum of $14,674 for one-seventh of the stipulated land rents for 1990 through 1993 for 214 acres and the sum of $1097 for one-seventh of the stipulated rents for the east farmhouse for 1992 and 1993; (2) denied plaintiffs' claim for attorney fees; (3) denied plaintiffs' claim for prejudgment interest on the farm rents; (4) denied defendants' request for sanctions; and (5) denied defendants' request for an accounting.

¶ 15 Defendants appeal. Plaintiffs cross-appeal.

¶ 16 ANALYSIS

¶ 17 A. Defendants' Appeal

¶ 18 On appeal, defendants assert that the trial court erred by (1) awarding plaintiffs rent where defendants did not take more than their proportional share of the property; (2) failing to award rents to them where plaintiffs took more than their proportional share of the common property; (3) finding plaintiffs were not bound by an oral agency agreement made prior to the filing of the lawsuit; (4) declining to impose sanctions against plaintiffs and their attorneys; (5)

allowing attorney William Hotopp to testify as a witness at trial; (6) finding that defendants' alleged knowledge of certain exhibits prior to a December 2007 agreed order barred them from seeking sanctions; and (7) declining defendants' request to amend their complaint to seek relief for the value of Wendy's interest transferred to plaintiffs immediately prior to the filing of the lawsuit and to add a conspiracy count.

¶ 19 1. *Propriety of the Trial Court's Finding that the Agency Relationship Terminated Upon Filing of Lawsuit and Its Affect on Rent*

¶ 20 Defendants challenge the trial court's (1) finding that the agency agreement between defendants and Marten terminated upon the commencement of the lawsuit and (2) decision to award plaintiffs the sum of $14,674 for one-seventh of the stipulated land rents for 1990 through 1993 for 214 acres and the sum of $1097 for one-seventh of the stipulated rents for the east farmhouse for 1992 and 1993.

¶ 21 Initially, we note that the parties do not dispute the trial court's finding that Marten was the apparent agent for plaintiffs and, by virtue of that relationship, possessed the authority to enter into an agreement with defendants, waiving plaintiffs rights to their share of rents from the property in exchange for Marten living in the west house and using a machine shed rent free. Defendants take issue, however, with the court's finding that the apparent agency relationship between Marten and plaintiffs terminated upon the filing of this lawsuit in July 1990. Defendants argue that plaintiffs cannot unbind themselves from the agency agreement by the mere filing a lawsuit especially "when [they] accepted a benefit from the Agency" in the form of a bathroom Marten removed from a machine shed and reinstalled in a home owned by one of the plaintiffs. We disagree.

¶ 22 It is well settled that a "principal may revoke the authority of his agent at his mere pleasure" unless the agency "is coupled with an interest, or where it is given for a valuable

consideration, or where it is part of a security." *Walker v. Denison*, 86 Ill. 142, 145 (1877). In this case, there is no indication that any of the exceptions to the revocability of the agency agreement exists. Accordingly, we find no error with the trial court's determination that any apparent agency agreement terminated once plaintiffs asserted their rights to the property by filing a partition suit. Further, defendants fail to persuade us that Marten's removal of the machine shed bathroom and its reinstallation of those facilities at a home owned by one of the plaintiffs somehow prohibits plaintiffs from renouncing the agency relationship with their father. The record shows that Marten removed the bathroom sometime around March 1993—nearly three years after the agency agreement terminated—and reinstalled it at the home in which he and his wife later moved. Although that house was titled in one of the plaintiffs names, Marten—not plaintiffs—received the benefit of the use of the bathroom.

¶ 23 Having found the trial court did not err by finding the agency agreement terminated as of July 1990, we now consider the propriety of awarding plaintiffs rent based on their respective interests. Defendants assert that section 4a of the Joint Tenancy Act (765 ILCS 1005/4a (West 2016)) precludes plaintiffs from collecting rent because defendants did not take more than their proportional share of the property. Section 4a of the Joint Tenancy Act provides:

> "When one or more joint tenants, tenants in common or co-partners in real estate, or any interest therein, shall take and use the profits or benefits thereof, in greater proportion than his or their interest, such person or persons, his or their executors and administrators, shall account therefor to his or their cotenants jointly or severally." *Id.*

¶ 24 In response, plaintiffs assert that the Act is not applicable because the parties entered into an agreed order in December 2007 that provided, in pertinent part, "[e]xcept for the remaining

issues of interest and attorney's fees, this order constitutes a full settlement of any and all claims either party has against the other" including plaintiffs' claims "for cash rent and building rents for the years 1989 through 1993."

