2018 IL App (1st) 170584-U

No. 1-17-0584

Fourth Division
March 15, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MICHAEL C. FOLEY, Plaintiff and Counterdefendant-Appellee, v. IIR, INC., and ANTHONY DUARTE, Defendants and Counterplaintiffs-Appellants.	)	Appeal from the Circuit Court of Cook County. No. 15 L 005190 The Honorable Patrick J. Sherlock, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Burke and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that there was no enforceable written contract between the parties due to the absence of a certain document that was incorporated into the contract is affirmed where this court cannot say it was against the manifest weight of the evidence for the trial court to conclude that this document was necessary to determine the terms of the contract. Additionally, this court cannot say that the trial court's damages calculation on defendant's unjust enrichment counterclaim was against the manifest weight of the evidence, nor can this court say that the trial court's finding that an oral contract existed and was breached by defendant was against the manifest weight of the evidence.

¶ 2 The instant appeal arises from construction work performed by defendant IIR, Inc., and its president and sole shareholder, defendant Anthony Duarte, after a fire damaged plaintiff

Michael Foley's three-flat building. Plaintiff and defendant allegedly agreed that defendant would perform certain repairs, but the parties disagreed as to the type of agreement that existed, the scope of the work contemplated, whether all the work was performed, and whether the work that was performed was done satisfactorily. After a bench trial, the trial court found that there was no written contract between the parties but that an oral contract existed that was breached by defendant, entitling plaintiff to $24,451.49 in damages. The trial court also found in defendant's favor on its unjust enrichment counterclaim, finding that defendant was entitled to $79,922.05 for work that it had completed for which it had not been compensated. Defendant appeals, arguing (1) that there was a written contract between the parties; (2) that there was no oral contract between the parties and, even if there was, it had not been breached; and (3) that the trial court's measure of damages on defendant's unjust enrichment claim was too low. For the reasons that follow, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 I. Complaint and Amended Complaint

¶ 5 On May 21, 2015, plaintiff filed a verified complaint against defendant[1] alleging that plaintiff was the owner of a three-flat building in Chicago that had been "rendered *** uninhabitable" due to a February 4, 2012, fire at the building. The complaint alleged that defendant was engaged in the business of home repair and remodeling and that, on February 5, 2012, defendant offered to perform the work necessary to restore the property to a habitable state. The complaint alleged that defendant and plaintiff "entered into a verbal

[1] While both IIR, Inc., and Duarte, its president, are named as defendants, the allegations concern the actions of IIR, Inc., and only concern Duarte in his capacity as its president. Accordingly, we refer to the parties collectively as the singular "defendant" and, where referring only to Duarte, refer to him by his last name.

agreement *** to complete the repairs and renovations necessary to restore the Property to a habitable state." Defendant "made numerous assurances that the work on the Property would be completed in a timely manner and to a professional standard."

¶ 6 The complaint alleged that defendant had received payments from Farmers Insurance Group (Farmers), plaintiff's insurance carrier, that totaled over $265,781.98. However, "[n]umerous work stoppages lasting months at a time would occur, delaying progress and making timely and satisfactory completion of the project impossible." The complaint alleged that plaintiff lived in one of the three units at the property and that the fair market value of the remaining two units was $2600; the complaint further alleged that, as a result of the units being uninhabitable for a period of at least 30 months, plaintiff had sustained economic damages in excess of $78,000. The complaint also alleged that due to plaintiff's needing to relocate to replacement housing, he was required to expend over $42,000. After deducting the amount provided under the Farmers policy, plaintiff had unreimbursed loss of use costs in excess of $79,736.15 due to defendant's delay.

¶ 7 The complaint further alleged that "[a]s a result of the unreasonable delays in completing the project, Plaintiff forfeited his recoverable depreciation amounts under the Farmers policy," which were $159,250.29. The complaint alleged that defendant knowingly accepted payment from Farmers for labor and materials never performed or installed on the property and alleged that, as of the time the complaint was filed, the restoration project "remains substantially incomplete."

¶ 8 The complaint set forth four causes of action: (1) fraud, (2) violations of the Home Repair and Remodeling Act (815 ILCS 513/1 *et seq.* (West 2010)), (3) violations of the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2010)), and (4)

breach of contract. Only count IV is at issue on appeal. Count IV alleged that the parties entered into an oral agreement concerning the repair of the property, one material element of which was its duration—the complaint alleged that the parties "agreed at its outset [the agreement] would be completed within 12 months." However, defendant failed to meet this deadline. Count IV further alleged that another material element of the contract concerned the quality of the work, "which was meant to be at a professional standard." However, the quality of the work performed "was substantially short of professional standard." The complaint requested a total of $264,376.79 in compensatory damages, as well as punitive damages, attorney fees, and costs.

¶ 9 On October 21, 2015, defendant filed a combined motion to dismiss all counts of plaintiff's complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). With respect to count IV, defendant claimed that the count must be dismissed because the parties entered into a written contract for services "that sets forth material terms controverting Plaintiff's allegations." Attached to the motion to dismiss was a copy of a contract for $363,485.56 that was dated March 22, 2012, and signed by plaintiff, as well as a copy of a "revised" contract for $531,667.46, which was signed by plaintiff on February 16, 2013. In response, plaintiff denied that the signature on the contracts was his. On December 21, 2015, the trial court granted the motion to dismiss in part. The motion to dismiss is not at issue on appeal.

¶ 10 On January 19, 2016, plaintiff filed a verified amended complaint. Count III of the amended complaint was substantively identical to the prior count IV of the original complaint and was for breach of an oral contract. A new count IV was for unjust enrichment, and alleged that between February 2012 and the time of filing the complaint, defendant had

received at least $265,781.98 in insurance proceeds from Farmers to which it was not entitled and had refused to either return the money or complete the outstanding work.

¶ 11 II. Counterclaim and Affirmative Defenses

¶ 12 On February 1, 2016, defendant filed a verified counterclaim, alleging that on March 22, 2012, plaintiff entered into an agreement with defendant, which was amended on February 16, 2013, in which defendant was to perform construction work for plaintiff in exchange for $531,667.46. The parties also agreed that plaintiff would be responsible for extra charges of $25,203.53 in extras and supplemental work. The counterclaim alleged that "[a]ll work to be performed under the contract was substantially completed on or about September 18, 2014," and further alleged that defendant had substantially performed its obligations under the contract and that plaintiff had accepted defendant's performance under the contract. Count I of the counterclaim was for breach of contract and alleged that payments for defendant's services totaled only $341,217.17, leaving a balance of $215,653.82 due and owing to defendant for the work that it had performed. The counterclaim alleged that by failing to pay defendant the sums to which it was entitled, plaintiff had breached the contract. Count II of the counterclaim was an alternative count for unjust enrichment and alleged that if no contract was found to have existed between the parties, then plaintiff had been unjustly enriched in the amount of $215,653.82, which represented the difference between the value of the services defendant had provided and the compensation it had received. Count III of the counterclaim, which is not at issue on appeal, was for foreclosure of defendant's mechanic's lien.

