2013 IL App (2d) 121083-U
No. 02-12-1083
Order filed November 25, 2013



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* MARRIAGE OF THOMAS S. BLOOM | ) | Appeal from the Circuit Court |
| | ) | of Du Page County. |
| Petitioner-Appellee, | ) | |
| | ) | |
| and | ) | No. 06-D-2265 |
| | ) | |
| MICHELLE M. BLOOM, | ) | Honorable |
| | ) | Robert A. Miller, |
| Respondent-Appellant. | ) | Judge, Presiding. |

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

¶ 1 **ORDER**

¶ 2 *Held:* The trial court did not err in dismissing the fraud counts contained in respondent's petition for relief from judgment; however, dismissal of conscionability count was error; and respondent's claims that trial court should have permitted amendment of her petition or granted her motion to reconsider based on newly discovered evidence were moot as they pertained to conscionability and did not cure defects in her claims of fraud.

¶ 3 I. INTRODUCTION

¶ 4 This cause comes to us following the trial court's denial of respondent's third amended petition to vacate the judgment dissolving her marriage to petitioner, Thomas S. Bloom. See 735

ILCS 5/2-1401 (2008). Respondent's petition contains three counts–the first two allege fraud and the third alleges that the distribution of marital assets set forth in the judgment for dissolution of marriage is unconscionable. All counts relate to the valuation of Bloom Partners, Inc., an asset awarded to petitioner in the judgment. For the reasons that follow, we affirm in part, reverse in part, and remand.

¶ 5 II. BACKGROUND

¶ 6 The following is a summary of the pertinent allegations contained in respondent's petition. On March 18, 2005, petitioner created a business known as Bloom Partners, Inc., "which engaged primarily in the specialized area of stock surveillance." The business was created using marital funds and was a marital asset. Petitioner filed his initial divorce petition in October 2005 (the parties were married in 1986). He subsequently voluntarily dismissed this petition and refiled it in October 2006. In his financial disclosure statements tendered early in this litigation, petitioner stated that the business had no value. In November 2007, petitioner tendered a third disclosure statement in which he stated that Bloom Partners was worth $50,000.

¶ 7 Respondent retained Edward Morris of Clifton Gunderson LLP, "an expert business valuator," to ascertain the value of Bloom Partners. Morris was respondent's agent. Because of the specialized nature of Bloom Partners, "a significant portion of the information required in order to arrive at a fair and accurate valuation of the business[] could only have come from [petitioner]." Hence, petitioner was the "primary source of information" used by Morris. Morris opined that Bloom Partners was worth $1,193,000. This figure included a reduction in the value of the company by 70%, as Morris believed that this portion of its value represented personal goodwill attributable to petitioner. Petitioner deposed Morris on March 14, 2008.

¶ 8 Petitioner also hired a business valuator, Warren T. Jacobsen. Jacobsen completed his own valuation, which included speaking with petitioner and examining documents created by petitioner. Jacobsen concluded that the value of Bloom Partners was $183,000. Petitioner tendered to respondent's counsel a pretrial memorandum in January 2008, which stated that Bloom Partners was worth $183,000. Petitioner disclosed this figure in his fourth financial disclosure statement on or about March 31, 2008. Respondent deposed petitioner on April 3, 2008.

¶ 9 During pretrial discussions, Judge Equi (who presided over earlier portions of this litigation) "made recommendations as to the division of marital assets for settlement purposes and accepted the representations made by [respondent] that Bloom Partners was primarily composed of personal goodwill." Trial commenced on April 8, 2008. However, on April 15, 2008, the parties reached a settlement. Pursuant to the settlement, petitioner was awarded Bloom Partners. A judgment for dissolution of marriage was entered on April 17, 2008, which incorporated the marital settlement agreement (MSA).

