FOURTH DIVISION
February 16, 2017

No. 1-16-0081

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

YOON SO CHOI, and NAM SOON CHOI,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 15 L 4771
	)	
DAE YONG KIM, and OK SUN KIM,	)	Honorable
	)	Raymond Mitchell,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's order dismissing plaintiffs' complaint for breach of contract, *quantum meruit*, and fraud; the breach of contract claim against Dae Yong Kim was barred by *res judicata*, the breach of contract claim against Ok Sun Kim was barred by the statute of frauds; the *quantum meruit* claim against both defendants was barred by the statute of limitations; and, the fraud claim against Dae Yong Kim was also barred by the statute of limitations.

¶ 2 This appeal arises from a dispute between the parties to a lease of a laundromat signed by plaintiffs-lessees Yoon So Choi and Nam Soon Choi, and Dae Yong Kim (Kim) as defendant-lessor. Plaintiffs allege a lease rider gave them an option to purchase the property and defendant breached the lease when he failed to sell the property to them after they exercised their option to purchase. Plaintiffs subsequently filed suit in 2005 in the chancery division of the circuit court of Cook County against Kim seeking specific performance. After a trial, the circuit court entered a judgment for specific performance for plaintiffs. After entry of the judgment for specific performance against Kim, defense counsel revealed he had learned after the judgment was entered that Kim owned the disputed property in joint tenancy with his wife Ok Sun Kim (Ok Sun). Ok Sun was not named as a party to the lawsuit for specific performance. Plaintiffs, in 2015, filed the complaint in this case against Kim and his wife seeking damages for breach of contract, *quantum meruit*, and fraud. Defendants filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) alleging the complaint was barred by *res judicata*, statute of frauds, and statute of limitations. The circuit court agreed and dismissed the case. For the following reasons we affirm the decision of the Circuit Court.

¶ 3 BACKGROUND

¶ 4 In November 2002, plaintiffs signed a lease agreement to rent from Kim real estate located on Armitage Avenue in Chicago. The subject property was used as a coin operated laundromat. A rider attached to the lease contained a provision giving plaintiffs the option to purchase the real estate. Three parties' names were listed on the lease all of whom signed the lease agreement and rider: Yoon So Choi, Nam Soon Choi (both as tenants), and Dae Yong Kim (as landlord). The name of Kim's wife, Ok Sun Kim, does not appear in the lease. In 2005, the plaintiffs filed a complaint in the chancery division the circuit court of Cook County against Kim

seeking specific performance and alleging Kim breached his obligation under the lease to sell the property to plaintiffs. On May 27, 2009, after a trial, the court entered judgment for specific performance in favor of the plaintiffs and ordered Kim to complete the sale of the property. The court also ordered that the issue of the amount of attorney fees Kim owed to plaintiffs under the contract on account of the breach be determined at a later proceeding. On June 4, 2009, plaintiffs filed a motion for leave to file a second amended complaint to add a count to recover the damages plaintiffs incurred between the time of Kim's breach and the time the contract was complied with. The court did not rule on the motion. On August 20, 2009, while the issue of attorney fees was still pending before the chancery court, plaintiffs also filed a motion for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994) against Kim and his counsel. Plaintiffs alleged Kim and his counsel made fundamental misrepresentations to the court during the litigation over the property for not revealing the joint ownership of the property earlier in the case.

¶ 5 On October 15, 2009, the court awarded appellees $130,725.91 in attorney fees due under the contract as requested in the complaint. The trial court held an evidentiary hearing on the Supreme Court Rule 137 petition on November 21, 2012, Judge Agran presided. Both Kim and his wife Ok Sun testified concerning the circumstances of the signing of the lease and rider. At the conclusion of the hearing, Judge Agran imposed sanctions against Kim because Kim had made multiple affirmative representations to the court that he was the owner of the property. Judge Agran denied imposing sanctions against defendant's counsel. Kim filed a timely motion for reconsideration and the Rule 137 sanction was later modified on August 9, 2013 by Judge Agran; the court vacated the award of fees to plaintiffs. The record shows the name of Ok Sun appeared as an owner in an appraisal ordered by plaintiffs prior to the trial. Although plaintiffs'

counsel testified he didn't see her name on the appraisal the trial court made a finding that plaintiffs' counsel admitted he knew prior to trial that Ok Sun had an interest in the property. In an order dated August 9, 2013, Judge Agran vacated the Rule 137 fee award payable to plaintiffs because they were aware of Ok Sun's interest in the property prior to the trial. Instead of paying plaintiff, Kim was ordered to pay $5,000 to the clerk of the circuit court for his misrepresentations to the court.

