

2018 IL App (1st) 171785-U

Order filed June 6, 2018

Third Division

No. 1-17-1785

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

LINK COMPANY GROUP, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant and Counterdefendant)	Cook County.
and Cross-Appellee,)	
v.)	No. 12 CH 22761
)	
MANOEL JOSE SALINO CORTES,)	
)	
Defendant-Appellee and Counterplaintiff)	The Honorable
and Cross-Appellant,)	Lisa R. Curcio,
)	Judge Presiding.
CHICAGO TITLE LAND TRUST COMPANY,)	
as Trustee under the provisions of a Trust)	
Agreement dated May 10, 2010 and known as)	
Trust No. 8002355017,)	
)	
Defendant-Appellee and Cross-Appellant,)	
)	
(Abbie Tucker; Robert Tucker; and Unknown)	
Owners and Necessary Parties, Defendants),)	
)	
(Valdir Barion, and Jenner Araujo,)	
Third-Party Defendants).)	

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

ORDER

¶ 1 *Held:* The circuit court properly granted defendants' motion for summary judgment on plaintiff's claim for breach of contract and plaintiff's claim seeking foreclosure of its mechanic's lien. In addition, the circuit court properly denied defendants' motion for summary judgment on plaintiff's *quantum meruit* claim and defendant's counterclaim for violations under the Home Repair and Remodeling Act. Furthermore, the circuit court did not abuse its discretion in denying the parties' motions to reconsider. We affirm.

¶ 2 This appeal arises from a dispute over remodeling work. Manoel Jose Salino Cortes allegedly agreed to purchase a property where his daughter, Ana Barion, his then son-in-law, Valdir Barion, and their children would live. In addition, Cortes allegedly agreed to procure certain remodeling work from Link Company Group, LLC (Link). Link was owned by Valdir's brother, Jenner Araujo, and managed by Valdir. According to Link, Cortes never paid the full amount for the work. Consequently, Link filed suit against Cortes, as well as the previous record owner of the property, Chicago Title Land Trust Company (Chicago Title) (collectively defendants).¹ In turn, Cortes sought relief against Link, as well as Araujo and Valdir.

¶ 3 Subsequently, the circuit court granted partial summary judgment in favor of defendants on Link's claim for breach of contract, as well as Link's claim seeking foreclosure of its mechanic's lien (770 ILCS 60/1 (West 2016)), but denied defendants summary judgment on Link's *quantum meruit* claim. The court also denied summary judgment on Cortes' own claims for violations under the Home Repair and Remodeling Act (Home Repair Act) (815 ILCS 513/1 (West 2016)) and consumer fraud under the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/10a (West 2016)). Link, Cortes and Chicago Title now appeal. For the reasons to follow, we affirm the circuit court's summary judgment ruling in favor of defendants on Link's claim for breach of contract and Link's claim seeking foreclosure of its mechanic's lien. We also affirm the court's denial of summary judgment as to Link's

¹Link also sued the current owners of the property, Abbie and Robert Tucker, who are not parties to this appeal.

quantum meruit claim and Cortes' counterclaim, and therefore, remand those matters for further proceedings.

¶ 4

I. BACKGROUND

¶ 5 In November 2009, Valdir and his now ex-wife, Ana, were on vacation in Brazil with Cortes. During that time, Cortes allegedly agreed to purchase a property in Cook County for Valdir, Ana and their children because they were suffering from financial difficulties. At the time of their discussion, neither Valdir nor Cortes had a specific property in mind, but were simply referring to a hypothetical property, which they would choose sometime in the future. As part of their discussion, Cortes also allegedly agreed that he would hire Link to complete certain remodeling work because it would give Valdir, as Link's manager, an opportunity for work in light of Valdir's financial difficulties.

¶ 6 In May 2010, Cortes purchased the property located at 3480 Cornflower Trail in Northbrook, Illinois, through a land trust (Trust No. 8002355017) with Chicago Title. After the purchase, Link began the remodeling work. Throughout the remodeling process, Valdir and Cortes communicated via email regarding the remodeling. Valdir, Ana and their children lived at the property from November 2010 until March 2012. In April 2012, however, Valdir filed for divorce and communication between Valdir and Cortes quickly deteriorated. In May 2012, Link completed the remodeling work at the property. According to Link, Cortes paid approximately \$138,000, but still owed Link \$410,486.88. Subsequently, Link recorded a mechanic's lien.

