2017 IL App (1st) 161805-U

No. 1-16-1805

Order filed November 2, 2017

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SNOW & ICE MANAGEMENT SERVICES, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 14 M3 1935
	)	
KEY DEVELOPMENT PARTNERS LLC,	)	Honorable
	)	Raymond Funderburk,
Defendant-Appellee.	)	Judge presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McBride and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment after trial that plaintiff failed to prove that defendant breached their contracts was not against the manifest weight of the evidence where the evidence at trial supported the finding.

¶ 2 Plaintiff Snow & Ice Management Services, Inc. entered into two nearly identical contracts with defendant Key Development Partners LLC to perform snow and ice removal services on two properties managed by defendant in Wheaton and Orland Park. The parties agreed to a seasonal price for the services, but also that defendant would pay additional amounts

if any snowfall exceeded 9 inches and separately if the cumulative seasonal snowfall exceeded 45 inches. During the term of the contracts, plaintiff sent defendant several invoices for services based on multiple snowfalls exceeding 9 inches and the cumulative seasonal snowfall exceeding 45 inches. Defendant, however, did not pay the invoices, resulting in plaintiff suing for a breach of the contracts. Following a bench trial on the matter, the circuit court found in favor of defendant. Plaintiff now appeals the court's finding, contending that its judgment was both against the manifest weight of the evidence and an abuse of discretion. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff provides snow and ice removal services for commercial businesses. Defendant manages commercial real estate. In November 2013, the parties executed two contracts for properties managed by defendant, one located at 811 East Butterfield Road in Wheaton (the Wheaton property) and the other located at 131st Street and La Grange Road in Orland Park (the Orland Park property). Both contracts became effective on November 1, 2013 and ran until March 31, 2014. The seasonal price for the Wheaton property was $10,000, and the seasonal price for the Orland Park property was $3,600.

¶ 5 According to both contracts, the seasonal price included general snow plowing, de-icing and sidewalk cleaning services. However, the contracts provided that, if blizzard conditions existed, defined as "any snowfall over nine inches," services would not be covered "under the seasonal" price and would be "charged [time and material] rates." The contracts further provided that, if the cumulative seasonal snowfall exceeded 45 inches, "addition [*sic*] [time and material] rates" would apply. The time and material rates were detailed in the contracts. The contracts

additionally required defendant to submit to plaintiff in writing any dispute concerning an invoice within 15 days of the date of the invoice.

¶ 6 On June 27, 2014, plaintiff sued defendant for a breach of those contracts. According to plaintiff's verified complaint, defendant owed plaintiff $19,374.70 for services rendered on the Wheaton property and $7,720.16 for services rendered on the Orland Park property. Plaintiff attached to its complaint two statements, one for the Wheaton property and one for the Orland Park property, which referenced various invoices and the amounts due under them. Plaintiff also attached an e-mail exchange from February 11, 2014, between Kamila Lenart, an account executive of plaintiff, and Noni Kavuri, an employee of defendant. In the exchange, Kamila reminded Kavuri that defendant had past due invoices to which Kavuri responded that defendant would "get payments out for Wheaton and Orland in [its] February check run."[1]

¶ 7 Defendant filed an answer, denying it owed the claimed amounts. After both parties engaged in discovery, they participated in mandatory arbitration. The arbitrators found in favor of plaintiff and awarded $25,040 in damages. Defendant, however, filed a notice of rejection of the award and demanded trial. The case eventually proceeded to a bench trial.

¶ 8 A. Plaintiff's Case

¶ 9 Plaintiff presented the testimony of Krzysztof Lenart, its owner, and Kamila.[2] Plaintiff's evidence revealed that it utilized approximately 20 independent contractors to provide snow and ice removal services to its customers at 90 different locations throughout Illinois and Wisconsin. After the independent contractors performed their services, they submitted their records of time

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[1] Because Kamila Lenart as well as Krzysztof Lenart are referenced in this appeal, we will refer to each of them by their first name.