¶ 25 Our review of the record reveals that the December 2007 agreed order reserved the issue of rents for the years 1989 to 1993. Specifically, it provided that plaintiffs' "claim for cash rent and building rents for the years 1989 through 1993 *** shall be determined by the Court after hearing on those issues." This hearing did not take place until July 2016. Nonetheless, we find the Joint Tenancy Act does not preclude the rents awarded to plaintiffs in this case.

¶ 26 We note that in their "total benefits" calculation, defendants include the following chart, based on the parties' stipulated fair market values:

Period	Benefits from East House	Benefits from Farm Land	Benefits from West House	Total Benefits
1990 (Jan-May)	$1750	$10700	$2250	$14700
1990 (June-Dec)	$2450	$14980	$3150	$20580
1991	$4200	$25680	$5400	$35280
1992	$4200	$25680	$5400	$35280
1993	$4200	$25680	$5400	$35280

Then, based on the total possible fair market rental value of the property, defendants calculate the percentage of benefits they received as follows:

Period	Defendants' Interest in the Property	Defendant's % of Interest in the Property	Total Possible Benefit Based on Above Chart	Defendants Taking of Benefits	% of Benefits Received by Defendants
1990 (Jan-May)	19/21	90.48%	$14700	$10700	72.79%
1990 (June-Dec)	6/7	85.71%	$20580	$14980	72.79%
1991	6/7	85.71%	$35280	$25680	72.79%
1992	6/7	85.71%	$35280	$29520	83.67%
1993	6/7	85.71%	$35280	$29520	83.67%

¶ 27 Based on the above numbers, they conclude that they did not take more than their proportional share of the property and, thus, do not have to account to plaintiffs for their share of benefits. In calculating the percentage of benefits they received, however, defendants include the fair market value of the west house for which no rents were collected because the parties' father lived their rent free during the time period at issue. This is inappropriate. The result for removing the fair market value for rents from the west house from the calculation is as follows:

Period	Defendants' Interest in the Property	Defendant's % of Interest in the Property	Total Possible Benefit Based on Above Chart	Defendants Taking of Benefits	% of Benefits Received by Defendants
1990 (Jan-May)	19/21	90.48%	$14700	$10700	72.79%
1990 (June-Dec)	6/7	85.71%	$17430	$14980	85.94%
1991	6/7	85.71%	$29880	$25680	85.94%
1992	6/7	85.71%	$29880	$29520	98.80%
1993	6/7	85.71%	$29880	$29520	98.80%

Thus, when the benefits from the west house are not included in the calculations, it becomes clear that defendants took more than their proportional share and are accountable to plaintiffs under the Joint Tenancy Act. Accordingly, the trial court did not err by awarding rents to plaintiffs based on their respective interests.

¶ 28 2. *Propriety of the Trial Court's Denial of Defendants' Motion for Sanctions*

¶ 29 a. Rule 137 Sanctions

¶ 30 Defendants next assert that the trial court erred by declining to impose Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) sanctions against plaintiffs and their attorneys.

¶ 31 "Rule 137 is designed to penalize the litigant who pleads false or frivolous matters or who brings a lawsuit without any basis in the law." *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 191 (2003). " '[U]nder Rule 137, sanctions may be granted under two different circumstances:

(1) when a pleading, motion, or other paper is not "well grounded in fact" or is not "warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law," or (2) when it is interposed for purposes such as to "harass or to cause unnecessary delay or needless increase in the cost of litigation." ' " *Patton v. Lee*, 406 Ill. App. 3d 195, 202 (2010) (quoting *People v. Stefanski*, 377 Ill. App. 3d 548, 551 (2007), quoting Ill. S. Ct. R. 137). We will not disturb a trial court's decision regarding Rule 137 sanctions absent an abuse of discretion. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007).

