2018 IL App (1st) 171977-U

No. 1-17-1977

Third Division
March 28, 2018

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 DISTRICT

GEORGE FAYCURRY, Plaintiff and Counterdefendant-Appellant, v. INLAND BANK AND TRUST, Defendant and Counterplaintiff-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 15 L 10816 Honorable Thomas R. Mulroy, Judge, presiding.
INLAND BANK AND TRUST, Third-Party Plaintiff-Appellee, v. CHICAGO TITLE LAND TRUST COMPANY, as Trustee, Third-Party Defendant-Appellant.	)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Howse concurred in the judgment.

O R D E R

¶ 1 *Held*: Plaintiff failed to prove his right to receive the rent income derived from his foreclosed property where he did not possess the property during settlement negotiations. Plaintiff also failed to prove his right to the residual receiver's operating fund where the settlement agreement released his claims to these funds. Trial court did not err in considering extrinsic evidence to determine scope of release.

¶ 2 Plaintiff George Faycurry alleged that defendant Inland Bank and Trust (Inland) converted funds owed to Faycurry under the parties' settlement agreement. Additionally, Faycurry contends Inland was unjustly enriched when it received these same funds. In response, Inland brought counterclaims against Faycurry and third-party defendant Chicago Title Land Trust Company, acting as Trustee (Chicago Title), seeking specific performance, rescission of the settlement, or a set-off. Faycurry now appeals from the trial court's ruling that his claim to the disputed funds had been released under the terms of the settlement agreement. Additionally, Faycurry and Chicago Title challenge the trial court's award of attorney fees to Inland. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Faycurry owned two properties as the beneficiary of the land trusts held by Chicago Title. The properties were cross-collateralized on mortgages Faycurry obtained through Inland. In 2013, when Faycurry defaulted on one of his mortgages, Inland sued to foreclose on both properties. During the foreclosure proceedings, in Cook County and DuPage County respectively, Villa Capital Properties (Villa) was appointed as the receiver to manage and conserve the properties. The Cook County property was being used commercially and had five tenants. In the fall of 2014, the Cook County chancery court entered an Amended Judgment of Foreclosure and Sale. The court ordered the sale of the Cook County property

after finding that as of September 23, 2014, Faycurry owed Inland $761,742.24 and $374,009.14, for the respective Cook County and DuPage County mortgages.

¶ 5 Inland was the highest credit bidder at the judicial sale in September 2014. On January 29, 2015, the Cook County chancery court approved Villa's final receiver report and discharged Villa's receivership. The order entered instructed Villa to "transmit any remaining funds on hand to [Inland] to be used to satisfy the deficiency resulting from the sale or the outstanding debt[.]" That same day, the chancery court entered an Order Approving Report of Sale and Distribution, Confirming Sale and Order Of Possession (January 29 Order) which provided that the Sheriff would issue a certificate of sale, deliver a deed sufficient to convey title, and remove Faycurry from the property. Inland was awarded full and complete possession of the property and permitted to "deduct and retain [$45,110.85] from the Receiver's operating account" representing the deficiency from the judicial sale, post-judgment interest, and attorney fees for the foreclosure proceedings.

¶ 6 The following month, the parties signed a settlement agreement. In exchange for a lump-sum payment of $1.2 million, Inland agreed to dismiss the foreclosure case, assign the certificate of sale for the Cook County property to Faycurry, and release Faycurry from any remaining obligations under the mortgage instruments. The relevant provisions of the settlement agreement will be discussed in the analysis. Per the settlement agreement, the parties also submitted an agreed order to vacate the amended judgment of foreclosure and sale, the sheriff's sale, and the order confirming sale. Entered on February 26, 2015, the agreed order dismissed the foreclosure suit with prejudice.

