

tion becomes effective. In computing time, a day ordinarily is considered an indivisible unit. See *Fiedler v. Eckfeldt*, 335 Ill. 11, 17, 166 N.E. 504, 507 (1929). As a general rule, the law will not recognize fractions of a day unless that recognition is deemed important to the interests of justice or necessary to a decision regarding conflicting interests. *Fiedler*, 335 Ill. at 17, 166 N.E. at 507; *Conley v. Ratayczak*, 92 Ill.App.3d 29, 46 Ill.Dec. 616, 414 N.E.2d 500 (1980). The case at bar does not present such a situation. For example, this is not a case where an accident occurred on the day that the policy terminated and the case turns on which of the two occurred first. While we can envision other circumstances in which conflicting interests or the interests of justice may require the law to recognize fractions of a day, those circumstances are not presented here.

The record shows that the notice of cancellation was mailed in compliance with the policy provision and the Code and that Anchor's policy terminated for the nonpayment of a premium more than five months before the date of the accident. The circuit court erred in granting the defendants' motion for a summary judgment and in denying Pekin's motion for a summary judgment.

Accordingly, we reverse the judgment of the circuit court, and in accordance with our authority under Illinois Supreme Court Rule 366(a)(5) (155 Ill.2d R. 366(a)(5)), we hereby grant a summary judgment in favor of the plaintiff and against the defendants.

Reversed; judgment entered.

CHAPMAN and STEWART, JJ.,  
concur.



377 Ill.App.3d 842

316 Ill.Dec. 476

**Dan R. SMITH, d/b/a Dan R.  
Smith Building Services,  
Plaintiff-Appellant,**

v.

**Cory W. BOGARD and Angela  
M. Bogard, Defendants-  
Appellees.**

**No. 4-07-0240.**

Appellate Court of Illinois,  
Fourth District.

Dec. 26, 2007.

Rehearing Denied Jan. 25, 2008.

**Background:** Contractor sued homeowners for unpaid balance on remodeling work he performed, alleging breach of contract and alternatively, quantum meruit. Homeowners moved to dismiss on grounds contractor violated provisions of the Home Repair and Remodeling Act. The Circuit Court, Clark County, Brian O'Brien, J., granted the motion and contractor appealed.

**Holdings:** The Appellate Court, Appleton, P.J., held that:

- (1) contractor was required to comply with Act provisions to obtain a written contract and provide homeowners with a consumer-rights pamphlet;
- (2) allowing contractor to recover on quantum meruit theory was contrary to purpose of the Act and contrary to public policy.

Affirmed.

### 1. Pretrial Procedure ¶531

The purpose of a motion to dismiss based upon certain defects or defenses is to afford litigants a means to dispose of

issues of law and easily proved issues of fact at the outset of a case. S.H.A. 735 ILCS 5/2-619.

## 2. Appeal and Error ◊863

An appeal from a dismissal based upon certain defects or defenses is the same in nature as one following a grant of summary judgment, and the reviewing court must ascertain whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a matter of law. S.H.A. 735 ILCS 5/2-619.

## 3. Antitrust and Trade Regulation ◊203, 389(2)

Contractor was a “person engaged in the business of home repair,” pursuant to the Home Repair and Remodeling Act when he performed remodeling work for homeowners, and thus, his failure to comply with the Act by obtaining a written contract for the work and providing the homeowners with a consumer-rights pamphlet precluded recovery of the unpaid balance on grounds of breach of contract, even though contractor claimed he was merely a subcontractor and not subject to the Act; contractor performed general construction work for the homeowners, and there was no general contractor who obtained written contract with the homeowners for the entire project. S.H.A. 815 ILCS 513/15.

## 4. Implied and Constructive Contracts ◊30

Contractor who was precluded from recovering the unpaid balance on remodeling work for violation of the Home Repair and Remodeling Act was likewise precluded from recovery under theory of quantum meruit; allowing recovery when contractor had breached the Act was contrary to legislature’s intent of protecting consumers, would reward deceptive practices, and

would violate public policy. S.H.A. 815 ILCS 513/1 to 513/999.