[2] Although there was no transcript made of the trial, the circuit court certified a bystander's report submitted by defendant. See Ill. S. Ct. R. 323(c) (eff. July 1, 2017).

and material rendered to plaintiff. Krzysztof reviewed the records and then gave them to Kamila, who would invoice plaintiff's customers.

¶ 10 Although the contracts between plaintiff and defendant for the Wheaton and Orland Park properties called for defendant to pay time and material rates if the cumulative seasonal snowfall exceeded 45 inches, the parties "subsequently agreed" that defendant would instead pay at "plow/shovel (full-push) rates," which were also set forth in the contracts.

¶ 11 Concerning the Wheaton property, defendant paid in full the seasonal price of $10,000. On January 9, 2014, plaintiff sent defendant an invoice in the amount of $6,660 using the time and material rates based on a snowfall exceeding nine inches from "12-31-13 thru 01-03-14." On January 30, 2014, plaintiff sent defendant an invoice in the amount of $6,660 using the time and material rates based on a snowfall exceeding nine inches on "01-04-14." Lastly, from February 13 through March 14, 2014, plaintiff sent defendant a total of eight invoices for various services rendered during the months of February and March 2014. Each invoice stated that the cumulative seasonal snowfall had exceeded 45 inches, and combined, the invoices totaled $4,780 using "per-time rates."

¶ 12 Concerning the Orland Park property, defendant paid in full the seasonal price of $3,600. On January 30, 2014, plaintiff sent defendant an invoice in the amount of $3,500 using the time and material rates based on a snowfall exceeding nine inches on "01-04-14." And from February 6 through March 14, 2014, plaintiff sent defendant a total of 14 invoices for various services rendered during the months of February and March 2014. Each invoice stated that the cumulative seasonal snowfall had exceeded 45 inches, and combined, the invoices totaled $3,760 using "per-time rates."

¶ 13 Kamila testified that she received the records of time and material rendered on defendant's properties, but they had been "shredded prior to trial and could not be produced." She stated that she routinely shredded these types of records.

¶ 14 Krzysztof testified that plaintiff maintained a written record of snowfall in the ordinary course of business for December 31, 2013 and January 1 and 4, 2014. The records, which were introduced into evidence, had been created by a company called Weather Command and prepared by Tom Piazza, its chief meteorologist. Plaintiff's Exhibit No. 7 stated that, on December 31, 2013, Wheaton received 2.6 inches of snow and on January 1, 2014, Wheaton received 7.7 inches of snow. Plaintiff's Exhibit No. 8 stated that, on January 4, 2014, Wheaton received 9.5 inches of snow while Orland Park received 10.5 inches of snow. According to Weather Command's report, as of January 4, 2014, Wheaton's cumulative "season total" of snowfall was 32.1 inches while Orland Park's was 30.2 inches. The report did not indicate when the "season" began.

¶ 15 B. Defendant's Case

¶ 16 Defendant presented the testimony of Noni Kavuri, the employee who supervised the administrative responsibilities for defendant's Wheaton and Orland Park properties. Kavuri observed that the contracts with plaintiff contained similar language to other snow and ice removal contracts defendant had signed with different companies for other properties it managed. Kavuri testified that he became suspicious of several invoices he had received from plaintiff because he had not received "similar invoices from other vendors providing service to the other similarly situated properties" of defendant's and because tenants had complained about the adequacy of the snow removal at the Wheaton and Orland Park properties.

¶ 17 Kavuri acknowledged that, on or around, January 13 or 14, 2014, he received an invoice via mail from plaintiff that bore the date of January 9, 2014. That invoice pertained to services rendered at the Wheaton property from December 31, 2013 through January 3, 2014. Shortly after receiving the invoice, Kavuri "called" plaintiff and "voiced objection" to it. He also sent e-mails to plaintiff, beginning on January 29, 2014, which were entered into evidence as Defendant's Exhibit A.

