2012 IL App (2d) 120629-U
No. 2-12-0629
Order filed December 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SILVERADO GROUP, LLC, as assignee of Chicago Leasing Corporation, Plaintiff-Appellant, v. ED'S TOWING, INC., d/b/a Best-Way Towing, Defendant-Appellee.	)	Appeal from the Circuit Court of McHenry County. No. 10-LM-487 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) We lacked jurisdiction to review the trial court's grant of defendant's section 2-1401 petition, as plaintiff did not appeal that judgment within 30 days of its entry; (2) the trial court's judgment that defendant validly exercised an option to purchase at the end of a lease was not against the manifest weight of the evidence: although the option was not in the lease itself, it was provided in separate correspondence, and given the mixed evidence the court was entitled to find that defendant validly exercised the option by sending payment as instructed.

¶ 2 Plaintiff, Silverado Group, LLC, as assignee of Chicago Leasing Corporation, filed a complaint in replevin against defendant, Ed's Towing, Inc., d/b/a Best-Way Towing, to recover a

1999 International 4700 Tow Truck after the lease between plaintiff and defendant expired. Defendant argued that it had the option to purchase the truck at the end of the lease and had exercised that option. Following a bench trial, the court ruled in favor of plaintiff. Upon a petition for a new trial pursuant to section 2-1401 of Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2010)), the trial court granted judgment in favor of defendant. Plaintiff now appeals, arguing that the trial court erred: (1) by reopening the replevin action upon defendant's newly discovered evidence; and (2) in its ultimate judgment in favor of defendant, because defendant waived its right to exercise its option to purchase the truck at the end of the lease. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff filed its complaint on June 16, 2010, alleging the following facts: defendant leased a truck from plaintiff; the truck was wrongfully being detained by defendant; and the truck was valued at $30,000. According to the complaint, the lease agreement attached showed that the lease terminated on August 13, 2008, requiring defendant to turn over the property. Further, the lease provided that plaintiff was entitled to recover $0.25 per mile for each mile over 172,140 miles and to the restoration of the vehicle to "reasonable condition." Plaintiff sought recovery of the truck, all damages to the property, and costs associated with the truck's recovery.

¶ 5 The lease that plaintiff attached was dated August 13, 2004, and was between Chicago Leasing and defendant, for a term of 48 months. There was no provision in the lease indicating an option to purchase at the end of the lease term. There was a box labeled "Depreciated Value at Lease End" with an amount listed at $3,782. The lease was signed by "R. Stroschein," vice president of Chicago Leasing, and defendant.

¶ 6 On September 29, 2010, defendant filed a counterclaim, alleging that it had fully complied with its lease obligations. Defendant alleged that on July 27, 2009, before plaintiff was assigned the lease, Chicago Leasing sent defendant notice of the amount required to purchase the vehicle pursuant to the lease. Defendant alleged that on August 1, 2009, it tendered the amount of $4,448.27 to Chicago Leasing to exercise its option to purchase. Chicago Leasing never sent defendant title. Defendant now sought title from plaintiff. Defendant attached a copy of the lease agreement, which contained the same language as plaintiff's with the exception of the handwritten word "payoff" in the box titled "Depreciated Value at Lease End." Defendant's lease contained a different signature for Chicago Leasing than what appeared on plaintiff's copy. An illegible signature appeared on the lease, which was signed on behalf of Chicago Leasing in a "G.M." capacity. In an answer to plaintiff's interrogatories, defendant identified the person who wrote "payoff" on the lease as Larry Newman of 4540 White Hall Lane in Algonquin. Defendant also attached the July 27, 2009, letter from Chicago Leasing, stating that the payoff amount of defendant's lease was $4,448.27 and that, upon receipt of that amount, the title would be available to transfer ownership. The sum was comprised of the depreciated balance at the end of the lease, the last payment due, late charges, interest, and a lease disposition fee. The letter was signed by Louis T. Marosi as an authorized agent of Chicago Leasing. Defendant also attached a copy of its check register to show that it sent a check.

