

2014 IL App (2d) 130734-U  
No. 2-13-0734  
Order filed February 27, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JAMES PREISS,	)	Appeal from the Circuit Court
	)	of Boone County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-CH-89
	)	
JESSE BENTLEY,	)	Honorable
	)	Brendan A. Maher,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE BURKE delivered the judgment of the court.  
Justices Zenoff and Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court properly dismissed plaintiff’s complaint for breach of contract under the statute of frauds: the writings that defendant signed (including the e-mails sent in his name) did not contain a sufficient quantity term, instead providing for the sale of a “project” consisting of ambiguously defined components.
- ¶ 2 Plaintiff, James Preiss, appeals the dismissal of his amended complaint (see 735 ILCS 5/2-619(a)(7) (West 2012)), for breach of contract, against defendant, Jesse Bentley. Plaintiff contends that the trial court erred in holding that the alleged contract did not satisfy the statute of frauds (810 ILCS 5/2-201 (West 2012)). We affirm.

¶ 3 Plaintiff's amended complaint sought either specific performance or damages. It alleged the following facts, with documentation. Defendant owned a "custom built aircraft" known as an RV-8, which he stored in Muskego, Wisconsin. On April 10, 2011, plaintiff read advertisements for the sale of the RV-8; the ads were placed on the websites of <http://www.Barnstormers.com> and <http://www.VansAircraft.com>. The amended complaint attached a copy of the advertisement on the latter website. The headline stated that "VAN'S RV-8 PROJECT" was for sale for \$80,000. The ad continued:

"RV-8 Project New Mattituck Red Gold 360, horiz. intake, dual p-mags, fuel inj. Custom leather seats, Advanced Glass panel with moving map, AOA engine monitor. Advanced auto pilot with vertical steering. Dual bus elec architecture. 80% to 90% completed. GTX 337, SL-30, GMA 240 Dual Infinity Sticks. All kits including finishing. Much Much more."

¶ 4 On April 10, 2011, plaintiff traveled to Wisconsin and inspected the "aircraft." At some point between April 11, 2011, and April 21, 2011, defendant sent plaintiff a "portfolio" of photographs of the "RV-8 project." (There is one such photograph in the record.) On April 16, 2011, plaintiff met defendant and offered him \$75,000 for the "project"; defendant insisted on \$80,000; plaintiff agreed to pay \$80,000; and they shook hands on the deal. Thereafter, the ads on the two websites listed the RV-8 project as "sold."

¶ 5 The amended complaint continued as follows. After the handshake agreement, plaintiff obtained \$80,000 by taking out a loan against his life insurance policy. On April 21, 2011, defendant e-mailed plaintiff the "pdf files for electrical schematic" for the RV-8. The e-mail asked whether plaintiff "might like some help on weekends to help finish the 8." That day, plaintiff e-mailed back that funds to buy the "property" were available in his bank account and

that he would have a trailer available to transport the “property.” His e-mail also read, in part, “I am sure I would love to have your help working on this project. \*\*\* What is the status of the airplane in regards to being ready for me to come and get it? Have you gathered up all the things for the airplane? Wings off yet?” Defendant responded, “Not ready yet. Was planning on drilling the few holes left in the lower fuselage/wing overlap before pulling the wings. Was planning on doing that Saturday.” He added, “We had talked about the earliest delivery of next week I thought. Don’t know if I could have been ready.” Plaintiff replied that he would “get back late [April 26] evening” and that they could “shoot for one of those days [that week].”

¶ 6 On April 26, 2011, the parties again exchanged e-mails. At 1:37 p.m. defendant wrote, “[T]he earliest I can take the day and work with you on getting it to your place would be Friday.” He added, “Lets [*sic*] figure 8 or 9 am on Friday [April 29] at the hanger [*sic*]. Later if it works better for you.” At 1:51 p.m., plaintiff responded that Friday was unavailable, but that they could try someday “Sunday thru Friday the 6th of May.” He asked how defendant wanted “the funds sent” and requested “wire info for [defendant’s] bank.” At 2:33 p.m., defendant e-mailed plaintiff a bank account number and a routing number for payment. He apologized for the delay and added, “I’m sure you’re anxious to have it in your hanger [*sic*].” He had not “[gotten] the wings off yet,” but would be able “to get the rest done over the weekend now.” At 2:43 p.m., plaintiff responded, “We can try for next Monday or Tuesday.”

¶ 7 The amended complaint continued as follows. Before the property was exchanged for the agreed price, defendant breached the contract. On May 12, 2011, he e-mailed plaintiff, in part, “[T]hank you for your kindness and understanding in agreeing to discontinue the transaction regarding the RV.” Defendant had invested “a huge amount of my time and energy into building it up to the point where it is today.” Based on plaintiff’s “kind release,” defendant had

“accept[ed] the money from [his] brother and transferred majority ownership to him.” On May 15, 2011, plaintiff e-mailed back, in part, “I have never agreed to discontinue the transaction regarding the RV8. I would like you to tell me how you have come up with that conclusion.”

¶ 8 In moving to dismiss the complaint, defendant cited a portion of the statute of frauds:

“[A] contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.”

810 ILCS 5/2-201(1) (West 2012).

¶ 9 Defendant contended that, even considered collectively, the writings that he had signed did not satisfy this provision. None established any meeting of the minds on what specifically defendant had allegedly agreed to sell, what plaintiff had allegedly bought, or the terms of any offer that defendant had made and plaintiff had accepted.

