IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

JAMES JANOUSEK, Plaintiff, v. MICHAEL SLOTKY, ET AL., Defendants.	Case No. 2009 CH 22216 Calendar 03 Honorable Franklin U. Valderrama

TRIAL OPINION AND JUDGMENT ORDER

This matter coming to be heard for trial on Plaintiff, James Janousek's Sixth Amended Verified Complaint against Defendants, Michael Slotky, the Estate of Burton Slotky, Bureaus Investment Group, LLC, and Bureaus Investment Group III, LLC, and Counter-Plaintiffs, Michael Slotky and the Estate of Burton Slotky's Counterclaim against Counter-Defendant James Janousek. Trial commenced on June 15, 2015 and concluded on December 2, 2015. The Court, having heard the opening arguments of counsel for the parties, considered the testimony of the witnesses, and received and reviewed the evidence submitted by the parties, makes the following findings of fact and conclusions of law.

STATEMENT OF THE CASE

This case involves a business relationship turned sour. Michael Slotky ("Michael"), Burton Slotky ("Burton"), and James Janousek ("Janousek") formed Bureaus Investment Group, LLC ("BIG") in March 1999. Janousek claims that in October 2007, the Slotkys froze him out of BIG's management and control and formed a direct competitor of BIG, Bureaus Investment Group III, LLC ("BIG III").

This action was initiated on July 7, 2009 when Janousek, individually and on behalf of BIG, filed a multi-count complaint (the "Complaint") against Michael, Burton, BIG, and BIG III (collectively, "Defendants"), which has subsequently been amended numerous times.

On December 1, 2009, Michael and Burton (collectively, the "Slotkys") filed an answer and affirmative defenses to Janousek's Complaint as well as a counterclaim (the "Counterclaim") against Janousek. The Slotkys' Counterclaim, which is presently before the Court, asserts claims for breach of the BIG Operating Agreement, Count I; and unjust enrichment or *quantum meruit*, Count II. On January 11, 2010, Janousek filed his answer to the Slotkys' Counterclaim and affirmative defenses of voluntary payment doctrine, failure to state a claim by BIG, unclean hands, waiver, and failure to state a claim of unjust enrichment. On March 2, 2010, the Court granted the Slotkys' motion to strike Janousek's affirmative defenses of failure to state a claim by BIG and failure to state a claim of unjust enrichment.

On September 13, 2011, Janousek filed his nine-count Second Amended Verified Complaint (the "Second Amended Complaint"), which asserted claims for declaratory judgment by Janousek against BIG, and the Slotkys, Count I; breach of fiduciary duty of loyalty by Janousek against the Slotkys and BIG III, Count II; breach of fiduciary duty of loyalty by BIG against the Slotkys and BIG III, Count III; breach of fiduciary duty of good faith and fair dealing by Janousek against the Slotkys, Count IV; accounting by Janousek against the Slotkys, Count V; violation of the Illinois Limited Liability Company Act (the "LLC Act"), 805 ILCS 180/1-1, *et seq.*, by Janousek against the Slotkys, Count VI; breach of BIG's Operating Agreement by Janousek against the Slotkys, Count VII; declaratory judgment and injunction by BIG against the Slotkys, Count VIII; and fraud by Janousek against the Slotkys, Count IX.

All parties thereafter filed motions for summary judgment on Janousek's Second Amended Complaint. The Court denied BIG's motion for summary judgment on September 17, 2014. On November 24, 2014, the Court denied Michael's and Janousek's motions for summary judgment. Also on November 24, 2014, the Court granted in part and denied in part BIG III's motion for summary judgment. Specifically, the Court granted BIG III's motion for summary judgment on Janousek's constructive trust and successor liability theories against BIG III, but denied BIG III's motion for summary judgment on Janousek's *alter ego* liability theory against BIG III.

On December 5, 2014, the Court dismissed with prejudice Count V for accounting as alleged against Burton pursuant to the stipulation of the parties as a result of Burton's death.[1] On December 18, 2014, the Court ruled on part of Burton's motion for summary judgment, in which Michael joined. Specifically, the Court denied Burton's motion on Count V; granted Burton's motion as to the injunctive relief requested in Count VIII but denied the remainder of Burton's motion on Count VIII; and granted Burton's motion on Count IX as to Burton but denied Burton's motion on Count IX as to Michael.

On February 25, 2015, the Court ruled on the remainder of Burton's motion. Specifically, the Court denied Burton's motion on Counts IV and VI. The Court also granted in part and denied in part Burton's motion on Count VII. The Court denied Burton's motion on Count VII as to the issue of whether BIG's September 20, 2007 Resolution, which was executed only by the Slotkys and purported to give Michael sole authority to manage and act on behalf of BIG, constituted a breach of BIG's Operating Agreement. The Court, however, granted Burton's motion on Count VII in part finding that the Slotkys' pledge of their interests in BIG to Community Bank of Oak Park River Forest ("Community Bank") as collateral for a requested line of credit for BIG III was not an assignment of their interests in BIG for the benefit of creditors and, therefore, was not a breach of BIG's Operating Agreement.

Also on February 25, 2015, the Court granted Janousek leave to file a third amended complaint and set the case for trial. Janousek thereafter filed his third and, to correct inadvertent errors and omissions therein, his Fourth Amended Verified Complaint ("Fourth Amended Complaint"). Janousek's Fourth Amended Complaint asserted claims for declaratory judgment by Janousek against BIG, and the Slotkys, Count I; breach of fiduciary duty of loyalty by

[1] Burton passed away on November 5, 2014. The independent co-executors of the Estate of Burton Slotky, Fern Slotky, Michael Slotky, and Lauren A. Simmons, were subsequently substituted as Defendants in Burton's stead.

Janousek against the Slotkys and BIG III, Count II; breach of fiduciary duty of loyalty by BIG against the Slotkys and BIG III, Count III; breach of fiduciary duty of good faith and fair dealing by Janousek against the Slotkys, Count IV; accounting by Janousek against Michael, Count V; violation of the Illinois Limited Liability Company Act (the "LLC Act"), 805 ILCS 180/1-1, *et seq.*, by Janousek against the Slotkys, Count VI; breach of BIG's Operating Agreement by Janousek against the Slotkys, Count VII; declaratory judgment by BIG against the Slotkys, Count VIII; and fraud by Janousek against Michael, Count IX.

On March 27, 2015, Defendants filed their respective answers and affirmative defenses to Janousek's Fourth Amended Complaint. In each of their respective answers, all Defendants pleaded affirmative defenses of failure to state a cause of action, failure of condition precedent, prior breach of contract, waiver, estoppel, the exculpatory clause in the BIG Operating Agreement, the business judgment rule, and failure to mitigate damages. Additionally, the Slotkys and BIG III also pleaded affirmative defenses of lack of consideration, *laches*, and unclean hands. Janousek filed his replies to Defendants' respective affirmative defenses to his Fourth Amended Complaint on April 17, 2015.

Trial commenced on Janousek's Fourth Amended Complaint on June 15, 2015. Janousek presented his case-in-chief over eight days between June 15, 2015 and June 25, 2015, after which Janousek rested.[2] Defendants thereafter made various motions for directed findings. Specifically, Michael moved for a directed finding on Count IX, which the Court granted, finding that Janousek failed to establish a *prima facie* case of fraud by misrepresentation or concealment against Michael in his case-in-chief. Additionally, BIG III moved for a directed finding on Janousek's *alter ego* allegations in Counts II and III, which the Court denied.

Moreover, BIG moved for a directed finding on Count I, which the Court granted to the extent that Janousek, in Count I, sought a declaratory judgment that he was dissociated as a member of BIG pursuant to sections 35-45(3), 35-45(4), and 35-45(8)(C) of the LLC Act. However, the Court denied BIG's motion to the extent that Janousek, in Count I, seeks a declaratory judgment that he dissociated as a member of BIG on October 1, 2007 pursuant to section 35-45(1) of the LLC Act.

Finally, the Estate of Burton Slotky (the "Estate") moved for a directed finding on Counts II, III, IV, VI, VII, and VIII. Michael joined and adopted the Estate's motion with respect to Count VIII. The Court granted the Estate's and Michael's motion as to Count VIII on the basis that Janousek failed to respond to the Estate's argument thereon. Additionally, the Court granted the Estate's motion as to Count VII on the basis that Janousek failed to establish a *prima facie* case for breach of BIG's Operating Agreement by Burton. The Court denied the remainder of the Estate's Motion as to Counts II, III, IV, and VI, finding that Janousek established a *prima facie* case that Burton breached his fiduciary duties to Janousek and BIG.

Subsequent to the Court's rulings on Defendants' motions for directed findings, Janousek moved for leave to amend his Complaint to make two amendments. First, Janousek sought to amend his prayer for relief in Count I to add BIG III and to seek a declaration that BIG III is the

[2] Specifically, Janousek presented his case-in-chief on June 15, 2015, June 16, 2015, June 17, 2015, June 18, 2015, June 22, 2015, June 23, 2015, June 24, 2015, and June 25, 2015.

alter ego of BIG (the "Alter Ego Amendments"). Second, Janousek sought to amend Counts II and IV to obviate language bringing them in the alternative to Count I (the "Alternative Pleading Amendments"). On November 6, 2015, the Court granted Janousek's motion with respect to the Alter Ego Amendments but denied Janousek's motion with respect to the Alternative Pleading Amendments.

Janousek thereafter filed his fifth and, to correct inadvertent errors and omissions therein, his Sixth Amended Verified Complaint ("Sixth Amended Complaint"), which is presently before the Court. Janousek's Sixth Amended Complaint, filed on November 17, 2015, asserts claims for declaratory judgment that Janousek voluntarily dissociated as a member of BIG on October 1, 2007 by Janousek against BIG, the Slotkys, and BIG III, Count I; breach of fiduciary duty of loyalty by Janousek against the Slotkys and BIG III, Count II; breach of fiduciary duty of loyalty by BIG against the Slotkys and BIG III, Count III; breach of fiduciary duty of good faith and fair dealing by Janousek against the Slotkys, Count IV; accounting by Janousek against Michael, Count V; violation of the Illinois Limited Liability Company Act (the "LLC Act"), 805 ILCS 180/1-1, *et seq.*, by Janousek against the Slotkys, Count VI; and breach of BIG's Operating Agreement by Janousek against Michael, Count VII. In his Sixth Amended Complaint, Janousek also identified and re-pleaded for the purpose of appeal issues on which the Court granted summary judgment and directed findings.

On November 19, 2015, Defendants filed their respective answers and affirmative defenses to Janousek's Sixth Amended Complaint. In each of their respective answers, all Defendants pleaded affirmative defenses of failure to state a cause of action, failure of condition precedent, prior breach of contract, waiver, estoppel, the exculpatory clause in the BIG Operating Agreement, the business judgment rule, failure to mitigate damages, and, for the first time, statute of limitations pursuant to section 35-60 of the LLC Act. Additionally, the Slotkys' and BIG III also pleaded affirmative defenses of lack of consideration, laches, and unclean hands.

On November 24, 2015, Janousek filed a motion to dismiss Defendants' respective affirmative defenses of statute of limitations pursuant to section 35-60 of the LLC Act. Janousek filed his replies to Defendants' remaining affirmative defenses to his Sixth Amended Complaint on November 30, 2016.

Trial resumed on November 9, 2015, at which time Defendants began presenting their respective cases-in-chief, which continued on November 10, 2015 and November 16, 2015, and concluded on December 2, 2015. Janousek also presented his rebuttal on December 2, 2015 after which all parties rested and evidence was closed.

On May 10, the Court granted Janousek's motion to dismiss Defendants' respective affirmative defenses of statute of limitations pursuant to section 35-60 of the LLC Act with prejudice. As such, presently before the Court are: (1) Counts I, II, III, IV, V, VI, and VII of Janousek's Sixth Amended Complaint and Defendants' affirmative defenses thereto; and (2) Counts I and II of the Slotkys' Counterclaim and Janousek's affirmative defenses thereto.

FINDINGS OF FACT

1. Janousek is represented by Thomas Kanyock and Karen I. Jeffreys of Schwartz & Kanyock, LLC.

2. BIG is represented by Jeffrey L. Widman and Genevieve M. Daniels of Shaw Fishman Glantz & Towbin LLC.

3. Michael, Burton, and BIG III are represented by Martin T. Tully, Dara C. Tarkowski, and Julian Dayla of Akerman LLP.

4. At trial, the following fact witnesses testified: Michael, Janousek, Aristotle Sangalang ("Aristotle"), Marian Sangalang ("Marian"), Susan Shirley, Walter Healy ("Healy"), Andrew Harlan, Jr., and Glen Mikell.

