2014 IL App (1st) 103733-U

THIRD DIVISION
MARCH 19, 2014

No. 1-10-3733

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

TRODDEN, INC., d/b/a Bartlett Tire and Service, and VALERIE LOFTUS,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 09 CH 52446
J & E AUTO ENTERPRISES, LTD, d/b/a J. MARTIN AUTO SERVICE, CLOVER PROPERTY SOLUTIONS LTD, JOHN MURRAY, and ERIN MURRAY,	)	Honorable Kathleen M. Pantle, Judge Presiding.
Defendants-Appellees.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court was affirmed where: (1) it properly dismissed the plaintiffs' complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)) for failing to state claims for breach of contract, promissory estoppel, civil conspiracy, intentional interference with a contract, intentional interference with economic advantage, and injunctive relief; (2) it did not abuse its discretion in dismissing the complaint with prejudice; and (3) it did

not abuse its discretion in its determination of reasonable attorney fees which it awarded to a prevailing defendant pursuant to the terms of the parties' contract.

¶ 2 The plaintiffs, Valerie Loftus and Trodden, Inc., d/b/a Bartlett Tire and Service (Bartlett Tire), appeal from the circuit court order which dismissed, with prejudice, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), their complaint against the defendants, J & E Auto Enterprises, Ltd. (J & E), d/b/a J. Martin Auto Service (J. Martin Auto), Clover Property Solutions, Ltd. (Clover), John Murray, and Erin Murray, for various claims in connection with the plaintiffs' purchase of Bartlett Tire, an automobile repair business, from the defendants. For the reasons that follow, we affirm.

¶ 3 The following facts are derived from the amended complaint filed on June 28, 2010. Plaintiff Valerie Loftus is the sole shareholder of plaintiff Trodden, Inc. (hereinafter we refer to the plaintiffs collectively as "Loftus"); Loftus has owned and operated Bartlett Tire, an automobile repair and tire sales business located in Bartlett since purchasing the business from Clover on April 30, 2004. Prior to the sale, John Murray, who was president and shareholder of Clover, operated Bartlett Tire under the same name and at the same location, along with "Robert Fillmore, Genevieve Murray, shareholders, officers and directors."

¶ 4 Loftus purchased the business from Clover[1] through an "Asset Purchase Agreement" (Agreement). Relevant to this appeal, section 7(D) of the Agreement contained the following non-compete and non-solicitation clause:

"D. Non-Compete/Non-Solicitation. Seller, and its affiliates and shareholders of Seller shall not, individually or as a consultant, shareholder, partner, venturer, director, officer, agent or otherwise, directly or indirectly engage in any of the following actions:

[1] At the time of the sale of Bartlett Tire, the seller was listed as "Bartlett Tire, Ltd." Shortly after the sale, Bartlett Tire, Ltd. was dissolved and the entity reorganized under the name "Clover Property Solutions, Ltd.". For the sake of clarity, we refer to the seller of Bartlett Tire only as Clover.

(i) solicit, call on or contact any past (within the past 36 months) or present customers, suppliers or employees of Seller with respect to the Business; or

(ii) for a five year (5) year period following the Closing Date, engage in any activity competitive with the Business (as now conducted) in the Village of Bartlett, Illinois plus 10 miles."

¶ 5 Additionally, section 7(D) provided that the seller (Clover) was not to disclose any confidential or proprietary information, including customer and supplier lists, pricing information, and other business information. The provision stated that, if Clover breached section 7(D), Loftus had the right to have the section specifically enforced in a court of law and that the parties agreed that monetary damages would not be an adequate remedy for such a breach.

¶ 6 Regarding attorney fees, the Agreement provided that the "prevailing party or parties in any action brought in connection with this Agreement shall be entitled to recover its or their reasonable costs and attorneys' fees from the non-prevailing party or parties."

¶ 7 The complaint alleged that, in November 2005, John Murray and his wife, Erin Murray, set up J & E with Erin listed as the sole shareholder. In January 2006, J & E purchased J. Martin Auto, an automotive repair and tire sales business located approximately seven miles from Bartlett Tire, in South Elgin. Sometime in April 2006, Clover was involuntarily dissolved.

