NOTICE
Decision filed 11/12/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250941-U

NO. 5-25-0941

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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| SUN INDUSTRIES, INC., | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellant, | ) | Massac County. |
| | ) | |
| v. | ) | No. 15-CH-21 |
| | ) | |
| ROLLO BURNETT, Individually and as Trustee | ) | |
| for the Rollo Burnett Revocable Trust U/D/O 12-24-2007 | ) | Honorable |
| | ) | Jeffrey A Goffinet, |
| Defendant-Appellee. | ) | Judge, presiding. |

JUSTICE McHANEY delivered the judgment of the court.
Justices Sholar and Hackett concurred in the judgment.

**ORDER**

¶ 1 *Held*: Sun Industries forfeited review of the trial court's directed finding on its accounting claim by failing to challenge that ruling in its opening brief, and that finding is affirmed. The trial court did not abuse its discretion in excluding Sun Industries' expert rebuttal report or in denying its posttrial motion to vacate the judgment and reopen the proofs where Sun Industries' Rule 213(f)(3) disclosure was inadequate and the proposed testimony could not have supplied the evidence necessary to support the relief sought. The trial court's directed finding on the constructive-trust count is affirmed where Sun Industries failed to prove an identifiable, traceable *res*, an essential element of a constructive trust.

¶ 2 I. BACKGROUND

¶ 3 This appeal arises from a long-running dispute over farmland in Massac County known as the Paul Stratemeyer Farm. The plaintiff is Sun Industries, Inc. (Sun Industries), an Illinois

corporation whose principals are the three adult children of Eugene Stratemeyer[1] (Eugene). The defendant is Rollo Burnett, individually and as trustee of the Rollo Burnett Revocable Trust under declaration dated December 24, 2007 (collectively, Burnett). In 2003, Eugene entered into a contract for deed with Rodger and Cheryl Harrison to purchase the Paul Stratemeyer Farm. The purchase was never completed, and the Harrisons later conveyed the farm to Rollo Burnett by deed dated February 9, 2007.

¶ 4 In February 2007 Eugene and Rollo discussed Eugene's purchase of the Paul Stratemeyer Farm from Rollo on a contract for deed. A written contract for deed was prepared but never signed. The agreement called for Eugene to pay Rollo a purchase price of $429,000, in annual installments of $85,800 in principal plus interest, and to reimburse Rollo for the real estate and drainage taxes on the property. The agreement also provided that Rollo would convey the farm by warranty deed upon payment of the final installment. Eugene made the payments called for by the agreement, and by January 30, 2012, he had paid the $429,000 purchase price in full. Rollo never conveyed a deed to the farm. Rollo conveyed the Paul Stratemeyer Farm into his revocable trust by a warranty deed in trust dated March 5, 2012.

¶ 5 Eugene conveyed his interest in the Paul Stratemeyer Farm to Sun Industries by quitclaim deed dated April 5, 2012. In a separate action, Massac County Cause No. 2009-L-7, Sun Industries and Eugene settled their disputes by an agreement dated March 28, 2014, and an addendum dated February 27, 2015, which the circuit court approved on March 9, 2015. Under that settlement, Eugene conveyed his assets to Sun Industries and assigned to it each and every contract, claim, cause of action, and interest. Sun Industries then filed this action against Burnett, individually and

[1]Eugene is a non-party to this action whose interest in the Paul Stratemeyer Farm was acquired by Sun Industries through a court-approved settlement in a separate action (Massac County Cause No. 2009-L-7).

as trustee, seeking a warranty deed to the Paul Stratemeyer Farm, an accounting, and the imposition of a constructive trust on the crops and their proceeds.

¶ 6 Sun Industries filed its initial complaint on June 2, 2015. Eugene died on July 11, 2016. Sun Industries filed the operative amended complaint on September 9, 2016, which pleaded four counts. Counts I and II sought specific performance regarding two properties. Count I sought an order compelling Burnett to execute and deliver a warranty deed conveying good and merchantable title to the Paul Stratemeyer Farm, together with Sun Industries' costs. Count II sought an order compelling Burnett to execute and deliver a warranty deed conveying good and merchantable title to the Mermet Farm[2] or, in the alternative, a determination of the parties' rights in that property, together with Sun Industries' costs. Count III sought an accounting from Burnett for all grain grown, sold, or retained on the Mermet Farm, the Paul Stratemeyer Farm, and the other farmland identified in Exhibit A to the complaint since 2003, together with all proceeds from the sale of that grain, and a judgment against Burnett for any amount shown to be owed to Sun Industries upon that accounting. Count IV sought an order declaring Burnett the constructive trustee, with Sun Industries as beneficiary, of the crops and their proceeds; an order requiring Burnett to pay Sun Industries all proceeds from the sale of the crops, together with any crops remaining in Burnett's possession or control, plus interest from the date of receipt; and an award of the costs and attorney's fees Sun Industries incurred in prosecuting the claim. On January 5, 2022, the trial court granted partial summary judgment to Burnett on the portions of Counts III and IV that related to the Mermet Farm, leaving for trial only the portions of Counts III and IV concerning the Paul Stratemeyer Farm.

