THIRD DIVISION
June 20, 2018

No. 1-17-1677

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UH PARTNERS, LLC, an Illinois Limited Liability Company, UNGARETTI & HARRIS LLP, an Illinois Limited Liability Partnership,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellees/Cross-Appellants,	)	
v.	)	14 L 007040
RONALD J. GIDWITZ, an Individual; RALPH GIDWITZ, an Individual; JAMES G. GIDWITZ, an Individual; PETER E. GIDWITZ, an Individual; NANCY GIDWITZ, an individual; FAMILY TRUST CREATED UNDER THE ALAN GIDWITZ DECLARATION OF TRUST OF OCTOBER 6, 1997; BETSY R. GIDWITZ, an Individual, HERBERT J. HALPERIN, an Individual; JOHN "JAKE" PASCHEN, an Individual; BURNHAM MANAGEMENT COMPANY, an Illinois Corporation; NEW WEST, an Illinois Limited Partnership; NEW BLUFF, an Illinois Limited Partnership; BURNHAM RESIDENTIAL VENTURE I, L.P., an Illinois Limited Partnership; BURNHAM RESIDENTIAL VENTURE I CORP., an Illinois Corporation; BURNHAM RESIDENTIAL VENTURE VII, L.P., an Illinois Limited Partnership, and BURNHAM	)	

RESIDENTIAL VENTURE VII CORP., an Illinois Corporation, Defendants-Appellants/Cross-Appellees.	)	
NEW WEST, an Illinois Limited Partnership; NEW BLUFF, an Illinois Limited Partnership Plaintiffs-Appellants v. UNGARETTI & HARRIS LLP, an Illinois limited liability partnership, RICHARD A. UNGARETTI, THOMAS M. FAHEY, SAM VINSON, J. TIMOTHY RAMSEY, and NIXON PEABODY LLP, an Illinois limited liability partnership, Defendants-Appellees.	)	Honorable Patrick Foran Lustig, Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed. The trial court's judgment defendants breached their obligation to pay their attorney's bills and that the fees and costs charged were reasonable is not against the manifest weight of the evidence; the trial court is presumed to consider the evidence and to know and follow the law. The trial court's judgment refusing to award the plaintiff-attorneys prejudgment interest and deducting certain fees and costs is not against the manifest weight of the evidence; the trial court could find the billing records were insufficient to allow it to determine the reasonableness of the fees charged and plaintiff-attorneys failed to point to specific evidence to the contrary.

¶ 2 Although the parties' history is long and the litigation from which their relationship arose multifaceted, this appeal arises solely from the judgment in a lawsuit by plaintiff, Ungaretti & Harris LLP and UH Partners, LLC (U&H)[1], a law firm, against defendants, the firm's former clients. Plaintiff sued defendants to recover unpaid attorney fees, and defendants counterclaimed

[1] Nixon Peabody, LLP is the successor to U&H.

against the firm and individual attorneys for breach of the parties' contract for legal representation and for malpractice. The disputed fees were for only the trial portion of plaintiff's representation of defendants. The trial was of a suit by the City of Joliet to condemn defendants' property, which was then being used as low income housing. Defendants paid plaintiff's attorney fees for pretrial work in the condemnation case and for U&H's representation of defendants in other aspects of the complex litigation surrounding the property. Following a bench trial, the circuit court of Cook County entered judgment in favor of U&H on its claim for attorney fees and in favor of U&H and against defendants on defendants' counterclaims against plaintiff. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The property at the heart of the litigation at issue in this case was known as the Evergreen Terrace Apartment Complex (Evergreen Terrace) in Joliet, Illinois. Evergreen Terrace sits on two parcels of land owned by two land trusts (Mid-City National Bank of Chicago Trust No. 1252 and Mid-City National Bank of Chicago Trust No. 1335). Defendants New West and New Bluff are Illinois limited partnerships that hold the beneficial interest to the two land trusts. The Burnham Residential Venture defendants[2] are the general partners of New West and New Bluff. Defendants Ronald Gidwitz and Ralph Gidwitz own the Burnham Residential Venture entities. Defendant Burnham Management Company is the property manager for Evergreen Terrace. Burnham Management Company is owned by Ronald and Ralph Gidwitz, and by defendants James Gidwitz, Peter Gidwitz, Thomas Gidwitz, Nancy Gidwitz, Betsy Gidwitz, and the Alan Gidwitz Trust, as successor to Alan Gidwitz (deceased). U&H argued below, and the trial court found, the foregoing entities were collectively known as "The Burnham Companies" and were

[2] Burnham Residential Venture I, LP and Burnham Residential Venture I Corp.; and Burnham Residential Venture VII, LP and Burnham Residential Venture VII Corp.

controlled by the Gidwitz family, a finding that is in dispute in this appeal. Herbert Halperin was the president of "the Burnham Companies" and John Paschen was his successor.[3]

¶ 5 On March 24, 2005, Halperin signed a letter agreement for legal representation with U&H (agreement letter). U&H addressed the agreement letter to Halperin as president of the Burnham Companies. The letter states U&H was being retained "to advise you regarding potential claims and to represent you in Fair Housing Act and civil rights litigation against the City of Joliet and certain of its officials arising from their efforts to deny affordable housing to the tenants of, and prevent [the Department of Housing and Urban Development (HUD)] from closing on the refinancing of, Evergreen Terrace Phase I (the 'Matter')." The letter states U&H commenced services on February 2, 2005 and that a "formal statement of policy with respect to fees and disbursements [was] enclosed." The statement of policy on fees states, in pertinent part: "The firm reserves the right to charge interest at the prime rate for accounts that are sixty (60) days past due." As it pertains to this appeal, the letter also states as follows:

> "Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning the outcome of the Matter or various courses of action and the results that might be anticipated. While we will always endeavor to give you a candid and accurate assessment of the Matter, any such statements will be an expression of our opinion based on information available to us at the time, and not a promise or guarantee."

Other than being addressed to Halperin as president of "The Burnham Companies" the letter agreement does not identify who or what entity engaged U&H. U&H's legal fees were funded

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[3] U&H voluntarily dismissed Halperin and Paschen as defendants in this case.

by the Gidwitz family through loans to New West and New Bluff.[4] U&H estimated its fees and expenses for this matter would total approximately $800,000.

