

2026 IL App (1st) 251062-U

No. 1-25-1062

Order filed August 20, 2026

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGOLAND PAINTING 123 LLC d/b/a	)	Appeal from the
FIVE STAR PAINTING OF NORTH SHORE,	)	Circuit Court of
	)	Cook County.
Plaintiff and Counterdefendant-Appellee,	)	
	)	
v.	)	No. 24 M2 01563
	)	
SHELDON M. LUSTIG,	)	Honorable
	)	James Allegretti
Defendant and Counterplaintiff-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE NAVARRO delivered the judgment of the court.
Justices Ocasio and Quish concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's judgment following a bench trial finding in favor of plaintiff and against defendant on plaintiff's breach of contract claim and on defendant's breach of contract counterclaim is not against the manifest weight of the evidence. The trial court erred in dismissing defendant's counterclaim brought pursuant to the Illinois Mechanics Lien Act for failing to timely release the lien (770 ILCS 60/35 (West 2024)). Affirmed in part and reversed in part. Cause remanded.

¶ 2 Defendant-Counterplaintiff, Sheldon M. Lustig (Lustig), appeals from the trial court's judgment finding in favor of Plaintiff-Counterdefendant, Chicagoland Painting 123 LLC, doing business as Five Star Painting of North Shore (Five Star), and against Lustig on Five Star's breach of contract claim and on Lustig's breach of contract counterclaim following a bench trial. He also

appeals from the court's order granting Five Star's section 2-619 motion to dismiss (735 ILCS 5/2-619 (West 2024)) on his counterclaim alleging a claim under the Illinois Mechanics Lien Act (Act) (770 ILCS 60/35 (West 2024)) for failing to timely release the lien. On appeal, Lustig contends that the trial court's judgment on Five Star's breach of contract claim and his breach of contract counterclaim is against the manifest weight of the evidence. He also argues the court erred in dismissing his counterclaim for failure to release the lien because the statutory penalty under the Act for failing to timely release the lien is mandatory. For the following reasons, we affirm the court's judgment in favor of Five Star and against Lustig on the parties' breach of contract claims, and we reverse the court's order granting Five Star's motion to dismiss Lustig's counterclaim for failing to timely release the lien.

¶ 3

I. BACKGROUND

¶ 4

In April 2020, the parties entered into a contract whereby Lustig would pay Five Star \$18,435 for Five Star to provide painting services at Lustig's residence. In January 2021, Five Star recorded a lien with the Cook County Clerk's Office against Lustig's property, alleging that Lustig did not pay the full amount owed under the contract. In April 2024, Five Star filed a complaint for breach of contract against Lustig based on his failure to pay.

¶ 5

Five Star's complaint alleged as follows. Lustig paid Five Star a down payment of about \$9,000, after which Five Star provided painting services in a workmanlike manner pursuant to Lustig's directions. At the time that Five Star provided the painting services, Lustig was remodeling the interior of his residence such that there were multiple contractors at the site. Five Star was "required to work around numerous other subcontractors including electricians, a plumber, tile installers, and more." During the parties' final walkthrough inspection after Five Star had finished the painting services, Lustig refused to pay Five Star the additional money owed under

the contract, and he ordered Five Star's manager off the property. Five Star alleged that Lustig breached the contract by failing to pay the full amount owed, and it requested the court enter judgment in the amount of \$9,217.50, plus interest of \$4,977.45, and attorney fees.

¶ 6 Five Star attached to its complaint the contract that provided, among other things, "Five Star will always do a walk around with the customer at the end of the job to ensure that the customer is completely satisfied with the final product" and "[a]ll work to be completed in a workmanlike manner according to standard practices." It also contained a provision stating that, "[i]n the event suit is brought, the prevailing party shall recover its attorney fees and costs."

¶ 7 Lustig's Counterclaims

¶ 8 Lustig alleged three counterclaims, including breach of contract, "negligent property damage," and failure to release the lien pursuant to section 35 of the Act (770 ILCS 60/35 (West 2024)).

¶ 9 In Lustig's breach of contract claim, he alleged that Five Star failed to complete the work specified in the contract and that its work was "incomplete, non-conforming and of poor quality." He alleged that Five Star "refused to correct hundreds of spots where little or no paint had been applied or where paint was found on the floor or other inappropriate areas, where the painting was clumpy or otherwise of poor quality, unprofessional and extremely non-workmanlike." Lustig further alleged that Five Star breached the contract because it used the first-floor powder room for cleaning even though Lustig instructed Five Star not to use that room. As a result, Five Star damaged the sink and wallpaper in that room. Lustig claimed that he suffered damages due to Five Star's actions because he had to pay over \$15,000 to complete or correct Five Star's work and to make the repairs to the powder room.

¶ 10 In Lustig’s claim for “negligent property damage,” he alleged that Five Star breached its duty of care by failing to complete the painting in a workmanlike manner and by ignoring Lustig’s instructions not to use the powder room for cleaning. He alleged that, as a result, Five Star negligently caused damage to the powder room.