5. Additionally, Janousek presented expert testimony from Thomas Kabler ("Kabler") on the valuation of BIG and BIG III.

6. Defendants, on the other hand, presented expert testimony from Richard Lies, III ("Lies") on the valuation of BIG and BIG III. Defendants also presented expert testimony from Mark Hosfield ("Hosfield") on the issue of BIG's lost profits if the Slotkys are found to have usurped corporate opportunities.

7. The Court, having heard the testimony presented, evaluated the credibility of the witnesses, and reviewed the exhibits admitted as evidence, makes that following findings of fact.

8. Janousek is an individual who resides in Lake County, Illinois.

9. Michael is an individual who resides in Cook County, Illinois, and is the son of Burton.

10. Burton is an individual who resided in Cook County, Illinois until his death on November 5, 2014. Fern Slotky ("Fern") was Burton's wife and Lauren Simmons ("Lauren") is Burton's daughter. Michael, Fern, and Lauren are each executors of Burton's Estate and trustees of the Burton A. Slotky Revocable Trust dated August 6, 1976 (the "Trust"). Fern and Lauren are named as defendants only in their capacities as executors of Burton's Estate and trustees of the Trust.

11. The Bureaus, Inc. ("TBI") is an Illinois corporation headquartered in Cook County, Illinois.

12. TBI was founded in 1928 as a medical bill collection company and continues to operate in the business of debt collection.

13. The Slotky family purchased TBI in 1974. Members of the Slotky family continue to own TBI. Michael was placed in charge of TBI's day-to-day operations in 1989, was named TBI's CEO in the 1990's, and became part owner of TBI in 1994. Michael remains TBI's part owner and CEO.

14. Prior to his death in November 2014, Burton, as part owner of and advisor to TBI, helped Michael secure financing and strengthen and support key business relationships. Burton also advised Michael on operational and personnel matters. In approximately 2013, Burton transferred his ownership interest in TBI to his wife, Fern.

15. Michael, as CEO of TBI, focuses on TBI's big-picture strategic decisions, on building and maintaining business and industry relationships, on raising investor capital, and on securing favorable financing from banks.

16. In the 1980s, TBI began operating as a third-party debt collector for owners of delinquent consumer debt.

17. A bank named First Chicago was one of TBI's first delinquent consumer debt collection clients.

18. In approximately 1986, Janousek worked for First Chicago as a compliance officer and later assumed responsibility for First Chicago's recovery department, which included responsibility over First Chicago's delinquent consumer debt accounts.

19. During the course of TBI's work for First Chicago, Michael and Janousek met in the early 1990s and developed a cordial and professional working relationship.

20. In 1992, in addition to acting as a third-party debt collector for clients like First Chicago, TBI began purchasing pools of delinquent consumer debt accounts on which it conducted collections activities.

21. In 1994, Janousek left his employment at First Chicago and became employed as a debt recovery manager at First USA, which was also a client of TBI for which TBI acted as a third-party debt collector on delinquent consumer debt.

22. In 1996, TBI hired Aristotle as a debt collector. Aristotle eventually became President of TBI in 2013, the position in which he remains.

23. In 1997, TBI again expanded its business to become a Master Servicer. In its capacity as Master Servicer, TBI provides two services: (1) developing opportunities for clients to buy and sell pools of delinquent consumer debt accounts which it projects to be profitable and facilitating such transactions by, among other things, securing third-party financing; and (2) managing all services related to, sales of, and administrative operations on clients' pools of delinquent consumer debt accounts, including collections and servicing activity, legal compliance, and licensing.

24. In developing and facilitating opportunities for its clients to buy and sell pools of delinquent consumer debt accounts, TBI relies on: (1) a network of close personal and institutional relationships that TBI, Michael, and Burton have developed with industry participants and third-party financiers, including investors and bank lenders; and (2) proprietary tools,

valuation models, and substantial industry experience that TBI has developed to evaluate the potential profitability of purchases and sales and to guide negotiations over price and other terms.

25. As Master Servicer, TBI: (1) identifies opportunities to purchase pools of delinquent consumer debt accounts which it projects will be profitable; (2) directs those opportunities to its Master Servicer clients based on, among other things, the client's goals, risk profile, and ability to finance the purchase; (3) negotiates and facilitates the purchases on the client's behalf if the client chooses to make the purchase; (4) manages all collections and administrative operations, including outsourcing certain functions as appropriate; and (5) identifies and develops opportunities for clients to sell pools of delinquent consumer debt to third parties.

26. In exchange for TBI's services as Master Servicer, TBI's clients pay TBI a percentage of the money collected on the clients' pools of delinquent consumer debt accounts as well as certain expenses incurred by TBI, including expenses for data analysis.

27. As TBI expanded its business to become a Master Servicer, the Slotkys were involved in the formation of several special purpose entities to buy and sell pools of delinquent consumer debt accounts for which TBI would act as Master Servicer, including Bureaus Portfolio No. 1, LLC ("Bureaus Portfolio No. 1") and Bureaus/PL Portfolio No. 1, LLC ("Bureaus/PL Portfolio No. 1"). The Slotkys obtained bank loans and raised investor capital to fund those entities' purchases of pools of delinquent consumer debt accounts.

28. The first purchase of a pool of delinquent consumer debt accounts TBI identified and arranged as Master Servicer occurred in 1997 for a pool sold by First USA, which was represented in the sale by Janousek.

29. Janousek thereafter represented First USA with respect to numerous other sales of pools of delinquent consumer debt accounts to entities for which TBI acted as Master Servicer.

30. In 1998, Burton and Michael invited Janousek to South Florida to discuss the possibility of Janousek joining TBI. At the meeting, the Slotkys explained to Janousek that TBI anticipated continuing to emphasize and expand its business as a Master Servicer.

31. As part of the discussions, the Slotkys and Janousek discussed various options wherein TBI would employ Janousek. One option included Janousek acquiring an ownership interest in TBI. Another scenario envisioned the Slotkys and Janousek creating a debt-buying entity for which TBI would act as Master Servicer.

32. The Slotkys and Janousek ultimately came to an agreement wherein Janousek would become President of TBI and the Slotkys and Janousek would form a new debt-buying entity.

33. The Slotkys thereafter executed a letter dated October 15, 1998 (the "Letter of Intent") addressed to Janousek which memorialized the understanding and intent of the agreement the

Slotkys and Janousek reached with respect to TBI's offer of employment to Janousek and the creation of a new debt-buying entity. Trial Ex. 21.

34. Specifically, the Letter of Intent provided that the Slotkys and Janousek would review an existing, but unexecuted, employment contract which would remain as written absent mutual agreement. Janousek, however, never executed an employment contract with TBI.

35. The Letter of Intent also provided that the Slotkys and Janousek would form a debt-buying entity in which Michael would have a 40% ownership interest, Burton would have a 20% ownership interest, and Janousek would have a 40% ownership interest. The Letter of Intent further provided that when Burton no longer had any involvement in the debut-buying entity, the parties intended to enter into an agreement to provide for a 50/50 split of voting shares between Michael and Janousek notwithstanding whether Michael and Janousek each had a 50% ownership interest in the debt-buying entity.

36. Prior to beginning his employment at TBI, Janousek resided with his family in Texas.

37. In January 1999, Janousek moved with his family from Texas to Illinois and began his employment as President of TBI. As President of TBI, Janousek's primary duties were to collaborate with Michael on identifying opportunities to purchase and sell pools of delinquent consumer debt accounts, to help negotiate the corresponding transactions, and to manage the servicing and collections on the pools of delinquent consumer debt accounts owned by TBI's clients.

38. In March 1999, the Slotkys and Janousek formed Bureaus Investment Group, LLC ("BIG"). BIG's Articles of Organization were filed with the Illinois Secretary of State on March 24, 1999.

39. Also in March 1999, BIG published a Confidential Offering Memorandum dated March 15, 1999 (the "1999 BIG Offering Memo") for the purpose of raising money for BIG from investors by issuing secured notes. Trial Ex. 23. BIG has no physical offices because TBI, as Master Servicer, manages all collections and administrative operations on behalf of BIG.

40. The 1999 BIG Offering Memo outlined BIG's structure and intended operations. According to the 1999 BIG Offering Memo, BIG planned to use the proceeds from the secured notes it issued to capitalize subsidiaries ("BIG Portfolios") wholly owned and managed by BIG. The BIG Portfolios would in turn supplement investor capital by obtaining loans from banks. The BIG Portfolios would then use its combined capital to purchase pools of delinquent consumer debt from which TBI, as Master Servicer, would generate collections revenue.

41. Furthermore, according to the 1999 BIG Offering Memo, the collections revenue received by the BIG Portfolios would first be used to make required payments on bank loans, which are senior to and have first priority over all other debt obligations. Next, the BIG Portfolios would use collections revenue to make payments on investor notes so long as the obligations to the banks were satisfied. Finally, management fees would be paid to BIG's members, the

Slotkys and Janousek, in proportion to each member's ownership interest if and when possible and prudent to do so.

42. The 1999 BIG Offering Memo also included a section titled "Risk Factors" which identified a non-exclusive list of risks involved in the investment offering, including: (1) the absence of securities regulation of the investment offering; (2) the lack of Investment Company Act registration of the notes issued by BIG; (3) BIG's lack of initial capital beyond that received by issuance of notes pursuant to the 1999 Offering Memo; (4) BIG's reliance on TBI to generate collections revenue despite TBI's lack of specific significant experience; (5) BIG's absolute discretion to make business judgments; (6) costs of enforcement by investors for exercising default remedies against BIG; (7) the impact of general economic conditions; (8) the potential for conflicts of interest between BIG, the Slotkys, Janousek, and TBI; and (9) uncertainties concerning the computation of BIG's taxable income.

43. The Slotkys and Janousek each approved the 1999 Offering Memo and invested in BIG by purchasing notes pursuant to the 1999 BIG Offering Memo. The majority of the remaining investors in BIG who purchased notes pursuant to the 1999 Offering Memo were friends, family, and business associates of the Slotkys.

44. Additionally, the Slotkys and Janousek executed the Limited Liability Company Operating Agreement of Bureaus Investment Group, LLC (the "BIG Operating Agreement") dated August 1, 1999. Trial Ex. 24. Under the BIG Operating Agreement, BIG's ownership was distributed such that Michael and Janousek each held a 40% ownership interest, and Burton held a 20% ownership interest.

45. The BIG Operating Agreement provides that, except as otherwise provided, the "action of the Members shall be effectuated by a Majority of the Members." The BIG Operating Agreement also provides that any notice, demand, consent, election, offer, approval, request, or other communication required or permitted under the BIG Operating Agreement must be in writing and either delivered personally sent by certified or registered mail, postage prepaid, return receipt requested sent by recognized overnight delivery service or by facsimile transmittal. The BIG Operating Agreement, however, does not provide that its members are prohibited from owning or participating in entities similar to BIG which buy and sell pools of delinquent consumer debt accounts.

46. The BIG Operating agreement also provides that BIG "shall continue in existence until December 31, 2019, unless its existence is sooner terminated . . . ." Additionally, the BIG Operating Agreement also required its members to make nominal capital contributions in proportion to their ownership interest. Michael and Janousek were required to contribute $40.00, while Burton was required to contribute $20.00.

47. Subsequent to BIG's formation, BIG established eleven BIG Portfolios—named Bureaus Investment Group Portfolio No. 1 ("BIG Portfolio No. 1"), Bureaus Investment Group Portfolio No. 2 ("BIG Portfolio No. 2"), Bureaus Investment Group Portfolio No. 3 ("BIG Portfolio No. 3"), Bureaus Investment Group Portfolio No. 4 ("BIG Portfolio No. 4"), Bureaus Investment Group Portfolio No. 5 ("BIG Portfolio No. 5"), Bureaus Investment

Group Portfolio No. 6 ("BIG Portfolio No. 6"), Bureaus Investment Group Portfolio No. 7 ("BIG Portfolio No. 7"), Bureaus Investment Group Portfolio No. 8 ("BIG Portfolio No. 8"), Bureaus Investment Group Portfolio No. 9 ("BIG Portfolio No. 9"), Bureaus Investment Group Portfolio No. 10 ("BIG Portfolio No. 10"), and Bureaus Investment Group Portfolio No. 11 ("BIG Portfolio No. 11")—to employ BIG's investor capital, borrow additional capital from banks, and purchase and sell pools of delinquent consumer debt accounts.

