2014 IL App (2d) 130982-U
No. 2-13-0982
Order filed May 20, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

BOARD OF MANAGERS OF HIDDEN LAKE TOWNHOME OWNERS ASSOCIATION, Plaintiff-Appellant, v. GREEN TRAILS IMPROVEMENT ASSOCIATION, Defendant and Third-Party Plaintiff-Appellee (The Ryland Group, Inc., Third-Party Defendant).	)	Appeal from the Circuit Court of Du Page County. No. 06-MR-50 Honorable Terence M. Sheen, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied plaintiff's request for further relief based upon a declaratory judgment entered in its favor where the undisputed facts permitted only one valid inference—that plaintiff did not involuntarily pay annual assessments under duress; however, the trial court erred in denying plaintiff restitution for annual assessments paid in reliance on trial court's judgment that was reversed.

¶ 2 Plaintiff, Board of Managers of Hidden Lake Townhome Owners Association (Hidden Lake), appeals from the denial of its request for further relief based upon a declaratory judgment entered in its favor and against defendant, Green Trails Improvement Association (Green Trails). The declaratory judgment ruled that a license agreement (agreement) between Green Trails and The Ryland Group, Inc. (Ryland), the developer of the Hidden Lake townhome community, did not obligate Hidden Lake property owners to pay annual assessments to Green Trails for use of its paths and common areas. As further relief pursuant to section 2-701(c) of the Declaratory Judgment Act (Act) (735 ILCS 5/2-701(c) (West 2010)), Hidden Lake sought to recover annual assessments paid to Green Trails from 2006 to 2010. For the following reasons, we affirm in part and reverse in part the trial court's denial of Hidden Lake's request.

¶ 3 I. BACKGROUND

¶ 4 Hidden Lake is a community of 88 townhomes in Lisle, Illinois, bordering the Green Trails master plan development. Green Trails consists of 744 acres encompassing a number of residential subdivisions. Green Trails owns and maintains common areas and 25 miles of paved trails for walking, biking, and jogging throughout the development. All of the property owners within Green Trails are association members who pay annual assessments. In 1997, when Ryland was developing Hidden Lake, it entered into the agreement with Green Trails, under which Hidden Lake property owners would become "affiliate members" of the association with the right to access Green Trails' property. The affiliate members were to pay annual assessments equal to 90% of the annual assessment paid by members.

¶ 5 This is the second appeal in this matter. This court's opinion in the prior appeal details the background of the dispute, and we need not recount those facts except to the extent necessary to resolve the present appeal. *Board of Managers of Hidden Lake Townhome Owners Ass'n v.*

Green Trails Improvement Ass'n, 404 Ill. App. 3d 184, 187-89 (2010) (*Hidden Lake I*). Pertinent to the current appeal, in January 2006, Hidden Lake sued Green Trails seeking a declaratory judgment that the agreement was not binding on Hidden Lake property owners (count I). Hidden Lake further alleged that Green Trails' retention of annual assessments paid pursuant to the agreement constituted unjust enrichment (count II). Following a bench trial, the court entered judgment in Green Trails' favor on both counts.

¶ 6 On appeal, this court held that the agreement created a license, not a covenant running with the land, and that the agreement was not binding on Hidden Lake property owners because Ryland never took the necessary step of amending the Hidden Lake declaration of covenants to incorporate the agreement. *Hidden Lake I*, 404 Ill. App. 3d at 190-93. Accordingly, we reversed the trial court's judgment on count I and remanded with directions to enter declaratory judgment in Hidden Lake's favor. *Hidden Lake I*, 404 Ill. App. 3d at 197. We affirmed the judgment on count II. *Hidden Lake I*, 404 Ill. App. 3d at 195. We agreed with the trial court that there was no unjust enrichment where the annual assessment of $153 was less than the benefit each Hidden Lake property owner received under the agreement. *Hidden Lake I*, 404 Ill. App. 3d at 194.

