2022 IL App (4th) 210547-U

NO. 4-21-0547

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 30, 2022
Carla Bender
4th District Appellate
Court, IL

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| MARK JEHLE, Individually and on Behalf of Jehle Bros., Inc., Plaintiff-Appellee, v. MERLE JEHLE, Defendant-Appellant. | ) | Appeal from the Circuit Court of Livingston County No. 17CH13 Honorable Jennifer H. Bauknecht, Judge Presiding. |

JUSTICE BRIDGES delivered the judgment of the court.
Presiding Justice Knecht concurred in the judgment.
Justice Turner concurred in part and dissented in part.

**ORDER**

¶ 1 *Held*: The trial court did not err in finding that defendant breached his fiduciary duties to plaintiff and the parties' close corporation. Nor did the trial court err in taking judicial notice, awarding punitive damages against defendant, and ordering him to forfeit compensation for the duration of his breach. Therefore, the trial court's judgment is affirmed.

¶ 2 At issue in this appeal is the trial court's judgment in favor of plaintiff, Mark Jehle, individually and on behalf of Jehle Bros., Inc. (JBI), and against defendant, Merle Jehle, based on defendant's breach of fiduciary duties. Plaintiff and defendant are brothers who farmed together for decades. They each owned 50% of JBI, which they formed for their farming operations. In addition to arguing that the trial court erred in granting judgment to plaintiff, defendant argues that the trial court erred in calculating damages for his use of JBI equipment, in imposing punitive damages, and in calculating interest due on the judgment. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 25, 1994, plaintiff and defendant executed a close corporation shareholders action for JBI, an Illinois corporation. JBI was incorporated as a close corporation pursuant to Article 2A of the Business Corporation Act of 1983 (Act) (805 ILCS 5/2A (West 1994)).

¶ 5 On March 2, 2017, plaintiff brought a four-count complaint against defendant. Count I alleged breach of fiduciary duties resulting in damage to JBI, including that defendant had misappropriated JBI funds, defamed plaintiff, and used his position with JBI to advance his personal interests to the detriment of JBI. Count II also alleged breach of fiduciary duties but with the resulting damage to plaintiff. Count III alleged losses related to defendant's willful and malicious interference with JBI's business relationships. Plaintiff sought punitive damages on count III. Last, count IV sought, in the alternative, the dissolution of JBI. Defendant counterclaimed for breach of fiduciary duty.

¶ 6 A. Bench Trial

¶ 7 The case proceeded to a bench trial that took place over several days. Plaintiff testified as follows. Plaintiff was 61 years old, and he was married with three stepchildren. His wife was Joanne. He and defendant began farming in 1972, when plaintiff was 14 years old and defendant was 17. In the early years of farming together, they split everything, including farming duties, and they had no written agreement. Up until 2017, each of them had been farming roughly 250 acres.

¶ 8 The parties formed JBI in 1994 to make things "more formal," and there never were any other shareholders in JBI other than plaintiff and defendant. Since JBI's inception, defendant was the secretary and treasurer, and plaintiff was the president. JBI never had other directors.

Defendant never surrendered his shares in JBI nor resigned as a director or officer. As of 2020, JBI was an active corporation in good standing with the Illinois Secretary of State.

¶ 9 JBI's business included renting farm grounds from tenants and doing custom work with their farming equipment; "basically it was just equipment stuff and farming together." JBI farmed the parties' own ground as well as land from various landlords. Historically, defendant handled negotiations with the bank, and JBI took out annual operating loans for farming.

¶ 10 JBI did not have any agreement on the division of profits or dividends, other than a 50-50 split. During the years between 1994 and 2012, if either plaintiff or defendant needed money, "we would get it. Supposed to be a 50-50 split." Plaintiff explained that if they needed money personally and funds were available in JBI, "we'd say okay, take out a thousand dollars, 2000 maybe, whatever, to get you going or keep you going." Beginning in 2012, their practice of taking money from JBI as needed changed when they agreed to draw equal salaries and to compensate the bookkeeper monthly. They started their salaries at $2000 per month each but, at the request of defendant, eventually bumped their salaries up to $6000 per month.

¶ 11 Cindy Jehle handled JBI's bookkeeping from 1994 to 2012. After that, Amy Fecht kept the books until 2014, and then Joanne took over the books. In July 2015, plaintiff was diagnosed with cancer and started treatment in August 2015. During this time, Amy returned to cover the bookkeeping for Joanne.

¶ 12 JBI had various clients that it typically farmed for under annual cash rent leases, including Stetcher Incorporated, Paul Mau, Carl Zulke, Heartland Bank, Connie Haley, Wendall

Gassler, Vern Ingalsbe, and Sherry Metcalf. JBI had farmed for several clients for at least 15 years and some for over 20 or even 40 years.[1]

¶ 13 In addition to farming, plaintiff had a job as a mail carrier at the post office in Cullom. He went full-time at the post office in 1990 and continued until around the start of 2015.

¶ 14 In April 2014, defendant came to him and said he wanted to retire, asking to be bought out for $1.5 million. Plaintiff said that was fine but that defendant would have to pay back money he had been taking out of JBI over the last 15 years or so. Plaintiff contacted Larry Groskreutz, their corporate accountant, to figure out defendant's buyout, which they thought would be paid out over several years. Plaintiff, defendant, and Larry were set to meet in December 2014, but defendant did not come to the meeting. After defendant did not show, plaintiff walked outside and found defendant sitting in his truck, and he asked him if he was coming inside. Defendant responded no, and said he was not retiring. He did not give a reason. Plaintiff had given up his post office position in anticipation of defendant's retirement, and he could not get his job back. Despite these events, they farmed together for JBI in 2015.

¶ 15 In 2015, all corporate liabilities were paid with corporate funds, and all corporate machinery and equipment were used for JBI's farming operations. That fall, JBI rented a tractor to another company, Heritage FS, and plaintiff relied on University of Illinois and Iowa State farm tables to determine the rental rate for the equipment. JBI historically rented out its machinery and equipment to Heritage FS, and it paid rent by depositing it in JBI's corporate bank account.

¶ 16 On January 17, 2016, Joanne suggested that they confront defendant about issues between the two of them. He and Joanne walked over to defendant's house, and the three of them

[1]Some clients were served by the parties prior to JBI's corporate formation.

talked. Plaintiff said something to the effect of he was tired of defendant talking about him behind his back and that it needed to stop. Defendant simply smirked with his hands across his chest. As to JBI and its operations moving forward, nothing was resolved that day; they did not discuss dissolving the corporation.

¶ 17 In early 2016, defendant again told plaintiff he planned to retire and asked to be bought out. Defendant assured him that JBI would keep its clients moving forward. In March 2016, JBI took out an operating loan that year as usual, but it was the first time that plaintiff signed for it instead of defendant.

¶ 18 The parties met in August 2016 to discuss a buyout. They discussed a buyout of $1.5 million, a possible division of land, and the funds defendant owed JBI that he had taken over the years for personal use above what plaintiff had taken. No agreement was reached, and the parties continued to operate JBI following the meeting.

