

No. 1-11-1266

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SUPERIOR STRUCTURES	)	Appeal from
CONSTRUCTION, LTD.,	)	the Circuit Court
	)	of Cook County
Plaintiffs-Appellant/Cross-Appellee,	)	
	)	
	)	
v.	)	No. 07 CH 13239
	)	07 CH 21883
PARKWAY BANK & TRUST COMPANY,	)	07 CH 22747
Individually and as Trustee under trust #13511,	)	
ALL-PRO DEVELOPMENT, INC., and	)	
UNKNOWN OWNERS, TRUSTEES & LIEN	)	
CLAIMANTS,	)	Honorable
	)	James B. Linn
Defendant-Appellees/Cross-Appellants.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

¶1 **Held:** The trial court's factual findings regarding the myriad terms of the excavation contract are not against the manifest weight of the evidence. The trial court's judgment regarding attorneys' fees pursuant to the Mechanics' Lien Act and the contract provision are affirmed as the trial court did not abuse its discretion in determining that it was reasonable for the general contractor to bear its own fees in this case.

¶ 2

NATURE OF THE CASE

¶ 3 The plaintiff-appellant, cross-appellee, Superior Structures Construction, Ltd., in a mechanics lien act and breach of contract case appeals from a judgment entered following a bench trial that did not award it all of the relief it requested. The defendant-appellee, cross-appellant, All-Pro Development, Inc. cross-appeals on its breach of contract action against Superior because it also was not awarded full relief.

¶ 4

EVENTS LEADING TO THIS APPEAL

¶ 5 Superior Structures Construction, Ltd. ("Superior") is a general contracting company whose president is David Kives. All-Pro Development, Inc. ("All-Pro") is the owner and developer of a parcel of real estate in Lemont, Illinois. All-Pro's project to develop its Lemont parcel into residential lots and a detention basin was approved by the Village of Lemont. Superior and All-Pro entered into a contract whereby Superior was to provide excavation work, site utility improvements and silt fencing in exchange for money. The excavation work was covered by a contract fully executed by the parties on June 26, 2006 and a subcontract executed on May 3, 2006.

¶ 6 Superior began work on the project and received two payments from All-Pro totaling \$260,000.

¶ 7 Superior also entered into another contract for landscaping, curbing and gutters with All-Pro on this same Lemont project on August 24, 2006.

¶ 8 During the construction work, Superior issued change orders for work on the project numbered 1, 3, 4, 5, 6, 7, 9, and 11. Change orders # 3 and 4 were executed.

¶ 9 Superior sent a bill to All-Pro on November 5, 2006 requesting payment of the full contract

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price which it claimed was \$395,000 plus \$266,825 in claimed extras minus All-Pro's previous payments totaling \$260,000 for a claimed balance of \$396,825. Negotiations between Superior and All-Pro were conducted to attempt to resolve their differences regarding Superior's billing claims. This resulted in All-Pro issuing a letter to Superior dated March 16, 2007 instructing Superior not to perform any more work on the Lemont project.

¶ 10 On April 11, 2007, Superior recorded a mechanics lien claim against the Lemont project for \$399,050. This litigation followed. Superior filed a two-count complaint against All-Pro for: 1) foreclosure of its mechanics lien, and 2) breach of contract. All-Pro filed a counterclaim against Superior for breach of contract. A bench trial was conducted over four weeks involving more than a dozen witnesses and more than 100 exhibits. The trial court granted judgment to Superior on its mechanics lien request and breach of contract claim for \$106,249.50 and \$76,349 in extras and change orders for a total award of \$182,598.50. The judge also awarded Superior statutory interest on that amount. The court denied Superior's post-trial motion for attorney fees, a higher interest rate and costs.

¶ 11 **ISSUES ON APPEAL**

¶ 12 Specifically, Superior seeks review of the judgment because it believes the court erred in six areas, as follows:

1) when it determined the contract price on the excavation contract was \$375,000 rather than \$395,000;

2) when it denied Superior recovery pursuant to change order # 4 for alleged additional soil relocation;

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3) when it awarded All-Pro a \$8,750.50 credit for work it claimed was necessary to complete the contract;

4) when it allowed the submission of an All-Pro settlement offer into evidence in response to Superior's post-trial motion for contractual attorney fees;

5) when it failed to award Superior attorney fees, interest and costs on its mechanics lien claim; and

6) when it failed to award Superior attorney fees, interest and costs under its breach of contract claim.