¶ 13 Attached to the counterclaim were the same contracts as had been attached to the motion to dismiss. Both contracts were form contracts that had been prepared by defendant, with

certain boxes checked and certain details handwritten into spaces on the form. The first contract, dated March 22, 2012, was for $363,485.56. The contract had a number of boxes checked, including one that said "General – per scope of loss." Next to this was handwritten in a note that stated: "see scope of loss for all interior type repairs." Under "Additional information," the contract stated: "Farmers Insurance has reduced RCV from total loss (500K+) to 363K. [Defendant] will perform work per scope of loss." The second contract was signed by plaintiff on February 16, 2013, and contained a notation that it was "revised/continued." The new contract amount was for $531,667.46 plus supplemental costs if necessary. Next to the "General – per scope of loss" option was handwritten "see scope of loss/other docs." Attached to the contract was a document containing additional terms, which bore plaintiff's initials after a statement that "I have read and agreed to the above terms." One such term was a provision that "The Agreement constitutes the entire agreement between the parties. It may be changed only [by] written instrument signed by both parties. THERE ARE NO ORAL AGREEMENTS OF ANY KIND." (Emphasis in original.) In addition, there was a two-page document entitled "Schedule of Specifications" attached to the contract[2] which was signed by both plaintiff and Duarte, on behalf of defendant. This schedule of specifications listed each space inside and outside the building, followed by a list of repairs to be done in that space. At the top of the schedule of specifications was the following statement: "The following schedule of specifications describes the finishes to be expected. It is understood that any additional items/additional work of consequence above and beyond the schedule of specifications will be performed at additional cost and may add time to project. Expected project time of 12-18 months from issue of work permits."

[2] It is not clear whether the documents setting forth additional terms and the schedule of specifications were attached to the first or second contract. The two contracts and these documents all appear collectively as exhibit A to defendant's counterclaim.

¶ 14 On February 16, 2016, defendant filed an answer and affirmative defenses to plaintiff's amended complaint, raising two affirmative defenses. First, defendant requested a setoff of any award to plaintiff in the amount of $215,653.82, which it alleged was the amount that plaintiff owed to defendant for work that defendant had performed. Second, defendant raised an affirmative defense of nonpayment, alleging that any uncompleted projects were justified as a result of plaintiff's failure to pay defendant for the work that had been completed and that, "[p]ursuant to Illinois Common Law, the Defendant *** was entitled to cease work due to the Plaintiff's failure to make payment for work having been completed by [defendant]."

¶ 15 III. Trial

¶ 16 The parties came before the trial court for a bench trial on January 23, 2017. As noted, the only counts at issue on appeal concern count III of plaintiff's amended complaint, alleging breach of an oral contract; and counts I and II of the counterclaim, alleging breach of a written contract and unjust enrichment, respectively. Accordingly, we relate the trial proceedings relevant to those counts. Plaintiff provided two witnesses—Earnest Dugo and plaintiff—while Duarte was the sole witness for the defense.

¶ 17 A. Earnest Dugo

¶ 18 Plaintiff's first witness was Earnest Dugo, who testified that he was residing at the property at the time of the February 2012 fire. Dugo was not injured, but plaintiff was hospitalized due to the fire, so Dugo took on the responsibility of contacting Duarte to board up the property; Dugo testified that defendant had previously performed repairs on the property's roof, windows, and gutters due to hail damage. Approximately a week later, Dugo and Duarte discussed immediate repairs that needed to be completed, such as putting tarps on

the roof and removing an unstable back porch; since plaintiff was in the hospital, Dugo was acting on plaintiff's behalf.

¶ 19 Dugo testified that he moved back into the property in July 2014, but that the property was "[n]ot fully inhabitable" and "needed some work." Dugo testified that he finished most of the outstanding work and "got it livable." For instance, Dugo purchased a washer and dryer and shower fixtures for his unit, as well as a water heater. Dugo paid for these items and was reimbursed by plaintiff. On cross-examination, Dugo admitted that he was not a contractor, was not trained in carpentry, and was not in the business of estimating the value of repairs for construction work. Dugo further admitted that he had never hired anyone to provide any estimates for correcting any defects that he had identified in the quality of the work.

¶ 20 B. Plaintiff

¶ 21 Plaintiff also testified on his own behalf, testifying that he was present on the evening his property caught fire and was burned when trying to extinguish it, which resulted in his being hospitalized. While he was in the hospital, he was visited by Dugo, who informed him that Dugo had contacted Duarte and had the building boarded up.

¶ 22 Plaintiff testified that during the first week of February 2012, after he had been discharged from the hospital, plaintiff met with Duarte for a walkthrough of the property and asked Duarte "if he could handle the job," meaning a full remodel of the property. Duarte assured plaintiff that he could and that "[h]e had done it before." Duarte told plaintiff that "it would be from 9 to 12 months, which is standard for a remodel." At that time, it was plaintiff's understanding that he had retained Duarte "to start working demolitions and whatnot towards the eventual rebuild." On cross-examination, plaintiff was impeached when

he admitted that in his deposition, he had testified that plaintiff represented that he could complete the project in 12 to 18 months.

¶ 23 Plaintiff testified that he had an insurance policy on the property through Farmers and that after he was released from the hospital, he met with an adjuster named Heather McBride, who had previously met with Duarte, and explained to plaintiff the next steps in the process. McBride verbally informed plaintiff and Duarte that "it looked more likely than not that the loss would be a total loss"; plaintiff's insurance policy had a maximum limit of $599,000 for real property damage.

¶ 24 Plaintiff testified that he had little communication with the insurance company concerning the repairs and that most of his communications concerned personal items that plaintiff had lost; plaintiff testified that "[e]verything else was kind of in Mr. Duarte's court as far as I understood."

¶ 25 Plaintiff testified that plaintiff initially gave him an estimate of nine months to a year in order to complete the repairs, "but then other things start[ed] to come about in terms of Farmers." When asked to explain, plaintiff testified that McBride, the original adjuster, needed to take leave from Farmers, so a different adjuster was assigned to the case. The new adjuster readjusted the loss, making a downward adjustment in the replacement cash value of the property, which "kind of put a damper on our agreement." Plaintiff testified to a letter he received from Farmers dated February 29, 2012, which listed a dwelling loss amount of $363,485.56. Shortly after receiving that letter, he and Duarte "ha[d] some discussions" about the work that would be completed at the property.

¶ 26 The letter, which was admitted into evidence, was addressed to plaintiff and was sent to him at his temporary address in Palos Heights; plaintiff testified that he "would assume" that

he received the letter. In the letter, as noted, the dwelling loss amount was found to be $363,485.56. The letter stated that "[a] scope of repairs has been provided, and reflects the extent of damages for this loss. We believe that we have provided a complete scope of loss, and paid what is owed at this time, but if you think we have overlooked anything, please let us know." The letter continued: "During repairs, sometimes hidden damage is revealed. While we will make additional or supplemental payments where appropriate, please note that no payments will be made for any repairs not listed on the estimate without approval from us. This approval has to be obtained prior to the repair, and we must have the opportunity to inspect the damaged area for the proposed changes or additional work. Please inform your contractor or anyone performing repairs of this requirement for prior approval for repairs not listed in our scope of loss."