¶ 6 On April 28, 2014, Judge Garcia entered an order denying the motion for leave to file a second amended complaint, but ordered plaintiffs to file a new complaint against Ok Sun under the same case number. In May 2014, Kim filed a notice of appeal with respect to the May 27, 2009 judgment. On October 8, 2014, we dismissed Kim's appeal for lack of jurisdiction and we also ordered the chancery court to vacate the April 28, 2014 order.

¶ 7 On May 8, 2015, plaintiffs filed the instant complaint in the Law division of the circuit court of Cook County, alleging breach of contract and *quantum meruit* against both defendants, and alleging fraud against Kim. Defendants filed a motion to dismiss under sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619 (West 2016)). In support of the motion to dismiss the defendants alleged as defenses (1) *res judicata* to bar the breach of contract claim against Kim, (2) statute of frauds (740 ILCS 80/2 (West 2016)) to bar the breach of contract claim against Ok Sun, and (3) statute of limitations (735 ILCS 5/13-205 (West 2016)) to bar the fraud claim against Kim and *quantum meruit* claims against both defendants. Defendants additionally argued that plaintiffs had failed to state a cause of action for which they could be granted relief.

¶ 8 Plaintiffs responded to the motion by arguing that *res judicata* does not bar the claim against Kim. Plaintiffs argue that there was no final judgment on the merits because they have a

pending motion to amend the complaint, and that there was no identity of causes because they could not have brought their claim for damages caused by the delay in performance in the prior proceedings. Plaintiffs also argued that the statute of frauds did not bar their action because Ok Sun's testimony in the 2005 case was a judicial admission that Kim was her agent and he was authorized to sign the lease agreement for her. In addition, plaintiffs argue that their current action was not barred by the statute of limitations because the current complaint related back to their 2005 action. Judge Mitchell dismissed plaintiffs' complaint with prejudice pursuant to section 2-619 (735 ILCS 5/2-619 (West 2016)) because the breach of contract claim against Kim was barred on grounds of *res judicata* as the current claim could have been brought in the 2005 trial, the breach of contract claim could not be brought against Ok Sun because she was not a party to the contract and did not unequivocally declare that her husband was her agent who had authority to sign the lease on her behalf, and that the fraud and *quantum meruit* claims were barred by the statute of limitations. Accordingly, the trial court found it unnecessary to reach the arguments for dismissal pursuant to section 2-615.

¶ 9 ANALYSIS

¶ 10 A 2-619 motion to dismiss admits to the legal sufficiency of the complaint and all reasonable inferences therefrom, but asserts an affirmative defense that otherwise defeats the cause of action. 735 ILCS 5/2-619 (West 2016); *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d. 351, 361 (2009). A court ruling on a section 2-619 motion construes the pleadings in favor of the nonmoving party and should only grant the motion if the plaintiff is able to prove no set of facts supporting the cause of action. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 31. On appeal, we review *de novo* a 2-619 motion to dismiss. *Kean*, 235 Ill. 2d at 361. The Illinois statute of frauds requires any contract for the sale of land be in a writing signed

by the party to be charged, or by the party's agent who is authorized in a writing which is signed by the person to be charged:

> "No action shall be brought to charge any person upon any contract for the sale of lands *** 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." 740 ILCS 80/2 (West 2016).

¶ 11 Breach of Contract Claim Against Kim Barred by *Res Judicata*

¶ 12 In their complaint, plaintiffs seek damages against defendant for the losses they suffered between the time they exercised the right to purchase under the lease rider and the time the property was conveyed. Defendant Kim argues the damages claimed by plaintiffs could have been brought in the 2005 case and therefore they are barred on grounds of *res judicata*. After a court of competent jurisdiction renders a final judgment on the merits, the doctrine of *res judicata* bars subsequent actions by the same parties on the same issue so long as three conditions are met: (1) that a court of competent jurisdiction rendered a final judgment on the merits, (2) there exists an identity of cause of action, and (3) the parties, or their privies, are identical in both causes of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008).

