2022 IL App (2d) 200599
Nos. 2-20-0599 & 2-21-0519 cons.
Opinion filed November 29, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MILL CREEK WATER RECLAMATION DISTRICT, Plaintiff-Appellant, v. KENT W. SHODEEN, as Trustee of the Kent W. Shodeen Trust No. 1; SHO DEEN, INC.; MILL CREEK LAND COMPANY; TANNA FARMS, LLC; and MILL CREEK COUNTRY CLUB, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Kane County. No. 14-MR-1234 Honorable Mark Pheanis, Judge, Presiding.

KENT W. SHODEEN, as Trustee of the Kent W. Shodeen Trust No. 1; TANNA FARMS, LLC; and MILL CREEK COUNTRY CLUB, INC., Plaintiffs-Appellees and Cross-Appellants, v. MILL CREEK WATER RECLAMATION DISTRICT, Defendant-Appellant and Cross-Appellee.	)	Appeal from the Circuit Court of Kane County. No. 15-L-293 Honorable Mark Pheanis, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court, with opinion.

Justices Hutchinson and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 In 1995, Mill Creek Water Reclamation District (District) and the Kent W. Shodeen Trust No. 1 (Trust) entered into a purchase agreement, a bill of sale, and a lease agreement (Agreements) where the District agreed to buy systems to dispose of water and wastewater and to pay rent in order to discharge water on the property of defendants, Kent W. Shodeen, as Trustee of the Trust; Sho Deen, Inc.; Mill Creek Land Company (MCLC); Tanna Farms, LLC; and Mill Creek Country Club, Inc. The parties renewed the lease agreement on multiple occasions. In 2012, the District stopped paying rent. In 2014, In case No. 14-MR-1234, the District filed a 10-count complaint seeking to have the Agreements declared void as unconscionable and against public policy. In 2015, in Case No. 15-L-293, the defendants Kent, Tanna Farms, LLC, and Mill Creek Country Club, Inc., filed a complaint seeking damages for the unpaid rent. The trial court consolidated both cases for trial. In 2019, following a bench trial, the District filed a motion to amend its complaint to add a count for breach of contract. The trial court granted the motion. It subsequently determined that the defendants had breached the Agreements and it awarded the District $2,678,798.25 in damages in case No. 14-MR-1234. The trial court also found that the District had breached the Agreements by not paying rent and it awarded the defendants $2,616,079.36 in damages in case No. 15-L-293. However, the trial court denied the defendants' request for prejudgment interest. The defendants appealed in case No. 14-MR-1234, which was docketed as appeal No. 2-20-0599. The District appealed in case No. 15-L-293, which was docketed as appeal No. 2-21-0519. The defendants cross-appealed in case No. 2-21-0519 the denial of prejudgment interest on the damages award. We consolidate appeal Nos. 2-20-0599 and 2-21-0519. For the reasons that follow, we affirm in part and reverse in part.

¶ 2 I. BACKGROUND

¶ 3 Kent is the developer of Mill Creek. Mill Creek is a planned unit development (PUD) composed of single and multifamily residential units, two golf courses (Mill Creek Country Club and Tanna Farms Golf Club), schools, and other facilities. The District was established in 1992 to provide potable water and sanitary, treated wastewater disposal to Mill Creek's residents and the owners and users of the commercial properties, which was necessary for Mill Creek to achieve residential housing densities that were typical in incorporated municipal developments. Without the establishment of the District, the development of Mill Creek would not have been possible.

¶ 4 The District was formed pursuant to the Sanitary District Act of 1936 (Sanitary Act) (70 ILCS 2805/1 (West 1994)). The Sanitary Act provides that a sanitary district shall be governed by a board of trustees consisting of three trustees. *Id.* § 3. All district trustees must reside within the district's geographic boundaries. *Id.* § 3(b). A sanitary district's initial trustees are appointed by the relevant county board chairperson, with the advice and consent of the county board. *Id.*

¶ 5 On January 12, 1993, the Kane County Board appointed the District board's initial trustees. At the time the District was established, only eight registered voters lived there, including Christopher Vieau, Pamela Shodeen, and Patricia Shodeen. Vieau worked for a company that was affiliated with the Trust. Pamela and Patricia were Kent's daughters-in-law. The Kane County Board selected Vieau as an initial trustee of the District's board and subsequently appointed Pamela and Patricia after the other two initial trustees resigned. In 1995, only five registered voters lived in the District: Vieau, Pamela, Craig Shodeen (Pamela's husband and Kent's son), Patricia, and Eric Shodeen (Patricia's husband and Kent's son).

¶ 6 The District's water works system, wastewater system, and stormwater system (collectively, the Systems) were initially constructed and paid for by MCLC and/or the Trust. The

Systems were designed to include a land application system for the disposal of treated wastewater generated from Mill Creek's residential and commercial water users. Under this system, the treated wastewater would be discharged onto the defendants' golf courses.