¶ 18 In this e-mail chain, Krzysztof informed Kavuri that the "seasonal cap" had been reached for both the Wheaton and Orland Park properties, requiring plaintiff to bill defendant at time and material rates pursuant to the contracts. Krzysztof concluded the e-mail by saying "[p]lease see photo attached."[3] Kavuri responded, stating that "we are over the cap" and defendant owed plaintiff money for the months of February and March. He also asked if there was "anything we can work out in order to protect our tenants from high costs if it snows more?" Kamila replied that, as Krzysztof and Kavuri had "discuss[ed]" and "agreed," plaintiff would bill defendant "a per-time bases" beginning January 30, 2014, until the term of the contracts ended. Kamila attached to the e-mail a past due invoice and two current invoices along with "weather report for back up."[4]

¶ 19 In response to Kamila's e-mail, Kavuri wrote that it was "not fair" that plaintiff combined snowfalls at the Wheaton property from December 31, 2013 to January 3, 2014, to reach the nine-inch "cap" and then kept January 4, 2014, "separate." Kavuri asserted that defendant "can't be expected to pay both" invoices. Krzysztof responded that "[t]he storm" began on December

[3] The attachment to this e-mail is not included in the record on appeal, and the bystander's report does not describe it.

[4] This "weather report" is not included in the record on appeal, and the bystander's report does not describe it.

31, 2013 and ended on January 1, 2014, with a total snowfall of 10.3 inches, as exhibited by the weather reports provided to defendant. He asserted that plaintiff was simply following the terms of the contract.

¶ 20 Kavuri replied that "it was [his] fault for not reading the fine print about" snowfalls over nine inches being billed at time and material rates. He also attempted to negotiate the cost of some of the outstanding invoices and requested that the parties "strike" the "language" about blizzards from "both contracts and just bill at per push since we have now gone over the 45[-inch] cap." Kavuri further noted that none of defendant's other snow removal vendors had any language concerning blizzards in their contracts. In response, Krzysztof stated the current winter had been relentless with frequent snowfalls, something plaintiff could not control. He also asserted that plaintiff did not compare its contracts with other snow removal companies and the complained-of terms were explicitly part of the contracts and not hidden anywhere. Kavuri responded that he understood and had "signed the contract." He indicated that he would call Krzysztof to discuss the past due invoices, and they would "reach an agreement."

¶ 21 Kavuri further testified about another e-mail chain between him and plaintiff, beginning on February 6, 2014, which was entered into evidence as Defendant's Exhibit B. In this e-mail chain, Kamila highlighted three past due invoices and asked Kavuri when they would be paid by defendant. Kavuri responded, complaining that "it seem[ed]" like plaintiff was "just billing" defendant "for the sake of billing." He asserted that another vendor who removed snow at other properties managed by defendant near the Wheaton property had "different snow fall totals" than plaintiff and billed defendant differently. Krzysztof responded and explained plaintiff's billing practices.

¶ 22 Additionally, Kavuri testified that defendant maintained a written record of snowfall in the ordinary course of business from December 31, 2013 through January 5, 2014. The records, which were introduced into evidence, had been created by a company called Weather Works and certified by Sean Rowland, its director of operations.

¶ 23 Defendant's Exhibit C stated that, from December 31, 2013 until January 1, 2014, there were "[m]ultiple waves of snow impact," resulting in Wheaton receiving 2.5 inches of snow. The report indicated that this was the "first of two batches of snow" for the New Year, and it arrived during the day on December 31 and continued into the early morning hours of January 1, tapering off around 2:30 a.m. The report stated that a "brief break" in snowfall occurred overnight before "redeveloping" during the early morning hours of January 1.

¶ 24 Defendant's Exhibit D stated that, from January 1 until January 2, 2014, Wheaton received 7.5 inches of snow. The report indicated that "a strong winter storm continued" with snowfall "redevelop[ing]" between 6 and 9 a.m. on January 1 and continuing until the afternoon of January 2.

¶ 25 Defendant's Exhibit F stated that, from January 4 until January 5, 2014, Wheaton received 8.3 inches of snow. The report indicated that the snowfall began between 8:30 and 11:30 a.m. on January 4 and continued into the early evening hours of January 5.

¶ 26 Defendant's Exhibit G stated that, from January 4 until January 5, 2014, Orland Park received 8.0 inches of snow. The report indicated that the snowfall began between 8:30 and 11:30 a.m. on January 4 and continued into the early evening hours of January 5.

