

the City's counterclaim against Phillips for the costs of demolition and abatement of asbestos for a building located at 205 East Main Street in Belleville. Mr. Phillips also requests that this court review the circuit court's order of December 11, 2012, which granted a summary judgment in favor of the City of Belleville on his complaint for wrongful demolition of the building, but said order was not specified in his notice of appeal. This court denied Mr. Phillips' motion for leave to amend his notice of appeal to include the December 11, 2012, order, because it was filed outside of the time limit specified in Illinois Supreme Court Rule 303(d) (eff. June 4, 2008). Mr. Phillips later filed a request for clarification of the jurisdictional issue raised by the denial of his motion for leave to file an amended notice of appeal, or, in the alternative, a motion to reconsider, which we took with the case. For the reasons that follow, we deny the motion to reconsider, find that we do not have jurisdiction over the circuit court's December 11, 2012, order, and affirm the circuit court's May 21, 2013, order which entered a judgment in favor of the City of Belleville on its counterclaim.

¶ 3 On May 13, 2014, we issued our original order disposing of this appeal. On June 4, 2014, Mr. Phillips filed a petition for rehearing. We hereby issue this amended order upon denial of rehearing.

¶ 4 **FACTS**

¶ 5 On May 23, 2011, Mr. Phillips filed a complaint in the circuit court of St. Clair County against the City of Belleville. According to the complaint, on May 26, 2010, a fire originated at a building located adjacent to a building he owned at 205 E. Main Street and spread to his building. After the fire was extinguished, the City of Belleville

contacted Mr. Phillips and informed him that his building was being demolished and he had two hours to remove any personal belongings. The City of Belleville contracted with Hank's Excavating (Hank's) to demolish both properties and submitted a demolition lien notice to Mr. Phillips' insurance company in the amount of \$88,578 for the costs of the demolition. Counts I and II of the complaint alleged that the City of Belleville violated various provisions of the Illinois Municipal Code governing the demolition of private property (65 ILCS 5/11-31-1 *et seq.* (West 2010)) and sought damages in excess of one million dollars.

¶ 6 Count III of the complaint alleged that the City of Belleville demolished both properties without first determining whether either building contained asbestos-containing materials. According to the complaint, Mr. Phillips, Hank's, and the City of Belleville received a violation notice letter on August 6, 2010, from the Illinois Environmental Protection Agency (IEPA), regarding a violation of section 9(a) of the Illinois Environmental Protection Act (415 ILCS 5/9(a) (West 2010)) and regulations promulgated thereunder, because the demolition caused, threatened, or allowed the emission of asbestos into the atmosphere without providing the IEPA with notice of such activities. During a meeting with the IEPA on April 28, 2011, Mr. Phillips notified the IEPA that he planned to file a suit against the City of Belleville to effectuate abatement of the asbestos remaining on the property. Count III requested that the circuit court find that the City of Belleville created a nuisance and enter an order requiring it to remediate the asbestos.

¶ 7 On August 16, 2011, the circuit court entered an order granting the City of

Belleville leave to file a counterclaim against Mr. Phillips *instanter*. According to the counterclaim, on the night of the fire, personnel of the fire department spoke to Mr. Phillips and the neighboring property owner, as well as their insurance adjusters, regarding the extent of damage to the buildings at issue and both adjusters instructed that the buildings be demolished immediately. After consulting with the city engineer and a structural engineer, the City of Belleville contracted with Hank's to demolish the buildings and remove the debris. Hank's worked from May 26, 2010, until June 2, 2010, demolishing the buildings, wetting the area to minimize dust, sweeping the streets and sidewalk, and hauling the debris off the site. The counterclaim alleged that prior to the completion of the work, Mr. Phillips and the adjacent property owner demanded that Hank's and the City of Belleville stop any work at the site. At that time, Hank's invoice for the work performed was \$69,875.80.

