2016 IL App (1st) 151936-U

SECOND DIVISION
December 13, 2016

Nos. 15-1936, 15-1989 & 15-3541 (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEVIN JORDAN and TYRONE JORDAN, Plaintiffs-Cross-Appellants and Counterdefendants-Appellees, v. GLORIA JORDAN, KEITH JORDAN, FLOYD JORDAN, JR., LASALLE BANK NATIONAL ASSOCIATION, as Successor Trustee to American National Bank and Trust Company Under Trust Agreement Dated June 18, 1980 and Known as Trust Number 50145, and THE TRUST AGREEMENT FOR ETHEL NEAL JORDAN, Defendants (Keith Jordan and Floyd Jordan, Jr., Defendants-Cross-Appellees and Counterplaintiffs-Appellants).	Appeal from the Circuit Court of Cook County, Illinois. No. 03 CH 18768 Honorable David B. Atkins, Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Following decade-long dispute over the management of residential real estate held in trust, the trial court ordered the properties to be sold and the proceeds divided among the parties. The trial court had authority to order a judicial sale based upon its finding that the parties were deadlocked as to the management of the trusts. The court did not err in denying damages to plaintiffs on their accounting claim or in denying relief to defendants on their counterclaims for breach of fiduciary duty and an equitable lien over one of the trust properties. Posttrial orders regarding management of the properties were not injunctive in nature and therefore not subject to prerequisites for injunctive relief.

¶ 2 This case concerns the management of three residential rental properties that were held in two separate trusts. Ethel Neal Jordan managed both trusts prior to her death in 2002, and her five children—Kevin, Tyrone, Keith, Floyd Jr., and Gloria—were named as beneficiaries. After her death, disputes arose among her children regarding the management of those trusts, escalating into litigation that has dragged on for over a decade.

¶ 3 In November 2003, Kevin filed suit against his siblings, alleging that Floyd, Keith, and Gloria had taken over the management of the trust properties to the exclusion of Kevin and Tyrone, and they refused to divulge any information about the finances of the properties. Kevin sought an order requiring Floyd, Keith, and Gloria to render an accounting for each of the trust properties. In an amended complaint, Tyrone joined Kevin as a plaintiff. (We shall refer to Kevin and Tyrone as "plaintiffs" and Floyd and Keith as "defendants." Gloria died in 2010 and her estate is not a party to this appeal.)

¶ 4 After lengthy proceedings, the trial court ordered all parties to provide an accounting for the trust properties. In 2014 the court held a bench trial to determine (i) whether the accounting presented to the court by the parties was sufficient and (ii) whether any money was owed either to plaintiffs or defendants. Following trial, the court found that defendants had not kept proper records for the years they managed the trust properties, and thus their accounting was deficient; nevertheless, the court concluded that plaintiffs did not prove their entitlement to damages for wrongfully withheld rent. The court also ordered the parties to sell the trust properties and

distribute the sale proceeds among themselves. Both sides now appeal. Plaintiffs claim the trial court erred by failing to award them damages. Defendants claim, among other things, that the trial court lacked the authority to order a sale of the trust properties. We affirm the trial court's judgment in all respects.

¶ 5 BACKGROUND

¶ 6 The procedural background of this decade-long family feud is complex and confusing, featuring no fewer than six interlocutory appeals filed by defendants in addition to the present appeal.

¶ 7 The Underlying Dispute

¶ 8 All the properties held in trust are located in Chicago. The trusts are LaSalle Bank Land Trust No. 50145 (the LaSalle Trust) and the Trust for Ethel Neal Jordan (the Ethel Trust). The corpus of the LaSalle Trust consists of an eight-unit apartment building located at 8015-17 South Indiana (the Indiana property). The trustee is LaSalle Bank National Association (as successor to American National Bank), and the Jordan siblings are beneficiaries and joint tenants with rights of survivorship. The trust document provides that "the interest of any beneficiary hereunder shall consist solely of a power of direction to deal with the title to said real estate and to manage and control said real estate."

¶ 9 The corpus of the Ethel Trust consists of (i) a three-unit apartment building located at 8037 South Champlain (the Champlain property), (ii) a two-unit building located at 3620 South Ellis (the Ellis property), and (iii) certain personal tangible property that remains undistributed pursuant to the trust's terms. The Ethel Trust names the Jordan siblings as beneficiaries with rights of survivorship and also provides that after Ethel's death, the siblings are successor co-trustees. It further states:

> "All living beneficiaries will jointly manage the buildings located at 8037 South Champlain and 3620 South Ellis in Chicago. They will be jointly responsible for paying bills, collecting rent, renting apartments, selling the property, and seeing that my wishes are carried out. In these decision[s], the majority decision will rule. They will meet once a month. All profits from these building[s] are to be equally shared."

¶ 10 As noted, Ethel managed both trusts until her death in January 2002. It was at this point that the disputes over the management of the trusts arose. Kevin filed suit in November 2003, naming each of his other siblings as defendants, as well as the two trusts and LaSalle Bank National Association. In 2006, with leave of court, Kevin dismissed Tyrone as a defendant and then amended his complaint to add Tyrone as a plaintiff.

¶ 11 Plaintiffs' second amended complaint alleged that since January 7, 2002, the defendants and Gloria operated the trust properties to the exclusion of the plaintiffs. Defendants and Gloria collected all rental income and refused to divulge any information to plaintiffs regarding the buildings' finances. Plaintiffs sought relief in three counts. In count I, plaintiffs sought a judicial sale of the Indiana property under the terms of the LaSalle Trust, which provides: "If any property remains in this trust twenty years from this date it shall be sold at public sale by the Trustee on reasonable notice, and the proceeds of the sales shall be divided among those who are entitled thereto." The trust acquired title to the Indiana property on July 28, 1980. Accordingly, plaintiffs requested that the Indiana property be sold and the proceeds be distributed among the parties in accordance with the terms of the LaSalle Trust.

¶ 12 In counts II and III, plaintiffs sought an accounting for the LaSalle Trust and the Ethel Trust, respectively, including all financial information pertaining to the trust properties, such as

rental income, expenses and profits. Plaintiffs also asked "[f]or such other and further relief as equity may require."

¶ 13 Defendants filed a counterclaim. In their second amended counterclaim, defendants sought relief in three counts. In count I, breach of fiduciary duty, defendants alleged that the Jordan siblings had fiduciary duties to each other with regard to the maintenance and ownership of the trust properties. They further alleged that, in violation of their fiduciary duties, plaintiffs interfered with rent collection, diverted potential tenants, failed to participate in the management of the properties, and falsely accused defendants of excluding them from management of the properties.

¶ 14 In count II, defendants alleged that Floyd was entitled to an equitable lien on the Indiana property because since July 1980, he allegedly made all mortgage payments, real estate tax payments, and insurance payments on that property. In count III, unjust enrichment, defendants restated the allegations of count II and asserted that plaintiffs had been unjustly enriched due to their lack of contributions toward the mortgage, taxes, insurance, and maintenance of the Indiana property. Defendants asked that the property be partitioned and that the disbursement take into account Floyd's contributions to the property.