¶ 7 In October 2015, Faycurry filed a two-count complaint alleging conversion and unjust enrichment based upon Inland's receipt and retention of funds derived from the Cook County

property after the parties settled the foreclosure suit. Faycurry argued that, under the settlement terms, the residual funds in the Receiver's operating account and rent profits from February were owed to him. Inland responded with five affirmative defenses alleging that Faycurry's claims were barred because of: (1) the settlement agreement's release provision, (2) *res judicata*, (3) Faycurry's failure to state a cause of action under which relief could be granted, (4) promissory estoppel, (5) and fraud. Inland also filed a counterclaim and a third party complaint against Faycurry and Chicago Title seeking specific performance of the settlement agreement, rescission of the agreement because of fraud or unilateral mistake, or a setoff amount to reduce any award to Faycurry by the amount previously applied to satisfy the deficiencies in his DuPage County foreclosure case. Faycurry also filed a cross-claim requesting attorney fees under the settlement agreement's prevailing party fee-shifting provision. After Inland rejected an arbitration award for Faycurry, the case proceeded to a one-day bench trial in April 2017.

¶ 8 Mark Reid, Vice President of Inland's Special Assets division, testified that he oversaw Faycurry's accounts with Inland. Following the judicial sale of the Cook County property, the Cook County Sheriff issued a certificate of sale to Inland. No deed was ever prepared. Villa's receivership duties were discharged by court order, but Inland privately retained Villa to continue serving as the property manager. Villa was directed by Inland to transfer the residual receivership funds to a new, separate account when it began serving as the private property manager. Villa managed the Cook Country property on behalf of Inland from January 29 to February 26, 2015. Reid represented that Inland believed it owned the property during this time. During Villa's operation as the private property manager, Villa collected the February rent from the property's five tenants. Reid was aware that Villa took care of

collecting the rent. Villa also took care of general management, maintenance, and janitorial services and charged those respective fees against the property's operating account. Reid could not testify what the amounts recorded on Villa's General Ledger represented.

¶ 9 Reid further testified that Inland entered into negotiations to reach a final separation from Faycurry. Inland drafted the settlement agreement and considered receipt of the residual receivership funds as a "fait accompli" outside of the settlement agreement's payoff amount. Villa was directed by Inland on February 6, 2015, to remit the $45,110.85 specified in the January 29 Order to Inland. The transfer was completed on February 19, 2015. Reid testified that Inland applied these funds towards Faycurry's outstanding loan debt without formally notifying Faycurry of the "credit." Inland did not intend to or believe it was required to return this amount after receiving the settlement payout. Reid did not recall when the settlement agreement was signed, but he believed the agreement was finalized on February 26, 2015. On that date, Inland assigned the certificate of sale to Faycurry, relinquished ownership of the property, and fulfilled all the terms of the settlement agreement.

¶ 10 Faycurry testified that he was present and represented by counsel at the trial court hearing when the January 29 order and order approving the final receiver's report were entered. After these orders were entered, he resumed managing the property sometime in February 2015. He acknowledged that Villa managed the property for part of that month and could not specify exactly when he resumed his management role. Faycurry stated he did not hire Villa to help with the property management. Later, Faycurry testified he was definitely managing the property by February 25. On that date, he signed a side letter agreement agreeing to "pay all invoices, costs, and expenses incurred by Inland Bank or the Receiver arising directly or

indirectly from the [d]amage" caused by a failed sprinkler head which an insurance company retained by Inland repaired.

¶ 11 Faycurry testified that he did not think Inland ever had ownership of the property because he always held title to the property. He stated that the provision of the January 29 order awarding possession was vacated, although he could not specify when it was vacated. Faycurry believed he was owed the net operating proceeds for February. He made multiple requests for Villa to provide an accounting for the property after he did not receive the income generated. He clarified that the $19,735.00 cited in his complaint represented the gross rental income, and he believed that at least the net income of $13,600.65 was due to him. He received a response from Villa in July 2015, when he received a check for $5,480.82. Accompanying the check was a General Ledger for January to June 2015. Faycurry was surprised to see that the ledger documented a transfer of $45,110.85 to Inland because he did not authorize the transfer. Faycurry was aware that the January 29 Order awarded Inland the $45,110.85 but believed that by agreeing to vacate that order, Inland also agreed to return the money.