¶ 11 In Lustig’s claim for failure to release the lien under section 35 of the Act, he alleged that on January 14, 2021, Five Star filed a lien against his property pursuant to the Act. On January 8, 2023, Lustig sent a demand letter to Five Star, in which he demanded Five Star either file suit to foreclose the lien or release the lien. Five Star failed to file suit to enforce the lien. On March 15, 2024, Lustig sent Five Star a demand pursuant to section 35 of the Act to record a release or satisfaction of the lien within 10 days, after which Five Star failed to do so. Lustig alleged that, due to Five Star’s failure to record a timely release or satisfaction of the lien within 10 days, Five Star was liable to Lustig under the Act in the amount of \$2,500, plus attorney fees and costs.

¶ 12 Lustig attached to his counterclaim the lien Five Star filed against Lustig’s property. Lustig also attached his March 15, 2024, demand letter, in which he stated that Five Star failed to file suit or release the lien within 30 days of its January 8, 2023, demand letter and that, pursuant to the Act, Five Star must record a satisfaction and release of the lien within 10 days.

¶ 13 Five Star’s Section 2-619.1 Motion to Dismiss Lustig’s Claims for
Negligence and Failure to Release the Lien

¶ 14 Five Star moved to dismiss Lustig’s negligence claim under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 West 2024)), arguing that the negligence claim was insufficient because, under the *Moorman* doctrine, Lustig could not recover in tort for purely economic losses where the parties have a contract. See *Olson v. Ferrara Candy Co.*, 2025 IL App (1st) 241126, ¶ 43 (“The *Moorman* doctrine, also known as the economic loss doctrine, states that there can be no recovery in tort for purely economic losses.”).

¶ 15 As for Lustig’s claim for failure to release the lien, Five Star moved to dismiss this claim pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2024)). Five Star argued that it filed the lien against Lustig’s property because he failed to pay for its painting services and that Five Star released its claim for lien on June 24, 2024, which was “long before” Lustig filed his counterclaim for failing to release the lien.

¶ 16 Five Star attached to its motion the release of lien that it filed with the Cook County Clerk’s Office on June 24, 2024, which provided that Five Star acknowledged the release of claim for lien that was recorded on January 14, 2021.

¶ 17 In Lustig’s response to Five Star’s motion to dismiss, Lustig asserted that Five Star did not timely file suit to foreclose the lien or release the lien following its January 8, 2023, demand letter. He asserted that because Five Star did not file suit or release the lien, he sent Five Star a demand letter on March 15, 2024, triggering its obligation to release the lien within 10 days, but Five Star did not file the release of lien until three months later on June 24, 2024. He argued that, under the clear language of the Act, if a release of lien is not filed within 10 days of a property owner’s notice to release, then the owner is entitled to a statutory award of \$2,500.

¶ 18 In reply, Five Star argued that, absent any facts showing the owner suffered damages, as here, technical compliance with the 10-day requirement is not required under the Act. According to Five Star, the Act is “not a windfall statute automatically conferring benefits after missing a ‘tripwire’ deadline date.” He asserted that there was no precedent addressing the situation here, where a claim for damages under the Act was first filed after the claim for lien was released.

¶ 19 In a written order, the trial court granted Five Star’s motion to dismiss Lustig’s claims for negligence and failure to release the lien. The court’s written order did not provide its reasoning, and we do not have a transcript of the hearing on the motion to dismiss.

¶ 20

Bystander's Report

¶ 21 The court held a bench trial on Five Star's breach of contract claim and Lustig's breach of contract counterclaim. The record does not include a transcript from the bench trial.

¶ 22 In Lustig's appendix to his opening brief, he attached the trial court's August 19, 2025, order approving an "agreed revised [b]ystander's [r]eport" as well as the bystander's report. However, as an appellate court, we "may not consider documents that are not part of the certified record on appeal." *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 14 (2009). "Attachments to appellate briefs that are not contained in the certified record on appeal cannot be used to supplement the record and are not properly before a reviewing court." *Id.*

¶ 23 In Five Star's appellee brief, it does not object to or dispute the attached bystander's report or the trial court's August 19, 2025, order approving such report. The fact that the court's order approving the bystander's report indicates that it was an "agreed revised" bystander's report also provides support that the parties agreed to it. Further, Lustig filed with this court a motion for an extension of time to file the bystander's report to which he attached the bystander's report and an affidavit from his counsel. His counsel averred that the trial court approved the bystander's report on August 19, 2025, and that it was filed with, and accepted by, the circuit court on August 21, 2025. Five Star also did not object to Lustig's motion. Although we granted Lustig's motion for an extension of time to file the bystander's report and subsequently entered an order directing him to file the appropriate motions to supplement the record, he did not file a motion to supplement the record. Nevertheless, under these circumstances, we take judicial notice of the trial court's order approving the agreed bystander's report as well as the bystander's report. See *Zahdan v. Frontline Business Enterprise Inc.*, 2024 IL App (1st) 221351, ¶ 21 ("Courts of review may take

judicial notice of matters that are readily verifiable from sources of indisputable accuracy.”); *Koshinski v. Trame*, 2017 IL App (5th) 150398, ¶ 10 (where the reviewing court took judicial notice of a circuit court’s orders included in the defendant’s appendix, it stated that the circuit court’s orders were “proper materials for judicial notice”).

