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IN THE  
COURT OF APPEALS OF INDIANA

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Community Construction LLC,  
*Appellant-Plaintiff/Counterclaim  
Defendant,*

v.

Posterity Scholar House, LP,  
and BWI Development &  
Management, Inc.,  
*Appellees-Defendants/Counterclaim  
Plaintiffs.*

January 20, 2023

Court of Appeals Case No.  
21A-CC-2728

Appeal from the Allen Superior  
Commercial Court

The Honorable Craig J. Bobay,  
Judge

Trial Court Cause No.  
02D02-1906-CC-1573

**Robb, Judge.**

## Case Summary and Issues

[1] This litigation arises out of an intended multi-phase construction project (“Project”) in Fort Wayne, Indiana. As of the time of this litigation, only phase one had been completed, consisting of two twenty-two-unit apartment buildings. The relevant entities are:

- Plaintiff and Counterclaim Defendant Community Construction LLC (“Community”) – the construction manager and actual constructor of phase one of the Project
- Jason Ellis – President and sole owner of Community
- Defendant and Counterclaim Plaintiff Posterity Scholar House, LP (“Posterity”) – a limited partnership created for the purpose of obtaining tax-credit financing to complete and own the Project
- Defendant and Counterclaim Plaintiff BWI Development & Management, Inc. (“BWI-DAM”) – started in 2005 as a real estate development and investment company; also provides property management services; general partner of Posterity in the Project
- Non-party BWI Contractors, LLC (“BWI-C”) – started in 2010 as an electrical contractor; provided “owner rep” services to Posterity and BWI-DAM for the Project
- Gary Hobbs – sole owner of BWI-DAM and BWI-C

[2] Near the end of construction of phase one, Community submitted a pay application for final payment that Posterity did not pay because Community

allegedly did not submit the required paperwork, among other things. Community filed a mechanic's lien and sued Posterity and BWI-DAM for breach of contract and foreclosure of the lien. Posterity and BWI-DAM filed a counterclaim alleging breach of contract and seeking an accounting from Community. Posterity and BWI-DAM then filed a motion for partial summary judgment on Community's complaint and on liability with respect to their counterclaims. The trial court granted the summary judgment. Community appeals, raising several issues that we consolidate and restate as: 1) whether the trial court erred in granting summary judgment to Posterity and BWI-DAM on its complaint and 2) whether the trial court erred in granting summary judgment to Posterity and BWI-DAM on the liability issues in their counterclaim. Concluding Posterity and BWI-DAM were entitled to summary judgment, we affirm the trial court.

## Facts and Procedural History

[3] On March 7, 2017, Posterity, as owner, entered into an AIA Document A133 Construction Contract<sup>1</sup> (“A133 Contract”) with BWI-C, as construction manager, for the Project. Hobbs signed the A133 Contract as a Member of Posterity; Ryan Mitchell signed as Vice President of BWI-C. The A133 Contract provided for monthly progress payments upon application with

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<sup>1</sup> This is a “Standard Form of Agreement between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price[.]” Appellant's Appendix, Volume 2 at 80.

supporting documents. The A133 Contract also provided for final payment of the entire unpaid balance after the construction manager had fully performed and submitted a final accounting.

[4] On that same date, a subcontract agreement (the “Subcontract”) was executed between BWI-C, as construction manager, and Community, as subcontractor, for Community to “perform the construction of the Project on the same terms and conditions . . . as set forth in the [A133] Contract.” Appellant’s Appendix, Volume 2 at 100. Essentially, BWI-C assigned all its rights and responsibilities under the A133 Contract to Community. The Subcontract provided Community would be reimbursed the cost of its work plus eleven percent, capped at a guaranteed maximum price. Hobbs signed as President of BWI-C and Ellis signed as President of Community.

[5] Due to lender objections to BWI-C’s participation in the Project, however, Posterity, as owner, subsequently entered into an AIA Document A102 Construction Contract<sup>2</sup> (“A102 Contract”) directly with Community, as contractor. Hobbs signed on behalf of Posterity and Ellis signed on behalf of Community. BWI-C was not a party to the A102 Contract. In correspondence with Hobbs prior to signing the A102 Contract, Ellis refers to the A102 Contract as the “new contract[.]” Appellant’s App., Vol. 7 at 133. Although the parties signed the A102 Contract in mid-June 2017, it was backdated to

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<sup>2</sup> The A102 is a “Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price[.]” Appellant’s App., Vol. 2 at 169.

