2019 IL App (1st) 182224-U

SIXTH DIVISION
JULY 26, 2019

No. 1-18-2224

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

2403 BERNICE, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,	)	Cook County.
	)	
v.	)	
	)	No. 17 L 5910
MITCH GAJ and PNC SERIES, LLC,	)	
	)	
Defendants	)	Honorable
	)	James E. Snyder,
(PNC Series, LLC, Defendant-Appellee and Cross-Appellant).	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in partially dismissing the plaintiff's complaint; in denying specific performance of the contract; in partially granting summary judgment in favor of the defendant PNC; in partially granting summary judgment in favor of the plaintiff; or in denying the defendant PNC's petition for attorney's fees.

¶ 2 The plaintiff-appellant/cross-appellee, 2403 Bernice, LLC, (Bernice) appeals from the judgment of the circuit court of Cook County partially dismissing its complaint against the

defendant-appellee/cross-appellant, PNC Series, LLC (PNC), and denying Bernice its request for specific performance of the contract at issue. Bernice additionally challenges the circuit court's judgment partially granting summary judgment in favor of PNC. PNC cross appeals from the circuit court's judgment partially granting summary judgment in favor of Bernice and awarding it attorney's fees. PNC also appeals the circuit court's judgment denying its petition for attorney's fees. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 PNC is the owner of a property located at 2403-09 W. Bernice Avenue in Chicago (the property). On March 20, 2017, PNC and Bernice entered into a Vacant Commercial Land Purchase and Sale Contract (the contract), wherein Bernice agreed to purchase the property "as is" from PNC for the purchase price of $1,225,000. The contract required Bernice to deposit $25,000 as earnest money with PNC's broker (the escrowee).

¶ 5 Paragraph 4 of the contract was an attorney modification clause. The attorney modification clause provided that "the parties' respective attorneys may propose written modifications" to the contract, "on matters other than the purchase price, broker's compensation and dates" before April 3, 2017. The attorney modification clause further provided:

> "If, within the attorney approval period, the parties cannot reach agreement regarding the proposed modifications, then this contract shall be null and void, except for those provisions which by their terms survive the termination of this contract, and the earnest money shall be promptly returned to the buyer."

¶ 6 Paragraph 17 of the contract included property information clauses. The property information clauses required a complete disclosure of property information by PNC, including environmental matters.

¶ 7 Paragraph B of the General Provisions section of the contract was a default clause. The default clause provided that "neither party shall be considered in default under this contract unless such party fails to cure a breach of this contract on such party's part within __ days after notice from the other party specifying such breach." The blank line was never filled in to specify a number of days which a party had to cure a breach after notice. The default clause further provided that if PNC defaulted on the contract, Bernice's sole remedy options were to either promptly receive the return of the earnest money and sue for damages, or compel specific performance of the contract. Additionally, any successful party asserting their rights under the contract would be entitled to recover attorney's fees.

¶ 8 Following the execution of the contract, Bernice deposited $25,000 in earnest money with the escrowee. And PNC submitted several copies of the property information reports, but not the Geo Tech Report which contained environmental information.

¶ 9 On March 23, 2017, PNC's counsel submitted several proposed contract modifications to Bernice's counsel (the March 23rd letter). The proposed contract modifications in the March 23rd letter included proposed changes to dates.

¶ 10 On March 30, 2017, Bernice's counsel returned the March 23rd letter with handwritten notes that accepted some of PNC's proposed changes, rejected the changes relating to dates, and amended other changes. Bernice's counsel then signed the March 23rd letter "accepted as modified."

¶ 11 Also on March 30, 2017, Bernice submitted its own proposed modifications to PNC's counsel through a letter from its counsel (the March 30th letter). One of the proposed modifications included extending the closing date.

¶ 12 On April 3, 2017, the same day that the attorney modification period ended, PNC counsel's sent a letter to Bernice's counsel (the April 3rd letter). The April 3rd letter stated:

> "I have discussed your client's response to [the March 23rd letter,] and [the March 30th letter]. Please be advised that my client does not accept your request and hereby declare[s] this contract void. In the event any earnest money was deposited[,] said money will be released to the buyer. In the event your client wants to purchase the property on or before April 28, 2017 with the terms of [the March 23rd letter,] then my client is willing to sell the property to your client[]. If not[,] please consider this letter as a cancellation of said contract."