¶ 24 Additionally, under Illinois Supreme Court Rule 329 (eff. July 1, 2017), “[m]aterial omissions or inaccuracies or improper authentication may be corrected by stipulation of the parties or by the trial court, either before or after the record is transmitted to the reviewing court, or by the reviewing court or a judge thereof.” Because we are taking judicial notice of the trial court’s August 19, 2025, order approving the “agreed revised [b]ystander’s [r]eport,” as a reviewing court, under Rule 329, we also amend the record to include the agreed bystander’s report. See *Scepurek v. Board of Trustees of Northbrook Firefighters’ Pension Fund*, 2014 IL App (1st) 131066, ¶¶ 2-3 (where the defendant attached a transcript of the circuit court proceedings as an appendix to its brief and did not follow the court rules to make the transcript part of the official appellate record, the reviewing court amended the record to include the transcript pursuant to Rule 329).

¶ 25 Turning to the bystander’s report, we summarize below the testimony as described therein.

¶ 26 Andres Orihuela, a former employee of Five Star, testified that he was at Lustig’s residence almost every day on behalf of Five Star. Lustig frequently stopped by the residence during his lunch hour to inspect the painting progress, and Lustig never expressed dissatisfaction with Five Star’s painting job. Orihuela’s crew always used the laundry room sink for cleaning, and they were instructed not to use the powder room. There were other subcontractors, including electricians, drywall installers, and plumbers, at the residence each day, and Orihuela did not know whether those individuals used the powder room when Five Star was not there. The other

subcontractors stored tools and equipment at the residence, which was difficult for Five Star to maneuver around.

¶ 27 Orihuela also testified that the contract provided that Five Star would use “eggshell” finish paint, which is harder to use because it shows flaws. If touch-ups are required with this paint, the entire wall must be repainted. Orihuela testified that numerous rooms were not “paint-ready,” and floors were unfinished, which caused marks and damage to the baseboards and required numerous rooms with baseboards to be repainted two or three times. He further testified that, after Five Star finished painting certain rooms, the electricians cut numerous holes in the drywall to complete their electrical work. The canned lights in the first-floor ceiling near the fireplace were moved, which caused new ceiling holes and required repainting that ceiling. He testified that when he left the job, Lustig did not place blue tape to note the paint marks.

¶ 28 Caleb Herr, the owner of Five Star, testified that Five Star’s work was workmanlike and met the requirements of the contract. He testified that after the job was completed, he attempted to schedule a final walkthrough with Lustig for weeks to obtain the final payment, which was supported by a series of text messages admitted at trial. Lustig never complained about Five Star’s painting job until it completed the work and requested final payment from Lustig.

¶ 29 Herr testified about a series of photographs, which were admitted into evidence, and he testified that they reflected Five Star’s work complying with the contract as well as the unfinished flooring and obstacles in multiple rooms. Some of the photos showed that windows were installed after rooms were painted. Herr testified that a few days before Five Star completed its job, Lustig’s project manager, David Buenzow, requested a quote from Five Star for additional painting of the garage and exterior of the residence. At the final walkthrough after Five Star completed the job, Lustig requested Five Star remove and reinstall crown molding where there was “an unacceptable

gap between joints.” Herr stated he wanted full payment and would not engage in services outside the scope of the contract, after which Lustig “exploded” and screamed at Herr to get off his property, causing the police to be called. Herr testified that it was only after this incident that Lustig claimed Five Star provided deficient work and that Five Star damaged the powder room.

¶ 30 Herr testified about Five Star’s final invoice to Lustig, which was admitted into evidence. Five Star did not bill Lustig for all additional work it provided. He also testified that Five Star’s workers did not use the powder room for cleaning. After the July 2020 walkthrough, Lustig communicated with Herr’s wife by e-mail, and Lustig did not mention any damage to the powder room until September 2020.

¶ 31 Irene Herr, Caleb Herr’s wife, testified that Lustig did not pay the final invoice. She also testified about various e-mail communications with Lustig, which were admitted into evidence. The bystander’s report does not describe the content of those communications. According to Irene Herr, Five Star’s work met the requirements of the contract.

¶ 32 Lustig testified that he hired Five Star to perform painting services at his residence pursuant to the parties’ contract. When he examined Five Star’s work, he was not satisfied and, before the walkthrough, he placed blue painter’s tape on the defects he identified. At the walkthrough, a dispute arose when Five Star refused to correct the painting defects without additional payment. He testified about photographs he took of the residence after Five Star completed the project. These photographs were identified as Defendant’s Exhibits 7-1 through 7-18 and, according to Lustig, accurately reflected the condition of the property and showed numerous defects in Five Star’s performance that required correction. The bystander’s report stated that the court did not admit Defendant’s Exhibit 7 based on lack of foundation.

