FOURTH DIVISION
June 8, 2017

Nos. 1-15-1663 & 1-15-2401 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COMMUNITY DEVELOPMENT RESOURCE, LLC and RAFAEL RIOS, Plaintiffs, v. COMMUNITY DEVELOPMENT RESOURCES; SIGNATURE HEALTHCARE SERVICES, LLC; DEVELOPMENT RESOURCES, INC.; CLUNE CONSTRUCTION CO., L.P.; JAMES DeROSE; HOWARD BLAIR; MICHAEL CLUNE; 3300 W FRANKLIN BLVD, LLC; LOUIS COHEN; and JOHN DOES 1-10; Defendants. (Community Development Resource, LLC and Carrie Rios, Administrator of the Estate of Rafael Rios, Plaintiffs-Appellants; Community Development Resources, James DeRose, Howard Blair, and Michael Clune, Defendants-Appellees.)	)	Appeal from the Circuit Court of Cook County. No. 11 CH 38504 Honorable Rita M. Novak, Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court judgment affirmed. On cross-motions for summary judgment, trial court did not err in denying plaintiffs' motion and granting defendants' motion, as no question of material fact existed as to the identity of the parties to the contract at issue.

¶ 2 This case centers on a dispute between two entities whose names differ by only one letter: plaintiff Community Development *Resource*, LLC (Resource) and defendant Community Development *Resources* (Resources). More specifically, the trial court was called on to decide whether Resource or Resources was entitled to certain fees for consulting work performed by Rafael Rios (Rios).

¶ 3 Rios formed Resources, plural, with defendants James DeRose, Howard Blair, and Michael Clune. While the parties disputed the specific purpose of Resources, the general idea was to pursue low-income housing development projects. Rios's specialty was tax-credit consultation work, and it is undisputed that he performed this consultation work not only for the housing developing projects that Resources pursued but also for outside clients, including for one client named Signature Healthcare Services. Defendants DeRose, Blair and Clune do not deny as much, but they claim that, as part of the formation of Resources, it was agreed that Rios would perform this consultation work as part of (on behalf of) Resources, that any fees generated therefore belonged to Resources, and in exchange Rios received monthly payments of $10,000.

¶ 4 Rios, on the other hand, claimed that he was performing this consultation work as part of Resource, singular—of which Rios was the sole member. He claims that he had been operating this *Resource* entity before he entered into the *Resources* ventures with defendants, though he never mentioned it to them, not even when Blair pitched the idea of naming the new venture "Community Development Resources." In any event, Rios claims that the Signature contract was with the singular Resource, not the plural Resources.

¶ 5 Rios and Resource filed a declaratory judgment suit to determine who was entitled to the consultation fees. On cross-motions for summary judgment, the trial court agreed with defendants (Resources, DeRose, Blair, and Clune) and awarded them summary judgment.

Plaintiffs Carrie Rios (as administrator of Rios' estate following Rios's death) and Resource appeal from that order.

¶ 6 On appeal, plaintiffs argue that the court erred in denying their motion for summary judgment and in granting defendants' motion, because the evidence showed that the parties intended for Rios and Resource to retain his entire consultation fee. We disagree. The evidence showed that Rios entered into the Signature contract on behalf of Resources, plural. That was Signature's understanding. It was the understanding of DeRose, Blair, and Clune. And it was consistent with Rios's objective manifestations toward both Signature and Resources. Though Rios testified that his intention was to bind his solo company Resource to the Signature contract, his subjective intent alone cannot overcome this other evidence.

¶ 7 I. BACKGROUND

¶ 8 Clune was the president of a construction company called Clune Construction Company, L.P. (Clune Construction). Blair and DeRose were the owners of a real estate development company called Development Resources, Inc. (DRI).

¶ 9 Rios began working with Clune in early 2010. Clune Construction issued Rios five checks for $10,000 each on March 8, May 1, September 15, October 15, and November 15, 2010. Rios received a form 1099-MISC from Clune Construction that indicated he had received $50,000 in "[n]onemployee compensation."

¶ 10 Sometime in 2010, Rios, Blair, DeRose, and Clune agreed to work together on real estate development projects. This venture, whether it was a joint venture or partnership—a contested issue—consisted of Clune, Rios, and DRI (Blair's and DeRose's real-estate development company).

¶ 11 On April 27, 2010, Blair sent an email to Rios, DeRose, and Clune titled, "name of new venture." Blair wrote, "Team—How about 'Community Development Resources'?" Rios responded, "Go for it." It is undisputed that Rios did not apprise DeRose, Blair, or Clune at that time (or ever) that he was operating a solo company with that same name, minus one letter.