¶ 6 U&H filed a complaint on behalf of New West against the City of Joliet related to Evergreen Terrace. New West's lawsuit alleged Joliet's attempts to block Evergreen Terrace from participating in a federal program to extend a contract with HUD to provide rent subsidies for residents of Evergreen Terrace and to restructure its loans from HUD violated the Fair Housing Act (FHA) and other civil rights laws. In response to the FHA lawsuit Joliet filed an action to condemn Evergreen Terrace and to take the property by eminent domain. U&H represented the property owners and defended the condemnation action. One defense U&H pursued in the condemnation action was to argue that Joliet's attempt to condemn the property was barred by the Supremacy Clause of the United States Constitution. Following an adverse ruling on the Supremacy Clause defense by the Court of Appeals for the Seventh Circuit and the denial of a petition for writ of *certiorari* to the United States Supreme Court, the condemnation matter was remanded to the district court. The district court consolidated New West's suit under the FHA and Joliet's suit for condemnation (hereinafter, "the condemnation trial") for discovery. The district court stayed the condemnation trial pending negotiations that had the potential to lead to a settlement of the case. In July 2010 U&H provided New West and New Bluff with an estimate of the amount of U&H's fees and expenses for pretrial work of $825,000.

¶ 7 The parties could not come to an agreement and a settlement could not be reached. Thereafter the district court ordered an accelerated discovery schedule for the condemnation trial. Discovery in the condemnation trial ended on August 3, 2012. In September 2012 U&H

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[4] The Gidwitz defendants answered the second amended complaint by admitting "that individual members of the Gidwitz family, as funding parties, made loans to New West and New Bluff, as makers, and Ralph Gidwitz, as nominee, all in accordance with loan transactions that U&H structured and documented for the purpose of generating payment of its legal fees and expenses."

billed New West and New Bluff (NWNB) over $3.2 million for pretrial work. Paschen asked U&H for the cost of the trial. U&H informed NWNB the fees and expenses for the trial would be $1.2 million. The condemnation trial began on September 27, 2012. On September 28, 2012, NWNB paid U&H $2.44 million toward outstanding fees and expenses. In mid-January 2013, U&H billed NWNB over $3.2 million for fees and expenses. Fees and expenses for the trial up to December 31, 2012 totaled approximately $2.5 million. The parties concluded the presentation of evidence in the condemnation trial on December 20, 2013. On December 31, 2013, U&H filed a motion to withdraw as NWNB's attorney. On January 24, 2014, the district court granted U&H's motion to withdraw from its representation of NWNB. On January 31, 2014, U&H sent NWNB a final bill for over $6 million. The total amount of fees U&H charged defendants since its representation began was over $13.5 million.

¶ 8 On July 3, 2014, U&H filed a complaint in the circuit court of Cook County to recover the unpaid legal fees plus interest pursuant to the engagement letter. Defendants filed a counterclaim, alleging U&H's fees were excessive and unreasonable, for breach of contract, legal malpractice, and related theories.

¶ 9 U&H adduced the testimony of an expert, Edward Zulkey. During plaintiff's expert's testimony, U&H provided the trial court with a list of the materials Zulkey reviewed. Later in the examination, plaintiff's attorney represented to the court that Zulkey reviewed all of U&H's invoices.[5] Zulkey testified U&H and its attorneys complied with the standard of care for a lawyer in its representation of defendants. Zulkey also opined defendants made an informed

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[5] "Under the rules of our supreme court, a lawyer is prohibited from making 'a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false.' (134 Ill. 2d Rules of Professional Conduct R. 3.3(a)(1).) Given this prohibition, and the attendant sanctions which counsel would face for its violation, counsel's factual statements to the court must be considered presumptively true. This presumption is, of course, rebuttable." *Lewis v. Illinois Central Railroad Co.*, 234 Ill. App. 3d 669, 681 (1992).

decision to proceed with the litigation. U&H's attorney asked Zulkey whether, based on his experience and review of the case, he believed the entire legal bill is reasonable and fair. Zulkey testified he did believe the entire legal bill was reasonable and fair and explained his reasons why he believed that to be true. Zulkey testified as follows:

> "I'm not claiming that I'm equipped to analyze every entry and say that this is reasonable and this is reasonable. But I don't think that's the legal standard.
>
> * * *
>
> This engagement letter is still the most normal one where the lawyer says these are the rates but we reserve the right to put other people on as needed and we're going to do the work required under the circumstances.
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> So at that stage they should get paid for what they had done unless there was something like fraud going on, which I don't believe there was. They took an oath. They said there's not. I accept it. They are a reputable law firm.
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> * * *
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> In [Rule] 1.5 of the fees, the key line is basically on the complexity of the case. This case meets that more than any case you can imagine. So, yes, I think the fees were reasonable."

¶ 10 Zulkey also testified he did not see anything in the billing cycle that was a deviation from the standard of care. Zulkey later testified that defendants were given the proper advice with regard to the likelihood of success or the risks of not getting the recovery they hoped for. On cross-examination, Zulkey agreed that a client reading the parties' engagement letter would expect the attorneys to provide a candid and accurate assessment of what the projected fees are going to be but that assessment is not a guarantee.

¶ 11 Following a bench trial, the trial court entered a written order finding in favor of U&H on its claim for attorney fees and costs. The trial court's written order found, in pertinent part, as follows:

- "The Burnham Companies" was either an assumed name or common law partnership used for real estate ventures pursued by the Gidwitz family.
- The Burnham Companies entered into a valid and binding written contract with U&H for legal services through its president, Halperin.
- When Halperin entered into the contract with U&H using the name "The Burnham Companies" it was for the benefit, and on behalf of, Ronald J. Gidwitz, Ralph Gidwitz, James Gidwitz, Peter Gidwitz, Thomas Gidwitz, Nancy Gidwitz, the Family Trust Created under the Alan Gidwitz Declaration of Trust, and Betsy R. Gidwitz (the Gidwitz family), as well as the remaining defendants named in U&H's complaint.
- The Gidwitz family was to share equally in the payment of legal fees and costs related to the contract for legal services with U&H, and they did so up to the point they stopped making payments.

¶ 12 The trial court found in favor of U&H on defendants' counterclaims for breach of contract, legal malpractice, and related theories. The court found in favor of defendants on the issue of the reasonableness and necessity of some of U&H's fees and costs. The court expressly found that: "In evaluating the legal fees charged by [U&H] the Court has considered both the criteria set forth in [*Wildman, Harrold Allen & Dixon v. Gaylor*, 317 Ill. App. 3d 590 (2000)] and the Illinois Rules of Professional Conduct, as well as the testimony of all the attorneys and paralegals who prepared the billing entries, the experts called by the parties, and the Court's own review of *each and every billing entry*." (Emphasis added.) The court's order found the "parties stipulated that the total amount of attorneys' [*sic*] fees and costs due and owing is $6,223,019.06.

The court found that of that amount, $5,715,485.56 is fair, reasonable, and necessary. The court stated it deducted $507,533.50 because it could not make a determination of whether those fees were fair, reasonable, and necessary due to a lack of sufficient detail in the billing entries to determine what tasks were performed. The court declined to award U&H interest pursuant to the statement of policy on fees attached to the engagement letter. The court held: "Because there was a legitimate dispute as to the amount of attorneys' [*sic*] fees and costs due and owing that had to be resolved by this Court, and in light of the fact that the attorneys' [*sic*] fees and costs far exceeded what had originally been estimated by the plaintiffs and anticipated by the Defendants, the Court is not awarding interest on the sums due and owing prior to the date of this order." The court entered judgment in favor of U&H in the amount of $5,715,485.56, plus costs.