¶ 8 According to the counterclaim, Mr. Phillips, the adjacent property owner, the insurance adjusters, and Hank's spoke with representatives of the City of Belleville regarding the payment of Hank's invoice, and all parties agreed that Mr. Phillips and the adjacent owner would pay a proportional share of the invoice based on the square footage of the demolished buildings. According to the agreement, which was memorialized in a letter from Mr. Phillips' attorney to city attorney Robert Sprague dated September 29, 2010, Mr. Phillips' proportional share of the invoice amounted to \$47,583.87.

¶ 9 In a letter between Mr. Phillips' attorney and the city attorney dated December 20, 2010, Mr. Phillips' attorney agreed that Mr. Phillips would endorse a check in the amount of \$88,578 that he expected from his insurance company and deliver it to the City of

Belleville for deposit into an escrow account. Once the check cleared, the City of Belleville would issue one check for \$47,583.87 to Hank's for Mr. Phillips' share of the demolition costs and one check for the remainder to Mr. Phillips. According to the counterclaim, Mr. Phillips never delivered the check. Count I of the counterclaim alleges a cause of action against Mr. Phillips for breach of the contract to pay the demolition costs, count II alleges a cause of action for promissory estoppel, and count III alleges conversion. Count IV of the counterclaim requested an order requiring that Mr. Phillips remediate the asbestos on the site of the demolition as required by the IEPA.

¶ 10 On August 2, 2012, the City of Belleville filed a motion for summary judgment as to the plaintiff's complaint. The City of Belleville also filed a motion for summary judgment as to its counterclaim. On December 11, 2012, the circuit court entered an order granting the City of Belleville's motion for summary judgment as to Mr. Phillips' complaint. The circuit court made the finding, *inter alia*, that the City of Belleville had the authority to demolish the building without notice and a court order pursuant to section 11-31-1 of the Illinois Municipal Code (65 ILCS 5/11-31-1 (West 2010)). See *Turpen v. City of St. Francisville*, 145 Ill. App. 3d 891 (1986); see also *City of Chicago v. Garrett*, 136 Ill. App. 3d 529 (1985).

¶ 11 On January 2, 2013, Mr. Phillips filed a notice of appeal from the circuit court's December 11, 2012, order. On March 21, 2013, this court dismissed that appeal for a lack of jurisdiction because the City of Belleville's counterclaim was still pending in the circuit court. See *In re M.M.*, 337 Ill. App. 3d 764, 771 (2003) (an order is not final, and thus not appealable pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994),

where jurisdiction is retained for matters of substantial controversy). See also Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) (if multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to fewer than all of the claims only if the trial court has made a special finding that there is no just reason for delaying either enforcement or appeal or both).

¶ 12 On April 30, 2013, the circuit court held a bench trial on the City of Belleville's counterclaim. Hank's was permitted to intervene and to file a counterclaim against the City of Belleville for breach of contract and a declaratory judgment that it is entitled to indemnity for any costs it may incur in the future for asbestos abatement on the site that could be ordered in the future by the IEPA. Mr. Phillips testified, as an adverse witness, that his insurance carrier agreed to issue the check to Hank's as memorialized in the letter between his attorney and the city attorney but that he did not understand that the money was going to be subtracted from his insurance proceeds. Mr. Phillips agreed that the letters memorializing the agreement were sent by his attorney and that he never delivered the check but that the neighboring property owner paid his part as agreed. However, he testified that it was never his intent to pay for the demolition and he never communicated such intent to his attorney, as he did not give permission for the building to be demolished. Mr. Phillips conceded that there was asbestos on the site, as well as the neighboring site, and that he had worked with the neighboring property owner to develop a remedial action plan for abating the asbestos on both properties. However, he testified that his building had a rubber roof without shingles and that he had no personal knowledge of there being asbestos on the property before the fire.

