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District), filed a forcible entry and detainer action (forcible action), alleging defendant, Dockside Development Corporation (Dockside), breached its lease agreement with the Port District by failing to excavate a marine slip to a depth of 27 feet. The Port District seeks repossession of its property due to the alleged breach. In addition, the Port District filed a complaint for breach of contract to recover damages resulting from Dockside's alleged dredging default, and attorney fees for Dockside's unsuccessful lawsuits against the Port District. The court consolidated the forcible action and breach of contract complaints.

¶3 Dockside moved for summary judgment on the forcible action based on (1) newly-discovered evidence of a 1984 release signed by both parties that purportedly released Dockside "from any claims" for breach of "any of the terms and conditions" set forth in the leases between Port District and Dockside; and (2) the immateriality of a 27-foot depth for the slip in today's maritime environment. Dockside also moved to dismiss the Port District's breach of contract complaint pursuant to sections 2-615 (735 ILCS 5/2-615 (West 2010)) and 2-619 (735 ILCS 5/2-619 (West 2010)) of the Illinois Code of Civil Procedure (Code). The circuit court granted each of Dockside's motions based on the 1984 release signed by both parties. Port District timely appealed. For the following reasons, we affirm.

¶4 BACKGROUND

¶5 The facts of this case have been thoroughly set forth in orders from the three previous appeals and so we repeat only those facts necessary for disposition of this appeal.

¶6 The Lease

¶7 In 1965, Dockside entered into two 65-year leases with the Port District for two parcels of

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property located at Lake Calumet Harbor, in Chicago. On March 7, 1969, the parties entered into a third lease for an additional parcel of land located at the harbor and also owned by the Port District. The leased premises, referred to as parcels “A” and “B,” were to be operated as a public port and terminal facility “for the purpose of handling for reshipment to and from vessels, barges, rail cars, trucks and/or pipe lines, storing, processing and distributing scrap metal products, steel, lumber and other commodities with the exception of bulk liquids or bulk grain.” To accomplish this, Dockside was required to construct a warehouse of at least 100,000 square feet on parcel A. On parcel B, Dockside agreed to construct a steel dock wall and dredge a 27-foot deep boat slip, “Slip No. 2.” Under the lease, Dockside agreed to pay the Port District an annual rent and to remit all wharfage and dockage charges collected during the term of its tenancy. The leases permitted Dockside to recover \$750,000 of the cost of excavating Slip No. 2 by withholding a portion of dockage and wharfage fees it would otherwise remit to the Port District. The lease also provided that once Dockside completed the construction of the slip and the wall, the Port District would bear the burden of maintaining the dredging of the slip to a depth of 27 feet and keeping the wall in good order and repair.

¶ 8 Dockside dredged the slip to a uniform depth of just over 25 feet, completing the work in the summer of 1969. The Port District became aware of Dockside’s failure to dredge the slip uniformly to a depth of 27 feet as early as 1969 and notified Dockside of its concern that the slip’s water level was, and would be in the future, below 27 feet. Nevertheless, the Port District informed Dockside that it had no objection to Dockside’s \$713,726.15 reimbursement request for dredging the slip. During the next two years, the parties disputed the standard to be utilized in measuring the depth of

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the slip, but agreed that the 27-foot depth requirement was not met.

¶ 9 The parties reached an agreement, as reflected in a letter dated September 23, 1970, from the Port District's then-executive director, Maxim Cohen, to the Port District's consulting engineers, De Leuw, Cather and Company, that Dockside would pay for the additional dredging required at the slip and then recover its costs "in the same system as they had recovered the previous \$750,000 that they had expended." Cohen stated in the letter that, "in all fairness," if and when Dockside performs additional dredging at the slip that Dockside's costs "be added to the original sum of \$750,000 and liquidated in the fashion outlined" in the lease agreement.

¶ 10 On January 25, 1971, Dockside submitted a modified request for reimbursement in the amount of \$749,908.38. Cohen's response to Dockside on March 12, 1971 indicated that Dockside had yet to commence efforts to dredge the slip to the required 27-foot depth. Among other things, the parties continued to dispute which standard to use for measuring the 27-foot depth.