¶ 13 This appeal followed.

¶ 14 ANALYSIS

¶ 15 Defendants appeal the trial court's order awarding U&H over $5 million in unpaid attorney fees and costs. Defendants argue (1) Rule 1.5(a)(4) of the Illinois Rules of Professional Conduct precludes finding the total amount of fees U&H charged defendants throughout its representation was reasonable; (2) the trial court erred in finding (a) the fees charged pursing the Supremacy Clause defense and (b) the fees charged for pretrial work were reasonable; (3) the trial court erred in finding over $5 million in fees for trial reasonable without referencing the estimate the trial would cost $1.2 million; and (4) the trial court erred in construing the engagement letter. U&H cross-appeals the trial court's order deducting certain fees and costs from the total amount billed as clearly erroneous and the court's refusal to award interest pursuant to the parties' written agreement as against the manifest weight of the evidence. "Rule 1.5 of the Illinois Rules of Professional Conduct requires that all fees for legal services be reasonable." *Wildman*, 317 Ill. App. 3d at 601.

> "In an action for attorney fees based on a breach of contract or *quantum meruit* theory, the plaintiff-attorney's *prima facie* case includes proof of the following: (1) the existence of an attorney-client relationship, (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client. [Citation.] A plaintiff-attorney must also furnish sufficient facts and computations to establish, by a preponderance of the evidence, that the services rendered were necessary and that the amount of fees sought is fair, just and reasonable. [Citation.]" *Id.* at 598.

¶ 16 Standard of Review

¶ 17 Defendants first argue our standard of review is *de novo* because the trial court failed to apply the correct legal standard, calling into question the court's interpretation and application of Rule 1.5(a)(4). Defendants cite *Myrick v. Union Pacific R.R. Co.*, 2017 IL App (1st) 161023, ¶ 21, for the proposition that whether the trial court applied the correct legal standard is a question of law we review *de novo*. In further support of their position, defendants also cite *In re Karavidas*, 2013 IL 115767, ¶ 36, for the proposition that questions involving the interpretation and application of the Rules of Professional Conduct are reviewed *de novo*. U&H responds the question on review is whether the trial court's judgment for attorney fees was against the manifest weight of the evidence and that should be our standard of review.

¶ 18 Rule 1.5 provides the "factors to be considered in determining the reasonableness of a fee" (Ill. R. Prof. Conduct 1.5(a) (eff. Jan. 1, 2010)) regardless whether the fees are sought under a fee shifting provision or in a common law action for breach of contract (*Wildman*, 317 Ill. App. 3d at 601). In *Wildman*, this court held that "[u]nlike findings in a fee petition case, which rest in the sound discretion of the trial judge, the reasonableness of attorney fees in a common law breach of contract action presents a question to be resolved by the trier of fact, following a fair

and impartial trial. [Citation.]" *Wildman*, 317 Ill. App. 3d at 597. The *Wildman* court recognized that it is not the province of this court to substitute its judgment for that of the trier of fact—whether judge or jury—unless "there is a 'patent error wherein the weight of the evidence demands a contrary conclusion.' [Citations.]" *Id.* The court held that "as in any other civil breach of contract action, *** the sole question on review is whether the trial court's judgment for attorney fees and costs was against the 'manifest weight of the evidence.' " *Id.* at 598.

¶ 19 Defendants attempt to distinguish *Wildman* by arguing that unlike in *Wildman*, their appeal "addresses directly the Trial Court's failure to properly apply" Rule 1.5(a)(4). However, as noted by U&H, the trial court's judgment, after quoting Rule 1.5(a), specifically states: "In evaluating the legal fees charged by UH the Court has considered both the criteria set forth in the *Wildman* case and the Illinois Rules of Professional Conduct ***." Thus, the record directly refutes defendants' assertion the trial court failed to apply Rule 1.5(a). Therefore, the determination for this court is whether, considering all of the factors outlined in Rule 1.5 of the Illinois Rules of Professional Conduct, the trial court's judgment for attorney fees and costs was against the manifest weight of the evidence. *Wildman*, 317 Ill. App. 3d at 598, 601-02. Moreover, *Myrick* is inapposite. *Myrick* held it is an abuse of discretion to base a decision on an incorrect view of the law, and that determining what the correct legal standard is "is a question of law that we review *de novo*." *Myrick*, 2017 IL App (1st) 161023, ¶ 21. Here, the correct legal standard is not in dispute. Further, the trial court applied the correct legal standard—Rule 1.5(a) and *Wildman*—and the issue on appeal is whether its decision after applying that standard is against the manifest weight of the evidence, particularly in light of the Rule 1.5(a)(4) element. Similarly, *Karavidas* is unavailing. There, the issue was whether the respondent's conduct was "professional misconduct that may be the basis for the imposition of professional discipline." *In re Karavidas*, 2013 IL 115767, ¶ 34. In other words, the question in *Karavidas* was whether the

rules applied to the conduct at issue. In this case, the trial court did not dispute the applicability of Rule 1.5 and expressly applied it. We hold the standard of review applicable in this appeal is whether the judgment is against the manifest weight of the evidence.

¶ 20 Reasonableness of the Fee

¶ 21 When determining the reasonableness of a fee, Rule 1.5(a)(4) requires the trial court to consider "the amount involved and the results obtained." Defendants state U&H charged $13.5 million for litigation concerning property with a net value of $2.5 million, and lost. Defendants argue the expending of $13.5 million to preserve the property at issue is unreasonable on its face and in contravention of Rule 1.5(a)(4). Predicate to defendants' argument concerning Rule 1.5(a)(4) is its complaint the trial court wholly failed to consider the total fees U&H charged defendants over the entire course of the litigation. Defendants argue the trial court "failed to even mention" the total fee charged and it "ignored the entire fee." Defendants argue that had the trial court considered the fees defendants paid "as part of its consideration of the total fee, it would have found the total fee unreasonable" because considering the Rule 1.5(a)(4) factor, no reasonable person could find that $13.5 million incurred in fees and expenses "to pursue litigation of a property worth approximately $2.5 million was reasonable."

