

Nos. 1-11-0428, 1-11-1607, 1-11-2539  
(Consolidated)

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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SANTORINI CAB CORPORATION and	)	APPEAL FROM THE
SAVAS TSITIRIDIS,	)	CIRCUIT COURT OF
Plaintiffs-Appellees and Cross-Appellants,	)	COOK COUNTY
	)	
v.	)	
	)	
CROSS TOWN CAB COMPANY and ABDULZAH	)	No. 08 CH 2328
ABUKATAB,	)	
Defendants-Appellants and Cross-Appellees	)	
	)	
(Rule Transfer, Inc.,	)	HONORABLE
Petitioner and Intervenor-Appellant).	)	KATHLEEN M. PANTLE,
	)	JUDGE PRESIDING.

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JUSTICE STEELE delivered the judgment of the court.  
Presiding Justice Salone and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *HELD:* The trial court did not err in granting plaintiffs specific performance of their contract with defendants for the sale of taxicab medallions. The intervening petitioner forfeited its arguments on appeal. Lastly, the circuit court did not err in denying the plaintiffs attorney fees under the contract.

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¶ 2 Plaintiffs Santorini Cab Corporation (Santorini) and Savas Tsitiridis filed suit against defendants Cross Town Cab Company (Cross Town) and Abdulzahi Abukatab, alleging breach of a contract for the sale of taxicab medallions. Following a bench trial in the circuit court of Cook County, the trial judge entered orders granting specific performance of the contract, denying intervening petitioner Rule Transfer Inc. (Rule Transfer) the ability to foreclose on a its purported secured interest in the medallions, and denying plaintiffs' request for attorney fees. Cross Town, Abukatab and Rule Transfer now appeal; Santorini and Tsitiridis cross-appeal from the denial of attorney fees. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On January 18, 2008, plaintiffs filed their verified complaint against defendants, seeking injunctive relief and specific performance of a contract with defendants for the sale of six City of Chicago (City) taxicab medallions. Plaintiffs were the purchasers; defendants were the sellers.

The contract provides in relevant part:

"1. *Sale of "Medallions"*: (a) Based upon the purchase price of **\$87,000** per medallion, Seller shall transfer the Medallions to Purchaser, free and clear of any liens, claims and encumbrances. **Purchaser shall submit all required items for transfer of the Medallions to the City of Chicago within a reasonable time hereof.**

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(d) Seller shall be responsible for clearing City Ground Transportation Taxes and Parking tickets on said Medallions and shall provide the original clearance documents to

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purchaser at the time the transfer documents are tendered to purchaser. If purchaser advances any funds to obtain said clearances, said amount shall be reimbursed through deduction from the purchase proceeds.

(e) Each party shall be responsible for their **own attorney, accountant, and other fees except as otherwise provided herein.**

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## 2. *Covenants*

*Seller* (b) There are no existing liens or claims on this [sic] Medallions except as disclosed herein, and the seller has full authority to sell the Medallions without restriction.

I. Seller acknowledges a **lien(s)** from **Progressive Credit Union and Tony Battala** and acknowledges that Seller will be responsible to clear same and further hereby authorizes purchaser to obtain all information related to same and, if not paid prior, to pay same from the purchase proceeds.

4. *Remedies.* Upon the occurrence of any Event of Default \*\*\* [a] party may pursue any and all remedies available under this Agreement, or at equity, under applicable law or otherwise, including, without limitation: \*\*\* (b) Purchaser may require specific performance of Seller's obligations hereunder, and seek such in a Court order at Seller's expense." (Emphases in original.)

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On August 27, 2008, defendants filed an answer and affirmative defenses. Defendants denied breaching the contract and alleged, in part, plaintiffs breached the contract by failing to submit a bulk sales notice to the City. On September 25, 2008, Rule Transfer petitioned to intervene in the case. Rule Transfer alleged it had: (1) a security interest in the medallions; (2) declared a default on the loan secured by the medallions; and (3) completed a foreclosure sale for the medallions in May 2008. The circuit court granted Rule Transfer's petition on February 10, 2009.

¶ 5 The record of the bench trial discloses the following facts. Abukatab is the owner of a number of taxicab medallions. Abukatab was acquainted with Bernard Block, an attorney working in the taxicab industry for approximately 25 years. In January 2007, Abukatab asked Block for help in finding a buyer for six taxicab medallions.

