SECOND DIVISION
JULY 26, 2011

2011 IL App (1st) 91198-U
No. 1-09-1998

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID J. BARTS, Plaintiff-Appellant, v. VAN DOMANSKIS, individually and as Trustee of the Domanskis Trust, DOUGLASS BLOUNT, BLOUNT PRUDENTIAL REALTY, WILLIAM POKORNY, JR., and MARGARET POKORNY, individually and as Trustees of the William and Margaret Pokorny, Jr. Land Trust, Defendants-Appellees, DOUGLASS BLOUNT and BLOUNT PRUDENTIAL REALTY, Defendants-Cross-Appellants, v. DAVID J. BARTS, Plaintiff-Cross-Appellee, WILLIAM POKORNY, JR., and MARGARET POKORNY, individually and as Trustee of the William and Margaret Pokorny, Jr. Land Trust, Third-Party Plaintiffs-Appellants, v. DOUGLASS BLOUNT, PRUDENTIAL L.T. BLOUNT and DAVID J. BARTS, Third-Party Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 02 CH 13016 Honorable LeRoy Martin, Judge Presiding.

PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Karnezis and Connors concurred in the judgment.

ORDER

Held: We uphold the trial court's rulings in this lawsuit involving competing contracts for the purchase of real estate that: (1) the unsuccessful purchaser failed to prove a breach of contract action against the seller and that he was entitled to specific performance against the seller and ultimate purchaser; (2) the amount of the award of damages to the unsuccessful purchaser against his real estate agent for breach of fiduciary duty was supported by the evidence; and (3) the ultimate purchasers failed to prove a cause of action for breach of fiduciary duty and causation for damages against the real estate broker who sponsored their agent and thus no award for damages to the ultimate purchasers was warranted.

¶ 1 After a 2009 bench trial in the circuit court of Cook County, the trial court ruled against the plaintiff-appellant, plaintiff-cross-appellee and third-party defendant-appellee, David Barts (Barts) in his lawsuit for specific performance and breach of a real estate contract against the seller of a property, defendant-appellant Van Domanskis (Domanskis). The trial court awarded Barts $300 in damages on his claim for breach of fiduciary duty against defendants-appellants, cross-appellants and third-party defendants-appellees, Douglass Blount (Blount), the dual real estate agent for the property and his company, Blount Prudential Realty (Prudential). The trial court further ruled in favor of the defendants-appellees, third-party plaintiffs-appellants, William Pokorny, Jr. and Margaret Pokorny (the Pokornys), the purchasers of the subject property, in their counter lawsuit to quiet title. The trial court ruled against the Pokornys and in favor of Blount and Prudential on the issue of whether Blount's breach of duty of honesty and fair dealing was the proximate cause of their litigation to quiet title.

¶ 2 On appeal, Barts raises the following issues: (1) whether the trial court erred when it failed to comply with a previous appellate court mandate in this case that Barts interprets as having concluded that Domanskis' attorney modifications were made in bad faith; (2) whether the trial court's ruling that Domanskis' proposed attorney modifications to the contract were made in good faith is against the manifest weight of the evidence; (3) whether the trial court erred in finding that Barts rejected Domanskis' counteroffer; (4) whether the trial court erred when it found that Barts failed to meet the required burden of proof in his breach of contract claim against Domanskis; (5) whether the trial court erred by not resolving the ambiguity of the attorney approval provision of the contract between Domanskis and Barts; and (6) whether the trial court erred by awarding inadequate damages for Blount's breach of fiduciary duty to Barts where Blount did not disclose a competing offer on the property.

¶ 3 The Pokornys raise the following issues on appeal: (1) whether Blount breached his duty of honesty and fair dealing to his agent Catherine Maier (Maier), and thus to the Pokornys because Maier was their agent; (2) whether Blount should have disclosed to his agent Maier the material fact that he was one of the purchasers of the Domanskis' property; (3) whether the trial court was inconsistent and therefore erroneous in finding that the Pokornys' offer was a material fact that should have been disclosed to Barts, but not finding that the fact that Blount was a potential purchaser of the property was a material fact that should have been disclosed to the Pokornys; and (4) whether Blount's acts and omissions caused the Pokornys substantial damages by requiring an action against Barts to quiet title and thus the trial court erred in not awarding the Pokornys attorney fees against Blount.