¶ 13 The discovery deposition of Henry Rohwedder, the owner of Hank's, was admitted into evidence. He testified that the morning of the fire, the city engineer called him to assist the City of Belleville in tearing the subject building down for public safety reasons. He testified that the fire actually involved one building that was subdivided into two units with a common wall between them. One unit was owned by Mr. Phillips and the other was owned by Mr. Chester Nance. At the time, it was Mr. Rohwedder's expectation that Hank's contract for the demolition was with the City of Belleville. After arriving at the site that morning, the city engineer instructed Hank's to remove the walls of the building and push them inward so that they would not fall over spontaneously. Mr. Rohwedder testified that after Hank's completed the demolition that evening, the mayor instructed Hank's to begin removing and hauling the debris off site beginning the next day. He had no conversations with Mr. Phillips. Mr. Rohwedder testified that Hank's billed the City of Belleville for the job and that he believes the City of Belleville remains responsible for paying Hank's bill.

¶ 14 Mr. Rohwedder testified that during the demolition, Hank's proceeded with the assumption that there was asbestos on the property, although he had no specific knowledge of the location of potential asbestos on the site. During the demolition, Hank's used a wetting process to contain any fibers or dust. The debris that was hauled off the site was labeled as "special waste." Following the demolition, Hank's had an asbestos survey completed but was unable to complete any further work on the property because it received a letter from the City of Belleville on approximately June 14, 2010, stating that Mr. Phillips and Mr. Nance had demanded that all work cease at the site. Mr.

Rohwedder testified that his invoice for the work performed, totalling \$69,875.80, was fair and reasonable for the type of work Hank's performed. Because Hank's had not been paid the \$47,583.87 remaining on the invoice, Mr. Rohwedder testified that Hank's has been sending the City of Belleville invoices for interest at the rate of 1.5% per month.

¶ 15 Paul Bauman, a building inspector with the City of Belleville, provided a foundation for Exhibit 16, an affidavit for demolition expenses that he completed at the behest of Mr. Phillips' insurance company. It was Mr. Bauman's understanding that the purpose of the affidavit was for the insurance company to ensure that adequate money from Mr. Phillips' proceeds was kept available to pay the demolition expenses. On cross-examination, Mr. Bauman admitted that the affidavit stated that \$88,578 was due and owing, and that this was the incorrect amount for Mr. Phillips' portion of the demolition expenses. Mr. Bauman further testified that the subject property is currently in violation of various ordinances on nuisance, including dangerous excavation pit and noxious weed ordinances.

¶ 16 During Mr. Bauman's cross-examination, Mr. Phillips' attorney began a line of questioning regarding whether the demolition by the City of Belleville was lawful. Counsel for the City of Belleville objected, stating that the questions were irrelevant, as the circuit court had already ruled that the demolition was lawful when it granted the City of Belleville's motion for summary judgment on Mr. Phillips' complaint. Mr. Phillips' attorney stated that this was one of Mr. Phillips' affirmative defenses to the City of Belleville's counterclaim. The circuit court agreed that the affirmative defense was improper, but granted a limited amount of time for Mr. Phillips' attorney to pursue this

line of questioning. Mr. Bauman testified that he relied on the opinion of a structural engineer in making the determination that the building needed to be demolished immediately for the sake of public safety. On redirect examination, Mr. Bauman testified that to his knowledge, the City of Belleville has never agreed to pay for the demolition of a privately owned building, and in any situation when it has had to pay a contractor to demolish a building, the City of Belleville has recouped the money from the property owner or placed a lien upon the building.

¶ 17 Tim Gregowicz, city engineer for the City of Belleville, testified that he called Hank's to the site of the fire. Initially, Hank's was going to demolish one wall that was leaning, but because of stability issues that would ensue from demolishing the one wall, the City of Belleville ultimately instructed Hank's to demolish the entire building. Mr. Gregowicz testified that he never represented to Hank's that the City of Belleville was going to be responsible for paying the bill. When Mr. Gregowicz arrived at the scene that morning, he called a structural engineer from Kaskaskia Engineering to meet him at the site. However, he did not recall any opinions that the structural engineer gave about the integrity of the building, but no one ever told him that the building was safe and should not be demolished. He believed that it was necessary to tear the entire building down because the leaning wall supported the remaining walls of the building and the floors were also substantially compromised. The insurance adjusters were present when the decision was made to demolish the building, and made no objection.

