2015 IL App (2d) 150384-U
No. 2-15-0384
Order filed December 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FORRESTON STATE BANK, Plaintiff-Appellant, v. JAMIE DIEHL, CHRISTOPHER DIEHL, and HAROLD DIEHL, Defendants-Appellees (1st Farm Credit Services, FLCA, A.L.B.S. Wireless Services II, LLC, Unknown Heirs, Non-record Claimants, and Diehl Trucking, LLC, Defendants).	)	Appeal from the Circuit Court of Ogle County. No. 09-CH-175 Honorable Kathleen O. Kauffmann, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not: apply an improper standard of proof; abuse its discretion in excluding certain evidence; or err in finding that ratification was barred by the statute of frauds. The trial court's determination that the purported signer of a note and mortgage did not actually sign the documents was not against the manifest weight of the evidence. Therefore, we affirmed.

¶ 2 Plaintiff, Forreston State Bank (Forreston or bank), appeals from the trial court's ruling that its note and mortgage were unenforceable because Jamie Diehl, the purported signatory, did

not sign, authorize, or ratify the documents. Forreston argues that: (1) the trial court used an improper standard of proof when evaluating Jamie's assertion that the notarized signature was not his; (2) the trial court erred by refusing to admit evidence that Jamie confirmed the note's and mortgage's validity; (3) the trial court erred by finding that Jamie's ratification of his signature was barred by the Frauds Act (740 ILCS 80/1 *et seq.* (West 2008)) (Frauds Act or statute of frauds[1]); and (4) the trial court's conclusion that Jamie did not sign the documents was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 We begin by summarizing some of the trial court's factual findings, made after a bench trial. In March 2009, Jamie was in default on several notes securing loans from Forreston. Ed Vock, a Forreston representative, became concerned that the loans were not supported by sufficient collateral. Jamie had a one-quarter undivided interest in 80 acres of farmland that he co-owned with his father, Harold Diehl, and his brother, Christopher Diehl. Vock and Jamie discussed this interest. Forreston then prepared a note to refinance the four previous notes on which Jamie had defaulted as well as a fifth note, along with the payment of an overdraft of Jamie's checking account and costs associated with the mortgage on Jamie's interest in the farmland. The note was in the amount of $181,393.99, and the note and mortgage were signed with the name "Jamie Diehl." Jamie did not receive any additional funds as a result of the note and mortgage, and there was no evidence that Harold or Christopher were aware of the issuance of a mortgage on the farmland.

[1] The Frauds Act is also known as the statute of frauds. *International Supply Co. v. Campbell*, 391 Ill. App. 3d 439, 447 (2009).

¶ 5 The record shows that Forreston filed a complaint against the Diehls and other defendants on September 18, 2009. Count I sought to foreclose on Jamie's interest in the farmland; count II sought replevin of Jamie's personal property; count III sought the same as well as replevin against Jamie's trucking company; count IV sought damages against Jamie; and count V sought damages against both Jamie and his trucking company. On October 19, 2009, the trial court entered an order of replevin for various equipment and cattle. On March 19, 2010, Harold and Christopher asserted the affirmative defense that the note and mortgage were invalid because Jamie did not sign them. They also asserted the affirmative defense of unclean hands, alleging that Forreston sought to unfairly acquire an interest in the farmland. Jamie asserted the same affirmative defenses and that of bankruptcy, stating that he had filed a bankruptcy petition on March 29, 2010.

¶ 6 Forreston filed an amended complaint on February 18, 2011. It added count VI, seeking foreclosure based on apparent authority, and count VII, claiming ratification. The Diehls reasserted their prior affirmative defenses as well as the statute of frauds.

¶ 7 We now summarize witness testimony. Vock testified as follows, in relevant part. In 2009, he was Forreston's senior vice president in charge of credit. Jamie's business operations involved cattle, trucking, and some crops. In June 2008, Jamie had fourteen notes with Forreston totaling about $446,000. During the second half of 2008, the bank loaned him over $250,000 more. In December 2008, Vock obtained Jamie's credit report and learned that he had about $32,000 in credit card debt. Jamie also had arrearages at the bank totaling about $31,000 that month, and notes worth about $100,000 were coming due in January. Vock and Jamie met on December 26, 2008, to discuss the loans. Jamie said that he would liquidate his cattle and related equipment because the business was not profitable. Vock said that the bank needed additional

collateral or a guarantor on the outstanding debt. Jamie said that he had a one-fourth interest in 80 acres of farmland, and he offered that as collateral. He also said that he had historically received a large income tax refund, and he could also apply the refund to the outstanding debt. Vock said that would be acceptable, but he needed a current financial statement.

¶ 8 On March 9, 2009, Vock sent Jamie a letter stating that Jamie had numerous accounts past due, and that if he did not address the matter by the end of the month, the bank would make it a "collection issue." A few days later, Vock received a financial statement from Jamie's bookkeeper, Adam Drinkall. Under the heading long-term liabilities and the subheading real estate mortgages, the statement listed three notes with the letters "FSB" and what appeared to be loan numbers. A revised financial statement dated March 24, 2009, also included this information. Vock acknowledged that at the time, Forreston did not have a mortgage on the 20 acres other than what had been discussed in December. Vock also agreed that there was a superior mortgage on the property through Farm Credit Services, which was not referenced on the financial statement. Vock called Jamie and said that he would prepare the note and mortgage on the real estate, and Jamie could come in and pick up the documents on March 25 to review them. Jamie agreed. He did not come that day, but on March 26 Darci Diehl, his then-wife, came to pick up the documents. The next day, Vock called Jamie and asked if he had reviewed the documents and found them acceptable. Jamie said that they were acceptable and that he would come in and sign them. To Vock's knowledge, Jamie signed the documents, though he did not do so in Vock's presence. The documents were notarized by a bank employee, Brenda Lamm. If Jamie had not signed the note and mortgage, Forreston might have obtained a judgment lien against his real estate. However, because Jamie had agreed to a "work-out plan," the bank did not think that was necessary. On March 27, 2009, Jamie owed Forreston around

$580,000. Vock agreed that the bank could have taken legal action against Jamie in April 2009 but did not.

