2019 IL App (1st) 170813-U

FOURTH DIVISION
March 21, 2019

Nos. 1-17-0813, 1-17-1841, & 1-17-2326 Cons.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re MARRIAGE OF	)	
	)	
PAMELA HARNACK,	)	Appeal from the
	)	Circuit Court
Petitioner-Appellant,	)	Cook County.
	)	
and	)	
	)	No. 08 D 02844
STEVE FANADY,	)	
	)	
Respondent-Appellee,	)	
JEROME ISRAELOV,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11 CH 7166
	)	
STEVE FANADY and ALPHA INDUSTRIES, LLC,	)	
	)	
Defendants,	)	
	)	
(Steve Fanady, Defendant-Appellee)	)	
CBOE HOLDINGS, INC., and COMPUTERSHARE	)	
SHAREOWNER SERVICES, LLC,	)	

Plaintiffs,	)	
v.	)	No. 11 CH 35656
STEVE FANADY, PAMELA HARNACK, MICHELLE MARME, JEROME ISRAELOV, ALPHA INDUSTRIES, LLC, FANMARE, and GRUND & LEAVITT, P.C.,	)	
Defendants,	)	
(Steve Fanady, Michelle Marme, and Jerome Israelov, Defendants-Appellees; Pamela Harnack, Defendant-Appellant).	)	Honorable David E. Haracz Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Petitioner's appeals against respondent dismissed for lack of jurisdiction where the orders appealed from were not final. As to petitioner's claims against respondent's business partners, the trial court properly denied petitioner's motion to reconsider based on a purported misapplication of law.

¶ 2 This is the third appeal in proceedings regarding the ownership and proper division of certain shares of Chicago Board Options Exchange, Inc. (CBOE) stock, and other related issues. This appeal arises from three consolidated actions: (1) a divorce action between petitioner Pamela Harnack and respondent Steve Fanady; (2) a breach of partnership agreement, conversion, and breach of fiduciary duty action brought by plaintiff Jerome Israelov against Fanady and Alpha Industries, LLC (Alpha), an entity solely owned and controlled by Fanady; and (3) an interpleader action brought by plaintiff CBOE Holdings, Inc. (CBOE Holdings) and its stock transfer agent Computershare Shareowner Services LLC against Harnack, Fanady, Israelov, Alpha, Michele Marme, Fanmare, and Grund & Leavitt P.C.

¶ 3 Many of the underlying facts have been extensively set out in the prior two appeals in this case. The following background is taken from those appellate decisions, and we have included additional facts relevant to the resolution of the instant appeal.

¶ 4 Harnack initiated a dissolution action against Fanady in March 2008. Fanady initially participated in the proceedings, but later stopped participating, and a default judgment was entered against him on November 1, 2010.

¶ 5 In February 2011, Harnack moved for a temporary restraining order and preliminary injunction seeking to bar Fanady or his agents or enterprises from transferring any assets, in particular shares of CBOE stock. The trial court granted Harnack's motion on February 15, 2011.

¶ 6 Also in February 2011, Israelov filed a breach of partnership action against Fanady and Alpha, which was consolidated with the dissolution action. Israelov claimed that he and Alpha entered into a partnership named ISRFAN, for the purpose of purchasing a membership, also known as a "seat," at the CBOE. Israelov and Alpha each contributed $1,312,500 for the purchase of a CBOE seat. In June 2010, CBOE became a publicly traded company and it exchanged 80,000 shares of stock for each seat. The ISRFAN shares were issued to Alpha, which had held the seat for the benefit of the partnership.

¶ 7 Israelov alleged that in January 2011, Fanady withdrew 40,000 shares of the CBOE stock. Israelov maintained that he was entitled to receive 20,000 of the 40,000 released shares, but that Fanady did not deliver the shares to ISRFAN for disbursement in accordance with the partnership agreement. Israelov requested, among other things, that the court enter an order requiring Fanady to immediately deliver 20,000 of the released shares, and issue a temporary restraining order and preliminary injunction enjoining Fanady and Alpha from taking delivery of the remaining 40,000 shares.

¶ 8 On August 3, 2011, the trial court held a prove-up hearing on the dissolution action, during which it heard testimony from Harnack. Fanady did not appear, and none of the other parties in the other two actions were parties to the dissolution proceedings. That same day, the trial court entered a judgment for dissolution of marriage. In that judgment, the court found that Fanady was worth approximately $7.3 million as of March 2010, while Harnack had minimal income and was unable to support herself. The court further found that during the marriage, Harnack and Fanady acquired assorted marital property, including "the equivalent of 320,000 shares of [CBOE] stock (Steve Fanady being 100% owner of at least 280,000 [shares])." The court found that the CBOE stock owned in the names of Fanady, Alpha, Fanmare, ISRFAN and Pantheon, LLC, another Fanady enterprise, was property acquired during the marriage and awarded Harnack 140,000 shares of the CBOE stock. The court ordered CBOE Holdings and Computershare to transfer 120,000 shares to Harnack within 10 days, and further ordered that "[f]orty thousand shares currently registered to Alpha LLC and so held shall be placed in an escrow account pending resolution of Israelov's claim." The court then awarded Fanady "the balance of the shares of CBOE stocks (not awarded to [Harnack])."

¶ 9 The trial court also awarded Harnack the marital home, which was encumbered by a $690,460 lien imposed by the Internal Revenue Service (IRS) for Fanady's unpaid personal income taxes. The court ordered Fanady to execute a deed and transfer all rights and title to the property from the trust in which the house was held to Harnack within 14 days of the judgment. In a separate provision, the court "requested" that the IRS release any liens on the property.

¶ 10 Thereafter, in October 2011, CBOE Holdings filed a complaint in interpleader against all parties claiming a portion of the CBOE stock held in the name of either Alpha or Fanmare, as well as dividends. CBOE Holdings asserted that only 120,000 shares of CBOE stock remained

(80,000 shares held in the name of Alpha, and 40,000 shares held in the name of Fanmare), and due to the conflicting claims, CBOE Holdings was in doubt as to who had the legal right to those shares. The action sought a determination of the rights of all defendants for the disputed stock and dividends. The interpleader action was consolidated with the dissolution and breach of partnership actions in January 2012.

¶ 11 In April 2012, approximately nine months after the judgment for dissolution of marriage was entered, Fanady returned to the trial court and filed a motion to set aside the judgment for dissolution of marriage pursuant to section 2-1301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301 (West 2010)), or in the alternative, under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). In May 2012, the trial court denied Fanady's motion, finding that section 2-1301 did not apply, and that Fanady failed to show due diligence as required by section 2-1401.