¶ 19 In October 2016, defendant told plaintiff that he was done farming with him and that he had already taken some of JBI's clients. In November, plaintiff noticed that defendant had taken $58,000 out of JBI's corporate bank account, which had been deposited electronically by the United States Department of Agriculture. He did not know what defendant did with it, only that he had removed the funds. Defendant never asked for permission or consent to take the funds. Plaintiff was unable to pay the operating loan in full in 2016 due to the circumstances of defendant's decision to strike out on his own.

¶ 20 In 2017, JBI retained only one corporate client, the University of Illinois. Plaintiff began farming with Joe Sterrenberg that year. They used Joe's equipment to farm, and they farmed together only that one year. Joe tried to mediate plaintiff and defendant's relationship to no avail.

At that point his relationship with Joe soured; they had not talked since, but Joe remained friends with defendant.

¶ 21 Defendant had taken possession of all JBI equipment by March 2017. Plaintiff had, through Joe, said defendant could take the equipment but that he would have to pay for it. Plaintiff identified a list of equipment owned by JBI, which in 2016 had been used for the corporation's business by plaintiff and defendant. Since early 2017, neither he nor JBI had used any of the equipment on the list. JBI filed corporate tax returns from 2017 through 2020, and it did not have any revenue or profit for those years. Only defendant had used JBI equipment since early 2017. Defendant had not paid any rent for his use of the equipment in 2017 through 2020 to plaintiff or JBI, and defendant ended up selling some of the corporate equipment.

¶ 22 Defendant testified as follows. He confirmed that he was the secretary and treasurer of JBI, that he had never surrendered his shares in JBI, and that he had never submitted a resignation as director or officer of JBI. He answered yes to the question whether, despite being a shareholder, director, and officer in JBI, he farmed corporate clients beginning in 2017 on an individual basis. He acknowledged receiving rent from third parties, primarily Heritage FS, for their use of JBI equipment. The amount of rent Heritage FS paid was not set beforehand and instead was a "trust issue."

¶ 23 Counsel showed defendant an invoice sent to Heritage FS for equipment rentals. The January 2018 invoice had a rate of $90 for a tractor rental, which he assumed was per hour. The total for 202 hours of use was $18,180. He received rental income from Heritage FS in 2017, 2018, and 2019 but did not deposit it with JBI.

¶ 24 Defendant was willing to pay something for taking possession of JBI's equipment. He did not know, however, what a reasonable rental rate for the equipment was. He was not okay with paying the rate that Heritage FS paid, because it was too high.

¶ 25 Regarding plaintiff and Joanne's confrontation in January 2016, defendant said that plaintiff accused him of stealing $400,000, and he said he did not know what plaintiff was talking about. Plaintiff told him that their farming partnership was basically done. Later, when they were discussing a potential buyout, plaintiff told him that it was "everyone for himself" in securing landlords for work.

¶ 26 Defendant had thought about retirement in 2014, but he did not know what he really wanted to do. He had never stopped farming, and at the time of trial he was farming for a number of landlords. He intended to keep farming, stating he loved it. As for JBI, it was defendant's desire to dissolve the corporation and for the parties to move on in their separate ways.

¶ 27 Regarding JBI's bookkeeping, "[t]here was no discussion" over who would take over the books after Amy. Plaintiff simply told him that Joanne would take over and that he wanted his checkbook. He did not object to Joanne taking over the books, but he did not feel like he had a choice in the matter.

¶ 28 Defendant acknowledged withdrawing the $58,000 from JBI's bank account in November 2016 without plaintiff's consent. He stated that the money was a government payment called an ARC-CO payment.[2] The payment was for the 2015 crop. Defendant continued that no

[2]We take judicial notice that ARC-CO stands for Agriculture Risk Coverage-County, which is a program that will issue payment when the actual county crop revenue of a covered commodity is less than the ARC-CO guarantee for the covered commodity. See ARC/PLC

debts were left on the 2015 crop, "so I just took my half." The full ARC-CO payment was $116,000.

¶ 29 Defendant did not receive any of the crop revenue from 2016, despite asking plaintiff for it "[m]any times." After the August 2016 meeting, defendant said he was owed 50%, but plaintiff said he was not giving him anything. That is why he took his $58,000 share from the ARC-CO payment; he was "starving" because plaintiff backed out of the buyout agreement and had not given him anything from the 2016 crop.

¶ 30 At the end of trial, the trial court admitted plaintiff's exhibit 13, which was a stipulation of rental payment that Heritage FS paid to defendant for use of JBI equipment, including a tractor.

¶ 31 B. Trial Court Judgment

¶ 32 On April 2, 2021, the trial court entered its written judgment. The trial court found the following facts, in relevant part. JBI was a close corporation, in which each brother had a 50% interest. Plaintiff served as JBI's president, and defendant served as its secretary and treasurer. At the time of the trial court's judgment, JBI remained in existence and was in good standing with the Illinois Secretary of State for 2020. By 2014, JBI rented farmland from approximately 15 landlords, farmed 2600 acres, received rental income from third parties for equipment rentals, and had accumulated machinery and equipment valued in excess of $900,000.

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Program, Farm Service Agency of the United States Department of Agriculture, https://www.fsa.usda.gov/programs-and-services/arcplc_program/index (last visited September 27, 2022).

¶ 33 The trial court found that the parties contributed equally regarding duties and responsibilities for JBI, and both parties considered their work at JBI to be full-time employment. Plaintiff also worked at the post office from 1990 to 2015. Defendant was the "point person" for landlords: he negotiated annual leases, and he dealt with lenders for operating and equipment loans.

¶ 34 The parties also shared equally in the profits. Both parties had used corporate funds for personal expenses. Defendant did not refute plaintiff's testimony that they drew monthly salaries from JBI starting in 2012, which gradually increased from $2000 to $6000 per month.

¶ 35 In 2014, defendant indicated to plaintiff that he was thinking about retiring. At this time, the parties first discussed a potential buy-out of defendant by plaintiff. Defendant eventually decided he was not going to retire, and his decision upset plaintiff. Plaintiff had already taken steps to assume complete ownership of JBI, including retirement from the USPS. Also at this time, plaintiff raised concerns with defendant about his personal use of JBI funds.

¶ 36 By 2016, plaintiff and defendant's relationship "had reached a breaking point," although they continued normal operations at JBI. Thereafter, plaintiff began assuming a greater role in JBI's operations, including securing the operating loan, and JBI did its spring planting work for its landlords as usual. Defendant did not take out an operating loan that year or do any spring preparation except for labor work.

¶ 37 The parties met in August 2016 to finalize terms of the buyout, but they were unable to reach an agreement. Plaintiff and defendant never had any conversations about dissolving JBI, and defendant denied telling people he planned on retiring, although he had broached the subject with a few people. On October 22, 2016, the last day of harvest, defendant told plaintiff that he was done farming with him and had already taken on his own clients.

