

Nos. 1-17-1321 & 1-17-2340 (cons.)

**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).

---

IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

AIDAN DEVELOPMENT CORPORATION, an Illinois corporation,	)	Appeal from the Circuit Court of Cook County,
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16 L 007810
	)	
KSA GRAND VENTURES LLC, an Illinois limited liability company,	)	Honorable
	)	Patrick J. Sherlock,
Defendant-Appellant.	)	Judge Presiding.
	)	

---

JUSTICE MIKVA delivered the judgment of the court.  
Presiding Justice Pierce and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly granted summary judgment in favor of plaintiff where the defendant failed to provide the disclosures required by the Residential Real Property Disclosure Act. The circuit court erred in awarding plaintiff attorney fees and costs where the defendant did not willfully violate the Act.

¶ 2 Plaintiff Aidan Development Corporation and defendant KSA Grand Ventures LLC were both parties to a sales contract for two parcels of land, each with a building on it. Aidan terminated the contract before the sale was completed, citing as its reason KSA’s failure to provide the disclosures required by the Residential Real Property Disclosure Act (Disclosure Act

Nos. 1-17-1321 & 1-17-2340 (cons.)

or Act) (765 ILCS 77/1 *et seq.* (West 2014)). The circuit court agreed and, on Aidan's motion, entered summary judgment in favor of Aidan. The court also awarded Aidan certain requested attorney fees and costs pursuant to the Act. In these consolidated appeals, KSA argues that (1) the circuit court erred in granting summary judgment for Aidan because the Disclosure Act did not apply to the parties' contract; and (2) Aidan was not entitled to attorney fees or costs under the Act. For the following reasons, we affirm the circuit court's grant of summary judgment but reverse its award of attorney fees and costs.

¶ 3 I. BACKGROUND

¶ 4 A. The Undisputed Facts

¶ 5 The following facts were uncontested on the motion for summary judgment.

¶ 6 On April 29, 2016, the parties entered into a contract, with Aidan as the buyer and KSA as the seller, for the purchase of two buildings and the land on which they were built located at 800 West Altgeld Avenue (the 800 building) and 802 West Altgeld Avenue (the 802 building) in Chicago, Illinois. The contract, which is part of the record on appeal, provided that it was for the purchase of "the real estate and improvements located at 800-802 W Altgeld, Chicago, IL, 60614." It was not disputed that these were two separate buildings, and assigned two separate Property Index Numbers (PINs) for purposes of real estate taxation. The purchase price for these two buildings was \$1.88 million. Pursuant to the contract, Aidan tendered an earnest money deposit of \$90,000 to KSA's real estate broker.

¶ 7 On June 17, 2016, Aidan sent KSA written notice that it was terminating the agreement because KSA had failed to provide the disclosures required by the Disclosure Act.

¶ 8

B. Procedural History

¶ 9 Aidan filed its initial complaint against KSA on August 5, 2016, alleging a single count of breach of contract. On November 14, 2016, Aidan filed a motion for summary judgment. In that motion, Aidan argued that the parties had contracted “for the sale of two buildings—800 W. Altgeld, Chicago, Illinois, having PIN: 14-29-420-049-0000,” which had a total of three—two legal and one illegal—residential dwelling units, “and 802 W. Altgeld, Chicago, Illinois, having PIN: 29-420-048-0000,” which had two residential dwelling units. Aidan alleged that the two buildings were “separate in all respects” from each other. Aidan argued that, as such, each property qualified as “residential real property” under the Disclosure Act—defined by section 5 of the Act as “real property improved with not less than one nor more than 4 residential dwelling units” (765 ILCS 77/5 (West 2014))—and KSA should have provided the disclosures required by section 20 of the Disclosure Act (765 ILCS 77/20 (West 2014)). Alternatively, Aidan argued that even together the properties only contained four residential dwelling units since one of the units in the 800 building was not a legal dwelling unit. In either case, because KSA failed to provide the disclosures, Aidan was entitled to terminate the contract under section 55 of the Disclosure Act (765 ILCS 77/55 (West 2014)). And, therefore, KSA’s refusal to return Aidan’s earnest money was a breach of the parties’ contract.

¶ 10 KSA responded to Aidan’s motion, arguing that the parties’ contract defined the property being sold “as a single parcel, not multiple parcels,” and therefore the parcel contained five residential dwelling units and was not subject to the Act’s disclosure requirements. In the alternative, KSA disputed that the 800 building had an illegal residential dwelling unit, and argued that the motion should be denied due to this disputed issue of material fact.

Nos. 1-17-1321 & 1-17-2340 (cons.)