48. TBI acted as Master Servicer for the BIG Portfolios and in so doing arranged for various banks to make loans to the BIG Portfolios. The banks included TCF Bank, Community Bank of Oak Park River Forest ("Community Bank"), Fifth Third Bank, and US Bank, with each of which TBI, Michael, and Burton had longstanding relationships.

49. As a condition of the BIG Portfolios receiving loans from the banks, the banks generally required BIG's members to personally guarantee some or all of the loan amounts such that, in the event that a BIG Portfolio defaulted on a loan, BIG's members would also be personally liable for repayment of the loan in the amount of the guarantee.

50. Additionally, as Master Servicer, TBI received as compensation 32% of all collections made on behalf of the BIG Portfolios, as well as a "scrubbing" fee of $20.00 per delinquent consumer debt account, up to an additional 4% of all collections.

51. In 2001, the Slotkys and Janousek formed Bureaus Investment Partners II ("BIP II") as an Illinois general partnership in which, Michael and Janousek each had a 40% ownership interest, and Burton had a 20% ownership interest.

52. BIP II was formed to acquire the business of another Illinois general partnership, Bureaus Investment Partners ("BIP"), which was created by the Slotkys and Janousek as a part of a joint venture with a company called Amresco. BIP and BIP II, like BIG, were in the business of purchasing and selling pools of delinquent consumer debt accounts, though BIP and BIP II did so directly as opposed to through subsidiaries, for which TBI acted as Master Servicer. After Burton passed away in November 2014, Michael and Janousek agreed to dissolve BIP II. BIP II's dissolution is ongoing.

53. In 2004 and again in 2005, BIG issued new Confidential Offering Memoranda (the "2004 and 2005 BIG Offering Memos") to raise additional investor capital to distribute to the BIG Portfolios. The 2004 and 2005 BIG Offering Memos were substantially similar to the 1999 BIG Offering Memo. Similar to the 1999 BIG Offering Memo, the Slotkys and Janousek each purchased notes under the 2004 and 2005 BIG Offering Memos, and the majority of the remaining investors in BIG who purchased notes under the 2004 and 2005 BIG Offering Memos were friends, family, and business associates of the Slotkys.

54. Subsequent to its formation in 1999, BIG developed a successful business plan for purchasing pools of delinquent consumer debt accounts at prices which TBI projected to be and were in fact profitable. BIG's business plan further included redeploying capital received from collections on profitable pools of delinquent consumer debt accounts as well as sales of such pools, to purchase other pools which TBI projected to be profitable.

55. After Janousek became President of TBI, Aristotle was promoted to TBI's Director of Strategic Planning and Operations Support in which Aristotle developed and refined many of the proprietary tools and models that TBI came to use to evaluate opportunities to purchase and sell pools of delinquent consumer debt accounts. In 2007, Aristotle was promoted to Vice-President in which position Aristotle had additional responsibility over managing and improving TBI's servicing and collections activity. Aristotle was ultimately promoted to President of TBI in 2013, the position in which he remains.

56. TBI, as well as its clients including BIG and BIP II, enjoyed considerable success and profitability throughout the early and mid-2000s, often with collections exceeding 105% of TBI's projections. However, the relationship between the Slotkys and Janousek soured beginning in 2007.

57. Beginning sometime in 2007, the Slotkys received numerous complaints from TBI employees that Janousek was contributing to an increasingly unproductive work environment. Additionally, TBI's financial performance began to decline significantly in the summer of 2007. The Slotkys attributed TBI's poor financial performance at least in part to Janousek.

58. In approximately the middle of 2007, Janousek was of the opinion that Burton's role in BIG had diminished to the point that Janousek requested a face-to-face meeting with the Slotkys to discuss buying out Burton's interest in BIG consistent with the Letter of Intent. Janousek expressed to Michael that Burton no longer contributed to BIG and that, though Burton's industry and banking relationships had at one time been valuable, TBI and BIG could maintain those relationships without Burton's involvement.

59. Michael disagreed with Janousek's opinion that Burton no longer contributed to BIG.

60. Michael suggested that Janousek offer to purchase Burton's 20% interest in BIG. Janousek, however, did not want to pay for Burton's interest because, in Janousek's opinion, Burton had already been fully compensated for his contributions to BIG. Thus, Janousek maintained that Burton's ownership interest in BIG should either be reduced over a period of years or that Michael and Janousek should form a new partnership for all future purchases of pools of delinquent consumer debt accounts.

61. Janousek also expressed his opinions and frustrations about Burton's role in BIG to Aristotle. Aristotle felt Janousek's decision to do so was unprofessional and reported the details of his conversation with Janousek to the Slotkys.

62. In the summer of 2007, Janousek also began to advocate against TBI facilitating new purchases of pools of delinquent consumer debt accounts for its Master Servicer clients, especially with respect to BIP II and the BIG Portfolios, unless the prices for such pools were incredibly compelling. According to Janousek, the state of the economy was such that opportunities to purchase profitable pools of delinquent consumer debt accounts were few and far between and that TBI and its Master Servicer clients would be better served to focus

on collecting on pools of delinquent consumer debt accounts which its Master Servicer clients already owned.

63. In September 2007, the Slotkys tentatively decided to terminate Janousek's employment as President of TBI. Michael testified that the decision to terminate Janousek was based on Janousek's poor performance and leadership, his reluctance to execute the Slotkys' vision to continue to grow TBI's business, and the Slotkys' growing mistrust of Janousek. The Court, however, does not find Michael's testimony on this point credible except to the extent that the Slotkys' decision to terminate Janousek was based on their growing mistrust of Janousek, specifically with respect to Janousek's position that Burton's interest in BIG should be reduced and eventually eliminated.

64. Michael also testified that the Slotkys felt they could not partner with Janousek on future purchases of pools of delinquent consumer debt accounts and the attendant personal guarantees required by banks to finance such purchases for similar reasons to the Slotkys' decision to terminate Janousek's employment as President of TBI. Again, the Court does not find Michael's testimony on this issue credible except to the extent that the Slotkys' decision not to partner with Janousek was a result of mistrust of Janousek with respect to Janousek's position that Burton's interest in BIG should be reduced and eventually eliminated.

65. Michael discussed his and Burton's decision to terminate Janousek as President of TBI with Sanganlang and his wife, Marian (the "Sangalangs"). Michael and the Sangalangs also discussed the Sangalangs assuming Janousek's responsibilities as President of TBI.

66. As such, the Slotkys prepared a severance package for Janousek on behalf of TBI. The Slotkys also prepared a resolution for BIG dated September 30, 2007 (the "BIG Resolution"), which purported to give Michael sole authority to act on behalf of BIG. Only the Slotkys signed the BIG Resolution. However, Michael never acted on behalf of BIG pursuant to the BIG Resolution.

67. The Slotkys also explored the possibility of forming a new special purpose entity, owned exclusively by the Slotkys, to purchase pools of delinquent consumer debt accounts as the Slotkys wanted to continue to make purchases without Janousek's involvment.

68. Accordingly, the Slotkys had discussions with Community Bank about funding a potential new entity and its future purchases of pools of delinquent consumer debt accounts. As part of its discussions with the Slotkys, Community Bank prepared a Relationship Presentation Summary dated September 27, 2007 (the "Summary"), which detailed Community Bank's relationship with the Slotkys and summarized the Bank's preliminary willingness to make loans guaranteed by the Slotkys to the Slotkys' new entity. Community Bank's Summary also evaluated the potential collateral that the Slotkys could use to secure loans for the Slotkys' proposed new entity including the Slotkys' combined 60% ownership interest in BIG. Community Bank's Summary estimated BIG's total net value at $25.1 million.

69. In late-September 2007, Janousek again requested a meeting with the Slotkys to discuss his opinion that Burton was not contributing to BIG and that Burton's ownership interest in BIG should eventually be reduced or eliminated.

70. On October 1, 2007, the Slotkys and Janousek met at Burton's home. Janousek attended with an easel and white board, prepared to discuss Burton's future participation and ownership interest in BIG. However, soon after Janousek arrived, the Slotkys informed Janousek that he was terminated as President of TBI. The Slotkys also explained to Janousek that, as a result of TBI's termination of his employment as President, Janousek would no longer be involved in TBI's operations as Master Servicer or have access to TBI's offices or computer systems pursuant to TBI policy. The Slotkys presented Janousek with the BIG Resolution which had been executed by the Slotkys and purported to give Michael sole authority to act on behalf of BIG.

71. Janousek refused to sign the BIG Resolution. Additionally, Janousek orally informed the Slotkys that a buyout of his ownership interest in BIG would be appropriate in light of his termination as President of TBI and his disagreement with the BIG Resolution. Janousek, however, did not thereafter request in writing a buyout of his ownership interest in BIG from the Slotkys or BIG.

72. Michael did not consider Janousek's statements on October 1, 2007 to be a demand for a buyout of his ownership interest in BIG. Michael, however, responded that he would consider buying out Janousek within a year.

73. Using the income approach to valuation, neither accounting for taxes in the calculations of BIG's projected cash flows nor BIG's weighted average cost of capital, and applying a 25% discount for lack of marketability, BIG's fair value on October 1, 2007 was $34,040,256.00 such that the fair value of Janousek's 40% ownership interest in BIG on October 1, 2007 was $13,616,102.40.

74. BIG III's first servicing agreement with TBI is dated October 1, 2007.

75. On October 12, 2007, Michael and Janousek again met in person to discuss BIG and BIP II. Michael confirmed that Janousek was still his partner in BIG and BIP II and that Janousek would continue to receive management fees from BIG and distributions from BIP II in proportion to his ownership interests. Michael also asked Janousek to provide him with a list of reports about BIG and BIP II's performance that he would like to receive going forward.

76. In an email dated October 26, 2007, Janousek requested native versions of liquidation reports, debt-summary reports, and other financial reports and updates for BIG, the BIG Portfolios, and BIP II so that he could begin modeling the value of BIG and BIP II and his ownership interests therein. Michael agreed to regularly provide Janousek with such reports and substantially did so.

77. Additionally, as a part of their discussions by email, Michael confirmed with Janousek that he and Burton agreed that the BIG Portfolios and BIP II would, if possible, avoid making any

new purchases of pools of delinquent consumer debt accounts. However, Michael acknowledged that certain BIG Portfolios had entered into installment contracts with CreditMax which required monthly purchases of pools of delinquent consumer debt accounts over a period of time and pursuant to which future purchases were still required to be made. Michael also noted that the Slotkys were "going in another direction" such that Janousek's exposure would decrease over time.

78. Toward the end of October 2007, Janousek emailed Michael to express concern that performance of the pools of delinquent consumer debt accounts purchased by the BIG Portfolios from CreditMax was inexplicably poor.

79. On October 22, 2007, the Slotkys formed BIG III. Michael received 60% ownership interest and Burton received a 40% ownership interest. BIG III's business model is identical to that of BIG. Specifically, BIG III did not itself purchase pools of delinquent consumer debt accounts but established subsidiaries (the "BIG III Portfolios") wholly owned and managed by BIG III to do so, the first of which was named Bureaus Investment Group Portfolio No. 12 ("BIG Portfolio No. 12"). To date, BIG III has established four subsidiaries, including BIG Portfolio No. 12, Bureaus Investment Group Portfolio No. 13 ("BIG Portfolio No. 13"), Bureaus Investment Group Portfolio No. 14 ("BIG Portfolio No. 14"), and Bureaus Investment Group Portfolio No. 15 ("BIG Portfolio No. 15").

80. Like BIG, BIG III capitalized the BIG III Portfolios by issuing secured notes to investors pursuant to a Confidential Offering Memorandum dated January 15, 2008 (the "2008 BIG III Offering Memo"). The 2008 BIG III Offering Memo was sent to all of BIG's investors except Janousek, identified BIG as BIG III's "predecessor company," confirmed that BIG III was formed for the identical purpose as BIG, and announced that the BIG Portfolios would make no additional new purchases except those they were contractually obligated to make pursuant to particular installment contracts. Specifically, the Slotkys, through BIG III, offered BIG's investors the right to invest the proceeds from their secured notes issued by BIG for secured notes issued by BIG III pursuant to the 2008 BIG III Offering Memo.

81. The Slotkys both invested in BIG III by purchasing secured notes pursuant to the 2008 BIG III Offering Memo. The majority of the other investors in BIG III who purchased secured notes pursuant to the 2008 BIG III Offering Memo were the Slotkys' family, friends, and business associates, many of whom had also invested in BIG by purchasing secured notes pursuant to the 1999 BIG Offering Memo, the 2004 BIG Offering Memo, or the 2005 BIG Offering Memo.

