

STATE OF MICHIGAN
COURT OF APPEALS

FARID KAZI,

Plaintiff-Appellee,

v

RENTAL TO OWNER REALTY,

Defendant,

and

LARRY C. GREEN, SR.,

Defendant-Appellant.

UNPUBLISHED

November 21, 2019

No. 345184

Oakland Circuit Court

LC No. 2017-158611-CZ

Before: JANSEN, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

Defendant, proceeding *in propria persona*, appeals as of right the trial court’s opinion and order entered after a bench trial in this case involving the dissolution of a limited liability company. We affirm.

I. RELEVANT FACTUAL BACKGROUND

This appeal arises from a dispute involving the distribution of assets of Rental to Owner Realty, LLC (the company), in which plaintiff and defendant were both members. Plaintiff and defendant established the company in December 2012 to “to engage in the rental and sale of single-family residences in the Southeastern Michigan area.” In May 2017, plaintiff filed this action for an accounting of the company’s assets, judicial dissolution of the company, and appointment of a receiver. Following a hearing on December 21, 2017, the trial court denied defendant’s motion for leave to file a counterclaim and ordered that the company be dissolved. After conducting a three-day bench trial, the court entered a written opinion and order determining the assets and liabilities of the company, and ordering the distribution of the

company's assets in conformance with the company's operating agreement. Defendant now appeals the trial court's decision.

II. ADMISSION OF EVIDENCE

Defendant first challenges the admission of the company's bank statements into evidence at trial on three separate grounds. Specifically, defendant argues that the bank statements were not properly authenticated and were inadmissible hearsay, and that they were admitted in violation of the rule of completeness, MRE 106. We disagree.

A. STANDARD OF REVIEW

This Court reviews a trial court's determination regarding the admission of evidence for an abuse of discretion. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). The court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Powers v Brown*, ___ Mich App ___; ___ NW2d ___ (2019) (Docket No. 343287); slip op at 2.

B. THE EVIDENCE

On the first day of trial, plaintiff sought to admit Exhibit 10, consisting of bank records from PNC Bank, in support of a ledger summary he had prepared documenting the funds that he had loaned to the company. Plaintiff testified that the records consisted of computer printouts from PNC Bank's website for the company's bank account and that it was the practice of the company to make the bank statements a business record of the company. Defendant objected to the admission of the records on the basis that they were hearsay and that the "documents aren't substantiated[.]" as well as because he had not received the documents before trial. After noting that defendant had not filed a discovery request for the bank statements, the trial court admitted the bank records.

Moreover, when presenting PNC Bank statements to verify loans that plaintiff took out on behalf of the company and deposited into the company's bank account, plaintiff introduced Exhibit 25, which verified the loans that were deposited. With regard to Exhibit 25, plaintiff's counsel informed the trial court that the bank statements were "a business record[.]" and were "self-authenticating[.]" Upon questioning by the trial court, plaintiff confirmed that he printed the bank statements from the PNC Bank website and that they were accessed using his password. The trial court granted plaintiff's motion to admit the statements as business records, despite defendant's objections that the records were "hearsay," "unauthenticated," and "incomplete and unsubstantiated."

When plaintiff sought to introduce bank statements from Citizens Bank and PNC Bank showing the balances in the company's accounts, defendant again objected on the basis that the records were "[h]earsay" and "[u]nsubstantiated," but the trial court allowed the statements into evidence as plaintiff's Exhibits 43 and 44. Plaintiff also relied on Exhibit 25 to substantiate amounts that defendant had withdrawn from the company's bank account for alleged expenses that could not be verified. At that point, the trial court noted that Exhibit 25 only included bank statements from 2012 to 2015. The court then adjourned trial for the day to allow plaintiff's

counsel to properly organize plaintiff's exhibits and ordered plaintiff's counsel to provide defendant with bank statements for 2016 forward.