[2]Count II (Mermet Farm) was resolved pretrial by partial summary judgment in Burnett's favor and is not at issue in this appeal.

¶ 7 Sun Industries moved for summary judgment on Count I and on Burnett's first and second affirmative defenses, which asserted that the contract was not assignable and that money remained owing under it. Burnett denied owing Sun Industries a deed. In the answer, however, Burnett admitted that the unsigned 2007 contract for deed accurately stated the agreement Rollo and Eugene had reached and that the two had followed its terms.

¶ 8 On February 7, 2025, the trial court granted Sun Industries summary judgment on Count I. The trial court held that the parties never entered into a written contract for the sale of the farm and that the statute of frauds applied. The trial court found, however, that the matter fell within the partial performance exception to the statute of frauds, because the evidence showed that Eugene and Rollo had agreed that Rollo would convey the farm by warranty deed in exchange for payments totaling $429,000, and that the $429,000 was paid in full as of January 2012. The trial court declined to enforce any other provision of the unsigned contract, finding insufficient evidence of a meeting of the minds on any other term, and it rejected as overbroad the argument that the unsigned writing was itself an enforceable written contract. Having found an enforceable contract, the trial court held that Sun Industries had succeeded to Eugene's rights in the Paul Stratemeyer Farm. The trial court ordered Rollo to deliver a warranty deed and set Counts III and IV for a bench trial.

¶ 9 The summary judgment on Count I settled Sun Industries' right to a deed, but it did not resolve the parties' competing claims to the crops and proceeds generated while Burnett held title and farmed the land. Those matters remained for trial under Count III, which sought an accounting for the grain grown, sold, or retained and the proceeds of its sale, and Count IV, which sought to impose a constructive trust on the crops and their proceeds. On June 2 and 3, 2025, the trial court held a bench trial on Counts III and IV. In its opening statement, Sun Industries described the relief

it sought on the constructive trust count as a finding that the proceeds of the Paul Stratemeyer Farm had been held in constructive trust since 2012 and that "that amount is owed to my clients." When the trial court asked whether Sun Industries was asking it to award money, counsel answered that it was. Burnett's opening asserted that a constructive trust requires an identifiable res. The evidence concerning the farming of the Paul Stratemeyer Farm came principally from Rollo and his son Daniel Burnett.

¶ 10 Rollo was the first witness called by Sun Industries. He testified that he owned 80 percent of Burnett Farms, a limited liability company, and that his sons Daniel and Christopher own the remainder. He testified that Daniel had made most of the seed, chemical, and technical decisions for the operation for nearly ten years, that Daniel engaged in custom farming of the Paul Stratemeyer Farm beginning in 2012, and that Burnett Trucking, LLC, hauled the grain to elevators beginning in 2012.

¶ 11 On cross-examination, Rollo testified that over the years he did custom farm work for Eugene under verbal agreements, with no written contracts, and that he operated much like an independent contractor: Eugene would ask him to do work, Rollo would do it, Rollo would send invoices, and Eugene would pay them. Rollo testified that when Eugene died, Eugene owed him no money. He further testified that Eugene was in the grain-bin business and that Rollo occasionally bought equipment from Eugene, sometimes trading work against an invoice, though he disputed some invoices and left some unpaid. Rollo testified that he never commingled his money with Eugene's money and never commingled his grain with Eugene's grain, and he described his relationship with Eugene as "always [a] professional business relationship."

¶ 12 Rollo testified that Burnett Trucking, LLC, owned and operated by his son Daniel, would at times take grain off Eugene's land and deliver it directly to grain elevators, and that the elevator

would issue a ticket stating the owner's name and the number of bushels delivered. He testified that at other times, at Eugene's request, the grain was delivered to Eugene's own bins. Rollo further testified that, beginning in 2012, when Eugene made the last payment on the contract for deed, Rollo began farming the Paul Stratemeyer Farm as if it were his own and kept the crops, and that he did so from 2012 until he deeded the land in 2025. He testified that the farm was in poor condition from 2007 through the year of trial.