¶ 12 Fanady appealed, and this court affirmed the trial court's denial of Fanady's motion to vacate. However, we remanded for the "sole purpose of clarifying the trial court's intent with regard to the 40,000 CBOE Holdings shares to be transferred to escrow." *Harnack*, 2014 IL App (1st) 121424, ¶ 67. This court noted that, "[g]iven that conflicting interpretations of the transfer provision in the judgment for dissolution of marriage have arisen and that CBOE Holdings and Computershare have informed the court that they are holding only 120,000 shares, we *sua sponte* remand to the trial court to amend the judgment for dissolution of marriage to clarify this point." *Id.* ¶ 66. Fanady filed a petition for leave to appeal to the supreme court in January 2015, which was denied on September 30, 2015. Following the denial, the appellate court mandate issued on November 12, 2015.

¶ 13 Meanwhile, in March 2015, Harnack filed a motion to modify the previously entered injunction orders of the trial court, requesting, among other things, that the court direct CBOE Holdings to distribute 80,000 shares of CBOE stock to her as provided in the judgment. Israelov, Marme, and Fanmare filed objections to Harnack's motion. The trial court denied Harnack's motion, finding that "the third party issues have to get resolved before any release of any of these shares is ordered," and it "would be *** detrimental to these third parties if these shares were released."

¶ 14 Harnack filed the second appeal in this matter pursuant to Supreme Court Rule 307(a) (eff. Feb. 26, 2010), which allows for interlocutory appeals from orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." However, this court concluded that the circuit court lacked jurisdiction to consider Harnack's motion, since the mandate had not yet issued in the prior appeal. *Harnack*, 2016 IL App (1st) 151874-U, ¶ 22. We thus vacated the circuit court's order in a Rule 23 order filed March 31, 2016 (*id.*), and the proceedings continued in the trial court.

¶ 15 After extensive briefing regarding the proper distribution of the CBOE shares, the circuit court held a three-day trial on April 4, 5, and 6, 2017, during which the court heard testimony from Harnack, Fanady, Israelov, Marme, and Harnack's former counsel.

¶ 16 On July 11, 2017, the trial court entered an order, noting that the issue before the court was "the ownership of 120,000 shares of CBOE Holdings Inc. stock and the associated dividends held by Computershare." The court noted that there had:

> "been great delay and upheaval caused mostly by the many machinations of Steve Fanady in his attempt to deceive his ex-wife and his former business partners. It was Mr. Fanady's antics that created the chaos in the pre-decree divorce case. It

> was Mr. Fanady who fabricated a judgment and forged a judge's stamp.[1] It was Mr. Fanady who transferred an additional 120,000 shares of stock to locations which he now refuses to disclose."

¶ 17 The trial court then made substantial factual findings based on the trial evidence, which are summarized below.

¶ 18 Prior to June 14, 2010, members of the CBOE owned CBOE "memberships" which were commonly referred to as "seats." On June 14, 2010, the CBOE demutualized and conducted an initial public offering ("IPO") of CBOE common stock. Each seat was exchanged for 80,000 shares of CBOE stock, which consisted of 40,000 shares of restricted Class A-1 common stock and 40,000 shares of restricted Class A-2 common stock. The only difference between the two classes of stock was that the Class A-1 common stock was subject to transferability restrictions that expired on December 15, 2010, making them unrestricted and "freely transferable at that time." The Class A-2 common stock was also subject to transferability restrictions, but they expired approximately six months later, on June 13, 2011, at which time they would also become unrestricted and freely transferable.

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[1] Fanady obtained a religious divorce from Harnack in the Greek Orthodox church by presenting his priest with a falsified circuit court of Cook County "judgment for dissolution of marriage" dated July 21, 2010, which included an alleged signature stamp of Cook County Judge Nancy Katz. He then went on to marry his girlfriend on November 28, 2010, although the judgment for dissolution of marriage dissolving Harnack and Fanady's marriage was not actually entered until August 3, 2011. Fanady was arrested and charged with three counts of felony forgery. The case was subsequently dismissed.

¶ 19 Late in 2009, Fanady called lsraelov and proposed that the two of them invest as equal partners in the purchase of a CBOE seat. On January 26, 2010, Israelov and Alpha, an entity solely owned and controlled by Fanady, entered into a 50/50 partnership to form ISRFAN for the purpose of purchasing a CBOE seat. ISRFAN through Alpha, purchased a seat for $2,625,000.00, half of which was contributed by Israelov, and half of which was contributed by Fanady, through Alpha. In order to purchase a CBOE membership, a person or entity had to be a member of the CBOE. Because Israelov and ISRFAN were not members of the CBOE, but Alpha was, Israelov and Fanady agreed that Alpha would purchase and hold the ISRFAN seat for the benefit of ISRFAN. ISRFAN leased the seat and, pursuant to the ISRFAN partnership agreement, Israelov and Alpha divided the rental payments equally.

¶ 20 On June 14, 2010, the CBOE demutualized and the seat was exchanged for 80,000 shares of restricted CBOE common stock. In connection with the CBOE's demutualization, an account was established at Mellon—which is now known as Computershare—for former members of the CBOE to hold the CBOE Holdings common stock that they were issued in exchange for their CBOE memberships. Pursuant to the agreement between Israelov and Fanady, the 80,000 shares were held in an account in the name of Alpha at Mellon. ISRFAN divided any dividends issued equally.

¶ 21 On March 27, 2005, Marme and Fanady entered into a 50/50 partnership to form Fanmare. Fanady purchased two CBOE seats for the benefit of Fanmare—the first, on or about October 21, 2005, and the second, on or about September 19, 2006. On June 30, 2009, Alpha replaced Fanady as a 50% partner in Fanmare. Thereafter, one seat was held in the name of Fanmare, and one seat was held in the name of Alpha, for the benefit of Fanmare.

¶ 22 When the CBOE demutualized on June 14, 2010, each of Fanmare's CBOE seats was exchanged for 80,000 shares of restricted CBOE common stock. In late September or early October 2010, Fanady represented to Marme that an SEC ruling barred Marme from selling or trading the A-1 shares when those shares became tradeable under CBOE rules in December 2010. This representation was incorrect, however, Marme agreed to allocate all A-1 shares to Alpha, and all A-2 shares to Marme. They documented that agreement in an addendum to the Fanmare partnership agreement dated November 13, 2010.

¶ 23 Immediately prior to the June 14, 2010 demutualization, Alpha held two CBOE seats in its name, one for the benefit of ISRFAN, and one for the benefit of Fanmare. Fanmare held one CBOE Membership in its own name. After the demutualization, Alpha was issued 80,000 shares of restricted CBOE common stock for the seat held for the benefit of ISRFAN, and 80,000 shares of restricted common stock for the seat held for the benefit of Fanmare. Fanmare also was issued 80,000 shares of restricted common stock for the seat held in its own name.

