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2015 IL App (3d) 140260-U

Order filed November 18, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

SILVER CROSS HOSPITAL AND MEDICAL)	Appeal from the Circuit Court
CENTERS, an Illinois not-for-profit)	of the 12th Judicial Circuit,
Corporation,)	Will County, Illinois.
)	
Plaintiff-Counterdefendant-Appellee)	
and Cross-Appellant,)	
)	Appeal No. 3-14-0260, 3-14-0415 &
v.)	3-14-0647
)	Circuit No. 09-MR-500
GV DESIGNER HOMES, LTD., an Illinois)	
Corporation,)	
)	
Defendant-Counterplaintiff-Appellant)	The Honorable
and Cross-Appellee.)	Barbara Petrunaro,
)	Judge, presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* In a case involving a real estate purchase contract that both parties alleged the other had breached, the circuit court ruled in favor of the seller in a declaratory judgment action. The appellate court affirmed, holding that: (1) the liquidated damages provision was valid and enforceable; (2) the buyer breached the contract; (3) the buyer failed to establish its claims of promissory estoppel and equitable estoppel; (4) the buyer waived its claim that the circuit court granted relief impermissible for a declaratory judgment action; and (5) the circuit court did not

err when it granted the seller attorney fees and costs. The appellate court also held, in the seller's cross-appeal, that the circuit court did not err when it: (1) ruled that the buyer was entitled to receive refunds for extension payments and a farm lease payment; and (2) ruled that the declaratory judgment was not a money judgment.

¶ 2 On appeal, GV argues that the circuit court erred when it: (1) ruled that the liquidated damages provision was enforceable; (2) found that GV breached the PSA; (3) ruled that GV did not meet its burdens on its estoppel claims; (4) granted certain relief that was inappropriate for a declaratory judgment action; and (5) awarded Silver Cross attorney fees and costs. In its cross-appeal, Silver Cross argues that the circuit court erred when it: (1) ruled that GV was entitled to a refund for the extension payments and farm lease payment; and (2) ruled that the declaratory judgment was not a money judgment. We affirm.

¶ 3 **FACTS**

¶ 4 This appeal involves a dispute over a real estate purchase and sale agreement (the PSA) for a large tract of land (the Village Station property¹) in unincorporated Will County. Silver Cross owned the Village Station property and had negotiated with the Village of New Lenox for the land to be annexed into the village as a high-density commercial and residential development designed around a commuter rail station. In connection with this land plan, Silver Cross conveyed three parcels of the Village Station property to Metra in December 2004; one parcel would contain the train station and the other two parcels would be used for parking lots. Throughout this decision, we will refer to the latter two parcels as the Metra parcels.

¹ The entire Village Station property was a 236-acre tract that contained the parcels conveyed to Metra, the 214.776 acres GV sought to purchase, and an approximately 4.8-acre parcel that Silver Cross decided to retain. For the purposes of this case, when we refer to the "Village Station property," we mean the 214.776 acres GV sought to purchase under the PSA.

¶ 5 The agreement that Silver Cross negotiated with Metra included an option for Silver Cross to construct a parking deck, subject to certain conditions and Metra's approval, and Metra would re-convey the Metra parcels to Silver Cross in exchange for some parking spaces in the deck (hereinafter, the Metra Agreement). This right was required to be exercised by December 2009. According to Silver Cross's chief financial officer (CFO), William Brownlow, Silver Cross only wanted to sell the property, not develop it. To that end, Silver Cross never had any intention of constructing the parking deck; if Silver Cross took an action that could be construed as real estate development, then Silver Cross could be taxed millions of dollars as a consequence.

¶ 6 The Metra Agreement also included a provision that should Silver Cross sell or transfer its interest in any portion of the parcel upon which the Metra parcels were located, then "Silver Cross shall assign in writing all of its rights, remedies and obligations under this Agreement to any such third party" and that third party would be required to execute an acceptance of those rights, remedies, and obligations.

¶ 7 In 2006, Silver Cross began marketing the Village Station property for sale and development. On December 20, 2006, Silver Cross and GV entered into the PSA, whereby GV agreed to purchase the Village Station property for \$26,500,000 plus \$1,575,604.50 for certain open space credits granted to Silver Cross under a 2005 contract with the Village of New Lenox. The PSA also required GV to deposit \$100,000 into escrow (the "Initial Deposit") "[t]o secure the performance by the Buyer of its obligations under [the PSA]." GV was also required to deposit an additional amount (the "Additional Deposit") to bring the total earnest money amount to 5% of the purchase price by a certain date. The PSA also collectively referred to the Initial Deposit plus the Additional Deposit as the "Deposits." The section on the earnest money

deposits also gave GV the option “to direct the Escrowee to invest the Deposits on behalf of the parties in compliance with the Escrowee’s standard investment instructions[.]”

