

Schantz to develop property fronting Interstate 64 in O'Fallon, Illinois, known as Regency Park. Regency Partners operated a Holiday Inn at 116 Regency Park. Regency Partners constructed a pole sign on 128 Regency Park to advertise and market the Holiday Inn. The sign lights up at night via an electrical hookup in the hotel. It also has a grandfather-exemption from the City of O'Fallon's current ordinances regarding sign requirements.

¶ 5 On July 21, 2000, Regency Partners transferred the property at 116 Regency Park to Leeco, L.L.C., by warranty deed. On October 17, 2000, Regency Partners transferred the real property commonly referred to as 128 Regency Park to BJR by warranty deed. The ownership of the pole sign was transferred along with the real estate when the warranty deed was executed.

¶ 6 BJR's vice president, Mr. Schantz, testified that Leeco continued to operate the hotel as a Holiday Inn. At some point it lost the Holiday Inn franchise and it became a Howard Johnson. Mr. Schantz still owned lot 128 and he allowed Leeco to use the sign to advertise and market the hotel. He also allowed Leeco to change the sign faces to Howard Johnson.

¶ 7 Mr. Schantz testified that on June 24, 2005, at the suggestion of his attorney, BJR and Leeco entered into an easement agreement regarding the terms of the easement granted for the use of the sign. The purpose of the easement is for "maintaining, repairing, replacing, re-erecting and otherwise doing all things necessary to maintain a sign upon the premises advertising Leeco's motel operation." Pursuant to the terms of the easement, "[t]he easement shall cease if the sign is removed or not in use for a period [in] excess of 90 days or if the Leeco premises are no longer used for a motel." The easement further provided that "[n]o other sign shall be attached to the existing sign or sign post to any subsequent sign or sign post without the written consent of the BJR which consent shall not be unreasonable [*sic*] withheld."

¶ 8 On June 24, 2005, Leeco transferred the 116 Regency Park property to Cheesook,

L.L.C., by warranty deed. On August 30, 2007, Cheesook and PS Hospitality entered into a hotel purchase and sale agreement. Cheesook sold the real property and business assets commonly known as Howard Johnson located at 116 Regency Park to PS Hospitality. An addendum to the agreement executed January 4, 2008, provided that Cheesook should terminate the franchise agreement with Howard Johnson. On January 10, 2008, Cheesook transferred the property by special warranty deed to PS Hospitality.

¶ 9 Yosuk Meade testified that she was employed with Howard Johnson from July 2001 until January 10, 2008. She stated that the hotel's accountant informed her that January 10, 2008, would be the last day they would receive a paycheck. She said that an owner of Cheesook flew in from California to tell the employees that the Howard Johnson was being shut down. She stated that on January 10, 2008, "the Patel people came into the property, says that they purchased Howard Johnson and that everybody has to leave at that point." She said that all the current customers were relocated to an extended-stay motel in the Regency Park area.

¶ 10 Nehal Patel testified that he is a principal owner of PS Hospitality of St. Louis, LLC. He stated that when he purchased the Howard Johnson it was his intent to continue operating it as a hotel, but to upgrade it to a different flag. He stated that even before purchasing the property, he spoke with Country Inn and Suites by Carlson to see if there was a franchise opportunity.

¶ 11 Mr. Patel testified that in order to open the hotel as a Country Inn and Suites, it had to be upgraded. Michael Ebert testified that he is a hotel owner/operator. He stated that typically when a hotel property changes ownership there is a property improvement plan whether the hotel stays the same brand or changes to a different brand. He stated that while the hotel sometimes closes for renovations, it remains in business because it will be renting rooms in the future.

¶ 12 Mr. Patel testified that the hotel renovations began at the end of January or beginning of February 2008. Barry Ash testified that he is a self-employed general contractor who acted as the construction manager of the renovation of the hotel. He stated that the project included guest room renovations, exterior renovations, public access renovations, and pool renovations. He testified that he started the project sometime in February 2008 and finished it the second week of August 2008.

¶ 13 On April 16, 2008, PS Hospitality applied for a commercial building permit and certificate of zoning compliance for 116 Regency Park Drive to remodel the Howard Johnson into a Country Inn and Suites. The permit was approved the same day.

¶ 14 Mr. Patel testified that during the renovation period from January 2008 until July 2008, the hotel did not rent rooms to the general public. Mr. Ash testified that employees of Rick Reynold Construction from southeast Missouri stayed at the hotel during the renovation. The employees did not pay to stay in the rooms. Instead, the construction company discounted the amount it charged PS Hospitality for its services.

