2015 IL App (2d) 140881-U
No. 2-14-0881
Order filed July 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JACK PEASE, Plaintiff and Counterdefendant-Appellee, v. TIMOTHY McPIKE, Indiv. and as Trustee of the Elaine Summerhill Trust, and LINDSEY SCHEINERT, Trustee of the Jesrael Sumerhill Trust, Defendants and Counterplaintiffs-Appellants.	)	Appeal from the Circuit Court of McHenry County. No. 08-AR-38 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted Pease's motion to dismiss the sellers' counterclaim on the basis of the Statute of Frauds and entered judgment for Pease on his complaint. Therefore, we affirmed.

¶ 2 This case involves two contracts to purchase commercial property (the Property) located in Crystal Lake. The Property was held in a land trust, and defendants and counterplaintiffs, Timothy McPike and Lindsey Scheinert (Sellers), were both beneficiaries of the land trust.

¶ 3 In January 2008, plaintiff and counterdefendant, Jack Pease, filed a complaint against Sellers seeking the return of his earnest money based on Sellers' alleged refusal of his offer on the Property. Sellers filed a counterclaim seeking specific performance of the contract to purchase the Property. Sellers also filed an amended motion for summary judgment on Pease's complaint and their counterclaim, which the trial court denied. Pease filed a motion to dismiss Sellers' counterclaim, and the trial court granted Pease's motion. The trial court then entered judgment in favor of Pease on his complaint.

¶ 4 On appeal, Sellers argue that the trial court erred by denying their motion for summary judgment, granting Pease's motion to dismiss their counterclaim, and ruling in favor of Pease on his complaint. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Stipulated Facts

¶ 7 The following stipulation of facts and deposition statements were submitted to the court "in lieu of testimony" regarding Pease's complaint.

¶ 8 The Property consisted of 4.27 acres of land and contained two industrial buildings. In 2007, the Sellers listed the Property for sale through their real estate agent, Bruce Kaplan. The listing price was $1,450,000. There were two "purported" real estate contracts pertaining to the Property. One contract was dated September 10, 2007 (First Contract), and the second contract was dated September 27, 2007 (Replacement Offer).

¶ 9 The First Contract named "Pat Plumeri or Nominee" as "Purchaser" and was signed by Plumeri on September 10, 2007. The First Contract was drafted at Plumeri's request by his real estate agent, Gary Wolf, and contained the following terms. The purchase price was $1,200,000, and closing was to occur on October 28, 2007. The First Contract required Sellers to accept the

offer within 48 hours, or it would become null and void. In addition, the First Contract included four conditions: (1) a professional inspection, paid for by the purchaser, within 10 days of contract acceptance; (2) determination within 7 days that the Property was zoned for the purchaser's use; (3) the purchaser's inspection of an environmental report within 7 days; and (4) an attorney review clause. Wolf delivered the First Contract to Sellers' agent, Kaplan.

¶ 10 Upon receipt of the First Contract, Sellers made a counteroffer of $1,300,000, which Plumeri rejected. Sellers then decided to accept the First Contract, although the 48-hour period had passed. On September 14, 2007, McPike, on behalf of Sellers, accepted the First Contract by signing it. In doing so, McPike deleted the requirement in the First Contract stating that the offer must be accepted within 48 hours. McPike's modification was accepted by Plumeri on September 17, 2007.

¶ 11 What followed was a Replacement Offer, dated September 25, 2007, that named Plumeri and Pease as "Purchaser." The Replacement Offer was signed by Pease only and contained the same purchase price of $1,200,000. The Replacement Offer was also accompanied by a cover letter from Pease, dated September 25, 2007. The cover letter stated that the Replacement Offer was "a replacement for all other previous contracts" and that the condition of the attorney review clause in the Replacement Offer was "waived." In addition, the Replacement Offer was accompanied by earnest money totaling $20,000. (No earnest money had accompanied the First Contract.) One $10,000 check, dated September 19, 2007, was from Pease. The other $10,000 check was from a company called Kristy's Trucks & Parts, Inc. (Kristy's), of which Plumeri was president. Both checks were deposited into Kaplan's agency account.