¶ 8 In addition, the PSA contained a “Remedies” provision, which stated, in part:

"In the event the sale of the Property fails to close due to the fault of the Seller, Buyer shall be entitled to receive a refund of its Deposits, together with any interest thereon, as its sole remedy. In the event the sale of the Property fails to close due to the fault of the Buyer, Seller shall be entitled to receive payment of the Deposits, together with any interest thereon, as liquidated damages as Seller's sole and exclusive remedy. The prevailing party in any action brought by Buyer or Seller to enforce the remedies reserved to the parties, respectively, hereunder shall be entitled to recover attorneys' fees in addition to any other relief."

GV's attorney stated that the “Remedies” provision was included after it was negotiated by the parties.

¶ 9 The “Remedies” provision also provided for attorney fees: “[t]he prevailing party in any action brought by Buyer or Seller to enforce the remedies reserved to the parties, respectively, hereunder shall be entitled to recover attorneys’ fees in addition to any other relief.”

¶ 10 Silver Cross and GV executed six amendments to the PSA. In the first amendment, executed on January 26, 2007, the parties agreed to extend the date by which GV was required to deposit the remaining earnest money into escrow. Before that date, GV had concept sketches prepared that included a parking deck being built, and Silver Cross saw those sketches. At a February 2007 meeting that included GV's representative, George Venturella, and Brownlow,

Venturella claimed he told Brownlow that the Metra parcels needed to be "swapped"—i.e., placed in different spots—and that Brownlow represented that the swap should not be a problem.

¶ 11 Also in February 2007, GV completed its preliminary plat application to be filed with the Village of New Lenox. The preliminary plat differed from the concept sketches in that it included the Metra parcels but also a potential shared parking deck. At the Village's request, GV prepared an exhibit in which the Metra parcels were relocated on the Village Station property. GV had consulted with Silver Cross and obtained its consent regarding the preliminary plat before the plat was submitted to the Village of New Lenox on February 23, 2007, although Metra's consent was neither sought nor obtained.

¶ 12 In the second amendment, executed on May 1, 2007, the parties agreed a second time to extend the date by which GV was required to deposit the remaining earnest money into escrow, although it also required GV to deposit \$400,000 of that amount immediately. GV did so, and also deposited the remaining amount into escrow on May 31, 2007. The total amount paid as earnest money by GV was \$1,325,000.

¶ 13 In the third and fourth amendments, executed on October 25, 2007, and January 14, 2008, respectively, the parties agreed to extend the time within which GV was required to close on the PSA. In exchange, GV paid three extension fees totaling \$289,231.49. Additional extension fees were included in the agreement, but were never paid due to the fifth amendment.

¶ 14 The Village of New Lenox approved GV's plat application on January 29, 2008. The plat that was approved did not include a parking deck; rather, it contained only shared parking lots. Thereafter, GV and Silver Cross continued to negotiate the furtherance of the real estate purchase. In a February 2008 meeting, GV emphasized to Silver Cross that it could not close on the PSA unless the Metra parcels were swapped and relocated. Brownlow informed GV that his

relationship with Metra was strained such that he did not believe he could be of any help with GV's attempts to purchase the Metra parcels. GV had retained an attorney from the firm that represented Silver Cross in an attempt to purchase the Metra parcels, but those attempts were ultimately unsuccessful.

¶ 15 The parties negotiated a fifth amendment to the PSA, which was executed on June 3, 2008. The fifth amendment split the purchase into three phases, with each phase containing a portion of the Village Station property, at a slightly reduced purchase price. During these negotiations, counsel for GV requested a provision that would have required Silver Cross to effectuate the relocation of the Metra parcels, but that provision was ultimately not included in the fifth amendment. Among the agreements that were included in the fifth amendment were: (1) Silver Cross would waive the \$275,000 in extension fees provided for by the fourth amendment; (2) GV would receive a credit of \$725,000 toward the purchase price at the closing of phase two and \$1,000,000 at the closing of phase three; (3) GV would pay a farmer \$18,103.14 pursuant to a farm lease the farmer had with Silver Cross on part of the Village Station property; (4) a declaration of covenants and restrictions related to the Village Station property; and (5) the earnest money would be applied to the purchase price at the closing of phase three. While a legal description of the Village Station property was attached to the declaration of covenants and restrictions, no legal description of the property contained within each phase was attached to the agreement. Instead, the fifth amendment referred to "the property depicted on Exhibit" A, B, or C, respectively. The documents attached to the fifth amendment as Exhibits A, B, and C simply stated that phase one constituted approximately 84.52 acres, phase two constituted approximately 48.284 acres, and phase three constituted approximately 71.757 acres, and included copies of GV's preliminary plat.