¶ 7 Effective August 1, 1995, the District and the Trust entered into a purchase agreement by which the District agreed to purchase the Systems from the Trust. The initial cost was $8.1 million, but the Trust agreed to sell the Systems to the District for $6.455 million, plus additional consideration. Part of that additional consideration was that the District would enter into a 15-year lease to pay the defendants for discharging water onto the defendants' property. As part of selling the Systems to the District, the defendants conveyed approximately 25 acres of land to the District.

¶ 8 The District and the Trust entered into extensions of the lease on August 10, 2010, June 30, 2011, November 30, 2011, and March 27, 2012, the last of which by its terms expired on April 30, 2012. During the terms of the lease, the District paid approximately $2,376,823. After April 30, 2012, the District stopped making payments to the defendants but continued to discharge treated wastewater onto the golf courses.

¶ 9 On December 1, 2014, the District filed a complaint, in case No. 14-MR-1234, seeking to have the Agreements invalidated. As amended over the next five years, the complaint ultimately alleged 10 counts. Count I alleged that the Agreements were *void ab initio* because the trustees who approved them had conflicts of interest in violation of the Public Officer Prohibited Activities Act (Prohibitions Act) (50 ILCS 105/3(a) (West 1994)) and the Sanitary Act. Count II alleged that the Agreements were void because they violated the Sanitary Act. Count III sought damages, alleging that the defendants had been unjustly enriched by receiving payments from the District pursuant to the lease agreement. Count IV was premised on promissory estoppel, seeking money

damages for the amount the District had paid under the lease as well as a sum equal to the "fair value" of the water it deposited on the defendants' land.

¶ 10 Count V sought alternative declaratory relief. The count asserted that the defendants' actions after the Agreements, rather than the agreements themselves, violated the Sanitary Act. Count V requested that the Agreements be declared void from their inception and that the District be permitted to deposit its wastewater on the defendants' land in perpetuity without charge.

¶ 11 Count VI asserted a cause of action for "violation of the public trust" and requested that the Agreements be declared void. Count VII asserted that the Agreements should be invalidated because they were "oppressive and unconscionable." Counts VIII, IX, and X asserted that the Agreements were void as against public policy.

¶ 12 On July 2, 2015, certain defendants in case No. 14-MR 1234 (Kent, Tanna Farms, LLC, and Mill Creek Country Club, Inc.) filed a lawsuit against the District, in case No. 15-L-293, seeking money damages for its refusal to pay rent after April 30, 2012. Case No. 15-L-293 was consolidated with case No. 14-MR-1234, the District's case.

¶ 13 In 2019, the defendants moved for summary judgment on the entirety of the District's complaint, which at that point alleged only six counts. On June 18, 2019, the trial court dismissed counts III, IV, and VI of the District's complaint. The trial court explained that, because the District was "not asking to return the lands, water systems, and wells to Defendants," the Agreements would survive the litigation at least in part, "rendering the quasi-contractual counts improper."

¶ 14 The trial court also granted the defendants summary judgment on their affirmative defense of necessity. This affirmative defense was directed at the District's counts I, II, and V. When the Agreements were executed, Vieau, Pamela, and Patricia were three of only five people living in the District, and the other two were Craig and Eric. The defendants argued that, even if the

District's indirect interest theory was correct, "literally every registered voter in the District in 1994-95 would have been improperly interested in the Agreements." The trial court agreed, stating:

> "The district through its board was the only entity which could have purchased the systems. Without an operating system the prospect of additional non-conflicted residents moving into the PUD becomes doubtful. The Rule of Necessity dictates that the board, even if technically conflicted, be allowed to fulfill its responsibilities."

¶ 15 The trial court therefore granted summary judgment to the defendants on the District's counts I, II, and V, based on this affirmative defense. The trial court did not dismiss those counts entirely, but limited them to those theories that involved an "imaginative scheme" or "a subterfuge." The trial court also explained that the rule of necessity did not prevent legal remedies as to the trustees' actions that were unconscionable.

¶ 16 Following the trial court's ruling on the defendants' motion for summary judgment, the District filed an amended complaint, adding counts VII through X. The defendants filed a motion to dismiss. On November 7, 2019, the trial court granted the defendants' motion to dismiss in part, finding that counts VII and IX were redundant of the previously dismissed count II. The trial court also struck the District's prayer that it be given the right to irrigate on the defendants' land without charge as "not a natural result of the pleading."

¶ 17 On December 9, 2019, the trial court conducted a bench trial on both the District's and the defendants' complaints. All the District's remaining claims sought only injunctive and declaratory relief, as its claims seeking money damages had previously been dismissed. All the District's claims also requested that the Agreements be invalidated. The defendants' complaint sought money damages for the breach of the lease.

