

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Suburban Maintenance	:	
and Construction, Inc.,	:	
	:	
Plaintiff-Appellant/ Cross-Appellee,	:	No. 25AP-454 (C.P.C. No. 20CV-49)
v.	:	
	:	(REGULAR CALENDAR)
Complete General Construction	:	
Company et al.,	:	
	:	
Defendants-Appellees/ Cross-Appellants.	:	

D E C I S I O N

Rendered on October 22, 2026

On brief: *Thompson Hine LLP, Mac P. Malone, and Daniel M. Haymond*, for plaintiff-appellant/cross-appellee. **Argued:** *Mac P. Malone*.

On brief: *O.J. Scheaf & Associates, LLC, and O. Judson Scheaf, III; Ice Miller LLP, and Eric L. Arras*, for defendants-appellees/cross-appellants. **Argued:** *O. Judson Scheaf, III*.

APPEALS from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Plaintiff-appellant/cross-appellee, Suburban Maintenance and Construction, Inc. (“Suburban”), appeals from both the December 5, 2023 judgment entry of the Franklin County Court of Common Pleas granting summary judgment in favor of defendants-appellees/cross-appellants, Complete General Construction Company (“General”), on all of Suburban’s claims, and the May 8, 2024 judgment entry denying Suburban’s motion to reconsider.

{¶ 2} Additionally, General cross-appeals from the May 19, 2025 judgment entry of the Franklin County Court of Common Pleas overruling its objections to and adopting

the magistrate's decision issued on January 13, 2025, thereby finding in favor of Suburban on all of General's counterclaims; the April 15, 2025 entry denying General's motion for leave to exceed page limitations; and the January 23, 2025 entry denying General's motion for findings of fact and conclusions of law.

{¶ 3} For the following reasons, we affirm the judgments of the trial court as to both the appeal and the cross-appeal.

I. Facts and Procedural Background

{¶ 4} These cross-appeals arise from a construction contract dispute between General, a general contractor, and Suburban, a subcontractor, in connection with the replacement of the railroad bridge over Third Avenue at the development known as Grandview Yard (the "Project"). The City of Columbus (the "City"), as the project owner, entered into a contract (the "Principal Contract") with General to provide general-contracting services for the Project. In turn, General entered into a contract (the "Subcontract") with Suburban to drill and place concrete for 34 "shafts" designed to support the railroad bridge. The railroad bridge was replaced in two phases so trains could continue to run during construction, and the railroad bridge was functional throughout the Project. In phase one, Suburban drilled and placed 15 shafts, and in phase two, Suburban drilled and placed 19 shafts. Suburban completed the shaft work in May 2019.

{¶ 5} On January 3, 2020, Suburban filed a complaint asserting a claim for breach of contract and seeking damages based on General's alleged delays, obstructions, accelerations, and the Project redesign in connection with the work for which Suburban was engaged to perform.

{¶ 6} On March 2, 2020, General filed an answer and counterclaims. General asserted Suburban's claims were barred by the City's prior rejection of those claims pursuant to the dispute-resolution terms set forth in the Principal Contract and incorporated in the Subcontract. General also asserted counterclaims for fraudulent misrepresentation, negligent misrepresentation, and breach of contract, claiming damages for Suburban's alleged misrepresentations regarding the shaft-drilling production rate and delays by Suburban in performing the shaft work.

{¶ 7} On September 11, 2020, General filed a motion for summary judgment as to all of Suburban’s claims against it, which Suburban timely opposed. On January 21, 2022, the trial court ordered the parties to submit joint stipulations of fact and supplemental briefing on the motion. The parties submitted joint stipulations of fact on February 28, 2022. On March 3, 2022, General submitted a supplemental brief, and Suburban submitted a supplemental brief on March 4, 2022, to which General replied.

{¶ 8} On December 5, 2023, the trial court granted summary judgment in favor of General on Suburban’s claims. The court found that the claim-resolution process set forth in the Principal Contract involving determinations by the City as the project owner—and specifically incorporated into the Subcontract between General and Suburban—was Suburban’s exclusive remedy with regard to its claims. Thus, the court concluded that the City’s prior rejection of Suburban’s claims under the requisite claim-resolution process effectively barred those claims in a subsequent lawsuit. (*See* Dec. 5, 2023 Jgmt. Entry Granting Def.’s Mot. for Summ. Jgmt. & Amending Case Schedule.)

{¶ 9} On April 9, 2024, over five months after the trial court issued its decision granting summary judgment in favor of General on Suburban’s claims, Suburban filed a motion for reconsideration of the court’s ruling. On May 8, 2024, the court issued a journal entry summarily denying Suburban’s motion for reconsideration. (*See* May 8, 2024 Journal Entry Den. Plf.’s Mot. to Amend & Den. Plf.’s Mot. to Reconsider.)