¶ 11 On January 30, 2017, the circuit court granted summary judgment in favor of Aidan and ordered KSA to direct the release of the earnest money. The court found that the two buildings included in the transaction were on separate and distinct properties—relying, in part, on each property having a separate PIN—and that KSA could not “aggregate the number of dwellings [on the properties] to thwart the requirements of the Act.” Because each property had less than four residential units on it, the court held that KSA violated the Disclosure Act by failing to provide Aidan with the required disclosures and, as such, Aidan properly terminated the contract under the Act.

¶ 12 KSA filed a motion to reconsider the circuit court’s judgment, arguing that the circuit court had erred in its application of existing law and that the court’s order was “inconsistent with the common understanding of the phrase ‘real property,’ [wa]s inconsistent with the rules of interpretation for the contract at issue, and [wa]s inconsistent with our legislature’s definitions and limits in other statutes.” KSA supported its arguments with several dictionary definitions of the phrase “real property” and the handling of the terms “property” and “real property” in other Illinois statutes. The circuit court denied KSA’s motion to reconsider on May 8, 2017.

¶ 13 Aidan filed a motion for attorney fees and costs pursuant to section 55 of the Disclosure Act (765 ILCS 77/55 (West 2014)). Aidan argued that it was entitled to costs because the court found that KSA breached its duty under the Act by failing to provide disclosures. Aidan also argued that the circuit court should grant it attorney fees because KSA “unnecessarily delayed the return” of the earnest money to Aidan “based solely on its baseless positions that the Act did not apply to the transaction at issue” and, in addition, filed a “baseless Motion to Reconsider in an attempt to further delay refunding the earnest money as ordered by the Court.” Aidan

Nos. 1-17-1321 & 1-17-2340 (cons.)

requested \$649 in costs and \$23,100 in attorney fees.

¶ 14 In response, KSA argued that Aidan was not entitled to fees or costs because Aidan had failed to show that KSA knowingly violated its duties under the Disclosure Act.

¶ 15 The circuit court granted Aidan’s motion in part and denied it in part on September 19, 2017. First, the court explained that it was denying the order with respect to the time “attributable to the initial filing of the case and motion for summary judgment” because, although it “did not find the case was particularly novel or complicated, the question of whether the [Disclosure] Act was applicable to the real estate transaction at issue was a legitimate issue for litigation.” But the court also found that KSA’s motion to reconsider was “not ‘well grounded in fact.’ ” The court stated, “Defendant presented the motion (which was nothing more than a regurgitation of its same old arguments), forcing the plaintiff to respond to said motion, then failed to reply or even appear for the hearing in support of its own motion.” The court granted Aidan’s request for \$649 in costs, and granted \$5000 in attorney fees.

¶ 16

## II. JURISDICTION

¶ 17 On May 24, 2017, KSA timely filed a notice of appeal from the circuit court’s January 30 grant of summary judgment in favor of Aidan and the court’s May 8 denial of the motion to reconsider. On September 22, 2017, KSA timely filed a notice of appeal from the circuit court’s September 19 grant of attorney fees. Although initially filed as separate appeals, this court granted KSA’s motion to consolidate the appeals on November 2, 2017. This court has jurisdiction over this consolidated appeal pursuant to Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. Jan. 1, 2015).

Nos. 1-17-1321 & 1-17-2340 (cons.)

¶ 18

### III. ANALYSIS

¶ 19

#### A. Standards of Review

¶ 20 On appeal, KSA contends that the circuit court erred by granting summary judgment in favor of Aidan, by denying KSA's motion to reconsider that grant of summary judgment, and by awarding Aidan attorney fees and costs.

¶ 21 "Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). "A circuit court's ruling on a motion for summary judgment is reviewed *de novo*." *Pekin Insurance Co. v. Centex Homes*, 2017 IL App (1st) 153601, ¶ 18 (citing *A.B.A.T.E. of Illinois, Inc. v. Quinn*, 2011 IL 110611, ¶ 22). Summary judgment in this case turned on the interpretation of the term "residential real property" as used in the Disclosure Act. Questions of statutory interpretation are also reviewed *de novo*. *Wolf v. Toolie*, 2014 IL App (1st) 132243, ¶ 21.

¶ 22

#### B. Defining "Residential Real Property" as Used in the Disclosure Act

¶ 23 The Disclosure Act provides that "[a] seller of residential real property shall" provide certain disclosures to the buyer of the property. 765 ILCS 77/20 (West 2014). The Act defines "residential real property" as "real property improved with not less than one nor more than 4 residential dwelling units[.]" 765 ILCS 77/5 (West 2014). "If the seller fails or refuses to provide the disclosure document prior to the conveyance of the residential real property, the buyer shall have the right to terminate the contract." 765 ILCS 77/55 (West 2014).