¶ 12 Faycurry initially testified that the $45,110.85 never came up during settlement negotiations. He later qualified that, to his recollection, it never came up. He further testified that he did not provide any limiting instructions to his counsel about the terms he would not accept for settlement. Faycurry noted that receiving the ledger was the first time he heard of the receivership's residual funds being transferred to Inland. He also did not recall rent proceeds from February being discussed during settlement negotiations.

¶ 13 The following exhibits were admitted at trial: copies of the parties' settlement agreement and escrow closing instructions, the common law record from the Cook County foreclosure

suit, Villa's General Ledger for the Cook County property, and an email chain regarding counsels' settlement negotiations.

¶ 14 On May 19, 2017, the trial court ruled against Faycurry on the conversion and unjust enrichment counts and stated that the matter was disposed of in its entirety. The following week, Inland motioned for leave to file a fee petition. Leave was granted on June 6, and Inland filed its fee petition the next day. Faycurry also filed a post-trial motion on June 2, requesting the May 19 judgment be vacated, modified, or in the alternative to reopen proofs. Faycurry's motion was heard first and an order denying the motion was entered on July 7. On August 4, Faycurry filed a notice of appeal challenging both the May 19 and July 7 orders. Later in August, Inland's fee petition was heard by the court and taken under advisement. On September 8, the court granted Inland's fee petition after listing certain deductions. The total award for Inland was $60,498.50 in attorney fees and $438 in costs. Faycurry submitted an amended notice of appeal on September 12 to include the order for attorney fees.[1]

¶ 15 II. ANALYSIS

¶ 16 A. Jurisdiction

¶ 17 As an initial matter, we address our appellate jurisdiction. Inland contends that the amended notice of appeal[2] was not timely filed under Illinois Supreme Court Rule 303(b)(5) (eff. July 1, 2017). An appellate court's jurisdiction is dependent on the appellant's timely filed notice of appeal. *Huber v. American Accounting Ass'n*, 2014 IL 117293, ¶ 8. Illinois Supreme Court Rule 303(a)(1) requires parties to file a notice of appeal with the clerk of the

[1] Faycurry filed this amended notice without a file-stamp. This court granted Faycurry leave to re-file the correct file-stamped document on October 26, 2017.

[2] Inland also argued that the second amended notice of appeal was improper. The amended notice sought to include the November 29, 2017 trial court order denying leave to supplement the record as an issue on appeal. The issue was mooted by this court's order on January 10, 2018 which granted Faycurry leave to e-file his supplement to the record. Therefore, we will not address this argument. See *Goodman v. Ward*, 241 Ill. 2d 398, 404 (2011).

circuit court within 30 days after the entry of the final judgment appealed from. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). When a timely post-trial motion directed against the judgment is filed, a new 30-day window for filing a notice of appeal begins when an order is entered disposing of the post-trial motion. *Id.* Under Rule 303(d), leave of the reviewing court is required to file an appeal after the 30-day window. Ill. S. Ct. R. 303(d) (eff. July 1, 2017). Under Rule 303(b)(5), leave of the reviewing court is also required for amending a notice of appeal after 30 days have passed. Ill. S. Ct. R. 303(b)(5) (eff. July 1, 2017).

¶ 18 In the case at bar, Faycurry filed a post-trial motion seeking modification of the judgment entered on May 19, 2017. This post-trial motion was denied on July 7, 2017; and Faycurry timely filed his notice of appeal within 30 days. However, Inland's petition for attorney fees was still pending in the trial court. A request for attorney fees affects the finality of judgments. *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983 (1994). Therefore, Faycurry's notice of appeal was premature when filed because the trial court had not ruled on attorney fees. See *5510 Sheridan Road Condominium Association v. U.S. Bank*, 2017 IL App (1st) 160279, ¶ 14.

