2012 IL App (1st) 113560-U

FOURTH DIVISION
December 20, 2012
Modified on Denial of Rehearing April 11, 2013

No. 1-11-3560

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FOREST PRESERVE DISTRICT OF COOK COUNTY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 07 L 5698
	)	
URBAN BUILDERS, INC.,	)	Honorable
	)	Bill Taylor,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Circuit court's decision granting summary judgment to plaintiff on its breach of contract claim and on defendant's counterclaims is affirmed, with damages award modified. Defendant breached contract when it stopped work on contract; purported errors in architectural plans did not allow for rescission of contract based on "mistake," where errors could have reasonably been discovered before defendant's bid, defendant did not assert rescission claim until years after it discovered mistake, and defendant did not take advantage of procedures set forth in contract for adjustments.

¶ 2 Urban Builders, Inc. (Urban) appeals from the circuit court's order granting summary judgment to Forest Preserve District of Cook County (District) on the District's breach of contract claims and on Urban's counterclaims. The circuit court found that Urban breached its contract with the District when it failed to complete work on a public works project, and it rejected Urban's counterclaims based on equitable theories of rescission, reformation, and *quantum meruit*. On December 20, 2012, we entered an order affirming the judgment of the trial court. Defendants filed a petition for rehearing on February 18, 2013. We requested and received a response from the District with respect to one issue regarding the amount of damages awarded. Upon denial of rehearing, we issue this modified order.

¶ 3 On May 3, 2004, the District and Urban entered into a contract to restore picnic shelters at the District's North Groves. Dejan Stojanovic, Urban's founder and owner, obtained the bid documents in early March 2004. Among those documents were drawings and bid specifications for the project prepared by the District's outside architect, Roula Associates.

¶ 4 The bid documents contained a notice requesting all bidders to attend a pre-bid conference on March 12, 2004, at the District's headquarters. Pre-bid meetings are held to allow the District to discuss the project and its specifications with interested contractors and answer any questions they may have about the project. If necessary, the District can address any concerns regarding the specifications or plans and issue an addendum addressing such concerns. Stojanovic did not attend the pre-bid meeting, and he did not send a representative from Urban.

¶ 5 The bid documents also required each bidder to examine and become personally familiar with the conditions and requirements of the work sites:

> "Each Bidder shall be acquainted by personal examination, with the location of the proposed work, and shall be informed of the actual conditions and

> requirements of the work, including risks, means of access, character of the soil and subsoil, restrictions and regulations. Failure to do so will not relieve a successful Bidder of its obligations to furnish all material and labor necessary to carry out the provisions of the Contract and to complete the contemplated work for the consideration set forth in the Bid.
>
> The submission of a Bid shall constitute and imply full knowledge of such conditions and regulations and acceptance of the risks contained therein.
>
> * * *
>
> There is no expressed or implied agreement that the depths or the character of materials have been correctly indicated, and Bidders should take into account the possibility that conditions affecting the work to be done may differ from those indicated."

Stojanovic did not personally visit any of the various project sites to inspect actual conditions before he submitted Urban's bid. Instead, he asked Miguel Carbo to make the site visits in order to prepare the bid. Stojanovic believed that Carbo had training as an architect in South America, but he did not verify this. Carbo was not an employee of Urban, but Stojanovic had worked with him in connection with some other Urban contracts.

¶ 6 Stojanovic had the "impression" that Carbo visited "almost all" of the 59 job sites in the North Groves Project. Carbo's site inspections took place in the two weeks between when Stojanovic picked up the bid package and the bid submission due date of March 25, 2004. Stojanovic and Carbo met the day before the bid deadline to discuss what Carbo had seen at the site visits. Stojanovic relied on Carbo to calculate Urban's costs and unit prices and to complete the bid documents for the project because, according to Stojanovic, Carbo "was more familiar with the field and everything that it would be." Stojanovic reviewed, approved, and signed the bid documents once Carbo had completed them.

¶ 7 After all bids were opened, Stojanovic learned that Urban had submitted the lowest bid, for $1,088,644.32. The second bidder, Rudnick, bid approximately $2.44 million on the project, and the third bidder, Kovilic Construction, bid approximately $3 million. The District was required to award the project to the lowest responsible bidder.