¶ 10 As part of the settlement, the parties were required to exchange their federal tax returns by May 15 of each year. When respondent received petitioner's 2008 tax return, she noted that petitioner had sold Bloom Partners to NASDAQ for a sum exceeding $19,000,000. Respondent filed her initial petitioner to vacate the judgment for dissolution of marriage on September 14, 2009.

¶ 11 Her initial petition was dismissed without prejudice in January 2010. She filed an amended petition on January 28, 2010, which petitioner moved to dismiss in accordance with section 2-619 of the Civil Practice Law (735 ILCS 5/2-619 (West 2010)). Respondent alleges that in an affidavit supporting his motion to dismiss, petitioner, for the first time, admitted that he formed the intent to sell Bloom Partners prior to the entry of the judgment for dissolution of marriage and that he met

with representatives of the New York Stock Exchange (NYSE) to discuss a sale a few days after the judgment was entered. Respondent also alleges that she acted diligently by bringing this information to the trial court in the pleading at issue in this appeal (this pleading was entered pursuant to an agreed order).

¶ 12 Respondent's first count is titled, "Fraud–Inducing [respondent] to Relinquish Her Rights to Bloom Partners, Inc." In it, she alleges that petitioner had a "duty to truthfully disclose all material facts regarding the value of Bloom Partners." Knowledge of the details of the company's operations were exclusively the province of petitioner. Petitioner's duty allegedly arose from he and respondent being partners in the business and his obligations to truthfully disclose information to the trial court in his financial disclosure statements and testimony. Petitioner made several misrepresentations in an effort to cause respondent to relinquish her interest in Bloom Partners "for a small fraction of its true value," including (1) that petitioner had no intention of selling Bloom Partners, that he intended to continue to operate it as he always had, and that, accordingly, profits form the business would remain about the same; (2) the value of Bloom Partners was limited as it was largely based on his unique skills and involvement in the company; (3) the value of Bloom Partners was comprised mostly of petitioner's personal goodwill; (4) Bloom Partners was not scalable beyond 50 clients due to the nature of its business, which limited its value; (5) Bloom Partners was limited to 50 clients because petitioner could service no more than that; (6) Bloom Partners was limited to 50 clients because the business was heavily reliant on petitioner's individual expertise; (7) Bloom Partners had no or nominal value without petitioner; and (8) Bloom Partners' value was $183,000.

¶ 13 Further, respondent alleged, petitioner's fraudulent representations about scalability induced respondent and the business valuators to believe that the value of Bloom Partners would remain relatively constant. Petitioner's representations about scalability, operating capacity and potential growth of its client base were Morris's sole source of information about these considerations. It was understood by the parties and their representatives that Bloom Partners would continue to operate on its current scale for the foreseeable future. Contrary to petitioner's representations, Bloom Partners was scalable beyond 50 clients and its value was not significantly composed of petitioner's personal goodwill. After Bloom Partners was sold to NASDAQ, it "was able to offer an enhanced suite of stock intelligence services to approximately there [*sic*] thousand nine hundred (3,900) companies." Had Morris been informed that petitioner was seeking a buyer for Bloom Partners, the value of the company was not significantly apprised of petitioner's goodwill, and it was scalable well beyond 50 clients, he would have advised respondent to further investigate the value of the company.

¶ 14 Respondent further alleged that, as shown by his affidavit dated June 3, 2010, respondent formed the intent to sell Bloom Partners at a price far exceeding $183,000 prior to the entry of the judgment for dissolution of marriage. Petitioner did not disclose his intent to respondent. In this affidavit, respondent also admitted that he met with the NYSE and NASDAQ within days of inducing respondent to give up her interest in Bloom Partners. Less than three months after respondent relinquished her interest, petitioner received an offer from the NYSE to purchase Bloom Partners for $15,000,000. Within six months, petitioner sold the company to NASDAQ for $19,000,000. Between the time the judgment for dissolution of marriage was entered and the time Bloom Partners was sold, there were no significant changes in the company that would have materially impacted upon its value.