¶ 33 Lustig hired Drake Painting and Wallpaper to correct Five Star's painting defects. Lustig also testified about photographs he took of the powder room that showed numerous damages caused by Five Star's workers using that room for cleaning. Lustig testified that there was no laundry room in his basement and no laundry tub in the house, and the contractors were required to clean their tools outside the house with a hose.

¶ 34 On cross-examination, Lustig acknowledged that, before the walkthrough, he did not write any e-mails or text messages expressing dissatisfaction with Five Star's work. He acknowledged that other subcontractors had full access to the powder room, and he did not know whether any of Five Star's employees actually damaged the powder room. Lustig also testified that, although there was no laundry room in the basement, there was a sink there. Before the final walkthrough, Lustig did not mention any damage to the powder room to Five Star.

¶ 35 David Buenzow, the general contractor on Lustig's remodeling project, testified that he was Lustig's friend and business partner and that Lustig micromanaged the subcontractors for the most part. He testified that Five Star's performance did not meet the requirements of the contract, and the painting was not performed in a workmanlike manner. Buenzow also testified that he did not send any e-mails or text messages expressing dissatisfaction with the painting project. At Lustig's request, a few days before the walkthrough, Buenzow asked Caleb Herr for a new quote from Five Star to provide garage and exterior painting services. Buenzow testified that there was no laundry room sink at the residence, and he saw Five Star employees use the powder room.

¶ 36 Dan Malenfant, the owner of Drake Painting and Wallpaper, testified that he was an experienced painting contractor and personally inspected Five Star's work. According to Malenfant, Five Star's work was not performed in a workmanlike manner, and many rooms

required repainting to meet the workmanlike standard. He testified that the photographs contained in Defendant's Exhibit 7-1 through 7-18 accurately reflected the condition of the property after Five Star had completed the project and before Drake Painting and Wallpaper completed the follow-up corrective work. He testified that the photographs showed numerous defects in Five Star's work. Lustig paid Drake Painting and Wallpaper \$7,500 for each room it repainted. Malenfant also testified that he did not use eggshell finish paint, which requires full repainting for any touch ups. He testified that Drake Painting and Wallpaper painted many rooms that Five Star was not required to paint.

¶ 37 The bystander's report stated that the trial court determined that the case was based upon credibility, and it found Five Star credible and Lustig not credible. The report stated that the court found Five Star proved its breach of contract claim and that having found Lustig not credible, the court ruled against him on his counterclaim for damages to the powder room.

¶ 38 Trial Court's Order

¶ 39 The record includes the trial court's May 6, 2025, written order, in which it entered judgment in favor of Five Star and against Lustig on Five Star's breach of contract claim and ordered Lustig to pay \$9,217.50 in compensatory damages, as well as attorney fees costs and interest. The court also entered judgment in favor of Five Star and against Lustig on Lustig's breach of contract counterclaim. The order also stated that the court found Five Star credible and Lustig not credible.

¶ 40 This appeal follows.

¶ 41 II. ANALYSIS

¶ 42 On appeal, Lustig contends that the trial court erred when it entered judgment in favor of Five Star and against him on Five Star's breach of contract claim and on his breach of contract counterclaim.

¶ 43 We will only reverse a trial court's judgment after a bench trial if it is against the manifest weight of the evidence. *Cadle Properties of Illinois, Inc. v. Fortune Investments, LLC*, 2021 IL App (1st) 200556, ¶ 23. A trial court's judgment "is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). Under this standard, we afford "great deference to the trial court because the trial court is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor, and resolve conflicts in their testimony." *Wade v. Stewart Title Guaranty Co.*, 2017 IL App (1st) 161765, ¶ 59. We will also "not substitute our judgment for that of the circuit court." *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35. "[A]fter a bench trial, the trial court's judgment will be upheld if there is any evidence supporting it." *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2021 IL App (1st) 200753, ¶ 75.

¶ 44 To prove a breach of contract claim, a plaintiff must prove that a contract exists between the parties, plaintiff performed his or her obligations under the contract, defendant did not fulfill his or her obligations under the contract, and damages occurred as a result of that breach. *Archon Construction Co., Inc. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 55. The parties do not dispute the existence of the contract, which provided that "Five Star will always do a walk around with the customer at the end of the job to ensure that the customer is completely satisfied with the final product" and that all work was "to be completed in a workmanlike manner according to standard practices." Lustig asserts that the evidence does not show that Five Star fully performed

under the contract, as Five Star did not meet the quality and performance standards set forth therein.