¶ 22 U&H responds it is "factually and legally erroneous" for defendants to argue the trial court ignored or disregarded the fees defendants had already paid because the court "heard, weighed and evaluated the same evidence and arguments during trial" that defendants raise on appeal; further, U&H argues[6] "much more than the potential equity in Evergreen Terrace was at

[6] U&H filed a separate appellee's brief from defendants' cross-appeal from the trial court's judgment denying their counterclaims in which it made the foregoing argument and noted, correctly, that the argument and claims supporting it are also found in U&H's appellee's brief addressing defendants' appeal from the judgment in favor of U&H on its complaint to recover attorney fees. U&H filed a motion to dismiss that portion of defendants' cross-appeal from the denial of their legal malpractice claim based

issue" including a large tax liability that would accrue, the obligation to the shareholders, the loss of 30 years of management fees for the property, and reputational damage to the Gidwitz family, in addition to the ostensible goal of the rights of the tenants of Evergreen Terrace. Defendants respond that with the exception of the alleged reputational benefit, all of "the benefits referred to by U&H were 'benefits' which went to the value of the property." We disagree. The potential benefits from the litigation, which defendants do not refute (except the potential damage to their reputation) were not tied to the amount at stake in the condemnation action (or the difference between the appraised value of Evergreen Terrace and the mortgages on the property), which is the amount on which defendants rely for this argument. This is borne out by the record which shows that defendants continued to seek legal services from plaintiff and paid their invoices for legal services well after the bill exceeded the approximately $ 2.5 million net equity of the property. We agree with U&H that there was "evidence that the circuit court could weigh to determine that the Rule 1.5(a)(4) factor weighed in favor of U&H." "A trial court's judgment is against the manifest weight of the evidence when its findings appear to be unreasonable, arbitrary, or not based on the evidence." *Wildman*, 317 Ill. App. 3d at 599. In this case, we cannot say the trial court's judgment is against the manifest weight of the evidence.

¶ 23 We next address defendants' argument, which is the common thread in its arguments on appeal, that the trial court failed to consider the total fees paid for U&H's representation. In response to U&H's argument the trial court had defendants' arguments and evidence on this subject before it (and, therefore, defendants' argument the trial court failed to consider the total fee must fail), defendants' argue the trial court's order made no finding "the paid fees and expenses or total fees and expenses were reasonable." Defendants argue this failure by the trial

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on defendants' admission they are not pursuing an appeal from that portion of the judgment. U&H's motion was ordered taken with the case.

court violates a pretrial order "that the reasonableness of the total fee must be proven, not just the unpaid amount." The order to which defendants refer is the trial court's ruling on U&H's motions for summary judgment (which were decided by a different trial judge). The summary judgment order states, in pertinent part, as follows:

> "Ungaretti & Harris argues that only approximately $6.5 million is in dispute and any analysis of the reasonableness of fees should therefore be based upon this figure. Ungaretti & Harris bases this argument upon the Court's May 12, 2016 and July 26, 2016 rulings that the statute of repose applicable to claims arising out of an attorney's representation bars claims arising out of the representation afforded Plaintiff prior to certain dates. The Court's previous rulings, however, were limited to New West and New Bluff's legal malpractice and breach of fiduciary duty claims and did not limit evidence regarding billing. New West and New Bluff may therefore still assert unreasonableness regarding the total amounts billed as a defense to Plaintiffs' claims."

Defendants continue to argue in reply that the trial court's findings "are limited to the reasonableness of the *unpaid* fees and expenses." (Emphasis added.)

¶ 24 Defendants have failed to establish the trial court failed to consider the totality of the fees charged and paid in determining the reasonableness of the unpaid fees for the trial work. Initially we note the pretrial order, on which defendants heavily rely, stated defendants could "assert unreasonableness regarding the total amounts billed *as a defense* to Plaintiffs' claims." (Emphasis added.) Defendants did so; we find that the trial court merely rejected their defense, not that it failed to consider it. The issue of the total fee was indisputably before the court. Defendants admit the trial judge reaffirmed the summary judgment ruling prior to trial. U&H filed a motion *in limine* to bar defendants' expert from testifying regarding damages in

defendants' malpractice counterclaim that occurred prior to the running of the statute of repose. The trial court understood defendants wanted to "show they [(the fees)] are unreasonable right from the get-go." After lengthy arguments on the motion *in limine* the trial court ruled defendants would be allowed to discuss the reasonableness of the fees prior to the dates in the summary judgment order to show the reasonableness of the fees "in their totality" but defendants could not "seek recovery for anything prior to those [repose] dates for any alleged malpractice."

¶ 25 Defendants also placed the issue before the trial court during closing argument. Defendants argued their attorney never explained the true value of the case in terms of the value of the property as a "way to run up fees far in excess of the value of the subject matter of this case," which ended up being "13.5 million in fees for a $3 million property." Defendants' attorney then went through each stage of the litigation and discussed the fees in each stage. Defendants argued U&H offered no explanation for why the fees to pursue the Supremacy Clause defense greatly exceeded their estimate or why they billed "3 million plus in fees for an argument that was totally flawed." Defendants argued U&H offered "[n]o support for the reasonableness of those fees at all." Defendants' attorney then discussed the fees for the underlying trial. Defendants' attorney argued that assuming (based on testimony by certain U&H attorneys) $2.8 million of the fees billed are reasonable, what defendants had already paid, or "$7.2 million to protect a $3 million piece of property," exceeds the reasonable fees for the trial by 2 ½ times. Defendant's attorney continued:

> "What I want to talk a little bit about is the fact Judge Mitchell said, we can do this from the beginning of the case all the way through the end of the case to determine the reasonableness of fees. And I submit to you that the Gidwitzes, New West and New Bluff, who is the party who paid all these, have paid these lawyers more than they deserve. They're not entitled to another dime."

Near the end of closing argument, defense counsel asserted:

> "I think the amount that's been paid clearly compensates these lawyers for the work they have done. I think their failure to come in here and tell your Honor why they ran up a $13.5 million bill for a property that was worth at the most 3 million completely fails to prove the reasonableness of these fees."

¶ 26 In *In re Marriage of Kane*, 2016 IL App (2d) 150774, an attorney sought fees and costs under the Illinois Marriage and Dissolution of Marriage Act.[7] *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 1. The attorney argued "that, because attorneys must provide sufficiently detailed time records when seeking fees, 'in fairness' the trial court should have a corresponding duty to detail the specific entries that it finds unreasonable." *Id.*, ¶ 31. The court rejected the attorney's "implicit assertion that the presence of specificity in an attorney's billing records therefore mandates a line-by-line finding of *reasonableness* (*or unreasonableness*) by the trial court." (Emphasis added.) *Id.* The *In re Marriage of Kane* court observed that the "purpose of requiring such specificity by the attorney is to aid the trial court in its efforts to determine a reasonable fee award [citation], and those efforts would not be aided by requiring of the trial court the same degree of specificity ***. While reviewing courts have commented favorably where trial courts did undertake a line-by-line review [citation], there is simply no requirement for trial courts to do so." *Id.* This court has held that "[i]n a nonjury civil case, an order of the circuit court is not required to contain findings of fact or conclusions of law. The appealing party bears the burden of overcoming the presumption that the trial court's judgment is correct.

