No. 1-09-0955

FIFTH DIVISION
June 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALI YOUSEF HALEEM,	))	Appeal from the
	))	Circuit Court of
Plaintiff-Appellee and Cross-Appellant,	))	Cook County
	))	
v.	)	
	)	
GEORGE BING TONKS a/k/a JORGE CRESPO,	)	No. 04 CH 8981
	)	
Defendant-Appellant and Cross-Appellee,	)	
and ELOIDA CRUZ a/k/a ELOIDA ARCE,		Honorable
		Ronald F. Barkowicz,
Defendant and Cross-Appellee.		Judge Presiding.

JUDGE EPSTEIN delivered the judgment of the court.
Justices Joseph Gordon and Howse concurred in the judgment.

ORDER

Held: Where a defamation *per se* claim was based on statements made within one year of the filing of the complaint, it was not barred by the statute of limitations; where defendant did not establish his defamatory statements were made for the purpose of instituting legal proceedings, or otherwise as part of a judicial or quasi-judicial proceeding, the statements were not protected by an absolute privilege; and where plaintiff failed to establish the existence of a valid and enforceable oral repair contract, the trial court did not err in denying his breach of contract claim.

¶ 1 Defendant Jorge Crespo appeals a judgment of the circuit court of Cook County finding him liable for defamation and awarding plaintiff, Ali Yousef Haleem, $45,000 in damages. Crespo contends that the judgment should be reversed because the defamation claim is barred by the statute of limitations, and because the statements on which it is based are absolutely privileged. Haleem cross-appeals the trial court's denial of his defamation claim against defendant Eloida Cruz, and the denial of his breach of contract claim against both defendants. For the following reasons, we affirm.

BACKGROUND

¶ 2

This controversy arose out of an alleged oral contract to repair a 1999 Mazda Miata owned by Cruz, but primarily driven and maintained by Crespo, her son. Unfortunately, the state of the record on appeal leaves much to be desired, and the parties have supplied inaccurate citations in more than several instances. It appears, however, that the following facts are not in dispute. In November 2002, Crespo, a tow truck driver, towed the Miata from his mother's residence, where he lived, to a commercial towing facility owed by his employer and friend Hani Elayyan. Elayyan is also a friend of Haleem, a Chicago police officer, whom he has known since childhood. In December 2002, Haleem towed the vehicle from Elayyan's lot to his residence, where he performed a number of repairs on it. This dispute began when Haleem subsequently demanded, and Crespo refused to provide, payment for those repairs. Haleem retained possession of the vehicle and began to claim entitlement to a storage fee of $25 per day. On May 27, 2003, Cruz, with Crespo's help, filed a stolen vehicle report with the Chicago Police Department. That same day, Crespo filed a complaint against Haleem with the Police Department's Office of Professional Standards, which was forwarded to the

Police Department's Internal Affairs Division (IAD). On May 28, 2003, Haleem signed the Miata's certificate of title and claimed ownership of the vehicle as payment for the repairs. Following an investigation, the police concluded that Cruz's theft claim was unfounded. Nevertheless, on July 15, 2003, while the IAD investigation was ongoing, Haleem voluntarily returned the car to Cruz and placed a $4,300 lien on the vehicle. Crespo, aware of the lien, subsequently sold the vehicle to a third party. Haleem was later suspended for 20 days as a result of the IAD investigation.

¶ 3 On June 3, 2004, Haleem filed the instant lawsuit, bringing claims for violation of the Labor and Storage Lien Act (770 ILCS 45/0.01 *et seq*.) (count I), breach of contract (count II), quantum meruit (count III), and defamation *per se* (count IV). Defendants answered, denying the existence of any contract and raising a number of affirmative defenses, including unclean hands, fraud, and the existence of an unspecified privilege.

¶ 4 At trial, Elayyan testified that in the late summer or fall of 2002 Crespo asked to store the Miata on his commercial lot for a short period of time. Elayyan agreed, but after several months he told Crespo that the vehicle, which appeared to be inoperable, was obstructing business and had to be removed. Crespo asked Elayyan if he knew anyone who could "take care" of the vehicle. Elayyan said Haleem might be able to help and gave Crespo his phone number. Later that day, Haleem came to Elayyan's lot and spoke with Crespo. Several days later, with Crespo watching, Haleem towed the vehicle away. Elayyan said Crespo later gave him the Miata's certificate of title with instructions to give it to Haleem. When, months later, the dispute over the repair costs arose between Haleem and Crespo, Elayyan brought the two men together and attempted to broker a compromise. Elayyan said he convinced Haleem to lower his demand and offered to split the remaining cost with Crespo, but

Crespo refused to pay anything and threatened to call the police. No agreement was reached and Haleem and Crespo went their separate ways.

