

including boundary and topographic survey, preparation and submittal of preliminary plat, agency submittal or coordination of 39 ± lots (single-family residential) with consultant, preparation of construction plans for 39 ± lots (single-family residential), preparation and submittal of final plat, and attendance at meetings with the City of Collinsville, as required. The proposal provided that:

"Invoices will be submitted monthly based on actual hours performed by our personnel during that billing period. Payment will be due upon receipt of invoicing. An account will become delinquent after thirty (30) days. It is agree[d] that a late charge will be added to delinquent accounts at a rate of 1½ percent per month."

The proposal provided that GASA may terminate the arrangement at any time and then would be obligated to pay Sherrill for all work performed to date of notification of termination. The proposal provided, "Acceptance of this proposal shall serve as a contract agreement by signing and returning the original to this office." GASA signed and accepted the proposal on January 14, 2008.

¶ 5 Sherrill alleged that between February 1, 2008, and September 30, 2009, it performed services for GASA, and despite demands for payment, GASA failed to pay. On April 16, 2010, Sherrill sent a letter to GASA demanding payment of \$42,383.42 due as of March 25, 2010, plus applicable attorney fees and accrued interest. Sherrill informed GASA that if the amount was not paid by April 26, 2010, it authorized its attorney to pursue all legal remedies available to collect the amounts due, including filing suit against GASA.

¶ 6 On August 18, 2010, Sherrill filed a two-count complaint against GASA. The first count sought payment for services rendered under the theory of action on account. The second count sought recovery of the amount owed under the theory of *quantum meruit*. On October 21, 2010, Sherrill amended its complaint to include a

copy of the contract between the parties.

¶ 7 On November 10, 2010, the trial court entered a default judgment against GASA in the amount of \$47,485.44. On January 10, 2011, GASA filed a petition to vacate arguing that the judgment was obtained surreptitiously without any attempt to notify GASA or its counsel. On the same day, GASA also filed a motion to dismiss. GASA argued that the breach of contract claim failed because Sherrill did not include a copy of a contract in its pleading. It also argued that if a contract existed as alleged by Sherrill, *quantum meruit* is not available. On January 31, 2011, Sherrill filed a response to GASA's petition to vacate. On March 1, 2011, the trial court granted GASA's motion to vacate.

¶ 8 On July 28, 2011, there was a mandatory arbitration hearing. The arbitrators entered an order awarding Sherrill \$50,000 plus court costs of \$219. Both parties participated in the arbitration in good faith. On August 5, 2011, GASA filed a notice of rejection of the arbitration award.

¶ 9 At a judgment call on September 2, 2011, for entry of judgment on the arbitrators' award, the trial court declined to enter a judgment because of GASA's rejection of the award. In accordance with Sherrill's agreement, the court dismissed count II of Sherrill's complaint with prejudice and granted GASA 28 days to file an answer to count I.

¶ 10 On September 13, 2011, GASA filed an answer and affirmative defenses to the first amended complaint and a motion for summary judgment. GASA argued that Sherrill failed to substantially perform the contract terms because it failed to prepare or submit a final plat that would obtain the City of Collinsville's approval and failed to meet with the city to get the plats approved. It asserted that it had paid "Sherrill thousands of dollars for work claimed to be performed by Sherrill, yet which has not

yet been completed," and that by failing to complete the work, Sherrill was in breach of contract.

¶ 11 On September 26, 2011, Sherrill filed a combined response to GASA's motion for summary judgment and a cross-motion for summary judgment. Sherrill argued that its agreement with GASA contained no provision that payment for services by Sherrill was contingent upon the City of Collinsville approving the project or final plat, or that payment for services by Sherrill was contingent upon all services described being completed. Sherrill stated that GASA did not pay for the services rendered from October 2008 to September 2009. Sherrill argued that the agreement is unambiguous and that Sherrill was to be paid an hourly rate for services performed. Sherrill argued that it was entitled to judgment as a matter of law because there was no genuine issue of material fact that it provided services pursuant to the agreement, that it invoiced GASA for the hourly rate of the services provided, and that GASA had not paid for some of those invoices.

¶ 12 In an affidavit of David Sherrill, treasurer of Sherrill, attached to the motion, he stated that GASA paid \$13,122.50 on invoices for services rendered related to the project. He wrote that GASA did not pay any of the invoices for services rendered from October 2008 to September 2009. David Sherrill stated that the invoices set forth the rate, hours, title, and name of each Sherrill employee who performed services related to the project for the billing period. He averred that he had specific and personal knowledge that each employee who logged hours related to services performed on the project completed those hours as set forth in the invoices. He further stated: "GASA ceased making payments on the Invoices after several months and ceased communication with Sherrill about the Project and invoices because, upon information and belief, GASA decided not to pursue the Project. Consequently,

Sherrill did not move on to the phase of services listed in Estimate Number 2." He wrote, "[B]ased on my 30 ± years of experience in the engineering and surveying industry, the industry standard is for clients to pay monthly for services as they are provided." He further stated, "Based on my experience, the industry standard is not for the engineering and surveying firm to be responsible for approval by any third parties before payment of services is enforceable."

¶ 13 On October 14, 2011, the court heard both parties' motions for summary judgment. It denied GASA's motion and granted Sherrill's motion for summary judgment.