¶ 15 Pretrial Proceedings

¶ 16 *Management of the Trust Properties*

¶ 17 Management of the trust properties has been a highly contentious issue in this litigation. On August 31, 2007, the trial court entered an order appointing Keith to manage the trust properties on a day-to-day basis. Little more than four months later, on January 7, 2008, the trial court appointed Tyrone to be "solely and exclusively responsible for the collection of rents,

payment of bills and all other management and upkeep of the properties." The court entered an additional order on March 18, 2008, stating in pertinent part:

> "3) Floyd Jordan and Keith Jordan are to have nothing to do with the management of the properties in the trusts until further order of this court ***;
>
> 4) Any future checks for rent are to be immediately tendered to Tyrone Jordan;
>
> 5) Tyrone Jordan is to send a letter to all tenants with his picture instructing each tenant on payment of rent."

¶ 18 Notwithstanding this order, defendants continued to represent to tenants that they controlled the properties, and they continued to collect rent without forwarding it to Tyrone or depositing it into the trust accounts. Plaintiffs filed a petition for adjudication of indirect civil contempt against defendants. Following a three-day evidentiary hearing, the trial court found that defendants were in indirect civil contempt of court based on their conduct in wrongfully withholding $33,860 in rent from the trust properties from 2008 through 2009. In its July 9, 2010 order, the court sentenced defendants to incarceration but stayed their sentence for 14 days to allow them to tender to the court $33,860 in certified checks payable to the trusts, as well as $16,935 of plaintiffs' attorney fees as a sanction for contempt. The court provided that once defendants tendered those sums, their sentences would be vacated.

¶ 19 By August 26, 2010, defendants had not complied with the court's order, and the court took them into custody. On September 1, 2010, the court released defendants from custody with the understanding that they would purge their contempt by paying the required sums, which they did on September 8, 2010.

¶ 20 *Plaintiffs' Attempts to Obtain Judicial Sale of the Trust Properties*

¶ 21 Defendants filed a section 2-615 motion to dismiss count I of plaintiffs' second amended complaint (seeking sale of the Indiana property under the terms of the LaSalle Trust). Defendants' motion was granted on November 12, 2008. No memorandum was filed with the order explaining the reason for dismissal, but it appears from the record that the reason was tied to the LaSalle Trust document itself. Specifically, Floyd's answer to the complaint indicated that the trust document had been renewed, extending its provisions for another 20 years.

¶ 22 After nearly four more years of litigation, on October 12, 2012, the court invited the parties to file motions requesting that the trust properties be judicially sold and the proceeds divided among the parties. Plaintiffs filed a motion requesting this relief on October 26, 2012. They argued that the parties were engaged in a joint venture with regard to the trusts, but they were deadlocked as to the management and control of the properties. Continued deadlock would only serve to waste trust assets and frustrate the purpose of the trusts. Thus, plaintiffs asked the court to order a sale of all three trust properties. Both Keith and Floyd filed responses in opposition. (These responses are missing from the record on appeal, but the trial court references them in its judgment.) Plaintiffs' motion was still pending at the time of trial.

¶ 23 *Plaintiffs' Claims for Accounting*

¶ 24 The trial court granted summary judgment to plaintiffs on counts II and III of their complaint, *i.e.*, the counts seeking an accounting for the trust properties. On February 23, 2010, and again on October 8, 2010, the court ordered the parties to provide an accounting for the income and expenses of the trust properties for the periods during which the parties were responsible, respectively, for managing them.

¶ 25 Trial

¶ 26 The court held a bench trial from August 20 to 22, 2014, to determine (i) whether the accounting presented to the court by the parties was sufficient and (ii) whether any money was owed to any parties. All four brothers testified at trial.

¶ 27 Tyrone testified that his parents purchased the Champlain and Ellis properties before 1980. As for the Indiana property, his parents decided in 1980 that it would be a good idea for their children to invest in apartment property together. Thus, Ethel arranged to purchase the Indiana property, and each of the five Jordan siblings contributed $5,000 toward the down payment. Tyrone could not recall the exact manner in which he paid: either he gave his mother $5,000 in cash, or he told his mother to take the money from his bank account, which also had her name on it. After the initial purchase, Tyrone did not make any mortgage payments on the building. Rather, the rental income from the building was enough to cover the mortgage payments and the taxes.

¶ 28 When the Indiana property was purchased, it had some building code violations and needed significant repair work, although it was not in demolition court. All of the Jordan siblings helped with the repairs at the direction of their father, Floyd Jordan, Sr. (Senior). Tyrone testified that he stripped the walls of wallpaper, sanded the floors, and put up tile.

¶ 29 Initially, the trust properties were managed by Senior. Senior died in 1993, and Ethel served as manager until her death in 2002. After Ethel died, Keith went to the tenants and told them that he was taking over. Defendants managed the properties and collected the rent until January 7, 2008, when the court ordered that Tyrone be the sole manager of the properties.

¶ 30 During the period that defendants were managing the trust properties, Keith told plaintiffs that he was in charge of the properties and would not relinquish control. He refused to give Tyrone any information on tenants, rental income, or building expenses. But Tyrone knew the

properties were occupied: "I live in the neighborhood," he explained. "I know the individuals in there." He stated that the Indiana property and the Ellis property were fully rented. As for the Champlain property, two of the three apartments were rented; the third apartment was their mother's former apartment and was left vacant after her death.

¶ 31 When Tyrone was named manager of the trust properties on January 7, 2008, he established accounts in which to deposit the rent he collected. But he was only able to collect about half of the rent, because some tenants continued giving their rent checks to Keith and refused to pay Tyrone. Tyrone informed the court of this development in January 2008, and the court directed him to evict the tenants who did not pay him. Accordingly, Tyrone hired an attorney and initiated eviction proceedings in housing court. At the eviction proceedings, Keith told the court that the tenants at issue were good tenants and were paying him the rent. Nevertheless, a total of four tenants were evicted. Tyrone paid the attorney fees for that proceeding out of trust funds.

¶ 32 Tyrone testified that the defendants stopped collecting rent in 2010 when they were incarcerated for contempt of court. After that, plaintiffs had complete control of the trust properties. But there were at least three vacancies at the Indiana property; tenants had moved out because of "quality of life issues, the safety issues that were involved because *** Floyd had been disturbing them." As a result, the Indiana property lost money from 2010 to 2012. At the time of trial, the Indiana property was no longer losing money, but both the Ellis and Champlain properties were losing money due to vacancies.

¶ 33 During cross-examination, Keith (appearing *pro se*) showed Tyrone a court order from May 19, 2009, requiring that all workers on trust property be bonded and licensed. Tyrone

admitted that he hired workers named Carlos and George, neither of whom was licensed or bonded, to perform maintenance and cleanup on trust property.

¶ 34 Kevin corroborated Tyrone's testimony that all five Jordan siblings purchased the Indiana property together. According to Kevin, their mother spearheaded the deal. Each sibling contributed $5,000 toward the purchase price, and their mother collected the money. Kevin paid his share by giving his mother a check for $5,000. Back then, their mother "masterminded everything": she managed the property, paid all of the bills (including the mortgage payments), and delegated tasks to each of the siblings. "So all of us played an important part of this property because we were all co-owners," Kevin said.