¶ 7 On remand, Hidden Lake filed a motion for further relief pursuant to section 2-701(c) of the Act. Hidden Lake relied on the following undisputed facts. In June or July 2005, William Dramel, as Hidden Lake's representative, informed Green Trails that the agreement was not binding on Hidden Lake property owners because it had not been incorporated into the Hidden Lake declaration of covenants. Hidden Lake property owners voted to file a declaratory judgment action against Green Trails, which Hidden Lake filed in January 2006. At trial, Peter Bakas, the president of Green Trails, testified that Green Trails had the right to place liens on Hidden Lake property if the owners failed to pay annual assessments. To that end, the agreement

provided that "[a]ll sums assessed against a lot shall constitute a lien on the lot prior to all other liens except all sums unpaid on a bona fide first mortgage (or trust deed) lien of record against such lot." Bakas further testified that Hidden Lake property owners began protesting payment of the assessments in July 2005. Additionally, Green Trails' real estate expert, Kenneth Polach, testified that the average value of properties in Hidden Lake was approximately $300,000. Annual assessments charged by Green Trails on Hidden Lake properties ranged from $117 in 1997 to $153 in 2009. In 2007, owners of 20 of the 88 Hidden Lake properties designated their payments as "under protest." From 2006 to 2010, during the pendency of the litigation, Hidden Lake property owners paid annual assessments to Green Trails totaling $64,806.

¶ 8 As further relief pursuant to section 2-701(c) of the Act, Hidden Lake sought to recover all annual assessments paid to Green Trails from 2006 to 2010. Hidden Lake contended that its owners protested the assessments and paid them under duress. According to the motion, the assessments were paid under duress because the agreement gave Green Trails the right to place liens on Hidden Lake property. Hidden Lake maintained that, given the high value of Hidden Lake properties, the "prudent course of action" was to pay the assessments until the litigation over the agreement was resolved. According to Hidden Lake, litigating the validity of individual liens placed on Hidden Lake properties while the litigation was pending "would have made no judicial or practical sense."

¶ 9 Green Trails responded that (1) Hidden Lake's request for further relief was barred by the law of the case, (2) Hidden Lake's arguments regarding payments made under duress and protest were irrelevant because Green Trails had not asserted the affirmative defense of voluntary payment, (3) Hidden Lake had waived its arguments, and (4) Hidden Lake's request for further relief was barred by *laches*. Green Trails maintained that this court's affirmance of the judgment

in its favor on count II of Hidden Lake's complaint, which alleged unjust enrichment, was the law of the case and precluded Hidden Lake from seeking recovery of annual assessments paid. In its reply, although not previously raised by Green Trails, Hidden Lake additionally argued that its request for further relief was not barred by *res judicata*.

¶ 10 On March 7, 2012, the trial court denied Hidden Lake's motion in a written order. The court concluded that, under the law-of-the-case doctrine, it was bound by this court's determination that there was no unjust enrichment and could not grant further relief under that theory. It then noted that recovering annual assessments based on the theory that assessments were involuntarily paid under duress or protest was not "appropriate for this case." The court reasoned, first, that there was "no agreement or procedure for a refund of payments made under protest" and, second, that "the voluntary payment doctrine is an affirmative defense which is asserted in response to a claim" and which Green Trails had not pleaded. The court indicated that it did not need to consider issues of duress, *res judicata*, waiver, or *laches*. The court concluded, "If Hidden Lake did not want to make payments for the duration of litigation, Hidden Lake could have simply not made payment, moved for injunctive relief, and/or moved for a stay of enforcement of judgment."

¶ 11 In its March 7, 2012, order, in addition to denying Hidden Lake's request for further relief, the court entered judgment in Hidden Lake's favor on count I of its complaint, in accordance with this court's mandate in *Hidden Lake I*.[1]

[1] In fact, because the trial court did not enter declaratory judgment in Hidden Lake's favor until March 7, 2012, Hidden Lake's request for further relief pursuant to section 2-701(c) technically was premature, as no declaratory judgment had yet been entered. Nevertheless, in exercising its discretion to choose an appropriate remedy in a declaratory judgment action, a trial

¶ 12 Hidden Lake timely appealed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Hidden Lake argues that the court erred in denying its request for further relief pursuant to section 2-701(c) of the Act. Hidden Lake maintains that the annual assessments its property owners involuntarily paid under duress or protest are recoverable even in the absence of unjust enrichment. It alternatively contends that "equity requires a refund." At a minimum, Hidden Lake argues, it is entitled to restitution for payments made after May 11, 2009, the date of the trial court's judgment upholding the agreement, which this court reversed in *Hidden Lake I*.