¶ 13 Sun Industries next called Richard Kruger, an attorney who had represented Rollo since the 1970s and at the outset of this case. Kruger testified that he drafted the unexecuted agreement to purchase the Paul Stratemeyer Farm between Rollo and Eugene in 2007, that Roger Harrison still owned the property at that time, and that the purchase price was approximately $429,000. He testified that Eugene had paid the $429,000, although he was unsure whether that figure covered everything owed because of outstanding drainage and real estate taxes. The contract he drafted named Eugene as the buyer and contained a non-assignment clause, which Kruger agreed meant the buyer could not assign his rights without the seller's consent. Sun Industries also introduced Kruger's March 8, 2012, letter to Rollo as Exhibit 38. The trial court admitted it after Rollo waived the attorney-client privilege but ruled that it would not consider Eugene's hearsay statements within the letter. In the letter, Kruger acknowledged that he believed a warranty deed may have been due from Rollo to Eugene, and he advised Rollo to withhold the deeds conveying the farm to Sun Industries. In a December 3, 2012, letter to opposing counsel, Kruger relayed an offer by Rollo to give Sun Industries and Eugene the choice of taking back either the Paul Stratemeyer Farm or the purchase money, less a $1,200 offset, in exchange for a release. Kruger testified that he received no response before his disqualification in 2023. During Kruger's testimony, when Sun Industries sought to introduce evidence of the court-approved settlement in cause No. 2009-L-7

that it contended would establish constructive fraud, the trial court observed that Count IV alleged abuse of a fiduciary relationship rather than fraud and excluded the evidence as not relevant to the claim as pled, although the trial court did take judicial notice of the 2009-L-7 order itself.

¶ 14 Daniel Burnett testified that he had been president of Burnett Farms since 2012. He testified that, for the years 2003 to 2012, when he custom-farmed the Paul Stratemeyer Farm at Eugene's request, the harvested grain went to Eugene's bins or to the elevator Eugene designated, and Eugene received the grain ticket. As to the period beginning in 2012, Daniel Burnett testified that the Paul Stratemeyer Farm was incorporated in with the rest of the Burnett fields, that Burnett Farms then farmed it, and that Burnett Farms kept all of the money from the grain from 2012 through 2024.

¶ 15 Sun Industries called Brock Waggoner, an agronomist it had disclosed as a controlled expert. Burnett's counsel objected to the sufficiency and timeliness of the expert disclosures, stating that Waggoner had first been disclosed in August 2022 that the disclosure addressed only potential crop yields, that crop yields had nothing to do with the need for an accounting, and that Sun Industries' later disclosure of additional reports had been untimely. Examining the initial opinion-witness disclosure, which attached only Waggoner's resume and stated that his conclusions and opinions would be presented at a later date, the trial court found that it was not a valid disclosure under Illinois Supreme Court Rule 213(f)(3) (eff. Jan. 1, 2018) because it gave none of his opinions and stated only that he was expected to conduct an analysis. Shortly before 4:00 p.m. on the first day of trial, with Waggoner on the stand, the trial court recessed to allow Sun Industries to locate information showing when and how its disclosures had been made, and trial resumed the following morning. The trial court later found that Sun Industries' supplemental discovery response, dated December 30 and served December 31, 2024, had been served after the

discovery deadline, by a link to an electronic document, and under a certificate of service time-stamped 6:49 p.m. on December 31, 2024, and ruled that it had been served late and not by agreement.

¶ 16 On the second day of trial, after Sun Industries accounted for its reports and Waggoner's deposition, the trial court overruled the nondisclosure objection to the extent of finding at least some disclosure, but it sustained a relevance objection to Waggoner's proposed opinion that the figures provided by Burnett reflected misconduct, allowing an offer of proof. The trial court permitted Waggoner to testify about observed differences in the numbers, while barring an opinion that those differences showed misconduct or fraud. When Sun Industries moved to admit Waggoner's April 10, 2023, report as Exhibit 50, the trial court sustained Burnett's objection, finding that the report had been disclosed after Waggoner's deposition rather than by a timely written disclosure or during the deposition, and that it was also hearsay.

¶ 17 Waggoner was then permitted to continue his testimony. He testified that his work involves investigating and assessing claims concerning farm products such as seed and chemicals, that he analyzes yield reports, and that he evaluates such claims using moisture and weather data. Reviewing the defendants' expense and income reports, he testified that certain invoices bore the same invoice numbers and amounts but had been submitted for different years, that information identifying the buyers of crops had been altered, and that a 2020 custom application cost recorded at $9 per acre did not match a receipt showing that $7.50 had been paid. As to yields, he testified that 2012 was one of the driest years on record yet the reported yields were higher than he would have expected, and that the 2013 figures of 37 bushels per acre for soybeans and 118 to 120 bushels per acre for corn were low for Southern Illinois. The trial court permitted this testimony about differences in the numbers but continued to bar any opinion that the discrepancies reflected fraud

or intentional misconduct, struck portions of the testimony on relevance and foundation grounds, and stated that it would consider only admissible evidence in reaching its decision. Sun Industries introduced no settlement tickets or other elevator records showing the quantity of grain delivered in Eugene's or Sun Industries' name. When Sun Industries argued that the handwritten figures were unreliable, the trial court observed that Sun Industries could have subpoenaed the grain elevators. Trial counsel responded that it had tried but that the elevator had not responded, and, when asked whether it had sought a contempt citation, counsel stated that by the time it entered the case it was too late. Waggoner acknowledged on cross-examination that a landowner can obtain settlement tickets from an elevator showing how much grain was delivered in the owner's name.