¶ 35 When the Indiana property was purchased, it was not in demolition court, but several of the apartments were vacant and the building needed a lot of refurbishing. Floyd helped with the repairs, but Kevin denied that Floyd did "a lot" of work. As for Kevin, he assisted his father in painting three of the apartments. He also spent some of his own money to purchase paint and tile for the building, although he could not recall how much he spent. He did not make any mortgage payments or pay any real estate taxes on the building.

¶ 36 After their mother died in January 2002, defendants "immediately" started collecting rent from the trust properties. Kevin collected rent on one occasion, around three months after Ethel's death, at defendants' direction. He deposited the rent in a bank account designated for trust income. At the time, there was "a serious issue with money being collected and not going to the bank." In November 2002, at Thanksgiving dinner, Gloria raised the subject of who was collecting the rent and where the collected rent was going. Keith threatened to hire a lawyer and "tie this up in court with frivolous lawsuits."

¶ 37 After the court appointed Tyrone to manage the trust properties, Kevin went with him to collect rent. Several tenants told him that they had already paid their rent to Floyd. They said the same thing in court during the eviction proceedings, and they presented copies of their rent checks, made payable to and endorsed by Keith.

¶ 38 Floyd testified that he personally paid the entire down payment on the Indiana property. None of his siblings contributed to the down payment. Floyd asserted that he personally made all of the mortgage payments and also made real estate tax payments totaling around $181,000. "Some of [the tax money] came from proceeds," he said. "But once again if it was in the red, I paid for it." Contrary to Tyrone's assertion that the building was self-sufficient, Floyd stated that the rent proceeds were never enough to cover the mortgage payments and taxes.

¶ 39 As evidence for his claim that he made all of the mortgage payments on the Indiana property, Floyd submitted into evidence a loan payment book with the name "Mrs. Floyd Jordan." Despite the name, Floyd asserted that the book belonged to him. His mother's address—her apartment in the Champlain property—was written on the book; Floyd said that was because he lived with his mother in 1980.

¶ 40 Floyd testified that the Indiana property was in demolition court at the time he purchased it and required extensive renovation, almost all of which was done by Floyd and his father. Plaintiffs did not help with the repairs at all. Keith helped some, although not as much as Floyd would have preferred.

¶ 41 In 2003, after his mother's death, Keith and Gloria handled all of the finances for the trust properties, while Floyd was in charge of maintenance work. According to Floyd, Gloria was in charge of collecting rent. Floyd was living with Gloria at the time, helping to take care of her because of her failing health. Tenants would pay the rent by dropping it through the mail slot of

their house. Sometimes the mail would be picked up by Gloria, and sometimes by Floyd. But Floyd did not recall the rent checks ever being made out to him.

¶ 42 Counsel for plaintiffs asked Floyd whether he understood that after the court's January 7, 2008 order, Tyrone was the sole manager of the trust properties and defendants were to have nothing to do with management. Floyd stated that he did not understand, because there was no justification for the order. "[W]hy wouldn't I have anything to do with property that I had purchased?" he said.

¶ 43 According to Keith, he did not contribute any money to the down payment on the Indiana property. After his mother's death in 2002, "several of us" collected rent on the trust properties, including Keith. When Keith collected rent, he deposited the checks "in the appropriate accounts," *i.e.*, accounts that his mother had set up for trust funds. He did not take any of the rent proceeds for personal use. As for expenses, he paid some, and Gloria also paid some. Asked what account Gloria paid the checks from, Keith said: "You would have to ask Gloria."

¶ 44 Keith was not aware that the court had ordered him to produce an accounting for the trust properties. He knew that counts II and III of the complaint sought an accounting but claimed not to understand what that meant. When the lawsuit was filed in 2003, although he sought the advice of counsel, he never spoke with counsel about the requirements for an accounting, and nobody told him that he needed to keep a ledger of rent received and bills paid. Accordingly, he did not have exact figures for rent income, insurance costs, and real estate taxes from 2003 through 2007. He also did not submit to the court any receipts for trust expenses during that time period. He prepared a document on July 20, 2011, that sought to approximate the trusts' income and expenses from 2003 to 2007, but he admitted that the numbers contained therein were merely estimates, not actual figures.

¶ 45 Keith did not recall the court ordering the defendants to have nothing to do with the management of the trust properties. Regarding the court's January 7, 2008 order that gave Tyrone the sole and exclusive right to manage the properties, Keith claimed not to understand the phrase "sole and exclusive right."

¶ 46 In 2010, defendants were found in contempt of court for withholding rent from 2008 and 2009. According to Keith, defendants purged their contempt by turning over all of the proceeds in the trust accounts set up by Ethel. Defendants had no further trust monies and, in fact, had to use personal funds to pay plaintiffs' attorney fees (imposed as sanctions for the 2010 contempt finding).

¶ 47 After the close of evidence, the parties agreed to reconvene the next day for closing arguments. The trial judge suggested that, during closing arguments, the parties should address Gloria's role in collecting rent and paying expenses and discuss its impact on the case. Counsel for plaintiffs mentioned that, before her death, Gloria had filed an accounting with the court. Neither party sought to introduce this accounting into evidence during the trial, and the court declined to consider it, stating, "It's not part of the evidence in this case."

¶ 48 Posttrial Proceedings

¶ 49 After closing arguments and while the matter was under advisement, there was a fire at the Champlain property on November 27, 2014. Tyrone hired workers to board up and secure the property.

¶ 50 In a motion filed on February 18, 2015, Keith sought to reopen the proofs with evidence that the property was in a state of disrepair following the fire and that plaintiffs refused to provide defendants with insurance and trust account information. After the trial court struck Keith's motion as untimely, plaintiffs moved for sanctions against defendants for interfering with

the cleanup and repair of the Champlain property. Plaintiffs claimed that defendants interfered with and harassed workers hired to work on the property, changed the locks to the building on several occasions, and, after removing boards placed on the windows, complained to the police that the property was unsecured.

¶ 51 On April 10, 2015, the trial court entered an order denying plaintiffs' request for sanctions but reaffirmed that its prior orders making Tyrone the sole manager of the trust properties and barring defendants from interfering with their management were in full force and effect. Accordingly, the court ordered:

> "7. Neither Keith Jordan nor Floyd Jordan Jr. are to interfere in any manner with the cleanup, repair, or rehab authorized by Tyrone Jordan of the Property located at 8037 S. Champlain;
>
> 8. Neither Floyd Jordan Jr. or Keith Jordan, nor any person acting on their behalf, are to change, alter, or modify any work done at the property;
>
> 9. As manager of the trust property <u>only Tyrone Jordan</u> has authority to interact with or direct the adjusters or workers regarding the Property located at 8037 S. Champlain." (Emphasis in original.)

¶ 52 Keith filed a motion to reconsider the court's April 10 order, alleging, among other things, that after the fire, Tyrone breached his fiduciary duty by leaving the Champlain property unsecured.

