



favor of FedEx on Inland's class action complaint. For the reasons that follow, we affirm.

¶ 3

### FACTS

¶ 4 On September 25, 2001, Stephen Fleischer filed a class action complaint in the circuit court of Madison County.<sup>1</sup> On February 20, 2003, the class action complaint was amended to add Inland as a plaintiff. Inland alleged that upon information and belief, based on the number of packages it shipped with FedEx between September 22, 2000, and September 21, 2001, there was at least one instance where FedEx charged Inland for an expedited delivery service and its packages did not arrive at their destination by the promised delivery deadline. Count I stated a cause of action for a breach of contract, and count II set forth a cause of action for unjust enrichment. During discovery, FedEx admitted that on August 15, 2001, Inland shipped a package via FedEx as a standard overnight shipment, with a guaranteed delivery time of 3 p.m. or 4:30 p.m. the next day, depending on whether the delivery address was in a remote location. The shipment was actually delivered at 10:41 a.m. on August 17, 2001, two days after it was shipped.

¶ 5 On July 8, 2010, FedEx filed a motion for a summary judgment. According to the motion, Inland agreed that its shipments would be subject to the terms and conditions of the FedEx service guide. According to FedEx, the exclusive remedy for late delivery was set forth in the money-back guarantee policy in the FedEx service guide. FedEx attached the service guide in effect as of June 1, 2000, to its motion for a summary judgment. The relevant language of that policy is as follows:

#### **"MONEY-BACK GUARANTEE POLICY**

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A. Service Failure—At our option, we will either refund or credit your

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<sup>1</sup>Stephen Fleischer was dismissed as a plaintiff to this action and is not a party to this appeal.

transportation charges upon request if we deliver your shipment 60 seconds or more after our published delivery commitment.

In order to qualify for a refund or credit due to service failure, the following limitations apply:

1. For invoiced shipments and for shipments by shippers using our customer automation, we must receive your notification (in writing or by telephone) of a service failure within 30 calendar days from the original invoice date. \*\*\*

2. For shipments that we don't invoice because you paid by cash, check, money order, or credit card, you must notify us, in writing or by telephone, of a service failure within 30 calendar days from the date of shipment. We will send your refund to the billing address on your account.

\* \* \*

This Money-Back Guarantee does not apply to requests for invoice adjustments based on overcharges. (See 'Billing' section.)"

¶ 6 Although the June 2000 version of the money-back guarantee policy that was attached to the motion for a summary judgment requires notice of late delivery to FedEx within 30 calendar days, effective August 11, 2001, the money-back guarantee was amended to require notice to FedEx within 15 calendar days. We note that this version would have been in effect at the time of FedEx's delivery of Inland's August 15, 2001, shipment. FedEx also attached the deposition of one of its representatives to its motion for a summary judgment, in which the representative confirmed that Inland did not attempt to avail itself of the money-back guarantee provision of the contract by giving FedEx notice of the late delivery.

¶ 7 In opposition to FedEx's motion for a summary judgment, Inland presented the circuit court with the "Billing" section of the FedEx service guide, arguing that a late delivery could be characterized as an "overcharge" as defined by that section, which would entitle Inland

to an adjustment representing the difference between the amount it paid for expedited delivery service and the delivery fee applicable to the time in which the packages were actually delivered. The relevant language from the "Billing" section of the FedEx service guide at the time of Inland's August 15, 2001, shipment, follows:

**"BILLING**

\* \* \*

**M. Invoice Adjustments/Overcharges:**

1. We reserve the right to audit airbills and shipments made via an automated shipping service to verify service selection and package or shipment weight. If the service selected or weight entered is incorrect we may make appropriate adjustments to the invoice at any time.

2. Default billing: Senders are responsible for accurately completing all sections of the airbill and for the entry of accurate shipment information in any automated shipping device. Because the number of packages and weight per package are critical to our ability to correctly invoice, if you fail to provide or incorrectly enter this information you will be billed based on our estimate of the number of packages transported and either the standard dimensional factor at the time of the billing or a standard 'default' weight-per-package estimate, determined at our sole discretion. If no service is marked, we will send your shipment via FedEx Priority Overnight or FedEx Express Freight service selected by us at our sole discretion.