¶ 27 The letter also provided that recoverable depreciation was available if plaintiff met the conditions outlined in the policy, which "include actual repair or replacement, a timely claim being made, and providing documentation supporting the claim." The letter instructed that "[b]efore any recoverable depreciation is paid for building damages, you must show that all repairs were completed according to the approved scope of repairs. You need to demonstrate that the actual cost for the completed repairs has exceeded the actual cash value payment." The letter stated: "Your claim for recoverable depreciation must be made timely. The policy requires repairs or replacement to be completed within 180 days after the date of loss, however, as a courtesy, we are extending that time period for making repairs or replacement to 365 days from the date of our initial Actual Cash Value payment of February 29, 2012. Therefore, your 365 day timeframe to recover the depreciation expires on February 29, 2013. Additional time extensions may be considered for good cause. Expiration of the time limit

will impact your client's ability to recover the additional funds. Please call me immediately if you or any contractor believes that the repairs will take longer than projected."

¶ 28 Plaintiff testified that he had discussed with Duarte the subject of recoverable depreciation and that Duarte was aware that plaintiff was eligible for such recoverable depreciation. However, plaintiff testified that he did not recover any recoverable depreciation from Farmers because "recoverable depreciation in my understanding is a time constraint to try to get the work done. So it's I guess if you want to say it's a reward for doing this on time, if you don't accomplish that in the time allotted, you would lose it. That's gone." Plaintiff testified that after the new adjuster was assigned, they negotiated a six-month extension for the recoverable depreciation, but were unable to complete the project in that time, so "it was gone." Plaintiff testified that he raised concerns about the recoverable depreciation with Duarte but "it was not a big concern of his" until after the deadline had passed. On cross-examination, plaintiff admitted that he never sent a request for an additional extension after receiving the initial extension.

¶ 29 Plaintiff testified that he moved back into the property in spring or summer of 2014 and described the quality of the work as "shoddy at best." When he moved back, he changed the locks, because "I don't know who had access to the place," since Duarte had a copy of the keys and may have given copies to subcontractors. On cross-examination, plaintiff admitted that he had not had any estimates completed by third parties as to the cost to repair the alleged defects in the quality or scope of the work done by defendant.

¶ 30 Plaintiff testified that he "vague[ly]" remembered a written agreement between himself and defendant and testified that "I'm sure I have seen the document. I signed it." On cross-examination, plaintiff testified further about the written agreement. First, plaintiff testified to

the same March 22, 2012, written agreement that had been attached to defendant's counterclaim, testifying that it was a document that had been presented to him by Duarte after plaintiff had received the February 29, 2012, loss letter from Farmers. He testified that the agreement consisted of two pages, the second of which was a list of "terms and conditions," and that he signed and initialed the agreement. Plaintiff further testified that the agreement contained a notation under "additional information" indicating that Farmers had reduced the reimbursement cost value from being a total loss and that defendant would perform work pursuant to the scope of loss. Plaintiff agreed that this notation was added because he and Duarte "both sort of had the understanding that the loss was going to be *** deemed a total loss, which would result in a higher value being assessed to the property."

¶ 31 Plaintiff testified that, at some point, he and Duarte had discussions about attempting to obtain a higher recovery loss value for the property. He then testified to a letter he received from Farmers that was dated January 11, 2013, which increased the replacement cost value assessed to the property to $533,667.46. Plaintiff further testified to the same revised contract that had been attached to defendant's counterclaim, testifying that it consisted of four pages that had been signed by plaintiff and that "Mr. Duarte presented this revised document that has the terms of the work he would complete based on the fact that *** the replacement cost value was increased to $531,667.46." Plaintiff testified that the third page of the document was entitled "schedule of specifications" and indicated that additional items would be performed at additional cost and may add time to the project and that the expected project time was 12 to 18 months from the time of issuance of work permits.

¶ 32 C. Duarte

¶ 33 After plaintiff's testimony, plaintiff rested, and defendant called Duarte as its sole witness. Duarte testified that he was the president of defendant company and oversaw operations of all of defendant's projects as general contractor. Duarte testified that defendant had completed a project for plaintiff in 2011 involving roofing, gutters, and windows, and plaintiff was "very happy" with defendant's work on the project. In February 2012, Duarte was contacted and asked to come to the property due to a fire loss; Duarte testified that "they were interested in me helping them out," initially by securing the property by boarding it up and securing the roof.

¶ 34 Duarte testified that Heather McBride, an insurance adjuster from Farmers, came to inspect the property a few days after the fire; plaintiff asked Duarte to remove some of the boards to that she could enter the property. McBride "mentioned she thought it was going to be something approaching a total loss," but most of the time was spent taking inventory of plaintiff's personal property. Duarte testified that plaintiff made him aware of a February 29, 2012, letter that plaintiff had received in which the cost to repair value was allocated at $363,485.56. Duarte and plaintiff "ha[d] conversations about" that amount and whether it would be sufficient. Duarte was also informed by plaintiff that McBride had taken leave from Farmers.

¶ 35 Duarte identified the initial March 22, 2012, agreement and testified that the likely reason it took from the end of February until March 22 to enter into an agreement was that "we were going to be talking about what we were going to be doing." Duarte testified that "when we were discussing what it was that [plaintiff] wanted his project to turn into, there was a difference in what we would be able to do with the $363,000 amount versus *** what he

would have been told would have been the larger amount closer to a total loss. So we tried to figure out, you know, the differences between what we could do. You know, the $363,000 amount, there was an itemized list in the scope of loss from the insurance company. That's what we wanted to work off of. We were happy to work off of that amount. There were certain things that [plaintiff] wanted beyond that that would have been near impossible to do, if not impossible, you know, with the amount that the insurance companies covered." Plaintiff and Duarte eventually reached an agreement to repair the property for $363,485.56 "[b]ased on the scope of the work provided to [them] by Farmers."

¶ 36 Duarte testified that he received an initial payment of $88,593 from Farmers, which was used for expenses such as hiring an architect, securing the property with plywood, repairing fencing, making temporary repairs to the roof, cleaning out everything plaintiff and his tenants no longer wanted, removing water that had accumulated in the basement, and tearing down the rear porch.