¶ 8 The complaint alleged that the defendants' operation of J. Martin Auto violated section 7(D) of the Agreement and that Loftus discovered the violation in April 2009, when she learned that J. Martin Auto was offering competing services to Bartlett Tire customers. The complaint further alleged that the defendants tried to conceal their activities from Loftus by listing Erin as the shareholder of J & E, instead of John, and that Erin knew their conduct would violate the terms of the Agreement.

¶ 9 The complaint contained the following counts: breach of contract claims against John Murray and Clover (count I); promissory estoppel claim against John Murray (count II); civil conspiracy against John and Erin Murray (count III); intentional interference with a contract against John Murray (count IV) and Erin Murray and J & E (count V); intentional interference with prospective economic advantage against John and Erin Murray and J & E (count VI); fraudulent misrepresentation against John Murray (count VII); and count VIII sought permanent and preliminary injunctive relief.

¶ 10 On August 9, 2010, the defendants moved to dismiss the amended complaint under section 2-615 of the Code, arguing, in part, that all of Loftus's claims failed because John Murray, Erin Murray, and J & E were not signatories to the Agreement and, therefore, were not bound by its terms. Further, the defendants argued that Loftus's claims failed because Clover, the only defendant actually bound by the Agreement, did not breach it as it was neither the owner nor the operator of J. Martin Auto.

¶ 11 In a written order dated November 4, 2010, the circuit court granted, with prejudice, the defendants' motion to dismiss. We summarize the counts in the complaint along with the trial court's conclusions as follows.

¶ 12 Count I of the amended complaint alleged breach of contract claims against John Murray and Clover, claiming that they breached their obligations and duties under the Agreement by engaging in competitive activities within 10 miles of Bartlett Tire. The court stated that count I failed to plead any facts that Clover breached the Agreement as it neither owned nor operated the competing business. The court also found that John's individual actions did not fall within the scope of his agency relationship with Clover so he was not bound by the terms of the Agreement. Thus, the court dismissed count I, finding that no set of facts could be pleaded upon which relief could be granted.

¶ 13 Count II alleged promissory estoppel against John Murray, claiming that Loftus relied on the unambiguous promises he made in section 7(D) of the Agreement. Loftus alleged that she relied on Murray's promises to her detriment as she has lost revenue and sales because of his competitive actions. The court dismissed count II, finding that John's promises were made only on behalf of Clover and were not his individual promises. Further, the claim was rooted in the covenants contained in the Agreement and, therefore, promissory estoppel was not an applicable theory upon which relief could be granted.

¶ 14 Count III of the amended complaint alleged civil conspiracy against John and Erin Murray. In this count, Loftus claimed that John and Erin entered into an agreement to form a competing business and conceal John's ownership, management and involvement in the busines. The court dismissed count III on the basis that the complaint failed to state any details of the alleged agreement between Erin and John or whether the parties knowingly and voluntarily agreed to violate the restrictive covenants in the Agreement. Additionally, the court stated that the restrictive covenants in the Agreement did not apply to John individually and, therefore, the parties' could not have conspired to violate it.

¶ 15 Count IV alleged that John Murray intentionally interfered with the contract between Loftus and Clover by intentionally operating a competing business, soliciting customers and suppliers from Bartlett Tire, and utilizing proprietary information for his benefit. Count V alleged that Erin Murray and J & E intentionally interfered with the contract between Loftus and Clover as they knew the terms of the Agreement and intentionally participated in the purchase and operation of J. Martin Auto to the detriment of Loftus. Count VI alleged that John Murray, Erin Murray, and J & E intentionally interfered with Loftus's prospective economic advantage by engaging in the competitive activities while having actual knowledge of Loftus's business expectancy that it would not be subject to such interference. As to counts IV and V, the court

determined that there was no breach of the Agreement because Clover was not involved in the purchase or operation of J. Martin Auto and the other defendants were not bound by the Agreement. The court further found that the complaint did not specify any third parties with whom Loftus reasonably expected to enter into a valid business relationship, a required element of count VI. Thus, the court dismissed counts IV, V, and VI of the amended complaint.