¶ 18 At the close of Sun Industries' case, Burnett moved for a directed finding under section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2024)). Burnett argued that Sun Industries had not made a *prima facie* case on either count: the claims as pleaded sounded in breach of contract, for which an adequate remedy at law existed; no fraud had been pleaded; and there was no evidence of a fiduciary relationship or its breach, the only exception that might overcome the adequate-remedy bar. Sun Industries argued that the 2007 contract between Eugene and Rollo had been breached in January 2012 when Eugene completed payment and Rollo did not convey the deed, and that a fiduciary relationship arose from that point forward, comparing it to the confidential relationship that can accompany a grantor-grantee relationship. Sun Industries contended that Daniel Burnett and Burnett Farms had farmed the land as agents for Rollo and his trust, and that the various Burnett entities operated as a single, combined enterprise. Sun Industries maintained that the accounting claim required proof by a preponderance of the evidence and the constructive-trust claim by clear and convincing evidence. It argued that it had met both standards on the same facts: the existence and breach of a fiduciary relationship. The asserted breach

included Burnett's failure to protect the land, which Sun Industries said the yield maps and Waggoner's testimony showed. Burnett replied that, under section 2-1110, the trial court was to weigh the evidence and judge the credibility of the witnesses rather than view the evidence in the light most favorable to Sun Industries, and that Sun Industries had neither pleaded nor proved, by clear and convincing evidence, a fiduciary relationship in which Eugene placed trust and confidence in Rollo and Rollo accepted it.

¶ 19 On June 3, 2025, the trial court granted the motion and entered a directed finding for Burnett on both counts: Count III, which sought an accounting, and Count IV, which sought imposition of a constructive trust. The trial court's rulings on both counts rested principally on the absence of any fiduciary relationship between Eugene and Rollo.

¶ 20 As to Count III, the accounting count, the trial court found that Sun Industries had failed to meet its burden, stating that there was no testimony in the record that Burnett owed Eugene rents and profits. The trial court found no evidence that Eugene had assigned to Sun Industries his rights in the crops and proceeds as alleged in the amended complaint. The trial court observed that the complaint alleged farm income since at least 2003, which it found inconsistent with Sun Industries' position that the case was really about a 2015 issue. The trial court found insufficient evidence of a breach of fiduciary duty to trigger a right to an accounting, and it found no mutual or complex accounts, a separate basis on which a right to an accounting can rest.

¶ 21 The trial court then turned to Count IV, the constructive trust count, stating that it was "much the same analysis" as the accounting count. Measuring the evidence against the allegations of the complaint, the trial court found no evidence that Eugene had entrusted the management of his crops and monies to Rollo, no evidence that Eugene considered Rollo a close personal friend and confidant, and no evidence of the alleged confidential relationship or of the great trust and

confidence Eugene was said to have placed in Rollo. The trial court stated that there was no evidence at all of what Eugene believed, and no evidence that Eugene considered his trust and confidence in Rollo in purchasing the Paul Stratemeyer Farm. The trial court concluded that it could not find evidence to support a finding that a confidential and fiduciary relationship existed between Eugene and Rollo. Finding that the burden had not been met, the trial court directed a finding for Burnett on Count IV.

¶ 22 The trial court also stated that nowhere in Counts III and IV did Sun Industries claim that Sun Industries itself had a relationship with Rollo, and that the testimony was to the contrary. The trial court noted that the facts might have supported an action for breach of contract or for conversion, but that neither was before it. The trial court further observed that there was testimony that Burnett Farms had farmed property owned by Sun Industries or by Eugene, but that Burnett Farms had never been named a defendant in the ten-year history of the case. The trial court declined to find laches, finding no evidence of prejudice because Burnett had not yet presented his case. It noted that no fraud had been alleged in the complaint and made no finding on the statute of frauds. On June 17, 2025, the trial court entered a written judgment order on Counts III and IV, incorporating the findings it had stated on the record on June 3, 2025. The order found that Sun Industries had failed to meet its burden of proof to justify the equitable relief sought and had failed to make out a *prima facie* case on either count, and stated that the trial court, in its discretion, declined to order an accounting on Count III or to impose a constructive trust on Count IV.