¶ 13 It is not disputed that there is an identity of parties present: plaintiffs were Yoon So Choi and Nam Soon Choi, and defendant was Kim. In dispute is whether there was a final judgment on the merits in the 2005 case and whether there was an identity of issues. Plaintiffs dispute that the court rendered a final judgment on the merits because plaintiffs have a pending motion requesting leave to file a second amended complaint, indicating the judgment in the 2005 case is not final. Additionally plaintiffs dispute the existence of an identity of issues.

¶ 14 With regard to the issue of whether there was a final judgment in the 2005 case, we agree with plaintiffs that the order for specific performance entered on May 27, 2009 was not a final and appealable judgment on the merits when it was entered because the issue regarding attorney fees prayed for by plaintiffs in the complaint as contract damages had not been resolved. While the issue of attorney fees was pending, plaintiffs filed a motion for Supreme Court Rule 137 sanctions. Under Illinois law, a case is not final and appealable while there is a timely filed Rule 137 motion pending before the trial court unless the court enters a Supreme Court Rule 304(a) finding. *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983-84 (1994). An order resolving the attorney fees issue was entered in October 2009. However, the entry of the order on attorney fees did not make the specific performance order final and appealable because the Rule 137 motion was pending. The final order on the motion for Rule 137 sanctions was entered on August 9, 2013. On that date the judgment became final and appealable. Therefore the time to file an appeal from the court's orders expired 30 days later.

¶ 15 We recognize plaintiffs filed a motion for leave to file a second amended complaint before the judgment became final and that the trial court did not enter an order in response to the motion until April 2014. Plaintiffs argue their motion to amend constitutes a postjudgment motion which prevented the judgment on the merits from becoming final.

> "Supreme Court Rule 303(a)(1) provides that a notice of appeal must be filed 'within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last-pending post-judgment motion.' [Citation.] The timely filing of a notice of appeal under Rule 303 is a

> jurisdictional requirement. [Citation.]" *Pempek v. Silliker Laboratories, Inc.*, 309 Ill. App. 3d 972, 977 (1999).

For a motion to fall within the meaning of a Rule 303(a)(1) postjudgment motion, the motion must be "directed against the judgment." *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 462 (1990). Plaintiffs' motion to amend was not directed against the judgment. "A motion for leave to file an amended complaint is not *** a motion 'directed against the judgment.' " *Fultz v. Haugan*, 49 Ill. 2d 131, 136 (1971). Therefore, the motion to file an amended complaint was not sufficient to allow the trial court to retain jurisdiction more than 30 days after entry of a final order. In this case, the judgment became final after an order resolving the Rule 137 motion was entered by the court on August 9, 2013, and the pending motions filed by plaintiffs to amend the complaint did not prevent the judgment from becoming final. Therefore, the court lost jurisdiction to rule on the motion to amend the complaint in this case after 30 days elapsed from the August 9, 2013 order which disposed of the Rule 137 motion and the plaintiffs lost the right to appeal any alleged error by the court in not allowing them leave to file the amended complaint, when no appeal was filed within 30 days of August 9, 2013.

¶ 16 Having concluded that two elements of *res judicata* are met, we turn to whether there exists an identity of cause of action. The doctrine of *res judicata* is a bar against re-litigating "what was actually decided in the first action, as well as those matters that could have been decided in that suit." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302 (1998). Illinois courts utilize the transactional test to determine whether there is an identity of cause. *Id.* at 313. Under the transactional test, multiple claims are considered part of the same cause of action if they arose from the same transaction, or series of transactions, even if there is no substantial overlap of evidence. *Id.* at 311. A court determining whether multiple claims arose

from the same transaction, or series of transactions, will consider " 'whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.' " *Id*. at 312. A subsequent claim is barred under this theory even if the plaintiff seeks different relief, or to present an alternate theory of the case from the first action. *Id*.

¶ 17 Plaintiffs' 2015 action against Kim for breach of contract is based on the same core of operative facts as their 2005 claim. Plaintiffs contend they are not seeking relief for the same transaction because they now seek relief for the delay in performance rather than the breach itself. Plaintiffs rely upon our decision in *Talerico*, where we found that a plaintiff may request relief for both the breach of contract, which may be cured by specific performance, and for the delay in the performance of the contract, which would not be cured by specific performance. *Talerico v. Olivarri*, 343 Ill. App. 3d 128, 132 (2003). Contrary to plaintiffs' assertion, our decision in *Talerico* did not stand for the position that the damages incurred after the breach are separate transactions from the original breach. Rather, *Talerico* stood for the proposition that the remedy of curing the breach through an order of specific performance does not cure the injury done in the period between the breach and actual performance. *Id.* In this case, plaintiffs' claims result from the same transaction: entering into a lease agreement with Kim and his eventual breach of the option to purchase rider. Kim's breach of contract resulted in multiple harms with multiple forms of relief available. Having won their claim, plaintiffs cannot now go back and request additional relief they could have sought at trial.

