2016 IL App (1st) 141942-U

THIRD DIVISION
March 16, 2016

No. 1-14-1942

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

MARTIN MAYFIELD, L.L.C., Plaintiffs-Appellee,	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division.
v.	)	
UHY ADVISORS, INC., f/k/a Centerprise Advisors, Inc., Defendant-Appellant,	)	No. 11 L 004454
	)	The Honorable Thomas R. Mulroy, Jr., Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court properly concluded that the Illinois ten year statute of limitations applied to the cause at bar (735 ILCS 5/13-206 (West 2010)), where parol evidence was not necessary to establish the existence of any essential terms of the parties' agreement. The circuit court's award of $610,017 damages in favor of the plaintiff was not against the manifest weight of the evidence. The circuit court, however, abused its discretion in awarding the plaintiff prejudgment interest where the damages were neither fixed nor easily ascertainable.

¶ 2 This cause of action arises from a breach of contract claim filed by the plaintiff, Martin

Mayfield, L.L.C., (hereinafter MM) to recover certain contingency fees from the defendant UHY Advisors Inc., f/k/a Centerprise Advisors Inc., (hereinafter UHY), to whom it provided consulting services. After a bench trial, the circuit court granted judgment in favor of MM awarding it: (1) $610,017 in damages, and (2) prejudgment interest running from March 1, 2004 through May 20, 2014, in the amount of $311,776.86. On appeal, UHY contends that the cause of action was time barred by the Illinois five-year statute of limitations (735 ILCS 5/13-205 (West 2010)) governing oral contracts rather than the Illinois ten-year statute of limitations governing written contracts (735 ILCS 5/13-206 (West 2010)). In the alternative, UHY argues that the trial court erred by: (2) permitting two of MM's experts to testify at the bench trial because they lacked the proper qualifications; (2) admitting into evidence MM's damages report since it was "unreliable, speculative and riddled with errors;" and (3) awarding prejudgment interest to MM. For the reasons that follow, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 Because the record in this case is voluminous, we set forth only those facts and procedural history necessary for the resolution of this appeal. The plaintiff, MM is a limited liability corporation that provides professional consulting services to companies to consolidate supply purchasing processes. At all relevant times, the firm's principals were John McKay (hereinafter McKay) and Keith Stuckert (hereinafter Stuckert). The defendant, UHY, is a regional consulting firm formed in 2000 as a merger of seven accounting and consulting firms across the United States (including five accounting firms, a software consulting firm and a health benefits consulting firm). At all relevant times for purposes of this appeal, the following individuals held the following leadership positions at UHY: (1) Dennis Bikun (hereinafter Bikun) was chief financial officer (CFO); (2) Bob Basten (hereinafter Basten) was the chief executive officer

(CEO); (3) Michael Berent (hereinafter Berent) was the chief operating officer (COO); and (4) William White was the controller.

¶ 5 The parties agree that in January 2001, McKay and Stuckert met with UHY's Bikun and Basten to discuss MM's ability to assist UHY in consolidating the purchasing power of UHY's formerly independent consulting firms to achieve savings for services and products that UHY had used and purchased in the past. As a result of this meeting, on May 10, 2001, UHY sent a joint arrangement letter (hereinafter the JAL) to MM. McKay approved and signed the JAL on behalf of MM on May 10, 2001, and UHY's Berent executed it on May 11, 2001.

¶ 6 A. The Joint Agreement Letter

¶ 7 Pursuant to the JAL, MM was retained by UHY to analyze UHY's suppliers and implement the "Synergy Program" to streamline UHY's spending in various categories (including printing, telephone services, office supplies and shipping) and to optimize the supply side of UHY's business. The Synergy Program consisted of two phases: (1) a one-month assessment during which MM would determine UHY's annual spending, the potential opportunity for streamlining by area and the priority of which areas to pursue; and (2) the implementation, during which it would help UHY obtain new national contracts and set up a compliance and savings monitoring system.

¶ 8 The JAL further set forth the relative rights and obligations of the parties, the scope of the project, the deliverables, the timeframe, and the method by which MM would be paid for its services.

¶ 9 With respect to the "Project Timeframe," the JAL stated that the project would take "six months to complete, with the opportunity assessment comprising the first month." MM's official "start date" was set for May 28, 2001, and its "end date" was set for November 30, 2001.

Pursuant to the JAL "timing [wa]s dependent upon [UHY's] staff availability, project team management and supplier responsiveness." Accordingly, the JAL provided that "[t]iming issues" would be discussed with management on "a regular basis" and "any significant problems, which could extend the duration of the project" and "negotiation of additional fees" would be "discussed as soon as recognized" with UHY's COO Berent. The JAL provided that if MM was responsible for any delays, it would complete the project without any fixed fees beyond November 30, 2001. However, the JAL specified that "all contingency fees w[ould] still be earned given the project was concluded to UHY's satisfaction after November 30, 2001."

¶ 10 With respect to MM's fees for its consulting services, the JAL provided that UHY would pay MM both: (1) fixed fees of $25,000 per month from May 2001 through October 2001; and (2) quarterly contingency fees from 2002 to 2004.

¶ 11 The JAL stated that that MM's contingency fees would consist of: (1) "25% of the total financial savings" UHY received in 2002, and (2) "15% of all total financial savings" it received in 2003 from all supplier contracts implemented within the Synergy Program. According to the JAL, "financial savings" would be calculated "per the 'Project Savings' section above." That section states in pertinent part:

> "The savings that [UHY] receives as result of the project is critical to define, and a majority of MM's fees will be paid out of these savings ***. Only actual, quantifiable financial savings that are received by [UHY] will qualify as savings in the program for both operational expenses and capital expenditures. Savings will be measured as the difference between the overall financial cost of new supplier arrangements constructed in the program and the historic cost of the arrangements. *** The savings will include actual volumes going forward extended against the unit pricing."

That section also lists specific financial savings that would be tracked as part of the Synergy Program.[1]

¶ 12 With respect to calculating the contingency fees, under the JAL, UHY specifically agreed to do "everything in its power to drive compliance to the new [national] contracts through all of UHY along with MM's assistance." In addition, MM agreed to *assist* UHY in constructing and implementing a savings-tracking system for all purchases for UHY to use. However, the JAL explicitly provided that, if after the project ended, UHY wanted MM (instead of itself) to track the savings, it was required to separately engage MM for this service.

¶ 13 In addition, according to the JAL, the first quarter contingency fee was to be paid by UHY in advance on December 3, 2001, and this advance payment would be "reconciled with actual saving in the second quarterly payment in 2002."

¶ 14 With respect to the project return on fees, MM guaranteed that UHY would save at least

[1] These include: (1) savings received from reduced unit pricing multiplied by actual volumes; (2) financial benefits received from extending supplier payment terms and increasing prompt payments discounts (with UHY's cost of capital used in the calculation); (3) rebates or volume discounts received from suppliers separate from price reductions; (4) savings received by detecting and eliminating overcharges, surcharges or unnecessary charges (*i.e.*, unused phone data that UHY was historically charged for); (5) quantifiable processing or administrative savings (*i.e.*, replacing weekly or order-by-order billing with monthly billing or electronic billing, but not headcount reductions); and (6) other financial benefits received from suppliers such as marketing donations, advertising contributions etc.

MM's total fixed fees and expenses (projected at $189,000 total, including $39,000 in expenses) in the first full year following the project. MM agreed that if the savings level of $189,000 was not achieved in the first year, MM would either refund UHY the difference or "provide additional services beyond the scope of this agreement to offset the payable."

