2019 IL App (5th) 180503-U

NO. 5-18-0503

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GARY WEIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 18-MR-132
	)	
E. & G. WEIS FARMS, INC.,	)	
GENEVA R. WEIS, and DIANE KAY MARKS,	)	Honorable
	)	W. Charles Grace,
Defendants-Appellants.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion in granting a preliminary injunction in favor of the plaintiff.

¶ 2 The defendants, Geneva R. Weis and Diane Kay Marks, along with nominal defendant, E. & G. Weis Farms, Inc. (E. & G.), appeal an interlocutory order of the circuit court of Jackson County, which granted a preliminary injunction in favor of the plaintiff, Gary Weis, temporarily enjoining the defendants from selling, transferring or conveying any corporate assets. We affirm.

¶ 3 I. Background

¶ 4 On September 11, 2018, Gary filed a complaint for a shareholder derivative action against the defendants. With his complaint, Gary filed an emergency motion for a preliminary injunction and temporary restraining order. On the same day, the circuit court, following a brief

hearing, issued a temporary restraining order without notice in favor of Gary. Pursuant to the court's order, the defendants were restrained from selling, transferring or otherwise conveying any corporate assets for 10 days.

¶ 5 A. Motion for Preliminary Injunction and Temporary Restraining Order

¶ 6 The motion for a preliminary injunction and temporary restraining order contains the following allegations. E. & G. is an Illinois corporation in the business of operating a grain farm in Jackson County, Illinois. Gary, a minority shareholder of the corporation, brought the shareholder derivative action on behalf of E. & G. to remedy and recover damages sustained as a result of breaches of fiduciary duty and corporate waste by the corporation's directors, Geneva and Diane.

¶ 7 Gary asserted that on or prior to December 20, 2017, Geneva, Gary's mother, suffered from, and continues to suffer from, dementia. Diane, Gary's sister, has been in a position of domination and control over Geneva and has acted as power of attorney for Geneva at all relevant times. Due to Geneva's diminished mental capacity, Diane's role as power of attorney and their mother-daughter relationship, Geneva had been extremely susceptible to suggestion from Diane. As a result, Diane had obtained influence and superiority over Geneva. Geneva informed Gary that she had signed any and all documents Diane placed in front of her "without understanding what they were." Diane prepared or procured the preparation of all documents dated on or after December 20, 2017, and Diane was instrumental in having said documents signed by Geneva. Geneva "did not know the nature or quality of her actions when she purportedly signed the documents, in that she did not understand she was breaking her fiduciary duty to the [corporation] and selling off its assets at prices far below fair market value." As such, all documents signed by Geneva on or after December 20, 2017, "were presumptively obtained

through undue influence and are of no force or effect," including certain documents titled Notice of Special Meeting of E. & G. (Notice), Minutes of Special Meeting of Directors of E. & G. (Minutes) and Resolution of Special Meeting of Directors of E. & G. (Resolution).

¶ 8 Gary attached copies of these documents, along with the corporation's by-laws, as exhibits to his emergency motion. The following facts were taken from these exhibits. Geneva, in her capacity as secretary of E. & G., issued the Notice in writing, pursuant to the corporation's by-laws. The Notice indicated that a special meeting was scheduled on January 8, 2018, at 11 a.m. in Du Quoin, Illinois. The Notice also indicated that the purpose of the meeting was "to vote upon the removal of Gary Weis, an acting director of E. & G. Weis Farms, Inc. and on amending the by-laws of the [corporation] regarding removal of the president and amending the place of meeting for directors." The Notice was signed by Geneva in her capacities as vice president and secretary of E. & G., and in her capacity as trustee of the Eugene C. Weis Trust and the Geneva R. Weis Revocable Trust, which rendered her the majority stockholder of the corporation.

¶ 9 The Minutes revealed that the special meeting, which was held on January 8, 2018, at 3:30 p.m., was attended by Geneva, Diane and "Attorneys Jordan Campanella and Calen Campanella, of Campanella & Campanella, Brothers at Law." The following matters were discussed and approved by the directors: waiver of notice of special meeting; the removal of Gary as acting president; the nomination and election of Geneva as acting president; the removal of acting corporate counsel, David Oldfield; and the hiring of Campanella & Campanella, Brothers at Law, as acting corporate counsel. The Minutes also indicated that these matters "were approved by unanimous vote of the Directors as being in the best interests of the Corporation." The Minutes were signed by Geneva and Diane, as directors of the corporation.

¶ 10 Geneva and Diane, as directors of the corporation, also passed the Resolution, making the above actions effective immediately. The corporation's by-laws included articles pertaining to stockholders, directors and officers, as well as the resignation and increase in the number of directors. The by-laws indicated that the president of the corporation may be removed for cause by the directors, but the by-laws were silent on the procedure for removal of a director.