¶ 12 Resources never officially registered with the State as a corporation or partnership or joint venture or the like. But it had a checking account, letterhead, and an office—it used DRI's offices at 439 North Wells Street in Chicago.

¶ 13 About a month later, Rios began to receive checks from Resources. On May 27, June 17, July 13, August 16, and December 15, 2010, Rios received five $10,000 checks ($50,000 total). On March 16, April 15, May 16, June 15, and July 28, 2011, Rios received another set of five $10,000 checks ($50,000 total). Each of the checks listed Resources' address as 439 North Wells Street, Chicago, Illinois 60610.

¶ 14 On April 12, 2011, Rios sent a letter to the chief financial officer of Signature Health Services, LLC (Signature) confirming Signature's engagement of "Community Development Resource, LLC *** for the purpose of arranging new market tax credit and tax increment financing related to the renovation and redevelopment" of several properties that Signature owned. This engagement letter was the contract with Signature that was in dispute. Throughout the rest of the engagement letter, Rios referred to the company as "CDR." The letter was signed:

"Very Truly Yours,

COMMUNITY DEVELOPMENT RESOURCE, LLC"

Below that, Rios signed his name over the label "Managing Director." The bottom of each page of the letter had the address 439 North Wells Street, Chicago, Illinois 60610. There is no dispute that Rios performed the consulting work outlined in the contract.

¶ 15 Also on April 12, 2011, Rios sent an email to DeRose, Blair, and Clune that said that "Community Development Resource [was] being retained to provide *** consulting services to Signature *** in connection with [its] Lakeshore Hospital redevelopment project." Rios wrote, "Our retainer will be $30,000 and our fee is estimated to be approximately $600,000."

¶ 16 In other communications over the next few months, Rios sent emails to potential clients indicating his affiliation with Resources, while sometimes interchanging the singular version of the name:

- Rios emailed his "bio" to U.S. Bank, which read: "Rios is managing director of Community Development Resources, LLC (CDR) a development and development consulting firm with a focus on projects using New Markets, Historic and Low Income Tax Credits. CDR is an affiliate of [DRI]."
- Rios emailed a contact at FirstMerit Bank to solicit business, explaining that "Community Development Resources" (plural) was making a "foray into low-income community development" and that "CDR is a partnership of DRI (James DeRose and Howard Blair) and Clune Construction's Michael Clune." Rios said that he was "managing director of CDR." Below his signature was the name "Community Development Resource" (singular), with the address on Wells Street where Resources (plural) had an office, and including Resources' phone number.

¶ 17 On September 1, 2011, as the relationship between Rios and defendant began to take a decidedly downward turn, Rios sent an email to DeRose, Blair, and Clune. Rios said that his initial understanding of their relationship was that "CDR did not intend to profit from [his] consulting fees." Rather, he thought that "CDR sought to be made whole for payments [it] made to me in 2010 and 2011 *** and to profit from the *** development of projects [he] structured."

¶ 18 Rios continued that, after meeting with DeRose, he learned that "CDR expected to receive all revenue generated from [his] consulting work" and that "CDR and its principals" had instructed him to deposit his entire consulting fees into "CDR's account." Rios rejected that proposal and said that he would "settle up with the principals of CDR [and/or] CDR for their respective out-of-pocket expenditures related to the amounts paid [to Rios] in 2010 and 2011."

¶ 19 On September 14, 2011, Resources' attorney sent a letter to Signature asking Signature to send the consulting fees to it, rather than to Rios, pursuant to the April 2011 engagement letter.

¶ 20 On September 15, 2011, Rios registered Resource (singular) as a limited liability company with the Illinois Secretary of State. Rios was listed as Resource's registered agent, and Resource's principal office was listed as 115 South Clinton Avenue, Unit A, Oak Park, Illinois.

¶ 21 The same day, Alan Eaks, an executive with Signature, sent an email to Rios stating, "Our number one concern *** is that our agreement is with DRI and DRI has communicated to *** our legal counsel that communication between you and DRI has not been good since you left September 1st." Eaks asked Rios to send him "what [Rios] and DRI have agreed to in completing [the] transaction," whether Rios was "authorized to complete [the transaction] on behalf of DRI," and what arrangements Rios had made to complete the transaction.

¶ 22 On September 27, 2011, Rios sent Signature an invoice for $108,400 for the services rendered pursuant to the engagement letter. Rios signed the invoice as "Sole and Managing Member of Community Development Resource, LLC."

¶ 23 On November 7, 2011, Rios and Resource filed a five-count complaint for declaratory judgment. In Count I, Rios and Resource sought a declaration that they were the sole parties "entitled to recover consulting fees" that, according to Rios and Resource, Resource provided to Signature Health Services, LLC (Signature).