¶ 6 Tsitiridis agreed to purchase the medallions. Block drafted the contract at issue and represented Tsitiridis and Santorini in the transaction. Defendants signed the agreement on April 30, 2007; Abukatab personally guaranteed the agreement. Plaintiffs signed the contract on May 4, 2007. Other than signing the contract, Tsitiridis did not perform any acts regarding the transaction, as he authorized Block to act on his behalf.

¶ 7 Block testified that any transfer of medallions required approval from the City. Thus, the purchaser was required to submit a transfer package to the City for review and approval. The transfer package must include an audit clearance form from the Department of Revenue. The audit clearance form provides a statement regarding taxes, fines and other monies owed to the City for a particular medallion. Block also testified that the Department of Revenue audit is

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initiated by the filing of a bulk sales notice, which identifies the buyer and seller and provides a copy of the contract to show the medallion at issue is actually being sold. According to Block, the contract in this case required the sellers to provide the bulk sales notice to the City.

¶ 8 However, in July 2007, the transaction had not progressed. Although Block represented the purchasers, he testified that he prepared a bulk sales notice to help get the transaction processed. Block stated he believed someone from his office submitted the bulk sales notice to the Illinois Department of Revenue in July 2007. The bulk sales notice was returned unstamped to Block by his secretary. Block had never seen a bulk sales notice returned or refused before.

¶ 9 Block further testified that he discussed the refusal of the bulk sales notice with Abukatab shortly thereafter, which turned into "continuous conversations." Abukatab told Block he had disputes with the City over both amounts owed and the process by which the amounts were calculated.

¶ 10 Abukatab testified he was not responsible for submitting the bulk sales notice and did not do so. Abukatab stated he never submitted a bulk sales notice in connection with any of his prior purchases or sales of medallions. Abukatab provided copies of automobile titles, city stickers and "hard cards" for the medallions to Block, pursuant to the contract.

¶ 11 Uniform Commercial Code filing statements and security agreements introduced into evidence show that on July 18, 2006, Progressive Credit Union (Progressive) loaned \$300,000 to Cross Town and Abukatab, collateralized by 20 medallions, including the 6 medallions at issue in this case. On September 26, 2007, Progressive assigned its interest in the loan to Rule Transfer. On September 26, 2007, Cross Town granted Rule Transfer a secured lien on the

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medallions in connection with refinancing debt owed another lender as part of a new loan in the amount of \$480,000.

¶ 12 Lev Wolkowicki, the president of Rule Transfer, testified that he met Abukatab in 2004 and had loaned him money in connection with medallions. Wolkowicki recommended Abukatab to Progressive in 2006. Wolkowicki testified that Abukatab was behind in paying Rule Transfer in 2007 and pressured Abukatab to sell medallions to pay off his debt. Wolkowicki also testified Progressive asked him to take assignment of its 2006 loan to Abukatab. Wolkowicki further testified he was aware of the contract between plaintiffs and defendants prior to September 2007.

¶ 13 On January 10, 2011, the circuit court issued a memorandum opinion and order concluding plaintiffs were entitled to specific performance of the contract. The circuit court ruled in relevant part that: (1) it was defendants' obligation to submit the bulk sales notice; (2) plaintiffs were ready, willing and able to perform; (3) Rule Transfer had not shown it was entitled to foreclose on its secured interest because it failed to show its further encumbrance of the medallions was in good faith. On May 23, 2011, the circuit court entered a judgment order directing defendants and Rule Transfer to execute all documents and do all things necessary to close the sale pursuant to the contract between plaintiffs and defendants, clear of any encumbrance, including the \$480,000 interest claimed by Rule Transfer. The circuit court declined to award plaintiffs attorney's fees. On June 9, 2011, defendants filed a timely notice of appeal to this court. On June 17, 2011, plaintiffs filed their cross-appeal.

