2013 IL App (2d) 130316-U
No. 2-13-0316
Order filed December 26, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BLACKHAWK STATE BANK, INC., Plaintiff and Counterdefendant-Appellee, v. AL'S MOTORHOME AND TRAILER SALES, INC., ALAN BEILKE, GAYLE BEILKE, MICHAEL OKUN, DENIS HASKELL, TEXTRON FINANCIAL CORP., COUNTRY COACH, INC., CLEAR CHANNEL OUTDOOR, INC., RON RICE, PETE WETZEL, UNKNOWN OWNERS and NON-RECORD CLAIMANTS, Defendants (Martin Maggio, Defendant and Counter-plaintiff-Appellant).	)	Appeal from the Circuit Court of Winnebago County. No. 09-CH-679 Honorable J. Edward Prochaska, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The bank turns out not to be the villain in this case where the defendant and counterplaintiff entered into a handshake deal to purchase the subject property, a

farm, for $825,000 from the property owner who was also struggling to keep his motorhome business afloat even though it had amassed nearly $7 million dollars of debt. The trial court did not err in dismissing defendant and counterplaintiff's counterclaims for rescission based on mutual mistake and fraud, and its judgment on the unjust enrichment counterclaim was not against the manifest weight of the evidence. The trial court also did not abuse its discretion in sanctioning the defendant and counterplaintiff for a conceded discovery violation.

¶ 2 A handshake may be enough to transact business between men and women of good will, but, in this case, such trusting naiveté, while perhaps its own spiritual reward, is a business and monetary bust. Defendant and counterplaintiff, Martin Maggio, appeals the judgment of the circuit court of Winnebago County in favor of plaintiff and counterdefendant, Blackhawk State Bank, Inc. (Blackhawk), on Maggio's counterclaim for unjust enrichment, dismissing, pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 619 (West 2010)), his claims for rescission based on mutual mistake and, alternatively, fraud, and awarding a discovery sanction to Blackhawk in the amount of $2,000 for withholding a signed settlement agreement with Alan Beilke (who is not a party to this appeal) despite Blackhawk's repeated requests. We affirm.

¶ 3 BACKGROUND

¶ 4 Alan Beilke owned both the subject property, a farm located on Rotary Road near Rockford, and Al's Motor Homes & Trailers, Inc. (Al's). In 2005, Beilke and his wife, Gayle, mortgaged the subject property. Blackhawk held the mortgage on the subject property, and, in January 2006, Blackhawk perfected its interest in the property. Beilke borrowed more money from Blackhawk, eventually reaching a total indebtedness of $6.7 million. The subject property, which was originally mortgaged for $325,000, stood as collateral for Beilke's total indebtedness. The Beilkes also issued personal guarantees for the total loan amount.

¶ 5 At some time before May 30, 2007, Al's sold a 2007 Country Coach motorhome out of trust, meaning that the sales price of the motorhome was not used to pay down the Beilke's indebtedness to Blackhawk. Blackhawk, through Todd Larson, an officer of the bank and the bank's contact with Beilke, informed Beilke that $425,025 needed to be paid to Blackhawk, or else Beilke's loan could be called into default. In addition, Blackhawk was apparently aware, as of May 29, 2007, that some other vehicles were out of trust, but it had not determined if those vehicles had been sold or moved to another Al's location.

¶ 6 At some time around April 30, 2007, Maggio and Beilke negotiated a handshake purchase of the subject property for $825,000, and with Beilke representing that, after being asked, Maggio would receive the subject property free and clear of liens and encumbrances. Maggio wrote Beilke a check for $425,000 and dated April 30, 2007. The check was written on the Maggio Truck Center, Inc., account at Amcore Bank, and was made payable to Beilke. On the memo line of the check, Maggio wrote, "payment on farm less $425,000 bal w/$400,000 due". On May 30, 2007, Maggio wire-transferred the sum of $400,000 to Beilke.

¶ 7 Also on May 30, 2007, Beilke called Larson at the bank, informing him that a check would be dropped off. Later that day, Gayle dropped of the Maggio check in an envelope addressed with Larson's name. Larson reviewed the check but did nothing with it initially. Beilke called a little later that day and asked Larson if he had received the check. Larson informed Beilke that he had, but that he had questions about the check. Larson asked about the purpose of the check and who had drafted it. According to Larson, Beilke responded that Maggio was a long-time family friend who was helping him out. Larson accepted Beilke's answer and the check. Beilke instructed Larson to apply the proceeds of the check to the Al's

indebtedness. The bank first deposited the check into Beilke's account and, thereafter, the amount of the check was applied to Beilke's indebtedness.

¶ 8 Larson indicated that, on May 30, 2007, neither he nor any other bank personnel knew who Maggio was, and all were unaware of any business dealings between the Beilkes and Maggio. As of May 30, 2007, no written contract for the sale of the subject property had been created. On June 7, 2007, after payment-in-full had been tendered to the Beilkes, Maggio and the Beilkes finally executed a written contract for the sale of the subject property. In July 2007, Blackhawk received notice of Maggio's claim against the subject property and for the proceeds of the $425,000 check. Around the same time, Beilke inquired about what it would take to release Blackhawk's mortgage on the subject property. Larson informed Beilke that the bank would require full payment on all of Beilke's indebtedness in order to release its liens on the subject property.