¶ 7 In June 2012, Link filed a three-count complaint, alleging a count against defendants for *quantum meruit*, as well as a count seeking foreclosure of its mechanic's lien. Link's complaint also alleged a count against Cortes, individually, for breach of contract. In April 2015, Cortes filed a counterclaim against Link for violating the Home Repair Act (815 ILCS 513/1 (West

2016)) and sought relief under the Consumer Fraud Act (815 ILCS 505/10a (West 2016)).

Cortes also filed a third-party claim against Valdir and Araujo for the same violations under the Home Repair Act, as well as a claim against them for violations under the Racketeer Influenced and Corrupt Organizations (RICO) statute (18 U.S.C. § 1962 (West 2016)).

¶ 8 In October 2016, defendants filed a motion for summary judgment on each of Link's claims. Cortes also moved for summary judgment on his counterclaim against Link. In March 2017, the circuit court granted partial summary judgment in favor of defendants on Link's breach of contract claim, as well as Link's claim seeking foreclosure of its mechanic's lien, but denied summary judgment on Link's *quantum meruit* claim. In addition, the circuit court denied summary judgment on Cortes' counterclaim.

¶ 9 Link and defendants filed motions to reconsider, which were both denied. The circuit court subsequently entered an order, finding that there was no just reason for delaying enforcement or appeal pursuant to Illinois Supreme Court Rule 304 (eff. March 8, 2016). This appeal and cross-appeal followed.

¶ 10 II. ANALYSIS

¶ 11 A. Link's Appeal

¶ 12 1. Summary Judgment Ruling

¶ 13 We review the circuit court's summary judgment ruling *de novo*. *State Chamber of Commerce v. Filan*, 216 Ill. 2d 653, 661 (2005). Summary judgment is proper where the pleadings, admissions, depositions and affidavits demonstrate that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.*; 735 ILCS 5/2—1005(c) (West 2016). On appeal, Link contends that the circuit court improperly entered summary judgment against it on its breach of contract claim because a genuine issue of fact

exists as to whether Link and Cortes had an oral contract.

¶ 14 Illinois law is well-settled that oral contracts, to be enforceable, must contain definite and certain essential terms agreed upon by both parties. *Commonwealth Eastern Mortgage Co. v. Williams*, 163 Ill. App. 3d 103, 110 (1987); see also *Morey v. Hoffman*, 12 Ill. 2d 125, 130 (1957) (stating that the terms must be sufficiently clear and free of ambiguity and doubt). Simply put, the contract must be so definite and certain in all of its terms that the court can determine what the parties agreed to do, and therefore, require the specific thing contracted for to be done. *Id.* Unless it is clear that the alleged verbal agreement contains such terms, the agreement is not an enforceable oral contract. *Commonwealth Eastern Mortgage Co.*, 163 Ill. App. 3d at 110.

¶ 15 Here, the alleged verbal agreement is unenforceable because it did not contain sufficiently definite and certain terms agreed upon by Link and Cortes. In his deposition, Valdir testified that the verbal agreement between Link and Cortes was formed through conversations between Valdir and Cortes during the vacation in Brazil, and that they agreed that Cortes would purchase the property and hire Link for the remodeling work. Based on Valdir's deposition testimony, he was acting on his personal behalf and as a representative of Link in these discussions.