¶ 23 On July 16, 2025, Sun Industries filed a motion to vacate and a motion to reconsider the directed finding. The motions were supported by the affidavit of Sun Industries' former counsel, Bentley Bender, who attested that Waggoner's April 10, 2023, rebuttal report had been disclosed to Burnett's then-counsel, Richard Kruger, on April 21, 2023, and had been forwarded to Burnett's

trial counsel on April 24, 2024. On October 3, 2025, with Sun Industries then unrepresented, the trial court took the pending post-trial motions on the written submissions and, having considered the written arguments, denied them. Sun Industries filed a timely notice of appeal on November 3, 2025.

¶ 24 II. ANALYSIS

¶ 25 1. Count III (Accounting) and the Posttrial Motion

¶ 26 The trial court directed a finding for Burnett on Count III and declined to order an accounting. Sun Industries argues on appeal that the trial court wrongly required proof of fraud or a fiduciary relationship and that its evidence entitled it to relief, but it directs that argument to the constructive-trust count and asks this court to order an accounting only as part of the relief flowing from that count. It develops no contention that the directed finding on the accounting count was itself error. To prevail on appeal, Sun Industries had to show the trial court erred in determining that it had not established its entitlement to an accounting, which it has not done. An appellant forfeits a claim of error that it does not argue in its opening brief. Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020); *Miller v. Illinois Municipal Retirement Fund*, 2019 IL App (5th) 180267, ¶ 8 n.1; *AMCO Insurance Co. v. Erie Insurance Exchange*, 2016 IL App (1st) 142660, ¶ 35. We therefore affirm the directed finding on Count III as forfeited and do not reach the merits of the accounting claim.

¶ 27 Sun Industries separately contends, however, that the judgment should be vacated based on the trial court's exclusion of Waggoner's rebuttal report and the denial of its posttrial motion to vacate the judgment and reopen the proofs. Sun Industries argues that these rulings were error because it had disclosed the rebuttal report to Burnett's prior counsel in 2023, and that Burnett's trial counsel misrepresented when he received it. Burnett responds that the disclosure was inadequate regardless of its timing and that the trial court acted within its discretion. Both rulings

are reviewed for abuse of discretion. Whether an opinion has been adequately disclosed under Rule 213 is a matter within the trial court's discretion, and a ruling on the admission of such evidence will not be reversed absent an abuse of discretion. *Sullivan v. Edward Hospital*, 209 Ill. 2d 100, 109 (2004). Accord *Greco v. Orthopedic & Sports Medicine Clinic, P.C.*, 2015 IL App (5th) 130370, ¶ 32. Likewise, the denial of a motion to reopen proofs, and of a posttrial motion to vacate, is committed to the trial court's sound discretion. *Chicago Transparent Products, Inc. v. American National Bank & Trust Co. of Chicago*, 337 Ill. App. 3d 931, 940 (2002); *In re Marriage of Steele*, 212 Ill. App. 3d 425, 434 (1991).

¶ 28 Sun Industries' challenge fails because the dispositive issue is not the timing of any exchange with opposing counsel but the content of Sun Industries' expert disclosure. Rule 213(f)(3) required Sun Industries to serve a written disclosure stating the subject on which Waggoner would testify, his conclusions, the bases for those conclusions, and any report he prepared. Ill. S. Ct. R. 213(f)(3) (eff. Jan. 1, 2018); *Sullivan*, 209 Ill. 2d at 109. Sun Industries made three disclosures, and none satisfied those requirements. Its initial August 2022 disclosure identified only the subject "potential yields" and attached Waggoner's resume, but stated none of his conclusions, the bases for them, or any report he had prepared. Its December 2024 supplemental response, served after the discovery deadline, supplied none of the missing conclusions or bases. And the April 2023 rebuttal report upon which Sun Industries principally relies, even setting aside its timeliness, did not disclose the conclusions and bases required by Rule 213(f)(3). The deficiency is therefore one of content, and it runs through every disclosure Sun Industries made rather than affecting only one of them.

¶ 29 Nor did Waggoner's discovery deposition cure the deficiency. Under Rule 213(g), once Burnett objected at trial, the burden fell on Sun Industries to prove that the opinion had been

disclosed either in a Rule 213(f) answer or in the discovery deposition. Ill. S. Ct. R. 213(g) (eff. Jan. 1, 2018). Sun Industries carried neither burden. Its written answers, as explained, stated only the subject of Waggoner's testimony, and Sun Industries identified no deposition testimony supplying his conclusions that Burnett's figures were unreliable or the bases for them. The fact that the trial court found "at least some disclosure" does not establish compliance, because disclosing the general subject of an expert's testimony is not the same as disclosing the conclusions and the bases Rule 213(f)(3) requires.