¶ 13 On April 6, 2017, the parties' attorneys had a phone conversation in which PNC agreed to reinstate the contract subject to certain terms, including extending the inspection period and the closing date. PNC's counsel then sent a letter to Bernice's counsel memorializing the reinstatement terms.

¶ 14 On April 11, 2017, PNC delivered a copy of the Geo Tech Report to Bernice. And on April 12, 2017, PNC delivered a letter with the projected costs of the anticipated environmental cleanup on the property.

¶ 15 Later in the day on April 12, 2017, Bernice's counsel sent an email to PNC's counsel. The email stated that "the Geo Tech Report is quite revealing" and that the "property has

enormous environmental contamination." The email explained that Bernice was still interested in purchasing the property, but only at a $250,000 price reduction.

¶ 16 About a half hour later, PNC's counsel responded to the email, stating that PNC was not willing to reduce the purchase price. The email also stated: "Since the parties have not reached an agreement[,] I was instructed to terminate the subject transaction with no further affect."

¶ 17 Minutes later, Bernice's counsel responded to the email stating that the contract "has already been terminated." The email additionally requested the immediate return of the earnest money to Bernice's counsel's office.

¶ 18 Following the email exchange, the escrowee prepared and sent to the party's attorneys a "cancellation agreement" for the party's signatures. The cancellation agreement stated that the earnest money was to be released to Bernice and that the contract is null and void based on the April 3rd letter. Bernice refused to sign the cancellation agreement, and PNC did not return the earnest money.

¶ 19 Bernice then filed its complaint in the instant matter against PNC on June 9, 2017. The complaint alleged seven different claims: breach of contract: duty to not interfere (count I); breach of contract: implied covenant of good faith and fair dealing/wrongful termination of the contract (count II); fraud (count III); violation of the Consumer Fraud and Deceptive Business Practices Act (count IV); breach of contract: representations and warranties (count V); breach of contract: failure to return earnest monies (count VI); and tortuous interference of contract (count

VII).[1] In counts I, II, IV, V, and VII, Bernice sought specific performance of the contract at a $250,000 price reduction. All of the counts sought damages and attorney's fees from PNC.

¶ 20 In lieu of an answer, PNC filed a motion to dismiss[2] all the counts in Bernice's complaint. PNC's motion argued: "it is clear from the correspondence between the parties, that no meeting of the minds was reached as [Bernice] refused to close without a $250,000 reduction to the purchase price and PNC refused to close at anything other than the purchase price set forth it the contract. Accordingly, [Bernice] is unable as a matter of law to establish a claim for a breach of contract."

¶ 21 PNC then attempted to return the earnest money, but not until after Bernice had filed its complaint in this case. On July 18, 2017, after litigation had commenced, PNC's counsel emailed Bernice's counsel that he was in the "process of getting the [escrowee] to agree to immediately release the [earnest money]." Later in the same day, PNC's counsel sent another email to Bernice's counsel, notifying her that he spoke with the escrowee and that "he is dropping off a check for the [earnest money] at my office tomorrow." PNC's counsel then explained that he would thereafter overnight the earnest money check to Bernice's counsel's office.

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[1]Bernice's complaint was filed also against Mitch Gaj, "the manager, an officer, director, or otherwise employee" of PNC at the time the contract was executed. Counts III and IV were against both PNC and Gaj, while count VII was against only Gaj and the remaining counts were against only PNC. Bernice does not appeal from the judgments regarding counts III, IV, or VII, which are the counts against Gaj, and so Gaj is not a party to this appeal.

[2]PNC's motion was labeled as a combined motion to dismiss pursuant to both sections 2-615 and 2-619 of the Code of Civil Procedure (Code). 735 ILCS 5/2-615; 735 ILCS 5/2-619 (West 2018). However, PNC's motion to dismiss strictly argued that Bernice failed to state a cause of action in its claims, which is only pursuant to section 2-615 of the Code. See *Quinn v. Board of Education of the City of Chicago*, 2018 IL App (1st) 170834, ¶ 57 (a motion to dismiss pursuant to section 2-615 argues that it is readily apparent from the pleadings that there is no possible set of facts that would entitle the plaintiff to the requested relief). On the other hand, a motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the pleading, but asserts an affirmative defense or other matter that avoids or defeats the claim. *Barber v. American Airlines, Inc.*, 241 Ill. 2d 450, 455 (2011). PNC made no such argument pursuant to section 2-619 in its motion. We accordingly will treat PNC's motion to dismiss as a motion to dismiss pursuant to section 2-615 of the Code.