¶ 14

## DISCUSSION

¶ 15

### I. Defendants' Appeal

¶ 16 On appeal, Cross Town and Abukatab claim the trial court erred in granting Santorini and Tsitiridis specific performance of the contract. To prevail on a claim for specific performance, the plaintiff must prove: (1) the existence of a valid, binding, and enforceable contract; (2) compliance by the plaintiff with the terms of the contract, or proof that the plaintiff is ready, willing, and able to perform the contract; and (3) the failure or refusal of the defendant to perform his part of the contract. See *Hoxha v. LaSalle National Bank*, 365 Ill. App. 3d 80, 85 (2006). Moreover, the terms of the contract must be clear, definite, and unequivocal. See *id.* at 86. Generally, the standard of review applied regarding a judgment from a bench trial is whether the order or judgment is against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. "A decision is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). However, the trial court also construed and ruled on the legal effect of the contract. In reviewing the trial court's conclusions of law, we apply a *de novo* standard of review. *Id.*

¶ 17 Cross Town and Abukatab first argue that the trial court's finding that the contract required Cross Town to file the bulk sales notice with the City is against the manifest weight of the evidence. Cross Town and Abukatab contend that Block's testimony on this point was self-serving and contradicted by paragraph 1(a) of the contract, which states that Santorini and Tsitiridis "shall submit all required items for transfer of the Medallions to the City of Chicago

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within a reasonable time hereof." However, as the trial court noted, paragraph 1(d) of the contract states that Cross Town and Abukatab "shall be responsible for clearing City Ground Transportation Taxes and Parking tickets on said Medallions and shall provide the original clearance documents to purchaser at the time the transfer documents are tendered to purchaser." Thus, the issue before the court was whether the bulk sales notice was one of the clearance documents the seller was required to provide to the purchaser for inclusion in the transfer package.

¶ 18 In this case, the trial judge relied not only on Block's testimony that the contract in this case required the sellers to provide the bulk sales notice to the City, but also on his testimony that the department of revenue audit that produces the statement regarding taxes, fines and other monies owed the City for a particular medallion is initiated by the filing of a bulk sales notice. The trial judge reasoned that if the sellers were responsible for clearing items including taxes and fines and such were determined by an audit initiated by a bulk sales notice, the bulk sales notice is a clearing document Cross Town and Abukatab were legally responsible for filing under the contract, regardless of whether Block attempted to submit said notice in an attempt to expedite the sale. Abukatab testified he never submitted a bulk sales notice in connection with any of his prior purchases or sales of medallions, but the terms of those sales agreements were not before the trial court here. Cross Town and Abukatab have failed to show that the trial court misinterpreted the contract or that its finding that the bulk sales notice is a clearing document is against the manifest weight of the evidence.

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¶ 19 Cross Town and Abukatab also argue that the trial court erred in finding that Santorini and Tsitiridis proved they were ready, willing, and able to perform the contract. However, this argument is based on the assertion that the purchasers abandoned the contract by failing to initiate the audit. Having concluded that the trial court did not err in ruling this was the sellers' responsibility, the argument fails.

¶ 20 II. Intervening Petitioner's Appeal

¶ 21 Rule Transfer's statement of issues in its brief identifies six issues for review, but its argument addresses two issues, which we address in turn.

¶ 22 Initially, Rule Transfer argues that the trial court's finding that Rule Transfer did not act in good faith in loaning Cross Town additional funds and further encumbering the medallions was against the manifest weight of the evidence. Although Rule Transfer seeks to foreclose its purported secured interest in the medallions, its argument is devoid of citation to the Uniform Commercial Code as adopted in Illinois (UCC) (810 ILCS 5/1-101 *et seq.* (West 2006)) or case law interpreting the UCC. Instead, Rule Transfer cites *Evans v. Tabernacle No. 1 God's Church of Holiness in Christ*, 283 Ill. App. 3d 101, 107 (1996), *Bowers v. Murphy & Miller, Inc.*, 272 Ill. App. 3d 606, 610 (1995), *Warsing v. Material Handling Services, Inc.*, 271 Ill. App. 3d 556, 560 (1995), and *McDermott v. Metropolitan Sanitary Dist.*, 240 Ill. App. 3d 1, 44 (1992), all of which address the burden of proof relating to good faith settlements under the Contribution Act. Rule Transfer also cites *Perez v. Citicorp Mortgage, Inc.*, 301 Ill. App. 3d 413, 424 (1998), and *Magna Bank of Madison County v. Jameson*, 237 Ill. App. 3d 614, 617 (1992), which address the covenant of good faith and fair dealing implied in every contract. Lastly, Rule Transfer cites the

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Restatement of Contracts § 317(1) (1981), which generally addresses the assignment of a contractual right.