When trial resumed the next day, plaintiff's counsel informed the court that he had provided defendant with the missing bank statements as part of Exhibit 42, prompting an objection by defendant on the basis of MRE 106, because the bank statements were missing some pages. After defendant pointed to unspecified portions of the exhibit, the trial court expressed that it was not able to follow or understand the substance of defendant's objection and ultimately determined that plaintiff had provided "complete documents." As the trial court questioned defendant regarding whether he had submitted a proper discovery request for the documents, plaintiff's counsel conceded that the bank statements for 2016-2018 were still missing, because instead of providing all records, counsel for plaintiff had cross-referenced the pertinent bank statements to the ledger that plaintiff had created. After a brief adjournment to review the record, the trial court concluded that defendant had not submitted an appropriate discovery request. The court further invited defendant to make a list of what he believed was missing from the bank statements and show when the information was requested before trial. The trial court then decided to again adjourn the proceedings to allow plaintiff's counsel to include bank statements from 2012 until 2017 in plaintiff's Exhibit 25. The court instructed plaintiff's counsel: "[y]ou need to give [defendant] all the bank records, period" and went on to state that "you need to give [defendant] everything and then we'll come back and start this one more time." When trial resumed, plaintiff's counsel sought to admit Exhibit 42, a ledger documenting the amounts that defendant had withdrawn from the company's bank account, corroborated by PNC Bank statements. Defendant again alleged that the records were hearsay, incomplete, and that "this whole thing [in Exhibit 42] is a waste of time." The trial court admitted Exhibit 42 over defendant's objection.

C. ANALYSIS

Defendant first argues that the PNC Bank statements were erroneously admitted because they were never authenticated.

MRE 901 provides, in pertinent part:

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

In *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 154; 908 NW2d 319 (2017), this Court recognized that the inquiry concerning whether evidence has been authenticated, that is whether "there is sufficient reason to believe that the evidence is what its proponent claims for purposes of admission into evidence[.]" is one "reserved solely for the trial judge." Direct or circumstantial evidence may support a finding "that the matter in question is what its proponent claims." *Id.* at 155; MRE 901. Whether evidence can be authenticated and whether the evidence might violate the rule against hearsay are two distinct questions. *Meagher v Wayne State Univ.*, 222 Mich App 700, 724; 565 NW2d 401 (1997).

MRE 902 provides, in pertinent part:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * *

(11) Certified Records of Regularly Conducted Activity. The original or a duplicate of a record, whether domestic or foreign, of regularly conducted business activity that would be admissible under rule 803(6), if accompanied by a written declaration under oath by its custodian or other qualified person certifying that

(A) The record was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;

(B) The record was kept in the course of the regularly conducted business activity; and

(C) It was the regular practice of the business activity to make the record.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

Although defendant argues that the PNC Bank statements could not be authenticated under MRE 902(11) because plaintiff did not provide notice of his intent to offer the evidence under this rule, the record does not indicate that the records were authenticated under this rule. Rather, the trial court heard testimony from plaintiff confirming that, using the appropriate pass codes for the company's PNC account, he retrieved the PNC Bank statements from the bank's website. The trial court did not abuse its discretion by accepting this testimony as "evidence sufficient to support a finding that the matter in question is what its proponent claims." MRE 901(a). A review of the PNC statements shows that they bear the name of the bank, the company's bank account number, as well as the month and year of each statement at issue. Plaintiff made a sufficient showing that the proffered evidence was indeed what it was claimed to be, namely, PNC Bank statements for the company's bank account with PNC Bank.

Second, defendant argues that the bank statements were inadmissible hearsay. This argument also fails.

MRE 803(6) provides, in pertinent part:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

The PNC Bank statements were hearsay to the extent that they were out-of-court statements offered for “the truth of the matter asserted[,]” that is, to establish the deposits and withdrawals that were made from the company’s bank account. MRE 801. Hearsay is not admissible unless it falls within a recognized exception. See MRE 802. Notably, MRE 803(6) provides an exception to the rule against hearsay for business records. To the extent the company’s bank statements were generated by PNC Bank “in the course of a regularly conducted business activity[,]” the statements fall within this exception. While defendant challenges the applicability of this exception because plaintiff did not produce the testimony of the custodian of the records, or some “other qualified witness[,]” plaintiff argues that the trial court could take judicial notice of the nature of the specific bank records.

Plaintiff cites *People v Vargo*, 139 Mich App 573, 580; 362 NW2d 840 (1984), in support of his argument that he was a “qualified witness” who could testify regarding the regular business practices that resulted in the generation of the bank statements. MRE 803(6). In *Vargo*, 139 Mich App at 580, this Court held that “a qualified witness must establish that the record was kept in the course of a regularly conducted business activity and that it was the regular practice of such business activity to make that record.” Observing that “[k]nowledge of the business involved and its regular practices are necessary[,]” this Court held that the defendant was not a qualified witness because his contact with the organization at issue “was extremely limited[,]” and he could not establish that it was the regular practice of the organization to maintain the form that he sought to admit into evidence. *Id.* While plaintiff’s testimony at trial did support a conclusion that the bank statements were generated regularly by PNC Bank, because plaintiff is not an employee of PNC Bank or familiar with its internal business practices, we conclude that *Vargo* does not support plaintiff’s argument that he was a “qualified witness” under MRE 803(6).