¶ 4 In his cross-appeal, Blount argues that: (1) the trial court's ruling that Barts failed, for the most part, to prove causation and damages against Blount for breach of fiduciary duty was not against the manifest weight of the evidence; (2) the trial court correctly ruled that Blount's failure to withdraw his contract for a portion of the property was not the proximate cause of the Pokornys' expenditure of attorney fees to quiet title; and (3) Blount did not have an obligation to disclose the Pokornys' offer to Barts because the Pokornys had requested that their offer remain confidential and only disclosed to Domanskis.

¶ 5 For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 6 BACKGROUND

¶ 7 On May 28, 2002, Barts submitted an offer to purchase Domanskis' home located at 8415 West 119th Street in Palos Park, Illinois (the property). Domanskis owned the property as trustee of the Domanskis Trust. On that date, Barts, Blount, Domanskis and Domanskis' son who was also his attorney, Alexander Domanskis (Al), met at the property to discuss the terms and conditions of the contract. Blount was Domanskis' neighbor and the listing agent of the property. Blount also represented the potential purchaser, Barts, as a dual agent. The parties agreed on a purchase price of $427,200, the inclusion of various items of personal property and the closing and possession dates. Barts deposited $10,000 with Blount as earnest money. The contract contained the following provision:

> "ATTORNEY MODIFICATION:
>
> The terms of this Contract, except the purchase price, closing date, and possession date, are subject to good faith modifications (which

> may include additional terms) by the attorneys for the parties within three (3) business days from the Contract Date. ***. Notice of modification shall be in writing, served upon the other party or his agent, and shall state the specific terms to be modified and the proposed revisions. IN THE ABSENCE OF WRITTEN NOTICE WITHIN THE TIME SPECIFIED HEREIN, THIS PROVISION SHALL BE DEEMED WAIVED BY ALL PARTIES HERETO AND THIS CONTRACT SHALL CONTINUE IN FULL FORCE AND EFFECT. THE PARTIES ACKNOWLEDGE THAT MODIFICATION PURSUANT TO THIS PROVISION SHALL CONSTITUTE A COUNTEROFFER."

¶ 8 A handwritten clause in the contract contained the following: "This contract is contingent on [the] simultaneous closing of [the] contract between Domanskis/Blount for 5' x 160' parcel on west side of lot. Should this contract fail to close, [the] Domanskis/Blount contract shall be void and vice versa." The described parcel of land was the portion of Blount's driveway that encroached on Domanskis' property. On May 28, 2002, Blount signed a contract with Domanskis to purchase the small parcel for $4,800.

¶ 9 On May 30, 2002, Al mailed and transmitted by facsimile a letter to Barts' attorney, Scott Ladewig (Ladewig), that proposed seven modifications to the contract. Al requested that he be notified in the event that the modifications were not acceptable to Barts so that the contract could be cancelled and the earnest money returned. On May 31, Ladewig replied by letter that Domanskis

had already exercised his right to modify the contract at the meeting of the parties on May 28, 2002. Ladewig further stated in that letter that the proposed modifications by Al were not made in good faith since the parties had already negotiated and accepted the terms on May 28. Ladewig also stated in the letter that the original contract was in full force and effect and therefore Barts had no response to the modifications proposed by Al.

¶ 10 On May 31, Al responded by letter to Ladewig that the meeting and the negotiations that took place on May 28, 2002, did not alter the right of each party to suggest modifications pursuant to the contract terms. Al explained that there were other people involved in his father's trust who needed to give their input regarding the contract and thus the modifications were suggested after consultation with them. The letter stated that it was the last day of the attorney modification period and Barts had until 5 p.m. that day to withdraw his letter and accept the modifications proposed by Al. Al's letter concluded with, "I await your response. Failure to respond will confirm termination of the contract."