¶ 27 C. Posttrial

¶ 28 After trial, pursuant to an order of the circuit court, both parties submitted proposed findings of fact, conclusions of law and a recommended decision. In a written order, the court

subsequently found "in favor of the defendant" and "against the plaintiff *** for the reasons stated in open court." The record on appeal does not contain a transcript of the court's oral findings or a bystander's report of those findings. See Ill. S. Ct. R. 323(c) (eff. July 1, 2017). Plaintiff unsuccessfully moved the court to reconsider its finding and, on June 24, 2016, filed its notice of appeal.

¶ 29 Thereafter, each party submitted a proposed bystander's report of the trial. In a November 4, 2016, written order, the circuit court found that the bystander's report submitted by plaintiff did "not accurately reflect matters occurring at trial" and declined to certify it. The court, however, certified the bystander's report submitted by defendant, finding that it "accurately reflects the testimony and matters occurring at trial." The certified bystander's report was attached to the order. The court concluded its order stating that the "basis" of its "ruling after trial" was "that plaintiff failed to sustain its burden of proof *** by a preponderance of the evidence." This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Plaintiff first contends that the circuit court's ruling after trial that it failed to meet its burden of proof was against the manifest weight of the evidence.

¶ 32 At the outset, we must note that, in their briefs, the parties discuss parts of the trial and the circuit court's findings on certain issues. However, the only evidence in the record on appeal concerning the trial is the bystander's report, and the only evidence concerning the court's findings are its written orders. These orders consist of one where the court stated it found in favor of defendant and against plaintiff, and another wherein the court stated it ruled in favor of defendant because plaintiff failed to satisfy its burden of proof. Our review of the trial and the court's findings can only be based on the bystander's report and the court's orders, not anything

stated or argued by the parties in their briefs. See *Thomas v. Powell*, 289 Ill. App. 3d 143, 147 (1997) (stating that the reviewing court "is limited to evidence in the record on appeal" and "we cannot rely upon mere assertions by a party"). We further note it is well-established that, for the appellant to support a claim of error on appeal, it has the burden to present the reviewing court with a sufficiently complete record. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Id.* When the record on appeal is incomplete, the reviewing court must presume that the circuit court acted in conformity with the law and with a sufficient factual basis. *Id.* at 157. Any doubts that arise from the incomplete record must be resolved against the appellant. *Id.*

¶ 33 To this end, plaintiff initially claims that the circuit court allowed defendant to submit its proposed bystander's report even though defendant was in violation of Illinois Supreme Court Rule 323(c) (eff. July 1, 2017). We note that plaintiff makes this claim in its statement of facts, itself a violation of Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017), which provides that a statement of facts must be free from "argument or comment." Nevertheless, based on the record on appeal, plaintiff's claim is without merit. According to Rule 323(c), the appellant must serve its proposed bystander's report on the opposing party within 28 days of filing its notice of appeal. Ill. S. Ct. R. 323(c) (eff. July 1, 2017). Within 14 days of that service, the other party may serve proposed amendments to appellant's bystander's report or its own proposed bystander's report. *Id.* Finally, within 7 days thereafter, the appellant must present the proposed reports to the court for certification. *Id.*

¶ 34 Plaintiff alleges that the circuit court allowed defendant to submit its proposed bystander's report well after the 14 days allowed by Rule 323(c). Plaintiff, however, supports

this argument with references to a motion it filed and an order entered by the court, but without any citations to the record on appeal. Based on our review of the record on appeal, the only order relevant to the bystander's report is from November 4, 2016, wherein the court certified defendant's proposed bystander's report and declined to certify plaintiff's proposed bystander's report. Although over four months had elapsed between plaintiff filing its notice of appeal and the court certifying defendant's proposed bystander's report, without any documents establishing the cause of this timeline, we do not have enough of a factual basis to conclude that defendant violated Rule 323(c). See *Corral*, 217 Ill. 2d at 156-57. We may not merely rely on plaintiff's assertion on the matter. See *Thomas*, 289 Ill. App. 3d at 147.