¶ 8 After the bids were opened, Stojanovic called James Havlat, the District's building architect, to ask about the difference between Urban's bid amount, the District's estimate, and the other bid amounts. According to Stojanovic, Havlat told him that the Urban's bid was consistent with internal estimates. Roula, the District's architect, had estimated the bid amount at approximately $1.7 million. Havlat said that it was common to see a wide spread in bids in some projects. Havlat discussed the differences in the bid amounts with the District's outside project manager and architect, as well as with District employees involved in the project. They examined the content of Urban's bid, checked Urban's references, examined Urban's company profile as provided in Urban's bid documents, and reviewed information that Urban previously submitted to the District regarding its capabilities to complete the Project.

¶ 9 Before the contract was signed, Stojanovic and the District discussed some minor mathematical errors found in Urban's cost schedules. Stojanovic was aware of, and agreed with, the corrections the District made in Urban's calculations. While Stojanovic professed concerns about his bid amount, he did not withdraw the bid. Stojanovic did not have an attorney review the contract before he signed it. As Stojanovic explained, "I am a lawyer by education, and I understand these things better than any lawyer would." He proceeded to sign the contract with the District on May 3, 2004 for $1,082,396.14.

¶ 10 As required by the contract, on or around May 17, 2004, Urban executed a performance bond and payment bond, which it obtained through International Fidelity & Surety (IFS), for the benefit of the District. IFS's obligation to the District arose under the bond after the District notified Urban and IFS that it "is considering declaring a Contractor Default and has requested and attempted to arrange a conference with [Urban and IFS] to discuss methods of performing the [contract]." The bond provided that the District may agree "to pay the balance of the Contract Price to IFS in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the District." The bond then required IFS to take one of the following actions: arrange for Urban "to perform and complete the Construction Project"; "[u]ndertake to perform and complete the Construction Contract itself, through its agents or through independent contractors"; or "[w]aive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances."

¶ 11 The contract between the District and Urban provided that "[i]t is understood that the quantities in the above schedule are approximate and are given for comparison of bids, and that the Contractor's compensation will be computed upon the basis of the actual quantities of the completed work." The contract also addressed potential differences between the architectural plans, referred to as "drawings," and the actual conditions:

> "Checking Drawings: The contractor shall check all drawings furnished him and promptly notify the Engineer of any discrepancies.
>
> * * *
>
> The Contractor shall compare all drawings and verify the figures before laying out the work, and will be responsible for any errors which might have been avoided thereby."

The contract set out extensive procedures for any revisions in the plans or other contract changes:

> "The intent of these documents is to prescribe a complete outline of the Work which the Contractor undertakes to do in full compliance with the contract.
>
> Alterations, Extensions and Deductions: The District reserves the right to alter the plans, extend or shorten the improvement, add such incidental Work as may be necessary, and increase or decrease the quantities of Work to be performed to accord with such changes, including the increase, reduction, or cancellation of any one or more of the unit price items.
>
> When such changes involve an increase or decrease in the amount of the contract of more than 25 percent of the contract price, then a supplemental agreement between the Contractor and the District will be required.
>
> Additional Work: When changes in the plans result in an increase in the quantities of Work that appear in the Proposal as specified items accompanied by unit prices, then such Work shall be paid for at the contract unit price or prices in

> the same manner as if such Work has been included in the original estimate.
>
> In case the total value of the Work involved in the changes requires a supplementary agreement, and/or the nature and scope of the additional Work is such as to require working methods or equipment more costly than those required for the bid quantities, then the Contractor may ask for an adjustment in unit prices, but no change shall be made by the District without evidence that such prices are fair and equitable to both parties concerned. If an adjustment price cannot be agreed upon, then such Work shall be done on a Force Account Basis."

¶ 12 A few months after the contract was signed, as early as the summer 2004, Stojanovic discovered that the plans were "extremely defective, disastrous." Stojanovic explained that "the mistakes and ambiguities and how disastrous these plans are, all that is hidden." In February 2005, Stojanovic began requesting additional funds from the District based upon the asserted defects in the architectural plans. By early June 2005, Urban had stopped work on the project. Stojanovic continued to request additional funds and an extension of the contract. When Urban refused to resume its work, the District tendered its last payment to Urban on or about July 11, 2005. At that point, Urban had received progress payments on the contract totaling approximately $827,000.

¶ 13 In October 2005, two of Urban's subcontractors, Midcon Products, Inc. and K&K Iron Works, Inc., filed suit in the Circuit Court of Cook County against Urban, IFS, and the District to foreclose on mechanics' liens. The court entered summary judgment on behalf of Midcon and K&K, and the District later reached a settlement agreement with Midcon for $72,242.45 and with

K&K for $62,524.13.

