2016 IL App (1st) 141168-U
No. 1-14-1168

THIRD DIVISION
December 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RTKL ASSOCIATES, INC.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee and Cross-Appellant,	)	
	)	
v.	)	No. 09 L 10985
	)	
MICHAEL B. KLEIN,	)	
	)	The Honorable
Defendant-Appellant and Cross-Appellee.	)	Patrick J. Sherlock,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court of Cook County finding that no contract for architectural and interior design services existed between the parties and that RTKL sustained its burden of proof for a *quantum meruit* award. We vacate the circuit court's award of prejudgment interest on RTKL's *quantum meruit* claim because such an award is not statutorily allowed under the circumstances presented.

¶ 2 Defendant-appellant and cross-appellee, Michael B. Klein (Klein), appeals from the portion of the circuit court's order entering judgment in favor of plaintiff-appellee and cross-appellant, RTKL Associates, Inc. (RTKL), on its *quantum meruit* claim and award of

prejudgment interest, and entering judgment against him on his breach of agreement claim. RTKL cross-appeals from that portion of the same order entering judgment in favor of Klein on RTKL's breach of written contract claim.

¶ 3 BACKGROUND

¶ 4 In September 2009, RTKL filed this action to recover unpaid fees from Klein for architectural and design services in connection with a single family home in Chicago and a condominium in Miami. *RTKL* filed an amended complaint and Klein filed an answer, affirmative defenses, and counterclaims. After rigorous pretrial activity, there were five RTKL counts and one Klein count left for the court to decide: for RTKL: breach of written contract, account stated, *quantum meruit*, conversion as to the Chicago property and breach of oral contract; for Klein: breach of contract.

¶ 5 Following a five-day bench trial in January 2014, the circuit court entered a written order specifying the following findings of fact: (1) RTKL is a multistate architectural and interior design firm; (2) Klein is the proprietor of a Chicago-area design-build construction firm; (3) Klein hired RTKL to assist in designing a single-family home in north suburban Chicago and furnishing a condominium in Miami, Florida; (4) on July 28, 2004, RTKL sent Klein a written proposal with specific terms, but Klein never signed the proposal because it was unacceptable to him; (5) on July 29, 2004, RTKL sent Klein a new proposal, which was also never signed by Klein because it was unacceptable to him; (6) on July 30, 2004, Klein emailed RTKL stating that most of the terms of the proposal were acceptable, but disagreeing with certain expenses for telephone, fax, and renderings; (7) that same date, RTKL responded to Klein's proposal stating it usually outsourced renderings because it was more cost-effective than preparing them in-house, and agreeing not to charge Klein for telephone or fax expenses; (8) Klein responded, "That is

ok," and that his in-house staff could prepare renderings quickly, and his testimony to that effect was credible because "his statement was intended to accept RTKL's proposal to waive the fax charges and telephone charges, but that he believed his in-house staff could still perform the rendering work more cheaply and he did not agree to be charged for it" and; (9) thereafter, "the parties began working together without the benefit of a signed contract."

¶ 6 On RTKL's breach of written contract claim, the circuit court entered judgment in favor of Klein, disagreeing with RTKL's position that the July 29 proposal and the email exchange on July 30 constitute a written contract. The circuit court reasoned that "there was never agreement upon whether Klein would be required to pay expenses for renderings, whether those expenses would be absorbed by RTKL, whether Klein agreed to pay for renderings that were outsourced or whether the parties agreed that Klein's in-house staff would create the renderings. There simply was not a complete agreement."

¶ 7 On RTKL's account stated claim, the circuit court entered judgment in favor of Klein, finding that "there was never agreement between RTKL and Klein based upon their previous transactions that, with the concession offered by RTKL, the account representing their prior transactions was true and that the balance stated is correct. Additionally, Klein never made a promise, express or implied, to pay the outstanding balance." The court credited Klein's testimony that he refused RTKL's offer of an approximate $11,028 concession if he agreed to pay outstanding invoices where it was confirmed by a contemporaneous email refusal to RTKL.