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[7] In a petition for fees and costs under the Illinois Marriage and Dissolution of Marriage Act, *unlike* a common law proceeding to recover attorney fees in a breach of contract action, the "determination of reasonable attorney's [*sic*] fees and costs *** is within the sound discretion of the trial court." (Internal quotation marks omitted.) *In re Marriage of Kane*, 2016 IL App (2d) 150774, ¶ 21 (quoting 750 ILCS 5/508(c)(3) (West 2014)). Nonetheless, we find *Kane* instructive.

The reviewing court will neither presume that error occurred in the trial court nor assume that the trial court misunderstood the applicable law, but will extend all reasonable presumptions in favor of the judgment or order from which the appeal is taken." *American Wheel & Engineering Co. v. Dana Molded Products, Inc.*, 132 Ill. App. 3d 205, 212 (1985). Defendants have not established the trial court failed to consider the total fees charged throughout U&H's representation of defendants when it determined which portion of the disputed fees were reasonable.

¶ 27 Further, the trial court's order states: "In evaluating the legal fees charged by UH the Court has considered both the criteria set forth in the *Wildman* case and the Illinois Rules of Professional Conduct, as well as the testimony of all the attorneys and paralegals who prepared the billing entries, the experts called by the parties, and the Courts [*sic*] own *review of each and every billing entry*." (Emphasis added.) Then, in a separate paragraph, the trial court turned to its consideration of the unpaid fees, stating "[t]he parties stipulated that the total amount of attorneys' [*sic*] fees and costs due and owing is $6,223,019.06." We reject defendants' conclusory assertion that the trial court's "review was limited to the unpaid fees." *Supra*, ¶ 24. The trial court's finding the total fee was reasonable is implicit in its written order. ("In evaluating the legal fees charged by [U&H] the Court has considered *** the Court's own review of *each and every billing entry*." (Emphasis added.)). We find the order establishes the trial court considered the reasonableness (as required by *Wildman* and Rule 1.5) of the total fees and costs. The fact the trial court did not expressly state the total fees were reasonable when it held that, of the unpaid fees, approximately $5.7 million were reasonable, does not establish that the trial court failed to consider the total amount billed because it was not required to make that express finding, and the trial court's order read in its totality does establish that it did consider all of the fees in making its reasonableness determination. Based on the trial court's written judgment, defendants failed to overcome the presumption the trial court's judgment was correct.

¶ 28 We presume the trial court took all the competent evidence into consideration in rendering its decision. *Getto v. City of Chicago*, 392 Ill. App. 3d 232, 243 (2009) (Gordon, J., dissenting). That presumption may only be rebutted where the record affirmatively shows the contrary. See *Belmont Nursing Home v. Illinois Department of Public Aid*, 108 Ill. App. 3d 660, 664 (1982) ("Although in a bench trial it is presumed that the trial judge has considered only competent evidence, this presumption may be rebutted where the record affirmatively shows the contrary."). Defendants have not overcome the presumption the trial court considered defendants' evidence concerning the preemption defense and its likelihood of success or of U&H's estimates and the degree to which U&H exceeded those estimates.

¶ 29 First, U&H presented expert testimony it was reasonable to pursue the preemption theory. "The weight to be given to expert testimony is for the trier of fact." *Dienstag v. Margolies*, 396 Ill. App. 3d 25, 36 (2009). Second, the U&H attorney who prepared the estimate (Ramsay) testified it "was based upon an understanding of the case that existed as of the time this memo was prepared. Obviously it changed over time." Later, he explained as follows:

> "[I]f you look at the Page 10 of Exhibit Number 2 [(the pretrial memorandum)] as an example the task for deposition, this assumed that there would be approximately 20 depositions *** and, in fact, there were something like 60 depositions that were taken in a compressed time frame and at the time that this estimate was prepared on written discovery it was 150,000. There had not been, it was not anticipated that there would be discovery taken on some parts of the case that the actual discovery did occur on based upon further development of the arguments in the case."

¶ 30 Contrary to defendants' argument, U&H's expert provided an explanation for the escalation in fees other than the mere fact of the expedited discovery schedule. Zulkey testified

that even if the discovery schedule resulted from an "agreed order," the parties' attorneys would have been unable to meaningfully challenge the district judge's desire for expedited discovery. Then, Zulkey explained that the pace of discovery required using additional attorneys, or what he called "triple track." Zulkey explained what he meant my "triple tracking" and the impact on fees this way:

> "I'm talking about sometimes you have to take three depositions on one day simultaneously. So you have to put more people on the case who don't necessarily know it the best but also instead of incurring eight hours of billing for a deposition, you might be incurring 24 hours of lawyer time because of the triple tracking."

Third, Zulkey also testified that the way the district court conducted the trial impacted the actual fees. Zulkey stated:

> "[The district court judge] tried the case on a couple days a week or one day a week, and I think the trial lasted *** a couple hundred trial days.
>
> * * *
>
> At least 95 and I think there was an [*sic*] 11,000 pages of transcript. And then every time when you have a case like that, you go—when you have a case like that, you have to go back to your office and then you have to do other things because you can't bill the client for doing everything every day constantly. But then it increases the cost all over again because you have to go and reprep and rethink and stuff like that. It's a very inefficient way to try the case but it's one in which you can't—you can't tell you [*sic*] federal judge you are not going to do it."

Later, Zulkey testified a reasonable lawyer could not anticipate a 95-day trial becoming spread out over 13 months, as was the case here. Given this testimony, the trial court's judgment that the total fees were reasonable is not against the manifest weight of the evidence.

¶ 31 The trial court's judgment did not expressly mention the $1.2 million estimate to complete the trial, and defendants argue that because the trial court simply made a deduction from the unpaid fees, "it could not have given any consideration to the [e]stimate." However, evidence of all of the estimates was before the court, and absent clear evidence to the contrary, we presume the trial court considered and properly weighed it. As to what "weight" any of the estimates have in determining the reasonableness of the fees and costs, defendants argue that the trial court's alleged failure to consider the estimate for pretrial and trial costs in determining whether the trial fees were reasonable violated Rule 1.5(a), or at minimum "undercuts any conclusion that the Trial Court conducted a proper Rule 1.5(a) reasonableness analysis." Defendants cite no authority for the proposition an attorney's estimate of what a case will cost is a necessary element in determining whether the fees charged were reasonable. In light of the evidence presented by U&H, we cannot say the trial court's judgment is against the manifest weight of the evidence. Therefore, we must also reject defendants' arguments (1) the allegedly novel nature of the preemption argument, (2) the estimate that pretrial work would cost $825,000, and (3) the estimate that the trial would cost $1.2 million each go to the reasonableness of the total fee and the trial court "committed reversible error when it found $5,715,485.56 in unpaid fees reasonable without finding" the fees paid in pursuit of the preemption theory, and the fees paid following the $825,000 estimate, reasonable, and erred in finding the fees for the trial were reasonable in light of the estimate.