¶ 24 On December 28, 2010, Fanady opened a brokerage account at SunTrust Investor Services, Inc. in the name of Alpha, and executed a "Transfer Of Assets Form" which initiated the transfer of 80,000 shares of CBOE common stock from Alpha's account at Mellon to Alpha's SunTrust account—40,000 of the 80,000 shares belonged to ISRFAN. The other 40,000 shares belonged to Fanmare. Pursuant to Fanady's actions, all 80,000 shares of unrestricted CBOE common stock held in Alpha's name were transferred out of Alpha's account at Mellon and into Alpha's SunTrust account on or about January 4, 2011.

¶ 25 During the same time that Fanady was carrying out these acts, he was purposely misleading Israelov. Specifically, Israelov emailed Fanady on December 21, 2010, asking Fanady whether he had made any progress getting the first 20,000 of ISRFAN's shares

transferred to Israelov. Fanady responded by stating that he was "getting papers ready to open an account so that [he could] begin the transfer." Likewise, shortly before January 14, 2011, Israelov had a telephone conversation with Fanady in which he asked Fanady about transferring Israelov's 50% interest in ISRFAN's former Class A-1 shares. During this conversation, Fanady told Israelov to forward his account information and Fanady would then transfer the shares. On January 14, 2011, Israelov emailed Fanady the account information necessary to transfer the 20,000 shares to Israelov. Fanady responded, without further explanation, that the transfer "probably won't happen overnight" and that he would likely "have to jump through a hoop or two."

¶ 26 Fanady, however, never transferred the 20,000 shares to Israelov, and instead began to ignore Israelov's repeated communications, prompting Israelov's attorney to send a letter to Fanady on January 31, 2011, requesting that Fanady provide information regarding ISRFAN's 40,000 former Class A-1 shares and an estimate of when 20,000 of those shares would be delivered to Israelov.

¶ 27 On February 1, 2011, the day after receiving the letter from Israelov's attorney, Fanady sent an email to SunTrust inquiring about the status of the shares of CBOE common stock in Alpha's SunTrust Account. Two days later, on February 3, 2011, Fanady sent a letter to SunTrust authorizing the transfer of all 80,000 shares of CBOE common stock from Alpha's SunTrust Account to an account in Switzerland. Thereafter, on February 9, 2011, Fanady sent multiple emails to check on the status of the transfer of the shares to the Swiss account. The transfer of the shares to the account in Switzerland was completed on February 15, 2011.

¶ 28 Shortly thereafter, Fanady finally agreed to speak with Israelov in person. During their meeting, Israelov asked Fanady why he had not transferred 20,000 of ISRFAN's shares into

Israelov's securities account. Knowing that he had already transferred ISRFAN's 40,000 shares to the account in Switzerland, Fanady told Israelov, for the first time, that he could not transfer the shares because he was in the middle of a divorce and that a temporary restraining order had been entered on February 15, 2011. He also told Israelov that he was not the owner of Alpha, that Alpha was owned by another entity called Pantheon, and that that Pantheon was "two people on the Island of Nevis."

¶ 29 On February 25, 2011, Israelov filed a "Verified Complaint In Equity For Mandatory Injunction-Breach Of Partnership Agreement And Other Relief" against Alpha and Fanady, asserting claims for breach of contract, conversion, and breach of fiduciary duty. On June 13, 2011, Israelov and Alpha entered into a settlement agreement in which Alpha admitted that it had received its 50% interest in the 80,000 shares belonging to ISRFAN, and agreed that Israelov was entitled to the remaining 40,000 shares held in Alpha's account at Mellon for the benefit of ISRFAN. The settlement agreement contemplated that the remaining 40,000 shares would be distributed to ISRFAN and then Israelov, but was conditioned upon the court in the dissolution action dissolving various injunctions prohibiting the transfer of the shares.

¶ 30 Meanwhile, less than five years after their October 2003 marriage, Harnack filed for divorce on March 25, 2008. On November 1, 2010, Fanady was held in default in the dissolution action for failure to file an appearance or otherwise plead after his attorney withdrew. On August 3, 2011, following an *ex parte* prove-up hearing, the court entered a judgment for dissolution of marriage dissolving the marriage and awarding certain alleged marital assets to Harnack and to Fanady.

¶ 31 On the day the dissolution judgment was entered, Harnack knew that Fanady only had a 50% interest in the ISRFAN and Fanmare partnerships. Harnack was also aware that Fanady had

previously been the sole owner of another seat, but that he had already sold that seat for $2,775,000 in 2009 before the CBOE's demutualization. Harnack also knew by virtue of Israelov's action against Fanady and Alpha, which had been consolidated with the dissolution action, that Fanady, through Alpha, had already taken and received 50%, or 40,000, of ISRFAN's 80,000 shares of CBOE Holdings common stock. Finally, Harnack also knew or should have known prior to entry of the dissolution judgment that Fanady had withdrawn 120,000 shares of CBOE common stock belonging to ISRFAN and Fanmare.

¶ 32 Despite knowing that Fanady, through Alpha, only had an interest in 120,000 shares and that he had already withdrawn 120,000 shares, Harnack procured a dissolution judgment which stated that during the marriage the parties acquired marital property including "[t]he equivalent of 320,000 (Three Hundred Twenty Thousand) shares of Chicago Board of Options Exchange (CBOE) stock (Steve Fanady being 100% owner of at least 280,000); *** CBOE stocks in the name of Alpha Industries, LLC; *** [and] CBOE stocks in the name of Fanmare Partnership."

¶ 33 At the August 3, 2011 prove-up hearing, Harnack testified that she had reviewed the dissolution judgment and the itemization of the marital property set forth in the dissolution judgment. Harnack, however, failed to inform the court:

> "(i) that there were never 320,000 shares of CBOE Holdings common stock because Fanady had sold CBOE Seat No. 301003 prior to the CBOE's demutualization and IPO;
>
> (ii) that Israelov, through ISRFAN, and Marme, through Fanmare, each owned [] 50% interest in three (3) of the former CBOE Seats that had each been exchanged for a total of 240,000 shares of CBOE Holdings common stock; or
>
> (iii) that Fanady had already withdrawn 120,000 of these 240,000 shares."

¶ 34 Harnack thus caused the trial court to enter a dissolution judgment that awarded her 120,000 shares of CBOE common stock, all while knowing that Fanady had an interest in only 120,000 shares and that he had already taken and received all of those shares.

