2025 IL App (1st) 241428-U

THIRD DIVISION
June 30, 2025

No. 1-24-1428

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARTICE DAVIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee and Cross-Appellant,	)	Cook County
	)	
v.	)	No. 19 L 3748
	)	
G.W. NITZSCHE INC. d/b/a SERVPRO OF WHEATON/GLEN ELLYN/LISLE,	)	Honorable
	)	Jean M. Golden,
	)	Judge Presiding.
Defendant-Appellant and Cross-Appellee.	)	

JUSTICE REYES delivered the judgment of the court.
Justices Martin and D.B. Walker concurred in the judgment.

ORDER

¶ 1 *Held*: Reversing and remanding for a new trial where the trial court erred in granting a motion to strike a jury demand.

¶ 2 Martice Davis (Davis) hired a construction company to perform work on the roof of her residence. The construction company failed to properly secure the roof, resulting in extensive water damage to the property during a rainstorm. Davis filed a claim with the construction company's insurer, and the insurer's third-party claims manager arranged for G.W. Nitzsche Inc. d/b/a Servpro of Wheaton/Glen Ellyn/Lisle (Servpro) to assess the damage. Servpro is in the

business of cleaning, repairing, and restoring properties damaged by casualties.

¶ 3 Davis subsequently filed an action against Servpro in the circuit court of Cook County, alleging that Servpro had "stripped" her residence to its skeletal structure and removed her personal property to purportedly repair the water damage, but then abandoned the project and improperly billed her (instead of the insurer) for the incomplete work and the property removal and storage costs. Servpro filed counterclaims, primarily alleging that Davis had failed to pay for its various services. Following a bench trial, the circuit court entered a judgment in favor of Davis on her conversion claim but rejected the remainder of her claims and Servpro's counterclaims. In these cross-appeals, both parties challenge the rulings of the circuit court. For the reasons discussed below, we reverse and remand for a new trial.

¶ 4 BACKGROUND

¶ 5 *Lawsuit and Servpro Counterclaim*

¶ 6 After Davis initiated a lawsuit against Servpro and other defendants (described further below) in April 2019, Servpro filed a counterclaim for breach of contract. Servpro alleged that Davis owed $41,041.08 for its labor, materials, and services, based on an "Authorization to Perform Services" which she signed. The amount consisted of $19,799.14 for residential water damage restoration and $21,241.94 for packing and storing her personal belongings. Servpro also asserted alternative counts for unjust enrichment and *quantum meruit*.

¶ 7 On December 10, 2019, Davis filed a motion to dismiss the counterclaim, arguing that there was no enforceable contract, as the signed authorization form lacked essential terms, *i.e.*, no defined scope of work and no price terms. In an order entered on August 10, 2020, the circuit court denied the motion, finding that the absence of the price and duration from the contract may affect damages but did not impair the validity of the contract.

¶ 8 *Operative Complaint*

¶ 9 Davis was eventually granted leave to file a first amended complaint (operative complaint).[1] The operative complaint alleged, in part, as follows.

¶ 10 Davis owned and resided in a property located in the 300 block of 51st Avenue in Bellwood, Illinois (the property). She retained Cole Construction to perform work on the property; Cole Construction is owned by Milton Cole (Milton). On June 19, 2018, Cole Construction failed to properly cover exposed gaps in the roof at the end of the workday. Due to heavy rain that evening, the property and its contents sustained significant water damage.

¶ 11 Milton informed Davis that his company was insured by Hartford Casualty Insurance Company (Hartford). On June 20, 2018, Davis telephoned Hartford and made a claim for the damage. Hartford contacted a third-party claims manager, Crawford & Company, which arranged for Servpro to visit the property, survey the damage, and prepare a repair estimate.