¶ 13 All-Pro challenges each of the issues raised by Superior and additionally cross-appeals the portion of the trial court's holding that All-Pro was, in any way, responsible for breach of contract.

All-Pro also cross-appeals on four more issues, as follows:

1) the money judgment awarded to Superior;

2) the ruling that All-Pro's payment obligation to Superior was triggered by the Village of Lemont's approval of the site work as being within Village requirements and acceptable to the Village;

3) the trial court's finding that All-Pro did not comply with the notice provisions of the contract; and

4) that the trial judge erred in denying recovery to All-Pro of its many damages claims against Superior.

¶ 14 The parties' appellate briefs arrange their issues in an imperfect and sometimes reverse chronological order and began their presentations with their respective positions on the trial court's

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denial of Superior's posttrial motion for attorney fees. This order addresses the issues raised by the parties in chronological order for clarity. In some instances, the issues overlap considerably.

¶ 15 I. DETERMINATION OF THE CONTRACT PRICE BETWEEN  
SUPERIOR AND ALL-PRO

¶ 16 Superior claims on appeal that the trial court erred when it found that the actual price agreed to between Superior and All-Pro on the Excavation Contract was \$375,00 and not the \$395,000 claimed by Superior.

¶ 17 A.) Standard of Review

¶ 18 When a challenge is made to a trial court's ruling following a bench trial, the applicable standard of review is whether the trial court's judgment is against the manifest weight of the evidence. *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2009) citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995). Only when the trial court's findings appear to be unreasonable, arbitrary, or not based on the evidence or when an opposite conclusion is apparent is the trial court's judgment deemed against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476 citing *Leonardi v. Loyola University*, 168 Ill. 2d 83, 106 (1995).

¶ 19 B.) The Trial Court's Findings and Our Analysis

¶ 20 It is important to note that the trial court found both Superior's President, David Kives and All-Pro's corporate Secretary, Andrzej Bednarczyk's testimony to be unconvincing and not persuasive. These two men were the main witnesses for the issue of the disputed excavation contract price. The trial court devoted two full paragraphs of its specific findings on why it believed the final contract price accepted and agreed to by the parties was \$375,000 and not the \$395,000 amount claimed by Superior. Basically, All-Pro informed Superior that it would not accept the excavation

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contract price unless Superior could perform the work for \$20,000 less than their original submitted price of \$395,000. Superior's President, David Kives, crossed out the original contract price of \$395,000 and wrote in the price of \$375,000 and initialed the change "DK". At trial, Kives admitted to performing this action and that the amended contract price was his handwriting and "DK" were his initials. The court found, quite reasonably, that Superior is bound by its President's handwritten amendment to the contract price. If Kive had wished to amend any other contract provision, he had the contract at his disposal to insert any additional provision within its four corners for submission to All-Pro for approval, but did not do so. No other signed contract was submitted to the court demonstrating any final contract price other than the Excavation contract that reflected the \$375,000 price approved by Superior's President Kives. While Kives tried to convince the court that there was a side oral agreement for All-Pro to pay Superior \$20,000 extra despite the \$20,000 written reduction, the court was unconvinced by his testimony as to what motivated him to reduce the contract price other than a desire to secure the excavation work for which All-Pro said it would not pay more than a total of \$375,000. It was Superior's President who amended the contract price to reflect that Superior was willing to accept \$20,000 less than their original submission and it was not unreasonable for the trial court to hold that Superior is bound by this amendment.

¶ 21 II. RESPONSIBILITY FOR ANY BREACH OF THE EXCAVATION CONTRACT

¶ 22 A.) Standard of Review

¶ 23 All-Pro submits that the proper standard of review on the issue of who breached the contract and when is a question of law to which this court should apply a *de novo* review standard. Despite the extensive trial transcript to the contrary, All-Pro amazingly submits that the facts surrounding

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this issue are not in dispute.

¶ 24 There were no undisputed facts submitted to the trial court on the issue of who breached the contract and when. The trial court heard testimony on the issues and its findings are reviewed to see if they conform to the manifest weight of the evidence presented by the parties on this issue. *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2009) citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995).

