

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Bugay and Rolling Maul,
LLC,
Appellants-Defendants,

v.

Jeffrey DeBoy and JBD Builders,
Inc.,
Appellees-Plaintiffs.

August 29, 2022

Court of Appeals Case No.
21A-PL-1667

Appeal from the Tippecanoe
County Circuit Court

The Honorable Sean Persin, Judge

Trial Court Cause No.
79C01-1610-PL-144

May, Judge.

[1] David Bugay and Rolling Maul, LLC, appeal the trial court's post-trial judgment, which awarded \$139,601.98 to Jeffrey DeBoy on his claim for unjust enrichment. Bugay and Rolling Maul allege the trial court erred as a matter of law by failing to decrease DeBoy's unjust enrichment award on account of the additional construction defect damages that the trial court found existed. DeBoy cross-appeals to assert the trial court's calculation of his unjust enrichment award was too small because it did not include monies for disgorgement of profit. We affirm.

Facts and Procedural History

[2] Bugay owns Rolling Maul, which operates Legacy Sports Club, a business that owns and operates soccer facilities. DeBoy owns JBD Builders, Inc., which is a construction company. In 2012, Bugay hired DeBoy and JBD Builders to build a soccer facility. After that construction, DeBoy and Bugay began discussions of a business partnership whereby the two men would build and operate additional soccer facilities, with Bugay's investment to be in capital and DeBoy's investment to be sweat equity. A formal partnership agreement was never reached, but additional facilities were built and DeBoy invested many sweat-equity hours as Vice President of Legacy Sports Club. In 2016, Bugay sent a letter to DeBoy ending their personal and business relationship.

[3] After the relationship between Bugay and DeBoy soured, DeBoy and JBD Builders sued Bugay and Rolling Maul. DeBoy's complaint asserted two claims: (1) DeBoy has a partnership interest in Legacy Sports Club, and (2)

Bugay was unjustly enriched by the unpaid sweat-equity hours DeBoy worked for Legacy Sports Club. Bugay and Rolling Maul filed a crossclaim in which they asserted defective construction by DeBoy's JBD Builders had resulted in more than \$500,000 in damages to Legacy Sports Club's facilities.

[4] The trial court entered summary judgment on DeBoy's first claim regarding a partnership interest in Rolling Maul, because Bugay and DeBoy had never come to an agreement about the terms of such a partnership. The parties then entered mediation, which resulted in the settlement and dismissal with prejudice of Bugay's crossclaim alleging defective construction by DeBoy's JBD Builders in exchange for \$150,000. Following that settlement, the trial court held a two-day bench trial regarding DeBoy's unjust enrichment claim and entered the following order, which we quote in full to provide additional detail about the underlying facts and the trial court's reasoning:

The Court held a two-day bench trial, commencing December 15, 2020 in the Tippecanoe Circuit Court. On December 16, 2020, the proceedings were conducted remotely via Zoom due to COVID-19 concerns. Plaintiffs (DeBoy) renewed their motion to exclude evidence related to Defendants' (Bugay) counterclaims because the counterclaims had been previously dismissed through a partial settlement. Specifically, DeBoy asked to exclude evidence related to Bugay's allegations of poor workmanship and property damage, testimony of Tom Walter, and the amount of the partial settlement. The Court denied this request, again, noting that the evidence was not being offered as a "claim" against De[B]oy or "to prove or disprove the validity or amount of a disputed claim." Rather, it was offered for a different purpose – as a defense to unjust enrichment. Bugay expressly reserved his right to offer evidence in this regard.

When settling the counterclaim, he signed a release, which provided in relevant part:

“To the extent permitted by law, allowed by the rules of evidence and the Court, David Bugay intends to use the claims discharged by this release as a defense to Jeffrey DeBoy’s claim for unjust enrichment in the pending litigation.”

