2025 IL App (3d) 230763-U

Order filed January 22, 2025

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2025

LLT GROUP, INC.,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
Plaintiff, Counterdefendant-Appellant, and Cross-Appellee,	)	Du Page County, Illinois,
	)	Appeal No. 3-23-0763
v.	)	Circuit No. 18-MR-1688
	)	
ADAM DUMAN; EUROVIEW ENTERPRISES, INC.; EUROVIEW, INC.; and EUROVIEW GLASS & MIRROR LLC F/K/A EUROVIEW ENTERPRISES LLC,	)	
	)	
Defendants-Appellees and Cross-Appellants	)	
	)	Honorable
(Adam Duman and Euroview Enterprises LLC, Counterplaintiffs).	)	Bonnie M. Wheaton,
	)	Judge, Presiding.

PRESIDING JUSTICE BRENNAN delivered the judgment of the court.
Justices Holdridge and Bertani concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in finding no substantially prevailing party under the fee-shifting provision in the parties' settlement agreement and denying reconsideration. The trial court did not err in dismissing count I of the second amended counterclaims for failure to state a claim. The trial court abused

its discretion in denying leave to file count VIII of the third amended counterclaims for a declaratory judgment as to the amount due and owing under the settlement agreement. Affirmed in part and reversed and remanded in part.

¶ 2 Plaintiff, LLT Group, Inc., sued defendants, Adam Duman; Euroview Enterprises, Inc.; Euroview, Inc.; and Euroview Glass & Mirror LLC f/k/a Euroview Enterprises LLC (collectively Euroview) for, *inter alia*, breach of a settlement agreement.[1] Duman and Euroview counterclaimed for, *inter alia*, breach of the settlement agreement. Following an evidentiary hearing, the trial court found that LLT Group had not materially breached the settlement agreement. The trial court later denied the parties' cross-petitions for attorney fees under the fee-shifting provision in the settlement agreement, denied the parties' motions for reconsideration, and denied Duman and Euroview leave to file counterclaims for the amount due and owing under the settlement agreement. LLT Group appealed; Duman and Euroview cross-appealed. For the reasons set forth below, we affirm in part and reverse and remand in part.

¶ 3 I. BACKGROUND

¶ 4 LLT Group is a digital advertising and marketing agency. Euroview manufactures and installs custom shower doors, closets, window coverings, garage floors, and mirrors. Duman is Euroview's principal officer. On November 13, 2017, LLT Group and Euroview entered into a contract pursuant to which LLT Group agreed to provide website development and marketing services for Euroview. Subsequently, a dispute arose between the parties regarding the scope of the work and payments owed. Euroview allegedly agreed to partially pay LLT Group by installing doors in LLT Group's office space. However, on April 5, 2018, Euroview sent LLT Group's landlord a notice of intent to file a mechanic's lien. Thereafter, the parties resolved the

[1] The record reflects additional variations of the name for the Euroview entities. For ease of reference, we refer to the Euroview entities as Euroview, as do the parties.

dispute and entered into a July 20, 2018, settlement agreement. The underlying dispute on appeal arises from alleged breaches of the settlement agreement. We recount the relevant portions of the settlement agreement, procedural history, evidentiary hearing, and trial court's ruling.

¶ 5 A. Settlement Agreement

¶ 6 The parties to the July 20, 2018, settlement agreement were LLT Group and Euroview Glass & Mirror LLC, formerly known as Euroview Enterprises LLC, and Euroview Enterprises, Inc. The subject matter of the settlement agreement was outlined in the recitals, as follows: (1) whereas LLT Group and Euroview are parties to a dispute regarding their November 13, 2017, contract with the dispute involving claims by Euroview regarding the work done or to be done by LLT Group and claims by LLT Group regarding outstanding payments from Euroview; (2) whereas, on April 5, 2018, Euroview tendered to LLT Group a notice of intention to file a lien on the property where LLT Group conducts business and where Euroview had installed doors and related structures; and (3) whereas, without admitting fault, the parties wished to come to a full and complete settlement with respect to any and all claims arising out of or in any way related to the dispute.

¶ 7 In addition to Euroview's agreement to provide a release of the lien (which Euroview thereafter provided on July 25, 2018), the terms and conditions of the settlement agreement were set forth in section one as follows:

> "For and in consideration of this release and the settlement of all matters in dispute as between the parties in connection herewith, LLT has paid $18,088.00 to resolve the claims set forth in Euroview's April 5 Notice of Intention to File Lien and will pay the additional sum of $62,500.00, for a total of $80,588.00 in full and final

settlement of all matters at issue in the Dispute, the same to be paid pursuant to the following schedule:

> (A) Payment in the amount of $20,000.00 to be tendered and payable to Euroview on or before August 1, 2018, or contemporaneously with the execution of this Agreement, whichever is later;
>
> (B) Payment in the amount of $10,625.00 to be tendered and payable to Euroview on or before September 1, 2018 and on the first of each month for three months thereafter until the balance shall be paid in full (on or before December 1, 2018)[;]
>
> (C) In the event that LLT elects to make any payment required hereunder by credit card, an additional 3% of that payment shall be due and payable with that payment[;]
>
> (D) In the event of any default of this payment schedule by LLT, it is hereby stipulated and agreed that Euroview shall be entitled to immediately collect $98,088[;]
>
> (E) Such a default will be deemed to occur if any payment required hereunder is not made within five business days of its due date. A payment will be deemed to have been made when it is either personally delivered, wired, or placed in the mail or overnight delivery service for delivery to Euroview at such address as it may designate for notices hereunder." (Emphases in original.)