¶ 15 Section 2-701(c) of the Act provides:

> "If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined by the declaration to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order." 735 ILCS 5/2-701(c) (West 2010).

The further relief contemplated by this section is not limited to further declaratory relief. *Pacemaker Food Stores, Inc. v. Seventh Mont Corp.*, 143 Ill. App. 3d 781, 785 (1986). Rather,

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court may grant consequential relief, and should do so if necessary and proper for determination of the controversy before it. *Mayfair Construction Co. v. Waveland Associates Phase I Ltd.*, 249 Ill. App. 3d 188, 205 (1993). Because the trial court had the authority to grant the relief Hidden Lake requested whether it was "further relief" or "consequential relief," we choose to overlook this procedural technicality.

further relief may include assessment of damages or other affirmative relief. *Pacemaker Food Stores, Inc.*, 143 Ill. App. 3d at 785 (citing Ill. Ann. Stat., ch. 110, ¶ 2-701, Historical and Practice Notes, at 13 (Smith-Hurd 1983)). The statute is not limited to relief previously requested but contemplates something further based upon a declaration of right. *Burgard v. Mascoutah Lumber Co.*, 6 Ill. App. 2d 210, 219 (1955). "[T]he statute permits a party to petition for such further relief as may be appropriate after the declaration of rights, although not previously prayed for by a complaint or counterclaim." *Burgard*, 6 Ill. App. 2d at 219; see also *Pacemaker Food Stores, Inc.*, 143 Ill. App. 3d at 785 (quoting *Burgard*); *Myers v. Mundelein College*, 331 Ill. App. 3d 710, 715-16 (2002) (holding that a plaintiff who succeeded in obtaining a declaratory judgment was permitted to seek additional relief in the form of money damages).

¶ 16 Because the trial court decided the issue of Hidden Lake's entitlement to further relief as a question of law, based solely on the pleadings and without an evidentiary hearing, our standard of review is *de novo*. See *Rico Industries, Inc. v. TLC Group, Inc.*, 2014 IL App (1st) 131522, ¶ 14 (reviewing *de novo* a decision on a motion for judgment on the pleadings); *Steadfast Insurance Co. v. Caremark Rx, Inc.*, 373 Ill. App. 3d 895, 898-99 (2007) (reviewing *de novo* a ruling on a motion for restitution where no evidentiary hearing was held).

¶ 17 A. Doctrines of *Res Judicata*, Law of the Case, Waiver, and *Laches*

¶ 18 We first address the threshold issues of *res judicata*, law of the case, waiver, and *laches*. Green Trails contends that Hidden Lake's request for further relief is barred by *res judicata* because (1) a final judgment was entered in Green Trails' favor on Hidden Lake's claim for unjust enrichment, (2) the cause of action underlying the claim for unjust enrichment is the same cause of action underlying the claim for further relief, and (3) the parties are the same.

¶ 19 Under the doctrine of *res judicata*, before a judgment will stand as a bar to subsequent actions, the first action must result in a final judgment on the merits. *Relph v. Board of Education of Depue Unit School District No. 103*, 84 Ill. 2d 436, 441 (1981). A final judgment is one that determines the litigation on the merits so that if affirmed the only thing left to do is to execute the judgment. *Relph*, 84 Ill. 2d at 441. As long as a judgment remains subject to appellate review, it is not final for purposes of *res judicata*. *Relph*, 84 Ill. 2d at 441-42 (1981); see also *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 860 (2000) ("Where a judgment remains subject to the appellate process, it is not to be given *res judicata* effect."). Where an appellate court has remanded a case to the trial court with directions to enter a judgment, the judgment entered remains subject to the appellate process, which forecloses application of *res judicata*. *Relph*, 84 Ill. 2d at 441-42.