¶ 7 On October 15, 2010, the matter went to trial. Marosi testified that he was president of defendant, a leasing company that acquired the lease from Chicago Leasing in March 2010. According to Marosi, Chicago Leasing's business records showed that, as of the lease expiration date (September 1, 2008), defendant owed one payment plus any amount for damage and excessive mileage. Marosi began working on this account in late July 2009, while he was with Abrams &

Jossel Consulting (Jossel Consulting), the firm that was working to transition accounts out of Chicago Leasing during its demise. Marosi testified that he spoke to Lee Dye from defendant about a settlement agreement on this lease but no agreement was reached. According to Marosi, the extension fee per the lease was 5% of the regular monthly payment per day, which meant that defendant owed $27,202.50. Marosi denied that Jossel Consulting or Chicago Leasing ever received a check for $4,448.20 in August 2009. Marosi testified that on September 11, 2010, Dye told him that he could not pay the money Marosi told him he owed all at once and that Chicago Leasing could take him to court if it would not accept a payment plan.

¶ 8 Arlie "Lee" Dye, vice president of defendant, testified that he did not recall telling Marosi that defendant made the $4,448.20 payment in August 2009 when he told him that Chicago Leasing could take defendant to court if it would not accept payments. Dye testified that, when he first communicated with Marosi in July 2009, he understood that the $4,448.20 was the payoff amount for title to the truck, not a settlement offer. Dye's mother, Donna Dye (Donna), wrote the check to Chicago Leasing. Dye attempted to follow up with Chicago Leasing about the title but the calls did not go through and its offices were always closed when he tried to visit in person. His last attempt was in January 2010. Dye did not receive anything from Chicago Leasing's side until May 2010 when a repossession agent came to defendant. A month later, the lawsuit was filed.

¶ 9 Donna, president of defendant, testified that the last payment made to Chicago Leasing was in July 2008. She admitted that she did not make the September 2008 final payment. Donna testified that she was present when the lease was signed, along with her husband and Larry Newman. Donna testified that she wrote in "payoff" on the lease agreement. Donna wrote "payoff" while confirming with Newman that defendant would have the option to buy the truck at the end of the

lease. Around September 2008, Donna spoke with "Ron" from Chicago Leasing about paying off the truck. An agreement was reached that defendant would do Chicago Leasing's towing to work off the final lease payment. Sometime in mid-November, defendant stopped towing for Chicago Leasing because it stopped answering its phone calls. Donna said that defendant had performed $1,800 in towing services, and she was mad that she could not reach anyone at the leasing company. Donna testified that she wrote the payoff check to Chicago Leasing but it was sent to Jossel Consulting per Marosi's instructions.[1] She admitted that the check never was cashed. Donna attempted to call Jossel Consulting to see if it received the check but it never responded until the lawsuit.

¶ 10 On October 19, 2010, the court issued its decision. It found that plaintiff's submitted copy of the lease agreement did not contain any option to purchase. Defendant's copy merely included the handwritten language "payoff," and defendant did not know when that language was added. The court noted that there was no other evidence to indicate that the parties agreed upon an option to purchase. The court agreed that the July 27, 2009, letter included an offer to purchase the vehicle if the amount was paid. However, the court found that the funds were never received, and there was no evidence that defendant ever attempted to follow up on the payment. The court therefore issued the order of replevin.

¶ 11 On February 24, 2011, defendant petitioned to reconsider the judgment of replevin pursuant to section 2-1401 of the Code. Defendant argued that, despite its diligence in attempting to locate Larry Newman at the time of trial, defendant was unable to do so until the week of February 14,

[1]A letter and an e-mail from Marosi admitted at trial corroborated that defendant was told to send payment to Jossel Consulting.

2011. Newman confirmed that the "payoff" language was inserted by him with the intent to give defendant a contractual right to purchase the truck at the end of the lease. An affidavit by Newman was attached.

¶ 12 On May 11, 2011, the court heard defendant's section 2-1401 petition. Donna testified again that she, her husband, and Larry Newman were present for the signing of the lease in 2004. She first began looking for Newman at the end of the lease, when she wanted to pay off the truck and take title. She attempted to find Newman at Chicago Leasing, but it was out of business. She did not know any other contact information for Newman and did not know where he lived or his personal phone number. She also did not know if he went to work elsewhere. Donna tried to look up "Larry Newman" on Google but thousands came up. She never found him before the trial. When the motion for damages was filed against defendant, Dye searched again for Larry Newman on the Internet. At that time, a picture of Newman appeared in conjunction with a car dealership that Newman was now working for. Dye called and spoke to Newman. Donna admitted that she never hired a private investigator to find Newman.