¶ 38 In 2017, defendant farmed almost exclusively for former landlords of JBI, and as a result, JBI's income was reduced to nothing. Defendant used JBI corporate equipment to perform his work for former landlords without compensating JBI. That year, plaintiff initiated this lawsuit, and he went to work for Joe Sterrenberg, who was not a JBI client.

¶ 39 From 2018 through 2020, defendant continued to farm almost exclusively for former JBI clients using JBI equipment without paying rent to JBI. He farmed 1900 acres in 2018 and 2019, and 1500 acres in 2020. Plaintiff farmed with Bob Francis, who was not a JBI client and did not use JBI equipment. JBI did not perform farming operations during those years, and its corresponding tax returns showed no income or expenses. Defendant and plaintiff each continued to hold shares in JBI and remained officers through the conclusion of the trial.

¶ 40 With respect to defendant's use of JBI's equipment, plaintiff claimed he was entitled to a rate comparable to that paid by Heritage FS to defendant for use of JBI equipment. The parties agreed that some amount of rent was owed, and plaintiff had submitted the Heritage FS rates. However, the parties had not submitted calculations for reasonable rates. Therefore, the trial court *sua sponte* took judicial notice of an online article (the farmdoc article) from the University of Illinois. See Michael Langemaier, "Farm Machinery Costs and Custom Rates," *farmdoc daily* (7):161, Department of Agriculture and Consumer Economics, University of Illinois at Urbana-Champaign, September 1, 2017, https://farmdocdaily.illinois.edu/wp-content/uploads/2017/09/fdd010917.pdf. The trial court explained that the document and sources therein were easily authenticated and verified as reliable in accordance with Illinois Rule of Evidence 201(b)(2) (eff. Jan. 1, 2011). The document contained tables for computation of machinery and cultivation costs. Based on the evidence presented in conjunction with the farmdoc article, the trial court determined that a reasonable rate for use of JBI equipment was $78.50 per

acre. The trial court granted the parties 28 days leave to request a hearing to contest the veracity of the farmdoc article.

¶ 41 Specific to counts I and II of plaintiff's complaint, the trial court made the following findings. Although the parties had some discussions on the matter, the parties never executed any formal agreement that would have wound down JBI. Because JBI was not sold or dissolved, "[t]he parties owe[d] each other and the corporation a fiduciary duty to exercise the highest degree of honesty and good faith in their dealings and in the handling of business assets and [were] prohibited from enhancing their personal interests at the expense of the corporation."

¶ 42 The trial court continued that defendant breached his fiduciary duties to JBI and plaintiff when he directly competed with JBI's business. It was undisputed that, from 2017 through 2020, defendant entered into personal farm leases with the majority of JBI's clients. As long as JBI was in existence, defendant was obligated to put its interest before his personal interests and to not compete with JBI. In addition, the trial court found that defendant breached his fiduciary duties to JBI and plaintiff when he used JBI's equipment to compete with JBI and did not compensate JBI for that use, and when he misappropriated JBI funds for personal use. Defendant further admitted to receiving rental income from Heritage FS for use of JBI corporate equipment without compensating JBI.

¶ 43 The trial court found that JBI and plaintiff suffered the following damages under counts I and II: $58,000 that defendant took in 2016; $160,000 in annual net income loss for the years 2017 through 2020; $63,540 in lost rental income from Heritage FS; and $565,200 in lost rental income for defendant's use of JBI equipment from 2017 through 2020.

¶ 44 Regarding count III, the trial court stated that JBI had long-standing relationships with approximately 15 landlords and that defendant knew these landlords were long-standing JBI

clients. The trial court found that defendant intentionally interfered with JBI's business relationships when he maintained those relationships on behalf of himself instead of on behalf of JBI.

¶ 45 Turning to plaintiff's request for punitive damages and fees, the trial court found that JBI was a "thriving and well-respected farming operation" with the potential to operate for years to come; that the parties, despite their strained relationship, were able to operate the business successfully; that plaintiff's livelihood and future was in JBI; that defendant knowingly and unilaterally shut JBI down and took its clients; that defendant acted intentionally and for personal gain, to the detriment of plaintiff; and that but for defendant's actions, the parties would be operating JBI until a sale or dissolution. The trial court found defendant's actions "egregious" and found no motivation other than spite toward plaintiff. Accordingly, it found that defendant forfeited all compensation during the period of his breach of duty and that plaintiff was entitled to punitive damages, which were to include his attorney fees and court costs.

¶ 46 On defendant's counterclaim, the trial court found that defendant did not present evidence that plaintiff misappropriated JBI funds, with the specific transactions identified having no evidence to show those transactions were for anything other than JBI's usual business. The trial court denied defendant's counterclaim. It also denied defendant's Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) motion for sanctions.

¶ 47 Last, the trial court found that it was equitable to wind up JBI's business and dissolve it. It ordered JBI dissolved effective immediately, and plaintiff was to wind down its business affairs and sell JBI's assets at auction.

¶ 48 The trial court entered judgment in favor of plaintiff in the amount of $1,326,740 in compensatory damages and forfeiture of defendant's compensation. It also ordered $100,000 in

punitive damages against defendant, which included attorney fees and costs in the amount of $66,590.90.

¶ 49 C. Postjudgment Motions

¶ 50 Defendant moved to reconsider and vacate the trial court's judgment. He also moved to vacate the trial court's finding based on judicial notice and for a finding that interest did not start to accrue on April 2, 2021.

¶ 51 On September 10, 2021, the trial court heard and denied all of defendant's postjudgment motions. With regard to the trial court taking judicial notice of the farmdoc article, the trial court stated that it had taken judicial notice for the benefit of defendant. To wit, when the trial court calculated a value based on plaintiff's Heritage FS documents, "the number was very high. Very high." It continued that plaintiff had proven that he was entitled to compensation and that, "in fact, the Defendant admitted that he was entitled to compensation for the use of that property, of that equipment." The trial court was "stuck" with the Heritage FS documents, and without the farmdoc article, the rent calculation was "going to be greatly in excess of the amount that ultimately was awarded."

¶ 52 As to the article itself, the trial court reiterated that it was a document whose veracity was easily authenticated and verified as a reliable source. It cited plaintiff's testimony that the University of Illinois's articles were a common source of information for farmers.

¶ 53 Last, the trial court disagreed with defendant that he did not have a chance to rebut the evidence, explaining that it granted the parties 28 days to examine and rebut the evidence and that defendant chose not to. The court believed it was allowed to take notice after the close of evidence as it had allowed the parties an opportunity to re-open the evidence and present their rebuttal.

¶ 54 In denying defendant's motion regarding interest accrual, the trial court stated that interest began to accrue on the date of the entry of judgment. Regarding defendant's motion to reconsider, the trial court stated that it was "not here to decide who I like best," and that, based on the trial court's familiarity with the farming community, this situation was "horrible." The trial court encouraged the parties to settle the case short of going up on appeal "because nobody except the lawyers *** are winning in this never[-]ending saga."

¶ 55 This timely appeal followed.