¶ 18 Scott Lanxon, fire chief for the City of Belleville, testified about the nature and extent of the fire that took place on the subject property. He testified that the properties

owned by Mr. Phillips and Mr. Nance had the same beams running through them so that any metal that had been exposed to heat and weakened on Mr. Nance's side of the building could have twisted, bent, and caused the walls to collapse on Mr. Phillips' side of the building. In addition, very little was left of Mr. Phillips' roof which further threatened the structural integrity of the walls. These factors, along with 20-mile-per-hour winds that were in the area and the fact that the building was located in an area heavily traveled by vehicles and pedestrians, led to his decision, in conjunction with the city engineer and mayor, to demolish the building. During Mr. Lanxon's cross-examination by Mr. Phillips' attorney, the circuit court interrupted, reminding counsel that he had already ruled on whether the building was legally demolished. Mr. Phillips' attorney explained to the court that it was Mr. Phillips' position that the City of Belleville is responsible for asbestos abatement on the site because it was the City of Belleville's decision to demolish the building, and, in the process, asbestos from the neighboring site was transferred to Mr. Phillips' property. Mr. Phillips' attorney then ended her questioning of Mr. Lanxon.

¶ 19 Mark Eckert, the mayor of the City of Belleville, testified that on the night of the fire, he received a phone call that a major fire was threatening an entire block downtown. The next morning, when the roofs of both sides of the building had collapsed, the devastation to the building was apparent. He requested the police dispatcher to call both Mr. Phillips and Mr. Nance to the scene. Mr. Phillips was not at the scene at the time the decision was made to proceed with the demolition, but his insurance adjuster was on the scene, had been in touch with Mr. Phillips, and had made Mr. Phillips aware of the

severity of the situation. Mayor Eckert testified that he conferred with the city attorney who advised him that if he and his staff believed the building was totally unsafe, and it was in the best interests of the public, that he had the authority to order the building to be demolished. At that time, he made the decision to retain Hank's. After Hank's began demolition on the wall on Mr. Nance's side of the building, it instantly crumbled. The front wall that tied together with Mr. Phillips' side of the building then started to shake drastically.

¶ 20 Mayor Eckert testified that it was never the intent of the City of Belleville to be responsible for Hank's bill for the demolition. The City of Belleville has no ownership interest in the property. Mayor Eckert did not know on the day he made the decision to demolish the property that there was asbestos on the site. Under examination by Hank's attorney, Mr. Eckert was presented with requests to admit in which the City of Belleville admitted they had a contract with Hank's for the demolition of the building.

¶ 21 Following the bench trial on the City of Belleville's counterclaim, the circuit court took the matter under advisement. On May 21, 2013, the circuit court entered judgment in favor of the City of Belleville and against Mr. Phillips on the City of Belleville's counterclaim, finding that Mr. Phillips breached his contract with the City of Belleville and is responsible for Hank's demolition bill. The order gave Mr. Phillips seven days in which to endorse the check from Mr. Phillips' insurance company, which was then in the possession of the circuit court, and to turn the check over to the City of Belleville for payment to Hank's. The order also required Mr. Phillips to pay any interest owed to Hank's. Finally, the order gave Mr. Phillips 30 days to abate the asbestos on his property

and, if he failed to do so, allowed for the City of Belleville to retain its own asbestos remediation contractor at Mr. Phillips' expense.

¶ 22 On May 31, 2013, Mr. Phillips filed a timely notice of appeal. The notice of appeal states that Mr. Phillips "hereby appeals from the [f]inal [o]rder entered on May 21, 2013 *** granting [j]udgment in favor of [the City of Belleville]." There is no mention of the December 11, 2012, order granting a summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for wrongful demolition and nuisance. However, Mr. Phillips' docketing statement, filed on June 14, 2013, lists the December 11, 2012, order and its attendant issues as the subject of the appeal, and the vast majority of his opening brief, filed on September 3, 2013, focuses on the issue of whether the circuit court erred in its finding that the City of Belleville's demolition of Mr. Phillips' property was lawful.