¶ 13 Dye testified consistently with Donna and additionally explained that he was unsure of the spelling of Newman's last name, which added to the difficulty in locating him because there were multiple ways to spell it (Newman, Neumann, etc.).

¶ 14 Larry Newman testified that he signed the lease when he executed it with Donna and her husband. He was familiar with them because they had previously leased a truck from Chicago Leasing with him. Newman testified that Donna did not have his cell phone number or any information other than his contact information at Chicago Leasing. In 2007, Newman left Chicago Leasing because it was failing. He went to work at Elgin Toyota but did not inform any customers

like defendant because the business was not of the same type. Since leaving Chicago Leasing, Newman had had six different jobs. He began his current position as Internet salesman in August 2010, and the Internet advertisements went online in September or October 2010.

¶ 15 Regarding the lease, Newman testified that he normally printed out three copies of a lease agreement. He recalled that the word "payoff" was on the copy that he signed, which was the customer copy. Usually there were no differences in the three copies, but Newman testified that in this case the word "payoff" was written on the customer copy. The "payoff" language indicated that the depreciated value at the end of the lease was the amount that would have to be paid to purchase the truck at the end of the lease. Newman testified that it was the customer's option to purchase. Newman recalled explaining each box in the lease agreement, explaining the payoff amount, and Donna writing in "payoff" as he explained it. They all then signed the lease. Newman identified the lease that defendant submitted and identified his signature. He testified that he did not recognize his signature on plaintiff's submitted lease. Newman recognized one of the signatures on plaintiff's version as being Pat Stroschein, a former principal of Chicago Leasing. Newman explained that he would sign two of the three lease copies, the lessees would sign all three, and Stroschein would sign the third on behalf of Chicago Leasing. This explained why there were different versions with different signatures and some without the word "payoff" written in.

¶ 16 The trial court discussed its decision and commented that, if the section 2-1401 petition were to be decided solely on whether defendant was diligent in its search for Newman, the court would deny the petition. However, the court believed that the substance of Newman's testimony was highly material. The court took the matter under advisement to review the case and the case law. On June 24, 2011, the court rendered its opinion, finding that it had discretion to consider equity in addition

to diligence. The court determined that the substance of Newman's testimony was so material and that defendant's efforts were sufficiently diligent that it granted defendant's petition, vacated the judgment of replevin, and ordered a new trial.

¶ 17 The parties stipulated to having the court use the transcripts of the earlier trial and the testimony of Newman from the hearing on the section 2-1401 petition. On September 16, 2011, the court rendered a new judgment. It determined that plaintiff failed to establish that it had a superior right to the vehicle where the evidence showed that defendant's lease provided an option to purchase the vehicle at the end of the lease. The evidence also showed that defendant attempted to exercise that option with Chicago Leasing. According to the lease where "payoff" was written, the amount that defendant had to pay was $3,782. The court thus found in favor of defendant, but did not decide upon damages and continued the matter as the truck had been sold after the first trial.

¶ 18 Plaintiff then moved for reconsideration, arguing that the trial court erred in granting defendant's section 2-1401 petition and allowing a new trial with Newman's testimony. Plaintiff argued that defendant was not diligent in searching for Newman and that the petition should never have been granted. Even so, plaintiff alternatively argued that defendant waived its option to purchase by not exercising it in a timely fashion. On March 19, 2012, the trial court denied that motion.

¶ 19 Following the March 19, 2012, order, defendant moved for final resolution as to what plaintiff now owed defendant. On May 15, 2012, the court entered an order, stating that plaintiff was to turn over $15,625.98 to defendant by July 6 to dispose of the case. It included language pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Plaintiff timely appealed, arguing that the trial court erred: (1) by reopening the replevin action upon defendant's newly discovered

evidence where defendant failed to show diligence; and (2) in its ultimate judgment in favor of defendant, because defendant waived its right to exercise its option to purchase the truck at the end of the lease.