¶ 18 Plaintiffs contend that *res judicata* should not bar their action because they were unable to raise their claim for damages caused by the delay in performance until after judgment was

entered by the trial court. Plaintiffs also allege that the trial court should have allowed an amendment to add the additional count as the court did in *Talerico*.

¶ 19 Initially we note that by failing to file a timely appeal, plaintiffs lost any right to complain about the trial court not ruling on the motion to amend the complaint. Moreover, the *Talerico* decision is not controlling because it did not address the issue of whether a complaint can be amended after entry of a judgment to add an additional count. However, the real issue presented in this case is whether plaintiffs' request for damages as a result of Kim's delay in conveying title could have been raised in the first lawsuit prior to judgment and whether they can now be raised in a second lawsuit against Kim. We find that the damages claim could have been raised in the 2005 case. Therefore, plaintiffs were required to raise the money damages claim prior to the entry of judgment and cannot file a new case to seek additional damages.

> "Amendments to pleadings to add a new cause of action may be allowed at any time before final judgment. [Citation]. A complaint 'may only be amended after judgment to conform the pleadings to the proofs.' [Citation]. Amending a complaint to add a new cause of action is not a proper postjudgment motion." *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 710 (2010).

We were clear in *Mandel* that, under *Talerico*, a plaintiff may request the damages resulting from the delay in performance which would not be cured by specific performance, but that the proper time to raise such damages was prior to final judgment. *Id*. at 711. In any event, the judgment in the 2005 case became final in August 2013. The money damages for breach of contract could have been raised in the case prior to judgment but were not raised. Plaintiffs cannot now split their claims into separate trials when the claims arose from the same transaction and could have been brought in the prior trial.

¶ 20 Accordingly, we find that all three elements of *res judicata* are present such that plaintiffs are barred from bringing their claim of breach of contract against Kim. The chancery court's judgment on the merits became final because no appeal was timely filed, nor any postjudgment motion directed against the verdict. The 2005 claim and 2015 claim both resulted from the same transaction (the breach of contract), and although multiple forms of relief are available, plaintiffs should have brought a claim for all those forms of relief in the earlier trial rather than engaging in claim splitting now. Finally, the parties are identical: Yoon So Choi and Nam Soon Choi sued Kim for breach of contract in 2005 and received a judgment of specific performance in 2009. Therefore their breach of contract claim against Kim is barred by *res judicata*.

¶ 21 Breach of Contract Claim against Ok Sun Kim Barred by Statute of Frauds

¶ 22 In addition to their breach of contract claim against Kim, plaintiffs brought a breach of contract claim against Ok Sun. Plaintiffs argue that she was a party to the lease agreement and is therefore bound by its terms. Defendants argue OK Sun was not a party to the lease and did not sign the lease or rider. The court below found plaintiffs' claim against Ok Sun was barred by the statute of frauds because Ok Sun did not sign the lease, nor was there any writing signed by Ok Sun authorizing Kim to sign on her behalf and her testimony did not constitute a judicial admission that Kim had authority to sign her name to the lease. For the following reasons we affirm the trial court.

¶ 23 As noted earlier, the statute of frauds provides that a contract for sale of land must be in a writing signed by the party to be charged or an agent authorized in writing to sign by that person.

> "No action shall be brought to charge any person upon any contract for the sale of lands *** 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." 740 ILCS 80/2 (West 2016).

Plaintiffs do not allege that there is a written authorization for Kim to sign a land sale contract on Ok Sun's behalf. Plaintiffs contend that the statute of frauds should not prevent their claim against Ok Sun because the testimony she gave in court in the 2005 case constituted a judicial admission that Kim was her agent who was authorized to sign a land sale contract on her behalf. We find that as a matter of law that the statements Ok Sun made in her testimony do not constitute a judicial admission that Kim was authorized to sign a land sale contract; therefore the contract for sale cannot be enforced against her under the statute of frauds.

¶ 24 Ok Sun never signed the lease or the option to purchase rider, and her name did not appear in the lease. There is no evidence Kim received written authorization from Ok Sun to act as her agent.