¶ 56 II. ANALYSIS

¶ 57 Defendant raises several issues on appeal. First, he argues that the trial court erred in granting judgment in favor of plaintiff on the issue of breach of fiduciary duties and denying his counterclaim for breach of fiduciary duties. Second, he argues that the trial court erred in taking judicial notice of the farmdoc article. Third, he challenges the trial court's award of punitive damages and the forfeiture of defendant's compensation for the period of his breach of fiduciary duties. Last, he argues that interest on the judgment did not begin to accrue on the date of entry of the judgment. We address his arguments in turn.

¶ 58 A. Breach of Fiduciary Duties

¶ 59 Defendant argues that the trial court's judgment was against the manifest weight of the evidence, both in finding that defendant breached his fiduciary duties to plaintiff and JBI and that plaintiff did not breach his fiduciary duties to him.

¶ 60 Defendant contends that the parties effectively terminated their relationship in 2016 and that, as a consequence, defendant did not owe plaintiff a continuing fiduciary duty following their termination. He calls into question the application of *Hagshenas v. Gaylord,* 199 Ill. App. 3d 60 (1990), and he argues that "[i]f JBI were a partnership, [defendant] would owe no fiduciary

duties to JBI or [plaintiff] after the 2016 split." He also states that either he or plaintiff could have executed a waiver to terminate fiduciary duties but neither did.

¶ 61 Next, defendant contends that plaintiff breached his fiduciary duties to defendant in 2016, arguing that JBI had almost $1.5 million in crop sales, which plaintiff did not share with defendant, and failed to pay a $600,000 operating loan. He argues that plaintiff was running JBI during 2016 when JBI had the aforementioned income. Defendant argues that the trial court's conclusion, that JBI's 2016 income was used to pay corporate liabilities, was unsupported by evidence in the record. He continues that the only evidence of plaintiff paying a corporate liability was plaintiff's testimony that he paid $108,000 to defendant. Defendant concludes that plaintiff breached his fiduciary duties to him by using JBI corporate funds personally and entering into fraudulent loan transactions.

¶ 62 Last, defendant argues that he did not breach his fiduciary duties to plaintiff when, in 2016, he took $58,000 of funds from JBI. He argues that the evidence at trial showed that the $58,000 he took was only one-half the ARC-CO payments. He further argues that both he and plaintiff freely took JBI funds for personal use throughout their years with the company and that the trial court erred in singling out this one instance.

¶ 63 Plaintiff responds that *Hagshenas* is controlling precedent and demonstrates that defendant retained fiduciary duties post 2016. He argues that evidence showed that defendant never resigned from his position at JBI, that he never surrendered his shares in JBI, that he never sought a waiver under section 7.90 of the Act (805 ILCS 5/7.90 (West 2020)), that JBI was never dissolved or sold, and that no party ever attempted to dissolve or sell JBI.

¶ 64 As to defendant's counterclaim, plaintiff argues that it was barred by the doctrine of unclean hands and that defendant nevertheless forfeited argument on appeal by failing to

challenge the trial court's decision on his counterclaim below. Plaintiff continues that defendant's argument also fails on the merits, contending that defendant had the burden of proof on his counterclaim but failed to present evidence to establish that JBI had $2,100,000 or any other amount of money in *net* revenue, available to distribute to shareholders.

¶ 65 Finally, plaintiff argues that defendant took $58,000 from JBI's corporate account without authority or approval for personal use. Although plaintiff acknowledges his admission at trial that both brothers had taken corporate funds for personal use in the past, he contends that his admission did not render the trial court's decision unreasonable or arbitrary.

¶ 66 We hold that the trial court did not err in denying defendant's counterclaim, in finding that defendant breached his fiduciary duties to plaintiff and JBI by taking $58,000 from JBI in 2016, nor in determining that defendant owed plaintiff and JBI continuing fiduciary duties post 2016. To state a claim for a breach of fiduciary duty, a party must allege that (1) a fiduciary duty exists, (2) the fiduciary duty was breached, and (3) a breach of the duty proximately caused the injury of which the party complains. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 69. In a closely held corporation under the Act, a 50% shareholder owes the corporation and the other shareholder fiduciary duties until they are no longer a shareholder. *Hagshenas*, 199 Ill. App. 3d at 71; *cf. Dowell v. Bitner*, 273 Ill. App. 3d 681, 689-90 (1995) (stating a 23% shareholder did not owe fiduciary duties where he resigned from the corporation, was removed from the board of directors, and clearly had no ability to hinder, influence, or control the corporation).

¶ 67 In a close corporation, 50% shareholders owe duties similar to those of partners in a partnership, including a duty of loyalty to the corporation and other shareholders. See *Anest v. Audino*, 332 Ill. App. 3d 468, 476 (2002). Partners owe each other a duty to exercise the highest

degree of honesty and good faith in dealings and in handling of business assets, and they must not advance personal interests at the expense of the interests of the partnership. *Hagshenas*, 199 Ill. App. 3d at 71. Under the Act, a 50% shareholder can execute a written waiver that relieves them of fiduciary duties to the corporation or any of its shareholders. 805 ILCS 5/7.90 (West 2020).

¶ 68 A trial court's finding of a breach of fiduciary duty is reviewed against the manifest weight of the evidence. *Lawlor*, 2012 IL 112530, ¶ 70. A judgment is against the manifest weight of the evidence only where an opposite conclusion is evident or the findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 69 We first reject defendant's argument that he effectively terminated his position with JBI and therefore did not owe continuing fiduciary duties to JBI or plaintiff. Defendant's argument is directly at odds with *Hagshenas*. In *Hagshenas*, Bruce Hagshenas was a 50% shareholder in Imperial Travel, Ltd., and Robert and Virginia Gaylord owned the other 50% of shares. *Hagshenas*, 199 Ill. App. 3d at 63. Bruce sued for dissolution of the corporation, and the Gaylords sued for breach of fiduciary duties. *Id.* Prior to purchasing a new agency and competing with Imperial, Bruce resigned as an officer and director. *Id.* He argued that once he resigned, he was free to compete with Imperial. *Id.* at 68.

¶ 70 The appellate court disagreed. Although Imperial was not organized as a close corporation, the court found that "for all practical purposes it acted as a close corporation." *Id.* at 69. It reasoned that the parties' enterprise closely resembled a partnership in that the parties were not only equal 50% shareholders but also were directors and officers of the company and oversaw the day-to-day operations. *Id.* at 71. Accordingly, it found that Bruce owed a fiduciary duty to Imperial and the Gaylords, and it was not persuaded that his resignation relieved him of his fiduciary duties. *Id.* The court explained that shareholders who enter into a small business

enterprise place trust and confidence in each other, and fiduciary relationships exist where confidential relationships arise. *Id.* at 72 (citing *Illinois Rockford Corp. v. Kulp*, 41 Ill. 2d 215 (1968)).

¶ 71 Here, plaintiff and defendant were 50% shareholders in an actual close corporation. Moreover, unlike Bruce who resigned in *Hagshenas*, the trial court found that defendant did not resign from JBI. The trial court's finding was reasonable, given that defendant testified that he never submitted a resignation and always remained the secretary and treasurer of JBI. Thus, *Hagshenas* clearly controls this case, and defendant owed plaintiff continuing fiduciary duties.