However, federal caselaw interpreting the federal counterpart to MRE 803(6), FRE 803(6), is persuasive on this point. Our Supreme Court has recognized that federal caselaw is instructive and may be considered in interpreting parallel state rules of evidence. See *People v Denson*, 500 Mich 385, 405; 902 NW2d 306 (2017) (“Because the Michigan Rules of Evidence in general parallel the text of the federal rules on which the state committee’s product was based,” Michigan courts find “helpful” and “persuasive” caselaw interpreting the Federal Rules of Evidence.”) (citation and quotation marks omitted). In *FDIC v Staudinger*, 797 F2d 908, 910 (CA 10, 1986), the trial court admitted bank documents that the defendant argued were

inadmissible hearsay. These included a lending memorandum, a commercial loan worksheet, and copies of a promissory note. *Id.* The court disagreed with the defendant's argument that the hearsay exception for business records was not applicable because the plaintiff did not call an employee of the bank to testify regarding the veracity of the documents. The court, quoting Weinstein's Evidence, stated "there is no requirement that the party offering a business record produce the author of the item." *Id.* The court determined that the records at issue were "the type of records maintained by banks in the ordinary course of business." *Id.* The court further stated:

Furthermore, "[a] foundation for admissibility may at times be predicated on judicial notice of the nature of the business and the nature of the records as observed by the court, particularly in the case of bank and similar statements." [*Id.*, quoting Weinstein's Evidence, p. 803-178.]

Subsequently, in *United States v Johnson*, 971 F2d 562, 570 (CA 10, 1992), the defendant challenged the trial court's admission of bank receipts that reflected the transfer of monetary funds from the defendant to several investors. The defendant was convicted of several counts of money laundering and it was alleged that he had engaged in a scheme in which he defrauded investors "out of millions of dollars." *Id.* at 564. The receipts were sent to each investor by the banks reflecting that a transaction impacting their accounts had occurred. *Id.* at 570-571. The defendant argued that the records were inadmissible because the documentation was admitted through the testimony of the individual investors, rather than by a custodian of the respective banks. *Id.* at 571. The federal appellate court disagreed, observing that the trial court indicated that it found the investors to be the custodians of the records because the records were held to document transactions in their respective accounts. The court also rejected the defendant's argument that failure to produce the custodians of the records from the respective banks was "determinative of the documents' admissibility under Rule 803(6)." *Johnson*, 971 F2d at 571. Quoting *Staudinger* for the legal proposition that admissibility may be based on the court taking judicial notice of the nature of the records at issue, particularly with regard to bank and similar statements, the court noted that "[t]he record is replete with circumstances demonstrating the trustworthiness of the documents." *Id.* The court went on to state, in pertinent part:

As noted above, bank records are particularly suitable for admission under Rule 803(6) in light of the fastidious nature of record keeping in financial institutions, which is often required by governmental regulation. The nature of the documents themselves as bank statements together with the testimony of the investors established that the records were made at the time of the transactions in question and were made in the course of a regularly conducted business activity. The accuracy of the documents and the fact that they were prepared by a person with knowledge of the transactions were established both by the testimony of the investors and by comparison with the defendant's own bank records. In short, the record as a whole shows a sufficient foundation for the admission of the documents under Rule 803(6). Under the circumstances, the investors were "qualified witness[es]" whose testimony, together with the other evidence, was sufficient to show a foundation for the admission of the documents. The district

court did not abuse its discretion in admitting the evidence. [*Johnson*, 971 F2d at 571-572.]

Like the receipts in *Johnson*, the PNC Bank statements in the instant case are bank records that are “fastidious[ly]” maintained by PNC Bank and are subject to governmental oversight and regulation. *Id.* During his testimony, plaintiff testified that he accessed the bank statements from the PNC Bank website, using the personal access code for the company, and the bank statements bear the company’s bank account number, as well as the relevant dates of the transactions. Notably, defendant did not dispute that the statements reflected activity in the company’s bank account, but questioned whether the deductions from the account supported the allegation that he had withdrawn the money for expenses that were not verified. Under such circumstances, the proffered bank statements carried sufficient indicia of trustworthiness. Therefore, the trial court’s decision to admit the evidence fell within a range of reasonable and principled outcomes. Accordingly, the court did not abuse its discretion by admitting the bank statements.

