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

JAMES JANOUSEK, individually and on behalf of Bureaus Investment Group, LLC, Plaintiff, v. MICHAEL SLOTKY, BURTON SLOTKY, BUREAUS INVESTMENT GROUP, LLC, and BUREAUS INVESTMENT GROUP III, LLC, Defendants.	Case No. 2009 CH 22216 Calendar 03 Hon. Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Plaintiff, James Janousek's Motion to Reconsider And/Or Clarify. For the reasons that follow, Plaintiff's Motion is granted in part and denied in part.

BACKGROUND

This contentious case involving a complex business relationship turned sour now returns on a second post-judgment motion. The Court has recited the background of the case in lengthy written opinions on numerous occasions and, thus, will only recite the facts necessary to resolve the motion presently before the Court.

On June 7, 2016, the Court issued a Trial Opinion and Judgment Order (the "Trial Opinion") on, in pertinent part, Plaintiff, James Janousek's seven-count Sixth Amended Verified Complaint (the "Sixth Amended Complaint") against Michael Slotky, Burton Slotky (collectively, the "Slotkys"), Bureaus Investment Group, LLC ("BIG"), and Bureaus Investment Group III, LLC ("BIG III") (collectively, "Defendants"). Janousek's Sixth Amended Complaint asserted claims for declaratory judgment by Janousek, individually, against Defendants that Janousek voluntarily dissociated as a member of BIG on October 1, 2007, Count I; breach of fiduciary duty of loyalty by Janousek, individually, against the Slotkys and BIG III, Count II; breach of fiduciary duty of loyalty by Janousek, derivatively on behalf of BIG, against the Slotkys and BIG III, Count III; breach of fiduciary duty of good faith and fair dealing by Janousek, individually, against the Slotkys, Count IV; accounting by Janousek, individually, against Michael, Count V; violation of the Illinois Limited Liability Company Act (the "LLC Act"), 805 ILCS 180/1-1, *et seq.*, by Janousek, individually, against the Slotkys, Count VI; and breach of BIG's Operating Agreement by Janousek, individually, against Michael, Count VII.[1]

[1] Janousek also identified and re-pleaded for the purpose of appeal issues on which the Court granted summary judgment and directed findings.

In its Trial Opinion, the Court entered judgment in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys on Count III, finding that the Slotkys breached their fiduciary duty of loyalty to BIG by forming BIG III, usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, and failing to fully and fairly disclose such opportunities to BIG. The Court concluded that an appropriate amount of compensatory damages to BIG for the benefit the Slotkys received in connection with their breaches of fiduciary duty was the value of BIG III—$203,301,180.75—and entered judgment in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys in that amount.

The Court, however, entered judgment in favor of Defendants and against Janousek on the remainder of Janousek's claims in his Sixth Amended Complaint. As to Count II, the Court found that to the extent Janousek asserted that the Slotkys breached their fiduciary duty of loyalty by competing with BIG by forming BIG III and usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, the injury to Janousek as a result of those breaches were indirect and merely derivative of his status as a member of BIG, such that Janousek's individual claims therefor were inappropriate. While the Court found that Count II was appropriate as an individual claim by Janousek to the extent it asserted 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 found that Janousek failed to satisfy his burden to prove those assertions by a preponderance of the evidence.

As to Count IV, the Court similarly found 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 seizing control of BIG, excluding Janousek from the management and control of BIG, and refusing Janousek access to BIG's books and records. Additionally, the Court found that Janousek's injuries as a result of the remainder of Janousek's assertions that the Slotkys' breached their fiduciaries of good faith and fair dealing were indirect and merely derivative of his status as a member of BIG such that Janousek's individual claims therefor were inappropriate.

The Slotkys subsequently filed a motion to reconsider and vacate or, alternatively, to modify the Court's judgment on Count III, arguing that the value of BIG III was not an appropriate measure of BIG's damages for the Slotkys' breaches of their fiduciary duty of loyalty. Instead, contended the Slotkys, the appropriate measure of damages for a derivative claim for breach of fiduciary duty is lost profits. In an order dated July 18, 2016 (the "July 18, 2016 Order"), the Court granted the Slotkys' motion, agreeing on both accounts and noting that one of Defendants' expert witnesses, Mark Hosfield, presented unrebutted testimony that in the event the Court found that the Slotkys breached their fiduciary duties of loyalty to BIG by forming BIG III and usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, BIG's past and future lost profits that resulted therefrom totaled $8,455,036.00. Accordingly the Court modified its judgment on Count III in favor of Janousek, derivatively on behalf of BIG, and against the Slotkys for compensatory damages in the amount of $203,301,180.75 to $8,455,036.00.

Presently before the Court is Janousek's motion to reconsider pursuant to section 2-1203 of the Code of Civil Procedure.

MOTION TO RECONSIDER STANDARD

The purpose of a motion to reconsider is to bring to the court's attention "newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." Farmers Auto. Ins. Ass'n v. Universal Underwriters Ins. Co., 348 Ill. App. 3d 418, 422 (1st Dist. 2004). The moving party on a motion to reconsider has the burden of establishing sufficient grounds to vacate a judgment. Day v. Curtin, 192 Ill. App. 3d 251, 254 (1st Dist. 1989). Arguments that could have been raised at an earlier proceeding will not be considered on a motion to reconsider. Continental Cas. Co. v. Security Ins. Co., 279 Ill. App. 3d 815, 821 (1st Dist 1996).

DISCUSSION

Janousek makes three arguments in his motion to reconsider. First, contrary to the Court's conclusion in its Trial Opinion, Janousek maintains that his direct claims for breach of fiduciary duty against the Slotkys in Counts II and IV of his Sixth Amended Complaint were proper. Second, Janousek asserts that the Court's judgment on Count III in his favor, derivatively on behalf of BIG, erroneously failed to include BIG's diminished value, a post-judgment accounting of BIG III's profits, disgorgement of the management fees the Slotkys received, damages for the value of BIG's defaulted senior and subordinated debt, and the imposition of equitable pre-judgment interest. Third, Janousek insists that the Court should award exemplary punitive damages. The Court will address each argument in turn.

Janousek's Direct Claims for Breach of Fiduciary Duty in Counts II and IV.