¶ 15 Respondent alleged that petitioner provided fraudulent information to respondent and the business valuators to cause them to undervalue Bloom Partners. Petitioner knew his statements were untrue and that respondent was relying upon them in determining whether to relinquish her interest in Bloom Partners. Respondent had no reason to believe petitioner's statements were false and justifiably relied on them. As a result, respondent contends she was fraudulently induced to give up her interest in Bloom Partners.

¶ 16 Respondent further alleged that these facts were not known at the time of the entry of the judgment for dissolution of marriage. Petitioner's misrepresentations influenced the recommendations made by the circuit court during negotiation of the MSA, and respondent relied upon these recommendations in making her decision. Respondent's reliance on petitioner's misrepresentations caused her to accept a value for Bloom Partners far below its actual value. Moreover, the trial court was uninformed as to the material facts when it approved the MSA.

¶ 17 Respondent alleged that she acted diligently in that she filed her third amended petition to vacate the judgment for dissolution of marriage "within a short amount of time after her discovery that [respondent] fraudulently induced her to relinquish her rights in Bloom Partners for a small fraction of the company's actual worth."

¶ 18 Count II is titled "Fraud–Concealment and Misrepresentation of Scalability of Bloom Partners." Here, respondent alleges petitioner had a fiduciary duty to truthfully disclose all material facts about Bloom Partners, as he was in sole possession of this information. Petitioner represented that Bloom Partners was dependent on his personal expertise and "knowledge of proprietary stock surveillance techniques and proprietary processes developed by him for use by Bloom Partners." He stated that he was Bloom Partners primary asset. His expertise was so specialized that it would

take years to train other employees to do what he was doing, which limited Bloom Partners' scalability and value. Petitioner said that Bloom Partners was not was not scalable beyond 50 clients. Petitioner told Morris that Bloom Partners would not scale well and that he did not intend to scale it beyond 50 clients. Petitioner's representations were the sole source of information "regarding scalability, operating capacity and potential client base growth of Bloom Partners." Morris relied on petitioner's representations and reduced the value of Bloom Partners to reflect that much of its value was attributable to petitioner's personal goodwill. After the sale to NASDAQ, the company, newly formed as Pinpoint Market Intelligence–Bloom Partners, offered services to approximately 3,900 companies. Had Morris known Bloom Partners was scalable to 3,900 clients, he would have arrived at a much higher value.

¶ 19 Respondent also asserted that petitioner's misrepresentations were intended to deceive respondent and induce her to sign the MSA and relinquish her interest in Bloom Partners. They also improperly influenced the trial court's pretrial recommendations. Respondent alleged that she was diligent in seeking to uncover petitioner's intentions about the future operation of Bloom Partners in that she made extensive discovery requests, issued subpoenas, and reviewed corporate records.[1]

¶ 20 In her third count, respondent alleges that the distribution of assets in the judgment for dissolution of marriage is unconscionable. It was premised upon petitioner's fraudulent misrepresentations, namely, that the value of Bloom Partners was $183,000 rather than $19,000,000. Respondent also points to alleged misrepresentations regarding petitioner's future plans for the

[1]At this point, a page of the petition (page 24) is missing from the record, which apparently contains the majority of respondent's prayer for relief with respect to count II as well as additional allegations.

company; however, these are largely subsumed in the allegation about the value of the company. Respondent was induced to sign the MSA based on her misunderstanding of the value of Bloom Partners. Respondent attempts to ascertain the true value of Bloom Partners were thwarted by petitioner, as he alone had control of information essential to calculating the value of the company. The division of property contained in the MSA and the judgment for dissolution of marriage unreasonably and disproportionately favored petitioner.

¶ 21 The trial court dismissed respondent's petition with prejudice, denying her leave to further amend the petition. Respondent filed a motion to reconsider, which was denied, and then initiated this appeal. For the reasons that follow, we affirm in part, reverse in part, and remand.