{¶ 10} As a result of the trial court’s ruling on summary judgment in General’s favor on Suburban’s claims, General’s counterclaims remained the only claims pending. Pursuant to Civ.R. 53 and Loc.R. 99.02, the matter was referred to a magistrate for a bench trial. (*See* Sept. 30, 2024 Order of Ref.)

{¶ 11} On October 7, 2024, the bench trial commenced and continued for three days. At trial, counsel for both parties appeared and evidence was presented by party representatives on behalf of General and Suburban, respectively. On behalf of Suburban, the trial magistrate heard the testimony of Suburban’s Vice President, Dan Miller. On behalf of General, the magistrate heard the testimony of General’s Bridge Division Manager, Ashley Hoskins; General’s Chief Engineer, Michael Obert; General’s Vice President of Operations, James George; and General’s Bridge Estimator, Rick Comer.

{¶ 12} Miller testified that at the August 16, 2016 pre-contract meeting of the parties held to discuss Suburban’s bid for the work, he told General’s representatives Suburban could drill one shaft every one and a half days. In contrast, General’s representatives, Hoskins, George, and Comer, each testified that Miller had either told them Suburban could drill one and a half shafts per day or had at least left General’s representatives with that “impression.” (See Jan. 13, 2025 Mag.’s Decision at 10-11.) Obert presented testimony regarding General’s alleged damages. *Id.* at 15-16.

{¶ 13} On January 13, 2025, the trial magistrate issued a 19-page decision, which included findings of fact and conclusions of law. In her decision, the magistrate recommended the trial court enter judgment in favor of Suburban on all of General’s claims against Suburban. As to its breach of contract claim, the magistrate found that because the rate of production is not an enforceable contractual provision, there was no breach by Suburban. The magistrate further found that even if the production rate was an enforceable contractual provision, General failed to prove damages with sufficient certainty so as to entitle it to recover any such damages. *See id.* at 16-18.

{¶ 14} As for General’s fraudulent and negligent misrepresentation claims, the magistrate found those claims failed, as well. The magistrate found that the economic-loss rule barred General’s tort claims and that the exception to the rule premised on fraudulent and/or negligent misrepresentation was inapplicable. More specifically, the magistrate found that General did not prove the requisite mental-state element of these claims, that Suburban’s statement regarding its estimated production rate did not pertain to past or present but, rather, to future performance, and that General did not prove that it reasonably relied on the alleged statement regarding estimated production rate. *See id.* at 18-19.

{¶ 15} Finally, the magistrate recommended the trial court dismiss General’s declaratory judgment claim, with prejudice, because General abandoned the claim at trial. *See id.* at 19.

{¶ 16} On January 21, 2025, General filed a motion for findings of fact and conclusions of law, and on January 23, 2025, the trial court issued its “Entry Denying Defendant Complete General Construction Company’s Motion for Findings of Fact and Conclusions of Law.”

{¶ 17} On January 27, 2025, General filed objections to the magistrate’s decision, and on February 5, 2025, it filed a motion for leave to supplement its objections pending preparation of the trial transcript. The trial court granted the motion to file supplemented objections on March 17, 2025.

{¶ 18} On April 11, 2025, General filed a motion for leave to exceed the page limitations for filing its supplemented objections, and on April 15, 2025, the trial court issued its “Entry Denying Motion of Complete General Construction Company for Leave to Exceed the Page Limitations as Ordered by the Court.”

{¶ 19} On April 18, 2025, General filed its supplemented objections to the magistrate’s decision, and on April 25, 2025, Suburban filed its response to General’s supplemented objections.

{¶ 20} On May 19, 2025, the trial court issued its “Judgment Entry Overruling Counterclaim Plaintiff’s Objections and Adopting the Magistrate’s Decision,” thus finding in favor of Suburban on all of General’s counterclaims.

{¶ 21} On June 4, 2025, Suburban filed its notice of appeal from the trial court’s “Judgment Entry Granting Defendants’ Motion for Summary Judgment” entered in this action on December 5, 2023, and the “Journal Entry Denying Plaintiff’s Motion to Reconsider” entered in this action on May 8, 2024.

{¶ 22} On June 12, 2025, General filed its notice of cross-appeal from the trial court’s “Judgment Entry Overruling Counterclaim Plaintiff’s Objections and Adopting the Magistrate’s Decision” entered in this action on May 19, 2025, the “Entry Denying Motion of Complete General Construction Company for Leave to Exceed the Page Limitations as Ordered by the Court” entered in this action on April 15, 2025, and the “Entry Denying Defendant Complete General Construction Company’s Motion for Findings of Fact and Conclusions of Law” entered in this action on January 23, 2025.