> "To satisfy the Statute of Frauds, the writing itself must contain on its face or by reference to other writings, *the names of the vendor and of the vendee*, a description of the property sufficiently definite to identify the same as the subject matter of the contract, the price, the terms and conditions of sale, and the signature of the party to be charged. [Citation.]" (Emphasis added.) *Thompson v. Wiegand*, 9 Ill. 2d 63, 66 (1956).

The lease and rider in this case contain only three names; Yoon So Choi, Nam Soon Choi, and Kim. The record provides no evidence Kim acted as Ok Sun's authorized agent when he signed his own name on the lease and rider. "A contract for the sale of real estate must be in writing to be enforceable, and where such a contract is signed by an agent, the agent's authority to do so must also be in writing." *Vuagniaux v. Korte*, 273 Ill. App. 3d 305, 311 (1995). If an agent acts

on a principal's behalf in signing a real estate agreement, then an authorization of agency must be in writing signed by the principal to satisfy the statute of frauds. *Leach v. Hazel*, 398 Ill. 33, 38 (1947). We cannot presume that Kim had authorization to act as Ok Sun's agent in the real estate sale simply because they are husband and wife. A husband is not authorized to act as his wife's agent simply by virtue of the marital relationship: "we know of no rule which compels a wife to follow her husband's footsteps and ascertain what actions he is taking to sell property owned jointly by them *** and if another expects a wife to be bound to sell real estate, she should be bound in the same manner as any other person who contracts to sell real estate ***." *Id*. at 40. In the absence of a writing signed by the wife granting the husband authority to contract on the wife's behalf, a contract signed by the husband on the wife's behalf will not satisfy the statute of frauds. *Volmut v. Bern*, 346 Ill. 619, 622 (1931). Kim did not act as Ok Sun's authorized agent simply because he was her husband when he signed the lease agreement and option to purchase rider. Therefore, there needed to be a signed writing by Ok Sun authorizing her husband to act as her agent in the sale of real estate.

¶ 25 Plaintiffs contend that there exists the equivalent of a signed writing by Ok Sun because they claim she unequivocally admitted in court that her husband was her agent authorized to sign the lease agreement and the option to purchase rider on her behalf. Plaintiffs rely on *Hartke* for the proposition that the statute of frauds is satisfied when there is an admission in court of an agency relationship and a signed writing by the agent on the principal's behalf. *Hartke v. Conn*, 102 Ill. App. 3d 96 (1981).

¶ 26 However, plaintiffs' case is distinguishable from *Hartke*. In *Hartke*, plaintiff Harry Hartke filed a declaratory judgment action against Conn to have a lease granting Conn a tenancy for life on farm land declared invalid under the statute of frauds, and in a separate action sought

to terminate the lease and evict the tenant for allegedly breaching the same lease. His cases were consolidated at trial. *Hartke*, 102 Ill. App. 3d at 97. Hartke alleged he was not bound by the lease because it did not satisfy the requirements of the statute of frauds because his wife signed his name and his brother's name on the lease. *Id*. However, for the eviction proceedings, Hartke sent a notice to quit to the tenant in which he noted the specific ways the tenant had violated terms of the lease, identified all parties to the lease (including himself), and indicated that the lease was being terminated. *Id*. at 98. The court determined that it could look to other documents to determine whether the requirements of the statute of frauds were satisfied:

> "It is also firmly established that:
>
> '(t)he contract need not be on a single piece of paper, but the writings taken together must contain all the essential elements to show a contract between the parties so that there is no need of parol proof of any of the terms or conditions of the sale or the intention of the parties. It is necessary that where various writings are involved, they be connected in some definite manner. The signed writing or writings must refer expressly to the other writing, or the several writings must be so connected, either physically or otherwise, as to show by internal evidence that they relate to the same contract.' [Citation.]" *Id*. at 100 (quoting *Mid-Town Petroleum Inc. v. Dine*, Ill. App. 3d 296, 303-4 (1979)).

The tenant argued the notice to quit served as a writing which referenced the lease agreement, therefore the written notice to quit taken together with the original lease satisfied the statute of frauds. Hartke argued he did not sign the notice to quit, therefore there was no written document signed by him for the court to examine nor an authorization for an agent to act on his behalf.

Hartke argued that because it was the attorney who signed the notice to quit, the authorization of the attorney to sign as his agent was required to be in writing. *Id*. at 98.