¶ 11 By the early-1980's, Dockside had recovered all its expenditures allowed by the lease agreements. Thereafter, Dockside remitted and the Port District accepted all wharfage and dockage fees realized during Slip No. 2's operation.

¶ 12 The 1984 Release Documentation

¶ 13 In May 1984, Dockside approached the Port District about selling the warehouse facility it constructed on parcel A and assigning portions of parcels A and B to Pinkert Steel Company (Pinkert). On May 14, 1984, an attorney representing Dockside, Stephen Golan, attended a meeting of the "Committee on Agreements of Leases of the Chicago Regional Port District" to discuss the proposed sublease to Pinkert. Golan memorialized the events of the meeting in an internal file

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memorandum bearing the same date. The attorney representing the Port District, Terrence Diamond, was also present for the meeting. According to Golan, the meeting began with the chairman of the committee, James Gidwitz, “making a statement as to the feeling of the Port District that there had to be a release of all sums due Dockside from the Port District in order for the sublease to be approved.” The Port District agreed to provide Dockside with a letter outlining its requirements for approval of the sublease.

¶ 14 Golan also spoke to Diamond after the meeting to discuss concerns that Dockside had not met its obligations under the lease, “particularly with respect to the development of new business; and there was the question of funds due Dockside for the use of *** Slip No. 2.” Golan proposed that Port District and Dockside “would each release the other from any and all claims they may have with respect to the leases.”

¶ 15 The following day, on May 15, 1984, Golan sent a letter to Diamond regarding the meeting, noting that Gidwitz stated the Port District was unwilling to approve the sublease “unless Dockside agreed to ‘expunge’ the balance of wharfage and dockage fees due Dockside from [the Port District].” Golan proposed a compromise to permit the sublease to Pinkert, which included that the Port District “agree to release Dockside from any claims it may have against Dockside existing prior to December 31, 1983, for breach of any of the terms and conditions set forth in the Leases.”

¶ 16 On May 22, 1984, Diamond responded by letter to Golan, initially stating, “Please refer to your letter of May 15, 1984 regarding the seven separate terms which [Dockside] consent[s] to the proposed sublease of certain portions of Parcel A and B.” Diamond noted in her letter that she conferred with Gidwitz and the chairman of the Port District, John Serpico, regarding Dockside’s

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proposal. Diamond stated in her letter, “In response to that proposal I, as the legal representative of the Port District, am authorized to make the following counter-proposal, subject to ratification by a majority of the full board of directors.” The counterproposal stated that the Port District “will agree to an assignment, as opposed to a sublease” of the property to Pinkert based upon the following terms and conditions,” which included, “The Port District will agree to release Dockside from any claims it may have against Dockside existing prior to December 31, 1983, for the alleged breach of any of the terms and conditions set forth in the several Leases between the Port District, Dockside and EmEsCo.”¹ Diamond continued, “If the above terms and conditions are acceptable to your clients, please contact me at your earliest convenience.” Diamond scheduled a special meeting of the Port District’s board of directors on May 31, 1984 for Pinkert and Dockside to present the proposal to board members, “which may be raised prior to the vote by the full Board of Directors on this matter.”

¶ 17 Following the May 31, 1984 Port District meeting, Golan sent a June 13, 1984 correspondence to Diamond, which provided:

“As we discussed at the meeting of [the Port District] and during subsequent telephone conversations, the Port District is willing to consent to the assignment of portions of Parcels A and B to Pinkert Steel Company only under the following conditions:

4. The Port District will agree to release Dockside from any claims it may

¹ EmEsCo is identified as Dockside’s related stevedore operating company.

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have against Dockside existing prior to January 1, 1984, for the alleged breach of any of the terms and conditions set forth in the several Leases between the Port District, Dockside and EmEsCo.

John B. Schlossberg, the President of Dockside, has advised me that Dockside will agree to the above conditions in order to obtain the Port District's consent. Assuming that this is satisfactory to you, please countersign the enclosed copy of this letter and return same to me as soon as possible."