¶ 22 UPS made three unsuccessful attempts to deliver the earnest money check to Bernice's counsel on July 20, 21, and 24, 2017. On August 19, 2017, PNC's counsel emailed Bernice's counsel that he had attempted to deliver the earnest money check to her office, but was unsuccessful. The email stated: "Please confirm that you will be picking up the check at my office, or provide other instructions for where to send." On August 29, 2017, Bernice's counsel responded to the email that she was waiting for Bernice to instruct her as to what to do with the earnest money check. On October 26, 2017, Bernie's counsel picked up the earnest money check from PNC's counsel's office.

¶ 23 Meanwhile, the proceedings in the lawsuit continued. On November 15, 2017, the court entered an order granting PNC's motion to dismiss, in part. The order dismissed all "request[s] for specific performance contained" in counts I, II, IV, V, and VII. Count VII was also dismissed with prejudice "based on tortuous interference." The order denied the motion as to the causes of action for breach of contract (counts I, II, IV, V, and VI) and as to the fraud claim (count III).

¶ 24 Both parties then filed a motion for summary judgment on all counts. Bernice's motion for summary judgment primarily argued that there was no material issue of fact as to whether PNC interfered with and breached the contract. Bernice stressed that PNC proposed modifications to dates within the contract, even though the attorney modification clause strictly prohibited it from doing so. Bernice additionally claimed that PNC failed to timely tender its environmental reports. Bernice's motion concluded that PNC "deliberately made it impossible for the contract to be performed."

¶ 25 The crux of PNC's motion for summary judgment was that the contract was properly terminated on April 3, 2017, in accordance with the attorney modification clause, as the attorneys for the parties were unable to agree on modifications to the contract. PNC argued that

even if its proposed modifications to dates were improper, Bernice's counsel simply rejected them instead of notifying PNC that it was in breach, as required under the default clause of the contract. PNC also highlighted that Bernice submitted its own proposed modification to the closing date in the March 30th letter. PNC concluded by noting that the contract was also never reinstated because Bernice refused to do so without a $250,000 price reduction.

¶ 26 On June 28, 2018, following a hearing[3], the court entered an order granting partial summary judgment in favor of PNC on counts I, II, III, IV, and V (the breach of contract and fraud claims). The trial court also granted partial summary judgment in favor of Bernice as to count VI (breach of contract: failure to return earnest monies) and ordered Bernice to file its petition for damages, including attorney's fees.

¶ 27 Bernice did not file a petition for damages, but only a motion for costs and attorney's fees, totaling $9,532. At the same time, Bernice filed a "motion to compel specific performance," again requesting the trial court to order specific performance of the contract at a $250,000 price reduction.

¶ 28 In its response to Bernice's motion for costs and attorney's fees, PNC filed its own motion for costs and attorney's fees. PNC argued that it was entitled to recover the fees it incurred defending itself because it had prevailed on all the claims except for one. The motion sought $13,524.50 in costs and attorney's fees.

¶ 29 On October 10, 2018, the trial court entered a final order granting Bernice's motion for costs and attorney's fees in the amount of $9,532. The trial court also denied Bernice's motion to

[3]A transcript from the hearing on the parties' motions for summary judgment is not included in the record on appeal.

compel specific performance. The trial court further denied PNC's motion for costs and attorney's fees. This appeal followed.

¶ 30 ANALYSIS

¶ 31 We note that we have jurisdiction to consider the matters raised in this appeal and cross appeal, as both parties filed timely notices of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 32 At the outset, we note that both Bernice and PNC, as the parties appealing, failed to include any transcripts from the trial court proceedings in the record on appeal. Our supreme court has long held that in order to support a claim of error on appeal, the appellant has the burden to present a sufficiently complete record. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984)). "Any doubts arising from an incomplete record must be resolved against the appellant." *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 278 (2006). In the absence of transcripts, it is presumed that the trial court acted in conformity with the law and that the findings were based on the evidence presented. *Watkins v. Office of State Appellate Defender*, 2012 IL App (1st) 111756, ¶ 19. Thus, because the record does not allow us to know what occurred at any of the hearings or the basis for any of the trial court's orders, we must presume that the court followed the law and had a sufficient factual basis for its rulings. In any case, our review leads us to affirm all of the challenged trial court orders.