¶ 8 The settlement agreement provided a release, stating that, subject to the terms and conditions of the settlement agreement, and upon satisfaction of the foregoing obligations, the parties agreed to "release, acquit and forever discharge each other and their respective officers,

directors, shareholders, agents, servants, heirs, successors and assigns, from and against any and all claims, judgments, manner of actions, causes of actions, suits, debts, sums of money, accounts, bonds, bills, specialties, covenants, controversies, claims, guaranties and demands whatsoever in law or in equity, as of the date of the execution of this Agreement, arising out of or in any way relating to the Dispute." The parties further agreed that "[t]hese mutual releases are specifically intended to include and related [*sic*] to any claims that were or could have been asserted in connection with the Dispute; provided, however, that the foregoing releases do not apply to any obligation or claim arising under or as a result of a breach of this Agreement."

¶ 9 The parties also agreed to bear their respective costs and expenses associated with the dispute, including attorney fees. However, the settlement agreement included a fee-shifting provision in the event of a breach of the settlement agreement, namely: "If a controversy arises in relation to a claimed breach of this Agreement or an enforcement action relating to the Dispute, the substantially prevailing Party shall be entitled to recover its attorneys' fees and costs, from the non-substantially prevailing Party."

¶ 10 In addition, the settlement agreement contained the following nondisparagement clause:

> "Each of the parties hereto agrees that he or she shall not make any defamatory remarks or statements, whether oral or written, to any third[]party about any of the other parties hereto and they further agree not to write, distribute, or publish, either directly or indirectly, any statements about any of the other parties in any medium, including print or online, which is intended, or would reasonably be expected to harm any party hereto or any of their reputations, or which would reasonably be expected to lead to unwanted or unfavorable publicity to any of the parties hereto. The parties each acknowledge that there would not be any adequate remedy at law for the same and that any violations of

this obligation would thus need to be the subject of injunctive relief in a court of competent jurisdiction, to which they hereby consent. In the event such legal action, or any action to enforce this Agreement, is brought by either party as against the other, the Court shall have authority to grant an award of attorneys fees and costs in favor of any prevailing party."

¶ 11 And finally, the settlement agreement included a provision wherein the parties "represent[ed] and agree[d] that this Agreement is binding upon them and that the signatories to this Agreement have authority to enter into this agreement and thereby bind the parties hereto."

¶ 12 B. Post-Settlement Agreement

¶ 13 The exhibits and testimony (from the evidentiary hearing that was ultimately held approximately five years later, as discussed *infra*) reflect that, prior to making the August 1, 2018, initial $20,000 payment, on July 31, 2018, Rahul Wahi (LLT Group's president and chief executive officer) e-mailed Arnie Harris and Brandon Bailes (both from Euroview), advising:

"Per our agreement, please see the attached Credit Card Authorization form (received today) for processing payment of $20,000. Please note that no processing fees should be assessed until payment of full settlement amount as notated in LLT Mutual Release Fully Executed.pdf.

We may choose to switch to other payment methods for future payments per schedule. Please note the next payment shall be on September 1st-7th in the amount of $10,625.00[.]

If you have any questions, please feel free to let me know. Processing the card will confirm receipt and acceptance of this message."

Wahi testified that he made that statement based upon conversations he had with Harris and Bailes prior to execution of the settlement agreement.

¶ 14 The parties' e-mail correspondence regarding the next payment—the first of four equal installments of $10,625 due by September 1, 2018—reflected as follows. On September 7, 2018, Bailes responded to a September 6, 2018, e-mail from Wahi (which stated "September Charge" in the subject line and referenced an "updated amount to be reflected") as follows: "I appreciate you making that change yesterday. I got a text from Adam and replied letting him know you made the change from 10,000 to the 10,625. I didn't look at the contract closely enough before I talked to you. The contract says each payment will be for 10,625 plus the 3% cc fee. Not sure where the $10,000 number came from." A couple hours later, Wahi responded: "I am out of town at this time and will not be available to make that change until I get back on Monday. Please note that we have a ten day grace period, however you can take this email as my verbal approval for the 3% cc fee. I have reattached this here and we are fine with the charge." Attached was the authorization for credit card use with the amount changed to $10,625 and initialed by Wahi. Then, on September 12, 2018, Wahi wrote: "Does the below email not suffice? Your form does not state that 3% fee, so either add that in or use the email below as approval for $10,625 p/3% cc fee." Shortly thereafter, the credit card was processed for the payment amount, but not for the credit card processing fee. Counsel for Euroview later stipulated that LLT Group tendered a payment authorization on September 7, 2018, in the amount of $10,625 and that the payment was before the five-day grace period but without the credit card processing fee.

¶ 15 On October 8, 2018, Wahi sent Bailes a text message, stating, "[C]an we meet up today or tomorrow so I can make that next payment for you?" A few minutes later, there was an incoming phone call from Bailes to Wahi, which lasted for three minutes. Wahi testified that he

had a check ready for Euroview to pick up, that he discussed this with Bailes, but that the check was never picked up. Bailes testified that he did not recall such a conversation.

¶ 16 On October 12, 2018, Wahi e-mailed Bailes, attaching an "Authorization for Credit Card Use" and asking, "Did you guys charge the card on the 10th? This is the card to use on file and use here on out so I wanted to make sure it went through for the $10625.00[.]" Wahi testified that he wanted to make sure that the credit card was charged since the check had not been picked up.