Third, defendant argues that the trial court admitted the bank statements in violation of MRE 106, which provides:

When a writing or record statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other party or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

In *People v Solloway*, 316 Mich App 174, 200; 891 NW2d 255 (2016), this Court recognized the underlying purpose of MRE 106, also known as the rule of completeness:

Under the rule of completeness in MRE 106, “[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” This “rule of evidence [is] only . . . pertinent if defendant sought, but was denied, permission to have a complete writing or recorded statement introduced.” *People v McGuffey*, 251 Mich App 155, 161; 649 NW2d 801 (2002).

Although the record indicates that at one point in the proceedings defendant may not have had the PNC Bank statements for 2016, 2017, and 2018, this appears to have been due to a somewhat disorganized filing system by plaintiff’s counsel. There is no suggestion in the record that the bank records were deliberately withheld. In any event, when this issue came to the trial court’s attention, the court adjourned the proceedings not once, but twice, so that all of the records could be provided to defendant. Although defendant continues to assert that he was not furnished with complete records, he does not provide evidentiary support for this contention. Because the record clearly discloses that the trial court acted to ensure that defendant was furnished with the records in their entirety, we reject this claim of error.

III. DEFENDANT'S MOTION TO COMPEL DISCOVERY

Defendant next challenges the trial court's denial of his motion to compel discovery of the company's financial records. We reject this challenge.

A. STANDARD OF REVIEW

The trial court's ruling on a motion to compel discovery is reviewed for an abuse of discretion. *Cabrera v Ekema*, 265 Mich App 402, 406; 695 NW2d 78 (2005). The court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Powers*, ___ Mich App at ___; slip op at 2.

B. THE MOTION TO COMPEL

On February 20, 2018, defendant filed a motion to compel the production of financial information for an accounting. Defendant alleged that plaintiff had refused to allow him access to the company's financial records, and because plaintiff had removed him from all of the company's bank accounts, he could not access this information on his own. Defendant further asserted that as a member of the company, he had the right to access the company's financial records, as well as the right to an accounting.

In support of his motion, defendant submitted a letter, dated December 14, 2017, in which plaintiff's counsel informed defendant that a special meeting of the company was held on December 14, 2017, and pursuant to a resolution of the company, defendant no longer was authorized to access the company's financial records because he was removed as a member of the company. Defendant also submitted a copy of e-mail correspondence he sent to plaintiff's counsel, dated January 25, 2018, in which he requested the online access codes for the company's bank accounts with PNC Bank and Chase Bank, as well as the company's tax returns for 2012, 2013, and 2014. In addition, defendant's accountant had requested additional information related to the company, such as the company's 2015 bank statements and year-to-date transaction details for all years that the company was conducting business. Defendant had not previously submitted discovery requests for any of this information. At a hearing on February 28, 2018, the trial court determined that defendant had already been provided with the necessary records because plaintiff had filed an accounting with the trial court in compliance with the court's earlier order. Accordingly, the trial court denied defendant's motion to compel.

As noted earlier, on the second day of trial, defendant objected to plaintiff's introduction of the PNC Bank statements, arguing in part that the records were incomplete. When defendant asserted that he had previously filed a motion to compel production of the information, the trial court, upon questioning defendant and reviewing the lower court file, determined that defendant had never submitted an appropriate discovery request to plaintiff before filing his motion to compel. But the court also then found that plaintiff had provided all of the financial documentation to defendant in the accounting he had previously filed with the court. The trial court ruled that the trial would continue, but invited defendant to make a list of any documents he believed had not been provided.

C. ANALYSIS

As this Court observed in *Cabrera*, 265 Mich App at 407, the court rules foster a policy of open and broad discovery, and “[p]arties are permitted to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the lawsuit, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.” See also *Sarkar v Doe*, 318 Mich App 156, 175; 897 NW2d 207 (2016) (observing that Michigan has a policy of broad and open discovery). However, a trial court can also protect the interests of a party that opposes discovery and may take protective action so that the party opposing discovery is not subjected to “excessive, abusive, or irrelevant discovery requests.” *Id.* As noted earlier, defendant did not serve plaintiff with any discovery requests, and in his only request for information apparent from the record, defendant simply requested the online access codes for the company’s bank accounts; he did not specifically request multiple years of the company’s bank statements. At the time relevant, MCR 2.302(A)(2) stated that “[a] motion for discovery may not be filed unless the discovery sought has previously been requested and refused.”¹

In support of his argument that the trial court abused its discretion by not ordering discovery, defendant relies on MCL 450.4503, which provides, in pertinent part:

(1) Upon written request of a member, a limited liability company shall send a copy of its most recent annual financial statement and its most recent federal, state, and local income tax returns, and any other returns or filings the limited liability company has submitted or is required to submit to any federal, state, local, or other governmental taxing authority, to the member by mail or electronic transmission.