¶ 16 The closing of phase one occurred on June 6, 2008. GV purchased 84.5 acres of the Village Station property for \$11,193,240.69, which included \$630,241.80 for open space credits and \$9,100 for the aforementioned farmer. Unbeknownst to GV, there was a mechanic's lien for \$191,174.72 on the Village Station property that had been recorded on September 21, 2007.² Also, the deed for the phase one property did not include the one Metra parcel that the preliminary plat had included.

¶ 17 The closing of phase two was scheduled to occur in October 2008, but it did not take place, leading to the sixth amendment to the PSA, which was executed on January 8, 2009, but was backdated to October 14, 2008. The sixth amendment extended the phase two closing deadline to April 15, 2009.

¶ 18 During the negotiations for the sixth amendment, it was determined that Metra would agree to relocate its parcel on the phase one property for \$700,000, even though GV's manager/secretary had believed that Silver Cross represented to him that the Metra parcels could be obtained from Metra through a swap of parcels. Brownlow claimed he never made any such representation to Venturella, and counsel for GV stated Silver Cross never made any such representation to him. GV requested that Silver Cross release \$400,000 of the earnest money to help pay for the relocation of the Metra parcel on the phase one property. Silver Cross had no intention of releasing those funds, and they in fact were never released. Phase two's closing did not take place by April 15, 2009, and both parties alleged that the other had breached the PSA.

¶ 19 Silver Cross filed a complaint for declaratory judgment on May 14, 2009, which asked the circuit court, *inter alia*, to rule that GV breached the PSA by failing to close on phase two by April 15, 2009, that the breach resulted in the termination of the PSA with regard to Phases II

² The lien's release was recorded on January 8, 2010.

and III, and that Silver Cross was entitled to retain the earnest money. GV filed an answer and affirmative defenses alleging that Silver Cross breached the PSA, that equitable estoppel and waiver operated to preclude Silver Cross from keeping the earnest money, and that in the alternative, a mutual mistake occurred regarding the Metra parcels. GV filed a three-count counterclaim, alleging, *inter alia*, that Silver Cross had breached the PSA by failing to obtain the Metra parcels, and that GV was entitled to a refund of the earnest money and extension fees.

¶ 20 The circuit court held a bench trial in October 2013 at which seven witnesses testified, *inter alia*, about the matters described above. The witnesses included Perry Higa, a commercial broker retained by Silver Cross, who testified that in 2008, changes in the economy resulted in land values dropping significantly. An exhibit admitted at trial—an email from GV’s attorney—also included a statement that GV was committed to purchasing the Village Station property, even though its fair market value had dropped well below the contract price.

¶ 21 The circuit court issued its written order on February 26, 2014. First, the court found that the remedy provision in the PSA was an enforceable liquidated damages provision such that Silver Cross was entitled to seek those liquidated damages. The court also found, however, that the extension payments and farm lease payments were not intended to be included in the liquidated damages provision, so Silver Cross was not entitled to keep that \$307,876.38.

¶ 22 With regard to the breach of contract claims, the circuit court found that GV was the party that breached the agreement. The court rejected GV's claim that the fifth amendment modified the property to be conveyed by Silver Cross, as neither the fifth nor sixth amendments contained any language referencing the "swapping" of the Metra parcels. The court also noted that the PSA did not include the Metra parcels in its description of the property to be conveyed, that GV knew Metra owned the parcels but GV never included Metra in any of the discussions

moving toward Village approval, and that GV signed all of the amendments and proceeded with phase one closing without any contractual language requiring Silver Cross to effectuate a Metra parcel "swap." The court further found that GV failed to meet its burdens on its claims that Silver Cross breached its duty of good faith and fair dealing, that Silver Cross should be liable under a promissory estoppel theory, and that equitable estoppel operated to prevent Silver Cross's recovery. Accordingly, the court found that Silver Cross was entitled to retain the escrow funds, less the amounts of the extension payments and farm lease payments, and ordered GV:

“to execute the strict joint order escrow instructions and deliver to [Silver Cross] a direction authorization addressed to all third parties who have prepared any of the development documents at [GV’s] request authorizing them to deal with [Silver Cross] and deliver to [Silver Cross] the signed original of the First Amendment to the Declaration of Covenants and Restrictions.”