¶ 17 Then, on October 16, 2018, Wahi's phone records showed a two-minute phone call to Bailes. Approximately 45 minutes later, counsel for Euroview e-mailed counsel for LLT Group, stating:

> "I was disappointed to learn that your client, LLT Group, Inc., has defaulted on its payment obligations under the attached Mutual Release and Settlement Agreement dated July 25, 2018. As you may know, the payment due September 1, 2018 was made by credit card, was late, and did not include the $318.75 credit card fee due under Section 1(C) of the Agreement. The payment due October 1 is now 15 days late.
>
> At this time your client must immediately pay the default payment of $98,088.00 as provided in Section l(D) of the Agreement.
>
> Please confirm that we will receive payment immediately, otherwise we will file a lawsuit to enforce this agreement and seek attorney's fees and costs as provided in Section 4."

¶ 18 Two days later, on October 18, 2018, counsel for LLT Group sent counsel for Euroview the following e-mail:

> "I have not heard back from you since we spoke the other day, although I have left another VM in the meantime. As you know, my client tried to make this last payment a few times since it came due and provided confirmation to your guys that they could use the same credit card number to do that—both by email and by phone. You then said during our discussion the other day that you wanted to get this over with and I confirmed in response that LLT wants the same and is thus willing to make the last payments all right now so we can get done with this altogether.
>
> There has been no default, and I'm sure you know that your client can't just ignore attempts at payment to create a default on their own, so I would certainly appreciate your talking to them so we can get this resolved and done with. LLT is, as they have been, ready, willing and able to make the October payment and, assuming you get back to me and this doesn't snowball, to make the remaining payments now as well so this can be closed pursuant to its terms."

¶ 19 On October 26, 2018, counsel for Euroview sent counsel for LLT Group a demand for payment of $98,088 for breach of the settlement agreement, stating that LLT Group was required to make a payment of $10,625 within five business days of October 1, 2018; that LLT Group failed to do so, amounting to a default under the terms of the settlement agreement; and that the default entitled Euroview to immediately collect $98,088. Counsel for Euroview further advised that it would file suit to compel performance if LLT Group failed to make the $98,088 payment by November 1, 2018, and would seek attorney fees and costs pursuant to the fee-shifting provision in the settlement agreement. Counsel for LLT Group responded, disputing Euroview's interpretation of the settlement agreement's default provision and stating that it stood ready to make payment pursuant to the terms of the settlement agreement. Counsel for the parties

continued to correspond throughout early November 2018, maintaining their respective positions.

¶ 20 C. Procedural History

¶ 21 LLT Group initiated this action on December 5, 2018, with a five-count complaint for declaratory and other relief against Duman and Euroview. Count I was against Duman only and alleged breach of the underlying marketing agreement in that Duman was not a party to the settlement agreement and "has otherwise failed and refused to pay the amounts due to LLT [Group] under the [settlement agreement]."

¶ 22 Count II was a breach-of-settlement agreement claim against Euroview in which LLT Group alleged that Euroview breached the nondisparagement clause of the settlement agreement in that "over the weekend of December 1, 2018, Euroview representatives were overheard to be defaming and otherwise bad-mouthing LLT at a business party." Count II also alleged that Euroview breached the mutual release provision of the settlement agreement. Count II's prayer for relief sought findings that LLT Group had complied with its obligations for payment under the settlement agreement, Euroview was required to accept LLT Group's payments by credit card authorization, and Euroview breached its obligations to LLT Group by refusing the payments. LLT Group sought fees, costs, and consequential damages under the settlement agreement.

¶ 23 Count III for declaratory relief was directed against Euroview and sought a declaration that, under the terms of the settlement agreement, Euroview was not entitled to $98,088, in the event of a breach, in addition to what had already been paid under the settlement agreement. Count IV, titled "Reformation," was against Euroview and sought entry of the same findings and monetary relief sought in count II. And finally, count V, titled "Injunctive Relief," was against

all defendants and sought immediate injunctive relief to prohibit Euroview from "publishing or distributing any disparaging statements about LLT [Group], its employees, officers, owners and agents."

¶ 24 Duman and Euroview moved to dismiss the complaint for failure to state a claim pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2018)). Duman and Euroview also unsuccessfully moved to disqualify LLT Group's counsel on the alleged basis that his professional judgment would be materially limited by his role in drafting the settlement agreement. Following briefing and argument, on July 19, 2019, the trial court ruled on both motions. First, the trial court denied the motion to dismiss as to counts I (breach of the underlying marketing agreement against Duman), III (declaratory relief against Euroview), and IV (reformation against Euroview) of the complaint. The trial court granted the motion to dismiss as to counts II and V without prejudice to LLT Group's right to seek the relief requested therein. Second, the trial court denied the motion to disqualify without prejudice to the right to bring such a motion prior to trial in the event LLT Group's counsel was expected to testify.

¶ 25 Thereafter, on September 17, 2019, Euroview filed an answer to the surviving counts. Duman filed a motion to dismiss count I of the complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2018)) on the basis that, contrary to LLT Group's position, the release set forth in paragraph three of the settlement agreement (in which the parties agreed to release "each other and their respective officers, directors, shareholders, agents, servants, heirs, successors and assigns, from and against any and all claims *** arising out of or in any way relating to the Dispute") included Duman. Following briefing and argument, on December 4, 2019, the trial court denied the motion without prejudice, and Duman thereafter filed an answer.