¶ 37 Duarte testified that at some point, plaintiff informed him that it was likely that McBride, the initial adjuster, would be returning to Farmers, and she did in fact return around September 2012. At plaintiff's direction, Duarte communicated with McBride about obtaining a higher loss value for the damage to the property. McBride requested additional documentation, including an engineer's report and an electrician's report, which Duarte provided; Duarte testified that "I went about gathering for somebody with a porch, engineer, architect, electrician, HVAC, everything she wanted to put together in the package for her sent to her. We have e-mail correspondence of having done that. She said it was to her linking, and she said she was going to do whatever she needed to do internally with Farmers to see if she could get it increased to what she thought it should have been initially." McBride

then informed Duarte that "there was just going to be a waiting period while she fought whatever battle she had to fight internally at Farmers." In January 2013, plaintiff informed Duarte that he had received a letter from Farmers increasing the loss value from $363,000 to $531,667.46. Based on the revised value, "we were able to agree to do some of those other things that [plaintiff] wanted. But we still had to determine, you know, exactly what they were. So we had another round of having the architect come around again. We had another round of going over different floor plans and different possibilities for materials for [plaintiff's] project."

¶ 38 Duarte testified that the February 22, 2013, signed contract accurately represented the revised agreement between plaintiff and defendant. Duarte further testified that in this contract, he represented to plaintiff that the work would be completed within 12 to 18 months from the time of issuance of work permits. Duarte identified that the contact included a document with the title "schedule specifications [*sic*]," which he described as "a summary that describes the type of work that we were going to do in the different apartments, the different areas of each apartment, so that we would both be on the same page about the work that was being done." Duarte was asked by his counsel to "explain *** the overall scope of the work." He testified:

> "It was a complete gut rehab, meaning removal of everything that was on the inside of the property, replacing all of the major mechanical systems, plumbing, heating, electric, windows, the brickwork that we talked about that was outside the scope of work was something that we did also, new tile, new kitchens, new bathrooms. [Plaintiff] selected the kitchen and bathroom plumbing fixtures, the kitchen cabinetry, everything.

Q. So basically all of the things from the exterior walls all brand new?

A. All brand new.

Q. HVAC, electrical, plumbing?

A. Yes.

Q. For the most part, was it to the specifications that [plaintiff] wanted to?

A. The specifications [*sic*] were above and beyond the specifications."

¶ 39 Duarte testified that "pretty much the entirety of that scope of work" was completed, other than a few minor items that were not completed at the end of the project "due to nonpayment" and items that were beyond the scope of work. Duarte testified that, at some point, his relationship with plaintiff "started to fall apart. There were some things beyond the scope of work, and it had been a long time since we had received payment. So that was the reason why we held off on doing that hoping that would be able to work something out financially." However, at some point, he was unable to finish because "[w]e were locked out of the property." After the work had been completed, Duarte testified that he came back and addressed any "punch-list" items or minor concerns that plaintiff or Dugo raised and did not hear any additional complaints until the filing of the lawsuit.

¶ 40 With respect to dealings with the insurance company, Duarte testified that "[t]he homeowner's responsibility is to collect all payments and then pay us. Our relationship, our contract, is with the homeowner. It's impossible for us to have that sort of agreement with an insurance company. So you know, I work for [plaintiff]. I did not work [for] his insurance company. I did not work for Mr. Dugo. I worked for [plaintiff]." Duarte testified that plaintiff had asked him to write a letter containing certain information that plaintiff would then use to try to obtain an extension for the recoverable depreciation, which he did. Duarte testified that

he never received anything from the insurance company other than that which was communicated to him through plaintiff.

¶ 41 Duarte testified that defendant was owed $531,667.46 under the contract, and had been paid only about half, or $265,000, to date. It was his understanding that Farmers had issued another check for $75,000 that plaintiff had not turned over and that was being held in escrow.

¶ 42 On cross-examination, Duarte testified that the contract contained reference to a "scope of loss" that had been issued by Farmers but was not physically attached to the contract. However, Duarte testified that the scope of loss document "was there" when the contract was presented to plaintiff. Duarte was further asked on cross-examination about the scope of the work:

"Q. The scope of the work in this case was memorialized in the document from Farmers, correct?

A. I believe so, yes.

Q. You used that document in order to figure out, you know—that was your guide for what work you were going to do, correct?

A. You know, [plaintiff] was the leading guide as to what it was that he wanted us to do. So I would day that [plaintiff's] and my communication and my coming up with the schedule [of] specifications was really the guide because what he wanted is he wanted a complete gut rehab of his property.

You know, there was a lot of—I know there was a time when he wanted the original infrastructure of the property to be saved as much as possible in an effort to save the original wood, which I think we talked about before.

> And then eventually what he settled on was he wanted a complete gut rehab. So you know, the scope of loss is not going to dictate, I think, in the way that you are implying what it is that we are doing. If it did, then what we would be doing is we would be doing things like—you know, again, the insurance companies need to pay to replace what's there. So you know, space heaters for the heating, for example, lack of kitchen cabinetry, very basic, you know, stuff is what we would go back with because that's what the insurance company is going to allow for in the scope of loss.
>
> [Plaintiff] wanted well above and beyond that. So you know, that was not the primary—"

¶ 43 On redirect examination, Duarte testified that the outstanding $265,000 that was required to complete the work and to pay for labor costs was paid for by defendant.

¶ 44 D. Closing Arguments

¶ 45 After Duarte's testimony, defendant rested and plaintiff did not call any rebuttal witnesses. The parties then presented closing arguments. During plaintiff's closing, plaintiff's counsel expressed skepticism that the written agreement between the parties reflected a meeting of the minds, arguing that "[w]e contend that the meeting of the minds happened orally at the meeting between Mr. Dugo, [plaintiff], and Mr. Duarte. And at that time when the work commences, there's a meeting of the minds that involved those oral representations about a quicker turnaround time for the project." Plaintiff's counsel also argued that defendant had not proven that it had completed $530,000 worth of work, given that "[t]here's not a single invoice. There's not an accounting of labor. There's not a list of material. The document that would be helpful in establishing that would be the scope of loss document, which some reason wasn't attached to the Defendant's Exhibit 9, despite the fact

*** Defendant's Exhibit 9 refers to it." Plaintiff's counsel additionally pointed to other claimed deficiencies in the written agreement, such as font size and layout, that plaintiff claimed rendered any meeting of the minds questionable and argued that "[f]urther, there is a checkmark next to—see scope of loss, see scope of loss. That scope of loss seems to me to be terribly germane to what the meeting of the minds actually was. It seems to be inappropriate to attempt to collect or otherwise enforce a contract that has several terms omitted from it entering into evidence."

¶ 46 When defendant's counsel began its closing, the trial court engaged in a lengthy colloquy with counsel about the scope of loss document:

> "DEFENDANT'S COUNSEL: *** The first count, breach of contract, it's our position that the document that was admitted to the Court as Exhibit 9 clearly sets forth an offer to complete work in the amount of $531,667.46. It does indicate that a prior payment had been made of 265,781.58.
>
> That being said, despite the apparent positions in this case, the defendants in our cross-claim, cross-defendants, that this is not enforceable. Clearly it's a written document. You look at the four corners. They have not provided any evidence or made an argument. It's unambiguous, unclear, et cetera.
>
> THE COURT: Let's talk about the clarity about that. The biggest item here is the scope of work. What is it?
>
> DEFENDANT'S COUNSEL: Well, your Honor, if you look at Page 2 and 3.
>
> THE COURT: That's not the scope of work, right?
>
> DEFENDANT'S COUNSEL: The scope of work would be something that Farmers Insurance provides to [plaintiff].