Janousek argues that the Court erred in finding that Janousek failed to prove a distinct injury in Counts II and IV. Specifically, Janousek asserts that his injury that resulted from the Slotkys' breach of their fiduciary duties is distinct from the injury to BIG or the Slotkys, the other members of BIG. Janousek contends that the Slotkys targeted his ownership interest in BIG by establishing BIG III, an entity in which he had no ownership interest and having BIG III, to the exclusion of BIG, purchase pools of delinquent consumer debt accounts. According to Janousek, the Slotkys' decision to cease new purchases by BIG and to have BIG III make those purchases instead eventually rendered BIG worthless and Janousek's interest in BIG equally worthless. Janousek, however, posits that the Slotkys did not sustain the same injury as him because they benefited from BIG III's purchases to his exclusion. As such concludes Janousek, his injury was direct and not derivative, citing Levy v. Markal Sales Corp., 268 Ill. App. 3d 355 (1st Dist. 1994); Zokoych v. Spalding, 36 Ill. App. 3d 654 (1st Dist. 1976); and Boyer v. Wilmington Materials Inc., 754 A.2d 881 (Del. Ch. 1999), amongst other cases.[2]

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[2] The other cases cited by Janousek include 1515 North Wells, L.P. v. 1513 North Wells, LLC, 392 Ill. App. 3d 863 (1st Dist. 2009); Anest v. Audino, 332 Ill. App. 3d 468 (2d Dist. 2002); Labovitz v. Dolan, 189 Ill. App. 3d 403 (2d Dist. 1989); Cede & Co. v. Technicolor I, 542 A.2d 1182 (Del. 1988); In re El Paso Pipeline LP, 132 A.3d 67 (Del. Ch. 2015); Kelly v. Blum, 2010 Del. Ch. LEXIS 31 (Feb. 24, 2010); Fischer v. Fischer, No. 16864, 1999 Del. Ch.

Janousek further asserts that the Slotkys' post-trial conduct also supports the contention that his injury was distinct from that of BIG. Janousek points out that two new lawsuits have been filed against him, one by U.S. Bank based on his personal guarantees and another by BIG seeking a declaratory judgment regarding Janousek's status as a member of BIG.

The Slotkys counter that the Court should deny the motion because the Court did not misapply the law. The Slotkys note that this Court found that Janousek failed to prove that the Slotkys had breached any fiduciary, contractual, or statutory duties owed to him individually. The cases cited by Janousek, according to the Slotkys, are inapplicable because in many of those cases, the courts found that the plaintiffs had pleaded sufficient facts of a direct injury. In this case, on the other hand, the Sloktys assert that the Court found that the injuries alleged by Janousek were derivative and not direct.

As for Janousek's contention that evidence of his direct injury is supported by the recent lawsuits filed against him, the Slotkys retort that Michael Slotky's recently filed lawsuit is not "newly discovered" evidence nor is it relevant to this action. BIG's lawsuit according to the Slotkys simply seeks a determination as to Janousek's status as either a member or unit holder in BIG as of October, 2015 based on representations made by Janousek. For example, that he is insolvent. If he is, argue the Slotkys, this would constitute a Withdrawal Event under BIG's Operating Agreement.

Janousek replies that the Slotkys fail to address, much less distinguish the numerous cases Janousek cites in his opening brief. The evidence in this case, according to Janousek revealed that the Slotkys formed BIG III to exclude him from participating in BIG III. An entity that the Slotkys established for the exact same purpose of continuing BIG's business. The Sloktys funneled all new debt buying opportunities to BIG III, instead of BIG. This, argues Janousek, resulted in an injury unique to him, making his claim direct and not derivative.

The Court first addresses Janousek's argument with respect to Michael Slotky's recently filed lawsuit against Janousek as well as his refusal to communicate with Janousek regarding the Court's judgment against the Slotkys on Count III for BIG's lost profits, which the Slotkys have satisfied. While Janousek does not explicitly assert that his argument on that point is based on newly discovered evidence, the Court, like the Slotkys, construes it as such.

"To justify setting aside a prior order based on newly discovered evidence, (1) the party seeking to overturn the order mush show due diligence in discovering the evidence; (2) the party must also show that he could not have produced the evidence at the first trial by exercising due diligence; (3) the party must demonstrate that the evidence is so conclusive that it would probably change the trial result; (4) the evidence must be material and relate to the issues; and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment." In re Wolff, 355 Ill. App. 3d 403, 409-10 (2d Dist. 2005).

LEXIS 217 (Nov. 4, 1999); Atkinson v. Marquart, 541 P.2d 556 (Ariz. 1975); Brodie v. Jordan, 857 N.E.2d 1076 (Mass. 2006); Meinhard v. Salmon, 164 N.E. 545 (N.Y. 1928); Borghetti v. Sys. & Computer Tech., 199 P.3d 907 (Utah 2008); Perlman v. Feldman, 219 F.2d 173 (2d Cir. 1955); Elmhurst Consulting, LLC v. Gibson, 219 F.R.D. 125 (N.D. Ill. 2003).

The Court agrees with the Slotkys that the new facts upon which Janousek relies are not germane to the issue of whether the injury sustained by Janousek as a result of the Slotkys' breach of fiduciary duty supports a direct claim by Janousek. Additionally, the Court finds that Janousek has failed to satisfy his burden to demonstrate that the evidence is so conclusive that it would probably change the trial result. Accordingly, the Court denies this portion of Janousek's motion to reconsider. The Court now turns to Janousek's primary contention in support of his argument that the nature of his injury that resulted from the Slotkys' breach of fiduciary duty properly supports his direct claims against the Slotkys in Counts II and IV of his Sixth Amended Complaint.

In Illinois, a shareholder of a corporation may bring two kinds of actions against the corporation or its shareholders: derivative actions and direct actions. Levy v. Markal Sales, 268 Ill. App. 3d 355, 371 (1st Dist. 1994). Though distinct claims, direct and derivative claims can arise from the same nucleus of facts. Caparos v. Morton, 364 Ill. App. 3d 159, 169 (1st Dist. 2006).