¶ 12 Based on representations that Hartford had approved Servpro's services, Davis allowed Servpro to commence mitigation and repair work at the property and to temporarily move her possessions to another location. According to the operative complaint, both Servpro and Hartford led Davis to believe that Hartford would cover the cost of Servpro's work. Davis alleged that there was no indication that Hartford was denying or disputing coverage or that she would have to pay any repair costs. Hartford approved her occupancy at a hotel, depositing $4888.80 into her bank account in August 2018 as reimbursement for her hotel stay.

¶ 13 Servpro removed drywall and flooring, leaving the property with exposed beams and pipes. While Servpro was performing its work, Davis allowed Milton back into the property to

[1] While not captioned as a verified complaint, a "verification" from Davis under section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2020)) was appended to the operative complaint.

complete the original construction project. Without Davis's knowledge, Milton removed the chimney on the lower levels of the property; this method of removal was potentially unsafe. Davis filed a second claim with Hartford relating to the chimney removal.

¶ 14 On September 20, 2018, the Village of Bellwood inspected the work being performed, advised Davis that the necessary permits had not been obtained, and ordered all construction work to cease. At that point, the property had been "gutted." According to the operative complaint, Servpro abruptly abandoned its work and kept her personal items.

¶ 15 On October 25, 2018, an attorney retained by Davis contacted Servpro and demanded that the company finish its work and return her possessions. One day later, Servpro provided backdated invoices to Davis (through her attorney). On November 13, 2018, Hartford notified Davis that it was denying her claim, asserting that it "does not fall within" the applicable policy.

¶ 16 Davis filed the 10-count operative complaint against defendants Cole Construction, Milton, Servpro, and Hartford. Count I alleged that Cole Construction breached its contract by, among other things, leaving the uncovered gaps on the roof, which resulted in extensive damage to the property. Counts II and III against Cole Construction and Milton alleged negligence and violation of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2018)). As Milton had filed a mechanic's lien against the property, count IV asserted a claim to quiet title. Count V asserted a "breach of agreement" by Servpro, alleging that the company failed to complete the cleaning and restoration services which it had committed to perform pursuant to an agreement between the parties. Counts VI, VII, and VIII asserted claims against Servpro for violation of the Consumer Fraud Act, common law fraud, and, alternatively, negligence. Davis asserted a conversion claim against Servpro in count IX, alleging that the company had wrongfully refused to return her possessions. Finally, in

count X against Hartford, Davis asserted that the insurer should be equitably estopped from denying her insurance claim.

¶ 17 *Answers, Affirmative Defenses, and Dismissal Matters*

¶ 18 Hartford filed an answer and affirmative defenses. Although Hartford acknowledged that it contacted Crawford & Company, which then contacted Servpro, to secure the open roof so as to prevent further damage, Hartford denied arranging (either directly or indirectly) for Servpro to conduct any repairs. In its affirmative defenses, Hartford maintained that Davis had entered into an agreement with Servpro, which she breached through non-payment. Hartford also noted that Davis had signed a release in connection with her receipt of the hotel payment reimbursement.

¶ 19 Servpro filed an answer and affirmative defenses, as well as a motion to dismiss the Consumer Fraud Act count, the common law fraud count, and the negligence count of the operative complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2020)). As to the Consumer Fraud Act count, Servpro argued, in part, that Davis failed to plead that Servpro's employees had actual knowledge of the false, misleading, or deceptive character of the information they allegedly conveyed or that Servpro intended for Davis to rely on the alleged deception. As to the common law fraud count, Servpro maintained, in part, that it was "just a reformulation of the contract claim," *i.e.*, Davis failed to identify any fraudulent act distinct from the alleged breach of contract. Servpro further asserted that Davis was barred from recovery on the negligence count under the *Moorman* doctrine (*Moorman Manufacturing Co. v. National Tank Co.*, 91 Ill. 2d 69 (1982)), which generally bars recovery for damages under tort law for solely economic losses.