¶ 72 Defendant questions whether we should follow *Hagsehnas*, citing 7 Charles W. Murdock, Illinois Practice, Business Organizations § 10:3 (2d ed. 2022), which described the decision as "very controversial" and criticized its reasoning. Despite the practice series' criticisms of *Hagshenas*, it remains the law in Illinois. We acknowledge that, in *Dowell*, this court refused to extend the holding of *Hagshenas* to a 23% shareholder who had resigned from the corporation, stating that "something more than mere status as a shareholder in a close corporation is required to impose a fiduciary duty" on the defendant. 273 Ill. App. 3d at 690. To assess whether a fiduciary duty existed, we advanced but did not adopt a test of whether the shareholder had the ability to hinder, influence, or control the corporation. *Id.*

¶ 73 If any case presents "something more than mere status as a shareholder," it is this case. Defendant was a 50% shareholder in a close corporation, he always remained an officer in the corporation, he retained access to corporate funds, and he never signed a section 7.90 waiver. He also was able to hinder and influence JBI: the record supported that he took all but one of JBI's longstanding clients and possessed all its equipment, reducing JBI's income to nothing for years. Accordingly, the trial court did not err in following *Hagshenas*.

¶ 74 Turning to defendant's counterclaim, he has not forfeited argument on his counterclaim. Although defendant was not required to file a postjudgment motion to preserve the issue for review (Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1. 1994)), he did move to reconsider and vacate the trial court's judgment and argued that the trial court's judgment should be reversed in its entirety, including on his counterclaim. Moreover, the trial court did not apply the doctrine of unclean hands, instead addressing defendant's counterclaim on the merits. As such, we will address the merits as well.

¶ 75 The trial court did not err in denying the counterclaim on the merits. Defendant had the burden of proof on all elements of his counterclaim (*Rush v. Leader Industries, Inc.*, 176 Ill. App. 3d 803, 806 (1988)), and he consistently failed to put forth evidence that plaintiff breached his fiduciary duty by misappropriating corporate funds. While he asserts that JBI had $1.5 million in crop sales in 2016, he did not put forth any evidence as to JBI's costs and thus its profits for that year. In comparison, plaintiff's award for *net* income loss per year for 2017 through 2020 was only $160,000—around an order of magnitude less than the $1.5 million defendant asserts.

¶ 76 Defendant argues that plaintiff testified to paying only $108,000 in corporate liabilities, but again, it was incumbent upon defendant to prove his counterclaim, not plaintiff to disprove it. Defendant put forth no evidence that plaintiff withdrew the 2016 crop income for personal use. Likewise, he did not put forth evidence of any inappropriate use of the $600,000 operating loan.

¶ 77 Defendant's own witness hurts his position. To wit, Dennis Stephens, the president of the bank that regularly provided JBI operating loans, testified that plaintiff had sold all the grain in 2016 but still would not be able to repay the operating loan. Stephens continued that, to satisfy the loan, the bank took possession of a John Deere sprayer and sold it. Therefore, not only did

Stephens's testimony reasonably infer that the crop sale was insufficient to cover JBI's liabilities but also that the loan was satisfied. Accordingly, the trial court's denial of defendant's counterclaim was not against the manifest weight of the evidence.

¶ 78 As to the $58,000 that defendant withdrew in 2016, he admitted to taking it from JBI for himself. Defendant's argument that both parties had previously taken corporate funds for personal use is unavailing. Importantly, in 2012, the parties departed from their practice of informal withdrawals from JBI by implementing a policy of set salaries. To the extent the parties continued to take corporate funds for personal use post 2012, that shows other potential breaches of fiduciary duty by both parties; it does not show that defendant somehow lacked fiduciary duties to JBI and plaintiff when he withdrew $58,000 in 2016.

¶ 79 What is more, defendant's position is again belied by his failure to distinguish between corporate profits and income. The parties' 50-50 sharing agreement did not mean that the parties were each entitled to withdraw 50% of all revenue JBI generated. Rather, they were entitled to a 50% share of profits and dividends. See *supra* ¶ 10. Here, defendant did not take 50% of his share of profits or dividends; he took 50% of JBI's income from the 2016 ARC-CO payments. The record shows that the money taken was for defendant's benefit and to the detriment of JBI and plaintiff, and plaintiff did not consent to him taking it.[3] Under these circumstances, the trial court's finding of a breach of fiduciary duty was not against the manifest weight of the evidence.

[3]We note that the removal of income by one shareholder in a close corporation necessarily reduces the profits of all shareholders. For instance, if total revenue for a year was $1,100,000 and total costs were $1,000,000, then profits for that year would be $100,000. If one 50% shareholder removed $10,000 in that year's revenue, then the profits would be only $90,000, and the other 50%

¶ 80 B. Judicial Notice and Lost Rental Income

¶ 81 Defendant also argues that the trial court erred in taking judicial notice *sua sponte* of the farmdoc article to help determine that defendant owed $565,200 in rental income for his use of JBI equipment. He argues that plaintiff, who had the burden of proof on the issue, failed to present sufficient evidence of what a reasonable rate was for defendant's use of various JBI equipment. He contends that plaintiff should have introduced the farmdoc article as evidence of damages and that a trial court should not take judicial notice of evidence that a plaintiff failed to present.

¶ 82 Furthermore, he argues that equipment rates were not an appropriate fact for a court to find by judicial notice, citing Illinois Rule of Evidence 201(b) (eff. Jan. 1, 2011). He argues that there is no evidence authenticating the article or showing that the article is accurate beyond reasonable questioning. Further, defendant highlights that the rate the trial court settled on, $78.50 per acre, did not appear in the article. He contends that the trial court abused its discretion in "filling the gap" of plaintiff's evidence by calculating the rate based on acreage instead of time.

¶ 83 Plaintiff responds that the trial court properly took judicial notice of the farmdoc article. Plaintiff argues that he met his burden of proof, including proof of damages, and that the trial court took judicial notice only out of fairness to defendant. Although plaintiff maintains that the trial court properly took judicial notice, he requests that if we determine the trial court erred, we should remand for a new rent calculation without reliance on the farmdoc article.

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shareholder's share of profits (assuming a 50-50 profit split) would be reduced from $50,000 to $45,000. Here, there is no evidence or argument that either party intended the $58,000 to come out of defendant's share of profits.