¶ 11 A response letter sent by Ladewig on May 31, 2002, stated:

> "My earlier letter does not act as a rejection of your counteroffer, but instead specifically states that my client has no response to your proposed modifications as he legally does not have to consider them at this point. Furthermore, your interpretation of the attorney modification language in the contract is incorrect. The language provides that the attorneys for the parties have three (3) business days from acceptance to propose 'good faith' modifications, but does not put any time limits on reaching an agreement with respect to any

> proposed modifications. My client is not held to either agreeing or disagreeing with any proposed modifications within the three (3) day period. As I stated in my earlier letter, my client's position is that the contract in the form that it presently exists is legally binding and valid. Your letter of May 30, 2002 does not constitute 'good faith' modifications under the terms of the attorney modification clause."

¶ 12 On May 31, 2002, Al sent another letter by facsimile to Ladewig which stated, "You have now twice rejected my attorney modifications as allowed under the contract." Al further stated that his letter of May 30, 2002, constituted a counteroffer which was twice rejected and thus the contract was null and void.

¶ 13 The Pokornys were shown the property by Maier, a salesperson for Prudential L.T. Blount Realtors[1]. Blount was Maier's sponsoring broker. On May 28, the Pokornys instructed Maier to prepare a written offer to Domanskis on the property. Maier told Blount that her clients were going to make an offer. On May 29, 2002, Maier informed the Pokornys that another contract had been accepted by Domanskis. The Pokornys then instructed Maier to submit their backup cash offer of the full asking price of $439,900. On June 6, 2002, Domanskis accepted the Pokornys' offer. The contract called for a closing date of August 14, 2002. Attached to the contract was a rider that stated that the Pokornys agreed to purchase the property subject to a prior contract dated May 28, 2002, which the seller had terminated on May 30, 2002, for failure to agree to the terms of an attorney

[1]This is the correct name of the realty firm, although the caption in the lawsuits lists the company's name as Blount Prudential Realty.

modification letter. Another rider stated that the contract "shall not be communicated to the first buyer by the seller or the seller's agent." On July 1, 2002, after the Pokornys became aware of Blount's contract with Domanskis, the Pokornys wrote a letter to Blount requesting that he withdraw his contract with Domanskis to purchase the small parcel of Domanskis' property. Blount did not take any action in that regard.

¶ 14 On June 3, 2002, Blount sent Ladewig a facsimile transmission of a termination of contract document executed by Domanskis. Barts did not sign the document. Barts alleged that he became aware of the Pokornys' contract on June 7, 2002. On June 11, 2002, Barts recorded a memorandum of contract against the property. On July 15, 2002, Barts filed a complaint in the sixth municipal district of the circuit court of Cook County seeking specific performance of the contract and recorded a *lis pendens* notice against the property. Domanskis and the Pokornys closed their transaction on July 17, 2002. The Pokornys accepted the title to the property through the William and Margaret Pokorny, Jr. Land Trust.

¶ 15 On July 16, 2002, Barts' lawsuit was transferred to the chancery division of the circuit court of Cook County. The lawsuit sought specific performance of the real estate contract against the seller of the property, Domanskis, and the ultimate purchasers of the property, the Pokornys. The complaint was amended several times and Barts filed his fourth amended complaint in July 2003 seeking: (1) specific performance of the real estate contract against Domanskis and the Pokornys (count I); (2) actual damages against Domanskis for breach of contract (count II); and (3) actual damages for breach of fiduciary duty against Blount and Prudential (count III).

¶ 16 In August 2002, the Pokornys filed a "Counter Complaint to Quiet Title and For Other Relief" against Barts, Blount and Prudential. In November 2002, the Pokornys filed a first amended counter claim against the same parties and requested: (1) a quit claim deed from Barts and Blount releasing any and all interest in the property to the Pokornys; (2) a declaration that the contracts between Domanskis and Blount and between Barts and Domanskis were null and void; and (3) compensatory and punitive damages for Blount's actions. The Pokornys alleged that Blount breached his duty as a fiduciary and officer of Prudential, waived his rights in the real estate contract with Domanskis, interfered with the Pokornys' contractual relationship with Domanskis and committed slander of title causing them to expend great sums of money.