¶ 25 B.) The Trial Court's Findings and Our Analysis

¶ 26 All-Pro appeals the trial court's finding that it was All-Pro which breached the excavation contract when it failed to timely pay Superior's invoices after the Village of Lemont approved Superior's work. All-Pro continues to maintain its trial positions that it was Superior who breached the contract by failing to provide a timely warranty for its work, by failing to properly stockpile dirt, and by improperly issuing a "stop work" notice on November 15, 2006. The trial court heard evidence on All-Pro's positions and rejected them, finding that there was no material breach by Superior for any failure to complete its work on the excavation contract for the Lemont project. The trial court found that All-Pro not only accepted Superior's work that was approved by the Village of Lemont, but that All-Pro also relied on Superior's completed work to ask for and receive a reduction in All-Pro's letter of credit, a financially advantageous position for them. In other words, the trial court found that Superior had provided substantial performance of the excavation contract that required Superior to install sanitary sewer mains, water mains, storm sewers and rough road grading. The trial court found that it was All-Pro who first breached the excavation contract when it failed to timely pay Superior's invoices for Superior's work that was approved by the Village of Lemont and for which All-Pro received a reduction in its letter of credit because it was completed.

This finding was not against the manifest weight of the evidence.

¶ 27 III. THE TRIAL COURT'S DENIAL OF SUPERIOR'S REQUEST FOR PAYMENT FOR WORK ALLEGEDLY PERFORMED PURSUANT TO CHANGE ORDER #4 DEALING WITH SOIL RELOCATION ON THE CONSTRUCTION SITE

¶ 28 A "change order" is submitted by a contractor when a contractor believes he is unable to perform a portion of the original contract within the original terms agreed to by the parties. There are myriad reasons that make "change orders" a necessary and typical occurrence in construction contracts. These reasons include unforeseeable job site conditions, such as unrecorded utility lines or unexpected rock, revised safety, health or building code regulations, and unavailability of specified materials, to name a few.

¶ 29 Superior asserts that it provided "extra" labor over and above that required in its excavation contract with All-Pro which required them to move an extra 12,222 cubic yards of excavated dirt at \$9.00 per cubic yard that was not included in its original contract obligation and was justified in charging an extra \$110,000 payment under change order #4.

¶ 30 A.) Standard of Review

¶ 31 Superior does not address the standard of review that it believes is applicable to this issue. All-Pro correctly submits that this court's proper standard of review is whether the trial court's ruling is supported by the manifest weight of the evidence, *Addison Ins. Co. v. Fay*, 232 Ill. 2d 446 (2002), because the trial ruling is based on both the witnesses' testimony and other evidence.

¶ 32 B.) The Trial Court's Ruling and Our Analysis

¶ 33 After reviewing the trial testimony and evidence, the trial court found that "Superior has failed to prove its damages under this change order by clear and convincing evidence" and found

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"that Superior is entitled to no award whatsoever on this change order."

¶ 34 While many of Superior's submitted change orders relating to the excavation contract between Superior and All-Pro were never fully executed, this change order #4 for "extra" dirt moving work on the Lemont project was signed by the parties. All-Pro claims that Superior is attempting to double bill for dirt moving that Superior was already required to perform under the original contract. All-Pro further claims that Superior never performed any "extra" dirt moving pursuant to change order #4.

¶ 35 For a contractor like Superior to recover compensation for extra work performed over and above the original contract price, the contractor bears the burden of proving five essential elements: (1) that the work was outside the scope of his original contract obligations; (2) that the extra work/items were ordered by the owner; (3) that the owner agreed to pay extra, either orally or in writing; (4) that the extra work/items were not furnished by the contractor as his voluntary, unilateral act; and (5) that the extra work/items were not rendered necessary by any fault of the contractor. *Doornbos Heating & Air Conditioning, Inc., v. Schlenker, M.D., S.C.*, 403 Ill. App. 3d 468, 485 (2010).

¶ 36 The trial court found that Superior was unable to prove that any dirt moving it performed on the construction site fell outside the scope of the original contract. In other words, Superior did not meet its burden in the first of the five required elements it had to prove to recover any extra amounts pursuant to change order #4.