¶ 30 These disclosure failures also dispose of Sun Industries' posttrial motion to vacate the judgment and reopen the proofs. The question on such a motion is whether the trial court's refusal to reopen the proofs denied Sun Industries fundamental justice and reflected an improper exercise of discretion. *Steele*, 212 Ill. App. 3d at 434. We need not decide whether Sun Industries provided the rebuttal report to Burnett's prior counsel in 2023, or whether opposing counsel misrepresented when he received it, because the deficiency lay in the content of Sun Industries' disclosure, not in the timing of any exchange, and it would persist however that timing dispute were resolved. Reopening the proofs would therefore have made no difference. Beyond that, Waggoner's opinions concerned only crop yields and the reliability of Burnett's expense figures and therefore could not have supplied the evidence the directed finding found missing: proof of a fiduciary relationship or any other basis entitling Sun Industries to an accounting. Accordingly, the trial court did not abuse its discretion in denying the motion to vacate the judgment and to reopen the proofs.

¶ 31 Alternatively, the exclusion is sustainable on a second, independent ground. Burnett objected to the rebuttal report on three separate bases: that it was untimely disclosed, that the Rule 213(f)(3) disclosure was insufficient in content, and that Waggoner's opinion was irrelevant to

whether an accounting was warranted. The trial court's exclusion could rest on any one of them. A reviewing court may affirm an evidentiary ruling on any basis the record supports, including a ground the trial court did not expressly adopt. *Mutual Management Services, Inc. v. Swalve*, 2011 IL App (2d) 100778, ¶ 11. It follows that an appellant who attacks only one of several independent grounds for a ruling cannot obtain reversal, because the grounds left unchallenged remain in place and independently support the ruling; a party's failure to carry forward a previously asserted ground abandons it. *Midway Airlines, Inc. v. Department of Revenue*, 234 Ill. App. 3d 866, 871 (1992) (previously asserted alternative grounds not carried forward on appeal are abandoned, and a judgment may be sustained on any ground the record supports). Sun Industries contests only the timeliness of the disclosure. It does not argue that the Rule 213(f)(3) disclosure was sufficient in content, and it does not argue that Waggoner's opinion was relevant to the accounting. Those two grounds therefore stand unchallenged, and each independently supports the exclusion. Even if Sun Industries were correct that it timely disclosed the report and that opposing counsel misstated when he received it, the exclusion would still stand on the insufficiency and relevance grounds Sun Industries has not contested. We affirm the exclusion on this basis as well.

¶ 32 Finally, even if the trial court's exclusion of the report had been error, the error was harmless. An erroneous evidentiary ruling does not warrant reversal unless the record shows that it caused substantial prejudice affecting the outcome; absent such prejudice, the error is harmless. *Greco*, 2015 IL App (5th) 130370, ¶ 21. No such prejudice appears here. The trial court permitted Waggoner to testify to his observations about the numbers and stated that it understood the point Sun Industries sought to make through him, but the trial court found that point immaterial to the issue before it. The excluded report addressed the same subjects as the testimony: crop yields and the reliability of Burnett's expense figures. Although those subjects bore on how the farm was

managed, they did not bear on whether Eugene placed in Rollo the trust and confidence a fiduciary relationship requires, nor on the existence of mutual or complex accounts, the other ground on which an accounting could have rested. Admitting the report therefore could not have changed the outcome, because it could not supply the proof which the trial court found missing when it directed the finding. Its exclusion caused no substantial prejudice and was harmless. For these reasons, we affirm the judgment on Count III.

¶ 33 2. Count IV (Constructive Trust)

¶ 34 Count IV of the amended complaint sought the imposition of a constructive trust on the grain grown on the Paul Stratemeyer Farm and the proceeds of its sale. The trial court directed a finding for Burnett, concluding that Sun Industries had not shown the fraud or fiduciary relationship it understood a constructive trust to require. Sun Industries contends that the trial court's ruling was error. It argues that Illinois law permits a constructive trust to prevent unjust enrichment even without fraud or a breach of fiduciary duty, that it held title to identifiable property in the grain and its proceeds, and that Burnett was unjustly enriched by retaining them. Sun Industries asks this court to reverse and remand for imposition of the constructive trust and for an accounting. Burnett responds that the directed finding was proper on several independent grounds: that Sun Industries proved neither fraud nor a fiduciary relationship, that it established no basis for relief under an unjust-enrichment theory, and that it presented no specific, identifiable res on which a constructive trust could rest.

¶ 35 Sun Industries contends that the standard of review is *de novo* because the trial court found, as a matter of law, that it failed to present a *prima facie* case, and because whether a constructive trust requires fraud or a fiduciary relationship is a question of law. Burnett contends, however, that the standard of review is abuse of discretion because the imposition of a constructive trust is a

matter committed to the trial court's discretion. Neither position states the standard that governs a directed finding under section 2-1110 of the Code of Civil Procedure. 735 ILCS 5/2-1110 (West 2024).