¶ 35 Based on the above findings of fact, the court concluded that Israelov was "an innocent victim of Mr. Fanady's underhanded actions" and that he "should receive promptly 40,000 shares currently being held by Computershare." The court then stated that the case as to Marme was "a bit more complicated," but that Harnack had not proven her allegations that "Marme colluded with Fanady to deprive her of her portion of the marital estate." Accordingly, the court awarded Marme 80,000 shares of CBOE stock. Finally, the court stated that, although Harnack's arguments were compelling as an equitable matter, they failed legally, and she was required "to chase Mr. Fanady for her just share of the marital estate." The trial court determined that Fanady had no claim to the remaining 120,000 shares, and accordingly, Harnack had no marital claim to those shares. The trial court further found that Harnack "should not benefit from her husband's bad acts" or "from her own misunderstanding or misrepresentation as to the number of shares of CBOE Holdings which were in the marital estate."

¶ 36 The court rejected Harnack's arguments that the settlement agreement between Alpha and Israelov violated any injunctions or the Illinois Uniform Partnership Act, or that the November 2010 Fanmare partnership addendum violated the Illinois Uniform Partnership Act. The court also rejected Harnack's claims that *res judicata* and collateral estoppel barred Marme's claims.

¶ 37 Accordingly, and as clarified in a July 28, 2017, order, the court ordered Computershare to immediately transfer 40,000 shares of CBOE stock and associated dividends to Israelov, and 80,000 shares of CBOE stock and associated dividends to Marme. The court also "dissolved and

vacated" all "injunctions, temporary restraining orders, or other orders *** enjoining, restraining, prohibiting, or otherwise restricting the transfer of shares of CBOE Holdings, Inc. common stock and/or the dividends that were the subject of the interpleader action."

¶ 38 On July 11, 2017, the same day as the trial court's order, Harnack filed a motion for reconsideration, and thereafter an amended motion for reconsideration on July 28, 2017, arguing that the court "reached erroneous conclusions." Specifically, regarding the shares issued to Israelov, Harnack argued, among other things, that the settlement agreement between Alpha and Israelov was prohibited by the injunctions she had obtained pre-decree, and by Illinois partnership law. Harnack further stated that the trial court "disregard[ed] the distinction between 'A-1' and 'A-2' shares" by concluding that Israelov was entitled to all of the remaining A-2 shares. Harnack stated, "Indeed, Israelov's own Chancery Complaint *** entails a judicial admission by Israelov that both he and Fanady/Alpha each had a 50% interest in the 40,000 'A-1' shares Fanady had withdrawn and transferred to Switzerland and therefore, mechanically, a 50% interest in the remaining 40,000 'A-2' shares still held by CBOE and associated with [ISRFAN]."

¶ 39 Regarding Marme, Harnack argued, among other things, that the November 13, 2010, addendum violated Illinois partnership law. She also contended that Marme had not provided proof that the November 13, 2010, addendum was actually executed on that date, or at any time prior to the February 15, 2011, temporary restraining order. She submitted that Marme and Fanady had a "practice" of "back-dating" documents, and contended that the written date should be "viewed with 'distrust.' " Accordingly, Harnack contended that the court should have also found that "Illinois injunction law" precluded Marme's claim to "the 40,000 'A-2' shares that constituted Fanady's property on February 15, 2011," and those shares should have been

distributed to Harnack. Harnack further maintained that the court "disregard[ed] the overwhelming evidence of collusion between Marme and Fanady" and that the court improperly excluded the admission of two SEC filing documents. Harnack contended those documents showed that Marme's husband, who was a director at the CBOE, had not disclosed ownership of the shares, supporting Harnack's conclusion that Marme had already been "taken care of."

¶ 40 Regarding the court's findings that Harnack caused the court to enter a dissolution judgment overstating the number of shares in the marital estate, and that she had knowledge that Fanady had already withdrawn shares belonging to Fanady's partners prior to the judgment, Harnack stated that she "learned about the withdrawn shares over the February-March, 2011 period; but in no way, does such knowledge support the implicit conclusion that all such shares belonged to Fanady." Harnack agreed that she knew that Fanady had 50/50 partnerships with Israelov and Marme, but maintained that Israelov had an interest in 20,000 of the A-1 shares that were stolen by Fanady, and 20,000 of the A-2 shares that remained. Accordingly, Harnack contended that the court erred by awarding him 40,000, and not 20,000, of the remaining A-2 shares. As to Marme, Harnack argued that Marme's silence led Harnack to "reasonably underst[an]d that Marme had been 'taken care of' " and that the remaining shares were not "subject to any claim by Marme."

¶ 41 On August 11, 2017, Israelov responded to Harnack's motion to reconsider, contending that the motion was "an improper attempt to re-litigate the issues" and that the trial court's order correctly found that neither Fanady nor Harnack were entitled to the 40,000 shares awarded to Israelov.

¶ 42 On August 11, 2017, Marme also filed a response to Harnack's motion to reconsider, adopting the arguments in Israelov's motion. Specifically regarding the two documents Harnack

asserted should have been admitted, Marme contended that the trial court "properly excluded them as irrelevant" because Harnack had not shown that her husband was required to list Marme's Fanmare holdings, or that an omission would prove that Marme did not own the shares.

¶ 43 In Harnack's reply to Marme's response, she denied that the "two proffered exhibits as to [Marme's husband's] SEC filings" were found to be "irrelevant." Harnack asserted that the court "never stated its basis for the denial" and submitted that "the Court's denial was actually based on the timing of the request for admission into evidence, not lack of relevance."

¶ 44 On August 21, 2017, Harnack also filed a "supplemental" motion for reconsideration, in which she asserted that, after the court entered its clarified order, she was "stand[ing] on all points set forth in her Amended Motion for Reconsideration."

¶ 45 On August 23, 2017, the trial court entered an order denying Harnack's amended motion for reconsideration and supplemental motion for reconsideration. The trial court stated:

> "Clearly, there is no—there isn't any new evidence that I have not heard before. There aren't changes in the applicable law. So really, obviously, it comes down to did I make a mistake? Was there some error in my interpretation or application of existing law? I spent a lot of time in my initial decision, spent a lot of time going through the well-written reconsideration motions, but I stand firm on my application of both the—my interpretations of the evidence and the application of the law. I'm going to deny the Motion for Reconsideration."

¶ 46 The court further found as to both orders "pursuant to Illinois Supreme Court Rule 304(a)" that there was "no just cause for delay of enforcement or appeal of the Court's July 11, 2017, order, as clarified on July 28, 2017." Harnack filed a notice of appeal from that order on

September 20, 2017, and thereafter, an amended notice of appeal on September 21, 2017. The appeal was docketed under appellate number 1-17-2326.