Diamond countersigned the letter. Above her signature, the letter stated, "Accepted on behalf of Chicago Regional Port District."

¶ 18 The Port District's board members voted and approved to consent to the assignment and the terms and conditions therein, as evidenced by two consent resolutions and one consent, each dated June 15, 1984. The two consent resolutions are nearly identical. The resolutions contain a number of recitals in the preamble, including releases agreed to by both the Port District and Dockside. One resolution attaches and references the May 31, 1984 correspondence from Golan to Diamond, while the other resolution attaches and references the June 13, 1984 correspondence from Golan to Diamond, which Diamond countersigned.

¶ 19 The consent states that Port District "for and in consideration of the specific terms and conditions contained in the letter dated June 13, 1984 attached hereto as Exhibit A, by resolution duly adopted at its regular Board meeting of June 15, 1984, does hereby consent" to the conveyance of the warehouse and assignment of the designated property. Notably, the consent

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also stated, “This Consent releases Transferor [Dockside] from all of the terms, covenants or obligations contained in the said Leases to be kept, observed and performed by the Transferor with respect to the property set forth on Exhibit A attached hereto.” Chairman Serpico signed the consent. The Port District’s secretary, Andrew Moore, attested to Serpico’s signature. The June 13, 1984 letter was attached to the consent. The official minutes from the June 15, 1984 meeting of the Port District’s board reflect that “[u]pon motion by Chairman Gidwitz and seconded by Director Maragos, the board unanimously approved a consent resolution for the sale and assignment of certain Dockside Development properties to Pinkert Steel Corporation (attached and made to form a part of these minutes).”

¶ 20 In addition to the consent, the Port District also executed an estoppel certificate, also dated June 15, 1984, which was signed by the Port District’s general manager under penalty of perjury. The estoppel certificate specifically provided that “there is no existing default by any party under any of the Leases.” Copies of the leases were annexed to the estoppel certificate.

¶ 21 Previous Appeals Before This Court

¶ 22 In January 1989, and again in July of that year, Dockside advised the Port District that certain maintenance was required on the slip. The Port District responded, acknowledging its obligation to maintain the slip, but indicating it was not in a position to comply with Dockside’s request due to insufficient funds.

¶ 23 The next correspondence between the parties regarding maintenance of the slip was issued in 1995. On June 1, 1995, Dockside advised the Port District by letter that the slip’s depth was “less than required” and that the bumper on the north end of the slip was in disrepair.

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Dockside demanded the Port District's immediate attention to the matter and requested the Port District "dredge and maintain [the] Slip *** to a depth of twenty seven feet and *** repair or replace the bumper." The Port District responded in writing that it had no obligation to dredge the slip or perform maintenance because Dockside had never completed its obligation to excavate the slip to 27 feet in the first instance.

¶ 24 On January 9, 1998, Dockside filed a complaint against the Port District in the circuit court of Cook County, seeking a judicial declaration that the Port District had failed to meet its obligation to maintain the slip, resulting in two circuit court orders and the first two appeals, *Dockside I (Dockside Development Corp. v. Chicago Regional Port District*, No. 1-00-3625 (2002) (unpublished order under Supreme Court Rule 23)) and *Dockside II (Dockside Development Corp. v. Chicago Regional Port District*, No. 1-03-3474 (2005) (unpublished order under Supreme Court Rule 23)).

¶ 25 The prior orders of this court extensively considered the provisions of the leases and the initial actions of the parties. *Dockside I* and *Dockside II* both involved the question of whether the Port District's duty to maintain the slip was subject to the condition precedent of Dockside completing the excavation of the slip to 27 feet in depth. This court in *Dockside I* and *Dockside II*, however, did not have the benefit of the release documentation in the records before them because the release documentation was not discovered until the appeal in *Dockside III (Chicago Regional Port District v. Dockside Development Corp.*, No. 1-10-0499 (2011) (unpublished order under Supreme Court Rule 23)).

