

No. 15-2183

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE CITY OF CHICAGO,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff/Counterdefendant-Appellee,	)	
	)	
v.	)	
	)	
MARSHALL KORSHAK, et al. (Police, Fire,	)	
Municipal, and Labor Funds Trustees)	)	No. 01 CH 4962
	)	
Defendants/Counterplaintiffs-Appellants	)	
	)	
and	)	
	)	
MARTIN RYAN, et al. (Participants Class)	)	Honorable Neil H. Cohen
	)	Judge Presiding
Intervening Plaintiffs-Appellants	)	

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Maureen E. Connors and Justice Sheldon A. Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred by striking defendants' motion to enforce a settlement agreement. The settlement was modified and the court had jurisdiction to enforce the modification. The City agreed to provide benefits to its retirees for the entire 2013 plan year and its assumed obligation imposed a duty to reconcile and to pay the amount it agreed to pay under the settlement agreement.

¶ 2 This appeal is taken from the trial court's ruling to strike a motion to enforce a settlement agreement. The City of Chicago agreed to settle a dispute with its retirees over their healthcare benefits. The settlement agreement was set to expire in June 2013, but the City sent a letter to its retirees agreeing to extend its obligations through the end of the year. The City failed to fulfill its obligations in their entirety and the retirees moved to enforce the agreement. The trial court found that, because the agreement by its own terms expired in June 2013 and because the City's actions did not constitute a modification of the original settlement agreement, it lacked jurisdiction. We reverse that ruling and remand the case to the circuit court with directions that it enter an order in favor of the retirees.

¶ 3

#### BACKGROUND

¶ 4 The issues in this case relate back to a case filed in 1987. The dispute concerns City of Chicago retirees and how their healthcare costs should be allocated between themselves and the City. In 1987, the City filed a complaint seeking what amounted to a judicial declaration of how the healthcare costs should be allocated. *City of Chicago v. Korshak*, No. 87 CH 10134 (Cir. Ct. Cook. Cty). The case went to trial, but, before any judgment on the merits was issued, the City and the trustees of the benefit funds entered into a settlement agreement. A class of individual retirees objected to the settlement and appealed. We affirmed, upholding the terms of the settlement. *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 975 (1990). The terms of that settlement were set to expire on December 31, 1997.

¶ 5 Before the expiration of the initial settlement period, the parties entered into a new agreement that extended their accord until June 30, 2002. Again, before that agreement expired, in April 2003, another settlement was reached to cover the period up to June 30, 2013. The April

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2003 agreement is paramount in this appeal.

¶ 6 In conjunction with the settlement agreement, the parties eventually entered into an audit and reconciliation agreement. This reconciliation agreement was reached in October 2008 after it was discovered that the individual retirees were paying a greater share of their healthcare costs than had been agreed upon. The estimates had not matched up with the actual costs so the City agreed to perform an audit each year and reimburse the fund members for their overpayments by computing the actual cost figures in accordance with the percentages stipulated in the settlement agreement. Over the life of the April 2003 agreement, the reconciliation reimbursements totaled more than \$50 million.

¶ 7 The April 2003 agreement created the Retiree Healthcare Benefits Commission. The commission was made up of experts in the field of healthcare economics. The commission convened and eventually concluded that it would be unsustainable to maintain the level of benefits in the April 2003 agreement once that agreement expired.

¶ 8 On May 15, 2013, a couple weeks before the April 2003 settlement terms were set to expire, the City, by its comptroller, indicated in a letter that the City would be extending the coverage and benefit levels until the end of the plan year—December 31, 2013. The City then did so, paying benefits for the remainder of 2013. The City followed the reconciliation agreement and reimbursed the fund members for the period up until June 30, 2013, but refused to reconcile and reimburse for the six-month period making up the second half of the plan year. That is the subject of this appeal.

¶ 9 On March 6, 2015, the retirees filed a motion to enforce the extended benefits under the settlement agreement. In the motion, the retirees ask the court to order the City to audit, reconcile,

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and reimburse the retirees for any overpayments made in the second half of 2013. The motion was brought under case No. 01 CH 4962, the case in which the circuit court entered judgment approving the April 2003 settlement agreement. The City responded, moving to strike the retirees' motion to enforce on the basis that the court lacked jurisdiction. The April 2003 agreement provided that once its terms were approved by the court, the case was to be dismissed with prejudice, but that the court "retain[ed] jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement" of the agreement. The City argued that because the retirees were seeking relief for a period from July through December 2013, they were seeking to modify the agreement, not enforce it. Thus, the City argued, the court could not entertain the retirees' motion and requested that it be stricken.

¶ 10 The trial court agreed with the City. It found that it only had jurisdiction to enforce the terms of the settlement agreement which expired on June 30, 2013. And, since the retirees were seeking relief for a period beyond that date, they were not entitled to do so by way of "reactivating" the No. 01 CH 4962 case which was dismissed with prejudice. The court opined that the retirees could potentially obtain the relief they seek by filing a new action, but that the court could not grant any relief in this dismissed case. Because the retirees were not seeking "enforcement of the actual terms of the Settlement Agreement," the retirees' motion to enforce was denied and the City's motion to strike was granted. The retirees appeal.

