FOURTH DIVISION
June 15, 2017

Nos. 1-10-3711, 1-11-3255, 1-12-2254, 1-12-2907, 1-13-0643 & 1-14-3331 (consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICK SANTELLA, Individually and Derivatively as a Shareholder of Food Groupie, Inc.,	)	Appeal from the Circuit Court of Cook County
Plaintiff/Counterdefendant-Appellant,	)	
v.	)	No. 05 CH 018591
WILLIAM KOLTON and MARY KOLTON,	)	
Defendants/Counterplaintiffs-Appellees,	)	
(Food Groupie, Inc., an Illinois corporation, Defendant/Counterdefendant).	)	Honorable Kathleen M. Pantle, Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court judgment affirmed. Trial court had subject-matter jurisdiction to consider, and correctly determined, ownership of intellectual property. Trial court's decisions that defendants' compensation was reasonable and that defendants had not breached their fiduciary duties were not against manifest weight of evidence. Trial court did not abuse its discretion in allowing defendants to file verified second amended counterclaim to conform to proofs. Trial court did not err in finding that defendants were entitled to indemnification. Trial court's decision to dissolve corporation was not against manifest weight of evidence. Trial court did not abuse its discretion in entering or in refusing to dissolve preliminary injunction that served to prevent plaintiff from diluting defendants' shares in close corporation. Interlocutory appeal from permanent injunction

dismissed for lack of jurisdiction. Trial court orders denying request for appointment of plenary custodian and denying motion to stay dissolution of corporation affirmed where appeals from those orders were abandoned. Trial court did not abuse its discretion in awarding attorney fees and costs to defendants under section 12.60(j) of Business Corporation Act (805 ILCS 5/12.60(j)(West 2010)).

¶ 2 This case started over a decade ago as a family feud for control of a close corporation, former defendant/counterdefendant, Food Groupie, Inc. (Food Groupie), which is now dissolved and is not a party to this appeal. The parties are plaintiff/counterdefendant Rick Santella (Rick), defendant/counterplaintiff William Kolton (Bill), and defendant/counterplaintiff Mary Kolton (Mary) (collectively, the Koltons). Bill and Mary are married. Rick is Mary's brother.

¶ 3 In 2005, Rick filed a verified complaint, individually, and derivatively as a shareholder of Food Groupie. At that time, Bill, Mary, and Rick were Food Groupie's only shareholders and directors. The complaint contained claims of breach of contract (a count that Rick voluntarily dismissed prior to trial), breach of fiduciary duty, usurpation of corporate opportunity, and violations of the Business Corporation Act of 1983 (805 ILCS 5/1.01 *et seq*. (West 2004)). Rick sought declaratory, injunctive, statutory, and monetary relief.

¶ 4 One of the principal arguments running through the case was Rick’s contention that Food Groupie was not a corporation but, rather, had converted into a partnership pursuant to a “Shareholder/Partner Agreement” executed by the parties. That partnership, Rick argued, required unanimous consent for company decisions and made him an equal partner, not a minority shareholder. At trial, however, the trial court ruled the “Shareholder/Partner Agreement” was a total fabrication, and Rick had forged the Koltons’ signatures on it.

¶ 5 Litigation ensued for over a decade, during which time the trial court entered injunctions, and several interlocutory appeals were filed. After a trial on the merits, the circuit court found in

favor of the Koltons. The court later awarded the Koltons attorney fees and costs under section 12.60(j) of the Business Corporation Act of 1983 (805 ILCS 5/12.60(j) (West 2010)). This consolidated appeal includes six separate appeals filed by Rick (five interlocutory appeals, as well as the appeal of the circuit court's final judgment). The Koltons previously filed an interlocutory appeal that we dismissed for lack of jurisdiction. See *Santella v. Kolton*, 393 Ill. App. 3d 889 (2009).

¶ 6 For the reasons that follow, we affirm the judgment of the circuit court in all respects.

¶ 7 I. BACKGROUND

¶ 8 The following largely-undisputed facts were adduced at trial, as well as from our review of the 90-volume record in this consolidated appeal, which includes records and supplemental records filed on various dates between May 6, 2011, and January 6, 2016. To the extent Rick challenges the facts, they will be discussed as part of our analysis of his arguments.

¶ 9 As a general overview, we can properly describe this controversy as involving a dispute between siblings and in-laws in which Rick initially seemed to carry the day before the circuit court, resulting in interlocutory orders in his favor and against the Koltons that effectively gave Rick control of the company for some time. But during and after a trial that spanned over 40 days, spread out over years, the circuit court slowly began to side with the Koltons, resulting in interlocutory orders in the Koltons' favor, and in a final judgment in which the court found that Rick had engaged in mismanagement when given the reins of the company, that Rick's arguments regarding compensation paid to the Koltons were without merit, and perhaps most importantly, that much of Rick's case had been based on the existence of a shareholder/partnership agreement that Rick had fabricated from whole cloth.

¶ 10 A. Pre-Litigation Events

¶ 11 In 1986, Mary created a nutrition concept promoting healthy eating choices for young children. She designed plush anthropomorphic toy characters representing the major food groups. These "food groupies" included Bernie Bread, Bonnie Broccoli, Melvin Milk, Olivia Orange, and Paulie Peanut. Mary also created a publication called "What's a Food Groupie?" Mary continued to develop her concept in 1987 by meeting with early childhood educators, nutrition professionals, and intellectual property attorneys. In 1988, Mary applied for, and obtained, design patents and copyrights for her inventions. In 1989, she obtained copyrights for Food Groupie tags and advertisements that she had created.

¶ 12 Food Groupie was incorporated in 1988, and bylaws were adopted. The corporation had three shareholders: Mary, Bill, and Rick. On March 4, 1988, they signed a pre-organization subscription agreement for the issuance of 1,000 shares of corporate stock at $10 per share. Rick invested $4,900 for 490 shares of stock and owned 49% of the shares; Mary invested $2,600 and owned 26%; and Bill invested $2,500 and owned 25%. Food Groupie's Articles of Incorporation identified four directors: Mary, Bill, Rick, and Ron Santella. Ron Santella was Rick's and Mary's brother. The paid-in capital was $10,000.

¶ 13 On March 12, 1989, Mary and Food Groupie entered into a licensing agreement (the 1989 License Agreement). Rick signed the agreement on behalf of Food Groupie.[1]

¶ 14 The 1989 License Agreement stated that Mary had created inventions, had filed applications for copyrights (on March 14, 1988) and design patents (on March 28, 1988), and that the certificate of copyright registration had been issued for all of the copyrights. The 1989

[1] On January 10, 2006, in his response to a partial motion to dismiss, Rick denied he had ever seen or executed the agreement. In late 2009, Mary produced an audiotape of a telephone conversation involving Rick, Bill and Food Groupie's then attorney, during which Rick acknowledged that the licensing agreement existed.

License Agreement further provided that Mary, the "Licensor," had the right to grant to Food Groupie, the "Licensee," the exclusive license to manufacture and sell her inventions, and that she had not granted anyone else any rights. The 1989 License Agreement provided for royalties to be paid to Mary by Food Groupie, and also provided that the exclusive license expired on January 1, 1993, but was renewable for three-year terms.[2]

¶ 15 On May 20, 1989, Food Groupie's board of directors adopted a resolution to amend the articles of incorporation lowering the number of directors from four to three and removing Ron Santella as a director. The amendment was filed with the Illinois Secretary of State on May 23, 1989. The three directors were Mary, Bill, and Rick. Mary and Bill were also the corporate officers. Both before and after incorporation, between January 1988 and March 1991, meetings were held. Mary prepared notes of the meetings and circulated them to the other directors.

¶ 16 For many years, Mary and Bill ran the business, initially from the basement of their home. They later rented office and warehouse space. In 1990, Mary and Bill quit their full-time jobs and began working full-time for Food Groupie. Mary left Baxter Healthcare in March 1990; Bill left Northrup in July 1990. For four years, they took no salary or any other compensation. Food Groupie began paying a salary to Mary and Bill in 1994.

¶ 17 Throughout the 1990's, Mary and Bill were the only full-time employees of Food Groupie. Rick's wife, Carolyn (Carrie) Korhorn, worked part-time for Food Groupie but stopped

[2] By initialing a change to the 1989 License Agreement on July 22, 1993, Mary extended the license agreement to January 1, 1995. The record also contains copies of three license extensions between Mary (licensor) and Food Groupie (licensee), extending the license to January 1, 1998, January 1, 2001, and January 1, 2004, respectively.

working in March 2003. At no time was Rick an employee. Rick continued working full-time at his jobs at Budget Rent-A-Car and, later, with the City of Chicago until he retired.[3]

¶ 18 On February 14, 1992, Mary obtained additional copyright registrations for her inventions. The forms note that new text, artwork and sculpture had been added to her previously copyrighted work. On August 7, 1992, Mary submitted copyright registrations for derivative work consisting of three videotapes and audiocassettes. This time, she listed Food Groupie as the author. The forms note that new text, cinematography, photographs, music, artwork, and lyrics had been added to her pre-existing copyrighted material. The title of the work was "Food Groupie Early Nutrition Education Program." In 1996, Mary filed copyright applications for derivative works, and described the material added to her original inventions as "[r]evised and additional new artwork and sculpture." On the form, Mary listed Food Groupie as the author.

¶ 19 In 1992, Food Groupie established a "Profit Sharing Plan and Trust" for the benefit of Food Groupie's current and future employees. In 1994, Food Groupie began making contributions to the profit sharing plan. No contributions were made in 1999 or 2000. By 2000, Food Groupie had contributed a total of $56,872.30 on behalf of Mary and Bill. The funds were deposited into certificate of deposit accounts. No contributions were made on Rick's behalf because he was not an employee of Food Groupie.

¶ 20 Between 1994 and 2002, Mary and Bill took salaries of less than $50,000 each. In 2002, Food Groupie had a 40% increase over the previous year's sales ($545,882 in 2002 as compared to $390,609 in 2001). A board of directors meeting was held on November 15, 2002. Rick had been sent notice of the meeting, but he did not attend. During the meeting, Food Groupie increased Mary's and Bill's salaries to $60,000 and gave them each a bonus of $50,000.

[3] Carrie Korhorn and Rick married in 1998.

¶ 21 In March 2003, Rick received Food Groupie's 2002 financial statements and learned of the increase in the Koltons' compensation. At this point, Rick became more involved, demanding more money from Food Groupie, more information from the Koltons, and that he be allowed to help run Food Groupie. Rick told the Koltons that they did not deserve the increases and threatened to sue them.

¶ 22 In addition to the dispute over the Koltons' increased compensation, a variety of other conflicts arose between the Koltons and Rick including Mary's management of the company, the direction of the company, the manner in which the profit-sharing plan had been established, development of a third animated video project, relocating the corporate office to a larger facility, hiring sales representatives, implementing a sales lead tracking system, and the use of the company van. Apparently, to avoid litigation, the parties settled the dispute over the profit-sharing plan. The Koltons paid Rick $32,113.62 from their personal funds.

¶ 23 Relations between the Koltons and Rick remained strained. Rick continued to raise objections regarding the management of Food Groupie. The Koltons told Rick they wanted to part ways and offered to purchase Rick's 49% interest in Food Groupie for $100,000. Rick rejected the offer as "unrealistic" and proposed a counter-offer of $520,000-$700,000 for his shares. He sent the Koltons a business valuation range analysis of Food Groupie that he had completed, at his own expense. Rick stated that the valuation range was "based on [his] professional knowledge and experience in acquiring businesses." The Koltons hired a business valuation analyst and consulted legal counsel, another action that Rick considered to be an improper, unnecessary corporate expense. The parties were unable to resolve their differences.[4]

[4] As the trial court noted, any settlement negotiations by the parties after suit was filed are irrelevant and not considered by the court.

¶ 24 On June 23, 2003, Rick came to a shareholders' meeting and gave Bill and Mary his own notice for a board of directors meeting. Rick read, and apparently recorded, a prepared statement with a list of demands and grievances. Rick also threatened legal action against the Koltons, claiming they had engaged in a criminal scheme and conspiracy to commit theft from Food Groupie. After reading the statement, which took approximately 25 minutes, Rick refused to participate in the shareholders or directors meetings and left. Mary and Bill voted in a new director, Anthony Kolton, Bill's brother. Rick was no longer a director. They also voted to retain accountants and corporate counsel.

¶ 25 At the next 2003 board meeting, the directors (now Mary, Bill, and his brother, Anthony) agreed to increase Mary's and Bill's salaries to $70,000 and gave them each a bonus of $30,000. They also passed a resolution establishing 10% sales commissions for Mary and Bill.

¶ 26 At the August 18, 2004 board meeting, the directors passed a resolution to pay Mary her royalties that were due, and in arrears, under the 1989 License Agreement. On December 31, 2004, Food Groupie paid Mary $14,744.08 for royalties accrued from 1993 through 2003. On January 1, 2005, Mary and Food Groupie entered into a new License Agreement for a three-year term (the 2005 License Agreement).

¶ 27 B. Lawsuit

¶ 28 In October 2005, Rick filed a four-count verified complaint, individually and derivatively as a shareholder of Food Groupie, against the Koltons and Food Groupie, seeking declaratory, injunctive, and monetary relief. Count I, which alleged breach of contract, was voluntarily dismissed shortly before trial. Count II alleged breach of fiduciary duty. Count III alleged usurpation of corporate opportunity. Count IV alleged violations of the Business Corporation Act of 1983 (805 ILCS 5/1.01 *et seq*. (West 2004)) for defendants' oppressive and fraudulent actions,

and misappropriation of corporate funds and services. As we have previewed, Rick alleged in the complaint that the parties had entered into a written "Shareholder/Partner Agreement" requiring unanimous consent for all company decisions, making Rick an equal partner in the business and rendering many of the Koltons' actions invalid or tortious. Rick attached this purported agreement to the complaint, and allegations concerning the purported agreement were incorporated into all counts of the complaint.

¶ 29 From the outset, the Koltons maintained that the alleged "Shareholder/Partner Agreement" that Rick had attached to his complaint was a complete fabrication—they had never previously seen it, and their signatures were forged. They also claimed that Rick's claim of usurpation of a corporate opportunity was meritless because Mary, not Food Groupie, owned the intellectual property.

¶ 30 As noted in our 2009 opinion, the circuit court entered an interim order, on December 21, 2005, appointing John Ashenden as a custodian of Food Groupie with the authority to "review all corporate disbursements" during the pendency of the litigation. *Santella*, 393 Ill. App. 3d at 894.

¶ 31 From 2005 to February 2008, as the litigation continued, Food Groupie continued to operate and make sales. *Id*. At a board meeting held on December 8, 2006, the directors authorized an additional $5,047.10 payment to Mary for a portion of the 2005 royalties that were in arrears.

¶ 32 According to its terms, the 2005 License Agreement expired on January 1, 2008. On February 22, 2008, Mary wrote a letter to Food Groupie's court-appointed custodian, Ashenden. She sent a copy of the letter to Food Groupie's counsel and Rick's counsel. In her letter, which we discussed in our 2009 opinion, Mary referred to the "significant financial strain" on Food Groupie caused by the " 'negative impact of a down-trending target market because of federal

and state budget cuts' and 'the ongoing litigation with [Rick].' " *Id*. at 895. She further stated that Food Groupie's landlord had terminated the lease of the corporate office, and that Mary was not renewing her license with Food Groupie that had granted it the right to use the intellectual property rights to the Food Groupie characters. *Id*. Mary wanted the company liquidated. *Id*.