{¶ 23} These cross-appeals are now before this court.

II. Assignments of Error—Suburban’s Appeal

{¶ 24} In its appeal, Suburban presents two assignments of error for our review:

- [1.] The trial court erred by granting Complete General Construction Company’s and Arch Insurance Group, Inc.’s Motion for Summary Judgment and dismissing all

of Suburban Maintenance and Construction, Inc.'s claims.

- [2.] The trial court erred by denying Suburban Maintenance and Construction, Inc.'s Motion for Reconsideration.

III. Assignments of Error—General's Cross-Appeal

{¶ 25} In its cross-appeal, General presents seven assignments of error for our review:

1. WHEN THE PARTIES AGREED THAT CGC'S INTERPRETATION OF THE SUBCONTRACT WOULD BE "CONCLUSIVE AND BINDING" IN THE EVENT OF A DISPUTE AS TO THE INTERPRETATION, THE TRIAL COURT ERRED IN FINDING THAT CGC'S INTERPRETATION WAS "UNREASONABLE," AND IN NOT EVEN ADDRESSING THAT AGREEMENT IN ITS DECISION.
2. WHERE THE TRIAL COURT RECORD CONFIRMS THAT THE PARTIES' COURSE OF PERFORMANCE FURTHER DEMONSTRATED AN AGREED-UPON SCHEDULE, THE TRIAL COURT ERRED IN FINDING THAT THERE WAS NONE.
3. WHERE MR. MILLER OF SUBURBAN TESTIFIED THAT HE DID NOT "MISSPEAK" IN PROVIDING SUBURBAN'S PRODUCTION RATE, HIS BID TAKE-OFF SHOWED A PRODUCTION RATE OF ONE DRILLED SHAFT EVERY ONE AND A HALF DAYS, AND THREE WITNESSES TESTIFIED THAT MR. MILLER STATED ONE [AND] A HALF SHAFTS PER DAY, THE TRIAL COURT ERRED IN FINDING THAT CGC'S RELIANCE ON SUBURBAN'S MISREPRESENTATIONS WAS UNREASONABLE AND THAT SUBURBAN DID NOT COMMIT FRAUD OR OTHERWISE ACT RECKLESSLY.
4. WHERE MR. MILLER OF SUBURBAN TESTIFIED THAT CGC DID NOT DELAY THE PROJECT, THE TRIAL COURT ERRED IN CONCLUDING THAT HE DID NOT TESTIFY TO THAT EFFECT WHEN ASKED TO RECALL HIS TESTIMONY THAT CGC "DID NOT DELAY THE PROJECT," AND RESPONDING "NO" THAT HE WAS NOT "CHANGING THAT STORY."
5. THE TRIAL COURT ERRED IN FINDING THAT CGC DID NOT PRESENT RELIABLE EVIDENCE TO DEMONSTRATE DAMAGES WITH SUFFICIENT

CERTAINTY WHERE SUBURBAN OFFERED NO REBUTTAL TESTIMONY TO THAT DAMAGES ANALYSIS AND THE “MEASURED MILE” OF DAMAGES WAS PROVEN.

6. THE TRIAL COURT ERRED BY DENYING CGC’S UNOPPOSED MOTION FOR LEAVE TO EXCEED THE PAGE LIMITATION IN FILINGS ITS OBJECTIONS TO THE MAGISTRATE’S DECISION WHERE THE CIVIL RULES AND LOCAL RULES DO NOT IMPOSE A 15-PAGE LIMITATION ON OBJECTIONS TO A MAGISTRATE’S DECISION, WHICH ITSELF WAS 19 PAGES LONG, PURSUANT TO CIV.R. 53(D)(3)(B) FOUR DAYS AFTER THE MOTION WAS FILED.
7. THE TRIAL COURT ERRED BY DENYING, WITHOUT EXPLANATION, CGC’S UNOPPOSED MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CONNECTION WITH THE MAGISTRATE’S DECISION PURSUANT TO CIV.R. 53(D)(3)(A)(ii) TWO DAYS AFTER THE MOTION WAS FILED.

IV. Law And Discussion: Suburban’s Appeal

A. Standard of Review

{¶ 26} Both of Suburban’s assignments of error arise from the trial court’s decision granting summary judgment in favor of General on all of Suburban’s claims against it. We review a decision on a motion for summary judgment under a de novo standard. *LRC Realty, Inc. v. B.E.B. Properties*, 2020-Ohio-3196, ¶ 11.