Presiding Justice APPLETON delivered the opinion of the court:

Plaintiff, Dan R. Smith, doing business as Dan R. Smith Building Services (Smith), performed construction work for defendants, Cory W. Bogard and Angela M. Bogard (the Bogards), as part of a remodeling project on the Bogards’ home. After the project was complete, Smith sued the Bogards for the unpaid balance on the work he had performed. The Bogards filed a motion to dismiss, claiming Smith was precluded from recovery because he had violated various provisions of the Home Repair and Remodeling Act (Act) (815 ILCS 513/1 through 999 (West 2004)). The trial court agreed with the Bogards and dismissed Smith’s complaint.

Smith appeals, claiming the trial court erred in dismissing his complaint because (1) the Act does not apply to him as a subcontractor, and (2) even if the Act does apply to him, and his violations of the provisions of the Act preclude his recovery under contract theories, he is still entitled to recover the amount due under the equitable theories of unjust enrichment and/or *quantum meruit*.

For the following reasons, we find the trial court did not err in granting the Bogards’ motion to dismiss because, under the facts of this case, the Act *does* apply to Smith and his violations of the Act preclude his recovery of any unpaid balance for the work he had performed under both contract and equitable theories. We affirm.

### I. BACKGROUND

In September 2003, Smith met with the Bogards to discuss the construction of a

26' × 20' living-room addition to the Bogards' home in Casey, Illinois. According to the Bogards, Smith gave them an oral estimate of "\$20,000 or less" as a cost for labor and materials for completion of the job. Smith began construction in October 2003 and completed the project in February 2004 at a total cost of \$25,515.85. Smith acknowledged that the Bogards had previously paid him \$15,000, leaving a balance due of \$10,515.85. The Bogards have refused to pay the balance Smith claims due because they say Smith abandoned the project. On October 14, 2005, Smith filed a complaint against the Bogards for a breach of contract seeking \$10,515.85 plus interest.

On November 6, 2006, Smith filed an amended complaint, adding two additional counts—one for unjust enrichment and one for *quantum meruit*. On November 27, 2006, the Bogards filed a motion to dismiss pursuant to section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2004)) on the grounds that Smith's claim was barred by an affirmative matter that avoids the legal effect of or defeats his claim. The Bogards claimed Smith violated the Act by not securing a written contract prior to initiating construction and by failing to provide them with the consumer-rights pamphlet. They claim these violations preclude Smith's recovery.

On January 19, 2007, the trial court conducted a hearing on the Bogards' motion to dismiss. After considering the arguments of counsel, the court granted the motion in its entirety, finding that because Smith had failed to comply with the Act, he was precluded from recovery on count I—the breach-of-contract claim. The court further found that because Smith was unable to recover under an action at law, he was precluded from recovery under any equitable theory as well because such a recovery would "defeat[ ] the entire pur-

pose of the [Home Repair] [A]ct and the public policy behind it." Thus, the court also dismissed counts II and III. The court entered a written judgment on February 16, 2007. This appeal followed.

## II. ANALYSIS

[1, 2] Smith appeals the trial court's order granting the Bogards' motion to dismiss, claiming that (1) a disputed issue of whether the Act applies to him remains, and (2) even if the Act does apply to him, he is not precluded from recovery under the theories of unjust enrichment and/or *quantum meruit*. We review the trial court's order granting the Bogards' motion to dismiss according to the following standard.

"The purpose of a motion to dismiss under section 2-619 of the Code of Civil Procedure is to afford litigants a means to dispose of issues of law and easily proved issues of fact at the outset of a case. [Citation.] An appeal from a section 2-619 dismissal is the same in nature as one following a grant of summary judgment. In both instances, the reviewing court must ascertain whether the existence of a genuine issue of material fact should have precluded the dismissal, or absent such an issue of fact, whether dismissal is proper as a matter of law. Review is *de novo*." *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill.2d 169, 178, 314 Ill.Dec. 91, 874 N.E.2d 1, 7 (2007).

First, Smith argues that the nature of his business relationship with the Bogards is a disputed question of fact and precludes the early dismissal of his complaint. In particular, he claims the Act does not apply to him because he acted as the Bogards' subcontractor. We find the nature of the relationship between the Bogards and Smith, in relation to the remodeling project, is not a disputed fact that pre-

cludes dismissal of Smith's complaint. In sum, we find the Act applies to Smith.