¶ 20 II. ANALYSIS

¶ 21 We first address plaintiff's argument that the trial court abused its discretion in granting defendant's section 2-1401 petition. Plaintiff argues that defendant did not show diligence in searching for Larry Newman and that the materiality of Newman's testimony to the case should not have factored into the court's determination of whether to grant the petition and vacate the judgment.

¶ 22 Section 2-1401 of the Code provides a procedure by which final orders, judgments, and decrees may be vacated after 30 days from their entry. See 735 ILCS 5/2-1401 (West 2010); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). The filing of a section 2-1401 petition is considered a new proceeding, and consequently a ruling on such a petition is deemed a final order, appealable pursuant to Illinois Supreme Court Rule 304(b)(3) (eff. Feb. 26, 2010). See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (noting policy reason behind allowing review of orders granting relief from final judgment is to avoid impractical effect of subjecting parties to time and expense of trial before it is known whether the trial court's decision to set aside existing judgment is proper).

¶ 23 In this case, the trial court granted defendant's section 2-1401 petition on June 24, 2011. Plaintiff did not appeal this order within 30 days. Although the parties do not raise jurisdiction as an issue, they cannot consent to or waive appellate jurisdiction. *In re Marriage of Mackin*, 391 Ill. App. 3d 518, 519 (2009). Accordingly, we have no jurisdiction to review the merits of plaintiff's attack on the propriety of the trial court's order granting defendant's section 2-1401 petition.

¶ 24 Moving on, we consider plaintiff's argument that the trial court erred in granting judgment for defendant as defendant failed to timely exercise its option to purchase.[2] Our standard of review of a judgment based on the evidence is the manifest weight of the evidence. *Goldberg v. Astor Plaza Condominium Ass'n,* 2012 IL App (1st) 110620, ¶ 60. A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be arbitrary or not based on the evidence. *Id.* The deferential standard of review exists because the trial court is in a superior position to determine and weigh the credibility of witnesses, observe witnesses' demeanor, and resolve conflicts in the testimony. *Id.*

¶ 25 Plaintiff argues that: the trial court originally determined that defendant did not timely accept the offer to purchase contained in the July 27 letter, the initial finding was correct, and its opposite conclusion at the second trial should be overturned. To summarize the record, after the first trial, the court concluded that: (1) the lease did not contain an option to purchase; (2) the July 27 letter contained an offer to sell the vehicle; and (3) defendant did not timely accept the offer. After the second trial, the trial court concluded that: (1) the lease did contain an offer to purchase; and (2) defendant timely exercised that option. At the end of the second trial, the trial court stated that it incorporated Newman's testimony into the evidence previously received, and it determined that the plaintiff failed to meet its burden that it had a superior right to the vehicle. It stated that, because of Newman's testimony, it believed that there was "ample evidence to support defendant's version that

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[2]We note that jurisdiction is proper on this issue as plaintiff filed its notice of appeal on June 6, 2012, which was within 30 days of the trial court's final May 15, 2012, order, which determined the amount plaintiff owed defendant following the sale of the vehicle. See Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008).

the lease was to provide an option for the purchase of the vehicle, and that the—consistent with the comments made in the earlier ruling, I believe that they did make an effort to purchase the vehicle." It stated that the evidence established that Newman had authority to act on behalf of Chicago Leasing, that the contract contained an option to purchase, and so the court found in favor of defendant. Upon the denial of plaintiff's motion to reconsider this judgment, the court stated that it had found at the first trial that there was no option to purchase and, as such, it "could not have made a specific ruling as to whether or not an option had existed." It stated that as a result, "given the absence of specific findings on whether or not the option had been exercised," it denied plaintiff's motion.

¶ 26 While the trial court's comments were inconsistent with its findings at the first trial, we find that inconsistency irrelevant where the initial findings were not binding on the court in the second trial. The second trial, by the parties' stipulation, merely incorporated the evidence adduced at the first trial and Newman's testimony adduced at the section 2-1401 hearing. Accordingly, we need not consider the trial court's initial factual findings and conclusions of law and we review only the second trial's findings that: (1) the lease contained an option to purchase and (2) defendant timely exercised that option.