"A derivative action is an action that a corporate shareholder brings on behalf of a corporation to seek relief for injuries done to the corporation, where the corporation cannot or will not assert its own rights." Davis v. Dyson, 387 Ill. App. 3d 676, 682 (1st Dist. 2008). Derivative actions "are one of the remedies which equity designed for those situations where the management through fraud, neglect of duty or other cause decline to take proper and necessary steps to assert the rights which the corporation has." Id. The stockholders are then allowed to take the initiative and institute the suit which the management shareholders should have started had it performed its duty. Id. Derivative claims always and only belong to the corporation on whose behalf they are brought and any damages awarded in a derivative suit flow exclusively and directly to the corporation, not the nominal plaintiff. Stevens v. McGuire Woods, LLP, 2015 IL 118652. "Put another way, the nominal plaintiff in a derivative action serves only as a 'champion' of the corporation's claim." Id. The result is that the nominal plaintiff benefits only indirectly from a successful shareholder derivative suit. Id.

To bring a direct action, on the other hand, a shareholder must allege an injury "separate and distinct" from that suffered by other shareholders, or an injury that involves a contractual right, such as the right to vote or the right of majority control that exists independently of any right of the corporation. Caparos v. Morton, 364 Ill. App. 3d 159, 167 (1st Dist. 2006). To determine whether an action is derivative or direct, courts look at the nature of the alleged injury to see if it was the corporation or the individual shareholder that suffered the harm. Sterling Radio Stations, Inc. v. Weinstine, 328 Ill. App. 3d 58, 62 (1st Dist. 2002).

The Court notes that the distinction between derivative and direct actions traditionally applies to shareholders in a corporation. Caparos, 364 Ill. App. 3d at 167. However, courts have treated limited partners in a limited partnership similarly to corporate shareholders in this respect. Id. Thus, as a general matter, "limited partners seeking redress for the decreased value of their shares in the limited partnership must do so in a derivative action" for claims including a "general partner's mismanagement, negligence, diversion of assets, action beyond authority, and

failure to perform elements of an agreement" where all limited partners were similarly harmed. Id. at 168-69.

BIG, however, is neither a corporation nor a limited partnership, but a limited liability company. The parties do not cite any binding authority that applies the distinction between derivative and direct actions to members of limited liability companies and the Court's own research has similarly revealed none. Nevertheless, the Court notes that at least two federal district courts applying Illinois law have done so. See United Central Bank v. Desai, No. 13 C 5637, 2014 U.S. Dist. LEXIS 7815, at *6-7 (N.D. Ill. Jan. 21, 2014) (holding that a member of a limited liability company was entitled to sue another member personally); McGee v. Dresnick, No. 04 C 6684, 2005 U.S. Dist. LEXIS 18244, at *5 (N.D. Ill. Aug. 24, 2005) (holding "an LLC member can sue on his own behalf only if he has a personal injury that is distinct from the injury to the [LLC]"). The Court finds the reasoning of Desai and McGee logical and persuasive, and agrees that the theory underlying the distinction between derivative and direct claims applies equally to members of a limited liability company as it does to shareholders of a corporation or limited partners in a limited partnership. See Osman v. Ford Motor Co., 359 Ill. App. 3d 367, 374 (4th Dist. 2005) (following the reasoning of an unpublished federal circuit court of appeals opinion which the appellate court found to be logical and persuasive). In short, in the context of a limited liability company, the Court sees no reason to depart from the general rule that an individual or entity with an ownership interest in any business must bring a derivative action for an injury to the business and may only bring a direct action for injuries that are distinct from the injury to the business and the other owners.

Accordingly, the Court finds that the relevant inquiry to determine whether Janousek's direct claims against the Slotkys for breach of fiduciary duty are proper is whether the injury suffered by Janousek as a result therefrom is separate and distinct from the injury suffered by BIG and its other members, the Slotkys.

The LLC Act provides that the 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 the relations among the members, managers, and company." 805 ILCS 180/15-5(a) (West 2012). However, to the extent the operating agreement does not otherwise provide, the LLC act governs the relations among the members, managers, and company. Id.

A limited liability company may be either member-managed or manager-managed. 805 ILCS 180/15-1 (West 2012). BIG's Operating Agreement provides that the BIG is a member-managed limited liability company. Members of member-managed limited liability companies, like BIG, owe fiduciary duties to the company as well as the other members of the company. 805 ILCS 180/15-3(a) (West 2012). The duties owed by a member to a member-managed limited liability company and the company's other members include the duty of loyalty, and specifically to account to the company, to act fairly in conducting the company's business, and "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).

Pursuant to its Trial Opinion, the Court entered judgment in favor of Janousek and against the Slotkys on Count III of Janousek's Sixth Amended Complaint, Janousek's derivative

claim, on behalf of BIG, against the Slotkys for breach of their fiduciary duty of loyalty to BIG by forming BIG III, usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, and failing to fully and fairly disclose such opportunities to BIG. The Court modified the amount of its judgment on Count III on the Slotkys' motion to reconsider. However, the Court's fundamental conclusion that the Slotkys breached their fiduciary duties of loyalty to BIG stands. As the Slotkys, pursuant to section 15-3 of the LLC Act, owed the same fiduciary duty of loyalty to BIG and Janousek as the other member of BIG, it stands to reason that the Slotkys' conduct that constituted a breach of their fiduciary duties of loyalty to BIG also constitute a breach of their fiduciary duties of loyalty to Janousek.

The Court, in its Trial Opinion, found that the injury suffered by Janousek as a result of the Slotkys' breach of their fiduciary duties of loyalty was indirect and merely derivative of the injury suffered by BIG. As such, the Court concluded that Janousek's direct claims against the Slotkys for their breach of their fiduciary duties in Counts II and IV were improper. Janousek now maintains that the Court erred in so finding given the evidence that the Slotkys targeted his interest in BIG and created BIG III for the purpose of conducting the same business as BIG, except that BIG III excluded him as an owner. Illinois case law, according to Janousek as well as cases from other jurisdictions supports his contention. The Court notes that Janousek does not allege a separate contract right to bring a direct claim.

Thus, as explained above, the dispositive issue is whether Janousek suffered an injury as a result of the Slotkys' breach of their fiduciary duties of loyalty that was separate and distinct from the injury to BIG or the Slotkys.

Janousek insists that Levy v. Markal Sales Corp., 268 Ill. App. 3d 355 (1st Dist. 1994), and Zokoych v. Spalding, 36 Ill. App. 3d 654 (1st Dist. 1976) support a finding in this case that the Janousek sustained a direct injury as a result of the Slotkys' breach of their fiduciary duties.