¶ 5 Haleem testified that Crespo approached him in December 2002 and asked for his help repairing the Miata, which was inoperable and had been sitting unused in Elayyan's lot for months. Haleem agreed to get the vehicle into "running shape" and "back to the way it was" in exchange for cash for parts and labor. Haleem also demanded the Miata's certificate of title, signed by the owner, as security for payment. He required the security because he knew Crespo was experiencing financial difficulty and, in fact, had been living out of the vehicle in the recent past. No schedule was set for completion of the repairs. No price or labor rate was set. They agreed that Crespo would give Haleem the signed certificate of title and bring him $200 or $300 a month and "apply it towards [Haleem's] labor and towards the parts." Soon thereafter, with Crespo's permission, Haleem towed the Miata to his house. Elayyan gave Haleem the signed certificate of title several days later. Haleem said he completed the repairs by February 2003 at a cost of approximately $3,000. Crespo, however, first delayed payment and eventually refused to pay Haleem, who retained possession of the vehicle. In March 2003, Haleem began to claim entitlement to a storage fee of $25 per day. On May 26, 2003, Elayyan brought Haleem and Crespo together and attempted to broker a compromise. Elayyan persuaded Haleem to reduce his demand and offered to cover half the remaining cost. Crespo refused to pay any amount and threatened to go to the police if the vehicle was not immediately returned. That was the last time Haleem and Crespo spoke. On May 28, 2003, Haleem signed the certificate of title, taking the Miata as payment for the his repairs per the agreement. In July 2003, he returned the Miata to Cruz after an IAD investigator questioned the authenticity of her signature on the

certificate of title. After Crespo sold the vehicle, Haleem filed the instant suit.

¶ 6 At trial, Crespo denied the existence of any agreement with Haleem to repair the Miata. According to him, the vehicle was operable and in no need of repair. Crespo said he towed the vehicle to Elayyan's lot to hide it from his mother's creditors and his estranged wife, who had the only key. Crespo denied that Elayyan demanded he remove the vehicle from the lot, denied giving Haleem permission to take it, denied he was present when Haleem towed it away, and denied giving Elayyan or Haleem the certificate of title. Although he alluded to an agreement whereby Haleem would take the Miata to a car dealership, he did not elaborate. Crespo claimed that after he towed the Miata to Elayyan's lot, he locked the certificate of title in the glovebox for safekeeping, albeit without a key. Crespo said that he did not try to retrieve the vehicle immediately after Haleem took it because he was in Puerto Rico for several months receiving cancer treatment. When Crespo returned to Chicago, he demanded that Haleem return the Miata, but Haleem refused and threatened Crespo's life. Crespo said he then explained the situation to his mother and helped her file a stolen vehicle report with the police on May 27, 2003. He also filed a complaint against Haleem with the Office of Professional Standards. Crespo admitted that he was aware of Haleem's lien when he later sold the Miata.

¶ 7 Cruz testified that she purchased the Miata in 2000. She said that shortly after filing for bankruptcy in November 2002, she asked Crespo to hide the vehicle from her creditors and from his estranged wife, whom she feared might take it. Cruz acknowledged giving Crespo the certificate of title, but insisted it was unsigned and the signature that subsequently appeared on it was not hers. Like Crespo, Cruz claimed that the vehicle was always operable, but added that it had been sitting

unused at her house for months before Crespo towed it away. Cruz said that several months after Crespo took the Miata, another of her sons told her that Haleem was driving the Miata around town. She then asked Crespo about the whereabouts of vehicle and he told her it was stolen. With Crespo acting as her translator, Cruz went to the police on May 27, 2003, and filed a stolen vehicle report. Cruz further testified that she never met or had any dealings with Haleem before he returned the Miata to her in July 2003, and everything she knew about the circumstances of his possession of the vehicle, she learned from Crespo.

¶ 8 Three police officers involved in the investigation of this matter also testified at trial. Officer Michael Nowacki testified, in relevant part, that he spoke with and helped defendants complete the stolen vehicle report on May 27, 2003, at which time they told him the vehicle was stolen from Elayyan's lot sometime the previous night by an unknown offender.

¶ 9 Officer David Sivicek testified that he investigated the alleged theft and, after interviewing all the relevant parties, concluded that the stolen vehicle report was unfounded. He reached this conclusion based on, *inter alia*, statements made by Crespo that he asked Haleem to tow the vehicle from Elayyan's lot, and Haleem's stated willingness to return the vehicle if and when he was paid for the repairs. Officer Sivicek also said Crespo told him the Miata was inoperable during the period in question.

