2016 IL App (3d) 150723-U

Order filed December 6, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

LANDMARK ENGINEERING GROUP, INC.,	)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois.
Plaintiff-Appellee,	)	
	)	Appeal No. 3-15-0723
v.	)	Circuit No. 10-AR-78
	)	
DONNA HOLEVOET,	)	
	)	Honorable Jeffrey O'Connor,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred when it found a binding oral contract. The parties' original contract required all modifications to be in writing and signed by all parties.

¶ 2 On March 4, 2008, defendant, Donna Holevoet, entered into a written contract with plaintiff, Landmark Engineering Group, Inc. (Landmark). Pursuant to the contract, which was drafted by Landmark, Landmark was to perform survey work and develop a preliminary subdivision plat for a parcel of land Holevoet owned in rural Henry County. Landmark claims

Holevoet gave verbal authorization for it to perform additional work on the parcel during a July 22, 2008, phone conference. After the phone call, Landmark sent Holevoet a written contract addendum outlining the additional work. Holevoet never signed or returned the contract addendum.

¶ 3 Landmark performed the additional work, and when Holevoet refused to pay, Landmark filed suit for breach of contract. Following a one day bench trial, the trial court found in favor of Landmark. Holevoet appeals, arguing there was no enforceable contract because she never signed the written contract addendum. Alternatively, she argues the court's damage award was not based on any evidence and violated Illinois Supreme Court Rule 222 (eff. July 1, 2006). We reverse.

¶ 4 FACTS

¶ 5 In 1997, Holevoet and her sister, Marie Howson, inherited a 100-acre parcel of land in rural Henry County near Wolfe Creek. The front 60 acres of the parcel were zoned for agricultural use, while the back 40 acres were zoned for residential use. The only ingress and egress to the back 40 acres was via a road that bisected the front 60-acre portion of the parcel. At all relevant times, Holevoet lived in Hawaii and Howson lived in Connecticut.

¶ 6 On March 4, 2008, Holevoet entered into a written contract with Landmark. The contract (hereinafter "the original contract") was designated as Landmark Engineering Group project 01-07-645, and was also referred to as the Wolfe Creek project. Pursuant to the original contract, Landmark agreed to provide various services including performing a topographical and boundary survey of the entire 100-acre parcel, preparing a site plan, preliminary plat, and preliminary design for a subdivision on the residential portion of the parcel, submitting the preliminary plat to Henry County for preliminary approval, and submitting the preliminary design to the Henry

County Highway Department for access review and approval. The parties referred to the documents called for under the contract as the "deliverables." Pursuant to the original contract, Holevoet agreed to pay Landmark on a time and material basis, and Landmark estimated a cost of $15,000.

¶ 7 Two pages of "General Conditions" were incorporated into the original contract. One of those general conditions stated as follows:

> "COMPLETE AGREEMENT—AMENDMENTS: This contract constitutes the entire contract between the parties and supersedes all agreements, purchase orders, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof. No party hereto shall be bound by or charged with any oral or written agreements, representations, warranties, statements, promises or understandings not specifically set forth in the contract or the exhibits hereto. This contract may not be amended, altered or modified except in writing signed by all parties."

¶ 8 On July 22, 2008, Holevoet and Howson initiated a conference call with Landmark president, Michael Shamsie, and another Landmark employee, Jim Faetanini. After the phone conversation (the topic of which is heavily disputed by the parties), Landmark mailed Holevoet a written contract addendum dated July 21, 2008, and titled "Contract Addendum #1 for Wolfe Creek Subdivision." The addendum contained the same project number as the original contract and called for Landmark to perform various additional tasks, including (1) a hydrology and hydraulic analysis, (2) a final design for a subdivision layout, (3) a design review for septic

systems designs, and (4) a plan submittal to Henry County officials for preliminary approval. The addendum recited an estimated cost of $12,000. It also referred to the aforementioned "General Conditions," and sought to incorporate them by reference. The addendum contained signature blocks for both Holevoet and Shamsie. Holevoet never executed the written addendum.

¶ 9 Between July 22 and September 23, 2008, Landmark sent a number of documents to Holevoet via e-mail, including a site drainage analysis, storm water prevention plan, design report, site plan, site grading plan, preliminary plat, final plat, subdivision plan, and wetland design report. Holevoet testified that when she received these documents, she believed they were the deliverables called for by the original contract, which were necessary for closing on the sale of the 60 agricultural acres. Holevoet forwarded each document to her real estate attorney. The sale of the agricultural parcel closed on September 17, 2008.