¶ 18 Two weeks after the trial was concluded and the proofs were closed, the District sought leave to amend its complaint pursuant to sections 2-616(a) and (c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-616(a), (c) (West 2018)). The District asked for leave to assert a new count, XI, for breach of the purchase agreement with a prayer for money damages. Count XI alleged that the purchase agreement and the bill of sale required that the defendants deliver a "complete" system for the disposal of water. The defendants allegedly breached this requirement by not transferring to the District sufficient land in fee simple at the time of the agreements. The District therefore alleged that it was required to condemn 173 acres of adjacent property in 2016. The District sought money damages in the amount the District spent to acquire this acreage through condemnation. The defendants objected to the District's motion to amend its complaint, arguing that it was untimely and "was a tactical sandbag designed to hamper Defendants ability to respond." On June 16, 2020, the trial court granted the District's motion to amend its complaint to add count XI.

¶ 19 On September 16, 2020, the trial court entered its judgment. The trial court held that the parties had a valid contract, rejecting the District's argument that the 1995 trustees had an improper interest in the Agreements. The trial court also found that the lease was neither unconscionable nor against public policy. The trial court found that the District had breached the lease when it stopped paying rent, and it awarded the defendants $2,616,079.36 in damages. The trial court declined to award the defendants prejudgment interest. The trial court further held that the defendants[1] had

[1] Although the trial court found that the several named defendants in case No. 14-MR-1234 breached the Agreements, and the parties frame the issue on appeal as whether those several defendants breached the Agreement, the Trust was the only named defendant who signed the

breached the Agreements by not delivering to the District "title or easement to their own irrigation field." The trial court therefore awarded the District $2,678,798.25, the amount the District paid to condemn 173 acres in 2020 to use for its irrigation field.

¶ 20 Following the denial of the defendants' posttrial motion, the District filed a timely notice of appeal in case No. 15-L-293, which was docketed as appeal No. 2-21-0519. The defendants filed a timely notice of cross-appeal in No. 2-21-0519 from the denial of their request for prejudgment interest. The defendants also filed a timely notice of appeal in case No. 14-MR-1234, which was docketed as appeal No. 2-21-0599. We consolidated the appeals.

¶ 21 II. ANALYSIS

¶ 22 On appeal, the parties raise numerous issues, but they can be condensed to three: (1) whether there was there a valid contract between the District and the defendants; (2) if there was a valid contract, whether the trial court properly allowed the District to amend its complaint after trial to allege breach of contract, and, if so, whether the trial court properly found that the defendants had breached that agreement; and (3) whether the trial court properly determined that the District had breached the agreement and, if so, whether the trial court erred in not awarding the defendants prejudgment interest. We will address each of these issues in turn.

¶ 23 A. Validity of the Agreements

¶ 24 The District contends that the three District trustees who approved the Agreements all had at least an indirect interest in the Agreements, due to their relationship with Kent. The District asserts that this indirect interest was improper and violated the Prohibitions Act. The District further argues that the trial court erred in determining that the violation of the Prohibitions Act was

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Agreements.

excused by the rule of necessity. The District then argues that the trial court compounded its error by requiring it to show that the trustees' actions were unconscionable or part of an "imaginative scheme" in order for it to be entitled to any relief.

¶ 25 The Prohibitions Act prohibits anyone holding public office from having "any manner" of financial interest, even indirect, in any contract or the performance of any work voted upon by that person. 50 ILCS 105/3(a) (West 1994). It also provides that "[a]ny contract made and procured in violation hereof is void." *Id.* The Sanitary Act similarly prohibits even indirect interest in "any contract, work or business of the district." 70 ILCS 2805/3(d) (West 1994).

¶ 26 A direct interest occurs when the public official is a party to the contract on which the official votes. See, *e.g.*, *People ex rel. Madigan v. Bertrand*, 2012 IL App (1st) 111419, ¶ 43. A public official has an indirect interest in a contract where, even though he is not a party to that contract, he has an interest in it that is "immediate[and] ascertainable." *Croissant v. Joliet Park District*, 141 Ill. 2d 449, 459 (1990). An indirect interest must be "certain, definable, pecuniary or proprietary." *Panozzo v. City of Rockford*, 306 Ill. App. 443, 456 (1940). There must be "proof that the officer has a pecuniary interest in the contract." *Id.* at 452.

¶ 27 Here, the 1995 trustees all had a connection to Kent: Patricia and Pamela were Kent's daughters-in-law while Vieau worked for a company that had connections to Kent. Even if we were to determine that the trustees had an improper indirect interest in the Agreements, based on their relationship to Kent, the agreement that they approved would still be potentially valid if the rule of necessity was applicable.

