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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

EVENT CREATIVE, LLC, SEAN CANNON)	Appeal from the
and FERGUS ROONEY,)	Circuit Court of
Defendants-Appellees,)	Cook County.
Cross-Appellants,)	
v.)	No. 08 CH 13217
KURT MILOUSKI,)	
Plaintiff-Appellant,)	Honorable
Cross-Appellee,)	Franklin Valderrama,
)	Judge, presiding.
SEAN CANNON,)	
Defendant-Appellant,)	
v.)	
KURT MILOUSKI,)	
Plaintiff-Appellee.)	

JUSTICE COBBS delivered the judgment of the court.

Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's directed finding in favor of defendants under section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2012)), was not against the

manifest weight of the evidence where plaintiff failed to present sufficient evidence to establish that an executed Terms Sheet constituted a valid and enforceable contract.

¶ 2 Plaintiff Kurt Milouski (Milouski) filed a four-count amended complaint against defendants Event Creative, LLC (Event Creative), Sean Cannon (Cannon), and Fergus Rooney (Rooney) for issues arising out of an alleged breach of contract.¹ In count I, Milouski charged defendants with a breach of fiduciary duty. In count II, Milouski alleged that he was entitled to an accounting of all activities of Event Creative. In count III, Milouski alleged a breach of contract claim. In his complaint, Milouski contended that an executed "Terms Sheet" agreement constituted a valid and enforceable contract between him, Cannon and Rooney although it "was rendered ambiguous in that the parties used terminology therein that customarily was applied to corporations." Specifically, Milouski alleged that although the Terms Sheet contemplated that he would be a "silent partner in the amount of 24%," in actuality, "their intent was that he was to have membership interest of 24% of this limited liability company." At the close of Milouski's case-in-chief, the circuit court granted defendants' motion for a directed finding on counts I, II, and III pursuant to section 2-1110 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-1110 (West 2012)), finding that Milouski's evidence was insufficient to establish the existence of a valid contract. The primary issue on appeal is whether the circuit court erred in granting a directed finding in favor of defendants on counts I, II, and III.

¶ 3 We first address Milouski's motion to strike portions of defendants' statement of facts, which we ordered taken with the case. Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013) provides that briefs before this court must contain a statement of facts "stated accurately and

¹ Only the first three counts are relevant to this appeal.

fairly without argument or comment." When a party violates this rule, a court may, in its discretion, strike or disregard those portions of a brief not in compliance with supreme court rules. *Hubert v. Consolidated Medical Laboratories*, 306 Ill. App. 3d 1118, 1119-20 (1999) (citing R. 341(e)(6)). Here, we agree with Milouski that defendants' brief includes purported statements of fact which were contained in their stricken affirmative defenses and allegations which are not supported by citations to the record. However, this court will not strike a portion of a party's statement of facts unless it includes "such flagrant improprieties that it hinders our review of the issues." *John Crane Inc. v. Admiral Insurance. Co.*, 391 Ill. App. 3d 693, 698 (2009) (citing *Lock 26 Constructors v. Industrial Comm'n*, 243 Ill. App. 3d 882, 886 (1993)). We find that the factual improprieties in the case at bar do not significantly hinder our review. Thus, we will not strike defendants' statement of facts, but we will disregard any inappropriate or unsupported statements in their brief. See *id.* Milouski's motion is hereby denied. We now turn to the merits of the appeal.

¶ 4

BACKGROUND

¶ 5 In 1998, Milouski and Cannon were business associates in a business venture known as The Lighting Department. The Lighting Department provided lighting and staging services for events in the Chicagoland area. Milouski invested \$30,000 to acquire stock in the corporation, and he loaned the company \$10,000. Between 1998 through 2003, Milouski traveled from his home in New York to Chicago to work at events for the company. After the departure of two other shareholders, Cannon dissolved the corporation and sold its assets. Milouski was not aware

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that Cannon planned to close the business and sell off its assets, and learned what Cannon had done after the company was dissolved.²

¶ 6 Subsequently, Cannon formed two other event lighting and staging businesses, Cannon Creative, Inc. and Creative Audio Visual, LLC. In September 2003, Cannon filed Articles of Organization for Creative Audio Visual, LLC with the Illinois Secretary of State; this business was later known as Event Creative. In early 2004, Event Creative moved into an office space with Rooney at 311 West Walton Avenue in Chicago, Illinois.