¶ 36 At the close of the plaintiff's case in a bench trial, the defendant may move for judgment in his favor. *Id.* The trial court is to consider the weight and quality of the evidence, including the credibility of the witnesses. *Id.* A directed finding for the defendant at the close of the plaintiff's evidence in a bench trial requires a two-step analysis. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154-155 (1980). First, the trial court determines, as a matter of law, whether the plaintiff presented a *prima facie* case. *Id.* That is, the plaintiff must have presented at least some evidence on every element essential to the cause of action; if the plaintiff has not, the court grants the motion and enters judgment for the defendant. *Id.* Second, if the plaintiff has presented a *prima facie* case, the trial court, as the finder of fact, weighs all of the evidence, including evidence favorable to the defendant, and this weighing "may result in the negation of some of the evidence necessary to the plaintiff's *prima facie* case." *Id.* at 155.

¶ 37 The standard of review depends on which step the trial court reached. Where a determination that the plaintiff failed to present a *prima facie* case is a question of law, that ruling is reviewed *de novo*. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003). If the trial court instead proceeded to the second step and weighed the evidence, the trial court's ruling is reversed only if it is against the manifest weight of the evidence. *Id.* at 275-76.

¶ 38 Here, the trial court resolved Count IV at the first step. Ruling from the bench, the trial court found that Sun Industries had presented no evidence of the confidential and fiduciary relationship that the amended complaint alleged as the basis for the trust. It found no evidence that Eugene entrusted the management of his crops and monies to Rollo, no evidence that Eugene

regarded Rollo as a confidant, and no evidence of the great trust and confidence the complaint alleged, concluding that it could not find evidence to support a finding that a confidential and fiduciary relationship existed between Eugene and Rollo. Although the trial court also framed its ruling as a failure to meet the burden of proof and as insufficient evidence, it did not weigh competing evidence, assess the credibility of witnesses, or negate any evidence Sun Industries had presented; it identified a complete absence of proof on an element essential to the claim. A ruling that the plaintiff presented no evidence on an essential element is a determination that no *prima facie* case was made, which is the first step of the section 2-1110 analysis rather than the second. Because the trial court determined, as a matter of law, that Sun Industries failed to present a *prima facie* case, our review is *de novo*, and on that review we consider whether Sun Industries made a *prima facie* case on each element essential to a constructive trust, not only the element the trial court addressed. *Id*. at 276-77.

¶ 39 A constructive trust is an equitable remedy imposed to redress unjust enrichment caused by wrongful conduct. *Indeck Energy Services, Inc. v. DePodesta*, 2021 IL 125733, ¶ 60. Two elements are essential: the existence of identifiable property to serve as the *res* on which the constructive trust is imposed, and possession of that *res* or its product by the person to be charged as constructive trustee. *People ex rel. Hartigan v. Candy Club*, 149 Ill. App. 3d 498, 502 (1986). As to the first element, the proceeds of the alleged wrongful conduct "must exist as an identifiable fund traceable to that conduct, such that it can become the *res* of the proposed trust." *Indeck*, 2021 IL 125733, ¶ 60. Where there is "no identifiable property or fund to serve as the *res*," "the elements necessary to impose a constructive trust have not been established." *Id*. ¶ 61.

¶ 40 A reviewing court may affirm a directed finding on any basis the record supports. *Swalve*, 2011 IL App (2d) 100778, ¶ 11. We affirm on the basis the record most clearly supports: Sun

Industries' failure to prove an identifiable, traceable *res*. Because that failure disposes of Count IV, we do not reach the fiduciary-relationship question on which the trial court relied. Even if Sun Industries were correct that Illinois law allows a constructive trust to prevent unjust enrichment without proof of fraud or a fiduciary relationship, Count IV would still fail, because Sun Industries did not prove such a fund.

¶ 41 The parties did not analyze this element under Illinois law. Rather, both parties framed it through the Restatement (Third) of Restitution and Unjust Enrichment and a federal bankruptcy decision applying Tennessee law. The identifiable, traceable *res* requirement is settled Illinois law, and we analyze it under *Indeck*, 2021 IL 125733, and *Candy Club*, 149 Ill. App. 3d 498.

¶ 42 Upon review of the record, we find that Sun Industries failed to establish an identifiable, traceable *res*. The Burnetts farmed the Paul Stratemeyer Farm together with their other operations as a single enterprise. Grain harvested from the Paul Stratemeyer Farm was sold, and the proceeds were absorbed into the combined Burnett operation with no segregated fund, where they were offset against the expenses of the combined operation. No separate account or segregated fund for the grain from the Paul Stratemeyer Farm or its proceeds was maintained, and the grain itself was commingled. On that record, no identifiable fund traceable to the alleged wrongful retention remained to serve as the *res*. *Indeck*, 2021 IL 125733, ¶ 61.