THE COURT: I don't know what that is.

DEFENDANT'S COUNSEL: [Plaintiff] would know.

THE COURT: No. No. This is something that's part of your contract with [plaintiff].

DEFENDANT'S COUNSEL: Right.

THE COURT: I don't know what it is. It's not attached. Your client has it. Obviously they have it because they wrote those words in.

* * *

You are trying to tell me you agreed to do the scope [of] work, but you can't even tell me what the scope of work is.

DEFENDANT'S COUNSEL: Your Honor, you heard testimony from Mr. Duarte his original file is locked in Mr.—

THE COURT: I don't believe it.

DEFENDANT'S COUNSEL: Again, that being said, the scope of work, there's no testimony that says the scope of the work is not $531,667.46. There's no evidence of that.

THE COURT: There's no evidence of what the scope of the work is.

DEFENDANT'S COUNSEL: Your Honor, that's one—the scope of the work is saying if the architectural plans—

THE COURT: This is a written contract. I don't know what he's supposed to do.

DEFENDANT'S COUNSEL: If architectural plans were not attached, would you say that's not—the contract wouldn't be enforceable?

THE COURT: If it said per plans, yes, I would say you don't have an enforceable contract.

DEFENDANT'S COUNSEL: I understand your position, Judge. I don't agree to the extent that this has the terms of the offer, 531,000 to complete. And perhaps if the documents—your conclusion is that if you don't have the scope of the work, it's not enforceable. I disagree with that, your Honor. I understand that's your thought.

THE COURT: How am I supposed to determine whether or not your client performed everything it required under the contract? That's one of the basic premises of a breach of the contract action.

DEFENDANT'S COUNSEL: Based on the testimony.

THE COURT: Let me finish. I, the plaintiff, performed everything required of me under the contract.

DEFENDANT'S COUNSEL: He's testified he did.

THE COURT: No. No. No. I have a written contract.

***

The written contract says I agree to do the following things. One of those things is see attached scope of work.

***

If I don't see that attached scope of work, I don't know what is required to be done. And I don't then know whether or not the plaintiff proved that he did what was required to be done, can I?

DEFENDANT'S COUNSEL: Part of that is you heard two pieces of testimony. You are the trier of fact, so you can judge credibility. He's testified about the original documents that he would need are in [plaintiff's] apartment or they still are.

***

Secondly, he testified that the scope of work was completed. Certainly you can judge him based on credibility, et cetera. You can see the very detailed specification of—scheduled specifications of all of the work that was going to be completed. It's not like he just has a two page thing saying I am going to renovate the property."

Later, defendant's counsel further argued:

"[O]ur position as you have heard—well, you heard testimony that Mr. Duarte completed work based on his contract. The only testimony you heard that the work was not completed per the terms of this contract or the scope of work that [plaintiff] would have in his possession because Farmers would have provided to him was the items they claim were not completed and/or were not completed properly. So that is clear based on the evidence and testimony that's presented in the case."

¶ 47 With respect to damages, as to defendant's breach of contract counterclaim, defense counsel argued:

"[O]ur argument is that the contract price was $531,667.46. There's been testimony that [defendant] substantially completed it. There's been no rebutting of that to the extent that [plaintiff] nor Mr. Dugo testified that he did not complete items within the scope of the work except for what we just mentioned."

Accordingly, defendant was requesting the balance of the contract price minus the uncompleted items for which plaintiff had provided evidence of the cost to repair.

¶ 48 Defense counsel also argued, in the alternative, that the trial court should find for defendant on its unjust enrichment counterclaim. In doing so, counsel argued that the value of defendant's work was the same as the contract price. Counsel argued:

> "There's testimony by Mr. Duarte, also Farmers insurance, all parties acknowledge that they had an adjuster out there to determine that [*sic*] would be the cost to—the value of the amount of money that would be needed to replace—to repair the property. You have the letter that was admitted from Farmers Insurance from January of 2013.
>
> ***
>
> That is Exhibit 5, [defendant's] Exhibit 5. Replacement cost, $531,667.46. Again, you are obviously the trier of fact. You will make your determination, but you will have testimony from Mr. Duarte that [defendant] completed all of [the] work through its subcontractors. You don't have any rebuttal testimony that the scope of the work was not completed other than the items that we have discussed including the water heater—I'm sorry, water boiler and HVAC, et cetera.
>
> So I think that that's credible evidence that qualified trained adjusters went out there and made a determination of how much it would cost to get the property back to be in a condition that was livable and no evidence beyond the items we just discussed of things that [weren't] completed by [defendant] that was not the value of the work. That being said, we would seek that amount."

¶ 49 E. Trial Court Ruling

¶ 50 After hearing closing argument, the court made the following findings with respect to count I of defendant's counterclaim for breach of contract:

"[Defendant] contents that the *** contract is Exhibit 8 as amended by Exhibit 9, which is dated March 23rd. And the Exhibit 9 is an undated written document where it's supposed to have a date. It says revised, slash, continued.[3]

The problem with this document is that the work that needs to be done is described extremely poorly. And when you get to the general per scope of loss, it says see scope of loss and then there is no scope of loss attached. There is the document called schedule of specifications that's attached that contains in general terms some of the work, but certainly not all of the work that was to be performed at the property address ***.

The contract such as it is is impossibly vague. The Court cannot determine what the terms are and hence cannot determine whether or not the plaintiff of the counterclaim in this case complied with the terms of the contract. So for that reason, it's judgment for [plaintiff] on the breach of contract claim."

¶ 51 However, the court found that there was "testimony that substantial work was done to the property," and that there were photographs introduced into evidence that "by and large show that the work quality was quite good." The court noted that "[t]he real question here is what is the value of that work?" The court found that there had been no expert witness to testify as to the value of the work, and that "[t]he most [defendant] can point to is Exhibit 5, which is a letter from Farmers, which is an attempt to adjust the claim. And the Court doesn't find the evidence is particularly helpful. There is, however, a check for $75,435.19 that was issued by the insurance company. And what it really appears to me that the agreement was is that

[3] We note that, while the trial court correctly notes that the box for "Date" contained the notation "revised/continued" instead of the date, there was a handwritten date of February 16, 2013, next to plaintiff's handwritten initials on one of the contract's signature lines.

[defendant] will accept what the insurance company is willing to pay to do the work that it did." The court noted that plaintiff would have been entitled to recoverable depreciation if the work had been done within a specified time period, and found that "[i]t wasn't done within that time period. So I don't believe that they're entitled to that additional recoverable depreciation in this case. So I find in favor of [defendant] for $75,035.19 [*sic*] under [its] unjust enrichment claim."[4]

¶ 52 With respect to plaintiff's claim for breach of an oral contract, the trial court found:

> "There was certainly an agreement that this work would be done within 12 to 18 months. By everyone's agreement, the work was not done within 12 to 18 months. There were certain items that the parties had agreed would be done that [weren't] done or expenditures that [plaintiff] had incurred that he wouldn't have incurred if the job had been done correctly."