¶ 28 The rule of necessity authorizes a decision to be made by an official who has the legal duty to make it, despite also having some personal interest or stake in the outcome. *International Harvester Co. v. Bowling*, 72 Ill. App. 3d 910, 914 (1979). This rule allows an otherwise

disqualified official to consider a matter if that official's disqualification would prevent anyone else from considering the matter. *E&E Hauling, Inc. v. Pollution Control Board*, 116 Ill. App. 3d 586, 602 (1983).

¶ 29 Here, the only people authorized to enter into an agreement on the District's behalf in 1995 were interested parties, because only interested parties lived within the District. If they were not allowed to participate in the agreement, then there would be no water and waste management system for the planned Mill Creek development. As such, the trial court did not err in determining that the rule of necessity allowed the trustees to enter into the Agreements. *Id.*

¶ 30 That being said, we also believe that the trial court properly determined that the District would be entitled to relief if it could show that the Agreements were unconscionable or reflected an imaginative scheme to defraud the residents of the District. The trial court's determination reflects that, just because a group of officials may properly invoke the rule of necessity, that does not give those officials the right to act with unfettered power to the detriment of their district's residents. See *Village of Wheeling v. Stavros*, 89 Ill. App. 3d 450, 453 (1980) (public officials are trustees with a fiduciary duty to the people and must demonstrate loyalty and fidelity to their position of high public trust).

¶ 31 We believe that the trial court properly found that the Agreements were not unconscionable. Indeed, on appeal, the District does not even suggest that the Agreements were unconscionable. Rather, it argues that a group of disinterested trustees could have gotten a better deal for the District. That may be so, but that is not a fair test to encumber the rule of necessity, as no such disinterested trustees were available. The District's argument would have the effect of eviscerating the rule of necessity and the underlying policies for having such a rule. We therefore

reject the District's suggestion that all it needed to demonstrate was that a better deal could have been had.

¶ 32 We also reject the District's argument that Kent created an "imaginative scheme" to benefit himself to the detriment of the District. In explaining that the District needed to show an "imaginative scheme" in order to recover, the trial court relied on *People v. Simpkins*, 45 Ill. App. 3d 202, 208-09 (1977), which explained that the Prohibitions Act was intended to prevent "imaginative schemes by which an official might veil his interest from public view." Here, the 1995 trustees were approved by the Kane County Board. The record indicates that the Kane County Board was well aware of the relationships between Kent and the trustees. There is no indication in the record that Pamela, Patricia, or Vieau attempted to conceal those relationships. Based on the *Simpkins* standard, none of the trustees engaged in an "imaginative scheme" to conceal their interests in the Agreements from public view.

¶ 33 In a related argument, the District argues that the trial court erred in denying its unjust enrichment claim. That claim is premised on the Agreements being invalid because of the trustees' indirect interests. As we have determined that the Agreements are valid, a claim for unjust enrichment is not available. See *People ex rel. Hartigan v. E&E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992) (when there is a specific contract that governs the relationship of the parties, the doctrine of unjust enrichment has no application).

¶ 34 B. Whether the Defendants Breached the Agreements

¶ 35 The defendants raise numerous reasons why the trial court erred in determining that they had breached the Agreements. The defendants first assert that the trial court abused its discretion in allowing the District to amend its complaint to add a breach of contract claim five years after the District had filed its complaint and after the trial had already concluded. The defendants further

insist that the numerous affirmative defenses they raised—*laches*, statute of limitations, election of remedies, waiver, ratification—negated the District's right to obtain any relief. We need not delve into any of these issues, however, because a plain reading of the Agreements reveals that the defendants did not breach the Agreements.

¶ 36 The District's count XI asserts that the Agreements required the defendants to deliver to it a "complete" wastewater system that included all the lands and easements necessary therefor. This language is included in both the purchase agreement and the bill of sale. The District asserts that this provision means that the defendants were to convey to them everything they needed for their own wastewater system, which included an irrigation field. Because the defendants did not convey to them an irrigation field, the District argues that the defendants breached the Agreements. As a result of that breach, the District was forced to condemn 173 acres of adjacent property (paying $2,678,798.25 for it) so that it could have its own irrigation field.

¶ 37 In response, the defendants argue that, at the time of the Agreements, they conveyed approximately 25 acres to the District for its wastewater management system. The Agreements specifically indicated that an irrigation field was being leased to the defendants—not sold. The defendants contend that the District's interpretation of the Agreements renders the lease portion of the Agreements superfluous, which is improper.