¶ 26 Prior to that time, on November 1, 2019, LLT Group moved for partial summary judgment on count III of the complaint, seeking a declaration as the interpretation of section 1(d) of the settlement agreement (which provides that, "[i]n the event of any default of this payment schedule by LLT, it is hereby stipulated and agreed that Euroview shall be entitled to immediately collect $98,088"). LLT Group argued that Euroview's interpretation of the settlement agreement—that it was entitled to $98,088 in addition to what had already been paid under the settlement agreement—was unreasonable and amounted to an unenforceable penalty. Following briefing and argument, on November 12, 2020, the trial court granted LLT Group's motion for partial summary judgment, finding as follows:

> "When one looks at the amount, it is very clear that the amount in question is $98,088. But for the purposes of settlement, the entire amount that would be paid is $80,588. The difference between those two numbers is the discount for the settlement that is reached. I believe that the absolutely only coherent logical interpretation is that if there is a default, the entire amount which would be collected would be the $98,088 instead of the $80,588. And that a penalty for non payment of any amount stipulated in the settlement agreement would be *** whatever the difference is between $98,088 and $80,588. *** And if it's not paid per the terms of the agreement, then the total amount that Euroview would be entitled to would be the 98 figure rather than the 80,000 figure, Otherwise, if one were to adopt the interpretation of Euroview, the amount would constitute an unenforceable penalty provision. It simply boggles the mind that anybody could interpret it that Euroview would be entitled to whatever it has collected to date plus $98,000.00[;] that is simply illogical as well as being unenforceable as a penalty."

¶ 27 Meanwhile, on March 2, 2020, in addition to filing affirmative defenses to the complaint, Duman and Euroview Enterprises LLC (Euroview LLC) filed counterclaims against LLT Group and crossclaims against Wahi, Tony Zipparro (LLT Group's chief operating officer), and Justin Duff (LLT Group's vice president). The first three counts of the counterclaims were brought by Euroview against LLT Group and raised counts for, respectively: (count I) breach of the settlement agreement, seeking $98,088 in addition to the payments LLT Group already made under the settlement agreement; (count II) alternatively, rescission of the settlement agreement due to the alleged breach; and (count III) alternatively to both of the foregoing counts, a declaratory judgment that the settlement agreement is void because there was no meeting of the minds on the essential terms. Counts IV and V for fraudulent inducement of the contract and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2020)), respectively, were brought by Duman against LLT Group, Wahi, Zipparro, and Duff and, as an alternative to count I, by Euroview against these same parties. Count VI for breach of the underlying marketing agreement was brought by Duman against LLT Group, and, as an alternative to count I, by Euroview against LLT Group.

¶ 28 On April 2, 2020, LLT Group filed a section 2-615 motion to dismiss counts I, IV, and V of the counterclaims for failure to state a claim and sought to strike any claim for punitive damages in count I. Following briefing and argument, on May 27, 2020, the trial court granted the motion and dismissed counts IV and V of the counterclaims without prejudice and struck the punitive damages claim in count I without prejudice for leave to file a punitive damages claim should discovery demonstrate the propriety of such an amendment. On June 24, 2020, Duman and Euroview LLC filed amended counterclaims and affirmative defenses, setting forth the same counts with additional allegations. LLT Group (later joined by the individual counterdefendants)

moved to dismiss certain counterclaims and the affirmative defenses. Following briefing and argument, on January 7, 2021, the trial court granted LLT Group's motion. In addition, the trial court *sua sponte* dismissed the remaining amended counterclaims and, as a result, dismissed the individual parties to the litigation, including Duman, Wahi, Zipparro, and Duff. Finally, the trial court dismissed count I of LLT Group's complaint (against Duman for breach of the marketing agreement), noting that counsel for LLT Group "confirm[ed] that said count is being withdrawn (except to the extent the allegations contained therein are incorporated by reference and thus germane to Counts Two and Three [breach of the settlement agreement and request for declaratory relief])." At this point, what remained pending in this case were counts II and III of LLT Group's complaint against Euroview for breach of the settlement agreement and declaratory relief and count I of Euroview's amended counterclaims against LLT Group for breach of the settlement agreement. Litigation continued.

¶ 29 Euroview and Duman filed a motion for a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. March 8, 2016) that there was no just reason for delaying an appeal of the dismissal of their counterclaims. Following briefing and argument, on July 22, 2021, the trial court denied the motion. Meanwhile, on May 27, 2021, following a status hearing, the trial court ordered that the case be bifurcated to allow discovery on the issue of the enforceability of the settlement agreement to proceed first given the parties' request for an evidentiary hearing on the issue. On July 12, 2021, LLT Group filed a second motion for partial summary judgment as to the enforceability of the settlement agreement, noting that Euroview admitted in its answer to the complaint that the settlement agreement was a "valid and enforceable contract." Then, on July 20, 2021, Duman and Euroview filed a motion to clarify that the trial court's January 7, 2021, dismissal order was without prejudice and for leave to file amended counterclaims and

affirmative defenses. On August 27, 2021, the trial court entered an order: (1) granting LLT Group's second motion for partial summary judgment, finding that "the terms of the agreement with regard to release of claims are clear and unambiguous and enforceable"; (2) instructing that the case would proceed to an evidentiary hearing on the issue of whether there was a breach of the settlement agreement and setting a deadline for LLT Group to answer count I of Euroview's amended counterclaims; and (3) stating that "[a]ll other matters in dispute, or which the parties may seek to bring by way of any amended pleadings, are hereby stayed pending the aforesaid evidentiary hearing" and setting a deadline for the conclusion of discovery solely on the issue of whether there was a breach of the settlement agreement. Thereafter, LLT Group filed an answer and affirmative defenses to count I of the amended counterclaims. Further litigation over the scope of discovery ensued.