¶ 9 Maggio contacted Larson and the bank's president seeking the return of the funds associated with the $425,000 check. Both Larson and the president refused Maggio's importunities. Subsequently, in 2009, Maggio entered into an agreement with Beilke and Gayle, apparently in an effort to mitigate his damages. Maggio agreed to release any claims he had against the Beilkes and to not become involved as a creditor in Beilke's impending bankruptcy, and, in return, he received a quit-claim deed to the subject property, a quit-claim deed to a five-acre parcel nearby the subject property, and a second mortgage on the Beilkes' house in the amount of $800,000 (even though the house and its several-acre parcel was not worth that amount).

¶ 10 Beilke eventually was unable to continue to pay his debts and Blackhawk filed a foreclosure action against the subject property. Maggio filed a counterclaim against Blackhawk

in that action based on the foregoing events. Maggio raised three causes of action in his counterclaim: rescission based on mutual mistake, rescission based on fraud, and unjust enrichment. Blackhawk's motion to dismiss the rescission claims was granted. On the eve of the evidentiary hearing in this matter, Maggio finally produced the 2009 settlement agreement with the Beilkes. Blackhawk filed a motion for sanctions on the day the trial commenced. The trial court held an evidentiary hearing at which evidence consistent with the foregoing factual summary was elicited. At the end of the hearing, the trial court allowed the parties to submit written argument on the unjust enrichment claim and the motion for discovery sanctions.

¶ 11 The trial court issued an oral judgment in favor of Blackhawk on the unjust enrichment counterclaim. It held that Maggio had failed to meet his burden of proof, specifically finding that Beilke deposited the $425,000 check which was then applied to Beilke's indebtedness to Blackhawk, so that the bank's retention of the funds was not unjust. The trial court also held that Blackhawk was a holder in due course, which provided a complete defense to the unjust enrichment counterclaim, and that Maggio had unclean hands due to the casual and negligent manner in which he handled an $800,000 transaction with Beilke without performing any verification of the encumbrances to the subject property or even creating a written agreement until after the purchase price for the subject property had been paid. The trial court continued the motion for sanctions and, eventually, granted the motion and awarded Blackhawk $2,000. Plaintiff timely appeals.

¶ 12 II. ANALYSIS

¶ 13 On appeal, Maggio argues first that the trial court erred in its judgment in favor of Blackhawk on the unjust enrichment counterclaim because it applied incorrect legal standards and its decision was against the manifest weight of the evidence. Next, Maggio argues that the

trial court erred in dismissing the two rescission counterclaims. Last, Maggio argues that the trial court abused its discretion in allowing Blackhawk's motion for discovery sanctions and awarding it $2,000. We consider each contention in turn.

¶ 14 A. Unjust Enrichment

¶ 15 As an initial matter, we review the trial court's judgment in a bench trial to determine whether it was against the manifest weight of the evidence. *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478, ¶ 14. A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the judgment appears to be arbitrary, unreasonable, or not based on the evidence. *Id.* With these principles in mind, we consider Maggio's specific contentions.

¶ 16 Maggio first challenges the trial court's judgment that he failed to adequately prove his entitlement to the relief sought. Maggio argues that the trial court incorrectly considered his counterclaim to be equitable rather than legal. Maggio also complains that the trial court improperly punished him for his discovery violation by using that violation in its substantive decision on the unjust enrichment counterclaim. Maggio also argues that the trial court's determination that Blackhawk was a holder in due course did not provide a defense to his unjust enrichment counterclaim. Maggio also challenges the trial court's factual determinations, specifically its acceptance of Larson's testimony and its rejection of Beilke's affidavit. Maggio also argues that the unclean hands finding was unwarranted because he was under no obligation to retain an attorney and to perform a title search while purchasing the subject property. Maggio concludes that Blackhawk had a duty to investigate based on the information contained on the check's memo line referring to the sale of a farm; if nothing else, Blackhawk should have simply called Maggio, the drawer of the check, about the meaning of the memo-line inscription on the

check. Maggio concludes that, for all of these reasons, the trial court's judgment on the unjust enrichment counterclaim was against the manifest weight of the evidence.

¶ 17 It is helpful to review precisely what we are called upon to review. It is well established that an appellate court reviews the trial court's judgment, but not its reasoning in arriving at that judgment. *Bruel & Kjaer v. Village of Bensenville*, 2012 IL App (2d) 110500, ¶ 22. Additionally, we may affirm the trial court's judgment on any basis supported by the record. *Id.* Here, Maggio is attacking the trial court's judgment on a broad front, and, essentially, he must prevail on every ground raised in order to carry this first issue. On the other hand, if the trial court's judgment is sound for any of the reasons it gave, or for any other reason appearing in and supported by the record, we can sustain the trial court's judgment.