¶ 38 Although the District suggests that we should employ a manifest weight of the evidence standard of review because the trial court entered its judgment following a bench trial (see *First Baptist Church v. Toll Highway Authority*, 301 Ill. App. 3d 533, 542 (1998)), the issue before us is whether the trial court properly interpreted the Agreements. Our review, therefore, is *de novo*. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 219 (2007) (the interpretation of a contract is a question of law, subject to *de novo* review on appeal).

¶ 39 The primary goal of contract interpretation is to give effect to the intent of the parties. *Virginia Surety Co. v. Northern Insurance Co. of New York*, 224 Ill. 2d 550, 556 (2007). Courts must consider the contract as a whole and not focus on isolated portions. *Gallagher*, 226 Ill. 2d at 233. If the language of a contract is unambiguous, the intent of the parties must be determined solely from the language of the contract itself, which should be given its plain and ordinary meaning. *Id.*

¶ 40 "Moreover, because words derive their meaning from the context in which they are used, a contract must be construed as a whole, viewing each part in light of the others." *Id.* "[I]nstruments executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction are regarded as one contract and will be construed together." *Id.* A contract should be construed such that none of its terms are regarded as mere surplusage. *J.B. Esker & Sons, Inc. v. Cle-Pa's Partnership*, 325 Ill. App. 3d 276, 285 (2001).

¶ 41 The relevant provisions in the purchase agreement stated:

> "B. [Kent] is the sole beneficiary of Old Kent Bank, as trustee under Trust Agreement dated August 24, 1994 and known as Trust No. 6901 (the 'Trust') which is the owner of approximately 24.939 acre parcel of land in Kane County, Illinois which is legally described on Exhibit 'A' attached hereto (the 'Land').
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> * * *
>
> E. The Beneficiary has constructed, or agrees to construct, the following water, wastewater treatment and stormwater drainage facilities, which are collectively referred to as the 'Systems' in accordance with the Plans and Specifications (as hereinafter defined):
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> * * *

3. a complete wastewater management system *** and lands and easements necessary therefor.

F. The total cost of construction of the Systems were completed, will be in excess of Eight Million One Hundred Thousand Dollars ($8,100,000.00).

* * *

1. SALE OF THE SYSTEMS: The Beneficiary hereby agrees to sell the Systems to the District, and the District agrees to purchase the systems from the Beneficiary, on the terms and conditions contained herein, and the Beneficiary shall cause the Land to be conveyed to the District."

¶ 42 The lease portion of the Agreements provided in pertinent part:

"A. The Owner is the sole beneficiary of the land trusts which are the owners of the land legally described on Exhibit 'A' attached hereto which is being improved with an eighteen (18) hole golf course (the 'Premises'). The Owner may in the future construct an additional (9) hole golf course and if so, the land on which the additional nine hole golf course is located shall be added to and become a part of the Premises. The legal description of the Premises is subject to amendment as required by the Owner in constructing the eighteen hole and nine hole golf course, if applicable.

B. The District is a sanitary district organized and existing pursuant to the laws of the State of Illinois which was created in order to operate a sanitary sewage treatment and waste water disposal system, and a storm water drainage system (the 'Systems').

C. As part of the customary and usual operations of the Treatment Systems, large quantities of treated wastewater (the 'Wastewater') are generated by the District which need to be disposed of in an economical and safe manner.

D. The District purchased the Systems from the Owner pursuant to the provisions of a Purchase Agreement dated as of August 1, 1995, and the purchase price for the Systems was substantially less than the cost of construction of the Systems by the Owner.

E. As additional consideration for the purchase of the Systems the District has agreed to lease the Premises from the Owner and dispose of the Wastewater on the Premises in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing statements, the mutual covenants herein contained and other good and valuable considerations, the sufficiency and receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. LEASE. The Owner hereby leases the Premises to the District for the sole purpose of permitting the District to dispose of the Wastewater on the Premises in strict conformance with all the terms and conditions of this Agreement. In addition, the District shall have the benefit of easement which permits the Owner, in its discretion, to dispose of the Wastewater on those parcels of land within the corporate boundaries of the District, which in the future will be owned by the Geneva Park District (the 'Park Property').

2. DISPOSAL: USE. The District agrees to dispose of the Wastewater on the Premises and the Park Property, if applicable, during the term of this Agreement. The District shall have the right to use the Premises solely for the purpose of disposing of the Wastewater subject to the provisions of paragraph 6 of this Lease. The rights of the District contained herein shall at all times be subject to the rights of the Owner to operate a golf course, or golf courses, upon the Premises. The District shall use the Premises for the purposes stated herein in accordance with the reasonable rules and regulations promulgated

by the Owner from time to time dealing with the hours of the day and months of the year when the District may dispose of the wastewater upon the Premises.