¶ 15 The JAL further contained a termination provision under which UHY was permitted to terminate the agreement "for any reason at any time" prior to June 29, 2001, with written notice. If however, "such termination d[id] not occur" by June 29, 2001, then the JAL permitted "no termination" "other than [that] for a material breach of this contract," and the specified that the project would continue until conclusion.

¶ 16 B. JAL Amendments

¶ 17 The JAL was amended four times: on June 25, 2001, October 9, 2001, December 17, 2001, and February 25, 2002. The first addendum set forth the revised scope of the project, including increased staffing by MM, and modified the timing of the first contingency payment. Specifically, UHY agreed to move up its payment for MM's first quarter 2002 savings "from December 3, 2001 to November 2, 2001."

¶ 18 The second addendum dated October 9, 2001, is in the form of a letter from McKay to Berent. The letter states that its purpose is to "summarize their discussion" and "confirm" that MM would continue to assist UHY in implementing the Synergy program and that the arrangement would be extended through November and December. The letter further stated that MM would, *inter alia*, assist UHY in constructing a central database to be used by UHY to track compliance (determining savings), as well as train a UHY person to manage the purchasing data and contracts and transition all contracts supplier contacts to that person. With respect to

contingency fees, according to the addendum, MM agreed to move the contingency fee payment (as described in the original JAL) to a later date to help UHY with its "cash flow."

¶ 19 The third addendum dated December 17, 2001, is also in the form of a letter, from McKay to Berent. That letter "propose[s] an arrangement for MM to continue through the end of January with final conversion of all Synergy areas and to structure the database tracking system that will measure ongoing savings and compliance." In addition, the letter states that MM will work closely with UHY's CFO White to structure and set up a process for maintaining the ongoing corporate database that will be used to track all Synergy sourcing areas, including arranging data input from suppliers. With respect to contingency fees, according to this addendum, MM again agreed to move the contingency fee payment to a later date to "facilitate" UHY's "cash flow."

¶ 20 The fourth addendum, dated February 25, 2002, also consists of a letter from McKay to Berent. The purpose of this letter is "to summarize the arrangement for Curt Leonard [hereinafter Leonard] to work part-time to wind down the Synergy [P]rogram." The letter states that "[i]n addition to completing the conversion of additional telecom areas *** [Leonard] will work with you and *** White to finalize the supplier database and construct the template for field reporting." The letter designates Leonard as MM's point for any other conversion issues. The letter states what Leonard's fees will be. In addition, the letter confirms that any additional savings facilitated by Leonard's efforts going forward would continue to be measured and included in MM's contingency fee structure.

¶ 21 B. Procedural History

¶ 22 Almost ten years after executing the original JAL, on April 29, 2011, MM filed a complaint for breach of contract against UHY. In that complaint, MM acknowledged that UHY paid MM: (1) all of the agreed-upon fixed fees (approximately $327,500); (2) all of the expenses

(approximately $108,634); and the first 2002 quarterly contingency fee ($68,785). Nevertheless, it alleged that UHY had breached the JAL by failing: (1) to pay the remaining seven contingency fees; (2) to maintain proper records and calculate its actual savings; and (3) to act in good faith to comply with the Synergy Program and convert to using the national suppliers, as contemplated under the JAL.

¶ 23 MM subsequently amended its complaint twice, after UHY filed motions to dismiss contending, *inter alia*, that no signed contract between the parties existed. During discovery, however, UHY produced an executed copy of the original JAL.

¶ 24 On May 4, 2012, UHY filed its answer and affirmative defenses, *inter alia*, contending that MM's claim was time-barred by Illinois's five year statute of limitations on oral contracts (735 ILCS 5/13-205 (West 2010)). UHY pointed out that in support of its breach of contract claim, MM had relied upon "extraneous writings" (namely the writings evidencing the addendums to the original JAL) thereby confirming that the contract had in fact been an oral one.

¶ 25 C. Bench Trial

¶ 26 After years of discovery and contentious motion practice, the cause proceeded to a bench trial. The trial lasted over a period of four days, during which nine witnesses testified and over 70 exhibits were introduced into evidence. For purposes of brevity, we summarize only the evidence that is relevant to the resolution of the issues in this appeal.

¶ 27 1. Curtis Leonard

¶ 28 Curtis Leonard first testified that he was an independent contractor[2] hired by MM to work on the Synergy project between June 2001 through November 2002. Leonard worked out of UHY offices, mostly in Chicago, but also in St. Louis. His main contact person at UHY was Berent, but he also worked with Bikun and White.

¶ 29 Leonard testified that prior to 2001, he had about eight or nine years experience in strategic consulting. He had worked for several consulting firms, including Gibson & Associates and Answerthink. Leonard averred that he had expertise in creating and analyzing databases using Microsoft Access and Excel programs and explained that the Synergy project was similar to the other supply sourcing projects he had worked on before, which utilized these same databases.

¶ 30 Leonard testified that at the start of the Synergy project his main role was to request and compile data from UHY's seven operating firms to determine what was being spent across those firms in all of UHY's locations. To do so, he received accounts payable data from the seven firms for a period of about 15-months. The data was then analyzed using a Microsoft Access database (the "historic database"). Leonard shared the historical cost analysis with representatives at the seven operating firms to ensure that each firm agreed with and approved the figures.

¶ 31 Afterwards, together with McKay and Stuckert, Leonard prepared a report, which was

[2] Leonard testified that he did not participate in preparing the JAL between UHY and MM, but averred that he saw and read it. Leonard's arrangement with MM in 2001 was to receive $5,000 a month and then a percentage of the contingency fee driven by the savings UHY received.

presented at a meeting to UHY leadership on July 27, 2001, and which was admitted as an exhibit into evidence. Leonard testified that UHY's CEO Basten, COO Berent and CFO White were all present at that meeting and approved the report.

¶ 32 Leonard explained that the historic database analysis was then used to create "requests for proposals" (hereinafter "RFP") and negotiate contracts with national suppliers. Leonard helped create the RFP's, which were reviewed by the leaders at each of UHY's seven firms, with Berent having final approval. According to Leonard, MM helped UHY put into place 14 different national supplier contracts. All of them were signed by UHY's COO Berent. The contracts were admitted into evidence.

¶ 33 Leonard testified that the project continued through approximately February 2002. By that time the number or suppliers from which UHY purchased various supplies and services was substantially reduced from over 1,000 local vendors to approximately 20 different national suppliers.

¶ 34 Leonard also testified that as part of the Synergy project, he was involved in helping prepare templates to track and measure actual savings that UHY received as a result of using the new national supply contracts. He explained that he prepared a document referred to as the dashboard, which identified the accounts payable, and the spending after the national agreements were prepared within each area of purchase (*i.e.*, shipping, telephone etc.) and by firm. The dashboard essentially showed compliance with the Synergy program (*i.e.*, participation in using national suppliers) versus noncompliance (using local suppliers) and calculated the savings. Leonard prepared his final dashboard report and delivered it to White on January 30, 2003, reflecting $511,977 in actual Synergy savings through October 2002. Leonard testified that to his knowledge UHY never objected to this calculation.

¶ 35 Leonard explained that the formula used to calculate actual savings used actual spending volume and actual spending costs incurred by UHY from 2002 to 2004. For example, the actual dollars spent by UHY on deliveries were the UPS office supply contract unit prices times the actual unit volumes for each type of service purchased by UHY. As Leonard made clear, the formula took the actual accounts payable spend and grossed it up by using the savings percentages to determine what the actual spend would have been if the pre-Synergy historic unit costs had been used. The formula also used a market basket pricing concept, considering the weighted average costs for the mix of products and services purchased by UHY.