¶ 35 Turning to the issue at hand, plaintiff argues that, based on the weather data it introduced into evidence at trial combined with the lack of evidence that defendant objected to the invoices as required under the contracts, the circuit court should have found that defendant breached the two contracts for snow and ice removal. In order for a plaintiff to establish a claim for a breach of contract, four elements must be present: (1) there must have been a valid and enforceable contract between the parties; (2) performance by the plaintiff; (3) a breach of the contract by the defendant; and (4) a resulting injury to the plaintiff. *Burkhart v. Wolf Motors of Naperville, Inc.*, 2016 IL App (2d) 151053, ¶ 14.

¶ 36 In this case, the parties do not dispute that three of the four elements were present, but rather contest whether defendant actually breached the contracts. Plaintiff argues that, on three separate occasions (twice at the Wheaton property and once at the Orland Park property), there were snowfalls in excess of 9 inches, thus requiring additional payments from defendant. Plaintiff further argues that, after January 30, 2014, the cumulative seasonal snowfall reached 45 inches at both properties, which also required additional payments from defendant. According to

plaintiff, defendant breached the contracts when it failed to pay for plaintiff's services after these events occurred. Conversely, defendant contends that plaintiff failed to prove at trial any of the snowfalls in question were in excess of 9 inches and failed to prove the cumulative seasonal snowfall reached 45 inches at either property. Defendant therefore argues that plaintiff failed to establish a breach of the contracts.

¶ 37 In a bench trial, the circuit court must weigh the evidence presented and make findings of fact. *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35. Whether the defendant breached a contract is a question of fact. *Covinsky v. Hannah Marine Corp.*, 388 Ill. App. 3d 478, 483 (2009). We will not reverse the court's finding on this matter unless it was against the manifest weight of the evidence. *Orlich*, 2012 IL App (1st) 112974, ¶ 35. "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." *Samour, Inc. v. Board of Election Commissioners*, 224 Ill. 2d 530, 544 (2007). We give such deference to the circuit court because " 'the trial judge as the trier of fact is in a position superior to a court of review to observe the conduct of the witnesses while testifying, to determine their credibility, and to weigh the evidence and determine the preponderance thereof.' " *Chicago Title Land Trust Co. v. JS II, LLC*, 2012 IL App (1st) 063420, ¶ 31 (quoting *Schulenburg v. Signatrol*, Inc., 37 Ill. 2d 352, 356 (1967)). This is especially true when the evidence at trial is conflicting. *Id.* (citing *Schulenburg*, 37 Ill. 2d at 356).

¶ 38 At trial, both parties presented evidence concerning the amount of snow that had fallen on the dates in question. According to plaintiff's data, Wheaton received: 2.6 inches of snow on December 31, 2013; 7.7 inches of snow on January 1, 2014; and 9.5 inches of snow on January 4, 2014. Additionally, Orland Park received 10.5 inches of snow on January 4, 2014. According

to defendant's data, Wheaton received: 2.5 inches of snow from December 31, 2013 to January 1, 2014; 7.5 inches of snow from January 1 to January 2, 2014; and 8.3 inches of snow from January 4 to January 5, 2014. Additionally, Orland Park received 8.0 inches of snow from January 4 to January 5, 2014.

¶ 39 Following the presentation of this evidence, it was for the circuit court to determine which set of data it believed and whether that data demonstrated any snowfalls in excess of nine inches had occurred. Although we do not know the exact reasons underlying the court's finding that plaintiff failed to meet its burden of proof, we cannot say that, based on the conflicting data, the opposite conclusion reached by the court was plainly evident or without a basis in the evidence. Critically, if defendant's data is believed, there was no single snowfall in Wheaton or Orland Park on any of the dates in question that exceeded nine inches. Plaintiff, in essence, asks us to reweigh the evidence presented at trial and find its data more credible than defendant's. We cannot accede to such a request. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) ("A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn" from the evidence). Accordingly, based on the record before us, the circuit court's finding that plaintiff failed to prove that defendant breached the contracts was not against the manifest weight of the evidence.