{¶ 27} De novo appellate review means the court of appeals conducts an independent review, without deference to the trial court’s decision. *Wiltshire Capital Partners v. Reflections II, Inc.*, 2020-Ohio-3468, ¶ 12 (10th Dist.). Summary judgment is appropriate only when the moving party demonstrates (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 1997-Ohio-221, ¶ 8-10. In ruling on a motion for summary judgment, a court must resolve all doubts and construe the evidence in favor of the nonmoving party. *Premiere Radio Networks, Inc. v. Sandblast, L.P.*, 2019-Ohio-4015, ¶ 6 (10th Dist.).

{¶ 28} Pursuant to Civ.R. 56(C), the party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and of identifying those

portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 1996-Ohio-107, ¶ 17-18. The moving party cannot satisfy this initial burden by simply making conclusory allegations, but instead must demonstrate, including by use of affidavit or other evidence allowed by Civ.R. 56(C), that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Wiltshire Capital* at ¶ 13. If the moving party fails to satisfy this initial burden, the court must deny the motion for summary judgment; however, if the moving party satisfies the initial burden, the nonmoving party has a burden to respond, by affidavit or otherwise as provided under Civ.R. 56, with specific facts demonstrating a genuine issue exists for trial. *Dresher* at ¶ 17-18; *Hall v. Ohio State Univ. College of Humanities*, 2012-Ohio-5036, ¶ 12 (10th Dist.), citing *Henkle v. Henkle*, 75 Ohio App.3d 732, 735 (12th Dist. 1991).

B. First and Second Assignments of Error

{¶ 29} As previously noted, each of Suburban's two assignments of error arises from the trial court's decision on General's motion for summary judgment as to Suburban's claims against it, i.e., both the decision granting of the motion for summary judgment and the denial of the motion for reconsideration of that decision.

{¶ 30} Suburban's claims against General relate to alleged entitlement to additional payments for work performed under the parties' Subcontract, which is governed by Section 10(h) of the parties' Subcontract. Section 10(h) of the Subcontract provides as follows:

[Suburban] shall make its claims to [General] for additional time to perform the work, additional costs to perform the work, additional compensation based upon alleged extra work, changed conditions and *all other claims* in the same manner and mechanism as provided in the [City's] contract with [General] (the Principal Contract)[.] . . . [General] *will be not liable to [Suburban] . . . unless and until it is allowed by the [City]*.

(Emphasis added.) (Jan. 3, 2020 Compl., Ex. A at 7.)

{¶ 31} The construction of a written contract involves issues of law that appellate courts review de novo. *Alexander v. Buckeye Pipeline Co.*, 53 Ohio St.2d 241 (1978), paragraph one of the syllabus. When construing a contract, a court's primary objective is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Servs., Inc. v.*

Nationwide Ins. Cos., 1999-Ohio-162, ¶ 12-15. “The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement.” *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. When the terms in an existing contract are clear and unambiguous, we cannot create a new contract “by finding an intent not expressed in the clear and unambiguous language of the written contract.” *Alexander* at ¶ 14. “If the meaning is apparent, the terms of the agreement are to be applied, not interpreted.” *Albert v. Shiells*, 2002-Ohio-7021, ¶ 20 (10th Dist.), citing *Carroll Weir Funeral Home v. Miller*, 2 Ohio St.2d 189, 192 (1965).

{¶ 32} We find Section 10(h) of the Subcontract to be clear and unambiguous in its terms and, therefore, it must be applied as written. Furthermore, a plain reading of the foregoing section shows that the Subcontract clearly and unambiguously provides that the agreed upon step process set forth in the Principal Contract and explicitly incorporated into the Subcontract required the City to approve any additional payment amounts.

{¶ 33} In this case, it is undisputed that Suburban presented its claims to the City (through General) and that all but a part of one of those claims—a certain portion of costs identified as part of Suburban’s “Phase 2 Revised Project Pricing Claim” in the amount of \$97,201.72—were rejected by the City. Regarding the rejected claims, it is further undisputed that Suburban neither sued the City after its claims were denied by it, nor demanded that General do so on its behalf, as required by the parties’ agreement. Therefore, as the trial court found, Suburban’s claims against General relating to these rejected claims are precluded as a matter of law. Accordingly, General is entitled to summary judgment on those claims as a matter of law. Furthermore, the motion for reconsideration was likewise properly denied for the same reason.

{¶ 34} Regarding the \$97,201.72 in costs allowed by the City as part of Suburban’s Phase 2 Revised Project Pricing Claim, paragraph 29 of the Subcontract provides as follows:

The Contractor may reserve from any amounts due or to become due to the Subcontractor, sums equal to any indebtedness owed by the Subcontractor on this or any other subcontract which the Subcontractor has with the Contractor for labor or material or equipment or any other obligations of the Subcontractor on this project for which the Contractor may be liable and as to which the Contractor has received notice from the Subcontractor of any provisions or obligations of this

subcontract, the Contractor shall have the right to retain out of and deduct from any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage, or expense including anticipated liquidated damages for which the Subcontractor is responsible, until the breach has been satisfactorily remedied or adjusted by the Subcontractor.