¶ 33 On February 25, 2008, Rick filed an "Emergency Motion for Imposition of Statutory Remedies to Enjoin Dissipation of Assets and for Immediate Accounting," seeking relief under section 12.56 of the Business Corporation Act of 1983 (805 ILCS 5/12.56 (West 2006)). In the motion, Rick restated the allegations made in his complaint that defendants had improperly distributed corporate funds to themselves between 2002 and 2005 (see *Santella*, 393 Ill. App. 3d at 895), and further alleged that between January 1, 2007, and February 1, 2008, the corporation had paid defendants $200,000, paid their attorneys more than $80,000 for their personal defense against Rick's action, and paid defendants' attorney $50,000 in advance retainers. *Id*. He disputed Mary's claim that the corporation needed to be liquidated due to financial problems. *Id*. Rick requested that the court appoint him as an officer of Food Groupie and that the Koltons be removed as officers and directors. *Id*. at 896.

¶ 34 On March 12, 2008, defendants filed a response to Rick's emergency motion and argued, among other things, that Food Groupie's financial situation was "dire" as a result of deteriorating market conditions and the costs associated with defending the company against Rick's lawsuit. *Id*. Defendants also claimed that they would always disagree with Rick as to the future of the company but, because of Rick's 49% share, they could not attain the approval of 66% of the shareholders necessary under the bylaws to voluntarily dissolve the corporation. *Id*. Because of this deadlock, together with the dire financial condition of the company, defendants asserted that

judicial dissolution of the corporation was required under section 12.56(b)(12) of the Business Corporations Act (805 ILCS 5/12.56(b)(12) (West 2006)). *Id.*

¶ 35 On March 31, 2008, the court entered an order extending the 2005 License Agreement (which had expired on January 1, 2008) through April 9, 2008. The court conducted a pretrial conference on April 4, 2008. The court then held an evidentiary hearing over four days (April 7, 8, 9, and 10) on Rick's emergency motion, during which Rick and the Koltons testified. The court issued an oral ruling, followed by a written order.

¶ 36 In its April 15, 2008 oral ruling, the trial court made several comments explaining its reasoning. The court stated: "I don't understand what these commissions [to the Koltons] are based on." As the court also observed: "It almost looks as if this was—to me, these are bonuses." The court also stated: "I think that the commissions were actually just a way to make up what they—the [Koltons] perceived to be a shortfall in their salaries." The court concluded as follows:

> "I think these commissions are not true commissions, but they're just bonuses in disguise, that it was inappropriate to take this kind of compensation, and it constitutes corporate mismanagement at a time when sales are dropping, that the [Koltons] are not doing anything, as I said before, with regard to advertising or trade shows or anything to try and save this corporation. And I would also note that the *** commission started in 2005 *** which is the same year that the case was filed."

¶ 37 In its April 23, 2008 written order, the court removed the Koltons as officers and directors of Food Groupie. Anthony Kolton, whom the court determined was a disinterested director, was not removed. The court ordered an expansion of Ashenden's powers "to enable him to make all necessary day-to-day decisions of the company until May 1, 2008, and to aid

Anthony Kolton in transition issues prior to the appointment of new officers and directors." The court found that there had been corporate mismanagement with respect to the payment of commissions to the Koltons in 2005, 2006, and 2007, set aside Food Groupie's approval of those commissions totaling $144,019, and ordered the Koltons to return the funds to Food Groupie. The court also found, however, that the salaries paid by Food Groupie to the Koltons, as well as the legal expenses paid on their behalf, did not constitute corporate waste or mismanagement. As referenced earlier, the Koltons filed an interlocutory appeal of this order that we dismissed for lack of jurisdiction. See *Santella*, 393 Ill. App. 3d 889.

¶ 38 On May 23, 2008, Food Groupie's corporate counsel, pursuant to the direction of Anthony Kolton, filed a Chapter 7 voluntary petition in bankruptcy. The bankruptcy proceeding was dismissed on September 8, 2008. Prior to its dismissal, the automatic stay was lifted to allow the circuit court to appoint the new directors.

¶ 39 On July 3, 2008, after inviting suggestions from the parties for replacement directors, the court appointed as additional directors individuals recommended by Rick, Martha J. Williams and David Bojan.

¶ 40 On July 8, 2008, Mary sent a certified letter to Food Groupie's directors, informing them that she had decided not to renew the 2005 License Agreement. She further informed them she was placing them on formal notice of her intention to enforce her rights under the 2005 License Agreement in the event of its breach by Food Groupie.

¶ 41 On August 22, 2008, a special meeting of the board was held at which Rick and his attorney were present. The bankruptcy proceeding was discussed. Rick suggested that, should the Koltons not return the $144,019 to Food Groupie, he would provide $10,000 to Food Groupie, to meet its short-term capital requirements. Rick further proposed to operate the company on a

"deferred executive compensation" basis and to recruit other employees to work on a deferred compensation basis to generate sales and sales leads. The board then had a discussion with Food Groupie's attorney, outside the presence of Rick and his attorney, to discuss Rick's proposal and the possibility of dismissing the bankruptcy proceeding. Director Anthony Kolton announced his intention to resign from the board and left the meeting. With a quorum remaining (Williams and Bojan), the board adopted several resolutions which included dismissing the bankruptcy proceeding and recommending to the circuit court that Rick be appointed as Food Groupie's president and CEO.

¶ 42 On September 10, 2008, Rick filed his "Emergency Motion For Additional Statutory And Equitable Remedies To Appoint Operating Officer And Compel Transfer Of Control Of All Business Assets." Among other things, Rick noted that the Koltons had not yet returned any of the $144,019 to Food Groupie as ordered by the court. Rick also requested that the court appoint him as Food Groupie's president and CEO "to work on a *deferred compensation basis*." (Emphasis added.) On September 10, 2008, the circuit court entered an order appointing Rick president and CEO of Food Groupie on a *deferred compensation* basis. The court further ordered the Koltons to produce, in open court, "all office keys, P.O. Box keys, passwords, passcodes, websites, voicemail boxes, mail, email, faxes and the corporate checkbook."

¶ 43 On November 20, 2008, the court held an evidentiary hearing on Rick's petition for a rule to show cause why the Koltons should not be held in contempt for their failure to pay the $144,019 to Good Groupie as ordered on April 23, 2008. The court was not persuaded by the Koltons' claims that their attorneys had informed them that they need not comply with the order, since it was the subject of a pending interlocutory appeal, principally because the Koltons had not filed a motion in the circuit court to stay the enforcement of the order. At the hearing, the

Koltons' counsel made an oral motion to stay enforcement of the order, but, at that point, the motion was untimely under Illinois Supreme Court Rule 305 (eff. July 1, 2004). On November 21, 2008, the court held the Koltons in direct civil contempt for their failure to repay the $144,019 to Food Groupie. The court ordered that the sum be paid by December 5, 2008, and further ordered that Mary and Bill each pay the sum of $200 per day to the court, beginning on December 6, 2008, until they purged themselves of contempt by paying the $144,019.

¶ 44 On December 17, 2008, at Rick's request, a special meeting of the board was held and conducted by conference call. Director Anthony Kolton objected to the insufficient notice of the meeting and did not participate in the conference call. Rick discussed Food Groupie's financial problems which included a lack of working capital. He "expressed a willingness to invest additional capital in the corporation." He also proposed that the board enter into a written contract with him, for a salary of not less than $96,000 per year, and permitting him to convert unearned or deferred compensation to additional stock in the company. Rick further proposed hiring new counsel for the corporation, in light of the withdrawal of the former counsel, and hiring a new accountant.

¶ 45 The board passed several resolutions which included: retaining a new accountant to provide services at the direction of Rick; appointing Rick as Food Groupie's registered agent; issuing 4000 shares of stock to Rick for $30,000; and entering into a written employment contract with Rick, allowing him to convert his deferred compensation into stock and requiring Food Groupie to give Rick a security interest in all of Food Groupie's assets as security for his deferred compensation. The board also resolved to retain the new corporate counsel recommended by Rick and to have the new corporate counsel obtain a declaratory determination from the circuit court that these board actions were consistent with the business judgment rule.

¶ 46 On January 5, 2009, Food Groupie filed a motion seeking a declaration that the board's actions were consistent with the business judgment rule. The motion expressly maintained that the particular board actions issuing stock to Rick "were necessitated as a result of a dearth of capital caused by the failure of William and Mary Kolton to supply the corporation with the capital [(*i.e.*, the $144,019)] as they were Ordered to do in April, 2008." The motion also stated that the purpose of the motion was for the board to "obtain the Court's review and imprimatur of the actions which it has taken" and cited *Miller v. Thomas*, 275 Ill. App. 3d 779 (1995) (business judgment rule protects board from liability for decisions made in the absence of bad faith or fraud).

¶ 47 The Koltons opposed the motion. They argued, among other things, that the court's order requiring them to repay the $144,019 in commissions was based on incorrect information and was on appeal. They also contended that if the court's order removing them as directors was not overturned, the actions of the current board "will have worked an irreparable harm to [the Koltons] due to the transfer of controlling interest in the corporation to [Rick]."

¶ 48 Regarding Food Groupie's request for court approval of the board's resolution to issue additional shares to Rick in exchange for a cash contribution, the Koltons argued that the effect "would be to change which shareholders have effective control of the corporation." The Koltons further argued that, should the court "officially endorse a change in the controlling interests of the corporation," the result could be "the uncompensated devaluation of the Koltons' shares, in that an argument exists that the value of a minority share is worth less than the value of the same share owned by the majority shareholder."

¶ 49 After hearing argument, the court entered an order that the motion would be granted unless the Koltons delivered the $144,019 to Food Groupie's attorney by the close of business.

Otherwise, the motion would be entered and continued to trial. The Koltons paid the $144,019 to Food Groupie on February 10, 2009. (Nonetheless, as will be described below, Rick and/or the board took subsequent actions that would be consistent with the motion having been granted, not entered and continued.)

¶ 50 Rick filed a "Verified, Comprehensive Listing of Breaches of Fiduciary Duty and Violations of Court Orders Relating to Conduct Occurring Since the Defendants Were Removed as Officers and Directors and Petition for Rule to Show Cause Thereon," which the circuit court considered to be Rick's "supplemental complaint" adding allegations of acts constituting a breach of fiduciary duty. The Koltons, on February 25, 2009, filed an "Amended Answer And Affirmative Defenses to Plaintiff's Supplemental Complaint and Verified Counterclaim."

¶ 51 Thus, up to this point, before trial, Rick had largely prevailed in the litigation. He had persuaded the court to invalidate over $144,000 that Food Groupie had paid to the Koltons, to remove the Koltons from their positions as officers and directors, to replace them with directors Rick had recommended, and to name Rick the interim CEO. He was also on the verge, should the trial court rule in his favor, of obtaining additional stock that would give him majority control over Food Groupie.

¶ 52 C. Trial (2009-2012)

¶ 53 The trial began on February 26, 2009, and took place on approximately 50 days over the next several years. But, as discussed in further detail below, during the time period of the trial, Rick continued to run Food Groupie, and the board of directors held "special" meetings on March 5, 2009, April 1, 2009, March 18, 2010, and October 14, 2010. Several board actions were taken, prompting the Koltons to request injunctive relief and file a verified amended counterclaim against Rick and Food Groupie.

¶ 54 1. Rick’s Case-In-Chief

¶ 55 Rick's case-in-chief took place on various dates in 2009 and 2010. Rick rested his case on October 18, 2010, after approximately 40 days of testimony. We will address the testimony as needed and as it relates to the issues raised on appeal.

¶ 56 After the trial had commenced, the board approved an employment agreement with Rick at a March 5, 2009 meeting. The written employment agreement, executed on March 30, 2009, provided, among other things, that Food Groupie was employing Rick as its President and CEO in exchange for an annual salary of $66,000, plus other benefits. The agreement also permitted Rick to use his accrued deferred compensation to purchase additional shares of stock in the company, a right he could exercise on a bi-weekly basis. The Koltons were apprised of all of the board's actions.

¶ 57 On April 15, 2009, the Koltons filed a four-count verified amended counterclaim against Rick and Food Groupie (the Koltons' counterclaim). The Koltons continued to insist that the "Shareholder/Partner Agreement" on which Rick heavily relied was a fictitious document. The Koltons alleged that they had not seen that document before the commencement of the lawsuit. They further alleged that a forensic document examiner had opined that it was a contrived document based on the fact that Bill's signature was "an exact duplication" of his signature from a document sent to the IRS—a document that did not exist until six years after the date of the purported Shareholder/Partner Agreement.

¶ 58 Count I of the Koltons' counterclaim alleged breach of fiduciary duty against Rick. In Count II, Mary alleged breach of the 2005 License Agreement by Food Groupie. In Count III, the Koltons sought a declaratory judgment against Rick and Food Groupie seeking several declarations. Among other things, the Koltons asked the court to declare that Mary was the

owner of the intellectual property described in the 2005 License Agreement, Food Groupie must return the $144,019 to the Koltons, and Food Groupie must be dissolved. In Count IV, Mary sought a variety of injunctive relief against Rick and Food Groupie which included enjoining them from manufacturing, marketing or exploiting her intellectual property, described in the 2005 License Agreement.

¶ 59 On July 2, 2009, Rick filed Food Groupie's annual report with the Secretary of State (reflecting paid-in capital of $13,488 and 1,465 shares), and an additional paid-in capital report that reflected Rick's acquisition of 465 shares for $3,488.[5]

¶ 60 On October 18, 2010, on cross-examination at trial, Rick testified that, on October 14, 2010, the board had ratified its prior resolution permitting him to acquire stock in exchange for his deferred compensation. The board had also passed a resolution that Food Groupie's 2009 federal tax return, and its annual report to the State, be filed reflecting the new stock ownership percentages that had resulted in Rick having majority control. Anthony Kolton did not attend this meeting.

¶ 61 In light of this evidence of the "dilution of the Koltons' ownership interest" and the board's approval of the dilution, the Koltons' counsel orally moved for a preliminary injunction. Rick's counsel objected. The court determined that the motion was essentially for a temporary restraining order (TRO) (a conclusion it later changed) and requested a written motion.

[5] It is not clear if the 90-volume record on appeal contains copies of these reports. According to Rick's brief, these reports were admitted into evidence on May 6, 2010, but his brief references only his trial testimony and contains no cites to the reports. We could not find them in the list of trial exhibits.

¶ 62 Also on October 18, 2010, after approximately 40 days of testimony, Rick rested his case-in-chief. The Koltons filed a motion for a directed judgment or, in the alternative, directed findings.

¶ 63 2. Koltons' Request for Injunctive Relief

¶ 64 On October 19, 2010, the Koltons filed a petition for temporary injunctive relief based on the evidence adduced the previous day at trial of the "dilution of the Koltons' ownership interest" and the board's approval of the dilution. On October 27, 2010, after hearing argument, the court converted the motion into one for a preliminary injunction and granted it.