¶ 53 On May 14, 2015, while Keith's motion was still pending, plaintiffs filed a motion for a rule to show cause, alleging that defendants continued to interfere with the Champlain repairs in violation of the court's April 10 order. The motion was denied, but the court further ordered that

defendants were not allowed onto the Champlain property until further order. The trial court additionally denied Keith's motion to reconsider the April 10 order.

¶ 54 Also on June 26, 2015, the trial court entered judgment. The court found that defendants failed to prove that they were entitled to any relief on their counterclaims. Specifically, (i) there was no credible evidence that plaintiffs mismanaged the properties, interfered with rent collection, diverted potential tenants, or otherwise breached their fiduciary duties to defendants; (ii) Floyd's claim that he paid all the money for the down payment and all of the mortgage payments on the Indiana property was not credible, and even if it were true, it would not give him an equitable lien over the property; and (iii) there was no evidence that plaintiffs were unjustly enriched.

¶ 55 The court additionally denied plaintiffs' request for damages as a result of defendants' failure to provide an accounting. While the court agreed that defendants had produced no documents to substantiate their claims regarding the rent they collected and the expenses they incurred from 2002 through 2009, and that this would "[n]ormally" be fatal to their defense of the accounting claims, the court was not, based on the evidence, in a position to fairly calculate damages for the seven years Floyd and Keith controlled the properties because any figure it awarded would be purely speculative.

¶ 56 Finally, the court ordered a judicial sale of the trust properties. It found that the Jordan siblings entered into a joint venture regarding the LaSalle and Ethel Trusts, but were deadlocked as to their management, observing that "[t]he past decade has clearly shown that the surviving Jordan Siblings cannot jointly manage the trust properties." Particularly in light of defendants' "flagrant disregard" for the court's orders regarding management of the properties and the more than decade-long litigation, the court concluded that the parties would be unable to jointly

manage the properties without court supervision. Therefore, the court ordered that the corpus of the trusts be sold and the proceeds be divided equally among the parties.

¶ 57 ANALYSIS

¶ 58 Both plaintiffs and defendants appeal from the court's judgment. Plaintiffs have filed a joint appeal in which they argue that the trial court erred in finding that damages were too speculative to be awarded.

¶ 59 Floyd and Keith have each filed separate appeals. Floyd raises three contentions of error: (i) the trial court erred in ordering the sale of the trust properties; (ii) the trial court erred in entering its April 10 and June 26, 2015 orders (which Floyd characterizes as permanent injunctions) prohibiting defendants from entering or interfering with the cleanup of the Champlain property; and (iii) the trial court should have granted Floyd an equitable lien over the Indiana property.

¶ 60 Keith, who is appealing *pro se*, joins Floyd in the first two of these issues. Keith also raises several additional contentions of error: (i) the trial court erred in finding against defendants on the breach of fiduciary duty count of their counterclaim; (ii) the trial court erred by holding defendants in indirect civil contempt for failing to comply with its orders regarding collection of rent; (iii) plaintiffs' trial counsel, Shawn Warner, should have been disqualified; and (iv) Keith's privacy rights were violated when plaintiffs submitted a posttrial progress report to the court containing his Social Security number and home address.

¶ 61 Plaintiffs' Claims for Accounting

We first consider plaintiffs' contention that the trial court erred in not awarding damages on their accounting claims. As noted, the trial court found that damages were too speculative to be awarded, particularly in light of defendants' unimpeached testimony that they gave

unspecified amounts of rents and records to Gloria before her death. On appeal following a bench trial, we defer to the trial court's determination of damages unless that determination is against the manifest weight of the evidence. *In re Estate of Halas*, 209 Ill. App. 3d 333, 349 (1991).

¶ 62 Under section 11(a) of the Illinois Trust and Trustees Act, "[e]very trustee at least annually shall furnish to the beneficiaries *** a current account showing the receipts, disbursements and inventory of the trust estate." 760 ILCS 5/11(a) (West 2014). Beneficiaries of a trust are entitled to learn from their trustee " 'what property came into his hands, what has passed out, and what remains therein, including all receipts and disbursements in cash, and the sources from which they came, to whom paid and for what purpose paid.' " *McCormick v. McCormick*, 118 Ill. App. 3d 455, 461-62 (1983) (quoting *Wylie v. Bushnell*, 277 Ill. 484, 491 (1917)); see also Restatement (First) of Trusts § 173 (1935) (upon a beneficiary's request, the trustee has a duty to (i) divulge complete and accurate information about the nature and amount of the trust property and (ii) permit the beneficiary to inspect accounts and documents relating to the trust). Thus, the general rule is that " '[w]here there has been a negligent failure to keep trust accounts, all presumptions will be against the trustee upon a settlement; obscurities and doubts being resolved adversely to him.' " *Woolard v. Woolard*, 547 F.3d 755, 761 (7th Cir. 2008) (quoting *First National Bank & Trust Co. of Racine v. Village of Skokie*, 190 F.2d 791, 796 (7th Cir. 1951)).

¶ 63 But it is also the rule that plaintiffs bear the burden of establishing a reasonable basis for computation of damages. *First National Bank of Elgin v. Dusold*, 180 Ill. App. 3d 714, 719 (1989) (reversing award of damages where there was an insufficient basis in the record to establish the costs incurred by defendant's breach of warranty). Evidence of damages cannot be

speculative or uncertain. *Halas*, 209 Ill. App. 3d at 349. Where a party establishes a right to damages but fails to prove the amount of those damages, only nominal damages will be awarded. *Id.* (where trustee breached his fiduciary duty to beneficiaries, but expert testimony on the issue of damages was flawed, the trial court's award of one dollar in nominal damages was not against the manifest weight of the evidence). Based upon these principles, we find that the trial court's denial of damages was not against the manifest weight of the evidence.

¶ 64 Plaintiffs claim that they are each entitled to $76,586.35 in trust income for the period of time that defendants controlled the trust properties. They compute this number based on (i) Tyrone's testimony that the trust properties were fully occupied from 2003 until 2008, when he took over management; (ii) Tyrone's alleged testimony that the expenses for a fully-rented apartment building are typically one-half of the rental income; (iii) plaintiffs' accounting documents that show rental income and expenses for the trust properties from 2008 to 2013; and (iv) accounting records prepared by Gloria before her death that were in the court file but not admitted into evidence during trial. We find that these items do not establish a reasonable basis for computation of damages.

¶ 65 Plaintiffs rely heavily on Tyrone's testimony at trial that the trust properties were fully occupied (except for Ethel's former apartment in the Champlain property) from the time the lawsuit was filed in 2003 until January 2008. Tyrone also specifically testified that the buildings were fully occupied in January 2008 when he was given control of their management. But this is directly contradicted by plaintiffs' accounting for the year 2008. In fact, when Tyrone took over, there was one vacancy in the Indiana property which was not filled until June. The Ellis property was completely vacant, and it remained that way for all of 2008. In light of these facts, the trial court was entitled to discount Tyrone's testimony on this issue. See *People v. Snulligan*, 204 Ill.

App. 3d 110, 118 (1990) (in bench trial, court has duty to determine the credibility of witnesses and the weight to be accorded to their testimony).