In Zokoych, the plaintiff and one of the defendants founded a corporation in which each owned half of the issued stock. Zokoych, 36 Ill. App. 3d at 659. The plaintiff sued the defendant founder and others, alleging that the defendant founder conspired to defraud the plaintiff by forcing him out as an officer and director of the corporation, transferred the corporation's equipment to the defendant founder's competing business, deprived the plaintiff of his pledged stock and salary, and left him as a guarantor of the corporation's debt after the corporation went bankrupt. Id. at 657-59. Following a bench trial, the trial court found in the plaintiff's favor and awarded damages as well as equitable relief. Id. at 657. The defendants against whom the judgment was entered appealed, arguing that the plaintiff's cause of action was derivative of the corporation and not direct as pleaded in the plaintiff's complaint. Id. at 663. The appellate court rejected the defendants' argument, finding that the allegations of the plaintiff's complaint, which included the defendant founder's appropriation of the corporation's stock ownership, assets, good will, and customers, caused injury to the corporation as well as to the plaintiff. Id. at 663-64. Accordingly, the appellate court affirmed the trial court, ruling that the plaintiff's direct action was proper. Id. at 664.

In Levy, the plaintiff and two defendants were the sole shareholders in a corporation. Levy, 268 Ill. App. 3d at 358. The plaintiff owned a 40% interest in the corporation, while the two defendant shareholder owned 40% and 20%, respectively. Id. The defendant shareholders eventually terminated the plaintiff's employment with the corporation and excluded the plaintiff from participating in the corporation's business. Id. at 359. After the plaintiff formally resigned from the corporation, the defendant shareholders formed another corporation for the purpose of pursuing a business opportunity that they did not present to the corporation in which plaintiff owned a 40% interest. Id. at 359-60.

The plaintiff subsequently filed suit against the defendant shareholders, alleging in part that the defendant shareholders breached their fiduciary duties by freezing him out of the corporation and by forming another corporation that excluded the plaintiff for the purpose of pursuing an opportunity that belonged to the corporation in which the plaintiff owned a 40% interest. Id. at 358, 364. Following a bench trial, the trial court entered judgment in favor of the plaintiff, finding that the defendant shareholders breached their fiduciary duties to the corporation and the plaintiff by forming another corporation for the purpose of pursuing an opportunity that they did not present to the corporation in which the plaintiff owned a 40% interest. Id. at 364. On the issue of whether the plaintiff properly pleaded and proved direct claims for breach of fiduciary duty against the defendant shareholders, the trial court found that the defendant shareholders' breach of their fiduciary duties gave rise to both direct and derivative claims. Id. at 371. Specifically, the trial court found that as a result of the defendant shareholders' breach of their fiduciary duties, the defendant shareholders effectively converted the plaintiffs' stock and, as such, awarded the plaintiff, individually, the value of his stock. Id. The trial court also entered judgment on the plaintiff's derivative claim on behalf of the corporation for forfeiture of the defendant shareholders' salary and benefits from the corporation during the time the defendant shareholders were in breach of their fiduciary duties. Id. at 364.

The appellate court affirmed, finding that the plaintiff could recover for the value of his stock if the defendant shareholders converted it and the value was ascertainable. Id. at 371. The defendant shareholders did not contest the fact that they effectively converted the plaintiff's stock by forming the other corporation, but merely argued that the trial court did not have a sufficient basis to assess the value of the plaintiff's stock. Id. The appellate court disagreed, concluding that a stock repurchase agreement provided a sufficient basis to determine the value of the plaintiff's stock on a per share basis. Id. at 371-72. The appellate court also affirmed the trial court's entry of judgment on the plaintiff's derivative claim in the amount of the defendant shareholders' salary and benefits from the corporation during the time the defendant shareholders were in breach of their fiduciary duties. Id. However, the appellate court denied the plaintiff's further request for relief that the defendant shareholders' salary and benefits be returned directly to the plaintiff, finding that the salary and benefits should be returned to the corporation from which the plaintiff would be entitled to his respective 40% share. Id. at 376-77.

The Slotkys argue that Zokoych and Levy are distinguishable. The Slotkys assert that Zokoych is merely representative of many cases cited by Janousek where courts have determined that a plaintiff had standing to bring a direct claim where no derivative claim had been alleged. As for Levy, the Slotkys contend that the plaintiff in Levy was not allowed to bring direct and

derivative claims for usurpation of corporate opportunities, but was merely awarded damages for the conversion of his stock in the company.

While the Court finds Zokoych to be factually distinguishable and, therefore, of limited value as applied to this case, the Court finds Levy particularly persuasive because the facts of this case are very closely aligned. Contrary to the Slotkys argument, the Court finds that the plaintiff in Levy was allowed to maintain a direct claim for the defendant shareholders' breach of their fiduciary duties by usurping corporate opportunities, and that the unique injury the plaintiff sustained was that his stock in the company was effectively converted by the defendant shareholders through their breach of their fiduciary duties. Levy, 268 Ill. App. 3d at 371.

Like Levy, Janousek and the Slotkys formed BIG, in which Janousek owned 40% and the Slotkys owned 40% and 20%, respectively. In or around October 2007, the Slotkys, who collectively owned 60% of BIG and, therefore, effectively controlled BIG, caused BIG to cease making purchases of pools of delinquent consumer debt accounts. As a result, BIG is now insolvent. At the same time, the Slotkys formed BIG III, which is identical in all respects to BIG except that Janousek does not have any ownership interest in BIG III, and continued making purchases of pools of delinquent consumer debt accounts into BIG III without offering those opportunities to BIG, which the Slotkys, as majority and controlling owners of BIG indisputably could have taken advantage of on behalf of BIG.

Thus, as the Court concluded in its Trial Opinion, the Slotkys breached their fiduciary duties of loyalty by forming BIG III, by usurping opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, and by failing to fully and fairly disclose and offer those opportunities to BIG.

The Court, in its Trial Opinion, found that Janousek failed to prove a direct injury and, as such, he could not recover individually for the Slotkys breach of fiduciary duty. Upon reconsideration, however, the Court finds that it erred in finding that Janousek failed to prove that is claim was direct. This is so because, like Levy, the Slotkys' breach of their fiduciary duties by forming BIG III and usurping all of BIG's opportunities to purchase pools of delinquent consumer debt accounts acted as an effective conversion of Janousek's 40% ownership interest in BIG.