¶ 47 While the trial court was adjudicating the parties' claims to the remaining 120,000 shares of CBOE stock, it was also considering other claims of Harnack against Fanady. First, on August 2, 2016, Harnack filed a petition for rule to show cause against Fanady for "Non-Compliance with Judicial Requirements as to Obligations to Business Partners," alleging that by not providing his business partners with 50% of the shares of CBOE stock that he withdrew, Fanady had violated the judgment which provided that he should "save and hold [Harnack] free, harmless and indemnified against all debts, liabilities and obligations of every kind and nature whatsoever which were incurred by him for the benefit of himself." Fanady moved to dismiss the petition of October 11, 2016, alleging that Harnack was really asking the trial court to modify the judgment for dissolution of marriage to add new obligations, and the trial court lacked subject matter jurisdiction to do so. The trial court granted Fanady's motion to dismiss on November 23, 2016, and Harnack's motion to reconsider that order was denied on February 24, 2017.

¶ 48 Meanwhile, on June 22, 2015, Harnack filed an amended petition for rule to show cause alleging that Fanady had failed to pay his income taxes, which resulted in IRS tax liens on the marital home. A rule issued, and the court found Fanady in indirect civil contempt on October 21, 2015. Fanady apparently appealed that order, and on November 4, 2015, Fanady filed a "Motion for a Stay Pending Appeal or in the Alternative for an Order Discharging the Finding of Contempt Entered in the Order of October 21, 2015." Fanady was denied a stay on December 7, 2015, and thereafter, on February 16, 2016, Harnack filed a "Petition for Finding of Non-Compliance Respecting Purge Terms, for Additional Rule to Show Cause, and for Other Relief." After a three-day evidentiary hearing, the court entered an order on December 12, 2016, which

granted Fanady's motion to discharge the contempt finding, and denied Harnack's request for a finding of non-compliance with purge terms. Harnack's motion to reconsider that order was also denied on February 24, 2017. On March 24, 2017, Harnack filed a notice of appeal from the February 24, 2017, order denying her two motions to reconsider, and the appeal was docketed under appellate number 1-17-0813.

¶ 49 Meanwhile, in March 2016, Harnack filed yet another petition for rule to show cause, alleging that Fanady had failed to pay real estate taxes for the marital home. The trial court entered an order on April 29, 2016, finding Fanady in contempt, and setting purge terms of payment of the delinquent real estate taxes to the Cook County clerk's office. Thereafter, Harnack paid the delinquent real estate taxes, and the trial court entered an order on July 13, 2016, finding that the prior purge term was moot.

¶ 50 On November 23, 2016, Harnack filed a supplemental petition for rule to show cause, arguing that Fanady's nonpayment of the real estate taxes violated the judgment for dissolution of marriage. The court denied Harnack's petition for rule to show cause on July 3, 2017, concluding that the language of the judgment for dissolution of marriage was not "clear or precise enough" to hold Fanady in contempt. On July 24, 2017, Harnack filed a notice of appeal from that order. The appeal was docketed under appellate number 1-17-1841.

¶ 51 In this court, Harnack raises several issues related to Fanady, Israelov, and Marme. We will address each in turn.

¶ 52 First, as to Fanady, Harnack contends that the trial court erred in dismissing her petition for rule to show cause against Fanady for "Non-Compliance with Judicial Requirements as to Obligations to Business Partners." Harnack also contends that the trial court erred in "failing to

hold [Fanady] accountable" for federal income taxes that were charged as liens to the marital home, and for real estate taxes that Harnack paid.

¶ 53 In response, Fanady contends that the court lacks jurisdiction to consider Harnack's claims against him because Harnack has a pending fee petition that has not yet been ruled on. Specifically, on August 10, 2017, Harnack filed a "Petition for Award(s) of Litigation Costs Under IMDMA Section 508(b), for Contribution Award Under IMDMA Section 508(a), and for Other Relief," which asked the court to order Fanady and Marme to reimburse Harnack for fees and costs expended during this litigation.

¶ 54 In reply, Harnack admits that she filed a fee petition that "included claims for litigation expenses she incurred in connection with orders within the scope of Case #1-17-[0]813 and #1-17-1841." She claims though, that certain of her claims "were technically time-barred," and accordingly, she sought and received a stay from the trial court, which continued her fee petition in its entirety "until completion of the pending appeals." Harnack contends that only then can she "assess which of her fee claims she may then permissibly pursue."

¶ 55 We agree with Fanady that we lack jurisdiction to consider these appeals.

¶ 56 Generally, "a notice of appeal may not be filed until after the trial court has finally disposed of all claims." *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 342 (2001). Illinois Supreme Court Rule 304(a) governs appeals from orders that do not dispose of all matters presented to the trial court. When an action involves multiple claims for relief, an order that finally resolves only one claim is not immediately appealable unless the trial court has found in writing that there is no just reason to delay either enforcement or appeal or both. Ill. Sup Ct. R. 304(a) (eff. Mar. 8, 2016); *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 464 (1990); *Lozman v. Putnam*, 328 Ill. App. 3d 761, 767 (2002).

¶ 57 A party appealing under Rule 304(a) must file a notice of appeal within 30 days of the entry of the trial court's finding that there is no just reason for delaying appeal. *Id*. Under Rule 304(a), an order "must be final in the sense that it disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." (Internal quotation marks omitted.) *In re Estate of French*, 166 Ill. 2d 95, 101 (1995). A request for attorney fees is a "claim" within the meaning of Rule 304(a). *F.H. Prince & Co. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983 (1994).

¶ 58 Here, the order from which petitioner seeks to appeal did not resolve all claims involving all parties; as noted above, the issue of attorney fees remains pending, and accordingly, a Rule 304(a) finding was necessary to invoke this court's jurisdiction. *Marsh*, 138 Ill. 2d at 464 ("Without the Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved."). The trial court never made a Rule 304(a) finding in its orders of February 24, 2017, or July 3, 2017, at issue in the appeals docketed as appellate numbers 1-17-0813 and 1-17-1841. Therefore, we lack jurisdiction to address the merits of Harnack's appeals, docketed as appellate numbers 1-17-0813 and 1-17-1841, and must dismiss them.

¶ 59 We next turn to Harnack's appeal related to Israelov and Marme, docketed as appellate number 1-17-2326. Harnack's petition for attorney fees also included claims against Marme related to these proceedings. However, the trial court's order of August 23, 2017, complied with Rule 304(a) by including a 304(a) finding, making the order immediately appealable, and thereby giving Harnack 30 days in which to file her notice of appeal, regardless of the pending claim for attorney fees. See *Marsh*, 138 Ill. 2d at 468-69; *Villanueva v. Toyota Motor Sales, U.S.A., Inc.*, 373 Ill. App. 3d 800, 801-02 (2007) (inclusion of Rule 304(a) language made an

order granting a section 2-619 motion as to two counts final and appealable). Harnack filed a timely notice of appeal, and thus, this court has jurisdiction to consider her appeal as to Israelov and Marme.