¶ 40 We similarly cannot conclude that the circuit court's finding that plaintiff failed to prove the cumulative seasonal snowfall exceeded 45 inches was against the manifest weight of the evidence. At best, based on Plaintiff's Exhibit No. 8, the weather report created by Weather Command, on January 4, 2014, the cumulative seasonal snowfall for Wheaton was 32.1 inches and 30.2 inches for Orland Park. However, this exhibit did not even indicate when the season

began. While it is certainly possible that over the subsequent months, there was additional snowfall resulting in the 45-inch threshold being reached, the bystander's report fails to show that plaintiff presented any evidence of additional snowfall.

¶ 41 Nevertheless, plaintiff argues that Krzysztof testified at trial that the cumulative seasonal snowfall had exceeded 45 inches. Yet, as plaintiff acknowledges, the bystander's report does not contain any testimony from Krzysztof on this matter. We are limited to the evidence in the record on appeal and cannot rely on plaintiff's assertion. See *Thomas*, 289 Ill. App. 3d at 147.

¶ 42 Plaintiff further highlights Defendant's Exhibit A, specifically an e-mail from Kavuri wherein he suggested that plaintiff and defendant modify their contracts to "just bill at per push since we have now gone over the 45[-inch] cap." In a follow-up e-mail, Kamila confirmed to Kavuri the modification of the contracts based on a discussion between him and Krzysztof. Plaintiff argues that there would be no reason for this modification unless the cumulative seasonal snowfall had exceeded 45 inches. We separately observe that, in another e-mail from Kavuri, he stated that "we are over the cap" and acknowledged that defendant owed plaintiff money for the months of February and March. This was in response to Krzysztof's initial e-mail informing Kavuri that the "seasonal cap" had been reached for both the Wheaton and Orland Park properties. However, merely because Kavuri believed that the cumulative seasonal snowfall had reached 45 inches does not mean that plaintiff sufficiently satisfied its burden of proof to show the cumulative seasonal snowfall exceeded 45 inches. Without knowing the reasons why the circuit court found that plaintiff failed to meet its burden of proof, we must presume the court had a sufficient factual basis for its finding and acted in conformity with the law. See *Corral*, 217 Ill. 2d at 156-57.

¶ 43 One reason we can surmise as to why the circuit court ruled in favor of defendant despite Kavuri's e-mails and the parties' modification of the contracts is that plaintiff had a credibility issue. The evidence at trial showed that, in the various e-mail exchanges, Kavuri expressed suspicion concerning plaintiff's billing practices and snowfall data. Furthermore, plaintiff destroyed the records of time and material expended on defendant's properties and could not reproduce them. Even if shredding these records was the routine practice for plaintiff, as Kamila testified to at trial, this evidence would provide the circuit court a legitimate reason to doubt plaintiff's credibility on certain matters. One such matter could be Krzysztof's communications with Kavuri and their assertions that the cumulative seasonal snowfall had exceeded 45 inches. This is not to say this *was* the court's reason, or even in its calculus, for finding that plaintiff had failed to meet its burden of proof. But as the record on appeal fails to contain the court's reasons for finding in favor of defendant, we only have conjecture as to why the court ruled as it did. Given the absence of the court's reasons and the record of the trial as exhibited in the bystander's report, we have no basis to reverse its judgment. See *id.*

¶ 44 Plaintiff additionally argues the circuit court improperly found that defendant raised a timely objection to the disputed invoices. As previously mentioned, the parties' contracts contained a condition that required defendant to submit to plaintiff in writing any dispute concerning an invoice within 15 days of the date of the invoice. We first note that we do not know if plaintiff's assertion is correct. The court's factual findings are not included in the record on appeal, and "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Id.* at 156.

