

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

166 SYMPHONY WAY, LLC, and)	Appeal from the Circuit Court
THE HAIGHT CO.,)	of Kane County.
)	
Plaintiffs and Counterdefendants-)	
Appellees,)	
)	
v.)	No. 18-CH-72
)	
U.S. PROPERTY INVESTMENTS GROUP,)	
LLC,)	
)	Honorable
Defendant and Counterplaintiff-)	Kevin T. Busch,
Appellant.)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justices Jorgensen and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 This case, regarding a dispute about a driveway easement, comes before us for a second time. In the prior appeal, we held that the trial court properly found that (1) plaintiffs 166 Symphony Way, LLC (Symphony), and The Haight Company (Haight) (collectively, HC), did not materially breach the easement agreement between the parties such that the easement agreement was preserved, (2) HC was entitled to attorney fees from defendant, U.S. Property Investments Group, LLC (USP), pursuant to the easement agreement, and (3) the indemnification provision did not cancel out the attorney fee provision. *166 Symphony Way, LLC v. U.S. Property Investments*

Group, LLC, 2022 IL App (2d) 210510-U (*166 Symphony Way I*), *pet. for leave to appeal denied*, No. 129217 (Ill. Mar. 29, 2023). On remand, after a hearing on the reasonableness of the attorney fees sought in HC’s petition, the trial court awarded HC \$162,287.50 for attorney fees and \$3,384.65 for costs.

¶ 2 On appeal, USP argues that the trial court erred when it (1) awarded attorney fees to Symphony and Haight, separately or together, because neither was a party to or a third-party beneficiary of the easement agreement and (2) denied USP’s motion for indemnification. For the reasons that follow, we affirm and assess attorney fees and costs in favor of HC.

¶ 3 I. BACKGROUND

¶ 4 A. Initial Litigation

¶ 5 The factual background of this case at the time of our decision in *166 Symphony Way I* is detailed in that order. *Id.* ¶¶ 2-86. We summarize the facts here that are necessary to understand this appeal.

¶ 6 Linda Haight is the sole owner of Symphony, which owns the real property at 166 Symphony Way in Elgin, and Linda’s adult children own Haight, which leases some of the space at 166 Symphony Way.

¶ 7 Bogdan and Sandra Stanek own USP, and they bought the neighboring real property located at 220 Spring Street in 2014. A portion of the 220 Spring Street property is subject to a 1987 driveway easement agreement.

¶ 8 In 1987, Linda and John Haight, then owners of 166 Symphony Way (the dominant tenant), entered into a land swap and easement agreement with the former owners of 220 Spring Street (the servient tenant), now owned by USP, to provide a “driveway easement *** for driveway purposes.” The dominant tenant would have access to a 20-foot-wide lane that ran along the eastern

wall of its building such that it could, among other things, access its delivery door. The easement ran with the land.

¶ 9 Upon USP's purchase of the Spring Street property, the parties began to disagree as to the proper use of the driveway easement. HC's position was that it had used the easement as it always had, and USP's position was that HC had increased its use of the easement due to the wedding business that it had started simultaneously to USP's purchase.

¶ 10 In May 2019, HC filed a four-count complaint against USP. In count I, HC alleged that USP owed HC access to the driveway at issue and USP had breached the easement agreement when it erected along the "curb cut" fences, gates, and other barriers that blocked HC's safe and reasonable access to the easement (when it erected fences, gates, and other barriers across the "curb cut" that HC used for safe and reasonable access to the easement). HC sought continued use of the curb cut to access the easement. In counts II and III, HC sought, *inter alia*, to have USP's recordings of termination of the easement declared null and void, alleging that HC had not materially breached the easement agreement to warrant termination. In count IV, HC essentially sought the same remedy as count I but asserted that HC had acquired the right to use the curb cut to access the driveway by prescriptive easement.

¶ 11 USP filed a five-count countercomplaint against HC, alleging that HC breached various provisions of the easement agreement. In counts I through III, USP sought a judgment declaring termination of the easement agreement and for attorney fees. In count IV, brought in the alternative to counts I through III, USP alleged breach of contract, based on HC's breach of the easement agreement, and sought attorney fees and an order declaring the easement agreement terminated and enjoining HC from trespassing on USP's property. In count V, brought in the alternative to count I and in addition to counts II through IV, USP sought indemnification under the easement

agreement from Symphony, as “the Grantee under the Easement Agreement as the successor in interest or assign of John A. Haight and Linda M. Haight.”

¶ 12 After a three-day bench trial, in which the court considered testimony from 13 witnesses, 89 exhibits, and argument by counsel, it ruled that (1) USP’s recordings of termination of the easement were null and void because HC had not materially breached the easement agreement; (2) HC, as the prevailing party, was entitled to attorney fees under the easement agreement; and (3) such fees were cancelled out because USP was entitled to indemnification of such fees under the easement agreement.

¶ 13 USP appealed, challenging only the trial court’s findings that preserved the easement agreement between the parties. *Id.* ¶ 88. HC cross-appealed and argued that the indemnification provision did not cancel out the attorney fee provision.