¶ 30 On July 14, 2022, LLT Group filed, with leave of court, a first amended complaint, incorporating counts I through V of its initial complaint and adding a sixth count seeking attorney fees and costs under the fee-shifting provision of the settlement agreement. Also on that date, Duman and Euroview filed, with leave of court, second amended counterclaims against LLT Group for fraud, plagiarism, and "associated relief." Count I, brought by Euroview, alleged that LLT Group breached the settlement agreement by failing to pay the required 3% credit card fees when due and defaulting on the payment schedule. Count II, brought by Duman, added a claim that Duman was an intended third-party beneficiary of the settlement agreement and thus entitled to have his fees and costs paid by LLT Group. Counts III and IV, brought by Euroview and Duman as an alternative to the prior counts, reiterated the claims for the rescission of the settlement agreement and declaratory relief. Count V for fraudulent inducement of the contract, brought by Euroview as an alternative to count I, and by Duman, continued to allege that LLT

Group "made multiple knowingly false representations regarding LLT's services in a scheme designed to coerce Duman and Euroview into signing the Contract and refrain from terminating the Contract." Count VI, brought by Euroview as an alternative to count I, and by Duman, reiterated the Consumer Fraud Act claim. And finally, count VII, brought by Euroview as an alternative to count I, and by Duman, reiterated the claim for breach of the marketing agreement.

¶ 31 On September 13, 2022, LLT Group filed a motion to dismiss the second amended counterclaims pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2022)). LLT Group sought dismissal without prejudice of counts I and II for failure to state a claim pursuant to section 2-615. LLT Group sought dismissal with prejudice of the remaining counts pursuant to section 2-619 on the basis that the counts were moot given the trial court's prior finding that the settlement agreement was enforceable. This motion was later continued when the trial court scheduled an evidentiary hearing. Ultimately, on July 7, 2023 (after the evidentiary hearing), the trial court dismissed all counts with prejudice except count II (Duman's claim for fees and costs), which the trial court dismissed without prejudice and with leave to file a third amended counterclaim (but later dismissed count II with prejudice after Duman did not file any amended pleading).

¶ 32 On September 15, 2022, Duman and Euroview filed a motion to dismiss counts II and V of LLT Group's first amended complaint (breach of the settlement agreement's nondisparagement clause and injunctive relief claim) on the basis that the trial court already dismissed those counts in its July 19, 2019, order. The motion was later found moot by the trial court after LLT Group confirmed it was no longer seeking relief under counts II and V. Duman and Euroview answered the remaining counts. On January 25, 2023, the trial court scheduled an evidentiary hearing on the issue of whether LLT Group breached the settlement agreement. The

evidentiary hearing was held on May 10, 2023, and May 11, 2023. The exhibits and testimony discussed *infra* were introduced.

¶ 33 D. Trial Court's Ruling

¶ 34 Following the evidentiary hearing, on May 11, 2023, the trial court found that LLT Group did not materially breach the settlement agreement. Citing the default provision in section 1(E) of the settlement agreement, the trial court noted that the provision "does not specify payment by credit card, or if a credit card is used for a payment, how that credit card payment be made." Rather, the only reference in the settlement agreement to a credit card is section 1(C)'s provision that, in the event LLT Group elected to make a payment by credit card, " 'an additional three percent of that payment shall be due and payable with that payment.' " The trial court noted that it "stress[ed] that because there is nothing in the settlement agreement that specifies how a credit card payment should or may be made. It is completely silent." Moreover, the trial court found that LLT Group's Wahi was "wrong" in his July 31, 2018, e-mail to Euroview representatives that no credit card processing fee should be assessed until payment of the full settlement amount was made "because that is in contravention of the settlement agreement terms which say that it should be made—that the processing fee should be made with the payment." In this regard, the trial court further found that, "[w]hether it was an intentional effort to change the terms of the contract or it was a misstatement and a misunderstanding on his part really makes no difference, because it was ineffective to change the terms of the settlement agreement."

¶ 35 That being said, the trial court found that "[a]ny reasonable person looking at this and believing that there was an extra credit card payment that should be made would pick up the telephone, would send an e-mail, a smoke signal, something, to indicate no, your understanding is wrong, and if we process the card for the $20,000, we're not accepting the message. But

there's no response. I think that in itself is—would reliably be considered to be a breach of the covenant of good faith and fair dealing." Pointing out that the evidence established that the credit card was in fact processed for $20,000 on July 31, 2018, the trial court further noted that "[t]here was no demand at that time or at any other time that I've heard in testimony for the credit card fee up until everything fell apart."

¶ 36 Turning to the September 2018 e-mail correspondence, the trial court noted that Wahi "was wrong[,] that there was not a 10-day grace period, there was a 5-day grace period." However, the trial court pointed out that Wahi authorized in writing an approval of the credit card processing fee and the settlement agreement did not contain any requirement that any separate form was required. Taking judicial notice "that in modern commerce it is not only possible, it is common for credit card payments to be made over the telephone with no written authorization whatsoever." Thus, the trial court found that Wahi's September 7, 2018, e-mail "constitutes a tender of the payment of the entire $10,625, plus the three percent credit card fee in the amount of $318.75."

¶ 37 As for the October payment, the trial court found credible Wahi's testimony that he had a check ready for pickup and that he wanted to confirm that the credit card had been charged when the check was never picked up. The trial court concluded:

> "I think there's plenty of blame to go around in this case. I think Mr. Wahi was in error when he said that *** all of the credit card payments would be due when the settlement payments had been completed. Mr. Wahi was also in error when he said there was a 10-day grace period. But I believe that Mr. Bailes and Euroview were in error when they rejected what I consider, and I am hereby finding, to be a valid tender of the payments that were due on September 1 and October 1.

I believe that Euroview also breached its duty of good faith and fair dealing, and *** all of the payments were made on time, except for the credit card fees. I think [counsel for LLT Group] is making an excellent argument that the payments were made, and the fees were a minor point in this transaction. I think the fact that no mention of the $600 credit card fee being made at any time between September 1 and October 1 indicates to the Court that the failure to make a payment of this amount was not a material breach of the contract.