¶ 16 In contrast to that contention, Valdir's deposition testimony clearly reveals that the specific terms regarding Link's remodeling work were not discussed. In his deposition, Valdir testified that only general terms were discussed regarding what the parties "intended to do." In fact, Valdir admitted, in his deposition, that Link's agreement with Cortes was not a contract. When asked about the terms of the agreement, Valdir responded, "Well, again, did I have a

contract with him? No." ² Furthermore, the agreement did not even refer to an existing property, but instead, was predicated on a hypothetical property that Cortes allegedly agreed to purchase *sometime in the future*. Any agreement regarding Link's remodeling work was, therefore, clearly uncertain because the condition of the hypothetical property was unknown. Based on the alleged verbal agreement, we are unable to determine what Link and Cortes agreed to do, and thus, Link cannot impose contractual obligations on Cortes. See *Morey*, 12 Ill. 2d at 130-31; cf. *Apollo Heating & Air Conditioning Corp. v. American National Bank & Trust Co.*, 135 Ill. App. 3d 976, 978-79 (1985) (affirming the trial court's ruling that there was an enforceable oral contract based on trial testimony that the parties had established the specific repair work to be performed and the price of such work).

¶ 17 Even after Cortes purchased the property in May 2010, the specific terms of any alleged agreement remained demonstrably unsettled upon. While the parties continued to negotiate the terms via email following the initial discussion in Brazil, these conversations did not result in an agreement as to any definite terms. Specifically, it is undisputed that Link and Cortes never discussed or agreed on the price, duration or nature of the remodeling work that Link would complete. In fact, Valdir specifically testified at deposition that Cortes never agreed on a price for the remodeling work, but rather, they discussed only "ballpark" numbers in the "hundreds of thousands." By itself, this discussion does not support the existence of any enforceable oral contract. See *Morey*, 12 Ill. 2d at 130-31.

¶ 18 We also find the court's reasoning in *Commonwealth* to be persuasive. 163 Ill. App. 3d at 103. There, a dispute arose between the parties over an alleged verbal agreement to provide a future loan in order to purchase and complete necessary construction work at a property. *Id.* at

²We note that Link has preserved no distinction on appeal between Valdir's capacity as Link's representative and Valdir's capacity as a representative of his own interests.

¶ 22 Next, Link asserts that the circuit court improperly denied its motion to reconsider. A motion to reconsider affords parties the opportunity to bring to the circuit court's attention newly discovered evidence, changes in the law or errors in the court's previous application of existing law. *Hachem v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶ 34. The decision to grant or deny a motion to reconsider lies within the sound discretion of the circuit court and will not be disturbed on appeal absent an abuse of discretion. *Id.*

¶ 23 First, we reject Link's contention that the circuit court misapplied summary judgment standards to Link's express oral contract claim by failing to construe discovery materials in its favor. Construing the record in the light most favorable to Link reveals no definite and certain terms as part of the alleged agreement with Cortes, which are necessary to form an enforceable contract. We also reject Link's contention that the circuit court misapplied existing law relating to contracts implied in fact. Oral and written contracts are both forms of an express contract cause of action. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 20 (2009). A contract implied in fact, however, is a separate and distinct cause of action from an express contract, which must be plead as an independent action. *Id.*

¶ 24 Here, Link never pleaded an action for a contract implied in fact, so it was improper for Link to raise a theory based on a contract implied in fact for the first time in its motion to reconsider. See *Holzer v. Motorola Lighting, Inc.*, 295 Ill. App. 3d 963, 978 (1998) (stating that a party cannot raise a legal theory for the first time in a motion to reconsider or on appeal). Because Link has failed to demonstrate any newly discovered evidence, changes in the law or errors in the circuit court's previous application of existing law, we find no abuse of discretion in the denial of the motion to reconsider.

¶ 25 3. Leave to Amend

¶ 26 Link also argues that the circuit court abused its discretion in denying it leave to file an amended complaint containing an action for a contract implied in fact. The allowance or denial of an amendment to the pleadings is within the sound discretion of the circuit court and reversible error will not be found absent a manifest abuse of discretion. *Lajato v. AT&T, Inc.*, 283 Ill. App. 3d 126, 138 (1996). Additionally, the record must clearly show the reasons or facts that were presented to the circuit court as a basis for the proposed amendment before an abuse of discretion will be found in denying leave to amend. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7 (2004).