¶ 15 Mr. Patel testified that once the renovations were complete, the hotel opened as a Country Inn and Suites by Carlson. On July 9, 2008, a temporary certificate of occupancy was entered for the Country Inn and Suites. The certificate of occupancy was issued on September 19, 2008. Mr. Patel testified that the Country Inn and Suites offers a higher quality product than Howard Johnson.

¶ 16 The pole sign continued to display the Howard Johnson sign until May 28, 2008, when the sign faceplate was taken down to change to the Country Inn and Suites sign. Mr. Ash testified that the lights used to illuminate the sign operated on a timer inside a utility room on the hotel property. He testified that the timer sequence remained on during the hotel renovation. Mr. Patel testified that while Howard Johnson was not being operated on the premises from January 10, 2008, forward, the Howard Johnson sign was, in his view, being

"used as a location tool."

¶ 17 Mr. Schantz testified that, based upon his observations, the Howard Johnson was last open for operation around January 10, 2008. He stated that the signage was removed from the building and "there was no hotel there, there was no signage on it, just a building at that time in my opinion." He stated that from when the Howard Johnson closed in January 2008, until the Country Inn and Suites installed a new sign, the sign was not lit up.

¶ 18 Mr. Schantz testified that in June 2008, he spoke with his attorney who recommended that he issue a notice of termination of the easement because the sign was not in use for a period of over 90 days. On June 11, 2008, BJR executed a notice of termination of sign easement. In the notice BJR stated that pursuant to the terms of the easement, the easement shall cease if the sign is removed or not in use for a period in excess of 90 days, and the sign had not been in use for over 90 days, therefore the easement terminated. Mr. Schantz testified that from January 10, 2008, until BJR issued the notice of termination of the sign easement, he never had any discussions with anyone from PS Hospitality regarding their use of the hotel located at 116 Regency Drive and he never had any discussions about them using the sign located at 128 Regency Park.

¶ 19 Mr. Patel testified that a new sign for Country Inn and Suites was placed on the sign post at 128 Regency Park at the end of June or the first part of July 2008. He stated that he did not recall receiving a notice of termination of easement from BJR prior to putting up the new sign. He also did not recall speaking to anyone at BJR or anyone from PS Hospitality about obtaining consent from BJR to put up a new sign facing on the sign. Mr. Schantz testified that in July 2008, PS Hospitality put a new sign facing on the sign without asking for permission or consent.

¶ 20 Mr. Schantz testified that BJR was developing the property at 128 Regency Park into senior retirement apartments. He stated that BJR planned to use the sign to advertise the

senior living facility and it already had the sign faces.

¶ 21 On September 2, 2008, BJR Properties filed a complaint against PS Hospitality for a declaratory judgment that the sign easement had been validly terminated, or an injunction prohibiting them from entering upon the sign easement or altering the sign easement, or interfering with the use and enjoyment of the sign. BJR filed two amended complaints. In the second amended complaint, BJR added counts for trespass and attorney fees.

¶ 22 On February 24, 2011, BJR filed a motion for summary judgment. PS Hospitality filed a memorandum of law in opposition to BJR's motion for summary judgment. On May 10, 2011, the circuit court denied the motion for summary judgment.

¶ 23 On June 29, 2011, pursuant to a stipulation to bifurcate the trial, the circuit court bifurcated the issues of liability and damages. The issues of liability were set for a bench trial.

¶ 24 On August 12, 2011, following a bench trial, the circuit court entered an order in favor of PS Hospitality and against BJR and denied BJR the relief it sought. The court found that it was undisputed that the sign was not removed. It further found that there was undisputed evidence that from January 2008 through July 2008, the hotel was undergoing a major renovation and upgrade. The court found that "the sign was still lit every night and advertised a hotel—albeit a Howard Johnson franchise that was no longer in operation." The court held that the sign was in use during the renovation. The court found that there was a period of time when the sign was not in use while the faceplates were switched out, but found that this did not exceed 90 days. Finally the court found that there was undisputed evidence that between January 2008 and July 2008, the premises were not used for anything other than a hotel. It stated that the fact that the hotel was not open to guests did not mean it ceased being used as a hotel. The court held that "[t]he easement, when read as a whole, more reasonably embraces the interpretation urged by the Defendants than by the Plaintiff."

¶ 25 On September 12, 2011, BJR filed a posttrial motion arguing that pursuant to the terms of the sign easement, the easement terminated because the sign was not in use for more than 90 days. It argued that the court's interpretation that the sign was in use during the renovation period because the sign was lit and advertised a hotel was contrary to the purpose of the sign easement. The court denied BJR's posttrial motion. BJR filed a timely notice of appeal.