¶ 8 On RTKL's *quantum meruit* claim, the circuit court entered judgment in favor of RTKL "in the amount of $158,287.71 plus pre-judgment interest pursuant to 815 ILCS 205/1 and costs." The court disagreed with Klein's position that *quantum meruit* was an inappropriate basis for recovery where both parties agreed that there was a contract, citing Klein's implicit admission

that there was no contract "by arguing that both sides agreed to a contract, but 'they disagree as to the terms.'" The court found that RTKL's hourly rates and invoices were reasonable, concluding that RTKL had proved damages of $123,744.26 as to the Miami project and $60,571.45 as to the Chicago project. However, the court found two deductions were appropriate. First, the court found that RTKL had agreed to an $11,028 deduction in April 2005, and thus Klein was not required to pay that amount. Second, the court found insufficient evidence to support RTKL's assertion that it had billed Klein for approximately $15,000 for hours expended before termination.

¶ 9 On RTKL's conversion claim as to the Chicago property, the circuit court entered judgment in favor of Klein. The court reasoned that RTKL failed to show Klein did not pay for the design drawings, or renderings, relating to the Chicago project, that Klein paid RTKL more than $200,000 for work on the Chicago project, and RTKL never made clear whether the fees paid were insufficient.

¶ 10 On RTKL's breach of oral *agreement* claim, the circuit court entered judgment in favor of Klein, noting that RTKL sought damages for breach of an oral agreement whereby Klein agreed to pay the outstanding balance in exchange for an $11,028.86 reduction, but found that no such agreement existed.

¶ 11 On Klein's counterclaim for breach of agreement, the circuit court entered judgment in favor of RTKL, finding that the parties did not agree to a fixed fee contract. The court noted that nothing in the record supported finding that a fixed fee contract existed and, at best, Klein directed the court's attention to his desire to stay within a budget, which was not the same as two parties agreeing to a fixed fee contract.

¶ 12 Klein filed a timely notice of appeal[1] from the final written order entered on April 14, 2014, challenging whether the circuit court erred in determining that RTKL sustained its burden of proof for a *quantum meruit* award, and whether the court erred in awarding RTKL prejudgment interest on its *quantum meruit* claim.

¶ 13 RTKL filed a timely notice of cross-appeal, identifying its issues as whether the court erred: (1) by finding that Klein's acceptance of the proposal did not conform to the terms proposed by RTKL and did not result in the formation of a written contract; (2) by failing to consider whether a written contract was formed by Klein's ratification of its terms through conduct; (3) by failing to admit evidence or take judicial notice of Bank of America's prime rate for purposes of calculating prejudgment interest; and (4) in making certain deductions from RTKL's recovery in *quantum meruit*.

¶ 14 ANALYSIS

¶ 15 Klein contends that the circuit court's judgment in favor of RTKL on its *quantum meruit* claim was against the manifest weight of the evidence because RTKL failed to prove that Klein knowingly benefitted by any unpaid services and failed to prove the reasonable value thereof.

¶ 16 *Quantum meruit* is used as an equitable remedy to provide restitution for unjust enrichment. *Cove Management v. AFLAC, Inc.*, 2013 IL App (1st) 120884, ¶ 34. As in this case, "[p]laintiffs often plead *quantum meruit* as an alternative claim in breach of contract actions so that the plaintiff may recover even if the contract is unenforceable." *Id.*

¶ 17 To recover under a theory of *quantum meruit*, a plaintiff must prove (1) he performed a service to benefit the defendant, (2) he did not perform this service gratuitously, (3) the defendant accepted this service, and (4) no contract existed to prescribe payment for this service.

[1] In his reply brief, Klein voluntarily withdrew two of his original four issues.