¶ 22 III. ANALYSIS

¶ 23 As this case involves the dismissal of a petition for relief from judgment pursuant to section 2-1401 of the Civil Practice Law (735 ILCS 5/2-1401 (West 2010)), the following elements must be pleaded: "(1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986). Petitions under section 2-1401 are equitable in nature. *Paul v Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 95 (2006). As our supreme court has explained, "The power to set aside a judgment, and thus allow a litigant to have his or her day in court, ' "is based upon substantial principles of right and wrong and is to be exercised for the prevention of injury and [for the] furtherance of justice." ' " *Id.* (quoting *Airoom, Inc.*, 114 Ill. 2d at 225, quoting *Diner's Club, Inc. v. Gronwald*, 43 Ill. App. 3d 164, 168 (1976) and *Spencer v. American United Cab Ass'n*, 59 Ill. App. 2d 165, 172 (1965)). Put simply, "Relief should be granted under section 2-1401 when necessary to achieve justice." *People*

*v. Lawton*, 212 Ill. 2d 285, 298 (2004). Moreover, section 2-1401 is to be liberally construed to accomplish such ends. *In re Detention of Morris*, 362 Ill. App. 3d 321, 323 (2005). A petitioner bears the burden of proving a claim brought pursuant to this section by a preponderance of the evidence. *Wells v. St. Bernard Hospital*, 2013 IL App (1st) 113512, ¶ 38.

¶ 24 Where no evidentiary hearing is held and the action below culminates in the dismissal of the petition, review is *de novo*. *People v. Harvey*, 379 Ill. App. 3d 518, 521 (2008); see also *In re Marriage of Goldsmith*, 2011 IL App (1st) 093448, ¶¶ 15-17. Here, we must consider the merits of respondent's claims of fraud and unconscionability, as well as her diligence in presenting these claims in the underlying action and in the context of the petition at issue here. We first turn to the question of diligence.

¶ 25 A. Diligence

¶ 26 As noted above, diligence is required in two forms–respondent must establish that she acted with due diligence in presenting her claim to the trial court in the original action as well as in her current petition for relief from judgment. In assessing diligence, "courts look to whether petitioner, at the time of the entry of the judgment and after making every effort in his power, failed to raise or discover the asserted grounds through no fault or neglect of his own." *Browning, Ekleton Division v. Williams*, 256 Ill. App. 3d 299, 303 (1993). Where an outcome is brought about by a party's "fraudulent behavior, a court may vacate the award regardless of diligence." *Id*. It bears repeating that this proceeding is equitable in nature. *Id*. Thus, "[t]he requirement of due diligence need not be enforced when fraud or unconscionable behavior is shown." *Tsuetaki v. Novicky*, 158 Ill. App. 3d 505, 513 (1983); see also *In re Marriage of Armstrong*, 255 Ill. App. 3d 844, 846 (1993). A petitioner's lack of diligence may be deemed to result from an excusable mistake in light of the

totality of the circumstances, including the conduct of the litigants. *Ameritech Publishing of Illinois v. Hadyeh*, 362 Ill. App. 3d 56, 60 (2005). To set aside a judgment based on newly discovered evidence, a petitioner must show that the evidence was not known to him or her at the time of the original proceeding and could not be discovered with the exercise of *reasonable* diligence. *Goldsmith*, 2011 IL App (1st) 093448, ¶ 15.

¶ 27 We have little difficulty concluding that respondent was diligent in bringing the instant petition. The parties were divorced on April 17, 2008. Respondent filed her initial petition to vacate the judgment on September 14, 2009. We note that the petition was filed within the two-year period specified in section 2-1401. 735 ILCS 5/2-1401 (West 2008). Furthermore, respondent was not aware of the sale of Bloom Partners until the spring of 2009, when she received a copy of petitioner's 2008 tax return. Clearly, that respondent filed her petition in September 2009 constituted diligence in pursuing this action. See *Armstrong*, 255 Ill. App. 3d at 846.