¶ 26 In *Dockside I*, this court detailed Dockside's actions in improving the slip and submitting

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the reimbursement request for its work. This court affirmed the circuit court's denial of Dockside's motion for summary judgment and reversed the grant of the Port District's motion for summary judgment. The court found Dockside had not met its duty of excavating the slip to 27 feet. In addition, this court concluded that "Dockside's leasehold for parcel B was expressly contingent upon Dockside completing its work as specified and to the satisfaction of both the Port District and De Leuw Cather." *Dockside I*, No. 1-00-3625, slip op. at 29. However, this court found triable issues of fact related to the grant of the Port District's motion for summary judgment, particularly with respect to Dockside's allegation that the Port District waived strict compliance with the lease. *Id.* at 30.

¶ 27 On remand, the circuit court found that the Port District waived its right to insist upon strict timeliness by Dockside, but it did not waive the right to demand completion as a condition precedent to its maintenance obligations. On appeal of that decision, this court affirmed the circuit court's findings. Giving effect to all the provisions contained in the parties' lease agreements, this court found that "Dockside's failure to excavate the slip to a depth of 27 feet constitutes an ongoing breach of the parties' lease agreement." *Dockside II*, No. 1-03-3474, slip op. at 13. Citing paragraph 6.2 of the lease, this court found that even if the Port District's various actions and inactions were considered waiver, at most it was a waiver to timely demand Dockside meet its obligations and, pursuant to the lease, Dockside's obligations continued. *Id.* at 11-13. Without terms specifically waiving the right to performance, the language of paragraph 6.2 compelled the finding that the circuit court properly found in favor of the Port District. *Id.* at 13.

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¶ 28 Following *Dockside II*, the Port District sent notice to Dockside that it would no longer tolerate Dockside's delay in meeting its obligation to excavate the slip to 27 feet. The parties' efforts to negotiate a settlement failed. Dockside reported to the Port District that it had begun work toward meeting its obligation, including hiring a surveying company and seeking permits for the work. However, no work was completed. After negotiations failed, the Port District filed its verified complaint in forcible entry and detainer.

¶ 29 The Port District moved for summary judgment based on the doctrine of *res judicata*. The Port District argued that there was identity of parties and identity of cause of action between its forcible action and *Dockside I* and *Dockside II*. Because of this court's findings that Dockside failed to meet its obligation to dredge the slip in those two appeals, the Port District argued that the circuit court must grant summary judgment and find that Dockside was in default on the lease. In support of its motion, the Port District provided affidavits of several experts who testified to the permit requirements and process, economic advantages, and lease requirements for the construction and use of the 27-foot deep slip.

¶ 30 In its motion for summary judgment, Dockside argued that the release identified in the documents concerning the 1984 assignment of the lease warranted judgment in its favor. Dockside provided affidavits of several witnesses who testified that the 27-foot requirement was no longer a material condition. The witnesses testified that such a depth was only necessary for the largest vessels and it was no longer economically viable for such vessels to travel so far when other harbors existed on Lake Michigan. John B. Schlossberg, III, vice president of Dockside, testified that he was aware of the alleged release, but was not in possession of the documentation

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other than the June 13, 1984 letter. In response to Dockside's motion, the Port District submitted the affidavit of Diamond, who testified that the two letters addressed to her were never signed by her, nor was she authorized to do so. Diamond averred that the release was solely limited to the portions of the parcels assigned and did not apply to the portions maintained by Dockside, including the slip and Dockside's obligation to dredge the slip to 27 feet.

¶ 31 The circuit court granted Dockside's motion for summary judgment, finding that enough documentary evidence existed to conclude the Port District released Dockside's duty to dredge the slip to a depth of 27 feet. The court also denied the Port District's summary judgment motion, concluding the case was not barred by *res judicata* because the prior proceedings narrowly dealt only with the determination of whether the Port District's obligation was a condition precedent to Dockside's duties under the lease.