¶ 60 As an initial matter, we note that Harnack contends that she is appealing the August 23, 2017, denial of her amended motion to reconsider and her supplemental motion to reconsider. She asserts that the denial was "based upon the trial court's misapplication of existing law," and accordingly, that this court should review her challenges *de novo*. See *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006). Generally, a trial court's decision to grant or deny a motion to reconsider will not be reversed absent an abuse of discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). However, a reviewing court reviews the trial court's decision to grant or deny a motion to reconsider *de novo*, where the motion was based only on the trial court's application or purported misapplication of existing law, rather than on new facts or legal theories not presented at trial. *Bank of America, N.A. v. Ebro Foods, Inc.*, 409 Ill. App. 3d 704, 709 (2011).

¶ 61 As will be seen below, however, the issues Harnack raises are not limited to challenges to the trial court's purported misapplication of law—Harnack raises some legal issues, but other challenges are actually disagreements with the trial court's findings of fact. Accordingly, we will discuss the applicable standard of review in our analysis of each issue.

¶ 62 Harnack first challenges the trial court's entry of an order awarding Israelov 40,000 shares of the CBOE stock. Harnack does not claim that all 40,000 shares were erroneously awarded to Israelov. Instead, Harnack contends that the trial court should have determined that Israelov was entitled to only 20,000 shares held by Computerserve, and that 20,000 of the shares awarded to Israelov should have been awarded to Harnack instead. Harnack contends that "[t]he

law applied to the facts of this case demonstrates that [Harnack], not Israelov, is the rightful owner of 20,000 shares of CBOE, A-2 stock associated with [ISRFAN]."

¶ 63 Harnack's first basis for her claim is that the court erred in failing to determine that Israelov "made a judicial admission" that he was entitled to only 20,000 of the remaining shares. Harnack points to Israelov's complaint in the breach of partnership action, in which Israelov alleged that he was entitled to receive 20,000 of the 40,000 CBOE shares that Fanady had withdrawn. Harnack posits that, because Israelov claimed ownership of 20,000 shares that were withdrawn by Fanady, it necessarily means that Israelov can have a claim only to 20,000 of the shares that remained.

¶ 64 Appellate courts disagree as to the applicable standard of review when analyzing whether a trial court should have treated a statement as a judicial admission, with some courts asking whether the court abused its discretion, and others utilizing a *de novo* standard of review. See *Hall v. Cipolla*, 2018 IL App (4th) 170664, ¶ 101 (compiling various cases). Nonetheless, we need not decide that question here, as our conclusion would remain the same under either standard.

¶ 65 Initially, our review of the record discloses that Harnack never actually requested that the trial court treat the allegation in Israelov's complaint as a judicial admission. The first time Harnack mentioned a judicial admission in this context was in her amended motion for reconsideration. In that amended motion, Harnack stated that, "Indeed, Israelov's own Chancery Complaint *** entails a judicial admission by Israelov that both he and Fanady/Alpha each had a 50% interest in the 40,000 'A-1' shares Fanady had withdrawn and transferred to Switzerland and therefore, mechanically, a 50% interest in the remaining 40,000 'A-2' shares still held by CBOE and associated with [ISRFAN]."

¶ 66 Even if the above sentence were enough to request that the trial court make a finding that Israelov's allegation constituted a judicial admission, Harnack forfeited any such request based on its late timing, in a motion to reconsider after an evidentiary hearing on the issue. See *Hall*, 2018 IL App (4th) 170664, ¶ 4 (where the plaintiff failed to claim that certain statements amounted to judicial admissions until filing a motion for judgment notwithstanding the verdict, the plaintiff forfeited the theory "by participating, without objection, in a full trial on the issue.*** It was not until posttrial proceedings that [the] plaintiff raised the theory that judicial admissions by [the defendant] had eliminated that issue—after the parties had spent several days trying that issue and the jury had returned a verdict.").

¶ 67 Moreover, even if the issue were not forfeited, we would not conclude that the allegation in Israelov's complaint constitutes an admission that he is only entitled to 20,000 of the shares held by Computershare. Judicial admissions are defined as "deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998) (citing *Hansen v. Ruby Construction Co.*, 155 Ill. App. 3d 475, 480 (1987)). "What constitutes a judicial admission must be decided under the circumstances in each case, and before a statement can be held to be such an admission, it must be given a meaning consistent with the context in which it was found." *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009); see also *Lowe v. Kang*, 167 Ill. App. 3d 772, 776 (1988). The statement alleged to be a judicial admission must also be considered in relation to other testimony and evidence presented. *Smith*, 394 Ill. App. 3d at 468.

¶ 68 Although Israelov contended that Fanady wrongly withdrew 40,000 shares, in which Israelov also had an interest, it does not follow that Israelov judicially admitted that he was entitled to only half of the remaining shares. At best, Harnack asks this court to make an

inference from Israelov's claim to the withdrawn shares, and assume that he therefore had a correspondingly reduced claim to the remaining shares. A judicial admission, however, cannot be based on an inference. See *id.* (for a statement to qualify as a judicial admission, it "must not be a matter of opinion, estimate, appearance, inference, or uncertain summary").

¶ 69 Harnack next contends that the trial court erred in awarding 40,000 shares to Israelov because the settlement agreement between Fanady and Israelov violated the Partnership Act and "Illinois Injunction Law." Presumably, Harnack's argument is predicated on the belief that Israelov's right to the 40,000 shares he was awarded arises solely from the settlement agreement, which she claims should have been held to be invalid.

¶ 70 Israelov responds, however, that the trial court's award was not based on the settlement agreement. In fact, in the trial court, Israelov clarified that his intention was not to enforce the settlement agreement—indeed, he could not have enforced the agreement, because it was explicitly conditioned upon the court dissolving the injunctions that prohibited the transfer of the shares, which did not occur until the trial court entered the order on July 28, 2017. Instead, Israelov contended that he merely used the settlement agreement as evidence that Fanady acknowledged that he had already received his 50% share, and that the shares remaining were due to Israelov.

¶ 71 In arguing that the settlement agreement violated the Illinois Uniform Partnership Act, Harnack specifically points to Section 103(b)(9), which provides that a "partnership agreement may not *** restrict the rights of a person, other than a partner and transferee of a partner's transferable interest under this Act." 805 ILCS 206/103(b)(9) (West 2016). Harnack contends that the settlement agreement between Fanady and Israelov restricts her rights to an equitable marital share of the remaining CBOE shares.

¶ 72 Initially, we note that the trial court never found the settlement agreement to be valid, ordered it to be enforced, or otherwise relied on it as the source of Israelov's claim to the remaining shares. Accordingly, whether the settlement agreement was valid or invalid is of no real consequence.