(2) *Upon reasonable request, a member may obtain true and full information regarding the current state of a limited liability company’s financial condition.*

(3) Upon reasonable written request and during ordinary business hours, a member or the member’s designated representative may inspect and copy, at the member’s expense, any of the records a limited liability company is required to maintain under [MCL 450.4213], at the location where the records are kept.

(4) Upon reasonable written request, a member may obtain other information regarding a limited liability company’s affairs or may inspect, personally or through a representative and during ordinary business hours, other books and records of the limited liability company, as is just and reasonable.

¹ On June 19, 2019, the Michigan Supreme Court substantially amended MCR 2.302, effective January 1, 2020. The amended rule requires mandatory discovery disclosure in many cases.

(5) A member may have a formal accounting of a limited liability company's affairs, as provided in an operating agreement or whenever circumstances render it just and reasonable. [Emphasis added.]

Defendant argues that the trial court's decision to deny discovery was erroneous because the statute requires that a member of an LLC be provided with "true and full information regarding the . . . limited liability company's financial condition[,]" and that under "just and reasonable[]" circumstances, a member is to be provided with a financial accounting.

Preliminarily, we note that as of December 14, 2017, defendant was no longer entitled to access the company's financial records as a member of the company because the company resolved to remove him as a member. Further, contrary to defendant's claim that the trial court's failure to order discovery resulted in a "trial by surprise," the record reflects that the trial court acted to ensure that defendant was provided with the financial documentation that plaintiff sought to introduce in support of his case. For example, as plaintiff's counsel pointed out during the February 28, 2018 motion hearing, plaintiff had already provided detailed financial records of the company to defendant in an accounting filed with the trial court. The trial court recognized this fact, which was the basis for its ruling to deny defendant's motion to compel discovery. Moreover, during trial, despite repeatedly acknowledging that defendant had not served discovery requests as required by the court rules, the trial court, on more than one occasion, adjourned the proceedings to ensure that defendant was provided with the information that plaintiff was relying on to establish the assets and liabilities of the company. This course of action was not attributable to the trial court's decision to withhold relevant information from defendant at any stage of the proceedings or to undermine the purposes of discovery, but rather by what appeared to be plaintiff's disorganized and somewhat incoherent presentation of his case.

An example of this occurred during the first day of trial, when defendant objected to the introduction of plaintiff's Exhibit 10, PNC Bank statements establishing that plaintiff had taken out personal loans to fund the company's operations, and defendant objected to the admission of this evidence, arguing that it had not been provided to him before trial and he could not verify if the information that plaintiff was seeking to introduce was what defendant had been given before trial. In response, plaintiff's counsel countered that defendant had not requested the documentation, an order to produce the discovery had not been entered, and the financial documentation had been provided to defendant in the accounting that was previously filed in the trial court. The trial court ultimately allowed the admission of this evidence.

Subsequently, when plaintiff's counsel was questioning plaintiff about unverified expenses that defendant had withdrawn from the company's bank accounts, the trial court informed plaintiff's counsel that it only had bank statements for the years 2012 to 2015. Plaintiff's counsel responded that the omission was because of a mistake by counsel's assistant. The trial court informed plaintiff's counsel that the way he was attempting to show that defendant had deducted unverified expenses from the company's accounts was "very confusing[,]" and that the ledger summary of the alleged unverified expenses that plaintiff had produced, without corroborating financial documentation, was inadmissible. At that point, plaintiff's counsel requested that the matter be adjourned to allow him to "get everybody organized a little better[,]" and the trial court agreed, noting that the adjournment would give

defendant the opportunity to review the documents. The court also instructed plaintiff's counsel to provide the bank statements for 2016, 2017, and 2018 to defendant as soon as possible.