¶ 14 B. Appeal

¶ 15 We held in favor of HC and against USP. We determined that the trial court did not err when it found that HC did not materially breach the easement agreement. *Id.* ¶¶ 100, 110, 117. Employing principles of contract interpretation, we agreed with the trial court that HC was entitled to continue to use the curb cut to access the easement. *Id.* ¶ 134. The trial court properly interpreted the contract when it found that USP’s acts of blocking and attempting to terminate the easement were not justified. *Id.* ¶¶ 148-51. Regarding HC’s cross-appeal, we held that “the fee-shifting provision entitles HC [as the prevailing party] to attorney fees.” *Id.* ¶ 155. We then reversed the trial court’s determination that the indemnification provision canceled out the attorney fee provision. *Id.* ¶ 164. Finally, we remanded the case “for the trial court to determine HC’s reasonable fee award.” *Id.* ¶ 166.

¶ 16 C. Litigation on Remand

¶ 17 On remand, HC filed a petition for attorney fees and costs. In response, USP argued that (1) HC was not entitled to attorney fees because neither Symphony nor Haight was a party to the easement agreement and neither was a third-party beneficiary, (2) even if attorney fees were awarded, such fees should be substantially reduced based on Symphony and Haight's shared responsibilities, (3) HC was required to indemnify USP under the easement agreement, and (4) in the alternative to denying HC's fee petition, the trial court should hold a hearing to determine whether Symphony or Haight are parties to or beneficiaries of the easement agreement and whether their demand is reasonable in light of their shared responsibilities.

¶ 18 At the hearing on HC's petition, the trial court rejected USP's arguments, based on the law-of-the-case doctrine. The court considered testimony, exhibits, and argument on the reasonableness of the attorney fees. On December 13, 2023, the trial court awarded HC \$162,287.50 for attorney fees and \$3,384.65 for costs.

¶ 19 On January 11, 2024, USP filed a notice of appeal. The same day, USP also filed a motion to reconsider and to vacate, which the court denied on April 23, 2024. USP then filed an amended notice of appeal on May 10, 2024.

¶ 20 II. ANALYSIS

¶ 21 A. Attorney Fees

¶ 22 USP argues that (1) the trial court erred when it awarded attorney fees to Symphony and Haight, separately or together, because neither was a party to or a third-party beneficiary of the easement agreement and, (2) in *166 Symphony Way I*, we did not mandate the trial court to award attorney fees to HC, regardless of whether Symphony or Haight were entitled to such fees under the easement agreement. HC counters that USP's arguments are barred by the law-of-the-case doctrine. We agree with HC.

¶ 23

1. Law-of-the-Case Doctrine

¶ 24 As the application of the law-of-the-case doctrine is a question of law, our standard of review is *de novo*. *In re Christopher K.*, 217 Ill. 2d 348, 363-64 (2005). The law-of-the-case doctrine bars relitigation of an issue that has already been decided in the same case such that the resolution of an issue presented in a prior appeal is binding and will control upon remand in the trial court and in a subsequent appeal before the appellate court. *Goering v. Midwest Neurology, Ltd.*, 2021 IL App (2d) 200735, ¶ 27. The doctrine applies to questions of law and fact and encompasses a court’s explicit decisions as well as those decisions made by necessary implication. *Id.*

¶ 25 The purposes of the law-of-the-case doctrine are to protect settled expectations of the parties, ensure uniformity of decisions, maintain consistency during the course of a single case, effect proper administration of justice, and bring litigation to an end. *Id.* ¶ 28. The doctrine is also intended to maintain the prestige of the courts, because if an appellate court issues contrary opinions on the same issue in the same case, its prestige is undercut. *Id.*

¶ 26 Here, we hold that the law-of-the-case doctrine bars USP’s challenge to HC’s right to attorney fees under the easement agreement. Generally, the law-of-the-case doctrine prohibits reconsideration of issues that have been decided in a prior appeal. *Christopher K.*, 217 Ill. 2d at 365. “The rule is that no question which was raised or could have been raised in a prior appeal on the merits can be urged on subsequent appeal and those not raised are considered waived.” (Internal quotation marks omitted.) *Preferred Personnel Services, Inc. v. Meltzer, Purtill & Stelle, LLC*, 387 Ill. App. 3d 933, 947 (2009). Where there are no material changes in the facts since the prior appeal, such issues may not be relitigated in the trial court or reexamined in a second appeal. *Christopher K.*, 217 Ill. 2d at 365.

¶ 27 Our previous ruling in this case implicitly relied upon the existence, validity, and enforceability of the easement agreement between HC, collectively, and USP. See *166 Symphony Way I*, 2022 IL App (2d) 210510-U, ¶¶ 8, 11, 27, 166. While the case was under consideration in the trial court and in this court, USP did not pursue the argument that Symphony or Haight was not a party to the easement agreement. To consider this issue at this juncture in the litigation, after we previously relied upon Symphony and Haight as being parties to the easement agreement, would violate the settled expectations of the parties, undermine consistency in this case, and create an erroneous example for other cases.