¶ 12 Sometime later, Kaplan faxed Sellers a letter that compared the First Contract with the Replacement Offer. In his letter, Kaplan stated that the Replacement Offer added a contingency

allowing the buyers to receive an approved bank appraisal by October 20, 2007, and the problem was that appraisals typically took 30 days or more to complete. In addition, Kaplan stated that the Replacement Offer extended the time for the buyers to obtain a professional inspection and notify Sellers of any deficiencies. McPike ultimately instructed Kaplan not to respond to the Replacement Offer.

¶ 13 On October 3, 2007, Pease and Plumeri signed a "Notice of Inability to Satisfy Contingency and/or Mutual Cancellation Agreement" (Cancellation Notice) that listed five grounds that voided the First Contract. The Cancellation Notice stated that the First Contract was null and void and that the earnest money was to be returned. Pease faxed the Cancellation Notice to Plumeri's agent, Wolf.

¶ 14 In addition, Pease mailed a letter to Wolf, also dated October 3, 2007, stating:

> "Due to the following, I'm demanding a refund of the $20,000 deposit for the above mentioned property. On Sept. 14 2007 Pat Plumeri executed a contract [First Contract] with 10 business days for attorney review. The attorney review would expire Sept. 28, 2007. Sept. 25, 2007, You, Gary Wolf, broker, picked up a revised contract [Replacement Offer]. This contract [Replacement Offer] had changes allowed per attorney review period, including a contingency for buyer to receive an approved bank appraisal by October 20, 2007. On Sept. 28, 2007 the Seller proclaimed they wouldn't accept the new contract [Replacement Offer] and refused to sign it. Due to this I demand that the sellers refund the deposit, based on their refusal to execute the Revised September 25, 2007 contract [Replacement Offer]."

¶ 15 Wolf received Pease's October 3, 2007, letter on October 9, 2007, and then faxed it to Kaplan the same day. Prior to receiving the Cancellation Notice, the Sellers had not received

any correspondence from Pease or Plumeri regarding the five grounds that they alleged voided the First Contract.

¶ 16 On October 23, 2007, Sellers' counsel sent Plumeri a letter stating that pursuant to the First Contract, Sellers were "prepared to close this transaction according to the terms of the [First Contract] on October 28, 2007." In the letter, Sellers' counsel acknowledged that he had received communication that "you are unwilling to close this transaction on that date and have requested a return of the earnest money. Assuming that is the case, you have forfeited the $20,000 of earnest money." Finally, Sellers' counsel stated that if the Property was not sold at the same or a greater price of $1,200,000, "you would be responsible for damages arising from your breach." At some point, Pease received a copy of this October 23, 2007, letter.

¶ 17 On November 7, 2009, the Sellers sold the Property to a third party for $900,000.

¶ 18 As part of the stipulation, the parties agreed that the court could take judicial notice of various affidavits, including affidavits on behalf of Pease and Plumeri.

¶ 19 In Pease's affidavit, he averred as follows. Pease had been acquainted with Plumeri for more than 20 years. Pease did not sign the First Contract or authorize Plumeri to act on his behalf and sign as his agent, and Plumeri never offered to assign or make Pease the nominee of the First Contract. Despite the allegation that he was the "Nominee" referenced in the First Contract, Pease was not aware of the First Contract prior to its execution. Sometime between September 10, 2007, and September 19, 2007, Pease became aware of the First Contract and told Plumeri that he had no interest in becoming the nominee under that contract. Pease prepared the Replacement Offer, not as nominee under the First Contract but "as a new purchase."