¶ 14 On or about November 1, 2005, pursuant to the terms of the bond, the District, Urban, and counsel for IFS met to discuss methods for performance of the contract. The parties could not reach a resolution and on November 21, 2005, the District declared Urban in default of the contract. That same day, the District notified IFS that it sought to enforce the bond by either tendering the balance of the contract price to IFS or by tendering the balance to a contractor of IFS's choosing. The District sent a second notice and demand for enforcement of the bond to IFS's attorney on December 6, 2005, indicating that the District was willing to pay IFS, or a contractor of IFS's choosing, the balance of the contract price. On January 5, 2006, the District again sought to obtain IFS's performance under the bond. The District later learned that IFS was operating without a license in Illinois and other states.

¶ 15 After terminating its contract with Urban, the District entered into contracts with contractors Master Project, Inc. and C&P Maintenance to finish the work on the project. The total cost to the District for work performed by Master Project (minus the remaining balance under the Urban contract) was $143,198.74. The total cost to the District for work performed by C&P (minus the remaining balance under the Urban contract) was $90,753.30.

¶ 16 The District filed suit against Urban on June 1, 2007, for breach of contract, express indemnification, and breach of surety bond. Urban responded by filing counterclaims for rescission, reformation, and *quantum meruit*. After nearly four years of discovery and motion practice, the District moved for summary judgment on its claims and Urban's counterclaims. The circuit court found that Urban failed to perform under the contract as required, tendered an invalid performance bond, and that the District had been forced to pay subcontractors to finish the work left incomplete by Urban. The court therefore found that Urban breached its contract with the District and that it was required to indemnify the District for the money paid to Midcon and K&K. The court rejected Urban's counterclaims based on equitable theories, finding that there was no basis for the District to rescind or reform the contract five years after its termination. The court found that the District paid $368,718.62 as a result of Urban's breach of contract, taking into account the money paid as a settlement to Midcon and K&K and the money paid to Master Project and C&P to complete the project. In a later order, the court found that, under the terms of the indemnification provision, the District was entitled to attorney fees in the amount of $202,094.50 and costs in the amount of $8,148.33. The court entered a money judgment in the amount of $578,955.45 in favor of the District. Urban filed this appeal.

¶ 17 ANALYSIS

¶ 18 We review the trial court's decision to grant summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). Summary judgment aids in the expeditious disposition of a lawsuit. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32 (2004). However, " '[s]ummary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt.' " *Village of Palatine v. Palatine Associates, LLC,* 2012 IL App (1st) 102707, ¶ 42 (quoting *Outboard Marine Corp.*, 154 Ill. 2d at 102). We construe all evidence strictly against the moving party and liberally in favor of the nonmoving party. *Buenz v. Frontline Transportation Co.*, 227 Ill. 2d 302, 308 (2008).

¶ 19 A party moving for summary judgment may meet its initial burden of proof by affirmatively showing that some element of the case must be resolved in its favor or by establishing that there is an absence of evidence to support the nonmoving party's case. *Village of Palatine*, at ¶ 42. Although the nonmoving party need not prove its case at the summary judgment stage, it must present some evidentiary facts to support the elements of its cause of action. *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, ¶ 21. Nonetheless, mere speculation or conjecture is insufficient to avoid summary judgment. *Miller v. Hecox*, 2012 IL App (2d) 110546, ¶ 42.

¶ 20 We begin with the circuit court's decision on the District's breach of contract claim. Urban does not dispute that it stopped work on the project as of June 5, 2005, before completing work on the contract. Urban also acknowledges that the District incurred expenses as a result of retaining new contractors to the complete the work left unfinished by Urban.

¶ 21 Urban argues that because the architectural plans were "extremely defective," and because the District would not agree to new contract terms, it was the District that breached the contract. As to the defects, Urban contends that there were inconsistencies between the architectural plans and the conditions on the field, and it also claims that the plans were otherwise "negligently and poorly prepared." Based on these problems, Urban sought to extend the contract term and obtain additional payment. When the District refused, Urban stopped work on the contract.