¶ 66 As for the expenses incurred by the trust properties from 2002 through 2007, plaintiffs argue that this number can be extrapolated from Tyrone's testimony, as well as plaintiffs' accounting from 2008 to 2013, which shows the typical ratio of rental income to expenses for the trust properties. According to plaintiffs' brief, Tyrone testified that when a rental building is fully occupied, its maintenance expenses will normally equal around half of its rental income. Plaintiffs do not provide any record citation for this assertion, in violation of Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016). In fact, our review of the record reveals that Tyrone did not offer any testimony about the typical expense-to-income ratio of rental property, nor did any other witness. Moreover, there was no testimony to support the conclusion that plaintiffs' accounting from 2008 to 2013 was a reasonable basis upon which to extrapolate the trust properties' expenses prior to 2008.

¶ 67 Plaintiffs also argue that Gloria's accounting corroborates their position. But plaintiffs did not seek to have Gloria's accounting admitted into evidence during their case in chief or during their rebuttal. Only after the close of evidence did plaintiffs' counsel ask the court to consider it. The trial court refused, finding that it was untimely, lacking in foundation, and would cause unfair surprise to defendants, since it was not on plaintiffs' exhibit list. Under the circumstances, we cannot say the court's decision was an abuse of discretion. *Pavnica v. Veguilla*, 401 Ill. App. 3d 731, 740 (2010) (admission of evidence rests within the sound discretion of the trial court).

¶ 68 Additionally, there is reason in the record to doubt plaintiffs' claims about the profitability of the trust properties while defendants were in charge. First, there was no evidence

that the properties generated a profit prior to Ethel's death in 2002. Tyrone testified that his mother never disbursed any profits to him or his siblings, and he never had any reason to question her honesty. Moreover, Tyrone testified that since he started managing the trust properties in 2008, they have never been profitable. Taking into account all of these facts, as well as the uncertainty surrounding plaintiffs' damage computations, the trial court's refusal to award damages was not against the manifest weight of the evidence.

¶ 69 Plaintiffs argue that any problems of proof were caused by defendants' failure to keep proper records, and, in light of those circumstances, the trial court erred by requiring plaintiffs to prove damages. We disagree. Normally, the fiduciary relationship among the siblings and defendants' control of the jointly owned assets would require a court to resolve any doubts regarding the amount of damages against defendants, as the parties who violated their fiduciary duties. But that principle cannot substitute for or satisfy plaintiffs' obligation to prove the amount of damages with reasonable certainty. *Dusold*, 180 Ill. App. 3d at 719; *Halas*, 209 Ill. App. 3d at 349. And what plaintiffs here asked the trial court to do, with little or no factual basis, was to accept their unsubstantiated damage calculation under circumstances where the evidence at trial cast serious doubts on its accuracy.

¶ 70 We also disagree with plaintiffs' assertion that defendants' failure to keep proper records made it impossible for plaintiffs to prove damages. Plaintiffs could have presented expert testimony to establish the amount of their damages with reasonable certainty. For instance, an expert could establish the prevailing market rate for rentals in the area and provide a fact-based estimate of associated expenses, possibly extrapolating from plaintiffs' records for 2008 through

2013. But plaintiffs presented no such testimony.[1] Instead they essentially dumped their records on the court and invited the court to draw its own, necessarily speculative, conclusions. Particularly since plaintiffs could have offered competent proof of their damages, we do not fault the court for refusing to excuse their failure to do so. And while the court could have awarded nominal damages given plaintiffs' proof of defendants' breach of their fiduciary duties, nothing compelled that result.

¶ 71 Finally, plaintiffs state that they incurred attorney fees in eviction proceedings for tenants who continued paying their rent to defendants after January 2008. Plaintiffs paid those attorney fees out of trust funds and now assert that they are entitled to compensation from defendants. Plaintiffs have forfeited this issue by failing to raise it in the trial court. *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 21. Although Tyrone testified about the attorney fees for the eviction action, counsel for plaintiffs stated that he only elicited such testimony because it was relevant to the accuracy of plaintiffs' accounting. Thus, plaintiffs may not seek to recover those fees for the first time on appeal.

¶ 72 Judicial Sale of the Trust Properties

¶ 73 Defendants argue that the trial court lacked authority to order a judicial sale of the trust properties for several reasons: (i) the trial court erred in finding that the parties entered into a joint venture concerning the trust properties; (ii) ordering a judicial sale of the Indiana property is barred by the terms of the Ethel Trust; and (iii) since count I of plaintiffs' complaint (seeking sale of the Indiana property) was dismissed with prejudice prior to trial, it was improper for the

[1] Similarly, plaintiffs did not seek discovery regarding Gloria's role in collecting rent checks and paying expenses—though we note that defendants' stance on this issue was rather fluid, since they did not allege during the 2010 contempt hearings, while Gloria was still alive, that they gave rent checks to Gloria. Only at trial and after Gloria's death did they assert that Gloria collected some of the disputed rent.

trial court to grant the relief sought in that count. The record is silent as to whether the trust properties have been sold, but, in any event, neither party argues that the sale issue is moot.

¶ 74 As to defendants' first issue, a joint venture is an association of individuals engaged to carry out a single enterprise for profit. *Romanek v. Connelly*, 324 Ill. App. 3d 393, 405 (2001); *O'Brien v. Cacciatore*, 227 Ill. App. 3d 836, 843 (1992). A joint venture does not have to be established by formal agreement; rather, the existence of a joint venture can be inferred from facts and circumstances indicating that the parties intended to enter into a joint venture. *Id.* The elements that we consider in determining the parties' intent are:

> "(1) an express or implied agreement to carry on an enterprise; (2) a manifestation of intent by the parties to be associated as joint venturers; (3) a joint interest as reflected in the contribution of property, finances, effort, skill or knowledge by each party to the joint venture; (4) a measure of proprietorship or joint control of the enterprise; and (5) a provision for the sharing of profits or losses." *Id.*

Where the members of a joint venture are deadlocked as to the management of the venture, the court may exercise its equitable powers to dissolve the enterprise. *Regas v. Danigeles*, 54 Ill. App. 2d 271, 278 (1964) (compiling cases); see also 805 ILCS 206/801(5) (West 2014) (partnership will be dissolved upon a judicial determination that its economic purpose is likely to be unreasonably frustrated, a partner has engaged in conduct that makes continuance of the enterprise unreasonable, or it is not otherwise reasonably practicable to carry on the partnership business).

¶ 75 In this case, the trial court found that the Jordan siblings had entered a joint venture with regard to the trust properties, but they were deadlocked as to the management of the trusts. We agree with the trial court. All the elements of a joint venture are present here. First, there was an

agreement among the Jordan siblings that they would work together to manage the trust properties. This is explicitly set forth in the Ethel Trust, which directs the siblings to "jointly manage" the Champlain and Ellis properties and further states that they are "jointly responsible for paying bills, collecting rent, renting apartments, selling the property, and seeing that [Ethel's] wishes are carried out." Similarly, the LaSalle Trust provides that as cobeneficiaries, the siblings have "a power of direction to deal with the title to [the Indiana property] and to manage and control said real estate." Second, these provisions in the trust documents also demonstrate the siblings' intent to be associated as joint venturers.