¶ 16 Count VII of the amended complaint alleged a claim for fraudulent misrepresentation against John Murray, stating that he agreed to the non-compete and non-solicitation provision in the Agreement knowing that he would not abide by its terms. Loftus alleged that she relied upon Murray's fraudulent representations to her detriment, *i.e*, the loss of revenue and profits. The trial court found that count VII failed because John's alleged false statement was not actionable as it was merely a statement of intention of future conduct.

¶ 17 Finally, count VIII sought preliminary and permanent injunctive relief against John Murray and Clover. In this count, Loftus requested that Murray and Clover be enjoined from operating J. Martin Auto in violation of the Agreement. The court dismissed this count as well, stating that Loftus had not alleged a clearly ascertainable right or protectable interest.

¶ 18 On November 30, 2010, the defendants filed a motion seeking attorney fees pursuant to the Agreement and sanctions pursuant to Supreme Court Rule 137 (eff. July 1, 2013).

¶ 19 On April 13, 2011, the court awarded Clover reasonable attorney fees which it incurred while defending against the claims directed at it (counts I and VIII of the amended complaint and counts I, II, and VI of the original complaint) and in the course of the litigation. Because defense counsel represented all named defendants, the court awarded Clover one-third of the total attorney fees and costs which counsel billed to John Murray. Additionally, the court denied the motion to impose Rule 137 sanctions.

¶ 20 Loftus timely appealed, making three arguments: (1) counts I through VI of the complaint plead facts sufficient to sustain a section 2-615 attack; (2) the trial court should have granted her leave to amend her complaint instead of dismissing it with prejudice; and, (3) the trial court erred in awarding Clover attorney fees. We reject all three arguments.

¶ 21 A motion to dismiss for the failure to state a cause of action pursuant to section 2–615 of the Code attacks "the legal sufficiency of a complaint based on defects apparent on its face." *Pooh–Bah Enterprises, Inc. v. County of Cook*, 232 Ill.2d 463, 473 (2009). At this pleading stage, a plaintiff is not required to prove his case and need only allege sufficient facts to state all elements of the cause of action. *Peraica v. Riverside-Brookfield High Sch. Dist. No. 208*, 2013 IL App (1st) 122351,¶ 9. When reviewing a section 2–615 motion, the court construes all allegations in the complaint in the light most favorable to the plaintiff and accepts as true all well-pleaded facts and reasonable inferences that can be drawn therefrom. *Id.* A section 2-615 motion should be granted only if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Id*. Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish her claim as a viable cause of action. *Id.* We review *de novo* the circuit court's order granting a section 2-615 motion. *Id.*

¶ 22 We first address the breach of contract claims against John Murray and Clover in count I of the amended complaint. "The elements for [a breach of contract] action are (1) offer and acceptance, (2) consideration, (3) definite and certain terms, (4) performance by the plaintiff of all required conditions, (5) breach, and (6) damages." *Village of S. Elgin v. Waste Mgmt. of Illinois, Inc*., 348 Ill. App. 3d 929, 940 (2004). Loftus contends that there is no question that John's conduct violated the terms of the Agreement and that there is no question that his conduct fell within the scope of his agency as Clover's principal, thereby binding him to the Agreement along with Clover. In support of her argument, Loftus refers to the restrictive covenant language

of the Agreement which stated that Clover and its "affiliates and shareholders" would not engage in competitive activities "individually or as a consultant, shareholder, partner, venturer, director, officer, agent or otherwise." The defendants counter that Clover is not liable for the individual acts of its agents and, therefore, Clover cannot be bound by the acts which John performed outside the scope of his position with Clover. Further, the defendants contend that John cannot be personally liable for his individual conduct where he has signed the Agreement only in his presidential capacity. We agree with the defendants.