¶ 20 Plumeri averred as follows in his affidavit. Plumeri did not talk to Pease prior to signing the First Contract. In addition, Plumeri did not talk to Pease about Plumeri being Pease's agent;

and Pease never authorized Plumeri to sign the First Contract on Pease's behalf. After Plumeri signed the First Contract, he never assigned his interest in it to Pease or made Pease the nominee. When it became apparent that Plumeri could not purchase the Property, Pease drafted the Replacement Offer.

¶ 21 B. Pleadings

¶ 22 On January 24, 2008, Pease and Kristy's filed a complaint against Sellers seeking the return of their earnest money based on Sellers' refusal of the Replacement Offer on the Property. On February 28, 2008, Sellers filed a counterclaim against Pease and Kristy's and a cross-claim against Plumeri seeking specific performance of the contract.[1] Sellers later filed an amended counterclaim seeking $300,000 in damages after the Property sold to a third party.

¶ 23 On February 17, 2010, Sellers filed an amended motion for summary judgment on Pease's complaint and their counterclaim and cross-claim. Sellers argued, among other things, that the First Contract was not contingent and also that it did not become void when the Sellers failed to accept the Replacement Offer. Pease filed a response, arguing that Sellers' counterclaim was barred by the Statute of Frauds (740 ILCS 80/2 (West 2012)) and that he was not a party to the First Contract. On April 10, 2012, the trial court denied Sellers' amended motion for summary judgment.

¶ 24 On May 7, 2012, Pease filed a combined motion to dismiss under sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-615, 619, 619.1 (West 2012)). Pease argued that the First Contract was unenforceable under the Statute of Frauds because "no agreement or contract and no note or memorandum hereof was ever made in writing and signed"

[1] Plumeri and Kristy's were dismissed as parties upon Plumeri's bankruptcy and the Sellers' settlement with Kristy's.

by Pease. Pease supported his motion to dismiss with his own affidavit and with Plumeri's affidavit.

¶ 25 Sellers responded that two documents satisfied the Statute of Frauds: the First Contract and the Cancellation Notice. Sellers argued that alternatively, even assuming the Statute of Frauds was not satisfied, the Statute of Frauds was not a viable defense based on Pease's "binding judicial admission" in his complaint that he was a party to the First Contract. The trial court granted Pease's motion to dismiss Sellers' counterclaim. Sellers then moved to reconsider the trial court's ruling, and the court denied that motion.

¶ 26 Regarding Pease's complaint, which sought the return of his earnest money, the court considered the stipulated facts recited above, the exhibits previously filed with the summary judgment pleadings, and the contracts. On August 29, 2014, the court determined that Pease was not a party to the First Contract because Sellers failed to show that he was a nominee. In addition, the court determined that although Pease was a party to the Replacement Offer, it was undisputed that the Replacement Offer was never accepted by Sellers and that the earnest money was delivered with the Replacement Offer. As a result, the court entered judgment in favor of Pease for the $10,000 earnest money that he had paid.

¶ 27 Sellers timely appealed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, Sellers make several arguments: (1) Pease was a party to the First Contract; (2) the First Contract was not void; (3) Pease anticipatorily repudiated the First Contract by falsely asserting that unsatisfied contingencies voided it; and (4) Sellers were entitled to $300,000 in damages, which is the difference between the price in the First Contract and the

ultimate sale price. In reviewing these arguments, it is clear that all of them hinge on one issue, which is whether Pease was a party to the First Contract.

¶ 30 However, before we turn to that issue, we note that Sellers begin their arguments by focusing on the trial court's denial of their motion for summary judgment. As we explain, this issue is not reviewable.

¶ 31 A. Summary Judgment

¶ 32 Sellers filed an amended motion for summary judgment on Pease's complaint, on their counterclaim against Pease, and on their cross-claim against Plumeri. The trial court denied Sellers' amended motion for summary judgment, and on appeal, Sellers argue that they are "entitled to summary judgment on their counterclaim" against Pease. Specifically, Sellers argue that "there is no issue of fact or law about whether Pease was a party to the [First Contract] because he judicially admitted it" and "there is no genuine issue of material fact or of law that the contract was not cancelled and that Pease anticipatorily repudiated it."