¶ 23 This court is not a depository in which the burden of research and argument may be dumped. *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010). Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) requires a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Ill-defined and insufficiently presented issues that do not satisfy the rule are considered forfeited. *Gandy*, 406 Ill. App. 3d at 875. Rule Transfer has failed to cite any authority establishing it should have a superior secured interest in this case and thus forfeits the claim on appeal.

¶ 24 Rule Transfer also claims that the trial court should have declared a mistrial where Santorini and Tsitiridis argued and elicited testimony that Wolkowicki had a prior felony conviction related to bribery of public officials. However, the record on appeal shows that Rule Transfer failed to move for a mistrial on that basis and consequently has also forfeited this issue. See *Travaglini v. Ingalls Health System*, 396 Ill. App. 3d 387, 403 (2009). Moreover, there is a strong presumption in a bench trial that the trier of fact relied only on proper evidence in reaching its decision on the merits. *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 381 (2010). In this case, the record on appeal shows that the trial court sustained an objection to such evidence, pursuant to *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971), because the conviction was more than ten years old. Thus, there was no basis for declaring a mistrial on this point.

¶ 25

### III. Defendants' Cross-Appeal

¶ 26 In their cross-appeal, Santorini and Tsitiridis argue that the trial court erred in declining to award them attorney fees under section 4(b) of the contract. This ruling was not a subject of the trial court's memorandum order. Rather, the trial court struck the award of attorney fees from the judgment order drafted by Santorini and Tsitiridis as directed by the memorandum order.

¶ 27 Illinois follows the "American Rule," which provides that absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs. *Negro Nest, LLC v. Mid-Northern Management, Inc.*, 362 Ill. App. 3d 640, 641-42 (2005). "Statutes permitting the recovery of costs are in derogation of the common law and must be strictly construed." *Id.* at 642. Similarly, contractual provisions providing for attorney fees should also be strictly construed. *Id.* Successful litigants cannot recover attorney fees as costs unless expressly authorized by a statute or agreement using specific language. *Id.* When faced with cost or expense-shifting provisions in contracts, Illinois courts have consistently refused to read attorney fees into imprecise language. *Id.* at 649.

¶ 28 For example, in *Qazi v. Ismail*, 50 Ill. App. 3d 271 (1977), the issue was whether attorney fees were recoverable under a contract provision stating as follows: " 'In case of any legal action arising out of the above default, the party in violation will be responsible for all costs and consequences.' " *Id.* at 272. The plaintiff argued that attorney fees should be recoverable because legal action was specifically contemplated by the contract and attorney fees are a natural "consequence" of litigation. *Id.* Seeking guidance from statutory fees provisions, the *Qazi* court stated:

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" 'The legislature has in the past *specifically* provided for attorneys' fees where it wished to, and the courts have refused to interpret imprecise language as permitting attorneys' fees.

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The legislature has determined when attorney's fees should be awarded. It has been done by specific language such as listing "attorney's fees" to overcome the common[-]law rule. Where they have not used such specific language, the courts have consistently refused to give an expanded reading to the legislative language used.' " (Emphasis in original.) *Id.* at 273 (quoting *Waller v. Board of Education of Century Community Unit School District*, 28 Ill. App. 3d 328, 331 (1975)).

Thus, the *Qazi* court ruled it could not award attorney fees as a matter of contractual construction absent specific language. *Qazi*, 50 Ill. App. 3d at 273.

¶ 29 In this case, paragraph 4(b) of the contract refers to " Seller's expense." However, paragraph 1(e) provides that "[e]ach party shall be responsible for their own attorney, accountant, and other fees except as otherwise provided herein." The purchasers drafted the contract and clearly knew how to expressly refer to attorney fees, but chose not to do so in paragraph 4(b). Accordingly, the circuit court did not err in denying Santorini and Tsitiridis attorney fees under the contract.

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¶ 30

#### CONCLUSION

¶ 31 In sum, the trial court did not err in interpreting the contract. The trial court's finding that the bulk sales notice is a clearing document is not against the manifest weight of the evidence. The trial court's finding that Santorini and Tsitiridis proved they were ready, willing, and able to perform the contract was not against the manifest weight of the evidence. Rule Transfer forfeited its arguments on appeal. Lastly, the circuit court did not err in denying Santorini and Tsitiridis attorney fees under the contract. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 32 Affirmed.