¶ 14 On October 17, 2011, GASA filed a motion to reconsider arguing that Sherrill failed to attach a copy of the agreement to its pleadings and that there was a question of material fact, namely whether Sherrill substantially performed the essential elements of the contract. On October 24, 2011, Sherrill filed a memorandum in opposition to GASA's motion to reconsider. On October 25, 2011, GASA filed an objection to the entry of the order. On March 2, 2012, the trial court entered an order stating: "Arguments regarding interest and costs heard and considered moot. Summary judgment entered in the amount of \$50,000." It also heard and denied GASA's motion to reconsider. GASA filed a timely notice of appeal.

¶ 15

ANALYSIS

¶ 16 GASA argues that the trial court erred in granting summary judgment. "The purpose of summary judgment is to determine whether a genuine issue of material fact exists." *Adames v. Sheahan*, 233 Ill. 2d 276, 295 (2009). Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-

1005(c) (West 2010). "In determining whether a genuine issue of material fact exists, the pleadings, depositions, admissions and affidavits must be construed strictly against the movant and liberally in favor of the opponent." *Adames*, 233 Ill. 2d at 295-96. A genuine issue of material fact exists where the material facts are disputed, or if the material facts are undisputed, reasonable people might draw different inferences from the undisputed facts. *Id.* at 296. Summary judgment is a drastic measure and should be granted only when the right of the moving party is clear and free from doubt. *Id.* We review an order granting summary judgment *de novo*. *Id.*

¶ 17 GASA argues that Sherrill's "action on account" is a breach of contract claim for money damages. Sherrill agrees with this assessment. GASA argues that Sherrill failed to substantially perform the terms of the contract. Specifically, GASA contends that Sherrill did not submit a final plat and did not attend meetings with the City of Collinsville as required for the approval of the plat. GASA argues that Sherrill abandoned the project without completing it, that it did not substantially perform the terms of the contract, and that, therefore, it breached the contract.

¶ 18 Sherrill argues that substantial performance has no bearing on this case. It contends that the parties entered a binding contract on January 14, 2008, and the unambiguous terms of the contract provide that GASA was to be billed at an hourly rate for services Sherrill rendered to it and that GASA was to pay for the services upon receipt of each monthly invoice. Sherrill asserts that nothing in the contract makes payment contingent upon completion of all described services.

¶ 19 The primary goal of contract interpretation is to give effect to the intent of the parties. *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). Initially the court must look to the language of the contract alone, as the language, given its plain and ordinary meaning, is the best indicator of the parties' intent. *Id.* at 233. Because words derive

their meaning from the context in which they are used, a contract must be construed as a whole, not by focusing on isolated portions of the contract or on any clause or provision standing alone. *Id.* "If the language of the contract is clear and unambiguous, the intent of the parties must be determined solely from the language of the contract document itself, which should be given its plain and ordinary meaning, and the contract should be enforced as written." *Richard W. McCarthy Trust v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 535 (2011). A contract is ambiguous if the language is susceptible to more than one meaning. *Id.* If a contract term is susceptible to more than one interpretation, the court must follow the interpretation that establishes a rational and probable agreement. *Highland Supply Corp. v. Illinois Power Co.*, 2012 IL App (5th) 110014, ¶ 26. A written contract is presumed to include all material terms agreed upon by the parties, and any prior negotiations or representations are merged into that agreement; extrinsic evidence is generally inadmissible to alter, vary, or contradict the written instrument. *K's Merchandise Mart, Inc. v. Northgate Ltd. Partnership*, 359 Ill. App. 3d 1137, 1143 (2005).

¶ 20 In the instant case, the parties agree that there was a contract. The contract provides a summary of services. The list of services includes "preparation and submittal of final plat" and "attendance at meetings with the City of Collinsville, as required." The contract further provides that:

"Invoices will be submitted monthly based on actual hours performed by our personnel during that billing period. Payment will be due upon receipt of invoicing. An account will become delinquent after thirty (30) days. It is agree[d] that a late charge will be added to delinquent accounts at a rate of 1½ percent per month."

There is nothing in the contract that indicates that payment is contingent upon completion of all the services listed. The contract provides that services would continue to be performed

and billed until the project was either completed or terminated in writing.

¶ 21 The language of the contract is not ambiguous or open to more than one meaning. When construing the contract as a whole, giving the language its plain and ordinary meaning, it is clear that the parties intended for Sherrill to be paid monthly for services performed during the billing period. As David Sherrill stated in his affidavit, that practice is consistent with the standard in the engineering and surveying industry. Sherrill submitted invoices to GASA. The invoices set forth the rate, hours, title, and name of each Sherrill employee who performed services related to the project for the time frame at issue. David Sherrill swore in his affidavit that he had personal knowledge that each employee who logged hours related to the services performed on the project completed those hours as set forth in the invoices. GASA offered no evidence to rebut Sherrill's evidence that the services, as invoiced, were actually performed.

¶ 22 GASA does not dispute that it did not pay Sherrill for services rendered from October 2008 to September 2009. While GASA argues that it did not pay for services rendered during this time period because Sherrill did not complete all the items listed in the summary of services, no explanation is given as to why GASA paid \$13,122.50 on different invoices for services rendered related to the project. Furthermore, GASA does not point to any language in the contract that indicates that payment for services was contingent upon completion of all the items listed in the summary of services.

¶ 23 There is no genuine issue as to any material fact. The terms of the contract are clear that GASA was to pay the monthly invoices presented by Sherrill for services it rendered during that time period. Sherrill performed services for GASA and provided monthly invoices, and GASA failed to pay. GASA's failure to pay for services rendered was a breach of contract.

¶ 24

CONCLUSION

¶ 25

For the foregoing reasons, we affirm the circuit court of Madison County's summary judgment in favor of Sherrill.

¶ 26

Affirmed.