March 7 to align with the previous contracts at Ellis' request. *See id.* at 132. The A102 Contract provided, in part, that it “represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.” Appellant’s App., Vol. 3 at 147.<sup>3</sup> The payment terms under the A102 Contract were similar to the Subcontract terms, providing for Community to be paid the cost of its work plus a fee, with a guaranteed maximum price of just over eight million dollars. Community was to submit monthly payment applications with lien waivers from subcontractors and material suppliers, invoices, and other documentation to show costs incurred by Community. Final payment of the entire unpaid balance would be made after Community had fully performed and submitted a final accounting.

[6] On August 4, 2017, Hobbs, on behalf of Posterity, sent Community a notice to proceed with construction of the Project, referencing the A102 Contract: “[t]he construction activities shall be performed in accordance with the AIA A102-2007 construction contract dated March 7, 2017 (executed June 10<sup>th</sup> and 12<sup>th</sup>, 2017 by both parties in the contract).” Appellant’s App., Vol. 7 at 138. On October 8, 2018, over a year after Community began work on the Project, a

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<sup>3</sup> The .pdf numbering of Volume 3 contains an error (the .pdf numbering resets to 1 on Bates numbered page 8), so for Volume 3 only, we have referenced the Bates numbering.

one-page Contract Amendment (“Amendment”) was executed between Ellis, on behalf of Community, and Hobbs, on behalf of Posterity and BWI-C, reciting that it was an amendment to the A133 Contract between BWI-C and Community and addressing “out of scope” change orders and division of the contingency. Appellant’s App., Vol. 2 at 106. Ellis personally drafted the amendment. Hobbs testified at his deposition that when he signed the document, he did not pay attention to the specific language of who the contract was between or what contract it was amending, but it was his intent that “this was related to the contract that was in enforcement [sic] which was the [A]102.” Appellant’s App., Vol. 6 at 199.

[7] During the Project, Community submitted monthly progress payment applications as contemplated by the A102 Contract. Community’s pay applications 1 through 19 were paid. Pay application 20, submitted on December 28, 2018, sought release of the final retainage payment of \$407,711.24.<sup>4</sup> However, pay application 20 was not certified by the Project architect,<sup>5</sup> did not include any subcontractors’ lien waivers, and did not have any supporting invoices. Subsequent pay applications 21 (seeking payment of

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<sup>4</sup> The “retainage payment” is “the amount that an owner or prime contractor holds back from sub-tier contractors to ensure that they complete their work.” Appellant’s App., Vol. 3 at 141. Although Community later submitted two additional payment applications, those were for incidental landscaping services. Pay application 19 sought the “final payment” for the Project as contemplated by the contracts.

<sup>5</sup> The architect’s signature on the Architect’s Certificate for Payment certifies, “based on on-site observations and the data comprising the application, . . . that to the best of the Architect’s knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the amount certified.” *See, e.g.*, Appellant’s App., Vol. 3 at 208 (emphasis omitted).

\$20,062.71) and 22 (seeking payment of \$52,526.46) suffered the same deficiencies.

[8] On January 5 and 14, 2019, Certificates of Substantial Completion were issued by the Project architect for the two buildings constructed in Phase 1. The certificates noted that over \$420,000 in work was still required to be completed or corrected. Community signed the certificates acknowledging its responsibility to complete the punch list.

[9] Also in early January 2019 and continuing for the next several months, Posterity contacted Community multiple times seeking to obtain the final closeout documentation required by the A102 Contract and the lender in order to release the funds for pay applications 20-22. Community did not provide the requested documentation and pay applications 20-22 were not paid. Several mechanic's liens, including one by Community, were recorded against the Project.