¶ 9 Vock further agreed that Jamie did not receive additional collateral in exchange for the note and mortgage. Forreston did waive $5,000 or $6,000 in overdraft fees and gave him an additional 30 days to liquidate his cattle and machinery. If Jamie had done so and given Forreston his tax refund, the bank would have been willing to amortize the balance, though that was not in writing. The bank sent Jamie a default letter dated August 17, 2009, which specifically referenced the note and mortgage. Jamie never called Vock to say that he disputed signing those documents.

¶ 10 Subsequent to the default letter, Vock learned that Jamie had liquidated some farm equipment that was pledged as collateral to Forreston without remitting the proceedings to the bank. Vock and Jamie began negotiations to have Jamie help liquidate the remaining farm equipment and have the 20 acres deeded to the bank in lieu of foreclosure, with the understanding that the bank would not seek a judgment for the deficiency on the notes. At the same time, Forreston was also negotiating with Harold and Christopher Diehl to buy Jamie's interest that the bank anticipated receiving.

¶ 11 Forreston first learned that Jamie claimed to have not signed the mortgage in a correspondence from his attorney dated March 4, 2010.

¶ 12 Lamm testified as follows. She was employed by Forreston and was an Illinois notary public. When she notarized someone's signature, she always verified the person's identity through personal knowledge or a photo ID. Lamm was personally familiar with Jamie but did not independently recall him signing the note and mortgage. She was also personally familiar with Darci but did not recall her either executing the document on Jamie's behalf or taking the

documents and returning them shortly thereafter with his purported signature. Lamm did not recall ever notarizing a document that already had someone's signature on it.

¶ 13 The documents were dated March 27, 2009. When asked if she would reprint the documents if a person came to sign them on a subsequent day, Lamm testified that she "guess[ed] we would probably do it over." She testified that "if it's a day *** we might change the date *** on what day we notarized it."

¶ 14 Darci provided the following testimony. She and Jamie were married in November 2001 and had three children. They divorced in July 2013, and she had no financial interest in this case's outcome. Darci acknowledged that they were still married at the time of her deposition and that Jamie owed her about $10,000 in child support.

¶ 15 During the marriage, Darci would handle some banking matters for Jamie at Forreston. With Jamie's knowledge and consent, Darci would sign Jamie's name to checks and other bank-related documents. Bank employees were also aware of this practice and would sometimes ask Darci to sign documents for Jamie when she came in.

¶ 16 When shown a copy of the note dated March 27, 2009, Darci first testified that she did not recognize it but then testified that she signed Jamie's name on it. She testified that she also signed his name to the mortgage with the same date. Darci broke her arm on March 28, 2009, and turned 30 the next day. A few days after that, she went to the bank, with her right arm in a hard cast. She made a deposit, and when she was leaving, Lamm asked her to sign Jamie's name on some documents. Lamm said that she needed to step out, and Darci could just sign them and leave them on her desk. Darci signed the documents with her left hand without reading them; she had signed Jamie's name to documents numerous times and did not think that it was a "big

deal." Later that day, Darci told Jamie that she had signed documents, and he became very angry.

¶ 17 At trial, Darci identified checks that she had signed for Jamie both before and after she broke her arm. Darci did not "try to imitate" Jamie's signature when she signed his name, "but [she] tried to get it as close as [she] could." There were times she could not distinguish between her signature of Jamie's name and Jamie's authentic signature. On the day in question, Darci signed one document, but there was more than one place to sign.

¶ 18 Jamie testified as follows, in relevant part. In 2008 and 2009, Darci would make bank deposits and sign checks for him because it was difficult for Jamie to go to the bank during business hours. She had also signed a few notes for him at Forreston, at his direction. In March 2009, he owed Forreston around $300,000 or $400,000 "easy." The bank's collateral was Jamie's cattle and equipment, but it would not have covered the amount owed. Sometime before March 2009, Vock called Jamie, looking for more collateral. Jamie's interest in the farmland was brought up, and it was possible that Vock asked for a mortgage on the property. However, Jamie did not agree to a mortgage because the farmland also belonged to his brother and father, so it was not a decision he could make on his own. Jamie never agreed to sign a new note that would mature in 30 days, and there was no way he could have come up with $181,000 in that amount of time to pay off the note. He did not sign the note and mortgage and never gave anyone the authority to sign them in March or April 2009. He also did not instruct Drinkall, his bookkeeper, to include a mortgage to Forreston on his financial statement.

¶ 19 The signature on the note and mortgage were not his. He believed that Darci signed them because she was the only person who had such access at the bank. Also, she had a broken wrist at that time, and the signature looked like she had trouble signing it. Darci had mentioned that

she signed a document at the bank. Jamie "was a little concerned about it and probably wasn't too happy about it." However, he never called the bank, which was probably "just an oversight at that time." Jamie was overextended and "probably thought [he] was losing everything to begin with." After April 2009, they were forced into bankruptcy because they could not repay their obligations.

¶ 20 Jamie agreed that throughout the case, he was shown some signatures where he could not tell whether he or Darci signed. His memory of the document helped him determine whether he signed something. Jamie agreed that when asked to confirm during discovery whether 40 signatures were his, he could not say for certain whether he signed any of them. He was "not an expert at it." For most of the previous notes, he was not sure whether the signatures were his or Darci's.

¶ 21 Jamie agreed that the bank had a security interest in his tax refunds and in all of his farm equipment. However, he kept his 2008 tax refunds of about $24,000 and kept $11,000 from a tractor he sold in June 2009. Jamie further did not give the bank the proceeds of other equipment sold for about $800.

¶ 22 Jamie agreed that he received a copy of the mortgage foreclosure complaint on October 5, 2009. Later that month, his father and brother asked if he knew that Forreston had a mortgage on the property. Jamie told them that he did not sign the mortgage, so Darci must have. Jamie discussed the issue with his bankruptcy attorney but not with Forreston. Jamie was aware that during his bankruptcy, his father and brother acquired the trustee's interest in the farm.[2] There

[2] They purchased the interest subject to Forreston's rights, if any, under the disputed mortgage.

was no agreement for him to get the land back, so he had no personal financial interest in the case's outcome.