¶ 11

#### ANALYSIS

¶ 12 We review the trial court's decision to strike a motion *de novo*. *Filliung v. Adams*, 387 Ill. App. 3d 40, 50 (2008). The trial court's decision here required no exercise of discretion and the issues on appeal are purely questions of law, so *de novo* review is appropriate. *D. Mayer*

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*Landscaping v. Industrial Commission of Illinois*, 328 Ill. App. 3d 853, 857 (2002).

¶ 13 The City argues that the trial court correctly held that it lacked jurisdiction because the April 2003 settlement agreement expired. Accordingly, the city argues, the only thing the trial court could do is enforce the terms of the agreement up until its expiration date, but not amend or modify it. (citing *Director of Insurance ex rel. State v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 723 (2008)). The retirees' theory is that they are not asking the court to modify or amend the agreement. Instead, the retirees maintain that the City itself extended the agreement and they are seeking to enforce the City's modified obligation.

¶ 14 Any issue concerning the construction, interpretation, or legal effect of a contract is a question of law. *Daniel v. Ripoli*, 2015 IL App (1st) 122607, ¶ 65. The primary goal of contract interpretation is to give effect to the intent of the parties. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2014 IL App (1st) 111290, ¶ 75. The words of a contract derive their meaning from the context in which they are used. *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶ 40. A contract must be interpreted as a whole and the plain and ordinary meaning must be ascribed to unambiguous terms. *Palm*, 2014 IL App (1st) 111290, ¶ 75. When multiple agreements exist or when amendments and modifications are made, all parts of the agreement are to be considered in conjunction in order to determine the parties' intent. *Downers Grove Associates v. Red Robin International, Inc.*, 151 Ill. App. 3d 310, 318 (1986).

¶ 15 The City maintains that whatever it agreed to do and whatever obligations it took on, there was never an extension of the settlement agreement beyond June 30, 2013. The City's letter explains that "Under the Korshak (April 2003) Settlement Agreement, the City of Chicago agreed to provide support for annuitants through June 30, 2013" and establish a commission to make

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recommendations for the plan going forward. And, "After reviewing the findings of the report . . . the City has decided":

"1. The City will extend current coverage and benefit levels through December 31, 2013. This additional time will allow retirees to maintain coverage for a full plan year, recognizing what we heard from many retirees who have planned deductible and out of pocket expenditures based on an expectation of full year coverage. The City will, however, adjust the benefit levels provided under the current plan starting January 1, 2014.

2. After January 1, 2014, the City will provide a healthcare plan with continued contribution from the City of up to 55% of the cost for that plan for their lifetimes to the City retirees who are members of the Korshak (subclass) . . .

3. For all annuitants who retired on or after August 23, 1989, in light of the evolving landscape of national healthcare and challenges faced by Chicago taxpayers, the City will need to make changes to the current retiree healthcare plan. . ."

The letter from the City commits it to continue to provide coverage at the same levels as under the April 2003 agreement for the rest of the plan year. The City, however, argues that its "voluntary extension of benefits" did not "constitute an extension of the 2003 settlement agreement."

¶ 16 The City's letter expressly invokes the settlement agreement and commits the City to "extend current coverage and benefit levels through December 31, 2013," giving retirees

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"additional time" so that they "maintain coverage for a full plan year." The City suggests that it never said it would extend the *agreement*, only that it would extend the *benefit levels*. But that overexacting reading fails to give the commitment expressed in the letter a reasonable interpretation in light of the words used and their context. Moreover, the reading the City would have us ascribe to the letter ignores the nature and realities of the parties' relationship, failing to account for what both parties understood the commitment to mean along with what actually transpired.

¶ 17 In its letter, in light of the commission's suggestions, the City committed itself to "extend current coverage and benefit levels." Those are the essential terms of the settlement agreement being "extended." The reason for the extension was to give retirees "additional time" allowing them to "maintain coverage for a full plan year." The full "plan year" went to December 31, 2013, suggesting an unbroken continuation of the status quo. Not what the City proffers—some separate conferral of benefits—but *maintaining* what was in place until the end of the plan year.

¶ 18 The letter then explains that the City would "adjust the benefit levels provided under *the current plan* starting *January 1, 2014*." The letter also states that, beginning in 2014, "in light of the evolving landscape of national healthcare and challenges faced by Chicago taxpayers, the City will need to make changes to the *current retiree healthcare plan*." If the then-current plan ceased in June 2013, why would the City repeatedly state that it would start to make changes to that *plan* in 2014. The only reasonable interpretation is that it remained the operative plan.