¶ 37 The trial court heard testimony from Superior President Kives and All-Pro Secretary Bednarczyk, as well as other witnesses on the issue of whether any dirt moving performed by

Superior fell outside the scope of the original contract. All-Pro contended that all dirt moving that occurred on the site was pursuant to the original contract which provided for stripping and stockpiling of topsoil and that all excess dirt and spoils would be stockpiled on site. Superior President Kives admitted that pursuant to the original contract, Superior was required to move excavated dirt to a designated area out of the way of the construction. The trial court specifically found Kives' testimony on the amount of dirt and spoils moved pursuant to change order #4 "to be suspect, at best." In fact, Kives characterized his own testimony regarding the amount of dirt moved as a "guestimation" and could not state with any degree of accuracy who moved the dirt. At one point during his testimony, Kives claimed to have taken detailed written recordings and measurements of dirt moved by Superior but inexplicably destroyed all of his notes on the issue despite the on-going controversy Superior had with All-Pro regarding change order #4 that, in part, resulted in this lawsuit. This appears to be a clear issue of spoliation of evidence by a Superior official for which All-Pro may have been successful in a request for summary judgment or a motion to bar Kives' testimony on the issue. See, *e.g. Shimanovsky v. General Motors Corp.*, 271 Ill. App. 3d 1 (1994) (collecting cases and other authority on sanctions for spoliation of evidence). The trial court's finding that Superior failed to show it performed any work pursuant to change order #4 is a question of fact and we will not disturb it on appeal because it is clearly not against the manifest weight of the evidence presented on this issue.

¶38 IV. THE TRIAL COURT'S AWARD OF A \$8,750.50 CREDIT TO ALL-PRO  
FOR ALL-PRO'S EXPENDITURES TO FULLY COMPLETE THE CONTACT

¶ 39 Superior claims the trial court erred in awarding All-Pro a \$8,750.50 credit for amounts incurred for the work it was required to perform to put the finishing touches on its contract with

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Superior.

¶ 40 A.) Standard of Review

¶ 41 The trial court's determination on an issue of damages is one of fact and will not be disturbed on appeal unless its finding is against the manifest weight of the evidence. *Fieldcrest Builders, Inc. v. Antonucci*, 311 Ill. App. 3d 597, 609 (1999).

¶ 42 B.) The Trial Court's Ruling and Our Analysis

¶ 43 The trial court held that Superior substantially completed the excavation contract, but did not fully perform it. The trial court observed that both parties acknowledged that Superior did not complete the road grading and that the road grading had not passed the Village of Lemont's testing. Consequently, All-Pro was entitled to a set-off to the amount due to Superior for the completion of the work. Superior expended no amount for this final completion and All-Pro was found to be entitled to this amount at trial.

¶ 44 While it is true that the trial court found Superior had substantially performed the contract, Superior had not fully performed it. Yet, Superior insists in this appeal on the full contract price without any set-offs for the minor completion work it did not perform. As evidenced by the extensive trial record, as excavation proceeded under the parties' excavation contract, disputes arose over the terms of the contract, the quality of the workmanship, the specifications and Superior's billing. Clearly, the trial court found, by implication, that deducting the \$8750.50 from the total cost of the contract price for work Superior never performed was fair and equitable because the remaining sum was sufficient to compensate Superior for all the substantial work it had completed. Superior never incurred the \$8750.50 to fully complete the contract. All-Pro paid the \$8750.50 sum

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directly to those who actually completed the work and not to Superior, as the general contractor. Therefore, the trial court was correct in holding that this minor set-off was appropriate. The trial court correctly found Superior's right to recover after substantially performing its obligations under the parties' excavation contract was the contract price less the offset for the minor work All-Pro needed to expend for full completion of the contract. *Castricone & Castricone v. Michaud*, 223 Ill. App. 3d 138 (1991).

¶ 45

#### V. ATTORNEY FEE ISSUES

¶ 46 Superior claims that the trial court's decision to not award attorney fees should receive *de novo* review because none of the facts are in dispute. The record reflects that the parties disputed nearly everything in this case, including Superior's posttrial issue of whether attorney fees should be awarded. While it is true that contract provisions regarding attorney fees are strictly construed, "those provisions are to be enforced in the discretion of the trial court." *Ferrara v. Collins*, 119 Ill. App. 3d 819 (1983). Both parties acknowledge the long-standing, general rule that an unsuccessful party is not responsible for the payment of the other party's attorney fees. *Saltiel v. Olsen*, 85 Ill. 2d 484, 485 (1981). Superior argues that it falls into an exception to this rule because it claims to be the prevailing party and also that it is entitled to all attorney fees incurred pursuant to its contract with All-Pro which provided that All-Pro would be obligated to pay "any expenses incurred by Superior in collecting amounts due including court costs, attorney fees and other costs of collection."