¶ 33 Generally, a denial of a motion for summary judgment is not appealable. *People v. Strasbaugh*, 194 Ill. App. 3d 1012, 1016 (1990). If there is a hearing on the merits, there is a merger of issues, and the denial of the motion is not reviewable after judgment is entered. *Id*. Conversely, the denial of a motion for summary judgment may be reviewed on appeal where no evidentiary hearing was held, and the party seeking review of the denial of the motion for summary judgment has done nothing to avoid trial. *Id*. Typically, in the cases where the denial of a motion for summary judgment is appealed, there are cross-motions for summary judgment and the granting of summary judgment to the opposing party. *Id*.

¶ 34 In this case, the parties stipulated to various facts in lieu of testimony regarding Pease's complaint, and the court specifically found that Pease was not a party to the First Contract based

on Sellers' failure to show that he was a nominee. Accordingly, the court considered the issue on the merits and rendered a judgment. The result is that the denial of Sellers' motion for summary judgment on the counterclaim is not reviewable. See *id*. at 1016-17 (the rationale behind the court's refusal to review the denial of a motion for summary judgment appears to be that such review would be unjust to the party that was victorious at trial when the victorious party had the greater weight of evidence).

¶ 35 Moreover, the case cited by Sellers, *Fuller's Car Wash, Inc. v. Liberty Mutual Insurance Co.*, 298 Ill. App. 3d 167, 170 (1998), did not involve a judgment on the merits. Rather, it involved the review of a decision denying a motion for summary judgment and granting a motion to dismiss on the pleadings. *Id*. at 168. Again, although the case at bar involves both a denial of a motion for summary judgment and the granting of a motion to dismiss, it also involves a hearing on the merits and a judgment. Thus, Sellers have not shown that this case presents an exception to the general rule that a denial of a motion for summary judgment is not appealable. See *Strasbaugh*, 194 Ill. App. 3d at 1017 (rejecting the defendant's argument that the court improperly denied her motion for summary judgment, because it did not fit into an exception to the general rule).

¶ 36 B. Statute of Frauds

¶ 37 Sellers next argue that the trial court erred by granting Pease's motion to dismiss their counterclaim, which sought Pease's specific performance of the First Contract, on the basis of the Statute of Frauds. See 735 ILCS 5/2-619(a)(7) (West 2012) ("the claim asserted is unenforceable under the provisions of the Statute of Frauds"); see also *Cain v. Cross*, 293 Ill. App. 3d 255, 257 (1997) (a dismissal is appropriate under section 2-619(a)(7) of the Code of Civil Procedure when the claim asserted is unenforceable under the Statute of Frauds). Sellers

argue that Pease *was* a party to the First Contract and that there are three documents to that effect, thereby satisfying the Statute of Frauds.

¶ 38 Based on the same logic that Pease was a party to the First Contract, Sellers also argue that the trial court erred by entering judgment in favor of Pease on his complaint, which was the return of his earnest money that accompanied the Replacement Offer. Again, both issues, the section 2-619 dismissal and the judgment on Pease's complaint, hinge on whether Pease was a party to the First Contract.

¶ 39 Our standard of review for both issues is *de novo*. First, "[a] section 2-619 motion admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). When ruling on such a motion, a court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* Our review of a section 2-619 dismissal is *de novo*. Second, because the facts underlying the trial court's judgment on Pease's complaint were undisputed, our review on this issue is *de novo* as well. See *Manago ex rel. Pritchett v. County of Cook*, 2013 IL App (1st) 121365, ¶ 15 (where the court is requested to determine the correctness of the trial court's application of law to undisputed facts, our review is *de novo*); see also *Karagianis v. Stathopulos*, 248 Ill. App. 3d 297, 299 (1928) (whether the lease was void under the Statute of Frauds was a question of law for the court).

¶ 40 Section 2 of the Statute of Frauds provides:

> "No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, *unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto*

by him lawfully authorized in writing, signed by such party." (Emphasis added.) 740 ILCS 80/2 (West 2012).