The court also found that Silver Cross was entitled to petition for attorney fees and costs.

¶ 23 GV appealed the court's order and obtained a stay of enforcement pending the appeal.

The court also ruled at that time that its ruling that Silver Cross was entitled to seek the earnest money was not a money judgment; accordingly, the court limited post-judgment interest to whatever the money was earning in the escrow account at that time. During the hearing, counsel for GV informed the court that at the time the trial started, the escrow account had a balance of approximately \$1.4 million and had earned close to \$80,000 in interest.

¶ 24 Silver Cross also appealed the court's rulings, and the appeals were consolidated in June 2014.

¶ 25 Silver Cross filed a petition for attorney fees and costs, which the circuit court granted on August 8, 2014. After ruling that it had jurisdiction to consider the petition, the court awarded Silver Cross \$119,829.50 for attorney fees and \$3,904.06 for costs, but the court stayed enforcement pending the appeal. GV appealed the court's August 8, 2014, ruling, and Silver Cross filed an amended notice of appeal.

¶ 26 ANALYSIS

¶ 27 With regard to its appeal, GV argues that the circuit court erred when it: (1) ruled that the liquidated damages provision was enforceable; (2) found that GV breached the PSA; (3) ruled that GV did not meet its burden on its estoppel claims; (4) granted certain relief that was inappropriate for a declaratory judgment action; and (5) awarded Silver Cross attorney fees and costs.

¶ 28 I. GV'S APPEAL

¶ 29 A. WHETHER THE LIQUIDATED DAMAGES PROVISION WAS ENFORCEABLE

¶ 30 First, GV argues that the circuit court erred when it ruled that the liquidated damages provision was enforceable. GV contends that the amount it deposited into escrow was "made to secure performance," as stated in the PSA; that the amount was not an agreed-upon settlement of damages; that the amount was unreasonable given that only phase one closed; and that allowing Silver Cross to keep the earnest money resulted in a windfall because they also retained 60% of the Village Station property while keeping 100% of the earnest money.

¶ 31 In a declaratory judgment action, the standard of review to be applied on appeal depends on the underlying issues in the case. *Board of Education, Proviso Township High School District No. 209 v. Jackson (Jackson)*, 401 Ill. App. 3d 24, 31 (2010). Given that GV's argument on this issue raises a question of contract interpretation, our review of this issue is *de novo*. *Id.*;

see *Grossinger Motorcorp, Inc. v. American National Bank and Trust Co.*, 240 Ill. App. 3d 737, 749 (1992) (noting that a determination of whether a liquidated damages provision is enforceable presents a question of law).

¶ 32 The determination of whether a liquidated damages provision is enforceable is contextual. *Id.*

“In Illinois, courts will generally find a liquidated damages provision to be valid and enforceable in a real estate contract, when: (1) the parties intended to agree in advance to the settlement of damages that might arise from the breach; (2) the amount of liquidated damages was reasonable at the time of contracting, bearing some relation to the damages which might be sustained; and (3) actual damages would be uncertain in amount and difficult to prove.” *Id.*

An agreement on liquidated damages must include a specified amount for a specific breach, and such an agreement must not be intended to penalize a party for failing to perform under the contract or to secure such performance. *Id.* at 750.

¶ 33 The first factor to consider is whether the parties intended to agree in advance to the settlement of damages from a breach. In this regard, we note that the language of the provision itself is important, but it is not controlling. *Penske Truck Leasing Co., L.P. v. Chemetco, Inc.*, 311 Ill. App. 3d 447, 454-55 (2000); see also *GK Development, Inc. v. Iowa Malls Financing Corp.*, 2013 IL App (1st) 112802, ¶ 51. It is true that the PSA in this case included the language that GV was to deposit money into escrow “[t]o secure the performance by the Buyer of its obligations under [the PSA].” However, this language is not conclusive proof that the

“Remedies” provision was intended to secure GV’s performance. GV’s argument on appeal ignores the fact that its own attorney testified that the “Remedies” provision was included after it was negotiated by the parties. Thus, evidence was presented in this case that the “Remedies” provision was in fact a reflection of the parties’ agreement in advance to the settlement of damages from the failure to close by either party.