¶ 18 In order to prove a claim for unjust enrichment, a plaintiff must demonstrate that the defendant unjustly retained a benefit to the plaintiff's detriment, and that the defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. While many unjust enrichment scenarios involve situations in which the benefit the plaintiff is attempting to recover proceeded directly from the plaintiff to the defendant, the scenario in this case is one in which the benefit proceeded to the defendant through the actions of a third party. See *HPI Health Care Services, Inc. v. Mount Vernon Hospital, Inc.*, 131 Ill. 2d 145, 161 (1989). In this less usual scenario, it is nevertheless well settled that the retention of the benefit by the defendant would be unjust in three situations: (1) where the benefit should have been given to the plaintiff, but the third party mistakenly gave the benefit to the defendant; (2) the defendant obtained the benefit from the third party through some type of wrongful conduct; or (3) the plaintiff, for some other

reason, had a better claim to the benefit than the defendant. *Id.* at 161-62. With these principles in mind, we consider the trial court's judgment.

¶ 19 In pronouncing judgment, the trial court held in favor of Blackhawk on Maggio's unjust enrichment counterclaims. The trial court first noted that Blackhawk did not deal with Maggio, but only Beilke, who was also the bad actor in the transaction. As to the element of unjust retention, the trial court expressly held that there had not been an unjust retention of anything by Blackhawk. The trial court stated that Maggio was unable:

> "to show that there's a benefit that was unjustly retained, I think you [Maggio] lose right at that stage. I mean, Blackhawk State Bank didn't receive a benefit that they didn't – there was consideration for this check. I mean, Blackhawk State Bank got the check and they credited Mr. Beilke's account by $450,000 [*sic*], so I mean they weren't unjustly enriched.
>
> Maggio wrote a check to Beilke, which he [Beilke] then gave to Blackhawk State Bank. Blackhawk State Bank accepted the check and credited Beilke's account $450,000 [*sic*]. That almost ends the inquiry right there because there was no unjust enrichment for Blackhawk State Bank. They gave due consideration or due credit to the person who gave them the check, which was Alan Beilke."

¶ 20 The trial court thus held that, because the transaction between the three parties had proceeded along the lines that would have been expected, Maggio failed to sustain his claim for unjust enrichment. On appeal, Maggio does not actually directly challenge this particular factual finding by the trial court. Maggio does, however, assail the trial court's judgment and reasoning indirectly. Specifically, while Maggio does not couch his argument in the same terms used in *HPI*, he does challenge the trial court's determination that Larson was credible, Beilke was not

credible, and suggests either that Blackhawk obtained the benefit through unlawful or improper conduct or that he has a better claim to the proceeds from the $425,000 check (the benefit) than Blackhawk. We believe that Maggio's line of argument on this issue is sufficient to avoid waiver or forfeiture, even if the argument is not well drawn, because the argument is, at least, obvious.[1]

¶ 21 We consider first the credibility issue. It is the province of the finder of fact to weigh the testimony of the witnesses and asses their credibility. *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 254 (2004). Likewise, the fact finder will resolve conflicts in the evidence and draw the reasonable inferences and conclusions from the facts. *Smith v. Department of Professional Regulation*, 202 Ill. App. 3d 279, 284 (1990). As we have previously noted, we review these factual determinations to ascertain whether they were against the manifest weight of the evidence. *Martinez*, 2012 IL App (1st) 111478, ¶ 14. A factual determination is against the manifest weight of the evidence where the opposite conclusion is apparent or the determination is arbitrary, unreasonable, or not based on the evidence. *Id.* That said, the fact finder in a bench trial need not accept a party's testimony, even where it is uncontradicted. *Gonet v. Chicago &*

[1]We note that Blackhawk is quick—perhaps overeager—to wave the flag of waiver or forfeiture. For example, Blackhawk asserts that Maggio forfeited his argument regarding a holder in due course because when he first mentions it, he did not include argument or citation to develop the issue. Blackhawk overlooks the fact that Maggio supplied about six pages of argument on the topic which serves double-duty because Maggio applies the argument to his rescission claims as well. Thus, we would be unable to find the argument forfeited even though we might wish that Maggio would have provided a cleaner organization to his arguments.

North Western Transportation Co., 195 Ill. App. 3d 766, 776 (1990). Further, the reviewing court may not upset the fact finder's determinations of facts, credibility of witnesses, or weights to be given to the evidence simply because another trier of fact could have found differently or that other conclusions from the facts are reasonable; the determinations must be against the manifest weight of the evidence. *Id.*

¶ 22 Reviewing the evidence adduced during the hearing, Larson testified that Beilke delivered the $425,000 check to his attention. When he examined the check, he noted the memo line and called Beilke to discuss it. According to Larson, Beilke claimed that Maggio was a family friend helping him out. Larson denied having any knowledge of any other business dealings between Maggio and Beilke; Larson testified that he was unaware of the oral agreement between Beilke and Maggio for the purchase of the subject property. Larson, having satisfied himself that the check was proper, deposited to Beilke's account and then disposed the funds according to Beilke's directions. At that time, Larson had not been informed that the check was for the purchase of the subject property. Larson credited Beilke's indebtedness by the amount of the check. At the hearing, Maggio did not offer any evidence or testimony to refute or contradict Larson's testimony.