By its calculation, the trial court determined that plaintiff was entitled to $7051.49 for these expenses. The trial court disallowed storage fees incurred by Dugo that had been reimbursed by plaintiff, finding that those costs were not recoverable. The court continued:

> "There was a delay in this case.
>
> And the delay clearly was the result of inadequate staffing by [defendant] to this job because everyone agreed or at least it appeared everyone agreed that the work would be done in 12 months and possibly 18 months, but it didn't happen for going on 30 months or so.
>
> Giving the benefit of the doubt to the contractor that perhaps some of the delay was as a result of [plaintiff's] indecision, I will allow lost rents in the amount of

[4] Upon being presented with a copy of the actual check from Farmers, which was for $79,922.05, the trial court later increased the judgment in defendant's favor to that amount.

> $1,450 per month for four months[5] totaling $17,400. [Plaintiff] has an additional claim that he paid his father $1400 per month in rent for that same time period. And although we have his testimony, there is nothing else other than the lease that doesn't really comport with that same $1400.
>
> The Court doesn't find that evidence is sufficient to carry [plaintiff's] burden of proof, so I'm going to award [plaintiff] in sum the lost rents for the 12-month time period as well as the other delineated items that I have gone over which total $24,451.49."

¶ 53 The trial court entered a written order finding in defendant's favor on counts I, II, and IV of plaintiff's amended complaint; finding in plaintiff's favor on count III of the amended complaint with respect to an oral breach of contract and entering judgment in the amount of $24,451.40; finding in plaintiff's favor on count I of the counterclaim; and finding in defendant's favor on count II of the counterclaim with respect to unjust enrichment and entering judgment in the amount of $79,922.03.[6]

¶ 54 On February 23, 2017, defendant filed a notice of appeal, and this appeal follows.

¶ 55 ANALYSIS

¶ 56 On appeal, defendant argues first that the trial court erred in finding that there was no written contract between the parties. In the alternative, defendant argues that if there was no contract, then the trial court erred in calculating the measure of damages owing to defendant pursuant to its unjust enrichment claim. Defendant also argues that the trial court erred in finding that there was an oral contract between the parties. In the alternative, defendant

[5] The trial court later clarified that it was awarding 12 months of lost rents.

[6] The order provided that count III of the counterclaim, concerning the foreclosure of defendant's mechanic's lien, was voluntarily dismissed.

argues that even if there was an oral contract, the trial court erred in its calculation of damages in favor or plaintiff and also erred in finding that plaintiff himself had not breached the oral contract by his failure to pay the amount due and owing under the contract.

¶ 57 As an initial matter, as there is certainly an overlap between the issues, we must keep in mind that there are two separate contractual causes of action set forth by the parties and that must not be combined in our analysis of the issues on appeal. Plaintiff argues that there was an oral contract between the parties, entered into in February 2012, which was "a limited but articulable mutual understanding between the parties that [defendant] would perform demolition, home repair and remodeling services at the subject property [citation], that such work would be performed *** by [defendant] in connection with a Farmers Insurance homeowner policy [citation] and that the work would be completed sometime in calendar year 2013 [citation]." Defendant, by contrast, argues that there was a written contract between the parties, initially executed in March 2012 and revised in February 2013, which ultimately set forth an agreement for defendant to perform a gut rehab on plaintiff's property pursuant to the terms of the contract for the price of $531,667.46. These are two separate arguments about two distinct contracts, and each requires its own analysis. Bearing that distinction in mind, all of the trial court's findings flow from its initial finding that there was no written contract between the parties, so we consider that finding first.

¶ 58 I. Breach of Written Contract Counterclaim

¶ 59 In the case at bar, the trial court found that the written agreement between the parties did not constitute a valid contract, finding that "[t]he contract such as it is is impossibly vague. The Court cannot determine what the terms are and hence cannot determine whether or not the plaintiff of the counterclaim in this case complied with the terms of the contract."

Consequently, the trial court entered judgment in plaintiff's favor on this count of defendant's counterclaim.

¶ 60 Generally, the standard of review in a bench trial where there are contested facts 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). "As the trier of fact, the trial judge was in a superior position to judge the credibility of the witnesses and determine the weight to be given to their testimony." *Chicago's Pizza*, 384 Ill. App. 3d at 859. Thus, "[a] reviewing court will not substitute its judgment for that of the trial court in a bench trial unless the judgment is against the manifest weight of the evidence." *Chicago's Pizza*, 384 Ill. App. 3d at 859. " 'A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Chicago's Pizza*, 384 Ill. App. 3d at 859 (quoting *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001)).

¶ 61 However, "[t]he construction of a contract presents a question of law." *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). Thus, a contract construed as a matter of law by the trial court may be construed independently by a reviewing court, unrestrained by the trial court's judgment. *Fleet Business Credit, LLC v. Enterasys Networks, Inc*., 352 Ill. App. 3d 456, 469 (2004) (citing *Lewis X. Cohen Insurance Trust v. Stern*, 297 Ill. App. 3d 220, 232 (1998), and *Zale Construction Co. v. Hoffman*, 145 Ill. App. 3d 235, 240 (1986)). Accordingly, our review from a trial court's interpretation of a contract as a matter of law is *de novo. Avery v. State Farm Mutual Automobile Insurance Co*., 216 Ill. 2d 100, 129 (2005). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Asset*

Recovery Contracting, LLC v. Walsh Construction Co. of Illinois, 2012 IL App (1st) 101226, ¶ 59. It is this standard of review that defendant claims applies to the instant case.

¶ 62 In the case at bar, however, it is not the case that the trial court was simply asked to *interpret* the contract between the parties. Instead, the trial court first was required to find whether a written contract existed, as plaintiff challenged defendant's claim that they had entered into a written contract. " 'The elements of a breach of contract claim are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff.' " *Timan v. Ourada*, 2012 IL App (2d) 100834, ¶ 24 (quoting *Henderson-Smith & Associates, Inc. v. Nahami Family Service Center, Inc.*, 323 Ill. App. 3d 15, 27 (2001)). Thus, before being asked to interpret or construe the contract in any way, the trial court necessarily needed to determine whether a valid and enforceable contract existed at all. "Whether a contract exists, its terms, and the parties' intent are questions of fact to be determined by the trier of fact." *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 IL App (1st) 142754, ¶ 81. See also *Hedlund & Hanley, LLC v. Board of Trustees of Community College District No. 508*, 376 Ill. App. 3d 200, 205 (2007); *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 322 (2001). "A trial court's findings of fact will not be reversed unless they are against the manifest weight of the evidence." *Hedlund & Hanley*, 376 Ill. App. 3d at 205 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002)). Thus, in the case at bar, since the trial court determined that no contract existed, we apply the manifest-weight-of-the-evidence standard of review, as opposed to reviewing its decision *de novo* because of the contested facts As noted, " '[a] judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on

evidence.' " *Chicago's Pizza*, 384 Ill. App. 3d at 859 (quoting *Judgment Services Corp.*, 321 Ill. App. 3d at 154).