¶ 34 The second and third factors to consider are whether the amount of liquidated damages was reasonable at the time of the contract such that it bore some relation to the damages that might be sustained in the event of a breach, and whether actual damages would be uncertain in amount and difficult to prove. In this case, the PSA set the earnest money at 5% of the purchase price, and the “Remedies” provision, in part, permitted Silver Cross to retain this 5% as liquidated damages in the event of a breach by GV. On appeal, GV attacks this amount as being unreasonable, and it claims that Silver Cross did not present evidence that this amount was reasonable. We disagree.

¶ 35 “Liquidated damages clauses are often entered into to avoid the difficulty of ascertaining and proving damages by such methods as market value, resale value or otherwise.” *Siegel v. Levy Organization Development Co., Inc.*, 182 Ill. App. 3d 859, 861 (1989). In this case, evidence was presented that the fair market value of the Village Station property had dropped significantly since the signing of the PSA, which was due to an economic downturn. Through the PSA, GV sought to purchase over 214 acres of land for over \$26,000,000. In a sale of this magnitude, both parties would be spending considerable time and money to complete the transaction. The evidence indicated that the parties negotiated the “Remedies” provision and set an amount at 5%, which is reasonable and related to actual damages that might have been sustained under the circumstances. In this regard, we note that other courts have determined in

real estate transaction cases that liquidated damages in the amount of 10 to 20% were reasonable. *Id.* at 860-63 (upholding a 20% liquidated damages provision); *Curtin v. Ogborn*, 75 Ill. App. 3d 549, 555 (1979) (upholding a 10% liquidated damages provision).

¶ 36 Further, we disagree with GV’s claim that splitting the purchase into three phases rendered the liquidated damages amount unreasonable. We note that reasonableness of an amount in a liquidated damages provision depends “on whether the amount reasonably forecasts and bears some relation to the parties’ potential loss as determined *at the time of contracting*.” (Emphasis added.) *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 24. Here, the parties agreed at the time of contracting that 5% of the purchase price would be retained by Silver Cross in the event of a failure to close by GV. The parties did not renegotiate this amount when the purchase was split into three phases. Moreover, even apart from the choice not to renegotiate this amount, the \$1,325,000 in earnest money constituted less than 10% of the purchase price of phase one. As we mentioned above, courts have upheld liquidated damages provisions set at 10 to 20% of the purchase price. *Siegel*, 182 Ill. App. 3d at 860-63; *Curtin*, 75 Ill. App. 3d at 555.

¶ 37 In sum, we conclude that the parties agreed in advance to the settlement of damages due to a breach, that the amount was reasonable at the time of contracting and was related to actual damages that might have been sustained in the event of a breach, and that actual damages would be difficult to prove and uncertain in amount. We further find that the sole purpose of the liquidated damages provision in this case was not to secure performance such that it is not a penalty provision. See *Siegel*, 182 Ill. App. 3d at 861-62. Accordingly, we hold that the circuit court did not err when it ruled that the liquidated damages provision was enforceable.

¶ 38 B. WHETHER GV BREACHED THE PSA

¶ 39 Second, GV argues that the circuit court erred when it found that GV breached the PSA. Specifically, GV argues that the fifth amendment changed the definitions of the property to be purchased due to the fact that the descriptions of that property came from GV's preliminary plat. GV also argues that even if the preliminary plat was not controlling, the fifth amendment created an ambiguity because Silver Cross was trying to convey land that it did not own. GV also argues that the fifth amendment created an obligation on Silver Cross' part to effectuate a "swap" of the Metra parcels and that Silver Cross acted in bad faith because it knew of GV's need to "swap" the parcels to proceed and because Silver Cross made representations to GV that the "swap" would occur.

¶ 40 The determination of whether a material breach of contract has occurred presents a question of fact; accordingly, we will not disturb a circuit court's determination in that regard unless that decision is against the manifest weight of the evidence. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 72 (2006).

¶ 41 Our review of the record reveals no error in the circuit court's finding that GV breached the PSA. The original PSA did not include the Metra parcels in the Village Station property. Throughout the six amendments, no language was inserted into the PSA to include any "swap" of the Metra parcels as a condition of the sale. In fact, the evidence indicated that the idea of a "swap" of the Metra parcels was a creation of GV's negotiations with the Village of New Lenox, as the Metra Agreement between Metra and Silver Cross did not provide for any "swap" of the parcels. Rather, the Metra Agreement gave Silver Cross the option of building a parking deck and in exchange for some spaces in that structure, the two parcels intended to be used as parking lots would be re-conveyed back to Silver Cross. Also, it is significant that at no point was the concept of a "swap" as defined by GV ever added to the PSA.

