



negotiations for the sale of the property with any party other than the Ministries. The contract was assignable by the Ministries, but not without the permission of the City.

The Ministries intended to look for an investor who would put up the money to purchase the building and who would partner with the Ministries in operating a care facility for patients suffering from Alzheimer's disease. This was the third-party consecutive closing to which the contract referred. The Ministries did find a potential third-party partner in Matthew Stover.

After the execution of the contract, a dispute arose between the parties because the Ministries believed that the City had begun negotiating with other parties, including Matthew Stover, for the sale of the property in violation of the stand-still clause in the contract. Accordingly, the Ministries filed liens against the property in the amount of \$450,000. The Ministries was not comfortable with the structure of the deal the City wanted with Stover and approached the City about it buying out the Ministries contract. The City wanted to bargain directly with Stover. Accordingly, the parties entered into a settlement agreement, which is the subject of this lawsuit.

The settlement agreement is dated August 1, 2005, and is signed by the president of the Ministries and by the mayor of the City. It provides that the parties agreed as follows:

"1. This Day Forward and Marion have previously entered into various contracts concerning the sale of the Marion Memorial Hospital by Marion to This Day Forward.

2. Various disputes have arisen between the parties concerning the sale of Marion Memorial Hospital.

3. The parties desire to resolve any and all disputes and other pending issues between the parties.

4. Marion shall pay \$225,000.00 to This Day Forward at the closing of the sale

of Marion Memorial Hospital and upon receipt of payment, This Day Forward shall release any and all liens or other claims against the property. This payment shall also be due from any transaction in which Marion disposes of the property, buildings, and or any insurance proceeds received by Marion from a fire or other casualty to the Marion Memorial Hospital.

5. Pending the sale of Marion Memorial Hospital, This Day Forward shall retain all liens against the property.

6. Other than the obligations under this Settlement Agreement, both parties release, waive, and discharge any claims or demands against the other.

7. The parties shall execute such other and further documentation as may be necessary."

The settlement agreement was unanimously accepted and adopted by the Marion City Council at its meeting on August 1, 2005. It had been drafted by the attorney for the Ministries.

On the same date, August 1, 2005, the City entered into a sales contract with Matthew Stover for the sale of the Marion Memorial Hospital for the sum of \$1.235 million. This sales contract was accepted and adopted by the Marion City Council at its meeting of August 1, 2005, at the same time as the settlement agreement. It specifically provided that upon receipt of the purchase price from Stover, the City was to pay contractual liens in the amount of \$225,000 to the Ministries in accordance with the settlement agreement.

According to testimony, the parties had different understandings of these two agreements. The Ministries believed that the two contracts were not related and that performance under the settlement agreement was not dependent on the completion of the sale of the property to Stover. The Ministries believed that the \$225,000 sum due under the settlement agreement was payable whenever the City sold to any buyer or otherwise disposed

of the property in any way. The City believed that the two agreements were codependent and that the \$225,000 payment to the Ministries only became due upon the sale of the property to Stover. In the event the sale to Stover was not completed, the City would never have to pay the Ministries \$225,000.

In fact, the contract with Stover was never fulfilled and he did not purchase the property. The City has since demolished the hospital building and sold approximately one-half of the acreage to two different businesses. The City retains the ownership of the rest of the acreage. It has not paid any sum to the Ministries under the settlement agreement.

On April 8, 2009, the Ministries filed its fourth amended complaint against the City. The complaint sought a declaratory judgment with respect to the terms of the settlement agreement. It also sought a judgment against the City for common law fraud, alleging that the mayor never had any intention to honor the settlement agreement but that he had intentionally and fraudulently represented to the Ministries that he did intend to honor it and that the Ministries had relied on the mayor's misrepresentation in entering into the settlement agreement. At the close of the evidence, the Ministries sought and was granted leave to amend the complaint to conform to the proofs by adding a count for a breach of the settlement agreement.

Essentially, the Ministries sought a judgment declaring that payment to it under the settlement agreement was not contingent on the completion of the sale to Stover but that payment of the \$225,000 was due to it upon any sale or other disposition of the property, either in full or in part. Because the City had disposed of some of the property by selling some of acreage and demolishing the building, the Ministries sought a judgment against the City for a breach of contract in the amount of \$225,000, the amount due under the settlement agreement. The Ministries also sought a judgment for fraud because it claimed that the mayor had never intended to honor the settlement agreement in the absence of completion

of the sale to Stover and that this was an intentional misrepresentation.

At the close of the Ministries' case, the circuit court entered a judgment in favor of the City on the fraud count of the complaint. It found no evidence of an intentional misrepresentation on the part of the mayor or the City.

At the close of all the evidence, the circuit court of Williamson County entered a declaratory judgment that construed the settlement agreement as follows. The agreement was a binding contract between the parties and was not contingent upon the completion of the sale to Matthew Stover. The City is obligated to perform under the contract whenever it disposes of the property, which means the entire 7.448 acres. Any ambiguity with respect to the definition of the term "property" is construed against the Ministries, which drafted the agreement. Accordingly, it is construed to mean a disposition or sale of the entire 7.448-acre parcel, not a mere portion of it. Upon a disposition of the entire property, the City is obligated to pay to the Ministries the sum of \$225,000, regardless of the amount of money the City receives in return for the property. The sale of a part of the property or the demolition of the building thereon is not a disposition of the property under the agreement and therefore does not make the \$225,000 sum due and payable. When the Ministries does receive payment, it must release all claims and liens against the property. Based on this construction of the settlement agreement, the court entered a judgment in favor of the City on the breach-of-contract claim. The Ministries appeals.