When trial resumed the following day, plaintiff's counsel informed the trial court that he had provided unspecified bank statements to defendant by electronic mail as ordered by the court. Defendant then proceeded to object to the evidence on the basis of MRE 106, arguing that the records were not complete, the trial court questioned defendant whether he had requested the records in compliance with the court rules, and also inquired of plaintiff's counsel whether the bank records for all relevant periods had been provided. In response, plaintiff's counsel acknowledged that the bank records for 2016, 2017, and 2018 were still missing, but maintained that defendant had not provided plaintiff with a proper discovery request, which led the trial court to question defendant with respect to whether he had submitted an appropriate request. Plaintiff's counsel again conceded that he had not provided the company bank statements for all relevant years. The trial court then decided to adjourn the proceedings until July 19, 2018, so that plaintiff's counsel could provide defendant with all relevant documentation. Under these circumstances, given that the record confirms that (1) defendant, who had been removed as a member of the company, did not serve discovery requests as required by the court rules, (2) an accounting of financial documentation was filed with the trial court in advance of trial, and (3) any delay caused by the disorganization of plaintiff's counsel in producing documentation to defendant was rectified by the trial court adjourning the proceedings to allow the documents to be produced for defendant and for defendant to review them, we are not persuaded that the trial court abused its discretion by denying defendant's motion to compel.

IV. TRIAL COURT'S FACTUAL FINDINGS FOLLOWING THE BENCH TRIAL

Finally, defendant challenges the trial court's factual findings with regard to the assets and liabilities of the company. We find no clear error in the trial court's findings.

A. STANDARD OF REVIEW

This Court reviews for clear error the trial court's findings following a bench trial. *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 195; 761 NW2d 293 (2008). The trial court's findings are clearly erroneous if this Court is left "with a definite and firm conviction" that the court made a mistake. *Id.*

B. DEFENDANT'S ARGUMENTS

Initially, defendant argues that there is no evidentiary support for the trial court's findings with respect to defendant (1) withdrawing \$53,384.73 in "unverified expenses" from the company's bank account, and (2) improperly receiving \$4,550 in land contract payments. Defendant likewise contends that the trial court's factual determination that the company owed plaintiff \$45,646.77 for loans is without evidentiary support. Consequently, according to defendant, the trial court's factual determination that plaintiff was owed \$29,546.71, representing his membership interest in the unverified expense money that defendant received from the company's bank accounts, lacks evidentiary support. In support of these claims, defendant cites portions of the trial transcript from the first day of trial, in which the trial court and counsel for plaintiff engaged in a back-and-forth dialogue concerning what bank statements had in fact been

produced as evidence. As mentioned earlier, the records were eventually provided to defendant before the third and final day of trial.

C. LAND CONTRACT PAYMENTS

Addressing first defendant's reference to the \$4,550 in land contract payments wrongfully withheld from the company, the PNC Bank statements that defendant claims were erroneously admitted did not pertain to the land contract payments. Rather, plaintiff testified at trial that the tenant, at defendant's request, had sent \$4,550 in land contract payments to a "secret post box number" owned by defendant. At the time of trial, plaintiff estimated that five months of land contract payments, in the amount of \$910 each, had been sent to defendant without plaintiff's authorization, for a total amount of \$4,550. Plaintiff's testimony supports the trial court's findings with respect to the land contract payments.

D. UNVERIFIED EXPENSES

During the third day of trial, plaintiff presented Exhibit 42, which includes two ledger sheets documenting \$53,584.73 that defendant had withdrawn from the company's bank account by checks for alleged expenses. Plaintiff explained that defendant could not provide invoices for these checks and, in response to plaintiff's queries, defendant merely stated that the undocumented expenses were for unspecified "repairs." To the extent defendant now maintains that the monetary amounts listed in the ledger are not supported by evidence of record, our review of Exhibit 42 reveals that each amount listed on the ledger corresponds to an actual withdrawal documented in the company's bank account statements. Plaintiff provided examples of this during his trial testimony. Our review of a sampling of the withdrawals from the company's bank account confirms plaintiff's testimony. For instance, for a check drawn on the company account on August 26, 2014, plaintiff produced the accompanying bank statement for the period of August 30, 2014 until September 20, 2014, documenting that the amount of \$775 was in fact withdrawn from the company account on September 19, 2014. Similarly, check number 1193 in the amount of \$1,000 was written on the company bank account on January 10, 2017. Additionally, check number 1167 in the amount of \$900, reflected in plaintiff's ledger, was written on the company bank account on July 14, 2016. Similarly, check number 1104 in the amount of \$4,800 was written on the company account on August 26, 2015, according to the company's bank statements. The trial court stated that it found plaintiff's testimony, which was corroborated by the bank statements, to be "highly credible," and this Court affords deference "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). Therefore, contrary to defendant's assertions, the evidence at trial corroborates plaintiff's claim that defendant wrote checks against the company's bank account in the amount of \$53,584.73, and the trial court's findings with regard to this issue are not clearly erroneous. We are not left with a definite and firm conviction that the trial court made a mistake. *Mettler Walloon, LLC*, 281 Mich App at 195.