¶ 32 Next, defendants argue U&H failed to present competent evidence of the reasonableness of their fees. Defendants complain the only evidence U&H presented was the testimony of the

lawyers seeking the fees, which defendants argue is insufficient under *Mercado v. Calumet Federal Savings & Loan Ass'n*, 196 Ill. App. 3d 483 (1990), and the testimony of their expert, who's opinion defendants argue was "conclusory and insufficient as a matter of law" because the expert did not conduct an analysis of each billing entry. U&H responds its expert reviewed all of the billing entries submitted by U&H and testified that under the circumstances found within this case, U&H's bills were fair, reasonable and necessary for the legal representation provided, and the trial court properly relied on its expert's testimony. In *Mercado*, the court held as follows:

> "The burden is on the part of the party seeking the fees to present the court with sufficient evidence from which it can determine the reasonableness of the fees. [Citation.] A party attempting to justify a fee must show more than a compilation of hours multiplied by a fixed hourly rate, or copies of the bills issued to the client, because this data, alone, does not provide sufficient information as to reasonableness. [Citation.] A determination of reasonableness cannot be made on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees. [Citation.] A fee petition must specify 'the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor.' [Citation.] The party seeking fees, then, must present the court with 'detailed records maintained during the course of litigation containing facts and computations upon which the charges are predicated.' [Citation.]" *Mercado*, 196 Ill. App. 3d at 493 (citing *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 983-84 (1987)).

The *Mercado* court found the itemized bills the attorney submitted in that case did not contain "detailed records maintained during the course of litigation," and certain undated items listed on the bill were "too vague and lacking in sufficient details concerning the nature of the legal tasks

performed, the actual time spent on each task, the identity of the person who performed the tasks, the relationship of the legal tasks to the litigation, the necessity of the legal tasks, and the complexity of the *** matters;" therefore, the court held, the record did not contain an adequate basis to support the trial court's conclusion the fees were reasonable. *Id.* at 494.

¶ 33 Defendants' first argument U&H did not present competent evidence of the reasonableness of its total fees and costs fails because U&H submitted more evidence beyond a compilation of hours multiplied by a fixed hourly rate, copies of the bills issued to the client, or the conjecture or conclusions of the attorneys seeking the fees. *Id.* at 493. U&H produced the "detailed records maintained during the course of litigation containing facts and computations upon which the charges are predicated" *Mercado* requires. *Id.* (citing *Kaiser*, 164 Ill. App. 3d at 983-84).[8] The evidence provided the trial court with "the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor." *Id.* The trial court reviewed those records, and when it found they did not contain sufficient detail from which to determine whether the fees were reasonable, the court disallowed those fees. The record and the trial court's order belie defendants' argument.

¶ 34 Defendants' argument Zulkey's testimony is insufficient as a matter of law, because he did not conduct an analysis of each billing entry, fails because "[t]he weight to be given to expert testimony is for the trier of fact." *Dienstag*, 396 Ill. App. 3d at 36. In assigning weight to an expert's testimony the same rules that are applicable to other witnesses apply. *City of Chicago v. Concordia Evangelical Lutheran Church*, 2016 IL App (1st) 151864, ¶ 76. Thus, it was for the

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[8] Defendants argued the record does not include invoices from the paid bills, "only timesheets," and cites to an exhibit in the record. The timesheets plaintiff cited to contain entries stating "the services performed, by whom they were performed, the time expended thereon and the hourly rate charged therefor." *Mercado*, 196 Ill. App. 3d at 493.

trier of fact to resolve any gaps or inconsistencies in Zulkey's testimony. See *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). "Unless the opposite conclusion is evident from the record, the reviewing court will not substitute its judgment for that of the trier of fact on matters of credibility of a witness, weight of evidence and the inferences drawn from the evidence." *1472 N. Milwaukee, Ltd. v. Feinerman*, 2013 IL App (1st) 121191, ¶ 21. In addition to Zulkey's testimony, the trial court could rely on the attorneys' testimony and, most importantly, its own knowledge and experience. *McHenry Savings Bank v. Autoworks of Wauconda, Inc.*, 399 Ill. App. 3d 104, 113 (2010) ("The trial court may and should rely on its own knowledge and experience when determining the reasonableness of the fees sought."). As stated above, the trial court's order reflects it did analyze every billing entry pursuant to the guidelines of *Wildman* and Rule 1.5. Moreover, "we presume the trial court took all the evidence into consideration in rendering its decision." *Getto*, 392 Ill. App. 3d at 243 (Gordon, J., dissenting). Defendants have failed to demonstrate that the opposite conclusion—that the total fees and costs are unreasonable—is evident.

¶ 35 Next, we turn to defendants' argument the identity of the client in the engagement letter is ambiguous because "The Burnham Companies" "is a non-existent entity that is not a partnership, corporation or any other legal entity, and is nowhere defined in the Engagement Letter." Defendants argue the trial court erroneously found the engagement letter unambiguous then impermissibly used extrinsic evidence to construe the meaning of "The Burnham Companies" in the letter without construing that term against the drafters of the letter. U&H argues this court should reject defendants' argument "based upon the overwhelming amounts of evidence presented at trial." U&H argues the evidence at trial illustrated that "The Burnham Companies" was acting as an assumed name for businesses owned and controlled by the Gidwitz

family. Defendants reply the trial court's use of extrinsic evidence to define "The Burnham Companies" without first finding there was an ambiguity was erroneous as a matter of law.

> "Traditional contract interpretation principles in Illinois require that:
>
> > '[a]n agreement, when reduced to writing, must be presumed to speak the intention of the parties who signed it. It speaks for itself, and the intention with which it was executed must be determined from the language used. It is not to be changed by extrinsic evidence.' [Citation.]
>
> This approach is sometimes referred to as the 'four corners' rule. [Citation.]
>
> > In applying this rule, a court initially looks to the language of a contract alone. [Citation.] If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence. [Citation.] If, however, the trial court finds that the language of the contract is susceptible to more than one meaning, then an ambiguity is present. [Citation.] Only then may parol evidence be admitted to aid the trier of fact in resolving the ambiguity. [Citation.]" *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462-63 (1999).