¶ 23 Harold testified that he had a 50% interest in the 80-acre property, and Christopher and Jamie each had 25%. Around 2004 or 2005, they took out a loan on the property thorough First Farm Credit. Harold was not aware of any second mortgage. Harold first learned of the Forreston mortgage after being served with foreclosure papers. When asked what was going on, Jamie said that he never signed the mortgage. Harold said that they would look into the issue and get an attorney. At the time, Harold did not understand the legal significance of Jamie not signing the paperwork. Harold and Christopher later purchased Jamie's interest in the property in bankruptcy court for $10,000 or $15,000.

¶ 24 The trial court ruled that letters regarding proposed settlement terms would not be admitted into evidence because defendants stipulated that between December 2009 and March 2010, during ongoing negotiations, none of the Diehls raised the issue of whether Jamie had signed the mortgage. Harold testified that, to his knowledge, the first time they informed the bank that they felt that the mortgage was invalid was in a March 4, 2010, letter.

¶ 25 Drinkall, the accountant who prepared Jamie's 2009 financial statement, testified that, ordinarily, all of the figures in the balance sheet would have come from Jamie. It was possible that Vock gave him some numbers, but Drinkall could not remember. The "FSBs" on the sheet would stand for Forreston State Bank. Since there were three notes listed, they would represent three mortgages. Either Jamie or Forreston would have suggested that the notes go on the balance sheet. He did not recall Vock telling him to do so. Drinkall also did not recall Jamie ever saying that he did not sign the mortgage. The Farm Credit mortgage was not listed because Drinkall was not aware of it.

¶ 26 Robin Williams, an expert forensic document examiner, testified on behalf of Forreston as follows, in relevant part. He had masters degrees in science and forensic science. He was certified by the Board of Forensic Document Examiners and had studied under an FBI chief document examiner and the chief document examiner of the Wisconsin crime laboratories. Williams had been performing handwriting analysis in about 60 to 100 cases per year for the past 30 years. In contrast to a forensic document examination, graphology was the study of someone's signature to prepare a psychological profile; Williams would lose his board certification if he even attempted to practice graphology. Certified fraud examiners were primarily private detectives, and they were not qualified to conduct a forensic examination on a signature.

¶ 27 Williams opined that it was his conservative opinion that Jamie "probably" signed the mortgage and that Darci "probably did not" sign the mortgage. He based this opinion on comparing the mortgage signature to Jamie's known signatures, which consisted of the signatures on his driver's license and bank signature card, and five original signatures made during his deposition. Williams used only these signatures because Jamie would not definitively say that any of 40 sample signatures presented to him were actually his, which was very unusual. Williams also used Darci's signatures from her deposition as a comparison. Williams discussed charts comparing aspects of the known signatures to the mortgage signatures.[3]

[3] Defendants state that on cross-examination, Williams testified that he was no longer basing his testimony on the signatures identified in the charts he relied on in his direct examination because he did not know for sure who made those signatures. However, Williams actually testified that he was no longer relying on the signatures that he relied on in his *written report* because he wanted to use only the most reliable signatures during his testimony, and he

¶ 28 Warren Spencer testified as follows. He was a "questioned document examiner," and his assignments were largely to determine whether a signature was genuine or not. He was a certified fraud examiner through the Association of Certified Fraud Examiners in Austin, though he acknowledged that handwriting analysis was not a part of such certification. He was also a certified document examiner through the Scientific Association of Forensic Examiners. Spencer was a member of the American Society of Testing and Materials but did not have the 24 months' full-time training it recommended for forensic document examiners. He was a member of the National Association of Document Examiners but was not certified by that organization. Spencer was involved in 50 to 60 cases per year and testified in three to four cases per year. Spencer agreed that when he prepared his first report in this case, his website described him as a certified graphoanalyst, which involved behavioral profiling from handwriting. He did not currently include this certification on his CV because it was "not what [he was] doing now." His formal training for forensic document examination consisted of part of his graphoanalysis training and an "Andrew Bradley" correspondence course. Spencer acknowledged that in a Wisconsin arbitration case, the arbitrator found Williams to be qualified and credible and Spencer to be unqualified and not credible regarding whether a party had signed promissory notes for loans. In the instant case, the trial court accepted Spencer as a handwriting expert over Forreston's objections, stating that much of the criticism of his qualifications went to the weight of his testimony rather than its admissibility.

¶ 29 Spencer compared the mortgage signature to six samples of Jamie's authentic signature, which Harold had provided to him. Spencer looked at a 200 percent enlargement of each of the signatures and also looked at them with a stereomicroscope. Spencer discussed his methodology

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did not have the deposition signatures at the time he wrote his report.

and how the signatures compared. He opined that Jamie did not sign the note or mortgage. Spencer also looked at samples of Jamie's signature written by Darci. He described how they compared to the signatures on the note and mortgage and opined that they had the "same writing pattern."

¶ 30 The trial court found that Darci signed the note and mortgage. It stated:

> "Darci Diehl had previously signed numerous bank documents with Jamie Diehl's signature, with his full knowledge and consent, so it is certainly credible that she signed these documents as well. The credible evidence with regard to the signature and note was, as Darci testified, that Brenda Lamm, the bank's notary, requested that Darci sign the note and mortgage and Darci did so. In reaching this conclusion with regard to the notary, the Court considered Ms. Lamm's testimony that she had no independent recollection of the signing of these documents. She further testified as to what her usual practice was, but was unable to recall what actually occurred in this particular incident. Additionally, Ms. Lamm could certainly be characterized as an 'interested witness' in this case, as could virtually every witness who testified with the possible exception of both expert witnesses and Adam Driscoll [*sic*]. Further, in examining the handwriting exemplars analyzed by the defense expert, Mr. Spencer, it is quite clear to the Court that the signatures on the note and mortgage were made by Darci Diehl, signing 'Jamie Diehl.' "

¶ 31 The trial court further found as follows. Jamie, by his actions or inaction, ratified, "or at least failed to disagree with," Darci signing the documents. Darci told Jamie about signing papers, and he reacted angrily. He knew that the bank's collateral on his loans was not enough to cover his debt, and he resigned himself to losing everything with respect to his business interests.