82. Additionally, the BIG III Portfolios supplemented the investor capital raised by BIG III pursuant to the 2008 BIG III Offering Memo and received from BIG III by securing loans from Community Bank beginning in October 2007 in order to finance purchases of pools of delinquent consumer debt accounts.

83. To obtain the bank loans, the Slotkys were required to pledge their financial interests in BIG as collateral such that in the event the a BIG III Portfolio defaulted on a loan from Community Bank, Community Bank would have the right to use the Slotkys' financial

interests in BIG to satisfy the amounts due. However, the Slotkys' pledges of their financial interests in BIG did not involve or apply to Janousek's financial interest in BIG. Nevertheless, all of the loans for which the Slotkys pledged their financial interests in BIG were fully repaid ahead of schedule.

84. In October 2007, TBI, as Master Servicer, began developing and directing opportunities to purchase pools of delinquent consumer debt accounts to BIG III Portfolios. TBI continues to act as Master Servicer for the BIG III Portfolios. To qualify the BIG III Portfolios, specifically BIG Portfolio No. 12, to make purchases of pools of delinquent consumer debt accounts, Michael instructed TBI to use BIG's financial information and history with banks.

85. Meanwhile, Michael and Janousek continued to exchange emails and meet in person regarding BIG and BIP II's performance. Specifically, in November 2007, Janousek emailed Michael expressing concern regarding a pool of delinquent consumer debt accounts purchased by a BIG Portfolio from MBNA in August 2007 which was performing particularly poorly.

86. Michael and Janousek also exchanged emails regarding CreditMax. Janousek suggested that the pools of delinquent consumer debt accounts purchased by the BIG Portfolios may have been different than advertised. Michael disagreed. However, in April 2008, the Slotkys cancelled the BIG Portfolios' contract with CreditMax, worked with CreditMax to transfer the BIG Portolios' future purchasing obligations with CreditMax to a BIG III Portfolio on more favorable terms, and ultimately made the purchases through a BIG III Portfolio. The Slotkys did not inform Janousek of the more favorable terms CreditMax agreed to or that a BIG III Portfolio has made the purchases.

87. In December 2007, Janousek wrote an email to Michael regarding the poor performance of a pool of delinquent consumer debt accounts purchased in August 2007 by a BIG Portfolio from Washington Mutual. Also in December 2007, Janousek emailed Michael regarding a conversation he had with TCF Bank about TCF Bank's loans to some of the BIG Portfolios.

88. In January 2008, Janousek emailed Michael that, after reviewing the latest reports for BIG and its Portfolios, he believed that BIG's underperformance was largely the result of the pools of delinquent consumer debt accounts purchased by BIG Portfolios from CreditMax, MBNA, and Washington Mutual.

89. In March 2008, Michael informed Janousek that he was working to refinance a substantial portion of the BIG Portfolios' debts. The Slotkys authorized BIG to use $1,195,000.00 to pay off its investors. Many investors reinvested their payments from BIG into BIG III.

90. Additionally, US Bank was willing to refinance the loans it had made to BIG Portfolios on the condition that Janousek sign new personal guaranties. Janousek ultimately signed the new personal guaranties.

91. Between April and August 2008, Michael and Janousek engaged in a series of email discussions which included Janousek's analysis of possible buy-out scenarios. However, in

August 2008, Michael wrote to Janousek that he didn't think it was an appropriate time to buy out Janousek's ownership interest in BIG, but suggested that Janousek make an offer to buy out the Slotkys' ownership interest in BIG. Janousek did not thereafter make an offer to the Slotkys.

92. In August 2008, BIG temporarily stopped paying management fees to its members for the purpose of preserving capital and to build reserves in light of the declining condition of the economy and the continuing poor performance of some BIG Portfolios. Janousek did not disagree with that decision. Between October 1, 2007 and August 2008, BIG paid Janousek a total of $118,755.37 in management fees.

93. Janousek first learned of BIG III's existence in September 2008. In September 2008, Janousek requested that Michael confirm that the Slotkys' purchases of pools of delinquent consumer debt accounts were not creating any liabilities for Janousek. Michael confirmed that he and Burton had made purchases of pools of delinquent consumer debt accounts in to a new entity in which Janousek had no interest and, therefore, no liability. Michael further confirmed that the BIG Portfolios had not made any new purchases beyond those that they were contractually obligated to make since October 1, 2007 and had no plans to make any such purchases. Michael, however, did not disclose the name of the Slotkys' new debt-purchasing entity, BIG III.

94. Though Janousek did not know that the Slotkys' new debt-purchasing entity was named BIG III, Janousek nevertheless became aware that the BIG III Portfolios were named as a continuation of the BIG Portfolios' naming convention, *i.e.* BIG Portfolio No. 12, BIG Portfolio No. 13, BIG Portfolio No. 14, and BIG Portfolio No. 15. Janousek asked Michael why the BIG III Portfolios were so named and whether Janousek's interest in BIG had been cross-collateralized with the BIG III Portfolios. Michael responded that the naming of the BIG III Portfolios was merely a naming convention where by "Bureaus" was included to reference the entities' connection with TBI and that none of the new entities were cross-collateralized with Janousek's interest in BIG.

95. From September 2008 through January 2009, Michael and Janousek continued to discuss via email the performance of TBI, BIG, and BIP II, as well as potential buyout scenarios with respect to BIG.

96. In February 2009, the Slotkys decided to cease all buyout discussions with Janousek as it related to BIG based on the prevailing economic conditions at the time.

97. In March and April 2009, Michael sent Janousek emails requesting Janousek's cooperation with his efforts to refinance the BIG Portfolios debts with US Bank, Fifth Third Bank, TCF Bank, and Community Bank.

98. BIG III has prospered in the years since its creation and is highly profitable. Using the income approach to valuation, neither accounting for taxes in the calculations of BIG III's projected cash flows nor BIG III's weighted average cost of capital, and applying a 25%

discount for lack of marketability, BIG III's fair value as of December 31, 2014 was $203,301,180.75.

99. BIG, on the other hand, is insolvent.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter and parties.

Janousek's Sixth Amended Complaint

Count I: Declaratory Judgment of Dissociation as a Member of BIG

2. In Count I, Janousek seeks: (1) a declaratory judgment that he dissociated as a member of BIG by communicating to the Slotkys his express will to withdraw as a member of BIG on October 1, 2007; (2) a declaratory judgment of the fair value of Janousek's 40% ownership interest in BIG as of October 1, 2007; (3) a declaratory judgment that BIG or the Slotkys are required to purchase Janousek's 40% ownership interest in BIG; (4) a declaratory judgment that the Slotkys acted arbitrarily, vexatiously, or not in good faith; (5) an award of interest, fees, and expenses; and (5) a declaratory judgment that BIG III is the *alter ego* of BIG.

3. As an initial matter, the Court must determine whether Janousek dissociated as a member of BIG.

4. Janousek contends that his statements at his October 1, 2007 meeting with the Slotkys notified BIG and the Slotkys—the only members of BIG other than Janousek—of his express will to withdraw as a member of BIG.

5. BIG, on the other hand, argues that, based on the totality of the evidence, Janousek did not notify the Slotkys or BIG on October 1, 2007 of his express will to withdraw as a member of BIG and, therefore, did not dissociate as a member of BIG. Specifically, BIG contends that, at most, Janousek's request for a buyout of his ownership interest in BIG was conditioned on a change in BIG's business plan. Additionally, BIG notes that Janousek did not subsequently memorialize any purported demand for a buyout of his ownership interest in BIG in writing in spite of the fact that Janousek had over 600 written communications with Michael after October 1, 2007.

6. Section 35-45 of the LLC Act provides, in relevant part, that "[a] member is dissociated from a limited liability company upon . . . (1) [t]he company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member." 805 ILCS 180/35-45 (West 2012).

7. Based on the totality of the evidence, the Court finds that Janousek has failed to establish by a preponderance of the evidence that he gave notice to the Slotkys and BIG of his express will to withdraw on October 1, 2007. In fact, the weight of the evidence was to the contrary. Janousek continued to have regular written communications with Michael after October 1,

2007 through at least January 2009, yet Janousek did not memorialize his request for a buyout of his ownership interest in BIG from the Slotkys in writing. Moreover, Janousek's oral request for a buyout of his ownership interest in BIG was directed to the Slotkys personally, and not to BIG. To that end, the continuing communications between Michael and Janousek regarding buyout scenarios did not exclusively contemplate a buyout of Janousek's interest by the Slotkys, but also contemplated Janousek purchasing the Slotkys' ownership interests in BIG.

8. Furthermore, based on the evidence before the Court, Janousek did not at any time expressly notify the Slotkys or BIG that he no longer wished to be involved in the business of BIG or that he was withdrawing as a member of BIG as of October 1, 2007. On the contrary, after October 1, 2007, Janousek continued to represent himself as a member of BIG or a partner of the Slotkys, and regularly communicated with Michael regarding BIG's performance and his interest and participation therein until at least January 2009.

9. Having found that Janousek failed to satisfy his burden to prove by a preponderance of the evidence that he dissociated as a member of BIG on October 1, 2007, the Court need not address the remaining issues raised by Count I of Janousek's Sixth Amended Complaint or any of Defendants' affirmative defenses thereto. As such, the Court concludes that Janousek did not dissociate as a member of BIG and, thus, remains a member of BIG.

10. Accordingly, the Court enters judgment in favor of Defendants and against Janousek on Count I of Janousek's Sixth Amended Complaint.

Count II: Breach of Fiduciary Duty of Loyalty by Janousek, individually, against the Slotkys

11. In Count II, Janousek, individually, seeks a judgment for damages, costs, and expenses against the Slotkys for breaching their fiduciary duty of loyalty owed to Janousek as members of BIG by, among other things: (1) competing with BIG by and through forming BIG III; (2) using BIG III to usurp opportunities that belong to BIG for their own personal gain and to the exclusion of Janousek's 40% ownership interest in BIG, as the Slotkys own 100% of BIG III and only 60% of BIG; (3) seizing control of BIG; (4) excluding Janousek from the management and control of BIG; (5); refusing Janousek access to BIG's business premises and records; (6) assigning their membership interests in BIG to secure loans for BIG III, and failing to provide notice to Janousek of such activity; (7) signing loan documents that state the Slotkys own 100% of BIG or were the only members of BIG; (8) unilaterally deciding that BIG would not make new purchases after October 1, 2007 and instead funneling all new purchases to BIG III; and (9) focusing TBI's limited resources on BIG III to the detriment of BIG.

12. As a preliminary matter, the Slotkys argue in a footnote[3] that Count II is inappropriate as an individual claim by Janousek because the injury alleged by Janousek is not direct or unique

[3] The Slotkys' Joint Post-Trial Summation in Opposition to the Claims Brought Against Them (the "Slotkys' Response") is replete with footnotes, an unacceptable number of which raise substantive legal and factual arguments. See, e.g., Slotkys' Response at 6, n. 5 (arguing that Janousek's sole remedy as a dissociated member of BIG is the fair value of his ownership interest and that Janousek may not pursue any other claim individually or

to Janousek but instead was suffered by BIG, in which Janousek may share in any recovery as a member of BIG, citing Lid Assocs. v. Dolan, 324 Ill. App. 3d 1047 (1st Dist. 2001); In re Marriage of Schweihs, 272 Ill. App. 3d 653 (1st Dist. 1995); and McGee v. Dresnick, No. 04 C 6684, 2005 U.S. Dist. LEXIS 18244 (N.D. Ill. Aug. 24, 2005). Specifically, the Slotkys maintain that usurpation of corporate opportunity is a derivative claim and may not be raised individually, citing Goldberg v. Michaels, 328 Ill. App. 3d 593 (2d Dist. 2002). Factually, the Slotkys argue that Janousek introduced no evidence that establishes the alleged injuries were suffered by him as opposed to BIG.

13. Janousek, on the other hand, asserts that individual claims by members with a minority ownership interest are permissible even when the rights of the company are also implicated where members who have a controlling ownership interest directly attack the minority member's rights or expectations, citing Pielet v. Hiffman, 407 Ill. App. 3d 788 (1st Dist. 2011); Sterling Radio Stations, Inc. v. Weinstine, 328 Ill. App. 3d 58 (1st Dist. 2002); Levy v. Markal Sales Corp., 268 Ill. App. 3d 355 (1st Dist. 1994); Mann v. Kemper, 247 Ill. App. 3d 966 (1st Dist. 1993); Zokoych v. Spalding, 36 Ill. App. 3d 654 (1st Dist. 1976); Elmhurst Consulting LLC v. Gibson, 219 F.R.D. 125 (N.D. Ill. 2003); and several unreported decisions of federal district courts.