¶ 41 Accordingly, a real estate contract cannot be enforced under the Statute of Frauds unless: (1) there is a written memorandum or note on one or more documents; (2) the documents collectively contain a description of the property and the terms of sale, including price and manner of payment; and (3) the memorandum or note contains the signature of the party to be charged. *Hubble v. O'Connor*, 291 Ill. App. 3d 974, 983 (1997). In order to satisfy the Statute of Frauds, a writing need not itself be a valid contract, but only evidence of one. *Crawley v. Hathaway*, 309 Ill. App. 3d 486, 490 (1999). Though the writing need not be on a single piece of paper, all the essential terms must be in writing, and there must be an express reference to the other writings or such a connection between the documents as to demonstrate that they relate to the same contract. *Dickens v. Quincy College Corp.*, 245 Ill. App. 3d 1055, 1060 (1993). In addition, not all of the documents need to be signed, as long as those that are signed were signed with the full understanding of the connections to the contract. *Id.*

¶ 42 In this case, it is undisputed that Pease's name does not appear on the First Contract. Rather, the First Contract listed "Pat Plumeri or Nominee" as "Purchaser," and it was signed by Plumeri. Accordingly, unless there is a document signed by Pease showing that Pease was the "Nominee" under the First Contract, or a document signed by Pease authorizing Plumeri to act as Pease's agent, then the Statute of Frauds serves as a bar to Sellers' claim that he was a party to the First Contract. See *Prodomos v. Poulos*, 202 Ill. App. 3d 1024, 1029 (1990) ("In a contract for the sale of land, an agent may sign the contract only if the authority to do so is in writing."); see also *Flannery v. Marathon Oil Co.*, 75 Ill. App. 3d 690, 693-94 (1979) (because the written offer to purchase was never signed by the defendant as the party to be charged, or by any person

lawfully authorized by the defendant, the contract came within the prohibition of the Statute of Frauds, which requires that contracts for the sale of lands shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized in writing, signed by such party); *Fieschko v. Herlich*, 32 Ill. App. 2d 280, 286 (1961) ("It is the law in Illinois that an agent can only sign a contract for the sale of real estate containing such terms as his principal authorized him to execute, and such authority must be in writing signed by the principal in order to comply with the Statute of Frauds.").

¶ 43 Sellers rely on three documents to show that Pease was a party to the First Contract: the Cancellation Notice, Pease's October 3, 2007, letter, and Pease's complaint. According to Sellers, these three documents, considered independently with the First Contract, show that Pease was a party to the First Contract. However, as we discuss, none of these documents show that Pease was the nominee under the First Contract or that Pease authorized Plumeri to act as Pease's agent when signing the First Contract. Accordingly, none of these documents show that Pease was a party to the First Contract.

¶ 44 Beginning with the Cancellation Notice, Sellers point out that that document specifically referred to the First Contract and to Pease as a buyer, thereby satisfying the Statute of Frauds. The Cancellation Notice was a form document stating that the First Contract entered into by "Pat Plumeri and Jack Pease" was null and void based on five unsatisfied contingencies. The Cancellation Notice further stated that the earnest money was to be refunded to the buyer, and it was signed by Plumeri and Pease on the lines designated as "Buyer Signature."

¶ 45 The fact that the Cancellation Notice referred to the First Contract and to Pease as a buyer does not make Pease a party to the First Contract. On this point, we agree with Pease that if Sellers' argument were accepted by this court, then anyone who signs a document referring to

the first contract in a transactional chain would be bound to that first contract despite the fact that the person was not a party to it.