¶ 23 The testimony at trial revealed that the negotiation of the check turned out to be a straightforward matter. Beilke, as payee and client of Blackhawk, presented the check to the bank, stated that it was to help him stay afloat, and directed Blackhawk to credit his indebtedness with the amount of the check. Blackhawk did so. We cannot say that the trial court's conclusion on these facts that Blackhawk did not unjustly retain a benefit is against the manifest weight of the evidence. If there was no unjust retention of a benefit properly belonging to Maggio, then his claim fails.

¶ 24 Maggio maintains that Larson's testimony was not plausible. Maggio supports this claim by referring to Beilke's affidavit, which squarely contradicts Larson's account, and, in the affidavit, Beilke denies that he gave Larson the story that Maggio was a family friend helping him out.

¶ 25 The trial court stated that it accorded affidavit no weight at all. The trial court explained that the evidence showed that Beilke was the bad actor in this transaction, duping Maggio out of his money and using that money in a vain effort to keep his failing motorhome business alive a little longer. The trial court further observed that Beilke had never appeared for deposition or to give any testimony in this matter, and that silence was damning. Additionally, the record suggests that Beilke's mental capacity was failing during the course of the litigation, and the court had serious questions about how Maggio obtained the affidavit from Beilke when he was unable to testify in deposition or at trial due to his failing mental faculties. The trial court was free to make this assessment as the finder of fact (*Hoffman*, 352 Ill. App. 3d at 254; *Smith*, 202 Ill. App. 3d at 284); displaying its reasoning as to why it accorded Beilke's affidavit no weight allows the reviewing court to see, evaluate, and understand the trial court's thought processes. The decision to effectively ignore the Beilke affidavit was not made arbitrarily: there were legitimate concerns over its provenance, and Beilke maintained his sphinx-like silence throughout the proceedings save for the affidavit, even though the evidence squarely shows that it was Beilke who precipitated the entire mess (certainly from Maggio's viewpoint). Accordingly, we do not dispute the trial court's evaluation of the Beilke affidavit and cannot say that it was against the manifest weight of the evidence for the trial court to accord it no weight.

¶ 26 Instead of adopting Maggio's view, the trial court held that Larson's testimony was credible and was unrebutted. Maggio, of course, disputes this view. We have determined the

trial court was well within its bailiwick in according the Beilke affidavit no weight, and the Beilke affidavit is the only thing in the record that directly contradicted Larson's testimony. Because the Beilke affidavit could be ignored (as we analyzed above), then there remains nothing in the record contradicting Larson's testimony, and the trial court's determination that Larson's testimony is credible is not against the manifest weight of the evidence. Further, the trial court's attribution of credibility to Larson's testimony is particularly within its province as fact finder. *Hoffman*, 352 Ill. App. 3d at 254. Finally, regarding Maggio's own testimony, the trial court, as fact finder, is not constrained to automatically accept a party's testimony, but may subject that testimony to credibility assessment and weighing. *Pottinger v. Pottinger*, 238 Ill. App. 3d 908, 919 (1992) (in a bench trial, the trial court is not required to accept a party's testimony); *Gonet*, 195 Ill. App. 3d at 776 (the trial court in a bench trial is not required to accept a party's testimony even where it is uncontradicted). Thus, again, we cannot say that the trial court's assessment and weighing of the testimony adduced at the hearing was against the manifest weight of the evidence. Accordingly, we hold that the trial court's judgment that Maggio failed to demonstrate that Blackhawk unjustly retained a benefit that was more properly Maggio's was not against the manifest weight of the evidence, and his unjust enrichment claim necessarily fails.

¶ 27 Maggio argues that "Larson knew exactly what he was doing to Maggio" by accepting the check from Beilke and depositing it in Beilke's account, and later crediting Beilke's indebtedness in the amount of the check. In other words, Maggio is charging Larson with willful and wrongful conduct sufficient to fall under the wrongful conduct element of the *HPI* analysis (see *HPI*, 131Ill. 2d at 161). We find, however, no evidence in the record to support Maggio's claims of bad faith on the part of Blackhawk and Larson. Larson testified that he had no

knowledge of any dealings between Maggio and Beilke and expressly stated that he had no knowledge that Maggio was not going to get something he believed he had bargained for as part of the transaction relating to the negotiation of the check. Maggio's claims of bad faith are grounded on speculative leaps from the facts that Larson was the bank's point man in dealing with Beilke and his loans and mortgages and Larson saw the memo-line notation on the check. From this, Maggio leaps to the conclusion that Larson must have known that the check was for the purchase of the farm (despite Larson's contrary express testimony), and that Beilke was not entitled to negotiate the check unless Blackhawk was willing to release its interests in the subject property (again, despite Larson's testimony about knowing nothing of any dealings between Maggio and Beilke). The analytical leaps required by Maggio's arguments are too far and are contradicted by Larson's express (and, as determined by the trial court in its fact-finding role, credible) testimony. Accordingly, we reject the claims of Larson's or the bank's bad faith.