The Contractor may deduct from any pay estimate, sums due it for rental of equipment, work performed for the Subcontractor, or any other legitimate charge arising out of this project.

In addition, under Ohio's Prompt Payment Act, which generally requires a contractor to pay a subcontractor or material supplier within ten calendar days of receiving payment from the property owner for specific work or material, "[t]he contractor may reduce the amount paid by any retainage provision contained in the contract, invoice, or purchase order between the contractor and the subcontractor or material supplier, and may withhold amounts that may be necessary to resolve disputed liens or claims involving the work or labor performed or material furnished by the subcontractor or material supplier." R.C. 4113.61(A)(1).

{¶ 35} Thus, both the parties' agreement and Ohio's Prompt Payment Act specifically permit General to withhold the \$97,201.72 allowed by the City pending final resolution of General's claims against Suburban that are part of this case. Contrary to Suburban's contention that all of General's claims against and disputes with Suburban were fully resolved as of the judgment rendered in Suburban's favor after the trial below, until either Suburban and/or General have exhausted all of their respective rights of appeal in both this court and potentially the Supreme Court of Ohio, General's claims will not have been fully resolved.

{¶ 36} Therefore, based on all the foregoing, the trial court did not err in finding in its decision that General is entitled to judgment as a matter of law on Suburban's claims of alleged entitlement to additional payments for work performed under the parties' Subcontract.

{¶ 37} Accordingly, we overrule both of Suburban's assignments of error.

V. Law and Discussion: Cross-Appeal of General

A. First and Second Assignments of Error

{¶ 38} General's first and second assignments of error both relate to the trial magistrate's findings and the trial court's ultimate agreement with those findings. Specifically, General asserts the court erred in agreeing with the magistrate's findings that (1) General's interpretation of the Subcontract as it pertained to an ostensible agreement for a production rate and/or schedule was unreasonable, and (2) regardless of the Subcontract's terms, the course of the parties' performance establishes an agreed-upon schedule. Neither assignment of error has merit.

{¶ 39} Pursuant to Civ.R. 53, "the trial court reviews a magistrate's decision de novo." *RRL Holding Co. of Ohio, L.L.C. v. Stewart*, 2020-Ohio-199, ¶ 37 (10th Dist.). In addressing objections to a magistrate's decision, "the trial court must make an independent review of the matters objected to in order 'to ascertain [whether] the magistrate has properly determined the factual issues and appropriately applied the law.'" *Id.*, quoting Civ.R. 53(D)(4)(d).

{¶ 40} In contrast, an appellate court "applies an abuse of discretion standard when reviewing a trial court's adoption of a magistrate's decision." *Id.* Nevertheless, this court reviews questions of law de novo. *Mtge. Bank Corp. v. WWIO, Ltd.*, 2016-Ohio-7069, ¶ 12 (10th Dist.).

{¶ 41} In support of its first assignment of error, General asserts that Section 2 of the Subcontract gives it the unfettered authority to interpret the Subcontract in any way it sees fit, including in finding that the Subcontract includes an agreement between the parties for a production rate. General reaches this conclusion by insisting that the production rate was a "proposal or bid condition" and, as such, was incorporated into the terms of the Subcontract pursuant to Section 26 of the Subcontract.

{¶ 42} Section 26 of the Subcontract provides as follows:

The Subcontract and the enumerated Contract Documents embody the entire agreement between [General] and [Suburban]. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in the Contract Documents. [Suburban's] bid, proposal or bid condition, to perform the Work are part of the Subcontract or the Contract Documents by the terms of this Subcontract. No

changes, modifications or amendments of any kind of the terms and conditions shall be valid unless agreed by the parties in writing and signed by their authorized representative.

(Jan. 3, 2020 Compl., Ex. A at 7.) In turn, Section 2 of the Subcontract provides:

In the event of any dispute as to the interpretation of any of the documents which are a part of this Agreement, [General's] decision shall be conclusive and binding upon [Suburban].

Id. at 2.

{¶ 43} As set forth previously in discussing Suburban's assignments of error, the construction of written contracts involves issues of law that appellate courts review de novo. *Alexander*, 53 Ohio St.2d at paragraph one of the syllabus. When construing a contract, a court's primary objective is to ascertain and give effect to the intent of the parties. *Hamilton Ins. Servs., Inc.*, 1999-Ohio-162, at ¶ 12-15. "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly*, 31 Ohio St.3d at paragraph one of the syllabus. In determining the parties' intent, a court must construe the contract as a whole and give effect, if possible, to every part of the contract. *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 1997-Ohio-202, ¶ 32-41. If an undefined term is used in a contract, a court will give that word its ordinary meaning, unless manifest absurdity results or some other meaning is clearly evidenced in the contract. *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 2011-Ohio-2720, ¶ 38. No contract shall be construed to reach an unreasonable result. *See, e.g., Cincinnati Ins. Co. v. CPS Holdings, Inc.*, 2007-Ohio-4917, ¶ 8.