Installco Inc. v. Whiting Corp., 336 Ill. App. 3d 776, 781 (2002). "A *quantum meruit* recovery requires a showing that a defendant has *voluntarily* accepted a benefit which would be inequitable for him to retain without payment since the law implies a promise to pay reasonable compensation when valuable services are *knowingly* accepted." (Emphasis added.) *Plastics & Equipment Sales Co. v. DeSoto, Inc.*, 91 Ill. App. 3d 1011, 1017 (1980). Moreover, the plaintiff is required to present "some evidence specific enough to prove the reasonable value of the benefit" defendant allegedly received. *Bernstein and Grazian, P.C. v. Grazian and Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010). We evaluate the circuit court's grant of the *quantum meruit* award to RTKL pursuant to a manifest weight of the evidence standard of review. *Id.* at 978-79.

¶ 18 Relying on *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353 (1997), Klein asserts that "RTKL bore the burden to show that it conferred a benefit that Klein ***knowingly accepted and used*** yet never paid." (Emphasis in original.) Klein argues that "RTKL did not – and cannot – show that any purported additional work done was knowingly accepted and used by Klein since it was of no value to him, just as the expert witnesses and reports were of no value to attorney Hefner in *First Nat. Bank of Springfield*." Klein reasons that it defies logic that he would knowingly accept and use non-gratuitous work because he told Mendes that he had a fixed budget and sought to cap the cost of the entire project. He also refers to the terms and conditions of RTKL's proposal providing that any additional work would only be performed if the client requests such in writing. We disagree.

¶ 19 As RTKL correctly notes, Klein's position that *quantum meruit* recovery requires a showing that he knowingly accepted the benefit of RTKL's design for the Chicago project and "*used*" that design misstates the law. We agree with RTKL that the relevant inquiry is whether Klein knowingly accepted the benefit of its design services regardless of whether the designs

were ultimately used to construct the Chicago project, especially considering RTKL's observation that Klein declared, "I would like to keep the plans and the work done as I love the house plan" and "I am thinking about building *this house* on a bigger lot." RTKL adds that Klein hired a third-party contractor to build out the interior of the condo for the Miami project "per RTKL plans." Moreover, we are unpersuaded by Klein's reference to discussions with Mendes regarding a fixed budget and desire for a cost cap where, in his reply brief on appeal, he withdrew the issue of whether the circuit court erred in finding that the parties did not agree to a fixed fee contract. Nor are we persuaded by Klein's reference to the terms and conditions of RTKL's proposal, having determined that the circuit court did not err in finding that no contract for architectural and interior design services existed between the parties.

¶ 20 Klein nonetheless argues that RTKL failed to prove the reasonable value of its services because the invoices did not state which employees or contractor completed what work and how many people were working on a given aspect of the project. Citing *Rohter v. Passarella*, 246 Ill. App. 3d 860, 868 (1993) (quoting *In re Irving-Austin Building Corp.*, 100 F.2d 574, 578 (7th Cir. 1938)), Klein reasons that the reasonable value of services rendered is measured "not by the amount of time and energy expended by the laboring party but by the value of such services to the beneficiary."

¶ 21 RTKL responds that it had presented invoices setting forth both the hourly rates and number of hours expended that the circuit court found were reasonable, that Mendes testified regarding her personal responsibility for preparing the invoices for Klein's Chicago and Miami projects, which in accordance with standard custom and practice, were derived from a computerized timekeeping system that logged each employee who worked on either the Chicago or Miami project, and that Klein had presented no evidence to suggest otherwise, acknowledging