¶ 84 We hold that the trial court did not abuse its discretion in taking judicial notice of the farmdoc article. Pursuant to Illinois Rule of Evidence 201(b) (eff. Jan. 1, 2011), courts may take judicial notice of adjudicative facts "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Courts may take judicial notice of readily verifiable facts if doing so will aid the court in the efficient disposition of a case, even if the parties did not seek judicial notice. *State Farm Fire & Casualty Co. v. Watts Regulator Co.*, 2016 IL App (2d) 160275, ¶ 40; see Ill. R. Evid. 201(c) (eff. Jan. 1, 2011) ("A court may take judicial notice, whether requested or not."). Moreover, courts may take judicial notice of a fact at any stage of the proceeding. Ill. R. Evid. 201(f) (eff. Jan. 1, 2011); see *Puryear Law, P.C. v. Farris*, 2020 IL App (3d) 190398-U, ¶ 22 (stating under the plain language of the rule and consistent with Federal Rule of Evidence 201 (eff. Dec. 1, 2011), judicial notice may be taken after the close of evidence). But see *People v. Barham*, 337 Ill. App. 3d 1121, 1129 (2003) (stating a trial judge may take judicial notice *sua sponte* if the judge makes clear before the close of evidence what facts and sources are being noticed).

¶ 85 Judicial notice is an evidentiary matter that we review for an abuse of discretion. *People v. Messenger*, 2015 IL App (3d) 130581, ¶ 27. A court abuses its discretion when its decision is arbitrary, fanciful, or unreasonable. *Shoup v. Gore*, 2014 IL App (4th) 130911, ¶ 8.

¶ 86 We first reject defendant's argument that plaintiff necessarily failed to produce sufficient evidence of damages for defendant's use of JBI equipment. Plaintiff submitted the Heritage FS rates for the issue of damages, and the trial court noted that the parties agreed that some rent was owing. The trial court stated that it could calculate damages based on the Heritage

FS documents, but it was concerned that such a calculation was too high in this case. Therefore, it turned to the farmdoc article to help determine a reasonable rate—to defendant's ultimate benefit.

¶ 87 Here, the facts in the farmdoc article were not subject to reasonable dispute in that they were capable of accurate and ready determination via reliable sources. The farmdoc article provided various rates and costs, assuming a north central Indiana farm with 3000 acres of corn and soybeans. Citing to other articles from the Universities of Iowa State, Purdue, and Illinois, the farmdoc article provided purchase prices for equipment, insurance and housing costs, repair costs, and custom rates. It then provided model computations using the rates and costs. Plaintiff's uncontradicted testimony at trial was that he had previously relied on Illinois and Iowa State farm tables to determine equipment rental rates.

¶ 88 The trial court provided the parties an opportunity to request a hearing to contest the veracity of the farmdoc article's contents, but neither party requested a hearing. Instead, defendant moved to vacate the rental calculation on the basis that judicial notice was improper for the type of facts contained within the farmdoc article. We disagree with this argument. Contrary to defendant's argument, these facts were not tantamount to expert opinion but instead were more akin to a compilation of data. *Cf. Sherman v. City of Springfield*, 111 Ill. App. 2d 391, 408-09 (1969) (explaining that the trial court did not abuse its discretion in taking judicial notice of mortality tables taken from a commonly utilized source). The farmdoc article simply provided the trial court with different rates and prices for farm equipment and operations, which were derived from publications by reputable universities, and defendant never contested their veracity. Accordingly, the trial court did not abuse its discretion in taking judicial notice of the farmdoc article under Illinois Rule of Evidence 201(b)(2) (eff. Jan. 1, 2011).

¶ 89 Last, the majority addresses Justice Turner's partial dissent that the trial court's award of $565,200 in lost rental income was error. The majority disagrees that this court should be reviewing the $565,200 award for errors beyond what the parties have argued on appeal. The majority emphasizes that defendant's sole argument regarding plaintiff's failure to carry his burden centered on the trial court's use of the farmdoc article to determine the hourly rental rates for the equipment that was used to support plaintiff's claim, and we have decided the trial court's use of the farmdoc article was proper. Defendant has not argued that no amount of lost rental income was owing in this case; rather, as the trial court wrote in its judgment order, "both parties agree that some amount of rent is due and owing." In short, defendant argued only that the trial court erred in calculating the rental damages owed, and the majority believes that this court should not make additional arguments for him. *People v. Givens*, 237 Ill. 2d 311, 328 (2010) ("[E]ven though a reviewing court has the power to raise unbriefed issues, it should refrain from doing so when it would have the effect of transforming the court's role from that of jurist to advocate.").

¶ 90 C. Punitive Damages

¶ 91 Defendant argues that the trial court's imposition of punitive damages, including the forfeiture of his compensation for years 2017 through 2020, should be reversed. He argues that he "effectively resigned" from JBI in October 2016, and that imposing punitive damages on him for conduct extending beyond his resignation would impose heightened partnership duties on shareholders in close corporations. He urges that we follow *Hagshenas*, 199 Ill. App. 3d at 60, where punitive damages were limited by a shareholder's resignation.

¶ 92 Further, he argues that the trial court's award of punitive damages violated due process of law. He argues that punitive damages should be awarded only where a party's culpability is so reprehensible as to justify additional punishment and deterrence. He contends that

his conduct did not meet any of the five reprehensibility factors for punitive damages outlined by the supreme court. Moreover, he asserts that compensatory damages already made plaintiff whole.

¶ 93 Last, he argues that forfeiture based on a breach of fiduciary duty permits forfeiture of compensation, and compensation refers to a salary or commissions but not to a share of profits. He concludes that forfeiture was unduly harsh and that the trial court erred in determining that forfeiture meant he was not entitled to at least his fifty percent share of business receipts. Thus he argues that, in the alternative to vacating all the punitive damages against him, we should reduce his forfeiture to fifty percent.

¶ 94 Plaintiff responds that defendant ignores the trial court's findings that defendant's conduct was willful, intentional, and egregious. He argues that punitive damages are permitted for breach of fiduciary duties and stresses that they are a highly factual determination, owed considerable deference by this court. Further, he argues that forfeiture of all compensation is permissible for a willful and deliberate breach of fiduciary duty. See, *e.g.*, *LID Associates v. Dolan*, 324 Ill. App. 3d 1047, 1071 (2001).

¶ 95 Regarding defendant's due process argument, plaintiff argues that defendant's due process challenge was forfeited, but even if not, it fails. He argues that the trial court found defendant's conduct reprehensible by willfully and deliberately breaching his fiduciary duties over a span of four years. He concludes that punitive damages were appropriate because defendant took JBI clients and used JBI equipment for his personal benefit for years, effectively ending JBI's business, despite remaining a partner in JBI.

¶ 96 We hold that the trial court did not err in awarding punitive damages or in ordering defendant's forfeiture of compensation. In general, the purpose of punitive damages is to punish the wrongdoer and deter the wrongdoer and others from committing similar acts in the future.

*McQueen v. Green*, 2022 IL 126666, ¶ 58. Punitive damages may be awarded when a defendant acts willfully or with such gross negligence as to indicate wanton disregard of the rights of others. *Id.* In determining whether punitive damages are appropriate, the trier of fact considers the character of the defendant's act, the nature and extent of the harm caused, and the wealth of the defendant. *Id.* Because punitive damages are penal in nature, they are not favored in the law, and courts should take caution to see that punitive damages are not awarded improperly or unwisely. *Slovinski v. Elliot*, 237 Ill. 2d 51, 58 (2010).