Also, at this time, Jamie had been discussing with Vock how he could meet his obligation to the bank. Jamie told Vock about his interest in the farmland, and he told Drinkall to prepare updated financials for the bank. The fact that Jamie had previously authorized Darci to sign his name on bank documents would support a conclusion that Jamie knew, or should have known, that Darci obligated him in some way to the bank by signing the documents. However, Jamie never authorized Darci in writing to sign his name in his stead, and there was no written ratification of Darci's signing of his name.

¶ 32 Both parties' business practices were concerning, as the bank continued to extend credit to someone who was obviously not a good credit risk, and once Jamie realized his inability to repay, he spent whatever money "came his way," without regard to his bank obligations. The issue, however, was the validity of the note and mortgage. Because these were contracts dealing with real estate, they were subject to the statute of frauds. Theories of apparent authority and ratification failed under this case's facts because the delegation of authority and/or ratification would have to be in writing. The trial court was not persuaded by Forreston's argument that Jamie was barred from asserting the statute of frauds, because the trial court did not find that the bank had fully performed. It had also considered and rejected Forreston's assertion that the doctrine of equitable estoppel applied.

¶ 33 Defendants had impeached the notary's acknowledgement by clear and convincing evidence. "The notary, Ms. Lamm, was an interested witness in the outcome of this case and she also had no clear recollection of the acknowledgement of the signature on the note and mortgage."

¶ 34 The disputed note did not give Jamie any new consideration. The note and mortgage were drafted to mature just one month later and the bank was, or should have been aware, that

Jamie would not have been able to pay the note on such a short schedule. It was clear that the bank was belatedly attempting to secure collateral for prior loans on which Jamie was in default. However, the bank did not act in bad faith or commit any sort of misconduct or fraud.

¶ 35 The trial court ruled that the note and mortgage were invalid and unenforceable because Jamie did not sign, authorize, or ratify them, and Harold and Christopher were never parties to them. It further found that any remaining obligations of Jamie were discharged in bankruptcy. It "dismissed" all of Forreston's claims.[4]

¶ 36 On December 1, 2014, Forreston filed a motion to vacate or modify the ruling. It argued that, in relevant part: the trial court's finding that Lamm's employment with Forreston made her an interested witness was an error of law; defendants did not offer any disinterested witnesses to support their contention that Jamie did not execute the note and mortgage; and the trial court erred by premising its decision upon its own comparison of the handwriting exemplars to the mortgage signature.

¶ 37 The trial court denied the posttrial motion on March 16, 2015. It stated that it did not rely to a large extent on Darci's testimony in finding that she had signed the note and mortgage. It stated that it mentioned many different witnesses in its ruling, and if it had to pick one witness on which it relied the most, it would be Spencer. It stated that its findings regarding the notary were fact-specific to this case, and it found that her acknowledgement was overcome by clear and convincing evidence.

¶ 38 Forreston timely appealed.

¶ 39 II. ANALYSIS

[4] The trial court added the dismissal in an April 15, 2015, order amending the judgment *nunc pro tunc*.

¶ 40 A. Standard of Proof

¶ 41 Forreston first argues that the trial court used an improper standard of proof in evaluating Jamie's assertion that his notarized signature was a "forgery."[5] Whether a trial court applied the proper legal test to the evidence before it is a question of law that we review *de novo*. See *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 13.

¶ 42 Forreston cites *Koepke v. Schumacher*, 406 Ill. 93, 98 (1950), where our supreme court stated:

> "The rule is that the record of conveyance and the *certificate of acknowledgment can be overcome only by proof which is clear, convincing and satisfactory*. Public policy, the security of titles and the peace of society require such a rule, and it must be strictly adhered to. *** [T]he required proof to sustain a charge of forgery must be of the *clearest, strictest, and the most convincing character, and that proof must come from the testimony of disinterested witnesses*. The reason for such strictness is that should the law allow the unsupported testimony of an interested witness, who conceives that a very material gain is within his grasp, to offset and destroy the deliberate act of certification under oath by one created by law to certify instruments of conveyance, it would shock the moral sense of the community, deny justice, and create chaos in land titles." (Emphases added.).

[5] We note that a forgery requires an intent to deceive (*Haffa v. Haffa*, 115 Ill. App. 2d 467, 474 (1969)), whereas in this case there was no evidence of intentional deceit. However, our analysis is largely the same in determining whether a signature was forged or made without authority. See *Krueger v. Dorr*, 22 Ill. App. 2d 513, 527 (1959) (If a signature is forged or made without authority, it is inoperative unless ratified.).

See also *Krueger v. Dorr*, 22 Ill. App. 2d 513, 528 (1959) (a notary public's certificate of acknowledgement "cannot be overcome by the unsupported testimony of an interested party to the instrument," and the party seeking to impeach the acknowledgement has the burden to produce clear, convincing, and satisfactory proof by disinterested witnesses).

¶ 43 Forreston argues that applying this standard, the trial court should have first determined which of the Diehls' witnesses were interested and which were disinterested, and disregarded the testimony of any interested witnesses. Forreston argues that the trial court should have then evaluated the remaining testimony to determine whether it was the clearest, strictest, and of the most convincing character. Forreston argues that as a final step, the trial court also had to consider the countervailing evidence and testimony presented by the plaintiff, and here Williams' testimony alone was sufficient to preempt the required finding of clear and convincing evidence of forgery.