¶ 32 In this case, defendants sought Rule 137 sanctions based on documents that they found while going through Marten's belongings after his death; specifically, the May 1990 documents in which plaintiffs granted Marten "full authority to act [on their] behalf regarding [their] interest in property derived from the estate of [their grandparents.]" Based on these documents, defendants asserted that the pleadings complained of in their first amended motion for sanctions were not well grounded in fact, not supported by existing law, and interposed for an improper purpose. In particular, in their motion, defendants pointed to a position paper submitted by plaintiffs' attorney in January 1994 objecting to defendants' request to take plaintiffs' discovery depositions. In the position paper, plaintiffs' counsel denied that plaintiffs ever "authorized Marten Butler or anyone else to act as their agent in dealing with James Gord in matters related to the farming of the subject premises."

¶ 33 The record shows that the trial court acknowledged the existence of these documents and found that plaintiffs' attorney should have disclosed the authorizations. However, the court went on to find that the plaintiffs most likely gave Marten the authorizations at issue so he could talk to the attorney and file this partition suit. This finding is supported by the fact that the lawsuit was filed less than two months later. As noted, the decision to award Rule 137 sanctions lies in

the trial court's discretion and based on the record before us, we find the court did not abuse its discretion by denying Rule 137 sanctions.

¶ 34 b. Rule 219 Sanctions

¶ 35 Defendants also challenge the trial court's denial of Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) sanctions.

¶ 36 Rule 219(c) "authorizes a trial court to impose a sanction *** upon any party who unreasonably refuses to comply with any provisions of this court's discovery rules or any order entered pursuant to these rules." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998); Ill. S. Ct. R. 219(c) (eff. July 1, 2002). We will not disturb a trial court's determination of whether to impose Rule 219(c) sanctions absent an abuse of discretion. *Id.*

¶ 37 Defendants' contention of error on this basis is extremely muddled, but it appears that defendants' main argument is that the trial court erred by finding the December 10, 2007, order prevented an award of Rule 219 sanctions against plaintiffs and their attorneys. Our review of the record, however, reveals that the trial court never concluded its earlier order prevented an award of sanctions. In fact, the court stated:

> "If you'll all recall, I ruled that the only issues remaining in this case were the claims of the Butlers. That was my finding. We had a hearing on that so I'm not going to change that. Those are the only remaining issues *except for the issues that could be raised under 137 and 219 and those are sanctions*."

Accordingly, we reject defendants' contention and find the trial court did not abuse its discretion by denying Rule 219(c) sanctions.

¶ 38 3. *Propriety of Allowing the Testimony of Attorney William Hotopp*

¶ 39 Next, defendants assert that the trial court erred by allowing attorney William Hotopp to testify at trial. However, other than citing to Rule 1.6 of the Illinois Rules of Professional Conduct, defendants merely appear to argue generally, without describing the testimony that they take issue with, that Hotopp's testimony somehow violated their attorney-client privilege. Defendants are wrong.

¶ 40 Assuming that defendants are referring to Hotopp's testimony regarding the documents that defendants found in Marten's belongings after his death, *i.e.*, the papers giving Marten the authority to act on plaintiffs' behalf regarding their interest in the property, we note that defendants brought these papers into issue in the first place. Having done so, they cannot now claim attorney-client privilege. Further, the record shows that Hotopp's testimony related to a conversation with James Gord and a third party. It is well settled that communications occurring in the presence of a third party are not privileged. *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 36. While plaintiffs assert that the third party "was identified on the record *** as a licensed attorney who represented the Gords in various matter [*sic*] since 1986," they fail to cite to the record for support. We will not sift through the enormous record in this case to find support for plaintiffs' contention. Accordingly, we find the trial court did not err by allowing attorney Hotopp to testify.

¶ 41 4. *Propriety of Denying Defendants' Request To Amend Their Complaint*

¶ 42 Defendants also assert the trial court erred by not allowing them to amend their complaint to seek relief for the value of Wendy's interest transferred to plaintiffs prior to the filing of this lawsuit and to add a count for conspiracy.

¶ 43 We review a trial court's denial of a motion for leave to file an amended complaint for an abuse of discretion. *Keefe-Shea Joint Venture v. City of Evanston*, 364 Ill. App. 3d 48, 61 (2005).

An abuse of discretion exists only where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 44 The record shows that defendants sought leave to amend their complaint on August 1, 2016—more than 26 years after this litigation began, after the trial court conducted its July 2016 hearing on all remaining issues, and just one month before the court entered its final order. Based on our review of the record, we find the trial court did not abuse its discretion in denying defendants' eleventh-hour filing of their motion for leave to file an amended complaint, which came just weeks before the trial court intended to close this case forever.