¶ 26

ANALYSIS

¶ 27 "An easement provides a privilege or a right in the use of another's property." *Hahn v. County of Kane*, 2012 IL App (2d) 110060, ¶ 10. The estate that benefits from the easement is known as the dominant estate, while the land burdened by the easement is known as the servient estate. *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 840 (2005). The dominant estate is entitled to the use of the easement that is reasonably necessary for the full enjoyment of the premises. *Hahn*, 2012 IL App (2d) 110060, ¶ 10. "An express easement, or an easement by grant, is created by agreement between the owners of the dominant and servient estates." *Chicago Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 32. Generally, an easement by grant is construed in accordance with the intention of the parties, which is ascertained from the words of the instrument and the circumstances contemporaneous to the transaction, including the nature of the interest conveyed and the objective of the conveyance. *River's Edge Homeowners' Ass'n v. City of Naperville*, 353 Ill. App. 3d 874, 878 (2004). Where the language of an express easement is facially unambiguous, the trial court interprets the contract as a matter of law without the use of extrinsic evidence. *Id.* "Courts generally construe easement agreements strictly, so as to permit the greatest possible use of the property by its owner." *Bjork v. Draper*, 381 Ill. App. 3d 528, 538 (2008). This court reviews the language of an easement *de novo*. *Id.* "The standard of review in a bench trial is whether the judgment is against the manifest weight of

the evidence." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly evident or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 28 In the instant case, there is no dispute that there was an express grant easement. The easement was created "for the purpose of maintaining, repairing, replacing, re-erecting and otherwise doing all things necessary to maintain a sign upon the premises advertising" the motel operation. Pursuant to the terms of the easement, the easement shall cease if the sign is removed, or not in use for a period in excess of 90 days, or if the PS Hospitality premises are no longer used for a motel.

¶ 29 The dispute between BJR and PS Hospitality centers around whether an event occurred that triggered the termination of the easement. The parties agree that the sign was not removed. At issue is whether the sign was "not in use for a period [in] excess of 90 days or if the [PS Hospitality] premises are no longer used for a motel." "A court interprets an easement in the same manner it would interpret any agreement between parties." *River's Edge Homeowners' Ass'n*, 353 Ill. App. 3d at 878. When interpreting a contract the court should give effect to the parties' intent by interpreting the contract as a whole and applying the plain and ordinary meaning to unambiguous terms. *Village of Arlington Heights v. Anderson*, 2011 IL App (1st) 110748, ¶ 22. "Language in a contract is not ambiguous merely because the parties disagree as to its interpretation." *Id.* In the instant case, the terms of the easement are not ambiguous although the parties disagree as to their interpretation.

¶ 30 BJR argues that 116 Regency Park was no longer used as a motel 90 days after January 10, 2008, the date the Howard Johnson closed, because rooms were not made available to the public for renting during the period the hotel was under renovation, there was no commercial building permit either applied for or issued by the City of O'Fallon for guests

to stay on the premises, the Howard Johnson logos on the building had been painted over, and the property had not collected or paid any state or municipal hotel taxes.

¶ 31 The trial court found that the fact that the hotel was not open to guests did not mean it ceased being used as a hotel. It further found that there was undisputed evidence that between January 2008 and July 2008, the premises were not used for anything other than a hotel.

¶ 32 While BJR presented evidence that PS Hospitality did not and could not rent rooms to the public during the renovations, this does not mean that the premises ceased being used as a hotel. Evidence was presented that PS Hospitality always intended that the property operate as a hotel. Mr. Patel testified that when he purchased the property at 116 Regency Park it was his intent to continue operating it as a hotel. He stated that he planned to upgrade the property to a Country Inn and Suites and that prior to purchasing it, he contacted Country Inn and Suites by Carlton to see if a franchise was available. Ms. Meade testified that when PS Hospitality staff came to the Howard Johnson in January 2008, they told her that they were remodeling the hotel and offered to rehire her as general manager.

¶ 33 Mr. Patel testified that PS Hospitality spent in excess of \$1 million upgrading the property. Mr. Ash testified that the hotel renovations included guest room renovations, exterior renovations, public access renovations, and pool renovations. He stated that during the renovations, employees of Rick Reynold Construction stayed at the hotel in exchange for a discounted construction cost. As soon as the renovations were completed, PS Hospitality obtained the certificate of occupancy and approval from Country Inn and Suites, and opened its doors to the general public.

¶ 34 Mr. Ebert testified that when a hotel property changes hands a property improvement plan is instituted whether the property stays the same brand or changes to a different brand. He stated that typically hotels always have ongoing renovations. He testified that while a

hotel may close for renovations, it remains in business as a hotel.

¶ 35 The property at 116 Regency Park never ceased being used as a hotel. PS Hospitality always intended to operate the property as a hotel. It performed substantial upgrades to the property and spent significant amounts of money to complete the renovations. The renovations to the property were done in continuance of the hotel business. Based on the evidence, we cannot say that the trial court's determination that, during the renovation process, 116 Regency Park was never "no longer used as a motel" was against the manifest weight of the evidence.