¶ 36 Leonard testified that UHY's COO Berent reviewed and approved the use of this formula and methodology for measuring savings, and never voiced any objections to them. Leonard also explained that the formula used was never changed and that it was consistent with formulas he had used in other strategic sourcing projects to measure actual savings.

¶ 37 In addition, Leonard testified that in the fall of 2002, UHY wanted to verify the savings percentages that were the result of the implementation of the project (*i.e.,* converting to national suppliers). Accordingly, UHY asked MM to reconcile or audit the actual savings rates. Leonard performed the reconciliation analysis of the actual UHY spend data from January through June 2002 and documented his reconciliation findings in an October 28, 2002, memorandum to UHY, which was admitted into evidence at trial. That memorandum showed that the overall, reconciled Synergy savings percentage was 33.7% (with specific calculated savings percentages for each spend category) as compared to the initial projected overall savings percentage of 34.4%. According to Leonard, the reconciliation findings were presented to Berent and he approved and accepted them.

¶ 38 Leonard also testified that he was asked to calculate the actual savings under the Synergy

project for purposes of calculating damages in the instant litigation. He stated that the formula used was the same one used to calculate actual savings during the Synergy project and which was approved by UHY in 2001, 2002 and 2003. Leonard reiterated that the formula used compared historic unit prices to actual spend data to determine actual savings. Specifically, the formula used the reconciled and audited savings percentage for each supplier category (*i.e.*, shipping, office supplies, printing) that was determined using established, weighted average historic cost for each spend area as compared to the new unit cost established in the new national contract for that area. Leonard explained that the weighted average historic cost was calculated using the historic database that UHY had approved and that these historic costs were used by UHY to prepare its RFPs and to negotiate and analyze competitive bids that UHY received from proposed national suppliers.

¶ 39 Leonard explained that in calculating damages for purposes of litigation, he and McKay used all detailed data available to them, but admitted that because UHY destroyed its account payable data in 2004 and 2005 when it converted its accounting system, they had to extrapolate for missing monthly spend data by using the average of all available data.

¶ 40 Leonard identified plaintiff's exhibit Nos. 63, 64 and 72, as his and McKay's damages calculations. He acknowledged that the amount reflected in plaintiff's exhibit No. 72 includes corrections to the prior calculations in the other two exhibits. Specifically exhibit No. 64 includes additional months of actual accounts payable spend data that became available to him and was inserted into the damages report. Exhibit No. 72 contains a minor correction for approximately $6,000 and also formats the quarterly contingency fee to conform to the 25% of actual savings for 2002 and the 15% of actual savings for 2003 that were contemplated under the JAL, rather than using the average of 20% for the entire two year period.

¶ 41 2. Keith Stuckert

¶ 42 One of MM's two principals, Stuckert, next testified that he was involved in the Synergy project from as early as January 2001, when, together with McKay he met with UHY executives, Bikun and Berent to pitch the Synergy project to them. Stuckert testified that fees were explicitly discussed and agreed upon at this meeting, and acknowledged that that as a direct result the parties executed the JAL on May 11, 2001.

¶ 43 Stuckert explained that the first part of the Synergy project involved the opportunity assessment phase to determine how the seven UHY firms did their purchasing and where money could be saved. During this phase of the project, Stuckert visited most of the UHY offices collecting data, as testified to by Leonard. Stuckert explained that after the opportunity assessment phase was completed he presented his findings to UHY executives, Bikun, Berent and Basten at a meeting on July 27, 2001. UHY agreed with MM's assessment and after the meeting, MM began building a database of historic spends (*i.e.*, an accounts payable database) that would be used to calculate savings as well as to size up UHY's current expenses. After the database was completed, and after approval from UHY, MM began the implantation phase, attempting to negotiate national supplier contracts for UHY.

¶ 44 According to Stuckert, from the first meeting he had with UHY executives in January 2001, and throughout the Synergy project, at almost every meeting, MM received assurances from UHY executives that the seven UHY subsidiary firms would comply with the Synergy program, and convert to national suppliers. Stuckert testified that UHY executives promised they would do everything in their control to drive compliance. Based on these assurances, he expected around 80% to 90% compliance with the new contracts. On cross-examination, however, he

admitted that in his deposition he had stated that he never asked the UHY executives directly if they had direct control over the local firm's purchasing choices.

¶ 45 On cross-examination, Stuckert further acknowledged that starting in January 2002, after UHY entered into the national contracts the local branches were slow to adapt, refusing to change their stock. In fact, all of the seven local firms continued to use non-national suppliers for purchases, albeit to a different degree. Stuckert admitted that these issues continued in the first three to six months after implementation, but explained that they were repeatedly discussed with Berent.

¶ 46 Stuckert also acknowledged that near the end of 2002, an employee of UHY's Texas branch, Gerald Burger (hereinafter Burger) approached him challenging the sampling procedure used for the historical database. Stuckert, testified, however, that he looked into Burger's complaints and determined that they were not founded on either facts or data.

¶ 47 3. John McKay

¶ 48 MM's second principal, McKay next testified to his 13 years of experience in the finical industry. McKay holds an undergraduate degree in accounting and an M.B.A in finance. Prior to 2001, he had worked for Arthur Andersen for over three years, and had trained in that company's methodology for global sourcing projects. Prior to the Synergy project, McKay had worked on approximately 20 strategic sourcing projects that included creating historic cost databases exactly like the one used in the Synergy project.

¶ 49 McKay also averred that while at Arthur Anderson he had been part of the litigation team, and that therefore he was responsible for drafting the JAL for the Synergy project. McKay testified that in drafting the JAL he specifically included provisions stating that UHY gave MM assurances that it would comply with MM's Synergy requirements, and that it would arbitrate a

solution if for any reason UHY's field offices did not comply with switching to national contracts. While McKay admitted that the JAL did not define the specific level of compliance anticipated from UHY's field offices, he noted that the JAL provided that "acceptable compliance" would be defined by MM.

¶ 50 Consistent with Stuckert, McKay averred that in proposing the Synergy project, he expected between 80% to 90% compliance from UHY's offices and averred that this number had been presented to UHY executives at the July 27, 2001 meeting. McKay acknowledged that there were noncompliance issues and that they continued even after MM finished the project in 2002.

¶ 51 McKay further testified that he was responsible for preparing the four addendums to the original JAL. He averred that each of the four addendums was sent to UHY headquarters, and agreed upon, as well as executed by Berent. McKay admitted, however, that he did not have a signed copy of those addendums because he had retained only the electronic versions.

¶ 52 On cross-examination, McKay acknowledged that he was part of the reconciliation process in the fall of 2002, but denied that this audit modified or changed the original JAL. According to McKay, the only thing done at that point was to reconcile what the end of project savings would be going forward, using the same principles that had been agreed upon in the originall JAL. According to McKay, this was a "continuation of the contract on which MM was already performing."

¶ 53 McKay next acknowledged that he was in charge of supervising Leonard's work and testified consistently with Leonard as to the creation of the savings dashboard, and the calculation of actual savings. McKay explained that MM continued to collect accounts payable data until January 2004 and to apply them to calculating the savings percentages.