¶ 65 The court entered the following preliminary injunction:

> "1. [Food Groupie and Rick] are restrained from filing any corporate tax return or filing any report with the Illinois Secretary of State reflecting a dilution of the Koltons' ownership interests in [Food Groupie] since the filing of Plaintiff's Verified Complaint;
>
> 2. The actions of the Board of Directors of [Food Groupie] that have the effect of diluting the shares of the Koltons are hereby set aside;
>
> 3. The respective ownership interests of the shareholders of [Food Groupie] shall be as follows: 49% to Rick Santella, 26% to Mary Kolton and 25% to William Kolton;
>
> 4. Rick Santella is hereby ordered to file and provide to counsel for Defendants a weekly report of all cash expended by and/or on behalf of [Food Groupie], all purchase orders obtained and invoices issued, and all inventory purchased and sold by [Food Groupie] until further order of this Court;

5. Rick Santella is to produce to counsel for the Koltons copies of all [Food Groupie] money market, checking, credit card and other accounts of [Food Groupie], as they are received in the ordinary course of business, from the entry of this Court's order until further order of the Court;

6. [Food Groupie] is to file all documents necessary with the Illinois Secretary of State to reinstate [Food Groupie] within a reasonable time at the ownership interests outlined in Paragraph 3 above and at the original capital stock of $10,000 and original issued shares of 490 to Rick Santella, 260 to Mary Kolton and 250 to William Kolton;

7. [Food Groupie] is to file its tax return with the IRS and with the Illinois Department of Revenue as soon as possible, said tax filings are to reflect the ownership interests set forth in Paragraph 3 above;

8. No compensation is to be paid to Rick Santella, without a prior order of the Court."

¶ 66 On November 8, 2010, the court clarified its order, expressly stating which documents were rescinded, and listing the documents, and their contents, to be filed with the Illinois Secretary of State, as follows:

"1. The Cumulative Report of Changes in Issued Shares and Paid-in-Capital (Form BCA-14.30) filed by Food Groupie, Inc. with the Illinois Secretary of State on July 9, 2009 *** is hereby rescinded;

2. The 2008 Domestic Corporation Annual Report filed by Food Groupie, Inc. with the Illinois Secretary of State on July 2, 2009 *** is hereby rescinded;

3. Food Groupie, Inc. shall file the following documents with the Illinois Secretary of State, reflecting the original capital stock of $10,000 and original issued shares of 490 to Rick Santella, 260 to Mary Kolton and 250 to William Kolton:

a. Application for Reinstatement Domestic/Foreign Corporations (Form BCA 12.45/13.6);

b. Domestic Corporation Annual Report 2008;

c. Domestic Corporation Annual Report for 2009; and

d. Domestic Corporation Annual Report for 2010."

¶ 67 On November 19, 2010, Rick filed an interlocutory appeal of these orders (Appeal No. 1-10-3711). Although this was not, by any means, the first substantive interlocutory order in this case, it is chronologically the first of several on appeal before us currently, so we will refer to this order as the “First Contested Order.”

¶ 68 3. Koltons’ Motion to Remove Directors

¶ 69 On December 2, 2010, after the preliminary injunction was issued, the Koltons filed an emergency motion to vacate or modify the July 3, 2008 court order appointing Bojan and Williams as directors. The Koltons argued that these directors had not exercised the independent judgment and prudence in scrutinizing and controlling Rick's actions as president of Food Groupie, as the court had anticipated when it appointed them. Rather, they argued, Bojan and Williams simply did Rick’s bidding.

¶ 70 The Koltons included a list of 11 actions that they claimed reflected Rick's dominance and control over Bojan's and Williams's actions and the abdication of their responsibilities. The Koltons also argued that Rick had convened an "emergency meeting," even though Food

Groupie's bylaws did not authorize emergency meetings. At that meeting, Bojan and Williams passed a resolution to retain Attorney David Novoselsky at an hourly rate of $450, with a $25,000 retainer (which Rick failed to disclose to the court in his weekly cash report, contrary to the court's October 27, 2010 order). Attorney Novoselsky, on behalf of Food Groupie, had filed a notice of interlocutory appeal from the October 27, 2010, and November 8, 2010, court's orders (the same orders appealed by Rick).

¶ 71 Food Groupie filed its opposition to the Koltons' December 2, 2010 motion, supported with affidavits from Bojan and Williams. Rick also filed a memorandum in opposition to the motion noting that, although the emergency motion was directed at the corporation, the requested relief had the potential to affect both his individual and derivative interests. The trial court did not immediately rule on the motion. (Later, after the trial on the merits, the court removed Rick, Bojan, and Williams from their positions.)

¶ 72 4. Rick’s Request for Compensation

¶ 73 On May 2, 2011, Rick filed a motion to authorize some payment of his executive compensation and expense reimbursement. The Koltons opposed this request. On July 28, 2011, the trial court denied Rick's motion. The court noted that when it granted Rick's prior motion requesting that he be appointed as Food Groupie's president, the court had done so in reliance on his representation it would be on a deferred compensation basis. Although the board later authorized a salary of $66,000 per year, the court noted that Rick’s motion seeking payment presented "no evidence regarding the time or effort" that he had put into Food Groupie and no evidence of Food Groupie's "success or financial position." The court also noted that, if it granted Rick's request, over 70% of Food Groupie's current cash would be expended.

¶ 74 5. Trial Court’s Directed Findings

¶ 75 On August 24, 2011, the trial court entered a 29-page written order on the Koltons' motion for directed findings, which it granted in part and denied in part. In granting portions of the Koltons' motion, the trial court made several findings, many of which were based on the court's credibility determinations. Notably, the court found: (1) Mary, not Food Groupie, owned the intellectual property at issue; (2) Food Groupie was a corporation (and had not been changed by agreement to a partnership, as Rick claimed); (3) the purported "Shareholder/Partner Agreement" produced by Rick was fictitious; (4) Rick had attempted to dilute the Koltons' shares; (5) the Koltons' salaries and profit-sharing contributions were earned, fully disclosed, properly determined according to the adopted bylaws, and reasonable under the circumstances; (6) Rick was a passive investor and not an employee; (7) all of the evidence was contrary to Rick's claim that he invested more than $4,900; and (8) Rick was not deprived of his share of profits and received $131,783.63 over the period from 1988 to the last distribution in 2005.

¶ 76 6. Koltons' Case-In-Chief

¶ 77 On August 29, 2011, the trial resumed with the Koltons' case-in chief. The Koltons rested their case on September 2, 2011.

¶ 78 At the close of evidence in the Koltons' case-in-chief, pursuant to section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110) (West 2010)), Rick moved for directed findings on Counts I, III, and IV of the Koltons' Amended Counterclaim, which the trial court denied.

¶ 79 7. Rick's Request to Dissolve Preliminary Injunction

¶ 80 In addition to his motion for directed findings, Rick requested that the court dissolve the First Contested Order, where the court, by way of preliminary injunction, had invalidated any actions that had the effect of diluting the Koltons' shares, required Rick and Food Groupie to account to the court for its expenditures, and placed limitations on Food Groupie's tax filings.

¶ 81 After a hearing, the court denied Rick's request. Rick filed an interlocutory appeal of this order on November 4, 2011 (Appeal No. 1-11-3255). To keep it simple, we will refer to this November 4, 2011 order as the "Second Contested Order."

¶ 82 8. Rick's Additional Evidence

¶ 83 Between October 11 and October 13, 2011, Rick presented evidence at trial on his remaining claims, and the Koltons' amended counterclaims. After the trial concluded, the court ordered the parties to submit proposed findings of fact and conclusions of law.

¶ 84 9. Trial Court's July 2, 2012 Order

¶ 85 The court entered its 31-page written order on July 2, 2012, incorporating its findings from the August 24, 2011 order and entering judgment in favor of the Koltons. As a reminder, among the things the court incorporated from its previous Directed Findings were that Mary alone owned the intellectual property at issue, that the purported "Shareholder/Partner Agreement" produced by Rick was fraudulent, that Rick had attempted to dilute the Kolton's controlling shares, that the Koltons had been properly compensated and indemnified by Food Groupie, and that Rick had not been wrongfully deprived profits and was not entitled to indemnification.

¶ 86 The court also allowed the Koltons to amend their counterclaim to conform to the proofs.

¶ 87 Even though the question of attorney fees remained, and the litigation in the trial court was not yet over by any stretch, for ease of reference we will refer to this order as the "Third Contested Order" or the court's "Final Judgment."

¶ 88 D. Posttrial Events (Including Three Interlocutory Appeals)

¶ 89 The parties filed motions to reconsider the court's Final Judgment. The court denied Rick's motion, but granted the Koltons' motion requesting that the court order Rick to sell his shares. In the alternative, they had requested dissolution of Food Groupie.

¶ 90 On August 1, 2012, Rick filed an interlocutory appeal from the portion of the Final Judgment that granted permanent injunctive relief in favor of Mary based on the trial court's finding that Mary owned the intellectual property (Appeal No. 12-2254).

¶ 91 On September 11, 2012, the court ordered Rick to sell his shares. The court later vacated this portion of that order, as seen below. But relevant to our purposes, the court also denied Rick's request that the court appoint a specific retired judge as plenary custodian of the corporation pending the outcome of all appeals. We will refer to this portion of the September 11, 2012 order as the "Fourth Contested Order."

¶ 92 On October 9, 2012, Rick filed an interlocutory appeal from this Fourth Contested Order (Appeal No. 12-2907).

¶ 93 On December 17, 2012, the trial court vacated its previous order requiring Rick to sell his shares, agreeing with Rick that the court had no authority to order a forced sale of shares. The court instead ordered that Food Groupie be dissolved.

¶ 94 The Koltons resigned from their positions with Food Groupie in January 2013.

¶ 95 On February 25, 2013, the court entered an order (i) appointing a receiver to wind up the business affairs of Food Groupie and (ii) denying Rick's motion to reconsider or stay the dissolution. On February 28, 2013, Rick filed an interlocutory appeal of this order, which we will refer to as the "Fifth Contested Order" (Appeal No. 1-13-0643).

¶ 96 On March 20, 2013, a panel of this court denied Rick's motion to stay dissolution of the corporation pending appeal.

¶ 97 On September 30, 2014, the trial court entered its order on the Koltons' verified petition for attorney fees. The court awarded $486,081.70 in attorney fees and $44,400.50 in costs. We will refer to this order of fees and costs as the "Sixth Contested Order."

¶ 98 On October 28, 2014, Rick filed his timely appeal from the Sixth Contested Order.

¶ 99 II. ANALYSIS

¶ 100 In view of the lengthy history of this litigation, and the numerous issues raised in this consolidated appeal, we will first address Rick's arguments regarding the court's rulings related to the Final Judgment (or "Third Contested Order"), which entered judgment in favor of the Koltons and which incorporated the court's earlier directed findings after the close of Rick's case-in-chief. We will then proceed to review the interlocutory and post-trial rulings.[6]

¶ 101 A. The Final Judgment/Third Contested Order (Appeal No. 1-14-3331)

¶ 102 In his opening brief, Rick raises multiple issues regarding the court's Final Judgment, including many made in the court's directed findings. We will take them in turn.

1. Order on Koltons' Motion for Directed Findings

¶ 103 We first discuss Rick's challenges to the trial court's directed findings (which was later incorporated into the Final Judgment). In its directed findings, the court found that Rick had not provided sufficient evidence on some of his claims and that other claims failed because the weight, quality, and credibility of the evidence presented favored the Koltons.

[6] Initially, the Koltons moved to strike Rick's "preliminary statement" in his opening brief, in that it was argumentative, lacked citation, and was not provided for in Supreme Court rules governing briefs. Though all of these arguments have merit, we decline to strike that portion of Rick's opening brief.

¶ 104 Section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2–1110 (West 2010)) allows a defendant, at the close of the plaintiff's case-in-chief in a bench trial, to move for a directed finding in his or her favor. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). When a trial court rules on a section 2-1110 motion, it must apply a two-part analysis. *Id*. First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case, *i.e.*, has presented at least some evidence on every essential element of the case. *Id*. If so, the court moves to the second part of the analysis and, as the finder of fact, considers the totality of the evidence, including the evidence favorable to the defendant. *Id*.-at 275-76. The trial court must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom; this process may result in the negation of some of the evidence presented by the plaintiff. *Id*. at 276.

¶ 105 "After weighing the quality of all of the evidence, both that presented by the plaintiff and that presented by the defendant, the court should determine, applying the standard of proof required for the underlying cause, whether sufficient evidence remains to establish the plaintiff's *prima facie* case." *Id*. at 276. If so, the trial court should deny the defendant's motion and proceed with the trial. *Id*. But if the court finds that the evidence warrants a finding in favor of the defendant, it should grant the defendant's motion. *Id*.

¶ 106 This court will not reverse the trial court's ruling unless it is contrary to the manifest weight of the evidence. *Id*. Under the manifest-weight standard, we give deference to the trial court because, as the finder of fact, it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). A trial court's ruling is against the manifest weight of the evidence when the opposite conclusion is clearly evident or

the determination is unreasonable, arbitrary, or not based on the evidence presented. *Prodromos v. Everen Securities, Inc*., 389 Ill. App. 3d 157, 170-71 (2009).

¶ 107 a. Mary's Ownership of the Intellectual Property

¶ 108 We first address Rick's arguments regarding the trial court's finding that Mary, and not Food Groupie, owned the intellectual property. A threshold issue is whether the trial court had subject-matter jurisdiction to determine that Mary owned the intellectual property rights at issue. We review *de novo* an argument challenging the subject-matter jurisdiction of the circuit court. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010).

¶ 109 Rick argues that Mary's counterclaim requesting declaratory and injunctive relief was a matter of exclusive federal jurisdiction under the Copyright Act of 1976 (17 U.S.C. §101 *et seq*. (2006)). The relevant statute states:

> "The district courts shall have original jurisdiction of any civil action *arising under* any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights." (Emphasis added.) 28 U.S.C.A. § 1338(a) (2006).

¶ 110 "It is well-established that not every complaint that refers to the Copyright Act 'arises under' that law for purposes of Section 1338(a)." *Bassett v. Mashantucket Pequot Tribe*, 204 F.3d 343, 347 (2d Cir. 2000). And just because a case "concerns a copyright does not necessarily mean that it is within the jurisdiction of a federal district court." *Jasper v. Bovina Music, Inc*., 314 F.3d 42, 46 (2d Cir. 2002).

¶ 111 The determination of "[w]hether a complaint asserting factually related copyright and contract claims 'arises under' the federal copyright laws for the purposes of Section 1338(a)

'poses among the knottiest procedural problems in copyright jurisprudence.' " *Bassett*, 204 F.3d at 347 (quoting Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 12.01[A], at 12-4 (1999)). Yet, in *T. B. Harms Co. v. Eliscu*, 339 F.2d 823 (2d Cir. 1964), the court stated:

> "Mindful of the hazards of formulation in this treacherous area, we think that an action 'arises under' the Copyright Act if and only if the complaint is for a remedy expressly granted by the Act, *e.g.*, a suit for infringement or for the statutory royalties for record reproduction [citations], or asserts a claim requiring construction of the Act, *** or, at the very least and perhaps more doubtfully, presents a case where a distinctive policy of the Act requires that federal principles control the disposition of the claim. The general interest that copyrights, like all other forms of property, should be enjoyed by their true owner is not enough to meet this last test." *Id*. at 828.

¶ 112 As the court in *T.B. Harms* also explained:

> "[T]he federal grant of a patent or copyright has not been thought to infuse with any national interest a dispute as to ownership or contractual enforcement turning on the facts or on ordinary principles of contract law. Indeed, the case for an unexpansive reading of the provision conferring exclusive jurisdiction with respect to patents and copyrights has been especially strong since expansion would entail depriving the state courts of any jurisdiction over matters having so little federal significance." *Id*. at 826.