¶ 42 Further, we do not find GV's claims persuasive that the fifth amendment to the PSA changed the terms of the deal or, at a minimum, created an ambiguity. While it is problematic that Silver Cross agreed to include GV's preliminary plats as the descriptions for the three phases created by the fifth amendment, the record indicates that GV knew exactly what it was purchasing. The PSA's legal descriptions did not include the Metra parcels. GV began negotiating directly with Metra around the time of the fifth amendment regarding the Metra parcels, indicating that it knew that it would not receive the Metra parcels in its transaction with Silver Cross. It appeared that those negotiations were still ongoing at the time of the sixth amendment, as GV requested that Silver Cross release escrow funds to be used for securing a separate deal with Metra to swap parcels. Significantly, when phase one closed, GV's attorney reviewed the deed that was eventually recorded, which did not include the Metra parcels. Thus, the record belies GV's claims that the fifth amendment changed the terms of the deal or, at a minimum, created an ambiguity.

¶ 43 Likewise, we find no evidence of bad faith in the record on the part of Silver Cross. Even if Silver Cross knew of GV's need to "swap" the Metra parcels as early as February 2007, as Venturella claimed, ultimately no language was inserted into the PSA's amendments to ensure that "swap" would occur. Further, GV claims that Silver Cross knew of GV's need to "swap" the parcels and that it made representations to GV that a "swap" of the Metra parcels would occur. However, at very best for GV, the evidence in this regard was conflicting. Venturella had claimed that Silver Cross represented to him that the Metra parcels could be obtained through a swap. However, Brownlow testified that he never made any such representation to Venturella. Significantly, GV's attorney also stated that no such representation was ever made to him, either.

¶ 44 Our review of the record reveals that the manifest weight of the evidence indicated that GV's failure to close on phase two of the deal constituted a breach of the PSA. Evidence had been presented that GV was experiencing financing issues, which was also suggested by GV's request for Silver Cross to release part of the escrow funds to help pay for a separate deal with Metra to swap parcels. Those funds were not released, and GV failed to close on phase two within the time specified by the sixth amendment. Under these circumstances, the circuit court's finding that GV breached the PSA was not against the manifest weight of the evidence.

¶ 45 C. WHETHER GV ESTABLISHED ITS ESTOPPEL CLAIMS

¶ 46 Third, GV argues that the circuit court erred when it ruled that GV did not meet its burdens on its estoppel claims. GV contends that both promissory estoppel and equitable estoppel operated to prevent Silver Cross from prevailing in this action.

¶ 47 "To establish a claim based on promissory estoppel, plaintiff must allege and prove that (1) defendants made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendants, and (4) plaintiff relied on the promise to its detriment." *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309-10 (1990).

"To establish equitable estoppel, the party claiming estoppel must demonstrate that: (1) the other party misrepresented or concealed material facts; (2) the other party knew at the time the representations were made that the representations were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other party intended or reasonably expected the

representations to be acted upon by the party claiming estoppel or by the public generally; (5) the party claiming estoppel reasonably relied upon the representations in good faith to his or her detriment; and (6) the party claiming estoppel has been prejudiced by his or her reliance on the representations.” *In re Scarlett Z.-D.*, 2015 IL 117904, ¶ 25.

We will not disturb a circuit court’s decisions on whether the elements of promissory estoppel and equitable estoppel have been proven unless those decisions are against the manifest weight of the evidence. *Cullen Distributing, Inc. v. Petty*, 164 Ill. App. 3d 313, 318 (1987) (regarding promissory estoppel); *Scarlett Z.-D.*, 2015 IL 117904, ¶ 26 (regarding equitable estoppel).

¶ 48 Our review of the record in this case reveals no errors in the circuit court’s findings that GV failed to meet its burdens of proving the elements of promissory estoppel and equitable estoppel. GV’s argument on appeal essentially focuses on the claim that Silver Cross withheld information that exercising the Metra Agreement option was not possible due to Silver Cross’ strained relationship with Metra. Even if GV’s claim were correct, we do not find that such a claim could meet the requirements of either promissory estoppel or equitable estoppel. The Metra Agreement was between Silver Cross and Metra, and involved the potential re-conveying of two parcels back to Silver Cross if it would build a parking deck and give Metra some spots in that structure. This was an option that had to have been exercised by December 2009 and was required to be assigned to a buyer of the parcel on which the Metra parcels were located. Accordingly, the option was still possible at the time GV breached the PSA in April 2008. Moreover, the need to “swap” the parcels came about from GV’s negotiations with the Village of New Lenox and had nothing to do with the PSA, and no language requiring any “swapping” of

the parcels was ever included in the amendments to the PSA. In addition, as we have already stated above, the evidence that Silver Cross made representations that a “swap” of the Metra parcels would occur was, at very best for GV, conflicting.