¶ 27 We first consider the trial court's finding that the lease itself contained an option to purchase. The trial court determined that Newman's testimony established that there was an option to purchase the vehicle. We interpret the lease agreement using general contract principles. We apply the four corners rule, looking to the language of the contract alone. *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1006 (2011). If the language of the agreement is unambiguous, it is interpreted without resort to parol evidence. *Id.* If there is an ambiguity, then parol evidence may be admitted

to aid the trier of fact in resolving the ambiguity. *Id.* Whether an ambiguity exists is a matter of law, subject to *de novo* review. *Id.* Here, the lease agreement contains no language indicating that an option to purchase at the end of the lease existed. The word "payoff" written in the box labeled "Depreciated Value at Lease End" cannot reasonably be construed to add an option-to-purchase provision. An option contract has two elements: (1) an offer to do something, which does not become a contract until it is accepted; and (2) an agreement to leave the offer open for a specified time. *Terraces of Sunset Park, LLC v. Chamberlin*, 399 Ill. App. 3d 1090, 1094 (2010). While the court may infer that the parties meant a reasonable timeframe under the facts of the case where an option contract does not contain a specified time (*DiLorenzo v. Valve & Primer Corp.*, 347 Ill. App. 3d 194, 200 (2004)), the word "payoff" does not establish an offer to do something. Furthermore, even if we deemed "payoff" to be ambiguous, Newman's testimony did not clarify any ambiguity. Contrary to the trial court's comments that Newman had authority to act on behalf of Chicago Leasing, Newman testified that Stroschein signed the third copy of the lease, which did not contain the word "payoff," in the capacity of principal of Chicago Leasing. Newman did not testify that he had the authority to change a term in the contract, and in fact testified only that "payoff" was used to explain the value in the box; he did not testify that they were changing a term of the agreement with the addition of that word. Accordingly, we do not agree with the trial court's determination that the lease contained an option to purchase.

¶ 28 However, our analysis does not end with the lease, because defendant counterclaimed, arguing that the July 27 letter from Marosi modified the lease agreement to provide defendant an opportunity to purchase the vehicle. Defendant argued that it sent payment on August 1, 2009, but that plaintiff breached the contract by failing to transfer ownership of the truck. A modification of

a contract is a change that introduces new elements into the details of the contract, or cancels some of them, but leaves the general purpose and effect undisturbed. *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 468 (2004). "Modification of a contract normally occurs when the parties agree to alter a contractual provision or to include additional obligations, while leaving intact the overall nature and obligations of the original agreement." *Id.* "[A] valid modification of a contract must satisfy all the criteria essential for a valid original contract, including offer, acceptance, and consideration." *Id.* The parties cannot modify the contract without each other's knowledge; therefore, mutual assent is a requisite element in effecting a contractual modification. *Id.* at 469. The modified contract is regarded as creating a new single contract, incorporating unchanged terms of the original agreement, in addition to the new agreed-upon terms. *Id.* To sustain a breach-of-contract action, a plaintiff must establish an offer and acceptance, consideration, definite and certain terms of the contract, the plaintiff's performance of all required contractual obligations, the defendant's breach of the terms, and damages resulting from the breach. *Mannion v. Stallings & Co., Inc.*, 204 Ill. App. 3d 179, 186 (1990). In reviewing the trial court's determination that defendant established that it accepted the offer, we will not reverse this finding unless it is contrary to the manifest weight of the evidence. *Id.*

¶ 29 Here, plaintiff does not dispute the terms of the offer contained in the July 27 letter, but rather argues that defendant failed to prove that it timely accepted the offer by submitting payment, because payment was never received, which was required for acceptance. To be valid, an acceptance must be objectively manifested; if it is not, there is no meeting of the minds. *Rosin v. First Bank of Oak Park*, 126 Ill. App. 3d 230, 234 (1984). There is no acceptance until the offeree notifies the offeror of the acceptance or "at least employs reasonable diligence in attempting to do so." *Sementa v.*

Tylman, 230 Ill. App. 3d 701, 705 (1992). Although an acceptance may be implied under certain circumstances, the general rule is that silence cannot be relied upon to establish an acceptance of an offer to enter into a contract. *Rosin*, 126 Ill. App. 3d at 234.