¶ 11 B. Amended Complaint

¶ 12 On September 12, 2018, Gary, in his capacity as minority shareholder of E. & G., filed an amended four-count complaint for a shareholder derivative action against the defendants on behalf of E. & G., pursuant to section 12.56 of the Business Corporation Act (805 ILCS 5/12.56 (West 2018)). In his complaint, Gary sought, *inter alia*, damages, costs, reasonable attorney fees, removal of the directors of E. & G., authorization to act as the sole director of E. & G. and appointment as president of E. & G. for breaches of fiduciary duty (count I) and corporate waste (count II). Gary also alleged that Diane had obtained undue influence (count III) over Geneva and sought an order declaring null and void all corporate documents signed by Geneva after December 20, 2017. Lastly, Gary sought a preliminary injunction (count IV) prohibiting the defendants from selling or conveying corporate assets to preserve the status quo of the parties until the matter could be fully and permanently resolved. Gary's complaint contained similar allegations to those contained in his emergency motion.

¶ 13 On September 20, 2018, Jordan Campanella, acting corporate counsel for E. & G., entered his appearance on behalf of all named defendants by filing a response to the emergency motion for preliminary injunction and temporary restraining order. The defendants generally denied all allegations contained in Gary's amended complaint.

¶ 14 C. Hearing on Motion for Preliminary Injunction

¶ 15 On September 21, 2018, the circuit court held a hearing on Gary's emergency motion for preliminary injunction. Gary was present at the hearing with his attorney, Henry Villani. Geneva and Diane were present at the hearing with their attorney, Jordan Campanella, who was also serving as corporate counsel for the corporation. Although Mr. Villani initially voiced concerns that Jordan Campanella's joint representation of Geneva, Diane and the corporation created a conflict of interest, he was prepared to proceed on the merits.

¶ 16 In his opening statement, Mr. Villani argued that the evidence would establish the requisite elements for issuance of a preliminary injunction. According to Mr. Villani, the irreparable harm that will occur "is that the equipment will be gone and have to be replaced at a loss, or the value of the equipment sold or conveyed will greatly reduce the value of the corporate stock." Mr. Villani also asserted that "[t]here is no adequate remedy at law to compensate Gary for the liquidation of the corporate assets," and "Gary will likely succeed on the merits of this case at the time of a final trial with all of the evidence presented." Mr. Villani then indicated that he was prepared to call Gary as his first witness.

¶ 17 Prior to testimony, the following colloquy took place between the circuit court and Mr. Villani:

> "THE COURT: Before we proceed with that, you made the statement that there is no adequate remedy of law because of the liquidation of corporate assets. Could you clarify that, please, as it relates to the equipment which you mentioned and any other valuation[?]
>
> MR. VILLANI: Absolutely, [Y]our Honor. This corporation, the business, is the operation of an ongoing farm entity. There is a trust that owns farmland. The corporation farms that land and it farms other land as a sharecropper, so to speak, of other landowners. In this case the equipment is used in that farming operation. So what has been sold off or what we are aware of being sold off so far, a planter, spreader, semi-tractor and trailer—and I believe there was one other piece of equipment—all of those things are commonly used in the operation of this particular farming entity or corporate

entity. And without those, one, we're concerned whether or not the farm is being prepared for bankruptcy in which case it would be a loss of millions of dollars.

We don't know if purchasing the equipment back—We have evidence that will show that there is a range of prices that would have to be paid to replace the equipment that was sold off for far more than what it was sold for. And we don't know what all other equipment has been sold, and that's where in the underlying complaint when we get to in accounting, and we'll ask questions today about those pieces of equipment and what they were sold for. We don't know the extent of what the damages are, but they will continue to mount if the equipment continues to be sold off.

THE COURT: In other words, the market valuation of the farm in its own market.

MR. VILLANI: Correct. The market value is going to plummet. We don't know how much, by what percentage. We're unable to come up with that kind of a number.

THE COURT: Okay. You may proceed."

¶ 18 Gary testified to the following details. At the time of the hearing, Gary was a shareholder of E. & G., although he had previously acted as both the president and a director of the corporation. Gary was raised on a farm, and he had farmed his entire life. He has been involved with E. & G.'s farming operation since the corporation was formed by his father. Although he left the farm for a period of time to work in construction, he continued working on the farm with his father during the evenings and on weekends. In 1993 or 1994, he returned to work full-time on the farm with his father. Gary and his father performed the majority of the farm work while Geneva occasionally contributed by driving the trucks during harvest season. After his father passed away in June 2016, Geneva assigned Gary as the president of E. & G. and requested that he continue running the farming operation. Gary continued acting as the president and performed the majority of the farm work with occasional assistance from his son or a hired hand until January 2018 when he was removed as both the president and a director of E. & G. Since that time, Mark and Brock Steele had operated the farm.

¶ 19 After the Steeles were hired, Gary learned that the corporation was selling pieces of farming equipment. Gary first heard that the corporation's semi-tractor had been sold and later

observed the removal of additional equipment from the farm. Brock assisted in removing the equipment from the buildings.