¶ 28 Maggio also argues that he had a better claim to the money from the check than Blackhawk, attempting to fit under the better-claim element of the *HPI* analysis (see *HPI*, 131 Ill. 2d at 162). The trial court held that Blackhawk had a better claim to the proceeds because it took the check without notice of Beilke-Maggio deal to purchase the subject property. Again, this conclusion is amply supported by Larson's testimony and we cannot say it is against the manifest weight of the evidence. Additionally, Blackhawk was without knowledge that Maggio was expecting the bank to release its interests in the subject property because Beilke did not convey that information to Larson. The first time Blackhawk learned of the purchase of the subject property occurred about a month after the transaction when Beilke and Maggio inquired about releasing the mortgage on the subject property. We cannot say that the trial court's

conclusion that the bank was an innocent actor in the transaction is against the manifest weight of the evidence. Accordingly, we reject Maggio's contention.

¶ 29 We also note that the trial court determined that Maggio had been negligent in conducting a handshake transaction where the stakes were so high. The trial court stated that Maggio should have investigated Beilke's representation that there were no liens on the subject property by conducting a title search and by performing the transaction before a written contract had been drafted. Maggio disputes this finding, noting that not hiring counsel or performing a title search "does not equate to lack of reasonable care", citing *Czarobski v. Lata*, 227 Ill. 2d 364, 375-76 (2008), in support. Maggio expresses his point as a solid and immutable rule set forth by our supreme court; our reading shows the *Czarobski* holding to be much more equivocal than Maggio would have us believe. In *Czarobski*, the defendants claimed that the plaintiffs had been negligent because they did not do what was customary in a real estate transaction, namely, perform a title search. *Id.* at 375. The supreme court rejected the argument, noting that, "[w]hile a search of the tax records might be prudent practice, [the] defendants cite to no authority supporting the proposition that due care requires such a search in every real estate transaction, irrespective of the particular facts and circumstances." *Id.* at 376. The supreme court further noted that the defendants had also changed their position on what constituted customary practice in real estate transactions from the trial court to the appellate court, and that this was not allowed. *Id.* Our reading of *Czarobski*, then, shows that there were different circumstances at play in that case as opposed to the instant case, and the supreme court was essentially requiring due care and negligence in a real estate transaction to be considered on a case-by-case basis. *Id.* *Czarobski*, then, does not support Maggio's claim that proceeding in a real estate transaction without the benefit of counsel or a title search can never be considered negligent behavior, but it does require

us to determine whether the conclusion that such conduct in this case was negligent was against the manifest weight of the evidence.

¶ 30 The evidence adduced at trial showed that Maggio generally proceeded in his business dealings on a handshake basis, but there was no elaboration as to whether he customarily did handshake business with persons previously unknown to him. Maggio also inquired of Beilke whether the subject property was encumbered by any liens, to which Beilke, dishonestly, replied that it was free and clear of any encumbrances. The evidence also showed that this was a significant transaction, valuing the subject property at $825,000. The evidence also showed that Maggio and Beilke had not done business together before, and there was no indication that Maggio knew Beilke or the status of Beilke's business before the transaction occurred and then soured. Significantly, a written contract was drafted and executed about a week after the Maggio had paid in full for the subject property.

¶ 31 Comparing the evidence adduced about the circumstances surrounding the transaction for the subject property against our manifest-weight standard of review results in the conclusion that the trial court's determination in this case was not against the manifest weight of the evidence. The size and importance of the transaction, the lax approach to such a large transaction with someone unknown to him, and the fact that a written contract was produced only after the transaction had supposedly been completed all strongly support the trial court's determination. In addition, the trial court properly noted that Maggio could have easily avoided the entire situation with basic and customary investigation—of Beilke and his business as well as by a title search, or by using counsel to guide the transaction to completion. Because we cannot say that the trial court's holding that Maggio was negligent in the transaction in this case was against the manifest weight of the evidence, we also cannot say that the resulting determination that, due to

Maggio's negligence, the bank had a better claim to the proceeds of the check than Maggio was against the manifest weight of the evidence. Accordingly, we reject Maggio's arguments pertaining to his unjust enrichment counterclaim.

¶ 32 In light of our conclusion that Maggio failed to demonstrate that Blackhawk unjustly retained the proceeds of the check, his unjust enrichment claim necessarily fails, because an essential element of the claim is unproved. *Gagnon*, 2012 IL App (1st) 120645, ¶ 25. Because of our resolution of the unjust retention issue, we need not address any of Maggio's remaining arguments under the unjust enrichment issue because, even were Maggio to prevail on every one of the remaining issues, his failure on the unjust retention issue alone determines the outcome of the unjust enrichment counterclaim on appeal.

¶ 33 B. Rescission Claims

¶ 34 Maggio next challenges the trial court's dismissal of his counterclaims pursuant to sections 2-615 and 2-619 of the Code. A motion to dismiss pursuant to section 2-615 of the Code tests the legal sufficiency of the complaint. *Karas v. Strevell*, 227 Ill. 2d 440, 451 (2008). A motion to dismiss pursuant to section 2-619 of the Code, however, admits the sufficiency of the claim, but asserts the existence of an affirmative matter outside of the pleading that defeats the claim. *Czarobski*, 227 Ill. 2d at 369. The question to be answered on the appeal from a section 2-615 dismissal, is whether the allegations of the claim, when construed in the light most favorable to the pleader, are sufficient to establish a cause of action upon which relief may be granted. *Karas*, 227 Ill. 2d at 451. On the other hand, the purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact early in the litigation, and the review of such a motion, after construing the pleadings and supporting documents in the light most favorable to the nonmoving party, considers whether the existence of a genuine issue of

material fact should have precluded the dismissal, or, absent such an issue of fact, whether the dismissal was proper as a matter of law. *Czarobski*, 227 Ill. 2d at 369. Our review of section 2-615 and section 2-619 motions is *de novo*. *Karas*, 227 Ill. 2d at 451; *Czarobski*, 227 Ill. 2d at 369. With these principles in mind, we turn to Maggio's specific contentions.