¶ 76 Third, all of the siblings contributed finances, effort, and skill to the venture. Plaintiffs testified that the siblings jointly financed the purchase of the Indiana property, and the trial court found this testimony to be credible. Plaintiffs also testified that all of the siblings helped to repair the Indiana property. Additionally, over the course of this litigation, each of the siblings played a role in the management of the properties. Fourth, the siblings share a measure of control over the enterprise as cobeneficiaries of the LaSalle Trust and cotrustees of the Ethel Trust. Finally, as beneficiaries of the trusts, the siblings were supposed to share in any proceeds generated by the trust properties. In light of these facts, the trial court's finding that the parties were engaged in a joint venture was not against the manifest weight of the evidence. *O'Brien*, 227 Ill. App. 3d at 843-44 (existence of joint venture is a question of fact that we review under the manifest weight of the evidence standard).

¶ 77 Defendants argue that the trusts cannot be joint ventures, because if they were, they would necessarily have dissolved upon Gloria's death. This is incorrect. Under Illinois law, joint ventures are governed by partnership principles (*Ioerger v. Halverson Construction Co., Inc.*, 232 Ill. 2d 196, 202 (2008)) and, in particular, by the Uniform Partnership Act (805 ILCS

206/100 *et seq.* (West 2008)). Section 801(2)(i) of the Act provides that, *by default*, a partnership is dissolved within 90 days of a partner's death. 805 ILCS 206/801(2)(i) (West 2008). But the Act also provides that "relations among the partners and between the partners and the partnership are governed by the partnership agreement," and the provisions of the Act only apply "[t]o the extent the partnership agreement does not otherwise provide" (with exceptions not relevant here). 805 ILCS 206/103(a) (West 2008). Both trusts in this case explicitly provide that the death of a sibling does not end the joint venture. The Ethel Trust states that the siblings are beneficiaries with right of survivorship, while the LaSalle Trust states that they are joint tenants with right of survivorship. Thus, Gloria's death did not require the dissolution of either trust, nor did it impact the trusts' status as joint ventures.

¶ 78 Defendants next argue that the terms of the Ethel Trust preclude it from being considered a joint venture. They cite section II(A), which provides that Ethel retained the right to revoke the trust during her lifetime. We see no reason why this would impact the classification of the trust after Ethel's death, nor do defendants provide one. Defendants also cite section V(A), which states that the trustees have discretion to terminate the trust if they determine that the value of the trust estate is $10,000 or less. By vesting discretion in the Jordan siblings as cotrustees, this provision actually supports the trial court's finding that the trust is a joint venture. See *O'Brien*, 227 Ill. App. 3d at 843 (element of joint venture is a measure of joint control over the enterprise).

¶ 79 Moreover, it is abundantly clear that the parties are intractably deadlocked as to the management of the trusts, as they have been throughout the past 13 years of litigation. Defendants do not contest this finding by the trial court, nor could they reasonably do so.

¶ 80 On this issue, we find the instant case to be strikingly similar to *Regas*, 54 Ill. App. 2d 271. The parties in *Regas* (two plaintiffs and two defendants) were equal beneficial owners of

commercial property that they leased to various businesses. There was a falling out among the parties, after which part of the building remained vacant. Plaintiffs claimed to have found prospective tenants, all of whom were blocked by defendants; conversely, defendants claimed to have found tenants who were refused by plaintiffs. Faced with the loss of rental income due to management deadlock, plaintiffs filed suit, seeking a judicial sale of the property. *Id.* at 277. The *Regas* court held that they were entitled to such relief to end the "intolerable situation" caused by the parties' deadlock. *Id.* The court explained: "[F]or a wide variety of forms of business, courts have been empowered to decree dissolution where disagreement producing stalemate was defeating the very objects of the business agreement." *Id.* at 279.

¶ 81 Similarly, disagreement among the Jordan siblings has frustrated the purpose of generating income from the trust properties and has made continuance of the enterprise impracticable. The situation here appears equally intolerable as, if not worse than, the circumstances faced by the court in *Regas*. Consequently, it was certainly within the trial court's equitable power to dissolve the enterprise. *Id.* at 277-79; see also 805 ILCS 206/801(5) (West 2014). Any other form of relief would perpetuate the parties' rigid deadlock, leading to further mismanagement and waste, not to mention monopolization of scarce judicial resources.

¶ 82 Defendants next argue that judicial sale of the Indiana property is barred by the spendthrift provision and the no-contest clause of the Ethel Trust, and plaintiffs' conduct in requesting a judicial sale of the property effects a forfeiture of their interest in the trust property. The Ethel Trust's spendthrift provision states: "No beneficiary of this Trust, other than the Trustor shall have the right to alienate, encumber, hypothecate his interest in the Trust to claims of its creditors, or to render such interest liable to attachment, execution, or other process of law." Defendants argue that this provision deprives the trial court of authority to order the sale

of the corpus of the trust. But on its face, this provision only limits the beneficiaries of the trust; it does not purport to restrict a court's power to fashion an equitable remedy. Nor would any such restriction be effective. 805 ILCS 206/103(b)(7) (West 2014) (partnership agreement may not restrict court's power to dissolve partnership in accordance with section 801(5)).

¶ 83 The Ethel Trust also contains a no-contest clause, which provides that each beneficiary of the trust will forfeit his interest in the trust if he

> "contest[s] in any Court the validity of this Trust ***, or shall seek to obtain an adjudication in any proceeding in any Court that this Trust or any of its provisions *** is void, or seek[s] otherwise to void, nullify or set aside this Trust or any of its provisions ***."

But plaintiffs have never asserted that the Ethel Trust is void or that any provision of the trust should be nullified, and, in fact, specifically disavowed that position in their second amended complaint. Defendants nevertheless claim that plaintiffs' actions can be construed as a direct attack on the trust. We decline to adopt such an expansive construction of the no-contest clause. Although such clauses are valid in Illinois, they are "so disfavored by the courts" that they are strictly construed to avoid forfeiture. *In re Estate of Wojtalewicz*, 93 Ill. App. 3d 1061, 1063 (1981); see *In re Estate of Mank*, 298 Ill. App. 3d 821, 825-26 (1998). Particularly in light of this principle, we find that plaintiffs' attempt to obtain a judicial sale of the Indiana property is not tantamount to contesting the validity of the trust.

¶ 84 Defendants additionally raise a number of arguments related to the November 12, 2008 dismissal of count I of plaintiffs' complaint. They argue that (i) plaintiffs' attempt to relitigate the sale issue after the dismissal of count I violates the law of the case doctrine; (ii) since sale of the properties was not sought by any active count of plaintiffs' complaint at the time of trial, the

court lacked authority to grant such relief; and (iii) ordering a sale of the properties caused unfair surprise to the defendants, who were not prepared to (and in fact did not) argue the sale issue at trial.