¶ 7 Cannon thought that Milouski could be of some assistance to him in running Event Creative, and in July 2005, Cannon presented Milouski with a document entitled Terms Sheet, identifying Milouski as a member of Event Creative. When Cannon gave Milouski the Terms Sheet, it had already been signed by Rooney and Cannon. The Terms Sheet stated that "[t]he three equity partners in Event Creative are as follows" and listed Cannon as "Managing Partner" with 51% interest, Rooney as "Manager" with 25% interest, and Milouski as "Silent Partner" with 24% interest. Cannon never told Milouski that "Silent Partner" meant that Milouski had no voting rights in Event Creative. Milouski thought the term meant that he had no say in the day-to-day operations of the business. A section of the Terms Sheet captioned "Articles of [I]ncorporation" provided that "[t]he Articles of [I]ncorporation will be changed to reflect updated equity positions of members upon signing of this agreement; these articles will also reflect the stakeholder's position within the company as per Illinois law." Milouski reviewed the Terms Sheet, signed it, and returned it to Cannon. The Terms Sheet provided that the first meeting of the business would occur between Cannon and Milouski during the week of July 5,

² Count IV of Milouski's complaint alleged breach of fiduciary duty by Cannon concerning the sale of the Lighting Department. Cannon counterclaimed seeking contribution for payment of the Lighting Company's debts.

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2005, and that meeting occurred as planned. In December 2005, Cannon informed Milouski that he was having an Operating Agreement drawn up. In January 2006, Event Creative re-paid Milouski's loan of \$10,000 that he made to The Lighting Department.

¶ 8 Around June 29, 2006, nearly a year after Milouski signed the Terms Sheet and six months after Cannon discussed developing an Operating Agreement, Milouski received an unsigned Operating Agreement. Milouski reviewed the document, and then informed Cannon that he had concerns because he was listed as a "non-voting member." He told Cannon that he wanted to have voting rights in Event Creative. After Milouski expressed concern, Cannon became slow to return his phone calls, eventually failing to return any of Milouski's phone calls. The parties never signed the Operating Agreement because the members had not reached agreement on all of its provisions. Milouski presented no evidence of having done any work for, or on behalf of Event Creative, or of having made any capital contributions to the company subsequent to signing the Terms Sheet. According to Event Creative's 2007 tax return, the only members of Event Creative were Rooney and Cannon.

¶ 9 In his case in chief, Milouski called Cannon as an adverse witness. Cannon testified that he had not received a signed copy of the Terms Sheet before he sent Milouski the Operating Agreement. He stated that the first time he saw the signed Terms Sheet was after the lawsuit was filed. Cannon considered the Terms Sheet to be a proposal, which did not contain all the terms of the agreement. After June 30, 2006, Cannon and Rooney changed their membership interests in Event Creative so that Cannon held 75% interest and Rooney held 25% interest.

¶ 10 Milouski also called Rooney as an adverse witness. Rooney testified that Cannon prepared a Terms Sheet and he signed the sheet before Cannon gave it to Milouski. He did not recall ever seeing the Terms Sheet that Milouski signed before the litigation.

¶ 11 Milouski called Lee Gould to testify as an expert witness on damages. Gould opined that the fair value of Milouski's 24% ownership interest in Event Creative as of September 30, 2011 was \$128,400. He further testified that if corporate distributions had been paid in accordance with the ownership percentage reflected on the Terms Sheet, Milouski would have received approximately \$90,800 as his proportional share for his 24% ownership interest in Event Creative.

¶ 12 At the conclusion of Milouski's case-in-chief, defendants, pursuant to section 2-1110 of the Code (735 ILCS 5/2-1110 (West 2012)), moved for a directed finding on counts I, II, and III, on the grounds that the evidence presented established that the parties had not reached an agreement to admit Milouski as a member of Event Creative. The court found that Milouski failed to establish a *prima facie* case, stating that:

"there was no meeting of the minds with respect to the alleged contract between and amongst these parties. *** Mr. Milouski's intention or understanding of what the terms of this contract were [,] were not in any way consistent with those of Cannon and Rooney. By way of a point or by way of an example, specifically, the Term[s] Sheet lists Mr. Milouski as a silent partner. Mr. Milouski testified that he did not believe that as a silent partner this meant that he did not have voting rights in the entity to be created, Event Creative."