¶ 35 In passing upon the motion to dismiss the rescission counts, the court held first, that under either theory, mistake or fraud, the allegations of the counterclaims failed to plead the necessary elements required to state a claim upon which relief may be granted, and both were therefore subject to dismissal under section 2-615 of the Code. The trial court continued and also held that Blackhawk was a holder in due course and that this status defeated the rescission claims even if they had been adequately pleaded, so they were also impliedly subject to dismissal under section 2-619 of the Code.

¶ 36 The court analyzed the rescission based on mistake as follows:

> "In order to state a cause of action based on mutual mistake, Maggio must allege that there was a contract or agreement between Maggio and [Blackhawk]. The only agreement alleged in the [c]ounterclaim was between Maggio and Beilke. [Blackhawk] was not a party to that agreement. Similarly, the only allegation of mistake was between Maggio and Beilke. Maggio does not allege any negotiation or mistakes between him and [Blackhawk]. Maggio also fails to allege that [Blackhawk] was mistaken about a material term of an alleged agreement or negotiation. Finally, Maggio has failed to allege that his mistake occurred despite the exercise of reasonable care on his part. For all these reasons, [this count] fails to state a [cause] of action based on mutual mistake and must be dismissed under section 2-615 [of the Code]."

¶ 37 The court then turned to the rescission claim based on fraud and analyzed it as follows:

"The [c]ourt agrees with [Blackhawk] that this [c]ount would seemingly be brought against Beilke rather than against [Blackhawk]. The only representations or agreements alleged in the [c]ounterclaim are between Maggio and Beilke. Maggio fails to plead that [Blackhawk] made any representations to Maggio, let alone a representation aimed at inducing Maggio to act. Further, Maggio has failed to allege that [Blackhawk] made any false allegations about the check in question to anyone. As such, Maggio has failed to plead a cause of action for rescission of negotiation based on fraud and [this count] is dismissed under [s]ection 2-615 [of the Code]."

¶ 38 Finally, the court analyzed the issue of holder in due course as follows:

"Moreover, the [c]ourt finds that [Blackhawk] is a holder in due course which defeats both causes of action based on rescission. Blackhawk took the instrument for value since it reduced Beilke's loan by the face value of the instrument. *** Further, Maggio has failed to plead any facts which would have put [Blackhawk] on notice of any claim or defense to the instrument. Maggio has pleaded no irregularities on the face of the check. The notation of 'Payment on Farm less $425,000 Bal.' states the purpose of Maggio's writing the check to Beilke but does not put [Blackhawk] on notice of any claims or defenses to the instrument. In essence, this is a case where Beilke presented a check payable to himself, drawn by Maggio, which contained a notation concerning the reason for the payment. [Blackhawk] is a holder in due course under [section 3-306 of the Uniform Commercial Code (]810 ILCS 5/3-306 [(West 2012))]. Thus, [the rescission counts of the counterclaim] must be dismissed."

¶ 39 In order to adequately state a claim for rescission based on mistake that will survive a motion to dismiss pursuant to section 2-615, a party must plead and prove the existence of four

necessary elements: (1) the mistake is serious and material; (2) the mistake is so important that enforcement of the contract or transaction is unconscionable; (3) the mistake occurred even though the party seeking rescission exercised due care; and (4) rescission can place the other party in status quo. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 519 (1992). Blackhawk points to the third element—exercise of due care—and contends that Maggio neither pleaded facts nor even conclusions that would adequately state a claim for rescission due to mistake. We agree.

¶ 40 Maggio's only counterargument on the essential element of due care is that he was not required to utilize an attorney or perform a title search under the standards of due care, citing to *Czarobski* in support. Above, we noted that *Czarobski* did not promulgate an immutable rule, but rather, suggested that the issue of due care depended on the circumstances of each case. *Czarobski*, 227 Ill. 2d at 375-76. This suggests that the due care element presents a factual issue that is unsuitable for decision through a section 2-615 motion to dismiss. We note, however, that Maggio does not deny that his counterclaim failed to include allegations on the element of due care, and Maggio does not point to any specific allegations that satisfy the essential element of due care. Based on this implicit concession (and, in our review of the counterclaim, we are able to discern no allegations that Maggio undertook due care in this transaction), we hold that the counterclaim was fatally defective for having failed to allege a necessary element of the cause of action that Maggio sought to be proved.