It is true that the injury to Janousek in the form of the loss of the value of his ownership interest in BIG as a result of the Slotkys' breach of their fiduciary duties is shared by the Slotkys in the sense that the Slotkys also lost the value of their ownership interest in BIG. However, the Court finds that ending the analysis at this point disregards the important fact that the Slotkys disproportionately benefited to Janousek's exclusion as a result of their formation of BIG III, which effectively acted as a conversion of Janousek's 40% ownership interest in BIG.

The Slotkys, as majority and controlling owners of BIG, could have caused BIG to make any and all of the purchases that have been made by BIG III. However, by forming BIG III, which was owned solely by the Slotkys and excluded Janousek entirely, and causing BIG III to make all new purchases of pools of delinquent consumer debt accounts to the exclusion of BIG, the Slotkys continued to benefit as they would have if BIG had made those purchases and, in

addition, also benefited from Janousek's exclusion from BIG III in an amount equal to Janousek's 40% ownership interest in BIG. If the purchases were made by BIG instead of BIG III, Janousek would have benefited to the extent of his 40% ownership interest in BIG. Thus, Janousek received no benefit from BIG III's purchases because the Slotkys were the sole owners of BIG III.

Therefore, like Levy, the Court finds that Janousek's direct claim against the Slotkys for breach of their fiduciary duties of loyalty by forming BIG III, usurping through BIG III opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest, and failing to fully and fairly inform BIG of those opportunities is appropriate to the extent that the Slotkys' breach of their fiduciary duties of loyalty acted as an effective conversion of Janousek's 40% ownership interest in BIG. The Court notes that Janousek does not distinguish between Counts II and IV of his Sixth Amended Complaint, but merely argues that his direct claims against the Slotkys for breach of their fiduciary duties are proper generally because of the individual harm he suffered. The Court, however, finds that Count IV does not relate to the breach of fiduciary duty of loyalty that the Court has found the Slotkys to have committed. However, the Court finds that Count II is a direct claim by Janousek that mirrors Count III, on which the Court has entered judgment in favor of Janousek for the Slotkys' breach of their fiduciary duties of loyalty. As such, the Court denies Janousek's motion to reconsider as to Count IV but grants Janousek's motion to reconsider as to Count II, vacates the portions of the Court's Trial Opinion in which the Court found that Janousek's direct claim against the Slotkys for breach of their fiduciary duties was improper, and enters judgment in favor of Janousek, individually, and against the Sltokys, on Count II of Janousek's Sixth Amended Complaint.

The Court notes that this result is supported by the conclusion of the Delaware Court of Chancery in Boyer v. Wilmington Materials, Inc., 754 A.2d 881 (Del. Ch. 1998), a case cited by Janousek.[3] In Boyer, a company in which the plaintiff was a stockholder sold substantially all of its assets to another company. Boyer, 754 A.2d at 885. At the time of the sale, the purchaser company was owned by three of the five directors who voted to approve the transaction on behalf of the seller company and the remaining two directors had secured a contractual right to become stockholders of the purchaser company. Id. As a result of the sale, the value of the seller company as a going concern was destroyed, such that the plaintiff was effectively deprived of the value of his shares in the seller company held before the sale. Id. at 899. The plaintiff thereafter filed suit, individually and derivatively, alleging that the sale was in breach of the directors' fiduciary duty of good faith and fair dealing, and that the principal purpose of the sale was to eliminate the plaintiff and another stockholder from continued participation in the ownership and management of the seller company's assets and business. Id. at 885. After a bench trial, the trial court found that the defendants failed to meet their burden to establish the fair dealing and fair price aspects of the fairness standard applicable to interested transactions. Id. at 885, 898-902.

On the issue of whether the plaintiff was entitled to relief in his individual capacity, the trial court found that the plaintiff suffered an injury distinct from that of the defendants because the defendants' actions deprived the plaintiff of his fair share of the seller company, an injury

[3] The Court notes that Illinois courts often look to Delaware law as particularly persuasive authority on issues of corporate law, including the distinction between derivative and direct actions. Caulfield v. Packer Grp., Inc., 2016 IL App (1st) 151558, ¶ 33.

that only he and one other stockholder suffered because the defendants continued the seller company's business through the purchaser company. Id. at 903. Thus, the trial court awarded the plaintiff, individually, damages equal to the value of his shares in the seller company at the time of the sale. Id. at 905. The trial court also awarded the plaintiff, derivatively on behalf of the seller company, damages for the defendants' breach of their duties of loyalty. Id. at 908.

Like the plaintiff in Boyer, Janousek was effectively deprived of his 40% ownership interest in BIG by the Slotkys' breach of fiduciary duty. Though the plaintiff in Boyer received as damages the value of his shares in the seller company as a result of the defendants' breach of their fiduciary duties of good faith and fair dealing, whereas Janousek's individual recovery must be premised on the Slotkys' breach of their fiduciary duties of loyalty, the Court emphasizes that the nature of Janousek's injury, not the nature of the Slotkys' breach of their fiduciary duties, determines whether a direct claim by Janousek is appropriate. Weinstine, 328 Ill. App. 3d at 62. The Court has found that through the Slotkys' continuation of BIG's business through BIG III, which constituted a breach of their fiduciary duties of loyalty, Janousek suffered an injury separate and distinct from BIG or the Slotkys, namely, the deprivation and effective conversion of his 40% ownership interest in BIG. As such, the Court finds that Janousek is entitled to judgment on Count II of Janousek's Sixth Amended Complaint.

The issue that remains, then, is the amount of damages that are due to Janousek, individually, on his direct claim against the Slotkys for breach of their fiduciary duties of loyalty in Count II. As explained above, the nature of Janousek's direct injury as a result of the Slotkys breach of their fiduciary duties of loyalty is that the Slotkys effectively converted the value of his 40% ownership interest in BIG by forming BIG III and usurping all of BIG's opportunities to purchase pools of delinquent consumer debt accounts. Therefore, like Levy and Boyer, the Court finds that an appropriate measure of Janousek's damages as a result of the Slotkys' breach of their fiduciary duties is the diminished value of Janousek's 40% ownership interest in BIG from the time of the Slotkys' breach of their fiduciary duties of loyalty. The Court has previously found that the value of BIG at the time the Slotkys first breached their fiduciary duties of loyalty by forming BIG III, approximately October 1, 2007, was $34,040,256.00 such that the value of Janousek's 40% ownership interest was $13,616,102.40. There is no dispute that BIG was insolvent at the time of trial. Accordingly, the Court finds that the diminished value of Janousek's 40% ownership interest in BIG from the beginning of the Slotkys' breach of their fiduciary duties of loyalty to which Janousek is entitled is $13,616,102.40.