¶ 24 Rios and Resource alleged that Rios was the sole member and manager of Resource, which the complaint referred to as "CDR." Rios and Resource alleged that, in the spring of 2010, Clune, DeRose, and Blair asked Rios to join them in a joint venture "to pursue new real estate projects which could take advantage of potential tax credits or other government financing vehicles," for which Rios would receive $10,000 per month. Rios and Resource said that "Blair and/or DeRose elected to call the Joint Venture 'Community Development Resources LLC' " but that no limited liability company by that name was ever actually formed.

¶ 25 Rios and Resource said that Rios, through Resource, entered into a contract with Signature "to provide consulting services" relating to certain properties that Signature had planned to renovate. Rios and Resource alleged that "DeRose expressly advised Rios that [Resources] had no interest in consulting contracts for which Rios was providing all of the services," like the Signature contract. According to the complaint, Signature owed Resource $108,310 for the consulting services, and that Signature had retained the funds until it could determine which party it should pay.[1]

¶ 26 Defendants moved for summary judgment on count I. Defendants alleged that Clune, Blair, DeRose, and Rios had agreed to form Resources in mid-2010. Resources was to operate as a partnership through which the partners would "acquire distressed properties in low-income communities and redevelop them for residential and mixed uses." Defendants alleged that Rios was given office space in DRI's office at 439 North Wells Street in Chicago and that Rios listed his telephone number at that office (312-368-0770) on his letterhead and in emails.

¶ 27 Defendants alleged that, while he was working for Resources, "Rios often used the terms 'Community Development Resources,' 'Community Development Resource,' and 'CDR'

[1] Other counts in the complaint were voluntarily dismissed and are not at issue.

interchangeably." Defendants said that Rios had signed the Signature contract on behalf of Resources.

¶ 28 According to Defendants, Rios did not claim that Resource was a separate entity from Resources until after the dispute between him and DeRose, Clune, and Blair arose in August 2011. Defendants noted that Resource had not been established until September 15, 2011 and that Resource did not, at any point in time, have a checking account. In essence, defendants claimed, Rios fabricated the existence of *Resource* and, after the fact, registered it with the State in an attempt to justify his right to fees to which *Resources* was entitled.

¶ 29 Rios and Resource filed a cross-motion for summary judgment. Consistent with their complaint, they alleged that there was no partnership agreement among Rios, DeRose, Blair, and Clune, and that Rios had entered into the contract with Signature independently of any work he did with the other three. Rios and Resource alleged that Resource was an entity performing consulting services that operated independently of Resources, the entity established between all four of them. Thus, Rios and Resource claimed, Resource alone was entitled to the fees from the Signature contract.

¶ 30 The parties attached depositions from Rios, DeRose, Blair, Clune, and Eaks to their summary judgment motions.

¶ 31 Rios testified that he met Clune in 2010, when Clune was introduced to him as a possible general contractor for a development project. Eventually, Rios met DeRose and Blair through Clune. Rios said that DeRose, Blair, and Clune proposed that the four of them enter into a "joint venture" to find former industrial buildings and convert them into low-income housing. Rios said that there was never a written agreement regarding the joint venture.

¶ 32 Rios testified that he had a meeting with DeRose, where DeRose offered that, "in exchange for [Rios] finding the building, finding the tenants, arranging the financing, working on the design, applying for the financing, and managing the project, [Rios] might be allowed to have *** between 5 and maybe 10 percent ownership *** of the project." Rios said that his September 1, 2011 email was a rejection of this offer.

¶ 33 Rios testified that, prior to entering into the joint venture, he did all of his consulting work out of his home in Huntley, Illinois. Rios said that, after joining up with DeRose, Blair, and Clune, DeRose wanted him to come to "the office more often," so DeRose provided an office and telephone for Rios at DRI's office at 439 North Wells Street in Chicago. Rios acknowledged that he used the 439 Wells address and telephone number on his email signature. Rios said that he used that address for *Resource* even though it was the address of *Resources* because "at that point [he] had moved from Huntley to a new residence."

¶ 34 Rios testified that the checks he received from Resources were "draws," *i.e.*, advances that would reduce the amount of the development profits to which he would otherwise have been entitled once the projects were completed. Rios acknowledged receiving $50,000 "from what [he] thought was a limited liability company named Community Development Resources" in 2010 and 2011.