¶ 28 Whether respondent was diligent in the original action requires a closer analysis. Militating in favor of respondent are the facts that she engaged in formal discovery designed to ascertain the value of Bloom Partners and engaged an expert to assist her in making that determination. On the other hand, respondent did not avail herself of opportunities to depose some witnesses that may have shed light upon the value of Bloom Partners. Petitioner points out that respondent was given leave to issue subpoenas to NASDAQ, OMX Group, the NYSE, and Bloom Partners. By the time she filed her third-amended petition, the NYSE had responded, and respondent was given leave to depose numerous individuals, who, petitioner asserts, "likely had knowledge of those documents she received." Thus, it appears that respondent could have done more.

¶ 29 However, the law only requires *reasonable* diligence. *Goldsmith*, 2011 IL App (1st) 093448, ¶ 15. Respondent's efforts to ascertain the value of Bloom Partners were not insignificant. Indeed, she went as far as to hire an expert, Morris, to value the business. That expert, based on information coming, in part, from petitioner, determined that Bloom Partners was worth $1,193,000. The expert reduced the value of the company by 70%, believing, consistent with petitioner's representations, that a large portion of its value represented personal goodwill attributable to petitioner. Regardless of whether petitioner's representations rose to the level of legal fraud, they induced the expert to value the company at a price that was significantly below the price it sold for a short time later. *Cf. Hahn v. County of Kane*, 2013 IL App. (2d) 120660, ¶ 12 (quoting *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313 (2001)) ("Equitable estoppel involves, among other things, an element of 'fraud' (though not necessarily fraud 'in the strict legal sense or done with intent to mislead or deceive')."). Because petitioner's apparently inaccurate representations contributed to respondent's perception of the value of the company, we deem it inappropriate to apply the diligence requirements in a strict fashion. See *In re Marriage of Travlos*, 218 Ill. App. 3d 1030, 1037 (1991) ("Courts reason that when an opponent suppresses information, as to prevent the inquirer from realizing what has occurred, the failure to discover the information is the result of the opponent's fault and not the inquirer's negligence."). As such, to the extent respondent's conduct evinced a lack of diligence in the proceedings below, we hold that it was excusable in this case. We recognize that Morris stated during his deposition that Bloom Partners could be worth considerably more to a synergistic buyer (as we discuss in the next section). However, in the context of this *equitable* inquiry, we deem that insufficient to mitigate the effect of the inaccurate information conveyed by petitioner regarding the value of Bloom Partners.

¶ 30 In sum, we hold that respondent's conduct was sufficiently diligent under the circumstances, and, to the extent that it arguably was not, any lack of diligence was excusable under the totality of the circumstances in this case.

¶ 31 B. Fraud

¶ 32 We next turn to petitioner's two fraud counts. Fraud is an action at law. *Flashner Medical Partnership v. Marketing Management, Inc.*, 189 Ill. App. 3d 45, 54 (1989). To state an action for common law fraud, the essential elements of the tort must be pleaded with specificity. *Illinois State Bar Ass'n Mutual Insurance Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 38. Those elements are:

> (1) the existence of a false statement of material fact, (2) made by a party who knows or believes it to be false, (3) with the intent to induce another to act, (4) which causes action by another in reasonable reliance on the statemen's truth, and (5) causes an injury to the other resulting from the reliance." *Krilich v. American National Bank & Trust Co.*, 334 Ill. App. 3d 563, 570 (2002).

It is axiomatic that "[t]he party alleging fraudulent misrepresentation must show it justifiably relied on another's statements." *D.S.A. Finance Corp. v. County of Cook*, 345 Ill. App. 3d 554, 560 (2003).