at trial that he had no basis to dispute the accuracy of Mendes's testimony about the accuracy of RTKL's invoices. RTKL adds, and we agree, that Klein's reliance on *Rohter* is misplaced because it does not stand for the proposition that the actual amount of time expended by RTKL is not a relevant factor in measuring the reasonable value of services rendered. Rather, the appellate court in *Rohter* observed that the standard used by the trial court, requiring "a minute detailing of all efforts put forth by the party seeking compensation for those efforts," applies where the party is seeking the benefit of his bargain, as opposed to where the party "sues only to disgorge an unjust enrichment," for which the relevant inquiry is the reasonable value of the benefit received. *Rohter*, 246 Ill. App. 3d at 867. While RTKL was not required to provide "a line-by-line detailing" of its efforts, RTKL provided "some evidence specific enough to prove the reasonable value of the benefit" Klein allegedly received, which the circuit court found was reasonable. *Bernstein and Grazian, P.C.*, 402 Ill. App. 3d at 979. Based on the evidence presented, which supports that finding, we cannot conclude that the circuit court's judgment was against the manifest weight of the evidence. *Kay*, 2013 IL App (1st) 112455, ¶ 55. In so finding, we decline to entertain Klein's argument in his reply brief that RTKL failed to prove the value of its services "*beyond* the $219,782 total it received," as it is an improper expansion of his opening argument, that RTKL failed to offer evidence to support the $158,287.71 *quantum meruit* award, in violation of Supreme Court Rule 341(j) (eff. Jan. 1, 2016). *Rybak v. Provenzale*, 181 Ill. App. 3d 884, 899 (1989).

¶ 22 Klein next contends that the circuit court erred in awarding RTKL prejudgment interest on its *quantum meruit* claim. Before addressing the merits, we note and reject RTKL's argument that we lack jurisdiction to consider the prejudgment interest issue because it was absent from Klein's notice of appeal. Supreme Court Rule 303(b)(2) (eff. Jan. 1, 2015) provides that a notice

of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court," and when Klein stated in his notice of appeal that he was appealing from "portions of the Amended Order entered by the circuit court dated April 14, 2014, after trial, which entered judgment for Plaintiff/Appellee RTKL Associates, Inc. ("RTKL") and against Klein on Count III of the Second Amended Complaint in the amount of $158,287.71 and which entered judgment for RTKL and against Klein on Count I of the Counterclaim," Klein was logically appealing from the award of prejudgment interest on RTKL's *quantum meruit* claim. *Bernstein and Grazian, P.C.*, 402 Ill. App. 3d at 972-73. Accordingly, we find that Klein's notice of appeal makes clear with sufficient specificity that he also appealed from the circuit court's determination regarding the prejudgment interest award. *Id.* at 973.

¶ 23 We also note RTKL's observation that Klein did not raise the prejudgment interest issue in his posttrial brief, but observe that the waiver rule is a limitation on the parties and not the jurisdiction of the courts, and "a reviewing court may consider an issue not raised in the trial court if the issue is one of law and is fully briefed and argued by the parties." *Committee for Education Rights v. Edgar*, 174 Ill. 2d 1, 11 (1996); see *Chandra v. Chandra*, 2016 IL App (1st) 143858, ¶¶ 45-46 (and cases cited therein recognizing instances where the right to prejudgment interest becomes a matter of law). Under the law and undisputed fact that no proposal for architectural and interior design services was ever signed by Klein, we agree with Klein that the circuit court erred in awarding RTKL prejudgment interest on its *quantum meruit* claim because such an award is not statutorily allowed under the circumstances presented. *Thompson v. Buncik*, 2011 IL App (2d) 100589, ¶ 20 (citing *Edens View Realty & Investment, Inc. v. Heritage Enterprises, Inc.*, 87 Ill. App. 3d 480, 492 (1980) (a *quantum meruit* award merits no statutory interest)). Since Klein did not sign RTKL's proposal or otherwise agree to any provision for

prejudgment interest, the circuit court erred in awarding RTKL prejudgment interest on its *quantum meruit* claim. *Sampson v. Miglin*, 279 Ill. App. 3d 270, 277 (1996).