¶ 22 Even if we accept that the plans were defective as described,[1] the District's decision to

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[1] To resolve the claims on appeal, we will assume, without deciding, that the plans contained the errors described by Urban on appeal. We therefore do not address Urban's claims that the circuit court, when considering summary judgment, improperly struck reports from two purported experts, parts of a lengthy affidavit from Stojanovic, or an exhibit to Urban's response to summary judgment entitled "Urban Builders' Presentation of Major Facts and Major

refuse Urban's proposed modification did not excuse Urban from continuing its work. Urban does not dispute that the contract contemplated differences between the work in the field and the work as described in the plans: "When changes in the plans result in an increase in the quantities of Work that appear in the Proposal *** then such Work shall be paid for at the contract unit price or prices." According to Urban, the parties only contemplated "nominal construction variations" because the "General Notes" for the architectural plans stated "Plan dimensions and details relative to existing structure have been taken from existing plan/field measurements and are subject to nominal construction variations." But the contract lays out a procedure for more significant changes, and it specifically gives the District the right to make changes in a number of areas: "The District reserves the right to alter the plans, extend or shorten the improvement, add such incidental Work as may be necessary, and increase or decrease the quantities of Work to be performed in accord with such changes." When a change in the amount of work "involve[s] an increase or decrease in the amount of the contract of more than 25 percent of the contract price," the contract requires a supplemental agreement between the parties. As to adjustments in prices,"no change shall be made by the District without evidence that such prices are fair and equitable to both parties concerned."

¶ 23 The District rejected Urban's request for an increase in price, taking the position that no change in price or supplemental agreement was necessary and that any deviations between the plans and field conditions were accounted for because Urban was paid by unit price. Urban claims that once the District refused its proposed changes to the contract, "[i]t was Urban

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Mistakes."

Builders' duty to stop working, to secure the legitimate execution of the project, to seek a contractual adjustment, payment, and general resolution in regard to the invalid Contract and the remaining work." Even on appeal, Urban fails to present any competent evidence that any changes in work required a change of 25% of the contract price or more. Urban's vague reference to $2.4 million as the true "market value" of the contract is conclusory: Urban claims that this value represents the true value of the project because the District listed $2.4 million as an initial estimate as part of a request for funds (in 2000 and 2003) from the Illinois Department of Commerce. Urban makes no effort to connect this figure with the changes required by the purported errors in the plans. The contract does not require the District to agree to any request for a price increase when Urban asserts that changes are necessary, and Urban cannot label the District's refusal to adjust the contract price a breach of contract without presenting "some evidentiary facts" that those changes were required. *Newsom-Bogan*, 2011 IL App (1st) 092860, ¶ 21.

¶ 24 In any event, even if the architectural plans did require a supplementary agreement, the contract provides that where the parties cannot agree on a new price term, Urban must continue work on a force account basis: "If an adjustment price cannot be agreed upon, then such Work shall be done on a Force Account Basis." The contract elsewhere describes a "force account" process for extra work performed wherein Urban and the District's engineer would log labor hours, materials and quantities used, and all equipment operational hours, so that the parties could apply agreed-upon rates for the work performed and the materials used. See also 2 Bruner and O'Connor on Construction Law § 6:84 (2012) ("Force account pricing is more typically used for change order work. The contractor is required to perform the work although there is not yet an agreement on price ***."). Urban did not follow this procedure, and it fails to present any accounting of uncompensated additional work or materials that were required by defects in the architectural plans.

¶ 25 The contract not only contemplated the possibility that a change in the plans might require a substantial increase in the quantities of work, it set out a procedure by which the parties would resolve any disagreement over the changes. Put simply, Urban's assertion that the contract price should be changed did not allow it to abandon the project. When Urban abandoned the project, leaving it in an unfinished state, Urban breached the contract. The circuit court properly granted summary judgment in favor of the District on its breach of contract claim.

¶ 26 We turn to Urban's counterclaim for an equitable remedy. Urban argues that any errors in the architectural plans constitute a mistake, mutual or unilateral, that allows for rescission of the contract.[2] "Rescission of a contract refers to cancellation of that contract, so as to restore the parties to the status quo ante, the status before they entered into the contract. [Citation.]" *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 353 (2011). A party seeking rescission of a contract based on