¶ 20 Servpro subsequently filed amended affirmative defenses. Servpro asserted that the claims were barred to the extent of any failure by Davis to comply with the notice and claim

provisions of the parties' contract. Servpro also claimed a setoff in the amount of $41,041.08, plus attorney fees and costs, for amounts due in connection with her breach of the contract and alternatively, under theories of unjust enrichment and *quantum meruit*. Finally, Servpro maintained that a "limitation of liability" provision in the parties' contract limited its liability to three times the amount paid by Davis for its services, which was $0, as Davis had paid nothing.

¶ 21 Cole Construction and Milton filed a verified answer and affirmative defenses, alleging they performed services in a "workmanlike manner." They also asserted that the work performed by Servpro was an "independent intervening cause" of the damage to the property. Milton further represented that he had withdrawn the lien recorded against the property.

¶ 22 In October 2021, Davis filed a motion to voluntarily dismiss Hartford, Cole Construction and Milton from the action. The record indicates that these three defendants paid a total amount of $300,000 to Davis as part of a settlement. The circuit court entered an order dismissing these defendants with prejudice, and the case continued solely between Davis and Servpro.

¶ 23 Davis subsequently filed a response to Servpro's motion to dismiss certain claims. As to her Consumer Fraud Act and common law fraud claims, Davis asserted that a Servpro employee had represented that Hartford had approved Servpro's work and had agreed to pay for the work, *i.e.*, there was an actionable misrepresentation. Davis maintained that she never agreed to pay for Servpro's services. As to the negligence count, Davis argued that an exception to the *Moorman* doctrine—where a plaintiff's damages are proximately caused by fraud or intentional misrepresentation—precluded the application of the doctrine.

¶ 24 In its reply in support of the motion to dismiss, Servpro asserted, in part, that Davis failed to allege that Servpro had knowledge that the alleged misstatement was untrue and failed to plead common law fraud with specificity. Servpro also argued that count V of the operative

complaint pled a breach of contract count against Servpro, which barred Davis's negligence claim under the *Moorman* doctrine.

¶ 25 In an order dated October 19, 2022, the circuit court denied Servpro's motion to dismiss. Servpro subsequently filed an answer and affirmative defenses as to the fraud and negligence counts (counts VI, VII, and VIII), asserting: (a) that the damages were attributable to the actions of parties other than Servpro, including Cole Construction and Milton, and (b) that the limitation of liability provision in the parties' contract capped Davis's damages at $0 (*i.e.*, three times the $0 amount that she had paid to Servpro).

¶ 26 *Motions for Summary Judgment*

¶ 27 Davis filed a motion for summary judgment. She argued that Crawford & Company, as Hartford's representative, requested Servpro's work. Davis maintained that Hartford was Servpro's client, and Servpro expected Hartford to pay for the work. According to Davis, Servpro required her to sign documentation "regardless of who was paying for the work because she was the owner of the house and Hartford alone could not authorize anyone to work in someone's house." Davis argued that the Servpro documents she signed—including an "Authorization to Perform Services" and a "Construction Services Agreement & Deposit Receipt"—did not describe the work to be performed or the estimated cost of the work. She contended that Servpro advised Hartford of the extent of the damage and the scope of the work but never discussed payment with her as the work progressed. When Servpro stopped the project, it initially billed Hartford; Servpro did not bill Davis until after Hartford declined to pay.

¶ 28 Davis represented that Servpro primarily performed demolition work in the property but did not replace the walls, ceilings, closets, and drywall which were demolished. Davis described the property as in "bad shape" and "unsafe to live in" after Servpro's work. She also noted that

Servpro removed virtually all of her personal items from the property, ostensibly to clean the items and to clear the property to facilitate its work. Servpro refused to return Davis's possessions unless she paid the outstanding invoices.