¶ 20 In *Hidden Lake I*, this court remanded the matter to the trial court with directions to enter declaratory judgment in Hidden Lake's favor on count I of its complaint. Accordingly, there has been no final judgment for purposes of *res judicata*. The trial court's judgment on remand remained subject to the appellate process. Indeed, the trial court entered declaratory judgment in Hidden Lake's favor on count I of its complaint in the same order in which it denied Hidden Lake's request for further relief. Until the appellate process in this action has been exhausted, *res judicata* does not apply.

¶ 21 Green Trails also argues that Hidden Lake's request for further relief is barred by the law of the case. Generally, the law-of-the-case doctrine bars relitigation of an issue previously decided in the same case. *Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006). An appellate court's determination of a question of law in a first appeal ordinarily is binding upon the trial court on remand and upon the appellate court in subsequent appeals. *Krautsack*, 223 Ill. 2d at

552. Where a new issue is presented to the trial court on remand, however, the law-of-the-case doctrine is inapplicable. *Scheffel & Co., P.C., v. Fessler*, 356 Ill. App. 3d 308, 313 (2005).

¶ 22 In *Hidden Lake I*, this court affirmed the judgment in Green Trails' favor on Hidden Lake's unjust enrichment count. That ruling established the law of the case and barred relitigation of the issue of unjust enrichment on remand and in any subsequent appeals to this court. However, the issue Hidden Lake raised on remand—its entitlement to further relief in the form of recovery of annual assessments involuntarily paid under duress or protest—was a new issue that neither the trial court nor this court had previously addressed. Therefore, the law-of-the-case doctrine is inapplicable.

¶ 23 Green Trails also contends that Hidden Lake waived its right to recover involuntary payments made under duress or protest because it failed to plead this theory in its complaint or to raise it before the trial court prior to the appeal in *Hidden Lake I*. As noted above, however, the "further relief" provision in section 2-701(c) is not limited to relief previously sought but contemplates something further based upon a declaration of right. *Burgard*, 6 Ill. App. 2d at 219. "[T]he statute permits a party to petition for such further relief as may be appropriate after the declaration of rights, although not previously prayed for by a complaint or counterclaim." *Burgard*, 6 Ill. App. 2d at 219.

¶ 24 Additionally, Green Trails contends that Hidden Lake's new theory of recovery—involuntary payment under duress or protest—is barred by *laches*. In order to invoke the equitable doctrine of *laches*, a party must establish "lack of due diligence by the party asserting the claim and prejudice to the opposing party." (Internal quotation marks omitted.) *Ertl v. City of De Kalb*, 2013 IL App (2d) 110199, ¶ 28. Green Trails' one-paragraph argument addressing

laches conclusorily asserts that "Hidden Lake cannot be allowed to assert a new theory of litigation after a full bench trial and a fully-complete appeal."

¶ 25 Green Trails has forfeited the issue of *laches* by failing to offer any argument as to how it was prejudiced by Hidden Lake's alleged untimely assertion of its new theory. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (requiring appellate briefs to contain argument supported by citation to authority and to the record); *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) (stating that "this court will not become the advocate for, as well as the judge of, points an appellant seeks to raise"). Even if Green Trails had not forfeited the issue, section 2-701(c) of the Act contemplates a party seeking further relief *after* a declaratory judgment has been entered in its favor, and, here, Hidden Lake filed its motion for further relief immediately after this court's mandate issued in *Hidden Lake I*, which would mean its motion was timely. We fail to see how Hidden Lake's claim could be barred by *laches*. See *Myers*, 331 Ill. App. 3d at 712 (addressing a request for further relief filed approximately six months following entry of declaratory judgment); *Americana Nursing Homes, Inc. v. City of Rockford*, 53 Ill. App. 2d 447, 449-51 (1964) (holding that the trial court had jurisdiction to grant further relief based on declaratory judgment entered 14 months earlier).