¶ 23 In its response brief, filed on October 9, 2013, the City of Belleville raised the issue of this court's jurisdiction over the circuit court's December 11, 2012, order granting a summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for wrongful demolition and nuisance. On October 18, 2013, Mr. Phillips filed a motion for leave to file an amended notice of appeal to specify the December 11, 2012, order, stating that the failure to specify that order in the notice of appeal was an oversight and that the City of Belleville would not be prejudiced by allowing the amendment. On November 1, 2013, this court denied Mr. Phillips' motion because pursuant to Illinois Supreme Court Rule 303(d) (eff. June 4, 2008), the motion was untimely as it was filed more than 30 days after the expiration of the time for filing a notice of appeal.

¶ 24 On November 7, 2013, Mr. Phillips filed his reply brief. The reply brief failed to address the jurisdictional issue raised by the City of Belleville in its response brief. On December 2, 2013, Mr. Phillips filed a "Request for Clarification of Jurisdictional Issue Raised by Belleville, or in the Alternative, Motion to Reconsider Use of Discretion to Allow Amendment of Notice of Appeal to Add Interim Order," in which Mr. Phillips argued, for the first time, that the December 11, 2012, order granting summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for unlawful demolition and nuisance was "a step in the procedural progression leading to the judgment specified in the notice of appeal"—the May 21, 2013, order entering judgment in favor of the City of Belleville on its counterclaim against Mr. Phillips for breach of contract, promissory estoppel, conversion, and nuisance. On December 16, 2013, we took Mr. Phillips' motion for clarification or to reconsider with the case.

¶ 25

ANALYSIS

¶ 26 We begin our analysis with the issue of whether this court has jurisdiction to consider the propriety of the circuit court's December 11, 2012, order granting summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for wrongful demolition and nuisance. The December 11, 2012, order was not specified in Mr. Phillips' notice of appeal although it was discussed in Mr. Phillips' docketing statement and extensively in his brief. Illinois Supreme Court Rule 303(b)(2) (eff. June 4, 2008) provides that the notice of appeal "shall specify the judgment or part thereof or other orders appealed from." Our supreme court has held that the notice of appeal "is the jurisdictional step which initiates appellate review." (Internal quotation marks omitted.)

General Motors Corp. v. Pappas, 242 Ill. 2d 163, 176 (2011). In addition, "[a] notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal." *Id.* However, a notice of appeal is to be liberally construed and "will confer jurisdiction on the appellate court if the notice, when considered as a whole, fairly and adequately sets out the judgment complained of and the relief sought so that the successful party is advised of the nature of the appeal." *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433-34 (1979). Such is the case where the specified order directly relates back to the judgment or order sought to be reviewed such that it is a "step in the procedural progression leading" to the judgment specified in the notice of appeal. (Internal quotation marks omitted.) *Id.* at 434-35.

¶ 27 In contrast to the notice of appeal, "it is axiomatic that a docketing statement does not confer jurisdiction on the appellate court to consider the matter." *General Motors Corp.*, 242 Ill. 2d at 177. In addition, the failure to file a proper notice of appeal cannot be remedied by addressing an issue from a judgment not specified in the notice of appeal in the appellant's brief. *Id.* at 178. In order to ensure appellate jurisdiction over a judgment not specified in the notice of appeal, the appellant must amend the notice of appeal to specify the judgment in accordance with Illinois Supreme Court Rule 303(b)(5) or (d) (eff. June 4, 2008), which allows for amendment without leave of court within the original 30-day period to file the notice and upon motion within 30 days after expiration of the original 30-day period. Here, Mr. Phillips filed a motion to amend his notice of appeal in order to specify the December 11, 2012, judgment well after the time period for filing such a motion expired. Accordingly, we denied the motion. For the same reasons,

we deny Mr. Phillips' motion to reconsider.