{¶ 44} When the parties to a contract disagree on the meaning of the language in the contract, a court "must first look to the four corners of the document to determine whether an ambiguity exists." *Antonucci v. Ohio Dept. of Taxation*, 2010-Ohio-3326, ¶ 8 (10th Dist.), citing *Buckeye Corrugated, Inc. v. DeRycke*, 2003-Ohio-6321 (9th Dist.). "[I]f the contract terms are clear and precise, the contract is not ambiguous and the trial court is not permitted to refer to any evidence outside of the contract itself." *Id.*, quoting *Ryan v. Ryan*, 1999 Ohio App. LEXIS 5001, *4 (9th Dist. Oct. 27, 1999). Likewise, when a written instrument is unambiguous, parol evidence will not be considered in an attempt to demonstrate an ambiguity that otherwise does not exist. *Id.*, citing *Shifrin v. Forest City Ent., Inc.*, 1992-Ohio-28, ¶ 9-12, citing *Stony's Trucking Co. v. Pub. Util. Comm.*, 32 Ohio St.2d 139, 142 (1972). Thus, the parol evidence rule bars evidence of prior representations

offered to vary, contradict, or supplement terms in an integrated contract. *Williams v. Spitzer Autoworld Canton, L.L.C.*, 2009-Ohio-3554, ¶ 17. *See also Galmish v. Cicchini*, 2000-Ohio-7, ¶ 16-19, quoting *In re Gaines Estate*, 15 Cal.2d 255, 264-265 (1940) (“ ‘when there is a single and final memorial of the understanding of the parties[,] . . . prior and contemporaneous negotiations, oral or written, are excluded; or, as it is sometimes said, the written memorial supersedes these prior or contemporaneous negotiations’ ”).

{¶ 45} Likewise, where a fully integrated contract is clear and unambiguous, consideration of the parties’ course of performance is not permitted to determine the intent of the parties; rather, it is only where an ambiguity exists that course of performance may be relevant. *See, e.g., St. Mary’s v. Auglaize Cty. Bd. of Commrs.*, 2007-Ohio-5026, ¶ 39 (affirming the appellate court’s holding that looked to the parties’ course of performance to determine terms of an ambiguous agreement and subsequent modification); *State ex rel. Ohio AG v. Tabacalera Nacional, S.A.A.*, 2013-Ohio-2070, ¶ 24 (10th Dist.) (“To clarify ambiguity in contractual language, a finder of fact may consider the parties’ course of performance.”); *Cincinnati Ins. Co. v. ACE INA Holdings, Inc.*, 2007-Ohio-5576, ¶ 33 (1st Dist.) (“When an ambiguity exists, the court may consider the parties’ course of performance in determining their intent.”). *See also Patel v. Univ. of Toledo*, 2017-Ohio-7132, ¶ 16 (10th Dist.) (rejecting appellant’s argument that the parties implicitly modified their written agreement by their subsequent course of conduct where the written agreement was unambiguous).

{¶ 46} In this case, the Subcontract entered into by the parties is clear and unambiguous, and nowhere in it is there any mention of a shaft-drilling production rate. Neither does the Proposal submitted by Suburban prior to the parties’ entering into the Subcontract set forth a shaft-drilling production rate. There are no other documents included in the Subcontract.

{¶ 47} Furthermore, Section 26 of the Subcontract is an integration clause that specifically provides that the Subcontract is the entire agreement; that the parties are not bound by any other statements, representations, promises, inducement, or understanding not set forth in the contract documents; and that any changes, modifications, or amendments must be “agreed by the parties in writing and signed by their authorized representative.” (Jan. 3, 2020 Compl., Ex. A at 14.) The only reasonable

conclusion from the foregoing is that a production rate is not a term the parties' included in their agreement.

{¶ 48} General's contention that its "interpretation" of the Subcontract as including a production rate cannot be unreasonable because Section 2 of the Subcontract renders General's interpretation of the Subcontract "binding" in the event of a dispute is meritless. (Aug. 12, 2025 Brief of Appellee/Cross-Appellant at 15, 19). This is so because if General can simply insert any term it wants into the parties' integrated, unambiguous Subcontract after the fact of entering into it, then the entire purpose of Section 26—the Integration Clause—is rendered null. As previously observed, no contract shall be construed to reach an unreasonable result. *See, e.g., Cincinnati Ins. Co.*, 2007-Ohio-4917, at ¶ 8 (1st Dist.). The magistrate correctly found General's "interpretation" of the Subcontract to include a production rate was unreasonable.