¶ 17 In June 2004, the trial court granted Domanskis' and the Pokornys' motions to dismiss Barts' fourth amended complaint (735 ILCS 5/2-615(e) (West 2002)) and granted Blount's and Prudential's motion for summary judgment (735 ILCS 5/2-1005 (West 2002)) on Barts' breach of fiduciary duty count that was directed to them. Barts appealed.

¶ 18 In March 2006, the sixth division of this court reversed and remanded the case to the trial court. *Barts v. Domanskis et al.*, No. 1-04-2332 (2006) (unpublished order under Supreme Court Rule 23). This court ruled that the issue of whether the attorney modifications offered by Domanskis were made in good faith was a question of fact to be determined by a fact finder. Further, there were genuine issues of fact regarding Blount's attempted concealment of information material to the transaction.

¶ 19 Upon remand, a bench trial was conducted on Barts' fourth amended complaint and the

Pokornys' counter claim. On May 19, 2009, the trial court entered the following order: (1) judgment in favor of Domanskis and against Barts on the claim for breach of contract; (2) judgment in favor of Domanskis and the Pokornys and against Barts on the claim for specific performance; (3) judgment in favor of Barts and against Blount and Prudential for breach of fiduciary duty; (4) an order for briefing by the parties to determine the amount of the award to Barts for Blount's and Prudential's breach of fiduciary duty; (5) judgment in favor of the Pokornys and against Barts and Blount to quiet title; and (6) judgment for Barts and Blount and Prudential and against the Pokornys on their remaining counter claims. On June 30, 2009, the trial court awarded the amount of $300 in damages to Barts against Blount and Prudential for the breach of fiduciary duty claim. On July 29, 2009, Barts appealed from the orders of the trial court and the Pokornys also appealed on July 30, 2009. Blount and Prudential were granted leave by this court to file their notice of cross-appeal on September 17, 2009.[2] We therefore have jurisdiction to hear these appeals.

¶ 20 ANALYSIS

¶ 21 The first issue that Barts raises on appeal is that the trial court erred by failing to comply with the mandate contained in this court's March 17, 2006, order. In that order, this court: reversed the trial court's grant of Domanskis' and the Pokornys' motions to dismiss Barts' complaint; reversed the trial court's grant of Blount's and Prudential's motion for summary judgment; and remanded the case to the trial court. *Barts,* No. 1-04-2332 at 19. This court held that: (1) Domanskis and Barts

[2]Both Barts' and Blount's notices of appeal include a statement that they were also appealing the trial court's May 28, 2008, order denying their motions for summary judgment, however, they do not brief that issue and we do not address it.

had entered into a valid, enforceable contract that was contingent upon good faith attorney modifications; (2) the issue of good faith is an issue of fact to be determined by a trier of fact and needed to be determined prior to the trial court's finding that the attorney modifications constituted a counteroffer; (3) the fact that the contract between Domanskis and Blount did not close was not fatal to Barts' cause of action for breach of contract against Domanskis; and (4) Barts raised genuine issues of material fact regarding Blount's role as a fiduciary and the alleged concealment of facts material to the transaction.

¶ 22 Barts notes that after an appellate court has reversed and remanded the judgment of a trial court, the trial court hearing the case on remand must proceed according to the specific directions of the reviewing court. *Cheadle v. County Board of School Trustees*, 42 Ill. App. 3d 578, 580, 356 N.E.2d 420, 421-22 (1976). Barts claims that this court ruled in its order that the attorney modifications suggested by Domanskis were made in bad faith. Therefore, Barts argues, the trial court should not have re-litigated that issue.