¶ 73 Moreover, even if the settlement agreement had been the source of Israelov's interest, the trial court determined that Fanady had no right to the remaining CBOE shares. As a result, Harnack had no marital interest in the remaining shares that could have been restricted by the settlement agreement. Accordingly, the agreement did not restrict any right of Harnack since she had no interest, marital or otherwise, in the remaining shares.

¶ 74 Harnack further contends that the settlement agreement "unlawfully sought to deprive" her of her interest in the remaining shares of stock in violation of "Illinois Injunction Law." Harnack's argument on this point is sparse, and she cites no authority. As a result, we would be entitled to find this point forfeited. See *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23 ("A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue."). Nonetheless, Harnack appears to be arguing that the settlement agreement was entered into in violation of the temporary restraining order and preliminary injunction she had been previously awarded in the dissolution action on February 15, 2011.

¶ 75 Even if Harnack's argument were not forfeited, we would find it unpersuasive. As noted above, the settlement agreement was never enforced, and the agreement was explicitly conditioned upon the court dissolving the injunctions that prohibited the transfer of the shares. Accordingly, the settlement agreement could not violate any injunction, by its express terms.

¶ 76 As to Marme, Harnack contends that the trial court erred in awarding her any shares of CBOE stock because the evidence showed that she colluded with Fanady to defraud the marital

estate, and because she is liable for "aiding and abetting" Fanady. Harnack contends that Fanady and Marme's "collaborative action" violates the principles that a court should not "aid a litigant when its cause of action is based on an illegal act," and "where a spouse colludes with another person to commit a fraud against marital property, both the spouse and colluding party are accountable for the fraud."

¶ 77 In so arguing, Harnack challenges the factual findings of the trial court, which rejected her claims that the evidence showed collusion between Fanady and Marme. A trial court's factual findings are accorded great weight on appeal. *Suburban Bank v. Bousis*, 144 Ill. 2d 51, 63 (1991). The standard of review applied in a challenge to a trial court's factual findings is that a ruling turning upon the factual findings will not be disturbed unless the record shows that the factual findings are against the manifest weight of the evidence. *In re Barry B.*, 295 Ill. App. 3d 1080, 1085 (1998). This means that the complaining party must establish clear, plain, and undisputable error in the factual findings (*id.*), *i.e.*, that the opposite conclusion from that reached by the trial court is clearly evident from the facts presented in the record (*Brazas v. Ramsey*, 291 Ill. App. 3d 104, 109 (1997)). Whether we might have reached the same conclusion is not the test of whether the circuit court's factual finding is against the manifest weight of the evidence—the appropriate test is whether there is any evidence in the record to support the circuit court's finding. *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010). We conclude that Harnack has failed to meet this burden.

¶ 78 Harnack cites various exhibits she presented to the court, including emails between Marme, Fanady and their attorneys, regarding a lawsuit Marme brought in Florida against Alpha, Mellon, and Harnack, and which Marme later dismissed. Harnack contends that this evidence shows that Marme and Fanady were engaged in a scheme "to deprive [Harnack] of her rightful

ownership of 80,000 shares of CBOE stock." Harnack contends that the evidence shows that Marme and Fanady "concocted a plan to transfer the remaining 80,000 shares of A-2 stock to Marme at [Harnack]'s expense." Marme, however, testified at trial that she was never aware of, or part of, any plan by Fanady to prevent Harnack from receiving marital property. Marme contends that the evidence regarding the Florida litigation showed only that she was attempting to "protect her own property without involving herself in *** [Harnack and Fanady's] divorce proceedings."

¶ 79 The trial court heard and considered the above evidence, and concluded that Harnack had "not proven that Marme colluded with Fanady to deprive her of her portion of the marital estate." Instead, the court concluded that it was Harnack who caused the trial court to enter the judgment for dissolution of marriage based on an inflated assessment of the marital estate, despite knowing that Marme had a 50% interest in the CBOE shares associated with the Fanmare partnership. Such findings of fact will not be disturbed upon review, since the trial court, having heard and observed all the witnesses, is in a better position than a reviewing court to evaluate credibility and weigh the evidence. See *First Chicago Insurance Co. v. Molda*, 2015 IL App (1st) 140548, ¶ 52, quoting *Bazydlo v. Volant*, 164 Ill. 2d 207, 214-15 (1995) (" 'The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive.' "). Accordingly, Harnack has not shown that the trial court's rejection of her theory that Marme acted in collusion with Fanady was against the manifest weight of the evidence.

¶ 80 Harnack next contends that the court erred in awarding Marme any shares because her claim to those shares is barred by *res judicata* and collateral estoppel. She acknowledges that Marme was not a party to the dissolution proceedings, but contends that the judgment for

dissolution was a final judgment which applies to Marme because she was "in privity" with Fanady during the dissolution proceedings. The issue of whether a claim is barred by *res judicata* presents a question of law, which we review *de novo*. See *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 7 (2009).

¶ 81 A prior judgment may have preclusive effects in a subsequent action under both *res judicata* and collateral estoppel. The doctrine of *res judicata* provides that "a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies to a lawsuit and, thus, acts as an absolute bar to a subsequent action between the same parties or their privies involving the same claim, demand or cause of action." *Agolf, LLC v. Village of Arlington Heights*, 409 Ill. App. 3d 211, 218 (2011). *Res judicata* applies when all three of the following elements exist: "(1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001). When *res judicata* is established, it is conclusive not only as to every matter which was offered to sustain or defeat the claim or demand, but as to any other matter which might have been offered for that purpose. *Housing Authority v. Young Men's Christian Association*, 101 Ill. 2d 246, 251-52 (1984). However, *res judicata* will not be applied where it would be fundamentally unfair to do so. *Nowak*, 197 Ill. 2d at 390.

¶ 82 Similarly, the minimum threshold requirements for the application of collateral estoppel are: (1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Du Page Forklift Service, Inc. v. Material Handling Services, Inc.*, 195 Ill. 2d 71, 77 (2001);

American Family Mutual Insurance Co. v. Savickas, 193 Ill. 2d 378, 387 (2000); *Talarico v. Dunlap*, 177 Ill. 2d 185, 191 (1997).

¶ 83 Harnack contends that the requirements for *res judicata* and collateral estoppel are met in this case because the judgment for dissolution of marriage was a final judgment; there is identity of the key issue—namely, "what CBOE 'A-2' shares held by CBOE and associated with the Fanmare partnership constituted property of [Fanady]"; and Marme was "in privity" with Fanady.

¶ 84 Initially, we disagree with Harnack that there is an "identity of cause of action" between the dissolution proceedings and the interpleader action as is required to apply the doctrine of *res judicata*, or that the issues in the proceedings are "identical" as required to apply the doctrine of collateral estoppel. The dissolution proceeding and the interpleader action are separate proceedings involving separate issues. When issuing the judgment for dissolution of marriage, the court was not asked to consider or determine whether a third party—namely, Marme—had an ownership interest in the CBOE shares. It was only after the judgment for dissolution of marriage was entered when Computershare filed its interpleader action, noting that there were insufficient shares available to comply with the court's order, that the court was asked to determine which of those shares belonged to Marme.