{¶ 49} As for General's second assignment of error, as discussed above, neither can General use the doctrine of course of performance as a means to amend the parties' clear, unambiguous, and fully integrated written contract. *See, e.g., Patel*, 2017-Ohio-7132, at ¶ 16 (10th Dist.) (rejecting appellant's argument that the parties implicitly modified their written agreement by their subsequent course of conduct where the written agreement was unambiguous). In short, course of performance cannot be used to alter an unambiguous contract, which is what this case concerns.

{¶ 50} In sum, the magistrate correctly found that, as a matter of law, the Subcontract did not include a production rate and, thus, is not an enforceable contractual provision. Further, the trial court correctly agreed with the magistrate on this finding. As such, General's breach of contract claim fails as a matter of law, and the trial court did not err in reaching this conclusion.

{¶ 51} Accordingly, General's first and second assignments of error are overruled.

B. Third Assignment of Error

{¶ 52} In its third assignment of error, General asserts the trial court erred in finding that General's reliance on Suburban's alleged misrepresentations regarding a production rate was unreasonable and that Suburban did not commit fraud or otherwise act recklessly. We disagree.

{¶ 53} “ ‘The economic-loss rule generally prevents recovery in tort of damages for purely economic loss.’ ” *Waverly City School Dist. Bd. of Edn. v. Triad Architects, Inc.*, 2008-Ohio-6917, ¶ 26 (10th Dist.), quoting *Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc.*, 2005-Ohio-5409, ¶ 6. “This rule stems from the recognition of a balance between tort law, designed to redress losses suffered by breach of a duty imposed by law to protect societal interests, and contract law, which holds that parties to a commercial transaction should remain free to govern their own affairs.” (Internal quotations marks deleted and citation omitted.) *Shook* at ¶ 6. Under Ohio law, the breach of a contract does not create a tort claim. *425 Beecher, L.L.C. v. Unizan Bank*, 2010-Ohio-412, ¶ 50 (10th Dist.), quoting *Textron Fin. Corp. v. Nationwide Mut. Ins. Co.*, 115 Ohio App.3d 137, 151 (9th Dist. 1996), quoting *Wolfe v. Continental Cas. Co.*, 647 F.2d 705, 710 (6th Cir. 1981) (“ ‘the existence of a contract action generally excludes the opportunity to present the same case as a tort claim’ ”) and *Infocision Mgt. Corp. v. Found. for Moral Law, Inc.*, 2009 U.S. Dist. LEXIS 65867 (N.D. Ohio July 27, 2009) (recognizing that if a party could simply create a tortious action by alleging that a contracting party never intended to fulfill his promise, there would be no effective way of preventing almost any contract case from being converted to a tort action).

{¶ 54} “[T]he economic-loss rule sweeps widely.” *Clemens v. Nelson Fin. Group, Inc.*, 2015-Ohio-1232, ¶ 36 (10th Dist.). A tort claim based on the same actions as those on which a breach of contract claim is based exists independently of the contract action “ ‘only if the breaching party also breaches a duty owed separately from that created by the contract, that is, a duty owed even if no contract resulted.’ ” *Unizan Bank* at ¶ 51, quoting *Textron Fin. Corp.* at 151. Thus, fraudulent and/or negligent misrepresentation claims will survive application of the economic-loss rule only if such claims are “based exclusively upon [a] discrete, preexisting duty in tort and not upon any terms of a contract or rights accompanying privity.” (Internal quotation marks deleted and citation omitted.) *Clemens* at ¶ 36.

{¶ 55} Importantly, “where the parties are negotiating in an arm’s length transaction, there is no fiduciary duty.” *Camp St. Mary’s Assn. of the W. Conference of the United Methodist Church, Inc. v. Otterbein Homes*, 2008-Ohio-1490, ¶ 37 (3d Dist.). Indeed, the tort of negligent misrepresentation is generally inapplicable to “business

transactions negotiated at arms' length by sophisticated parties to further their own economic interests.” *Universal Contracting Corp. v. Aug*, 2004-Ohio-7133, ¶ 17 (1st Dist.). As we have previously stated, “[w]here the parties to a transaction are sophisticated business entities who have contracted to protect against economic loss, ‘contract principles override . . . tort principles . . . and economic damages are not recoverable except as provided in the contract or by the rules of contract interpretation.’ ” *Unizan Bank* at ¶ 51, quoting *Universal Contracting Corp.* at ¶ 20.