As such, the Court enters judgment in favor of Janousek, individually, and against the Slotkys on Count II of Janousek's Sixth Amended Complaint in the amount of $13,616,102.40.

Relief on Janousek's Derivative Claim in Count III.

With respect to the Court's judgment in Janousek's favor, derivatively on behalf of BIG, for the Slotkys' breach of their fiduciary duties of loyalty in Count III of Janousek's Sixth Amended Complaint, Janousek argues that the Court should award, in addition to lost profits: (1) the diminished value of BIG; (2) a post-judgment accounting of BIG III; (3) the value of BIG's defaulted senior and subordinate debt; (4) pre-judgment interest; and (5) disgorgement of management fees paid by BIG to the Slotkys. The Court will address each in turn.

The Diminished Value of BIG

Janousek argues that the diminished value of BIG is an appropriate measure of damages BIG sustained as a result of the Slotkys' breach of their fiduciary duties of loyalty, citing Vendo Co. v. Stoner, 58 Ill. 2d 289 (1974), and many other cases. The Slotkys retort that, though the court in Vendo affirmed an award of damages for the diminution of the value of the plaintiff's business, Janousek failed to introduce any evidence of BIG's diminished value. Janousek replies that the evidence shows that BIG's diminished value is at least $34,040,256.00, the fair value of BIG as of October 1, 2007.

In Vendo, the trial court entered a judgment against the defendants for the plaintiff's lost profits from 1962 to 1969, as well as the diminution in the value of the plaintiff's business attributable to the defendants' activities as of June 1969. Vendo, 58 Ill. 2d at 311. With respect to the plaintiff's lost profits from 1962 to 1969, the trial court calculated the difference between the plaintiff's anticipated sales volume and the plaintiff's actual sales volume during that period, and applied a profit ratio. Id. at 312. With respect to the diminution in the value of the plaintiff's business attributable to the defendants' activities as of June 1969, the trial court accepted the testimony of one of the plaintiff's expert witnesses, who calculated this element of the plaintiff's damages "by making a comparison between the future sales which could be anticipated with plaintiff's [market] share restored and the sales which could be anticipated without such restoration." Id. "A profit ratio was then applied to translate the sales figures into lost profits, and the latter figure was discounted so as to reflect present value." Id. "A second expert witness employed a somewhat different method whereby he capitalized the amount of what he determined to be the average annual lost profits prior to 1969." Id. The Illinois Supreme Court ultimately affirmed the trial court's judgment. Id. at 314.

The Court disagrees with Janousek's contention that Vendo provides authority for the Court to enter judgment on Count III for the diminished value of BIG in addition to the lost profits awarded by the Court pursuant to its July 18, 2016 Order. Pursuant to its July 18, 2016 Order, the Court modified its judgment on Count III to award Janousek, derivatively on behalf of BIG, BIG's past and future lost profits that were attributable to the Slotkys' breach of their fiduciary duties of loyalty in the amount of $8,455,036.00. Specifically, the Court found that BIG lost profits in the amount of $5,656,912.00 from October 2007 through December 2014, and $2,798,124.00 from January 2015 through December 2019.

Contrary to Janousek's argument, the Court finds that the amount of its judgment against the Slotkys for BIG's past and future lost profits is consistent with the trial court's judgment in Vendo. Namely, the portion of the judgment in Vendo referred to as lost profits from 1962 to 1969 is comparable to this Court's finding as to BIG's past lost profits of $5,656,912.00 from October 2007 through December 2014. Similarly, the portion of the judgment in Vendo referred to as diminution in the value of the plaintiff's business attributable to the defendants' activities as of June 1969 is comparable to the Court's conclusion that BIG's future lost profits of $2,798,124.00 from January 2015 through December 2019. This conclusion is particularly apparent upon consideration of the methodology used in Vendo to arrive at the so-called diminution in the value of the plaintiff's business. As explained above, the diminution in the

value of the plaintiff's business in Vendo was calculated "by measuring the comparison between future sales which could be anticipated with plaintiff's [market] share restored and the sales which could be anticipated without such restoration." Vendo, 58 Ill. 2d at 312. "A profit ratio was then applied to translate the sales figures into *lost profits*, and the latter figure was discounted so as to reflect present value." Id. (emphasis added). Thus, the so-called diminution in the value of the plaintiff's business in Vendo was in actuality a calculation of the present value of future lost profits. As such, the Court finds that Vendo does not provide any authority for this Court to increase its judgment on Count III by the diminished value of BIG over and above BIG's past and future lost profits, which the Court has already awarded.

Consideration of the cases cited by Janousek from other jurisdictions does not change the Court's conclusion. In fact, the Court notes that Janousek concedes that other jurisdictions consider a business's lost profits and the going concern value of the business, i.e. the diminished value of the business, to be mutually exclusive such that a plaintiff may only pursue one theory of damages, citing West Plains, LLC v. Retzlaff Grain Co., No. 8:13CV47, 2016 U.S. Dist. LEXIS 86344; Birmingham News Co. v. Horn, 901 So. 2d 27 (Ala. 2004); Farmington Dowel Prods. v. Forster Mfg. Co., 421 F.2d 61 (8th Cir. 1969); Western Fireproofing Co. v. W.R. Grace & Co., 896 F.2d 286 (8th Cir. 1990); and Albrecht v. Herald Co., 452 F.2d 124 (8th Cir. 1971). The Court finds this proposition consistent with Vendo as well as the Court's conclusion in this case. Accordingly, the Court denies Janousek's motion to reconsider as to BIG's diminished value on Count III.

Post-Judgment Accounting of BIG III

Janousek argues that the Court failed to address his request for an accounting of BIG III's profits in Count III and that such an accounting is proper in this case, citing Dweck v. Nasser, No. 1353-VCL, 2012 Del. Ch. LEXIS 170 (Del. Ch. Aug. 2, 2012). The Slotkys counter that Janousek has no basis to seek an accounting of BIG III because he does not request the Court to reconsider its ruling that BIG III is not liable on Count III. Additionally, the Slotkys note that Janousek made no request for such an accounting of BIG III at trial or in his post-trial briefing. Janousek replies that the Court did not strike his prayer for an accounting of BIG III in Count III and asserts that an accounting is appropriate where defendants engage in fiduciary misconduct through self-dealing.