¶ 54 McKay also testified that he participated in creating the report that calculated the damages

for purposes of the litigation. His testimony was consistent with that of Leonard. In addition, McKay explained that in determining damages, he and Leonard calculated UHY's noncompliant spending (*i.e.*, spending stemming from using non-national vendors). McKay determined that UHY should have had a minimum of 75% compliance with the Synergy program, based on his expectation that compliance would be 80% to 90%. Accordingly, McKay opined that the damages sought ($610,000) were reasonable.

¶ 55 McKay was next asked to explain why he waited for almost 10 years to institute litigation against UHY. He stated that in early 2004 UHY's controller, White, and COO, Berent, who here MM's primary contacts at UHY, left the firm. In addition, UHY's CEO, Basten became ill and unavailable. McKay averred that his firm had "never been historically in a situation where it needed to bring a claim or pursue a client," and rather wanted to "work it out." However, when in October 2010, McKay learned that White had returned to work for UHY as its CFO, McKay wrote White a demand letter for the remaining unpaid seven contingency fees.

¶ 56 4. Gerald Burger

¶ 57 After MM rested its case, UHY first called Gerald Burger, who has been chief administrative officer (CAO) of UHY's Texas subsidiary since 1999. Burger testified that although the Synergy program was "driven" by UHY corporate headquarters in Chicago, the corporate office did not have much control over the seven local subsidiaries. According to Burger, the corporate office only had the power to "recommend" projects, but no control over the actions of the local firms with regards to procurement.

¶ 58 Burger acknowledged that as part of the Synergy project in 2001, he met with members of

MM to discuss the Texas office's implementation of changes from local to national suppliers, and that in return, at Berent's request, he provided the MM team with historic cost information (*i.e.*, accounts payable data) for his office.

¶ 59 Burger admitted that once the implementation phase of the project started, his branch was slow to sign up for all of the national suppliers as advised by MM. Burger explained that the Texas office leadership did not believe that switching to all national suppliers was in the firm's best interest. According to Burger, the firm did not want to trade quality of products and services for the price. In addition, some of the local suppliers had also been clients of the Texas subsidiary and it was believed that maintaining a relationship with those clients was more important than switching to a national supplier.

¶ 60 Burger testified that on or about October 29, 2002, he received a memorandum from MM detailing some of the reconciliation calculations, including the percent-savings cost that MM believed it had accomplished during the initial implementation phase of the Synergy project. In December 2002, Burger tested those costs and compared the actual costs paid to the national supplier with the costs that the Texas firm had been paying before the Synergy program was implemented. In doing so, Burger found that MM's historical costs were more than half of what the Texas firm's actual historical costs were, based upon the firm's actual invoices. Burger testified that the overall savings was much smaller than the 36% indicated in MM's report. Accordingly, Burger sent an email explaining his complaints and including his calculations to UHY headquarters. Burger stated he never received any response from UHY headquarters, and admitted that he was surprised by this.

¶ 61 On cross-examination, Burger also admitted that he did not keep any copies of the testing he

had done, nor any of the invoices he had used. In fact, he admitted that he destroyed the file that included his "audit," and never provided MM with any of the invoices he claimed demonstrated discrepancies in MM's reconciliation. Burger tried to explain this destruction of these files by referring to the Texas firm's strict record retention policy, which was to destroy all documents after five or seven years. In addition, on cross-examination, Burger admitted that he never examined the historical database which MM created by gathering and analyzing 39,000 invoices from all of UHY's regional firms, but only looked at certain invoices from the Texas office, which he could not now identify.

¶ 62 5. Anthony Peter Frabotta

¶ 63 Anthony Peter Frabotta (hereinafter Frabotta), next testified that together with Mark Fisher (hereinafter Fisher) he was in charge of procurement at UHY's Michigan subsidiary office, between 2001 and 2004. Frabotta testified that in 2001, UHY's seven subsidiaries shared an executive committee and a board, and although all of the subsidiaries could be part of a joint program, the headquarters lacked authority to force any project on them. In fact, according to Frabotta, the executive committee worked through consensus.

¶ 64 Frabotta recalled the Synergy project as a proposal to save dollars though cost reduction. While Frabotta acknowledged that the executive committee (including representatives from each of the seven operating companies) was presented with MM's proposal for the Synergy project, he averred that the committee was never shown the JAL.

¶ 65 According to Frabotta, the executive committee was frustrated with the Synergy program, and attempted to quantify the level of savings on its own. For that purpose, the committee consulted a few members of the executive committee who were accountants, as well as leaders of their own subsidiary offices, including: Howard Foote (hereinafter Foote), Burger and Fisher.

According to Frabotta, "these men never saw anything that justified the dollars that we were being told we were saving or could possibly save."

¶ 66 6. Howard Foote

¶ 67 Howard Foote (hereinafter Foote) next testified, *inter alia*, that between 2001 and 2004 he was the CFO of UHY's New York branch. Consistent with Burger and Frabotta, Foote averred that in 2001 UHY's subsidiary branches had autonomy and corporate headquarters had no control over them. Foote also testified that it was his opinion that switching to the national suppliers was not in the best interest of the New York office because he could not record any substantial savings. Foote acknowledged, however, that the New York office continued to use the national suppliers even after 2003, but explained that they did so only to maintain "the corporate culture of collaboration."

¶ 68 7. Dennis Bikun

¶ 69 UHY's CFO and treasurer, Bikun testified consistently that in 2001, UHY was a holding company with no control over the direct day-to-day operations of its seven subsidiaries. Bikun averred that the subsidiaries did not have representatives at the corporate level. Rather, he explained they had members in the executive committee, whose role was to consider the recommendations of UHY's corporate leadership, discuss strategy and implement those projects that they saw fit.

¶ 70 7. Michael Berent

¶ 71 UHY's COO Berent did not testify at trial. Rather, his deposition, taken on November 19, 2012, was admitted into evidence. Therein, Berent testified consistently with the other UHY leadership that UHY was a holding company, with seven independent subsidiaries that had an executive committee that worked through consensus. According to Berent, each of the

subsidiaries reported to its own leadership and retained autonomy in hiring/firing, client relationships, and procurement. The subsidiaries only committed a financial plan to the UHY corporate structure. Accordingly, during the Synergy project, UHY headquarters could only encourage local offices to participate by switching to national suppliers, but there was no penalty or consequence to the local firms if they chose not to.

¶ 72 Berent acknowledged that under the JAL, UHY had committed to doing everything in its power to ensure compliance with having the local firms switch to national suppliers. He testified, however, that in all of his communications with McKay he would have reiterated that he had no ability to compel the subsidiaries to switch to the national suppliers, and that UHY would have had to obtain consensus from each of the firms. According to Berent, McKay certainly understood the structure of the firm as he was financially savvy and knew how a holding company operates. When asked to detail when he communicated to McKay that he had no power to compel the local firms to comply with the Synergy program, however, Berent stated that he could not recall any exact times or dates but only "his mindset and philosophy in these discussions."

¶ 73 Berent further testified that he did not negotiate any written agreements with MM for purposes of the Synergy project, but admitted that he reviewed and signed the original JAL after being instructed to do so by CEO Basten. Berent also admitted that the JAL was modified several times, and testified that while he recalled that those modifications extended the JAL, he does not believe that the JAL was revised in scope. In addition, while Berent could not specifically recall signing the addendums, he testified that he "must have agreed to them and approved them."

¶ 74 Berent further acknowledged that in the initial phase of the project, MM collected data from

the seven regional firms and that requests for such data would have had to come from his office. He averred, however, that he never personally reviewed any of that data, but only summaries, and that instead he would have delegated the responsibility of reviewing the data to Bikun and White.