¶ 49 On this record, we find no evidence of GV’s detrimental reliance on any unambiguous promise made by Silver Cross, or any evidence of Silver Cross misrepresenting or concealing any material facts upon which GV relied to its detriment. Under these circumstances, we hold that the circuit court did not err when it ruled that GV failed to meet its burdens on its estoppel claims.

¶ 50 D. WHETHER THE COURT GRANTED IMPERMISSIBLE RELIEF

¶ 51 Fourth, GV argues that the circuit court's ruling granted impermissible relief for a declaratory judgment action. Specifically, GV contends that the court made rulings and findings based on past conduct and did not issue rulings to guide future conduct.

¶ 52 We hold that GV has waived this argument. In its second amended counterclaim, filed on May 3, 2013, GV included a declaratory judgment claim in which it sought rulings that it was entitled to the escrow money, that it had the exclusive right to receive that money from the escrowee, and that Silver Cross should be required to take all necessary steps to effectuate the release of that money to GV. GV cannot now complain that the circuit court exceeded its authority when it ruled in favor of Silver Cross. See *Walton Playboy Clubs, Inc. v. City of Chicago*, 37 Ill. App. 2d 425, 428 (1962) (holding that a party who initially objected to the propriety of a declaratory judgment action, but then filed a counterclaim seeking declaratory relief, waived its objection to the declaratory judgment action “by invoking the same remedy in a new action of its own”).

¶ 53 E. WHETHER THE COURT ERRED WHEN IT GRANED ATTORNEY FEES

¶ 54 Fifth, GV argues that the circuit court erred when it awarded attorney fees and costs to Silver Cross. GV claims that because this was a declaratory judgment action, Silver Cross was not a prevailing party entitled to recover attorney fees. Also, GV claims that it was a prevailing party because the court found that GV was entitled to a refund of its extension and farm lease payments.

¶ 55 “Illinois follows the ‘American Rule,’ which prohibits prevailing parties from recovering their attorney fees from the losing party, absent express statutory or contractual provisions.” *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 64. The PSA in this case specifically provided for attorney fees in the “Remedies” provision that contained the liquidated damages clause: “[t]he prevailing party in any action brought by Buyer or Seller to enforce the remedies reserved to the parties, respectively, hereunder shall be entitled to recover attorneys’ fees in addition to any other relief.” The circuit court ruled that GV breached the PSA and that Silver Cross was therefore entitled to the escrow money. Under these circumstances, we hold that Silver Cross did indeed prevail such that it was entitled to attorney fees pursuant to the PSA.

¶ 56 Moreover, we find GV’s argument that it also prevailed to be without merit. The only reason that the circuit court ruled that GV was entitled to a refund of the extension payments and the farm-lease payment was because the PSA specifically provided that the sole remedy in the event of a breach by GV would be for Silver Cross to retain the escrow money. In light of the court’s ruling and the PSA’s “Remedies” provision, we further hold that GV was not a prevailing party.

¶ 57 II. SILVER CROSS’S CROSS-APPEAL³

³ We have reviewed the parties’ arguments in the cross-appeal relating to motions to strike for noncompliance with Supreme Court Rule 341 (eff. July 1, 2008), and we hereby reject those arguments.

¶ 58 A. WHETHER THE CIRCUIT COURT ERRED WHEN IT RULED THAT GV WAS
ENTITLED TO RECEIVE A REFUND FOR THE EXTENSION PAYMENTS AND FARM
LEASE PAYMENT

¶ 59 Silver Cross’s first argument in its cross-appeal is that the circuit court erred when it ruled that GV was entitled to a refund for the extension payments and farm lease payment. Specifically, Silver Cross contends that either the court misunderstood these payments to be a part of the escrow money, or it lacked the authority to allow the refund due to the fact that GV breached the PSA. GV contends, *inter alia*, that these payments were not a part of the “Deposits” as defined by the PSA and therefore were properly refunded to GV.

¶ 60 As we have previously noted, the interpretation of a contract’s provisions presents a question of law that we review *de novo*. *Jackson*, 401 Ill. App. 3d at 31.