¶ 19 The City also circulated literature that undercuts its position and shows that the parties' understanding at the time conflicts with the position the City now asserts. In a document titled

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"City of Chicago 2014 Retiree Healthcare Plan–Questions and Answers,"<sup>1</sup> the City explains that "In May 2013, the City of Chicago informed retirees that, in light of the evolving landscape of healthcare and because of the challenge facing Chicago taxpayers, changes to the City of Chicago's retiree healthcare benefits will be implemented on January 1, 2014." The only fair reading of that statement is that no changes were being contemplated or implemented until 2014 began. The rest of the document just reinforces the notion that no one contemplated anything to be different on June 29th than on December 30th. Because the City extended the agreement, the trial court had jurisdiction to enforce the terms of the April 2003 settlement agreement as modified.

¶ 20 If the City wanted the result it now suggests, it could have simply let the settlement agreement expire or it could have negotiated some new agreement. The City could have expressly stated that the letter was not an extension of the agreement or otherwise relinquished its obligations altogether. Instead, the city undertook to tell the retirees that it was unilaterally extending their coverage for another six months. Then the City proceeded to actually cover the retirees for that period. The real thrust of this case is that the City transparently wants to avoid its obligation to reconcile and reimburse the retirees for the likely windfall that the City received in the difference between actual and expected costs. Its position is that the extension of benefits did not incorporate any obligation to reconcile and pay the actual amount agreed under the original settlement agreement. That position is untenable.

¶ 21 The City contends that nothing in its letter shows an enforceable obligation to reconcile the estimated and actual costs for the period between July 1st and December 31, 2013, because that obligation ended on June 30, 2013. Perhaps the City is motivated to make this stand based on the

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<sup>1</sup> We may take judicial notice of easily verifiable public documents. *Muslim Community Center v. Village of Morton Grove*, 392 Ill. App. 3d 355, 359 (2009). The document is available at [http://ward32.org/wp-content/uploads/2013/10/Retiree\\_healthcare\\_fact\\_sheet\\_10.08.13.pdf](http://ward32.org/wp-content/uploads/2013/10/Retiree_healthcare_fact_sheet_10.08.13.pdf) (last visited September 9, 2016).



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fact that, without reconciliation, it would have paid out \$50 million less to the retirees over the life of the settlement agreement than was actually agreed upon. Regardless, since we have decided that the City did extend its obligations under the settlement agreement, its duty to reconcile and reimburse can hardly be questioned. The City agreed to maintain the same benefit levels and the record is replete with evidence that the only way to ensure the City actually paid what it agreed to pay under the settlement agreement is by performing an audit. The reconciliation obligations are merely a mechanism to ensure that the City carried out its primary obligation under the settlement—its obligation to pay its required share of defined costs.

¶ 22 The City contends that we should not arrive at this result because the City lacked authority to extend the settlement agreement. The City points to the settlement agreement itself which states that it "shall not be amended, modified or supplemented, nor shall any of its provisions be deemed waived, unless by written agreement signed by the respective attorneys for the Parties." However, the City's position ignores the realities presented in the case. First, the City, by its authorized officer, delivered to the retirees a written commitment to be bound through December 31, 2013. It is signed by the party to be charged. The City's letter is in absolute terms—that the City "will extend" current coverage levels through the end of the year. Second, the retirees acceded to the extension. They were induced to not take any action to seek a new settlement or any other relief and they accepted the benefits the City agreed to pay during the entire extension period without exception. Third, there was performance. The City acted on its agreement to pay and did in fact pay the benefits (although presumably not the right amount) for the second half of 2013. The City is estopped from arguing that it could not extend the terms of the agreement.

¶ 23 The City also argues that the retirees' counsel recognizes that the letter did not operate to

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extend the settlement period because class members were prohibited from asserting claims concerning healthcare benefits during the settlement period, yet counsel filed such a case in December 2013. If it is true that the retirees breached the settlement agreement by filing that other case, then the City is free to raise that affirmative matter in the other case or perhaps pursue a free-standing claim, but it has no bearing on whether the retirees are entitled to the benefits the City agreed to pay which the retirees seek here.

¶ 24 The City is attempting to get away with committing itself to one thing and then doing another, which the court cannot countenance. The City agreed to extend the retirees then-current coverage allowing them to maintain the same benefits until the end of the year. Now, it is saying that it agreed to pay benefits, but not those that the retirees had when they received the City's letter, but instead the benefits they had before the City acknowledged in a settlement that it was not paying its required share of defined costs. No reasonable argument can be made that the City did not obligate itself to pay benefits for the second half of 2013. We cannot give our judicial imprimatur to the City paying the wrong amount. All that the retirees seek is to audit what they were paid and make sure it complies with the percentage share that they contracted for—which they "maintained" for all of 2013. And that is what they are entitled to.

¶ 25 **CONCLUSION**

¶ 26 Accordingly, we reverse. The case is remanded to the circuit court with directions to enter an order requiring the City to audit, reconcile, and reimburse its retirees for the actual benefit costs for the period from July 1, 2013 to December 31, 2013.

¶ 27 Reversed. Remanded with directions.