¶ 75 Berent also testified that during the implementation phase he did everything in his power to work with the leadership of the local firms to encourage them to work with MM. Berent averred, however, that despite these efforts, the local companies failed to comply, resulting in hundreds of thousands of dollars lost in savings for UHY. According to Berent, by March 2004, when he left UHY, most of the savings that were contemplated under the Synergy project were not being achieved, which was a disappointment. In fact, of the 12 or 14 national suppliers that were originally put in place, only about 3 or 4 continued to be used by the different UHY offices. Berent further averred that the reason for this was that by March 2004, it seemed to him that the MM principals had "abandoned the project and moved onto something else." He testified that he had expected MM to provide UHY with a savings tracking system even after it put the national suppliers on the map, but that MM failed to do so.

¶ 76 At trial, Berent also admitted that he did not approve the payment of the seven contingency fees to MM. He explained, however, that for such payment there would have had to have been a consensus from all of the local firms to pay the contingency fee. According to Berent, he could not get that consensus, since the local firms believed that they had not received the benefits that were promised to them.

¶ 77 On cross-examination, Berent however acknowledged that according to the JAL, UHY never retained MM to track savings. In addition he admitted that during the Synergy project and thereafter, UHY did nothing to track savings or rebates or other administrative savings.

¶ 78 8. William White

¶ 79 UHY's CFO White next testified, *inter alia*, that it was his understanding under the JAL that MM would provide UHY a tracking system to calculate actual savings. White averred that no tool for such tracking was ever delivered to him or to the subsidiary offices. White acknowledged that he received instructions from Leonard and McKay on how to prepare compliance dashboards, but testified that he received no training for this purpose. In addition, White averred that he never approved any actual savings percentages proposed by MM in October 2002, after the reconciliation audit.

¶ 80 On cross-examination, however, White acknowledged that pursuant to the JAL, UHY never retained MM to track savings. White also admitted that UHY did nothing to track rebates received in the Synergy program or other components of administrative savings. In fact, White admitted that in 2004 and 2005 UHY destroyed all of its detail data, when it converted its accounts payable system.

¶ 81 On cross-examination, White also admitted that when he returned to UHY in April 2010, after a six year hiatus, he had a discussion with McKay about the contingency fees owed to MM. White attempted to testify at trial that after speaking with McKay, he searched for documents relating to the Synergy project at UHY's headquarters, but could not find any. White then wavered as to where and when he actually found hard copies of the documents requested by MM, stating that he found them in Bikun's old office, but later admitting that Bikun's office was actually now his. In addition, White admitted that early in the litigation, he signed an affidavit in which he stated that he could not find an executed version of the JAL, but that this document was later discovered in UHY's office.

¶ 82 9. David Jonathan Harkavey

¶ 83 UHY's expert damages witness, David Jonathan Harkavey next testified that he is a licensed certified public and financial forensic accountant with 13 years of experience, including having acted as controller of a manufacturing and supply company in Chicago. Harkavey averred that he has completed over 15 forensic audits.

¶ 84 Harkavey explained that for purposes of this litigation he reviewed most of the pleadings and depositions in this cause. Together with one staff member, he then spent about 370 hours analyzing MM's damages calculations. Harkavey opined that MM's damages calculation was based on an unreliable methodology and insufficient information and was therefore severely flawed and highly speculative.

¶ 85 Harkavey explained that MM had erred in: (1) using an average of the months of information that was available to support its two-year period of accounts payable spend data; and (2) using the accounts payable spend data to quantify actual savings. According to Harkavey, in both calculations, MM failed to consider the actual unit volume.

¶ 86 On cross-examination, Harkavey acknowledged that he did not calculate any savings or damages, including any administrative savings, and did not prepare an expert report. In addition, he admitted that in reviewing MM's damages he did not look at MM's historical analysis, including, for example detailed shipping and office supplies expenses. Accordingly, Harkavey acknowledged that he could offer no opinion regarding UHY's compliance or MM's calculation damages of missing actual savings based on UHY's documented noncompliance.

¶ 87 C. Trial Court's Findings

¶ 88 After hearing all of the evidence, on May 20, 2014, the circuit court issued a written order in favor of MM, expressly finding: (1) that MM's witnesses were "credible,"; (2) that UHY had destroyed documents that were relevant for MM's damages report; and (3) that UHY breached

the written JAL by failing to pay MM seven of the owed contingency fees. The circuit court determined that damages were $610,017, and that MM was entitled to prejudgment interest. In a separate written order, entered on July 17, 2014, the circuit court determined that MM be awarded prejudgment interest between March 1, 2004 through May 20, 2014, in the amount of $311,776.86. UHY now appeals.

¶ 89 II. ANALYSIS

¶ 90 On appeal, UHY initially contends that the trial court erred in concluding that MM's claim was not barred by the five-year statute of limitations on oral contracts (735 ILCS 5/13-205 (West 2010)). In the alternative, UHY contends that the trial court erred by: (2) permitting two of MM's experts to testify at the bench trial because they lacked the proper qualifications; (2) admitting into evidence MM's damages report since it was "unreliable, speculative and riddled with errors;" and (3) awarding prejudgment interest to MM.

¶ 91 Before addressing the merits of UHY's contentions, we begin by noting that we review a trial court's judgment after a bench trial, under the manifest weight of the evidence standard. *Northwestern Mem'l Hops. v. Sharif*, 2014 IL App (1st) 133008, ¶ 25. "A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or when the trial court's findings appear to be arbitrary, unreasonable, or not based on the evidence." *Wiczer v. Wojciak*, 2015 IL App (1st) 123753, ¶ 33. On review, we will not disturb the trial court's judgments as long as there is evidence to support that judgment. *Wiczer*, 2015 IL App (1st) 123753, ¶ 33 (citing *Wilmette Partners v. Hamel*, 230 Ill. App. 3d 248, 256 (1992)). In addition, we may affirm on any basis in the record, regardless of whether the trial court relied upon that basis or whether the trial reasoning was correct. See *Wiczer*, 2015 IL App (1st) 123753, ¶ 33. Accordingly, we will reverse the trial court's decision only where the appealing party presents

evidence that is strong and convincing enough to overcome, completely, the evidence and presumptions existing in the opposing party's favor. *Wolinsky v. Kadison*, 2013 IL App (1st) 111186, ¶ 116 (citing *Wildman, Harrold, Allen & Dixon v. Gaylord*, 317 Ill. App. 3d 590, 599 (2000)).

¶ 92 Although the interpretation of a contract is generally subject to a *de novo* standard of review, "the factual findings that inform the interpretation are given deference on review and are to be reversed only where they are against the manifest weight of the evidence." *Asset Recovery Contracting LLC v. Walsh Const. Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 74. In that respect, it is well-established that "[a]s the trier of fact in a bench trial, the court is in a superior position to observe the demeanor of the witnesses while testifying, to judge their credibility and to determine the weight their testimony and the other trial evidence should receive." *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶¶ 70-72. Accordingly, on review "we give great deference to the circuit court's credibility findings and we will not substitute our judgment of that of the circuit court." *Cook ex rel. Cook v. AAA Life Ins. Co.*, 2014 IL App (1st) 123700, ¶ 51.

¶ 93 A. Statute of Limitations

¶ 94 Turning to the merits of UHY's contention, we first address which statute of limitations should have been applied to the cause at bar. UHY contends that the five year statute of limitations on oral contracts (735 ILCS 5/13-205 (West 2010)) applies and should have barred MM from raising its claim because after the JAL was executed, the parties made several oral amendments to the essential terms of the JAL. On the other hand, MM contends that the trial court properly applied the ten year statute of limitations on written contracts (735 ILCS 5/13-206 (West 2010)) because the essential terms of MM's and UHY's contract were set forth in the original, written and executed JAL.