¶ 45 There was sufficient evidence presented at the bench trial to support the trial court's finding that Five Star met its requirements under the contract. Specifically, Five Star presented testimony from its owner, Herr, who testified that Five Star completed the painting project and it was workmanlike and met the requirements of the contract. The trial court also heard Herr testify about photographs, which were admitted into evidence, that reflected Five Star's work. Orihuela, Five Star's employee who was on the project every day on behalf of Five Star, testified that Lustig never expressed dissatisfaction with the timing or workmanship of the painting job and that Five Star was required to repaint numerous rooms, as they were not paint-ready. Additionally, Buenzow, the general contractor, testified that he never sent any communications expressing any dissatisfaction with the painting project, and Irene Herr testified that Five Star's work met the requirements of the contract. Accordingly, there was sufficient evidence to support the trial court's finding that Five Star fulfilled its obligations under the contract and performed its painting in a workmanlike manner.

¶ 46 Further, we note that the trial court expressly found Five Star's witnesses credible and Lustig not credible. Lustig nevertheless asserts that the trial court's credibility findings were against the manifest weight of the evidence. However, as previously discussed, "[a] trial court is in a superior position to observe the witnesses while testifying, to judge their credibility, and determine the weight of their testimony." *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 891 (2010). We "give great deference to the circuit court's credibility determinations" and "will not substitute our judgment for that of the circuit court." *Staes &*

Scallan, 2012 IL App (1st) 112974, ¶ 35. Accordingly, we defer to the trial court's credibility findings.

¶ 47 Lustig asserts that he presented evidence that Five Star did not fulfill its obligations under the contract because Lustig was not completely satisfied with Five Star's work as required under the contract. The contract states that "Five Star will always do a walk around with the customer at the end of the job to ensure that the customer is completely satisfied with the final product." Lustig claims that Caleb Herr's testimony, which the court found credible, is strong evidence that Lustig was not completely satisfied with Five Star's work, as Herr "admitted that there was a blowup at the walkthrough and that thereafter Lustig claimed deficient workmanship." We disagree with Lustig's assertion.

¶ 48 According to the bystander's report, Herr testified that he attempted to secure a walkthrough with Lustig for weeks and that Lustig never complained about Five Star's painting job until after it had completed the work and requested final payment. Herr also testified that it was only after the incident at the walkthrough, during which Herr told Lustig that Five Star wanted full payment and would not engage in services outside the scope of the contract, that Lustig first claimed Five Star performed deficient workmanship and falsely accused Five Star of damaging the powder room. As such, the testimony shows that, pursuant to the contract, the parties had a walkthrough to ensure Lustig was completely satisfied. The fact that Lustig claimed deficient performance at the walkthrough does not show that Five Star breached the contract provision that requires Five Star to "do a walk around with the customer at the end of the job to ensure that the customer is completely satisfied with the final product." Rather, from this testimony, the trial court could reasonably conclude that Lustig claimed deficient workmanship at the walkthrough for reasons other than the work not meeting the quality standards.

¶ 49 Lustig also claims the trial court ignored Buenzow's and Malenfant's testimony that corroborated Lustig's testimony and supported his position that Five Star did not perform its work in a workmanlike manner, as both witnesses testified that Five Star's work was not performed in a workmanlike manner and Malenfant testified he had to repaint many rooms.

¶ 50 However, as previously discussed, there was sufficient evidence presented to support the finding that Five Star's painting was performed in a workmanlike manner. "When contradictory testimony that could support conflicting conclusions is given at a bench trial, an appellate court will not disturb the trial court's factual findings based on that testimony unless a contrary finding is clearly apparent." *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). Based on the record, including where the court found Five Star's witnesses credible and Lustig not credible, we cannot find that the contrary finding, *i.e.*, that Five Star did not fulfill its requirements under the contract because its painting job was not workmanlike and did not meet the quality standard, is clearly apparent. We also disagree with Lustig's assertion that Malenfant's and Buenzow's testimony establishes that the court's finding that Lustig lacked credibility was against the manifest weight of the evidence.

¶ 51 Accordingly, based on the testimony set forth in the bystander's report, there was sufficient evidence for the trial court to reasonably conclude that Five Star performed its obligations under the contract and that Lustig failed to fulfill his obligations. The trial court's findings in favor of Five Star and against Lustig on Five Star's breach of contract claim and on Lustig's breach of contract counterclaim are based on the evidence and not against the manifest weight of the evidence.

¶ 52 Lastly, we note that Lustig asserts the trial court erred when it denied his request to admit into evidence the photographs contained in his Exhibit 7 based on lack of foundation. He

asserts that the testimony supported a proper foundation for the photographs, which were highly probative and corroborated the testimony from Lustig, Buenzow, and Malenfant that Five Star's painting job was defective. "The admission of evidence is within the sound discretion of the trial court, and a reviewing court will not reverse the trial court absent a clear abuse of that discretion." *Toushin v. Ruggiero*, 2021 IL App (1st) 192171, ¶ 87. A trial court abuses its discretion "only where no reasonable person could have agreed with the trial court's decision." (Internal quotation marks omitted.) *Russo v. Corey Steel Co.*, 2018 IL App (1st) 180467, ¶ 55.