¶ 24

The parties agree that the term "residential real property" is unambiguous. But KSA argues that the two parcels of land were being sold as one "property" under the contract and that

Nos. 1-17-1321 & 1-17-2340 (cons.)

because that single property was improved with a total of five residential dwelling units, it was excluded from the provisions of the Act, and KSA was not required to provide any disclosures to Aidan. Aidan, in contrast, argues that the two parcels were each individual properties, one with three units and one with two units, and that, although the two parcels were being sold together, KSA was required to provide disclosures for each. This case thus requires us to interpret the meaning of “residential real property” as it is used in the Disclosure Act.

¶ 25 “The cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the legislature.” *Wolf*, 2014 IL App (1st) 132243, ¶ 21 (quoting *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006)). The best indicator of that intent is the language of the statute and thus, if the language is unambiguous, it must be given its “plain and ordinary meaning” and “given effect without the use of other aids of construction.” *Id.*

¶ 26 Although the statute provides a definition of “residential real property,” that definition uses, but does not define, the term “property.” When a term is undefined by a statute it “must be given its ordinary and popularly understood meaning.” *Gruszczka v. Illinois Workers Compensation Commission*, 2013 IL 114212, ¶ 12. “It is entirely appropriate to employ the dictionary as a resource to ascertain the meaning of undefined terms.” *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 243 (2005); see also *People v. Hill*, 409 Ill. App. 3d 451, 454 (2011) (“The ordinary and popularly understood meaning of a word may be determined by utilizing the dictionary definition.”).

¶ 27 “Property” is defined as “something owned or possessed; *specifically*: a piece of real estate.” (Emphasis in original.) Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/property> (last visited March 12, 2018). We believe this is the ordinary and popularly

Nos. 1-17-1321 & 1-17-2340 (cons.)

understood meaning of “property”—a *piece* of real estate. As applied to the Disclosure Act, each piece of real estate thus qualifies as a separate residential real property. In this case, then, the two parcels of land at issue—which each had an individual address and PIN, and which had no overarching collective nature to make them a single piece of real estate—each qualify as a separate property. The ordinary meaning of “property” simply does not encompass two buildings that are next to each other and happen to be sold together. Therefore, the circuit court properly found that the parties’ contract fell under the Act, despite that the two pieces of real estate combined had five residential dwelling units.

¶ 28 In its appellate brief, KSA provides several different definitions of the term “real property” from various dictionaries, but we do not find these definitions helpful. As Aidan points out, these definitions of “real property” “distinguish [real property] from other property such as personal property.” See, *e.g.*, Black’s Law Dictionary (8th Ed. 2004) (defining “real property” as “Land and anything growing on, attached to, or erected on it, excluding anything that may be severed from the land without injury to the land.”). Moreover, these definitions offer no support for KSA’s argument that “residential real property” must encompass the aggregate of multiple parcels of land in a real estate contract.

¶ 29 KSA also points to the definition of “property” in other Illinois statutes where that term includes multiple buildings on the property. See, *e.g.*, 35 ILCS 200/1-130 (West 2014) (the Illinois Property Tax Code defining property as “the land itself, with all things contained therein, and also all buildings, structures and improvements \*\*\*”); 775 ILCS 5/3-101 (West 2014) (the Illinois Human Rights Act defining “real property” as “includ[ing] buildings, structures, real estate, lands, tenements, leaseholds, interest in real estate cooperatives, condominiums, and



Nos. 1-17-1321 & 1-17-2340 (cons.)

hereditaments, corporeal and incorporeal, or any interest therein”). KSA fails to explain how these statutory definitions of property in other contexts support its theory that “residential real property” under the Act requires the aggregation of multiple buildings when those buildings simply happen to be sold together.

¶ 30 KSA also argues that we should not rely on the fact that these two buildings had separate PINs. KSA notes that the tax code defines “Property Index Number or Permanent Index Number; PIN” as “A number used to identify a parcel of property for assessment and taxation purposes.” 35 ILCS 200/1-120 (West 2014). KSA submits that the Disclosure Act has nothing to do with assessment or taxation and does not use the word “parcel.” All of that is quite true. But the fact that these two buildings had separate PINs is just one of the indicia that they are, in fact, separate pieces of “real property improved with not less than one nor more than 4 residential units” (765 ILCS 77/5 (West 2014)), and that they should be subject to the Disclosure Act regardless of the fact that they were sold as part of one real estate transaction.