¶ 27 The trial court considered the testimony of Hartke to determine the issue of whether the testimony of Hartke was a judicial admission that the attorney was his agent and therefore the attorney signed the notice as an agent for Hartke.

> "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge. [Citation.] Where made, a judicial admission may not be contradicted in a motion for summary judgment [citation] or at trial [citation]. The purpose of the rule is to remove the temptation to commit perjury. [Citation.]" *In re Estate of Rennick*, 181 Ill. 2d 395, 406–07 (1998).

At the trial, Hartke testified he directed the attorney to prepare and serve the notice to quit and "he intended that the document be prepared for the purpose of terminating the written lease." *Hartke*, 102 Ill. App. 3d at 102. The court held that Hartke's testimony in court was a judicial admission that the attorney was authorized to sign the notice to quit for him. Therefore, the statute of frauds was satisfied because details of the lease provisions were contained in the written notice to quit, which was signed by Hartke through his authorized agent, and Hartke's judicial admission of his attorney's agency served as a signed writing authorizing agency. *Id*.

¶ 28 Ok Sun did not unequivocally state in court that her husband was authorized to sell the property on her behalf, nor did her testimony evidence awareness of any lease terms. At the evidentiary hearing for the sanctions action, Ok Sun testified in Korean through an interpreter because she did not understand English. She testified that she did not sign the lease:

> "Q. You don't see the three signatures on the last page of this document?

A. No, because my – I don't see any – my signature. I didn't sign this.

Q: Exactly. You didn't sign this document did you?

A. No

Q: Your husband did sign it, though?

A. Yeah, that's my husband's signature."

Further, Ok Sun testified that while her husband managed the business, she would still sign any documents that required her signature. She testified: "All business matters, such as like store matters, my husband is taking care of. My husband is the one who took care of, so when he asked me to sign, then I sign." Plaintiffs take this statement as a judicial admission by Ok Sun that her husband was authorized to sign real estate contracts on her behalf. However, the testimony of Ok Sun indicated when her signature was required on a document Kim would ask her to sign it herself. Ok Sun also stated that her husband would ask her to sign documents relating to renting the business and that she would then sign them. Nowhere in her testimony does she state she ever authorized her husband to sign documents on her behalf to sell the real estate. Nor is there any other writing or testimony referencing the terms of the lease agreement and option to purchase rider allegedly signed on her behalf.

¶ 29 Plaintiffs' strongest argument that Ok Sun gave a judicial admission that Kim was her authorized agent in selling the property is Ok Sun's testimony where she stated that she jointly owned and sold the business with her husband:

"Q. You and your husband owned a dry cleaner – I'm sorry, a coin laundromat called M & M and also the real estate that the coin laundromat is located on, Armitage Avenue in Chicago, Illinois, am I correct?

A. Yes.

Q. And you own that jointly with your husband?

A. Yes.

Q. And you sold the business jointly with your husband?

A. Yes.

Q. And you lease the real estate jointly with your husband?

A. Yes."

Plaintiffs take this as a judicial admission that Kim was Ok Sun's authorized agent in signing the lease agreement and rider. However, this testimony is far too vague to constitute such a judicial admission. Unlike the clear testimony in *Hartke* which included knowledge of lease terms and parties, Ok Sun's testimony fails to specify any knowledge of the specific lease at issue. The testimony does not indicate any property was sold, simply that the business was sold. She does not identify parties to the lease or any terms of the lease in the above quoted testimony. To bind a party to a real estate contract when that party did not sign the contract, the statute of frauds requires that the party's agent signed the contract and had written authorization of agency to do so. 740 ILCS 80/2 (West 2016). In the absence of a signed writing authorizing the exercise of agency, the statute of frauds will be satisfied if there was a judicial admission of agency by the party to be bound. See *Hartke*, 102 Ill. App. 3d at 102. Ok Sun may have stated she leased the real estate jointly, but nowhere in her testimony did she indicate knowledge of the terms of this lease. Further, this testimony is outweighed by her testimony that when her signature was required for the business, Kim would have Ok Sun sign herself. Nothing in the testimony indicates Kim signed documents for Ok Sun. Nowhere in the testimony did Ok Sun testify her husband had authority to sign her name, and the record contains no other document where she evidenced knowledge of the lease terms or authorized Kim as her agent. Hence, her testimony is

not an unequivocal admission that Kim was her agent or authorized to sign documents for Ok Sun at all. Plaintiffs had to demonstrate the equivalent of a signed writing authorizing agency, but Ok Sun's testimony falls short of such an admission.