[10] In June 2019, Community filed a complaint against Posterity and BWI-DAM.<sup>6</sup> The Complaint alleges Posterity and BWI-DAM entered into the A133 Contract, BWI-DAM entered into the Subcontract with Community, and further alleges Community was not paid as required by the Subcontract. The Complaint asserts claims for breach of contract against BWI-DAM and seeks

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<sup>6</sup> Community's complaint also named various other entities, none of which were BWI-C. All claims against or by these defendants have been resolved or are not relevant to this appeal.

foreclosure of its mechanic's lien. Attached to the Complaint as exhibits were the A133 Contract between Posterity and BWI-C, the Subcontract between BWI-C and Community, and the Contract Amendment.

[11] Posterity and BWI-DAM filed an answer and Posterity asserted counterclaims against Community for, among other things, breach of the A102 Contract and sought an accounting.<sup>7</sup> Attached to the counterclaim as an exhibit was the A102 Contract between Posterity and Community.

[12] Posterity and BWI-DAM filed a motion for partial summary judgment seeking judgment in their favor on all claims asserted by Community in its complaint and on the counterclaims against Community for breach of contract and an accounting.<sup>8</sup> Community responded, and the trial court held a hearing. Following the hearing, the trial court entered the following order, in pertinent part:

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<sup>7</sup> As Community did, Posterity and BWI-DAM also asserted claims against other entities, but these are the only claims relevant to this appeal. Additionally, although BWI-DAM is named as a counterclaimant, it appears only Posterity asserts counterclaims against Community. *See* Appellant's App., Vol. 2 at 164 (prayer for relief as to the breach of contract counterclaim stating, "Posterity Scholar House, LP . . . respectfully requests judgment against Community Construction, LLC").

<sup>8</sup> We direct counsel to Indiana Appellate Rule 50(C), which provides that the table of contents for an appendix "shall specifically identify each item contained in the Appendix[.]" The Appendix in this case consists of nine volumes. Posterity's designation of evidence in support of its motion for partial summary judgment is comprised of thirty-two separate exhibits and is 1,146 pages long beginning in Volume 3 and continuing over the entirety of Volumes 4, 5, 6, and 7 and part of Volume 8. And yet the table of contents identifies only "Posterity's and BWI's Designation of Evidence" collectively with no further detail. Implicit in the directive to "specifically identify each item" in the appendix is that the table of contents assist this court in finding the documents contained therein. *See Harrison v. Veolia Water Indianapolis, LLC*, 929 N.E.2d 247, 248 n.1 (Ind. Ct. App. 2010) ("For future reference, tables of contents for appendices must be more detailed."), *trans. denied*. Looking through nearly 1,200 pages of documents to identify for ourselves where thirty-two exhibits began was burdensome and hindered our review of this appeal.



## Community's Complaint

\* \* \*

As Community has not alleged a claim herein against BWI-[DAM] under any contract in which both Community and BWI-[DAM] were parties, and as Community has not filed a claim herein alleging Posterity violated the A102 Contract, the Court now GRANTS Posterity and BWI-[DAM]'s motion for partial summary judgment with regard to the claims brought by Community against both BWI-[DAM] and Posterity.

\* \* \*

### [Counterclaim] Count Three, Breach of Contract

\* \* \*

[The A102 Contract] plainly state[s] that Community must have “fully performed the Contract” to obtain final payment, and plainly states that such things as certificates from governmental entities, liens, architect payments, and a final accounting, must be provided in order to permit final payment. Here, final payment is the result of the full performance of the contract, not the reverse. Community does not argue that full performance was made by Community, rather, Community argues that Posterity failed to deliver final payment, and was therefore the first to breach. The Court concludes that Community failed to complete the work required by the A102 Contract.

\* \* \*

. . . [T]he Court GRANTS Posterity’s motion for summary judgment on count three of the counterclaim with regard to Community’s breach of contract.

[Counterclaim Count Four,] Right to an Accounting

\* \* \*

The Court notes that the final lien waivers and pay applications certified by the architect are missing from the designations. The Court concludes that, as agreed to by Community in the A102 Contract, Community is required to provide Posterity the accounting that Posterity seeks. The Court GRANTS Posterity’s motion for summary judgment with regard to Count four of the counterclaim.