¶ 44 Forreston argues that the trial court found that defendants impeached Lamm's acknowledgement because "she was an interested witness in the outcome of the case and she also had no clear recollection of the acknowledgement of the signature on the note and mortgage." Forreston maintains that Lamm's inability to recall the acknowledgment was irrelevant. It cites *Finely v. Felter*, 403 Ill. 372, 376, 380 (1949), where the supreme court found that the party challenging the signature did not meet his burden of proof, even though the notary did not recall notarizing the deeds. Forreston argues that the rationale for this approach was well-explained in *Butler v. Encyclopedia Brittanica, Inc.*, 41 F.3d 285 (7th Cir. 1994), where the federal appellate court stated:

> "[O]nly a rare individual can remember every person with whom the individual has a brief encounter. Indeed, that is the basic reason for recognizing a presumption of validity

> for a notary's certificate in the first place. If a notary's certificate were vulnerable to attack every time an interested witness contradicted the certificate and the notary did not have a personal recollection of the event, 'it would shock the moral sense of the community, deny justice, and create chaos in land titles[ ]' and every other type of document requiring notarization." *Id.* at 295 (quoting *Koepke*, 406 Ill. at 98).

Forreston notes that the supreme court has found a notarized document to be valid even in situations where the notary repudiated his notarization. See *Witt v. Panek*, 408 Ill. 328, 331 (1951) (notary testified that the deed was brought to him already signed).

¶ 45 Forreston argues that in addition to Lamm's lack of recollection of the transaction being irrelevant, the trial court's reliance on its finding that Lamm was an interested witness was improper. Forreston cites *The Ogden Building & Loan Ass'n v. Mensch*, 196 Ill. 554, 568-69 (1902), where the court stated that an officer or agent of a corporation or other party beneficially interested in a deed or mortgage, other than a stockholder, is not disqualified to certify an acknowledgement. Forreston argues that the National Notary Association's code also allows employees to notarize signatures for their employer's customers.

¶ 46 Forreston argues that the trial court correctly found that Darci was an interested witness, because, according to caselaw, the owner of the subject real estate is interested, as well as his or her spouse. Forreston argues that the supreme court has also found that anyone with a financial interest in the real estate is interested (see *Koepke*, 406 Ill. at 95-99 (attorney was interested because he was to receive part of real estate as fee); *Finley*, 403 Ill. at 398 (the plaintiff's attorney was an interested witness)), and here the income generated by the mortgaged farm land was reported on Jamie's and Darci's joint 2008 tax return. Forreston maintains that, however, the trial court then incorrectly reasoned that it could rely upon the testimony of an interested

witness to invalidate a notarized signature if it deemed the notary to also be interested. Forreston argues that this rationale would eviscerate the long-standing evidentiary standard consistently applied by our supreme court, and would ultimately create chaos in land titles.

¶ 47 The Diehls cite *Resolution Trust Corp. v. Hardisty*, 269 Ill App. 3d 613 (1995), where the appellate court considered a notary's interest. We examine the case in some detail. There, a house had been foreclosed upon but later conveyed back to the defendant and his wife through a second note and mortgage. *Id.* at 615. When the plaintiff sought to foreclose on the second note and mortgage, the defendant alleged that: his wife was in charge of the finances; his wife and a man pretending to be him attended a second closing; and the defendant never signed the relevant note and mortgage, as testified to by a handwriting expert. *Id.* The trial court found that if the defendant had signed the documents, he was bound by them, and if he were not present, he had granted his wife authority to sign documents on his behalf. It further found that even without such authorization, the defendant lost the property after the first foreclosure and never regained title. *Id.* at 616.

¶ 48 The appellate court noted that the mortgage had been acknowledged by a notary, and that impeaching such an acknowledgment required clear and convincing evidence from a disinterested witness. *Id.* at 616-17. It stated that the defendant met this burden by presenting evidence from disinterested witnesses that was not impeached or contradicted by other disinterested witnesses. *Id.* at 618. Specifically, the handwriting expert testified that the signatures were not the defendant's, the defendant's employer testified that he was working on the day of the transaction, and a time sheet corroborated the employer's testimony. *Id.* The appellate court stated that although the notary testified that the defendant was present and signed the documents, she was an interested witness because she was employed by the title insurance

company and thus had a direct stake in the litigation's outcome. *Id.* The trial court further stated that the defendant effectively impeached her testimony by calling into question her recollection. *Id.*

¶ 49 Citing many other cases, the Diehls argue that courts applying the standard of proof for contesting a notary's acknowledgement have dealt with various circumstances, such as: the purported signer denying signing the document; persons interested in the property denying the signature; notaries or witnesses admitting to not witnessing the signature; the notary not recalling signing the document; evidence in support of the alleged forgery; and evidence in support of the signature. The Diehls argue that to the extent the holdings in these cases can be summarized in a bright line rule, the rule is that the unsupported testimony of an interested witness is insufficient to impeach a notary's acknowledgment. The Diehls argue that no Illinois court has held that, as a matter of law, disputed expert testimony is insufficient to impeach a notary's acknowledgment, that interested witnesses' testimony must be disregarded, or that a purported signer's delay in challenging the signature requires that the signature be found valid.

¶ 50 Forreston responds that *Resolution Trust Corp.* actually supports its position. Forreston argues that the disinterested witnesses there were not "impeached or contradicted by other disinterested witnesses" (*id.* at 618), whereas here Spencer's testimony was rebutted by Williams. Forreston cites *Witt*, 408 Ill. at 333, where one handwriting expert testified that the signature was formed by a firm hand guiding a shaking hand and another expert testified that it had been made by one person trying to give the writing a shaky appearance. The supreme court stated:

> "In the present case the handwriting expert was called upon to go further and to determine whether the disputed signature could have been in the guided hand of the

> grantor. The uncertainty as to the accuracy of his conclusions is reflected in the exactly opposite results reached by the expert who testified for the appellees. We cannot say that proof of this nature, as it appears in this record, is of the clear and satisfactory type required to show that a signature is in fact a forgery." *Id.* at 286.

Forreston argues that the evidence here falls precisely within that which the courts in *Resolution Trust Corp.* and *Witt* found to be insufficient to invalidate a notarized signature.

