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FIFTH DIVISION
June 16, 2017

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JACQUELINE BONDS-JOHNSON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 2015 L 010127
)	
GENESIS CONSTRUCTION AND CARPENTRY)	
SERVICES, INC., an Illinois Corporation,)	The Honorable
)	Brigid Mary McGrath,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Judgment on the pleadings was proper on plaintiff's breach of contract claim and defendant's breach of contract counterclaim where the language of the parties' amended contract clearly provided for payment once the contract was completed and defendant ceased providing the contracted services prior to the project's completion.

¶2 Defendant, Genesis Construction & Carpentry Services, Inc., appeals the order of the circuit court granting a motion for judgment on the pleadings in favor of plaintiff, Jacqueline Bonds-Johnson. In so doing, the circuit court found defendant was in breach of the parties'

contract. Defendant contends the circuit court erred in granting judgment on the pleadings where there were genuine issues of material fact as to whether it breached the parties' contract. Based on the following, we affirm.

¶3

FACTS

¶4 In December 2013, plaintiff's home was damaged by a fire. After interviewing a number of adjusters and construction companies to perform restoration services, plaintiff entered into a contract with a public adjuster. Plaintiff's insurance company, State Farm Fire and Casualty Company (State Farm), paid her mortgagee, CitiMortgage, Inc. (CitiMortgage), \$146,183.96 in the form of a check to be held in escrow for the restoration work. CitiMortgage paid the adjuster \$48,687.99 in April 2014; however, in July 2014, plaintiff cancelled her contract with the adjuster. Thereafter, plaintiff entered into a second contract with an individual to perform the restoration services; however, she canceled that contract in September 2014.

¶5 On October 4, 2014, plaintiff entered into a contract with defendant to perform the restoration and rehabilitation services on her property. The contract price was \$172,000.00. The October 2014 contract, drafted by defendant, detailed the scope of work to be performed by defendant. In addition, the contract provided that "[i]n consideration of the covenants and agreements contained herein, the Owner agrees to pay the Contractor the sum of **One Hundred Seventy Two Thousand dollars (\$172,000.00) to be paid upon completion of services.**" (Emphasis in original). The contract also provided that "[t]he Contractor shall commence work hereunder after notice to proceed. Contractor shall diligently prosecute said work to completion based upon agreed schedule." Moreover, the contract stated, "[t]he completed work is subject to inspection and approval by the owner or its authorized representative(s)." On October 10, 2014, plaintiff personally executed a cashier's check to defendant in the amount of \$10,000.00.

¶6 On November 10, 2014, following further inspection of the property and assessment of the necessary work involved in the project, the parties entered into an amended contract for the sum of \$206,000.00. The amended contract, drafted by defendant, provided that “[i]n consideration of the covenants and agreements contained herein, the Owner agrees to pay the Contractor the sum of **Two- Hundred-Six-Thousand dollars (\$206,000.00) to be paid upon completion of services.**” (Emphasis in original). Again, the amended contract also provided that “[t]he Contractor shall commence work hereunder after notice to proceed. Contractor shall diligently prosecute said work to completion based upon agreed schedule.” Moreover, the amended contract stated “[t]he completed work is subject to inspection and approval by the owner or its authorized representative(s).”

¶7 On November 21, 2014, CitiMortgage issued a check to defendant in the amount of \$40,483.61. On February 16, 2015, CitiMortgage issued another check to defendant in the amount of \$24,363.99. Then, on March 16, 2015, president of defendant company wrote a letter to plaintiff notifying her that additional work was required for the project and that the contract price would increase \$43,350.00 in order to perform said work. The following day, defendant offered to continue previous repairs and to initiate new repairs for an upfront payment of \$30,000.00. Defendant, however, ultimately filed a claim for a mechanic’s lien against plaintiff on March 26, 2015, alleging plaintiff owed defendant \$59,053.00 for services rendered.