14. If a shareholder initiates a suit to recover damages for an injury to the company in which they have an ownership interest, such suit must be brought derivatively on behalf of the company. Small v. Sussman, 306 Ill. App. 3d 639, 643 (1st Dist. 1999). "However, an exception to this rule allows a shareholder with a direct, personal interest in a cause of action to bring suit even if the corporation's rights are also implicated." Sterling Radio Stations v. Weinstine, 328 Ill. App. 3d 58, 62 (1st Dist. 2002). "Whether an action is derivative or direct, however, requires a strict focus on the nature of the alleged injury, *i.e.*, whether it is to the corporation or to the individual shareholder that injury has been done." Id.

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derivatively against the Slotkys); at 7, n. 8 (arguing that Janousek's assertion that the Slotkys began freezing him out of BIG prior to October 1, 2007 is unsupported by the evidence introduced at trial and directly contrary to Janousek's initial position); at 9, n. 12 (arguing that the Slotkys' actions on behalf of BIG were actions of a majority of the members of BIG to which the business judgment rule applies and that Janousek presented no evidence of bad faith, fraud, illegality or gross overreaching to overcome the protection afforded by the business judgment rule); at 14, n. 17 (arguing that Janousek's expectation of unlimited access to all BIG-related information at any time is unreasonable); at 15, n. 18 (arguing that Janousek is incorrect that a presumption of fraud applies in Counts II and III because there was no transaction between Janousek and the Slotkys); at 17, n. 20 (arguing that Janousek's individual claims for breach of fiduciary duty in Counts II and IV are inappropriate because the injuries alleged are not specific to Janousek); at 27, n. 32 (arguing that Janousek wrongly asserts that application of a marketability discount to the value of BIG III would reward the Slotkys). The Court discourages the use of footnotes in general, especially with respect to substantive arguments, and even more so when, as here, some of the substantive arguments made in footnotes address the fundamental viability of Janousek's claims. See Lundy v. Farmers Group, Inc., 322 Ill. App. 3d 214, 218 (2d Dist. 2001) (substantive arguments should be contained in the text of a brief, not in footnotes which are discouraged). Additionally, the Slotkys' inclusion of myriad substantive legal and factual arguments in footnotes is a blatant and unacceptable evasion of the Court's December 4, 2015 Order which limited the parties' responsive post-trial submissions to 35 pages. If the Slotkys, in preparing their Response, were absolutely unable to comply with the page limitation imposed by the Court's December 4, 2015 Order, the Slotkys should have requested leave to file a brief in excess of the page limitation, and should not have merely created the appearance of compliance by flouting the Court's Standing Order which requires all briefs to be "double-spaced with 12-point font." Calendar 3 Standing Order (revised June 24, 2015), at 3, III(b).

15. The Court finds that Count II is appropriate as an individual claim by Janousek against the Slotkys to the extent that it asserts that the Slotkys breached their fiduciary duties by seizing control of BIG, excluding Janousek from the management and control of BIG, and refusing Janousek access to BIG's books and records. The Court finds that the nature of the injuries as alleged by Janousek on those portions of Count II are personal to Janousek and are thus appropriate as individual claims.

16. The Court, however, finds the nature of the injuries as alleged by Janousek on the remainder of the issues asserted by Janousek in Count II are merely injuries suffered by BIG and that Janousek's interest therein is derivative as a member of BIG. Specifically, the gravamen of the remainder of Count II is that the Slotkys breached their fiduciary duties by competing with BIG through BIG III, and usurping, through BIG III, opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest. The Court finds that the injuries resulting from these breaches of the Slotkys' fiduciary duty as alleged by Janousek are to BIG and that Janousek's interest therein is merely derivative of his status as a member of BIG.

17. As such, the Court enters judgment in favor of the Slotkys and against Janousek on Count II of Janousek's Sixth Amended Complaint to the extent that Janousek asserts an individual claim that the Slotkys breached their fiduciary duties by competing with BIG through BIG III, and usurping, through BIG III, opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest.

18. With respect to Janousek's claims in Count II that the Slotkys breached their fiduciary duties owed to Janousek by seizing control of BIG, excluding Janousek from the management and control of BIG, and refusing Janousek access to BIG's books and records, the Slotkys contend that Janousek failed to prove by a preponderance of the evidence that they breached any of their fiduciary duties.

19. On his claims for breach of fiduciary duty in Count II, Janousek, individually, has the burden to prove by a preponderance of the evidence that: (1) the Slotkys had a fiduciary duty to Janousek; (2) the Slotkys breached that duty; (3) the Slotkys' breach proximately caused an injury to Janousek. Neade v. Portes, 193 Ill. 2d 433, 444 (2000).

20. BIG, as a member-managed LLC, is governed by the LLC Act, which authorizes a hybrid form of business organization and permits its members to avail themselves of tax benefits similar to a partnership and of limited liability similar to the corporate form. First Mid-Ill. Bank & Trust v. Parker, 403 Ill. App. 3d 784, 792 (5th Dist. 2010). Section 15-3(a) of the LLC Act provides that "[t]he fiduciary duties a member owes to a member-managed company and its other members include the duty of loyalty and the duty of care . . . ." 805 ILCS 180/15-3(a) (West 2012).

21. First, the Slotkys argue that the evidence showed that BIG was operated by a majority of its members in accordance with the BIG Operating Agreement and, therefore, the Slotkys did not seize control of BIG or exclude Janousek from the management or control of BIG. The Court agrees.

22. The Court finds that Janousek failed to prove by a preponderance of the evidence that the Slotkys breached their fiduciary duties to Janousek by seizing control of BIG or excluding Janousek from the management or control of BIG. BIG's Operating Agreement provides that action by BIG may be effectuated by a majority of the members. The Slotkys, whose combined ownership interests in BIG was 60%, had authority to take action on behalf of BIG pursuant to the BIG Operating Agreement when they acted together. On the other hand, Janousek, whose ownership interest in BIG was only 40%, could not effectuate any action on behalf of BIG without the agreement of at least one of the Slotkys. Thus, the very nature of BIG's structure as provided in the BIG Operating Agreement allowed the Slotkys to effectively control BIG to the exclusion of Janousek when they act together. Additionally, the Court finds that the evidence shows that Janousek continued to communicate with Michael regarding the performance of BIG and the BIG Portfolios after October 1, 2007 through at least January 2009.

23. Therefore, the Court enters judgment in favor of the Slotkys and against Janousek on Count II of Janousek's Sixth Amended Complaint to the extent that Janousek asserts that the Slotkys breached their fiduciary duties to him by seizing control of BIG or excluding him from the management or control of BIG.

24. The Slotkys further argue that Janousek failed to prove that he was unlawfully denied access to the books and records of BIG. Specifically, the Slotkys contend that Janousek presented no evidence that the Slotkys denied any specific request by Janousek for information regarding BIG to which he was entitled. Instead, the Slotkys maintain that the evidence shows that Michael regularly provided Janousek with numerous liquidation reports, debt summaries, and information regarding bank loans relating to BIG and the BIG Portfolios from October 2007 through July 2009. Once more, the Court agrees.

25. The Court finds that Janousek failed to satisfy his burden to prove by a preponderance of the evidence that the Slotkys breached their fiduciary duties to Janousek by unlawfully denying him access to BIG's books and records. Specifically, the Court finds that the evidence fails to establish that Janousek ever made a request for information with respect to BIG that the Slotkys failed to comply with. On the contrary, the Court finds that the evidence establishes that on October 26, 2007, Janousek requested from Michael native versions of liquidation reports, debt-summary reports, and other financial reports and updates for BIG and the BIG Portfolios. The Court also finds that Michael agreed to regularly provide Janousek with such reports and substantially did so.

26. Therefore, the Court enters judgment in favor of the Slotkys and against Janousek on Count II of Janousek's Sixth Amended Complaint to the extent Janousek asserts that the Slotkys breached their fiduciary duties to him by unlawfully denying him access to BIG's books and records.

27. Accordingly, the Court enters judgment in favor of the Slotkys and BIG III and against Janousek on the entirety of Count II of Janousek's Sixth Amended Complaint. As such, the Court need not address the Slotkys' affirmative defenses to Count II.

Count III: Breach of Fiduciary Duty of Loyalty by Janousek, derivatively on behalf of BIG, against the Slotkys

28. In Count III, Janousek, similar to Count II though not individually but derivatively on behalf of BIG, seeks a judgment for damages, costs, and expenses against the Slotkys for breaching their fiduciary duty of loyalty to BIG as members of BIG by: (1) competing with BIG by and through forming BIG III; (2) using BIG III to usurp opportunities that belonged to BIG; and (3) not acting fairly towards BIG when conducting BIG's business.

29. Janousek argues that the evidence shows that the Slotkys breached their fiduciary duties of care and loyalty owed BIG pursuant to section 15-3 of the LLC Act. Specifically, Janousek contends that the Slotkys breached their fiduciary duties by establishing BIG III—a company identical in structure and purpose to BIG—for the purpose of funneling all opportunities the BIG Portfolios might have had to purchase pools of delinquent consumer debt accounts to the BIG III Portfolios. Janousek asserts that BIG had expectancy interests in purchasing those opportunities such that the Slotkys had an obligation to first offer the opportunities to BIG.

30. Additionally, Janousek argues that it was feasible for BIG and the BIG Portfolios to purchase such opportunities because BIG and the BIG Portfolios could have had millions of dollars in credit if the Slotkys had not used BIG's resources to obtain credit for BIG III and the BIG III Portfolios and, in any event, BIG and the BIG Portfolios certainly could have obtained sufficient additional capital necessary to make the initial purchase which was ultimately made by a BIG III Portfolios. Nevertheless, asserts Janousek, the Slotkys never asked him whether he would be willing to extend additional personal credit to obtain financing necessary to make purchases, even as prices for such opportunities were falling.

31. Janousek maintains that a presumption of fraud applies to all opportunities which could have gone to BIG and the BIG Portfolios but instead went to BIG III and the BIG III Portfolios such that the burden shifts to the Slotkys to overcome that presumption by clear and convincing evidence, citing In re Estate of Miller, 334 Ill. App. 3d 692 (5th Dist. 2002). According to Janousek, a significant factor in determining whether the Slotkys have overcome such presumption is whether the Slotkys made a full and frank disclosure of all relevant facts, citing McFail v. Braden, 19 Ill. 2d 108 (1960); and Monco v. Janus, 222 Ill. App. 3d 280 (1st Dist. 1991). Janousek notes that the Slotkys neither offered the opportunities to purchase pools of delinquent consumer debt accounts that BIG III and the BIG III Portfolios ultimately purchased nor fully and frankly disclosed those opportunities to BIG. Nor, insists Janousek, have the Slotkys provided any contrary evidence to rebut the presumption of fraud by clear and convincing evidence.

32. Janousek next argues that the Slotkys used BIG's assets and good will, including BIG's name, reputation, long established financial history, and contacts, to obtain financing for BIG III and the BIG III Portfolios.

33. Moreover, Janousek contends that the Slotkys' formation of BIG III was inconsistent with reasonable expectations. Though, according to Janousek, beginning in mid-2007, he was

reluctant for BIG and the BIG Portfolios to make purchases of pools of delinquent consumer debt accounts until prices fell, BIG's members never discussed whether BIG and the BIG Portfolios should permanently stop making such purchases. With respect to the CreditMax, contends Janousek, the Slotkys' argument that they cancelled BIG's installment contract out of concern for Janousek defies common sense. On the contrary, only weeks after the Slotkys cancelled BIG's installment contract with CreditMax, the Slotkys authorized a BIG III Portfolio to enter into an installment contract with CreditMax on more favorable terms than the BIG installment contract. Additionally, maintains Janousek, the Slotkys have not satisfied their burden to prove they offered or disclosed the more favorable terms to BIG or Janousek.

34. Furthermore, Janousek argues that the Slotkys changed BIG's business plan of redeploying excess cash flow to continue to purchase new pools of delinquent consumer debt, but instead gave up on BIG and transferred BIG's business plan to BIG III without buying out Janousek's ownership interest in BIG.

35. The Slotkys, on the other hand, contend that Janousek failed to prove that the Slotkys wrongfully usurped opportunities to purchase pools of delinquent consumer debt accounts which belonged to BIG. Specifically, the Slotkys argue that there was no understanding or expectation that the members of BIG could not form or invest in other entities which purchase pools of delinquent consumer debt accounts. In support of their contention, the Slotkys note that the BIG Operating Agreement does not prohibit its members from forming or investing in such entities other than BIG. In fact, assert the Slotkys, Janousek understood that the Slotkys had formed other such entities in which Janousek would have no interest, including Bureaus/PL Portfolio No. 1. The Slotkys also note that the 1999, 2004, and 2005 BIG Offering Memos included as a risk factor the potential for conflicts of interest between BIG, the Slotkys, Janousek, and TBI.