¶ 61 We acknowledge that compelling reasons exist in favor of both parties’ positions. However, the “Remedies” provision in this case provided that if GV breached the PSA, Silver Cross “shall be entitled to receive payment of the Deposits, together with any interest thereon, as liquidated damages as Seller’s sole and exclusive remedy.” The extension payments and farm lease payments were not “Deposits” as defined by the PSA, and the parties did not renegotiate the meaning of “Deposits” to include any other types of payments, including the extension payments and the farm lease payment. Under these circumstances, we hold that the circuit court did not err when it ruled that GV was entitled to a refund for the extension payments and the farm lease payment.

¶ 62 B. WHETHER THE CIRCUIT COURT ERRED WHEN IT RULED THAT THE
DECLARATORY JUDGMENT WAS NOT A MONEY JUDGMENT

¶ 63 Silver Cross’s second argument in its cross-appeal is that the circuit court erred when it ruled that the declaratory judgment was not a money judgment. We disagree.

¶ 64 The declaratory judgment statute (735 ILCS 5/2-701 (West 2008)) authorizes the circuit court “to grant the relief necessary and proper to the determination of the controversy before it[,]” which can include the entry of a money judgment. *Chester v. State Farm Mutual Automobile Insurance Co.*, 227 Ill. App. 3d 320, 324 (1992). In this case, Silver Cross filed a complaint for declaratory relief in which it requested a ruling that it was entitled to the escrow money and orders to effectuate the release of those funds. Silver Cross did not request a money judgment, and the sole case it cites in its brief in support of its argument, *Bank of Chicago v. Park National Bank*, 277 Ill. App. 3d 167, 171-74 (1995), is inapposite, as that case involved the retention of a set-off by a bank, that had use of the money, unlike the instant case, which involves money in an escrow account to which neither party had direct access and therefore neither party enjoyed the use of the money. Even if Silver Cross had presented a compelling argument on this issue, we find no error in the circuit court’s determination that the declaratory judgment was not a money judgment. The court’s order in this case declared that Silver Cross was entitled to the money in an escrow account, the amount of which was not in controversy. The only extent to which the court’s order could be said to include a money judgment would be the amount it declared GV was entitled to have refunded to it for the extension and farm lease payments. Under these circumstances, we reject Silver Cross’ argument that the court erred when it ruled that the declaratory judgment was not a money judgment.

¶ 65 Further, due to our ruling on this issue, there is no merit to Silver Cross’ next claim that the circuit court lacked the discretion to limit post-judgment interest. Because the declaratory judgment was not a money judgment, Silver Cross was not *entitled* to interest. See, e.g., *Hadley*

Gear Mfg. Co. v. Zmigrocki, 152 Ill. App. 3d 358, 359 (1986) (noting that “in chancery matters the decision to allow statutory interest lies within the sound discretion of the trial court”).

¶ 66 Silver Cross also argues that the circuit court abused its discretion when it limited post-judgment interest to the undefined amount of whatever rate the escrow money was earning. Silver Cross contends that because no evidence was presented on what, if any, interest had been earned on the escrow money, the court’s decision to limit post-judgment interest was arbitrary and constituted an abuse of discretion. We disagree. In the PSA, the parties agreed that the escrow funds could be invested at GV’s option. No restrictions or conditions were placed upon that option that afforded Silver Cross the right to object to, or provide input on, the investment of the escrow deposits. At the hearing on the motion to stay, counsel for GV stated that the escrow funds had earned approximately \$80,000 in interest at the time the trial had started. Under these circumstances, and because Silver Cross was not entitled to receive interest in this case, we find no abuse of discretion in the court’s decision to limit post-judgment interest to the amount the escrow account had been earning.

¶ 67 Lastly, Silver Cross argues that the circuit court erred when it stayed the enforcement of the portion of the court’s order that required GV to authorize all third parties who had prepared development documents to deal with Silver Cross and to deliver the signed original of the PSA’s first amendment to Silver Cross. However, Silver Cross provides no support for this argument, which it develops no further than alleging that the circuit court had “no reason” to stay the enforcement of that portion of the order. We find Silver Cross’ argument on this issue to be insufficient to show that the circuit court abused its discretion when it stayed the aforementioned portion of its order. See, e.g., *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 372 (2009)

(holding that the circuit court's decision on a motion to stay will not be disturbed absent an abuse of discretion).

¶ 68

CONCLUSION

¶ 69

The judgment of the circuit court of Will County is affirmed.

¶ 70

Affirmed.