¶ 23 We agree with the circuit court that the complaint failed to articulate facts which set forth (1) a breach of the Agreement by Clover based on John's individual conduct; and, (2) a breach of the Agreement by John in his individual capacity when he was not a party to it. First, the complaint did not allege any facts which demonstrated that Clover was involved in the purchase or operation of J. Martin Auto. Second, the complaint failed to allege any facts which demonstrated that John should be personally liable when he signed the Agreement as president of Clover, not in his individual capacity. "[W]hen an agent signs a document and indicates next to his signature his corporation affiliation, then, absent evidence of contrary intent in the document, the agent is not personally bound." *Carollo v. Irwin*, 2011 IL App (1st) 102765, ¶ 51; see also, *Safeway Insurance Co. v. Daddono*, 334 Ill. App. 3d 215, 220 (2002) ("A corporate officer is not normally liable on a contract made by his corporation, even if he is the sole stockholder"). One of the purposes of incorporating is to immunize the corporate officer from individual liability on contracts entered into in the corporation's behalf. *Carollo*, 2011 IL App (1st) 102765, ¶ 51. Here, John undisputedly signed the Agreement in his corporate capacity, and Clover was not alleged to have been involved in the purchase and operation of the competing business. Without any facts to support a piercing of the corporate veil under which John signed, we agree with the

court's finding that there was no set of facts pleaded in count I which would have entitled Loftus to relief from either Clover or John Murray.

¶ 24 Next, we consider Loftus's promissory estoppel claim directed at John Murray. Loftus argues that count II should not have been dismissed because plaintiffs are allowed to plead in the alternative. See *Prentice v. UDC Advisory Servs., Inc.*, 271 Ill. App. 3d 505, 512 (1995). The defendants counter that Loftus cannot plead in the alternative where the verified complaint admitted the existence of a contract, even if the parties disputed its terms.

¶ 25 "To establish a claim [for promissory estoppel], the plaintiff must prove that (1) [the] defendant made an unambiguous promise to plaintiff, (2) [the] plaintiff relied on such promise, (3) [the] plaintiff's reliance was expected and foreseeable by defendants, and (4) [the] plaintiff relied on the promise to [her] detriment." *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009). A plaintiff may assert alternative claims for breach of contract and promissory estoppel. *Prentice*, 271 Ill. App. 3d at 512. However, once a contract is established, "either by an admission of a party or by a judicial finding, that there is in fact an enforceable contract between the parties and therefore consideration exists, then a party may no longer recover under the theory of promissory estoppel." *Id.* It is important to note that, when considering a contract dispute, there is a difference between denying that a breach occurred and denying the existence of the contract itself. *Id.* at 513. "In contrast to the legal remedies which arise from a breach of contract, promissory estoppel is an equitable theory of recovery which permits the enforcement of promises that are unsupported by consideration." *Id.* Thus, where proof of a contract fails and where refusal to enforce a party's promise would be unjust in light of the promisee's detrimental reliance, promissory estoppel becomes the appropriate form of redress. *Id.*

¶ 26 In this case, John denied the existence of a contract between him and Loftus. He argued that he did not sign the Agreement in his individual capacity and was paid no consideration for any of the promises Clover made to Loftus. As stated, where the existence of a contract is in dispute, promissory estoppel remains a viable alternative theory of recovery for a plaintiff. However, we find that Loftus's claim still failed because there were no specific, unambiguous promises alleged in the complaint made to her by John. The promises set forth in the complaint were merely direct quotes from section 7(D) of the Agreement. Therefore, we agree with the trial court that, as pleaded, Loftus failed to state a claim for promissory estoppel in count II of the amended complaint.

¶ 27 Loftus next contends that the court erred in dismissing count III, the civil conspiracy claim, because she did not provide specific details regarding the alleged agreement between John and Erin and because she did not claim the agreement was made with an intent to violate the Agreement. We disagree.

¶ 28 The elements of civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 771 (2007); see also, *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994). Conspiracies are often intentionally " 'shrouded in mystery,' " which by nature makes it difficult for the plaintiff to allege with complete specificity all of the details of the conspiracy. *Time Savers*, 371 Ill. App. 3d at 771 (quoting *Adcock*, 164 Ill.2d at 66). Therefore, a plaintiff is not required to plead with specificity and precision the facts that are within the defendant's control and knowledge. *Id.*

¶ 29 Here, we agree with the trial court that the complaint failed to state facts supporting that the Agreement applied to John, individually, and therefore, Loftus could not plead facts

supporting the necessary element of a civil conspiracy claim—that the Murrays had acted to unlawfully to violate section 7(D). Accordingly, count III of the amended complaint was properly dismissed.