¶ 30 In *Hartke*, Harry Hartke directed that his attorney prepare and sign the notice to quit indicating his knowledge of the terms of the lease agreement and that he was a party to the lease (*Hartke*, 102 Ill. App. 3d at 102); in this case there is no document in the record where Ok Sun acknowledges her being a party to the lease or demonstrating she had knowledge of the specific terms of the lease. Ok Sun testified that while she remembered meeting with plaintiffs at a Chinese restaurant, she could not remember anything about their discussions. When asked whether she knew her husband signed the lease, she responded: "[i]t has been a while. It was a long time ago, so I don't remember which paper. It was seven, eight years ago or so, so I don't remember." Plaintiffs urge us to find that this testimony was an unequivocal admission in court of Kim's agency to engage in real estate contracts on Ok Sun's behalf. We disagree. While Ok Sun admitted her husband managed renting the business, she never indicated he was her agent in signing her name to any document, or that his signature stood for her signature, much less that he was authorized to sign his name on a contract to sell the property and thereby bind her. There is no testimony which is clear and unequivocal that Kim is authorized to sign for Ok Sun at all, or that Kim acted as Ok Sun's agent when he signed his own name in the contract.

¶ 31 Finally, plaintiffs urge us to allow them to engage in further discovery concerning a possible agency relationship authorizing Kim to sign the lease agreement on Ok Sun's behalf. The record indicates the parties took depositions on this issue in the 2005 case and testimony was adduced at the trial of the 2005 case. After the motion to dismiss was filed, there is nothing in the record indicating plaintiffs requested more time from the trial court to conduct discovery.

Plaintiffs relied upon the depositions and testimony concerning the issue of agency that were produced in the 2005 case to defend against dismissal. This is not a case where it is alleged the trial court prevented discovery. Plaintiffs elected to defend the motion to dismiss based on the universe of facts they already had. We have found as a matter of law that the statements by Ok Sun do not constitute judicial admissions that Kim was her agent for the purposes of selling the property. Having lost this issue, plaintiffs cannot now on appeal ask us for a second bite at the apple. We reject the request for a remand for additional discovery.

¶ 32 *Quantum Meruit* and Fraud Claims Filed After Statute of Limitations Expired

¶ 33 Finally, plaintiffs brought a claim of *quantum meruit* against both defendants seeking money damages, and a claim of fraud against Kim due to Kim's representations that he owned the property and could fulfill the terms of the agreement. The trial court found that both claims were filed more than 5 years after their cause of action arose; they were therefore barred by the statute of limitations. Under the Statute of limitations:

> "actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205 (West 2016)

The statute of limitations for claims of *quantum meruit* is five years. *Id*. Plaintiffs filed their complaint on May 8, 2015. Even if we accepted that plaintiffs' cause of action arose at the latest possible date, when defense counsel filed a motion to spread of record on July 28, 2009 and the court learned of Ok Sun's interest in the property, their complaint was still filed over five years

after that. The statute of limitations has expired for the *quantum meruit* claim. The statute of limitations on common law fraud is also five years. *Id*. Assuming plaintiffs became aware of Kim's fraud in July 2009, they filed a complaint in May of 2015, almost six years after the cause of action arose. Therefore, the statute of limitations has expired on their claim of fraud against Kim. Plaintiffs contend they timely filed this new complaint because it relates back to the original complaint from which they have pending a motion for leave to file a second amended complaint. We disagree. Plaintiffs provide no authority for the proposition that a new complaint should relate back to a prior complaint that already had a final judgment on the merits. We know of no authority providing that a wholly new cause of action may relate back to a different prior complaint. As such we affirm the trial court's ruling that the claims of *quantum meruit* and fraud should be dismissed pursuant to section 2-619 (735 ILCS 5/2-619 (West 2016)) because the claims were not filed within the period prescribed by the statute of limitations.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons we affirm the dismissal of plaintiffs' complaint pursuant to section 2-619. Plaintiffs' claim of breach of contract against Dae Yong Kim is barred by the doctrine of *res judicata*; plaintiffs' claim of breach of contract against Ok Sun Kim is barred by the statute of frauds; plaintiffs' claims of *quantum meruit* against defendants and of fraud against Dae Yong Kim are barred by the statute of limitations. The judgment of the circuit court of Cook County is affirmed.

¶ 36 Affirmed.