36. Moreover, the Slotkys argue that BIG did not have any interest in BIG III's opportunities to purchase pools of delinquent consumer debt accounts which came from TBI, not from BIG, and such opportunities were not developed or exploited using any of BIG's assets, citing Graham v. Mimms, 111 Ill. App. 3d 751 (1st Dist. 1998); Dremco, Inc. v. S. Chapel Hill Gardens, Inc., 274 Ill. App. 3d 534 (1st Dist. 1995); Peterson Welding Supply Co., Inc. v. Cryogas Prods., Inc., 126 Ill. App. 3d 759 (1st Dist. 1984); and Dominion Nutrition, Inc. v. Cesca, No. 04 C 4902, 2006 U.S. Dist. LEXIS 15515 (N.D. Ill. Mar. 2, 2006).

37. Furthermore, the Slotkys contend that it was not feasible for BIG to take advantage of BIG III's purchase opportunities because neither Janousek nor the Slotkys wanted the BIG Portfolios to make additional purchases. In any event, according to the Slotkys, neither BIG nor the BIG Portfolios had access to capital necessary to make such purchases.

38. Janousek replies that the Slotkys are estopped from raising the issue of whether it was feasible for BIG to take advantage of BIG III's purchase opportunities because the Slotkys, with Michael as CEO of TBI and Burton as part owner of and advisor to TBI, exploited their positions to enhance their individual interests through BIG III at the expense of BIG and Janousek, citing Graham v. Mimms, 111 Ill. App. 3d 751 (1st Dist. 1982). In any event,

Janousek contends that it was, in fact, feasible for BIG to take advantage of BIG III's purchasing opportunities.

39. On his claims for breach of fiduciary duty in Count III, Janousek, derivatively on behalf of BIG, has the burden to prove by a preponderance of the evidence that: (1) the Slotkys had a fiduciary duty to BIG; (2) the Slotkys breached that duty; (3) the Slotkys' breach proximately caused an injury to BIG. Neade v. Portes, 193 Ill. 2d 433, 444 (2000).

40. BIG, as a member-managed LLC, is governed by the LLC Act, which authorizes a hybrid form of business organization and permits its members to avail themselves of tax benefits similar to a partnership and of limited liability similar to the corporate form. First Mid-Ill. Bank & Trust v. Parker, 403 Ill. App. 3d 784, 792 (5th Dist. 2010). Section 15-3(a) of the LLC Act provides that "[t]he fiduciary duties a member owes to a member-managed company and its other members include the duty of loyalty and the duty of care . . . ." 805 ILCS 180/15-3(a) (West 2012).

41. Pursuant to section 15-3(b) of the LLC Act, "[a] member's duty of loyalty to a member-managed company and its other members includes," in pertinent part, "to refrain from competing with the company in the conduct of the company's business before the dissolution of the company." 805 ILCS 180/15-3(b) (West 2012). Thus, the Slotkys, as members of BIG, owe BIG a fiduciary duty of loyalty which includes refraining from competing with BIG in the conduct of BIG's business before dissolution of BIG.

42. The Slotkys' fiduciary duty of loyalty to BIG and Janousek also encompasses the corporate opportunity doctrine. Anest v. Audino, 332 Ill. App. 3d 468, 477 (2d Dist. 2002). The corporate opportunity doctrine prohibits an entity's fiduciary from taking advantage of business opportunities in which the entity has an interest. Levy v. Markal Sales Corp., 268 Ill. App. 3d 355, 365 (1st Dist. 1994).

43. An entity has an interest in a business opportunity when the opportunity "is reasonably incident to the [entity's] present or prospective business and is one in which the [entity] has the capacity to engage." Dremco, Inc. v. South Chapel Hill Gardens, 274 Ill. App. 3d 534, 538 (1st Dist. 1995).

44. As to the first element in determining whether an entity has an interest in a business opportunity, whether the opportunity is reasonably incident to the entity's present or prospective business, the Court finds that all of the purchases of pools of delinquent consumer debt accounts by BIG III and the BIG III Portfolios were reasonably incident to BIG's business.

45. The Court rejects the Slotkys attempt to evade this conclusion by asserting that TBI made the purchases of pools of delinquent consumer debt accounts made by BIG III and the BIG III Portfolios available only to BIG III and the BIG III Portfolios and did not make those opportunities available to BIG and the BIG Portfolios. To start, TBI was not a neutral third party which acted independent of the Slotkys' interests. Instead, TBI was directly aligned with the Slotkys' interests because Michael, as CEO of TBI, and Burton, as part owner and

advisor to TBI, exerted significant if not absolute control over TBI's operations. This point is especially true with respect to TBI's relationship with BIG and BIG III subsequent to Janousek's termination as President of TBI on October 1, 2007, when BIG III was formed and TBI began developing and directing opportunities to purchase pools of delinquent consumer debt accounts to the BIG III Portofolios.

46. The Court also rejects the Slotkys' argument that there was no understanding or expectation that the members of BIG could not form or invest in other entities which purchase pools of delinquent consumer debt accounts. The Slotkys' reliance on the fact that the BIG Operating Agreement does not prohibit BIG's members from forming or investing in entities which purchase pools of delinquent consumer debt accounts other than BIG is not well founded in light of sections 15-5(a) and 15-3(b) of the LLC Act.

47. As noted above, section 15-3(b)(3) of the LLC Act provides that a member's duty of loyalty to a member-managed company and its other members includes "to refrain from competing with the company in the conduct of the company's business before the dissolution of the company." 805 ILCS 180/15-3(b)(3) (West 2012).

48. However, Section 15-5(a) of the LLC Act provides:

> All members of a limited liability company may enter into an operating agreement to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this Act governs the relations among the members, managers, and company. Except as provided in subsection (b) of this Section, an operating agreement may modify any provision or provisions of this Act governing relations among the members, managers, and company.

805 ILCS 180/15-5 (West 2012).

49. As the Slotkys stress, the BIG Operating Agreement does not contain any provision on the issue of whether the members of BIG may form or invest in other entities which purchase pools of delinquent consumer debt accounts.[4] Thus, pursuant to section 15-5(a) of the LLC

[4] While the BIG Operating Agreement does not contain any provision which modifies section 15-3(b)(3) of the LLC Act, the Court notes that the ability of an LLC's operating agreement to modify the provisions of the LLC Act which govern the relations among the members, managers, and company is limited by section 15-5(b) of the LLC Act, which, in pertinent part, provides that an LLC's "operating agreement may not . . . (6) eliminate or reduce a member's fiduciary duties, but may; (A) identify specific types or categories of activities that do not violate these duties, if not manifestly unreasonable; and (b) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate these duties . . . ." 805 ILCS 180/15-5(b) (West 2012). Meaning, the BIG Operating Agreement could not have eliminated the fiduciary duty of loyalty each member owed to BIG and the other members. However, the BIG Operating Agreement may have been able to identify specific types or categories of activities that would not constitute a breach of a member's fiduciary duty of loyalty to refrain from competing with BIG. Or perhaps the BIG Operating Agreement could have included a provision which specified the number or percentage of members required to authorize or ratify a specific act or transaction that would otherwise violate a

Act, the members' fiduciary duty of loyalty to refrain from competing with BIG pursuant to section 15-3(b)(3) of the LLC Act governs the relations among the members of BIG without modification.

50. The Court also finds that the acknowledgement in the 1999, 2004, and 2005 BIG Offering Memos that risk factors associated with investment in BIG included potential conflicts of interest between BIG, the Slotkys, and TBI is irrelevant and, in any event, insufficient to overcome the express directive of section 15-3(b)(3) of the LLC Act.

51. Instead, the Court finds that the Slotkys' formation of BIG III and the BIG III Portfolios violated section 15-3(b)(3) of the LLC Act. First of all, BIG has not been dissolved. Additionally, BIG III and the BIG III Portfolios are direct competitors of BIG and the BIG Portfolios. This is so because BIG III and the BIG III Portfolios are identical in structure, purpose, and scope to BIG and the BIG Portfolios save for the fact that Janousek has no interest in BIG III and the BIG III Portfolios.

52. Specifically, unlike Bureaus Portfolio No. 1, Bureaus/PL Portfolio No. 1, and BIP II, neither BIG nor BIG III directly purchased pools of delinquent consumer debt accounts. Instead, BIG and BIG III both established wholly owned subsidiaries to make purchases—the BIG Portfolios and the BIG III Portfolios, respectively. Additionally, both BIG and BIG III issued secured notes to investors to capitalize their respective subsidiaries. Moreover, the BIG Portfolios and the BIG III Portfolios both supplemented investor capital raised pursuant to the issuance of secured notes by securing bank loans which had priority over the secured notes. TBI also served as Master Servicer for both the BIG Portfolios as well as the BIG III Portfolios. Furthermore, the business model of both BIG and the BIG Portfolios, and BIG III and the BIG III Portfolios included redeploying capital received from collections on profitable pools of delinquent consumer debt accounts as well as sales of such pools, to purchase other pools which TBI projected to be profitable.

53. As to the second element in determining whether an entity has an interest in a business opportunity, whether the entity has the capacity to engage in the opportunity, "it is relevant to consider whether it was feasible for the [entity] to take advantage of the opportunity, and whether the [entity] had a reasonable expectation that its fiduciary would disclose and tender the opportunity." Graham v. Mimms, 111 Ill. App. 3d 751, 763 (1st Dist. 1982).

54. "Nevertheless, the 'core principle' of the corporate opportunity doctrine is that [an entity's] fiduciary will not be permitted to usurp a business opportunity which was developed through the use of [the entity's] assets." Id. This is so because the corporate opportunity doctrine "'essentially treats [an entity's] expectations regarding certain business opportunities which are in the [entity's] line of business and of practical advantage to it as [the entity's assets] which may not be appropriated for personal gain.'" Id. (quoting In re Trim-Lean Products, Inc., 4 Bankr. L. Rep. 243, 247 (D. Del. 1980)). To that end, the corporate opportunity doctrine is but a specialized application of the proscription against misappropriation of an entity's assets by a fiduciary of the entity. Id. "'On the other hand, the general proscription

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member's fiduciary duty of loyalty to refrain from competing with BIG after a full and frank disclosure of all material facts. But the BIG Operating Agreement provides for neither.

against [misappropriation of an entity's assets] applies equally to business opportunities outside the [entity's] line of business.'" Id. (quoting In re Trim-Lean Products, 4 Bankr. L. Rep. at 247). "'Thus, a business opportunity falling outside [an entity's] line of business and which would not otherwise be considered a corporate opportunity, nevertheless, will be deemed a corporate opportunity if developed or financed with [the entity's assets].'" Id. (quoting In re Trim-Lean Products, 4 Bankr. L. Rep. at 247). "Therefore, when [an entity's] fiduciary uses [the entity's] assets to develop a business opportunity, the fiduciary is estopped from denying that the resulting opportunity belongs to the [entity] whose assets were misappropriated, even if it was not feasible for the [entity] to pursue the opportunity or it had no expectancy in the project." Id. at 763.

55. As an initial matter, the Court finds that the Slotkys are estopped from asserting that it was not feasible for BIG to take advantage of BIG III's purchase opportunities because the evidence establishes that the Slotkys used BIG's assets to capitalize BIG III and the BIG III Portfolios as well as to finance and qualify the BIG III Portfolios' purchases of pools of delinquent consumer debt accounts. A business's good will, which includes its name and reputation, is recognized as an asset of the business. Bd. of Trade of Chi. v. Dow Jones & Co., 108 Ill. App. 3d 681, 693, n. 2 (1st Dist. 1982); SSA Foods, Inc. v. Giannotti, 105 Ill. App. 3d 424, 429 (1st Dist. 1982).

56. Specifically, the Court finds that the Slotkys used BIG's name, reputation, and good will to attract investors to purchase secured notes issued by BIG III pursuant to the 2008 BIG III Offering Memo. In particular, the 2008 BIG III Offering Memo identified BIG as BIG III's "predecessor company," confirmed that BIG III was formed for the identical purpose as BIG, and announced that the BIG Portfolios would make no additional new purchases except those which they were contractually obligated to make pursuant to particular installment contracts.