¶ 85 The law of the case doctrine bars relitigation of an issue previously decided in the same case. *Radwill v. Manor Care of Westmont, IL, LLC*, 2013 IL App (2d) 120957, ¶ 8. But as noted by the trial court in its judgment, the issue raised in count I of plaintiffs' complaint was not the same issue raised in plaintiffs' later motion for sale. In count I, plaintiffs sought sale of the Indiana property (and only that property) based upon specific language in the Ethel Trust that limited the duration of the trust. Defendants sought and obtained section 2-615 dismissal of that count in 2008, apparently based upon assertions that the trust term had been extended. That is a separate and distinct issue which was previously decided. By contrast, plaintiffs' 2012 motion seeking sale of the trust properties was not based upon any specific language in the trust documents; rather, it requested that the court exercise its general equitable powers to do justice between the parties.

¶ 86 As for defendants' second point, it is black letter law that the prayer for relief in the complaint does not limit the relief that the trial court may grant. 735 ILCS 5/2-604 (West 2012); see *Kandalepas v. Economou*, 191 Ill. App. 3d 51, 53 (1989) (court of equity has jurisdiction to fashion remedy different from that requested by the parties). Accordingly, the fact that no active count of the complaint sought sale of the trust properties does not limit the trial court's authority to order such a remedy.

¶ 87 Defendants nevertheless argue that, under the circumstances, they were unfairly surprised by the trial court's grant of relief. See 735 ILCS 5/2-604 (West 2012) (providing that "where other relief is sought the court shall, by proper orders, and upon terms that may be just, protect

the adverse party against prejudice by reason of surprise"). The record belies this assertion. In 2012, the trial court explicitly invited the parties to file motions requesting a judicial sale of the trust properties. Plaintiffs filed such a motion, to which both Keith and Floyd filed separate responses, and all parties were aware that plaintiffs' motion was still pending as of the date of the trial. In light of these facts, defendants cannot claim that they were blindsided by the court's order. Thus, we find that the trial court did not err in ordering a judicial sale of the trust properties.

¶ 88 Trial Court's Posttrial Orders Regarding the Champlain Property

¶ 89 As noted, on November 27, 2014, there was a fire at the Champlain property. On April 10, 2015, the trial court ordered defendants not to interfere with the cleanup and repair of the property. On June 26, 2015, the court modified its April 10 order to provide that defendants were not allowed on the premises. Defendants characterize these orders as permanent injunctions and argue that they were improperly granted because the prerequisites to injunctive relief were not established and the procedures for granting injunctions were not followed. Defendants' arguments are inapposite, since the orders at issue were not injunctive in nature.

¶ 90 We note that this is not the first time such an issue has arisen in this action. In 2013, the trial court granted plaintiffs' motion to rent out their mother's vacant apartment in the Champlain property. Floyd filed an interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), which allows immediate review of orders granting injunctive relief. We dismissed the appeal in *Jordan v. Jordan*, 2014 IL App (1st) 140445-U, holding that the order at issue was not injunctive in nature.

¶ 91 To determine whether an order is an injunction, we look to its substance and not its form, taking into account the facts and relief sought by the parties. *In re A Minor*, 127 Ill. 2d 247, 260

(1989); *In re Marriage of Meyer*, 197 Ill. App. 3d 975, 978 (1990). Not every order compelling a party to do or not to do a particular thing is an injunction. *A Minor*, 127 Ill. 2d at 261-62. In particular, an order will not be considered an injunction if it is merely ministerial or administrative, in that it regulates only the procedural details of litigation before the court and does not affect the relations of the parties in their everyday activities outside the litigation. *Id.* at 262.

¶ 92 Viewed in context, the orders at issue were administrative in nature; they clarified the effect of the court's previous orders and did not purport to adjudicate any substantive issues between the parties. Pursuant to the court's order of January 7, 2008, Tyrone had sole responsibility for the upkeep of the trust properties. (Notably, defendants do not claim that the 2008 order was injunctive in nature.) Thus, after the Champlain fire in 2014, it was Tyrone's duty to ensure that the property was secured and repaired. Defendants allegedly interfered by repeatedly changing the locks, harassing and threatening Tyrone's workers, and preventing the workers from entering. Tyrone asked the police to stop defendants' interference, citing the trial court's prior orders; in response, the police told him that the orders were "old" and "needed to be updated."

¶ 93 Accordingly, on April 10, the trial court issued an updated order to give guidance to law enforcement officials dealing with disputes among the Jordan siblings over the repair of the Champlain property. In context, the April 10 order was a clarification of the court's prior administrative order, ensuring that Tyrone would be able to maintain and repair the Champlain property without disruption from defendants until a final judgment could be rendered. The order did not regulate the parties' conduct in their daily activities outside the litigation.

¶ 94 The same is true of the court's June 26 order. When the court entered its April 10 order, it intended for defendants to be able to enter the Champlain premises as long as they did not interfere with the work. But on May 6, 2015, there was an incident where Floyd entered the property and (in the trial court's words) "work was impeded whether intentionally or unintentionally." To prevent further incidents, the court explicitly barred defendants from the property. In doing so, the court was once more seeking to effectuate its prior non-injunctive order regarding Tyrone's responsibility for upkeep of the trust properties. As such, the challenged orders were ministerial and administrative, falling within the court's inherent power to regulate the procedural details of the litigation before it.

¶ 95 Equitable Lien over the Indiana Property

¶ 96 Floyd contends that the trial court should have granted him an equitable lien over the Indiana property because (i) he personally made the entire down payment on the property, (ii) he made all of the mortgage payments, and (iii) he made a substantial portion of the real estate tax payments while his siblings did not pay anything. As noted, the trial court found that Floyd's testimony was not credible, and even if it were true, it would not entitle him to an equitable lien over the property.

¶ 97 An equitable lien is the right to have property subjected to the payment of a claim. *Uptown National Bank of Chicago v. Stramer*, 218 Ill. App. 3d 905, 907 (1991). An equitable lien can arise in two ways: First, parties may expressly agree in writing that certain property will be held as security for a debt. *Paine/Wetzel Associates, Inc. v. Gitles*, 174 Ill. App. 3d 389, 393 (1988). No such agreement exists in this case. Second, even in the absence of an explicit agreement, the court may impose an equitable lien in the interests of fairness and justice. *Id.* In either case, the elements of an equitable lien are (i) a debt, duty, or obligation owed by one party

to another and (ii) a *res* to which that obligation attaches. *Uptown National Bank*, 174 Ill. 2d at 907. On appeal, we defer to the factual findings of the trial court unless they are against the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident or the findings are arbitrary, unreasonable, or not based on evidence. *Staes and Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35.

¶ 98 Under this standard, the trial court's findings are not against the manifest weight of the evidence. Although Floyd testified that he made the entire down payment on the Indiana property, his testimony was contradicted by both plaintiffs, who said that each sibling contributed $5000 toward the down payment. The trial court was entitled to believe plaintiffs' testimony. *Id.* (trial court's credibility determinations are given great weight because trial court is in the best position to evaluate the demeanor and conduct of witnesses).

¶ 99 Regarding the mortgage payments and real estate taxes, Floyd argues that his testimony was uncontroverted, insofar as nobody else claimed to have made any of the payments at issue. But even though plaintiffs did not claim to have made payments, they did contradict Floyd's testimony on this issue. Kevin testified that Ethel paid all of the bills during her lifetime. Tyrone testified that the property was self-sustaining, in that the rental income was enough to cover the mortgage payments and the taxes. As discussed, the court was entitled to find this testimony more credible than Floyd's.