¶ 24 RTKL contends that the circuit court erred in finding that no written contract for architectural and interior design services existed between the parties. According to RTKL, "[t]he sole issue here is whether the Trial Court was correct when it found that Mr. Klein's acceptance diverged from the terms of the offer communicated to him by Ms. Mendes" of RTKL. RTKL argues that the manifest weight of the evidence presented at trial shows that the only point of divergence that the court found to exist between RTKL's offer and Klein's acceptance of the same, "relating exclusively to the cost of renderings," was not divergent at all. RTKL asserts that the evidence comprising the parties' email thread on July 30, 2004, and Klein's trial testimony unequivocally demonstrate that (1) the parties agreed that Klein would be responsible for the cost of the renderings and (2) the question of who would prepare the renderings would be decided at the appropriate time when and if needed.

¶ 25 The parties' email thread was attached to RTKL's second amended complaint and admitted into evidence at trial. The sequence of email messages in the parties' correspondence has been rearranged to provide a coherent narrative as follows (see, *e.g.*, *People v. Hobson*, 117 Ill. App. 3d 191, 193 (1983) (rearranging the sequence of testimony to provide a coherent narrative)):

> "-----Original Message-----
> From: Wendy Mendes [mail to: WMendes@RTKL.com]
> Sent: Thursday, July 29, 2004 2:05 PM
> To: Mike Klein
> Subject: Design proposal update
>
> Dear Mr. Klein,
>
> As promised, here is the updated proposal, per our discussions. I will wait to hear from Chris regarding travel plans for next week.

Regards,

Wendy Mendes
Vice President
RTKL Associates Inc.
786 268-3200 MAIN
786 268-3690 DIRECT
786 268-3201 FAX

wmendes@rtkl.com

-----Original Message-----
From: Mike Klein [mail to: mklein@airoom.com]
Sent: Friday, July 30, 2004 11:58 AM
To: Wendy Mendes
Subject: RE: Design proposal update

Wendy,
I am ok with this except for reimbursable expenses.
I do not want to be charged for telephone, faxes or renderings as they come with the territory and are petty.
All else looks good. Let me know if that is acceptable.
Next Thursday is good for me. You might want to call Southwest Airlines as they have cheap fares into Midway on last minute flights. Around 200.00.

Give me a call on my cell.
Talk soon.
Mike.

-----Original Message-----
From: Wendy Mendes [mail to: WMendes@RTKL.com]
Sent: Friday, July 30, 2004 11:44 AM
To: Mike Klein
Subject: RE: Design proposal update

Mike,

Following up…we normally outsource our renderings, especially on residential projects, because it saves you money…we can spend the time to produce them in-house, but it is really so much cheaper when we do the initial studies (wire frame on CAD) as a part of the standard design process which you are billed for, but the actual finish renderings are outsourced. The cost for any renderings is much cheaper than the time we would spend and invoice you for if produced in house. Also, we would typically produce black and white rendering sketches, you normally don't need color renderings. Here is an example of our typical rendering.

> The phone charges and faxes are ok, I will absorb them. Let me know if this works for you. Looking forward to seeing you next week.
>
> Wendy
>
> -----Original Message-----
>
> From: Mike Klein [mklein@airoom.com]
> Sent: Friday, July 30, 2004 12:44 PM
> To: Wendy Mendes
> Subject: RE: Design proposal update
>
> *That is ok.* We renderer [*sic*] our stuff in house off CAD wire frame drawings.
> A good detailed rendering takes us about an hour to possibly two hours. *If we need it, we can discuss it.*
>
> See you soon." (Emphasis added.)

¶ 26 RTKL does not dispute the circuit court's determination "that Klein's initial [email] response constituted a rejection and counteroffer on identical terms, except that these three types of costs, if incurred, would be borne by RTKL." Nor does RTKL dispute that its response to Klein's counteroffer, namely, agreeing to absorb the cost of telephone calls and faxes, but disagreeing to absorb the cost of renderings, was a counteroffer. What RTKL does take issue with is Klein's "final acceptance" of that counteroffer.