¶8 Plaintiff responded on October 5, 2015, by filing the underlying complaint. In her complaint, plaintiff alleged, in relevant part, that defendant breached the parties’ contract by failing to substantially perform its obligations under the amended contract despite plaintiff’s performance of all the conditions of the contract. Plaintiff noted that she had caused defendant to receive \$74,847.60 in advance payments. Plaintiff requested \$60,000.00 in damages as a result of

the breach, which was the amount she was forced to pay other contractors to complete the rehabilitation project. Plaintiff additionally alleged the following claims: (1) consumer fraud; (2) home repair fraud; (3) aggravated home repair fraud; (4) common law fraud; (5) release of defendant's mechanic's lien; and (6) slander of title.

¶9 Defendant filed an answer to the complaint and asserted two affirmative defenses, substantial performance and estoppel. In its substantial performance affirmative defense, defendant argued that it fully performed under the contract. Defendant alleged "[i]n accordance with the terms of the Contract and industry custom, [it] completed the work in various phases." Defendant further alleged that each phase was completed and inspected by the relevant inspectors, after which time it received partial payment for satisfactory completion "pursuant to the terms of [the] Contract." Defendant stated that it had completed at least 65% of the work contracted for, yet plaintiff failed to compensate defendant for that work. Defendant alleged that, but for plaintiff's failure to comply with the terms of the contract, it would have completed the work as intended. Defendant also filed three counterclaims: breach of contract, common law fraud, and foreclosure of its mechanic's lien. In its breach of contract counterclaim, defendant again alleged that it completed work in phases, which triggered an inspection of the work performed and a partial payment once the phase was deemed satisfactorily completed pursuant to the terms of the amended contract. Defendant argued that plaintiff breached the amended agreement by refusing to continue making partial payments.

¶10 Plaintiff then filed a motion for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2016)). In the motion, plaintiff requested judgment on the pleadings as to her breach of contract claim, her release of mechanic's lien claim, and her slander of title claim, as well as on defendant's counterclaims. With regard to

her breach of contract claim and defendant's breach of contract counterclaim, plaintiff argued that defendant's affirmative defenses did not defeat her claim. Plaintiff alleged that the parties' contract contained an unambiguous provision stating defendant was to be paid "upon completion of services." Plaintiff argued that the contract did not provide a schedule for completion of services nor for submission of invoices. According to plaintiff, she authorized the prepayments "as a gesture of good will and because of improper demands by [d]efendant." Where defendant admittedly performed only 65% of the total work required under the contract, plaintiff argued that defendant was in breach of the agreement.

¶11 On August 24, 2016, following a hearing on plaintiff's motion, the circuit court concluded that defendant breached the parties' contract. In so doing, the court found the parties' contract was unambiguous, in that plaintiff was not required to pay defendant until the restoration and rehabilitation services were completed, and defendant had not yet completed those services. The court additionally found plaintiff did not waive any terms of the contract by voluntarily making three prepayments to defendant. Finally, the court agreed to language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), such that there was no just reason to delay the enforcement or appeal of the order. The court memorialized its findings in an August 24, 2016, written order entering judgment on the pleadings only as to plaintiff's breach of contract claim and defendant's breach of contract counterclaim. This appeal followed.

¶12

ANALYSIS

¶13 Defendant contends the circuit court erred in granting judgment on the pleadings in favor of plaintiff. According to defendant, there were genuine issues of material fact preventing entry of judgment on the pleadings where the parties disagreed as to when payment was due under the contract.

¶14 Judgment on the pleadings is appropriate where the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). When considering a motion for judgment on the pleadings, the court must consider only those facts apparent from the face of the pleadings, matters subject to judicial notice, and judicial admissions in the record. *Id.* A party moving for judgment on the pleadings pursuant to section 2-615(e) of the Code concedes the truth of the well-pled facts in the respondent's pleadings. *Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 442 (2010). "The court deciding the motion must take all reasonable inference from those facts as true, disregard all conclusory allegations and surplusage and construe the evidence strictly against the movant." *Id.* We review a circuit court's decision granting judgment on the pleadings *de novo*. *Id.* *De novo* consideration means the reviewing court performs the same analysis that a trial judge would perform independent of the trial court's decision. *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 20.