¶ 45 5. *Defendants' Remaining Contentions of Error are Waived*

¶ 46 Defendants' remaining contentions of error include whether (1) the trial court erred by failing to award rents to them where plaintiffs took more than their proportional share of the common property and (2) "It was an error in the application of law for the Court to determine that the Defendants alleged knowledge of Defendants' Exhibit Number[s] 45 and 46 prior to the entry of the December 10, 2007[,] Agreed Order barred the Defendants from seeking sanctions in this matter." Defendants cite no authority in support of either argument. Supreme Court Rule 341(e)(7) (eff. Nov. 1, 2017) requires an appellant to cite authority in support of his arguments on appeal. Because defendants failed to do so, we find these argument are waived and decline to address them. See *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) ("The consequence of not complying with Supreme Court Rule 341 is waiver of those issues on appeal.").

¶ 47 B. Plaintiffs Cross-Appeal

¶ 48 In their cross-appeal, plaintiffs maintain that the trial court erred by denying their request for prejudgment interest on the farm rents for the years 1994 through 2007 where defendants acted in bad faith in withholding rents.

¶ 49 "In Illinois, prejudgment interest may be recovered when warranted by equitable considerations, and disallowed if such an award would not comport with justice and equity." *In re Estate of Wernick,* 127 Ill. 2d 61, 87 (1989). "Whether equitable circumstances support an award of interest is a matter lying within the sound discretion of the trial judge." *Id.* We will not disturb a trial court's decision regarding prejudgment interest absent an abuse of discretion. *Id.*

¶ 50 In support of their contention that prejudgment interest should be awarded, plaintiffs direct our attention to multiple instances—supported by the record—where defendants either stalled the proceedings or blatantly disregarded court orders. For their part, defendants maintain that plaintiffs are not entitled to prejudgment interest because they "do not come before the court with clean hands." Specifically, defendants point to plaintiffs' denial of an agency agreement with Marten.

¶ 51 Initially, we note that based on our review of the record, it appears defendants never raised the issue of unclean hands as an affirmative defense at the trial level. See *Thomson Learning, Inc. v. Olympia Properties, LLC,* 365 Ill. App. 3d 621, 634 (2006) ("The doctrine of unclean hands bars equitable relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation."). While defendants direct our attention to the trial court's statement that plaintiffs "should have disclosed" the documents purporting to show an agency relationship between plaintiffs and Marten, the court made this statement in the context of rejecting plaintiffs' argument that the documents did not confirm an agency relationship. Because defendants failed to raise the doctrine of unclean hands below, the argument is waived. *Fauley v. Metropolitan Life Insurance Co.,* 2016 IL App (2d) 150236, ¶ 55.

¶ 52 On the issue of prejudgment interest, we find *Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund of Chicago,* 128 Ill. App. 3d 678 (1984), a case that concerned an award

of prejudgment interest on certain judgments for retroactive widows' annuity payments, instructive. In that case, the widow's husband, a battalion chief with the Chicago Fire Department, died entitling a widow's annuity. *Id.* at 680. The defendant Board paid the plaintiff for two years based on a construction of the relevant statute that resulted in increased annuity payments whenever salaries for positions similar to those held by her husband increased. *Id.* Thereafter, however, the defendant Board changed its interpretation of the statute and essentially froze the amount of annuity payments to the plaintiff without telling her. *Id.* On appeal, the court affirmed the trial court's award of prejudgment interest, finding the defendant deliberately concealed its change in statutory construction and that such "behavior can reasonably be said to constitute the element of bad conduct necessary to find either an equitable or a statutory basis for awarding prejudgment interest." *Id.* at 683.

¶ 53 In this case, it does not appear that defendants ever disputed they owed rent to plaintiffs after Marten moved off the farm property in 1993. In fact, at trial, James "c[ould not] remember" any reason why he did not pay plaintiffs rents for their shares after Marten left the property. Similar to the bad conduct that entitled the widow to an award of prejudgment interest in *Kozak*, defendants in this case wrongfully deprived plaintiffs of rents that were rightfully theirs following Marten's 1993 departure. See also *Finley v. Finely*, 81 Ill. 2d 317, 332 (1980) (upholding the allowance of interest where "[f]or well over 10 years, plaintiff was deprived of money *** which was rightfully hers" and "[f]or the same length of time, defendant enjoyed the use of the money." Thus, we find the trial court abused its discretion in denying plaintiffs' prejudgment interest for the farm rents from 1994 through 2007.