¶ 32 In the *Dockside III* appeal, this court rejected the Port District's argument that the doctrine of *res judicata* barred consideration of Dockside's obligation, and affirmed the circuit court's decision to deny the Port District's summary judgment motion. *Dockside III*, No. 1-10-0499, slip op. at 10. Pertinent to the issue presented here, the *Dockside III* court found there was not an identity of causes of action. Evidence of the release was not of record in the previous appeals and the record demonstrated that Dockside did not fully learn of the extent of the release or the existence of documents until the third appeal.

¶ 33 As to the release, the *Dockside III* court found "there is not such clarity from the documents to support a grant of summary judgment [in favor of Dockside]." *Id.* At 13. This court concluded:

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“Several factors lead us to find that questions remain. The assignment is not for the entirety of the parcels and it is a question if the parties contemplated full release of all obligations. Further, the release specifically limits its terms to claims existing prior to December 31, 1983, and January 1, 1984. In *Dockside II*, this court found that [Dockside’s] failure to meet its obligation of excavating to 27 feet and paragraph 6.2 of the lease compelled a finding that there was no waiver absent specific terms and the breach was ongoing. Therefore, there is a question of fact whether the release affected the ongoing breach. Subsequent actions by both parties in demanding undertaking of these lease obligations argue against a finding that they intended such a release of either party’s duties. The lack of concise and specific language and the surrounding circumstances require further examination and the trial court erred in granting summary judgment based on the documents presented.” *Id.* at 13-14.

¶ 34 The Cases Currently Before This Court

¶ 35 After remand, the Port District filed a new breach of contract complaint alleging damages resulting from Dockside’s alleged dredging default and seeking recovery of attorney fees from Dockside for its unsuccessful lawsuits against the Port District. The circuit court consolidated the breach of contract complaint with the forcible entry and detainer action.

¶ 36 On September 14, 2011, and September 27, 2011, Dockside moved for summary judgment based on the newly discovered release documentation and the immateriality of the alleged dredging breach. Dockside also moved separately to dismiss the breach of contract

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complaint pursuant to sections 2-615 and 2-619 of the Code. Dockside contended the only remaining issues were (1) whether the parties intended the release to cover the alleged dredging breach; and (2) whether the breach is presently material. Dockside also raised the statute of limitations as an affirmative defense to the breach of contract complaint because the Port District filed suit more than 38 years after it knew of the alleged dredging breach. Dockside argued that the Port District's breach of contract claim expired after four years under section 13-214 (735 ILCS 5/13-214 (West 2010)) of the Code, as the evidence reflected the Port District knew of the alleged breach in 1969. Finally, Dockside argued that the Port District impermissibly sought to recover attorney fees for a separate case that concluded in 2006.

¶ 37 The key evidence newly before the circuit court included a countersigned version of the June 13, 1984 correspondence from Dockside to Port Authority and the May 22, 1984 letter Diamond prepared and sent to counsel for Dockside. The May 22, 1984 letter stated that Diamond had conferred with Port District's board members and had authorization to submit a counterproposal in which Port District agreed "to release Dockside from any claims it may have against Dockside existing prior to December 31, 1983, for the alleged breach of any of the terms and conditions set forth in the several Leases between the Port District, Dockside and EmEsCo," subject to an approval vote by the board. Apparently, previously produced copies of the June 13, 1984 letter, which is specifically referenced in the consent, did not include Diamond's signature. The newly discovered evidence was not produced by the Port District but instead was found in Golan's file. According to Dockside, the newly discovered documents "decisively establish the broad scope of the Release, and resolve conclusively the issue remanded by the Appellate Court."

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¶ 38 In response, the Port District requested additional time to reply to Dockside’s motion and for leave to take discovery of Dockside, its experts, and witnesses in light of the newly discovered evidence of the release under Supreme Court Rule 191 (Ill. S. Ct. R. 191 (eff. July 1, 2002)). The Port District maintained that the purported release was not a general release, but was limited with the intention to avoid having ongoing disputes between Dockside and the Port District interfering with Pinkert’s impending sublease of property from Dockside. The Port District argued that the evidence overwhelmingly demonstrates that the release was intended only to relate to the property to be assigned to Pinkert. The Port District noted the dueling affidavits before the circuit court. The former attorney for Dockside, Golan, executed an affidavit testifying that the release was intended as a “global release,” while Diamond’s affidavit averred that the release was limited only as to potential claims affecting the Pinkert subleased property.