¶15 Defendant argues that breach of contract is a question of fact improperly ruled upon by the circuit court at this stage of the proceedings. Defendant additionally argues that, in making its ruling, the circuit court failed to consider all of the pleadings and exhibits attached thereto. According to defendant, the pleadings and exhibits demonstrate there was an issue of fact as to whether it substantially performed under the parties' contract. Defendant maintains that it met its obligations under the contract and plaintiff was in breach because she failed to provide payment in phases of completion of the project per the parties' agreement.

¶16 Defendant's arguments focus on whether the parties' contract was substantially performed, which, we agree, is a question of fact. See *W.E. Erickson Construction, Inc. v. Congress-Kenilworth Corp.*, 132 Ill. App. 3d 260, 264 (1985). This court, however, must first

determine what the parties agreed to in the amended contract. “When an agreement between two parties is reduced to a written contract, that writing is presumed to reflect the intention of the parties.” *Doornbos Heating & Air Conditioning, Inc. v. James D. Schlenker, M.D., S.C.*, 403 Ill. App. 3d 468, (2010). When construing a contract, the court’s primary objective is to ascertain and give effect to the intent of the parties by applying the language of the agreement as written. *Id.* If the contract is unambiguous, the parties’ intent must be construed based on the plain and ordinary meaning of the writing itself. *Id.* A contract term or provision is considered ambiguous only if, due to the indefiniteness of the language, it can be subject to multiple interpretations. *Id.* Extrinsic evidence may be used by the court to resolve an uncertainty if a contract is deemed ambiguous. *Id.* The interpretation of a contract is a question of law. *Id.*

¶17 The relevant provisions in the parties’ amended contract outlined defendant’s scope of work and provided that “[i]n consideration of the covenants and agreements contained herein, the Owner agrees to pay the Contractor the sum of **Two- Hundred-Six-Thousand dollars (\$206,000.00) to be paid upon completion of services.**” (Emphasis in original). The amended contract also provided that “[t]he Contractor shall commence work hereunder after notice to proceed. Contractor shall diligently prosecute said work to completion based upon agreed schedule.” In addition, the amended contract stated “[t]he completed work is subject to inspection and approval by the owner or its authorized representative(s).”

¶18 The plain language of the parties’ amended contract established that payment was due upon completion of services. There was nothing in the language of the amended contract tying payment to an agreed schedule. Considering all of the pleadings and exhibits in favor of defendant, there were no well-pled facts demonstrating the parties had agreed to payments on a scheduled basis. See *Gillen*, 215 Ill. 2d at 385; *Meseljevic*, 406 Ill. App. 3d at 442. In fact, there

was no evidence of an agreed schedule of any type. Defendant's insistence that the parties agreed to payment in phases is conclusory and unsupported by the pleadings. We acknowledge that defendant's answer and counterclaim alleged the contract supported its position that the parties agreed to partial payments after the completion of a phase of work; however, there was nothing on the face of the amended contract or within the pleadings to support that allegation.

¶19 If there was any ambiguity in the contract, it was with regard to the "agreed schedule" in terms of when the work was to be completed. The parties' disagreement, however, did not involve the timing of the completion of the actual work according to the undefined "agreed schedule;" rather, the parties' disagreement involved the timing of the payments for defendant's uncompleted work. More specifically, plaintiff did not refuse to pay defendant for the completed project because it was overdue; instead, plaintiff refused to pay defendant because the project was not completed. Contrary to defendant's argument, the amended contract provision stating that the completed work was subject to inspection lends nothing to its argument that inspections would be made upon a schedule and that payment would be made following satisfactory inspections. Again, there was nothing in pleadings or exhibits to support defendant's conclusory allegation. As a result, based on the language of the amended contract and defendant's admission in its affirmative defenses and counterclaim that the work was only 65% completed, we find defendant was in breach of the parties' agreement by failing to complete the services described in the amended contract. There was nothing in the pleadings to support a finding that plaintiff's three prepayments amended the language of the parties' written agreement. We, therefore, conclude that judgment was proper on the pleadings as to plaintiff's breach of contract claim and defendant's breach of contract counterclaim.

¶20

CONCLUSION

¶21 We affirm the judgment of the circuit court entering judgment on the pleadings as to plaintiff's breach of contract claim and defendant's breach of contract counterclaim.

¶22 Affirmed.