¶ 51 Forreston further argues that *Resolution Trust Corp.*'s language regarding the notary being interested is *dicta* because the court had previously concluded that there was unrebutted testimony from disinterested witnesses justifying a finding of forgery. Forreston argues that consideration of a notary's interest is contradicted by the supreme court's decision in *Ogden Building & Loan Ass'n*, 196 Ill. at 568-69 (stating attorney or agent of interested party may certify an acknowledgment) and section 1 of the Acknowledgement Validation Act (765 ILCS 25/1 (West 2008)).

¶ 52 We conclude that the trial court did not employ an improper standard of proof. A court is presumed to know and properly apply the law and is not required to specifically state the standard of proof applied. *People v. Weston*, 271 Ill. App. 3d 604, 615 (1995). Even so, here the trial court explicitly recognized in its ruling that the Diehls had the burden of impeaching Lamm's acknowledgement by clear and convincing evidence. While we agree with Forreston that such proof must include evidence from a disinterested witness (see *Koepke*, 406 Ill. at 98), there was such testimony here, from Spencer, which the trial court cited in its written ruling and in its oral comments in denying Forreston's posttrial motion. Forreston appears to take the position that under *Witt*, any expert testimony that is contradicted by another expert may not be considered, but a "battle of the experts" is common in litigation and is always left to be resolved

by the trier of fact. See *In re S.K.B.*, 2015 IL App (1st) 151249, ¶ 33. *Witt* is distinguishable on the subject of experts because those experts did not provide opinions as to who made the signatures, whereas here the issue was whether Darci or Jamie had signed the note and mortgage, a subject on which both experts offered their opinions. Moreover, the trial court was not required to ignore testimony from interested witnesses in assessing the evidence, as our supreme court in *Witt* also considered the testimony of interested witnesses in determining whether a signature was forged. *Witt*, 408 Ill. at 334 (stating that the notary's testimony impeaching his certificate was supported by that of the alleged forger); see also *Krueger*, 22 Ill. App. 2d at 528 (acknowledgement "cannot be overcome by the *unsupported* testimony of an interested party to the instrument" (Emphasis added.)).

¶ 53 As for the trial court's comments that Lamm was an interested witness, Forreston appears to conflate the subject of her interest with whether she was authorized to notarize the signatures in the first place. It is beyond dispute that she was authorized to acknowledge the signatures and that her acknowledgement could be overcome by only clear and convincing evidence. However, that evidence could include any interest she herself may have had, as the trial court considered in *Resolution Trust Corp.*, 269 Ill App. 3d at 618. We disagree that this analysis was *dicta*, because the court considered both the testimony of the defendant's disinterested witnesses and the notary's testimony in concluding that the signature was forged. *Id.* Even otherwise, a complete ban on consideration of a notary's interests could have absurd results, such as if the notary was a close relative of the party alleged to have perpetrated fraud. That being said, we agree that the fact that Lamm was employed by Forreston and could not recall the specific transaction was not significantly probative. However, in finding that the Diehls had met their burden of proof, the trial court did not limit itself to Lamm's interest as a

Forreston employee and her lack of recall. We examine later in the disposition whether the trial court's finding that Jamie did not sign the note and mortgage was against the manifest weight of the evidence. Finally, we note that section 1 of the Acknowledge Validation Act (765 ILCS 25/1 (West 2008)) does not affect our analysis, as it is undisputed that Lamm had the authority to notarize the signature. Moreover, the statute applies only to documents acknowledged before the Illinois Notary Public Act (5 ILCS 312/1-101 *et seq.* (West 2008)) was enacted, which is not the situation here.

¶ 54 B. Admissibility of E-mail Exchanges

¶ 55 Forreston next argues that the trial court committed reversible error by refusing to admit into evidence Jamie's attorney's admission confirming the validity of the note and mortgage. Forreston argues as follows. Subsequent to it filing a foreclosure complaint in September 2009 and before Jamie's March 2010 repudiation of his signature, Forreston was negotiating a deed in lieu of foreclosure agreement with Jamie's then-attorney, Jason Rock, which acknowledged the validity of the note and mortgage. Rock stated in two separate e-mails that the agreement looked "fine" and "nice." At the same time, Forreston was negotiating the sale of Jamie's interest in the real estate with Harold and Christopher. Jamie repudiated his signature only after the negotiations broke down because Forreston and the Diehls could not agree on a purchase price.

¶ 56 Forreston argues that the trial court refused to admit the documents on the basis that they constituted evidence of settlement discussions. Forreston argues that the documents could not be considered as such because there was no dispute regarding the note and mortgage at the time. Forreston argues that the evidence was probative because it showed that Jamie acknowledged the mortgage when he perceived it to be in his best interest to do so and changed his position only after it became apparent that the parties could not agree on a purchase price.

¶ 57 The admission of evidence is within the trial court's discretion, and we will not reverse the trial court unless it clearly abused its discretion. *McHale v. W.D. Trucking, Inc.*, 2015 IL App (1st) 132625, ¶ 28. An abuse of discretion occurs where the ruling is arbitrary, fanciful, or unreasonable. *Id.* Even if the trial court abused its discretion in its evidentiary ruling, a party is not entitled to reversal unless the error substantially prejudiced the aggrieved party and affected the case's outcome. *Kovera v. Envirite of Illinois, Inc.*, 2015 IL App (1st) 133049, ¶ 55.

¶ 58 This latter consideration applies here, because even if, *arguendo*, the trial court erred in excluding the e-mails/documents from the negotiation, there is no prejudicial error. Forreston argues that the evidence would show that none of the Diehls disputed that the mortgage had been signed until March 2010, but rather were attempting to negotiate the purchase of that interest from Forreston. However, the Diehls stipulated that between December 2009 and March 2010, during ongoing negotiations, none of the Diehls raised the issue of whether Jamie had signed the mortgage. Vock correspondingly testified that during that time, there were negotiations with Jamie to deed the 20 acres to the bank in lieu of foreclosure and simultaneous negotiations with Harold and Christopher to buy Jamie's interest from the bank. Accordingly, excluding the disputed evidence cannot be said to have affected the case's outcome.