3. TERM. This Agreement shall commence on September 1, 1995, and shall continue for a term of fifteen (15) years (the 'Term'). Upon expiration of the Term, and renewal term, this Agreement shall be automatically renewed for successive terms of five (5) years apiece unless either party gives written notice of non-renewal not more than one hundred eighty (180) days nor less than (90) days prior to the expiration of the Term.

The District shall have the right to terminate this Agreement by giving one (1) year's written notice to the Owner and pay to the Owner any accrued and unpaid Rental Payments, together with interest thereon as provided in paragraph 4 below, on or before the effective date of termination.

In the event the District elects to terminate this Agreement as provided in the immediately preceding paragraph, and at any time thereafter the District receives a bona fide offer for an agreement for disposal of the Wastewater which the District intends to accept (the 'Offer'), then the Owner shall have a right of first refusal to enter into an agreement with the District on identical terms as set forth in the Offer. If the Owner does not accept the Offer within thirty (30) days after notice from the District of the terms of the Offer, then this right of first refusal shall thereafter be null and void unless the District does not accept the Offer from the third party, in which event the right of first refusal shall continue in full force and effect.

4. RENTAL. In consideration for the Owner's agreement to lease the Premises to the District for the sole purpose of disposing of the Wastewater thereupon, the District covenants and agrees to pay to the Owner during the Term of this Agreement payments

> (the 'Rental Payments') equal to fifty per cent (50%) of the sanitary sewer user fees (but not water user fees) collected from the users of the Systems (the 'User Fees'). The District shall pay the Rental Payments to the Owner for the prior calendar year on or before January 31st of the immediately succeeding year."

¶ 43 Based on the above contractual language, it is clear that the parties did not intend that the defendants would sell the District an irrigation field. This is apparent from the lease agreement, whose entire subject matter concerns the irrigation field. If the parties intended that the District own the irrigation field upon the signing of the Agreements, there would be no reason for the District to lease one from the defendants.

¶ 44 Beyond the subject matter of the lease agreement, its individual parts also reinforce that the defendants were not selling an irrigation field to the District. Sections A and E refer throughout to the defendants as the "Owner." This is consistent with the defendants being the owner of the irrigation field. If the parties intended that the District would own the irrigation field, then the lease agreement would have referred to the defendants as the seller and not the "owner."

¶ 45 Section D refers to the District's purchase of the Systems. Section E then states that, as additional consideration for the purchase of the Systems, the District has agreed to lease the irrigation field from the defendants, to dispose of wastewater. Sections D and E, read together, indicate that the District knew that its purchase of the Systems did not include an irrigation field.

¶ 46 Section E.3 explains that, at the end of the 15-year-lease, the District could either renew the lease or enter into an agreement with someone else to dispose of its wastewater. The District obviously would not need to either renew the lease or enter into an agreement with someone else to dispose of its wastewater if it already owned an irrigation field.

¶ 47 Based on the language of the lease agreement, which was entered into at the same time as the purchase agreement and the bill of sale, the reference to "complete wastewater system" referred to in those latter two documents necessarily referred, not to a system that included ownership of all of the required irrigation field, but to a system that was completely or fully functioning. (There is no indication in the record that the wastewater system was not functioning properly. Indeed, the fact that the District renewed the lease on multiple occasions indicates that there were no problems with the wastewater system). The bill of sale therefore refers only to the approximately 25 acres that were specifically referred to in the purchase agreement that the defendants conveyed and the District acknowledged receiving. To interpret those latter two documents as meaning that the defendants were supposed to convey the entire irrigation field would eviscerate the entire lease agreement. We will not interpret the Agreements in such a way. See *J.B. Esker & Sons*, 325 Ill. App. 3d at 286.

¶ 48 The District argues that the trial court's interpretation of the Agreements did not render the lease agreement as "entirely surplusage." Rather, the rental payments under the 15-year lease were simply part of the consideration the District paid for the irrigation field. That interpretation is not supported by the plain language of the Agreements. As section E.3 of the lease agreement accentuates, at the end of the original lease, the District would either have to renew its lease with the defendants or find some other land on which to deposit its wastewater. The parties did not intend the lease to actually be an installment sale of the irrigation field.

¶ 49 The District further complains that the defendants' failure to deliver a complete wastewater management system harmed the District because (1) the lease could be terminated, (2) a foreclosure could wipe out the lease, (3) the District never had exclusive control over the real estate used for the irrigation field, and (4) it "neutered" the District's ability to function independently.

These complaints just go to whether, from its perspective, the District entered into a bad agreement. None of these concerns demonstrate that the defendants breached the Agreements. As it is not this court's role to rewrite the parties' contract, we cannot afford the District any relief based on its now buyer's remorse. See *Sloan Biotechnology Laboratories, LLC v. Advanced Biomedical Inc.*, 2018 IL App (3d) 170020, ¶ 31 ("it is not the role of the court to alter a contract by construction or to make a new contract for the parties; rather, it is the court's duty to interpret the contract that the parties have made for themselves").