¶ 46 The Cancellation Notice sought both to void the First Contract, which was signed by Plumeri only, and to obtain the earnest money tendered with the Replacement Offer. Rather than reading the October 3, 2007, Cancellation Notice in isolation, as Sellers do, it must be read in conjunction with Pease's letter to Wolf, which was also dated October 3, 2007, and which also sought a return of the earnest money. In Pease's October 3 letter, he summarized the transactional chain as follows: "Pat Plumeri executed the First Contract"; the First Contract contained a 10-day review period; prior to the expiration of that 10-day review period, Wolf picked up "a revised contract" (Replacement Offer), which had changes allowed per the review period; and Sellers' refusal to accept the Replacement Offer entitled Pease to a return of his earnest money.

¶ 47 Therefore, as stated, the First Contract and the Replacement Offer were part of a transactional chain. To bind Pease to the First Contract through the Cancellation Notice would ignore the October 3 letter, which made clear that Plumeri alone executed the First Contract. Moreover, because the October 3 letter revealed that Pease viewed the Replacement Offer as a "revision" to the First Contract, it made sense for him to attempt to cancel the First Contract via the Cancellation Notice in an effort to retrieve his earnest money even though he was not a party to the First Contract.

¶ 48 That said, there are situations in which the Statute of Frauds may be satisfied by a writing that purports to be a cancellation of the alleged contract, which occurred in *Hartke v. Conn*, 102 Ill. App. 3d 96 (1981). While Sellers rely on *Hartke* for their argument that the Cancellation Notice in this case satisfied the Statute of Frauds, *Hartke* is distinguishable.

¶ 49 In *Hartke*, the defendant farmed the land as a tenant under an oral year-to-year crop-share lease with the plaintiff owner for 10 years. *Id*. at 97. The parties, as well as the plaintiff's wife, who owned no interest in the land, and the plaintiff's attorney discussed a longer term lease, which was put into writing. *Id*. The written lease was executed by the plaintiff's wife, on behalf of the plaintiff, and she signed her name and the plaintiff's name, although she had no written authority from the plaintiff to act as his agent. *Id*. at 97. After the plaintiff's wife signed the plaintiff's name, she advised the plaintiff that she had done so while he was working outside and doing chores. *Id*. The defendant farmed the land under the written lease for six more years, until a dispute broke out. *Id*. The dispute led the plaintiff to serve the defendant with a Notice to Quit, which stated that the defendant was in default on the written lease and that the plaintiff was therefore terminating it. *Id*. at 98. Later, the plaintiff filed a forcible entry and detainer action against the defendant alleging that the plaintiff's wife was not his agent and that the written lease was void and unenforceable under the Statute of Frauds. *Id*.

¶ 50 The reviewing court in *Hartke* found that the written lease and the Notice to Quit satisfied the Statute of Frauds because the Notice to Quit referred to the written lease; the Notice to Quit was signed by the plaintiff's agent (his attorney); and the written lease referenced in the Notice to Quit contained all of the essential terms. *Id*. at 102. This conclusion, according to the court, was bolstered by the fact that the parties had operated under the written lease for years, and the fact that the plaintiff had not raised the Statute of Frauds defense when he initially filed his action. *Id*. at 103. The court stated that to allow the plaintiff to avoid the written lease under the Statute of Frauds would work an injustice. *Id*.

¶ 51 *Hartke* is distinguishable in several key respects. For example, the plaintiff's name appears on the written lease in *Hartke*. Even though the plaintiff's wife did not have the

authority to sign his name, the plaintiff was part of the lease's negotiations; he was aware that his wife had signed on his behalf; and he operated according to the written lease for years. In addition, the plaintiff acknowledged the existence of the written lease in his Notice to Quit by stating that the defendant had defaulted on the written lease and by seeking to terminate it.

¶ 52 In this case, Pease's signature does not appear on the First Contract; there is no evidence that he was part of its negotiation; Pease never acknowledged being a party to the First Contract or acknowledged being bound by it; and, he did not become a prospective buyer until the Replacement Offer, which replaced the First Contract in the transactional chain. Significantly, there was no injustice to prevent in this case, as in *Hartke*. Indeed, any injustice in this case would be holding Pease to a contract that he did not sign or authorize another to sign. Accordingly, *Hartke* does not aid Sellers but rather supports the conclusion that Pease was not a party to the First Contract.