¶ 63 Applying this deferential standard of review, we cannot find that it was against the manifest weight of the evidence for the trial court to find that the absence of the scope of loss document rendered the contract unenforceable. "The essential elements of a contract must be definite and certain in order for a contract to be enforceable." *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 314 (1987). "[A] contract 'is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of construction and applicable principles of equity, to ascertain what the parties have agreed to do.' " *Midland Hotel*, 118 Ill. 2d at 314 (quoting *Morey v. Hoffman*, 12 Ill. 2d 125, 131 (1957)); see also *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 29 (1991). "A contract may be enforced even though some contract terms may be missing or left to be agreed upon, but if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." *Cheever*, 144 Ill. 2d at 29.

¶ 64 Here, the trial court found that "[t]he contract such as it is is impossibly vague. The Court cannot determine what the terms are and hence cannot determine whether or not the plaintiff of the counterclaim in this case complied with the terms of the contract." In other words, the trial court found that the terms of the contract were not sufficiently definite and certain for the court to be able to determine what the parties had agreed to do. The basis for this finding was the fact that the scope of loss document was not physically attached to the contract. We cannot find that this conclusion was against the manifest weight of the evidence and we

cannot substitute our judgment for that of the trial court by finding that a contract did in fact exist.

¶ 65 As an initial matter, we note that it is not necessarily fatal that the scope of loss document was not physically attached to the contract. Courts have upheld such contracts in the past, as in *Wiczer v. Wojciak,* 2015 IL App (1st) 123753, and *Burns v. Ford Motor Company*, 29 Ill. App. 3d 585 (1974), cases relied on by defendant in its briefs on appeal. In both of those cases, the reviewing courts found that, so long as both parties were actually aware of the document, it was considered part of the contract despite not being physically attached to the contract. See *Burns,* 29 Ill. App. 3d at 591 ("Where a party to a contract has actual knowledge of the terms of a clause that is incorporated by reference as an attachment, but is not actually attached, the clause must be considered to be a part of the contract so that the contract is given the effect intended by the parties."); *Wiczer*, 2015 IL App (1st) 123753, ¶ 38. As noted by the *Wiczer* court, " '[i]t is a fundamental principle of contract law that "an instrument may incorporate all or part of another instrument by reference." ' " *Wiczer*, 2015 IL App (1st) 123753, ¶ 36 (quoting *Unifund CCR Partners v. Shah*, 407 Ill. App. 3d 737, 743, quoting *Provident Federal Savings & Loan Ass'n v. Realty Centre, Ltd.*, 97 Ill. 2d 187, 192-93 (1983)). "Contracts which specifically incorporate other documents by reference are to be construed as a whole with those other documents." *Wiczer*, 2015 IL App (1st) 123753, ¶ 36. Furthermore, it would not necessarily be fatal to the contract's existence for the parties to dispute whether a certain document was the document that had been referred to in the contract. See, *e.g.*, *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 62 (finding it was not against the manifest weight of the evidence for the trial court to determine what

document constituted " 'Exhibit A' " in the parties' contract where there was no document marked as such).

¶ 66 The case at bar differs in one significant respect from those cases, however: here, the absent scope of loss document was not submitted at all during trial, meaning that the trial court was deprived of the opportunity to examine the document. In the cases cited by defendant, the absent document was nevertheless submitted at trial. See *Wiczer*, 2015 IL App (1st) 123753, ¶ 29 (noting that the escrow agreement at issue was an exhibit at trial); *Burns*, 29 Ill. App. 3d at 588 (referring to the contents of the "General Conditions" supplement at issue). Thus, once the court determined that the document at issue was properly part of the contract, the court was able to interpret the contract as a whole.

¶ 67 In the case at bar, by contrast, the scope of loss document was not attached to the contract, and also was not presented at any stage of the trial in any manner. Thus, the trial court had no way of knowing what the document actually said. Since the scope of work under the contract was dependent in large part on the scope of loss document, the trial court was in a position in which a number of the contractual terms were unknowable to the court. The trial court determined that without this information, it could not determine what the parties had agreed to do and, therefore, the contract was not sufficiently definite to be enforceable. We cannot say that this conclusion was against the manifest weight of the evidence.

¶ 68 We note that if we were applying a *de novo* review, we might reach a different conclusion than the trial court did, given the circumstances present in the instant case. However, this case is not being reviewed *de novo*, but is instead being reviewed under a manifest-weight-of-the-evidence standard of review. "[F]or this court to deem reversal

warranted, the conclusion opposite to that reached by the trial court 'must be clearly evident,' and a court of review must not reverse a judgment 'merely because it would have reached a different conclusion had it been the trier of fact.' " *O'Leary v. America Online, Inc.*, 2014 IL App (5th) 130050, ¶ 7 (quoting *Watkins v. American Service Insurance Co.*, 260 Ill. App. 3d 1054, 1062 (1994)). Under the deferential standard of review that we must apply, we cannot find that the trial court's conclusion that it needed to scope of loss document was " 'unreasonable, arbitrary, or not based on evidence' " (*Chicago's Pizza*, 384 Ill. App. 3d at 859 (quoting *Judgment Services Corp.*, 321 Ill. App. 3d at 154)) so as to warrant reversal. Accordingly, we affirm the trial court's judgment in plaintiff's favor on this count of the counterclaim.

¶ 69 II. Damages for Unjust Enrichment

¶ 70 Defendant next argues that if we find there was no written contract, then we should find that the trial court erred in its calculation of damages for its unjust enrichment counterclaim.[7] "A plaintiff may recover under the theory of unjust enrichment if the defendant unjustly retained a benefit to plaintiff's detriment, and defendant's retention of the benefit violates the fundamental principals [*sic*] of justice, equity and good conscience." (Internal quotation marks and citations omitted.) *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, 864 (1998). "A cause of action based upon unjust enrichment does not require fault or illegality on the part of defendants; the essence of the cause of action is that one party is enriched, and it would be unjust for that party to retain the enrichment." *Stathis*, 295 Ill. App. 3d at 864. Thus, "[d]amages in an unjust-enrichment claim are restitution measured by the defendant's gain, not the plaintiff's loss." *Board of Managers of Hidden Lake Townhome Owners Ass'n*

[7] We note that plaintiff did not appeal the trial court's finding in defendant's favor on its unjust enrichment counterclaim.

v. Green Trails Improvement Ass'n, 404 Ill. App. 3d 184, 193 (2010). "[W]e will not overturn a trial court's determination regarding damages as contrary to the manifest weight of the evidence if there is 'evidence in the record to support the judgment amount.' " *ICD Publications, Inc. v. Gittlitz*, 2014 IL App (1st) 133277, ¶ 57 (quoting *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 37).