¶ 19 Under Rule 303(a)(2), Faycurry's original notice of appeal filed on August 4, 2017, only became effective when the fee petition was decided on September 8, 2017. See Ill. S. Ct. R. 303(a)(2) (eff. July 1, 2017); see also *A.M. Realty Western LLC v. MSMC Realty, LLC*, 2016 IL App (1st) 151087, ¶ 78. Rule 303(d) requires a new or amended notice of appeal if the trial court awards new and different relief than the judgment itself in addressing the post-judgment motions. Ill. S. Ct. R. 303(d) (eff. July 1, 2017); *A.M. Realty Western LLC*, 2016 IL App (1st) 151087, ¶ 82. In addressing Inland's fee petition, the trial court awarded new relief beyond what was granted in the May 19 judgment order. Therefore, Faycurry properly

submitted an amended notice of appeal to challenge the order regarding attorney fees. Faycurry was not required to seek leave of court under Rule 303(b)(5) to amend his notice of appeal because the amendment was within 30 days of the original notice's effective date. Ill. S. Ct. R. 303(a)(2), (b)(5), (d) (eff. July 1, 2017). Accordingly, we have jurisdiction to consider the instant appeal.

¶ 20 B. The Record and Briefs

¶ 21 During the pendency of this appeal, numerous motions and orders regarding the exhibits included in the record on appeal were filed. Per our March 12, 2018 Order we vacated the previous order striking portions of Faycurry's brief. We have confined our review to the referenced exhibits which were contained within the originally submitted certified Common Law Record[3] and the exhibits in the Supplemental Record for which explicit leave was given by this court to be electronically filed (PX9, DX2, DX15, and DX16).

¶ 22 C. Standard of Review

¶ 23 The primary issue to be decided in this appeal is whether Faycurry proved his conversion claim by a preponderance of the evidence. When reviewing a challenge to the trial court's ruling after a bench trial, we affirm unless the judgment is against the manifest weight of the evidence. *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id*. In determining whether plaintiff had proven the elements of conversion, the

[3] Inland complains that exhibits, most notably the settlement agreement, were never included in the Record on Appeal. However, the agreement was attached to Inland's counterclaim as an exhibit. Under civil procedure rules, the agreement did not need to be separately introduced into evidence because it is considered a part of the pleading. See 735 ILCS 5/2-606 (West 2014); *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 33. Even without this rule, we find Faycurry did move to file the settlement agreement and other exhibits in the trial court which were then included in the common law record.

trial court was required to establish the parties' rights under the settlement agreement and February 26 agreed order. Both of these are subject to contract law and their interpretation is reviewed *de novo*. *Condon and Cook, LLC v. Mavrakis*, 2016 IL App (1st) 151923, ¶ 56 (settlement agreements are governed by the principles of contracts); *Commonwealth Edison Co. v. Elston Avenue Properties, LLC*, 2017 IL App (1st) 153228, ¶ 13 (agreed orders are governed by the principles of contracts); *Carr v. Gateway, Inc.*, 241 Ill. 2d 15, 20 (2011) (contract interpretation is a question of law and reviewed *de novo*).

¶ 24 D. Conversion

¶ 25 Faycurry contends that he proved Inland converted the disputed funds. He argues that the trial court found against him because it considered improper evidence and erroneously interpreted the parties' settlement agreement. He further argues that he did not release his claims or agree to pay Inland anything above $1.2 million in settlement. To prove conversion, a plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property. *Loman v. Freeman*, 229 Ill. 2d 104, 127 (2008).

¶ 26 Faycurry asserts, without support in case law, that from the effective date of the settlement agreement the property along with any derivative income and its operating account belonged to him. He correctly asserts that contract provisions may relate back to an earlier effective date and be applied retroactively. *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1003 (2010). However, such relation back must be the intent of the parties and is typically deduced from the written instrument. *Id*. The parties' settlement agreement was executed on

February 25, 2015, with an effective date of February 13. Within the agreement, there are at least four provisions stating that Inland had no intention of terminating Faycurry's obligations, transferring possession of the property, or waiving any of its rights until all the contract provisions were satisfied. Therefore, the settlement agreement, when viewed as a whole, does not indicate that Faycurry had any right to the property or disputed funds relating back to February 13, 2015.