E. MONIES OWED TO PLAINTIFF

We next turn to defendant's contention that the trial court erred by finding that the company owed plaintiff \$45,646.77. During the first day of trial, plaintiff testified that he loaned \$6,202 to the company, and plaintiff's Exhibit 10, which was admitted into evidence, lists the

loans that plaintiff made to the company. Exhibit 10 includes not only the ledger statement that plaintiff prepared, but also the PNC Bank statements that substantiate the deposits made to the company's bank account. For example, plaintiff pointed out during his testimony that a loan that he made to the company in the amount of \$1,000 was reflected on the company's PNC Bank statement for the time period of April 1, 2016 until April 29, 2016. An additional loan that plaintiff said he made to the company on May 2, 2016, is also reflected in the company's PNC Bank statement for the time period April 30, 2016 to May 31, 2016. We have reviewed plaintiff's Exhibit 10, and the amounts listed in that exhibit are corroborated by corresponding deposits listed in the bank statements. Therefore, the trial court's factual finding with regard to the \$6,202 the company owed plaintiff for loans is not clearly erroneous. Again, we are not left with the definite and firm conviction that the trial court made a mistake.

During trial, plaintiff testified that Exhibit 14 was a ledger sheet documenting a loan for \$56,000 that he personally took out from Pensco Trust Company (Pensco). The exhibit included a copy of the October 1, 2015 promissory note reflecting the terms of the loan. Plaintiff also testified that he borrowed another \$7,000 from an unspecified entity, as well as \$28,000 from another unspecified entity, and applied the proceeds to the Pensco loan, with the final amount owing of \$25,881.56. The April 21, 2016 promissory note for the \$28,000 loan was also included as part of Exhibit 14. After the trial court admitted Exhibit 14, it clarified that it would require proof that the deposits from the loans were actually made to the company's bank account, and plaintiff produced Exhibit 25 in response. Exhibit 25 included PNC Bank statements for May and June 2015, which confirmed that plaintiff deposited \$50,000 into the company bank accounts during those months. Given plaintiff's testimony regarding the loans and the documentary evidence confirming the amounts of the loans that were taken to fund the company's business, the trial court's factual finding that the company still owed plaintiff \$25,881.56 is not clearly erroneous.

Additionally, at trial, plaintiff produced Exhibit 12, a ledger statement documenting \$11,837.21 in payments that he made to vendors on behalf of the company. While plaintiff did not execute promissory notes to document the specific amounts that he paid from his personal funds to vendors on behalf of the company, and he did not have documentary proof of all of the payments, he did attach proof for several of them to Exhibit 12. For example, plaintiff testified that he made a payment of \$5,500 to install a furnace at the Ferrin Place property in Mount Clemens, and made payments for business-related fees for taking out mortgages on behalf of the company, but he did not have documentation of these expenses. Plaintiff included a copy of the check that he wrote to Moraye Dinelli in the amount of \$1,500 for repairs, and \$246.54 that he paid to a locksmith, both of which were reflected in the ledger he prepared. Plaintiff also attached copies of two promissory notes, dated April 11, 2017, and November 14, 2017 for two separate loans, to document \$3,000 in interest payments for each respective loan. Therefore, the trial court's finding that plaintiff was owed \$11,837.21 for payments to vendors is supported by the evidence at trial.

Defendant claims in one sentence in his brief on appeal that the trial court did not have any basis to award plaintiff \$1,726 in attorney fees for this action, but defendant does not elaborate on this argument and it is unclear whether he is challenging the legal or factual basis for the trial court's decision with respect to attorney fees. In any event, plaintiff testified at trial that the law firm of plaintiff's counsel was owed \$1,726 for outstanding attorney fees for

services provided to the company to assist with its dissolution and distribution of its assets. Given this testimony, we are not persuaded that the trial court made a mistake by treating the \$1,726 amount for attorney fees as a debt of the company.

In sum, the trial court's factual findings regarding the company's liabilities of \$45,646.77 are supported by the evidence at trial and we are not left with a definite and firm conviction that the trial court made a mistake.