¶ 23 A plain reading of the order, however, leads us to a different conclusion. This court did not determine the issue of bad faith regarding the attorney modifications. Rather, this court ruled that the issue should be decided by the trier of fact. *Barts,* No. 1-04-2332 at 19. Upon remand, that is precisely what the trial court did. During a bench trial the court heard testimony and reviewed evidence. The trial court said, "I am of the opinion that the plaintiff has failed in his burden of showing that Mr. Domanskis made the modifications in bad faith. *** I am satisfied with the explanations that were offered by Mr. Domanskis as to the basis for making the modifications."

Thus, the trial court correctly followed this court's order by determining the question of fact.

¶ 24 The second issue that Barts raises is that the trial court's ruling regarding the good faith of Domanskis' proposed attorney modifications is against the manifest weight of the evidence. A court of review will not disturb a trial court's findings of fact unless they are against the manifest weight of the evidence. *Southwest Bank of St. Louis v. Poulokefalos,* 401 Ill. App. 3d 884, 890, 931 N.E.2d 285, 290 (2010). A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is apparent, or when the findings appear to be arbitrary, unreasonable or not based upon the evidence. *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 826, 807 N. E.2d 1026, 1034 (2004). A trial court's judgment following a bench trial will be upheld if there is any evidence supporting it. *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 484, 775 N.E.2d 669, 673 (2002).

¶ 25 Barts claims that the facts and circumstances of the case establish that Domanskis' proposed attorney modifications were not made in good faith. Among the facts which Barts points to are: (1) Barts had submitted three offers to purchase the property by the time the parties met to negotiate the terms on May 28; (2) the time period was not adequate for Barts to respond to the suggested modifications; and (3) the modifications changed the value of the property by deleting items that had been negotiated. Barts argues that "[c]learly Domanskis' conduct was calculated to terminate the Barts contract. He used the Attorney Modification Clause to change the bargained for value and to receive a more lucrative offer from Pokorny." Barts claims that the modifications of the contract which: (1) removed the personal property; (2) deleted the warranties, termite inspection and the

guarantee that the mechanical equipment would be in working order; (3) added the property sold "as is" clause; (4) increased the earnest money requirement; (5) decreased the tax proration; and (6) included the condition precedent of the Domanskis/Blount contract were added to force a contract termination to allow Domanskis to accept a higher offer.

¶ 26 Domanskis and Al testified at trial regarding why the proposed contract modifications were discussed and decided upon by their family. The Domanskis family decided to get an attorney approval letter before they received the Pokornys' offer. They had concerns regarding the sale of some of the personal property and whether Barts might raise issues relating to repairs after closing.

¶ 27 In the late afternoon of May 29, Blount called Al to tell him that another offer had been submitted. Al advised Blount that depending on how things developed after the attorney approval letter was submitted, Domanskis might consider other offers. Blount faxed the Pokornys' offer to Al on May 29. Al called Mr. Pokorny to verify that there would not be any contingencies on the contract. As the trial court found, we agree that Domanskis' and Al's actions do not indicate bad faith. We cannot say that the trial court was incorrect in finding that the modifications to the contract reflected the concerns of the Domanskis family and were therefore not made in bad faith.

¶ 28 The third issue which Barts raises is whether the trial court erred in finding that he rejected Domanskis' counteroffer. In order to determine the meaning of the language in a contract, the terms "must be given their plain, ordinary, popular and natural meaning." *Village of Glenview v. Northfield Woods & Water Utility Co.*, 216 Ill. App. 3d 40, 48, 576 N.E.2d 238, 244 (1991). A court of review uses a *de novo* standard when determining the interpretation of a contract, which involves

a question of law. *Dowling v. Chicago Options Associates, Inc*., 226 Ill. 2d 277, 285, 875 N.E.2d 1012, 1017 (2007).

¶ 29 The terms of the real estate contract in the case at hand clearly state that proposed modifications would constitute a counteroffer. The parties differ as to whether the letters sent by Ladewig, Barts' attorney, rejected the counteroffer. Barts claims that he never rejected the counteroffer, and thus the original contract was in full force and effect. Domanskis argues that Ladewig's letters were in fact a rejection of Domanskis' proposed modifications.