¶ 53 Here, the bystander's report states that the trial court denied his request to admit the photographs contained in Defendant's Exhibit 7. The bystander's report does not include the trial court's reasons for its denial based on lack of foundation nor the parties' arguments made at trial when the court denied his request to admit the photographs. As appellant, Lustig has the burden of presenting a sufficiently complete record on appeal to support his claim of error. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Where we have an incomplete record "any doubts arising from that incompleteness are resolved against the appellant" (*Gateway-Walden, LLC v. Pappas*, 2018 IL App (1st) 162714, ¶ 55), and " 'we must presume[] that the order entered by the trial court was in conformity with [the] law and had a sufficient factual basis' " (*In re Marriage of Gabriel & Shamoun*, 2020 IL App (1st) 182710, ¶ 51) (quoting *Foutch*, 99 Ill. 2d at 392)). Based on this record, we have no reason to conclude that the trial court abused its discretion in denying Lustig's request to admit the photographs into evidence, and we must presume the court's ruling had a sufficient factual basis. See *Gataric v. Colak*, 2016 IL App (1st) 151281, ¶¶ 29, 31 (stating that, "based on the inadequacy of the record ***, we must presume the result below was correct and affirm the trial court's judgment").

¶ 54 Trial Court’s Dismissal of Lustig’s Claim Under the Mechanics Lien Act

¶ 55 Lustig contends that the trial court erred in dismissing his claim for failing to release the lien because the statutory penalty under section 35 of the Act for failing to release within 10 days of the demand letter is mandatory. He asserts that the undisputed facts show that Five Star failed to release the lien within 10 days of its March 15, 2024, demand letter, as it did not file a release of the lien until June 24, 2024.

¶ 56 The trial court granted Five Star’s motion to dismiss Lustig’s claim for failure to release the lien under section 2-619 of the Code (735 ILCS 5/2-619 (West 2024)). A motion to dismiss under section 2-619 “admits the sufficiency of the complaint, but asserts a defense outside the complaint that defeats it.” *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. In reviewing a section 2-619 motion, “the trial court must consider whether the defendant has presented facts that constitute an affirmative defense that could defeat the plaintiff’s cause of action.” *King v. Gerber Realty, Inc.*, 2022 IL App (1st) 211189, ¶ 25. Under a section 2-619 motion, the court “admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts.” *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). The trial court “construes the pleadings and any supporting documentary evidence in the light most favorable to the nonmoving party.” *King*, 2022 IL App (1st) 211189, ¶ 25. Our review of a trial court’s dismissal under section 2-619 is *de novo*. *Jackson v. Hehner*, 2021 IL App (1st) 192411, ¶ 26.

¶ 57 Section 35(a) of the Act provides:

“(a) Whenever a claim for lien has been filed with the recorder of deeds, either by the contractor or sub-contractor, and is paid with cost of filing same, or where there is a failure to institute suit to enforce the same after demand as provided in the preceding Section

within the time by this Act limited the person filing the same or some one by him duly authorized in writing so to do, shall acknowledge satisfaction or release thereof, in writing, on written demand of the owner, lienor, or any person interested in the real estate, or his or her agent or attorney, and on neglect to do so for 10 days after such written demand he or she shall be liable to the owner for the sum of \$2,500, which may be recovered in a civil action together with the costs and the reasonable attorney's fees of the owner, lienor, or other person interested in the real estate, or his or her agent or attorney incurred in bringing such action." 770 ILCS 60/35(a) (West 2024).

¶ 58 Lustig argues that, when a person filing a lien fails to remove a lien within 10 days of the owner's notice, the \$2,500 statutory penalty is mandatory. According to Lustig, the language in section 35(a) stating that "he or she shall be liable to the owner" supports that the penalty is mandatory and that strict, not substantial, compliance with the 10-day period is required. Lustig also states that the facts are undisputed that Five Star did not record the release of its claim until June 24, 2024, which was more than 10 days after it issued its March 15, 2024, demand letter that triggered Five Star's obligation to release the lien within 10 days. He asserts that because an untimely release does not strictly comply with the Act, the court erred in dismissing his claim under the Act for failing to release the lien.

¶ 59 In response, Five Star asserts that the court properly dismissed Lustig's claim because Lustig did not allege he suffered any damages as a result of the late-recorded release and Five Star filed the release of the lien more than a month before Lustig filed his claim. According to Five Star, Lustig's position "that property owners accrue an automatic 'bonus' \$2,500 upon day 11 after written demand plus attorney fees is a clearly ridiculous interpretation of the statute."