As mentioned above, arguments that could have been raised at an earlier proceeding will not be considered on a motion to reconsider. Continental, 279 Ill. App. 3d at 821. The Court notes that Janousek does not respond to the Slotkys' argument that Janousek failed to raise the issue of an accounting of BIG III in connection with Count III at trial or in his post-trial briefing. In fact, in his motion to reconsider, Janousek concedes that the Court did not entertain full briefing on this issue, as well as others, because Janousek attempted to comply with the page limitations set by the Court. While the Court appreciates Janousek's compliance with the page limitations on the parties' post-trial briefs, the Court finds that a motion to reconsider is not a proper way to raise arguments that could have been but were not raised in the parties' post-trial briefs. If the page limitations imposed by the Court on the parties' post-trial briefs were insufficient for Janousek to address all of the issues contained within his Sixth Amended Complaint, Janousek should have requested leave of Court to file a brief in excess of the page

limitations. But to proceed by attempting to raise issues for the first time on a motion to reconsider is inappropriate and encourages piecemeal litigation, which is discouraged. See Tire 'n Tracks v. Cominic Fiordirosa Constr. Co., 334 Ill. App. 3d 87, 95 (2d Dist. 2002) ("It is improper practice to engage in piecemeal litigation, seeing one theory of the case to conclusion before proposing another."). Accordingly, the Court denies Janousek's motion to reconsider as to his request for a post-judgment accounting of BIG III.

Value of BIG's Defaulted Senior and Subordinate Debt

Janousek also contends that the Court may enter judgment on Count III against the Slotkys in an amount equal to the value of BIG's defaulted senior and subordinate debt, citing Zimmerman v. Bogoff, 524 N.E.2d 849 (Mass. 1988). The Slotkys respond that the Court properly declined to require BIG or the Slotkys to indemnify Janousek for the senior and subordinate debt claims arising from his personal guarantees. Additionally, the Slotkys note that Janousek has never before argued, as he does in his motion to reconsider, that the Slotkys should be liable to BIG for the amounts needed to discharge its senior and subordinate debt. Moreover, the Slotkys contend that Janousek's mere citation to a case from another jurisdiction cannot support any argument that the Court misapplied Illinois law, or that there has been a change in Illinois law. In reply, Janousek maintains that as a result of the Slotkys' breach of their fiduciary duties of loyalty, BIG defaulted on $6,350,660.69 in senior debt and $5,505,432.00 in subordinate debt.

Like the Court's conclusion on Janousek's request for a post-judgment accounting of BIG III, the Court similarly finds that Janousek could have, but did not raise the issue of the Slotkys' liability to BIG for the value of BIG's defaulted senior and subordinate debt in his post-trial briefs. As such, Janousek's request, made for the first time in his motion to reconsider, that the Court impose liability on the Slotkys' on Count III for the value of BIG's defaulted senior and subordinate debt to be improper, piecemeal litigation. Accordingly, the Court denies Janousek's motion to reconsider as to his request for a judgment against the Slotkys on Count III for the value of BIG's defaulted senior and subordinate debt.

Pre-Judgment Interest

Janousek next argues that the Court should award equitable pre-judgment interest to prevent the Slotkys the benefit of the use of the money they usurped from BIG as a result of their breach of their fiduciary duties of loyalty, citing Tully v. McLean, 409 Ill. App. 3d 659 (1st Dist. 2011); and Illinois State Toll Highway Auth. v. Heritage Standard Bank & Trust Co., 157 Ill. 2d 282 (1993). Janousek asserts that an equitable pre-judgment interest rate of 14% is proper as BIG, BIG III, and the Slokys agreed to that rate for subordinate investors.

The Slotkys counter that Janousek presents no basis to reconsider the Court's denial of his request for equitable pre-judgment interest on two prior occasions. Moreover, the Slotkys contend that pre-judgment interest is inapplicable to the Court's award of BIG's lost profits because the Court's award of lost profits includes future lost profits, which the Slotkys, necessarily, have not benefitted from.

As an initial matter, the Court finds that Janousek has failed to satisfy his burden on his motion to reconsider to establish that the Court misapplied existing law on the imposition of equitable prejudgment interest. Nevertheless, the Court will address the merits of Janousek's argument that equitable prejudgment interest is appropriate on the Court's award of BIG's lost profits on Count III.

"Prejudgment interest is proper when authorized by statute, agreement of the parties or warranted by equitable considerations." Tully v. McLean, 409 Ill. App. 3d 659, 684-85 (1st Dist. 2011). "'In cases involving a breach of fiduciary duty, the rationale behind an award of interest is to make the injured party whole by forcing the fiduciary to account for profits gained from his use of the injured party's funds.'" Id. at 685 (quoting Progressive Land Developers, Inc. v. Exchange National Bank of Chicago, 266 Ill. App. 3d 934, 945 (1st Dist. 1994)). "The determination of whether equitable circumstances support an award of interest lies within the discretion of the trial court." Id.

With respect to the Court's award of BIG's future lost profits, the Court agrees with the Slotkys that equitable prejudgment interest is unavailable. As explained above, the rationale behind an award of equitable prejudgment interest is to prevent a wrongdoer the benefit of the use of funds wrongfully obtained prior to judgment. There can be no dispute that the Slotkys did not retain BIG's future lost profits, as they had not been realized. Thus, the Court finds that equitable prejudgment interest on BIG's future lost profits is inappropriate.

As to BIG's past lost profits, the Court finds that the equitable circumstances do not support an award of equitable prejudgment interest. Therefore, the Court denies Janousek's motion to reconsider as to equitable prejudgment interest on the Court's award of BIG's lost profits on Count III of Janousek's Sixth Amended Complaint.

Disgorgement of Management Fees Paid by BIG to the Slotkys

Janousek's last argument on Count III is that the Court should require the Slotkys to disgorge the management fees they received from BIG, citing Caparos v. Morton, 364 Ill. App. 3d 159 (1st Dist. 2006). Janousek notes that he received $90,927.42 in management fees from BIG after October 2007. As such, Janousek reasons that Michael Slotky must have received the same amount as he also had a 40% ownership interest in BIG, and that Burton Slotky must have received $45,463.71, as he had only a 20% ownership interest in BIG.