¶ 28 In his motion to clarify the jurisdictional issue raised by the City of Belleville, Mr. Phillips argues for the first time that this court has jurisdiction to consider the December 11, 2012, judgment because it was a "step in the procedural progression" leading to the May 21, 2013, judgment and "the issue of legality of the demolition is intricately tied together with the issue of who is liable for paying the costs of the demolition and for removal of asbestos." After carefully considering Mr. Phillips' argument, we disagree. In the December 11, 2012, order, which entered summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for unlawful demolition and nuisance, the circuit court found, *inter alia*, that the City of Belleville had the authority to order the demolition of Mr. Phillips' building and that the City of Belleville was not responsible for abating the asbestos on Mr. Phillips' property. In the May 21, 2013, order, which entered judgment in favor of the City of Belleville on its counterclaim against Mr. Phillips, the circuit court found that Mr. Phillips breached his contract with the City of Belleville to pay the costs of demolition and that Mr. Phillips was responsible for abating the asbestos on his property. Each of these claims could have been filed independently of one another. Had Mr. Phillips not filed a complaint against the City of Belleville for unlawful demolition and nuisance, the City of Belleville could have filed an independent claim for breach of contract to recover the costs of the demolition and the abatement of the asbestos remaining on the property. As such, the judgment on Mr. Phillips' complaint is not a "step in the procedural progression" leading to the judgment on the City of Belleville's counterclaim. The distinction that we are making in so finding can be best illustrated by

comparing the orders at issue with those that were at issue in *Burtell*.

¶ 29 In *Burtell*, the notice of appeal specified that the appeal was from a decree and judgment entered against Charter Service Corporation on June 1, 1976, in which the circuit court awarded Burtell \$89,998.22 after a hearing on a complaint for an accounting. 76 Ill. 2d at 431. Charter Service Corporation did not specify that it was also appealing an order entered on December 19, 1975, finding the existence of a joint venture and ordering the accounting to take place. *Id.* Burtell did not challenge the sufficiency of the notice of appeal, and both he and Charter Service Corporation briefed and argued questions involving the joint venture finding and order of accounting from December 19, 1975, as well as the money judgment from June 1, 1976. *Id.* However, during oral argument, the appellate court raised the issue of the sufficiency of the notice of appeal and later held that the notice of appeal did not confer jurisdiction on the appellate court to consider the December 19, 1975, judgment.

¶ 30 The Illinois Supreme Court in *Burtell* found that the December 19, 1975, order finding the existence of a joint venture and ordering an accounting was but a preliminary determination necessary to the ultimate relief awarded to him by the June 1, 1976, order entering a money judgment based on the accounting, and, as such, the December 19, 1975, order, was "a step in the procedural progression leading to" the June 1, 1976, judgment. *Id.* at 436. Here, in contrast, the December 11, 2012, order granting the City of Belleville summary judgment on Mr. Phillips' complaint for unlawful demolition and nuisance was not a preliminary determination necessary to the relief sought by the City of Belleville in its counterclaim, which was awarded by the May 21, 2013, judgment

specified in Mr. Phillips' notice of appeal. Mr. Phillips cites to no case, and we are aware of none, that has held that an order disposing of one claim was a "step in the procedural progression leading to" an order disposing of an entirely separate claim. For these reasons, we find that this court lacks jurisdiction to consider any issues that were resolved in the circuit court's December 11, 2012, order granting summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for wrongful demolition and nuisance. Consequently, we now turn to the issues raised by Mr. Phillips concerning the propriety of the circuit court's May 21, 2013, order which entered judgment in favor of the City of Belleville on its counterclaim for the costs of the demolition and abatement of the asbestos remaining on Mr. Phillips' property.