Accord *Burke v. Pittway Corp*., 63 Ill. App. 3d 354, 356-57 (1978); *Bassett*, 204 F.3d at 347.

¶ 113 As the Seventh Circuit recently explained the reasoning of *T.B. Harms* on the question of subject matter jurisdiction: "Put simply, that question boils down to whether this is really a case

about validity and infringement of the copyright, or if it is about ownership or other rights conferred in the agreement between the parties." *Nova Design Build, Inc. v. Grace Hotels, LLC*, 652 F.3d 814, 816 (7th Cir. 2011); see also *Affymax, Inc. v. Ortho-McNeil-Janssen Pharm., Inc.*, 660 F.3d 281, 284 (7th Cir. 2011) (contractual disputes about ownership of copyrights arise under the contract, not copyright law); accord *Wisconsin Interscholastic Athletic Ass'n v. Gannett Co.*, 658 F.3d 614, 619 (7th Cir. 2011) ("A contract dispute about who owns a particular copyright does not give rise to [federal] jurisdiction.)."

¶ 114 As the Koltons noted before the trial court, their counterclaim was "an action for breach of contract and declaratory and injunctive relief relative to the 2005 License Agreement, not for infringement." On appeal, they contend that "the injunctive relief here is related to the rights created and tethered to the 2005 Licensing Agreement—not a standalone federal infringement case." We agree. The parties' ownership dispute here is a contract dispute. It is not about infringement. We hold that the trial court had subject matter jurisdiction to decide Mary's ownership rights in conjunction with her claims concerning the breaches of her licensing agreements with Food Groupie.

¶ 115 We now turn to the merits of the trial court's finding that Mary was the owner of the intellectual property, including the copyrights issued to Food Groupie in 1992 and 1996.

¶ 116 The trial court based its decision that Mary owned the copyrights on the evidence, which included the testimony of Mary, Rick, Ron Santella, and Carrie Korhorn. Commenting on the evidence produced by Mary, the court found her to be credible. The court also based its decision on the licensing agreements between Mary and Food Groupie, in which Mary gave Food Groupie an exclusive license to manufacture and sell *her* inventions.

¶ 117 In his verified complaint, Rick alleged that the creation of the Food Groupie characters was the result of a group effort by the Santella family which included Rick, his mother, his wife, and Ron Santella. Rick claimed that Mary's "task" was to transcribe the group's collaborative efforts into final character form and that "she was given the responsibility of submitting copyright, design patent and/or trademark forms for the benefit of Food Groupie." Rick alleged that Mary "neither claimed any individual right of ownership, nor asked any other member of the group to forfeit, assign or waive any rights in the intellectual property."

¶ 118 Rick also alleged that the Food Groupie characters underwent a "complete redesign" and a fifth Food Groupie character "was collaboratively created by the group." Food Groupie contracted with a third-party professional artist to redesign all the characters. Mary approved the agreement with the third-party artist, who signed a waiver acknowledging that he had no right, title or interest in the characters, and also signed a confidentiality and release agreement, by which Food Groupie claimed the intellectual property rights to the characters. Rick also alleged that, "[i]n subsequent years, the group developed numerous additional products using the Food Groupie character theme, including but not limited to carpets, playsets, games, and furniture."

¶ 119 Rick argues that "The Trial Court's Whole-Cloth Adoption of the Koltons' Proposed Findings, Demonstrate the Need for Independent Review." He claims that the trial court "rubber-stamp[ed]" the Koltons' proposed findings. Noting that the record spanned more than 40 days over three years, Rick argues that "the trial court's fact-finding process may have been unduly deferential to [the Koltons'] suggestions." As an example, Rick points to the trial court's finding that he "produced no credible documentary evidence that supports his contention that the characters were a group collaboration." Rick claims that, to the contrary, he "adduced hundreds of pages of notes which Mary maintained between 1988 and 1991 which amply demonstrated the

participation of five family members in all aspects of the development of the corporation and who were repeatedly identified as 'the Group.' "

¶ 120 But the trial court addressed these group discussions during Food Groupie's early years, noting that the discussions pertained to "the basic concepts which would define [the corporation]." The trial court acknowledged that both Rick and the Koltons, along with Ron Santella and Carrie Korhorn, discussed the basic concepts that would define Food Groupie." But as to the intellectual property, the court found that "these group discussions were an outgrowth of ideas solely conceived of and developed by Mary." The court noted the conflicts in the testimony regarding the ownership of the intellectual property. Importantly, the trial court found that the testimony from Rick and Ron Santella, that the genesis for the Food Groupie characters came from their mother, was "simply incredible." The court further found that "Mary credibly testified that she designed the characters and she produced in court early drawings made by her." The court found that Mary's ideas originated long before Food Groupie came into existence: "Mary created the [F]ood [G]roupie concept in January 1986 and continued to develop her concept in 1987 by meeting with early childhood and nutrition professionals and intellectual property counsel."

¶ 121 Further commenting on the evidence, the trial court explained that "Mary also credibly explained her thought processes concerning the characters and the work she put into [their] creation." The court noted that Mary "produced contemporaneous notes and drawings which depict[ed] the designs and characteristics of the characters." The court found incredible "Rick's contention that she destroyed or concealed other drawings." The court specifically found "unconvincing" Rick's testimony and that of his witnesses, including his wife, Carrie Korhorn.

¶ 122 The court further found that Mary created the patterns that were necessary to sew the prototypes for the characters. The court considered Mary's ability to produce, in court, her hand-drawn patterns, along with Mary's credible testimony that she designed the characters, planned their attributes, and sewed the prototypes. The court found that "Mary alone designed and created the [Food Groupie] characters." Again, the court found Rick's testimony incredible, this time his testimony that "a neighbor lady" sewed the prototypes from drawings.

¶ 123 The court determined that "Rick produced no credible documentary evidence that supports his contention that the characters were a group collaboration." The court expressly stated that it did not believe the allegation in the complaint that Rick and Carrie Korhorn "spent scores of hours researching potential characters and character attributes." The court did not believe Rick's testimony that the reason the notes were drafted by Mary was because Mary "could type" and that she was "merely a secretary." The court also discounted Rick's designation of Mary as a "good typist," which the court determined Rick intended to convey that Mary was a mere scrivener, rather than the creator and designer of the Food Groupie characters.

¶ 124 The court also discussed the book, "What is a Food Groupie?", and concluded that the copyright supported Mary’s testimony that she was the author of the book. The court noted that Mary created the outline, produced drafts of the book in court, and credibly testified to her efforts in planning the story. The court found unconvincing the testimony from Rick's witnesses that they helped "author" the book but were not interested in sharing authorship or copyright protections. Noting that the copyright was apparent from the book itself, the court also found "equally unconvincing" Rick's testimony that he did not know Mary had given the copyright to herself.

¶ 125 The court additionally noted that "throughout the years Mary and [Food Groupie] entered into various Licensing Agreements and extensions of those Licensing Agreements." The court found that "Mary credibly testified that she consulted a book entitled Patent It Yourself, in order to draft the original Licensing Agreement." The court pointed out that the licensing agreements acknowledge Mary as the creator of the intellectual property, *i.e.*, the Food Groupie characters. The court took note that the first licensing agreement, signed by Mary and Rick, was entered into on March 12, 1989, and was in the corporate minute book. Most significantly, the court explained that these licensing agreements and extensions would not have been necessary had Food Groupie owned the intellectual property.

¶ 126 The trial court's finding that Mary owned the intellectual property was based on the court's credibility determinations and significant amount of evidence. "[C]redibility determinations, the resolution of inconsistencies and conflicts in testimony, and the weight to be given to evidence lie exclusively within the province of the [finder of fact]." *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1030 (2006). We will not usurp that function, and we see no basis whatsoever to find that the trial court's factual findings were arbitrary or fanciful, or that the opposite conclusion was clearly evident. We affirm the trial court's finding that Mary, not Food Groupie, owned the intellectual property.

¶ 127 b. Koltons' Compensation

¶ 128 We next address Rick's challenges to the trial court's findings regarding the appropriateness of the Koltons' compensation (salaries, bonuses, commissions, and profit-sharing distributions). He argues that the trial court's application of the business judgment rule to the Koltons' self-dealing, and the court's imposition on Rick to prove fraud, illegality or conflict of interest, was "a profound misapplication of Illinois law." Rick claims that the Koltons

overcompensated themselves, and the trial court ignored their "self-dealing" and breaches of fiduciary duty. Rick argues that the Koltons “should be compelled to disgorge all monies taken while they breached their fiduciary duties.”

¶ 129 Count II of Rick's complaint alleged various breaches of duty; in paragraph 58(g), Rick alleged that the Koltons "grant[ed] themselves preferred treatment as [shareholders] by awarding themselves constructive dividends through the excessive salaries, bonuses and corporate contributions to their 401(k) plan." The court granted the Koltons' motion for a directed finding on paragraph 58(g) of Count II of the complaint and found that "the Koltons' salaries and profit-sharing contributions were earned, fully disclosed, properly determined according to the Bylaws, and reasonable under the circumstances." As the Koltons note, the court’s rulings were made after years of hearing evidence, including witness and expert testimony.

¶ 130 (We should note here, among this talk about the Koltons’ compensation, that the court did *not* revisit its finding earlier in the litigation (which the Koltons unsuccessfully tried to appeal) that the Koltons’ compensation for the years 2005-07 was excessive; that ruling stood, and is not before us. Our discussion here concerns the court’s findings on compensation paid by Food Groupie to the Koltons other than for that three-year span.)

¶ 131 Section 11 of Food Groupie's bylaws provided, in pertinent part, that the board of directors has "the authority to establish reasonable compensation for themselves in performing their duties as directors and for payment of reasonable expenses." It further states that "[n]o such payment shall preclude any director from serving the corporation in any other capacity and from receiving compensation therefor."

¶ 132 "Whether compensation is reasonable is a question of fact." *Romanik v. Lurie Home Supply Center, Inc.*, 105 Ill. App. 3d 1118, 1126 (1982); accord *Jaffe Commercial Finance Co. v.*

Harris, 119 Ill. App. 3d 136, 143 (1983). In making such determinations, some of the factors to be considered include: "the employee's ability, quantity and quality of services he renders, the time he devotes to the company, the difficulties involved and responsibilities assumed in his work, the success he has achieved, profitability due to his efforts, the company's financial condition, and the compensation paid for comparable work by similar companies." *Romanik*, 105 Ill. App. 3d at 1126.

¶ 133 Before we discuss the trial court's factual findings in detail on the issue of compensation and whether the trial court's judgment was against the manifest weight of the evidence, we will address a specific argument raised by Rick, because it appears he is claiming that "the trial court applied inappropriate legal standards" and is subject to *de novo* review.

¶ 134 Rick's expert, in opining that the Koltons' compensation was unreasonable, relied on the North American Industry Classification System (NAICS) code 454390. The trial court found that NAICS code 454380 was "patently inapplicable here" because it "provides hourly salary information for establishments primarily engaged in retailing merchandise via direct sale to the customer by means such as in-house sales (*e.g.*, party-planning merchandise), truck or wagon sales, and portable stalls." Rick challenges this finding and claims it was "not supported by the law." Citing *Zokoych v. Spalding*, 123 Ill. App. 3d 921 (1984), a case involving the valuation of a closely held corporation—specifically a tool and die business—Rick contends that the trial court had no "legal basis" to reject the application of NAICS code 454390 to the analysis of the Koltons' officer compensation. The Koltons do not address this specific argument. Nonetheless, we find it meritless.

¶ 135 *Zokoych* did not establish that NAICS No. 454380 is applicable *as a matter of law* in every case involving the valuation of a business, or the reasonableness of officer compensation.

Indeed, the court in *Zokoych* explained that the question of whether corporations are truly comparable is a question of fact for the trial court. *Id*. at 932. The court further explained that "there is no fixed rule for determining comparability." *Id*. at 933. The court's focus in *Zokoych* was "on the fact that each of the comparative companies had the same standard industrial classification as [the subject tool and die business], each supplied parts, machinery or equipment to other companies engaged in basic manufacturing, all were engaged in metal work and, as [the expert] acknowledged, all were affected by the same economic factors." *Id*. Moreover, in *Zokoych*, the court further stated that it was "[e]qually important" that the expert had testified regarding the other factors he considered in determining comparability between the companies. *Id*. at 933.

¶ 136 Thus, the trial court's finding that the NAICS No. 454390 did not apply to the facts of the present case was not a "legal" error. It was an appropriate factual finding supported by the evidence.

¶ 137 We now review the trial court's decision that the Koltons' compensation was reasonable. The Koltons have accurately summarized Rick's contention: Because the Koltons' compensation was unreasonable, *i.e.*, they received more money than they should have, they breached their fiduciary duty. But the court found that the Koltons' compensation was reasonable and rejected Rick's claim that the compensation amounts were evidence of a breach of fiduciary duty. The court also specifically rejected Rick's claims that the Koltons' compensation (salaries and profit-sharing contributions) between 2002 and 2007 was excessive. And in concluding that the Koltons' compensation was reasonable, the trial court considered and weighed all of the evidence presented.

¶ 138 We agree with the Koltons that, in deciding the issue of whether the Koltons' compensation was reasonable, the trial court directly confronted, and implicitly rejected, Rick's claims of self-dealing. The court's 29-page written order is replete with references to the court's findings that Rick's testimony on several claims was incredible. The court did not state that it rejected Rick's testimony in its entirety; rather, the order contains detailed reasons for the court's conclusion that Rick was not credible regarding certain claims.

¶ 139 As he did in the trial court, however, Rick argues that the trial court incorrectly imposed on him the burden of proof on the issue of the reasonableness of the Koltons' compensation, which he describes as a "profound misapplication of Illinois law."

¶ 140 In *Romanik v. Lurie Home Supply Center, Inc.*, 105 Ill. App. 3d 1118, 1126 (1982), this court held that "[a]lthough no generally accepted rule exists as to which party bears the burden of proof on the issue of reasonableness of compensation, when self-dealing is involved the recipient of the compensation has the burden." In that case, the party bearing the burden was the defendant, who had been compensated pursuant to an employment agreement. *Id*. The trial court never directly addressed the burden of proof or its finding of reasonableness of compensation, but this court reasoned that "[i]mplicit in the trial court's inaction with regard to the employment agreement is a finding that the compensation was reasonable and that defendants had met this burden." *Id*. Thus, the trial court's decision would be overturned only if against the manifest weight of the evidence. *Id*.

¶ 141 Here, in finding that the Koltons' compensation was reasonable, the trial court relied on *Romanik*, indicating implicitly, if not explicitly, that it understood that the burden of proof fell on the Koltons to demonstrate the reasonableness of their compensation. And unlike in *Romanik*, in

this case the trial court made an express finding that the Koltons' compensation was reasonable after a lengthy, detailed discussion of the issue. We find no error regarding the burden of proof.

¶ 142 Although we agree with Rick that the business judgment rule does not protect a board of directors' decision to give compensation in an amount that is *un*reasonable, the trial court here weighed the evidence, including the expert testimony, and determined that the Koltons' compensation was reasonable. And in determining that the Koltons' compensation was reasonable, the trial court considered and discussed in detail the parties' contributions to Food Groupie.

¶ 143 As the court noted, early in Food Groupie's existence, Mary and Bill, "during their peak earning years," both quit their full-time jobs with other businesses and began working full-time at Food Groupie to establish and grow the corporation. They ran the business out of their basement until they could afford to rent office and warehouse space. They were the only full-time employees and they took no salary for four years.

