2016 IL App (1st) 152130-U

SIXTH DIVISION
November 18, 2016

No. 1-15-2130

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIMUCCI DEVELOPMENT CORPORATION OF CICERO II, Plaintiff and Counterdefendant-Appellant, v. AARON RENTS, INCORPORATED, and ARMCO, LLC, Defendants and Counterplaintiffs-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 10 CH 46095 Honorable Rita M. Novak, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court: (1) correctly found that a lease agreement was unambiguous as to the application of a property tax cap; (2) did not err in denying plaintiff leave to amend its pleadings; (3) properly granted summary judgment in favor of defendants on their counterclaim; and (4) properly denied the plaintiff's motion to reconsider. Affirmed.

¶ 2 Plaintiff DiMucci Development Corporation of Cicero II (DiMucci II), filed a complaint for declaratory judgment and an accounting against defendants Aaron Rents, Incorporated (Aaron Rents), and Armco, LLC (Armco). The dispute centered around defendants' obligation

to pay their *pro rata* share of real estate taxes under a commercial lease. Defendants counterclaimed, contending that they actually had overpaid real estate taxes during the lease term. The circuit court granted defendants' motion for summary judgment, finding that the lease was unambiguous and that defendants owed no real estate taxes to plaintiff. The court later denied plaintiff's motion for leave to amend its pleadings, granted summary judgment in favor of defendants on their counterclaim, and denied plaintiff's motion to reconsider.

¶ 3 On appeal, plaintiff contends that the trial court erred when it: (1) found the lease agreement unambiguous; (2) denied plaintiff leave to amend its pleadings; (3) awarded summary judgment in favor of defendants on their counterclaim; and (4) denied plaintiff's motion to reconsider, refusing to consider evidence as to assessed property taxes. We affirm.

¶ 4 BACKGROUND

¶ 5 Plaintiff owned and managed the Cicero Market Place (Phase II) shopping center. Phase III, a separate portion of the center parcel, was managed by DiMucci Company of Cicero III (DiMucci III). On August 22, 2003, defendant Armco entered into a 10-year commercial lease with DiMucci III. The lease provided that Armco would pay rent of $8,800 per month, as well as, *inter alia*, a proportionate share of real estate taxes, defined as "all real property taxes ***, which are assessed, against the [shopping center]."

¶ 6 The lease provided that the "Landlord" (DiMucci III) represented and warranted that it had no "independent current knowledge of any information" that would result in property taxes increasing by more than 10%. The lease also required DiMucci III to deliver to Armco any notice that "advise[d] of a change in the value at which the [property] will be assessed for the purpose of levying taxes." The lease also had a merger or integration clause, providing that it

was "the entire agreement" between DiMucci III and Armco, and that "no other matters or agreements between the parties, either oral or written, will be of any effect."

¶ 7 On July 7, 2004, plaintiff, DiMucci III, and Armco entered into an amendment of the lease. The landlord of the property was changed to DiMucci II (plaintiff), and Armco's proportionate share of taxes was modified. In relevant part, the amendment provided that the taxes would not exceed:

> "Four and 50/100 Dollars per square foot ($4.50 per sq. ft.) for the first lease year. Thereafter, and notwithstanding anything to the contrary contained in the Lease, any annual increases for Taxes shall not exceed 5% of the Tenant's prior year's proportionate share of Taxes."

Finally, the amendment provided that, "[e]xcept as specifically provided herein," all of the terms and provisions of the original lease were ratified and continued "in full force and effect."

¶ 8 On August 2, 2007, Armco assigned the amended lease to Aaron Rents.

¶ 9 The Declaratory Judgment Action

¶ 10 On October 21, 2010, plaintiff filed a complaint for declaratory judgment and accounting.[1] Plaintiff's declaratory judgment claim involved defendants' proportionate share of real estate taxes. In relevant part, plaintiff asserted that defendants failed to pay for real estate taxes, and plaintiff asked the trial court to establish the correct formula for the payment of taxes and base rent. Plaintiff claimed that defendants' share of 2003 taxes (payable in 2004) was $479.32, and the share of 2004 taxes was $552.82.