¶ 95 It is well established that a contract is considered written for purpose of the statue of limitations if all essential terms are reduced to writing and can be ascertained from the instrument itself. *Toth v. Mansell*, 207 Ill. App. 3d 665, 669 (1990). "[W]here one party is claiming breach of a written contract but the existence of that contract or one of its essential terms must be proven by parol evidence, the contract is deemed oral and the five-year statute of limitations applies." *Gassner v. Raynor Mfg. Co.*, 409 Ill. App. 3d 995, 1004 (2011) citing *Armstrong v. Guigler*, 174 Ill. 2d 281, 287 (1996). However, if parol evidence is not necessary to establish the existence of an essential term, but is used to interpret a term, the contract is deemed a written contract and the ten year statute of limitations applies. *Gassner*, 409 Ill. App. 3d at 1004.

¶ 96 In the present case, the trial court found that parol evidence was not necessary to establish the existence of any essential terms of the parties' agreement, but was only used to interpret the written JAL. At oral argument before this court, UHY conceded that our standard of review in analyzing the trial court's ruling on this issue is manifest weight of the evidence. UHY nevertheless contended that we should reverse the trial court's finding as "not based on the evidence in the record," since the written JAL was orally modified on numerous occasions through unexecuted memorandums. Specifically, UHY argued that the following orally modified terms were "essential" to the agreement: (1) the duration of the contract; (2) the timing of the contingent fee payments; and (3) the measure to be used for calculation of those contingent fees.

¶ 97 "A finding is against the manifest weight of the evidence only if the opposite conclusion is

clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 342, 350 (2006). After a review of the record, we find nothing manifestly erroneous in the trial court's determination.

¶ 98 The record reveals that all of the essential terms of MM's and UHY's agreement were set forth in the original JAL executed on May 11, 2001. The JAL explicitly identified the parties, the scope of services that would be provided by MM, the manner in which actual savings would be calculated, and the formula for calculating MM's contingency fees.

¶ 99 Contrary to UHY's assertion, the four subsequent amendments to the JAL did not orally modify any essential terms of the JAL. The JAL was amended four times (on June 25, 2001, October 9, 2001, December 17, 2001 and February 25, 2002) to extend the contract period and allow UHY to postpone payment of its owed contingency fees. Although the amendments were not signed, witnesses for both parties testified that they were accepted by both parties. MM's McKay averred that he wrote all four amendments and sent them for approval to UHY's executives, who then accepted them. UHY's Berent admitted in his deposition that he "must have agreed to and approved" all four amendments.

¶ 100 Furthermore, contrary to UHY's assertion, all time extensions for the project and permissions to UHY to postpone its payment of owed contingency fees were expressly contemplated under the original JAL. The written agreement set forth a flexible and open-ended project timeline, explicitly permitting both time extensions on the project and any negotiation of additional fees to be done through meetings. According to the JAL, although the Synergy project was to take "six months to complete," the "timing [was] dependent upon [UHY's] staff availability, project team management and supplier responsiveness," and therefore the parties agreed that "[t]iming issues" would be discussed with management on "a regular basis." In

addition, the JAL explicitly provided that "any significant problems, which could extend the duration of the project" and "negotiation of additional fees" would be "discussed as soon as recognized" with UHY's COO Berent. The JAL also permitted UHY to terminate the agreement before June 29, 2001, for any reason, and before November 30, 2001, for a material breach of the contract. It is undisputed that UHY did neither. In addition, the JAL set no cap on contingency fees, and provided that UHY would be accountable for contingency fees (albeit not fixed fees) even if MM was responsible for a delay in the project after November 30, 2001. As such, none of the four amendments extending the duration of the project and permitting UHY to postpone payment on the contingency fees orally modified any essential term of the JAL.

¶ 101 UHY nevertheless points to documents and memorandums prepared by MM during the reconciliation process in September and October 2002, to argue that they evidence an oral modification as to the method of calculating contingency fees.

¶ 102 Contrary to UHY's contention, however, a review of those documents reveals that they are merely evidence of MM's performance of its agreed to obligations under the original JAL. Specifically, as to the calculation of contingency fees, the original JAL provided that after the first quarterly contingency fee payment, which was to be paid in advance based on projections, MM would perform a reconciliation of the actual results. As the JAL explicitly states, after that first quarter, the "payment will be reconciled as to *actual savings*." (Emphasis added.) Therefore, contrary to UHY's assertion, in October 2002, MM performed the reconciliation process precisely as contemplated under the JAL, and then documented its performance on the JAL by sending several memorandums to UHY's Berent. As such, these memorandums do not constitute an oral modification of the JAL.

¶ 103 Consequently, under the record before us, we find nothing manifestly erroneous in the trial

court's determination that parol evidence was not necessary in this case to establish any of the essential terms of the JAL. Accordingly, we find nothing improper in the trial court's application of the ten year statute of limitations for written agreements, rather than the five year statue of limitations for oral contracts, to the cause at bar. See *Gassner*, 409 Ill. App. 3d at 1004.

¶ 104 In coming to this conclusion, we have considered the decisions in *Toth*, 207 Ill. App. 3d at 670, *Portfolio Acquisitions, L.L.C. v. Feltman*, 391 Ill. App. 3d 642 (2009), *Bloomberg v. Marks*, 34 Ill. App. 3d 758, 761 (1975), and *Armstrong v. Guigler*, 174 Ill.2d 281, 287 (1996), relied upon by UHY and find them inapposite. Unlike here, in each of those cases, the courts determined that parol evidence was necessary to establish essential elements of a written contract. In *Toth*, one of the parties asserted the existence of a written contract based upon invoices and monthly statements prepared by the plaintiff. *Toth*, 207 Ill. App. 3d at 670. However, none of those documents evidenced any agreement by the defendant to pay any of those amounts, and therefore the court held that those documents did not constitute a written contract upon which both parties had agreed to be bound. In *Portfolio Acquisitions*, 391 Ill. App. 3d 651-52, the court held that a credit card issued to the defendant constituted a revocable offer, not a binding written contract, and that credit card statements did not by themselves continue a written contract. In *Bloomberg*, 34 Ill. App. 3d at 761, the court held that a letter from the defendant to the plaintiff's attorney did not constitute a written contract because the letter lacked the essential terms of the defendant's alleged performance. Finally, in *Armstrong*, 174 Ill. 2d at 287, the court held only that a claim for an implied breach of fiduciary duty was not an action based on a written contract, and thus was subject to the catch-all five-year statute of limitations.

¶ 105 B. Reliability of Damages Evidence

¶ 106 On appeal, UHY next contends that the trial court erred in relying upon the testimony of McKay and Leonard in determining the damages awarded to MM. In this respect, UHY argues: (1) that the court erred in qualifying Leonard and McKay as experts in contravention of the standard set forth in *Frye v. United States*, 293 F. 1013 (D.C.Cir.1923); and (2) that the damages report offered by these two witnesses were highly unreliable, speculative and riddled with errors. For the reasons that follow, we disagree.

¶ 107 1. Expert Testimony

¶ 108 It is well established that expert testimony is admissible if the proffered expert is qualified by knowledge, skill, experience, training, or education, and the testimony will assist the trier of fact in understanding the evidence. *Snelson v. Kamm*, 204 Ill. 2d 1, 24-25 (2003). There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through, *inter alia*, practical experience, education, and/or training. *Thompson v. Gordon*, 221 Ill. 2d 414, 429 (2006). The decision to admit expert testimony is within the sound discretion of the trial court. *Snelson*, 204 Ill. 2d at 24.