¶ 50 Accordingly, we hold that the trial court erred in determining that the defendants breached the Agreements. We therefore reverse the judgment of the trial court awarding the District $2,678,798.25 in damages.

¶ 51 C. Proper Amount of Defendants' Damages

¶ 52 The final issue on appeal is whether the damages that the trial court awarded to the defendants for the District's breach of the lease was proper. The District argues that (1) the trial court should not have awarded the defendants any damages or, alternatively, (2) the damages award was excessive. In its cross-appeal, the defendants argue that the trial court erred in not awarding it prejudgment interest.

¶ 53 The District first argues that the defendants' material breach of the Agreements by not conveying to it an irrigation field excused its nonperformance of the lease agreement. See *Israel v. National Canada Corp.*, 276 Ill. App. 3d 454, 461 (1995) (only a material breach of a contract provision will justify nonperformance by the other party). The District insists that the trial court's rulings were inconsistent when it held that the defendants had breached the Agreements by not conveying it an irrigation field but that the District then breached the lease agreement by not paying the defendants rent to use that irrigation field. We agree that the trial court's judgments were

inconsistent. However, as we have already determined that the Agreements did not require the defendants to convey an irrigation field to the District, the District's contention that the defendants' breach excused it from paying rent is without merit.

¶ 54 The District next argues that the trial court should have found that the lease agreement was really a license rather than a lease. This is really a distinction without a difference, as the measure of damages would be the same. *Pleasure Driveway & Park District of Peoria v. Jones*, 51 Ill. App. 3d 182, 187 (1977).

¶ 55 We next consider whether the trial court's damage calculation for the District's breach of the lease agreement was proper. Here, once the lease agreement ended, the District continued to discharge its wastewater onto the defendants' land. The defendants permitted the District to do this. This created a situation where the District was either a tenant at sufferance or a holdover tenant. *Bransky v. Schmidt Motor Sales, Inc.*, 222 Ill. App. 3d 1056, 1060 (1991).

> "A holdover tenancy is created when a landlord elects to treat a tenant, after the expiration of his or her lease, as a tenant for another term upon the same provisions contained in the original lease. Only the lessor, not the lessee, has the right to decide whether to treat the lessee as a holdover tenant." *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1027 (2005).

¶ 56 Once the District became a holdover tenant, its obligation to pay rent and abide by the terms of the lease agreement remained. *Bransky*, 222 Ill. App. 3d at 1062-63. As set forth earlier, the lease agreement required the District to pay 50% of the sanitary sewer user fees it collected from the user of the systems. David Patzelt, an employee for the defendants, testified that he calculated the fees that the District owed pursuant to the lease agreement. Between 1997 and 2005, Patzelt was able to rely on the actual water and sewer rates in Mill Creek residents' water bills. However, beginning in 2006, the two rates were combined into a single rate. Patzelt "assumed"

that 47% of the combined bill was for sewer and the other 53% was for water. Patzelt applied this ratio from 2005 through 2018. As a result of his calculations, Patzelt determined that the amount of unpaid rent from 2011 through 2018 was $2,444,756.20. The trial court awarded damages of $2,616,079.36, calculating that this was the amount owed through the close of trial, on December 12, 2019.

¶ 57 The District insists that Patzelt's testimony was insufficient to prove that the defendants were entitled to any damages, because Patzelt admitted that his calculations were based on assumptions. In a breach of contract action, recovery of lost profits is allowable as an element of damages, under certain conditions. The plaintiff must prove the loss with a reasonable degree of certainty, the court must be satisfied that the defendant's wrongful act resulted in the loss, and the profits must have been reasonably within the contemplation of the defendant at the time the contract was entered into. *Spangler v. Holthusen*, 61 Ill. App. 3d 74, 81 (1978).

¶ 58 Because lost profits are prospective, lost profits will, to some extent, be uncertain and incapable of calculation with mathematical precision. *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 315-16 (1987). Therefore, to recover such profits, the plaintiff need not prove the amount of loss with absolute certainty. *Id.* at 316. However, "recovery of lost profits cannot be based upon conjecture or sheer speculation." *Id.* The evidence must afford a reasonable basis for the computation of damages and the defendant's breach must be plainly traceable to specific damages. *Id.* Unless the plaintiff proves that the breach was the cause of the lost profits, he is entitled to nominal damages only. *Id.* Since lost profits are often the result of several causes, the plaintiff must show that the defendant's breach caused a specific portion of the lost profits. *Id.*

¶ 59 Here, in 2006, the District began charging its residents a combined water and sewer rate rather than bifurcating the two. The record does not indicate that the District informed the defendants how much of the combined rate should be assigned to sewer. Patzelt therefore "assumed" that the amount attributable to sewer was 47%, and he sent invoices to the District based on that amount. The District did not object to Patzelt's calculations, as it paid those invoices through 2012. The District's actions therefore suggest that it found Patzelt's calculations reasonable. The fact that Patzelt then continued to calculate the sewer rate the same way after 2012 was reasonable based on the parties' historical relationship. The trial court therefore did not err in determining that the defendants had proved their damages.