¶ 59 C. Frauds Act

¶ 60 Forreston next argues that the trial court committed reversible error by finding that Jamie's ratification of the mortgage signature was barred by the Frauds Act. Section 2 of the Frauds Act states, in relevant part, that a contract for any interest in or concerning land for a term of longer than one year must 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." 740 ILCS 80/2 (West 2008).

¶ 61 Forreston notes that in its amended complaint, it alternatively alleged that Jamie had ratified Darci's signature. Ratification occurs when a principal learns of an unauthorized transaction and then either retains the transaction's benefits or takes a position inconsistent with non-affirmation. *Graver v. Pinecrest Volunteer Fire Department*, 2014 IL App (1st) 123006, ¶ 18. As Forreston points out, the trial court found that Jamie ratified, or at least failed to disagree with, Darci signing the note and mortgage. The trial court went on to state that the ratification was unenforceable under the statute of frauds because there was no written authorization by Jamie for Darci to sign documents for him and no written ratification of Darci signing Jamie's name.

¶ 62 Forreston argues that the statute of frauds was inapplicable because it fully performed its obligations. There is an exception to the statute of frauds' writing requirement where one party completely performs under an oral contract. *Berkowitz v. Urso*, 2014 IL App (1st) 121662, ¶ 44. The rationale for the full-performance doctrine is that where one party performs all of its obligations in reasonable reliance on the contract, it would be unfair to allow the other party to accept the contract's benefits but avoid its reciprocal obligations by asserting the statute of frauds. *Noesges v. Servicemaster Co.*, 233 Ill. App. 3d 158, 163 (1992).

¶ 63 Forreston argues that the agreement was to refinance Jamie's defaulted indebtedness in exchange for additional collateral, *i.e.*, the farmland, and that Forreston fully performed by refinancing the in-default notes. Forreston notes that the trial court found that: (1) the note did not provide any new consideration to Jamie, Harold, or Christopher, and (2) the bank was or should have been aware that Jamie could not repay the note just 30 days later. Forreston maintains that the alleged inadequacy of consideration for a contract will not invalidate it. See *Gallagher v. Lenart*, 226 Ill. 2d 208, 243 (2007) ("Courts generally will not inquire into the

adequacy of consideration for a contract."); see also *Keefe v. Allied Home Mortgage Corp.*, 393 Ill. App. 3d 226, 230 (2009) (a contract does not lack mutuality because obligations appear unequal).

¶ 64 The existence of an oral contract, the contract's terms, and the parties' intent are question of fact, and we will not disturb the trial court's determinations on those questions unless they are against the manifest weight of the evidence. *Anderson v. Kohler*, 397 Ill. App. 3d 773, 785 (2009). A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 65 While there is an exception to the statute of frauds for full performance under an oral contract (*Berkowitz*, 2014 IL App (1st) 121662, ¶ 44), here Forreston never alleged the existence of an oral contract. Vock's testimony also did not support the existence of an oral contract, as his testimony shows that Forreston contemplated only a written contract. Also, for an oral contract to be enforceable despite the statute of frauds based on partial or full performance, the contract's terms must be clear, definite, and unequivocal, and the acts allegedly done in performance must be attributed exclusively to the contract. *John O. Schofield, Inc. v. Nikkel*, 314 Ill. App. 3d 771, 784 (2000). Here, the conversations regarding the terms of the note and mortgage were far from definite. Also, Vock testified that in conjunction with the note and mortgage, the bank would have been willing to amortize Jamie's remaining debt after the 30-day period, but it is unclear what those terms would have been. Forreston's "performance" of the contract also cannot be attributed exclusively to the contract, for although it allegedly refrained from bringing suit during that period, it still did not bring suit for many months after the default. Regardless, as the Diehls point out, although full performance can satisfy the Frauds Act, it

cannot avoid the requirements of the Credit Agreements Act (815 ILCS 160/0.01 *et seq.* (West 2008)) (*Machinery Transports of Illinois v. Morton Community Bank*, 293 Ill. App. 3d 207, 210 (1997)), which requires that agreements between creditors and debtors be in writing (815 ILCS 160/2 (West 2008)). Accordingly, the trial court's rejection of Forreston's claim that full performance brought it outside of the statute of frauds was not against the manifest weight of the evidence.

¶ 66 Forreston argues that equitable estoppel also brought it outside of the statute of frauds. Equitable estoppel prevents a party from taking advantage of his wrongdoing, and the doctrine's ultimate purpose is to prevent fraud or injustice. *Hubble v. O'Connor*, 291 Ill. App. 3d 974, 986 (1997). Forreston argues that each of the notes Jamie signed included blanket security agreements in which he pledged to Forreston all of his inventory, equipment, and general intangibles, including tax refunds. Forreston argues that the notes also prohibited Jamie from selling property without its permission, and Jamie was required to remit any payments to the bank. Forreston argues that Jamie's execution of the disputed note and mortgage provided him with additional time to misappropriate his tax refund and the proceeds of the sale of farm equipment. Forreston maintains that, therefore, the doctrine of equitable estoppel applies.

¶ 67 We conclude that Forreston's argument is without merit because, as the Diehls argue, the Credit Agreements Act bars all traditional exceptions to the Frauds Act, including equitable estoppel. *McAloon v. Northwest Bankcorp., Inc.*, 274 Ill. App. 3d 758, 765 (1995). Additionally, there is no evidence tying Jamie's retention of the tax refund and money from the sale of equipment to the new note and mortgage, nor is there evidence that the bank delayed recovery of these funds because of those documents. As such, the trial court's determination that equitable estoppel did not apply was not against the manifest weight of the evidence.

¶ 68 D. Finding that Darci Signed the Note and Mortgage

¶ 69 Last, Forreston argues that the trial court's finding that Darci, rather than Jamie, signed the note and mortgage is against the manifest weight of the evidence. See *Cook ex rel. Cook v. AAA Life Insurance Co.*, 2014 IL App (1st) 123700, ¶ 51(when a party challenges a trial court's bench-trial ruling, we will defer to the trial court's factual findings unless they are contrary to the manifest weight of the evidence).