¶ 33 Petitioner points out that, in his deposition, Morris valued Bloom Partners at $3,374,000, not deducting for goodwill, and further opined that a "synergistic buyer"[2] might pay up to four times this

[2] A "synergistic buyer," also known as a "strategic buyer," is one whom desires to make a purchase that will "create a synergy with their existing business" and, because the buyer "may actually get more value out of an acquisition than the intrinsic value of the company being acquired," will "usually be willing to pay a premium price to have the deal go through." Investopedia, *available at* http://http://www.investopedia.com/terms/s/strategic-buyer.asp (last visited September 19, 2013).

amount. Thus, respondent was aware that Bloom Partners might be worth more than the $183,000 at which petitioner's expert valued it. As such, it does not appear to us that respondent can satisfy the reliance element of a fraud claim. We emphasize that here, we are assessing whether respondent can state an action for common law fraud. This is a different question than whether respondent's actions showed a lack of diligence. On this equitable question, as we explain above, that petitioner's representations contributed to respondent's perception of Bloom Partners' value is sufficient to excuse any purported lack of diligence. *Cf. Hahn*, 2013 IL App. (2d) 120660, ¶ 12 (distinguishing between fraud in the legal sense and fraud in the equitable sense). Nevertheless, we hold that Morris's testimony precludes a claim of common-law fraud.

¶ 34 In short, we hold that respondent cannot state a claim for fraud, and both fraud counts were properly dismissed.

¶ 35 C. Conscionability

¶ 36 The final count of respondent's petition alleged that the distribution of assets set forth in the MSA and judgment for dissolution of marriage is unconscionable. Unconscionability may be procedural, substantive, or some combination of the two. *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 21 (2006). Procedural unconscionability concerns the manner in which a provision made it into the body of a contract (*i.e.*, fraud, duress, unequal bargaining power). See *Razor v. Hyundai Motor America* 222 Ill. 2d 75, 100 (2006). That is, "A contract is procedurally unconscionable if an impropriety in the process of forming the contract deprived a party of a meaningful choice." *In re Marriage of Tabassum & Younis*, 377 Ill. App. 3d 761, 775 (2007). On the other hand, substantive unconscionability concerns whether the terms of the contract are inordinately one-sided and oppressive. *Id.* In the substantive vein, "Unconscionability has been equated with one-sidedness

or oppressiveness and an unconscionable bargain has been defined as one no man in his right senses would make and which no fair and honest man would accept." *In re Marriage of Brandt*, 140 Ill. App. 3d 1019, 1021 (1986).

¶ 37 Here, respondent has stated a claim for unconscionability on substantive principles alone. As she points out, Bloom Partners sold for $19,000,0000, which is over seven times the value of the marital estate as represented by petitioner's comprehensive financial statements. Petitioner states that respondent received "a minimum of $4.5 million in assets and maintenance." Respondent was awarded maintenance in the amount of $34,150 per month for 60 months. We note that the total value of respondent's maintenance is over $2,000,000, so the value of marital assets awarded her was about $2,500,000. It is inferable that no person in their "right senses" (*Brandt*, 140 Ill. App. 3d at 1021) would agree to forego a claim to an asset worth nearly $20,000,000 for one-eighth of that amount. Moreover, even factoring in maintenance, Bloom Partners still sold for worth nearly five times what respondent received.

¶ 38 Petitioner asserts that courts have affirmed divisions of assets that were "far more 'one-sided' than" the one in the present case. To this end, petitioner cites *In re Marriage of Gorman*, 284 Ill. App. 3d 171,181 (1996); however, that case held that the mere fact that an agreement favors one party does not render it unconscionable. In the wake of *Razor*, 222 Ill. 2d 75, that is no longer the law–a contract may be found unconscionable on substantive grounds alone. That the *Gorman* court was applying law that is no longer valid renders its assessment of the facts of limited value. *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 707 (1996), did not involve a motion to dismiss. While *In re Marriage of Lindjord*, 234 Ill. App. 3d 319 (1992), involved a motion to dismiss, it is distinguishable on its facts. That case involved a marriage of a short duration, the husband paid the

wife's college expenses, the marital estate was worth $106,420 and the wife received almost $40,000 (including maintenance). *Id*. at 327. Conversely, this case involved a long marriage, respondent received a far lesser percentage of the total value of the estate (even accounting for maintenance), and there are no comparable facts to the wife being provided with a college education.