¶ 30 Next, Loftus contends that the trial court erred in dismissing counts IV and V, which alleged a claim for intentional interference with a contract against John Murray (count IV) and Erin Murray and J & E (count V) and count VI, which alleged claims against John, Erin, and J & E for intentional interference with prospective economic advantages.

¶ 31 The elements of the tort of intentional interference with contractual rights are: (1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of the contract which causes a subsequent breach by the other; and (4) damages. *Mannion v. Stallings & Co., Inc.*, 204 Ill. App. 3d 179, 187-88 (1990). The elements of the tort of intentional interference with a business expectancy are: (1) the existence of a valid business expectancy by the plaintiff; (2) the defendant's knowledge of the expectancy; (3) the defendant's intentional and unjustified interference which prevents the realization of the business expectancy; and (4) damages. *Mannion,* 204 Ill. App. 3d at 188.

¶ 32 We agree with the trial court's findings regarding counts IV, V, and VI. While the complaint alleged that John knew of the existence and terms of the Agreement between Loftus and Clover, the complaint failed to plead any facts demonstrating that the purchase and operation of J. Martin Auto by John, Erin, and J & E caused Clover to breach the Agreement. Similarly, the complaint failed to specify any third parties with whom Loftus reasonably expected to enter into a business relationship, a necessary element for a claim for intentional interference with

prospective economic advantage. Accordingly, the trial court's dismissal of counts IV, V, and VI pursuant to section 2-615 was proper.[2]

¶ 33 Loftus next argues that the trial court erred in dismissing the amended complaint with prejudice and without leave to amend and that we should grant her the right to amend pursuant to our discretionary authorities under Supreme Court Rule 366 (eff. Feb. 1, 1994). She contends that she should have been allowed to amend her complaint because: (1) only one amended complaint had been previously filed; (2) she could easily correct count VI by identifying third party suppliers with whom the defendants interfered with her business relationship; (3) she could amend count VII to include facts supporting that the defendants' conduct was part of a fraudulent scheme; and, (4) she could amend count VIII's claim for injunctive relief by pleading that a protectable interest existed in the Agreement's prohibition on the disclosure of confidential information.

¶ 34 To determine whether an abuse of discretion has occurred, four factors are considered: (1) whether the proposed amendment would cure the defective pleading; (2) whether the other parties would suffer prejudice or unfair surprise because of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. *O'Brien v. City of Chicago*, 285 Ill. App. 3d 864, 872 (1996). A plaintiff does not have an absolute right to amend under section 2-615, and the determination whether to grant or deny amendments to pleadings is within the discretion of the trial court,

[2] Loftus forfeited any argument that counts VII and VIII were improperly dismissed as she failed to make the arguments in her brief. See *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) (finding that, consistent with the plain language of Supreme Court Rule 341(h) (eff. Feb. 6, 2013), the failure to argue a point in the appellant's opening brief results in forfeiture of the issue).

which may not be reversed absent an abuse of discretion. *O'Brien*, 285 Ill. App. 3d at 872; *Hume & Liechty Veterinary Associates v. Hodes*, 259 Ill. App. 3d 367, 370, 632 N.E.2d 46, 49 (1994). Further, in exercising its discretion, the trial court may consider "the ultimate efficacy of the claim and whether plaintiff had prior opportunities to amend." *Hume*, 259 Ill. App. 3d at 370 (quoting *Capitol Indemnity Corp. v. Stewart Smith Intermediaries, Inc.*, 229 Ill.App.3d 119, 127 (1992)).

¶ 35 We first note that Loftus failed to move for leave to amend her complaint in the trial court. See *First Robinson Sav. & Loan v. Ledo Const. Co., Inc.*, 210 Ill. App. 3d 889, 892 (1991) (motion for leave to amend a pleading must be in writing, state the reason for the amendment, set forth the amendment that is being proposed, show the materiality and propriety of the proposed amendment, explain why the proposed additional matter was omitted from earlier pleadings, and be supported by an affidavit). Furthermore, "[w]hile it is certainly within this court's authority to allow [a plaintiff] to amend under Supreme Court Rule 366," we have utilized our authority under this rule for this purpose only under unique factual scenarios. See *Safeway Insurance*, 334 Ill. App. 3d at 223 (citing cases in which appellate court exercised its discretion to allow amendment of pleadings where: a plaintiff abandoned a claim upon a wrongful earlier dismissal by the trial court (*Canel & Hale, Ltd. V. Tobin*, 304 Ill. App. 3d 906 (1999); a plaintiff could not have foreseen a supreme court case affecting its claim (*Johnson v. American Airlines, Inc.*, 278 Ill. App. 3d 624 (1996); and, a plaintiff's claim was dismissed despite opposing party conceding its factual sufficiency (*Stamp v. Touche Ross & Co.*, 263 Ill. App. 3d 1010 (1993)).