¶ 97 The standard of review of punitive damages following a bench trial is a multi-step inquiry. See *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 51 (2009). First, we review *de novo* whether punitive damages were available as a matter of law. *Franz v. Calaco Development Corp.*, 352 Ill. App. 3d 1129, 1137 (2004). Next, we review whether the factual findings of willfulness or other aggravating factors were against the manifest weight of the evidence. *Id.* at 1137-38. As to the ultimate decision to award punitive damages, we review for an abuse of discretion. *Id.* at 1138. If the computation of punitive damages is challenged as excessive, we will not reverse unless "unless it is apparent that the award is the result of passion, partiality, or corruption." *McQueen*, 2022 IL 126666, ¶ 58.

¶ 98 Punitive damages are available for breach of fiduciary duty. *Tully v. McLean*, 409 Ill. App. 3d 659, 670 (2011). As to defendant's argument that he "effectively resigned," we have already determined that the trial court's finding that he did not resign was supported by the evidence (*supra* ¶¶ 69-71), and therefore we have no basis to reverse punitive damages based on his resignation. In addition, defendant's reliance on *Hagshenas* is again misplaced; the trial court in *Hagshenas* did not award punitive damages, and the appellate court affirmed, noting that the

plaintiff had attempted to resolve the parties' problems before resigning and opening a competing business. *Hagshenas,* 199 Ill. App. 3d at 78.

¶ 99 Regarding forfeiture of compensation, forfeiture is not the same remedy as punitive damages (see *Monotronics Corp. v. Baylor*, 107 Ill. App. 3d 14, 18-21 (1982)), although a trial court may consider forfeiture and punitive damages together and style an award of forfeiture as one of punitive damages (*Flynn v. Maschmeyer,* 2020 IL App (1st) 190784, ¶ 78). As a matter of public policy, when a breach of fiduciary duty is egregious, or it is willful and deliberate, the trial court may order forfeiture of compensation. *In re Marriage of Pagano*, 154 Ill. 2d 174, 190 (1992); *LID Associates,* 324 Ill. App. 3d at 1071. Forfeiture can be of gross compensation. *ICD Publications, Inc. v. Gittlitz,* 2014 IL App (1st) 133277, ¶ 56. Like the purpose of punitive damages, forfeiture of a fiduciary's compensation earned during the period of the breach is not meant to compensate the injured party; instead it deprives the wrongdoer of gains from the breach and deters disloyalty. *Flynn*, 2020 IL App (1st) 190784, ¶ 75.

¶ 100 Here, the trial court found that JBI was doing well before defendant intentionally took its clients and equipment to farm on his own for his personal gain, to the detriment of JBI and plaintiff. Defendant's breach of fiduciary duty was documented as continuous over four years. The trial court found that defendant's actions were egregious and motivated out of spite toward plaintiff.

¶ 101 Even if defendant had directly challenged these findings on appeal, which he has not, the trial court's findings were not against the manifest weight of the evidence. The record supported that defendant willfully breached his duty toward JBI and plaintiff for years and that the parties' split was due to unreconciled discord. It further supported that defendant's breach left JBI unable to continue farming operations, reducing its income to nothing for each year of the breach.

Given these facts and the public policy disfavoring willful and deliberate breaches of fiduciary duties (see *id.* (citing several cases in support of forfeiture as matter of public policy)), we also cannot say the that the trial court's ultimate decision to award forfeiture and punitive damages was an abuse of discretion.

¶ 102 Turning to defendant's federal due process challenge, defendant did not raise a due process argument in the trial court and has not raised plain error on appeal. Ordinarily, the failure to raise an issue in the trial court results in forfeiture of the issue on appeal. *In re E.F.*, 2014 IL App (3d) 130814, ¶ 42. However, forfeiture is a limitation on the parties, and we may overlook forfeiture to obtain a just result. *Wilson v. Humana Hospital*, 399 Ill. App. 3d 751, 757 (2010). Given that punitive damages are generally disfavored, we overlook forfeiture in this instance.

¶ 103 We review *de novo* whether an award of punitive damages is excessive under the fourteenth amendment of the United States Constitution (U.S. Const., amend XIV). *International Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 469 (2006). The Supreme Court has set forth three guideposts to consider in review of an award of punitive damages: "(1) the degree of reprehensibility of the defendant's misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases." (Internal quotation marks omitted.) *Id.* at 470.

¶ 104 The first consideration, reprehensibility, may be the "the most important indicium of the reasonableness of a punitive damages award" (*BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996)), and it has five factors to consider: (1) whether the harm caused was physical as opposed to economic, (2) whether the conduct evinced indifference or reckless disregard for the health and safety of others, (3) whether the target was financially vulnerable, (4) whether the

conduct was repeated or isolated, and (5) whether the harm was the result of intentional malice, trickery, or deceit, or instead was a mere accident. *Lowe*, 225 Ill. 2d at 470. No factor is dispositive, and the absence of all factors renders any award suspect. *Id.* at 470-71.

¶ 105 As to the second guidepost, the disparity between the harm and the punitive damages, the best way to determine whether an award is appropriate is to compare it to punitive damage awards in other, similar cases. *Id.* at 487. The Supreme Court has cautioned that few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process, and punitive damages more than four times the amount of compensatory damages may be " 'close to the line' ." *Id.* at 484 (quoting *Gore*, 517 U.S. at 581). The final guidepost, a comparison with civil penalties, looks to whether the legislature has spoken as to appropriate sanctions for the conduct at issue. *Id.* at 489.

¶ 106 Here, regarding reprehensibility, the harm was economic, and defendant was not indifferent to the health and safety of others. Plaintiff was financially vulnerable insofar as defendant's actions plummeted JBI's income and JBI was his full-time employment, but it is unclear what plaintiff's personal financial state was aside from JBI. Of significance to this case, defendant's conduct was continuous over four years, and the record supported that it was done willfully—the trial court specifically found that defendant was motivated by spite.

¶ 107 Defendant has not cited similar cases or relevant civil penalties. In looking at the trial court's awards, the specified award of punitive damages was substantially less than the compensatory damages ($100,000 versus $1,326,740). The majority of the award was for attorney fees and costs, which are properly included in an award of punitive damages. *E.J. McKernan Co. v. Gregory*, 252 Ill. App. 3d 514, 546 (1993). Furthermore, as we mentioned *supra* ¶ 99, forfeiture of compensation is not itself an award of punitive damages, and the trial court did not style

forfeiture as a punitive damage in this case. Even if we consider it one here, total forfeiture of compensations was unlikely to exceed the total compensatory award to plaintiff (which included $160,000 in annual net income from lost JBI operations), much less exceed it several times over. Accordingly, the trial court's award of punitive damages was not constitutionally excessive.

¶ 108 D. Interest

¶ 109 Defendant's last argument is that interest on the judgment did not begin to accrue on April 2, 2021. He contends that, in the trial court's judgment, it took judicial notice of the farmdoc article and granted the parties 28 days to contest its veracity, and therefore the judgment amount remained uncertain and was not finally adjudicated on April 2, 2021. Instead, he argues that interest on the judgment did not begin to accrue until September 10, 2022, when the trial court denied his postjudgment motions. In the alternative, he argues that, regardless of the rest of the judgment, interest did not begin accruing on the $565,200 award of rental income until September 10, 2021.