¶ 45 Furthermore, plaintiff neither cites any case law nor develops a coherent legal argument as to how defendant's alleged failure to timely object renders it liable for the entire amounts claimed. As the reviewing court, we are "entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented." (Internal quotation marks omitted.) *Bartlow v. Costigan*, 2014 IL 115152, ¶ 52. We are "not a depository in which the appellant may dump the burden of argument and research." *First Mercury Insurance Co. v. Nationwide Security Services, Inc.*, 2016 IL App (1st) 143924, ¶ 21. On this basis, we could find that plaintiff has forfeited any argument concerning the legal significance of defendant's alleged failure to timely object to the invoices. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

¶ 46 Regardless, even overlooking the aforementioned deficiencies in plaintiff's argument, it is not entitled to relief based on defendant's alleged failure to timely object to the invoices. Plaintiff appears to be invoking the doctrine of an account stated, which is " 'defined as an agreement between parties who have had previous transactions that the account representing those transactions is true and that the balance stated is correct, together with a promise, express or implied, for the payment of such balance.' " *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 56 (quoting *W.E. Erickson Construction, Inc. v. Congress-Kenilworth Corp.*, 132 Ill. App. 3d 260, 267 (1985)). "Where a statement of account is rendered by one party to another and is retained by the latter beyond a reasonable time without objection, this constitutes a recognition by the latter of the correctness of the account and establishes an account stated." *W.E. Erickson Construction*, 132 Ill. App. 3d at 267. However, an account stated determines only "the amount of the debt where a liability exists, and cannot be made to create a liability *per se* where none before existed." (Internal quotation marks omitted.) *Dreyer Medical Clinic, S.C. v. Corral*, 227 Ill. App. 3d 221, 226 (1992).

¶ 47 In this case, as already discussed, the circuit court's finding that plaintiff had failed to prove defendant breached the contracts was not against the manifest weight of the evidence. Thus, the court properly found that defendant was not liable for a breach of the contracts. Without liability in the first instance, plaintiff cannot establish an account stated. See *id.* at 226-27 (holding that where the circuit court "found that plaintiff failed to prove any liability of defendants, *** plaintiff could not establish an account stated").

¶ 48 Plaintiff further argues that, even if it failed to meet its burden of proof at trial, the circuit court ignored the undisputed evidence that showed it performed various services for defendant, who then failed to pay for those services. Similar to plaintiff's previous argument, it neither cites any case law nor develops a coherent legal argument to support this assertion. On this basis alone, we could find that plaintiff has forfeited this argument. See Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017).

¶ 49 Regardless, even overlooking plaintiff's forfeiture, it is not entitled to relief based on this undisputed evidence at trial. Plaintiff appears to be invoking the doctrine of unjust enrichment. "Under the doctrine of unjust enrichment, a plaintiff must show that the defendant has 'unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience.' " *Chicago Title Insurance Co. v. Teachers' Retirement System*, 2014 IL App (1st) 131452, ¶ 17 (quoting *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989)). Under this doctrine, the plaintiff need not prove fault or illegality by the defendant, rather only that the defendant was enriched and that it would be unjust for that party to retain the enrichment. *National Union Fire Insurance Co. of Pittsburgh, PA v. DiMucci*, 2015 IL App (1st) 122725, ¶ 67. However, a claim concerning unjust enrichment is inappropriate here because the doctrine "is

inapplicable where an express contract, oral or written, governs the parties' relationship." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25. And here clearly, there are two written contracts governing the parties' relationship.

¶ 50 In sum, based on the limited evidence before us, the circuit court had a proper evidentiary basis for finding in favor of defendant after trial. Therefore, its finding was not against the manifest weight of the evidence. Accordingly, we must affirm its judgment.

¶ 51 Plaintiff lastly contends that the circuit court's ruling that it failed to meet its burden of proof was an abuse of discretion. As previously discussed, whether the defendant has breached a contract is a question of fact, one we will not reverse unless the circuit court's finding was against the manifest weight of the evidence. *Orlich*, 2012 IL App (1st) 112974, ¶ 35; *Covinsky*, 388 Ill. App. 3d at 483. Thus, the proper standard of review in this case is the manifest-weight-of-the-evidence standard, not the abuse-of-discretion standard. Accordingly, we need not discuss this contention any further.

¶ 52 III. CONCLUSION

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

¶ 54 Affirmed.