¶ 10 On September 22, 2008, Holevoet received an invoice from Landmark for $24,162.75 for work allegedly performed between July 5 and August 31, 2008. Holevoet felt the invoice was a mistake and sent Shamsie and Faetanini an e-mail telling them to stop all work.

¶ 11 On September 24, 2008, Faetanini sent Holevoet an e-mail stating Landmark had met with Henry County officials on September 15. The e-mail summarized the discussions had at the meeting and informed Holevoet that Landmark was not currently working on the project.

¶ 12 On September 30, 2008, Holevoet sent both a letter and another e-mail indicating there had been an invoice error for $24,000, and she did not want to proceed with any county approvals or meetings until the misunderstanding could be resolved. She claimed the invoice far exceeded any reasonable expectation of additional work, and neither she nor her sister had

approved any additional work above and beyond the original contract. Howson sent a similar e-mail reiterating that Landmark was not to continue working on the project.

¶ 13 Shamsie responded by telling Holevoet that he could notify the county to pull the project from its meeting agenda if that is what she wanted, but that the "value was in the Preliminary Plat approval," which he thought she should complete.

¶ 14 On November 4, 2008, Holevoet received another invoice from Landmark for $17,013.21, stating it was for Landmark's professional services performed between October 1 and October 31, 2008.

¶ 15 On November 14, 2008, Shamsie sent Holevoet a detailed letter outlining the progression of the Wolfe Creek project. In the letter, Shamsie stated that Landmark had completed the deliverables under the original contract on July 14, 2008. Landmark had presented those materials to Henry County, and Henry County had requested that a more in depth and near final design be completed so that it could better understand the full impacts of the subdivision on the county. After meeting with Henry County officials, Landmark prepared the written addendum, and discussed the contents of the addendum with Holevoet and Howson during the July 22 phone conference, at which time Landmark's understanding was that the additional work was to be carried out in order to gain county approval.

¶ 16 Upon completion of the work outlined in the addendum, Landmark again met with Henry County officials. At that time, the county determined that the use of conventional septic systems was not going to be acceptable for all lots, so Landmark had to investigate and evaluate other options. After presenting several alternative ideas, Henry County agreed to support the project, and Landmark redesigned the subdivision to meet Henry County's approval. Landmark estimated that the cost for the redesign was approximately $35,000.

¶ 17 On November 23, 2008, Holevoet responded to Shamsie's letter. Holevoet stated that the objective of the original contract was to protect she and her sister in the sale of the agricultural portion of the property. She claimed they had neither the resources nor the desire to get final county approval for the residential portion of property. Holevoet did not receive any indication during the July 22 phone call that Landmark was performing additional work. She was mainly concerned that she had not received the deliverables from the original contract or a final invoicing. Holevoet concluded the letter by stating that she would be forwarding a check for $3,330.50, which was the balance owed for work done within the scope of the original contract.

¶ 18 On October 13, 2010, Landmark filed a three count verified complaint against Holevoet in the circuit court of Henry County. Count I alleged breach of contract. In support of this claim, Landmark alleged it had fully performed the original contract on July 14, 2008; Holevoet had authorized additional work on July 22, 2008; its invoices totaled $63,863.96; Holevoet had paid $14,859.50; and there was an outstanding balance of $49,004.46. Count II of the complaint alleged *quantum meruit*, and count III alleged unjust enrichment. Landmark attached an affidavit pursuant to Illinois Supreme Court Rule 222 (eff. July 1 2006). In the affidavit, Landmark's attorney swore that Landmark was seeking monetary damages not in excess of $50,000.

¶ 19 Holevoet filed a motion to dismiss Landmark's complaint, and the trial court dismissed Landmark's *quantum meruit* and unjust enrichment claims with prejudice. Holevoet thereafter filed an answer, wherein she denied that she owed any amount under the contract. Holevoet claimed that Landmark had performed unauthorized work, as she had not signed the contract addendum, and that it had continued to perform even after she had instructed it to cease all work.

¶ 20 The case proceeded to mandatory arbitration, and the arbitration award was rejected. On April 13, 2015, the trial court held a bench trial. At the outset, the original contract, contract addendum, deliverables, invoices, letters, and e-mails were all designated as exhibits and admitted by stipulation of the parties.

¶ 21 In his opening statement, Landmark's attorney argued there were two contracts at issue—the original written contract, which was executed by both parties, and an oral agreement, evinced by the unsigned contract addendum. In response, Holevoet's attorney contended that the original contract was the complete agreement, as it clearly stated that it could not be amended, modified, or altered, except in a writing signed by all parties.