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The circuit court granted a directed finding in favor of defendants as to counts I, II, and III of Milouski's amended complaint.

¶ 13 Milouski subsequently filed a motion for reconsideration arguing that the court erred in finding that he had failed, as a matter of law, to establish a *prima facie* case for the underlying causes of action. Upon reconsideration, the circuit court found that it had erred in its original finding. The court found that while Milouski had established a *prima facie* case for the underlying causes of action, "upon evaluating the totality of the evidence, including the credibility of the witnesses and the weight and quality of the evidence, Milouski failed to present sufficient evidence to establish his *prima facie* case." The court further found that the Terms Sheet was not a valid and enforceable contract and, therefore, defendants could not have breached the contract with Milouski. Thus, the court granted judgment in defendant's favor. It is from this judgment that plaintiff appeals.

¶ 14 For the reasons that follow, we affirm.

¶ 15 ANALYSIS

¶ 16 Section 2-1110 provides that, in all cases tried without a jury, a defendant may, at the close of the plaintiff's case, move for a finding or judgment in his or her favor. 735 ILCS 5/2-1110 (West 2012). In ruling on such a motion, a court must engage in a two-prong analysis. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). First, the trial court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case. A plaintiff establishes a *prima facie* case by proffering at least "some evidence on every element essential to [the plaintiff's underlying] cause of action." *Id.* (quoting *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154 (1980)). In phase one, the court does not weigh the evidence, but merely considers whether the

plaintiff has adduced at least some evidence in support of each element of the *prima facie* case. *Barnes v. Michalski*, 399 Ill. App. 3d 254, 263 (2010). If the court granted the motion in phase one of its analysis, finding a lack of evidence on one or more of the elements of the *prima facie* case, our standard of review is de novo. *Cryns*, 203 Ill. 2d at 275; *Minch v. George*, 395 Ill. App. 3d 390, 397 (2009). If, however, the plaintiff has presented a *prima facie* case, the trial court then must move on to the second stage of the analysis and weigh all the evidence offered by the plaintiff, including evidence favorable to the defendant, to determine whether the *prima facie* case survives. *Minch*, 395 Ill. App. 3d at 398.

¶ 17 The second phase of a section 2-1110 analysis recognizes that even though the plaintiff has presented some evidence on every element of the cause of action, the trial court, as the trier of fact, might not necessarily find the evidence as to one or more of the elements to be convincing enough to qualify as proof by a preponderance of the evidence. *Barnes*, 399 Ill. App. 3d at 264. In fact, the weighing process may result in the negation of some of the evidence necessary to the plaintiff's *prima facie* case, in which case the court should grant the defendant's motion. *Minch*, 395 Ill. App. 3d at 398. If the trial court, after weighing the evidence and assessing the credibility of witnesses, finds that no *prima facie* case remains and grants the motion in this, the second phase of the analysis, our standard of review is whether the ruling is against the manifest weight of the evidence. *Barnes*, 399 Ill. App. 3d at 264; see also *Prodromos v. Everen Securities, Inc.*, 389 Ill. App. 3d 157, 170 (2009).

¶ 18 A ruling is against the "manifest weight of the evidence when the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or without basis in the evidence presented." *Id.* 170-71 (citing *Best v. Best*, 358 Ill. App. 3d 1046, 1054 (2005)). Under the

manifest weight standard, deference is given to the trial court as finder of fact because the trial court is in a better position than the reviewing court to observe the conduct and demeanor of the parties and witnesses. *Best*, 358 Ill. App. 3d at 1054-55. The reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence. *Id.* at 1055.

¶ 19 Milouski contends that the trial court erred in finding that no contract existed when the parties had executed a valid written agreement. He advances three arguments in support. He first argues that the court erred, as a matter of law, when it looked to extrinsic evidence of the parties' subjective understanding of a written term in the Terms Sheet to determine the parties' intent as the sole basis for finding that no contract existed. He maintains that a determination of the existence of the contract was limited to the language in the Terms Sheet alone, without consideration of any other evidence, or the meaning of the term "silent partner." The Terms Sheet agreement, standing alone, contained all of the essential elements of an enforceable written contract and the court did not find any elements lacking. Thus, he asserts that the trial court's decision erroneously "rested entirely upon extrinsic evidence that Defendant's and Plaintiff's subjective understandings of the term 'silent partner' were different." Milouski argues that the proper standard of review is *de novo* because his appeal presents a question of law.