¶ 35 Rios acknowledged that he organized *Resource* after *Resources* had requested Signature to send the funds to it. But he insisted that he had been operating Resource prior to its formal organization as a limited liability company in September 2011. Rios said that he was surprised to learn that Resource had not been organized prior to September 2011, because he was under the impression that it had already been organized by Clune Construction. Rios explained his understanding of the relationship between Resource and Resources:

> "I was under the impression that *** Resource was a consulting group which I was—of which I was the sole member and managing director and managing member. I received checks from clients made out to *** Resource and submitted those checks to *** Clune or *** DeRose, and they were then deposited, I assume[d], into a checking account for *** Resource."

Rios testified that he later learned that Resource did not have a bank account. Rios testified that he expected that someone else had set up a bank account for Resource—without specifying who that someone might be, given that he was the sole member and manager of Resource.

¶ 36 Rios claimed that he told DeRose, Blair, and Clune that he would be retaining the consulting fees he accrued. But when asked how he communicated that fact, Rios replied, "Well, I don't recall exactly. But I know it was clearly communicated." Rios said that his "understanding" was that Signature would be paying Resource alone for his consulting work, not Resources. Rios said that he told DeRose, Blair, and Clune the same thing, although he did not specify when.

¶ 37 Rios acknowledged that, when Clune asked him what he thought of the name, "Community Development Resources" for the joint venture, Rios told him that it was "a fine name." Rios testified that he could not recall whether he ever told Clune, DeRose, or Blair that he was operating another entity called, "Community Development Resource."

¶ 38 Rios also acknowledged that he sent Clune, DeRose, and Blair an email informing them of the Signature contract, even though Rios believed the contract to be a contract with Resource, not Resources. Rios recognized that he used the terms "our" and "we" when referring to the fee that Resource would receive from Signature. Rios testified that, when he gave the $30,000

Signature retainer to DeRose, he expected it to be deposited in the *Resource* bank account (there was no such account, as we previously noted).

¶ 39 Rios said that he communicated with Clune, DeRose, and Blair about the Signature project because he wanted to apprise them of "possible work coming their way." Rios clarified that Blair "was hoping to get project management work" from Signature, and Clune "was hoping to be named the general contractor on that *** project."

¶ 40 Rios identified the engagement letter with Signature as "the standard engagement letter that *** Resources uses when entering into a transaction." When defendants' counsel asked, "Resources or Resource?", Rios replied, "Resource. Excuse me." Rios acknowledged that he used the 439 Wells address on that engagement letter but said that he did so because he had just moved from his home in Huntley to his address in Oak Park, where he had "a short-term lease."

¶ 41 In his deposition, DeRose testified that Rios had experience in consulting with "entities that needed incentives in the form of tax credit financings." Rios proposed the formation of an entity whereby Rios would "generate income," and DeRose, Blair, and Clune would use that income for development projects.

¶ 42 DeRose testified that the four partners had agreed that Rios would receive $10,000 per month and, in exchange, any consulting fees he received would go to Resources. DeRose claimed there was no understanding that Rios would participate in any real estate investments after paying the fees to Resources. DeRose testified that Resources paid Rios $10,000 per month for 17 months. DeRose characterized those payments as draws. DeRose said that Rios wanted to receive the monthly payments because Rios had personal financial problems.

¶ 43 DeRose testified that there was "an entity called Community Development Resources," but he did not know whether Resources was a partnership or a limited liability company. DeRose

testified that Clune opened a bank account for Resources and believed that he, Clune, and Blair were each signatories on that account. DeRose testified that Rios maintained an office, telephone, and voicemail in DRI's office at 439 North Wells Street.

¶ 44 DeRose testified that he heard Rios refer to Resources as "Community Development Resource" and that he corrected Rios, saying, "It's Community Development Resources." DeRose believed that Rios simply made a mistake regarding the name of the entity. DeRose said that Rios never told him that, in Rios' mind, there was a difference between Resource and Resources.

¶ 45 Blair testified that he, DeRose, and Clune agreed to form Resources as a partnership over the course of two meetings. Blair said that the motivation for forming Resources was that Rios had been asking Clune for money, Clune had been paying Rios for consulting work, and Clune wanted to figure out a way to include others to "figure out how to pay [Rios]." Blair explained that Resources "was basically an entity to fund [Rios'] paycheck, and then any fees in excess of that" would be split among him, DeRose, and Clune.

¶ 46 Blair disputed the notion that Rios' payments from Resources were draws against his future earnings. Blair testified that the $10,000 per month that Rios received were payments for his work as an independent contractor. Blair said that they agreed to pay Rios a monthly salary and told him that, if Rios was able to bring in fees that were three times as much as his salary, they would discuss giving Rios a bonus.

¶ 47 Blair also rejected the idea that Resources was created to generate development opportunities for him, DeRose, or Clune. Blair said, "It was all just consulting fees." Blair said that the notion that Resources was designed to generate development deals was "pie in the sky," because Resources "never made money."