¶ 29 Davis contended that she was entitled to summary judgment on her "breach of agreement" claim (count V), as Servpro demolished parts of the property, failed to complete the promised repairs, abandoned the project prior to completion, and refused to return her possessions. As to the Consumer Fraud Act claim (count VI) and common law fraud claim (count VII), Davis maintained that Servpro falsely informed her that Hartford had approved and would pay for the work and falsely represented that it was removing her personal items to clean them but instead retained them as "ransom," even after she initiated litigation. As to her alternative claim for negligence (count VIII), Davis argued, in part, that Servpro breached the duties it had undertaken by demolishing parts of the property without repairing them, abandoning the project before completion, and failing to return her items. Davis asserted that she had also proven conversion (count IX), as Servpro had no legal right to retain her possessions beyond the time necessary to clean them.

¶ 30 As to Servpro's breach of contract counterclaim, Davis argued that there was no contract, as the signed work authorization was missing pricing information, a description of the scope of the work, and other essential terms. As to the *quantum meruit* and unjust enrichment counts, Davis contended she had allowed Servpro on her property but "never accepted its work, as she demanded that it fix what it demolished and return all of her possessions it unlawfully kept."

¶ 31 The attachments to the motion included transcripts of the depositions of Davis and Patrick Murphy (Murphy), Servpro's corporate representative. Davis testified that she previously had a romantic relationship with Milton, and he previously resided in her coach

house. After the flooding occurred and she filed her initial insurance claim with Hartford, Servpro was "sent" to her property; she did not contact Servpro. Davis acknowledged that she signed certain documents from Servpro and that the company performed work on the property during a period of approximately 60 days. After filing the second claim (regarding the chimney removal), Davis learned that Hartford was investigating her claims. During the deposition, she was questioned regarding her receipt of a Paycheck Protection Program (PPP) loan; the PPP paperwork apparently referred to a taxi company, but she denied running any taxi service.

¶ 32 Murphy testified that he was not aware that any Servpro employee discussed pricing or payment matters with Davis. According to Murphy, "[e]verything was intended to be billed to her insurance company as part of her covered loss." Murphy considered Hartford to be Servpro's "customer" on the project, and he understood that all bills would be sent to Hartford. He acknowledged that Servpro billed Davis based on instructions from a Hartford employee.

¶ 33 Servpro also filed a motion for summary judgment, arguing that the fraud claims asserted by Davis were fatally flawed, as she admitted that Servpro did not solicit her business. As to the negligence claim, Servpro maintained that it was solely hired to perform remediation work and never agreed or promised to perform construction work at the property. Servpro further contended that a limitation of liability provision in the work authorization form limited the company's liability to three times the amount paid by Davis for the services, *i.e.*, $0.

¶ 34 After additional briefing, the circuit court entered an order on July 19, 2023, denying both motions for summary judgment.

¶ 35 *Motion to Strike Jury Demand*

¶ 36 On July 26, 2023, Servpro filed a motion to strike Davis's jury demand, which was included in both the original complaint and the operative complaint. Attached to the motion was

the "Authorization to Perform Services" signed in July 2018, which provided that the parties agreed to waive their respective rights to a trial by jury regarding any claims "related to or arising out of or in any way connected to this contract." Servpro argued that, "[u]nder Illinois law, an unambiguous jury waiver will be given effect, without need for an additional showing that the waiver was knowing and voluntary."

¶ 37 On the following day, Davis filed a motion to voluntarily dismiss count V of the operative complaint, which alleged a "breach of agreement" by Servpro. The circuit court entered an order on July 31, 2023, dismissing count V without prejudice.

¶ 38 In her response to the motion to strike, Davis maintained that she had denied the existence of a contract with Servpro throughout the litigation. She argued that the signed work authorization contained no description of the work to be performed or a cost estimate. Davis also observed that Murphy (Servpro's representative) had admitted during his deposition that Hartford was the company's customer and that Servpro had anticipated that Hartford would pay for its services. Davis contended that a jury should decide whether "a disputed contract exists before applying its purported terms," *i.e.*, the jury waiver.