¶ 20 In August 2018, Gary received a phone call from a gentleman who indicated that he had purchased E. & G.'s fertilizer spreader, drill and grain cart. During this conversation, Gary learned that the gentleman had paid $22,000 for each piece of equipment. Gary was unable to verify if additional items had been sold because he had been denied access to the buildings that stored the farm equipment.

¶ 21 Gary became familiar with the corporation's farming equipment through his years of work on the farm. He recalled that an appraisal report of the farm equipment had been prepared in 2017 (Plaintiff's Exhibit F), following the death of his father, which listed all equipment the corporation owned. Gary regularly used all of the equipment when he operated the farm, and he opined that each piece was necessary for the operation of the farm.

¶ 22 Based upon his own investigation, a review of the appraisal and 10 to 12 hours of online research, Gary provided his opinions with regard to the approximate replacement cost of each piece of equipment that had been sold. "[D]ue to the tariffs that have been brought in on steel," Gary believed that the market values of certain pieces of equipment increased 15% to 30% since the appraisal was performed in 2017. He explained that he and his father commonly used internet sources, such as "Fastline" or "TractorHouse," when purchasing parts or equipment.

¶ 23 Gary provided the following testimony with regard to the semi-tractor and trailer. The semi-tractor and trailer were used to haul grain to the bin during harvest season and to the elevator during winter months. In November 2017, Gary traded in the corporation's damaged semi-tractor to purchase a 2013 Volvo semi-tractor. After viewing the list prices for comparable

semi-tractors and trailers at a local dealership, Gary opined that it would cost $47,000 to 49,000 to replace the semi-tractor and $33,000 to 35,000 to replace the trailer.

¶ 24 Gary provided the following details with regard to the fertilizer spreader. Shortly before the appraisal, Gary purchased a used fertilizer spreader to replace one that "had some major issues." After the appraisal was performed, Gary refurbished the used spreader by cleaning and painting the frame and wheels and replacing the bearings in the back end. Gary identified a photograph of the spreader taken by the appraiser before it was refurbished (Plaintiff's Exhibit Q). While he did not have a photograph of the refurbished spreader, he identified a photograph of a comparable 2017 BBI MagnaSpread PTHP fertilizer spreader that he found online with a list price of $55,000 (Plaintiff's Exhibit T). Gary opined that this spreader was comparable to the one owned by the corporation because both were equipped with an uncommon feature called a variable rate monitor. He explained that a variable rate monitor programs the spreader to change the flow and speed of the conveyer to match the particular needs of different areas of soil. Gary was familiar with the Steeles' equipment and knew that they did not own a comparable fertilizer spreader because they hired an independent supplier to spread their fertilizer. According to Gary, independent suppliers did not consider the variable rate and often increased the cost by spreading more fertilizer than needed. Gary also found a comparable 2016 fertilizer spreader with a list price of $45,000 (Plaintiff's Exhibit U).

¶ 25 Gary provided the following testimony with regard to the drill. The drill was used to sew wheat and beans for the corporation. Gary first identified photographs of the drill sold by the corporation (Plaintiff's Exhibits I & J). Gary next identified a photograph of a comparable 30-foot, no-till drill with a list price of $34,000 (Plaintiff's Exhibit H). He explained that the drill in the photograph was comparable because it "had actual plates to meter" the seed more precisely,

which resulted in less waste. He also explained that there are "very few of these types of drills," and the drill depicted in the photograph was from Pennsylvania, which would result in additional freight costs if purchased as a replacement.

¶ 26 Gary provided the following testimony with regard to the grain cart. The grain cart was equipped with a scale to weigh the yield of every field. Gary identified a photograph of E. & G.'s 2008 grain cart (Plaintiff's Exhibit R) and the scale (Plaintiff's Exhibit S). He also identified a photograph of a 1999 Demco grain cart with a list price of $29,500 (Plaintiff's Exhibit O), and a photograph of a 2009 Demco grain cart with a list price of $32,500 (Plaintiff's Exhibit P). Gary opined that the 1999 and 2009 models were comparable and similarly valued to the one that had been sold.

¶ 27 Gary also provided testimony with regard to several additional pieces of equipment, although he was unsure if the pieces had been sold. He identified photographs of a tractor blade (Plaintiff's Exhibit K), a 26-inch Hurricane ditcher (Plaintiff's Exhibit L) and a fill auger (Plaintiff's Exhibits M & N). While Gary did not testify with regard to the use or value of the tractor blade, he explained that the Hurricane ditcher owned by E. & G. was used to cut ditches in fields for drainage and was valued at $3900 on the appraisal. He also explained that the fill auger was used to fill a grain dryer, but he did not provide testimony regarding its value.