¶ 39 On May 31, 2012, the circuit court heard argument on Dockside’s motions. The court reviewed *Dockside III*, but noted the newly discovered evidence was a game-changer, stating “it appears [Diamond] was acting on behalf of [Port District], and that she clearly accepted, by affixing her signature. Not only does she affix her signature; she also indicates her authority, prior to that, that she is the agent of the parties and that they’ve agreed to it.” As to the release, the trial judge stated, “I’d be strained to find that the release did not release both sides -- it’s clear, and I wanted to get to the language -- and that each side was releasing the other from any and all liability arising from the lease. I don’t know how it could be spelled out any clearer.” The court found no limiting language in the release, rather, the release language provided a release from “any and all obligations” under the terms of the lease. The court noted that the

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reviewing court in *Dockside III* did not have the benefit of the signed June 13, 1984 letter. The conclusive release language obviated the need to address the statute of limitations defense. The court entered an order of the same date dismissing the Port District's breach of contract complaint, but no order was entered regarding Dockside's summary judgment motion.

¶ 40 On June 27, 2012, the Port District filed its initial notice of appeal for the dismissal of its breach of contract complaint. Dockside moved to dismiss the appeal, arguing the May 31, 2012 ruling by the circuit court constituted a non-final order.

¶ 41 In the meantime, the Port District moved in the circuit court to file new evidence on materiality on July 3, 2012. The Port District received a consulting study in mid-June of 2012 and sought to submit it as evidence on the issue of current materiality in the forcible action.

¶ 42 On July 24, 2012, the circuit court heard argument again on Dockside's summary judgment motion. The trial judge referred back to his ruling in May, stating "I don't know how I can say it any clearer today." The court found the release documentation released Dockside from its obligation to dredge Slip No. 2 to 27 feet and that the Port District "confirmed the agreement" to release. In written orders of the same date, the court denied the Port District's motion to file new evidence on materiality and granted Dockside's summary judgment motion. The Port District filed its second notice of appeal on August 17, 2012. This court denied Dockside's motion to dismiss the Port District's initial appeal and both appeals were then consolidated as appeal number 1-12-1906.

¶ 43

ANALYSIS

¶ 44 The Port District raises a number of issues on appeal. First, it argues that the law of the

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case doctrine required the circuit court to follow the ruling in *Dockside III*. The Port District asserts that the extent of the release remains a genuine issue of material fact and that the court erred by granting Dockside summary judgment. The Port District argues the court erred by granting Dockside summary judgment on the issue of materiality of the alleged breach.

According to the Port District, dredging Slip No. 2 is a material element of the lease. In addition, the Port District contends the court committed prejudicial error by denying it the opportunity to conduct discovery concerning the newly discovered evidence. The Port District also asserts the statute of limitations does not bar the breach of contract complaint. Finally, the Port District argues its claim for attorney fees may be asserted in a separate proceeding.

¶ 45 The record below makes clear that the circuit court granted Dockside's motions based on the newly discovered evidence regarding the release. We likewise find the release between the parties is dispositive of the outcome of all the pending claims here.

¶ 46 Standard of Review

¶ 47 Summary judgment "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005 (West 2010); *State Farm Mutual Automobile Insurance Co. v. Coe*, 367 Ill. App. 3d 604, 607 (2006). The purpose of summary judgment is not to try a question of fact but to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 416-17 (2008). To determine whether a genuine issue of material fact exists, a court construes the pleadings liberally in favor of the nonmoving party. *Id.* at 417. Summary

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judgment should not be granted unless the movant's right to judgment is free and clear from doubt. *Mitchell v. Special Education Joint Agreement School District No. 208*, 386 Ill. App. 3d 106, 111 (2008). Our review of an order granting summary judgment is *de novo*. *Jones v. Country Mutual Insurance Co.*, 371 Ill. App. 3d 1096, 1098 (2007).