¶ 20 Defendants counter that the trial court's consideration of extrinsic evidence was proper in this case. Defendants note that it is unclear whether the court considered the Operating Agreement in its determination. They point out, however, that Milouski in his pleadings alleged that the Terms Sheet was ambiguous and that at trial, Milouski presented extrinsic evidence. Citing *Loyola Academy v. S&S Roof Maintenance, Inc.*, 164 Ill. 2d 263 (1992), defendants assert

that when the language of an alleged contract is ambiguous, the meaning must be ascertained through a consideration of extrinsic evidence. Thus, defendants maintain that the trial court's consideration of extrinsic evidence in this case was appropriate. Defendants urge our review under the manifest weight of the evidence standard because the circuit court's finding in their favor was supported by facts.

¶ 21 Although the parties contend that the dispositive issues on appeal are whether the term "silent partner" is ambiguous and whether the circuit court properly relied on extrinsic evidence in reaching its decision, we disagree. We believe that the relevant inquiry on review is whether the court's finding that Milouski failed to present sufficient evidence to establish his *prima facie* breach of contract claim was against the manifest weight of the evidence.

¶ 22 In his complaint, Milouski alleged that the Terms Sheet constituted a binding contract by and among him and defendants Rooney and Cannon. He further asserted that the Terms Sheet accurately reflected the parties' respective interests in the Company, although it was rendered ambiguous in that the parties used terminology therein that customarily was applied to corporations.

¶ 23 In their answer to the complaint, defendants denied that they had entered into "any oral or written agreement with plaintiff in 2005 or at any other time granting plaintiff a membership interest in the Company." Cannon's testimony at trial was consistent with the defendants' answer to the complaint. He testified that he considered the Terms Sheet to be a proposal, which did not contain all the terms of the agreement.

¶ 24 We are aided in our review of the arguments presented on appeal by the trial court's written "Trial Opinion and Judgment Order." We note initially that the circuit court focused on

the term silent partner "by way of example" in its initial ruling on the directed finding. Even a cursory reading of the Court's judgment order following Milouski's motion for reconsideration, reveals that the court considered the "totality of the evidence" when it found that Milouski failed to carry his burden of proof under the second stage of the section 2-1110 analysis. The court specifically stated that although Milouski had established a *prima facie* case for the underlying causes of action, "upon evaluating the totality of the evidence, including the credibility of the witnesses and the weight and quality of the evidence, Milouski failed to present sufficient evidence to establish his *prima facie* case."

¶ 25 Whether a contract is ambiguous presents a question of law (*William Blair & Co., LLC v. FI Liquidation Corp.*, 358 Ill. App. 3d 324, 334 (2005)) and, as Milouski correctly notes, our review is *de novo*. See *Timan v. Ourada*, 2012 IL App (2d) 100834, ¶24. Whether a contract exists, its terms and the intent of the parties, however, are questions of fact to be determined by the trier of fact. *Hedlund & Hanley, LLC v. Bd. of Trustees of Cmty. Coll. Dist. No. 508*, 376 Ill. App. 3d 200, 205 (2007). To prevail on a breach of contract claim, the plaintiff must plead and prove (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff. *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st), ¶40; *Timan* at ¶24 (quoting *Henderson-Smith & Associates, Inc. v. Nahamani Family Service Center, Inc.*, 323 Ill. App. 3d 15, 27 (2001)). "Overall, a party seeking to enforce an agreement has the burden of establishing the existence of the agreement." *Reese v. Forsythe Mergers Group, Inc.*, 288 Ill. App. 3d 972, 979 (1997).

¶ 26 A valid and enforceable contract requires an offer, an acceptance, and consideration. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶68 (citing *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶45). For a contract to come into existence there must be a meeting of the minds to the contract. *Barraia v. Donoghue*, 49 Ill. App. 3d 280, 282 (1977); see also *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991). When the record indicates that the language used or the terms proposed are understood differently by the parties, there is no meeting of the minds and no contract exists between the parties. *Martin v. State Farm Automobile Insurance*, 348 Ill. App. 3d 846, 855 (2004). However, it is not necessary that the parties share the same subjective understanding as to the terms of the contract. *Midland Hotel v. R.H. Donnelley Corp.*, 118 Ill. 2d 306, 313 (1987) (citing 1 Williston, Contracts §§ 21, 22 (3d ed. 1957)). "It is sufficient that the conduct of the contracting parties indicates an agreement to the terms of the alleged contract." *Id.* at 313-14. "Otherwise, a party would be free to avoid his contractual liabilities by simply denying that which his course of conduct indicates." *Id.* at 314.