¶ 41 Maggio reasonably suggests that the omission was only a technical defect that could have been easily remedied had he been allowed to replead the claim. Maggio further argues that, despite the defect, the evidence at the trial demonstrated that he undertook the transaction with due care. The trial court, however, expressly held that Maggio was negligent in his conduct of

the purchase of the subject property (*i.e.*, he did not exercise due care), and our analysis above included review of this precise holding, and we determined that the trial court's holding was not against the manifest weight of the evidence. *Supra*, ¶ 31.

¶ 42 Thus, we are left with a situation in which the formal defect is conceded and the adverse factual finding has actually been made. In other words, even if we believed that Maggio should be afforded an opportunity to replead his claim of rescission based on mistake, such an opportunity would be futile because the evidence already adduced on the issue would act as *res judicata* or law of the case and foreclose the claim in any event. See *Bjork v. Draper*, 404 Ill. App. 3d 493, 501 (2010) (questions of law or fact previously decided on appeal are binding on the trial court on remand). Accordingly, we hold that the trial court did not err in dismissing with prejudice the count of the counterclaim alleging rescission based on mistake. In light of our determination here, we need not address Maggio's remaining arguments regarding rescission based on mistake.

¶ 43 Maggio next contends, alternatively, that the trial court erred in dismissing his counterclaim of rescission based on fraud. In order to properly state a claim for rescission due to fraud on which relief may be granted, a party must allege: (1) a representation in the form of a statement of material fact; (2) made for the purpose of inducing the other party to act; (3) the statement is false; (4) the party making the statement either knows the statement is false or does not itself believe the statement; (5) the party to whom the statement is made does not know of the falsity of the statement; (6) the party to whom the statement is made reasonably believes the statement to be true; (7) the party to whom the statement is made acts upon the statement to its detriment; (8) relying on the truth of the statement. *Douglass v. Wones*, 120 Ill. App. 3d 36, 47-48 (1983). Here, Maggio's pleading of the claim was insufficient.

¶ 44 Specifically, Maggio did not properly and sufficiently allege the element of reasonable reliance on the truth of the statement. To be fair, Maggio included a perfunctory and conclusory allegation that he "reasonably relied to his detriment on Beilke's false statements." This is a formal defect, however, and Maggio could presumably allege sufficient facts to support the conclusion that he reasonably relied to his detriment on Beilke's false statements (see *Peraica v. Riverside-Brookfield High School District No. 208*, 2013 IL App (1st) 122351, ¶ 9 (Illinois is a fact-pleading jurisdiction, and one must allege facts and not conclusions in order to establish that one's claim is a viable cause of action)), even though he has not yet done so. Thus, as with the rescission-due-to-mistake claim, the trial court was justified in dismissing the claim, and the question becomes whether dismissal with prejudice is justified.

¶ 45 Due to the peculiar nature of this case, a trial was held on the counterclaim for unjust enrichment at which evidence dealing with the issue of reasonable reliance was adduced. The evidence (as well as an allegation in the counterclaim) showed that Maggio asked Beilke if the property were encumbered and that Maggio accepted Beilke's (false) representation that it was not. Based on this fact (and allegation), Maggio attempts to argue that his reliance was reasonable. We disagree.

¶ 46 The evidence at trial showed that Maggio and Beilke were strangers and had not conducted business together, and certainly not business of the magnitude of the instant transaction. Evidence also showed that Maggio did not prepare a contract, secure representation or counsel, acquire the services of a title company, or engage in any other conduct to ascertain whether the subject property was encumbered, or whether Beilke was someone with whom one could expect to conduct an honest handshake deal. In other words, the evidence showed that Maggio played the naïf to Beilke's sharp and unscrupulous operator. The trial court determined

that, in light of all of the evidence, this conduct was not reasonable and not undertaken with reasonable care. We reviewed this factual determination and concluded it was not against the manifest weight of the evidence. From that determination, we can infer that Maggio's belief, untested as it was, cannot be deemed reasonable when basic and customary actions like conducting a title search, reviewing Beilke's business status, executing a contract, or even retaining counsel to investigate the seller and the transaction, would have easily and clearly avoided the transaction and its consequences. Thus, even if Maggio were allowed to replead, he would have to include facts consistent with the trial court's factual determination of unreasonable conduct and undue care plus the reasonable inference that Maggio's belief, untested, was itself not reasonable under the circumstances. See *Bjork*, 404 Ill. App. 3d at 501 (questions of law and fact previously decided on appeal are binding on the trial court upon remand). In other words, if Maggio repleaded, he would have to include the facts adduced at the previous trial, and those facts would show that he could not have reasonably believed in the truth of Beilke's statements about the status of the subject property regarding encumbrances and its ability to be sold free and clear of encumbrances and other third-party interests in it, where he undertook no precautions to safeguard his own interests in the transaction.

¶ 47 Because Maggio did not properly plead an essential element of the claim of rescission due to fraud, namely, that he reasonably relied on Beilke's statements, and because even repleading could not cure the defect in light of the factual findings of the trial court and confirmed in this court, we hold that the trial court did not err in dismissing with prejudice Maggio's claim of rescission due to fraud pursuant to section 2-615 of the Code. Because we have determined that the rescission due to fraud claim is fatally flawed, we need not address Maggio's remaining arguments on this issue.