¶ 27 It is well-settled that Illinois law employs four factors to evaluate whether the circuit court abused its discretion in denying leave to amend: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleadings could be identified. *Ignarski v. Norbut*, 271 Ill. App. 3d 522, 532 (1995) (holding that the trial court's denial of leave to amend where the plaintiff orally moved to amend after summary judgment was entered, but failed to submit the proposed amendment, was not an abuse of discretion). With respect to the first factor, the circuit court may consider the ultimate efficacy of the claim as stated in the proposed amendment. *Hayes Mechanical, Inc.*, 351 Ill. App. 3d at 7. If it is apparent that, even with the amendment, no cause of action can be stated, leave to amend should be denied. *Id.* The proposed amendment must meet all four factors; thus, if it fails to meet the first factor, reviewing courts need not proceed with further analysis. *Id.* Unfortunately for appellant, the state of the record before us precludes any meaningful review.

¶ 28 An appellant has the burden of producing a sufficiently complete record to support a

claim of error and any doubts arising from the record's inadequacy are resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record, we must presume that the circuit court acted in conformity with the law and had a factual basis for its ruling. *Id.* Furthermore, a party's failure to include its proposed amendment and supporting facts in the record, can be found to constitute a waiver of that party's right to have the denial of leave to amend reviewed by this court. *Lajato*, 283 Ill. App. 3d at 138-39.

¶ 29 While the parties agree that Link orally moved to amend its complaint, the record does not contain a transcript reflecting that request. We are also not aware of whether Link presented an amended pleading to the circuit court. According to defendants, Link did not. More importantly, our record does not include any amended pleading proposed by Link. The record does not otherwise offer any new facts or evidence suggesting that Link's proposed amendment would allege a valid cause of action. More to the point, in its brief, Link concedes that a contract implied in fact claim would be "nearly identical" to its express contract claim and that the proposed amendment "would not alter the nature or quality of [the] evidence" already presented. See *O'Neil & Santa Claus, Ltd. v. Xtra Value Imports, Inc.*, 51 Ill. App. 3d 11, 14, (1977) (stating that a contract implied in fact requires the essential contractual terms to be implicit from the parties' conduct). Because Link's proposed amendment would not allege a valid cause of action to cure the defective pleading, we find no abuse of discretion.

¶ 30 B. Chicago Title and Cortes' Cross-Appeal

¶ 31 1. Link's *Quantum Meruit* Claim

¶ 32 On appeal, defendants contend that the circuit court improperly denied summary judgment on Link's *quantum meruit* claim, arguing that Link was a subcontractor to Valdir, thus eliminating any liability to Link. We disagree.

¶ 33 The theory of *quantum meruit* recognizes a party's liability on a contract implied in law, *i.e.*, a quasi-contract, in the absence of an underlying agreement between the parties. *Archon Construction Co., Inc. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 30. Under Illinois law, however, a subcontractor cannot sustain a *quantum meruit* claim against a property owner. *Springfield Heating & Air Conditioning, Inc. v. 3947-55 King Drive at Oakwood, LLC*, 387 Ill. App. 3d 906, 914 (2009). While allegations of the existence of a subcontract may appear to be allegations of fact, they are more properly allegations of a legal conclusion because the circuit court determines, based upon presented evidence, the existence of a contract between the parties. *Premier Electrical Construction Co. v. LaSalle National Bank*, 132 Ill. App. 3d 485, 495 (1984).

¶ 34 Here, Link was not a subcontractor to Valdir. The record on appeal contains no evidence that Link had any contract with Valdir. *Cf. Springfield Heating & Air Conditioning, Inc.*, 387 Ill. App. 3d at 914 (finding that the plaintiff's *quantum meruit* claim was defeated by an enforceable contract that identified the plaintiff as the subcontractor and the defendant as the general contractor). Accordingly, defendants have not shown that they were entitled to summary judgment on Link's *quantum meruit* claim.