¶ 26 B. Involuntary Payment

¶ 27 Hidden Lake argues that the trial court erroneously determined that recovery of annual assessments involuntarily paid under duress or protest was not "appropriate for this case." According to Hidden Lake, money paid involuntarily under duress or protest is recoverable. Green Trails responds that issues of duress and protest are relevant only to negate the affirmative defense of voluntary payment where it has been asserted, which Green Trails has not done.

¶ 28 Contrary to Green Trails' position, the issue of whether payments were made under duress is not relevant only where a defendant has asserted the affirmative defense of voluntary payment. The right to recover money paid under duress has long existed in Illinois and can be traced back to the English common law. See *Edward P. Allison Co. v. Village of Dolton*, 24 Ill. 2d 233, 234 (1962) (involving "an action to recover money allegedly paid under duress to defendant"); *Illinois Glass Co. v. Chicago Telephone Co.*, 234 Ill. 535, 540-542 (1908) (involving an action to recover money paid in excess of the rate fixed by ordinance); *Bradford v. City of Chicago*, 25 Ill. 411 (1861) (involving an action to recover money paid under a void assessment and tracing cases back to English common law). In *Illinois Glass Co.*, the supreme court discussed the rules applicable to such claims:

> "It has been a universally recognized rule that money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal. It has been deemed necessary not only to show that the claim asserted was unlawful, but also that the payment was not voluntary, that there was some necessity which amounted to compulsion, and payment was made under the influence of such compulsion. The ancient doctrine of duress of person, and later of goods, has been much relaxed, and extended so as to admit of compulsion of business and circumstances ***." *Illinois Glass Co.*, 234 Ill. at 541.

The court further stated, "In order to render a payment compulsory, such a pressure must be brought to bear upon the person paying as to interfere with the free enjoyment of his rights of person or property, and the compulsion must furnish the motive for the payment sought to be avoided." *Illinois Glass Co.*, 234 Ill. at 543. Although generally the issue of duress or

compulsion is one of fact for the trier of fact, where the facts are not in dispute and only one valid inference can be drawn from the facts, the issue can be decided as a matter of law. *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 850 (1995).

¶ 29 In *United Private Detective & Security Ass'n, Inc. v. City of Chicago*, 56 Ill. App. 3d 242 (1977), the plaintiffs were private detectives and detective agencies who, in a separate action, had successfully challenged the constitutionality of an ordinance requiring payment of license fees. *United Private Detective*, 56 Ill. App. 3d at 243. The plaintiffs then filed a lawsuit seeking to recover fees paid pursuant to the invalid ordinance. *United Private Detective*, 56 Ill. App. 3d at 243. The plaintiffs prevailed on their claim in the trial court, and, on appeal, the defendants argued that the plaintiffs' complaint failed to state a cause of action. *United Private Detective*, 56 Ill. App. 3d at 244. The appellate court disagreed, reasoning that the complaint alleged facts showing that the payments were made under compulsion. *United Private Detective*, 56 Ill. App. 3d at 244. The court noted that the ordinance authorized fines of $1,000 and/or six months' imprisonment for each day of operation without a license. *United Private Detective*, 56 Ill. App. 3d at 244. The court concluded that, because the plaintiffs alleged that the severe statutory penalties—which threatened the viability of the plaintiffs' businesses and which the defendants had "attempted" to enforce—were the "controlling motive" for their payment of the license fees, the complaint stated a cause of action for recovery of payments made under duress. *United Private Detective*, 56 Ill. App. 3d at 244-45.

¶ 30 Here, in its motion for further relief pursuant to section 2-701(c) of the Act, Hidden Lake argued that the annual assessments from 2006 to 2010 were paid under duress because Green Trails had the ability under the agreement to place liens on Hidden Lake properties for failure to pay assessments. It further argued that, given the relatively modest amount of the annual

assessments ($153) in comparison to the average value of Hidden Lake properties ($300,000), the "prudent course of action" was to pay the assessments until the litigation over the agreement was resolved. Hidden Lake maintained that litigating the validity of individual liens while the present litigation remained pending "would have made no judicial or practical sense."