¶ 60 “The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” *Mercado v. S&C Electric Co.*, 2025 IL 129526, ¶ 20. “The best indication of the legislature’s intent is the language in the statute, which must be given its plain and ordinary meaning.” *Id.* “We read the statute as a whole, giving effect to every word, clause and sentence, so as not to render any part of it superfluous or meaningless.” *Doe J.P. v. TK Behavioral, LLC*, 2026 IL App (1st) 251028, ¶ 18. “Where the statutory language is clear and unambiguous, this court will apply the statute as written without resort to extrinsic interpretive aids.” *Moreland v. Retirement Board of Policemen’s Annuity & Benefit Fund of City of Chicago*, 2025 IL 131343, ¶ 27. We review issues of statutory construction *de novo*. *Id.*

¶ 61 Before we apply the standards of statutory interpretation, we briefly discuss the Act. “The purpose of the Mechanics Lien Act is to permit a lien upon premises where a benefit has been received by the owner and where the value or condition of the property has been increased or improved by reason of the furnishing of labor and materials.” (Internal quotation marks omitted.) *American Steel Fabricators, Inc. v. K&K Iron Works, LLC*, 2022 IL App (1st) 220181, ¶ 22. “Under the Act generally, a contractor has up to two years after completing a project to file a lien against the subject property.” *Gateway Concrete Forming Systems, Inc. v. Dynaprop XVIII: State St. LLC*, 356 Ill. App. 3d 806, 809 (2005). The lien remains a cloud on the owner’s title until he or she pays the amount owed to the person filing the lien. *Id.* This court has explained that, “[m]echanic’s liens are not recognized by common law and exist only by virtue of the statutes that created them; therefore, the Act must be strictly construed with respect to those requirements upon which the right to a lien depends.” *Id.*

¶ 62 Sections 34 and 35 of the Act “ ‘provide a method for a property owner to force the issue on the validity of claims already filed and to clear a cloud on the owner’s property created

by the filing of a lien.’ ” *American Steel Fabricators*, 2022 IL App (1st) 220181, ¶ 23 (quoting *Krzyminski v. Dziadkowiec*, 296 Ill. App. 3d 710, 712 (1998)). Specifically, under section 34, the property owner may “force the issue of the lien claim’s validity by compelling the claimant to file suit to enforce the lien within 30 days of receiving the demand or forfeit its right to the lien.” *CB Construction & Design, LLC v. Atlas Brookview, LLC*, 2021 IL App (1st) 200924, ¶ 27. The failure to file suit to enforce the lien within 30 days of the demand notice under section 34 results in forfeiture of the lien. 770 ILCS 60/34(a) (West 2024); *CB Construction & Design*, 2021 IL App (1st) 200924, ¶ 30; *Gateway Concrete Forming Systems*, 356 Ill. App. 3d at 810. Further, when a demand made pursuant to section 34 “goes unanswered for more than 30 days,” as occurred here, “the party seeking to ‘force the issue of the lien claim’s validity’ is then empowered to seek the satisfaction or release of the lien under section 35.” *American Steel Fabricators*, 2022 IL App (1st) 220181, ¶ 25.

¶ 63 As noted above, section 35 of the Act provides that when the person filing the lien neglects to acknowledge satisfaction or release of the lien on written demand of the owner “for 10 days after such written demand he or she shall be liable to the owner for the sum of \$2,500, which may be recovered in a civil action together with the costs and the reasonable attorney’s fees of the owner *** incurred in bringing such action.” 770 ILCS 60/35 (West 2024).

¶ 64 As previously discussed, Lustig argues that the \$2,500 statutory penalty in section 35 is mandatory whenever a person filing a lien does not timely acknowledge release of the lien within 10 days of the written demand notice. When interpreting a statute “the ‘use of the word ‘shall’ generally indicates that the legislature intended to impose a mandatory obligation.’ ” *Norman v. U.S. Bank National Association as Trustee for Structured Asset Mortgage Investments II, Inc.*, 2020 IL App (1st) 190765, ¶ 30 (quoting *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738,

¶ 16). Further, “a statute is considered mandatory, as opposed to merely directory, if it indicates a legislative intent to dictate a particular consequence for failure to comply with the provision.” *Schultz*, 2013 IL 115738, ¶ 16. “Furthermore, the combination of a mandatory obligation and a penalty or consequences for noncompliance indicates that strict compliance, rather than substantial compliance is necessary.” *Norman*, 2020 IL App (1st) 190765, ¶ 30.

¶ 65 The plain and ordinary language of section 35 of the Act provides that the person filing the lien “shall be liable to the owner” in the amount of \$2,500 if he or she neglects to acknowledge satisfaction or release of the lien “for 10 days after” the owner’s written demand. Accordingly, the legislature included the word “shall” and also imposed a consequence for failing to comply with the 10-day requirement. As such, we find that the legislature’s use of the word “shall” combined with the imposition of the \$2,500 penalty indicates that the legislature intended to make the 10-day requirement mandatory and strict compliance is necessary. See *Norman*, 2020 IL App (1st) 190765, ¶ 30.