¶ 36 BJR argues that the easement terminated because the sign was not in use for a period in excess of 90 days. It contends that the easement only permitted the sign to be used to advertise a hotel operating at 116 Regency Park. BJR argues that the sign ceased to be used as contemplated by the easement agreement when the faceplates for Howard Johnson remained on the sign after the Howard Johnson had permanently closed and the hotel was being renovated. It contends the closing of the Howard Johnson triggered a 90-day time period in which PS Hospitality had to take action to avoid the termination of the easement agreement. BJR states that it "has never taken the position that the Easement Agreement strictly forbade PS Hospitality from changing the sign faceplates under any circumstances." It states, "For example, if PS Hospitality had placed new faceplates on the sign within 90 days of closing the Howard Johnson which said, 'Country Inn and Suites Coming Soon,' then the sign would have remained in use for its intended purpose—advertising the motel operation at 116 Regency Park."

¶ 37 The trial court found that the sign was not in use for a period less than 90 days when the faceplate was changed. The court found that during the renovation, the sign was lit every night and advertised a hotel. The court held that "[t]hus, the easement did not terminate by its own terms due to the manner in which the sign was used between January 2008 and July

2008."

¶ 38 Mr. Ash testified that the sign was on a timer and it lit up at a certain time of day and turned off early in the morning. He stated that the timer was left on during the renovation. He also testified that the timer was located inside a utility room on the hotel premises. Mr. Schantz testified that the electrical hookup from the sign was located at 116 Regency Park. Because the electricity to power the sign came from the hotel, PS Hospitality was paying to light the sign and was physically responsible for lighting the sign during the renovation period.

¶ 39 BJR asserts that the sign was not lit. It points to Mr. Schantz's testimony that after the Howard Johnson closed on January 10, 2008, the sign was not lit up until the Country Inn and Suites installed a new sign. Mr. Schantz also testified that he did not go by the property very often between January 2008 and July 2008. The trial judge, as the trier of fact, is in a superior position to judge the credibility of witnesses and determine the weight to be given their testimony. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). "When contradictory testimony that could support conflicting conclusions is given at a bench trial, an appellate court will not disturb the trial court's factual findings based on that testimony unless a contrary finding is clearly apparent." *Id.* In finding that the sign was lit up during the hotel renovations, the trial court judged the credibility of the witnesses and found Mr. Ash's testimony that the sign was lit to be credible.

¶ 40 Mr. Patel testified that PS Hospitality was using the Howard Johnson sign as a location tool to advertise the existence of a hotel at that location. PS Hospitality was periodically inspected by employees from Country Inn and Suites. Only once the renovations were done to their standards did PS Hospitality receive the final authorization to open as a Country Inn and Suites. PS Hospitality could not advertise a Country Inn and Suites until it was certain it would be opening under that franchise. Keeping the sign with the Howard

Johnson faceplate until it could be switched to Country Inn and Suites was part of the renovation process.

¶ 41 BJR suggested that if PS Hospitality put up a temporary sign advertising "Country Inn and Suites Coming Soon" within 90 days of closing the Howard Johnson, the sign would have remained in use in accordance with the terms of the easement. The cost of the sign was substantial. The documents submitted into evidence show that the cost of the new sign was \$20,802, plus \$9,700 for installation and \$150 for permits, for a total of \$30,652. The cost to put up a temporary sign, then replace it with the permanent sign, would have been in excess of \$60,000. The dominant estate is entitled to necessary use of the easement. *Hahn*, 2012 IL App (2d) 110060, ¶ 10. The necessary use of the easement was to advertise the location of a hotel at 116 Regency Park. The lit sign advertised a hotel at 116 Regency Park even though it still listed the Howard Johnson. To require PS Hospitality to put up a temporary sign at a tremendous cost would interfere with its necessary use of the easement.

¶ 42 No event occurred that triggered the termination of the sign easement. While rooms were not rented to the public during the period renovations were being made to upgrade the hotel to a Country Inn and Suites, the premises at 116 Regency Park were still being used as a hotel. PS hospitality always intended to use the property as a hotel and spent significant amounts of money to perform substantial upgrades to the property, all in continuance of hotel business. The sign was lit and advertised a hotel at 116 Regency Park during the time the hotel at that location was being renovated. PS Hospitality was responsible for paying to light the sign and to turn the sign on. At no time was it not in use for a period in excess of 90 days. There is sufficient evidence to support the trial court's decision, and an opposite conclusion is not clearly apparent; therefore, the trial court's decision was not against the manifest weight of the evidence.

¶ 43

CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court of St. Clair County is affirmed.

¶ 45 Affirmed.