¶ 85 We also conclude that there is no identity of parties or their privies, and that Marme was not in privity with Fanady during the dissolution proceedings. Privity generally exists when parties adequately represent the same legal interest. S*tate Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 559 (2009), citing *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296 (1992).

¶ 86 Harnack does not, and could not, assert that Fanady and Marme have the same legal interest. Indeed, it is clear that their interests diverge. Since both Fanady and Marme were 50/50 partners in Fanmare, any award of the associated CBOE shares to one partner necessarily means that those same shares are not available to be awarded to the other partner. See *Diversified Financial Systems, Inc. v. Boyd*, 286 Ill. App. 3d 911, 916 (1997), quoting Restatement (Second) of Judgments § 54, Comment a, at 66 (1982) (" 'Indeed, the very relationship of co-ownership is a source of continuing potential conflict among them.' ").

¶ 87 Moreover, even if we concluded Fanady and Marme represented the same legal interest, and that Fanady could act as Marme's representative, *res judicata* clearly would not apply in this case. "The Restatement (Second) explains that the privity rule is based upon the premise that the representative will adequately protect the nonparty's interests." *John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d at 561, citing Restatement (Second) of Judgments § 75, Comment b, at 210 (1982). To that end, if there was inadequate representation between the parties to a prior action, then the party represented in that action will not be bound by it. *Id.*; *In re Marriage of Mesecher*, 272 Ill. App. 3d 73, 76 (1995), citing *Progressive Land Developers*, 151 Ill. 2d at 296. A party will not be bound if its representative "fail[s] to prosecute or defend the action with due diligence and reasonable prudence and the opposing party was on notice of facts making that failure apparent." *Diversified Financial Systems, Inc.*, 286 Ill. App. 3d at 919, citing Restatement (Second) of Judgments § 75(2), at 209 (1982).

¶ 88 In this case, Fanady stopped appearing and caused a default judgment to be entered against him. Such action cannot be classified as acting with "due diligence and reasonable prudence" to protect Marme's interests. *Id.*

¶ 89 Harnack further asserts that the 2010 Addendum to the Fanmare partnership agreement violated the Illinois Partnership Act. In so arguing, she "adopts and restates all of her substantive points" in her argument against Israelov. As stated above, however, the trial court determined that Harnack had no marital interest in the remaining shares. Accordingly, like the ISRFAN settlement agreement, the Fanmare Addendum did not restrict any right of Harnack since she had no interest in the remaining shares. For the same reasons we rejected Harnack's argument against Israelov, we also reject the same arguments directed at Marme.

¶ 90 Harnack also argues that the 2010 Fanmare Addendum is prohibited by "Illinois Injunction Law." She admits that the addendum is dated November 13, 2010, prior to the entry of her February 15, 2011 temporary restraining order and injunction, but she contends that the date should be "viewed with distrust" and that the addendum "could have been created" after the injunction was issued.

¶ 91 In so arguing, Harnack challenges the factual findings of the trial court regarding when the addendum was created. As stated above, a trial court's factual findings are accorded great weight on appeal (*Bousis*, 144 Ill. 2d at 63), and will not be disturbed unless the record shows that the factual findings are against the manifest weight of the evidence (*In re Barry B.*, 295 Ill. App. 3d at 1085).

¶ 92 The trial court considered, and rejected, Harnack's claim that, despite the November 13, 2010, stated date, the addendum was created after the February 15, 2011, temporary restraining order and injunction. Based on our review, we find nothing to indicate that the trial court's rejection of her theory was against the manifest weight of the evidence.

¶ 93 Finally, Harnack contends that the court erred in denying the admission of two exhibits, specifically a CBOE 2010 Prospectus and a CBOE 2011 Annual Report, which would have

shown that Marme's husband had not reported his indirect interest in the shares of CBOE stock to the SEC. Marme responds that the exhibits were properly excluded based on their belated production, and because they were "cumulative and non-probative."

¶ 94 The admission of evidence is within the sound discretion of a trial court, and a reviewing court will not reverse the trial court absent a showing of an abuse of that discretion. *Snelson v. Kamm*, 204 Ill. 2d 1, 33 (2003) (citing *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993)). An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would adopt the trial court's view. *Roach v. Union Pacific Railroad*, 2014 IL App (1st) 132015, ¶ 20 (citing *People v. Cerda*, 2014 IL App (1st) 120484, ¶ 183; *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 9 (2007)).

¶ 95 Harnack's argument regarding the proffered exhibits is one paragraph long, in which she cites no authority. Accordingly, this court could conclude that she has forfeited consideration of this issue. See *Kic*, 2011 IL App (1st) 100622, ¶ 23.

¶ 96 Nonetheless, the record shows that the documents at issue were not disclosed on Harnack's pre-trial list of exhibits, and Harnack waited until the last day of trial to produce the exhibits. In such circumstances, Illinois Supreme Court Rule 219 allows a court to impose sanctions, including barring certain evidence, for failure to comply with discovery rules. Ill. Sup. Ct. R. 219 (eff. July 1, 2002); see *Ideal Plumbing Co. v. Shevlin-Manning, Inc.*, 96 Ill. App. 3d 207, 210 (1981) (the trial court did not abuse its discretion in barring proffered exhibits as a discovery sanction for not producing the exhibits prior to trial. "If the barred exhibits were as important to [the appellant]'s case as it claims they were, then the failure to disclose was unreasonable and there was no error in imposing the sanction. If, on the other hand, it was not so important and was merely foundational or cumulative, then its exclusion was not prejudicial.")

¶ 97 Moreover, although Harnack contends that the documents would support her claim that Marme's husband had not reported his indirect interest in the shares of CBOE stock to the SEC, Harnack had already introduced a 2011 email in which Marme stated that her husband was supposed to file SEC forms reflecting his ownership interest in the CBOE shares, but he had not done so. Accordingly, the trial court was within its authority to decline to admit Harnack's proffered documents as merely cumulative. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002) ("the exclusion of cumulative evidence is within the discretion of the trial court, whose ruling will not be reversed absent a clear abuse of that discretion.").

¶ 98 For the foregoing reasons, we dismiss the appeals docketed as appellate numbers 1-17-0813 and 1-17-1841, and affirm the judgment of the circuit court of Cook County docketed as appellate number 1-17-2326.

¶ 99 Nos. 1-17-0813 and 1-17-1841, Dismissed.

¶ 100 No. 1-17-2326, Affirmed.