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[2] Urban's counterclaims for reformation and *quantum meruit* have been abandoned on appeal. In its opening brief, Urban provides no argument (much less any authority) for why those claims should survive. The vague statements that do appear to reference those claims ("All Urban Builders' counts are supported by overwhelming evidence and law and proved [*sic*].") are insufficient to preserve the reformation and *quantum meruit* counterclaims on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (requiring "citation of the authorities" relied upon and providing that "[p]oints not argued are waived"); see also *People v. Ward*, 215 Ill. 2d 317, 332 (2005) (declining to consider point raised in brief but not supported by citation to relevant authority). Furthermore, Urban cannot seek to revive those claims in its reply brief. "It is axiomatic that arguments raised for the first time in a reply brief are waived." *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d 490, 502 (2010).

mistake must prove four elements: (1) the mistake was related to a material feature of the contract; (2) the mistake occurred even though the mistaken party exercised reasonable care; (3) the mistake is of such grave consequence that enforcement of the contract would be unconscionable; and (4) the non-mistaken party can be returned to the *status quo*. *Calnan v. Talsma Builders, Inc.*, 67 Ill. 2d 213 (1977).

¶ 27 Urban's rescission claim fails because Urban has not shown that it exercised reasonable care in reviewing the plans and the worksites during its bid preparation. While the bid documents contained a notice requesting all bidders attend a pre-bid conference (where potential bidders could raise problems and concerns with the specifications and the plans), no representative from Urban attended the conference. Moreover, the bid documents required Urban to become "acquainted by personal examination, with the location of the proposed work" and become "informed of the actual conditions and requirements of the work, including risks, means of access, character of the soil and subsoil, restrictions and regulations." Yet Stojanovic could not say with certainty that Carbo had visited all the job sites: Stojanovic had the "impression" that Carbo visited "almost all" of the job sites, and he relied on Carbo, who was not an Urban employee, to prepare the bid documents.

¶ 28 Urban claims that its actions were reasonable because it could never have discovered the "latent" and "hidden" mistakes before submitting a bid. Urban, however, also describes these errors as "gross deviations" from reality. For example, Urban claims that for one site, the plans called for twice the amount of brick to be replaced as existed in the structure (300 cubic feet in the plans versus 140 cubic feet in the field). Urban offers no explanation why these "gross deviations" could not have been discovered by the kind of inspection described in the bid documents. Even the "expert report" Urban relies on from architect John Hrivnak notes that a field inspection revealed differences from the plans and the field conditions: "Visiting several of the shelter sites to observe the area of repair to roof, concrete slab and/or brick-faced columns in comparison to quantities represented in the drawings revealed considerable errors of a magnitude in excess of 100% of quantities represented in the drawings." Urban otherwise claims that the plans were "not prepared consistent with required standards and guidelines" (*e.g.*, the plans used cubic feet instead of square feet), and they were "poorly prepared, consisting mainly of photographs and numbers" and "vague." Urban again fails to explain why these errors were beyond recognition before it submitted its bid or in the five weeks between the bid submission and the contract signing, yet they somehow became apparent after the bid was submitted. See *Calnan*, 67 Ill. 2d at 219-29 (finding that contractor did not exercise reasonable care where it "failed to use its review system [for the bid] and failed to discover the error until four months after its bid had been accepted"). Mere assertion that the mistakes were "hidden" is simply not enough to avoid summary judgment. *Miller*, 2012 IL App (2d) 110546, ¶ 42.

¶ 29 The equitable remedy of rescission is inappropriate for an additional reason: Urban has not shown (and refuses to address on appeal) why an equitable remedy is appropriate where it failed to take advantage of the remedies available by contract. *Scott & Fetzer Co. v. Montgomery Ward & Co., Inc.*, 129 Ill. App. 3d 1011, 1021 (1984) (finding that equitable remedy of rescission was inappropriate where parties had agree to damages provision in contract). Here, any "changes in the plans [that] result in any increase in the quantities of Work that appear in the

Proposal" simply required the District to pay for the work actually done. If we assume that the errors in the plans were so drastic that they exceeded the parties' expectations as to variations in the plans, the contract required a supplementary agreement for any changes greater than 25% of the contract price, and if no agreement could be reached, Urban was required to work on a force account basis. These mechanisms ensured both that Urban would continue its work on the project and that Urban would be paid for its work, at the original contract price, at a price set by supplementary agreement, or at a price set on a force account basis (if no agreement could be reached).