¶ 144 As Food Groupie became profitable, the Koltons began drawing salaries and other compensation, including bonuses and commissions. They also established, and contributed to, a profit-sharing plan. Rick continued working full-time at his jobs at Budget Rent-A-Car, and later with the City of Chicago. Rick worked for the City from 1994 to 2004, when he retired. Rick sometimes volunteered his assistance at Food Groupie, which included attending trade shows, moving items to a new storage facility, assisting with Food Groupie's efforts to create and market videos directed at children, and trying (though unsuccessfully) to place Food Groupie displays in Jewel grocery stores.

¶ 145 The court also found that Rick, along with Ron Santella and Carrie Korhorn, lost interest in Food Groupie during the 1990's and ceased to be actively involved, apart from occasionally

assisting with isolated tasks. But Mary and Bill continued to work full-time at Food Groupie. They created a catalog with items related to healthy eating; sold products to various school districts and educational institutions; stored and shipped products; dealt with vendors who manufactured products for Food Groupie; and made day-to-day decisions including financial, accounting and legal decisions. The court also noted that there was no evidence that the Koltons consulted with Rick, nor sought his approval, for these business decisions.

¶ 146 The court found that when Food Groupie became extremely profitable in the early 2000's, Rick became interested in the corporation again. He demanded more information, more money, and a bigger role in running Food Groupie. The court also noted that the Koltons had rejected Rick's suggestion that they implement a sales lead tracking system. Rick appeared at the June 2003 shareholders meeting with a list of demands and grievances and abruptly left the meeting. But, as the trial court found, "[t]hough Rick disagrees with many of the corporate decisions made by the Koltons, his disagreement is merely that and does not establish that the Koltons breached any fiduciary duty in relation to their salaries and profit-sharing contributions."

¶ 147 Rick has challenged the court's decision finding the Koltons' expert witness testimony more persuasive than Rick's expert witness testimony. As a reviewing court, we must scrutinize the evidence, but we do not reweigh the evidence or reevaluate the credibility of witnesses, especially where conflicting expert testimony is introduced at trial, which is within the province of the trier of fact. *Hajian v. Holy Family Hospital*, 273 Ill. App. 3d 932, 940 (1995). Again, as the trier of fact, the trial judge here was in the best position to resolve the conflicts between the experts' testimony and determine their credibility. See, *e.g., Flynn v. Cohn*, 154 Ill. 2d 160, 169 (1992).

¶ 148 In sum, the Koltons had the burden of proving their compensation was reasonable. They met their burden. We conclude that the trial court's decision that the Koltons' compensation was reasonable was not against the manifest weight of the evidence.

¶ 149 c. Other Claims for Breach of Fiduciary Duty and Oppression

¶ 150 Rick also argues on appeal that he is entitled to judgment on his claims for breach of fiduciary duty and corporate oppression relating to the Koltons' "efforts to sabotage" Food Groupie. Rick's argument relates to the trial court's findings on his supplemental complaint alleging various breaches of duties that occurred following the Koltons' judicial removal as officers and directors of Food Groupie. The trial court specifically addressed these claims in its directed findings. The court determined that "[t]hese claims fail outright because the Koltons no longer occupy a fiduciary status following their removal as employees, officers, and directors of [Food Groupie] by order of the Court." Rick now contends that, based on the trial court's 2008 order requiring the Koltons to repay the $144,191 for their corporate mismanagement, there is "no plausible justification for the trial court's finding that the Koltons' post-removal efforts to render the corporation moribund were entirely exempt from scrutiny." But, as the court further stated: "Even though the claims fail outright, the Court *will* address the specific allegations" (emphasis added) and proceeded to do so.

¶ 151 The court specifically addressed Rick's contention that, following their removal, the Koltons breached their fiduciary duties by participating in Food Groupie's bankruptcy proceedings. The court found that Anthony Kolton's unrebutted testimony established that he alone authorized the filing, after discussing the matter with counsel and the Koltons. Anthony Kolton also authorized the payment for counsel to file and pursue the petition in bankruptcy. Citing *Estate of Vogel*, 291 Ill. App. 3d 1044, 1050 (1997), the trial court concluded that,

because this action was lawful, and because the Koltons' cooperation with the bankruptcy trustee and proceedings were also lawful, these allegations could not form the basis of a breach of fiduciary claim.

¶ 152 Rick argues that *Vogel* has nothing to do with duties owed among shareholders in closely held businesses. In *Vogel*, a husband and wife had several joint bank accounts. *Vogel*, 291 Ill. App. 3d at 1045-46. After the husband died, the independent administrator of his estate sought to recover funds that the wife had withdrawn from the couple's joint bank accounts shortly before the husband's death. *Id*. While it is true that the breach of fiduciary duty claim in *Vogel* involved a different factual scenario, the court's analysis in *Vogel* relied on a principle that the trial court properly applied to the instant case.

¶ 153 The court there explained that, for the wife to have breached her duty not to misappropriate or convert the husband's interest in the joint accounts, her withdrawal of money from those accounts would have to have been wrongful, unauthorized, improper, or unlawful. *Id*. at 150; accord *Kern v. Arlington Ridge Pathology, S.C.*, 384 Ill. App. 3d 528, 539 (2008) (breach of fiduciary duty claims by plaintiff were not actionable absent unlawful underlying act). Here, in relying on *Vogel*, the trial court found that Rick's allegations of a breach of fiduciary duty based on the Koltons' involvement in the bankruptcy proceeding, after they had been removed as directors, failed because their actions were not unlawful. We find no error in this reasoning.

¶ 154 Rick also challenges the trial court's finding that he failed to demonstrate any damages caused by the Koltons' delay in "supplying the corporation with operating capital [*i.e.* by repaying the $144,019 to Food Groupie] and the accoutrements of management." He argues that, because the Koltons "effectively mothballed [Food Groupie's] operations for more than a year, they are estopped from complaining that the corporation's damages could not be demonstrated

with absolute certainty." The trial court's rulings on these issues were based on its comprehensive analysis of the evidence presented at trial. Part of that analysis involved debunking many of Rick's claims.

¶ 155 For example, regarding Rick's claims that the Koltons "sanitized" the computer system when they were removed as directors and officers, the court found that there was "absolutely no evidence that the Koltons tampered with computers, removed items from the website, such as e-mails, documents, pictures, spreadsheets, etc., or did anything that restricted access to the information necessary to operate the computer. ***All information necessary to run [Food Groupie] was contained [on the accessible computer systems.]" As the court further explained: "Rick's computer expert really was not an expert." Other files that Rick claimed were missing were actually on an inventory that had been completed by a woman Rick hired long after the Koltons had access to the computers and server.

¶ 156 We will not substitute our judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Best*, 223 Ill. 2d at 350-51. While Rick clearly disagrees with all of the trial court's findings, including the findings on his allegations that the Koltons breached their fiduciary duties, Rick has failed to show that the trial court's findings were against the manifest weight of the evidence.

¶ 157 2. The Final Judgment

¶ 158 We next address Rick’s arguments related those portions of the Final Judgment that were not incorporated from the directed findings. The court entered its 31-page Final Judgment on July 2, 2012.

¶ 159 Rick challenges the trial court’s order granting the Koltons' motion for leave to file a verified second amended counterclaim to conform to the proofs. Rick presents a two-part

argument and claims that the trial court erred in: (1) allowing the amendment; and (2) granting the relief sought in the verified second amended counterclaim.

¶ 160 a. Trial Court's Allowance of Amendment to Koltons' Counterclaim

¶ 161 We first address the trial court's decision to allow the amended counterclaim.

¶ 162 The Code of Civil Procedure states:

> "(a) At any time before final judgment amendments may be allowed on just and reasonable terms *** changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.
>
> * * *
>
> (c) A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just." 735 ILCS 5/2-616 (West 2012).

¶ 163 The decision to grant a motion to amend pleadings is within the discretion of the circuit court, and a reviewing court will not reverse the circuit court's decision absent an abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69; see also *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 100 ("The allowance of amendments following the presentation of evidence rests within the sound discretion of the trial court, and the ruling of the trial court will not be disturbed absent an abuse of discretion. [Citation.]") (Internal quotation marks omitted.)) A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court. *Lacey v. Perrin*, 2015 IL App (2d) 141114, ¶ 76.

¶ 164 Generally speaking, we determine whether the trial court abused its discretion in ruling on a party's motion to amend by applying four factors and consider whether: (1) the proposed amendment would cure the defective pleading; (2) the proposed amendment would surprise or prejudice the opposing party; (3) the proposed amendment was timely filed; and (4) the moving party had previous opportunities to amend. *Sheffler v. Commonwealth Edison Co*., 2011 IL 110166, ¶ 69; *Loyola Academy v. S & S Roof Maintenance, Inc*., 146 Ill. 2d 263, 273 (1992).

¶ 165 Rick argues that the trial court granted the Koltons' motion to amend their counterclaim without discussing any of these four factors. But the Koltons counter that the trial court's order granting their motion "is none other than the [Final Judgment] attached" which "goes into great detail with respect to its findings and for support of why an amendment to conform to the proofs is appropriate for relief under the Illinois Business Corporation Act."

¶ 166 As the Koltons further note, although Rick cites these four factors, he cites no other case law, and little citation to the record, to support an argument that the trial court here abused its discretion in allowing the Koltons to amend their counterclaim to conform to the proofs at trial.

¶ 167 Here, the Koltons brought their motion to amend to conform the pleadings to the proof at trial pursuant to section 2-616(c), which this court has analyzed by considering "whether the amendment will further the ends of justice, whether the amendment alters the nature of the proof required to defend against the claim, and whether the opposing party will be surprised or prejudiced." *Prignano v. Prignano*, 405 Ill. App. 3d 801, 822 (2010). Also, the amendment must be supported by the evidence. *Id*. Under either analysis, we conclude the trial court here did not abuse its discretion in granting the Koltons' leave to file a verified second amended counterclaim to conform to the proofs.

¶ 168 "In Illinois, there is a liberal policy of allowing amendments to a complaint to conform to proof adduced at trial, but the materiality of such amendments must be clear and apparent." *Zook v. Norfolk & Western Ry. Co.*, 268 Ill. App. 3d 157, 167 (1994). Section 2-616(a) allows amendments that add new causes of action. 735 ILCS 5/2-616 (West 2012). Amendments that result in changes in legal theories are permitted and have been held not to create prejudice which warrants a denial of the proposed amendment. *Zook*, 268 Ill. App. 3d at 167.

¶ 169 In their verified second amended counterclaim to conform the pleadings to the proofs, the Koltons sought to amend their counterclaim to seek relief under sections 12.56(b) and 12.60 of the Illinois Business Corporation Act of 1983 (BCA) (805 ILCS 5/12.56, 12.60 (West 2010)). As the Koltons noted in their motion seeking leave to amend, Rick's complaint had sought relief under section 12.56 of the BCA, and the trial court had granted emergency relief in April 2008 under sections 12.56 and 12.60 of the BCA.

¶ 170 Section 12.56(a) of the BCA provides that a shareholder may petition the circuit court for one or more of the remedies listed in subsection (b) if any of the following is established:

> "(1) The directors are deadlocked, whether because of even division in the number of directors or because of greater than majority voting requirements in the articles of incorporation or the by-laws or otherwise, in the management of the corporate affairs; the shareholders are unable to break the deadlock; and either irreparable injury to the corporation is thereby caused or threatened or the business of the corporation can no longer be conducted to the general advantage of the shareholders; or
>
> (2) The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect

> successors to directors whose terms have expired and either irreparable injury to the corporation is thereby caused or threatened or the business of the corporation can no longer be conducted to the general advantage of the shareholders; or
>
> (3) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent with respect to the petitioning shareholder whether in his or her capacity as a shareholder, director, or officer; or
>
> (4) The corporation assets are being misapplied or wasted." 805 ILCS 5/12.56(a) (West 2010).[7]

¶ 171 The Koltons had alleged the factual elements of section 12.56(a). Allowing them to amend their pleading to specifically request relief under that section would cure their defective pleading (first *Loyola* factor). The proposed amendment could not be said to have surprised or prejudiced Rick, where the evidence supporting the amendment was developed at trial, and Rick had ample opportunity to introduce evidence countering the claims (second *Loyola* factor). Based on the allegations in the first amended counterclaim, the amendment did not alter the nature of the proof required to defend against the claim (*Prignano*, 405 Ill. App. 3d at 822).

¶ 172 We also believe that the proposed amendment was timely filed where, being a motion to conform the pleadings to the proof, it was filed only two months after the close of evidence in this lengthy trial, and was filed while the parties were still in the process of submitting their proposed findings of fact and conclusions of law (third *Loyola* factor). Rick argues that the Koltons had previous opportunities to amend (fourth *Loyola* factor). Even if they could have

[7] Subsection (b) lists twelve remedies including dissolution of the corporation. 805 ILCS 5/12.56(b) (West 2010).

filed some of the allegations sooner, we do not believe this factor outweighs the other three. More importantly, we believe that the allowance of the amendment was supported by the evidence and furthers the ends of justice. See *Prignano*, 405 Ill. App. 3d at 822. We conclude that the trial court did not abuse its discretion in allowing the Koltons to file their verified second amended counterclaim to conform to the proofs.

¶ 173 b. Allowance of Relief Sought in Amended Counterclaim

¶ 174 Rick next argues that the trial court's allowance of the relief requested in the amended counterclaim "constituted an end-run around the appeals regarding corporate governance which were pending in this court in 2010 and 2011." Those appeals concerned the trial court's issuance of injunctive relief in favor of the Koltons (Appeal No. 1-10-3711), and the court's refusal to dissolve that injunction (Appeal No. 1-11-3255).

¶ 175 The issue was the trial court's decision to remove Rick and the two directors, whom the court had appointed in 2009, in light of the evidence adduced during the trial of the dilution of the Koltons' ownership interest in Food Groupie and the board's approval of the dilution. In our attempt to provide some order and framework to this lengthy opinion, we have not reached the merits of those claims yet, but as will be shown below, we reject Rick's arguments on each of those claims, and thus we reject them here as well.

¶ 176 c. Indemnification

¶ 177 Rick next argues that the trial court erred in finding that the Koltons were entitled to indemnification for the attorney fees and costs they incurred in this litigation, and that Rick was not.

¶ 178 Article XII of Food Groupie's bylaws provides for indemnification. Section 3 of Article XII states that "[t]o the extent that a director, officer, employee or agent of a corporation has

been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sections 1 or 2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith." Section 4 states, in pertinent part, that any determination that indemnification is proper "shall be made (a) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the shareholders." Section 5 provides that the indemnification was not to be deemed exclusive to any other rights to which those indemnified "may be entitled under any contract, agreement, vote of shareholders or disinterested directors or otherwise."

¶ 179 In ruling that that the Koltons were entitled to indemnification, the trial court referenced the action taken on December 6, 2005, by Food Groupie's board, noting that "Anthony Kolton signed a resolution prepared by corporate counsel indemnifying William Kolton and Mary Kolton for any and all legal fees and expenses relating to the instant litigation conditioned upon terms set forth in the resolution. Anthony took this action on advice of [Food Groupie's] counsel." The court found that “the Koltons acted in good faith and in a manner that they reasonably [] believed to be in or not opposed to the best interests of [Food Groupie]."