¶ 43 Sun Industries' strongest response is that it held legal and equitable title to specifically identifiable property, namely the grain grown on the Paul Stratemeyer Farm and the proceeds of its sale. Even accepting that Sun Industries held title to the grain when it was harvested, title does not supply a *res* once the property no longer exists in identifiable, traceable form. The *res* is not the original property in the abstract; it is an identifiable fund traceable to the wrongful conduct and still held by the defendant. *Id*. ¶ 60. Because the grain was sold and its proceeds commingled rather

than preserved in any identifiable fund, what remained was a claim for a sum of money, not a traceable *res*.

¶ 44 Furthermore, Sun Industries could not avoid this result by invoking the principle that commingling alone does not defeat tracing. Illinois law does permit a claimant to follow trust property into a commingled fund, because "it is the identity of the fund, and not the identity of the money or currency, which is to be established," and the right to reclaim the property "fails only when the means of ascertaining its identity fails." *People ex rel. Nelson v. Bates*, 351 Ill. 439, 443 (1933); see also *In re Commissioner of Banks & Real Estate*, 327 Ill. App. 3d 441, 489 (2001) (restating the rule). To identify proceeds within a commingled account, Illinois applies the lowest-intermediate-balance rule: the proceeds are presumed to remain in the account so long as its balance equals or exceeds the amount deposited, but once the balance falls below that amount the claimant's interest abates accordingly and is not restored by later unrelated deposits. *C.O. Funk & Sons, Inc. v. Sullivan Equipment, Inc.*, 89 Ill. 2d 27, 31-32 (1982).

¶ 45 The burden of tracing proceeds through a commingled account rests on the claimant, and where the claimant offers no evidence of the account balances, "the lowest intermediate balance remains unknown," and the proceeds "have not been identified as remaining in the account." *Id.* at 33. Accord *Sadacca v. Monhart*, 128 Ill. App. 3d 250, 258 (1984) (claimant bears the burden to show that withdrawals depleted the trust *res* rather than the holder's own funds, and absent that proof no constructive trust may be imposed). Sun Industries offered no such tracing proof. On the undisputed evidence of commingling in Burnett Farms' general account, with no segregated fund, Sun Industries failed to identify any remaining balance traceable to the proceeds at issue, and the commingling principle therefore cannot rescue the claim.

¶ 46 Nor does *Candy Club*, 149 Ill. App. 3d 498, require a different result. There, the court held that a plaintiff need not make detailed assertions about where the *res* is to be found "at the pleading stage," provided the complaint alleges that the property was misappropriated "in some specific form." *Id.* at 502. That is a pleading-stage accommodation that defers the tracing question to discovery; it does not excuse a plaintiff from proving an identifiable, traceable fund after a trial on the merits. Here, Sun Industries had its trial, and the proof of a traceable *res* was absent.

¶ 47 Because the absence of an identifiable, traceable *res* defeats Count IV under any theory of constructive trust, *Indeck*, 2021 IL 125733, ¶ 61, we need not resolve the further questions the parties and the record present: whether Illinois confines a constructive trust to fraud or a breach of fiduciary duty; whether a freestanding constructive-trust count is cognizable; whether Sun Industries holds Eugene's claim as the real party in interest, including the scope of the settlement assignment of each and every contract, claim, cause of action, and interest and whether it reached the claims for the crops and their proceeds; and whether equitable conversion or the adequate-remedy-at-law bar would alter the analysis. In declining to reach the real-party-in-interest question, we do not resolve the apparent tension between the trial court's finding that no evidence showed Eugene assigned to Sun Industries his rights in the crops and proceeds and the broader language of the settlement assignment, because our disposition does not depend on the scope of that assignment. Having resolved Count IV on the absence of a traceable *res*, we decide no more than the disposition requires and do not reach these remaining issues.

¶ 48 III. CONCLUSION

¶ 49 For these reasons, we affirm the judgment of the circuit court of Massac County in all respects. We affirm the trial court's directed finding on Count III because Sun Industries forfeited review of the accounting ruling by not arguing it in its opening brief. We affirm the trial court's

exclusion of Waggoner's rebuttal report and the denial of Sun Industries' posttrial motion to vacate the judgment and reopen the proofs, because the trial court did not abuse its discretion. And we affirm the trial court's directed finding on Count IV because Sun Industries failed to prove an identifiable, traceable *res*, an essential element of a constructive trust, where the grain and its proceeds were commingled within the Burnett operation and Sun Industries failed to establish any identifiable fund traceable to the alleged wrongful retention. *Id*.

¶ 50 Affirmed.