[1] The trial court later granted defendants' motion for summary judgment regarding the claim for an accounting. Plaintiff does not challenge that ruling here.

¶ 11 Defendants answered, denying the substance of plaintiff's claims and asserting a counterclaim. Defendants' counterclaim alleged that plaintiff breached the contract because plaintiff's calculation of defendants' proportionate share of taxes exceeded the tax cap specified in the lease amendment, and plaintiff failed to credit defendants for those alleged overpayments.

¶ 12 From May 2011 through August 2013, the parties conducted discovery. On June 9, 2011, defendants served their request for the production of documents, seeking in part "[a]ll tax bills for the real estate property taxes assessed against the Shopping Center." Plaintiff agreed to produce documents responsive to that request. Teresa DeJong, plaintiff's employee, testified during her deposition that defendants' proportionate share of property taxes were to be calculated based upon three property index numbers (PINs) that ended in "059," "060," and "061." DeJong also confirmed that there was no 2004 property tax bill payable in 2005. On June 25, 2013, Anthony DiMucci, president of plaintiff, stipulated during his deposition that he was aware that the property had not been fully assessed when the lease was amended. DiMucci, however, also asserted that the parties intended that defendants' *pro rata* share of property taxes should be based upon tax bills for the "fully improved" property.

¶ 13 Defendants' Motion for Summary Judgment

¶ 14 Defendants moved for summary judgment, arguing that the lease (as amended) unambiguously provided that, after the "first lease year," the increase in property taxes for any subsequent year was capped at no more than 5% of the prior year's taxes and that nothing in the lease abrogated that cap. Defendants thus argued that, since the 2004 taxes (payable in 2005) were $0, property taxes for subsequent years would also be $0.

¶ 15 Plaintiff responded, stating that it was "undisputed" that the property was being taxed as vacant, undeveloped land when the lease and the lease amendment were executed. Plaintiff

included as an exhibit a copy of the 2002 property tax bill (payable in 2003) with a cover sheet stating that the tax bill was based upon undeveloped land. Plaintiff, however, argued that the parties "clearly" intended that the cap would apply only after the shopping center was "fully assessed as improved property," rather than as vacant land.

¶ 16 On March 11, 2014, the trial court granted defendants' motion for summary judgment on plaintiff's complaint, but denied their motion for summary judgment on their counterclaim "for the reasons stated in open court." No transcript for this date appears in the record.

¶ 17 Plaintiff's Post-Summary Judgment Filings

¶ 18 On March 27, 2014, plaintiff filed a motion for leave to file an amended complaint seeking to add an additional cause of action for reformation, based upon mutual mistake of fact. Defendants responded that this new claim was not only untimely, but also prejudicial to them because litigating it would require substantial additional discovery and delay resolution of the case. On June 25, 2014, the trial court denied plaintiff's motion. Plaintiff then filed another motion, seeking leave to amend its answer to defendants' counterclaim to include mutual mistake of fact as an additional affirmative defense. The trial court denied this motion, as well.

¶ 19 On October 3, 2014, defendants filed an amended motion for partial summary judgment on their counterclaim seeking reimbursement for their alleged overpayment of taxes. Defendants noted that the parties agreed that there were no 2004 taxes payable in 2005. Relying on the summary judgment order which found that the tax cap applied when the amended lease was signed, defendants claimed that plaintiff owed them approximately $182,982. Plaintiff responded that the summary judgment order indicated that the cap on taxes "should be applied beginning in the first year of the Lease *** in which there were Taxes actually assessed against" the shopping center. Plaintiff further claimed that defendants' amended motion for partial

summary judgment should be denied because there was a material question of fact as to whether the amended lease "was the result of a mutual mistake of fact." Plaintiff also asked the court to reconsider the summary judgment order, arguing that the trial court's prior finding that the lease was unambiguous was erroneous.