¶ 30 Domanskis notes that under Illinois law, "an acceptance requiring any modification or change of terms constitutes a rejection of an original offer and becomes a counteroffer that must be accepted by the original offeror before a valid contract is formed." *OnTap Premium Quality Waters Inc. v. Bank of Northern Illinois, N.A.*, 262 Ill. App. 3d 254, 259, 634 N.E.2d 425, 429 (1994). See *Olympic Restaurant Corp. v. Bank of Wheaton*, 251 Ill. App. 3d 594, 622 N.E.2d 904 (1993) (where letters between the attorneys for seller and buyer were determined to be counteroffers that were never accepted and therefore nullified the original contract).

¶ 31 We find the case of *Patel v. McGrath*, which Barts relies upon for support that Ladewig's response was not a rejection of a counteroffer, to be inapplicable to the case at hand. *Patel v. McGrath*, 374 Ill. App. 3d 378, 872 N.E.2d 537 (2007). In the *Patel* case, the attorney modification provision in the contract did not include language that proposed modifications were a counteroffer. *Id.* at 379, 872 N.E.2d at 538. In that case, the proposed modifications specifically stated that they should not be construed as a counteroffer, or as a revocation of the original contract. *Id.* The

appellate court in *Patel* held that a valid contract had been formed, and the attorney approval clause constituted a condition subsequent to the offer. *Id*. at 381, 872 N.E.2d at 539-40.

¶ 32 Similarly, another case cited by Barts, *Hubble v. O'Connor*, 291 Ill. App. 3d 974, 684 N.E.2d 816 (1997), is distinguishable from the case at hand. In that case, the contract did not provide that a modification was a counteroffer. The appellate court found the contract valid, subject to a condition subsequent. *Id.* at 980, 684 N.E.2d at 821. In the instant case, the modifications were a counteroffer that voided the original contract. Al's letters specified that if the modifications were not accepted, the contract would be null and void. Barts was required to either accept, reject, or negotiate the modifications.

¶ 33 Barts determined unilaterally that the modifications were not offered in good faith. Barts did not respond to the declaration by Domanskis that the contract would be considered null and void if Barts did not address the proposed modifications. Further, Barts did not request additional time in which to consider the modifications. Our review of the record shows that the trial court's ruling that Barts rejected Domanskis' counteroffer was not against the manifest weight of the evidence. We will not disturb the trial court's decision on this issue.

¶ 34 The next issue that Barts raises on appeal is whether the trial court erred when it found that Barts failed to meet the required burden of proof for breach of contract and specific performance. The party with the burden of proof in civil cases must prove his case by a preponderance of the evidence. *Hanson-Suminski v. Rohrman Midwest Motors, Inc.*, 386 Ill. App. 3d 585, 592, 898 N.E.2d 194, 202 (2008). That means that a proposition must be found to be more probably true than

not true. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191, 835 N.E.2d 801, 856 (2005). A reviewing court will not overturn a trial court's determinations made in a bench trial unless the decision is manifestly erroneous. *Maple v. Gustafson*, 151 Ill. 2d 445, 460, 603 N.E.2d 508, 515 (1992); *Kenny Construction Co. v. Metropolitan Sanitary District of Greater Chicago*, 52 Ill. 2d 187, 196, 288 N.E.2d 1, 6 (1971). The trial court, as the trier of fact, is "responsible for resolving any factual disputes, judging the credibility of the witnesses, determining the weight to afford their testimony and deciphering contradicting evidence." *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 976, 931 N.E.2d 810, 824 (2010).

¶ 35 It is well settled that in order to bring an action for breach of contract, an enforceable contract must exist. The elements of a binding contract are: an offer, an acceptance and consideration. *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 329, 371 N.E.2d 634, 639 (1977). Barts claims that all three of these elements are satisfied. Barts reiterates his argument that Domanskis acted in bad faith and thus the original valid contract exists. For the reasons discussed, we reject that argument.