¶ 48 Summing up our decision on the rescission claims, we determined that each claim had not been adequately pleaded because Maggio omitted factual allegations that would have demonstrated the existence of a necessary element of each rescission claim. Maggio cannot replead the claims to cure the defect because he cannot plead facts on a remand contrary to those determined in the trial court and confirmed in this court, so any repleading would necessary lack an essential element of each rescission claim. Accordingly, we hold that the trial court properly dismissed with prejudice each rescission claim. We need not address any other issues, such as the dismissal pursuant to section 2-619 based on Blackhawk's claim to be a holder in due course, because the lack of the essential elements in each of the rescission claims is necessarily fatal to each rescission claim.

¶ 49 C. Discovery Violation Sanction

¶ 50 In his final issue on appeal, Maggio argues that the trial court erred in entering a discovery sanction against him for failing to produce until the eve of trial a settlement agreement between Maggio and the Beilkes that had been repeatedly requested in discovery and during Maggio's deposition. Maggio concedes that Blackhawk made repeated and proper requests for the settlement agreement and that he did not turn over the document pursuant to any of these requests until shortly before trial began. Notwithstanding the concession that he committed a discovery violation, Maggio argues only, without any substantive development of the argument, that Blackhawk was not prejudiced by Maggio's failure to produce the settlement agreement. Blackhawk disagrees as to whether it was prejudiced, with a contention Maggio decries as speculative, in that it could have filed a motion for summary judgment based on the idea that the settlement agreement fulfills Maggio's benefit of the bargain thereby undercutting his claims against Blackhawk. Blackhawk's summary-judgment argument is similarly without much in the

way of substantive development. Thus, we are left with the essentially naked contention that the trial court erred in awarding a discovery sanction arising from Maggio's conceded nonproduction of the settlement agreement.

¶ 51 Illinois Supreme Court Rule 219 (eff. July 1, 2002), governs the trial court's oversight of the discovery process, empowering it to issue sanctions for a party's noncompliance with the rules governing discovery or the discovery orders of the trial court. The imposition of sanctions against a party for its noncompliance with the discovery rules or orders of the court is a matter within the trial court's broad discretion. *Cyclonaire Corp. v. ISG Riverdale, Inc.*, 378 Ill. App. 3d 554, 562 (2007). We do not disturb the trial court's decision regarding a discovery sanction absent an abuse of discretion. *Id.* Key in the determination of whether a party's noncompliance with the discovery rules and orders of the trial court is unreasonable is whether the offending party's conduct evidences a deliberate and pronounced disregard for the rules of discovery and for the court. *Id.* With these principles in mind, we turn to what the record shows.

¶ 52 Maggio effectively concedes that he violated the rules of discovery and the concomitant discovery orders of the trial court. Further, no explanation appears in the record to rebut Blackhawk's characterization of Maggio's conduct as perjurious for flatly denying the existence of the settlement agreement when directly asked about it in his deposition. Nevertheless, Maggio contends that he should be let off the hook because no prejudice accrued to Blackhawk as a result of his noncompliance. By contrast, the record shows that Blackhawk incurred over $85,000 in legal fees pertaining to this entire case (but not only due to Maggio's counterclaim and participation). Blackhawk also incurred nearly $4,700 in fees trying to obtain disclosure of the settlement agreement. Maggio objected to Blackhawk's position, claiming that Blackhawk's documentation revealed that it spent only two days and about five hours of time specifically

related to the discovery violation. The trial court commented on Maggio's noncompliance in its ruling on his unjust enrichment claim, characterizing it as evidence of unclean hands sufficient to preclude the equitable relief requested in Maggio's counterclaim:[2]

> "Maggio knew that there was a settlement agreement and it was clearly requested in discovery more than once. And it wasn't produced really until more than the eleventh hour, and it was literally right before a trial in a three-year-old case that this settlement agreement got turned over. Blackhawk had every right to know about that settlement agreement and they did not receive it, and I put that on Mr. Maggio. I don't know why he was trying to hide the ball on that, but he had no right to do that."

¶ 53 Based on the foregoing, we perceive that the trial court did not feel that Maggio should receive a pass for his noncompliance despite whether Blackhawk was only inconvenienced instead of prejudiced. This is seen in the trial court's comments, as well as in the award of sanctions. That said, the trial court apparently did not completely agree with Blackhawk's position, as evidenced by its decision to award a little more than 40% of what Blackhawk requested for a sanction. Thus, we have a conceded discovery violation that led the opposing party to accuse Maggio of perjury, and not without reason or basis. Maggio offers no explanation or excuse for his noncompliance (rightly so because the noncompliance appears to be indefensible). Blackhawk had a clear right to receive the settlement agreement in discovery and Maggio's noncompliance appears willful and suggests a deliberate and pronounced disregard for the discovery rules, the trial court, and its discovery orders. Based on this, we perceive no

[2]We did not need to consider the unclean hands issue in light of our resolution of unjust retention issue and our resolution of the pleading issues related to the rescission claims.

abuse of discretion in the trial court's award of $2,000 as a sanction for Maggio's conceded discovery violation.

¶ 54 III. CONCLUSION

¶ 55 Accordingly, for the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 56 Affirmed.