The release was acceptable to DeBoy at the time all counterclaims against him were dismissed, and the Court sees no harm in allowing some evidence regarding the overall financial picture of the parties as it pertains to the claim of unjust enrichment. The Court, having considered all admissible evidence submitted at the bench trial, along with the parties’ proposed findings of fact and conclusions of law, and having taken all matters under advisement, now finds, concludes and orders as follows:

1. JBD Builders is a construction company owned by Jeffrey DeBoy that performs residential and commercial construction projects.
2. Rolling Maul is a single member LLC owned by David Bugay that operates under the name Legacy Sports Club.
3. Bugay hired DeBoy to construct Soccer Building #1 in 2012. Bugay intended for DeBoy to be the general contractor, but Bugay remained heavily involved in the process and oversaw many matters himself. DeBoy disputes he was the general contractor, even though he requested permits as the general contractor. DeBoy’s company handled most of the work.

4. Bugay and his wife financed the construction of Soccer Building #1.
5. After Soccer Building #1 was opened, it was quickly overbooked, and Bugay approached DeBoy about constructing Soccer Building #2.
6. Bugay and DeBoy discussed the possibility of a partnership, with both having an equal ownership interest, before any work was started on Soccer Building #2.
7. DeBoy informed Bugay that he could contribute services, but he did not have money or credit to buy into the partnership.
8. In early 2013, Bugay informally offered DeBoy an opportunity for a “cascading partnership,” where upon sale or dissolution of the partnership, funds would be applied towards Bugay’s capital investment first, then to DeBoy’s sweat equity, and the remainder would be divided equally.
9. DeBoy did not agree to the cascading partnership.
10. A proposed operating agreement was tendered to De[B]oy, in writing, in August 2014, and DeBoy did not sign the agreement.
11. This Court previously found that the parties failed to reach a meeting of the minds or essential partnership elements such as: the price for DeBoy’s share in the company, the amount of sweat equity to be provided by DeBoy, the total value of sweat equity, how other contributions of the parties would be treated, and the manner in which they would share any profits and losses.

12. On May 2, 2019, this Court granted Bugay’s Motion for Partial Summary Judgment, finding that, as a matter of law, there was no partnership contract between Bugay and DeBoy.

13. Despite the absence of a partnership agreement, Bugay and DeBoy worked together on the construction of Soccer Building #2, an addition to Building #1 and exterior soccer fields. DeBoy also provided general maintenance to Soccer Building #1.

14. They broke ground on Soccer Building #2 in August 2013.

15. Bugay and De[B]oy discussed the issue of billing sweat equity, which is confirmed through an email from Bugay to his accountant on July 31, 2013:

“As you know, Jeff DeBoy will be joining Rolling Maul as a partner and his initial “buy-in” will be sweat equity. He recently performed some maintenance work on the existing building and wants to invoice Rolling Maul. Some of the invoice is hardware/materials, other is labor that he wants to credit to sweat equity. How does he write an invoice from JBD Builders to Rolling Maul? Obviously there will be the line items for the hardware and materials. How should the labor which is sweat equity appear on his invoice, if at all, and how on the Rolling Maul books?”

16. DeBoy tendered invoices to Bugay for his company’s work, and Bugay paid all invoices, except as provided below:

August 20, 2013	Invoice #2637	\$5,071.00
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August 20, 2013	Invoice #2638	\$7,500.00
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October 28, 2013	Invoice #2644	\$15,685.00
January 15, 2014	Invoice #2648	\$10,330.00
June 5, 2014	Invoice #2651	\$28,550.00
October 30, 2015	Invoice #2688	\$15,000.00
May 10, 2016	Invoice #2588	\$360.00
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Total		\$82,496.00

17. The invoices above comprised of unpaid sweat equity or other amounts billed, but where DeBoy didn't seek reimbursement.

18. Bugay did not reject the invoices for sweat equity upon receipt.

19. On November 28, 2014, Bugay sent a letter to DeBoy conceding that Bugay [sic] had sweat equity, but contending the amount was \$63,429.

20. At trial, Bugay testified there was still an amount of sweat equity owed to DeBoy, which had not been paid. At other times, Bugay testified that DeBoy should not be compensated for sweat equity due to construction-related damages.

21. DeBoy paid \$5,000.00 to Arkor Architects & Engineers on behalf of Bugay for Soccer Building #2.

22. DeBoy paid \$15,000.00 to Bugay to apply towards the steel deposit for Soccer Building #2.

23. Bugay did not reimburse the \$20,000.00 in payments to DeBoy.

24. Bugay paid \$20,000.00 to DeBoy, which they agreed would be applied towards a separate snow removal venture, Ruck Over LLC. They used most of the funds to purchase plows and salt spreaders, which they still individually possess.