¶ 180 Rick, citing *Behrstock v. Ace Hose & Rubber Co*., 147 Ill. App. 3d 76, 84 (1986), argues that the Koltons were not entitled to indemnification because they never obtained a resolution from "either a majority of disinterested directors or a legal opinion from independent counsel determination [*sic*] that indemnification was proper." But this reflects the requirements of the statute that was in effect at the time *Behrstock* was decided. Section 8.75 has been amended

several times since 1986. Notably, the statute was amended by Public Act 92-33 §5 (eff. July 1, 2001) to provide, in pertinent part, that any determination that indemnification is proper shall be made "by the majority vote of the directors who are not parties to such action, suit or proceeding, *even though less than a quorum*." (Emphasis added.) This was the language of section 8.75 in effect at the time of the December 6, 2005 resolution and has remained in section 8.75 to this day. Thus, the board resolution providing indemnification to the Koltons, signed by Anthony Kolton, the only director at the time, constituted the majority vote of the directors who were not parties to such action, suit or proceeding, even though less than a quorum. The action was not invalid and the trial court here did not commit a "legal" error. *Behrstock* is inapplicable.

¶ 181 Rick also cites *Behrstock* for the proposition that the trial court's decision was against the manifest weight of the evidence. On this point, the case is not so much inapplicable as distinguishable. In *Behrstock,* the trial court made a finding that the defendants had *not* acted in good faith. In the instant case, the trial court found that the Koltons *had* acted in good faith.

¶ 182 Rick contends that the trial court's finding of good faith resulted from "a blind eye to the manifest weight of the evidence" in view of exhibits he presented at trial, namely, a letter from Food Groupie's former counsel, Charles Schneider, giving his opinion on certain matters and suggesting that Koltons distribute a nominal dividend. But we have already explained that the weight to be given to evidence lies exclusively within the province of the fact finder. *Webber*, 368 Ill. App. 3d at 1030. We will not make a long order longer by again reciting all the testimony on which the trial court relied in determining the Koltons' good faith and Rick's bad faith. Suffice it to say, the trial court's determination on the indemnification issues were made after years of evidence and testimony. Rick has presented us with no basis to determine that the trial court's finding was arbitrary or fanciful, or that the opposite conclusion was clearly evident.

¶ 183 We reject Rick's claims that *he* was entitled to indemnification for the same reasons we have just given. Rick's reliance on *Behrstock* is unavailing, and the trial court's finding of Rick's lack of good faith, based on an abundance of evidence gathered over months and months of testimony, much of which we have already discussed, was not against the manifest weight of the evidence.

¶ 184 3. The Fifth Contested Order: Dissolving Food Groupie

¶ 185 We next consider Rick's challenge to the court's order of December 17, 2012 that ordered the dissolution of Food Groupie, as well as the trial court's denial of Rick's motion to reconsider that ruling, which we have referred to as the Fifth Contested Order. (See *supra* ¶¶ 93-96.) Rick's argument that that court erred in dissolving the corporation is brief, totaling approximately one page in his opening brief and a half page in his reply brief.

¶ 186 Section 12.56 of the BCA states, in relevant part:

> "(b) The relief which the court may order in an action [by a shareholder in a non-public corporation] includes but is not limited to the following:
>
> (1) The performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceedings;
>
> (2) The cancellation or alteration of any provision in the corporation's articles of incorporation or by-laws;
>
> (3) The removal from office of any director or officer;
>
> (4) The appointment of any individual as a director or officer;
>
> (5) An accounting with respect to any matter in dispute;

(6) The appointment of a custodian to manage the business and affairs of the corporation to serve for the term and under the conditions prescribed by the court;

(7) The appointment of a provisional director to serve for the term and under the conditions prescribed by the court;

(8) The submission of the dispute to mediation or other forms of non-binding alternative dispute resolution;

(9) The payment of dividends;

(10) The award of damages to any aggrieved party;

(11) The purchase by the corporation or one or more other shareholders of all, but not less than all, of the shares of the petitioning shareholder for their fair value and on the terms determined under subsection (e); or

(12) *The dissolution of the corporation if the court determines that no remedy specified in subdivisions (1) through (11) or other alternative remedy is sufficient to resolve the matters in dispute. In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve the corporation solely because it has accumulated earnings or current operating profits*." (Emphasis added.) 805 ILCS 5/12.56 (West 2006).

¶ 187 A trial court's authority to dissolve a corporation is statutory, deriving from the Business Corporation Act. *Central Standard Life Ins. Co. v. Davis*, 10 Ill. 2d 566, 572 (1957); *Callier v. Callier*, 61 Ill. App. 3d 1011, 1013-14 (1978). Contrary to Rick's assertion, however, it does not follow that our review of the trial court's dissolution order is *de novo*. Rick's appeal does not

involve statutory construction or a question of law. As the Koltons correctly note, Rick is appealing the *factual* basis for the court's decision to dissolve Food Groupie. "The decision to judicially dissolve a corporation is discretionary." *Schirmer v. Bear*, 271 Ill. App. 3d 778, 785 (1995), *aff'd*, 174 Ill. 2d 63 (1996). Where the trial court has heard the evidence and made a finding on whether a party has proven grounds for dissolution, " '[a] reviewing court will not substitute its judgment for that of the trial court unless it is against the manifest weight of the evidence.' " *Id*. (quoting *Arians v. Larkin Bank*, 253 Ill.App.3d 1037, 1041 (1993)).

¶ 188 Rick cites *Smith-Shrader Co. v. Smith*, 136 Ill. App. 3d 571, 582 (1985), for the proposition that "a party who breaches his or her fiduciary duties to a corporation and fellow shareholders and siphons off all of the assets should not be provided the reward of the manifest injustice of a judicial dissolution." But the Koltons correctly counter that "[f]or the plethora of reasons stated by the Trial Court," the Koltons breached no fiduciary duties to Rick. And the court dissolved Food Groupie after years of litigation, after becoming well acquainted with the parties and the evidence.

¶ 189 In its well-reasoned six-page written dissolution order, the trial court stated that "[w]ithout the intellectual property, there is no point in [Food Groupie]'s continued existence because the essence of [Food Groupie] is its ability to market the [Food Groupie] characters *** in connection the sale of product." The trial court found that dissolution was the only equitable and legal remedy. As the court acknowledged, "[c]orporate dissolution is a drastic remedy that is only available if a court determines that no remedy specified in subdivisions (1) through (11) or other alternative remedy is sufficient to resolve the matters in dispute." 805 ILCS 5/12.56(b) (West 2006). The court concluded: "Given the unavailability of a forced sale of [Rick's] shares as a remedy, no other remedy will suffice."

¶ 190 The court explained that it had already tried certain remedies under section 12.56(b) and they had not successfully resolved the matter in dispute. These included the remedies contained in subsections (1), (3), (4), (6), and (8), listed above. As to the latter remedy ("submission of the dispute to mediation or other forms of non-binding alternative dispute resolution"), the court noted that Justice James Epstein, who is now retired from the Illinois Appellate Court, conducted a lengthy pre-trial conference with the parties before the commencement of trial at a time when he was a circuit judge assigned to the Chancery Division. The court also noted that the remedy provided under subsection (2), *i.e.*, "[t]he cancellation or alteration of any provision in the corporation's articles of incorporation or by-laws," would not resolve any matter in dispute, as those provisions were not the source of any real dispute, and the court had already rejected Rick's claim that there were additional "perpetual directors" besides the Koltons and Rick. The court further noted that the remedy available in subsection (7), *i.e.*, "[t]he appointment of a provisional director to serve for the term and under the conditions prescribed by the court," would not accomplish anything, as there had been a number of directors throughout the years and the disputes between the parties still existed.

¶ 191 As the Koltons correctly note, the trial court's dissolution order recited the court's thought process and reasoning. Rick has failed to address any of these findings. Notably, the court found that its attempt to save Food Groupie by putting Rick in charge as President (with two board members unrelated to any party) had failed. The order discusses Food Groupie's financial condition in great detail. The court found that Food Groupie's financial condition was not good and, in fact, the corporate finances were "in a shambles."

¶ 192 As the court also explained:

> "During the course of his tenure as President of [Food Groupie], [Rick] seemed more interested in pursuing this litigation and financially harming the Koltons rather than operating [Food Groupie] at a profit. The minutes from the Board meetings reflect little concern about the business of [Food Groupie]; rather the focus of the meetings is the litigation. [Rick] attempted to dilute the shares of the Koltons, an action that this Court set aside in its July 2, 2012 Order. [Rick] over-ordered product and [Food Groupie] has inventory that, historically, would take 10 years to sell.
>
> Additionally, [Rick] did nothing to market the company's products during his four-year tenure as President beyond listing products on the company's website. He did not update the catalogue, attend trade shows or toy shows, or visit past or current customers of [Food Groupie] in an effort to market and promote [Food Groupie]'s business.
>
> Finally, another reason that dissolution of [Food Groupie] is the correct remedy is the parties' fractured personal relationship. * * * [Rick] and the Koltons can no longer work together as this litigation has had an adverse effect on the relationship of the parties. It is apparent from the evidence that there is a personal undercurrent running through the case that will likely never be resolved."

¶ 193 We conclude that the trial court's thorough and well-reasoned decision, that dissolution of Food Groupie was the proper remedy, was not against the manifest weight of the evidence.

¶ 194 Citing *Smith-Shrader*, 136 Ill. App. 3d 571, and *Ruthfield v. Louisville Fuel Co.*, 312 Ill. App. 415, 428 (1942), Rick argues that this court has recognized the right to judicially reinstate a judicially dissolved corporation. But having the authority to do it is a different question from

exercising that authority. We have just determined that the trial court's dissolution order was well-founded; we have no reason to vacate that ruling and judicially reinstate this corporation. We affirm the dissolution order.

¶ 195 4. First Contested Order (Appeal No. 1-10-3711)

¶ 196 We now consider Rick's appeal of the First Contested Order. (See *supra*, ¶¶ 64-67.) This order was the preliminary injunction entered before final judgment in October 2010 (and clarified in November 2010), in which the court set aside actions of Food Groupie's board of directors that had diluted the Koltons' shareholder interests and prohibited Rick and Food Groupie from filing federal tax returns reflecting those diluted shareholder interests. The November 2010 clarification order also rescinded certain July 2, 2009 filings that Food Groupie had made with the Illinois Secretary of State.

¶ 197 Rick argues that the trial court abused its discretion in entering the preliminary injunction, and that the business judgment of the directors (Williams and Bojan) protected the decisions they made.

¶ 198 A trial court has the inherent power during the pendency of a case to issue, modify, or vacate a preliminary injunction. *Rochester Buckhart Action Group v. Young*, 379 Ill. App. 3d 1030, 1034 (2008). The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 32. The trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 12. Absent an abuse of discretion, the trial court's decision will not be disturbed on review. *Makindu*, 2015 IL App (2d) 141201, ¶ 32. "Stated differently, the only question before the court of review is whether there was a sufficient showing to sustain the order of the trial court." *Callis, Papa,*

Jackstadt & Halloran, P.C. v. Norfolk & Western Railway Co., 195 Ill. 2d 356, 366 (2001). Applying the proper standard of review, we conclude that the trial court did not abuse its discretion in issuing the preliminary injunction. We conclude that the Koltons made a sufficient showing to warrant the issuance of the preliminary injunction.

¶ 199 A preliminary injunction's purpose is to prevent a threatened wrong or continuing injury and preserve the status quo until the case's merits have been decided. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 31; *Helping Others Maintain Environmental Standards v. Bos*, 406 Ill. App. 3d 669, 697 (2010). The status quo is the last, actual, peaceable, uncontested status which preceded the controversy. See, *e.g.*, *In re Marriage of Weber*, 182 Ill. App. 3d 212, 218 (1989) (status quo of parties encompassed normal routine manner of operating business which they founded and built together over period of almost quarter century).

¶ 200 The party seeking a preliminary injunction must show: (1) a clear right or interest needing protection; (2) no adequate remedy at law; (3) that irreparable harm will occur without the injunction; and (4) a reasonable likelihood of success on the merits of the underlying action. *Helping Others*, 406 Ill. App. 3d at 697. The party seeking a preliminary injunction is not required to make out a case which would entitle it to relief on the merits of the underlying case; it need only raise a "fair question" about the existence of his right and that the court should preserve the status quo until it can decide the case on the merits. *Buzz Barton & Associates, Inc. v. Giannone*, 108 Ill. 2d 373, 382 (1985).

¶ 201 In this case, the procedural posture of this request for injunctive relief was not typical. In entering the preliminary injunction, the trial court explained that it had had the benefit of having heard sworn testimony during both the April 2008 hearing and Rick's case-in-chief at trial. As the trial court stated: "So I know the history of this corporation really well." When it entered the

preliminary injunction order, the court found that, in his request to be appointed as president, Rick had volunteered to work on a deferred compensation basis, but then took that order appointing him to convince the board that he could get stock, instead of a salary, as his deferred compensation.

¶ 202 Thus, as the record shows, the court's finding was based on its familiarity with the case and events that had taken place during this pending controversy. We have detailed many of the facts previously but will summarize them here:

> (1) on August 22, 2008, a special meeting of the board was held at which Rick and his attorney were present; Rick proposed to the board that he would operate the company on a *deferred executive compensation basis*; Rick also suggested that he would provide $10,000 to meet short-term capital requirements if the Koltons did not return the $144,019; and the board adopted a resolution to recommend to the circuit court that Rick be appointed as Food Groupie's president and CEO;
>
> (2) on September 10, 2008, Rick filed an "emergency" motion, noting that the Koltons had not yet returned any of the $144,019 to Food Groupie as ordered by the court and requesting that the court appoint him as Food Groupie's president and CEO to work on a *deferred compensation basis*;
>
> (3) consistent with Rick's representation, the court entered an order appointing him to the position on a deferred compensation basis;
>
> (4) on December 17, 2008, *at Rick's request*, another "special" meeting of the board was held during which Rick informed the board that the Koltons had still not returned the $144,019, Food Groupie had few current cash assets, and he

was willing to invest additional capital in the corporation; the board resolved to issue 4000 shares of stock to Rick for $30,000, enter into a written employment contract with Rick *allowing him to convert his deferred compensation into stock* and require Food Groupie to give Rick an interest in all of Food Groupie's assets as security for his deferred compensation;

(5) on January 5, 2009, Food Groupie came before the court seeking a declaration that these board decisions, which allowed for the dilution of the Koltons' ownership interest in Food Groupie, constituted an appropriate exercise of the board's business judgment;

(6) the motion expressly maintained that the particular board actions issuing stock to Rick "were necessitated as a result of a dearth of capital caused by the failure of William and Mary Kolton to supply the corporation with the capital as they were Ordered to do in April, 2008";

(7) the motion also stated that the purpose of the motion was for the board to "obtain the Court's review and imprimatur of the actions which it has taken";

(8) the court *did not grant* Food Groupie's request for a declaration that these board actions were appropriate;

(9) instead, the court stated it would grant the motion *unless* the Koltons delivered the $144,019 to Food Groupie's attorney by the close of business but, if they did pay, the motion *would be entered and continued to trial*;

(10) *the Koltons paid the $144,019 to Food Groupie by the close of business on February 10, 2009*;

(11) as a result, the motion was entered and continued to trial;

(12) nonetheless, although Food Groupie had not yet obtained the court's "review and imprimatur" of its December 17, 2008 actions or its requested declaration that those actions were appropriate, the board proceeded to take further steps that were consistent with its December 17, 2008 actions.[8]

¶ 203 In issuing the preliminary injunction, the court acknowledged that, earlier in the litigation, it had been unhappy with the Koltons' payment of bonuses to themselves. But the court explained that this did not mean that the court thought they should be "stripped of their corporate shares." The court expressed its dissatisfaction with the board not exercising the judgment and discretion that the court had hoped it would when appointing the two members. The court noted that "[Rick call[ed] for a meeting, and they drop[ped] everything and they [had] a meeting," yet had no "regularly scheduled board of directors meetings." The court opined that the board seemed to give Rick "everything he want[ed]." The court found that the "status quo" was Rick owning 49% of the stock, Mary owning 26%, and William owning 25%. According to the court, the acts that followed were not peaceable and constituted "nothing but a perversion of [the] court orders in order to effectuate a hostile takeover of Food Groupie."