3. A request for invoice adjustment or refund must be in writing. The request may be noted on either the Invoice Summary, Invoice Remittance or by attached letter.

However, the request must state the reason you believe an adjustment or refund is warranted and must provide the FedEx Account Number, if any, the airbill or

package tracking number, the date of shipment, and the recipient's name, address, ZIP code and any applicable non-payment codes. *A credit under our Money-Back Guarantee Policy will only be applied against charges for the shipment giving rise to the credit.*

4. 'Overcharge' means a charge based on an incorrect rate; an incorrect special handling fee; billing for the wrong type of service; billing based on incorrect package or shipment weight; billing to the wrong account numbers; or any billing that results in an incorrect charge.<sup>2</sup>

5. Requests for invoice adjustments and refunds must be received within one year after the date of shipment if the overcharge was caused by us. Requests for invoice adjustments and refunds must be received within 60 days after the original invoice date when you have caused the error. *For adjustments due to a service failure or failure to provide timely package status, see Money-Back Guarantee Policy.*" (Emphases added.)

¶ 8 According to Inland, even though it was not a named plaintiff until 2003, because it was a potential class member at the time the original complaint was filed in September 2001, the one-year notice requirement for what it claims could be characterized as an overcharge was met by the filing of the original complaint in 2001. Inland argued that because a late

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<sup>2</sup>The definition of "overcharge" was amended in February 2001. Prior to that date, the definition of "overcharge" in the June 1, 2000, service guide read as follows: "'Overcharge' means a charge based on an incorrect rate; an incorrect special handling fee; billing for the wrong type of service; or billing based on incorrect package or shipment weight; or account numbers."

delivery results in an incorrect charge, meeting the definition of "overcharge" in the service guide, and because the filing of the original complaint within one year of the overcharge was sufficient notice under the terms of the service guide, FedEx's motion for a summary judgment should be denied.

¶ 9 On November 19, 2010, the circuit court, the Honorable Daniel Stack presiding, entered an order denying FedEx's motion for a summary judgment. Apparently anticipating the entry of that order based on a ruling from the bench at the hearing, FedEx filed a motion to reconsider on November 15, 2010. On March 10, 2011, the circuit court, the Honorable William Mudge presiding, entered a detailed order in which he granted FedEx's motion to reconsider and entered a summary judgment for FedEx on all counts of the complaint. On April 8, 2011, Inland filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 Because the plaintiff appeals from an order granting a summary judgment in favor of FedEx, our standard of review is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). A summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to a judgment as a matter of law. *Id.* When the movant's right to judgment is clear and free from doubt, a summary judgment is appropriate. *Id.* Bearing in mind our standard of review, we turn to the substance of the circuit court's order granting a summary judgment in favor of FedEx.

¶ 12 This court has previously examined the June 1, 2000, FedEx service guide in the context of a lawsuit for a breach of contract for delayed shipment. See *Moody v. Federal Express Corp.*, 368 Ill. App. 3d 838 (2006). In *Moody*, this court found that the clear intent of the parties in entering a shipment contract whereby they agreed to be bound by the terms of the service guide was to limit the remedies available to those expressly provided for therein. *Id.* at 843. This court found that the money-back guarantee provision of the

contract, which expressly limited FedEx's liability for a delayed shipment to the actual damages to the item shipped or a full refund of shipping charges, was the exclusive remedy available to a FedEx customer for delayed shipment. *Id.* To recover the remedy of a full refund, this court found that the contract required a customer to provide a request for a full refund within 30 days of the shipment, which we recognize was amended in 2001 to require such a request within 15 days. *Id.* We found that to allow a partial refund after the notice-of-claim deadlines set forth in the contract lapsed would render the limitation of liability and notice requirements meaningless. *Id.* at 843-44. Accordingly, we found that the remedy sought by the plaintiff in her breach-of-contract action was excluded under the contract, and affirmed the dismissal of the plaintiff's complaint. *Id.* at 844.

¶ 13 Inland argues that the *Moody* decision is inapplicable to this case because in *Moody* we failed to consider the applicability of the "Overcharge" provision of the service guide when we determined that a partial refund remedy was unavailable. According to Inland, the "Overcharge" provision would allow for a partial refund for a late shipment because under the definition of "overcharge," as that definition was amended in the service guide applicable to Inland's shipment, a delayed shipment could be considered a "billing that results in an incorrect charge." However, we find that a reading of the "Money-Back Guarantee" section of the service guide in conjunction with the "Overcharge" section makes it clear that delayed shipments were intended to be excluded under the "Overcharge" section and limited to the provisions under "Money-Back Guarantee."