¶ 36 We further agree with the trial court that Domanskis' counteroffer was never accepted by Barts, and thus no contract was formed. A cause of action for specific performance requires proof of the existence of a valid, binding and enforceable contract. *Hoxha v. LaSalle National Bank*, 365 Ill. App. 3d 80, 85, 847 N.E.2d 725, 729 (2006). Barts has not met his burden of proof for either a breach of contract or specific performance and the trial court's ruling on this issue was correct.

¶ 37 The next issue that Barts raises on appeal is whether the trial court erred when it failed to

resolve the ambiguity in his real estate contract with Domanskis. A determination of whether a contract is ambiguous is a question of law; a contract is not ambiguous if a court can determine its meaning from the language of the contract. *Village of Glenview v. Northfield Woods Water & Utility Co. Inc*, 216 Ill. App. 3d 40, 48, 576 N.E.2d 238, 244 (1991). Barts claims that the contract with Domanskis is ambiguous because: (1) it is unclear what manner and format are required to respond to the modifications; (2) the time period for response is unclear; and (3) the consequences for failing to reach an agreement are unclear.

¶ 38 We agree with the trial court that the contract was not ambiguous. We also point to language in our previous appellate order that "the parties on appeal and the circuit court were also of the view that the attorney modification provision was clear and unambiguous." *Barts,* No. 1-04-2332, at 8. The contract clearly stated that the proposed modifications would constitute a counteroffer, as was pointed out in Domanskis' attorney's letter. Although Barts argues that he was not afforded reasonable time in which to respond to Domanskis' modifications, the testimony at trial disputed that. The trial court, as the trier of fact, resolved the issue of ambiguity and we see no reason to disturb the trial court's ruling that the contract was not ambiguous.

¶ 39 The last issue that Barts raises concerns the amount of damages the trial court awarded to him. The trial court found that the realtor Blount violated his fiduciary duty to Barts, whom Blount was representing as a dual agent. A determination of the amount of damages by a trial court will not be reversed unless it is contrary to the manifest weight of the evidence. *ABC Trans National Transport, Inc. v. Aeronautics Forwarders, Inc.*, 90 Ill. App. 3d 817, 834-35, 413 N.E.2d 1299, 1313

(1980).

¶ 40 The trial court determined that information that Maier had on May 28 regarding the Pokornys' offer could not be imputed to Blount. 225 ILCS 454/15-45(e) (West 2002). The trial court found that Maier informed Blount about the Pokornys' offer on the evening of May 29. The court noted the duty of a real estate agent to disclose material facts to his client. 225 ILCS 454/15-15(2)(C) (West 2002). The court found that Blount had an obligation to disclose the Pokornys' offer to Barts within a reasonable time; specifically, the next business day. The court stated that a competing offer would be a material fact that should have been disclosed to Barts.

¶ 41 On appeal, Blount argues that he did not have a duty to disclose the Pokornys' offer to Barts because it was confidential per the request of the Pokornys. As Domanskis' listing agent, Blount had a duty to act in a timely fashion to seek an acceptable transaction. 225 ILCS 454/15-15(a)(1)(A)(B) (West 2002). As Barts' agent, Blount had a duty to disclose material facts known to him, unless the information was confidential. 225 ILCS 454-15-15(a)(1) (West 2002). The Pokornys' direction was that their contract was "not to be communicated to the first buyer." As a dual agent, Blount first had a duty to Domanskis as his listing agent, and second, to Barts whom he was also representing. We agree with the trial court that Blount did have a duty to disclose the second offer to Barts and could have done so without breaching the confidentiality of the offer.

¶ 42 The trial court requested that Barts and Blount file briefs on the subject of damages related to Blount's breach. Barts argued that he proved his damages with reasonable certainty and that he should recover the amount of $224,291.96 against Blount, plus post-judgment interest. Barts arrived

at this amount because he had expended a total of $261,673.91 in attorney fees to litigate seven counts related to this matter. Six of these counts did not involve Blount. Barts therefore requested the sum of $224,291.96, which represented six/sevenths of the total amount expended by him. Barts argued for an exception to the rule barring recovery of attorney fees to a successful litigant.