¶ 39 In its reply, Servpro argued that both the original complaint and the operative complaint contained a breach of contract claim against Servpro "based on the written agreement between the parties that is the subject of Servpro's counterclaim." According to Servpro, Davis's allegation that she entered a contract with Servpro was a binding judicial admission. Servpro also argued that Murphy did not testify that there was no contract between Servpro and Davis. Servpro further contended that Davis had accepted the benefits of a contract—Servpro's performance of water mitigation services—and was thus estopped from denying the existence of the contract to avoid the jury waiver contained therein. Finally, citing *Dyna-Kleen, Inc. v.*

Hornbeck, 2022 IL App (2d) 210502-U, Servpro asserted that Illinois courts have upheld contracts for emergency mitigation services even when they lacked specific terms.

¶ 40 Following arguments, the circuit court entered an order on August 24, 2023, granting the motion to strike the jury demand. The case proceeded to a bench trial.

¶ 41 *Trial Testimony and Rulings*

¶ 42 The testimony and other evidence presented at trial included the following.[2]

¶ 43 Davis testified that on July 3, 2018, Servpro showed her a form agreement entitled "Construction Services Agreement & Deposit Receipt" (construction agreement), which she signed. The construction agreement contained no price or price estimate. The description of the work to be performed was: "Emergency services to include securing of tarp, demolition needed for drying equipment to be placed and moisture mapping. Contents to be moved as needed." Davis testified that she did not know the meaning of "moisture mapping." Nothing on the face of the construction agreement indicated that Davis would be responsible for the cost of Servpro's performance. Davis understood that she was required to sign the document provided by Servpro so it could commence the project. Although the construction agreement incorporated an "Addendum and General Specifications," such document was not provided to Davis.

¶ 44 On July 6, 2018, Servpro displayed several additional forms to Davis on an iPad. The documents included numerous pages with small print, which Davis briefly scanned. None of the forms contained price terms or estimates. Davis testified that she either electronically signed the documents or allowed Servpro to do so. Davis further testified that Servpro never provided her with paper or electronic copies of these documents. On July 11, 2018, a Servpro representative

[2] The parties filed an agreed statement of facts in lieu of a report of proceedings, as permitted by Illinois Supreme Court Rule 323(d) (eff. July 1, 2017).

left a voicemail for Davis indicating that "we got all the approvals that we need" from Hartford to begin the work at the property.

¶ 45 Davis testified that she was forced to move back into her unfinished and empty property when the payment from Hartford for her temporary housing was depleted. The "destruction" of the interior of the property and the loss of her possessions left Davis "devastated, depressed, ashamed and very upset." She subsequently sought psychiatric help.

¶ 46 Murphy testified that he had worked as an estimator and project manager at Servpro for 13 years and was the estimator for the Davis job. He testified that Hartford was Servpro's customer, that Servpro expected payment from Hartford, and that Servpro did not provide Davis with an estimate of its work on the property. According to Murphy, the authorization form signed by Davis was "more of an insurance-based document used for billing an insurance company." He further testified that any homeowner is required to sign the authorization form—regardless of the payor—to allow Servpro to work in their home.

¶ 47 Murphy was not aware whether anyone ever discussed the potential cost of Servpro's services with Davis, either verbally or in writing. He acknowledged that, when Servpro "left the job," the property was not in a livable condition.

¶ 48 At the conclusion of the evidence, Servpro moved for a directed finding and judgment in its favor. After the arguments of counsel, the circuit court denied the motion.

¶ 49 The circuit court entered a judgment order on January 12, 2024. The circuit court awarded judgment in favor of Servpro on Davis's fraud claims, finding there was no deceptive act or misrepresentation by Servpro, as it initially understood that Hartford would pay for the remediation work and fully expected Hartford to pay when it removed her possessions. As to Davis's negligence count, the circuit court found that Servpro "undertook a duty" to repair the

property, which it breached by leaving the property in a state of disrepair. The circuit court awarded damages to Davis on her negligence count in the amount of $15,264.77. The circuit court also ruled in favor of Davis on the conversion count and awarded $39,564.47. In denying Davis's request for punitive damages, the circuit court found that she never obtained leave to seek such damages under section 2-604.1 of the Code (735 ILCS 5/2-604.1 (West 2022)).