¶ 14 The "Money-Back Guarantee" section specifically states that it is spelling out the method by which to apply for a refund due to a service failure, and that it does not apply to requests for a refund or credit for an overcharge, which is governed by the "Billing" section, which contains the "overcharge" definition. Congruently, the "Overcharge" section specifically states that adjustments due to service failures are governed by the "Money-Back

Guarantee." For these reasons, we reaffirm our holding in *Moody* that the exclusive remedy under the FedEx service guide for a delayed shipment is spelled out in the "Money-Back Guarantee." It is undisputed that Inland did not avail itself of the 15-day notice-of-claim deadline required for a refund and thus cannot recover for a breach of contract. Accordingly, a summary judgment in favor of FedEx on count I of Inland's class action complaint was proper.

¶ 15 We note that Inland's class action complaint also alleges a cause of action for unjust enrichment in count II. Inland does not set forth argument in its brief as to the propriety of the summary judgment entered on count II and has therefore waived any claim of error. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Waiver aside, a claim for unjust enrichment is improper where there is a contract between the parties relating to the subject matter set forth in the complaint. *Nesby v. Country Mutual Insurance Co.*, 346 Ill. App. 3d 564, 567 (2004).

¶ 16 Finally, we will briefly address Inland's argument that the law-of-the-case doctrine prohibited the Honorable William Mudge from reconsidering the prior order denying a summary judgment to FedEx which was entered by the Honorable Daniel Stack. Inland's argument lacks merit. As FedEx aptly notes, the law-of-the-case doctrine provides that questions of law decided on a previous appeal are binding on the trial court on remand as well as on the appellate court on subsequent appeals. *Long v. Elborno*, 397 Ill. App. 3d 982, 989 (2010). The law-of-the-case doctrine does not prevent a circuit court from reconsidering its previous rulings. The circuit court acted within its inherent authority in entering an order granting a summary judgment to FedEx.

¶ 17 **CONCLUSION**

¶ 18 For the foregoing reasons, we affirm the March 10, 2011, order of the circuit court of Madison County which entered a summary judgment in favor of FedEx on Inland's class action complaint.

¶ 19 Affirmed.

¶ 20 JUSTICE CHAPMAN, dissenting:

¶ 21 I would reverse the trial court's order granting a summary judgment for FedEx. The majority reads the *Moody* case to limit plaintiff's remedy to the "Money-Back Guarantee" section of the service guide. I disagree. *Moody v. Federal Express Corp.*, 368 Ill. App. 3d 838, 858 N.E.2d 918 (2006). While I agree with the majority ruling that *the law-of-the-case* doctrine does not prevent a circuit court from reconsidering its previous rulings, and therefore Judge Mudge was entitled to revisit this issue, I agree with the previous rulings of Judges Crowder and Stack finding that nothing in *Moody* precludes a plaintiff from pursuing a remedy under a different provision of the contract not raised and considered by the *Moody* court, *i.e.*, the overcharge provision and amendment. The overcharge provision in the service guide defines "overcharge" as "a charge based on an incorrect rate; an incorrect special handling fee; billing for the wrong type of service; or billing based on incorrect package or shipment weight; or account numbers." This definition, read along with the expanded definition in the amendment to the service guide—"Invoice Adjustments/Overcharges" which adds any billing that results in an incorrect charge—certainly creates a question as to whether this provision can be used as an alternative remedy to seek a price-difference refund rather than a full money-back guarantee for late delivery. While it is true, as the majority points out, that the overcharge section does reference the money-back guarantee policy—"For adjustments due to a service failure or failure to provide timely package status, *see* Money-Back Guarantee Policy" (emphasis added)—I disagree that the word "see" necessarily translates into meaning that these adjustments must be "governed" (as the majority states) by the money-back guarantee policy as an exclusive remedy.

¶ 22 Because I believe there remain genuine issues of material fact, FedEx is not entitled

to a judgment as a matter of law. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*,  
154 Ill. 2d 90, 102 (1992).