¶ 36 The flaw in defendants' argument is that is characterizes the trial court's judgment in a way that is not supported by the record. Defendants asserted as follows: "The Trial Court held that the Engagement Letter was a 'valid and binding written contract' that 'remained in force throughout the engagement' and that 'fully and adequately set forth the terms of the engagement and the compensation to be paid to Plaintiffs.' [Citation.] *In other words*, the language of the

contract that controlled the engagement was unambiguous." (Emphasis added.) There is nothing in the trial court's judgment finding the engagement letter is unambiguous. True, there is no express finding the contract is ambiguous, but as we have already noted, the trial court in a bench trial is not required to make express findings in support of its rulings. See *People v. Roy*, 201 Ill. App. 3d 166, 183 (1990) ("it is a well-established rule that the trial court, as a trier of fact, is presumed to have only considered admissible evidence in reaching its determination. [Citation.] Accordingly, we find that in admitting Gremmels' statements into evidence the trial court appropriately considered the time, content, and circumstances of the statements were sufficient to establish their reliability *even though it did not articulate such a finding*." (Emphasis added.)). It is also a well-established rule that "[i]n a bench trial, a trial judge is presumed to know the law, and this presumption is rebutted only when the record affirmatively shows the contrary. [Citation.]" (Internal quotation marks omitted.) *Walker v. Chicago Housing Authority*, 2015 IL App (1st) 133788, ¶ 65. See also *In re Jonathon C.B.*, 2011 IL 107750, ¶ 72 ("This court presumes that a trial judge knows and follows the law unless the record affirmatively indicates otherwise.").

¶ 37 Here, defendants have pointed to no affirmative indication in the record that the trial court did not know that it must find the engagement letter ambiguous to consider the extensive extrinsic evidence presented on the parties' intent with regard to the identity of the client when Halperin signed the engagement letter on behalf of "The Burnham Companies." The trial court's finding that the letter "fully and adequately set forth the terms of the engagement and the compensation to be paid to the Plaintiffs" does not alter the conclusion the trial court found a term in the contract ambiguous such that it could hear extrinsic evidence to resolve the ambiguity. *CNA Casualty of California v. E.C. Fackler, Inc.*, 361 Ill. App. 3d 619, 624 (2005) ("if the court finds that the language of the Policy is susceptible to more than one meaning, then

an ambiguity is present, and we may consider parol evidence to resolve the ambiguity"). To be enforceable, the material terms of a contract must be sufficiently definite and certain to provide the trial court with a basis for deciding whether the agreement has been kept or broken. *Babbitt Municipalities, Inc. v. Health Care Service Corp.*, 2016 IL App (1st) 152662, ¶ 29. The evidence at trial was sufficient to permit the trial court to find "The Burnham Companies" was an assumed name or a common law partnership used for the real estate ventures of the Gidwitz family and that when Halperin signed the engagement letter using the name "The Burnham Companies" "it was for the benefit, and on behalf of the eight Gidwitz Family members." We find no error in the trial court's construction of the parties' agreement and the trial court's judgment is not against the manifest weight of the evidence.

¶ 38 Finally, defendants argue the trial court ignored U&H's contractual obligation to provide "candid and accurate assessments" of their fees. Defendants assert that "U&H provided estimates of fees and expenses that were so grossly exceeded that those estimates could not reasonably be considered candid or accurate, thereby breaching U&H's obligations under their own Engagement Letter." The trial court's judgment states defendants filed affirmative defenses and counterclaims for, *inter alia*, breach of contract. The court found in favor of U&H on the grounds defendants "did not sustain their burden of proof." The trial court's judgment referred only to a counterclaim for breach of contract and did not specify the claim was for breaching the obligation to provide candid and accurate assessments. But see *supra* ¶ 26 (citing *American Wheel & Engineering Co.*, 132 Ill. App. 3d at 212). "To recover for breach of contract, a plaintiff must prove (1) the existence of a contract; (2) plaintiff performed all contractual obligations; (3) facts constituting a breach; and (4) damages from the breach." *Storino, Ramello & Durkin v. Rackow*, 2015 IL App (1st) 142961, ¶ 17. "Whether a party has committed breach of contract is a question of fact, which will not be disturbed on review unless the finding is

against the manifest weight of the evidence." *Israel v. National Canada Corp.*, 276 Ill. App. 3d 454, 461 (1995). It is the province of the trier of fact to weigh the evidence, and "[a] reviewing court may not reweigh the evidence or substitute its judgment for that of the trier of fact. [Citations.]" *Fox v. Heimann*, 375 Ill. App. 3d 35, 46 (2007).

¶ 39 In this case, the duty under the contract to provide "candid and accurate" estimates must have some limits. An estimate is by definition imprecise; it is an approximation. We do not believe the parties intended that U&H would breach the contract simply if its estimate was wrong. Defendants have pointed to no evidence of what level of deviation might rise to the level of a breach of the parties' agreement. Defendants have pointed this court to nothing in the agreement (or any extrinsic evidence) indicating where the line is drawn between estimate and breach, and it was defendants' burden to prove U&H breached the contract. We acknowledge that in this case, the variance was great. However, the evidence provided some explanation for that variance, which might weigh against finding U&H breached the contract. We cannot say the trial court's judgment is against the manifest weight of the evidence. Moreover, we note that, just as defendants argued, U&H's bills exceeded their estimates multiple times, and the first two times, defendants paid the bill. "A party to a contract may waive, by express agreement or by its course of conduct, its legal right to strict performance of the terms of a contract. [Citation.] The waiver doctrine is intended to prevent the waiving party from lulling another into a false belief that strict compliance with a contractual duty will not be required and then suing for noncompliance." *Lake County Grading Co. of Libertyville v. Advance Mechanical Contractors, Inc.*, 275 Ill. App. 3d 452, 463 (1995). Accordingly, the trial court's judgment is affirmed.

¶ 40 Cross-Appeal

¶ 41 We now turn to a consideration of U&H's cross-appeal. U&H appeals the trial court's judgment denying its request for prejudgment interest of $618,401.95 under the following

language in the parties' agreement: "The firm reserves the right to charge interest at the prime rate for accounts that are sixty (60) days past due." The trial court's order, denying U&H prejudgment interest, states:

> "Plaintiff never assessed interest on fees and costs prior to the time the fee dispute arose. Because there was a legitimate dispute as to the amount of attorneys' [*sic*] fees and costs due and owing that had to be resolved by this Court, and in light of the fact that the attorneys' [*sic*] fees and costs far exceeded what had originally been estimated by the Plaintiffs and anticipated by the Defendants, the Court is not awarding interest on the sums due and owing prior to the date of this order."

¶ 42 Regarding the failure to charge interest on fees and costs prior to the time the fee dispute arose, U&H argues on appeal "the circuit court failed to cite any authority for its position that a party must first assess interest on unpaid fees and costs prior to the fee dispute arising." U&H also cites testimony of its lead attorney on this case stating that given their ongoing representation of defendants "it would not be, in his judgment, a good practice for U&H to do that [(charge the interest)] given the size of the very major assignment."