¶ 20 The trial court granted defendants' motion on their counterclaim and later determined that plaintiff owed defendants $182,982.64. On April 9, 2015, plaintiff filed a motion to reconsider and vacate those orders. Plaintiff asked that the trial court's order be vacated "in order to take into account the Taxes assessed against the Shopping Center and paid by [plaintiff] *** under PIN [050]." Plaintiff conceded that "all parties" to the litigation mistakenly believed that the only PINs associated with the property were those with the numbers 059, 061, and 061.[2] Specifically, plaintiff noted that it had previously, albeit erroneously, agreed that there were no taxes assessed against the property in 2004 (payable in 2005), but in fact there were taxes assessed against the property in 2004 under PIN 050, which plaintiff noted had been assigned to the property for "tax years 1998-2004." Plaintiff argued that this information was newly discovered evidence warranting reconsideration of the earlier orders.

¶ 21 On July 1, 2015, the trial court denied plaintiff's motion to reconsider, finding that the PIN information was discoverable as a public record and that plaintiff had failed to both show that the information was unavailable and to explain why it could not have been discovered prior to the entry of the judgment. This appeal followed.

[2] The PINs are abbreviated for clarity. The full PINs are: 16-27-306-059-0000, 16-27-306-060-0000, and 16-27-306-061-0000. The alleged newly discovered PIN is 16-27-306-050-0000, but is abbreviated to 050.

¶ 22 ANALYSIS

¶ 23 Plaintiff raises four issues on appeal. Plaintiff first challenges the trial court's finding that the lease was unambiguous. Plaintiff's second contention of error is that, should we reject his first claim of error, the trial court abused its discretion in denying plaintiff's motion for leave to amend both (1) its complaint to add a count seeking reformation based upon mutual mistake of fact and (2) its answer to defendants' counterclaim that sought to add mutual mistake of fact as an affirmative defense. Next, plaintiff claims that the trial court erred in granting summary judgment in favor of defendants' counterclaim. Finally, plaintiff also complains in the alternative that, should we reject his first claim of error, the trial court erred in denying its motion to reconsider based upon purportedly newly discovered evidence, namely, the property taxes for PIN 050.

¶ 24 Whether the Lease was Ambiguous

¶ 25 Plaintiff challenges the trial court's granting of summary judgment in favor of defendants. It contends that the trial court erred in finding that the lease unambiguously provided that the tax cap applied immediately after the first lease year, rather than after the property was "fully assessed." Plaintiff argues that the trial court's "literal interpretation is untenable because it would frustrate the clear intent of the parties and lead to an absurd and unintended result." Plaintiff adds that we should reverse the trial court's judgment in order to do "substantial justice to the intent of the parties." Plaintiff also argues in the alternative that the tax cap provision in the amendment to the lease is ambiguous, and the trial court therefore erred in entering summary judgment on this point.

¶ 26 Summary judgment is appropriate "if 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 2014). To determine whether there is a genuine issue of material fact, we construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 131-32 (1992). However, unsupported conclusions, opinions, or speculation are insufficient to raise a genuine issue of material fact. *Id.* at 132. We review a trial court's entry of summary judgment *de novo*. *Id.* at 102. Moreover, this court reviews the judgment, not the reasoning, of the trial court, and we may affirm on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct. *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995).

¶ 27 "The rules for construing a lease are the same as the rules for construing any other contract." *Monroe Dearborn Ltd. Partnership v. Board of Education of the City of Chicago*, 271 Ill. App. 3d 457, 461-62 (1995) (citing *Midland Management Co. v. Helgason*, 158 Ill. 2d 98 (1994)). Our primary duty is to give effect to the parties' intent at the time they entered into the agreement, as shown by the language used in the contract. *Id.* at 462 (citing *In re Doyle*, 144 Ill. 2d 451 (1991)). Illinois courts follow the "four corners rule" for contract interpretation, which requires that we initially look to the language of the agreement. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462 (1999). If the language of the contract is facially unambiguous, then the contract is interpreted by the trial court as a matter of law without the use of parol evidence. *Id.* By contrast, if the agreement is ambiguous or reasonably capable of more than one interpretation, the court may consider parol evidence to ascertain the parties' intent. *Id.* at 462-63. Nonetheless, it is well established that a contractual term is not ambiguous simply because the parties disagree on its meaning. *Central Illinois Light Co. v. Home Insurance Co.*,