¶ 31 At most, Hidden Lake's motion permits the inference that its property owners paid the annual assessments from 2006 to 2010 as a matter of convenience and good sense—to avoid having to litigate the validity of any liens that might have been imposed—not as a matter of compulsion. In order to establish compulsion, "[t]here must be some actual or threatened power wielded over the payor from which he has no immediate relief and from which no adequate opportunity is afforded the payor to effectively resist the demand for payment." *Smith*, 276 Ill. App. 3d at 849. The actual or threatened exercise of power "must furnish the motive for the payment sought to be avoided." *Illinois Glass Co.*, 234 Ill. at 543. The facts of *United Private Detective* provide a good example of circumstances necessitating payment under duress. Had the plaintiffs in that case not paid the license fees, the severe statutory penalties could have put them out of business before they had an opportunity to challenge the ordinance's validity.

¶ 32 The undisputed facts in this case do not establish circumstances necessitating payment under duress. Nothing in Hidden Lake's motion suggests that Green Trails ever imposed liens upon Hidden Lake properties or even threatened to do so. While the "prudent course of action" may have been to pay the assessments until the litigation over the agreement was resolved, this was not the only course of action available to Hidden Lake property owners and was not compelled under the circumstances. See *Conkling v. City of Springfield*, 132 Ill. 420, 424 (1890) ("Had the taxes been demanded by the collector, and after demand he had attempted to levy on personal property, and, to avoid a levy and sale, the plaintiff had paid under protest, then he

might well insist that the payment was made by compulsion; but such is not the case."); see also *School of Domestic Arts & Science v. Harding*, 331 Ill. 330, 333 (1928) (holding that payment of invalid real estate taxes to prevent a sale of the property is voluntary because the owner would "be enabled to avail himself of a remedy to contest the validity of the taxes"). There was no immediate threat to the owners' property interests comparable to the threat to the plaintiffs' businesses in *United Private Detective*.

¶ 33 While Hidden Lake is correct that the agreement permitted Green Trails to foreclose liens against Hidden Lake properties or to file actions for possession pursuant to the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* (West 2012)) if assessments remained unpaid, the mere existence of these provisions did not establish compulsion. See *School of Domestic Arts & Science*, 331 Ill. at 332-33 (holding that a provision in a trust deed permitting the institution of foreclosure proceedings in the event of a sale of the property for unpaid taxes did not render payment of taxes compulsory). "Ordinarily, payment made pursuant to threat of litigation or to prevent the bringing of a legal action is regarded as voluntary [citations] for the reason that an ample remedy by way of defense to the suit would exist and because no loss could occur until the lawsuit was instituted and proceeded to judgment." *Smith*, 276 Ill. App. 3d at 851-52. Had Green Trails placed liens against Hidden Lake properties and initiated foreclosure or forcible-entry-and-detainer actions, the property owners could have raised the defense that the agreement was not binding on them. In addition, the property owners could have moved to stay those actions pending resolution of this case. See *Couri v. Korn*, 203 Ill. App. 3d 1091 (1990) (affirming the stay of a foreclosure action pursuant to section 2-619(a)(3) of the Code of Civil Procedure pending resolution of another action challenging an assignment of the mortgage at issue).

¶ 34 Given the absence of any indication of compulsion, Hidden Lake's arguments regarding its property owners' protests also are unavailing. While protest can be evidence of compulsion and unwillingness to pay in certain circumstances, protest in the absence of other evidence of compulsion does not establish a right to recover payments. See *Smith*, 276 Ill. App. 3d at 849 ("Evidence of protest *** does not conclusively establish compulsion where [the surrounding] circumstances disprove payment under compulsion."); *Conkling*, 132 Ill. at 423-24 (holding that taxes paid under protest were not recoverable where there was no evidence of compulsion). Moreover, contrary to Hidden Lake's argument, the filing of its lawsuit against Green Trails in 2006 did not automatically establish that all subsequent payments were made under protest. If anything, payments made *after* the lawsuit challenging the agreement was filed tended to show "relinquishment of any prior claim under that complaint," not protest or compulsion. *Smith*, 276 Ill. App. 3d at 851 ("We greet with general skepticism Plaintiffs' contention that a complaint filed three days before payment is evidence of protest. If anything, a subsequent payment would constitute evidence of relinquishment of any prior claim under that complaint.").