¶ 33 We will address Bernice's appeal first. Bernice argues that: (1) the trial court erred in partially granting PNC's motion to dismiss and dismissing its requests for specific performance in counts I, II, IV, V, and VII[4]; (2) the trial court erred in denying its motion to compel specific

[4]Bernice does not challenge the part of the trial court's order dismissing count VII based on tortuous interference.

performance; and (3) the trial court erred in partially granting summary judgment in favor of PNC on counts I, II, and V. We take each argument in turn.

¶ 34 We first review the trial court's order dismissing Bernice's requests for specific performance contained in counts I, II, IV, V, and VII. Bernice argues that the contract specifically allowed it to seek specific performance on its breach of contract claims. Bernice also claims that it was inconsistent for the trial court to allow its breach of contract claims to proceed while simultaneously striking its requests for specific performance within those claims.

¶ 35 While a plaintiff is not required to prove his case in the pleading stage, he must allege sufficient facts to state all the elements which are necessary to sustain his cause of action. *Visvardis v. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007). A trial court should dismiss a complaint under section 2-615 of the Code only if it is readily apparent from the pleadings that there is no possible set of facts that would entitle the plaintiff to the requested relief. *Quinn*, 2018 IL App (1st) 170834, ¶ 57. "The question for the court is whether the allegations of the complaint, when construed in the light most favorable to the plaintiffs, are sufficient to establish the cause of action." *Id.* We review *de novo* the trial court's dismissal of a complaint pursuant to section 2-615. *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 735 (2009).

¶ 36 Here, the trial court dismissed Bernice's requests for specific performance contained within counts I, II, IV, V, and VII. Although monetary damages are the default remedy, specific performance of the contract is an available equitable remedy for a breach of contract claim. *Koehler v. Packer Group, Inc.*, 2016 IL App (1st) 142767, ¶ 75. "Generally, a party will be entitled to specific performance of a contract for conveyances of real estate only upon establishing either that the party has performed according to the terms of the contract or that the party was ready, willing and able to perform but was prevented, and thus excused from doing so

by the acts or conduct of the other party." *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 477 (2004).

¶ 37 Based on the pleadings, it is clear that Bernice failed to prove that it was entitled to specific performance of the contract. An attempt to obtain specific performance is an attempt to enforce a contract, (*Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1052 (2005)), but in this case, there was no contract which could be enforced. In its complaint, Bernice sought the specific performance of the contract, but at $250,000 below the agreed-upon purchase price. PNC never agreed to sell the property for a $250,000 price reduction. Stated another way, specific performance requires the party to be willing to perform its obligation under the contract, and Bernice made it clear in its pleadings that it was not willing to pay the agreed-upon purchase price. Granting Bernice's request for specific performance of the contract with a $250,000 price reduction would, in effect, require the court to significantly rewrite the contract with terms which were never agreed to by PNC. See *Schwinder*, 348 Ill. App. 3d at 477 (a trial court should not grant specific performance where the remedy would cause an inequitable result).

¶ 38 The contract provided that if PNC breached, Bernice's sole remedy options were to *either* receive the return of the earnest money and sue for damages *or* seek specific performance of the contract. However, Bernice demanded the return of its earnest money, and then sought *both* damages and specific performance in its complaint. It is irrelevant that the contract provided for a specific performance remedy if specific performance was impossible under the existing facts and established law. There cannot be a remedy of specific performance of a contract if there was never a meeting of the minds. See *Cinman v. Reliance Federal Savings & Loan Ass'n*, 155 Ill. App. 3d 417, 423 - 24 (1987) ("Where the court would be left to order further negotiations and

where the parties have yet to reach agreement on essential terms, specific performance is not available.").

¶ 39 Contrary to Bernice's argument, it was not inconsistent for the trial court to dismiss Bernice's requests for specific performance while allowing its claims for breach of contract to proceed. As discussed, the parties had not agreed upon the final price of the property. Therefore, it was impossible to enforce specific performance of the contract. However, that did not preclude the possibility of Bernice collecting monetary damages for a breach of contract claim. For the reasons discussed, the trial court properly allowed Bernice's breach of contract claims to move forward while simultaneously finding that Bernice was not entitled to specific performance as a remedy. Thus, the trial court properly dismissed Bernice's specific performance requests contained within counts I, II, IV, V, and VII of its complaint.[5]

¶ 40 Bernice next argues that the trial court erred in denying its motion to compel specific performance in its petition for damages. Specifically, Bernice claims that after the trial court granted summary judgment in favor of Bernice on count III (fraud), it should have granted Bernice's request for specific performance of the contract because that was the remedy provided in the contract. However, for the same reasons Bernice's argument regarding the motion to dismiss failed, its argument regarding compelling specific performance similarly fails and we need not repeat the same analysis.