¶ 47 We disagree with Superior that it can readily claim "prevailing party" status based on the trial court's judgment. Superior had a contract initially worth \$375,000. All-Pro had paid Superior \$260,000 of that \$375,000. If everything had gone as planned, which seldom does in a construction

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contract, Superior would have been owed \$115,000 under the contract. Instead, Superior sent All-Pro a final bill for more than three times that - \$396,825 which was also more than the original contract was worth bringing the total charges to \$771,825 for excavation work. The trial court factually determined that Superior's largest claims for: 1) \$20,000 more as the original contract price; 2) \$110,000 for additional earth moving; 3) \$25,000 in general contract costs; and 4) a \$40,000 delay expense claim were without merit. Those four claims alone by Superior amounted to \$195,000 in overcharges. If Superior had not billed for these charges which the trial court did find to be unwarranted billing, it is doubtful that the parties would have been embroiled in such extensive, hotly-contested factual disputes resulting in prolonged litigation. Indeed, in *Peter J. Hartmann Co. v. Capitol Bank & Trust Co.*, 353 Ill. App. 3d 700 (2004), this court held that purposefully inflating a lien amount should be defeated on the basis of constructive fraud. In any event, given its track record at trial for amounts recovered versus the amounts claimed, Superior can hardly be deemed the prevailing party.

¶ 48 At trial, both sides presented main witnesses, President Kives on behalf of Superior and Secretary Bednarczyk on behalf of All-Pro, both of whom the trial court found to be "less than forthcoming." This made the trial court's job that much more difficult as the trial court could not give deference to one witness's version of events over the other. In the end, the trial court was presented with over one dozen witnesses and over 100 exhibits which were submitted over the course of a four week trial. It is clear that the trial court gave the parties an exhaustively detailed trial on all the issues in the complaint and defenses. However, Superior submitted no proof or argument as to their entitlement to a contractual right to an award of attorney fees during the trial.

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¶ 49 Superior never filed any motion for a bifurcation of the trial as to any of its liability or damages claims. The only mention by Superior of a claim to attorney fees appears in its "Prayer for Relief" paragraph in the Findings of Fact and Conclusions of Law which it submitted. Superior devoted a total of five words to its claim when it parroted the relief language found in most prayers for relief by typing a five word request for "costs, attorneys' fees and interest\*\*\*." Superior asserts in its brief that "the trial court instructed the parties that it would rule on *the amount* of attorney fees, if any, after trial on the underlying causes of action". (Emphasis added.). No facts or argument were presented during trial on Superior's claimed contractual right to attorney fees. Further, not only did Superior not present any witnesses or argument during trial on its legal position that it was contractually entitled to attorney fees, it never submitted any proposed findings of fact and conclusions of law addressing its position that it was entitled to these damage components under its contract with All-Pro. Superior's post-trial motion attempts to correct this shortfall.

¶ 50 Such a filing put All-Pro at a distinct disadvantage. Like the trial court, it should have been able to reasonably rely on the scope of the trial issues *via* Superior's Proposed Findings of Fact and Conclusions of Law. Superior never identified any facts or legal position in that document or at trial regarding its contractual claim to attorney fees. The trial court did not "fail" to rule on the attorney fee issue, as suggested by Superior. A skeletal assertion in a complaint does not preserve a contract claim not otherwise presented at trial. *Daniels v. Corrigan*, 382 Ill. App. 3d 66 (2008) (submission of new arguments in a motion for reconsideration seeks "second bite at the apple" which is not allowed).

¶ 51 Only after the trial court issued its ruling on all issues raised during the four week trial did

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Superior file a motion for reconsideration and request attorney fees as a part of its contract claims against All-Pro. While it is true that the court supplied no reasoning in denying Superior's request, there are plenty of reasons in the record to deny such a request, especially since Superior supplied, posttrial, nothing more than the contract provision taken from a subcontract that contained many provisions ignored by both parties and for which there does not seem to have been any additional consideration given for such a provision. Even if Superior's posttrial motion was an effort to comply with the trial court's indication that it would consider the amount of attorney fees after trial, Superior's posttrial motion lacked the requisite content. It did not even include a fair estimate of the amount sought. Illinois has long held that when a contract containing a provision for attorney fees does not specify the amount of the fee by a fixed sum or a certain percentage of the contract balance determined to be due but merely provides for attorney fees, the party seeking fees must introduce evidence from which the reasonableness of the fee sought can be determined. *First National Bank of Decatur v. Barclay*, 111 Ill. App. 3d 162 (1982). For attorney fees to be awarded by a trial court on a contractual provision, there must be some type of proof of both the amount and its reasonableness. Because the trial court was never provided with this information in Superior's posttrial motion, Superior's request for attorney fees was insufficient. This is an additional grounds on which to affirm the trial court's ruling on the posttrial motion denying attorney fees to Superior.