¶ 204 For the reasons that follow, we find no error in the trial court's grant of the preliminary injunction.

[8] In their affidavits, Bojan and Williams both state that Rick had advised them in March that the court was reluctant to provide advisory opinions to the board, the court took the motion under advisement, and did not express any views that the board's actions had been inappropriate. It is not clear from the Bojan and Williams affidavits whether Rick had given them the full picture of the trial court's order in February—that is, whether they understood that the trial court had ruled that it would *not* approve these board actions unless the Koltons failed to pay the $144,019 before end of business. Nor is it clear from the affidavits whether Rick informed them that the Koltons did, in fact, pay that money by the close of business, meaning the trial court had *not* approved these board actions.

¶ 205 a. Protectable Interest

¶ 206 The trial court issued the preliminary injunction to maintain the status quo regarding the parties' stock ownership as it existed before the board actions at issue: 49% to Rick; 26% to Mary; and 25% to Bill. Clearly, with respect to the showing required for a preliminary injunction, ownership in a corporation is a protectable interest. *Cf. Lohr v. Havens*, 377 Ill. App. 3d 233, 237 (2007) (explaining that notice to shareholders required by section 12.56(f) of the Business Corporation Act of 1983 [(805 ILCS 5/12.56 (West 2002))] "allows all shareholders to participate in the election and *protect their proportionate interest in the corporation"*) (emphasis added); *Central Water Works Supply, Inc. v. Fisher*, 240 Ill. App. 3d 952, 959 (1993) ("threatened business interest is an identifiable right which may be protected by injunctive relief").

¶ 207 We conclude that the trial court correctly found that the Koltons raised a "fair question" about the existence of their right in their percentage of shares and satisfied the showing of a protectable interest. And we now have the benefit of having reviewed the entire record, after which it is obvious that a protectable interest existed.

¶ 208 b. No Adequate Remedy At Law

¶ 209 The trial court determined that there would be no adequate remedy at law for dilution of the Koltons' shares because stock value changes throughout time and would be difficult to value, especially since Food Groupie was a closely held corporation. Rick did not argue, in the trial court or on appeal, that the Koltons had an adequate remedy at law. We agree with the Koltons that Rick has forfeited the issue. The Koltons raised a fair question that there was no adequate remedy at law.

¶ 210 c. Irreparable Harm

¶ 211 Rick contended that there was no irreparable harm because he had not taken advantage of his majority position. He claimed no harm resulted, nor would result, from the reports filed by Food Groupie with the state and the IRS reflecting his majority control of the corporation. He argued that, if the Koltons disagreed that the reports filed by Food Groupie accurately reflected their interest, they could take advantage of a mechanism provided by IRS Form 8082 "to report their view of any inconsistent treatment between the Corporation's tax return and their own tax return and to relieve themselves of any tax liability arising from any inconsistency which their [*sic*] perceive."

¶ 212 The irreparable harm, however, is not the inaccuracy of the reports but, rather, the dilution of the Koltons' shares and the transfer of control to Rick, should the board actions be allowed to stand. The trial court determined that irreparable harm would occur if Rick were allowed to keep his board-created majority interest in Food Groupie: "[T]here is irreparable harm. Dilution of stock is an ongoing thing. Stock value changes throughout time. It would be hard to try and value this, especially since it is a closely held corporation. Thus, there is no adequate remedy at law. Besides irreparable harm is a harm of a continuing nature."

¶ 213 As this court has explained, "the injury the party fears need not be irreparable or incapable of compensation but merely denote transgressions of a continuing nature." *Central Water Works Supply*, 240 Ill. App. 3d at 959. "The mere threat of dissipation can be considered by this court in determining the risk of irreparable harm." *Id*.

¶ 214 We find no error in the trial court’s determination of irreparable harm.

¶ 215 d. Reasonable Likelihood of Success on the Merits

¶ 216 The trial court found the Koltons showed that there was a fair question that they would succeed on the merits. And, as noted earlier, in entering this preliminary injunction, the trial

court explained that it had had the benefit of having heard sworn testimony at both the April 2008 hearing and Rick's case-in-chief at trial. We have outlined the facts before the trial court above find no error in the trial court's determination that the Koltons sufficiently showed a likelihood of success on the merits.

¶ 217 Rick argues the trial court erred in finding a likelihood that the Koltons would succeed on the merits because the business-judgment rule protected the actions of Food Groupie's board of directors. We disagree, for two independent reasons.

¶ 218 First, as shown above, the court's preliminary injunction order was not based on Bojan's and Williams's exercise of business judgment, or the lack thereof. It was based on the fact that the Food Groupie, under Rick's control, asked the court to allow it to make Rick the majority shareholder, contrary to a previous order of the court that Rick would only be paid on a deferred-compensation basis and not through additional shares of stock; the court did not grant that permission; but Food Groupie proceeded to do it, anyway. The court ruled quite clearly that it would grant Food Groupie's request to give Rick additional stock *only* if the Koltons failed to pay the money it owed by close of business, and that otherwise the court would enter and continue the motion. The Koltons paid—meaning the court entered and continued consideration of Food Groupie's request—but Food Groupie proceeded to take those actions, anyway, as if the court had allowed them. The trial court correctly equated Rick's actions to "a hostile takeover" when he took the court order granting his request to serve as president on a "deferred compensation" basis and "used [that] court order to convince the board to allow him to essentially buy more shares." Rick has cited no case law for the proposition that a company may use the business-judgment rule as a shield to violate a court order.

¶ 219 Second, the business-judgment rule, which is intended to protect corporate directors from liability, generally comes into play when a cause of action is based on mismanagement of the company. *Richard W. McCarthy Trust Dated Sept. 2, 2004*, 408 Ill. App. 3d at 536 (2011) (*company's* attempt to apply business judgment rule misguided where complaint did not seek to hold directors liable for mismanagement of company but, instead, merely sought to compel company to perform its obligation under certain notes and request approval from Department of Insurance for redemption of notes). The business-judgment rule presumes that corporate directors act in the best interests of the corporation. *Richard W. McCarthy Trust Dated September 2, 2004 v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 536 (2011). The purpose of the business judgment rule is to shield or protect directors, who have been diligent and careful in performing their duties, from liability for honest mistakes in judgment. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 62; *Goldberg v. Astor Plaza Condominium Ass'n*, 2012 IL App (1st) 110620, ¶ 63; *Davis v. Dyson, 38*7 Ill. App. 3d 676, 694 (2008); *Stamp v. Touche Ross & Co., 263 Ill. App. 3*d 1010, 1015 (1993).

¶ 220 Citing *Spillyards v. Abboud*, 278 Ill. App. 3d 663 (1996), Rick steadfastly maintains that the board decisions that resulted in the dilution of the Koltons' shares constituted a proper exercise of the board's business judgment. But the business-judgment rule protects *directors* from liability; *Spillyards*, for example, was an action against a corporation's board of directors. The instant case does not involve an action against directors or the directors' right to invoke the business judgment rule. *Spillyards* is factually and procedurally inapposite, and Rick's reliance on the case is unavailing.

¶ 221 The trial court did not err in determining that the Koltons demonstrated a likelihood of success on the merits.

¶ 222 e. Additional Considerations

¶ 223 As he did in the trial court, Rick has raised other issues, including waiver, estoppel, and "the doctrine of unclean hands." The Koltons correctly note that Rick failed to provide the trial court with "acts, argument, or authorities in support of the application of waiver or estoppel or explain how these principles apply to preliminary injunctive relief."

¶ 224 Nevertheless, we will address Rick's argument that the Koltons' failure to address their unpaid contempt sanction somehow constitutes waiver of their argument that the trial court did not abuse its discretion in granting injunctive relief. As noted earlier, on November 21, 2008, as part of its order compelling the Koltons to repay the $144,019 it owed to Food Groupie, the circuit court ordered that the Koltons (each) pay the sum of $200 per day *to the court*, beginning on December 6, 2008, until they purged themselves of contempt by paying the principal amount due. The Koltons paid the $144,019 on February 10, 2009. Thus, at that point, they had complied with the April 23, 2008 order. They did not, however, pay the $200 daily fines to the court, fines that had been imposed to coerce their compliance.[9]

¶ 225 Rick relies on the general legal proposition that, as unpurged contemnors, the Koltons had no right to affirmative relief in the trial court, such as a preliminary injunction. But that is a general rule, not a hard-and-fast one tying the hands of the trial court. While "[c]onsideration is not *ordinarily* given to one who shows his contempt for the courts at the same time that he asks their affirmative assistance, *** it is within the discretion of the court whether to hear the matter or not under the circumstances of the case."(Emphasis added, citations omitted.) *In re Marriage of Marks*, 96 Ill. App. 3d 360, 362 (1981). Under the circumstances of this case, the trial court

[9] The court later found that neither the Koltons' delay in paying the $144,019 to Food Groupie, nor their failure to tender the sanctions amount to the court, constituted a breach of fiduciary duty.

chose to grant preliminary injunction based on the evidence we have outline above, including their payment of the principal amount owed ($144,019), if not the $200 daily fines. Given the record before the court at the time, we fail to see how the trial court abused its discretion in doing so.

¶ 226 Rick cites *Wick v. Wick*, 19 Ill. 2d 457 (1960) and *In re Marriage of Timke*, 219 Ill. App. 3d 423 (1991) for the proposition that, as unpurged contemnors, the Koltons had no right to affirmative relief in the trial court. The Koltons note that both cases involved postjudgment matters, not preliminary injunctive relief in the trial court. We agree that those cases are distinguishable.

¶ 227 In *Wick*, a mother filed a contempt citation against the father for failure to pay support money for two minor children. The mother had removed the children from the state in violation of the terms of the divorce decree. *Id*. at 458. Sometime thereafter, the father had started depositing the support payments into a bank account in the original home community of the parties. *Id*. at 459. The court held the father in contempt, and he appealed. As the Illinois Supreme Court noted: "It is the general rule that a party who refuses to obey the mandate of the court, and who has been adjudged in contempt for such refusal, is not entitled to prosecute or defend an action when the nature of the contempt is such as to hinder and embarrass the due course of procedure in the cause." *Id*. at 459. The court concluded that, in view of the mother's departure from the State in violation of the decree, the father's conduct did not amount to a contempt of court under the circumstances shown in that case. *Id*. at 460.

¶ 228 In *In re Marriage of Timke*, 219 Ill App. 3d 423 (1991), another divorce case, the husband was held in contempt after failing to appear in court and failing to deliver clear title to the marital residence. This court held that he was not entitled to appellate review of the marital

property division or the award of maintenance in gross, noting that the court was "afforded no reasons as to why [it] should yield to the entreaties of a contemnor who holds in nothing but scorn the very institutions whose aid he seeks to invoke." *In re Marriage of Timke*, 219 Ill. App. 3d 423, 426 (1991); accord *In re Marriage of Hill,* 2015 IL App (2d) 140345, ¶ 8 (dismissing appeal because "a party is not entitled to appellate review of an order that he is defying").

¶ 229 In contrast, here, while the Koltons did not pay the additional daily fines, they did purge themselves of the initial contempt by paying the $144,019. There is no evidence in the record that any failure to pay the additional fines to the court was "such as to hinder and embarrass the due course of procedure in the cause." *Id.* at 459. The circuit court here was thoroughly familiar with the case and acted within its discretion. We find no abuse of that discretion on this record.

¶ 230 For all of these reasons, we affirm the First Contested Order, specifically the preliminary injunction entered on October 27, 2010 and clarified on November 8, 2010, under Appeal No. 1-10-3711.

¶ 231 5. Second Contested Order (Appeal No. 1-11-3255)

¶ 232 The Second Contested Order was the trial court's order on October 11, 2011, after the close of the Koltons' case-in-chief, wherein the trial court refused to dissolve the preliminary injunction (the First Contested Order) after the close of the Koltons' case-in-chief. (See *supra* ¶¶ 80-81.) We have just explained why we affirm the First Contested Order. We affirm the Second Contested Order—the trial court's refusal to dissolve the First Contested Order—for largely the same reasons.

¶ 233 A trial court "possesses power to dissolve a preliminary injunction absent change of facts or law from the time of issuance to the time of dissolution, provided a sufficient basis exists to support dissolution." *Patrick Media Group, Inc. v. City of Chicago*, 252 Ill. App. 3d 942, 946

(1993). Whether to dissolve a preliminary injunction is within the trial court's discretion and we will reverse that decision only if the court abuses its discretion. *Wade v. Wade*, 2012 IL App (1st) 111203, ¶ 13; *Patrick Media Group*, 252 Ill. App. 3d at 946; see also *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 903 (2009) ("In interlocutory appeals, the trial court's decision to grant or deny the relief requested is generally reviewed under an abuse of discretion standard."). A trial court abuses its discretion in dissolving an injunction where no reasonable person would agree with its position. *Wade v. Wade*, 2012 IL App (1st) 111203, ¶ 13.

¶ 234 Rick argues that our standard of review is *de novo*, because the trial court's decision to keep in place the preliminary injunction came after the close of the Koltons' case-in-chief. While the Koltons persuasively distinguish the case law on which Rick relies, we can truncate that discussion with the observation that, even if the standard of review were *de novo*, we would affirm the Second Contested Order.

¶ 235 Rick argues that the Koltons, in their case-in-chief, failed to provide any evidence that overcame the business-judgment rule protecting the board's decision. We have already explained why the business-judgment rule did not protect that decision.

¶ 236 The party seeking to dissolve a preliminary injunction "must show that the trial court abused its discretion in issuing the injunction because the [party seeking the injunction] did not present a fair question as to the legal rights involved." *Helping Others*, 406 Ill. App. 3d at 697-98. We have already determined above that the Koltons *did* present a more than fair question as to their rights not to have their shares diluted.

¶ 237 Rick has failed to show that the trial court abused its discretion in refusing to dissolve the injunction, or even that the decision was erroneous under a *de novo* review. We affirm the Second Contested Order—the trial court's October 11, 2011 order, under Appeal No. 1-11-3255.

¶ 238 6. Portion of Third Contested Order/Final Judgment (Appeal No. 1-12-2254)

¶ 239 Rick filed this interlocutory appeal from the portion of the trial court's Final Judgment, or Third Contested Order, dated July 2, 2012, in which enjoined Rick and Food Groupie from selling products based on the court's determination of Mary's ownership rights in the intellectual property. (See *supra* ¶ 90.)

¶ 240 When it was initially filed as an interlocutory order, the Koltons (on December 24, 2012) moved to stay this appeal "pending the outcome of post-trial proceedings." We granted that motion the following month and ordered status reports. A year later, in December 2013, we denied Rick's motion to advance the appeal. We later consolidated this interlocutory order with all other appeals.