¶ 48 Blair said that DRI, which he and DeRose co-owned, funded Resources. Blair had no knowledge of a written agreement memorializing Resources' existence.

¶ 49 Clune testified that he came up with the idea of forming Resources with Blair, DeRose, and Rios. Clune said that he envisioned Blair "putting *** deals together" wherein DRI would work as the developer, Clune Construction would serve as a general contractor, with Rios "provid[ing] expertise in *** tax credits or whatever." Clune added that Rios would initially receive a salary and would receive "some kind of a bonus at the end of it, if there were profits." Clune did not recall the word "partner" being used to describe Rios. Clune testified that he never saw contracts for Rios' consulting work separate from the contracts used for Resources.

¶ 50 The trial court granted defendants' motion for summary judgment and denied Rios and Resource's motion for summary judgment. The court found that "Rios' actions around the time the [Signature] contract was signed establish that he entered into the contract on behalf of the joint venture," citing the evidence that Rios included Blair, DeRose, and Clune on an email to Signature, that Rios advised them of the retainer pursuant to the contract, that Rios used the word "our" in reference to the retainer, and that Rios turned over the retainer to DeRose. The court also cited Eaks's email as evidence that Signature believed that it had contracted with DRI, not some independent entity operated by Rios.

¶ 51 The court rejected the notion that Resource was entitled to the funds, because the "sole indicium of [it] being in existence is that Rios registered it the day after the parties' dispute arose and several months after the formation of the Signature contract to which it [was] allegedly a party." The court rejected the notion that the allegations of the complaint or "Rios' self-serving testimony" could rebut the evidence that Rios signed the Signature contract on behalf of his venture with DeRose, Blair, and Clune.

¶ 52 Finally, the court rejected Rios and Resource's arguments regarding defendants' counterclaims, noting that the only claim before the court was count I of the complaint.[2]

¶ 53 Plaintiffs moved to file an amended complaint, reinstating counts II through V. The court denied that motion, finding that it was not timely.

¶ 54 Plaintiffs also filed a motion to reconsider the award of summary judgment for defendants. At the hearing on the motion to reconsider, plaintiffs' counsel argued that defendants "claim[ed] that they were a partnership," whereas Rios "called it a joint venture," meaning that there was a question of fact regarding the nature of the relationship between Rios, Clune, DeRose, and Blair. Counsel argued that defendants presented "no evidence that there was a partnership in which [Rios] was not a member [but] for [which] he was signing contracts." Counsel also argued that the court erred in disregarding the arguments concerning defendants' counterclaims, since those were part of the pleadings before the court on summary judgment.

¶ 55 The court denied the motion to reconsider. The court clarified that the characterization of the venture did not matter: "I think what I said was that Mr. Rios was acting on behalf of that entity. I didn't go into questions of the formation of this partnership." The court noted that the central issue was "on whose behalf [Rios] thought he was acting," not the type of entity formed by the parties. The court also recognized that defendants' counterclaims provided the

[2] After the court awarded summary judgment for defendants, Rios and Resource's counsel filed a motion informing the court that Rios had died. Eventually, the court allowed Carrie Rios, the administrator of Rios' estate, to substitute into the case. As we noted above, we will refer to Carrie Rios and Resource—the two plaintiffs involved in this appeal—as "plaintiffs."

"landscape" of Rios' relationship with defendants but stressed that the only question before the court was summary judgment on count I of the complaint.

¶ 56 Plaintiffs filed a notice of appeal from the trial court's denial of their motion to reconsider, giving rise to appeal number 1-15-1663.

¶ 57 In the trial court, defendants filed a motion for further relief under section 2-701(c) of the Code of Civil Procedure (735 ILCS 5/2-701(c) (West 2014)), which allows a party in a declaratory-judgment action to petition for further relief in accordance with the declaratory judgment. Specifically, defendants asked the court to enter an order saying that they were entitled to the $108,310 in consulting fees. The court granted defendants' request, finding that Resources was entitled to the funds held by Signature.

¶ 58 Plaintiffs filed a notice of appeal from the court's award of further relief to defendants, giving rise to appeal number 1-15-2401. We consolidated plaintiffs' two appeals.

¶ 59 II. ANALYSIS

¶ 60 Plaintiffs raise four arguments challenging the trial court's judgment: (1) that plaintiffs were entitled to summary judgment because the evidence established that Resource was entitled to the consulting fees; (2) that the court ignored defendants' concession that Resources was not a partnership; (3) that the court failed to consider all of the pleadings on file when deciding the cross-motions for summary judgment; and (4) that the court erred in granting defendants' request for further relief.