57. Additionally, the Court finds that the Slotkys also used BIG's name, reputation, and good will to secure financing for the BIG III Porfolios from banks as well as to qualify the BIG III Portfolios, specifically BIG Portfolio No. 12, to make purchases of pools of delinquent consumer debt accounts, Michael instructed TBI to use BIG's financial information and history with banks.

58. Perhaps the Slotkys' use of BIG's name, reputation, and good does not rise to the level of the defendant in Graham, who was found to have used the corporation's employees and his own time as the corporation's executive, to research and investigate potential opportunities which he wrongfully usurped. Graham, 111 Ill. App. 3d at 764. But BIG had no employees and the members of BIG weren't compensated for their time—they were only compensated in the form of management fees and returns on the secured notes they purchased as investors in BIG. Instead, all of BIG's operations were managed by TBI as Master Servicer. As referenced above, however, TBI was directly aligned with the Slotkys' interests especially after the Slotkys terminated Janousek as President of TBI on October 1, 2007 because Michael, as CEO of TBI, and Burton, as part owner and advisor to TBI, exerted significant if not absolute control over TBI's operations.

59. Notwithstanding the fact that the Slotkys are estopped from asserting that it was not feasible for BIG to take advantage of BIG III's purchase opportunities because the Slotkys used BIG's name, reputation, and good will to capitalize BIG III and the BIG III Portolios as well as to finance and qualify the BIG III Portoflios' purchases of pools of delinquent consumer debt accounts, the Court finds that the evidence establishes that it was feasible for BIG to take advantage of BIG III's purchase opportunities.

60. The Court rejects the Slotkys argument that neither BIG nor the BIG Portfolios had access to capital necessary to make such purchases. Such an argument is belied by the implications of the Slotkys' position that the actions of BIG have at all times been effectuated by a majority its members. When they acted together, the Slotkys' combined ownership interests in BIG constituted a 60% majority sufficient to take action on behalf of BIG pursuant to the BIG Operating Agreement. The Slotkys, on their own, also clearly had the ability to obtain financing for the purchases made by BIG III and the BIG III Portfolios because they were the only members of BIG III. Thus, the Court finds that it was at least feasible for the Slotkys to have enabled BIG and the BIG Portfolios to take advantage of BIG III's purchasing opportunities by obtaining the same financing for BIG and the BIG Portfolios as they actually obtained for BIG III and the BIG III Portfolios.

61. The Court also finds the Slotkys' argument that neither Janousek nor the Slotkys wanted the BIG Portfolios to make additional purchases irrelevant. Even if true, the mere fact that the members of BIG did not want to make additional purchases cannot shield the Slotkys from the repercussions of violating their fiduciary duties of loyalty to not compete with BIG prior to its dissolution owed to BIG. Nevertheless, it is clear that the Slotkys wanted to continue purchasing pools of delinquent consumer debt accounts as they created BIG III and the BIG III Portfolios for exactly that purpose. Additionally, while Janousek expressed reservation about the BIG Portfolios making new purchases beginning in the summer of 2007 based on the performance of the BIG Portfolios' existing pools and the state of the economy in general, Janousek's position was not absolute such that Janousek would still have entertained new purchases if the prices were compelling.

62. When an entity's fiduciary wants to take advantage of a business opportunity in which the entity has an interest, "the fiduciary must first disclose and tender the opportunity to the [entity] before he or she takes advantage of it, notwithstanding the fiduciary's belief that the corporation is legally or financially incapable of taking advantage of the opportunity." Anest, 332 Ill. App. 3d at 478.

63. The Court finds that the Slotkys did not fully and fairly disclose any of the BIG III purchasing opportunities to BIG or Janousek prior to taking advantage of them through BIG III and the BIG III Portfolios. While Michael informed Janousek on October 1, 2007 that the Slotkys were going in an different direction, the Court finds that such a statement is not a full or fair disclosure of anything, much less a full and fair disclosure of the Slotkys intention to form BIG III and the BIG III Portfolios, or to use BIG III and the BIG III Portfolios to purchase pools of delinquent consumer debt accounts in which BIG and the BIG Portfolios had an interest.

64. Accordingly, the Court concludes that the Slotkys breached their fiduciary duties of loyalty to BIG by forming BIG III and the BIG III Portfolios which are identical in structure, purpose, and scope, and are direct competitors to BIG and the BIG Portfolios. Additionally, the Court finds that the Slotkys breached their fiduciary duty of loyalty to BIG by usurping opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest by making those purchases through BIG III and the BIG III Portfolios.

65. The Slotkys also raise waiver, *laches*, and estoppel as affirmative defenses to Counts II and III, citing Lozman v. Putnam, 379 Ill. App. 3d 807 (1st Dist. 2008); In re Nitz, 317 Ill. App. 3d 119 (2d Dist. 2000); Hubble v. O'Connor, 291 Ill. App. 3d 974 (1st Dist. 1997). Tarin v. Pellonari, 253 Ill. App. 3d 542 (1st Dist. 1993); Wald v. Chicago Shippers Ass'n, 175 Ill. App. 3d 607 (1st Dist. 1988); and Peterson Welding Supply, Co. v. Cryogas Prods., Inc., 126 Ill. App. 3d 759 (1st Dist. 1984). The Slotkys argue that the evidence shows that Janousek knew BIG and the BIG Portfolios ceased making purchases of pools of delinquent consumer debt accounts and that the Slotkys continued to make purchases through BIG III and the BIG III Portfolios beginning in October 2007 to which Janousek objected only in July 2009 upon Janousek's initiation of this action. Additionally, the Slotkys contend that they as well as BIG III will be prejudiced if Janousek is allowed to pursue his claims because, while the Slotkys personally guaranteed $50 million in loans for BIG III and the BIG III Portfolios to make purchases of pools of delinquent consumer debt accounts, $38 million of which remains outstanding, Janousek undertook no risk and made no contribution.

66. Janousek retorts that he was not aware until Fall 2008 that the Slotkys had made purchases of pools of delinquent consumer debt accounts through BIG III and the BIG III Portfolios at the expense of BIG. Additionally, Janousek contends that his initiation of this action less than one year after learning of BIG III's existence was not unreasonable. Janousek also maintains that the Slotkys have failed to satisfy their burden to prove that Janousek's delay in initiating this action caused prejudice to the Slotkys.

67. The Court notes that while the Slotkys recite the standard for the affirmative defenses of waiver and estoppel as expressed in Nitz, Wald, and Hubble, the Slotkys do not make any substantive argument that either waiver or estoppel defeat Janousek's claims for breach of fiduciary duty in Counts II and III. Instead, the Slotkys' argument with respect to its affirmative defenses is limited to the affirmative defense of *laches*. As such, the Court finds that the Slotkys have failed to satisfy their burden to prove by a preponderance of the evidence that waiver or estoppel bar Janousek from recovery on Counts II and III and, instead, have forfeited those affirmative defenses. As such, the Court will proceed to consider the Slotkys' affirmative defense of *laches*.

68. "Usurpation of a corporate opportunity is a claim based in equity and thus subject to the equitable defense of *laches*." Lozman v. Putnam, 379 Ill. App. 3d 807, 821-22 (1st Dist. 2008). *Laches* is an equitable doctrine which precludes that assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." McDunn v. Williams, 156 Ill. 2d 288, 330 (1993). "The doctrine is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." Id.

69. To prevail on their affirmative defense of *laches*, the Slotkys have the burden to prove by a preponderance of the evidence that: (1) Janousek lacked diligence in initiating this action; and (2) Janousek's lack of diligence resulted in prejudice to the Slotkys. Id. Specifically, courts consider four factors to determine whether *laches* applies: "(1) conduct on the part of the defendant giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had notice or knowledge of the defendant's conduct and the opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is held not to be barred." Dep't of Natural Resources v. Waide, 2013 IL App (5th) 120340, ¶ 19.

70. As to the first factor, the Court has already found that the Slotkys breached their fiduciary duties to BIG by forming BIG III and the BIG III Portfolios, and purchasing pools of delinquent consumer debt accounts in which BIG had an interest through BIG III and the BIG III Portfolios without fully and fairly disclosing those opportunities to BIG.

71. The Court also finds that the Slotkys have failed to satisfy their burden to prove that Janousek lacked diligence in initiating this action. Contrary to the Slotkys' argument, the Court finds that the evidence shows that Janousek did not know of BIG III's existence or of the Slotkys' intention to form and make purchases of pools of delinquent consumer debt accounts through BIG III and the BIG III Portfolios in October 2007. Instead, the evidence shows that Janousek did not learn of the existence of BIG III and the BIG III Portfolios, or that the Slotkys' had made purchases of pools of delinquent consumer debt accounts through BIG III and the BIG III Portfolios until September 2008. Additionally, the Slotkys decided to cease all buyout discussions with Janousek only in February 2009.

72. Janousek filed this action on July 7, 2009, less than one year after he became aware of the existence of BIG III and the BIG III Portfolios and less than six months after the Slotkys decided to cease all buyout discussions with Janousek. *Laches* will not be found if the delay is short of the statutory period of limitations and there has been no change of circumstances. Pinelli v. Alpine Dev. Corp., 70 Ill. App. 3d 980, 1004 (1st Dist. 1979). The statute of limitations on a claim for breach of fiduciary duty, on the other hand, is five years. Armstrong v. Guigler, 174 Ill. 2d 284, 290 (1996). Thus, Janousek's claim for breach of fiduciary duty against the Slotkys was well within the statute of limitations, even assuming that it accrued in October 2007. Additionally, the Court finds that there was no change of circumstances which would have led the Slotkys to believe that Janousek As such, the Court finds that Janousek's delay in initiating this action was not unreasonable and, therefore, Janousek did not lack diligence.

73. Further, the Court finds that the Slotkys did not lack notice that Janousek would assert his claims for breach of fiduciary duty against the Slotkys. Specifically, when Janousek learned of BIG III's existence, he communicated with the Slotkys to express his concern with the Slotkys' purchases of pools of delinquent consumer debt accounts in to the BIG III Portfolios.

74. Finally, the Court finds that the Slotkys will not suffer any prejudice as a result of Janousek's delay in initiating this action. The Court finds the Slotkys' argument regarding their personal guarantees of bank loans which financed the purchases made by BIG III unpersuasive because there is no evidence that the Slokys made those guarantees as a result of Janousek's delay in initiating this suit.

75. Accordingly, the Court enters judgment in favor of Janousek and against the Slotkys on the Slotkys' affirmative defense of *laches*.

76. As a final argument on the issue of Janousek's claim that the Slotkys usurped BIG's opportunities, the Slotkys contend that Janousek failed to present any evidence of damages, neither lost profits nor any benefit received by the Slotkys, citing Vendo Co. v. Stoner, 58 Ill. 2d 289 (1974); and Graham v. Mimms, 111 Ill. App. 3d 751 (1st Dist. 1982). The Slotkys also argue that, to the extent that the value of BIG III is a proper measure of damages, the Court should disregard Janousek's expert's valuation as inaccurate and unreliable and, in any event, apply a 25% discount for lack of marketability.

77. An appropriate measure of damages for breach of fiduciary duty by usurping corporate opportunities includes profits the injured entity lost by not pursuing the opportunities itself. Vendo Co. v. Stoner, 58 Ill. 2d 289, 310 (1974). Independent of lost profits, the party who breached their fiduciary duty must forfeit any benefit received in connection with the breach, so as to eliminate the incentive to engage in such activity. Id. at 305.

78. The Court finds that Janousek did not present evidence of the profits lost by BIG by not being able to take advantage of the opportunities to purchase pools of delinquent consumer debt accounts that the Slotkys purchased through BIG III and the BIG III Portfolios.

79. However, the Court finds that an appropriate measure of the benefit the Slotkys received by forming BIG III and purchasing pools of delinquent consumer debt accounts in which BIG had and interest through BIG III and the BIG III Porftolios is the value of BIG III. This is so because the Slotkys have been at all relevant times the sole owners of BIG III and all of the purchases of pools of delinquent consumer debt accounts by the Slotkys through BIG III and the BIG III Portfolios were to the detriment and exclusion of BIG.

80. As such, the Court finds that an appropriate measure of the compensatory damages due to BIG by the Slotkys for their breach of fiduciary duty of loyalty by competing with BIG and usurping opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest through BIG III and the BIG III Portfolios is the value of BIG III.

81. Janousek's expert witness, Kabler, opined that using the income approach to valuation, the value of BIG III was $279,515,419.00 as of December 31, 2014.