So I think both sides are to blame, both sides were in error, and both sides committed separate breaches of this contract. That being the case, I don't believe that I have to even reach the issue of whether the $90,000 plus was due and owing in any amount, because I don't think either side is entitled to damages.

As I said, there's plenty of blame in this case to go around. There is however, money that is still due and owing under the settlement agreement. *** By my calculation, that comes to a total of $32,793.75 that is due and owing from LLT to Euroview under the terms of the settlement agreement. I am finding that that is the only sum that is due and owing from LLT to Euroview. I am also finding that neither side is entitled to any damages for the breach, since both parties were in breach and in default under the terms of the contract and by virtue of their attempts to modify unilaterally the terms of the settlement agreement and to insert terms into the agreement to which neither of the parties agreed."

¶ 38 As a final matter, the trial court stated, "I don't believe that either side is entitled to attorney's fees because of the breaches or failures that I have just enunciated."

¶ 39 E. Fee Motions

¶ 40 On May 23, 2023, LLT Group filed a motion for summary judgment on the issue of whether it was the substantially prevailing party under the settlement agreement's fee-shifting provision, as alleged in count VI of the amended complaint (and a later supplement to the motion seeking an award of additional fees incurred). Thereafter, on September 5, 2023, both parties filed petitions for an award of attorney fees and costs as the substantially prevailing party under the settlement agreement's fee-shifting provision. Euroview also filed a motion for entry of a payment order, seeking an order requiring LLT Group to tender a cashier's check payable to Euroview in the amount of $32,793.75 based upon the trial court's May 11, 2023, finding that this sum was due and owing under the terms of the settlement agreement. LLT Group opposed the motion for entry of a payment order on grounds, *inter alia*, that the issue was not justiciable, as there was no pleading or demand for the sum. At a September 12, 2023, status hearing, counsel for Duman and Euroview advised the trial court that, if required, it would file a pleading "seeking a declaration that has already been made" regarding the $32,793.75 due and owing. The trial court "strongly suggested" to LLT Group that it pay Euroview the $32,793.75.

¶ 41 Following briefing and argument, on October 23, 2023, the trial court denied both fee petitions. In doing so, the trial court reasoned, "I think this case was not just a draw, it was mutually assured destruction and that's what happened." The trial court further noted,

> "When I made my ruling, I said the case was—that both parties had breached. [LLT Group] filed this complaint asking for a declaratory judgment that a certain amount was owed. That amount was incorrect.
>
> [Euroview] then underwent substantial litigation to try to set aside this settlement agreement and go back to the original agreement, but both parties were incorrect. I don't believe that there was a substantially prevailing party because both parties were wrong. I

said the case was a draw, and I still believe the case was a draw because both parties were in error."

The trial court concluded, "I don't believe that either side is entitled to attorney's fees because neither side was a substantially prevailing party."

¶ 42 The trial court also denied Euroview's motion for a payment order on the basis that the issue was not justiciable and subsequently denied Euroview's oral motion for leave to file a claim for the $32,793.75 found to be due and owing.

¶ 43 Both sides filed motions for reconsideration, and Euroview sought leave to file its third amended counterclaims to add three additional proposed counterclaims—count VIII seeking a declaration that "at least 32,793.75" remained due and owing from LLT Group to Euroview under the settlement agreement; count IX alleging an alternative claim for promissory estoppel for the amount due and owing; and count X alleging an alternative claim for unjust enrichment for the amount due and owing. Following argument, on November 30, 2023, the trial court denied both motions. The trial court set forth findings with respect to the denial of attorney fees as follows:

"My—my ruling was based on the multitude of times this case has appeared in front of me. I will say that Mr. Duman is one of the most disagreeable litigants I have seen in my 32 years in this courtroom. And I think he was intransigent. But he wasn't wrong. And [counsel for LLT Group's] client was always very polite and very accommodating. And he wasn't wrong either.

I think that it was extremely unfortunate that this case had to drag on for so long. But on the basis of what I have heard, I don't believe that I could find that either party

was the substantially prevailing party. And I believe that attorney's fees, as I originally said, would not be proper to award to either of them.

I am going to deny the motion to reconsider. ***."

¶ 44 LLT Group timely appealed; Duman and Euroview timely cross-appealed (although their arguments on appeal are directed at claims by Euroview).

¶ 45 II. ANALYSIS

¶ 46 On appeal, LLT Group seeks reversal of the trial court's denial of its claim for attorney fees as the substantially prevailing party under the settlement agreement's fee-shifting provision. Euroview seeks reversal of the trial court's dismissal of count I of the second amended counterclaims for breach of the settlement agreement and reversal of the trial court's denial of their request for leave to file third amended counterclaims for the $32,793.75 found to be due and owing under the settlement agreement. We address each argument in turn.

¶ 47 A. Substantially Prevailing Party

¶ 48 Illinois follows the "American rule," which provides that a prevailing party may only recover its attorney fees from its opponent if an express statutory or contractual provision allows for such recovery. *Oak Forest Properties, LLC v. RER Financial, Inc.*, 2018 IL App (1st) 161704, ¶ 12. Here, the settlement agreement included a fee-shifting provision in the event of a breach of the settlement agreement. However, the trial court held that the case was a "draw" and that neither party was entitled to recovery under the fee-shifting provision. On appeal, LLT Group argues that it was the substantially prevailing party in the underlying litigation and that this case should be remanded to the trial court for a determination of reasonable fees and costs, including the fees and costs on appeal. We disagree, as set forth below.