Appealed Order at 8, 10-11, 13, 15-16. The order addressed fewer than all the issues, claims, or parties in the litigation, but the trial court determined that there was no just reason for delay and expressly directed entry of judgment in favor of Posterity and BWI-DAM and against Community on the claims decided therein. Community now appeals. Additional facts will be provided as necessary.

## Discussion and Decision

### I. Summary Judgment Standard of Review

[13] The standard for granting summary judgment is as follows:

The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law[.]

Ind. Trial Rule 56(C). The moving party bears the burden of affirmatively negating an opponent's claim. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). Then, the "nonmoving party must come forward with contrary evidence showing a genuine issue for the trier of fact." *Buddy & Pals III, Inc. v. Falaschetti*, 118 N.E.3d 38, 41 (Ind. Ct. App. 2019) (internal quotation marks omitted), *trans. denied*.

[14] We review a trial court's summary judgment order de novo. *Kovach v. Caligor Midwest*, 913 N.E.2d 193, 196 (Ind. 2009). We accept as true those facts established by the designated evidence favoring the nonmoving party and resolve all doubts against the moving party. *Brill v. Regent Commc'ns, Inc.*, 12 N.E.3d 299, 309 (Ind. Ct. App. 2014), *trans. denied*. The trial court's order granting a motion for summary judgment "is clothed with a presumption of validity" and therefore, the party appealing from the summary judgment order has the burden of persuading us the decision is erroneous. *Lowrey v. SCI Funeral Servs., Inc.*, 163 N.E.3d 857, 860 (Ind. Ct. App. 2021), *trans. denied*. When, as here, the trial court enters findings of fact and conclusions of law in its summary judgment ruling, they aid our review, but they do not bind us. *Matter of Supervised Est. of Kent*, 99 N.E.3d 634, 637 (Ind. 2018).

## II. Community's Complaint

- [15] Posterity sought and was granted summary judgment on Community's complaint alleging BWI-DAM had breached the Subcontract. Posterity's position on summary judgment was that Community sued them "based upon [Community's] contract with someone else." The Transcript, Volume 1 at 8.
- [16] A party to a contract may generally only sue another party to the contract for its breach. *Blackwell v. Superior Safe Rooms LLC*, 174 N.E.3d 1082, 1094 (Ind. Ct. App. 2021), *trans. denied*; *see, e.g., Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 753 (Ind. 2018) (noting it is well-established as a matter of contract law that a contract generally cannot bind a nonparty). And generally, a party to a contract is one who is named as a party in the document. *Sunman-Dearborn Cmty. Sch. Corp. v. Kral-Zepf-Freitag & Assoc.*, 167 Ind. App. 339, 338 N.E.2d 707, 709 (1976); *see DSG Lake, LLC v. Petalas*, 156 N.E.3d 677, 687 (Ind. Ct. App. 2020) (holding auditor could not be sued for breach of contract as he was "not named as a party anywhere in the [contract] document"), *trans. denied*.
- [17] Community argues the trial court erred "in multiple ways" in entering summary judgment against it on its complaint. Brief of Appellant at 17. But despite Community's various arguments, the undisputed material facts are that Community sued Posterity and BWI-DAM for breach of a contract between itself and *BWI-C*, that non-party *BWI-C* and named party *BWI-DAM* are

different legal entities,<sup>9</sup> and that BWI-DAM is not a party to *any* of the contracts the parties have designated. In order to get around its own failure to name the appropriate party, Community asserts that as Posterity’s general partner, BWI-DAM shares Posterity’s liability. But again, the undisputed material facts are that Posterity is also not a party to the Subcontract and in any event, Community did not allege that *Posterity* breached any contract or request any relief from Posterity. *See* Appellant’s App., Vol. 2 at 75-76 (alleging that BWI-DAM “has breached . . . the Subcontract Agreement in numerous particulars” and requesting the court enter judgment in its favor and against BWI-DAM).

[18] We agree with the trial court that the undisputed designated evidence shows Community sued BWI-DAM but BWI-DAM “does not appear on any of the relevant contractual documentation, including the A133 Contract, the A102 Contract, the Subcontract, or the Amendment.” Appealed Order at 9. The trial court properly granted summary judgment in Posterity and BWI-DAM’s favor on Community’s complaint.