[5]We acknowledge that Bernice also argues that the trial court should have *sua sponte* struck PNC's motion to dismiss for being "legally deficient," or *sua sponte* allowed Bernice to amend its complaint "and state facts which would have allowed for the specific performance." However, Bernice did not submit a motion seeking to strike PNC's motion or a proposed amended complaint. And the trial court does not have a duty to *sua sponte* consider such matters or correct the parties' pleadings. Further, as discussed, no amendment to Bernice's pleadings could cure the fact that there was no meeting of the minds as to purchase price.

¶ 41 Bernice's final argument is that the trial court erred in partially granting summary judgment in favor of PNC on count I (breach of contract: duty to not interfere), count II (breach of contract: implied covenant of good faith and fair dealing/wrongful termination of the contract), and count V (breach of contract: representations and warranties). Bernice claims that PNC was not entitled to summary judgment on counts I and II because PNC breached the contract when it proposed prohibited changes in the April 3rd letter. Bernice avers:

> "[Bernice] presented evidence which showed that [PNC] deliberately made it impossible for the contract to be performed by submitting prohibited modifications and conditioning the validity of the contract on acceptance of such terms. *** This amounts to a prevention of performance and interference with completion of the contract."

Bernice further argues that PNC was not entitled to summary judgment on count V because PNC failed to deliver the property's environmental information until April 11 and 12, 2017, which was outside the inspection review period.

¶ 42 The purpose of summary judgment is to determine if a material question of fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014); *Adams*, 211 Ill. 2d at 43. "Although summary judgment is to be encouraged as an expeditious manner of disposing of a lawsuit, it is a drastic measure and should be allowed only where the right of the moving party is clear and free from doubt." *Wells Fargo*

Bank, N.A. v. Norris, 2017 IL App (3d) 150764, ¶ 19. We review appeals from summary judgment rulings *de novo*. *Id.*

¶ 43 The trial court entered summary judgment in favor of PNC on Bernice's breach of contract claims. To recover for breach of contract, a plaintiff must prove (1) the existence of a contract; (2) plaintiff performed all contractual obligations; (3) facts constituting a breach; and (4) damages from the breach. *Storino, Ramello & Durkin v. Rackow*, 2015 IL App (1st) 142961, ¶ 17.

¶ 44 Significantly, Bernice does not argue that a material issue of fact existed. The crux of Bernice's argument is that PNC breached the contract when it proposed prohibited modifications to the contract and again when it failed to deliver environmental information documents within the inspection review period. These facts are not in dispute. Our analysis focuses on the fact that the contract explicitly afforded an attorney modification period. The attorney modification clause provided that *the contract shall be null and void if the parties could not reach agreement* regarding any proposed modifications by April 3, 2017. And the parties *did not* reach an agreement by April 3, 2017. The contract consequently, by its own terms, became null and void on April 3, 2017.

¶ 45 Indeed, on April 12, 2017, Bernice's counsel emailed PNC's counsel that the contract "had already been terminated." And the contract was never reinstated because Bernice would only reinstate the contract if the purchase price was reduced by $250,000. It is therefore irrelevant that PNC did not deliver the environmental information documents until April 11 and 12, 2017.

¶ 46 Nevertheless, Bernice stresses that in the March 23rd letter, PNC proposed modifications to several dates, which was prohibited and therefore constituted a breach. We note, however, that

in the March 30th letter, Bernice itself proposed extending the closing date. Under Bernice's logic, Bernice would also be in breach of the contract. Ultimately, there was never a meeting of the minds as to the parties' proposed modifications; fault is irrelevant in this analysis. In turn, no material issue of fact existed as to whether PNC breached the contract as alleged in counts I, II, and V.