¶ 28 On cross-examination, Gary recalled that the corporation's checking account had $400 when he was removed from office. Gary was not surprised that there was currently over $100,000 in the account, stating "[t]here should be quite a bit. There was two years of wheat in that bin." Gary denied advising Diane and Geneva that the corporation was going bankrupt. When confronted with a document that had been signed by Leon Berg to purchase the grain cart and fertilizer spreader (Defendant's Exhibit A) and a $50,000 check (Defendant's Exhibit B),

Gary indicated that those items had been purchased for $25,000 a piece. He also acknowledged that the appraisal document listed the value of the grain cart as $22,500 and the fertilizer spreader as $25,000, which Gary admittedly purchased for $18,000. Gary testified that the Steeles were not using the corporation's equipment to operate the farming operation. He also testified that he had worked with the Steeles in the past and generally found them trustworthy. He expressed some doubts, however, when asked whether the Steeles "know what they're doing."

¶ 29 Next, Diane testified to the following details as an adverse witness. In the year preceding the hearing, E. & G. sold several pieces of farming equipment, including a Kinze planter, Volvo semi-truck, a grain cart, a fertilizer spreader and a drill. The Kinze planter was sold for $65,000. The Steeles contracted to purchase the semi-truck for $32,000 over the course of five years. They also hauled off all of the grain at no charge, although hauling grain usually cost $6000. The Steeles were also interested in purchasing the trailer for $22,000, although nothing had been "set in stone." According to Diane, it was unnecessary to advertise the equipment because there were willing buyers, and E. & G. needed the cash to pay $334,000 in bills. After selling the equipment and grain, the corporation still owed over $100,000 in bills. The balance of the corporate bank account was currently $225,000. Diane intended to continue selling equipment because there was no need for the equipment since the Steeles farmed the land on "a two-thirds/one-third basis," which was the same rate her father had charged to farm other ground. Diane did not know if the corporation was paying more to the Steeles than Gary received.

¶ 30 When the circuit court inquired whether the Steeles had paid the first installment on the semi-truck, Diane responded in the affirmative. The court then asked about the amount that had been paid, and Mr. Campanella responded, "it was [$]6,400." The court also clarified that the

Steeles had used the trailer, although they had not yet purchased it. Mr. Campanella then explained that the Kinze planter had not yet been transferred, although there were discussions for that item to be purchased at a later date.

¶ 31 Following a short recess, the plaintiff's exhibits were admitted into evidence without objection. Mr. Campanella orally moved for a directed finding, arguing that Gary had failed to show irreparable harm. In response, Mr. Villani argued that Diane had intended to continue selling off equipment for prices well below current fair market value. Mr. Villani further argued that the corporation would be "at the mercy of those who would do the farming" once E. & G. sold off its means to conduct the farming business, which would result in additional losses to the shareholders. The circuit court observed that several pieces of equipment had been sold for prices similar to those listed on the appraisal, while other items had been sold for amounts significantly less than the other estimate. The court stated that based on the evidence and the depletion of the grain, the four conditions required to issue a preliminary injunction were in place. After the court indicated that it would sign an order issuing the preliminary injunction, Mr. Campanella reminded the court that he planned to call witnesses.

¶ 32 Diane testified to the following details. Shortly after her father passed away, Gary advised Diane that the corporation would likely be bankrupt within two years. The corporation was receiving "bill after bill after bill" and owed over $325,000 to Farm Credit with an additional $100,000 loan to run the farm. Diane explained that, despite purchasing the semi-tractor and spending an additional $5000 on it, Gary was not "hauling any grain or anything off so we knew at that point that we had to do something." According to Diane, she and Geneva felt that Gary overspent and did not pay bills, thus, they acted against him for financial reasons. Because Gary was no longer farming, Diane believed that the corporation no longer needed the

farming equipment. In addition, Diane opined that "a million dollars worth of equipment" is unnecessary to farm 600,000 acres.

¶ 33 Following Gary's removal, a corporate resolution was passed allowing the Steeles to operate the grain farm on a "one-third and two-thirds" basis. While there was currently no written agreement, Diane explained that oral agreements were common among farmers. She also expressed that the Steeles were trustworthy and had gone "above and beyond to help" with the farming operation. She clarified that the Steeles had hauled off one bin of beans and one bin of grain at no charge. Gary had indicated that some of the grain belonged to him, although Diane believed all of the grain belonged to the corporation. While the first load of grain came out fairly well, the Steeles had to climb into the bin and chisel the rest of the grain because it had molded and was almost unsellable. Additionally, the Steeles, specifically Brock, assisted with pricing and selling of the equipment.

¶ 34 Diane provided the following testimony regarding the sale of equipment. The grain cart, which had a wholesale value of $22,500, was sold to Mr. Berg for $25,000. The fertilizer spreader, which had a wholesale value of $25,000 and was purchased for $18,000, was sold for $25,000. The drill, which had a wholesale value of $22,500, was transferred to Mr. Berg with the promise that he would pay $22,000 after selling his grain. Mr. Berg spent over $5000 repairing the drill. The semi-tractor, which was valued at $37,600, was sold to the Steeles for $32,500 after they hauled the bean and grain bins at no charge. Diane clarified that the 2009 Kinze planter had not been sold, although they had been negotiating with an interested purchaser, David McBride. Mr. McBride was also interested in purchasing the field cultivator for $10,000.