¶ 53 Third and finally, Sellers argue that Pease's complaint contained a judicial admission that he offered the First Contract to Sellers. See *Hartke*, 102 Ill. App. 3d at 102 (judicial admissions are binding and conclusive and have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the admitted facts). Sellers refer to paragraphs seven and eight of Pease's complaint:

> "Prior to the submittal of the [Replacement Offer] attached hereto as Exhibit "B", a prior contingent offer was made upon the same property dated September 10, 2007 and accepted by McPike on September 14, 2007. *** That as a result of the purchasers' inspections and review, the offer attached as Exhibit "C" [the September 25, 2007, cover letter stating that the Replacement Offer replaced all previous contracts] was withdrawn

by purchasers, *Plaintiffs herein*,[2] and a new contract (Exhibit "B") [Replacement Offer] was delivered to the agent for seller on or about September 27, 2007." (Emphasis added.)

¶ 54 According to Sellers, the above language constitutes a judicial admission that Pease "offered" the First Contract. Sellers argue that the complaint "specifically identifies who the 'purchasers' were under the [First Contract] and who 'withdrew' it – 'Plaintiffs herein,' which was Pease and Kristy's. In making this argument, Sellers assume that the "offer attached as Exhibit 'C' " refers not to the September 25, 2007, cover letter, which was in fact attached as Exhibit C, but instead to the First Contract. Sellers' argument is not persuasive.

¶ 55 We briefly review the sequence of events. The First Contract listed "Pat Plumeri or Nominee" as the Purchaser and was signed by Plumeri. The Replacement Offer listed both Plumeri and Pease as "Purchaser" and was signed by Pease. The Replacement Offer was accompanied by a cover letter (Exhibit C), which stated that the Replacement Offer was "a replacement for all other previous contracts," which would include the First Contract. Both Pease and Kristy's submitted earnest money checks along with the Replacement Offer, although Sellers refused to accept the Replacement Offer. After that, Pease and Kristy's filed a complaint seeking the return of the earnest money.

¶ 56 Essentially, Sellers attempt to use ambiguous or inartful pleadings to bind Pease to the First Contract. However, **c**ontrary to Sellers' argument, the language relied on by Sellers is not a judicial admission that Pease was a party to the First Contract. Rather, it shows that Pease, one of the "Plaintiffs herein," made a Replacement Offer that replaced the First Contract or resulted in the First Contract being withdrawn. To this end, Sellers' reading of Exhibit C is flawed in that

[2] "Plaintiffs" referred to Pease and Kristy's. Kristy's, which had paid the other half of the earnest money, was seeking a refund in the complaint as well.

Exhibit C was the cover letter indicating that the Replacement Offer signed by Pease replaced the First Contract.

¶ 57 In sum, Sellers attempt to switch interchangeably between the First Contract in which Plumeri was the sole buyer and the second contract (Replacement Offer) which was the first contract wherein both Plumeri and Pease were buyers. Without Pease's name appearing on the First Contract; without a document showing that he was a nominee; or without a document showing that Plumeri had authority to sign on his behalf, Sellers' argument fails. Accordingly, Sellers' attempt to claim the Statute of Frauds was satisfied fails against Pease.

¶ 58 As stated, Sellers' remaining arguments hinge on whether Pease was a party the First Contract, and no document establishes that he was a party to the First Contract. Because we have determined that the Statute of Frauds renders the First Contract unenforceable against Pease, we need not consider Sellers' additional arguments, including that Pease was not entitled to a return of his earnest money. Accordingly, we affirm the trial court's dismissal of Sellers' counterclaim on the basis of the Statute of Frauds, and we affirm the $10,000 judgment in favor of Pease as to his complaint.

¶ 59 III. CONCLUSION

¶ 60 For the foregoing reasons, the judgment of the McHenry County circuit court is affirmed.

¶ 61 Affirmed.