

**NOTICE**

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

2018 IL App (4th) 170603-U

NO. 4-17-0603

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 14, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

CB BLOOMINGTON PROPERTY, LLC, a Limited Liability Corporation,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
FRONTIER NORTH, INC., a Corporation,	)	No. 17CH92
Defendant-Appellee.	)	Honorable
	)	Rebecca S. Foley,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding the trial court properly dismissed plaintiff’s complaint for breach of contract and specific performance, as the unsigned contract failed to satisfy the statute of frauds.

¶ 2 In June 2012, plaintiff, CB Bloomington Property, LLC, a limited liability corporation, and defendant, Frontier North, Inc., a corporation, entered into negotiations regarding the sale of defendant’s property. The parties drafted a contract and exchanged e-mails regarding the contract, but only plaintiff signed the contract before defendant repudiated the deal. In April 2017, plaintiff filed a complaint seeking specific performance of the contract or damages. Defendant filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)), asserting the contract did not contain defendant’s signature and therefore was unenforceable under the statute of frauds (740 ILCS 80/2 (West 2016)). The trial court agreed and dismissed the complaint with prejudice.

¶ 3 Plaintiff appeals, asserting the trial court erred by dismissing the complaint because a series of e-mails accompanying the contract were sufficient to demonstrate defendant “signed” the contract despite the fact that defendant’s signature line on the contract remained blank. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2017, plaintiff filed a complaint alleging a breach of contract regarding the sale of certain property owned by defendant in exchange for \$115,000 and requesting specific performance of that contract or damages. Attached to the complaint were the June 2012 e-mail exchanges between the parties finalizing the terms of the contract.

¶ 6 Defendant’s representative, Dexter Craig, sent an e-mail on June 20, 2012, to plaintiff’s representative, David Bentley, stating,

“Attached you will find a copy of the purchase contract approved by legal today. Please be sure to fill in the notice section.

If you have any questions feel free to call me.”

¶ 7 The parties then exchanged e-mails regarding technical revisions. Later that day, Craig sent an e-mail to George Wood, plaintiff’s lawyer, stating, “Attached you will find the revised document with the changes you requested.”

¶ 8 After reviewing the e-mail, Wood mailed Craig a letter, stating,

“Enclosed with this letter please find original of Real Estate Purchase and Sale Agreement for the [property] now signed by my client, David T. Bentley, as Managing Member of [plaintiff].

Please return a copy of the Agreement to me via e[-]mail once it has been signed by [defendant's] representative.

We will order title policy for the referenced property and can close as soon as it is received and reviewed.”

¶ 9 Defendant did not tender a signed copy of the contract. On June 29, 2012, defendant sent a letter to plaintiff indicating it no longer wished to proceed with the sale of the property.

¶ 10 On June 15, 2017, defendant filed a combined motion to dismiss pursuant to section 2-619.1 of the Code alleging, under section 2-619(a)(7), the contract was not signed as required to sustain an action according to the statute of frauds (740 ILCS 80/2 (West 2012)). Plaintiff filed a response, arguing the parties' e-mail exchange was sufficient to demonstrate compliance with the statute of frauds. In August 2017, the trial court granted defendant's motion to dismiss with prejudice.

¶ 11 This appeal followed. During the pendency of the appeal, defendant filed a motion to dismiss a portion of the appeal because the disputed property had been sold to another party. Because of our holding, we deny the motion as moot.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff argues the trial court erred in granting defendant's motion to dismiss because the contract satisfied the statute of frauds.

¶ 14 Defendant alleged a violation of the statute of frauds as an affirmative defense under section 2-619(a)(7) of the Code (735 ILCS 5/2-619(a)(7) (West 2016)). A section 2-619 motion to dismiss admits all well-pleaded facts in the complaint and resolves all reasonable

inferences drawn from those facts in the plaintiff’s favor. *Roth v. Dillavou*, 359 Ill. App. 3d 1023, 1026, 835 N.E.2d 425, 429 (2005). Our review is *de novo*. *Id.* at 1027.

¶ 15 The statute of frauds provides, in relevant part,  
“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).

¶ 16 “Where a contract is enforced on the basis of a single signature, it must generally be signed by the party to be charged under the contract [citation] and delivered to the non-signing party who indicates acceptance by performing.” *Glabman v. Bouhall*, 81 Ill. App. 3d 966, 969, 401 N.E.2d 990, 993 (1980). Here, we have no performance by defendant demonstrating its acceptance of the contract. To the contrary, defendant’s only action was to revoke the agreement. Thus, the case turns on whether both parties—particularly defendant—entered into a signed writing accepting the agreement.

¶ 17 The question here is whether Craig’s e-mail response is sufficient to demonstrate defendant “signed” the contract when defendant’s signature line on the contract remained blank. Plaintiff argues the e-mail exchange constituted the necessary signing under the statute of frauds. “[A] writing has been considered ‘signed’ for the purpose of the statute even if it merely contains something which manifests that the instrument has been executed or adopted by the party to be charged by it.” *Just Pants v. Wagner*, 247 Ill. App. 3d 166, 173, 617 N.E.2d 246, 251 (1993). Plaintiff cites numerous cases in support of its argument that the e-mail exchange demonstrated