¶ 61 We review *de novo* a circuit court's ruling on a motion for summary judgment. *State Bank of Cherry v. CGB Enterprises, Inc.*, 2013 IL 113836, ¶ 65. Summary judgment is proper only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to

judgment as a matter of law. *Id*. To survive a motion for summary judgment, a plaintiff need not prove its case but must present some evidence that would arguably entitle it to judgment. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12.

¶ 62 When, as in this case, parties file "cross-motions" for judgment on the pleadings and summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record. *Jones v. Municipal Employees' Annuity and Benefit Fund of Chicago*, 2016 IL 119618, ¶ 26. But a court is not bound by that invitation, and if it finds the existence of a question of material fact, summary judgment is improper. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28.

¶ 63 Plaintiffs claim that they were entitled to summary judgment, and defendants were not, because "the undisputed evidence" showed that Resource, not Resources, contracted with Signature, that Rios was the sole manager and member of Resource, and that Rios "chose not to participate in any partnership or joint venture" prior to entering into the Signature contract.

¶ 64 Defendants put forward a good deal of evidence supporting their claim to the Signature funds. First, we consider the dealings between Rios and Signature.

¶ 65 The letter Rios sent Signature, confirming Signature's business, did refer to Signature's engagement of "Community Development Resource, LLC ***," using the singular version that Rios says was his sole company, not Resources, though elsewhere in the letter Rios used "CDR" as initials. But when he signed the letter in the name of that entity, he referred to himself as "managing director," the title he held at Resources, according to the bio he sent to clients. And the bottom of each page showed the address 439 North Wells Street in Chicago—DRI's address, where Resources had an office.

¶ 66 Signature thought it was dealing with Resources, plural. An executive at Signature testified that he believed that he was contracting with "DRI," DeRose's and Blair's company. And while we know that was not technically accurate, DRI was part of the entity known as Resources and provided office space for it. Indeed, in promotional communications with potential clients, Rios routinely described Resources, plural, as "a partnership of DRI (James DeRose and Howard Blair) and Clune Construction's Michael Clune." (Parentheses in original.) And when the relationship between Rios and defendants deteriorated, an officer for Signature emailed Rios with his "number one concern" that "our agreement is with DRI and DRI has communicated to *** our legal counsel that communication between you and DRI has not been good since you left September 1st."

¶ 67 This evidence supports defendants' position that Signature was contracting with the venture known as Resources that included DRI and Clune, not a company bearing almost the same name controlled solely by Rios.

¶ 68 The interactions between Rios and defendants regarding the Signature contract further support defendants' position. After securing Signature's business, Rios emailed DeRose, Blair, and Clune to inform them that "Community Development Resource [was] being retained to provide *** consulting services to Signature *** in connection with [its] Lakeshore Hospital redevelopment project." Rios wrote, "*Our* retainer will be $30,000 and *our* fee is estimated to be approximately $600,000." (Emphasis added.) He then gave the retainer to Resources, which deposited it in its bank account. We would note that Rios's reference in the first-quoted sentence above referred to the singular version of the company's name—Resource—yet Rios was referring to the business, in the second quoted sentence, in the collective "our" pronoun.

¶ 69 And that further underscores the undisputed evidence we detailed above that Rios had a tendency, of which defendants were well aware, of using "Resource" and "Resources" interchangeably in emails and in conversation with defendants. DeRose even recalled once correcting Rios on that point after Rios spoke of the company in the singular "Resource." Neither at that time, nor at any other time—including when Blair first suggested the company name—did Rios ever tell defendants that he was secretly running a side business with nearly the identical name.

¶ 70 Against all of this, plaintiffs' only response is that Rios testified that he was, in fact, running that Resource side business well before Resources (plural) came along. Defendants go to great lengths to cast doubt on his testimony, which we have previously detailed (Rios' failure to ever mention the side business to defendants, his interchanging of the names, his submission of the Signature retainer to defendants, and the fact that his solo company Resource never had a mailing address or phone number independent of Resources, plural).

¶ 71 While these are valid points, we do not conduct credibility determinations at the summary judgment stage. We look for the existence of a disputed issue of material fact. *State Bank of Cherry*, 2013 IL 113836, ¶ 65. If we find one, we do not resolve it in one party's favor; rather, it renders summary judgment inappropriate. *Pielet*, 2012 IL 112064, ¶ 28.