¶ 31 Because the circuit court entered its May 21, 2013, order following a bench trial, our standard of review is whether the judgment is against the manifest weight of the evidence. *Green v. Papa*, 2014 IL App (5th) 130029, ¶ 32. "A judgment is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id.* We can affirm the circuit court's judgment on any basis which appears in the record, regardless of the basis relied upon by the circuit court. *Gambino v. Boulevard Mortgage Corp.*, 398 Ill. App. 3d 21, 54 (2009). With these principles in mind, we turn to the first issue Mr. Phillips raises related to the May 21, 2013, order, which is whether the circuit court erred in entering a judgment in favor of the City of Belleville and against Mr. Phillips for his portion of the demolition costs.

¶ 32 The City of Belleville pled several theories in its counterclaim related to its

recovery of Mr. Phillips' proportionate share of the demolition costs, including breach of contract, promissory estoppel, and conversion. In its May 21, 2013, order, the circuit court found that Mr. Phillips breached his contract with the City of Belleville to pay his portion of the demolition costs. On appeal, Mr. Phillips argues that he did not authorize his attorney's agreement, as evidenced by the letters that were admitted into evidence at the trial, that Mr. Phillips would endorse the insurance check and deliver it to the City of Belleville to pay the demolition costs. In addition, Mr. Phillips argues that the agreement was not supported by consideration. We will address these issues in turn.

¶ 33 Considering Mr. Phillips' argument that he did not authorize his attorney to promise that Mr. Phillips would endorse the insurance check and deliver it to the City of Belleville, we note that Mr. Phillips testified that he was aware that his attorney had made such a promise because although he did not receive a copy of the letter containing the promise in the mail, his sister received the letter and read it to him. Mr. Phillips also testified that the attorney was representing him in connection with the demolition of his building during the relevant time period. It has been long held that when the relation of agent and principal exists, but in a particular transaction the agent has exceeded his authority, an intention to ratify will be presumed from the silence of the principal beyond a reasonable time. *McGeoch v. Hooker*, 11 Ill. App. 649, 653 (1882). Accordingly, there is evidence in the record to support a finding by the circuit court that Mr. Phillips ratified his attorney's promise that he would pay for the demolition costs by endorsing the insurance check by silence.

¶ 34 Turning to the issue of whether the promise to pay the demolition costs by

endorsing the insurance check was supported by sufficient consideration, the City of Belleville argues that the consideration for the promise to pay was the demolition itself. However, we note that the demolition occurred prior to Mr. Phillips' attorney's promise that he would pay. Generally, if consideration for a promise has been conferred prior to the promise upon which an alleged agreement is based, there is no valid contract. *Worner Agency, Inc. v. Doyle*, 133 Ill. App. 3d 850, 856-57 (1985). However, an exception to this rule exists if the promise is to pay a "debt due in conscience." *Id.* at 857. For the following reasons, we find this exception to the rule that past consideration is insufficient applies in this case.

¶ 35 Section 397.1 of the Illinois Insurance Code provides that if a certificate setting forth the amount of unpaid incurred demolition expense is executed by a municipality pursuant to the mandate of that section, an insurance company is required to pay the unpaid incurred demolition expense from the proceeds payable by issuing a check payable to the appropriate unit of government prior to paying the insured any proceeds under a casualty policy of insurance. 215 ILCS 5/397.1 (West 2010). The evidence shows that the City of Belleville executed such an affidavit at the behest of Mr. Phillips' insurance company, and we find the fact that Mr. Phillips actually owed substantially less than the amount stated in the affidavit of no consequence to the City of Belleville's entitlement to the amount of the proceeds that Mr. Phillips did owe. In accordance with this provision of Illinois law, Mr. Phillips' insurance company issued a check made payable to Mr. Phillips and the City of Belleville. We find that the City of Belleville's portion of the insurance proceeds, as evidenced by the insurance check made payable to

the City of Belleville, was a "debt due in conscience," and accordingly, the City of Belleville's demolition of the subject property, though it occurred after Mr. Phillips' attorney's promise that Mr. Phillips would turn over those proceeds to the City of Belleville, was adequate consideration for that promise. For these reasons, we find no error in the circuit court's finding that Mr. Phillips breached his contract with the City of Belleville.