213 Ill. 2d 141, 153 (2004) (citing *Johnstowne Centre Partnership v. Chin*, 99 Ill. 2d 284, 288 (1983)). Whether there is an ambiguity in a contract is a question of law subject to *de novo* review. *Cincinnati Insurance Co. v. Gateway Construction Co.*, 372 Ill. App. 3d 148, 151 (2007) (citing *Nicor, Inc. v. Associated Electric & Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 416 (2006)).

¶ 28 A court may not modify the existing terms of a contract or add new terms or conditions to which the parties do not appear to have assented, nor can it write into the contract something which the parties have omitted, or take away something that the parties included. *Gallagher v. Lenart*, 367 Ill. App. 3d 293, 301 (2006). In addition, there is a presumption against reading provisions into a contract that could have been easily included in the contract but were not. *Id.* Where a contract purports on its face to be a complete expression of the entire agreement, courts may not add additional terms about which the agreement is silent. *Id.* at 301-02. And if a contract is the "unambiguous expression of the entire agreement," a court cannot add terms to the contract merely to achieve what may be a more equitable result (*Touhy v. Twentieth Century-Fox Film Corp.*, 69 Ill. App. 3d 508, 513 (1979)).

¶ 29 In this case, the trial court properly granted summary judgment in favor of defendants. The lease, as amended, unambiguously capped defendants' liability for their *pro rata* share of taxes to no more than $4.50 per square foot for the first lease year, and then limited subsequent increases in that liability to no more than 5% above the prior year's liability. At the hearing on defendants' motion for summary judgment, the parties agreed that the tax liability for the first lease year was $0. As such, defendants' *pro rata* share for subsequent years would also be $0. Plaintiff attempts to avoid this result by arguing that the provision was to begin only after the property was "fully assessed" because the lease defined taxes as "real property taxes ***

assessed[] against [*sic*] the Center." Setting aside the fact that the phrase does not use the term "fully-assessed" or "fully improved," there is nothing in the amended provision that would indicate that setting of the cap would be deferred until that time. In addition, the lease contained a provision that the lease constituted the entire agreement between the parties, and no other agreements would be of any effect. As noted above, where, as here, the agreement is clear that it is the entire agreement between the parties, we may not modify or add any contractual terms where there is no evidence that the parties agreed to them. *Gallagher*, 367 Ill. App. 3d at 301-02. Since the parties could have easily added a provision deferring the cap until the property was fully assessed, the presumption against reading that provision into the contract commands that we not do so. *Id.* at 301.

¶ 30 In addition, as defendants point out, the parties included language in the lease that required plaintiff to provide notice to defendants as to future increases in assessed value. Moreover, DiMucci (plaintiff's president) stipulated at his deposition that he was aware that, at the time of the amendment, the property was being taxed as vacant land. Clearly, plaintiff was aware of the likely increase in tax assessments, but his company (plaintiff) did not negotiate this likelihood into the lease amendment with defendants. On these facts, we cannot hold that the parties intended to delay application of the cap until the property was assessed as fully developed, and we may not redraft the contract in the absence of any evidence of an intent to do so. *Id.* at 301-02.

¶ 31 Plaintiff's argument that we must reverse the judgment of the trial court to prevent an absurd result (or to do "substantial justice") is also unavailing. The amended agreement was unambiguous that it was the entire agreement between the parties, and we will not revise any term or provision solely to provide "a more equitable result." *Touhy*, 69 Ill. App. 3d at 513.