¶ 72 If the relevant question were whether Rios was or was not running this side business "Resource" at the time of the Signature contract, summary judgment would be improper, as a question of fact remains on that question. The problem for plaintiff, however, is that even if we accept as true that Rios was operating the "Resource" entity, and even if we accept as true that his intention was to retain the entire consulting fee for his solo company, his subjective belief surrounding the parties' contract does not control; Rios' *objective* manifestations of his intent is

what matters. See *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 331 (1977) ("In the formation of contracts it was long ago settled that secret intent was immaterial, only overt acts being considered in the determination of such mutual assent as that branch of the law requires.") (internal quotation marks omitted); *Urban Sites of Chicago, LLC v. Crown Castle USA*, 2012 IL App (1st) 111880, ¶ 51 ("it is the objective manifestation of intent that controls whether a contract has been formed. [Citation.] The subjective understanding of the parties is not required ***."); *Cox v. U.S. Fitness, LLC*, 2013 IL App (1st) 122442, ¶ 22 (when interpreting contract, parties' "subjective intentions are irrelevant; rather, the pertinent inquiry focuses upon the objective manifestations of the parties" (internal quotation marks omitted)).

¶ 73 None of the objective manifestations of the parties to the contract indicated that Signature was contracting with Rios's solo company Resource, and all of them were consistent with the notion that Signature was contracting with Resources. It is undisputed that Signature, one of the two parties to the contract, had no idea about this solo Resource company and thought it was contracting with a company of which DRI was a part (Resources). And nothing in the record shows that Rios did or said anything in his manifestations toward Signature or defendants to indicate otherwise—he used Resources' letterhead, including office address and phone; he turned over the Signature retainer fee to Resources; he spoke of the Signature contract as "our" contract to defendants.

¶ 74 Simply put, Signature thought it was contracting with Resources, the company of which DRI was a part. Defendants thought Signature was contracting with Resources. And everything Rios did or said in his objective manifestations indicated that Signature's contract was with Resources. We find no question of material fact on this point, and the trial court thus properly

entered summary judgment in favor of defendants, and denied summary judgment to plaintiffs, on the sole count of the complaint.

¶ 75 Plaintiffs next argue that the trial court erred in awarding defendants summary judgment because defendants failed to prove that Resources was a partnership. Plaintiffs note that the party asserting the existence of a partnership bears the burden of proving its existence and argue that defendants "adduced no evidence whatsoever that the Alleged Partnership existed."

¶ 76 Plaintiffs misconstrue the central inquiry of the dispute in this case. Count I of the declaratory judgment complaint, the only count before us, sought a declaration that Rios and Resource were "entitled to recover the consulting fees earned pursuant to the CDR-Signature contract," rather than defendants. In other words, the central question was the nature of the *contract with Signature*, not the structure of Resources as a partnership versus a joint venture.

¶ 77 The trial court correctly found that the structure of Resources did not matter. We reject plaintiffs' argument that defendants had to prove that Resources was a partnership, as opposed to some other type of business entity.

¶ 78 Next, plaintiffs contend that the court "admittedly ignored the Defendants' allegations in their Counterclaims, which expressly concede that Rios was the party entitled to consulting fees the parties he served."

¶ 79 It is true that, when considering a summary judgment motion, "the court must consider the affidavits, depositions, admissions, exhibits, and pleadings on file." *In re Estate of Hoover*, 155 Ill. 2d 402, 410 (1993). But the record contains no evidence that the trial court ignored the counterclaims. Rather, the trial court wrote that plaintiffs' "*arguments* about Defendants' counterclaims do not assist the Court in determining whether there is a genuine issue of fact that would preclude summary judgment on Count I." (Emphasis added.) If anything, the court

disregarded plaintiffs' *arguments* about the counterclaims—claims that were not before the court—not the assertions in the counterclaims themselves.

¶ 80 Moreover, the counterclaims do not, as plaintiffs claim, concede that Rios or Resource were entitled to the consulting fees. To the contrary, they explained the parties' agreement as follows:

> "10. Clune, DeRose and Blair determined that the three of them would join forces to pursue [new market tax credit] transactions and began operating *** Resources. *** Resources retained Rios as a paid consultant and paid him $10,000 per month for most months between May 27, 2010 through July 28, 2011. *** Clune, DeRose, Blair and Rios agreed that Clune Construction and DRI would provide the initial financing for *** Resources, including the compensation paid to Rios. In exchange for this monthly compensation, it was agreed that Rios would endeavor to generate revenue for the business by seeking consulting opportunities with third parties that in turn would generate consulting fees as well as potential development opportunities for *** Resources. It was further agreed that the fees generated by Rios would be reinvested into the business. It was also contemplated that Rios would receive an ownership interest in the business if and when he reimbursed Clune Construction, DRI and *** Resources for the compensation that Rios was paid."