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<sup>9</sup> Community seems to have fundamentally misunderstood this fact from the outset of this litigation. Community’s complaint alleges that Posterity and *BWI-DAM* entered into the A133 Contract retaining *BWI-DAM* as construction manager and that *BWI-DAM* then engaged Community to serve as sub-construction manager. *See* Appellant’s App., Vol. 2 at 71. However, BWI-DAM is not named in any contractual document at issue herein and it appears Community has conflated BWI-DAM with BWI-C.

### III. Posterity's Counterclaims

- [19] Posterity also sought and was granted summary judgment as to liability on its counterclaims against Community for breach of contract and an accounting. Community argues the trial court erred in granting summary judgment for several reasons.
- [20] Community first argues that Posterity did not raise failure to satisfy conditions precedent as an affirmative defense in its answer and its claim alleging the same is therefore waived. Indiana Trial Rule 9(C) describes failure to perform a condition precedent as an affirmative defense that must be specifically and particularly pleaded in a responsive pleading. *See Dave's Excavating, Inc. v. City of New Castle*, 959 N.E.2d 369, 383 (Ind. Ct. App. 2012), *trans. denied*. Claims, however, can be offense or defense: a claim is defense when it contests the opposing party's claim, and offense if it is a basis for affirmative relief. *Gittings v. Deal*, 109 N.E.3d 963, 971 (Ind. 2018). "So asserted 'defenses' may actually be counterclaims and vice-versa; or the allegations can have a dual character[.]" *Id.* (quotation omitted). Here, Posterity asserted in its counterclaim that Community failed to satisfy conditions precedent to the A102 Contract that caused damage to Posterity – that is not a defense to Community's claim that BWI-DAM breached the Subcontract, it is an entirely separate basis for affirmative relief under a different contract and therefore, raising it by counterclaim was appropriate. Moreover, because the Subcontract was between Community and BWI-C, an affirmative defense that Community did

not meet conditions precedent to that contract would be BWI-C's to assert, not Posterity's or BWI-DAM's as nonparties to the contract.

[21] Community also argues summary judgment was inappropriate because “Posterity designated no expert evidence of any alleged breach causing damages to Posterity[.]” Br. of Appellant at 5. But Community cites no authority for the proposition that expert testimony is required in this context, and, to the extent expert testimony would be required to prove Posterity's damages, Posterity only sought summary judgment as to liability. Posterity will be required to prove its damages at a later date. Summary judgment on liability is determined based on the evidence designated in this proceeding.

[22] Community contends the trial court erred in entering summary judgment on Posterity's breach of contract claim when the parties disagree about which contract governs their relationship. The designated evidence showing the A102 Contract was later in time, contained an integration clause, and was referred to by Ellis as the “new contract” prior to signing would be sufficient to demonstrate that the A102 Contract was the applicable contract, but regardless, the operative provisions of the A133 Contract and the A102 Contract are substantively identical, so the provisions the trial court considered are the same regardless of which contract applies.

[23] Community next contends that the trial court improperly considered extrinsic evidence. The interpretation of a contract is a question of law and is therefore particularly well-suited for summary judgment. *Kearschner v. Am. Fam. Mut. Ins.*

*Co., S.I.*, 192 N.E.3d 946, 952 (Ind. Ct. App. 2022). The unambiguous language of a contract is conclusive and binding on the parties and the court must give those terms their clear and ordinary meaning. *Sapp v. Flagstar Bank, FSB*, 12 N.E.3d 913, 924 (Ind. Ct. App. 2014), *trans. denied*. If a contract is ambiguous, its meaning is determined by examining extrinsic evidence and the contract construction becomes a matter for the factfinder. *Franciscan Alliance Inc. v. Metzman*, 192 N.E.3d 957, 964 (Ind. Ct. App. 2022). Extrinsic evidence is “evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement.” *Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 839 (Ind. Ct. App. 2017) (quotation omitted), *trans. denied*. But Community does not identify the alleged extrinsic evidence considered by the trial court and we do not believe the trial court considered any such evidence. The trial court looked at the four corners of the contracts to determine what they required and then applied those provisions to the designated evidence; it did not consider the designated evidence to interpret the contract.