¶ 27 Nevertheless, for purposes of enforceability, the essential terms of a contract must be definite and certain. *Id.* A contract is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions of the document, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do. *Id.* Even if the parties may have manifested the intent to make a contract, if the content of their agreement is unduly uncertain and indefinite no contract is formed. *Academy Chicago Publishers*, 144 Ill. 2d at 29 (citing 1 Williston, Contracts §37 (3d ed. 1957); 1 Corbin, Contracts §95 (1963)).

¶ 28 The one page document which is the genesis of this controversy is entitled "Terms Sheet." Briefly summarized, the document identifies the three equity partners in Event Creative, their respective positions and their stake in the entity. Following identification of the members, the document addresses the Articles of Incorporation which previously had been drawn up for Creative Audio and indicates that the Articles will be changed to reflect updated equity positions and include any necessary boiler plate language. A section captioned "Company 'By Laws' " indicates that the Articles of Incorporation will include the bylaws as an addendum which will list "various items deemed important in drawing up the Terms Sheet." Finally, the document includes a section captioned "Company Valuation" which includes the approximate amount of the prior years' sales, a definition of net profits, identifies the net profits for 2004 and finally, indicates the "[v]alue of [s]take" for each the of the three members. The document is signed by the three members.

¶ 29 We agree with the trial court that the Terms Sheet is not an enforceable contract. Although informative with respect to who the members of the Event Creative are, the future drafting and treatment of certain governing documents and the anticipated profits and stakeholder values, the document offers nothing with respect to the parties' rights and duties in their respective membership positions, their contributions to the entity, or even what conduct would constitute breach. That the parties may have by their agreement to the Terms Sheet anticipated entering into a contract, the Terms Sheet is not that document.

¶ 30 Moreover, although this court will not generally inquire into the sufficiency of consideration to support a contract between two parties, we note that Milouski did not produce any evidence of consideration for the contract in this case. It is well established that "[a]ny act or

promise which is of benefit to one party or disadvantage to the other is a sufficient consideration to support a contract." *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204, ¶ 23 (quoting *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 330 (1977)). However, Milouski fails to show that Cannon received a benefit or that he himself suffered a detriment as a result of executing the Terms Sheet. As mentioned, Milouski never performed any duties as a member of Event Creative nor did he make any financial contributions to the entity at any point before or after the execution of the Terms Sheet. See *Northwest Diversified, Inc. v. Desai*, 353 Ill. App. 3d 378, 390 (2004); *Agnew v. Brown*, 96 Ill. App. 3d 904, 908 111, 115 (1981) (holding that a contract will be held invalid by the court absent some indicia of actual consideration).

¶ 31 Further, although Milouski claims that he was added as a member of Event Creative upon the execution of the Terms Sheet, the Terms Sheet itself, coupled with the parties' conduct subsequent to his signing of the Terms Sheet indicates otherwise. The evidence reveals that the three men did not have a meeting of the minds on whether Milouski's interest in Event Creative would include voting rights. Additionally, communications between Milouski and defendants ceased before the anticipated signing of the Operating Agreement, which set forth the duties, responsibilities and rights of the individual members. Further, no Articles of Incorporation, as contemplated by the Terms Sheet, was produced at trial to identify Milouski as a member. Thus, based on this record, it appears that Milouski was never added as a member of Event Creative. See *Midland Hotel*, 118 Ill. 2d at 313-14 (The parties' course of conduct after the formation of an alleged contract is indicative of whether the parties agreed on its terms.).