25. De[B]oy, a licensed realtor, worked as the agent for Bugay for the purchase of additional land for soccer fields in 2015.

26. De[B]oy did not collect his real estate commission of \$7,920.00, which he considered to be additional sweat equity.

27. DeBoy was named Vice President of Legacy Sports Club, as reflected on his business cards. DeBoy focused on the facility. Bugay focused on soccer. They both devoted substantial hours.

28. De[B]oy has not been compensated for the following tasks related to club management and operations, which are not related to his work with JBD Builders:

solicited sponsors	34 hours
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administrative	17 hours
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51 hours

29. De[B]oy has not been compensated for the following tasks related to facilities manager/maintenance, which are not related to his work with JBD Builders:

snow removal/salt	186 hours
moved bleachers	60 hours
indoor turf maintenance	120 hours
outdoor turf maintenance	36 hours
small goal construction	8 hours
plumbing	4 hours
outdoor goals	4 hours
fencing	40 hours
parking lot	16 hours
lining fields	32 hours
hang banners	12 hours
convert fields	36 hours
fire inspections	8 hours

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562 hours

30. De[B]oy has not been compensated for the following tasks, which are not related to his work with JBD Builders:

stocked concessions 287 hours

gate and admissions 274 hours

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561 hours

31. Bugay usually paid staff \$10.00 per hour to work the gate.

32. Bugay paid his Club Manager, Claudia Gary, approximately \$38.46 per hour.

33. Bugay sent DeBoy a letter on May 4, 2016 ending his personal and professional relationship with De[B]oy and JBD Builders.

34. When taking depreciation into consideration, Legacy Sports Clinic [sic] operated at a loss from 2013 through 2016. When depreciation is not considered, Legacy reported profits of \$326,100.00 for this period.

35. Tom Walters, Bugay's construction expert, testified that poor workmanship on the roof of Soccer Building #1 and #2 has cause property damages to Bugay exceeding \$500,000.00.

36. The cost to replace the roofs is \$395,000.00.

37. The cost to repair the roofs with a protective membrane is \$175,000.

38. Bugay settled his counterclaims against De[B]oy for \$150,000.00.

CONCLUSIONS OF LAW

1. Bugay was unjustly enriched by De[B]oy's efforts. To recover under a theory of unjust enrichment, De[B]oy must show that he (a) rendered a benefit to Bugay at Bugay's express or implied request, (b) expected payment from Bugay, and (c) allowing Bugay to retain the benefit without restitution would be unjust. See generally, *Reed v. Reed*, 980 N.E.2d 277 (Ind. 2012). There is no question that De[B]oy invested significant time and money into Legacy Sports Club with the hope that he and Bugay would eventually formalize a partnership agreement. It is undisputed that De[B]oy acted at the request and direction of Bugay. Their text messages confirm this. Bugay's suggestion that De[B]oy was essentially a "soccer dad" and board member volunteering his time and donating money is illogical and disingenuous. Bugay was cash-rich and De[B]oy was not. It is absurd to think that De[B]oy invested \$20,000.00 cash, walked away from a realtor commission of \$7,920.00, and spent considerable hours doing work for the club, just to save Bugay some money.

The July 31, 2013 email confirms that De[B]oy expected payment and Bugay expected to pay him, even though there was no partnership contract. They openly discussed that De[B]oy would bill sweat equity so that he could be reimbursed in the event a formal partnership was not reached. Over the years, they continued to negotiate the terms of a formal partnership, but never reached a meeting of the minds. Deboy acknowledged the lack of a contractual relationship by reminding Bugay that he could walk away at any time.

The real issue is whether it would be unjust to allow Bugay to retain the benefits of De[B]oy's time and money without restitution once the relationship soured. Bugay contends that JBD Builders caused over \$500,000.00 of damages, and asks the Court to consider this when evaluating the overall financial picture of the parties. The Court has considered this, but finds that it would be unfair to allow the counterclaims that arose years later to offset the significant contributions made by De[B]oy. At the time his services were provided, all parties expected De[B]oy would eventually be paid, and it would be unjust to allow Bugay to retain the benefit of several years of sweat equity without compensation.