¶ 49 Initially, the parties dispute the standard of review. LLT Group asserts that we should review the trial court's decision *de novo*. See *Mirar Development, Inc. v. Kroner*, 308 Ill. App. 3d 483, 485 (1999) (whether the trial court properly applied the law in determining whether to award attorney fees is a legal question subject to *de novo* review). Euroview asserts that the applicable standard of review is an abuse of discretion. See *Peleton, Inc. v. McGivern's Inc.*, 375 Ill. App. 3d 222, 226 (2007) (where the issue on appeal is whether the trial court correctly applied the terms of a contract to the facts of the case to determine if a party is a prevailing party, the standard of review is abuse of discretion). In this case, the trial court applied the terms of the settlement agreement to the facts of the underlying litigation. We therefore review the trial court's ruling for an abuse of discretion. A trial court abuses its discretion when its ruling is " 'arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 50 "A party can be considered a prevailing party for the purposes of a fee award when it is successful on any significant action and achieves some benefit in bringing suit, receives a judgment in its favor, or obtains an affirmative recovery." *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2021 IL App (1st) 200753, ¶ 100. Moreover, a party may be considered the prevailing party even if it did not succeed on all matters. *Id.*

¶ 51 Here, the fee-shifting provision in the parties' settlement agreement provides, "If a controversy arises in relation to a claimed breach of this Agreement or an enforcement action relating to the Dispute, the substantially prevailing Party shall be entitled to recover its attorneys' fees and costs, from the non-substantially prevailing Party." Euroview suggests that a "substantially prevailing party" must meet a higher standard than a "prevailing party," citing *In*

re Marriage of Murphy, 327 Ill. App. 3d 845, 851 (2002) ("[T]o 'substantially prevail' [under section 508(a)(3.1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508(a)(3.1) (West 2000)) (providing for recovery of attorney fees for "the prosecution of any claim on appeal (if the prosecuting party has substantially prevailed)"] *** requires something more"—a party seeking a fee award is required to "prevail to a 'significant' degree, or to 'largely,' even if not 'wholly,' prevail."), *rev'd in part*, 203 Ill. 2d 212 (2003). However, the supreme court reversed the appellate decision in *Murphy* in part, explaining,

> "We believe that the appropriate reading of this section is that, in the context of a petition for fees for prosecution of an appeal, the circuit court may only award fees incurred for *those individual claims* on which the appellant can be said to have 'substantially prevailed' on appeal. To interpret the statute as requiring that the appellant prevail on the appeal as a whole would read out the phrase 'claim on,' which is contrary to our settled rules of construction." *Marriage of Murphy*, 203 Ill. 2d at 221; see also *Tax Track Systems Corp. v. New Investor World, Inc.*, 478 F.3d 783, 789 (7th Cir. 2007) ("Because Illinois interprets 'prevailing party' as one who prevails in a 'significant' respect in the litigation, we see little distinction in meaning between a 'prevailing party' and a 'substantially prevailing' one. *** A 'prevailing party' need not win on all claims [citing *Powers v. Rockford Stop-N-Go, Inc.*, 326 Ill. App. 3d 511, 515 (2001)], nor must a 'substantially' prevailing party—to prevail 'substantially' does not mean 'totally.' ").

¶ 52 That being said, a trial court may deny fees and costs if both parties prevail on "significant issues in the action," or if neither party prevails. See, *e.g.*, *Oak Forest Properties*, 2018 IL App (1st) 161704, ¶ 15 (affirming the trial court's decision not to award attorney fees where neither party had prevailed on balance amounting to a "draw"); *R.J. Management Co. v.*

SRLB Development Corp., 346 Ill. App. 3d 957, 971-72 (2004) (affirming the trial court's ruling that the parties were responsible for their own costs and fees because both parties were successful on significant issues). In a case involving multiple claims for relief, the significant issue test involves a "comparative analysis" in which "the relative value and complexity of the issues presented and the amount of time the parties devoted to each issue" are weighed. *Oak Forest Properties*, 2018 IL App (1st) 161704, ¶ 17.

¶ 53 Having reviewed the entirety of the record, we agree with the trial court's assessment of the ultimate futility of much of the litigation in this case and conclude that the trial court did not abuse its discretion in finding that there was no prevailing party. Despite the protracted litigation, the central significant issue, with which this case began in December 2018 with LLT Group's initial complaint and ended years later at the May 2023 evidentiary hearing, was whether LLT Group breached the settlement agreement. Ultimately, the trial court found that both sides breached the settlement agreement. Namely, Wahi (LLT Group's principal) was wrong that no credit card fee was due until payment of the full settlement amount and wrong about the length of the grace period. However, the trial court found that LLT Group's failure to timely pay the full amount did not amount to a material breach of the contract. In addition, the trial court found that Euroview breached its duty of good faith and fair dealing in responding as it did to LLT Group's attempts to comply with the terms of the settlement agreement. Accordingly, no party prevailed on the significant issue in this case. Further, LLT Group did not ultimately prevail on the remaining claims it raised during the course of the extensive litigation. As such, there is no basis on which to hold that the trial court abused its discretion in denying LLT Group's claim for fees as the substantially prevailing party under the settlement agreement.

¶ 54 B. Counterclaim for Breach of the Settlement Agreement

¶ 55 Euroview argues that the trial court erred in granting LLT Group's section 2-615 motion to dismiss count I of the second amended counterclaims for breach of the settlement agreement. A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. "The essential question is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Cochran v. Securitas Security Services USA, Inc.*, 2017 IL 121200, ¶ 11. When ruling on a section 2-615 motion, a court must accept as true all well pled facts and any reasonable inferences therefrom. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Mere conclusions unsupported by specific facts cannot be accepted as true. *Id.* The dismissal of a claim pursuant to section 2-615 is reviewed *de novo*. *Bjork*, 2013 IL 114044, ¶ 21.