¶ 35 On cross-examination, Diane admitted that Gary had paid the bills "[a] little at a time" when he was president of the corporation. When asked if Gary continued to repair, maintain and

replace equipment as needed, Diane stated that he bought new equipment every time and constantly felt the need to upgrade. Diane admitted, however, that she had never farmed and did not know whether any of those upgrades made the farming operation more cost effective and efficient. While Diane knew that the net, or gross, profits from the farming operation were different every year when Gary was working with their father, she did not know specific details about the calculations of the corporation's current profits. She was also unable to explain the difference between the corporation's current profits and the profits earned when Gary was running the farming operation.

¶ 36 Contrary to her earlier testimony, Diane believed there was a written agreement with the Steeles, and that Gary had not paid all the bills when he was acting as president. Diane specifically recalled that Gary had not paid the additional $5000 bill for the semi-tractor and that the Steeles had picked up the semi-tractor in Mt. Vernon at no charge. She admitted that Gary had been removed shortly after he purchased the semi-tractor.

¶ 37 Diane provided the following details in response to several inquiries from the circuit court. Geneva, who was 90 years old, functioned normally and was still involved in the corporation. Diane and Geneva discussed selling the equipment, and Diane showed Geneva all of the corporation's bills, including the interest rates. Diane did not intend to sell her corporate shares to the Steeles. Diane clarified that Gary did not constantly shop for upgrades, but she complained that he spent an additional $5000 after purchasing the semi-tractor. Diane admitted that Gary had significantly more experience in running a farm, stating that "[h]e does a great job farming. We have some of the best looking crops in a long time. There's a difference between planting and farming as opposed to paying the bills and knowing when to pay the bills. He needed a secretary."

¶ 38 Geneva then briefly testified to the following details. She was confident that her husband ran the farming operation correctly, and, although she had more faith in her husband than her children, she thought Gary ran the corporation in line with her husband's expectations and in a financially responsible manner. Geneva clarified that, at first, she thought Gary was running the operation properly because she did not see any records. While she did not recall Gary giving her information pertaining to the corporation, she explained that Diane always provided her access to corporate records. Despite viewing the corporation's bank statements and discussing the corporation's finances with Diane, Geneva did not know if Gary had run the operation "into ruin."

¶ 39 On cross-examination, Geneva could not recall if anyone else was present when she discussed the corporation's finances with Diane. She recalled that attorney Mike Oldfield had represented the corporation for many years, but she did not remember if she had fired him or why he had been fired. Geneva explained that she was going through a difficult time due to her husband's passing when Mr. Oldfield was fired. While she knew Mr. Campanella from reading his name in the newspaper, she could not recall who made the decision to schedule an appointment with him to represent the corporation. When asked if Diane was her power of attorney, Geneva responded, "I guess you could say she is."

¶ 40 After hearing closing arguments, the circuit court stated the following:

> "The requirements for a preliminary injunction, the elements are that the actions of the defendants are causing and will continue to cause irreparable damage to the corporation if injunctive relief is not granted. I'm reminded of the conclusive testimony on direct examination of the defendant, [Diane], where she indicated that there was no contract or written document between—and I asked her two or three different questions—between the people who are doing the work on the farm and herself or the company, and she indicated there was not. Later on she testified that she re-thought it and that she believed that there was. Either way, she doesn't know.
>
> The Court is mindful of the testimony of both the plaintiff and the defendant, [Diane]. And juxtaposing that testimony and what the Court heard in terms of knowledge

> and experience, the elements of a preliminary injunction pretty well fall in line. The irreparable damage that could be caused has to do with the continued farm operation. And we now have a two-thirds to one-third split between the Steeles with the larger share, and the farm operation with the smaller share.
>
> We now have, had there not been the temporary restraining order issued, we now have a sale of five pieces of equipment, all of which are equipment that this farm has owned and used every year for a number of years. That equipment, depending on whether you use the prices for sale online or the average resale value or whether you use the, quote, wholesale value in each case, the wholesale value has been used as a marker rather than something for replacement value.
>
> And mind you, this is not the only part of this lawsuit. This lawsuit has a complaint for shareholder derivative action which will continue on. And while the defendant states that the grain rotted, it would behoove the Steeles upon first look to indicate something like that in order to continue their objective in terms of running the farm operation.
>
> When I asked at the temporary restraining order hearing Mr. Villani about the sales that were going on, I brought up the issue of whether damages for money would cover all of that with the exception of the inherent valuation of an ongoing farm operation. And it is clear that this farm operation has changed directly around to a new kind of farm operation that sells off its assets in order to pay bills. And obviously bills are needed to be paid.
>
> The understanding that this Court had in terms of the knowledge and the experience of the people involved was that the plaintiff has far more experience and knowledge of how to operate a farm than the defendant. And accordingly, that inherent value of a farm operation ongoing is critical, and that is the lack of damages, money damages and irreparable damage of that that is behind the Court's ruling here. There is no adequate remedy at law. And all in all, there is a likelihood of success on the merits of the complaint and there's evidence presented that there wouldn't be success if it stayed as it was as well. But the Court has analyzed the evidence presented, and accordingly the Court is going to issue the preliminary injunction and maintain the status quo while this lawsuit is ongoing."