¶ 30 The July 27 letter stated that the "following represents the payoff/termination of your lease with Chicago Leasing Corporation" and that "[u]pon receipt of good funds, the title will be available for you to transfer ownership." The letter indicated that the amount due was $4,448.27. The letter further stated that defendant should review and "call [Marosi] at [its] earliest convenience to schedule a closing of this transaction." The letter closed by again requesting that defendant contact Marosi to "make arrangements to close out the lease and transfer the title and ownership." The letter included Marosi's phone number at Jossel Consulting. The letter was apparently sent via e-mail the same day (July 27). The e-mail stated that payment of the balance should be payable to Chicago Leasing but sent to Jossel Consulting. The e-mail, from Marosi and addressed to Lee Dye, stated, "[p]lease call me after you discuss same with Donna." Neither the letter nor the e-mail contained a specific time-frame in which defendant had to accept.

¶ 31 In addition to the July 27 letter, defendant also entered a copy of the check from its check register, dated August 1, 2009, written in the amount $4,448.27, and a bank statement showing check number 1996 missing from defendant's cleared check record. Defendant also submitted a September 16, 2009, collection letter indicating that Chicago Leasing retained the firm Franks Gerkin McKenna to collect $4,448.27. Donna testified that she paid Jossel Consulting with check number 1996 in August 2009, but admitted that the check never cleared. She testified that she called Jossel Consulting to follow up on the title after receiving the collection letter, but it never returned her messages. She testified that she never e-mailed or mailed any correspondence to Jossel Consulting

to follow up. She further testified that she never spoke to anyone at Franks Gerkin McKenna upon receiving the collection letter. Marosi testified that neither Jossel Consulting nor Chicago Leasing ever received the check in August 2009. Dye admitted that his last attempt at trying to reach anyone at Chicago Leasing was in January 2010, and he testified that he did not recall telling Marosi that Donna sent payment for the truck in August 2009 when he spoke to Marosi in September 2010. He did not recall ever calling anyone at Jossel Consulting.

¶ 32 The trial court determined that defendant proved that it accepted the offer by mailing the check. Under the facts of this case, we cannot say that the trial court's determination is against the manifest weight of the evidence. Donna testified that she mailed the check promptly, and she submitted her check copy and cancelled check statement showing that check 1996 never cleared. She further testified that she attempted to call Jossel Consulting and Chicago Leasing on numerous occasions. The July 27 letter did not indicate a deadline upon which defendant had to respond, and Marosi's e-mail indicated that payment should be "sent," but did not indicate by any special means, such as certified mail. Donna testified that she placed the check in the mail with proper postage, addressed to Jossel Consulting per the instructions. According to the mailbox rule, acceptance of a contract is effective when mailed, rather than when received. *Liquorama, Inc. v. American National Bank & Trust Co. of Chicago*, 86 Ill. App. 3d 974, 977-78 n.1 (1980). Here, the terms of the offer letter and accompanying e-mail advised defendant to "send" the check to Jossel Consulting's office address. No term in the offer changed the common-law mailbox rule by requiring any other action by defendant to ensure acceptance.

¶ 33 Even without the mailbox rule, the trial court's finding was not against the manifest weight of the evidence. In *Liquorama*, the lease at issue included a provision that implied that the mailbox

rule would not apply if the sender used regular mail, but rather the notice of lease renewal would be effective only upon actual delivery. *Id.* at 977-78. The court stated that, in proving receipt of mail, it is presumed that a properly addressed letter with proper postage will be received in due course. *Id.* at 978. Denial of receipt rebuts the presumption, in which case it becomes a question of fact to be decided by the trier of fact. *Id*. Here, Donna testified that she mailed the check to Jossel Consulting's address listed in the letter, with the proper postage. Marosi testified that Jossel Consulting never received the check. It was the trial court's function as the factfinder to weigh the conflicting evidence, and it found in favor of defendant. Therefore, we affirm the trial court's determination that defendant established that it accepted plaintiff's July 27 offer and that plaintiff breached the contract by refusing to turn over title.

¶ 34 III. CONCLUSION

¶ 35 Based on the foregoing reasons, we affirm the judgment of the circuit court of McHenry County.

¶ 36 Affirmed.