¶ 22 Shamsie testified on behalf of Landmark. Shamsie testified that due to the problems Landmark encountered while completing work on the original contract, it was forced to work on a final design in the preliminary approval stage in order to get the plan commissioned. He testified that the issues Landmark encountered were separate and apart from the original scope of services contained in the original contract. Shamsie stated he had discussed "the amendment" with Holevoet by phone in July and got her verbal authorization to proceed. After the phone conference, Shamsie sent Holevoet a copy of the addendum, but admitted he never received a signed copy. Instead, Landmark proceeded based on Holevoet's verbal authorization. According to Shamsie, Holevoet never indicated she did not want Landmark to perform the additional work. With regard to the outstanding balance on the account, Shamsie testified Landmark never received a check from Holevoet for the $3,330.50.

¶ 23 Holevoet testified that she and her sister had decided to sell the agricultural portion of the property in 2008 so that they could pay for their niece and nephew to attend college. To complete the sale, Holevoet and Howson entered into the original contract with Landmark.

Holevoet testified she and Howson had no plans to develop the residential portion of the property, but wanted to make sure the option would be available for their niece and nephew. Because there was only one road leading to the residential portion, they wanted to make sure the road was defined in a way that would not preclude later selling the property to a developer.

¶ 24 During their testimony, both Holevoet and Howson denied verbally authorizing any additional work during the July 22 phone call. Both stated that they had initiated the phone conference to ensure that the work under the original contract finished soon so that they could get the survey to their real estate attorney and close on the sale of the agricultural acreage. Holevoet and Howson had anticipated closing on the agricultural acreage on May 15, but they had to keep extending the closing while they waited for the deliverables under the original contract. Shamsie mentioned that the county "wanted more" during the phone call, but she did not approve any additional work at that time. Shamsie stated he would mail her a copy of the addendum outlining the additional work. When she later received a copy of the addendum in the mail, she decided not to sign it.

¶ 25 In closing, Landmark argued that it had a binding oral contract with Holevoet to perform the additional work, despite the fact that Holevoet never executed the written addendum. While Landmark acknowledged that the "General Conditions" required amendments to be in writing, it argued that the additional work on the project qualified as an entirely different subject matter. It also argued because it never received the $3,330.50 check from Holevoet, its damages should be increased from $49,004.46 to $52,293.96.

¶ 26 In her closing, Holevoet argued there had been no meeting of the minds to form an enforceable contract for the additional work based on the fact that the original contract required modifications to be in writing and signed by all parties.

¶ 27 On September 15, 2015, the trial court entered a written judgment in favor of Landmark in the amount of $52,293.96. The court's judgment contained no findings of fact or analysis. Neither party filed a posttrial motion.

¶ 28 Holevoet appeals.

¶ 29 ANALYSIS

¶ 30 Holevoet first argues the trial court erred when it found that a binding oral agreement existed. Specifically, she claims the parties intended that any agreement for the completion of additional work had to be in writing and signed by both parties for an enforceable contract to exist. In response, Landmark asserts Holevoet waived the issue by raising it for the first time on appeal. In the alternative, Landmark claims the trial court correctly found that a binding oral contract existed between the parties and that Holevoet was in breach of that contract.

¶ 31 To maintain a cause of action for breach of contract, a plaintiff must allege "the existence of a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff." *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 30. "The existence of an oral contract, its terms, and the intent of the parties are questions of fact, and the trial court's determinations on those questions will be disturbed only if they are against the manifest weight of the evidence." *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 32 Here, the testimony at trial was conflicting with regard to whether the parties formed an oral contract during the July 22 phone conference. On appeal, Holevoet claims this conflicting testimony is irrelevant because even assuming the court believed Shamsie, no oral agreement

was formed since both parties intended that the written addendum had to be executed before a binding contract could exist. In support of this argument, Holevoet sites *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 143-44 (1986). The relevant portion of *Ceres* states as follows:

> "[I]f the parties agree that a formal document will be prepared only as a memorialization of the oral agreement, the bargain is binding even though the document has not been executed. [Citations.] However, even where the essential terms have been agreed upon, 'if the clear intent of the parties is that neither will be legally bound until the execution and delivery of a formal agreement, then no contract comes into existence until such execution and delivery. [Citations.]' " *Id.* (quoting *Chicago Title & Trust Co. v. Ceco Corp.*, 92 Ill. App. 3d 58, 69 (1980)).