The court then waived bond and entered a written order granting Gary's motion for a preliminary injunction.

¶ 41 D. Order Granting Preliminary Injunction

¶ 42 The circuit court's written order contains the following finding: (1) Gary will suffer irreparable damage if injunctive relief is not granted; (2) there is no adequate remedy at law for the damages Gary will suffer; (3) Gary has a likelihood of success on the merits; and (4) the hardship borne by Gary if the injunction is not granted is much greater than any hardship borne

by the defendants if the injunction is granted. The preliminary injunction enjoins the defendants "from selling, transferring or otherwise conveying any corporate assets until a final hearing on the permanent injunction." This interlocutory appeal followed.

¶ 43 II. Analysis

¶ 44 On appeal, the defendants argue that the circuit court erred in granting the preliminary injunction because Gary failed to establish the requisite elements for the issuance of a preliminary injunction. The defendants also argue that he failed to prove the balance of hardships weighed in his favor. Before considering the merits of the defendants' specific arguments on appeal, we find it useful to set out the legal framework guiding our analysis.

¶ 45 The defendants brought this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). "In an interlocutory appeal taken pursuant to Rule 307(a)(1), neither controverted facts nor the merits of the case are decided." *Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 14 (citing *Illinois Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Board v. Illinois Institute of Technology*, 409 Ill. App. 3d 228, 231 (2011)). An appeal under this rule "may not be used as a vehicle to determine the merits of a plaintiff's case." *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399 (1993). Instead, "the only question before the reviewing court is whether there was a sufficient showing made to the trial court to sustain its order granting or denying the interlocutory relief sought." *Keefe-Shea Joint Venture v. City of Evanston*, 332 Ill. App. 3d 163, 168 (2002) (citing *Postma*, 157 Ill. 2d at 399).

¶ 46 A circuit court has substantial discretion in deciding whether to grant or deny a preliminary injunction, and the court's decision will not be disturbed absent a clear abuse of that discretion. *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 8 (citing

Lifetec, Inc. v. Edwards, 377 Ill. App. 3d 260, 268 (2007)). A circuit court "abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *People ex rel. Madigan v. Petco Petroleum Corp.*, 363 Ill. App. 3d 613, 634 (2006).

¶ 47 This court has stated that "the standard of review for a preliminary injunction is whether the circuit court abused its discretion in determining that the plaintiff provided *prima facie* evidence to support its claim." *Scheffel Financial Services, Inc.*, 2014 IL App (5th) 130600, ¶ 14. In assessing a circuit court's exercise of discretion, " 'we examine only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights.' " *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006) (quoting *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002)).

¶ 48 To obtain injunctive relief, a party need only make a *prima facie* showing of evidence on the following requisite elements: (1) a clearly ascertained right in need of protection, (2) irreparable harm in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case. *Scheffel Financial Services, Inc.*, 2014 IL App (5th) 130600, ¶ 10 (citing *Lifetec, Inc.*, 377 Ill. App. 3d at 268). "The circuit court must also consider whether the benefits of granting the injunction exceed any injury to the defendant." *Scheffel Financial Services, Inc.*, 2014 IL App (5th) 130600, ¶ 10. With these legal principles in mind, we consider the defendants' specific arguments on appeal.

¶ 49 A. Clearly Ascertainable Right

¶ 50 As stated, Gary was required to make a *prima facie* showing of a clearly ascertainable right in need of protection. The circuit court found, and the defendants do not dispute, that Gary

had a clearly ascertainable right in need of protection because he is a minority shareholder of the corporation.

¶ 51 B. Irreparable Harm and No Adequate Remedy at Law

¶ 52 The defendants first argue that Gary failed to prove that he would suffer irreparable harm if the injunction was not issued, and that he had no adequate remedy at law. Specifically, they argue there was no harm because the farm equipment was sold for a reasonable value and that monetary damages would adequately compensate the injury of replacing any farm equipment.

¶ 53 "The second and third elements of the preliminary injunction standard are closely related." *Happy R Securities, LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36. "An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard." *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286 (1981). "To show irreparable injury, the plaintiff is not required to show that the injury is beyond repair or compensation in damages, but need show only transgressions of a continuing nature." *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1096 (2007). The mere existence of a remedy at law or the fact that a money judgment may be the ultimate relief will not deprive a circuit court of its power to grant injunctive relief if the remedy is inadequate. *K.F.K. Corp. v. American Continental Homes, Inc.*, 31 Ill. App. 3d 1017, 1021 (1975). An adequate remedy at law is one which is clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy. *Cross Wood Products, Inc.*, 97 Ill. App. 3d at 286 (citing *Bio-Medical Laboratories, Inc. v. Trainor*, 68 Ill. 2d 540, 549 (1977)).