¶ 30 Thus, while the contract set out a procedure to deal with changes to the scope of work, including provisions that governed a dispute as to payment for additional work, Urban instead continued to accept payment at the contract price until July 2005 and then abandoned the project. We acknowledge that, as early as February 2005, Urban complained to the district about the asserted errors in the architectural plans and asked the District for additional payment. As noted above, however, Urban cannot explain how the additional funds it requested has any relation to the purported errors in the architectural plans or to any additional work or materials required by those errors. Urban now asks this court to retroactively raise the contract price to $2.4 million for work already completed, in spite of the availability of change mechanisms set forth in the contract. The court is not empowered to grant rescission based on Urban's dissatisfaction with its bid amount or with the change procedures agreed to in the contract. "It is well settled that it is not the duty nor function of this court to grant rescission of a contract voluntarily entered into between competent parties merely because such an agreement may later be thought unwise or improvident." *Scott & Fetzer Co.*, 129 Ill. App. 3d 1011, 1021 (1984).

¶ 31 Urban's claim that District acted with knowledge that the plans contained errors does nothing to aid its rescission claim. Urban asserts that the District engaged in "bad faith and obvious fraud even if the District did not know that the plans were faulty before the bid, because it had this knowledge, and had to know, after the commencement of work and at all times after the commencement of work." A party "seeking to rescind a transaction on the ground of fraud or misrepresentation must elect to do so promptly after learning of the fraud or misrepresentation, must announce his purpose and must adhere to it." *Freedberg v. Ohio Nat. Ins. Co.*, 2012 IL App (1st) 110938, ¶ 27 (quoting *Mollihan v. Stephany*, 35 Ill. App. 3d 101, 103 (1975)). "An unreasonable delay in taking the necessary steps to set aside a fraudulent contract will have the effect of affirming it." *Id.* (quoting *Illinois State Bar Ass'n Mutual Insurance Co. v. Coregis Insurance Co.*, 355 Ill. App. 3d 156, 165 (2004)). By its own admission, Urban was aware of the mistakes and irregularities in the plans as early as the summer of 2004 and no later than February 2005. Yet Urban, no longer laboring under any mistake, continued to work on the contract at the prices set forth therein until July 2005. Urban does not dispute that it received payments of approximately $827,000 for the work it performed. Only after Urban stopped work on the contract—and the District sued for breach of contract—did Urban seek to rescind the contract, claiming that the work it completed was actually worth $2.4 million and the court should order the District to pay the difference. Urban cannot now seek rescission based on a mistake that could have been discovered before the contract was signed and that was, by Urban's account, discovered just after the contract was signed.

¶ 32 Apart from its rescission counterclaim, Urban fails to address the circuit court's conclusion that Urban failed to meet its obligations under the surety bond. The circuit court found no material dispute that the bond was a valid and binding contract entered for the express benefit of the District relative to the project. As a result of Urban's failure to perform under its contract with the District, Urban was obligated to correct the defective work and ensure completion of the contract pursuant to the terms of the bond. Urban did not. There was no error in the circuit court's grant of summary judgment in favor of the District on the bond claim.

¶ 33 Urban also offers no explanation why it was not obligated to indemnify the District, apart from asserting that the indemnity language does not apply because of the defective plans. It is undisputed that in October 2005, Midcon and K&K filed suit against Urban, IFS, and the District to foreclose on mechanics' liens. The District settled with the subcontractors, and Urban failed to indemnify the District. Urban also did not secure performance of the contract, or cover the expenses incurred due to its abandonment of the project, for itself or through IFS. Urban fails to even address the indemnification provision in the contract on appeal, and it does not challenge the circuit court's order awarding attorney fees and costs to the District.

¶ 34 We finally address one point raised in Urban's petition for rehearing. Urban claims that the trial court improperly included $90,753.30 as part of the judgment award in this case. In its brief on appeal, the District represented that amount as "the total cost to the District for work performed by C&P minus the remaining balance under the Urban Contract." In its petition, Urban claims that C&P worked to complete a project governed by a separate contract between Urban and the District, which the parties agree is not the subject of this litigation. In response, the District noted that in light of Urban's representations that it has no assets to satisfy the money judgment, it was "willing to stipulate to a reduction of $90,753.30 in the judgment awarded the District in order to bring finality and closure to this protracted litigation." Without "conceding the merit's of Urban's argument," the District stipulated to a modified judgment award of $488,202.15.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, we affirm the circuit court's order granting summary judgment in favor of the District on its breach of contract claim and Urban's counterclaims and the order granting the District's motion for attorney fees and costs, and we modify the money judgment in favor of the District to $488,202.15.

¶ 37 Affirmed as modified.