Consequently, the trial court properly found that there was no genuine issue as to material fact regarding the tax cap provision in the amended lease, and it correctly granted summary judgment in favor of defendants. Since the provision at issue was unambiguous, plaintiff's claim in the alternative—that the provision was ambiguous and thus precluded summary judgment—necessarily fails.

¶ 32 Plaintiff's Motion for Leave to Amend Its Complaint

¶ 33 Since we have rejected plaintiff's contention that the trial court erred in finding the lease unambiguous, we must now consider its alternative arguments that the trial court abused its discretion in denying plaintiff leave to: (1) amend its complaint to add a count seeking reformation based upon mutual mistake of fact; and (2) amend its answer to defendant's counterclaim to raise mutual mistake of fact as an affirmative defense.

¶ 34 Section 2-616(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-616(a) (West 2016)) reads in pertinent part: "At any time before final judgment amendments may be allowed on just and reasonable terms, *** adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim." To determine whether to allow an amendment to the pleadings, a trial court considers the following factors: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992).

¶ 35 Although trial courts should liberally grant amendments, a party's right to amend is not "absolute and unlimited." *Freedberg v. Ohio National Insurance Co.*, 2012 IL App (1st) 110938, ¶ 41. A motion to amend that is merely "an attempt to evade an unfavorable summary judgment outcome should not be granted." *Id.* ¶ 44. In addition, a trial court may consider the timeliness of such a request. *Trans World Airlines, Inc. v. Martin Automatic, Inc.*, 215 Ill. App. 3d 622, 627 (1991). Notably, a motion to amend should be denied where "the matters asserted were known by the moving party at the time the original pleading was drafted and for which no excuse is offered in explanation of the initial failure." *Id.* at 627-28. The decision whether to allow a party's motion to amend its pleadings is within the trial court's sound discretion, and we may not disturb that decision absent a "manifest abuse of such discretion." *Loyola Academy*, 146 Ill. 2d at 273-74.

¶ 36 Here, the trial court did not abuse its discretion. It was not until after the court granted defendants' motion for summary judgment when plaintiff moved to amend by adding a new reformation claim based upon mutual mistake of fact. The reformation claim, however, was based upon the same operative facts as those in the original complaint filed nearly four years earlier. In addition, plaintiff candidly admitted at the hearing on its motion that it had only sought to add this claim following the trial court's ruling on defendants' motion for summary judgment. Plaintiff's motion was thus an obvious attempt to evade an adverse summary judgment ruling, and the trial court was well within its discretion to deny plaintiff's motion to amend. See *Freedberg*, 2012 IL App (1st) 110938 at ¶ 44.

¶ 37 Moreover, a cursory review of the *Loyola Academy* factors supports the trial court's decision. Although the proposed amendment would at least arguably have cured the defective pleading, a factor which favors plaintiff, that factor is far outweighed by the remaining factors.

Plaintiff unquestionably had previous opportunities to amend but refused to do so until after the trial court ruled against plaintiff on defendants' summary judgment motion. Similarly, the proposed amendment was not timely: plaintiff alleged no newly discovered evidence that would provide some justification for waiting nearly four years to add this new theory of relief. Finally, defendants correctly noted that they would suffer prejudice based upon the need for additional discovery related to the parties' negotiations of the amendment. On these facts, no reasonable argument can be made that the trial court committed a "manifest abuse of [its] discretion." See *Loyola Academy*, 146 Ill. 2d at 273-74. Accordingly, plaintiff's claim on this issue is without merit.

¶ 38 Summary Judgment on Defendants' Counterclaim

¶ 39 Plaintiff next contends that the trial court erroneously granted summary judgment to defendants on their counterclaim for damages resulting from the overpayment of their proportionate share of taxes. Plaintiff again contends there was a mutual mistake of fact as to the commencement of the tax cap, and it asserts there were genuine issues of material fact "concerning the affirmative defense of mutual mistake" precluding summary judgment.