¶ 54 In applying the deferential standard applicable to our review, we cannot say that the circuit court erred in finding that Gary raised a fair question as to the second and third elements.

After hearing the testimony, the court determined that Gary "has far more experience and knowledge of how to operate a farm" than Diane. With regard to irreparable harm and no adequate remedy at law, the circuit court stated that its findings related to the inherent value of "the continued farm operation." Specifically, the court observed that, since Gary's removal, the "farm operation has changed directly around to a new kind of farm operation that sells off its assets in order to pay bills." The court also observed that the corporation's crop share income had changed to "a two-thirds to one-third split between the Steeles with the larger share, and the farm operation with the smaller share." In other words, the court determined that these drastic changes in the farming operation, coupled with Diane's lack of knowledge and experience, were sufficient to demonstrate a *prima facie* showing that both Gary and the corporation could suffer irreparable damage with no adequate remedy at law absent issuance of a preliminary injunction. The record provides ample support for the court's findings.

¶ 55 Although the Notice and Resolution showed that Geneva had been elected as president following Gary's removal, the testimony revealed that Diane had assumed Gary's role as president in certain respects. Specifically, Diane's testimony revealed that she was instrumental in paying the bills and dealing with Mark and Brock Steele but claimed she had discussed these matters with Geneva. It is undisputed that, following Gary's removal, the corporation hired the Steeles to operate the grain farm, with the Steeles receiving two-thirds of the profits from crop sales and the corporation receiving one-third of the profits. Diane gave conflicting testimony as to whether the corporation had a written contract with the Steeles with regard to this arrangement. While Diane generally understood that the profits from the farming operation were different every year when Gary was working with their father, she did not know specific details

about the calculations. She was also unable to explain the difference between the corporation's current profits and the profits earned when Gary was running the farming operation.

¶ 56 It is also undisputed that the corporation began selling off farm equipment after hiring the Steeles. Diane testified that she intended to continue selling the farm equipment because the Steeles would operate the grain farm with their own equipment and Gary would no longer farm. While Diane stated that Gary had been removed from the corporation because he overspent and did not pay bills, she admitted that Gary had significant experience operating a farm, stating that "[h]e does a great job farming. We have some of the best looking crops in a long time." After considering this evidence, the circuit court could have reasonably determined that Gary had more knowledge and experience in running the farming operation, and that the nature of the corporation had changed since Gary's removal.

¶ 57 In addition, the continuing nature of the harm and the difficulty in calculating the damage to a closely held, ongoing farm operation support the circuit court's finding that there was no adequate remedy at law. While Gary requests money damages in his complaint, he alleges that the defendants' actions have damaged the corporation "in an undetermined amount." Although we agree that monetary damages may serve as adequate compensation for the sale of farm equipment under certain circumstances, there was a sufficient *prima facie* showing made to the circuit court to sustain a determination that such damages would be inadequate or difficult to calculate in the present case. Consequently, we cannot say that the circuit court abused its discretion in finding irreparable harm and no adequate remedy at law.

¶ 58 C. Likelihood of Success on the Merits

¶ 59 Next, the defendants argue that Gary failed to establish a likelihood of success on the merits of his underlying complaint. Specifically, the defendants argue that Gary failed to

demonstrate success on his claims for breach of fiduciary duty, corporate waste and undue influence.

¶ 60 Our review of this issue is hindered by the deficiencies in the argument set forth in the defendants' brief. Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017) requires that an appellant's brief contain argument consisting of "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research." *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26, (1982). "Citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7)." *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. It is not "the obligation of this court to act as an advocate or seek error in the record." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (citing *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). It is well-settled that a contention supported by some argument without citation to any legal authority does not satisfy Rule 341(h)(7), and conclusory contentions made without citation to any legal authority do not merit consideration on appeal. *Grant v. Dimas*, 2019 IL App (1st) 180799, ¶ 34 (citing *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990)). An appellant forfeits any contentions that are unsupported by citation to legal authority or by cohesive arguments. *Obert*, 253 Ill. App. 3d at 682.

¶ 61 Here, the defendants have failed to provide this court with a cohesive argument supported by legal authority. The entirety of the defendants' argument—that Gary failed to "prove a likelihood of success on the merits" of his complaint—consists of five short paragraphs with citations to only three cases. In the first paragraph, the defendants cite one case for the general

principle that a party seeking a preliminary injunction must establish a substantial likelihood of success on the merits. They also assert that Gary's underlying complaint includes claims for breach of fiduciary duty, corporate waste and undue influence.