¶ 36 Here, Loftus fails to set forth a unique factual scenario which would encourage this court to exercise its discretionary authority in this case. In fact, Loftus fails to support her arguments on appeal with relevant proposed facts as she (1) fails to identify a third party supplier with whom the defendants damaged her prospective business relationship; (2) fails to state the

proposed facts of a fraudulent scheme supporting her fraudulent misrepresentation claim; and (3) fails to state proposed facts for her injunctive relief claim, or any other claim, which would demonstrate that the Agreement, including the nondisclosure provision, applied to John Murray. Essentially, Loftus rests her argument on the fact she had amended her complaint only once, but she cites no authority requiring courts *per se* to allow plaintiffs multiple opportunities to amend. Accordingly, under these facts and circumstances, we decline to exercise our authority under Rule 366 to grant Loftus leave to amend her complaint.

¶ 37 Finally, Loftus contends that the trial court erred in granting Clover one-third of the total attorney fees charged to all the defendants by defense counsel. Loftus does not dispute that the Agreement provided that Clover may recover attorney fees if it prevailed in any action stemming from the Agreement. Rather, she argues simply that Clover incurred no fees because defense counsel billed all fees directly to John Murray, who paid the fees. The defendants argue that we should not only affirm the fee award, but also remand the cause to the trial court so that they may seek recovery of Clover's fees incurred in this appeal. We agree with the defendants.

¶ 38 Under the common law, the losing party in a lawsuit does not have to pay the prevailing party's attorney fees. *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 951 (2004). However, parties to a contract may agree otherwise, and if they do, the attorney-fee provision will be strictly construed. *Id.* When reviewing the amount of fees assessed by the trial court pursuant to a contractual provision, our standard of review is deferential, and we will not disturb the trial court's findings absent an abuse of its discretion. *Id.*; *LaHood v. Couri*, 236 Ill. App. 3d 641, 649 (1992).

¶ 39 Here, the record demonstrates that the trial court considered the bills submitted by defense counsel, noting that it could not refuse to award attorney fees to Clover simply because it shared counsel and agreed to a certain billing arrangement with the other defendants. The court

stated that counts I and VIII of the first amended complaint and counts I, II and VI of the original complaint were directed at Clover, causing it to incur fees connected with those claims. Further, the court noted that Clover incurred fees and costs "in connection with the litigation as a whole, e.g. court appearances and analysis of the issues" related to venue and the motions to dismiss. After considering these factors, in addition to the work performed, the hours expended thereon, the complexity of the issues, counsel's hourly rate, and the usual and customary charges for comparable services, the court determined that one-third of the total bill submitted was a reasonable amount to award to Clover. Based on the record, we cannot find that the trial court abused its discretion in awarding Clover this sum[3]. Therefore, we affirm the award of reasonable attorney fees to Clover and remand the cause for determination of its reasonable attorney fees incurred in this appeal. See *Erlenbush*, 353 Ill. App. 3d at 953 (remanding cause to trial court for determination of reasonable fees incurred in appeal where, like in the case at bar, the contract provision allowed prevailing party to recover his reasonable attorney fees and an "[a]ppeal is a continuation of the same action").

¶ 40 For the reasons stated, we affirm the judgment of the circuit court of Cook County and remand the cause for a determination of Clover's reasonable attorney fees incurred in this matter.

¶ 41 Affirmed and remanded with directions.

[3] The dollar amount of the attorney fee award is not clear from the court order or the record. However, defense counsel's billing statement attached to his motion indicated the total amount billed to all defendants was $12,960, meaning Clover was presumably awarded $4,276 (one-third of the total).