

# Supreme Court Summaries

Opinions filed September 23, 2010

**No. 109156 K. Miller Construction Co. v. McGinnis**

Appellate citation: 394 Ill. App. 3d 248.

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

Chief Justice Fitzgerald and Justices Freeman, Thomas, Kilbride, Garman, and Karmeier concurred in the judgment and opinion.

The plaintiff in this Cook County litigation is a sole proprietor who renovated a Chicago building for the defendant and his wife on the basis of an oral agreement. (They had been friends.) The total estimated price of the project was \$500,000, but, when the work was completed in 2006, the defendant owed over \$300,000 and refused to pay. When sued, he claimed there had been a violation of the Illinois Home Repair and Remodeling Act because the agreement was for over \$1,000 and there was no written contract, as required by the Act. The complaint was dismissed.

The appellate court held that, for lack of a written agreement, the plaintiff could not recover for breach of contract and could not foreclose a mechanic's lien. However, it held that recovery could be had in *quantum meruit*, an equitable remedy.

The Act clearly states that a remodeling contract for over \$1,000 must be in writing but does not specify whether failure to comply with this statutory requirement renders an agreement unenforceable. In this decision, the supreme court said that the appellate court should have conducted further analysis. Effective in July of 2010, the provision at issue was entirely rewritten to remove all references to the word "unlawful" and to provide that the remedy for actual damage caused by violations of the Act is the Consumer Fraud and Deceptive Business Practices Act. In this decision, the supreme court said that this legislative action was not a substantive change in the law, but was a clarification by which the legislature intended to make it clear that a violation of the Act as previously written did not render oral contracts unenforceable or make *quantum meruit* relief unavailable.

None of plaintiff's complaint counts should have been dismissed, and the cause was remanded to the circuit court for further proceedings.