¶ 100 The payment book does not, as Floyd contends, corroborate his testimony. The book was in his mother's name, which is entirely consistent with Kevin's testimony that Ethel paid all the bills on the property. Thus, the trial court's finding that Floyd was not entitled to an equitable lien was supported by the evidence.

¶ 101 Breach of Fiduciary Duty

¶ 102 Keith contends that the trial court erred in finding against defendants on the breach of fiduciary duty count of their counterclaim.

¶ 103 Keith does not challenge the trial court's finding that this claim was not supported by credible evidence. Instead, he raises several new allegations that are unrelated to the allegations of the complaint. Specifically, Keith alleges that (i) plaintiffs wasted trust funds on frivolous litigation; (ii) they took trust funds for personal use; (iii) they hired workers who were not bonded or licensed to work on trust property; and (iv) after the November 27, 2014, fire at the Champlain property, plaintiffs "gutted" the property, leaving it "in total disrepair."

¶ 104 Keith has forfeited the first three of these issues by failing to raise them in the trial court. As noted, it is well established that an unsuccessful party may not raise a new theory of recovery on appeal, and doing so results in forfeiture. *Thompson*, 2016 IL App (1st) 142918, ¶ 21 (quoting *In re Detention of Anders*, 304 Ill. App. 3d 117, 123 (1999)). "The purpose of this court's forfeiture rules is to encourage parties to raise issues in the trial court, thus ensuring both that the trial court is given an opportunity to correct any errors prior to appeal and that a party does not obtain a reversal through his or her own inaction." *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372, ¶ 14. Nothing in the record suggests that Keith could not have raised these issues prior to trial by seeking leave to amend his counterclaim. See *W.E. Erickson Construction, Inc. v. Chicago Title Insurance Co.*, 266 Ill. App. 3d 905, 912 (1994) (amendments to complaint may be allowed where they allow party to fully present a claim).

¶ 105 As for Keith's allegations regarding plaintiffs' posttrial actions toward the Champlain property, these allegations are unsupported by the trial evidence (for obvious reasons: all the relevant events occurred after trial). It is well-established that "[r]eviewing courts must determine the issues before them on appeal solely on the basis of the record made in the trial

court." *Lake v. State,* 401 Ill. App. 3d 350, 352 (2010); see also *People v. Heaton,* 266 Ill. App. 3d 469, 476 (1994) (evidence which is not part of the record on appeal may not be considered by a reviewing court). Accordingly, Keith's unsupported allegations are not grounds for reversal.

¶ 106 As noted above, Keith filed after trial what was essentially a motion to reopen the proofs, framed as an "Emergency Motion for a Ruling by the Court and to Accept New Evidence or in the Alternative Take Judicial Notice." The trial court struck Keith's motion as untimely on March 16, 2015, and Keith's notice of appeal did not contain any indication that he is challenging that order (nor, for that matter, does he reference the order in his brief). Thus, we find that Keith's notice of appeal did not confer jurisdiction on this court to review that order. *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229 (1991) (no jurisdiction over issue where notice of appeal did not fairly and adequately set out the judgment complained of and the relief sought); *People v. Shaw*, 2016 IL App (4th) 150444, ¶ 57 (appellate court lacked jurisdiction to review collateral proceeding that was not set forth in notice of appeal).

¶ 107 Contempt of Court

¶ 108 Keith appeals from the trial court's July 9, 2010 order holding defendants in indirect civil contempt for failing to comply with its orders regarding collection of rent. We find that Keith's challenge has been rendered moot by defendants' conduct that purged the finding of contempt.

¶ 109 An issue is moot where " 'intervening events have rendered it impossible for the reviewing court to grant effectual relief to the complaining party.' " *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007) (quoting *In re J.T.*, 221 Ill. 2d 338, 349-50 (2006)). With regard to contempt proceedings, our supreme court has stated that "a valid purge condition is a necessary part of an indirect civil contempt order. [Citation.] A contemnor must be able to purge the civil contempt by doing that which the court has ordered him to do." *Id.* Thus, where a party has purged his

contempt by satisfying the conditions of the contempt order, any appeal from the contempt order is moot. See, *e.g.*, *In re Marriage of Betts*, 155 Ill. App. 3d 85, 104 (1987) ("Actual payment of the entire amount *** renders the point moot. There is nothing to be accomplished by reversing this purging order, as respondent requests. The money has been paid"); *J.S.A. v. M.H.*, 384 Ill. App. 3d 998, 1009 (2008) (in parentage action, party's challenge to finding of contempt for failure to submit to DNA testing was moot where party purged her contempt by submitting to DNA testing).

¶ 110 In this case, in its July 9, 2010 order, the court directed defendants to tender to the court $33,860 in certified checks payable to the trusts, as well as $16,935 of plaintiffs' attorney fees as a sanction for contempt. After a period of incarceration, defendants tendered the required sums on September 8, 2010. Since defendants have paid the purge amount in full, Kevin's appeal from the July 2010 contempt order is moot.

¶ 111 Disqualification of Counsel

¶ 112 Keith next asserts, in a single paragraph, that the trial court erred by denying defendants' motion to disqualify Warner as plaintiffs' counsel. Keith provides no reasoning as to why Warner should have been disqualified, nor does he provide any authority for his assertion. Accordingly, he has forfeited this claim of error. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Lake County Grading Company, LLC v. Village of Antioch*, 2014 IL 115805, ¶ 36.

¶ 113 Privacy

¶ 114 Keith's final claim is that plaintiffs violated his privacy rights by filing documents containing his Social Security number and home address.

¶ 115 On August 20, 2015, plaintiffs submitted a monthly progress report for the trust properties from July through August 2015. Included with the report were 2014 tax documents

that listed the Social Security numbers and home addresses of all trust beneficiaries, including Keith. Keith argues that this disclosure of private information violates Illinois Supreme Court Rule 15 and requests "whatever relief this court feels is equitable."

¶ 116 Rule 15 provides: "Unless otherwise required by law or ordered by the court, parties shall not include Social Security numbers in documents filed with the court." Ill. S. Ct. R. 15(b) (eff. Jan. 1, 2004). (The rule does not prohibit inclusion of a party's home address in court filings, nor does Keith cite any law pertinent to that portion of his argument.) If a party's Social Security number is included in a filing, the party may move to have it redacted. Ill. S. Ct. R. 15(c) (eff. Jan. 1, 2004). The record does not reflect that Keith ever filed such a motion before the trial court. Because Keith did not request Rule 15 redaction from the trial court, he cannot raise the issue for the first time on appeal. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15.

¶ 117 CONCLUSION

¶ 118 After more than a decade of litigation, the trial court properly determined that the parties were unable to cooperate in managing the trust properties and, accordingly, directed that the properties be sold. Further, although plaintiffs established that defendants breached their fiduciary duties, they failed to adduce competent evidence of any damages caused by the breach. Finally, defendants failed to establish entitlement to any relief on their various counterclaims. We therefore affirm the judgment of the trial court in its entirety.

¶ 119 Affirmed.