¶ 27 Next, Faycurry contends that he was owed the rental income from February because he retained title to the property when no deed had yet been issued to Inland. Faycurry's argument ignores that, in Illinois, a mortgagee may collect rent if the mortgagee obtains possession of the property and the mortgage instrument provides for this remedy. *BMO Harris Ban N.A. v. Joe Contarino, Inc.*, 2017 IL App (2d) 160371, ¶¶ 34, 36. This prevents a defaulting mortgagor from collecting rent without applying the proceeds towards the outstanding mortgage payments. *Id.* at ¶ 36. Possession is essential to the right to collect rent to prevent a mortgagee from claiming rent proceeds and stripping the mortgagor of resources for maintenance of the property. *Id.* (citing *Comerica Bank-Illinois v. Harris Bank Hinsdale*, 284 Ill. App. 3d 1030, 1034 (1996)).

¶ 28 The parties' mortgage agreement and a separate assignment of rents provided that Inland could collect rental proceeds from the mortgaged property. The January 29 Order awarded Inland possession of the property and Inland immediately retained a private property manager to enter and take possession. In February, Inland was exercising, through its agent, the right to collect rent and apply any proceeds after operation costs towards Faycurry's debt. Faycurry did not have a right to possess the property until February 26, 2015. On that date, escrow on the settlement agreement closed, Inland assigned its certificate of sale, and

voluntarily relinquished possession of the property. Faycurry's claim that he was in possession of and managing the property in February is contradicted by his own trial testimony. His retention of title, without possession of the property, did not grant him an absolute right to the rent proceeds.

¶ 29 Faycurry also contests the distribution of the property's operating account and claims that Inland had no right to receive the $45,110.85 disbursement from Villa. This disbursement represented the monetary award granted by the chancery court in its January 29 Order. The same order was later vacated by agreement of the parties on February 26, 2015. An agreed order adopted by the court is a record of their private, contractual agreement and not an adjudication of the parties' rights. *Commonwealth Edison Co.*, 2017 IL App (1st) 153228, ¶ 13. Like other contracts, agreed orders must be construed to give effect to the parties' intention and is generally determined from the language of the order. *Allied Asphalt Paving Co. v. Village of Hillside*, 314 Ill. App. 3d 138, 144 (2000).

¶ 30 The agreed order contained three provisions which addressed: (1) dismissing the foreclosure suit, (2) vacating the "Amended Judgment of Foreclosure and Sale" and the Sherriff's Sale, and (3) vacating the "Order Confirming Sale" entered on January 29. The agreed order did not address the certificate of sale, possession of the property, or the $45,110.85 from the receiver's operating account. Faycurry contends that by vacating the order, the monetary award was also clearly vacated and needed to be returned. Alternatively, Faycurry argues that any ambiguity about the disputed funds should be resolved against Inland. Given the lack of greater specificity in the agreed order, we look to the facts and circumstances surrounding the agreed order's execution, as well as all pleadings and motions

from which it stems, to discern the intent of the parties. *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 27.

¶ 31 During the trial, Inland introduced an email chain between the parties' counsels in which settlement terms for the foreclosure suit were discussed. The emails were originally introduced to impeach Faycurry's statement that the disputed funds were never negotiated. However, the court deemed this impeachment attempt improper because Faycurry was not a party to the emails. Regardless, the court viewed the email chain as relevant evidence for determining the facts and circumstances surrounding the agreed order's execution.