¶ 71 In the case at bar, the trial court made certain findings as to the value of defendant's work in considering defendant's unjust enrichment counterclaim. Specifically, the trial court found that there was no expert testimony as to the value of the work, but that there was a check for $75,435.19 that had been issued by Farmers "[a]nd what it really appears to me [is] that the agreement was *** that [defendant] will accept what the insurance company is willing to pay to do the work that it did." The court further found that defendant was not entitled to the recoverable depreciation, finding that "I knew based on the testimony that the recoverable [depreciation] would be paid by Farmers [I]nsurance if the work was done in a certain specified time period. It wasn't done within that time period. So I don't believe that they're entitled to that additional recoverable depreciation in this case." Accordingly, the court entered judgment in the amount of the check.

¶ 72 In the case at bar, defendant claims that the trial court erred by not including the recoverable depreciation in its award of damages. However, we cannot find that the trial court's finding that this amount should not be included in the damages award was against the manifest weight of the evidence. Defendant argues that, "even under the Circuit Court's own reasoning, the amount that the insurance company was willing to pay for the work done at the Property was $531,667.46. [Citation.] Since the insurance company already made partial payments, [defendant] is entitled to the amount that remains unpaid, which is $265,885.48."

We do not find this argument persuasive. The record shows that the insurance company was willing to pay that amount for the completion of the repairs listed in the scope of loss document within a certain period of time. As has been made quite clear, that scope of loss document was not presented to the trial court and there is no way of knowing whether defendant performed all of the repairs that were included in the scope of loss. Thus, defendant cannot show that it performed all of the work that would entitle it to the $531,667.46 that the insurance company was willing to pay.

¶ 73 Furthermore, that $531,667.46 includes approximately $159,000 in recoverable depreciation, which both Duarte and plaintiff testified was not something that was automatically paid by the insurance company but instead required additional steps and timing requirements. Thus, it is not clear that the recoverable depreciation would have been part of the compensation Farmers was "willing to pay" for the repairs to be completed; it is equally plausible that the recoverable depreciation could be characterized as an incentive for the timely completion of the work. Again, the record does not include any breakdown as to what Farmers was willing to pay for specific work—as the trial court noted, the only evidence in the record of what Farmers was willing to pay for the work that had been completed was the fact that Farmers had, in fact, issued a check for slightly under $80,000.[8] We thus cannot find that it was against the manifest weight of the evidence for the trial court to find that this check, in addition to the payment that defendant had already received, represented the value of the work that defendant had performed.

[8] As noted, the trial court initially referenced a check in the amount of $75,035.19. However, after later bring presented with a copy of the actual check from Farmers, which was for $79,922.05, the trial court increased the judgment to that amount.

¶ 74 III. Breach of Oral Contract Claim

¶ 75 Finally, defendant claims that the trial court erred in finding that the parties had entered into an oral agreement in February 2012 and in finding in plaintiff's favor on the breach of contract count. "Oral agreements are binding so long as there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement." *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313 (2009). "The existence of an oral contract, its terms, and the intent of the parties are questions of fact, and the trial court's determinations on those questions will be disturbed only if they are against the manifest weight of the evidence." *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009). As noted, " '[a] judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence.' " *Chicago's Pizza*, 384 Ill. App. 3d at 859 (quoting *Judgment Services Corp.*, 321 Ill. App. 3d at 154).

¶ 76 In the case at bar, we cannot find that it was against the manifest weight of the evidence for the trial court to have found that plaintiff and defendant entered into an oral contract in February 2012. Every witness at trial—both for plaintiff and for defendant—testified that, immediately after the fire in February 2012, there were discussions between Duarte and Dugo, on plaintiff's behalf, for defendant to repair the fire damage. Plaintiff additionally testified that after he had been released from the hospital, he asked Duarte "if he could handle the job," and Duarte assured him that he could; plaintiff testified that at that time, it was plaintiff's understanding that he had retained Duarte "to start working demolitions and whatnot towards the eventual rebuild." The trial court, as the finder of fact, could properly determine from this testimony that an agreement had been reached in February 2012.

¶ 77 Defendant argues that there was no meeting of the minds as to the terms of the contract, first pointing to the fact that "the term pertaining to the timing for completion of the project was understood differently by the parties." However, this is a quintessential question of fact involving credibility determinations by the trial court, and we will not second-guess the trial court's finding on such a matter. See *Chicago's Pizza*, 384 Ill. App. 3d at 859 ("As the trier of fact, the trial judge was in a superior position to judge the credibility of the witnesses and determine the weight to be given to their testimony."). We must also note that the trial court resolved this factual issue in defendant's favor, finding a 12-to-18 month time period, as opposed to the 9-to-12 month period favored by plaintiff.

¶ 78 Defendant also points to the fact that the scope of the work and the price were not "solidified" until 2013, after Farmers had increased the replacement cost value. However, this mischaracterizes the terms of the oral contract. Plaintiff did not argue, and the trial court did not find, that there was an oral contract for defendant to perform specific repairs for a specific price. If that had been the purported contract, then defendant would be correct to point to the fact that the list of repairs and their price was not solidified until a later date. Instead, the contract argued by plaintiff and found by the trial court was, essentially, a contract that "defendant will perform the repairs authorized by the insurance company for the price that the insurance company is willing to pay." While these contractual terms are broad, they are sufficiently definite for a contract to exist. The fact that the precise contours of "the repairs authorized by the insurance company" and "the price that the insurance company is willing to pay" would not become clear until later in the process does not mean that the contract itself did not come into existence until that time. Accordingly, we cannot find that it

was against the manifest weight of the evidence for the trial court to find that an oral contract existed beginning in February 2012.

¶ 79 We also cannot find that it was against the manifest weight of the evidence for the trial court to find that defendant had breached the oral contract by not performing it in a timely manner and that plaintiff was entitled to 12 months' lost rents as part of its damages. With respect to timing, the trial court found that the work was required to be completed within 12 to 18 months, but that it was not completed for nearly 30 months. Accordingly, the trial court awarded plaintiff 12 months' lost rents for the 12-month delay. As noted, we cannot find that it was against the manifest weight of the evidence for the trial court to have concluded that the contract began in February 2012, starting the running of the clock at that time. Using an 18-month time frame, the contract then would have been required to have been completed by sometime in August 2013. Dugo testified that he returned to the property in July 2014, which was between 29 and 30 months after the contract date. However, Dugo testified that when he moved back in, the property was "[n]ot fully inhabitable" and he needed to perform additional work to return it to a livable state. Plaintiff also testified about work that remained, including electrical problems. Thus, we cannot find that it was against the manifest weight of the evidence for the trial court to use a 30-month figure and to award 12 months' lost rents.

¶ 80 CONCLUSION

¶ 81 For the reasons set forth above, we affirm the trial court's finding that the written contract between the parties was not sufficiently definite to be enforceable because this finding was not against the manifest weight of the evidence. We also affirm its award of damages with respect to defendant's unjust enrichment counterclaim. Finally, we affirm the trial court's

judgment in plaintiff's favor on his breach of oral contract claim, including the court's award of 12 months' lost rents as a component of plaintiff's damages.

¶ 82 Affirmed.