¶ 33 Landmark claims Holevoet has waived this argument by failing to raise it below. We disagree. Although Holevoet did not specifically cite the *Ceres* case to the trial court, her position has always been that there was no enforceable contract because the parties had not agreed to the additional work in writing as required by the original contract. This argument necessarily goes to the parties' intent to contract, as a valid contract can result only where there has been a "meeting of the minds." *Allstate Insurance Co. v. National Tea Co.*, 25 Ill. App. 3d 449, 461 (1975).

¶ 34 That being said, the main issue in this case is whether the alleged oral agreement constituted a new contract or an attempted modification of the original contract. Landmark claims the trial court believed its witness and found an oral contract. See *Bell Leasing*

Brokerage, LLC v. Roger Auto Service, Inc., 372 Ill. App. 3d 461, 467-68 (2007) ("Where there are different ways to view the evidence, or alternative inferences to be drawn from it, the view of the trier of fact must be accepted so as long as it is reasonable."). While Landmark's argument is technically accurate, in order for Landmark to have prevailed in its breach of contract action, the court must have also implicitly found that Holevoet's verbal authorization created a new agreement wholly outside the scope of the original contract.

¶ 35 Holevoet, on the other hand, has consistently maintained that all modifications to the original contract were required to be in writing and signed by both parties. While this is also true, it is completely irrelevant if the additional work was separate and distinct from that of the original contract. To be clear, there is no question that the trial court believed Shamsie's testimony that Holevoet agreed to the additional work during the July 22 phone call. However, such an oral agreement is meaningless if the terms of that agreement render it an attempted modification of the original contract, as the original contract unambiguously stated that all modifications were to be "in writing signed by all parties."

¶ 36 While a finding that parties have formed an oral contract is a question of fact (*Anderson*, 397 Ill. App. 3d at 785), the legal effect and interpretation of an existing written contract is a question of law. *Kennedy, Ryan, Monigal & Associates, Inc. v. Watkins*, 242 Ill. App. 3d 289, 295 (1993). We review questions of law *de novo*. *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007). "A modification of a contract is a change in one or more aspects of a contract that introduces new elements into the details of the contract or cancels some of them but leaves the general purpose and effect of the contract undisturbed." *Richard W. McCarthy Trust Dated September 2, 2004 v. Illinois Casualty Co.*, 408 Ill. App. 3d 526, 533-34 (2011).

¶ 37 Here, Landmark claims the unsigned contract addendum was nothing more than a memorialization of a separate oral agreement between the parties. We disagree. First of all, an "addendum" by very definition is an amendment. Moreover, it is well-settled law that any ambiguities in a contract must be construed against the contract's drafter. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 479 (1998). Landmark drafted both the original contract and the contract addendum at issue in this case. The contract addendum, which Landmark claims memorialized a "separate" agreement, specifically referenced the same subdivision project as the original contract, contained the same project number as the original contract, and even sought to incorporate the original contract's terms by reference. If this was not an attempt at contract modification, we are not sure what would have been.

¶ 38 Second, although the parties' alleged oral agreement called for the completion of some additional work beyond the scope of the original contract, the underlying purpose and effect of the contract remained the same. Pursuant to the terms of the original contract, Landmark was to design a subdivision that would garner Henry County officials' preliminary approval. Because of problems Landmark encountered during the preliminary approval process, Henry County officials informed Landmark that it would need to perform the additional work in order for them to commission the project. It was at this point, Shamsie claimed, that Holevoet gave Landmark verbal authorization to proceed with the additional work on the subdivision.

¶ 39 Even assuming that Shamsie's claim were true, as we must, the fact remains that the purpose of both the oral agreement and the original contract was to design a subdivision that would earn Henry County's preliminary approval. Put another way, the oral agreement did not alter the original contract's goal, it simply added work that Landmark deemed necessary in order to achieve that goal. We believe this is precisely the type of situation the parties contemplated

when they agreed that all amendments to the original contract were to be in writing, signed by all parties.

¶ 40 At its core, the purpose of such a provision is to protect both parties from the type of back and forth "he said/she said" that occurred in this case. If Landmark wanted to ensure that it would be paid for its additional work on the subdivision project, it should have first ensured that Holevoet agreed to the additional work in writing. Because Holevoet did not sign the contract addendum as specifically required by the original contract, the trial court erred in granting judgment for Landmark.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we reverse the judgment of the circuit court of Henry County.

¶ 43 Reversed.