¶ 47 Moreover, even if those facts rose to the level of a breach of contract, the default clause in the contract explicitly required Bernice *to notify PNC of the breach* and allow it time to cure the breach before the breaching party could be considered in default of the contract. Yet, when Bernice received the March 23rd letter, its counsel simply rejected the proposed changes to the dates. In fact, Bernice's counsel signed the March 23rd letter "accepted as modified." Bernice never gave notice to PNC that it was in breach in accordance with the language of the contract.[6] Accordingly, the trial court did not err in granting summary judgment in favor of PNC on counts I, II, and V.

¶ 48 We now turn to PNC's cross appeal. PNC argues that: (1) the trial court erred in partially granting summary judgment in favor of Bernice on count VI (breach of contract: failure to return earnest monies); (2) the trial court erred in awarding costs and attorney's fees to Bernice; and (3) the trial court erred in denying its motion for attorney's fees.

¶ 49 PNC first argues that the trial court erred when it entered summary judgment in favor of Bernice on count VI (breach of contract: failure to return earnest monies) and awarded costs and attorney's fees. PNC claims that it was not responsible for the delay in returning the earnest money. PNC highlights Bernice's refusal to sign the escrowee's cancellation agreement and the

[6]It is irrelevant that the parties never identified a time frame for the breaching party to cure its breach, as Bernice *never* notified PNC of the alleged breach.

three failed UPS attempts to return the check to Bernice's counsel's office. PNC claims: "after receipt of the [complaint in the instant lawsuit], counsel for PNC promptly intercede[d] with the escorwee and was able to secure a $25,000 check *** and on the same day overnighted it to [Bernice's] counsel."

¶ 50 We are not persuaded by PNC's argument. PNC concedes that it did not attempt to return the earnest money *until after Bernice filed its complaint.* The contract explicitly required PNC to return the earnest money *as soon as the contract became null and void*. It is irrelevant that Bernice refused to sign the escrowee's cancellation agreement. Moreover, the escrowee was PNC's broker. PNC could simply have instructed the escrowee to return the earnest money without the cancellation agreement. Indeed, PNC eventually did just that, but not until after Bernice filed this lawsuit. Regardless of the unsuccessful UPS deliveries and the eventual date that Bernice's counsel picked up the check, Bernice was forced to file the instant action in order to recover its earnest money. Consequently, no issue of fact existed as to whether PNC failed to properly return the earnest money and the trial court properly entered summary judgment in favor of Bernice on count VI.

¶ 51 PNC additionally challenges the trial court's award of attorney's fees to Bernice. PNC argues that in its fee petition, Bernice did not "separate[] out the fees incurred with six out of seven counts in which [PNC] prevailed." PNC additionally argues that Bernice's award of attorney's fees should be limited to the costs incurred before July 19, 2017, the date when PNC first attempted to return to earnest money.

¶ 52 Generally, a trial court's decision to award attorney's fees will not be reversed absent an abuse of discretion. *Guerrant v. Roth*, 334 Ill. App. 3d 259, 262 (2002). "The rationale for this standard is that a party challenging a trial court's decision regarding attorney['s] fees is actually

challenging the trial court's discretion in determining what is reasonable." *Id*. An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court. *Hale v. Odman*, 2018 IL App (1st) 180280, ¶ 25.

¶ 53 The contract explicitly provided that any "successful party asserting their rights under the contract would be entitled to the recovery of attorney's fees." Bernice filed the instant action in order to recover its earnest money, among other things, which was its right under the contract. And Bernice was successful in recovering its earnest money. It is beside the point that PNC eventually attempted to return the earnest money.

¶ 54 Bernice submitted a fees petition to the court for review, which listed the cost of, *inter alia*, hiring its attorney and filing its complaint. We note that PNC does not challenge the *reasonableness* of the attorney's fees, only that the itemized fees were not "separate[d] out" per each cause of action. PNC cites no authority for the proposition that it argues. Therefore, it cannot be said that the trial court abused its discretion in awarding costs and attorney's fees to Bernice.

¶ 55 Finally, PNC claims that the trial court erred in denying its motion for costs and attorney's fees. However, PNC never asserted its rights under the contract. Indeed, PNC never filed a complaint with claims against Bernice; PNC only defended itself from Bernice's claims. Thus, PNC was not entitled to attorney's fees under the contract and the trial court did not abuse its discretion in denying PNC's motion for costs and attorney's fees.

¶ 56 CONCLUSION

¶ 57 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 58 Affirmed.