{¶ 56} Furthermore, the Supreme Court of Ohio has held that “a party cannot predicate fraud on predictions or projections relating to future performance; rather, we have long recognized that to be actionable, a misrepresentation must involve a matter of fact that relates to the past or present.” *Lucarell v. Nationwide Mut. Ins. Co.*, 2018-Ohio-15, ¶ 63, citing *Block v. Block*, 165 Ohio St. 365, 377 (1956); *Armstrong v. Karshner*, 165 Ohio St. 276 (1890), paragraph one of the syllabus. Indeed, “[r]eliance on a statement of future intent made prior to the conclusion of negotiations in a complex business transaction is unreasonable as a matter of law. . . . Such a rule is particularly appropriate when two sophisticated business entities are involved in negotiations.” (Internal quotation marks deleted and citations omitted.) *Olympic Holding Co., L.L.C. v. ACE Ltd.*, 2009-Ohio-2057, ¶ 37.

{¶ 57} Here, the economic-loss rule bars General’s claims for misrepresentations in the first instance. There simply is no legal duty owed by Suburban separate from that created by the contract, “ ‘that is, a duty owed even if no contract resulted.’ ” *Unizan Bank* at ¶ 51, quoting *Textron Fin. Corp.* at 151. General has neither identified nor explained what legal duty Suburban owed to it separate and apart from the parties’ contract, with good reason—there isn’t one. This alone bars General’s tort claims.

{¶ 58} Furthermore, General cannot show that its reliance on any representations made by Suburban’s representatives was reasonable. This is so because even assuming for the sake of argument that Suburban’s representative (Miller) had indeed told General’s representatives that Suburban could drill one and a half shafts per day—and not one shaft every one and a half days as Miller testified he said—such a statement is one relating to future performance—not a past or present fact. “[A] party cannot predicate fraud on predictions or projections relating to future performance; rather, [Ohio has] long

recognized that to be actionable, a misrepresentation must involve a matter of fact that relates to the past or present.” *Lucarell* at ¶ 63, citing *Block* at 377; *Armstrong* at paragraph one of the syllabus.

{¶ 59} Moreover, as previously noted, “[r]eliance on a statement of future intent made prior to the conclusion of negotiations in a complex business transaction is unreasonable as a matter of law. . . . Such a rule is particularly appropriate when two sophisticated business entities are involved in negotiations.” (Internal quotation marks deleted and citations omitted.) *Olympic Holding Co., L.L.C.* at ¶ 37; *see also Heinz & Assocs. v. Diamond Cellar Holdings, L.L.C.*, 2012-Ohio-1422, ¶ 31 (10th Dist.). This is precisely the situation present in the within matter.

{¶ 60} In short, General’s tort claims fail as a matter of law, the trial court did not err in finding so, and its third assignment of error is overruled.

C. Fourth, Fifth, Sixth, and Seventh Assignments of Error

{¶ 61} In regard to General’s remaining assignments of error, because the issues raised under these assignments of error are rendered moot by virtue of our findings under the first, second, and third assignments of error, pursuant to App.R. 12(A)(1)(c), we decline to address them.

{¶ 62} App.R. 12(A)(1)(c) provides that “[u]nless an assignment of error is made moot by a ruling on another assignment of error,” a court of appeals shall “decide each assignment of error and give reasons in writing for its decision.” “An assignment of error is moot when it cannot have ‘any practical legal effect upon a then-existing controversy.’” (Further quotation marks deleted and citation omitted.) *State v. Gideon*, 2020-Ohio-6961, ¶ 26, quoting *Culver v. Warren*, 84 Ohio App. 373, 393 (11th Dist. 1948). Put another way, “[a]n assignment of error is moot when an appellant presents issues that are no longer live as a result of some other decision rendered by the appellate court.’” *Eric Petro. Corp. v. Vendel*, 2025-Ohio-1238, ¶ 40 (10th Dist.), quoting *Gideon* at ¶ 26.

{¶ 63} Here, we have already determined that the trial court did not err in concluding that, as a matter of law, General’s contract claim fails because the term allegedly breached—a production rate—was not part of the parties’ written Subcontract. We have further determined that the trial court did not err in concluding that, as a matter of law, General’s tort claims are barred by virtue of the economic-loss rule. Therefore,

any determination made by this court on the fourth, fifth, sixth, or seventh assignments of error would not have any impact on a genuine, live controversy.

{¶ 64} Accordingly, based on the foregoing, we find General's remaining fourth, fifth, sixth, and seventh assignments of error moot.

VI. Conclusion

{¶ 65} Having overruled Suburban's two assignments of error, having overruled General's first, second, and third assignments of error, and having found moot General's fourth, fifth, sixth, and seventh assignments of error, we affirm the judgments of the Franklin County Court of Common Pleas.

Judgments affirmed.

MENTEL and EDELSTEIN, JJ., concur.