¶ 60 The final issue is the defendants' contention that the trial court erred in not awarding it prejudgment interest. "Generally, interest is not recoverable absent a statute or agreement providing for it." *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 871 (2009). "The Interest Act [citation] does not authorize the imposition of interest against a municipality." *Id.* (citing *Kozak v. Retirement Board of the Firemen's Annuity & Benefit Fund*, 128 Ill. App. 3d 678, 681 (1984), and 815 ILCS 205/2 (West 2006)). An exception to this rule applies where a municipality has wrongfully exacted money and holds it without just right or claim. *City of Springfield v. Allphin*, 82 Ill. 2d 571, 577-78 (1980); *Morgan v. City of Rockford*, 375 Ill. 326, 328 (1940); *City of Chicago v. Northwestern Mutual Life Insurance Co.* 218 Ill. 40, 44 (1905).

¶ 61 This court generally accords deference to a trial court's decision on a request for interest on a judgment. *Kleczek v. Jorgensen*, 328 Ill. App. 3d 1012, 1025 (2002). The Interest Act (815 ILCS 205/0.01 *et. seq.* (West 2018)) allows considerable discretion for determination of whether an unreasonable delay warrants an award of prejudgment interest. See *John Kubinski & Sons, Inc. v. Dockside Development Corp.*, 33 Ill. App. 3d 1015, 1023 (1975). This court will not disturb the

trial court's findings of fact pertinent to prejudgment interest unless those findings are contrary to the manifest weight of the evidence (*Krantz v. Chessick*, 282 Ill. App. 3d 322, 327 (1996)), but we review issues of law *de novo* (*Joel R. v. Board of Education of Mannheim School District 83*, 292 Ill. App. 3d 607, 613 (1997)).

¶ 62 The defendants question the above application of *Allphin*, arguing that it "makes no sense" that they have to show a municipality has wrongfully exacted money *and* holds it without just right or claim. Rather, they argue that the rule is better read in the disjunctive rather than the conjunctive. See *Northwest Water Comm'n v. Carlo V. Santucci, Inc.*, 162 Ill. App. 3d 877, 896 (1987) (using the disjunction "or"). We note that *Santucci* cites our supreme court's decision in *Morgan* as its basis for holding that the rule is to be read in the disjunctive. However, *Morgan* sets forth the rule using the conjunction "and." *Morgan*, 375 Ill. at 328. Neither *Santucci* nor this court can depart from supreme court precedent. See *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008) (where our supreme court has already spoken on an issue, it is improper for the appellate to depart from supreme court precedent). As we must read the rule in the conjunctive, the defendants acknowledge this prevents them from recovering under the Interest Act, as they cannot show the District wrongfully exacted money.

¶ 63 Apart from the Interest Act, the defendants argue that they can still recover prejudgment interest on equitable grounds. In making this argument, the defendants rely on *In re Estate of Wernick*, 127 Ill. 2d 61, 87 (1989) (prejudgment interest may be recovered when warranted by equitable considerations). *Wernick*, however, does not address requiring a municipality to pay prejudgment interest. Our supreme court has determined that "equity does not authorize the circuit court to award interest against the State in the absence of statutory authority, when doing so has the net effect of entering a money judgment against the State." *Allphin*, 82 Ill. 2d at 579. As an

award of prejudgment interest here would constitute a money judgment against the District, the trial court did not err in declining to enter such an award in the defendants' favor.

¶ 64 III. CONCLUSION

¶ 65 For the foregoing reasons, the judgment of the circuit court of Kane County in case No. 14-MR-1234 in favor of the District on its breach of contract claim is reversed; the judgment of the circuit court in case No. 15-L-293 in favor of the defendants on their complaint is affirmed.

¶ 66 Affirmed in part and reversed in part.

***Mill Creek Water Reclamation District v. Shodeen*, 2022 IL App (2d) 200599**

Decision Under Review:	Appeal from the Circuit Court of Kane County, Nos. 14-MR-1234, 15-L-293; the Hon. Mark Pheanis, Judge, presiding.
Attorneys for Appellant:	Michael Resis, Daniel Whiston, and Ellen Green, of SmithAmundsen LLC, of Chicago, and Timothy J. Reuland, of Speers, Reuland & Cibulskis, P.C., of Aurora, for appellant.
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