¶ 27 RTKL argues that the manifest weight of the evidence shows that Klein's final acceptance conformed precisely to the terms of its counteroffer and thus triggered the formation of a contract between the parties. According to RTKL, Klein "clearly acknowledged his responsibility for the cost of the renderings (suggesting they might be done by his own in-house team instead of being outsourced to an outside vendor), but – like Ms. Mendes – stated that the manner of preparing the renderings would be decided another day." As support, RTKL cites the italicized portions of the Klein's email response as an indication of his "unequivocal acceptance" of its counteroffer and Klein's trial testimony that the email exchange between him and RTKL on

July 30, 2004, "had the effect of 'taking out' the issue of who would prepare the renderings," and resolved the reimbursable expenses issue.

¶ 28 Klein replies that he did not accept RTKL's counteroffer, citing his July 30, 2004, email response that he was "ok with *this* except for reimbursable expenses," his trial testimony that "this" referred to the project scope, phases, and hourly billing rates, and Mendes's trial testimony that "[Klein's] issues were some reimbursable expenses and renderings, and I told him that I would absorb them. And his response to me was that's okay."

¶ 29 In its reply brief on cross-appeal, RTKL concedes Mendes's testimony that RTKL agreed to absorb the costs of any reimbursable expenses, but "only to the extent that such costs were ultimately incurred by RTKL." RTKL asserts in a footnote that this testimony, at best, "reflects that if there were any additional renderings required beyond those that had been prepared by Mr. Klein's own staff (of which there is absolutely no evidence ever occurred) then Mr. Klein would not be charged for such renderings as reimbursable expenses owed under the terms of the Contract." RTKL reasons that "obviously" Klein would not be charged for the cost of renderings "as those were going to be prepared by Mr. Klein's own staff." For the reasons that follow, we conclude that the circuit court's finding that Klein's acceptance diverged from the terms of the offer communicated to him by Ms. Mendes was not against the manifest weight of the evidence.

¶ 30 The judgment of the trial court following a bench trial will be reversed only if it is against the manifest weight of the evidence. *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 19. A judgment is against the manifest weight of the evidence only where the opposite conclusion is apparent or the findings are unreasonable, arbitrary, or not based on the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). Put another way, we will uphold the trial court's

judgment following a bench trial "if there is any evidence supporting it." *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 484 (2002).

¶ 31 "In order to form a contract, there must be an offer, a strictly conforming acceptance, and consideration." *Hedlund and Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 205-06 (2007). Klein correctly notes that strict conformance between offer and acceptance is required for contract formation in Illinois, citing *Snow v. Schulman*, 352 Ill. 63, 71 (1933), *Whitelaw v. Brady*, 3 Ill. 2d 583, 589 (1954), and *Finnin v. Bob Lindsay, Inc.*, 366 Ill. App. 3d 546, 549 (2006). The existence of a contract between the parties, the parties' intent in forming it, and the terms of the contract are questions of fact (*Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 55), and a trial court's finding of fact and credibility are accorded great deference (*Jackson v. Mount Pisgah Missionary Baptist Church Deacon Board*, 2016 IL App (1st) 143045, ¶ 70).

¶ 32 Here, whether a valid contract existed between the parties was, and is, still in dispute. *Finnin*, 366 Ill. App. 3d at 550. "A distinction must be drawn between preliminary negotiations toward an agreement and the actual existence of a final contract." *Leekha v. Wentcher*, 224 Ill. App. 3d 342, 349 (1991), quoted in *Karris v. U.S. Equities Development, Inc.*, 376 Ill. App. 3d 544, 550-51 (2007). The email thread between the parties on July 30, 2004, did not create a contract because they comprised nothing more than a modified acceptance of propositions that culminated with Klein's rejection of RTKL's counteroffer. *Chicago Curtain Stretcher Co. v. Paepcke-Leicht Lumber Co.*, 108 Ill. App. 249, 251 (1903); *Weiland Tool & Manufacturing Co. v. Whitney*, 40 Ill. App. 2d 70, 86 (1963). We acknowledge RTKL's characterization of the reimbursable expenses provision of its proposal as a mere cost allocation provision and its position that a mere "comment upon the terms of the offer" does not constitute a rejection or