¶ 109 In the present case, the record supports the qualifications of McKay and Leonard to testify regarding synergy savings and the calculation of actual savings that they performed as was required under the terms of the JAL. Leonard testified that he had over eight years of experience in strategic consulting, including expertise in creating and analyzing databases using Microsoft Access and Excel programs, just as the one he used in the Synergy project to create the dashboard and the calculations of actual savings. Similarly, McKay testified that he had a degree in accounting, an M.B.A. in finance and over 13 years of experience in the financial industry, including about 20 prior strategic souring projects involving the creation of historic cost databases exactly like the one used in the Synergy project.

¶ 110 UHY incorrectly attempts to rely upon *Frye* to argue that Leonard's and McKay's expert testimony regarding the actual savings calculation should have been disregarded. The *Frye* standard applies only to opinions based on scientific evidence and only if the scientific principle, technique or test offered by the expert to support his conclusion is "new" or "novel." *People v. Robinson*, 2013 IL App (1st) 102476, ¶ 66; see also *In re Marriage of Alexander*, 368 Ill. App. 3d 192, 196 (2006) ("It is important to remember that the *Frye* test only applies to evidence that is both novel and scientific"); see also *In re commitment of Simmons*, 213 Ill. 2d 523, 531 (2004). When, as here, an expert's opinion clearly derives from his or her observations, experiences, general knowledge and/or training, the opinion is not considered scientific evidence and *Frye* does not apply. See *In re Marriage of Alexander*, 368 Ill. App. 3d at 196 (holding that an expert's valuation of goodwill of a medical practice that applied "basic mathematical principles" was not a scientific methodology subject to *Frye*).

¶ 111 Moreover, UHY has forfeited any argument that MM's expert testimony did not comply with the *Frye* standard. Although UHY moved *in limine* to bar McKay and Leonard from testifying as experts pursuant to the standard set forth in *Frye*, it failed to renew its objection during trial. It is well-settled that following an adverse ruling on a motion *in limine*, the movant remains obligated to contemporaneously object when the complained-of evidence is offered, or the objection will be deemed forfeited. See *Sher v. Deane H. Tank, Inc.*, 269 Ill. App. 3d 312, 317 (1995); see also *Cunningham v. Millers General Ins. Co.*, 227 Ill. App. 3d 201, 206 (1992) ("When a motion *in limine* is denied, the unsuccessful movant is left with the procedure of specifically objecting to the evidence when it is offered at trial. [Citations.] The rule is well established that the denial of a motion *in limine* does not preserve an objection to disputed evidence later introduced at trial. The moving party remains obligated to contemporaneously

object when the evidence is offered, or the objection will be waived. [Citations]."); see also *Gonzalez v. Prestress Engineering Corp.,* 194 Ill. App. 3d 819, 825 (1994). The rationale is that "a motion *in limine,* like any other interlocutory order, remains subject to reconsideration by the court throughout the trial," so that a party must object or renew its motion when the evidence is offered to preserve its objection on appeal. *Gonzalez* 194 Ill. App. 3d at 825. The record here is clear that after its motion *in limine* was denied, at trial UHY failed to object to Leonard's and McKay's testimony as expert witnesses or to the admissibility of their testimony on the basis that their methodology did not comply with the *Frye* standards. Accordingly, UHY has forfeited this issue for purposes of appeal.

¶ 112 We similarly reject UHY's contention that Leonard should have been disqualified as an expert witness because he had a contingent financial interest in the outcome of the case. In that respect, UHY's reliance on *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 362-63 (1997) is misplaced. In that case, the court only held that an expert referral company could not enforce its contract to be paid based on the success of its efforts in finding expert witnesses to testify at trial. In the present case, however, no evidence was presented that Leonard was hired by any attorney on a contingency basis for purposes of his testimony at trial. Rather, Leonard was a necessary fact witness who testified regarding the services he performed for MM under the JAL. It is well established that an interested party may offer his opinion regarding a plaintiff's damages, and that any bias goes only to the weight and not the admissibility of that witness's testimony. See *e.g., Northwest Commerce Bank v. Continental Data Forms, Inc.*, 233 Ill. App. 3d 124, 129-30 (1992); *Oakleaf of Illinois v. Oakleaf & Assocs. Inc.*, 173 Ill. App. 3d 637, 650-51 (1988); see also *Kaiser Agricultural Chems. v. Rice,* 138 Ill. App. 3d 706, 714-15 (1985). Accordingly, any argument by UHY concerning Leonard's initial

consulting compensation arrangement with MM for purposes of the JAL, goes only to the weight of his testimony, and does not disqualify him as a witness.

¶ 113 In coming to its decision, the trial court below stated that it "carefully considered" the testimony of all of the expert witnesses, and found Leonard's and McKay's testimony, including their "demeanor under oath and cross-examination," to be "believable and credible." We find nothing in the record which would compel us to find that this determination constitutes an abuse of discretion. See *Snelson*, 204 Ill. 2d at 24 ("The decision of whether to admit expert testimony is within the sound discretion of the trial court [citation] and a ruling will not be reversed absent an abuse of that discretion.").

¶ 114 2. Damages Report

¶ 115 We further find no merit in UHY's contention that in awarding $610,0170 in damages to MM, the trial court erred in considering McKay's and Leonard's damages reports, because those reports were inaccurate, riddled with errors and therefore unreliable.

¶ 116 It is well-established that the issue of damages is a question of fact, and that as such a trial court's finding of damages will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Doorknobs Heating & Air Conditioning v. Schlenker, Inc*., 403 Ill.App.3d 468, 485 (2010); see *also SK Hand Tool Corp. v. Dresser Industries, Inc*., 284 Ill. App. 3d 417, 426 (1996) ("Generally, the question of damages is one of fact; courts are reluctant to interfere with the discretion of the [trier of fact] in its assessment of damages."). A damages award is against the manifest weight of the evidence only where it is apparent that the trial court ignored the evidence or that its measure of damages was erroneous as a matter of law. *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 13. Although the party seeking damages must prove its damages to a reasonable degree of certainty, absolute certainty concerning the amount

of damages is not required. *Doorknobs*, 403 Ill. App. 3d at 485. Rather, the evidence need only tend to show a basis for computation of damages with a fair degree of probability. See *La Salle National Trust, N.A. v. Board of Directors of the 1100 Lake Shore Drive Condominium*, 287 Ill.App.3d 449, 457 (1997) (The evidence submitted only needs to "show a basis for computation of damages with a fair degree of probability.") see also *Doorknobs*, 403 Ill. App. 3d at 485 ("We are mindful *** that damages need not be proven with mathematical certainty [Citation] and that the plaintiff need only present evidence to allow the trial court to compute damages within a fair degree of probability [Citation]").

¶ 117 The record before us supports the trial court's finding of damages. At trial, MM's experts testified that their damages calculation used the same formula to calculate actual savings that the parties had used and approved in 2001, 2002, and 2003. The formula took the actual account payable spend and grossed it up by using the savings percentages to determine what the actual spending would have been if the pre-Synergy historic unit costs had been used. The formula then calculated the actual dollars saved by subtracting the actual dollars spend from the grossed-up amounts that would have been spent prior the Synergy program. MM's experts testified that UHY's Berent reviewed and approved the methodology used.