¶ 50 With respect to the negligence and conversion counts, the circuit court found for Davis on the limitation of liability affirmative defense asserted by Servpro. The circuit court observed that Murphy did not know whether Davis received copies of the documents which were signed on an iPad. The circuit court further found that "even if the existence of an agreed upon contract had been proven," the limitation of liability provision appeared to be against public policy or unconscionable.

¶ 51 The circuit court also awarded judgment to Davis on Servpro's claim for breach of contract and its alternative claims for *quantum meruit* and unjust enrichment. As to the breach of contract claim, the circuit court noted that Davis denied receiving a copy of the contract; she testified that she was informed that Hartford would be "responsible"; Servpro initially sent its bills to Hartford, not to Davis; and Murphy acknowledged that Servpro and Davis "did not have an agreement on price." As to the *quantum meruit* claim, the circuit court recognized that Servpro did not intend to work gratuitously but also did not expect Davis to pay for the work during the time it performed services. The circuit court further found that Servpro failed to prove a right to damages for unjust enrichment by a preponderance of the evidence.

¶ 52 Finally, the circuit court denied Servpro's request for a setoff against the $300,000 settlement Davis executed with Cole Construction, Milton, and Hartford. The circuit court found that the only testimony given with respect to the settlement was Davis's representation that the

settlement was for water damage to the upper floor of the property, not the main floor or the basement. The circuit court concluded that Servpro did not satisfy its burden to prove which portion of the settlement was attributable to its share of the liability.

¶ 53 Servpro filed a motion to reconsider, challenging various aspects of the circuit court's ruling. Following briefing, the circuit court entered an order on June 13, 2024, vacating the judgment in favor of Davis on the negligence count (count VIII) in the amount of $15,264.77, agreeing with Servpro that the economic loss doctrine applied. Servpro filed a timely appeal, and Davis filed a timely cross-appeal.

¶ 54 ANALYSIS

¶ 55 Servpro advances multiple contentions on appeal. Servpro initially argues that the trial court erred in not allowing a setoff against the $300,000 settlement with the other defendants. It next contends that the evidence was insufficient to support Davis's claim for conversion, *e.g.*, she authorized Servpro to remove the personal items from the property. Servpro also challenges the calculation of the damage award and maintains that the limitation of liability provision in the work authorization capped her damages at $0. Servpro further asserts that Davis lacked credibility based on, among other things, her testimony regarding her PPP loan. As to its counterclaim, Servpro maintains that Davis breached their contract by accepting Servpro's services and then refusing to pay for them.

¶ 56 In her cross-appeal, Davis challenges a specific finding of the circuit court in its order addressing the motion for reconsideration. Contrary to its earlier ruling, the circuit court stated on reconsideration that it "agrees with Servpro that the verified complaints constituted a judicial admission that a contract existed between the parties." While the circuit court ultimately reaffirmed its rejection of Servpro's breach of contract claim, Davis maintains that she never

admitted there was a contract. Based on the "non-existent contract," Davis also asserts that the circuit court erred in striking her jury demand.[3] Davis next argues that the circuit court erred in denying her Consumer Fraud Act claim, as the statute "prohibits unfair business practices regardless of whether a defendant misled or deceived the plaintiff." As to the ultimate denial of her negligence claim, Davis contends that the circuit court misapplied the *Moorman* doctrine based on its "erroneous finding that Davis admitted a contract between the parties." Finally, Davis asserts that the circuit court erred in denying punitive damages.

¶ 57 As discussed below, we view the dispositive issue in this case as whether the circuit court erred in striking Davis's jury demand. In granting the motion, the circuit court enforced a written jury waiver. A "contractual jury waiver is essentially a promise by the contracting party not to pursue a jury trial." *Schultz v. Sinav Limited*, 2024 IL App (4th) 230366, ¶ 140.

¶ 58 To resolve the issue, we must address whether the signed document which contained the jury waiver—the "Authorization to Perform Services"—was a valid and enforceable contract.