¶ 35 2. Cortes' Counterclaim

¶ 36 Next, Cortes contends that the circuit court improperly denied summary judgment on his counterclaim against Link because section 30 of the Home Repair Act (815 ILCS 513/30 (West 2016)) permits parties seek relief under the Consumer Fraud Act (815 ILCS 505/10a (West 2016)) for violations under the Home Repair Act.³ Cortes asserts that Link, in pleading an oral contract claim, violated the Home Repair Act because that act requires home improvement contracts in excess of \$1,000 to be in writing. 815 ILCS 513/15 (West 2016). In reviewing the

³We note that although Chicago Title purports to appeal from the circuit court's ruling on Cortes' counterclaim, Chicago Title was not a party to that claim.

circuit court's summary judgment ruling, we may affirm on any basis supported in the record, regardless of whether the court relied on that basis or whether its reasoning was correct.

Chicago Title Insurance Co. v. Bass, 2015 IL App (1st) 140948, ¶ 13.

¶ 37 The Home Repair Act does not apply here because there is no enforceable contract.

Thus, Cortes' assertion that he can bring an action seeking relief under the Consumer Fraud Act also fails. Accordingly, the circuit court properly denied summary judgment on Cortes' counterclaim.

¶ 38 3. Motion to Reconsider

¶ 39 Finally, defendants contend that the circuit court improperly denied their motion to reconsider, arguing that the court's summary judgment ruling on Link's *quantum meruit* claim was inconsistent with its ruling on Cortes' counterclaim, resulting in a misapplication of existing law. As stated, a motion to reconsider allows a party to bring to the circuit court's attention errors in the court's previous application of existing law. *Hachem*, 2015 IL App (1st) 143188, ¶ 34. Defendants assert that the circuit court's ruling that no enforceable contract existed, which precluded summary judgment on Cortes' counterclaim under the Home Repair Act, is inconsistent with its denial of summary judgment on Link's *quantum meruit* claim because such a claim is only available to general contractors.

¶ 40 Defendants, here, have simply asserted, in a conclusory fashion, that "the trial court's summary judgment rulings were inconsistent with Illinois law and inconsistent with one another as outlined in detail in Sections I and II of this Brief." Sections I and II of defendants' brief, however, are separate and distinct contentions, arguing that the circuit court improperly denied their summary judgment motion on Link's *quantum meruit* claim and Cortes' counterclaim. Section I argued that Link, as a subcontractor, could not sustain a valid *quantum meruit* claim.

Section II argued that Cortes pleaded a valid cause of action because Link violated the Home Repair Act, which entitled Cortes to relief under the Consumer Fraud Act. Neither section, however, asserts that the circuit court abused its discretion in denying their motion to reconsider or suggests that the court entered inconsistent rulings. Merely referring to these sections, without any cohesive argument and appropriate citations is insufficient and contrary to Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017).

¶ 41 Furthermore, the circuit court's rulings were not at all inconsistent. Defendants, rather, have suggested that the circuit court's ruling that the Home Repair Act did not apply to Cortes' counterclaim was because Link was a subcontractor and that act only applies to general contractors. See *MD Electrical Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 300 (2008).

Consequently, defendants argue that the circuit court improperly denied summary judgment on Link's *quantum meruit* claim because subcontractors cannot recover under *quantum meruit*. See *Springfield Heating & Air Conditioning, Inc.*, 387 Ill. App. 3d 906 at 914. Defendants' argument is misplaced, however, because the Home Repair Act does not apply to Cortes' counterclaim because there is no underlying enforceable contract between Link and Cortes, which in turn, effectively defeats Cortes' claim. See *MD Electrical Contractors, Inc.*, 228 Ill. 2d 281 at 291. More importantly, the Home Repair Act does not automatically deem a party to be a subcontractor in cases where that act does not apply. *Id.* at 292. The circuit court's rulings, therefore, were not inconsistent. Accordingly, we affirm the circuit court's judgment.

¶ 42

IV. CONCLUSION

¶ 43 Based on the foregoing, we affirm the circuit court's judgment in all respects.

Specifically, we affirm the court's order granting summary judgment on Link's claim for breach of contract and Link's claim seeking foreclosure of its mechanic's lien. We also affirm the court's

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denial of summary judgment as to Link's *quantum meruit* claim and Cortes' counterclaim, and therefore, we remand those matters for further proceedings. We also conclude that the court did not abuse its discretion in denying the parties' motions to reconsider.

¶ 44 Affirmed; remanded, in part.