¶ 48 Section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)) permits a defendant to file a combined motion to dismiss pursuant to sections 2-615 and 2-619 of the Code. A section 2-615 motion to dismiss “tests the legal sufficiency of the complaint” while a section 2-619 motion “admits the legal sufficiency of the complaint, but asserts an affirmative matter outside the complaint that defeats the cause of action.” *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Under either section of the Code, our standard of review is *de novo*. *Id.* Because the circuit court ultimately dismissed the Port District's breach of contract complaint pursuant to section 2-619, our analysis is based upon the constructs of section 2-619.

¶ 49 The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). “A section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts.” *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). “On appeal from a section 2-619 motion, the reviewing court ‘must consider whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.’ ” *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 436 (2008) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)).

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¶ 50 Whether the circuit court properly granted summary judgment in favor of Dockside in the forcible action and dismissed the Port District’s breach of contract complaint hinges on the consent approved by the Port District’s board and the release documentation preceding the consent.

¶ 51 Law of the Case

¶ 52 Prior to reaching the merits, we address the Port District’s argument that the law of the case from *Dockside III* applies here as well. According to the Port District, the circuit court failed to follow this court’s order in *Dockside III* because it granted summary judgment on the same evidence that this court found to be in dispute.

¶ 53 The law of the case doctrine provides that “issues presented and disposed of in a prior appeal are binding and will control in the circuit court on remand, as well as the appellate court in a subsequent appeal, unless the facts presented are so different as to require a different interpretation.” *Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 47 (1998). However, this doctrine is not a limitation on the reviewing court’s authority to revisit an issue in circumstances where the facts have changed. *Scheffel & Co. v. Fessler*, 356 Ill. App. 3d 308, 312 (2005); *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 860 (2000).

¶ 54 In *Dockside III*, this court relied upon Diamond’s affidavit to conclude that a genuine issue of material fact remained with regard to whether the release language was limited solely to the assignment of property to Pinkert. Diamond’s affidavit raised a question of whether the assignment was for the entirety of the parcels or whether the release contemplated full release of all obligations. This court did not have the benefit of the newly discovered evidence before it

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when it rendered its decision. The facts have substantially changed because the record makes clear: (1) Diamond countersigned the June 13, 1984 with authorization from the Port District's board; (2) the Port District's board voted and approved the consent, which referenced the June 13, 1984 countersigned letter; and (3) the May 22, 1984 letter reflects that Diamond conferred with the Port District's board members and set forth in her own letter to Dockside that the Port District agreed "to release Dockside from *any* claims it may have against Dockside existing prior to December 31, 1983, for breach of *any* of the terms and conditions set forth in the Leases." (Emphasis added.) Based on the newly discovered evidence, we reject the Port District's argument that the law of the case doctrine applies.

¶ 55 The Evidence Supports a Full Release of All Obligations

¶ 56 Contract law governs the operation of releases. *Farm Credit Bank v. Whitlock*, 144 Ill. 2d 440, 447 (1991). "A release is a contract whereby a party abandons a claim to the person against whom the claim exists." *Fuller Family Holdings, LLC v. Northern Trust Co.*, 371 Ill. App. 3d 605, 614 (2007). "Where the terms of the release are clear and explicit, the court must enforce them as written, and construction of the instrument is a question of law." *Id.* "General words of release are restrained in effect by the specific recitals contained in the document." *Id.* The construction of an ambiguous release is a question of fact and parol evidence is admissible to explain what the parties intended. *Whitlock*, 144 Ill. 2d at 447.