That description of the arrangement would mean that Resources was entitled to Rios' consulting fees pursuant to the parties' agreement. Nothing in the counterclaim could reasonably be construed as a concession that Rios was entitled to the consulting fees. Thus, even if the trial court committed any error in failing to consider the counterclaims (it did not), we fail to see how that failure would have prejudiced plaintiffs.

¶ 81 Plaintiffs cite the following statements the court made at the hearing on the motion to reconsider as evidence that it failed to consider the pleadings:

> "And now I understand your references to the counterclaims *** was an attempt to draw the Court into the landscape rather than the specific issue that was teed up on the motion for summary judgment. It was still teed up in the motion for summary judgment.
>
> * * *
>
> And on the motion for summary judgment, other than these allusions to the counterclaim, I didn't have other evidence that I felt ever countered or created an issue of fact with respect to that transaction on whose behalf he thought he was acting."

Plaintiffs offer no explanation for why these statements show that the trial court failed to consider the counterclaims. To the contrary, they appear to suggest that the trial court considered the counterclaims as background (*i.e.*, "the landscape") for the dispute. At best, the court's statements are ambiguous and insufficient to demonstrate that the trial court committed any error in this case.

¶ 82 Plaintiffs cite *Wilgus v. CyberSource Corp.*, 393 Ill. App. 3d 1039 (2009), as an example of when a trial court's refusal "to fully consider all pleadings, admissions, etc." when considering a summary judgment motion will lead to reversal. But in *Wilgus*, the trial court improperly excluded emails attached to a summary judgment motion that were "competent evidence of [the] defendant's alleged breach of contract." *Id.* at 1049. As we explained above, in this case, plaintiffs have not shown that the trial court actually disregarded any pleadings or that those pleadings contained any favorable evidence for plaintiffs' case. *Wilgus* does not persuade us that any reversible error occurred here.

¶ 83 Finally, plaintiffs argue that the trial court erred in granting defendants' request for further relief. Under section 2-701(c) of the Code of Civil Procedure (735 ILCS 5/2-701(c) (West 2014)), in a declaratory judgment action, a court may grant a party further relief beyond the declaration of the parties' rights where such further relief is "necessary or proper." Under this provision, a court, exercising its equitable powers, may "grant any consequential relief and dispose of the entire controversy." *Shipka v. Inserra*, 211 Ill. App. 3d 735, 738 (1991).

¶ 84 By awarding summary judgment to defendants on count I of the complaint, the court determined that Rios, while acting on behalf of Resources, agreed to provide consulting services to Signature in exchange for a fee that Rios would give to Resources. A necessary extension of that determination is that defendants, not plaintiffs, would be entitled to the Signature consulting fees. We disagree that the trial court erred in entering further relief that logically followed from its award of summary judgment.

¶ 85 Plaintiffs' argument concerning the court's award of further relief largely focuses on the absence of evidence that Rios was authorized to bind Resources. But the question facing the court was not whether Resources could be bound by Rios' actions. The court was not faced with determining whether Resources could be obligated to perform some action under a contract formed by Rios. Resources never claimed it was not bound by the Signature contract; quite the opposite, in fact. Rather, the pertinent question was the nature of Rios's relationship to Resources—whether the fees he generated belonged to Resources or his solo Resource company.

¶ 86 And in any event, the evidence showed that Resources gave Rios the actual authority to bind it to consulting contracts. In fact, the entire purpose behind the formation of Resources was that Rios would provide consulting services for possible real estate developments. Rios would necessarily be required to find and contract with prospective consulting clients. See *Progress*

Printing Corp. v. Jane Byrne Political Committee, 235 Ill. App. 3d 292, 308 (1992) ("Actual authority is express or implied; express authority is *** a specific grant of authorization to perform a particular act, and implied authority is that which is inherent in an agent's position.").

¶ 87 And even if Rios lacked the actual authority to bind Resources, he had apparent authority to do so. An agent may bind a party via the agent's apparent authority when the party "permits the agent to act in a manner that reasonably leads third persons who deal with that agent to conclude that the agent is authorized to bind the [party] to contracts." *Yale Development Co., Inc. v. Texaco, Inc.*, 51 Ill. App. 3d 616, 619 (1977). In this case, Rios held himself out as an agent of Resources to Signature by executing the engagement letter on its behalf and calling himself the managing director of Resources. And DeRose, Blair, and Clune knowingly let him do so, as Rios kept them updated regarding consulting contracts that he had formed, including the contract with Signature, but none of DeRose, Blair, nor Clune indicated to Signature that Rios lacked the authority to bind Resources. Thus, even if plaintiffs' argument concerning Rios' authority were relevant, we would not agree with them.

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we affirm the trial court's award of summary judgment for defendants.

¶ 90 Affirmed.