¶ 10 Plaintiff responded as follows. Under the statute of frauds, the required writing(s) need not contain all the material terms of the contract. The writing(s) need only (1) evidence a contract for sale; (2) be signed by the party against whom enforcement is sought; and (3) specify a quantity. Here, the advertisements that defendant had posted were for the sale of “an RV-8, a custom-built aircraft” for \$80,000. Defendant had provided photographs “demonstrating the components of the RV-8.” The parties orally agreed on the sale of the RV-8 for \$80,000. Afterward, their e-mails provided the specifics of the transaction and defendant e-mailed plaintiff

a bank account number and routing number for payment. On May 12, 2011, defendant e-mailed plaintiff that they had entered into a “transaction.”

¶ 11 Plaintiff argued that he had satisfied the statute of frauds, because the e-mails that he had attached to the amended complaint demonstrated the existence of a contract for sale by showing that the parties had reached a meeting of the minds on the essential terms. Specifically, defendant’s name on his e-mails made them “writing[s].” 810 ILCS 5/2-201(1) (West 2012). These e-mails afforded a basis to believe that the “oral evidence” rested on a “real transaction,” *viz.*, “the sale of an RV-8 on April 16, 2011.”

¶ 12 The trial court granted defendant’s motion to dismiss, stating as follows. Even accepting that defendant’s e-mails to plaintiff were writings under the statute of frauds, they did not establish that defendant accepted a sum certain in exchange for “a definite quantity of ‘goods.’ ” The advertisement stating that an “RV-8 project” was for sale for \$80,000 did not satisfy the quantity requirement. It was indefinite “as to what [was] included in the sale. For example, the offer include[d] ‘all kits’ (what are kits? how many kits?), ‘custom leather seats,’ (how many seats? 2? 4? 6?), and ‘much, much more’ (what, specifically, is included in ‘much, much more’? [W]hat would happen if the delivered project did not include ‘much, much more’ than the specific items identified in the posting?).”

¶ 13 The court continued that none of defendant’s e-mails mentioned either price or the specific goods that would be included in the sale. The amended complaint mentioned photographs of the RV-8 project, but the record did not show what the photographs depicted or whether every item in them was part of the “RV-8 project.” Thus, the statute of frauds applied. Plaintiff filed a timely notice of appeal.

¶ 14 On appeal, plaintiff argues that the trial court erred in dismissing his amended complaint, because he satisfied the statute of frauds. Because the trial court dismissed the amended complaint under section 2-619 of the Code of Civil Procedure, our review is *de novo*. See *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 368 (2003).

¶ 15 In Illinois, a writing must contain a quantity term in order to comply with the statute of frauds. *Forms World of Illinois, Inc. v. Magna Bank, N.A.*, 334 Ill. App. 3d 1107, 1112 (2002). “In a contract for the sale of goods, the court can supply all the missing terms except the quantity term.” *Ray Dancer, Inc. v. DMC Corp.*, 175 Ill. App. 3d 997, 1004 (1988). The contract is not enforceable beyond the quantity of goods shown in the writing. 810 ILCS 5/2-201(1) (West 2012)); *Ray Dancer*, 175 Ill. App. 3d at 1004.

¶ 16 Here, plaintiff contends that the writings that defendant signed, which may be considered collectively (see *Yorkville National Bank v. Schaefer*, 71 Ill. App. 3d 137, 140 (1979)) and included the e-mails sent in his name (see *Cloud Corp. v. Hasbro, Inc.*, 314 F.3d 289, 296 (7th Cir. 2002)), supplied the required quantity term. Plaintiff concedes that these writings did not identify “each and every component of the project” or “every bolt or screw included in the project.” He maintains, however, that the parties’ correspondence, the exhibits, and the allegations of the amended complaint all show that the parties had reached a meeting of the minds on the quantity of goods to be included in the “RV-8 project.”

¶ 17 We cannot agree with plaintiff. We note first that, to demonstrate compliance with the requirement of a quantity term, he relies in part on his own e-mails (and on the allegations of his amended complaint). However, while plaintiff’s e-mails may shed light on the issue, the statute of frauds ultimately required the quantity term to be established by a writing signed by

defendant, against whom the enforcement of the alleged contract was sought. See 810 ILCS 5/2-201(1) (West 2012)). We agree with the trial court that defendant's writings did not do so.

¶ 18 Although plaintiff's amended complaint at points described the subject matter of the alleged contract as "a custom-built aircraft," or in similar terms, there is no dispute that what was being discussed was an "RV-8 project," which involved a variety of components that are not well summarized or limited by anything of record. The website advertisement on which plaintiff relies in part was, as the trial court carefully noted, anything but definitive as to how many of which items (such as seats, "kits," and "Much, much, more") were included in the "project" or would be incorporated into the finished aircraft. Although plaintiff references a portfolio of photographs of these components, these photographs (save one, apparently) are not in the record, much less attached to any document defendant signed. Defendant's e-mails showed that the project was incomplete at the time of the alleged breach, although he had had hopes of completing it in short order. The advertisement, e-mails, and other documents in defendant's name did not supply the quantity term.

¶ 19 In sum, we agree with the trial court's analysis of the quantity issue, which, by itself, is sufficient to affirm the court's holding that plaintiff did not overcome the statute of frauds. We need not consider whether the statute of frauds applies for other reasons.

¶ 20 The judgment of the circuit court of Boone County is affirmed.

¶ 21 Affirmed.