The Slotkys retort that Janousek's contention that the Slotkys received management fees from BIG is without any evidentiary support and that no inference can be drawn from Janousek's receipt of management fees from BIG. Additionally, the Slotkys argue that Janousek's request for disgorgement of the management fees received from BIG is improperly made for the first time in Janousek's motion to reconsider.

Janousek replies that all that is required is a reasonable basis to calculate damages and that Janousek's receipt of $90,927.42 in management fees after October 2007 is sufficient for the Court to conclude that the Slotkys received management fees in proportion to their ownership interests in BIG.

As with several of the arguments raised by Janousek, the Court finds that Janousek's argument that the Slotkys should be held liable on Count III to disgorge the management fees they received from BIG to be untimely and inappropriatly raised for the first time on a motion to reconsider. Additionally, the Court rejects Janousek's contention that the Court may infer that the Slotkys received management fees in proportion to their ownership interests based solely on the fact that Janousek received $90,927.42 in management fees from BIG. The Court finds that there is simply no evidence in the record that the Slotkys, in fact, received any management fees from BIG. Perhaps the Slotkys did receive management fees from BIG. However, Janousek had the burden to provide an evidentiary basis for such a conclusion, but wholly failed to do so. Thus, the Court denies Janousek's motion to reconsider on the issue of disgorgement of management fees received by the Slotkys by BIG.

Availability of Punitive Damages Against the Slotkys.

The final argument made by Janousek in his motion to reconsider is that the Court should impose exemplary punitive damages against the Slotkys on Counts II, III, or IV, especially in light of the Court's modification of its damages award on Count III from $203,301,180.75 to $8,455,036.00. Janousek notes that the Court need not find intentional misconduct to support an award of punitive damages, but nevertheless argues that the Slotkys conduct in breaching their fiduciary duties of loyalty was willfully targeted to oppress Janousek, which supports an award of exemplary punitive damages of three or four times the Court's award of lost profits on Count III, citing Tully v. McLean, 409 Ill. App. 3d 659, 684-85 (1st Dist. 2011); and Obermaier v. Obermaier, 128 Ill. App. 3d 602 (1st Dist. 1984).

The Slotkys counter that Janousek's renewed request for punitive exemplary damages is improper on Janousek's motion to reconsider because it presents no new facts, or change or misapplication of existing law. Instead, the Slotkys contend that Janousek merely disagrees with the Court's conclusion that punitive damages are inappropriate.

As a preliminary matter, the Court finds that the Court's modification of its award on Count III from $203,301,180.75 to $8,455,036.00 does not provide a basis to reconsider its denial of punitive damages. Additionally, the Court agrees with the Slotkys that Janousek has not satisfied his burden on his motion to reconsider to establish new facts, a change in the law, or the Court's misapplication of existing law. Instead, the Court finds that Janousek merely disagrees with the Court's conclusion that punitive damages are not warranted under the circumstances of this case.

Moreover, to the extent that Janousek seeks clarification of the reasoning for the Court's conclusion that punitive damages are inappropriate under the circumstances, the Court acknowledges that the Slotkys' breached their fiduciary duties of loyalty to BIG and Janousek by forming BIG III—which was identical in form, function and purpose to BIG with the exception that Janousek did not have any ownership interest in BIG III—and usurping the opportunities to purchase pools of delinquent consumer debt accounts in which BIG had an interest. The Court also recognizes that beginning in April 2009, after the Slotkys learned Janousek had engaged an attorney in relation to his claims in this action, Michael Slotky expressed his interest in making

matters as difficult as possible for Janousek by, among other things, ceasing all distributions by BIG to its members, Janousek as well as the Slotkys. Tr. Ex. 421, 434.

"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).

The Slotkys' conduct upon which Janousek relies in his motion to reconsider occurred in 2009, nearly two years after the Slotkys formed BIG III in breach of their fiduciary duties to BIG and Janousek. The Court finds that such conduct subsequent to the Slotkys' breach of their fiduciary duties does not justify an award of punitive damages because it is not related to the Slotkys' intent or motive with respect to their breach of their fiduciary duties. The cases cited by Janousek are consistent with this conclusion. See Tully v. McLean, 409 Ill. App. 3d 659, 670-71 (1st Dist. 2011) (defendants exhibited a willful and wanton disregard for the rights of the plaintiffs through their breach of fiduciary duty by using company as cash cow to support other companies, especially in light of the fact that defendants created fictional accounts to hide transfers to other companies and continued their breach even after promising to stop); Obermaier v. Obermaier, 128 Ill. App. 3d 602, 610 (rejecting defendant's argument that award of punitive damages was improper where the trial court found a flagrant breach of fiduciary responsibility and clear evidence of fraud in the relevant transaction).

Further, the Court notes that much of the dispute between Janousek and the Slotkys is rooted in Janousek's advocacy in 2007 that Burton's ownership interest in BIG be reduced and that BIG avoid purchasing new pools of delinquent consumer debt accounts. Though the Court has concluded that the Slotkys' response to Janousek's dissent by forming BIG III to the exclusion of Janousek and to the detriment of BIG constituted a breach of their fiduciary duties of loyalty to BIG and Janousek, the Court cannot say that the circumstances warrant the imposition of punitive damages against the Slotkys. Accordingly, the Court denies Janousek's motion to reconsider on the issue of punitive damages.

CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part Plaintiff, James Janousek's Motion to Reconsider And/Or Clarify. Specifically, the Court grants Janousek's motion as to his direct claim for the Slotkys' breach of their fiduciary duty of loyalty in Count II of Janousek's Sixth Amended Complaint. On Count II, the Court finds that Janousek's direct claim against the Slotkys for their breach of their fiduciary duties of loyalty is appropriate and that Janousek, individually, is entitled to judgment the amount of $13,616,102.40, an amount equal to the diminished value of his ownership interest in BIG at the time the Slotkys' first breached their fiduciary duties of loyalty, approximately October 1, 2007. However, the Court denies the remainder of Janousek's motion.

ENTERED
JUDGE FRANKLIN ULYSSES VALDERRAMA-1968
NOV 29 2016
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTERED:

Franklin U. Valderrama
Judge Presiding

DATED: November 29, 2016