2. De[B]oy is entitled to restitution for billed sweat equity in the amount of \$82,496.00. Bugay did not reject the invoices and did not provide a clear explanation for his calculation of \$63,429.

3. De[B]oy is entitled to reimbursement for \$20,000.00. Bugay's argument that at least \$10,000.00 has already been repaid is well taken, since De[B]oy has retained some of the equipment from Ruck Over LLC. However, De[B]oy didn't advance money with the expectation of receiving snow removal equipment. He expected to receive \$20,000.00 back, and it would be unjust to allow Bugay to retain the benefit of \$20,000.00 without full restitution.

4. De[B]oy is entitled to reimbursement of the real estate commission of \$7,920.00. Bugay's suggestion that this was a donation to the club is not supported by the evidence.

5. De[B]oy is entitled to reimbursement for 51 hours of work as club management and operations, or \$1,961.46. The Court finds that \$38.46 per hour is appropriate for this administrative work. It is unclear whether De[B]oy truly expected additional payment for general contracting work, like meeting with Arkor or working

on designs. It is unclear whether De[B]oy expected payment for his fully paid trips for NPSL. De[B]oy has not met his burden of proof as to these items.

6. De[B]oy is entitled to reimbursement for 562 hours of work as facilities manager/maintenance, or \$21,614.52. The Court finds that \$38.46 per hour is appropriate for this work. The Court denied the request for restitution related to roof maintenance.

7. De[B]oy is entitled to reimbursement for 561 hours of work at the gate or stocking vending machines, or \$5,610.00. The Court finds that \$10.00 per hour is appropriate for this work.

8. De[B]oy is not entitled to disgorgement of profits. This is simply a request to reconsider whether there was a partnership, and there clearly was not. De[B]oy over-simplifies his calculation for profits by failing to consider amounts that will be paid out to De[B]oy, the substantial time invested by Bugay and his wife, the cost of repairs, etc. The Court cannot say it would be unjust for Bugay to retain the profits from 2013 through 2016 because he also bears all of the unrealized losses during that same period. Again, De[B]oy could walk away at any time, and Bugay could not. De[B]oy has not met his burden of proof regarding his claim for disgorgement of profits from Legacy Sports Club.

9. All claims for attorney's fees are denied, including De[B]oy's claim for fees related to his motion to compel discovery.

JUDGMENT

WHEREFORE, the Court enters judgment in favor of Jeffrey De[B]oy and JBD Builders, Inc. against David Bugay and Rolling Maul, LLC, in the amount of \$139,601.98.

(Appellants' App. Vol. 2 at 209-16) (emphasis in original).

Discussion and Decision

- [5] When, as here, the trial court sua sponte enters findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A), we apply a two-tiered standard of review. *In re Adoption of A.S.*, 912 N.E.2d 840, 851 (Ind. Ct. App. 2009), *trans. denied*. First, we determine whether the evidence supports the findings, and second, we determine whether the findings support the trial court's conclusions. *Id.* The trial court's findings or conclusions will be set aside only if they are clearly erroneous. *Id.* A judgment is clearly erroneous if it relies on the incorrect legal standard. *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*.
- [6] A finding of fact is clearly erroneous if the record lacks evidence or reasonable inferences from the evidence to support it. *Adoption of A.S.*, 912 N.E.2d at 851. When reviewing findings, we consider only the evidence favorable to the trial court's judgment and we do not reweigh the evidence. *Moriarty*, 150 N.E.3d at 626. Unchallenged findings are accepted as true, *M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020), and we will affirm "if the unchallenged findings are sufficient to support the judgment." *Moriarty*, 150 N.E.3d at 626.
- [7] Issues on which the trial court makes no findings will be reviewed as a general judgment. *C.B. v. B.W.*, 985 N.E.2d 340, 344 (Ind. Ct. App. 2013), *trans. denied*. A general judgment will be affirmed if it can be sustained upon any legal theory

by the evidence introduced at trial.” *Id.* We review questions of law de novo, without giving any deference to the trial court decision. *Moriarty*, 150 N.E.3d at 326.