¶ 118 In addition, MM's experts testified that for purposes of calculating actual damages, they requested all actual data (including invoice data) from UHY. The record reveals that UHY did not provide MM with monthly spend data as it had destroyed that information. Accordingly, MM's experts were able to use only certain actual detailed data that was provided to them. Due to circumstances completely outside of their control, MM's experts had to extrapolate for the unavailable data by using the average of all available data. In doing this calculation, they testified that they took into account UHY's actual volume spend.

¶ 119 In addition, MM's experts confirmed the JAL called for quarterly contingency fee invoices and that UHY had reviewed and approved the first quarter invoice methodology to calculate savings and promptly paid that invoice.

¶ 120 Based on this record, the trial court found that the damages reports offered by MM's experts, although modified twice to account for the unavailability of data from UHY and to comply with the original JAL, were reliable. Nothing in the record before us suggests that in coming to this decision the trial court ignored any evidence. In fact, UHY raised the same concerns about the reliability of MM's damages reports before the trial court through the testimony of its expert, Harkavey. However, the trial court gave little credence to his opinion. Where, as here, evidence of damages is based, at least in part, upon the testimony of witnesses, a determination of the witness credibility must be made, for which the trial court is much better equipped. *Nokomis Quarry, Co. v. Dietel*, 333 Ill. App. 3d 480, 485 (2002).

¶ 121 Since there is ample evidence in the record to support the trial court's determination of damages, and deferring, as we must, to the trial court's determinations regarding witness credibility and conflicting evidence, we conclude that the trial court's judgment was not against the manifest weight of the evidence. *Doorknobs*, 403 Ill. App. 3d at 485

¶ 122 C. Prejudgment Interest

¶ 123 On appeal, UHY next contends that the trial court erred in awarding prejudgment interest to MM in the amount of $311,776.86 going back to March 1, 2014. UHY argues that MM is not entitled to prejudgment interest under the Illinois Interest Act (Interest Act) (815 ILCS 205/1 *et seq*. (West 2010)) because the damages amount was not a liquidated amount, readily ascertainable and subject to easy computation. In the alternative, UHY contends that if prejudgment interest is awarded it should run from October 2010 when MM sent a letter to UHY

to pursue the amounts owed. For the reasons that follow, we agree that prejudgment interest should not have been awarded in this case.

¶ 124 Whether to award prejudgment interest is a matter within the sound discretion of the trial court, and its decision will not be reversed absent an abuse of discretion. *Certain Underwriters at Lloyd's, London v. Abbott Laboratories*, 2014 IL App (1st) 132020, ¶ 71; see also *Liberty Mut. Ins. Co. v. Westfield Ins. Co*., 301 Ill. App. 3d 49, 55-56 (1998). An abuse of discretion occurs where the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view. *Certain Underwriters at Lloyd's*, 2014 IL App (1st) 132020, ¶ 71.

¶ 125 Section 2 of the Interest Act (815 ILCS 205/2 (West 2010)) states in relevant part that creditors shall receive an additional 5% per year for all moneys due on any "instrument of writing." " 'In order to recover prejudgment interest, the amount due must be liquidated or subject to an easy determination.' " *Certain Underwriters at Lloyd's*, 2014 IL App (1st) 132020, ¶ 71 (quoting *Santa's Best Craft, L.L.C. v. Zurich American Insurance Co.*, 408 Ill. App. 3d 173, 191 (2010)). " '[I]f judgment, discretion, or opinion, as distinguished from calculation or computation is required to determine the amount of the claim, it is unliquidated.' " (Internal quotation marks omitted.) *Certain Underwriters at Lloyd's*, 2014 IL App (1st) 132020, ¶ 71 (quoting *Dallis v. Don Cunningham & Associates*, 11 F.3d 713, 719 (7th Cir. 1993)). As such, this court has previously held that where the amount of damages requires expert testimony regarding calculation, prejudgment interest is not appropriate. *Spagat v. Schak*, 130 Ill. App. 3d 130, 136 (1985).

¶ 126 In *Spagat*, 130 Ill. App. 3d at 132, the defendant appealed the trial court's order awarding

the plaintiffs', *inter alia*, $900,000 in damages, and $93,416 in prejudgment interest. The cause arose out of a real estate contract for the sale of an apartment complex to the plaintiffs. *Spagat*, 130 Ill. App. 3d at 132. The fee title to the property had been severed, with the defendant holding fee title to the improvements and the leasehold in the land, while a real estate investment trust held fee to the title to the land. *Spagat*, 130 Ill. App. 3d at 132. The court found that the contract was for the sale of both fee titles. *Spagat*, 130 Ill. App. 3d at 132. Accordingly, it concluded that the defendant had willfully breached the contract by failing to obtain the fee title to the land, and instead by negotiating to sell his improvements and leasehold estate to a third party while the contract was still in effect. *Spagat*, 130 Ill. App. 3d at 132. The court therefore awarded the plaintiffs damages as well as prejudgment interest. *Spagat*, 130 Ill. App. 3d at 132.

¶ 127 On appeal, the defendants argued, *inter alia*, that the plaintiffs should not have been awarded prejudgment interest because the damages were not "easily ascertainable." *Spagat*, 130 Ill. App. 3d at 132. The court agreed, noting that at trial, the plaintiffs had relied on an expert witness to establish the amount of damages that they incurred between the closing date and the filing of plaintiffs' complaint. *Spagat*, 130 Ill. App. 3d at136. The expert testified that in calculating damages, *i.e.*, the market value of the apartment complex (fee title to the land and the improvements), he "considered a number of factors *** including the value of the property as rental property, as condo conversion property, and as investment property." *Spagat*, 130 Ill. App. 3d at 136. The expert also explained that he used projected vacancy rates and maintenance costs rather than actual rates and costs so as to get an estimate of the fair market value of the property. *Spagat*, 130 Ill. App. 3d at 136.

¶ 128 In reversing the trial court's order for prejudgment interest, the court found that "the amount

of damages required expert testimony as to the value of the property at the time of the breach," and was therefore not "fixed or easily ascertainable." *Spagat*, 130 Ill. App. 3d at 136.

¶ 129 The same rationale applies here. From the start, the parties have disagreed both about the amount of damages MM owed to UHY and the formula that should have been used in calculating those damages. In that vein, both parties presented voluminous and complex expert testimony at trial as to the appropriate formula and the amounts owed. What is more, MM's own original damages request greatly differed from the amount awarded, in part, because of testimony from MM's own experts regarding the need to readjust and recalculate certain portions of those damages. Accordingly, contrary to what MM would have us believe, the damages were far from "easily ascertainable."

¶ 130 For these reasons, we find that the trial court abused its discretion in awarding MM any prejudgment interest. See *Spagat*, 130 Ill. App. 3d at 136 ("Since [the amount of damages] was not fixed or easily ascertainable," but rather "required expert testimony," "prejudgment interest was not properly granted."); see also *General Dynamics Corp. v. Zion State Bank & Trust Co.*, 86 Ill. 2d 135, 140 (1981) ("it has been held error to allow [prejudgment] interest on an amount due when*** that amount depends largely upon the construction placed on the terms of a contract, and upon questions of fact about which there is room for a difference of opinion.")

¶ 131 III. CONCLUSION

¶ 132 For the all of the aforementioned reasons, we affirm the judgment of the circuit court with respect to the applicability of the ten year statute of limitations and the award of damages in favor of the plaintiff, but reverse the court's order with respect to prejudgment interest.

¶ 133 Affirmed in part; reversed in part.