¶ 32 The email chain contained statements by Faycurry's counsel that Inland could keep the $45,110.85 which would be deducted from the total amount needed to be paid to reach the $1.2 million settlement payout. Inland's earlier emails indicated that this was not an acceptable term. The last emails in the chain refer to a final offer discussed over the phone, the details of which are not recorded. Coinciding with the conclusion of these negotiations, Inland directed Villa to transfer the $45,110.85 to Inland on February 6. It appears that the parties had reached settlement terms providing for Inland to receive both the $1.2 million payout and the $45,110.85. Neither the agreed order nor the settlement agreement drafted after these discussions specifically required the $45,110.85 be returned to Faycurry or even addressed that Inland had received the money. The circumstances at the time of drafting and executing these documents portray Inland as staunchly refusing to settle without receipt of the $45,110.85. Therefore, we find the agreed order's omission of any reference to the monetary award indicated that the parties' private, contractual agreement intentionally did not include a provision for vacating the monetary award and return of the $45,110.85.

¶ 33 Even if our interpretation of the agreed order is incorrect, Faycurry would still not be entitled to the $45,110.85 because of the release provision in the settlement agreement. Inland argues that any claim Faycurry had to the $45,110.85 was covered by the general release Faycurry signed. Faycurry responds that he could not have released Inland from this claim because it occurred after the effective date of the settlement agreement and because the claim was not contemplated to exist and could not be released.

¶ 34 Contract law governs the operation of releases. *Farm Credit Bank v. Whitlock*, 144 Ill. 2d 440, 447 (1991). "A release is a contract whereby a party abandons a claim to the person against whom the claim exists." *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 614 (2007). "Where the terms of the release are clear and explicit, the court must enforce them as written, and construction of the instrument is a question of law." *Id.* The construction of an ambiguous release is a question of fact and parol evidence is admissible to explain intent. *Whitlock*, 144 Ill. 2d at 447. The parties' intent controls the scope and effect of the release and may be discerned from either the express language or the circumstances surrounding the agreement. *Fuller Family Holdings*, 371 Ill. App. 3d at 614. The interpretation of contracts is subject to a *de novo* review, however, the factual findings that inform the interpretation are given deference on review and only reversed if against the manifest weight of the evidence. *Asset Recovery Contracting, LCC v. Walsh Construction Co. of Illinois*, 2012 IL App (1st) 101226, ¶ 74.

¶ 35 The parties' settlement agreement contained a broad, general release addressing any and all claims related to the mortgage and foreclosure. Due to the broad nature of the general release, and the lack of any reference to the residual receivership funds in both the settlement agreement and agreed order, it was ambiguous whether the funds were covered by the scope

of the release. The trial court thus properly looked to parol evidence concerning the circumstances surrounding the agreement and found that Faycurry was aware of the additional claim to the $45,110.85 at the time he signed the agreement. As discussed above, the emails clearly show that the $45,110.85 was still in dispute during settlement negotiations. Thus, both parties were aware of claims regarding the $45,110.85 at the time of signing the agreement. The trial court's factual finding that the claim was contemplated and could be released was not against the manifest weight of the evidence. We hold that the general release language of the agreement must be given effect to release Faycurry's claim to the disputed funds. See *Whitlock*, 144 Ill.2d at 447 (general release language given effect to release disputed claim where both parties were aware of the additional claim at the time of signing). Accordingly, Faycurry has failed to prove he had any right to either amount of the disputed funds and cannot sustain a claim for conversion against Inland.

¶ 36 E. Unjust Enrichment

¶ 37 Faycurry argues he proved Inland was unjustly enriched when it retained money from the receiver's operating account and the February rent income after the effective date of the settlement agreement. Unjust enrichment is an equitable remedy based on a contract implied in law. *Karen Stavins Enterprises, Inc. v. Community College District No. 508, County of Cook*, 2015 IL App (1st) 150356, ¶ 7. To state a claim for unjust enrichment, "a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). The remedy of unjust enrichment is only available where there is no adequate remedy in law. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005). "This

theory is inapplicable where an express contract, oral or written, governs the parties' relationship." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. Therefore, a party cannot state a claim for unjust enrichment where an express contract exists between the parties and concerns the same subject matter. *Karen Stavins*, 2015 IL App (1st) 150356, ¶ 7.