¶ 66 Five Star asserts that the statute is silent on the circumstances here where Five Star acknowledged release of the lien more than 10 days after the demand notice but before Lustig, the property owner, filed his claim. It therefore argues that the “[b]etter reasoning suggests that no penalty be imposed upon release before the filing of suit and where no damages are claimed.” However, if we accepted Five Star’s interpretation, we would have to read additional language into the statute, such as that, if the person filing the claim for lien neglects to acknowledge satisfaction or release of the lien “for 10 days after such written demand *and also does not do so before the owner files suit* he or she shall be liable to the owner for the sum of \$2,500, which may be recovered in a civil action together with the costs and the reasonable attorney’s fees of the owner *** incurred in bringing such action.” See *Gateway Concrete Forming Systems*, 356 Ill.

App. 3d at 810 (explaining that, to accept the plaintiff’s argument regarding the language of the notice requirement in section 34 of the Act, the court “would have to read into the statute additional language” and concluded that it “decline[s] to impose additional notice requirements that are not contained within the language of the statute”).

¶ 67 Accordingly, even though Five Star filed the release of claim for lien on June 24, 2024, which was before Lustig filed his claim on August 13, 2024, Five Star did not sufficiently raise an affirmative matter to defeat Lustig’s claim that Five Star failed to timely release the lien pursuant to section 35 of the Act. The trial court erred in granting Five Star’s section 2-619 motion to dismiss Lustig’s claim under the Act for failing to release the lien.

¶ 68 Five Star’s Motion for Award of Attorney Fees on Appeal

¶ 69 Five Star filed a “motion for award of attorney’s fees in the event of affirmance” with this court, which we took with the case. Five Star requests that we award attorney fees incurred in this appeal pursuant to the fee-shifting provision in the parties’ contract, which states that, “[i]n the event suit is brought, the prevailing party shall recover its attorney’s fees and costs.” Lustig did not file a response to Five Star’s motion for appellate attorney fees.

¶ 70 “A party is generally responsible for his own attorney fees, but there is an exception where a contract, as here, provides for an award of attorney fees.” *Pepper Construction*, 2021 IL App (1st) 200753, ¶ 99. This court has explained that, generally, in statutory fee-shifting provisions, “where a party that prevails in the trial court is required to defend that victory on appeal, courts award attorney fees to that party for their work on the appeal, too, provided they prevail on appeal as they did at trial.” *Trutin v. Adam*, 2016 IL App (1st) 142853, ¶ 35. “In determining whether a party has prevailed on appeal for purposes of an award of attorney fees and costs, we look at whether ‘he or she [wa]s successful on any significant issue’ in the appeal.” *Colin*

v. Brown, 2025 IL App (1st) 241288-U, ¶ 17 (quoting *Aliano v. Transform SR LLC*, 2020 IL App (1st) 172325, ¶ 27).

¶ 71 Here, the issue on appeal regarding the court’s judgment finding in favor of Five Star and against Lustig on their respective breach of contract claims was resolved in Five Star’s favor. As such, Five Star prevailed on a significant issue on appeal, and Five Star is entitled to reasonable appellate attorney fees.

¶ 72 In Five Star’s motion, it requests that this court award attorney fees and costs in the amount set forth in its motion. However, “the amount of attorney fees *** on appeal are more properly determined upon a petition and evidentiary hearing in the trial court.” (Internal quotation marks omitted.) *Erlenbush v. Largent*, 353 Ill. App. 3d 949, 953 (2004). We also note that, given our order reversing the trial court’s order dismissing Lustig’s failure to timely release the lien claim, on remand, the trial court will have to determine the attorney fees related to this claim. See 770 ILCS 60/35(a) (West 2024) (Under section 35 of the Act, the owner may recover the \$2,500 “in a civil action together with costs and reasonable attorney’s fees of the owner *** incurred in bringing such action”). As such, because the trial court will have to determine the attorney fees related to Five’s Star’s failure to timely release the lien claim under section 35, we also remand for Five Star to file a petition for appellate attorney fees in the trial court for the court to determine the reasonableness of those fees. See *Colin*, 2025 IL App (1st) 241288-U, ¶ 17 (finding that the appellee, who was the prevailing party on appeal, was contractually entitled to appellate expenses and remanding to the circuit court with directions for the appellee to file “an appellate attorney fees petition in the circuit court” and for the parties to be “heard there as to the reasonableness of those fees, including the costs of preparing the petition”). Accordingly, Five Star’s motion for attorney fees “in the event of affirmance” is granted in part.

¶ 73

III. CONCLUSION

¶ 74 We affirm the trial court's judgment after a bench trial finding in favor of Five Star and against Lustig on Five Star's breach of contract claim and on Lustig's breach of contract counterclaim. We reverse the trial court's order granting Five Star's section 2-619 motion to dismiss Lustig's claim under the Act for failing to timely release the lien. Five Star's motion for attorney fees is granted in part.

¶ 75 Affirmed in part and reversed in part. Cause remanded with directions.