¶ 43 After a hearing on the question of damages, the trial court determined that Blount owed Barts the sum of $300. That sum represented attorney fees that Barts incurred when Ladewig attempted to gain information from Blount about the Pokornys' offer and Blount did not return Ladewig's telephone calls. The trial court did not agree with Barts that all of the attorney fees generated by the litigation were a result of Blount's conduct.

¶ 44 The trial court concluded that there was a breach of fiduciary duty, but that this breach was not a proximate cause of the entire cost of Barts' litigation. The court found that Barts would not have acted differently had he known sooner about the Pokornys' competing offer. Our review of the record leads us to conclude that the trial court's determination of the amount of damages was supported by the evidence and is therefore not against the manifest weight.

¶ 45 We next address issues raised by the Pokornys who purchased the property. The Pokornys argue that Blount owed a duty of honesty and fair dealing to his agent Maier and therefore to them once Maier confided in Blount that the Pokornys wanted to make an offer. The Pokornys point out that the Illinois Real Estate Act (the Act) provides that a sponsoring broker, such as Blount, owes a duty to his designated affiliated licensee, Maier, to "take ordinary and necessary care to protect confidential information disclosed by a client to his or her designated agent." 225 ILCS 454/15-

50(b) (West 2002). Another section of the Act provides that a licensee shall promote the best interest of the client by "[a]cting in a manner consistent with promoting the client's best interests as opposed to a licensee's or any other person's self-interest." 225 ILCS 454/15-15(a)(2)(F) (West 2002). A licensee shall "[k]eep confidential all confidential information received from the client." 225 ILCS 454/15-15(a)(4) (West 2002).

¶ 46 The Pokornys argue on appeal that the trial court erred when it found that Blount did not have a duty to them. The Pokornys claim that the trial court's "judgment against Pokorny cannot be reconciled with its holding that Blount owed only a duty to disclose a material fact to Barts' [*sic*], but not Pokorny." The Pokornys argue that although the trial court recognized the fiduciary duty that Blount owed to Barts, it erred when it did not recognize that Blount also owed them a fiduciary duty. The Pokornys make several arguments urging that Blount owed them a duty. They also presented expert testimony at trial on this issue.

¶ 47 Blount testified at trial that on May 28, at the time of the meeting of the parties to the Barts contract, he did not know of any other offers that had been made. Evidence at trial showed that on May 28 Blount mentioned a possible other offer to Domanskis but said that, based upon the questions the potential buyers had asked, the other offer might contain contingencies. The Pokornys claim that this was a misrepresentation by Blount to Domanskis. Maier showed the Pokornys' offer to Blount on May 29, and Blount then faxed the offer to Al. The Pokornys' offer included the language that "This contract *** shall not be communicated to the first buyer by the seller or the seller's agent." The Pokornys argue that Blount breached his duty of honesty and fair dealing by not

disclosing to Maier or to them the fact that he was one of the buyers of the property.

¶ 48 We agree that as Domanskis' listing agent, Blount was duty bound to disclose the Pokornys' offer to Domanskis under the Act. However, while we agree with the Pokornys that Blount found himself in a "self-created dilemma," the "material facts" which the Pokornys argue should have been disclosed to them regarding Blount's involvement in prior offers were not material at all as related to the transaction. We further agree with the trial court that Blount's failure to comply with the Pokornys' request to withdraw his contract with Domanskis whereby he would purchase a small portion of Domankis' property, was not the proximate cause of the Pokornys' expenditure of attorney fees in their litigation to quiet title. That contract was declared void by the trial court because it was contingent upon the Barts/Domanskis contract that the trial court correctly ruled, terminated on May 31.

¶ 49 For the reasons discussed, we conclude that the trial court correctly ruled that Blount's conduct as related to the Pokornys was not the cause of their lawsuit to quiet title.

¶ 50 Accordingly, we affirm the judgment of the circuit court of Cook County.