¶ 40 We conclude that the trial court correctly granted summary judgment in favor of defendants on their counterclaim. Plaintiff admitted in its response to this motion that it was "undisputed" that defendants' *pro rata* share of property taxes assessed in 2004 (and payable in 2005) were $0. Applying the unambiguous language of the amended lease to this fact results in no property taxes due for later years in the lease. The amount at issue, $182,982.64, is undisputed. Plaintiff merely argues there was an issue of material fact as to whether there was a mutual mistake of fact, precluding summary judgment. Plaintiff relies on deposition testimony from DiMucci that the parties intended that defendants' *pro rata* share of property taxes be based

upon tax bills for the "fully improved" property. The record is bereft of any evidence indicating that defendants *also* had that intention.

¶ 41 DiMucci's testimony addressed whether the tax cap was to be delayed. But the court had already decided that point when it ruled on defendants' motion for summary judgment on plaintiff's complaint. Moreover, the integration clause within the lease plainly stated that the lease represented the parties' "entire agreement" and "no other matters or agreements between the parties, either oral or written, will be of any effect." The amendment to the lease did not change the validity of that clause; to the contrary, the amendment specifically stated that all terms and provisions of the original lease were ratified and continued in full force and effect. Since there were no genuine issues of material fact as to the amount of defendants' property tax overpayment, the trial court properly granted summary judgment in favor of defendants, and plaintiff's claim of error is unavailing.

¶ 42 Plaintiff's Motion to Reconsider

¶ 43 Finally, plaintiff argues, in the alternative, that should we hold that the lease is unambiguous with respect to defendants' tax liability, the trial court erred in denying plaintiff's motion to reconsider based upon "newly discovered" evidence in the form of an additional PIN that indicated increased 2005 property taxes (payable in 2006) for defendants.

¶ 44 The purpose of a motion to reconsider is to bring to the court's attention (1) newly discovered evidence that was unavailable at the time of the hearing, (2) changes in the law, or (3) errors in the court's previous application of existing law. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 133 (2008). Where, as here, the motion to reconsider is predicated upon newly discovered evidence, the moving party "essentially seeks a second bite at the apple, *i.e.*, requiring the trial court to determine whether it should admit these new matters into evidence and, in turn,

reconsider its decision based on them." (Internal quotation marks removed.) *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 71 (2008). It is well established that the submission of new evidence should not be allowed absent a "reasonable explanation of why it was not available at the time of the original hearing." *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 195 (1989). Moreover, absent "affirmative acts of deception," matters of public record serve as constructive notice. See *Ropiy v. Hernandez*, 363 Ill. App. 3d 47, 54-55 (2005) (quoting *De Kalb Bank v. Purdy*, 166 Ill. App. 3d 709, 725 (1988)). We review a trial court's denial of a motion to reconsider that was based on new matters for an abuse of discretion. *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006). A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would adopt the court's view. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 45 Here, the trial court did not abuse its discretion. The "new" evidence plaintiff offered was the existence of PIN 050, which was assigned to the property for tax years 1998 - 2004. The PIN was publicly available information, and therefore plaintiff had at least constructive notice of this information before it filed its initial complaint in October 2010, and well before defendants filed their motion for summary judgment in October 2013. *See Ropiy*, 363 Ill. App. 3d at 54-55. In addition, one month into the two-year discovery period, defendants served plaintiff with a request to produce all tax bills for property, which plaintiff agreed to provide. Therefore, the trial court did not abuse its discretion in denying plaintiff's motion to reconsider, and plaintiff's final claim of error is meritless.

¶ 46 CONCLUSION

¶ 47 To summarize, the circuit court correctly: (1) granted summary judgment based on its finding that the lease was unambiguous; (2) did not abuse its discretion in denying plaintiff's

motion for leave to amend its complaint to add a count seeking reformation based upon mutual mistake of fact and its answer to defendants' counterclaim to add mutual mistake of fact as an affirmative defense; (3) granted summary judgment to defendants on their counterclaim; and (4) properly denied defendants' motion to reconsider based upon newly discovered PIN 050.

¶ 48 Affirmed.