¶ 110 Defendant's argument requires that we interpret section 2-1303(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1303(a) (West 2020)). We review *de novo* the interpretation of a statute, as well as a trial court's decision under section 2-1303. *City of Springfield v. Ameren Illinois Company*, 2018 IL App (4th) 170755, ¶ 25; *Eclipse Manufacturing Co. v. U.S. Compliance Co.*, 381 Ill. App. 3d 127, 141 (2007) (*de novo* review of section 2-1303).

¶ 111 Section 2-1303(a) of the Code (735 ILCS 5/2-1303(a) (West 2020)) provides that judgments shall accrue interest at a specified rate "from the date of the judgment" until they are satisfied. The award of interest is mandatory. *Stanphill v. Ortberg*, 2020 IL App (2d) 190769, ¶ 9. Interest under section 2-1303 is "neither a penalty nor a bonus, but instead a preservation of the economic value of the award from diminution caused by delay." *Illinois State Toll Highway*

*Authority v. Heritage Standard Bank and Trust Co.*, 157 Ill. 2d 282, 301 (1993). For interest to accrue, the judgment amount must be certain. *GreatBanc Trust Co.*, 2018 IL App (1st) 171393, ¶ 64. The filing of an appeal does not toll the accrual of statutory postjudgment interest. *Kramer v. Mount Carmel Shelter Care Facility, Inc.*, 322 Ill. App. 3d 389, 392 (2001).

¶ 112 Here, the trial court's April 2, 2021, judgment against defendant was finally determined with certainty. To wit: $58,000 for money that defendant took from JBI in 2016; $160,000 in annual net income loss for the years 2017 through 2020; $63,540 in loss of rental income from Heritage FS; and $565,200 in lost rental income for defendant's use of JBI equipment from 2017 through 2020. Following entry of its judgment, the trial court denied all of defendant's motions attacking the judgment. Under the plain language of section 2-1303(a) of the Code, interest was to accrue "from the date of the judgment," and here that was April 2, 2021. Accordingly, the trial court did not err in using April 2, 2021, as its starting point for the calculation of postjudgment interest.

¶ 113 III. CONCLUSION

¶ 114 For the reasons stated, the judgment of the Livingston County circuit court is affirmed.

¶ 115 Affirmed.

¶ 116 JUSTICE TURNER, concurring in part and dissenting in part:

¶ 117 I dissent only from the majority's affirmation of the portion of the trial court's damage award to plaintiff in the amount of $565,200 for loss of rental income for defendant's use of JBI's equipment. I concur in the remainder of the majority order affirming the trial court's judgment.

¶ 118 The trial court awarded plaintiff the sum of $1,326,740 in "compensatory damages." The breakdown of the compensatory damage award was as follows: (1) loss of $58,000, taken by defendant from the corporate account in 2016 as defendant's purported share of an ARC-CO payment; (2) loss of $160,000 in annual net income for the years 2017-2020 totaling $640,000; (3) loss of $63,540 for equipment rental income from Heritage FS; and (4) loss of equipment rental income in the amount of $565,200 for defendant's "use of JBI's equipment for the years 2017, 2018, 2019, and 2020." I note the trial court also awarded plaintiff punitive damages but awarded no monetary damages of any kind to JBI.

¶ 119 In his brief, defendant argues plaintiff failed to carry his burden of "pleading," "production," and persuasion to justify the damage award to plaintiff for defendant's use of JBI's equipment for crop years 2017-2020. Defendant asserts "[f]ailure to satisfy the burden of production requires a decision by the court as a matter of law on the particular issue adverse to the burdened party." Defendant notes the trial court's written judgment acknowledged the insufficiency of plaintiff's evidence. Defendant's argument concludes "[s]ince plaintiff failed to prove his claim, defendant is entitled to a verdict in its (*sic*) favor and the $565,200 portion of the judgment should be reversed on this basis alone." I agree.

¶ 120 I begin by noting plaintiff's verified complaint entirely fails to assert an equipment rental loss due to defendant's use of JBI's equipment. The reason for its absence is obvious. During the decades of farming together, plaintiff and defendant *never* paid JBI rent for using the corporation's equipment in their farming operation. Had they done so, such evidence would have been readily available to the trial court to easily assess the "loss" of rental income for the four years of defendant's use of the equipment. However, the only equipment rental income annually received by the corporation was paid by Heritage FS. Although plaintiff was given an award for

Heritage FS's equipment rental, the scant evidence of the parties' relationship with Heritage FS failed to provide a basis to establish any amount of damages for defendant's use of the farm machinery. In its written order, the trial court found Heritage FS apparently paid rental income at different rates per hour for a "tractor" and "semi-tractor." However, the trial court explicitly stated it had "no evidence to establish exactly what equipment Defendant used or when it was used or for how long it was used." The trial court found that, although it could draw some "reasonable inferences about which pieces of equipment would likely be used[,] *** that alone [was] insufficient to apply to the Heritage FS rates and Plaintiff did not offer any calculations for the Court to consider." Given the pleadings and these findings, it is my view an award for lost rental income due to defendant's use of the equipment from 2017-2020 cannot be justified because plaintiff completely failed to plead and prove this item of damages.

¶ 121 Although not entirely clear, plaintiff at oral argument seemingly suggested the $565,200 award could be justified because the breach of a fiduciary duty requires a complete forfeiture of the breaching party's compensation during the period of the breach. However, plaintiff's suggestion is simply untenable under the facts of this case. As stated earlier, plaintiff and defendant never paid for equipment rental and thus never received compensation from JBI for equipment rental except in the case of Heritage FS. Thus, if defendant had not breached his fiduciary duty, neither plaintiff nor defendant would have received equipment rental compensation from their own use of the farm machinery. Instead, each would have received 50% of JBI's net profit as their compensation.

¶ 122 As previously noted, plaintiff was awarded $640,000 which represented 100% of the corporate profits generated by defendant's use of JBI's equipment. Accordingly, the trial court's $640,000 award included all of plaintiff's lost compensation and all of defendant's

forfeited compensation from the farming operation for years 2017-2020. Defendant also forfeited the value of all of his labor for those four years of farming, and concomitantly, plaintiff received additional compensation from Sterrenberg in 2017 and Francis in 2018-2020. *Supra* ¶¶ 38-39.

¶ 123 To summarize, defendant's use of JBI's equipment generated profits, which by the trial court's order inured solely to the benefit of plaintiff. Although the parties' used JBI's equipment in their farming operation, they did not pay rent to JBI and receive compensation in return. Instead, the parties contributed their labor to produce the annual commodities grown on the farmland owned or rented by JBI. As such, the loss plaintiff claims as a result of defendant's use of JBI's equipment was not proved and is a nonexistent and noncompensable item of damages. Therefore, I dissent from the majority's affirmation of the trial court's $565,200 damage award to plaintiff.