The Act went into effect on January 1, 2000. See 815 ILCS 513/999 (West 2004). Its purpose was to improve communications between consumers and persons engaged in the business of home repairs or remodeling in order to "increase consumer confidence, reduce the likelihood of disputes, and promote fair and honest practices in that business in this State." 815 ILCS 513/5 (West 2004). As a means of achieving this goal, the legislature enacted section 15, which provides that "a person engaged in the business of home repair or remodeling" shall provide a written contract or work order to the consumer prior to initiating any work over \$1,000. The contract or work order must set forth the total cost of the project. 815 ILCS 513/15 (West 2004). The Act also provides that it is unlawful for any person engaged in the business of home repairs and remodeling to begin a project without first obtaining a signed contract or work order. 815 ILCS 513/30 (West 2004). The person performing the construction services must also provide the customer with a copy of the pamphlet: "Home Repair: Know Your Consumer Rights" prior to the execution of any contract. 815 ILCS 513/20 (West 2004).

In this case, the following facts are undisputed: (1) the total cost of the Bogards' project exceeded \$1,000, (2) Smith failed to provide a written contract or work order prior to initiating work on the project, and (3) Smith failed to give the Bogards the consumer-rights pamphlet. The question is whether these failures (which constitute violations of the Act) serve to defeat his claim for remuneration.

There are only two Illinois appellate opinions interpreting the Act: *Central Illinois Electrical Services, L.L.C. v. Slepian*, 358 Ill.App.3d 545, 294 Ill.Dec. 844, 831

N.E.2d 1169 (2005) (Third District), and *MD Electrical Contractors, Inc. v. Abrams*, 369 Ill.App.3d 309, 307 Ill.Dec. 393, 859 N.E.2d 1070 (2006) (Second District), *appeal allowed*, 223 Ill.2d 636, 310 Ill.Dec. 249, 865 N.E.2d 969 (2007) (No. 104000). We will refer to each case using the name of the respective defendant for ease, clarity, and brevity.

In *Slepian*, the plaintiff, Central Illinois Electrical Services (CIES), entered into an oral contract with the homeowners to provide electrical work as part of a remodeling project. The Slepian's refused to pay the last installment claimed due for the work performed. CIES sued to foreclose a mechanic's lien on their property and, in addition, alleged claims for unjust enrichment and *quantum meruit*. In defending the suit, the Slepian's alleged that CIES had violated the Act by failing to provide a written contract. After a bench trial, the trial court found in CIES's favor with respect to the mechanic's lien, dismissed CIES's additional counts as moot, and denied all of the Slepian's claims. *Slepian*, 358 Ill.App.3d at 547-48, 294 Ill.Dec. 844, 831 N.E.2d at 1170-71.

On appeal, the Slepian's argued that the clear language of the Act precluded CIES from recovering the claimed amount due when it had failed to provide a written contract. CIES argued that because another electrical contractor was initially hired to do the work, CIES was not required by the Act to provide a written contract as it did not "initiate" the remodeling work. *Slepian*, 358 Ill.App.3d at 548-49, 294 Ill.Dec. 844, 831 N.E.2d at 1172.

Relying on the well-established principles of statutory construction, the Third District rejected CIES's claim and found that the plain and ordinary language of section 15 of the Act "clearly and unambiguously requires anyone engaged in the

business of home repair and remodeling to obtain a signed contract before initiating work that will exceed \$1,000 in cost.” *Slepian*, 358 Ill.App.3d at 550, 294 Ill.Dec. 844, 831 N.E.2d at 1173. The court held that the provisions of the Act applied to CIES as a successor electrical contractor. The court reversed the trial court’s judgment and remanded the case with directions for the trial court to proceed in accordance with the Act. *Slepian*, 358 Ill.App.3d at 550, 294 Ill.Dec. 844, 831 N.E.2d at 1173.

In *Abrams*, the electrical subcontractor, MD Electrical Contractors, Inc. (MD), sued the homeowner in *quantum meruit* to recover the costs of electrical work performed as part of a home-improvement project. The Abrams moved to dismiss the complaint, claiming MD had violated the Act by failing to provide a written contract and a consumer-rights pamphlet. The trial court granted the Abrams’ motion. MD appealed the court’s dismissal, claiming the Act did not apply because MD acted as a subcontractor, not a general contractor, and, even if the Act did apply, the Act did not preclude recovery under *quantum meruit*. *Abrams*, 369 Ill.App.3d at 309–10, 307 Ill.Dec. 393, 859 N.E.2d at 1071.