¶ 43 This court has held: "A party to a contract may waive, by express agreement or by its course of conduct, its legal right to strict performance of the terms of a contract. [Citation.] The waiver doctrine is intended to prevent the waiving party from lulling another into a false belief that strict compliance with a contractual duty will not be required and then suing for noncompliance." *Lake County Grading Co. of Libertyville*, 275 Ill. App. 3d at 463. Further, "[i]n actions for breach, 'estoppel support[s] the notion that a party to a contract may not lull another into a false assurance that strict compliance with a contractual duty will not be required and then sue for non-compliance.' [Citation.]" *Hancock v. Illinois Central Sweeping LLC*, 73 F. Supp. 3d 932, 941 (N.D. Ill. 2014). In *Barnes v. Northwest Repossession, LLC*, 210 F. Supp. 3d

954 (N.D. Ill., September 26, 2016), the plaintiff agreed to make bi-weekly payments on the outstanding balance on the purchase of a used automobile. *Barnes*, 210 F. Supp. 3d at 958. A "Memorandum of Installment Sale" informed the plaintiff that the seller would impose a $50 late charge on every late payment." *Id.* The plaintiff failed to make payments between July and January, and as a result the seller imposed late fees at the beginning of August, September, October, November, December, and January. *Id.* In late January, the seller accepted a partial payment and gave the plaintiff a late fee credit for one month. *Id.* at 958-59. Then, between January and March the seller accepted several more payments. *Id.* at 959. Ultimately, the vehicle was repossessed. *Id.* at 960. The plaintiff sued alleging the repossession was unlawful. The court held the late fees in that case were unlawfully excessive. *Id.* at 964. The court also held that "[e]ven assuming, *arguendo*, that Austin's late fees were not unlawfully excessive, under Illinois law, a contracting party may waive provisions beneficial to it or waive strict compliance by conduct or actions indicating that strict compliance with a particular provision will not be required. [Citations.]" (Internal quotation marks omitted.) *Id.* The court held, specifically,

> "[w]here a party accepts late payments it may waive or suspend its right to timely payments and its right to declare a forfeiture unless the buyer is given a definite and written notice of the intention to require strict compliance with the contract in the future. To reestablish strict compliance, the notice must give a reasonable time for performance, and what is a reasonable time depends on the facts in the case. [Citations.]" *Id.* at 965.

¶ 44 The trial court could rely on U&H's failure to charge interest on prior overdue accounts to decide not to award prejudgment interest. The trial court's judgment is not legally erroneous and is not against the manifest weight of the evidence.

¶ 45 U&H also appeals the trial court's decision to deduct $356,884.75 in legal fees and costs billed by attorney Polales and paralegal Duncan from the fees sought in the complaint. U&H argues the deduction was "not based upon the competent evidence produced during trial." The issue is not, contrary to U&H's argument, "the quality of both Mr. Duncan and Mr. Polales' work product and their respective importance to the case." The issue was whether their billing records provided sufficient evidence from which the trial court could determine the reasonableness of the fees. *Mercado*, 196 Ill. App. 3d at 493 (citing *Kaiser*, 164 Ill. App. 3d at 983). The trial court found "Mr. Duncan used a catch-all term of 'Trial Preparation' *** with no additional detail." The court concluded that "[w]hile Mr. Duncan testified generally about what he did during that time frame, the billing entries lacked sufficiency for the Court to assess whether they complied with the requirements of *Wildman* or Rule 1.5(a)." As for Mr. Polales, he also "used a catch-all term of 'Trial Preparation' or 'Prepare for Trial' " for several entries. The court similarly concluded that "[w]hile Mr. Polales testified generally about what he did during that time frame, the billing entries lacked sufficient detail for the Court to assess whether they complied with the requirements of *Wildman* or Rule 1.5(a)."[9]

¶ 46 U&H admits that Duncan's "billing entries went from being quite detailed *** to an entry of 'trial preparation' " during the period the trial court made deductions from his billing entries. U&H points to Duncan's testimony that: "That's always been the standard practice, as far as I have understood in my career. At the time of trial there are so many things happening through the course of the day. It's difficult to provide a detailed time record with the amount of things going on at the time." The trial court was not bound by any standard practice for paralegals, and while it may have been difficult for Duncan to add more detail to his billing records during trial,

[9] The trial court disallowed bills for six others as well as certain other costs, which U&H does not challenge on appeal.

we find no requirement that billing records must be kept strictly contemporaneously without later supplementation. See *Anderson v. Anchor Organization for Health Maintenance*, 274 Ill. App. 3d 1001, 1008 (1995) ("The fact that Travis did not maintain contemporaneous detailed time records in a personal injury action does not preclude her right to recovery. [Citation.] We find that she presented sufficient evidence from which the trial court could determine a reasonable fee for her services."). Moreover, the trial court did not find Duncan's or John Ruskusky's testimony sufficient to supplement Duncan's billing records for the specific dates in question. In support of the work Duncan did during the period the trial court disallowed his fees, U&H points to Ruskusky's testimony as the trial attorney who worked closely with Duncan during the trial. Ruskusky testified Duncan did "attendant research and follow-up *** to find related documents." He stated Duncan's role in trial was to pull exhibits and "do the necessary additional analysis *** to find other related documents." This testimony is not so clear as to Duncan's activities that we can say the trial court's judgment as to Duncan is against the manifest weight of the evidence.

¶ 47 Next, U&H argues defendants' attorney made a judicial admission that Polales' fees were reasonable. We disagree. "Judicial admissions are deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." (Internal quotation marks omitted.) *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010). The statement cited by U&H is not a clear and unequivocal statement of concrete fact about the reasonableness of Polales' fees. Counsel stated: "Mr. Power [(U&H's attorney)] gives Mr. Halperin credit for being an honest man. All right. I'll do the same for him. I'll talk about Dean Polales. Dean Polales' fees were about $640,000. $640,000 for the main trial—lead trial attorney on the case." As with Duncan, the quality of Polales' work or whether he reduced his usual fee is not germane. U&H argues Polales "testified that his unpaid bills were fair, reasonable and necessary to

perform the legal work he provided to Defendant Burnham Companies. The evidence supported his testimony." Again, U&H did not cite this court to specific testimony describing what Polales meant by "trial preparation" or "prepare for trial" in his billing entries. U&H has not met their burden to prove the trial court's judgment is against the manifest weight of the evidence.

¶ 48 Finally, U&H's motion, taken with the case, to dismiss defendants' cross-appeal from the denial of their counterclaims is denied as moot because defendants forfeited any issues concerning that portion of the trial court's judgment. Defendants failed to make any arguments in support of an appeal from that portion of the trial court's judgment. "Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing. 210 Ill. 2d R. 341(h)(7). Consistent with the plain language of the rule, this court has repeatedly held that the failure to argue a point in the appellant's opening brief results in forfeiture of the issue." (Internal quotation marks omitted.) *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010).

¶ 49 CONCLUSION

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

¶ 51 Affirmed.