counteroffer preventing contract formation. However, we observe that "Illinois case law clearly mandates that *any* modification, however slight, prevents the creation of a valid contract." (Emphasis in original.) *Finnin*, 366 Ill. App. 3d at 549; *Valdez v. Viking Athletic Ass'n*, 349 Ill. App. 376, 379-80 (1953). At best, both parties negotiated with counteroffers of their own and a proposal was never signed. *Karris v. U.S. Equities Development, Inc.*, 376 Ill. App. 3d 544, 550 (2007).

¶ 33 Moreover, after considering the trial testimony and exhibits including RTKL's updated proposal dated July 29, 2004, and the parties' email exchange the following date, the circuit court concluded that there was not a complete agreement between the parties as to who bore the expenses for renderings, whether Klein agreed to pay for renderings that RTKL outsourced, or whether Klein's in-house staff would prepare the renderings. In doing so, the court found that RTKL sent written proposals to Klein on July 28 and July 29, 2004, both of which were never signed because they were unacceptable to Klein; that on July 30, 2004, Klein emailed RTKL stating that most of the terms of the proposal were acceptable except for reimbursable expenses, which he did not want to be charged for; that RTKL responded stating that it usually outsourced renderings because it was cheaper than preparing them in-house, and agreeing not to charge him for telephone or fax expenses; that Klein responded, "That is ok," and that *his* in-house staff could prepare renderings quickly, which was consistent with his trial testimony; and that thereafter, "the parties began working together without the benefit of a signed contract." Based on the evidence presented, which supports the court's finding that Klein's modified acceptance diverged from the terms of the counteroffer communicated to him by Mendes, we cannot conclude that the circuit court's judgment was against the manifest weight of the evidence. *Downs v. Rosenthal Collins Group, LLC*, 2011 IL App (1st) 090970, ¶ 50; see, *e.g.*, *Kay v.*

Prolix Packaging, Inc., 2013 IL App (1st) 112455, ¶ 55 (we defer to the trial court's factual findings unless they are against the manifest weight of the evidence).

¶ 34 Next, RTKL asserts that "[c]onspicuously, the Trial Court did not consider whether Mr. Klein's conduct constituted a ratification of and assent to be bound by the terms of the parties' Contract," and submits "that the Trial Court's failure to recognize that Mr. Klein's subsequent conduct constituted acceptance of the Contract was reversible error. This error is one of law, and this Court reviews it *de novo*." However, our function as an appellate court is to review circuit court rulings and judgments, and we will not address any question the circuit court failed to rule upon unless we are asked to decide if the refusal to do so was an abuse of judicial discretion, which is not the case here. *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 IL App (1st) 142754, ¶ 81 (citing *Board of Education of the City of Chicago v. Chicago Teachers Union, Local I*, 26 Ill. App. 3d 806, 813 (1975)).

¶ 35 Third, RTKL argued that the Bank of America prime rate should have been used to calculate prejudgment interest, but we have already decided that the award of prejudgment interest was error, so we need not consider this matter.

¶ 36 Finally, RTKL argues that the court erred in making certain deductions to RTKL's recover in *quantum meruit*. The circuit court deducted $11,028 because it found that RTKL agreed to this on April 25, and deducted $15,000 for hours unsupported by the evidence. Based on the evidence presented, we cannot conclude that the circuit court's deductions were against the manifest weight of the evidence.

¶ 37 CONCLUSION

¶ 38 For the reasons stated, we vacate the award of prejudgment interest[2] to RTKL and affirm the judgment of the circuit court of Cook County finding that no contract for architectural and interior design services existed between the parties and that RTKL sustained its burden of proof for a *quantum meruit* award of $158,287.71

¶ 39 Affirmed in part; vacated in part.

[2] Neither Klein, nor RTKL specify the specific dollar amount in prejudgment interest awarded to RTKL.