The Ministries first argues that the circuit court erred in construing the terms of the settlement agreement, specifically in holding that the City's sale of a portion of the property did not trigger the payment to the Ministries and that the City's demolition of the building did not trigger the payment to the Ministries. The Ministries argues that the circuit court erred in construing the term "property" to mean the entirety of the 7.448 acres and not any portion of it and in construing the term "disposes of the property" as not including the demolition of

the building and hauling away of its debris. In the alternative, the Ministries argues that, at the very least, the payment of the \$225,000 to the Ministries should be pro-rated with the City's sale or disposition of the property.

The construction of a contract presents a question of law to which our standard of review is *de novo*. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). The primary objective in construing a contract is to give effect to the intent of the parties. *Gallagher*, 226 Ill. 2d at 232. A court must initially look to the language of a contract alone, because the language, given its plain and ordinary meaning, is the best indication of the parties' intent. *Gallagher*, 226 Ill. 2d at 233. Only if the language of the contract is facially ambiguous, that is, if it is susceptible to more than one meaning, may the court consider parol evidence. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 462-63 (1999).

A contract term is ambiguous if it can reasonably be interpreted in more than one way due to the indefiniteness of the language or due to the term having more than one meaning. *Intersport, Inc. v. National Collegiate Athletic Ass'n*, 381 Ill. App. 3d 312, 319 (2008). A term is not ambiguous if a court can ascertain its meaning from the general contract language. *Intersport, Inc.*, 381 Ill. App. 3d at 319-20. The mere fact that the parties disagree on the meaning of a term does not render that term ambiguous. *Intersport, Inc.*, 381 Ill. App. 3d at 320. Where there is no ambiguity, the court will ascribe to the term its plain and ordinary meaning. *Intersport, Inc.*, 381 Ill. App. 3d at 320.

The Ministries argues that the circuit court erred in construing the term "property" to mean the entirety of the 7.448 acres and not any portion of it and in construing the term "disposes of the property" as not including the demolition of the building and hauling away of its debris. While the circuit court found that the term "property" was ambiguous and so must be construed against the drafter of the agreement, we find no ambiguity in the term "property" as used in the agreement. It is not an indefinite term, nor does it have more than

one meaning. The meaning of the term can be ascertained from the general contract language. It refers to the property known as the Marion Memorial Hospital, which was the subject of the contracts for sale between the parties and consisted of 7.448 acres. That term refers to the property as a whole, not to any portion of it. The circuit court did not err in so construing the term.

Similarly, we find no ambiguity in the term "disposes of the property" as found in the fourth paragraph of the settlement agreement. It clearly refers to a transfer of the property by the City to another. It does not refer to the demolition of a building, for which the City paid a substantial sum, in order to increase the potential for sale of the property. Such an interpretation would be nonsensical and would pervert the intent of the parties. To the extent a contract is susceptible of two interpretations, one of which makes it fair, customary, and such as prudent persons would naturally execute, while the other makes it inequitable, unusual, or such as reasonable persons would not be likely to enter into, the interpretation that makes a rational and probable agreement must be preferred. *Foxfield Realty, Inc. Kubala*, 287 Ill. App. 3d 519, 525 (1997). Accordingly, the circuit court did not err in construing the term "disposes of the property" as not including the City's demolition of the old hospital building on the property.

Finally, we find no support for the Ministries' argument that the settlement agreement contains terms that would support a construction of the agreement as allowing the payment of the \$225,000 to the Ministries on a pro-rated basis with the City's sale or disposition of the property. Where a contract is clear and unambiguous, a court will not add terms in order to reach a result more equitable to one of the parties. *Mid-West Energy Consultants, Inc. v. Covenant Home, Inc.*, 352 Ill. App. 3d 160, 165 (2004). The circuit court did not err in its construction of the parties' settlement agreement.

We further find that in light of its construction of the parties' settlement agreement,

the circuit court did not err in entering a judgment on behalf of the City on the Ministries' breach-of-contract claim. Under the circuit court's construction of the settlement agreement, no payment was due to the Ministries and the City could not have been in breach for a failure to make a payment.

The Ministries also argues that the circuit court erred in entering a judgment at the close of the Ministries' case in favor of the City on the fraud count of the complaint. The Ministries alleges that the mayor admitted that the City had no intention of honoring the settlement agreement if the sale to Stover was not completed but failed to tell the Ministries this. In its docket entry order, the circuit court held, "[The Ministries'] evidence does not support intentional misrepresentation by Mayor Butler; outrageous [*sic*] and egregious conduct by Mayor Butler; that the City had no intention of fulfilling terms of written contract." It is not clear whether, in reaching this determination, the circuit court was finding that the Ministries had not presented a *prima facie* case, which would require a *de novo* standard of review, or that, after weighing all the evidence, the plaintiff would be unable to sustain the ultimate burden of proof, which would require a manifest weight of the evidence standard of review. See *Barnes v. Michalski*, 399 Ill. App. 3d 254, 262-65 (2010). Nevertheless, we conclude that under either standard of review, we would affirm the circuit court's judgment. It is clear that the mayor's statement was not intentionally fraudulent but that the Mayor was simply stating his understanding of the settlement agreement.

For the foregoing reasons, the judgment of the circuit court of Williamson County in favor of the City of Marion is hereby affirmed.

Affirmed.