¶ 56 The elements of a breach-of-contract claim are a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and a resultant injury to the plaintiff. *Sherwood Commons Townhome Owners Ass'n v. DuBois*, 2020 IL App (3d) 180561, ¶ 28. Euroview argues that it adequately pled the requisite elements for breach of the settlement agreement and for specific performance of the agreement such that dismissal under section 2-615 was improper. According to Euroview, it adequately pled in count I of its second amended counterclaims that: (1) the parties entered into a valid and enforceable settlement agreement; (2) Euroview performed all obligations required of it under the settlement agreement or was ready, willing, and able to fully perform except as to any obligation it was excused from performing due to LLT Group's alleged breach; (3) LLT Group defaulted on the payment schedule required by the settlement agreement by failing to pay the credit card processing fee with its payments such that Euroview was entitled to immediately collect the processing fees and $98,088 under

the default provision of the settlement agreement, then materially breached the settlement agreement by failing to make payment and by suing Duman; and (4) Euroview suffered damages and sought specific performance.

¶ 57 However, Euroview fails to appreciate that the trial court ultimately resolved the issues at the heart of count I of the second amended counterclaims—whether LLT Group materially breached the settlement agreement and whether Euroview was entitled to collect $98,088 under the settlement agreement's default provision. Namely, following the evidentiary hearing, the trial court found that LLT Group's failure to timely pay the full amount due under the terms of the settlement agreement did not amount to a material breach of the contract and that Euroview breached its duty of good faith and fair dealing by responding as it did to LLT Group's attempts to comply. In addition, prior to the evidentiary hearing, on November 13, 2020, the trial court granted LLT Group's motion for partial summary judgment on count III of its complaint, which sought a declaration as to the interpretation of section 1(d) of the settlement agreement (which provides that, "[i]n the event of any default of this payment schedule by LLT, it is hereby stipulated and agreed that Euroview shall be entitled to immediately collect $98,088"). In doing so, the trial court rejected Euroview's position that it was entitled to $98,088 in addition to what had already been paid under the settlement agreement as not only illogical but also an unenforceable penalty. Thus, assuming for the sake of analysis that count I of the second amended counterclaims should have survived a section 2-615 motion to dismiss, the claim simply did not ultimately prevail following an evidentiary hearing. Accordingly, Euroview presents no persuasive basis upon which to reverse the trial court's dismissal of count I of the second amended counterclaims.

¶ 58 C. Counterclaims for Amount Due and Owing

¶ 59 Euroview next argues that the trial court abused its discretion in denying leave to file the third amended counterclaims seeking the $32,793.75 found by the trial court to be due and owing under the settlement agreement. Parenthetically, we note that Euroview explicitly states that it makes no argument on appeal that the trial court erred in denying its motion for a payment order. Euroview cites section 2-616(a) of the Code (735 ILCS 5/2-616(a)) (West 2022) ("At any time before final judgment amendments may be allowed on just and reasonable terms *** changing the cause of action or defense or adding new causes of action or defenses *** which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.")) and section 2-616(c) of the Code (*id.* § 2-616(c) ("A pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just."). The trial court's decision as to whether to allow a party leave to file an amended pleading is reviewed for abuse of discretion. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 69. In determining whether a court has abused its discretion in denying a motion to amend, the following four factors are considered: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) the timeliness of the proposed amendment; and (4) whether previous opportunities to amend the pleadings could be identified. *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d. 263, 273 (1992).

¶ 60 Euroview argues that consideration of the *Loyola Academy* factors demonstrates that the trial court abused its discretion in denying the amendment. We agree, but only as to leave to file count VIII of the third amended counterclaims for a declaratory judgment that the undisputed amount of $32,793.75 remains due and owing from LLT Group to Euroview under the terms of the settlement agreement (and not as to counts IX and X for promissory estoppel and unjust

enrichment, not as to any of the other counts pled as counterclaims throughout the litigation, and not as to any other amount). Euroview's request for leave to file the third amended counterclaims was included in its motion to reconsider following the denial of Euroview's motion for a payment order and oral motion for leave to file an amended claim seeking the $32,793.75. The trial court did not make findings as to the basis for the denial of leave to file, although, following the evidentiary hearing, the trial court explicitly found $32,793.75 to be due and owing from LLT Group to Euroview under the terms of the settlement agreement and then later "strongly suggested" to LLT Group that it pay Euroview the amount due. LLT Group did not dispute the amount owed; rather, its position is that the amount should be deducted from its attorney fees. However, we have rejected LLT Group's argument that it was the substantially prevailing party.

¶ 61 The proposed counterclaims would permit Euroview to recover the undisputed amount explicitly found to be due and owing under the settlement agreement, and there would be no prejudice or surprise by virtue of its filing. While the request for leave to file the proposed counterclaims was made late in the litigation, the request followed the dismissal of Euroview's breach-of-contract claim and the trial court's explicit finding that the amount was due and owing. See *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010) (the trial court did not abuse its discretion where, following trial, the court found a certain sum remained due and owing and granted the plaintiff leave to amend the complaint to state a cause of action for unjust enrichment and thereby conform the pleading to the proofs, where the defendant was previously put on notice of the facts). Accordingly, we reverse the denial of leave to file count VIII of the third amended counterclaims for a declaratory judgment on the $32,793.75 the trial court found due and owing under the settlement agreement and remand for further proceedings consistent with our disposition and on this issue only.

¶ 62 III. CONCLUSION

¶ 63 The judgment of the circuit court of Du Page County is affirmed in part and reversed and remanded in part.

¶ 64 Affirmed in part; reversed and remanded in part.