¶ 57 "Releases are strictly construed against the benefitting party and must spell out the intention of the parties with great particularity." *Fuller Family Holdings*, 371 Ill. App. 3d at 614. "The intention of the parties controls the scope and effect of the release, and this intent is

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discerned from the release's express language as well as the circumstances surrounding the agreement." *Id.*

¶ 58 Where the releasing party was unaware of claims other than those contemplated by the release, it will be limited to the specific claims contained in the release agreement. *Whitlock*, 144 Ill. 2d at 447. Where both parties were aware of an additional claim at the time of signing the release, however, the general release language of the agreement will be given effect to release that claim as well. *Id.*

¶ 59 A clear trail of evidence supports the circuit court's finding that the Port District released Dockside from all its obligations under the three leases previously executed. First, before the drafting of any release language, the evidence reflects that the Port District sought to release Dockside from its lease obligations because "there was a question of funds due Dockside for use of *** Slip No. 2." In response, Dockside proposed the parties "would each release the other from any and all claims they may have with respect to the leases." Counsel for Dockside sent the Port District a proposal, noting that the Port District was unwilling to approve the sublease "unless Dockside agreed to 'expunge' the balance of wharfage and dockage fees due Dockside." The proposal suggested a compromise to permit the sublease to Pinkert, such that the Port District would "agree to release Dockside from any claims it may have against Dockside existing prior to December 31, 1983, for breach of any of the terms and conditions set forth in the leases."

¶ 60 Port District attorney Diamond responded to Dockside, stating that she was the legal representative for the Port District and was authorized to make a counterproposal, subject to ratification by a majority of the full board of directors. In the counterproposal, the Port District

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agreed to an assignment of the property based on certain terms and conditions, which included the Port District's agreement "to release Dockside from any claims it may have against Dockside existing prior to December 31, 1983, for the alleged breach of any of the terms and conditions set forth in the several Leases between the Port District, Dockside and EmEsCo."

¶ 61 Turning to the June 13, 1984 correspondence that Diamond countersigned, the Port District agreed to consent to the assignment of portions of parcels A and B to Pinkert "only under the following conditions," which included: "The Port District will agree to release Dockside from any claims it may have against Dockside existing prior to January 1, 1984, for the alleged breach of any of the terms and conditions set forth in the several Leases between the Port District, Dockside and EmEsCo."

¶ 62 On June 15, 1984, the Port District's board duly adopted the terms and conditions contained in the June 13, 1984 letter. The consent specifically stated, "This Consent releases Transferor [Dockside] from all the terms, covenants or obligations contained in the said Leases to be kept, observed and performed by the Transferor." The June 13, 1984 letter is attached as an exhibit to the consent. The minutes from the June 15, 1984 meeting reflect that the board unanimously approved the consent. In addition, the board also executed an estoppel certificate on the same date specifically providing "there is no existing default by any party under any of the Leases."

¶ 63 This evidence clearly demonstrates the parties' intent to release Dockside from any and all obligations under the leases. Viewing all of these instruments together, in addition to the actions of the Port District's board to unanimously consent to the release language in the June 13,

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1984 letter and execute the estoppel certificate, we find as a matter of law the terms of the release are clear and explicit, and must be enforced as written.

¶ 64 Moreover, the record shows the Port District was aware of Dockside’s failure to dredge Slip No. 2 to 27 feet in depth as early as 1969. In other words, the Port District’s claim of alleged breach for Dockside’s failure to excavate Slip No. 2 to 27 feet was in the contemplation of the parties at the time the parties executed the release and the board consented.

¶ 65 Notably, the Port District’s objection to the release is primarily based on prior court rulings, instead of the release language itself. The Port District has not pointed to any specific language demonstrating any ambiguity. The Port District cannot and does not before this court dispute the minutes from its own board meeting on June 15, 1984, the consent resolution, and estoppel certificate.

¶ 66 The June 13, 1984 release unambiguously applies in this case to release Dockside “from all of the terms, covenants or obligations contained in the said Leases to be kept, observed and performed” by Dockside as provided in the consent. The circuit court properly granted summary judgment in favor of Dockside and dismissed the Port District’s breach of contract complaint.

¶ 67 **CONCLUSION**

¶ 68 We affirm the judgments of the circuit court of Cook County: in case No. 07 M1 729103, to grant summary judgment in favor of Dockside; and in case No. 11 L 8151, to dismiss the Port District’s breach of contract complaint.

¶ 69 Affirmed.