¶ 35 C. Equity

¶ 36 Hidden Lake alternatively argues that equity requires a refund. The only authority it cites is *Kanter & Eisenberg v. Madison Associates*, 116 Ill. 2d 506, 512 (1987), for the proposition that "it is the first duty of all courts of equity to consider the equities of the case." Hidden Lake contends that its property owners "were unwitting participants in the agreement" who "prudently sought to protect their property during the pendency of the litigation."

¶ 37 Hidden Lake's argument is not supported by relevant authority and is not adequately developed. Therefore, it is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) (requiring appellate briefs to contain argument supported by citation to authority and to the record); *Skidis*,

309 Ill. App. 3d at 724 (stating that "this court will not become the advocate for, as well as the judge of, points an appellant seeks to raise"). Even if it were not forfeited, the argument lacks merit, given that in *Hidden Lake I*, this court held that Hidden Lake was not entitled to recovery under the equitable remedy of unjust enrichment. As our discussion in *Hidden Lake I* regarding the value of the benefits Hidden Lake received under the agreement suggests, the equities do not weigh in its favor.

¶ 38 D. Restitution

¶ 39 Hidden Lake's final argument is that, at a minimum, it is entitled to restitution for annual assessments paid after May 11, 2009, the date of the trial court's decision upholding the agreement, which this court reversed in *Hidden Lake I*.

¶ 40 "Upon the reversal of a judgment, a party that has received benefits from the erroneous judgment must make restitution." *West Suburban Bank v. Lattemann*, 285 Ill. App. 3d 313, 316 (1996). "The trial court's power to order restitution is inherent in its jurisdiction over the case [citation] and the duty to enforce restitution does not depend on any direct order from the appellate court [citations]." *West Suburban Bank*, 285 Ill. App. 3d at 316. "The purpose of restitution is to 'restore, so far as possible, the parties to their former position.' " *West Suburban Bank*, 285 Ill. App. 3d at 316 (quoting *Watkins v. Dunbar*, 318 Ill. 174, 178 (1925)).

¶ 41 The trial court declined to order restitution because, in its words, "Hidden Lake owners enjoyed the benefits of the affiliation with Green Trails at least until the Appellate Court's decision and until this court makes the declaration that no covenant exists." It appears that the trial court believed that restitution was not warranted because of its earlier determination (which this court affirmed) that Hidden Lake was not entitled to the remedy of unjust enrichment. However, restitution upon reversal of a judgment is not discretionary. See *Williamsburg v.*

Village Owners' Ass'n, Inc. v. Lauder Associates, 200 Ill. App. 3d 474, 483 (1990) ("[I]n Illinois it is well settled that upon the reversal of a judgment, under which one of the parties has received benefits, he is under an obligation to make restitution."). Therefore, we agree with Hidden Lake that it is entitled to restitution of any annual assessments paid to Green Trails after May 11, 2009, the date of the trial court's judgment. We reverse the trial court's judgment insofar as it declined to award restitution on this basis. However, we note that any payments made after Hidden Lake received notice of this court's decision in *Hidden Lake I* were made at Hidden Lake's peril and are not recoverable, as Hidden Lake knew at that point that it was under no obligation to make payments. Because the record does not disclose the amount of annual assessments Hidden Lake property owners actually paid after May 11, 2009, but before it received notice of the decision in *Hidden Lake I*, we remand for further proceedings to determine the amount and to enter the appropriate judgment in Hidden Lake's favor.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm in part and reverse in part the judgment of the circuit court of Du Page County and remand for further proceedings.

¶ 44 Affirmed in part, reversed in part; cause remanded.