¶ 54 Finally, we note that plaintiffs presented expert testimony below, with no objection from defendants, indicating $29,583 as the appropriate amount of interest for rents defendants

withheld from plaintiffs between 1994 and 2007. Defendants do not take issue with this calculation on appeal. The partial dissent raises an argument never made by defendants. Not in the trial court. Not here. Accordingly, we reverse the trial court's denial of prejudgment interest on rents for the years 1994 through 2007 and we enter an award of interest to plaintiffs in the amount of $29,583.

¶ 55 CONCLUSION

¶ 56 All good things must end. So it is true for this litigation. For the foregoing reasons, we affirm the circuit court of La Salle County's (1) finding that the apparent agency agreement terminated upon the filing of this lawsuit; (2) award of rent to plaintiffs based on their respective interests; (3) denial of sanctions; (4) decision to allow an attorney to testify at trial; (5) denial of defendants' request to amend their complaint at the eleventh hour; (6) finding that defendants were not entitled to an award for rent; and (7) finding that defendant's knowledge of the documents supporting the existence of an agency relationship between plaintiffs and Marten barred them from seeking sanctions. However, we reverse the court's denial of prejudgment interest in favor of plaintiffs for unpaid rents between 1994 and 2007 and enter judgment in favor of plaintiffs in the amount of $29,583 in prejudgment interest. We do this ourselves for fear that a remand for the trial court to do it will result in another 15 years of litigation. Unless the supreme court decides to entertain any petition for leave to appeal filed in response to this order, this case is over.

¶ 57 Affirmed in part; reversed and modified in part.

¶ 58 JUSTICE WRIGHT, concurring in part and dissenting in part:

¶ 59 I agree with the majority's well written and very thorough analysis on all issues, with just one exception. I would affirm the trial court's decision to deny prejudgment interest and would not award prejudgment interest in an amount that exceeds the statutory 5% rate.

¶ 60 This experienced trial court judge has demonstrated a judicious and solid understanding of the complex issues litigated in the circuit court. This court has affirmed every other difficult decision the trial court made during the course of this prolonged litigation. Finding a judicial officer has abused his judicial discretion is a strong conclusion that is unfairly assigned when a reviewing court would have done things differently if we had been sitting in the trial court.

¶ 61 I find guidance in the approach of our supreme court in *Finley v. Finley*, 81 Ill. 2d 317 (1980). In that decision, our supreme court affirmed the *trial court's* award of prejudgment interest. Notably, unlike the case at bar, the trial court made the decision to award prejudgment interest rather than the appellate court. In that same decision, our supreme court disapproved the *appellate* court's decision to award attorneys fees on the grounds that the trial court had declined a similar request for attorney's fees. Our supreme court stated:

> "It should be remembered that following the hearing and after considering the financial resources of the parties as required by section 508(a), the trial court had denied the plaintiff's petition for attorney's fees at the trial level. Since this was a factual determination made by the trial court following an evidentiary hearing it would appear that the same evidence which was insufficient to support the allowance of attorney's fees at the trial level would not be sufficient to support an award of attorney's fees for the defense of the appeal. We, therefore, conclude that the

> appellate court's order that the defendant pay plaintiff's attorney's fees for the defense of the appeal was not appropriate." *Id.* at 334.

¶ 62 After careful consideration, I believe the rationale expressed by our supreme court in *Finley* should control the award of prejudgment interest in this appeal. The trial court's judgment should take precedence.

¶ 63 The trial court judge has become familiar with the parties, observed the demeanor of the witnesses, considered the positions argued by counsel on behalf of their clients, and made a determination that prejudgment interest should not be awarded. Similarly, the trial court denied defendants' request for the court to assess various monetary sanctions against plaintiffs. The trial court's approach has been measured and judicious. I respectfully disagree that this record supports a conclusion that the trial court abused its discretion.

¶ 64 As previously stated, I would affirm the trial court's order in all respects, including the denial of prejudgment interest.