¶ 28 Further, USP's failure to raise this issue before us in *166 Symphony Way I* renders it decided by necessary implication, as we reversed the trial court's decision regarding attorney fees and mandated the trial court to "determine HC's reasonable [attorney] fee award." *Id.* ¶ 166; see *CE Design Ltd. v. C&T Pizza, Inc.*, 2020 IL App (1st) 181795, ¶ 32 (the law-of-the-case doctrine precludes "relitigation of a previously-decided issue in the same case and applies not only to the court's explicit decisions, but also those issues decided by necessary implication").

¶ 29 USP maintains that it did not have an earlier opportunity to raise the argument that neither Symphony nor Haight was a party to the easement agreement. USP contends that the trial court did not make any findings regarding this issue. The law-of-the-case doctrine provides that, when an issue could have been raised in a prior appeal but was not, the decision regarding that issue becomes the law of the case and the issue is deemed forfeited. *Pace Communications Services Corp. v. Express Products, Inc.*, 2014 IL App (2d) 131058, ¶ 26.

¶ 30 Here, the record shows that USP raised this issue in support of its affirmative defense of lack of standing, when it argued that neither Symphony nor Haight was a party to the easement agreement. In its written decision and order, the trial court found that USP waived this issue. USP

failed to timely challenge this finding in the first appeal. Based on the above principles, the trial court's decision became the law of the case. Accordingly, USP's argument that neither Symphony nor Haight is entitled to attorney fees because neither entity was a party to, or a third-party beneficiary of, the easement agreement is barred by forfeiture in the first appeal and the law-of-the-case doctrine thereafter.

¶ 31

2. Invited Error

¶ 32 Even if the law-of-the-case doctrine did not bar USP's arguments regarding attorney fees, the arguments are barred because USP invited the alleged error. Illinois has long subscribed to the proposition that a party cannot complain on appeal about an error that it has induced. Under the doctrine of invited error or acquiescence, a party may not request or induce the trial court to proceed in one manner and later contend on appeal that the course of action was in error. *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004); see *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 33 (holding that invited error prohibits a party from requesting to proceed in one manner and then contending on appeal that the requested action was error). Further, a party's acquiescence, that is, its "active participation in the direction of the proceedings[,] *** goes beyond mere waiver." *Swope*, 213 Ill. 2d at 218 (quoting *People v. Villarreal*, 198 Ill. 2d 209, 227 (2001)). Therefore, traditional exceptions to the waiver rule do not apply. *Id.*

¶ 33 Here, USP induced and invited the trial court to proceed as though Symphony and Haight were parties to the easement agreement. In its countercomplaint, USP referred to HC, *i.e.*, Symphony and Haight together, as "Counter-Defendants." USP alleged that "Counter-Defendants have regularly and repeatedly violated and breached the terms of the Easement Agreement." USP sought attorney fees against "Counter-Defendants."

¶ 34 Further, at trial, USP attempted to establish that HC breached the easement agreement and that USP had a right to terminate the easement agreement. At trial, USP failed to present evidence or argue that neither Symphony nor Haight was a party to the easement agreement. By preceding this way, USP induced the trial court to treat Symphony and Haight as parties to the easement agreement and thus acquiesced in, consented to, or invited any alleged error.

¶ 35 USP also argues that the trial court erred when it denied it the opportunity to present at the fee petition hearing evidence and argument regarding whether Symphony and Haight, individually or together, were beneficiaries of the easement agreement such that they were entitled to attorney fees. For the reasons stated above, we need not address this argument.

¶ 36 B. Indemnification Against Symphony

¶ 37 Next, USP argues that the trial court erred when it denied its motion for indemnification against Symphony and/or Haight. USP maintains that it is entitled to indemnification from Symphony as a result of Haight's "third-party action."

¶ 38 Again, USP attempts to relitigate issues that we already decided in *166 Symphony Way I*. As discussed, the law-of-the-case doctrine bars USP from arguing that Haight was not a party to the easement agreement. Further, in *166 Symphony Way I*, we reversed the trial court's ruling that USP was entitled to indemnification from HC under the easement agreement. *166 Symphony Way I*, 2022 IL App (2d) 210510-U, ¶¶ 164-66. In this regard, we determined that the trial court abused its discretion when it erroneously interpreted and reformed the easement agreement. *Id.* Accordingly, USP's arguments regarding indemnification are barred by the law-of-the-case doctrine. The trial court's judgment is affirmed.

¶ 39 C. Attorney Fees on Appeal

¶ 40 HC seeks additional attorney fees and costs incurred in defending this appeal. For the sake of judicial economy, we order HC to file with this court, within 14 days of this opinion, a petition or statement of reasonable expenses and attorney fees incurred because of this appeal. HC may also file any other affidavits or documentation it deems appropriate. USP shall have 14 days to respond. We will thereafter file an order determining the additional amount of attorney fees and costs that will be awarded to HC.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, the judgment of the circuit court of Kane County is affirmed.

¶ 43 Affirmed.

166 Symphony Way, LLC v. U.S. Property Investments Group, LLC,
2025 IL App (2d) 240040

Decision Under Review: Appeal from the Circuit Court of Kane County, No. 18-CH-72;
the Hon. Kevin T. Busch, Judge, presiding.

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