¶ 52 VI. ISSUE REGARDING POSTTRIAL ADMISSION OF ALL-PRO'S SETTLEMENT OFFER TO SUPERIOR

¶ 53 Superior's failure to include the issue of its claim to attorney fees at trial and never mentioning its alleged contractual right to attorney fees as a theory of liability in its Proposed Findings of Facts and Conclusions of Law, prejudiced All-Pro because they were unable to prepare

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any case to rebut it, especially when it came in the form of a posttrial motion. Because the trial court allowed Superior to present its alternative contractual claim for attorney fees *via* a posttrial motion, All-Pro was allowed to submit additional evidence, without benefit of testimony, as well. The court, in its capacity as a fair and objective arbiter of this dispute, gave every consideration to All-Pro to rebut the contractual claim for attorney fees as it would reasonably be surprised by Superior's posttrial motion. We believe the trial court was generous in allowing Superior to raise its legal claim to attorney fees *via* a posttrial motion. Witnesses were no longer available for All-Pro to either submit or cross-examine regarding their position on the subcontract and specifically, the provision covering attorney fees. Admitting All-Pro's March 15, 2007 settlement offer of \$225,000.00 before a complaint was ever filed into evidence, posttrial, in this manner was neither manifestly unfair nor a violation of the general rule that settlement offers be excluded. There is no indication that the settlement offer was actually used by the trial judge as relevant evidence to determine whether Superior had a contractual right to attorney fees in this case. However, this is a case involving multiple claims raised by both parties and where both parties have won and lost on claims. It may be inappropriate to find that either party is the prevailing party for attorney fee award purposes. See *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 227 (2007) *citing Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511 (2001) It is well within the trial court's discretion to determine whether any party really prevailed in this case. Clearly, by its ruling, the trial court believed Superior did not prevail.

¶ 54 With regard to Superior's claim for attorney fees pursuant to the Mechanics Lien statute, section 60/17 (b) specifically gives the trial court discretion to award attorneys' fees by utilizing the

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language that "[i]f the court specifically finds that the owner\*\*\*failed to pay a lien claimant\*\*\*without just cause\*\*\*the court may tax that owner \*\*\* reasonable attorneys' fees." 770 ILCS 60/16 (b) (West 2010).

¶ 55 Section 60/17(d) provides: "'Without just cause or right' as used in this Section, means a claim asserted by a lien claimant or a defense asserted by the owner who contracted to have the improvements made, which is not well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." 770 ILCS 60/17 (d) (West 2010).

¶ 56 A trial court's decision whether to award a party its attorney fees is reviewed for abuse of discretion even though the court ruled in that party's favor with respect to the mechanic's lien. This is because the requesting party may not have proven that their opponent had acted without just cause or right. *Central Illinois Electric Service, L.L.C., v. Slepian*, 358 Ill. App. 3d 545, 550-51 (2005), appeal denied 217 Ill. 2d 559. Further, Illinois Rules of Evidence 408, adopted September 27, 2010, effective January 1, 2011, discusses "Compromise and Offer to Compromise". Rule 408(b) covers "Permitted Uses" and in pertinent part provides: "[e]xamples of permitted purposes include\*\*\* negating an assertion of undue delay; [and] establishing bad faith."

¶ 57 Although the trial court supplied no reasoning for its denial of Superior's request for attorney fees, certainly based on the outcome of the litigation, All-Pro had many good-faith bases for refusing to pay Superior the money it demanded. See *O'Connor Construction Co. v. Belmont Harbor Home Development, LLC et al.*, 391 Ill. App. 3d 533, 587-88 (2009). All-Pro's settlement demand made to Superior before litigation began is additional demonstration of good faith by All-Pro to pay the

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full amount, and even more, than was due under the contract. For this reason alone, the settlement offer was admissible.

¶ 58 We see no reason to make a determination that the trial court abused its discretion. Therefore, its holding that Superior is not entitled to attorney fees under either under a mechanics' lien or contract theory is affirmed.

¶ 59 VII. CONCLUSION

¶ 60 For the foregoing reasons, we affirm the trial court on all issues.

¶ 61 Affirmed.