[8] Herein the parties dispute the trial court’s calculation of damages. The calculation of damages is within the discretion of the trial court. *Ponziano Const. Servs. Inc. v. Quadri Enterprises, LLC*, 980 N.E.2d 867, 873 (Ind. Ct. App. 2012) (discussing calculation of damages in breach of contract context). An award need not be supported by mathematical certainty, but it must be supported by evidence in the record. *Id.* An award may not be based on “mere conjecture, speculation, or guesswork.” *Id.* When parties challenge damages as inadequate or excessive, we will not reverse if the award is “within the scope of the evidence before the trial court[.]” *Id.*

1. Unjust Enrichment

[9] We first address Bugay’s claim that the trial court erred as a matter of law when it failed to decrease DeBoy’s unjust enrichment award based on the construction defect damages for which Bugay had not been compensated by the \$150,000 settlement of Bugay’s counterclaim against DeBoy. Given the language in the Release that settled Bugay’s counterclaim against DeBoy, we cannot agree.

[10] “A release, as with any contract, should be interpreted according to the standard rules of contract law.” *Evan v. Poe & Assocs., Inc.*, 873 N.E.2d 92, 98 (Ind. Ct. App. 2007).

A contract is ambiguous only if a reasonable person could find its terms susceptible to more than one interpretation. Where a contract is unambiguous, the intent of the parties should be determined by the language employed in the document. Thus, if the contract is unambiguous, we give effect to the intentions of the parties as expressed in the four corners of the document. We will neither construe clear and unambiguous provisions nor add provisions not agreed upon by the parties. The meaning of a contract is to be determined from an examination of all its provisions, not from a consideration of individual words, phrases, or even paragraphs read alone.

Id. (internal quotations & citations omitted).

[11] Regarding what was being released, the Release stated:

[For the consideration received,] receipt of which is hereby acknowledged, David **Bugay on behalf of Rolling Maul, LLC**, and for his heirs, executors, administrators, successors and assigns, releases, **acquits and forever discharges JBD Builders, Inc.**, its past, present and future directors, officers, employees, stockholders, attorneys, agents predecessors, successors, assigns, insurers and all other persons, corporations, associations, partnerships and entities (hereinafter referred to as “the parties released”) **of and from any and all claims, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has or which may hereafter accrue on account of, or in any way growing out of, any and all known and unknown, foreseen and unforeseen, injuries and damages, and the consequences thereof, resulting or to result from property damage** which occurred at or near [deleted address], Lafayette, Indiana on or after November 21, 2011, **including but not limited to all claims made by Rolling Maul, LLC, in their counterclaim against JBD Builders, Inc.** in the lawsuit entitled, “Jeffrey De[B]oy and

JBD Builders, Inc. v. David Bugay and Rolling Maul, LLC”
County of Tippecanoe, Cause No. 79D02-1610-PL-000144.

(Appellants’ App. Vol. 2 at 180-81) (emphases added). Reading the plain language, Bugay and Rolling Maul released JBD Builders, and thus DeBoy, “from any and all” claims and damages that Bugay and Rolling Maul had or may ever have based on the damages caused by JBD Builder’s construction of the soccer facilities. (*Id.* at 181.)

[12] Bugay notes the Release also says: “To the extent permitted by law, allowed by the rules of evidence and the Court, David Bugay intends to use the claims discharged by this release as a defense to Jeffrey DeBoy’s claim for unjust enrichment in the pending litigation.” (*Id.* at 180.) While that clause indicates Bugay intended to assert the construction defect damages as a defense to DeBoy’s unjust enrichment claim, it also acknowledged that Bugay’s ability to do so would be limited to “the extent permitted by law[.]” (*Id.*) When a counterclaim has been fully released with prejudice, there remains nothing for the defendant to assert against the plaintiff’s action. *See, e.g., Johnson v. Shanehsaz*, 152 N.E.3d 7, 15 (Ind. Ct. App. 2020) (unambiguous language of general release meant defendant could not assert against plaintiff any claim that arose before the release was signed), *reh’g denied*. Thus, as a matter of law, there is no extent to which Bugay can assert his dismissed counterclaim against DeBoy’s unjust enrichment claim. *See id.* (affirming trial court’s grant of summary judgment because claim could not be asserted).