¶ 241 The Koltons, citing our previous decision in *Santella*, 393 Ill. App. 3d 889, correctly note that this court lacks jurisdiction over this interlocutory appeal because the injunction was permanent in nature. "If an injunction is permanent in nature, it is a final order appealable only under Rules 301 or 304(a), if those rules are otherwise applicable." *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 417 (1991). This appeal should be dismissed. But we would quickly add here that earlier in this opinion, we did consider the merits of Rick's arguments regarding Mary's ownership rights in the intellectual property, as part of our discussion of the Final Judgment, and affirmed judgment in favor of the Koltons on this question. Rick has not been denied his day in court on this issue.

¶ 242 We dismiss Appeal No. 1-12-2254.

¶ 243 7. Fourth Contested Order (Appeal No. 1-12-2907)

¶ 244 Rick filed this interlocutory appeal of the trial court's September 11, 2012 order, specifically "those aspects" of the order that denied his request for the appointment of a

particular retired judge as plenary custodian for the corporation, Food Groupie, pending the outcome of all appeals pending before this court. (See *supra* ¶¶ 91-92.)

¶ 245 In view of our affirmance of the trial court's judgment dissolving Food Groupie, we believe this issue has become moot. In any event, Rick has abandoned the appeal. The Koltons correctly note that, although Rick referenced this interlocutory appeal in his opening brief in the final appeal, he included no argument on any issue raised in his appeal. In his reply brief, Rick did not respond to the Koltons' contention. Nor did he include any argument in his reply brief on any issue raised in this appeal. Because Rick has not presented this court with any argument or reasons that would warrant a reversal of any part of the trial court's September 11, 2012 order, we affirm the Fourth Contested Order. See, *e.g.*, *Senior Housing, Inc. v. Nakawatase, Rutkowski, Wyns & Yi, Inc*., 192 Ill. App. 3d 766, 770, 773 (1989) (affirming that part of trial court's judgment dismissing count I of complaint where, although included in notice of appeal, plaintiff later abandoned its argument as to count I).

¶ 246 5. Fifth Contested Order (Appeal No. 1-13-0643)

¶ 247 On February 28, 2013, Rick filed this fifth interlocutory appeal of the Fifth Contested Order—the trial court's February 25, 2013 order denying Rick's request to stay dissolution of Food Groupie. (See *supra* ¶ 95.)

¶ 248 Rick's opening brief in the final appeal references this interlocutory appeal but contains no argument. Although Rick argues that the court erred by dissolving the corporation, we have already addressed that argument. Nowhere in Rick's opening brief, or reply brief, does he address the trial court's order denying his request to *stay* dissolution of the corporation. Again, it appears that Rick has abandoned this interlocutory appeal. In any event, we are presented with no reason why the dissolution order (which we have affirmed above) should have been stayed. Thus, we

affirm the Fifth Contested Order under Appeal No. 1-13-0643. See *Senior Housing*, 192 Ill. App. 3d at 770, 773.

¶ 249 6. Sixth Contested Order

¶ 250 The final issue is the Sixth Contested Order—the order in which the trial court awarded the Koltons $486,081.70 in attorney fees and $44,400.50 in costs, pursuant to section 12.60(j) of the BCA (805 ILCS 5/12.60(j) (West 2010)), for vexatious and bad-faith conduct.

¶ 251 We reserved this issue for last, because any agreement we might have had with some or all of Rick's arguments could have affected the decision to award fees at all, as well as whether to reduce the amount of fees awarded. We have now considered and rejected all of Rick's substantive claims and are prepared to consider the question of section 12.60(j) fees and costs.

¶ 252 Section 12.60(j) provides:

> "(j) If the court finds that a party to any proceeding under Section 12.50, 12.55, or 12.56 acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding." 805 ILCS 5/12.60(j) (West 2010).

¶ 253 We begin with the standard of review. Typically, an award of fees as a sanction for improper conduct is reviewed for an abuse of discretion. That is the standard of review for sanctions ordered by the trial court under Supreme Court Rule 219(c) (eff. July 1, 2002) for "unreasonably" failing to comply with discovery rules. See *Klingelhoets v. Charlton-Perrin*, 2013 IL App (1st) 112412, ¶ 38. It is the standard by which we review sanctions imposed by the trial court pursuant to Supreme Court Rule 137 (eff. July 1, 2013) for making " 'untrue and false allegations without reasonable cause.' " *Mohica v. Cvejin*, 2013 IL App (1st) 111695, ¶ 47

(quoting *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill.App.3d 214, 217 (2007)). And most notably, it is the standard of review for the trial court's award of *statutory* fees and costs for "vexatious and unreasonable" delay in settling an insurance claim under section 155 of the Insurance Code (215 ILCS 5/155(1) (West 2014)). See *Certain Underwriters at Lloyd's, London v. Abbott Laboratories*, 2014 IL App (1st) 132020, ¶¶ 67-68. This standard of review has been deemed appropriate in these contexts because "generally the conduct at issue occurred before the judge issuing the sanctions, who, therefore, is in the best position to determine whether the challenged conduct warranted *** sanctions or *** heard testimony from individuals involved in the challenged conduct." *Mohica*, 2013 IL App (1st) 111695, ¶ 50.

¶ 254 It is also worth emphasizing that, like section 155 of the Insurance Code (and the supreme court rules we have cited), section 12.60(j) uses the word "may," indicating that *even if* the trial court found a party's conduct to be arbitrary, vexatious, or in bad faith, it still maintains the discretion to award or refuse to award fees and costs. See *Buckner v. Causey*, 311 Ill. App. 3d 139, 150 (1999) (use of word "may" in section 155 "signals a legislative intent to vest the trial court with discretion in awarding relief.").

¶ 255 We see no reason to depart from the abuse-of-discretion standard when considering an award of fees and costs under section 12.60(j). As we have quoted above, the statute at issue here provides for an award of fees or costs when a party acts "arbitrarily, vexatiously, or otherwise not in good faith." 805 ILCS 5/12.60(j) (West 2010). This language is similar to section 155's language of "vexatious and unreasonable" conduct (215 ILCS 5/155(1) (West 2014)) and is not far removed from the verbiage in Supreme Court Rules 219 ("unreasonably") or 137 ("untrue and false … without reasonable cause"), either. And as with all of those other provisions, the trial court considering a lawsuit under section 12.56 of the Business Corporations Act is in the

best position to observe and gauge the conduct of the parties during the course of the proceeding. Ultimately, what actions are "arbitrar[y], vexatious[], or otherwise not in good faith" under section 12.60(j) is based on the trial court's assessment of the relevant factual circumstances presented. It is hard to imagine how our standard of review could be anything but deferential.

¶ 256 But Rick argues for *de novo* review, claiming that the trial court's award of sanctions was an error of law. He cites *Sandholm v. Kuecker*, 2012 IL 111443 (2012), a case involving the Citizen Participation Act (735 ILCS 110/1 *et seq*. (West 2008)). *Id*. ¶ 1. But the court in *Sandholm* applied *de novo* review because it was interpreting a statute, which is always a question of law subject to such review. See *id*. ¶ 64 ("This issue involves the interpretation of a statute and, thus, is subject to *de novo* review."). The fact that the statute under consideration happened to be one involving the award of attorney fees was incidental.

¶ 257 The proper standard of review for the award of fees and costs under section 12.60(j) is an abuse of discretion. We will not reverse the trial court's judgment on this question unless we find it arbitrary, fanciful, or so unreasonable that no reasonable person would adopt the view of the trial court. *Abbott Laboratories*, 2014 IL App (1st) 132020, ¶ 68.

¶ 258 We turn now to the merits of the fee petition.

¶ 259 On September 18, 2012, the Koltons filed their verified petition for attorney fees: 98 single-spaced pages of attorney time records and 371 pages of expense claims. After Rick filed a motion to strike, the court struck a portion of the Koltons' fee petition, ruling that the Koltons could not seek fees in connection with the April 2008 hearing (where the court agreed with Rick that the Koltons had paid themselves over $144,000 in undeserved commissions) but otherwise rejecting Rick's claims.

¶ 260 The Koltons' principal argument in support of their claim of vexatious and bad-faith conduct, of course, was the fact that Rick had fabricated a document he entitled the "Shareholder/Partnership Agreement" and then relied on it to argue that Food Groupie was a partnership, not a corporation, thus giving him—as a full "partner"—equal say and a veto of any actions by the entity. The trial court expressly found this document to be fraudulent, a fictitious document with forged signatures.

¶ 261 We find it worthy of note that Rick, a party who has not proven to be shy about appealing trial court orders, has not challenged this factual finding on appeal. Indeed, in response to this finding by the trial court, he dropped his breach-of-contract claim (founded on the fictitious "contract") before trial, and since that point has made a Herculean attempt to distance himself from that document and act as if it were nothing more than a minor blip on the screen during this soap opera of a lawsuit.

¶ 262 The trial court rejected Rick's attempt to minimize the role of the fraudulent document in this litigation: "though Rick downplays the fictitious Shareholder/Partnership Agreement, his position at trial and the testimony he elicited, as the Court has previously pointed out, was consistent with this document's alleged provisions. The Agreement, and the testimony that [was] elicited by Rick in support of the Agreement, was the cornerstone of Rick's case."

¶ 263 The trial court's reasoning is supported by the record. Rick's verified complaint is replete with references to the purported Shareholder/Partnership Agreement. Although Count I specifically alleged breach of this fictitious agreement, Rick's eleventh-hour voluntary dismissal of count I did not eliminate all of the allegations regarding the agreement. Count II, the breach of fiduciary count, not only incorporated by reference all of the preceding paragraphs (1-56) of the complaint, but added claims based on the bogus agreement. Paragraph 57 of Count II begins with

the words, "Under the Shareholders Agreement . . . ." While the breach of fiduciary count also references common law, there is no separation of claims that fall only under common law. Count III, the usurpation of corporate opportunity count, realleges and incorporates all preceding paragraphs (1-60), including those alleging the fictitious agreement. Count IV, alleging violations of the BCA, realleges and incorporates all of the prior paragraphs (1-64), including those alleging the fictitious agreement. And paragraph 65 further alleges that he and the Koltons "reached an agreement on May 20, 1988 that all corporate decisions would be based on a policy of unanimous consent among all the shareholders."

¶ 264 The fact that Rick acted so brazenly as to invent a document, forge signatures on it, and swear to its authenticity in a court of law is enough, in and of itself, to *easily* satisfy a finding of actions that are vexatious and not in good faith. But we quote below from the trial court, which laid out other actions taken by Rick during the course of these proceedings, some of which we have previously recounted, and some of which have not found their way into any of our earlier discussion (the bullets point are ours):

- "Rick's false accusation of destruction of corporate records and wiping of [Food Groupie]'s computers;
- Rick's claim that he was forced out and excluded as a director of [Food Groupie] even though he had the right under [Food Groupie]'s Bylaws to cumulative voting of his shares to guarantee himself a Board position, but which he never exercised because he voluntarily failed to appear at an annual shareholders' meeting noticed by Mary;
- Rick's false claim that no License Agreement or extensions thereof existed;
- Rick's false claim that he did not participate in the incorporation of [Food Groupie] even though Rick sued under the Business Corporation Act and sought shareholder remedies pursuant to Section 12.56 of the BCA;
- Rick's false claim that the Koltons first began paying themselves commissions after Rick filed suit in 2005 even though they actually began doing so pursuant to a Board

resolution adopted years before; and that the Koltons had entered into numerous oral agreements with Rick for which there was no evidence to support such claims.

- The court found that it was "clear that Rick acted vexatiously and not in good faith during those proceeding as the cornerstone of his Verified Complaint was a contrived document (the fictitious Shareholder/Partner Agreement) and Rick otherwise pursued false claims and defenses against the Koltons."

¶ 265 Suffice it to say, the trial court did not abuse its discretion in finding vexatious and bad-faith conduct by Rick in these proceedings.

¶ 266 Nor do we find any error in the fees it awarded. The trial court cited *Dayan v. McDonald's Corp.*, 126 Ill. App. 3d 11, 23-24 (1984), which involved an award of attorney fees under Rule 137, noting that "where false allegations in the complaint were, like here, 'the cornerstone of the entire baseless lawsuit,' the defending party is entitled to an award of attorney fees and expenses of defending the suit because without the false allegations, there would have been no dispute." Referencing its prior order, and citing *Berlak v. Villa Scalabrini Home for the Aged, Inc.*, 284 Ill. App. 3d 231, 238 (1996), the trial court noted that it had previously determined it would follow Illinois case law regarding "a party's entitlement to fees on a non-covered claim where both covered claims and non-covered claims 'arise out of a common core of facts and related legal theories.' "

¶ 267 As the court noted, these general principles have been adopted in other Illinois cases. See, *e.g.*, *Ardt v. State*, 292 Ill. App. 3d 1059, 1067 (1997) ("The issues involved in this lengthy litigation were complex and so inextricably intertwined, we believe, that the time plaintiff's attorney spent on each issue cannot and should not be distinguished for the purpose of determining the reasonable amount of fees due to plaintiff ***.") And as the Koltons note, in the context of Rule 137 sanctions, we have stated that: "To avoid saddling the judiciary and

nonoffending litigants with the needless expenditure of time and money, a litigant who violates the rule should be held to account for the damage done by that violation even if the litigant later withdraws the offending pleading." *Edward Yavitz Eye Center, Ltd. v. Allen*, 241 Ill. App. 3d 562, 571 (1993).

¶ 268 Considering the difficulty in separating the claims involving the fictitious document from the other claims, and given that the fraudulent "contract" served as the principal argument throughout much of the case, the trial court was on firm ground in assessing fees related even to those matters that did not directly relate to the fraud. And as the trial court noted and we summarized above, other examples of bad faith, apart from the fabricated document, were present in this case.

¶ 269 And in any event, the trial court did not wholly accept the Koltons' petition. For example, the trial court struck the petition to the extent it requested fees and costs related to the April 2008 hearing, where Rick prevailed in convincing the trial court that the Koltons had improperly paid themselves over $144,000 in commission and bonuses. And after reviewing the entries submitted by the Koltons' counsel, the trial court "carved out" some of the fees (and noted that "[t]his task, though tedious, was hardly 'arduous' " as Rick had claimed). On the court's instructions, the Koltons provided Rick with a spreadsheet demonstrating the reductions to their original fee petition. Rick then filed objections to those time and expense entries tendered by the Koltons. On September 30, 2014, the trial court entered its final order in this case, on the Koltons' verified petition for attorney fees. The court awarded $486,081.70 in attorney fees and $44,400.50 in costs.

¶ 270 The record demonstrates ample support for the finding of vexatious and bad-faith conduct, and the trial court's award of fees was careful and reasoned. We cannot say that the trial

court’s judgment on these questions was arbitrary, fanciful, or so unreasonable that no reasonable person would adopt the trial court’s view. We affirm the Sixth Contested Order, the award of fees and costs.

¶ 271 III. CONCLUSION

¶ 272 For all of the reasons stated, we affirm the judgment of the circuit court of Cook County in all respects. We deny the Koltons' motion to strike the preliminary statement contained in Rick's final brief.

¶ 273 Appeal No. 1-10-3711: Affirmed.

¶ 274 Appeal No. 1-11-3255: Affirmed.

¶ 275 Appeal No. 1-12-2254: Dismissed.

¶ 276 Appeal No. 1-12-2907: Affirmed.

¶ 277 Appeal No. 1-13-0643: Affirmed.

¶ 278 Appeal No. 1-14-3331: Affirmed.

¶ 279 Motion taken with case is denied.