¶ 59 As an initial matter, we note a significant inaccuracy in Servpro's representations to the circuit court regarding this issue. In its reply in support of its motion to strike the jury demand, Servpro stated: "Both the original and First Amended Complaints filed by Plaintiff contain a breach of contract claim (Count V) against Servpro based on the written agreement between the parties that is the subject of Servpro's counterclaim." The original complaint, however, included a breach of contract claim against Hartford, but not against Servpro. In the context of this case—which was handled by several judges over the course of several years—the failure of Servpro's counsel to ensure the accuracy of its representations raises concern regarding the circuit court's

[3] We note that Judge James Flannery ruled on the motion to strike the jury demand, while Judge Jean Golden presided over the bench trial.

rulings which were presumably based (at least in part) thereon. See Ill. S. Ct. R. 137 (eff. Jan. 1, 2018) (providing that an attorney's signature constitutes a certificate that he read the document and "to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact").

¶ 60 On appeal, Servpro further asserts that "there was never a question as to the existence of a valid contract between the parties from the case's inception in April of 2019 until the eve of trial in September of 2023." Simply put, we disagree with this assessment. On December 10, 2019, Davis filed a motion to dismiss Servpro's counterclaim for breach of contract and, alternatively, *quantum meruit* and unjust enrichment. In the motion, Davis argued that the authorization attached to Servpro's counterclaim was "not a contract" and "show[ed] no meeting of minds" as, among other things, "it is missing any price terms at all." We also observe that in the subsequent operative complaint, Davis asserted a "breach of contract" claim against Cole Construction and a "breach of agreement" claim against Servpro. While the captioning of the counts is certainly not conclusive, the use of different terminology suggests that Davis viewed a distinction between the "contract" with Cole Construction and the "agreement" with Servpro.

¶ 61 Servpro also suggests that the circuit court order entered on August 10, 2020, denying Davis's motion to dismiss Servpro's counterclaim is dispositive of the issue.[4] We reject this suggestion. In denying the motion to dismiss, the circuit court noted that "[a]t this point, the court is only concerned with the validity of the contract and as such determines it is valid." While the law of the case doctrine generally "bars relitigation of an issue previously decided in the same case" (*Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006)), the doctrine binds a court only where a prior order was final. *Commonwealth Edison Co. v. Illinois Commerce Comm'n*,

[4] Judge Brendan O'Brien ruled on the motion to dismiss.

368 Ill. App. 3d 734, 742 (2006). As the denial of a motion to dismiss is an interlocutory order (*id.*), the law of the case doctrine does not apply. "Moreover, where, as here, multiple judges and rulings are involved, we are mindful of precedent recognizing the circuit court's inherent power to review, modify, or vacate interlocutory orders while the court retains jurisdiction over the entire controversy." *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 42.

¶ 62 The seeming confusion regarding the nature and effect of the authorization continued throughout the circuit court proceedings. In the order which partially granted the motion for reconsideration following the bench trial, the circuit court "agreed with Servpro that the verified complaints constituted a judicial admission that a contract existed between the parties." Aside from the questionable representations made to the circuit court—and the fact that the original complaint was not verified—we are concerned with the circuit court's characterization of the complaints as a "judicial admission." A judicial admission is a clear, deliberate, unequivocal statement by a party regarding a concrete fact within that party's knowledge. *In re Estate of Rennick*, 181 Ill. 2d 395, 406-07 (1998). While courts have recognized that allegations in a complaint generally are judicial admissions and are conclusive against the pleader (*Roti v. Roti*, 364 Ill. App. 3d 191, 200 (2006)), Davis has not made a clear and unequivocal statement regarding the existence of a contract with Servpro. Indeed, as noted above, her consistent position throughout this litigation has been that the authorization to perform services did not constitute a contract. We further note that the "question of a contract's validity is a matter of law for the court to decide." *1550 MP Road LLC v. Teamsters Local Union No. 700*, 2019 IL 123046, ¶ 38. A party is not bound by an admission regarding a conclusion of law, as the court will determine the legal effect of the facts adduced. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010).