¶ 38 Faycurry alleged that Inland retained funds in excess of the $1.2 million settlement payoff amount violating principles of justice, equity, and good conscience. However, the allegations against Inland are based on the settlement contract and concern the same subject matter, *e.g.* what was required to terminate any outstanding obligations to one another. Accordingly, the doctrine of unjust enrichment has no application here because an express written contract governs the parties' relationship. See *First Midwest Bank v. Cobo*, 2017 IL App (1st) 170872, ¶ 30; *Karimin v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 14.

¶ 39 F. Attorney Fees

¶ 40 The parties' settlement agreement contained a fee-shifting provision which provided that:

> "In the event of litigation arising out of, from or otherwise related to this Agreement, the prevailing party shall be entitled to recover all costs, fees, and expenses (including reasonable attorneys' fees) incurred in connection with such litigation from the non-prevailing party."

Faycurry raises three arguments that Inland was not entitled to attorney fees. First, Faycurry contends that he proved his claims of conversion and unjust enrichment, therefore Inland should have lost the suit and any right to attorney fees. We have already addressed that Faycurry did not prove conversion or unjust enrichment. Accordingly, this argument fails. Second, Faycurry argues that the trial court lacked jurisdiction to enter an award for attorney

fees because his notice of appeal vested jurisdiction in this court. However, Faycurry's original notice of appeal was premature and did not transfer jurisdiction to this court until after the fee petition was decided. Inland's fee petition was timely filed and the trial court had jurisdiction to rule on the matter. There is no challenge to the reasonableness of the fees awarded. Finally, Faycurry asserts that it was improper to award Inland attorney fees where the trial court did not rule on Inland's counterclaims.

¶ 41 In Illinois, each party must bear his or her own attorney fees and costs unless there is a statutory authority or a contractual agreement providing otherwise. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 64. We strictly construe contract provisions that provide for fee-shifting. *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276, 281 (2001). At issue is whether Inland was a "prevailing party." In *Powers v. Rockford Stop-N-Go, Inc.*, the court noted that determining the "prevailing party" is a question of fact reviewed for abuse of discretion. 326 Ill. App. 3d 511, 516 (2001). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432, ¶ 41. A prevailing party, for the purpose of awarding attorney fees, is one that is successful on a significant issue and achieves some benefit in bringing suit. *Esker*, 325 Ill. App. 3d at 280. A party that receives judgment in his favor is usually considered the prevailing party. *Tomlinson v. Dartmoor Construction Corp.*, 268 Ill. App. 3d 677, 687 (1994). A prevailing party does not have to succeed on all its claims; it is also possible for neither party to be the prevailing party. *Powers*, 326 Ill. App. 3d at 515.

¶ 42 Here, it is undisputed that this litigation is related to the settlement agreement. Judgment was entered for Inland on Faycurry's claims of conversion and unjust enrichment. Inland's

counterclaims were not specifically addressed and the trial court stated that the matter was disposed of in its entirety. We find there was no need to enter a specific ruling on Inland's counterclaims in order to find Inland was the prevailing party. Inland's requests for specific performance, to rescind the settlement, or to enter a set-off amount were moot after the court found that Faycurry's claims fell under the scope of the settlement's release. On these issues neither party prevailed. However, Inland was the prevailing party overall because it benefitted from the order favoring its retention of the disputed funds. Therefore, the trial court did not abuse its discretion when it awarded Inland reasonable attorney fees.

¶ 43 III. CONCLUSION

¶ 44 For the foregoing reasons, we find that the trial court's consideration of extrinsic evidence in making factual determinations about the scope of the release was proper. Faycurry did not prove his claims of conversion and unjust enrichment; therefore, judgment and attorney fees were properly entered for Inland. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 45 Affirmed.