¶ 32 Neither can it be said that Milouski enjoyed membership in Event Creative as a result of his relationship to the alleged previously dissolved Lighting Department.³ In that regard, we note the trial court's finding that subsequent to the sale of the Lighting Department, Cannon started a new company, Cannon Creative, Inc. Although Milouski testified that he and Cannon had a signed agreement whereby Milouski would be a shareholder of Cannon Creative, no such agreement was produced at trial. There was no evidence that Milouski was a shareholder of Cannon Creative, that he had any ownership interest in that entity, or that he performed any jobs for Cannon Creative. In 2003 Cannon started Creative Audio Visual, LLC. (CAV). Milouski did not produce any evidence that he had an ownership interest in CAV. In 2003 Cannon created Event Creative, LLC., which had been formerly known as CAV. According the Terms Sheet, CAV had been doing business as Event Creative since January, 2004. In 2004, only Rooney and Cannon were members of CAV.

¶ 33 Milouski relies on *Laserage Technology Corp. v. Laserage Laboratories, Inc.*, 972 F. 2d 799 (7th Cir. 1992) to argue that the circuit court should look only to the specific language of a written agreement to determine the parties' intention, and not to extrinsic evidence of the parties' subjective understanding of the agreement. In *Laserage*, the plaintiff asserted that the federal district court erred in concluding that the parties had reached a binding settlement agreement which allowed the defendant to retain his shareholder rights because there was no "meeting of the minds." *Id.* at 802. After reviewing the written agreement, embodied in a series of correspondence that the parties had exchanged over a period of 30 days, the federal court of appeals affirmed the district court's finding. *Id.* at 802-3. The court concluded that the parties

³ The trial court awarded Milouski damages on Count IV of his complaint which alleged breach of fiduciary duty against Cannon relating to the sale of the Lighting Department.

had reached a binding agreement that included the retention of the defendant's shareholder rights.

Id. The court's decision was based on what the parties had expressed "in their writings, not by their actual mental processes" and that the plaintiff misconstrued the "often-deceptive 'meeting of the minds' metaphor." *Id.* at 802.

¶ 34 Milouski's reliance on *Laserage* is misplaced. The parties' dispute in *Laserage* arose after a 30-day period of correspondence regarding the formal terms of a settlement agreement. Although the parties disagreed on a single provision within the agreement, the court found that the written terms of the agreement did not present "vagueness or indefiniteness problems," which would render a contract unenforceable. Because the *Laserage* court found that the terms of the contract were certain, the court had no need to consider evidence outside of the written agreement to find an enforceable contract between the parties. See *id.* 804. Conversely, in the instant case, the parties' dispute arose due to indefiniteness on the face of a one-page Terms Sheet, which Milouski himself once contended was too ambiguous to interpret the parties' intentions, and not a mere disagreement over the explicit terms of an otherwise enforceable contract as in *Laserage*. Therefore, *Laserage* is unavailing.

¶ 35 Milouski makes the additional argument that the Terms Sheet agreement formed a binding contract that did not require executing a subsequently drafted Operating Agreement to be enforceable. The argument presumes a finding by the trial court which is not supported by the record. In its written order, the court made no specific mention of the Operating Agreement as necessary to contract formation. In any case, because we have determined that the trial court's ruling is supported by the evidence, we need not engage in analysis of this argument.

¶ 36 Finally, Milouski asserts error in the trial court's failure to interpret the term "silent partner" in the Terms Sheet. He maintains that the trial court found that no contract existed when, instead, it should have rendered an interpretation of the "plain and ordinary meaning" of the term "silent partner" and construed any ambiguity against the defendants. Clearly, the absence of agreement by the parties regarding the meaning of the term was a factor in the court's determination concerning the existence of a contract. Having determined that no enforceable contract existed, however, it was not necessary that the court render any interpretation of the term "silent partner." Moreover, an interpretation of the term would have no transformative effect.

¶ 37 Based on these facts, we do not believe that the court's determination that the parties never formed a valid contract was unreasonable, arbitrary, or without basis in the evidence presented. See *Prodromos*, 389 Ill. App. 3d at 170-71. Thus, we hold that the circuit court's directed finding in defendants' favor was not against the manifest weight of the evidence.

¶ 38 We note in concluding defendants' request for leave to petition for an award of their reasonable attorney fees for responding to this appeal. Illinois Supreme Court Rule 375(b) provides that if an appeal is frivolous, not taken in good faith, or for an improper purpose, this court may impose a sanction on an appealing party, including an order to pay the other party's attorney fees. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). As we do not deem this appeal to meet any of the criteria set forth in the rule, we deny defendants' request.

¶ 39 For all of the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.