¶ 63 "To be enforceable, a contract must show a manifestation of agreement between the parties and be definite and certain in its terms." *Wagner Excello Foods, Inc. v. Fearn International, Inc.*, 235 Ill. App. 3d 224, 229 (1992). An enforceable contract "must include a meeting of the minds or mutual assent as to the terms of the contract." *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991). Where the material terms and conditions are not ascertainable, there is no enforceable contract. *Wagner Excello Foods*, 235 Ill. App. 3d at 229-30. See *Vassell v. Presence Saint Francis Hospital*, 2018 IL App (1st) 163102, ¶ 51 (stating that a "legally binding contract requires terms that are reasonably definite and certain").

¶ 64 In this case, the "Authorization to Perform Services"—which includes the jury waiver provision—appears to be missing key terms and conditions. While the document permitted Servpro to perform cleaning and restoration services at the property, it did not clearly *require* Servpro to perform any services. *Vassell*, 2018 IL App (1st) 163102, ¶ 51 (noting that contracts require mutual consideration). The authorization provided that Davis (as the "Customer") agreed to pay for Servpro's services if they were not covered by insurance but did not provide any information regarding the actual or potential price of such services. *Seiden Law Group, P.C. v. Segal*, 2021 IL App (1st) 200877, ¶ 17 (noting that price is a critical term). See *Olympia Express, Inc. v. Linee Aeree Italiane, S.P.A.*, 509 F.3d 347, 352-53 (7th Cir. 2007) (finding that a contract was unenforceable under Illinois law where the price was not specified). While Servpro cites *Dyna-Kleen*, 2022 IL App (2d) 210502-U, for the proposition that Illinois courts have upheld contracts for emergency mitigation services even where essential terms were missing, we observe that the contract at issue in *Dyna-Kleen* expressly provided performance and payment parameters that are absent in the instant case, *e.g.*, that the work would be completed in accordance with insurance estimates. *Id.* ¶ 4.

¶ 65 As noted above, a contractual jury waiver is "essentially a promise by the contracting party not to pursue a jury trial." *Schultz*, 2024 IL App (4th) 230366, ¶ 140. Even assuming *arguendo* that the authorization herein was a valid and enforceable contract, the circumstances of its execution suggest that Davis's jury waiver was not knowing and voluntary. *Id.* ¶ 139 (noting that the question of whether a party contractually waived her right to a jury trial under the Illinois constitution involves the application of ordinary contract principles, including the availability of general contract defenses to challenge the knowing and voluntary nature of the waiver). Davis's unrefuted testimony was that Servpro displayed the document on an iPad; she briefly scanned the small print. She also testified that she was not provided with a paper or an electronic copy of the document. Under the specific circumstances herein—where even the Servpro estimator apparently viewed the form as perfunctory and considered Hartford to be the customer on the job—we are hard-pressed to characterize Davis's waiver of her rights as knowing and voluntary.

¶ 66 Based on the foregoing, we conclude that the circuit court erred in granting Servpro's motion to strike Davis's jury demand. Given that Davis had a right to a jury trial with respect to at least some of her claims, we reverse and remand this matter for a new trial before a jury, as requested by Davis's counsel during oral argument. See *Schultz*, 2024 IL App (4th) 230366, ¶ 127 (noting that civil litigants have the constitutional right to a jury trial, "as that right was enjoyed before the adoption of the Illinois Constitution in 1970"); Ill. Const. 1970, art. I, § 13 (providing that "[t]he right of trial by jury as heretofore enjoyed shall remain inviolate"). As we are reversing and remanding for a jury trial, we need not consider the other claims of error.

¶ 67 CONCLUSION

¶ 68 The judgment of the circuit court is reversed, and this matter is remanded for a jury trial.

¶ 69 Reversed and remanded.