¶ 31 KSA argues that the legislature intended the key to the definition of “residential real property” to be the total number of residential dwelling units being purchased, because when the buyer is “purchasing five or more ‘residential dwelling units,’ the legislature assumed that the purchaser is sophisticated enough to not need the protection of the Act.” KSA does not cite any support for this assertion of legislative intent. If the legislature wanted to limit the disclosure obligations under the Act to any and all sales in which the aggregate number of residential dwelling units sold under the contract happened to be four or less, it could have easily said so. “We will not read into a statute language which is clearly not there.” *Wyness v. Armstrong World Industries, Inc.*, 131 Ill. 2d 403, 416 (1989).

Nos. 1-17-1321 & 1-17-2340 (cons.)

¶ 32 KSA's contention that the "indivisible nature of the Contract" requires the parcels of land to be treated as a single "residential real property" is also not persuasive. Selling two properties under one contract does not erase the distinct characteristics of each property: each property retains a separate address, a separate PIN, and separate buildings. While there may be real estate contracts in which the residential dwelling units sold are, in fact, part of one property such that it makes sense to aggregate them, that is not the case here.

¶ 33 Because we conclude the Disclosure Act did apply to the sale of the 800 and 802 buildings, the circuit court did not err in granting summary judgment in favor of Aidan. And, for the same reasons, the circuit court did not abuse its discretion in denying KSA's motion to reconsider.

¶ 34 C. Attorney Fees and Costs

¶ 35 KSA next contends that the circuit court erred in awarding Aidan attorney fees and costs under the Disclosure Act. KSA argues that, in order to recover attorney fees and costs, Aidan was required, and failed, to prove that KSA knowingly violated the Act.

¶ 36 Aidan acknowledges that when seeking attorney fees under the Act, the prevailing party "is required to show knowing misconduct on the part of the offending party." But Aidan further argues that Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) may be used as a guideline for awarding attorney fees under the Act and that the court properly awarded attorney fees and costs under that guideline because it found that KSA's "arguments and litigation tactics in pursuing its Motion to Reconsider were objectively unreasonable and demonstrate [KSA's] knowing misconduct."

¶ 37 The circuit court's order indicates that it awarded attorney fees and costs to Aidan for the

Nos. 1-17-1321 & 1-17-2340 (cons.)

motion to reconsider because it found that motion was “not ‘well grounded in fact.’ ” The circuit court took issue with KSA’s actions in pursuing its motion to reconsider. Specifically, the court pointed to KSA’s failure to file a reply brief in support of its motion and its failure to appear at the motion hearing.

¶ 38 Section 55 of the Act provides: “A person who knowingly violates or fails to perform any duty prescribed by any provision of this act \*\*\* shall be liable in the amount of actual damages and court costs, and the court may award reasonable attorney fees incurred by the prevailing party.” For a plaintiff—as the buyer—to recover fees or costs under section 55, it first “must show knowing misconduct on the part of defendant.” *Miller v. Bizzell*, 311 Ill. App. 3d 971, 976 (2000). In other words, the buyer cannot recover unless the seller knowingly violated the Act.

¶ 39 Here, Aidan prevailed on its claim because the court found that KSA was not entitled to aggregate two separate parcels of property to avoid the Disclosure Act’s disclosure requirements. And in its order granting Aidan’s motion for fees, the circuit court stated that “the question of whether the Act was applicable to the real estate transaction at issue was a legitimate issue for litigation.” It is clear from the court’s orders in this case that the court never found that KSA knowingly violated the Act. Instead, the court granted Aidan’s motion for fees with respect to the motion to reconsider because it found that motion was not well-grounded in fact. This was not an appropriate ground by which the court was entitled to award costs or attorney fees to Aidan under the Act. Because Aidan did not show, and the court did not find, that KSA knowingly violated the Act, we find that the court erred in awarding Aidan attorney fees and costs under the Act as a matter of law. We thus reverse the court’s award of attorney fees and costs to Aidan, pursuant to the Act.

Nos. 1-17-1321 & 1-17-2340 (cons.)

¶ 40 We note, however, that this holding does not affect whether Aidan would be entitled to court costs pursuant to section 5-108 of the Code of Civil Procedure (735 ILCS 5/5-108 (West 2014)), or any other applicable statute.

¶ 41 **IV. CONCLUSION**

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court as to the grant of summary judgment in favor of Aidan, but reverse its award of attorney fees and costs to Aidan.

¶ 43 Affirmed in part; reversed in part.