¶ 70 Forreston argues that it becomes apparent that the trial court's decision was unreasonable, arbitrary, and not based on the evidence when one considers a number of factors. Forreston argues as follows. First, our supreme court has ruled on three occasions that a signatory's delay in challenging his notarized signature is consistent with a finding that the signature is authentic. Here, Jamie did not repudiate his signature for almost a year, and he further engaged in negotiations that acknowledged the note's and mortgage's validity.

¶ 71 Second, four documents were executed, being the loan application, disbursement authorization, note, and mortgage. However, Darci's contradictory testimony was that she signed only one document, signed one document in two places, and signed two documents. Even giving credit to this testimony, she could have signed three of the documents while Jamie signed the mortgage.

¶ 72 Third, Darci recalled signing some documents after she injured her wrist on March 28, 2009, but the note and mortgage were dated March 27, 2009. This leads to the inevitable conclusion that she misremembered what she signed and when she signed it.

¶ 73 Fourth, the only disinterested testimony the Diehls offered was from Spencer, but Williams rebutted those conclusions, preventing them from constituting clear and convincing evidence sufficient to overcome the notarized signatures, especially considering *Witt*.

¶ 74 Fifth, Spencer's testimony could not constitute convincing evidence when one considers both his credentials and basis for his opinion. Spencer testified that he had never been found to be unqualified by a fact finder but then acknowledged that an arbitration decision found him to be unqualified and Williams to be qualified. Also, Spencer's formal training for forensic document examination consisted of just one correspondence course. His testimony was particularly unreliable when considering that he relied upon six checks Jamie purportedly signed as authentic handwriting exemplars, given to him by Harold. However, even Jamie and Darci had trouble distinguishing Jamie's authentic signatures on various documents. Moreover, in ruling on Forreston's posttrial motion, the trial court stated that it relied most heavily on Spencer's testimony, but its written ruling did not mention his testimony at all.

¶ 75 Sixth, the trial court stated in its ruling that in examining the handwriting exemplars, it was "quite clear" to it that Darci signed Jamie's name on the note and mortgage. However, these exemplars were unreliable, and the trial court's own examination of the signatures would not constitute the clear and convincing evidence by disinterested witnesses sufficient to invalidate a notarized mortgage.

¶ 76 We conclude that the trial court's finding that Darci signed Jamie's name on the note and mortgage is not against the manifest weight of the evidence. The trial court stated in ruling on Forreston's posttrial motion that it relied on the testimony of many witnesses in arriving at its decision, and the one it relied on the most was Spencer. Although Forreston claims that the trial court's written ruling made no such mention of Spencer, the ruling stated:

> "Further, in examining the handwriting exemplars analyzed by the defense expert, Mr. Spencer, it is quite clear to the Court that the signatures on the note and mortgage were made by Darci Diehl, signing 'Jamie Diehl.' "

Forreston interprets this language to mean that the trial court made an independent assessment of the signatures. However, the language is more reasonably interpreted to mean that the trial court relied on Spencer's analysis of the exemplars as compared to the signatures on the note and mortgage, and that its own examination of the signatures was incident to weighing Spencer's testimony regarding the signatures.

¶ 77 We recognize that Williams had superior credentials in forensic document examination as compared to Spencer. However, the trial judge is in the best position to weigh the evidence and evaluate expert testimony. *Hasek v. DaimierChrysler Corp.*, 319 Ill. App. 3d 780, 787-88 (2001). Here, the experts' methodology differed, including relying on different exemplars in making their comparisons. The fact that Harold provided exemplars of Jamie's signature to Spencer does not automatically make them suspect, as Harold testified that he provided signatures on documents that people, such as his sister, had seen Jamie sign. The experts discussed their opinions regarding spacing, slant, height, strokes, and other signature characteristics for the signatures at issue. We recognize that Williams arrived at a different conclusion than Spencer regarding who signed the note and mortgage, but, as discussed, this contradiction did not prevent the Diehls from reaching the clear and convincing evidence standard necessary to overcome the presumption given to notarized signatures. See *supra* ¶ 52.

¶ 78 Regarding the date the mortgage and note were signed, the fact that they were preprinted with the date March 27, 2009, is not dispositive of when they were signed, as Lamm was equivocal in her testimony regarding whether she would reprint the documents if they were signed after the print date; she testified that she "guess[ed] we would probably do it over" and that they "might change the date" to the date on which they notarized it. Thus, the trial court could have reasonably accepted Darci's testimony that she signed the documents after she

injured her arm. Although Darci did not know how many documents she signed, as the Diehls point out, there is no evidence indicating that they were not all signed at the same time.

¶ 79 The trial court had before it testimony that: Darci often signed Jamie's name for him at Forreston, including on some previous notes; Vock and Jamie discussed Jamie's interest in the farmland; Lamm asked Darci to sign Jamie's name on some documents a few days after March 28, 2009; and Jamie reacted angrily when Darci told him she signed his name. There was evidence that the new note and mortgage did not benefit Jamie in any significant way. Jamie also provided reasonable testimony that he would not have been able to repay the $181,000 due under the note in its 30-day time frame, and that he would not have agreed to a mortgage on the farmland because the land also belonged to his father and brother. He further testified that he did not immediately challenge the signature because he thought that he was going to lose everything anyway, and that he did later tell his bankruptcy attorney and then subsequent counsel. Finally, the fact that Lamm did not independently recall the signatures and was a Forreston employee could be a consideration, albeit a minor one. See *supra* ¶ 53.

¶ 80 The trial court stated that it relied primarily on the testimony of Spencer, who was a disinterested witness. When Spencer's testimony is combined with the above-mentioned evidence, we cannot say that it was against the manifest weight of the evidence for the trial court to conclude that the Diehls provided clear and convincing evidence sufficient to overcome Lamm's acknowledgment of the signatures.

¶ 81 III. CONCLUSION

¶ 82 For the reasons stated, we affirm the judgment of the Ogle County circuit court.

¶ 83 Affirmed.