[24] As for the substance of the counterclaim, Posterity claimed Community breached the A102 Contract in part by failing to properly manage and finish the Project and by failing to complete the items required to release funds for the



final payment before filing a mechanic's lien and a lawsuit alleging failure to pay.<sup>10</sup> The following provisions apply:

- With respect to final payment, § 12.2.1 of the A102 Contract and § 7.2.1 of the A133 Contract<sup>11</sup> state final payment (meaning the entire unpaid balance) shall be made by Posterity to Community when, among other things, 1) Community has fully performed the contract; 2) Community has submitted a final accounting for the cost of the work and has submitted a final payment application; 3) Posterity has received from Community all required documents; and 4) Community has delivered to Posterity complete releases and waivers from Community and all subcontractors;
- With respect to accounting, § 11 of the A102 Contract and § 6.11 of the A133 Contract require Community to “keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred.” Appellant’s App., Vol. 2 at 92

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<sup>10</sup> In full, Posterity’s counterclaim alleges Community breached the contract by “(i) performing shoddy and unworkmanlike construction, (ii) mismanaging the project, (iii) self-performing work or allowing related entities to perform work without the prior knowledge and consent of Posterity, (iv) failing to keep accurate accounting records, or otherwise turn over accurate records to Posterity, (v) submitting fraudulent payment applications, (vi) refusing to submit closeout construction documentation, including an accounting and lien waivers, and (vii) refusing to abide by conditions precedent to bringing suit, including mandatory alternative dispute resolution.” Appellant’s App., Vol. 2 at 163-64.

<sup>11</sup> Although the A133 Contract was between Posterity and BWI-C, the Subcontract assigned all of BWI-C’s rights and responsibilities to Community, and thus the provisions of the A133 Contract, if still operative, would apply directly to Community.

(A133 Contract) and 176 (A102 Contract). Further, Community is required to allow Posterity and its auditors access to and permission to copy and audit the records and accounts, including complete supporting documentation.

[25] Posterity’s designated evidence includes Community’s pay applications 20 through 22, each of which includes a pay application that is not certified by the Project architect; a spreadsheet showing a description of the work, its scheduled value, and the value of work completed in previous applications and the current period, among other things; and an affidavit and waiver of lien from Community. Community’s designated evidence in response includes what it labels as “Pay Applications with Final Accounting[.]” Appellant’s App., Vol. 8 at 240. But the exhibit is simply the same pay applications 21 and 22 Posterity designated without any additional documentation; that is, Community has not designated any evidence showing that it in fact substantiated the costs incurred beyond the spreadsheets attached to pay applications 20 through 22 simply showing amounts allegedly due. Further, Community did not designate any evidence showing that it provided Posterity lien waivers from subcontractors.

[26] Community insists it completed the scope of work required by the contract and did not do the final accounting and submit the required paperwork because it did not receive the final payment. But as the trial court noted, “final payment is the result of the full performance of the contract, not the reverse.” Appealed Order at 13. To the extent Community argues its failures were caused by Posterity’s failure to properly manage the Project, Community’s designated

evidence fails to show any specific failures on Posterity's behalf that kept Community from completing the items required to receive final payment. In sum, Posterity has shown that there is no genuine issue of material fact as to whether Community breached the contract and was entitled to summary judgment on Community's liability for the breach.

- [27] Finally, Community did not submit a final accounting to Posterity but was required by the contract to keep full and detailed records supporting the cost of the work. Those records were not provided to Posterity when Posterity asked for them multiple times even though the contract provides for the Owner to have access and permission to audit and copy the Contractor's records and accounts. Thus, Posterity is entitled to an accounting as requested.

## Conclusion

- [28] The designated evidence shows that there is no genuine issue as to any material fact on the claims and counterclaims for which Posterity and BWI-DAM sought summary judgment and therefore, they are entitled to judgment as a matter of law on Community's complaint and on liability issues associated with the breach of contract and accounting counts of the counterclaim. The judgment of the trial court is affirmed.
- [29] Affirmed.

Pyle, J., and Weissmann, J., concur.