¶ 62 In the second, third and fourth paragraphs, the defendants contend that Gary failed to prove a likelihood of success on both his breach of fiduciary duty and corporate waste claims. In support of this contention, the defendants make two arguments. First, the defendants, without citation to any legal authority, argue that they "have proven the sales of the four pieces of equipment were fair and reasonable," and Gary "failed to testify to any other evidence of specific corporate waste or breach of fiduciary duty." While the defendants briefly elaborate on this point by discussing certain testimony presented at the hearing, the defendants have failed to set out the requisite elements of these two separate actions in their brief. The defendants also failed to cite authority demonstrating the standard of proof necessary to establish a likelihood of success at the preliminary injunction stage. Consequently, the defendants neither specified which elements Gary failed to prove nor adequately explained why the evidence was insufficient to meet the requisite standard of proof for each claim.

¶ 63 Next, the defendants argue that Gary is unlikely to succeed because the business judgment rule protects their actions. The defendants offer three sentences in support of this argument, two of which include citations to case law. In the first sentence, the defendants cite a case that sets out the business judgment rule. Next, the defendants cite a bankruptcy case for the basic principle that courts should not second-guess a business's decision using "20/20 hindsight" except in rare cases. Lastly, the defendants conclude by asserting that they "made a reasonable decision in selling the equipment and thus are protected under the business judgment rule." We note, however, that the circuit court did not decide this controverted fact at this stage in the

proceedings. While the defendants cite two cases in support of this argument, we note that neither case involves the denial of a preliminary injunction based on the application of the business judgment rule. Even assuming these cases constitute relevant authority, the defendants fail to explain how this authority demonstrates that Gary failed to raise a fair question as to his likelihood of success on these claims.

¶ 64 In the fifth paragraph, the defendants address Gary's undue influence claim. The entirety of the defendants' argument in support of this contention is set out in the following sentence: "As [Gary] failed to provide evidence of undue influence in his case in chief, he did not show a substantial likelihood of success on the merits and as such has failed to prove this mandatory element for issuance of a preliminary injunction." Because the defendants' argument in this regard is conclusory and unsupported by any developed legal analysis, it too is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (requiring that an appellant's brief contain argument consisting of "the contentions of the appellant and the reasons therefor"); *Pilat v. Loizzo*, 359 Ill. App. 3d 1062, 1063 (2005) (explaining that a "mere conclusory assertion, without supporting analysis, is not enough").

¶ 65 Thus, the defendants' arguments relating to Gary's success on his claims for breach of breach of fiduciary duty, corporate waste and undue influence fail to meet the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). Consequently, we conclude that the defendants have forfeited review of these arguments.

¶ 66 D. Balance of Hardships

¶ 67 Lastly, the defendants argue that Gary failed to establish that the hardships were balanced in his favor. The defendants also argue that the circuit court failed to properly address the balance of hardships in granting the preliminary injunction.

¶ 68 The purpose of a preliminary injunction is to preserve the status quo until the merits of the case are decided. *Smith v. Department of Natural Resources,* 2015 IL App (5th) 140583, ¶ 21 (citing *City of Kankakee v. Department of Revenue,* 2013 IL App (3d) 120599, ¶ 17). However, the status quo, which is defined as "the last actual, peaceable, uncontested status preceding the controversy," should be preserved "with the least injury to the parties." *Limestone Development Corp. v. Village of Lemont,* 284 Ill. App. 3d 848, 859 (1996). "Usually, courts employ an equitable balancing test to determine whether injunctive relief is properly tailored to the facts." *Liebert Corp. v. Mazur*, 357 Ill. App. 3d 265, 287 (2005) (citing *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 62 Ill. App. 3d 671, 682 (1978)). "If the equitable doctrine applies, any harm an injunction would impose on the defendant is weighed against the benefit it would provide the plaintiff." *Liebert Corp.*, 357 Ill. App. 3d at 287 (citing *ABC Trans National Transport, Inc.*, 62 Ill. App. 3d at 682).

¶ 69 Here, as the defendants correctly note, the circuit court did not make specific findings with regard to the balance of hardships at the hearing. However, the court did state it had considered the evidence and determined that issuing the preliminary injunction would maintain the status quo. Moreover, in its written order granting the preliminary injunction, the court found Gary would suffer a greater hardship than the defendants if the injunction was not granted. The record contains ample evidence to support the court's conclusion. It is undisputed that the continued liquidation of the farm equipment would fundamentally alter the farming operation and substantially reduce the fixed assets of the corporation. While the defendants claim they will be harmed by the depreciation in the value of the equipment, they offered no evidence in support of this claim at the hearing. Because there was a sufficient showing to support the court's

determination that the hardships balanced in Gary's favor, we cannot say that the court abused its discretion.

¶ 70 III. Conclusion

¶ 71 For the foregoing reasons, we affirm the order of the circuit court of Jackson County granting the preliminary injunction in favor of Gary.

¶ 72 Affirmed.