82. On the other hand, the Slokys' expert witness, Lies, opined that Kabler incorrectly failed to treat the impact of taxes consistently between BIG III's projected cash flow and BIG III's weighted average cost of capital. Lies continued that accounting for taxes in both BIG III's

projected cash flow and BIG III's weighted average cost of capital, BIG III's value as of December 31, 2014 was $79,751,524.00. Additionally, Lies opined that BIG III's values should be discounted by 25% for lack of marketability to $59,813,643.00.

83. Kabler, in rebuttal, opined that if the impact of taxes on BIG III's projected cash flow and weighted average cost of capital should be treated consistently, a proper valuation should account for taxes in neither as BIG III is an LLC, which is a pass-through entity that does not itself pay taxes. Accounting for taxes in neither BIG III's projected cash flow nor BIG III's weighted average cost of capital, Kabler opined that BIG III's value as of December 31, 2014 was $271,068,241.00.

84. The Court finds that as BIG III is an LLC which is a pass-through entity which does not itself pay taxes, accounting for taxes in either BIG III's projected cash flow or weighted average cost of capital is inappropriate. Thus, the Court accepts Kabler's opinion that using the income approach and accounting for taxes in neither BIG III's projected cash flow nor weighted average cost of capital, BIG III's value is $271,068,241.00. However, the Court finds that based on the nature of BIG III's business and the illiquidity of BIG III's assets, applying a 25% discount for lack of marketability is appropriate.

85. As such, the Court finds that the value of BIG III is $203,301,180.75 using the income approach, accounting for taxes in neither the calculation of BIG III's projected cash flow nor BIG III's weighted average cost of capital, and applying a 25% discount for lack of marketability.

86. Janousek also requests that the Court award exemplary punitive damages against the Slotkys.

87. "The purpose of punitive damages is to act as retribution against the defendant, deter the defendant from committing similar wrongs in the future and deter others from similar conduct." Tully v. McClean, 409 Ill. App. 3d 659, 669-70 (1st Dist. 2011). "'Such damages will be awarded only where the defendant's conduct is willful or outrageous due to evil motive or a reckless indifference to the rights of others.'" Id. at 670 (quoting Gambino v. Boulevard Mortgage Corp., 398 Ill. App. 3d 21, 68 (1st Dist. 2009)). "Not favored in the law, punitive damages are available only in cases where the alleged wrongful act 'is characterized by wantonness, malice, oppression, willfulness, or other circumstances of aggravation.'" Id. (quoting Gambino, 398 Ill. App. 3d at 68).

88. In order to award punitive damages, "[t]he court must determine (1) whether punitive damages are available as a matter of law for the cause of action; (2) whether the facts show willfulness or other aggravating factors; (3) whether punitive damages should be awarded under the facts at bar; and (4) the amount of punitive damage award." Id. (quoting Gambino, 398 Ill. App. 3d at 69).

89. As to the first element, punitive damages are available as a matter of law for a breach of fiduciary duty. Id. (citing Levy v. Markal Sales Corp., 268 Ill. App. 3d 355, 379-80 (1st Dist. 1994).

90. However, the Court finds that the imposition of punitive damages inappropriate under the circumstances of this case.

91. Janousek also requests attorney fees but notes that the parties have agreed to address the issue of attorney fees through a separate petition. Defendants raise no objection to Janousek's request to submit a petition for attorney fees. As such Janousek is granted leave to file a petition for attorney fees which addresses the basis in law for and reasonableness of his request.

92. Though not addressed by Janousek, the Court notes that BIG III is also named as a defendant in Count III. BIG III argues that the allegations in Count III that it is the *alter ego* of BIG are irrelevant as BIG is not a defendant to Count III and, therefore, there can be no judgment against BIG for which BIG III can be held liable on an *alter ego* theory. The Court agrees.

93. Accordingly, the Court enters judgment in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys on Count III of Janousek's Sixth Amended Complaint in the amount of $203,301,180.75 in compensatory damages. However, the Court enters judgment in favor of BIG III and against Janousek on Count III.

Count IV: Breach of Fiduciary Duty of Good Faith and Fair Dealing by Janousek, individually, against the Slotkys

94. In Count IV, Janousek, individually, seeks a judgment for damages, costs, and expenses against the Slotkys for breaching their fiduciary duty of good faith and fair dealing by: (1) seizing control of BIG; (2) excluding Janousek from the management and control of BIG; (3); refusing Janousek access to BIG's business premises and records; (4) assigning their membership interests in BIG to secure loans for BIG III, and failing to provide notice to Janousek of such activity; (5) signing loan documents that state the Slotkys own 100% of BIG or were the only members of BIG; (6) unilaterally deciding that BIG would not make new purchases after October 1, 2007 and instead funneling all new purchases to BIG III; and (7) focusing TBI's limited resources on BIG III to the detriment of BIG.

95. The Slotkys argue that Count IV is inappropriate as an individual claim by Janousek because the injury alleged by Janousek is not direct or unique to Janousek but instead was suffered by BIG, in which Janousek may share in any recovery as a member of BIG.

96. As in Count II, the Court finds that Janousek's assertions in Count IV that the Slotkys breached their fiduciary duties to Janousek by seizing control of BIG, excluding Janousek from the management and control of BIG, and refusing Janousek access to BIG's books and records are proper direct actions by Janousek, individually, against the Slotkys as the nature of the harm is personal to Janousek.

97. However, for the same reasons the Court entered judgment in favor of the Slotkys and against Janousek on Count II, the Court similarly finds that Janousek has failed to satisfy his burden to prove by a preponderance of the evidence that the Slotkys, in fact, seized control of

BIG, excluded Janousek from the management and control of BIG, or refused Janousek access to BIG's books and records.

98. Additionally, the Court finds the nature of the injuries as alleged by Janousek on the remainder of the issues asserted by Janousek in Count IV are merely injuries suffered by BIG and that Janousek's interest therein is derivative as a member of BIG. As such, the Court finds that the remainder of Janousek's assertions in Count IV are inappropriate as direct actions by Janousek, individually.

99. Accordingly, the Court enters judgment in favor of the Slotkys and BIG III and against Janousek on Count IV of Janousek's Sixth Amended Complaint.

Count V: Accounting of BIG by Janousek against Michael Slotky

100. In Count V, if Janousek remains a member of BIG, Janousek seeks an accounting of BIG by Michael on the basis that Michael has refused to supply Janousek with BIG's records and, therefore, is in breach of his fiduciary duty of good faith and fair dealing.

101. The Court finds that its conclusion in Counts II and IV that Janousek failed to satisfy his burden to prove that the Slokys refused to provide Janousek with BIG's records controls the outcome of Janousek's claim against Michael for an accounting of BIG. As the Court has found that Janousek has failed to prove that Michael breached his fiduciary duty to Janousek by refusing to provide access to BIG's records, the Court finds that Janousek has similarly failed to satisfy his burden that he is entitled to an accounting of BIG against Michael.

102. Accordingly, the Court enters judgment in favor of Michael and against Janousek on Count V of Janousek's Sixth Amended Complaint.

Count VI: Violation of the LLC Act by Janousek against the Slotkys

103. In Count VI, Janousek seeks a judgment for damages, costs, and expenses against the Slotkys for violating the LLC Act by: (1) wrongfully excluding Janousek from the management and conduct of BIG's business beginning on October 1, 2007; (2) denying Janousek access to BIG's business premises and current and accurate records beginning on October 1, 2007; and (3) breaching their fiduciary duties of loyalty and good faith and fair dealing owed to Janousek as members of BIG.

104. The Court finds that the outcome of Janousek's claim for violation of the LLC Act in Count VI is controlled by the Court's conclusions on Counts II and IV that Janousek failed to satisfy his burden to prove by a preponderance of the evidence that the Slotkys wrongfully excluded Janousek from the management and control of BIG's business or denied Janousek access to BIG's books and records. Thus, the Court finds that Janousek has failed to satisfy his burden to prove that the Slotkys violated the LLC Act.

105. Accordingly, the Court enters judgment in favor of the Slotkys and against Janousek on Count VI of Janousek's Sixth Amended Complaint.

Count VII: Breach of the BIG Operating Agreement by Janousek against Michael Slotky

106. In Count VII, Janousek seeks a judgment for damages, costs, and expenses against Michael for breaching the BIG Operating Agreement by: (1) intentionally preventing Janousek from exercising his right to inspect BIG's books and records beginning on October 1, 2007; (2) intentionally preventing Janousek from participating in the management of and voting on matters coming before BIG beginning on October 1, 2007; and (3) conducting BIG's business on his own and not through a majority of the members.

107. Similar to Count VI, the Court finds that the outcome of Janousek's claim against Michael for breach of the BIG Operating Agreement is controlled by the Court's conclusions on Counts II and IV that Janousek failed to satisfy his burden to prove that the Slotkys wrongfully excluded Janousek from the management and control of BIG's business or denied Janousek access to BIG's books and records. Additionally, the Court finds that Michael did not take any action on behalf of BIG pursuant to the BIG Resolution and, instead, that BIG's business was effectuated by a majority of the members at all times. Therefore, the Court finds that Janousek has failed to satisfy his burden to prove that Michael breached the BIG Operating Agreement.

108. Accordingly, the Court enters judgment in favor of Michael and against Janousek on Count VII of Janousek's Sixth Amended Complaint.

The Slotkys' Counterclaim

109. The Slotkys' Counterclaim includes two counts: breach of the BIG Operating Agreement by wrongfully dissociating from BIG, Count I; and unjust enrichment by accepting management fees from BIG subsequent to his dissociation, Count II. Thus, both counts of the Slotkys' Counterclaim are premised upon Janousek having dissociated as a member of BIG. The Court, however, has concluded that Janousek did not dissociate as a member of BIG and, therefore, remains a member of BIG, on Janousek's claim for a declaratory judgment that he dissociated as a member of BIG in Count I of Janousek's Sixth Amended Complaint. Accordingly, the Court's conclusion that Janousek has not dissociated as a member of BIG and, instead, remains a member of BIG compels the conclusion that the Slotkys cannot prevail on either count of their Counterclaim.

110. Accordingly, the Court enters judgment in favor of Janousek and against the Slotkys on Counts I and II of the Slotkys' Counterclaim.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

A. Judgment is entered in favor of Defendants, Michael Slotky, the Estate of Burton Slotky, Bureaus Investment Group, LLC, and Bureaus Investment Group III, LLC, and against Plaintiff, James Janousek, on Count I of Janousek's Sixth Amended Complaint.

B. Judgment is entered in favor of Defendants, Michael Slotky, the Estate of Burton Slotky, and Bureaus Investment Group III, LLC, and against Plaintiff, James Janousek, on Count II of Janousek's Sixth Amended Complaint.

C. Judgment is entered in favor of Plaintiff, James Janousek, derivatively on behalf of Bureaus Investment Group, LLC, and against Defendants, Michael Slotky and the Estate of Burton Slotky, on Count III of Janousek's Sixth Amended Complaint in the amount of $203,301,180.75 in compensatory damages. However, judgment is entered in favor of Bureaus Investment Group III, LLC and against Plaintiff, James Janousek, on Count III of Janousek's Sixth Amended Complaint.

D. Judgment is entered in favor of Defendants, Michael Slotky, the Estate of Burton Slotky, and Bureaus Investment Group III, LLC, and against Plaintiff, James Janousek, on Count IV of Janousek's Sixth Amended Complaint.

E. Judgment is entered in favor of Defendant, Michael Slotky, and against Plaintiff, James Janousek, on Count V of Janousek's Sixth Amended Complaint.

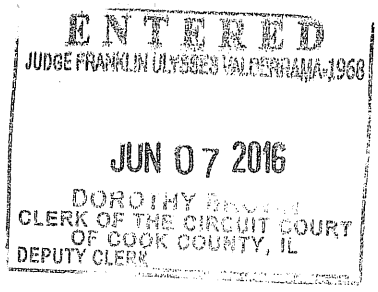
F. Judgment is entered in favor of Defendants, Michael Slotky and the Estate of Burton Slotky, and against Plaintiff, James Janousek, on Count VI of Janousek's Sixth Amended Complaint.

G. Judgment is entered in favor of Defendant, Michael Slotky, and against Plaintiff, James Janousek, on Count VII of Janousek's Sixth Amended Complaint.

H. Judgment is entered in favor of Plaintiff, James Janousek, and against Defendants, Michael Slotky and the Estate of Burton Slotky, on Counts I and II of the Slotkys' Counterclaim.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court expressly finds that this is a final order and that there is no just reason for delaying the enforcement of this Judgment or appeal thereon.

ENTERED:



Franklin U. Valderrama
Judge Presiding

DATED: June 7, 2016