[13] Moreover, even if Bugay could assert his dismissed counterclaim against DeBoy, the Release also included a “hold harmless” clause that made Bugay and Rolling Maul responsible for indemnifying JBD Builders, and thus DeBoy, if “subjected to further claim by any person or entity acting under any actual or purported lien, right, subrogation, or assignment of any claim released pursuant to this agreement.” (Appellants’ App. Vol. 2 at 181-82.) As such, it appears Bugay would have been liable to DeBoy for any amount of construction damages the trial court would have set-off against DeBoy’s unjust enrichment award.

[14] For all these reasons, we cannot say the trial court erred as a matter of law when it refused to reduce DeBoy’s unjust enrichment recovery to account for Bugay’s remaining construction damages after Bugay had dismissed his counterclaim for those damages “with prejudice.” (*Id.* at 159.) *See Johnson*, 152 N.E.3d at 15 (affirming grant of summary judgment because claims were precluded by signed release).

2. Disgorgement of Profits

[15] On cross-appeal, DeBoy asserts his award for unjust enrichment should have been greater because the trial court should have awarded him monies for disgorgement of Rolling Maul’s profits. None of his arguments, however, convince us that the trial court’s conclusions were clearly erroneous. The trial court determined:

8. De[B]oy is not entitled to disgorgement of profits. This is simply a request to reconsider whether there was a partnership,

and there clearly was not. De[B]oy over-simplifies his calculation for profits by failing to consider amounts that will be paid out to De[B]oy, the substantial time invested by Bugay and his wife, the cost of repairs, etc. The Court cannot say it would be unjust for Bugay to retain the profits from 2013 through 2016 because he also bears all of the unrealized losses during that same period. Again, De[B]oy could walk away at any time, and Bugay could not. De[B]oy has not met his burden of proof regarding his claim for disgorgement of profits from Legacy Sports Club.

(Appellants' App. Vol. 2 at 215.)

[16] DeBoy claims the construction repair costs “are not a valid set-off because Bugay chose not to pursue those claims or to quantify the cost of repairs attributable to DeBoy” (Appellees' Br. at 33.) In so arguing, DeBoy conflates the concept of set-off with the calculation of profits. A set-off would involve decreasing the amount Bugay owed DeBoy based on damages caused by DeBoy, *see* Black's Law Dictionary 1581 (10th Ed.) (defining “setoff” as “[a] debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor”), which we held above the trial court properly did not do when Bugay had released, with prejudice, his construction-damages counterclaim against DeBoy.

[17] Calculation of profits, however, accounts for income and expenses. *See id.* at 1404 (defining “profit” as “[t]he excess of revenues over expenditures in a business transaction”). Here, the trial court determined DeBoy oversimplified the calculation of profits by failing to consider Bugay's unrealized losses. (Appellant's App. Vol. 2 at 215.) The trial court found Bugay's expert testified

the faulty construction had caused Bugay over \$500,000 in property damages. (*Id.* at 213.) Considering Bugay settled the faulty construction claim for \$150,000, (*id.*), that would seem to leave at least \$350,000 in construction damages unrecovered. This, in part, may account for why “[w]hen taking depreciation into consideration, Legacy Sports [Club] operated at a loss from 2013 to 2016. When depreciation is not considered, Legacy reported profits of \$326,100.00 for this period.” (*Id.*) See also *E.I. DuPont De Nemours & Co. v. Ind. Dept. of State Rev.*, 79 N.E.3d 1016, 1026 (Ind. Tax Ct. 2017) (quoting Black’s Law Dictionary 22 (9th Ed.) (defining “accrual accounting method” as “an account method that records entries of debits and credits when the revenue or liability arises, rather than when the income is received or an expense is paid”)). We cannot say the trial court committed clear error when it considered Bugay’s unrealized losses against the profits to determine DeBoy had not met his burden to demonstrate Bugay had profits that could be divulged.

Conclusion

[18] The trial court did not err when it declined to decrease DeBoy’s unjust enrichment award based on construction defects because Bugay had settled his construction defects crossclaim for \$150,000 and dismissed that crossclaim with prejudice. Nor did the trial court err when it refused to award DeBoy monies for disgorgement of profits from Legacy Sports Club because the trial court’s findings support that conclusion. Accordingly, we affirm.

[19] Affirmed.

Riley, J., and Tavitas, J., concur.