The Second District agreed with MD’s first contention on appeal—that the Act did not apply to MD as a subcontractor. *Abrams*, 369 Ill.App.3d at 310, 307 Ill.Dec. 393, 859 N.E.2d at 1071. Because the Abrams had signed a contract for the remodeling project with a general contractor, the court held that the Act did not require that each subcontractor, in turn, comply with the requirements of the Act. *Abrams*, 369 Ill.App.3d at 311, 307 Ill.Dec. 393, 859 N.E.2d at 1072–73. The court held that “[a]side from the contrary indicia of legislative intent that plaintiff has identified, there are further signs that the Act

was meant to apply only to general contractors.” *Abrams*, 369 Ill.App.3d at 313, 307 Ill.Dec. 393, 859 N.E.2d at 1074. The court found that certain phrases within the Act appeared to “refer to the project as a whole, not the particular task of a subcontractor.” *Abrams*, 369 Ill.App.3d at 314, 307 Ill.Dec. 393, 859 N.E.2d at 1074.

Considering these cases as the general framework for interpretation of the provisions of the Act, we now turn to Smith’s claims on appeal. He first argues that the trial court’s dismissal of his complaint was premature as a disputed question of fact remains. He claims the nature of his relationship with the Bogards in terms of the remodeling project remains disputed. Relying on *Abrams*, Smith claims that because he acted as a subcontractor in performing the work on the Bogards’ remodeling project, he was not obligated to comply with the various provisions of the Act.

After considering the pleadings and affidavits on file, we must determine “whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.” *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill.2d 112, 116–17, 189 Ill. Dec. 31, 619 N.E.2d 732, 735 (1993). “The suggestion that an issue of material fact exists, without supporting evidence, is insufficient to create one.” *People ex rel. Department of Professional Regulation v. Manos*, 326 Ill.App.3d 698, 704, 260 Ill. Dec. 364, 761 N.E.2d 208, 213 (2001).

[3] The record before us does not support Smith’s contention that he acted as a subcontractor in the Bogards’ remodeling project. Unlike the electrical subcontractor in *Abrams*, Smith performed a variety of general construction duties. The Bogards did not employ a general contractor and did not employ Smith for only specific

and limited duties. Instead, the facts before us indicate that Smith communicated directly with the Bogards with regard to the planning, construction, and finishing phases of the project.

Unlike the court in *Abrams*, we need not decide the general issue of whether the provisions of the Act apply similarly to subcontractors as general contractors because under the specific facts of this case, Smith was “a person engaged in the business of home repair” within the meaning of the Act. 815 ILCS 513/15 (West 2004). As such, the Act applies to Smith. His role in the remodeling project and the nature of his relationship with the Bogards dictate that he is obligated to comply with the Act. He cannot claim otherwise simply by calling himself a “subcontractor.” We find the Act applies to Smith, that Smith violated several provisions of the Act, and those violations support the dismissal of his breach-of-contract claim.

In the alternative, Smith claims that even if the Act applies and his conduct violated the Act, he is still entitled to recover from the Bogards under equitable theories. Smith claims the trial court erred in dismissing his claims for unjust enrichment and *quantum meruit* on the grounds that recovery under those equitable theories would run contrary to public policy and the purpose of the Act. We agree with the trial court.

[4] Because Smith is obligated to comply with the provisions of the Act, and because he failed to do so, he is precluded from recovering any amounts he claims

due for work performed. Allowing a contractor a method of recovery when he has breached certain provisions of the Act would run afoul of the legislature’s intent of protecting consumers, would reward deceptive practices, and would be violative of public policy. See *American Home Assurance Co. v. Golomb*, 239 Ill.App.3d 37, 41, 179 Ill.Dec. 961, 606 N.E.2d 793, 796 (1992) (when a contract is void, the courts will assist neither party but will leave them where they have placed themselves); see also *Townsend v. Fassbinder*, 372 Ill. App.3d 890, 902, 310 Ill.Dec. 470, 866 N.E.2d 631, 643 (2007) (“the doctrine of ‘unclean hands’ precludes a party from taking advantage of his own wrong”).

Based on the record before us, we conclude the trial court did not err in granting the Bogards’ motion to dismiss because we find that an affirmative matter (Smith’s violation of the Act) defeated Smith’s claims for recovery.

### III. CONCLUSION

For the foregoing reasons, we affirm the trial court’s judgment.

Affirmed.

McCULLOUGH and STEIGMANN,  
JJ., concur.