¶ 36 We note that even if we found error in the circuit court's finding that Mr. Phillips breached his contract with the City of Belleville, we find evidence in the record to support the City of Belleville's claim for conversion. Conversion is the unauthorized deprivation of property from a person entitled to its possession. *IOS Capital, Inc. v. Phoenix Printing, Inc.*, 348 Ill. App. 3d 366, 370 (2004). To prove conversion, the plaintiff must establish (1) a right in the property, (2) a right to immediate possession, (3) wrongful control by the defendant, and (4) a demand for possession. *Id.* As explained above, the City of Belleville had a right to immediate possession of Mr. Phillips' insurance proceeds covering the unpaid demolition costs because Mr. Phillips' insurance company made the proceeds check payable to the City of Belleville for the unpaid demolition expenses pursuant to section 397.1 of the Illinois Insurance Code (215 ILCS 5/397.1 (West 2010)), as evidenced by Mr. Phillips' insurance company's designation of the City of Belleville as a payee of the check. Mr. Phillips wrongfully controlled the proceeds by refusing to deliver the check to the City of Belleville despite its demand for payment as evidenced by letters between Mr. Phillips' attorney and the city attorney that are contained in the record. Accordingly, even if we found that no valid contract to pay

the demolition expenses existed, we would affirm the circuit court's judgment in favor of the City of Belleville on the basis of conversion.

¶ 37 Finally, we turn to the circuit court's finding that Mr. Phillips is responsible for the cost of abating the asbestos that remains on the property following the demolition. On appeal, Mr. Phillips argues that the circuit court erred in so finding because the evidence shows that Mr. Phillips' property did not contain asbestos prior to the fire, and any transfer of asbestos from Mr. Nance's property to his property was caused by the City of Belleville when it illegally ordered the building to be demolished. First, the issue of the illegality of the demolition is barred by collateral estoppel, or issue preclusion, because the issue was litigated on the merits in the prior summary judgment proceeding, and Mr. Phillips had a full and fair opportunity to litigate the issue. See *LaHood v. Couri*, 236 Ill. App. 3d 641, 645-46 (1992). Mr. Phillips cites no authority, and we are aware of none, that substantiates the proposition that he should not be required to abate asbestos on his property that was transferred there as a result of a fire and subsequent lawful demolition. We also reject Mr. Phillips' argument that Mr. Nance was a "necessary party" to the proceedings on the City of Belleville's counterclaim for the abatement of the asbestos on Mr. Phillips' property. A complete determination of the City of Belleville's claim that a nuisance existed on Mr. Phillips' property which he had a duty to abate could be made without Mr. Nance's presence. See 735 ILCS 5/2-408 (West 2010). If Mr. Phillips believed that Mr. Nance could have been liable to him for all or part of the City of Belleville's claim for the abatement of the asbestos, he could have brought a third-party complaint against Mr. Nance pursuant to section 2-408 of the Illinois Code of Civil

Procedure (735 ILCS 5/2-408 (West 2010)). Mr. Phillips did not file such a third-party action against Mr. Nance. For these reasons, we find no error in the circuit court's order requiring Mr. Phillips to abate the asbestos remaining on his property.

¶ 38

CONCLUSION

¶ 39 For the foregoing reasons, we decline jurisdiction over the circuit court's December 11, 2012, order granting summary judgment in favor of the City of Belleville on Mr. Phillips' complaint for wrongful demolition and nuisance, and hereby deny Mr. Phillips' motion to reconsider our prior order denying him leave to amend his notice of appeal to specify that judgment. We affirm the circuit court's order of May 21, 2013, which entered a judgment in favor of the City of Belleville on its counterclaim for payment of the costs of the demolition and required Mr. Phillips to abate the asbestos remaining on the subject property.

¶ 40 Affirmed; motion denied.