¶ 39 Petitioner contends that a court will only find a marital settlement agreement unconscionable if a spouse is left destitute. Petitioner cites, *inter alia*, *Brandt*, 140 Ill. App. 3d 1019, in support. It is true that the *Brandt* court declined to find an agreement unconscionable because the wife was not left destitute. *Id*. at 1024. However, before making this finding, the court explained:

> "The next inquiry to be made concerns the economic circumstances of the parties resulting from the agreement. [Citation.] Traditional concepts of unconscionability are to be applied in determining whether the economic situation resulting from the agreement is unconscionable. [Citation.] *Furthermore*, the propriety of the agreement must be determined in light of the positions and needs of the parties. [Citation.]" (Emphasis added.) *Id*.

Thus, the "needs of the parties" is set forth as an alternate basis for a finding of unconscionability. Under ordinary circumstances (*i.e.*, "[t]raditional concepts or unconscionability"), we do not inquire into the economic status of the parties to a contract when assessing unconscionability. See, *e.g.*, *Kinkel*, 223 Ill. 2d 20-43; *Razor*, 222 Ill. 2d at 99-105. Under the present circumstances, respondent has stated a claim regardless of the respective needs of the parties.

¶ 40 Petitioner further argues that respondent has "failed to demonstrate her competence to allege that the $19 million purchase priced in November 2008 represented what the fair market value would have been in April 2008" when the judgment for dissolution of marriage was entered. Petitioner's

assertion defies credulity. From the timing and circumstances of the sale alone, it can be inferred that Bloom Partners was worth far more than the value attributed to it at the time of the judgment for dissolution of marriage. A mere seven months separated these events, and it stretches the bounds of reason and logic to conclude that the business appreciated to that degree in such a short time. We need not abandon common sense here. See *People v. Natal*, 368 Ill. App. 3d 262, 267 (2006); *Tindell v. McCurley*, 272 Ill. App. 3d 826, 832 (1995).

¶ 41 To conclude, we hold that the court erred in dismissing respondent's claim that the division of property in the MSA and judgment for dissolution of marriage is unconscionable.

¶ 42 D. Other Issues

¶ 43 Respondent contends that the trial court should have granted her request to amend her third-amended petition. This amendment would add allegations concerning information she received from the NYSE in response to a subpoena. This information concerned a decrease of $5,000,000 in retained earnings in 2007 compared to 2006 (respondent intimates that these earnings were concealed) and petitioner's acquisition of a $3,500,000 home following the entry of the judgment for dissolution of marriage.

¶ 44 As this pertains to her conscionability count, this request is moot, as we have determined that respondent can proceed on that count. If respondent wishes to rely on additional evidence in support of this claim, it can be dealt with as a matter of evidentiary law and other relevant principles. As for petitioner's fraud counts, the allegations sought to be added by amendment would not cure their deficiency.

¶ 45 We further note that respondent contends the trial court erred in denying her motion to reconsider its dismissal of her petition. In support, she references what she terms newly-discovered

evidence, specifically the decrease in retained earnings and the house purchase. Again, as it pertains to conscionability, this argument is moot, and as it pertains to fraud, it does not cure the defects in respondent's claims.

¶ 46 IV. ANALYSIS

¶ 47 In light of the foregoing, we reverse the trial court's dismissal of respondent's conscionability claim and otherwise affirm its judgment. This cause is remanded for further proceedings consistent with the opinions expressed herein.

¶ 48 Affirmed in part; reversed in part; cause remanded.