F. THE MORTGAGE AGAINST 23 FERRIN PLACE

Defendant also argues that plaintiff, by taking out a mortgage in the amount of \$81,750 against the Ferrin Place property, incurred a profit at the company's expense, which he should have been required to repay to the company. At trial, plaintiff admitted that a mortgage was taken out on the Ferrin Place property, but testified that the company used the money, with defendant's consent, to pay off "four or five" high-interest credit cards of the company. According to plaintiff, in the time frame contemporaneous with when the mortgage was taken, the company owed approximately \$48,000 in credit-card debt. When the mortgage money was received, plaintiff "distribute[d] and paid all the credit cards which were on the books [of the company], and [he] paid partially the loan [to Pensco]." Although Quicken Loans wrote plaintiff a check for \$19,189 out of the mortgage funds, plaintiff testified that this was a mistake by Quicken Loans, and he did not retain the proceeds. At the time of plaintiff's testimony on July 19, 2018, the company no longer had any credit-card debt. Plaintiff also confirmed that when the company sold the Ferrin Place property, the sale proceeds were used to pay off the mortgage balance against the property. Plaintiff also noted that when the company did not have the money to pay the mortgage loan, he would do so out of his own funds. There is no indication in the record that plaintiff used the funds for his own personal use. To the extent defendant argues that plaintiff's assertion that the mortgage funds were used to pay off the company's credit-card debt is false, we again defer to the trial court's assessment of plaintiff's credibility. MCR 2.613(C). It is undisputed that the company no longer had any credit-card debt at the time of trial. Crediting plaintiff's testimony that the mortgage loan proceeds were used to pay the company's credit-card debt, the trial court did not clearly err by not including the mortgage funds from the Ferrin Place property as an asset of the company in calculating the parties' respective distributions.

Defendant's contention that the trial court mistakenly did not consider the \$1,500 that defendant withdrew from the company's bank account as an asset of the company is unclear, given that the only reference to this matter during trial was defendant's perfunctory assertion during his closing argument that he withdrew this amount from the company's bank account. Put simply, there is nothing in the record to indicate that the trial court erred in some manner by not including this amount as an asset of the company.

Similarly, defendant maintains that the trial court should have ordered plaintiff to personally repay \$2,900 in funds that plaintiff testified he transferred from a secret account that defendant had set up to the company's real and verified bank account. Because the record reflects that plaintiff merely acted to place company funds back into the company's bank account after defendant misappropriated them, defendant's argument that plaintiff should be in some manner personally liable for these funds is not persuasive.

Defendant concludes his argument by asserting that this Court should essentially redistribute the company's assets. Because this request is based on defendant's mistaken argument that the trial court's factual findings with respect to the company's assets and liabilities are clearly erroneous, we reject his claim that the company's assets should be distributed in a manner differently than what the trial court ordered.

V. DEFENDANT'S REQUEST TO STRIKE PLAINTIFF'S BRIEF

In his reply brief on appeal, defendant argues that plaintiff's brief on appeal should be stricken because it was not timely filed. We disagree. Defendant filed his brief on appeal on December 17, 2018. Plaintiff timely filed his appellee's brief on January 11, 2019, within the 35-day period allowed by MCR 7.212(A)(2)(a)(ii). Although this Court notified plaintiff on January 16, 2019, that the proof of service filed with the brief contained an incorrect address, plaintiff corrected the defect by filing an amended proof of service with the correct address. Under MCR 7.212(I), this Court was permitted to allow plaintiff to correct the defective filing or strike the brief. Considering that defendant never filed a motion to strike plaintiff's brief, that this Court was authorized to allow plaintiff to cure the defective filing, and that plaintiff did in fact cure the defect by filing an amended proof of service, we reject defendant's argument that plaintiff's brief should be stricken.²

Affirmed.

/s/ Kathleen Jansen
/s/ Mark T. Boonstra
/s/ Anica Letica

² Defendant also asserts that plaintiff forfeited his right to oral argument. Although defendant correctly observes that MCR 7.212(A)(4) provides that "[a]ny party failing to timely file and serve a brief required by this rule forfeits the right to oral argument[.]" plaintiff did timely file his brief and, while the brief was initially nonconforming, plaintiff rectified the nonconformity by filing an amended proof of service, which this Court accepted. Therefore, defendant's assertion that plaintiff forfeited his right to oral argument is unavailing.