¶ 10 Officer Don Lewis, the IAD agent assigned to investigate Crespo's complaint, testified that Crespo alleged Haleem: (1) took possession of and performed unauthorized repairs on the Miata; (2) wrongfully refused to return the vehicle unless Crespo paid him several thousand dollars; and (3) transferred title in the vehicle to himself without the consent of the owner. Officer Lewis said

Crespo repeated these allegations during an investigatory interview on June 17, 2003, during which Crespo also said that he authorized Haleem to tow the inoperable vehicle from Elayyan's lot. Officer Lewis said that Crespo's allegations, as well as a fourth allegation added for operating an unlicensed repair shop from a place of residence, were subsequently sustained and Haleem was suspended for 20 days as a result.

¶ 11 After trial, on March 11, 2009, the trial court entered judgment in favor or Haleem on his defamation claim against Crespo, finding that Crespo's actions were not privileged, and awarding Haleem $30,000 in compensatory damages and $15,000 in punitive damages. Although the trial court expressly found that Crespo's testimony was not credible, it ruled for defendants on the remainder of Haleem's claims, finding that Haleem failed to prove Crespo authorized the repair of the vehicle. The trial court also found that Cruz "was a passive actress in the proceedings and perhaps even a victim of her son's dispute with Plaintiff, and thus is not chargeable for any of Haleem's allegations."

¶ 12 On April 10, 2009, Haleem filed a post-trial motion, arguing that: (1) Crespo's counsel judicially admitted the existence of the oral repair contract in his closing argument; (2) the evidence overwhelmingly indicated the existence and breach of that contract; (3) the evidence indicated Cruz was aware of and authorized the contract; (4) because Cruz was aware of the contract, she was also liable for defamation; and (5) Haleem was entitled to $200,000 in damages relating to his defamation claim. That same day, defendants filed a notice of appeal. The trial court declined to alter its disposition of Haleem's claims, but entered an amended order on June 9, 2003, which was identical to the original order except for the inclusion of one sentence referencing Crespo's June 17, 2003

statements to Officer Lewis.

¶ 13 Crespo appeals, contending that: (1) the defamation claim is barred by the statute of limitations; and (2) his statements to the IAD are absolutely privileged. Haleem cross-appeals, contending that: (1) the trial court erred in ruling for defendants on the contract claim; and (2) the trial court erred in ruling for Cruz on his defamation claim. We address each argument in turn.

ANALYSIS

¶ 14 I. Defamation

¶ 15 *A. Statute of Limitations*

¶ 16

Crespo contends that the trial court's defamation finding was based on statements he made on May 27, 2003, statements that fall outside the one-year statute of limitations for defamation. The statute of limitations in Illinois for a defamation claim is one year from when the cause of action accrued (735 ILCS 5/13-201 (West 2006)) and its application is a question of law that is evaluated under a *de novo* standard of review. *First Baptist Church of Lombard v. Toll Highway Authority*, 301 Ill. App. 3d 533, 540 (1998). Here, the complaint, filed on June 3, 2004, makes clear that Haleem's defamation claim was based on statements made "[o]n or about June 3, 2003, and at various times thereafter." Not only did the trial court find generally for Haleem – as against Crespo – on that claim, it specifically found Crespo repeated his defamatory statements to the IAD on June 17, 2003. These latter statements were made within the one-year limit and, therefore, are not time barred.

¶ 17 *B. Privilege*

¶ 18

Crespo next contends, without explanation, that his statements to the IAD are absolutely privileged because they were "statements made to law enforcement officials for the purpose of instituting legal proceedings," and an "absolute privilege should apply when, as in this case, statements made to an Internal Affairs Investigator result in the imposition of discipline." Haleem responds, *inter alia*, that knowingly false statements made to police investigators are not absolutely privileged. Whether a defamatory statement is privileged is a question of law, which we review *de novo*. *Zych v. Tucker*, 363 Ill. App. 3d 831, 834 (2006). The party asserting the privilege, in this case Crespo, carries the burden of establishing its existence. *Clarage v. Kuzma*, 342 Ill. App. 3d 573, 584 (2003).

> "Defamatory statements that would otherwise be actionable will escape liability when the conduct is to further an interest of social importance such as the investigation of an alleged crime. [Citations.] Defamatory statements are not actionable if they are protected by an absolute or conditional privilege. [Citation.] * * * 'When absolute privilege attaches, no action for defamation lies, even where malice is alleged.' [Citation.]" *Morris v. Harvey Cycle and Camper, Inc.*, 392 Ill. App. 3d 399, 404 (2009).

In Illinois, "[i]t has long been held that statements made to law enforcement officials, for the purpose of instituting legal proceedings, are granted absolute privilege." *Vincent v. Williams*, 279 Ill. App. 3d 1, 7 (1996). That narrow privilege, however, does not apply to any and all statements made to law enforcement officials. It has only been applied to protect those reporting unlawful activity to law enforcement officials for the purpose of instituting criminal proceedings. *See Starnes v. International*

Harvester Co., 184 Ill. App. 3d 199, 203 (1989) (abrogated on other grounds in *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 108 (1996)) (statements to federal law enforcement officials accusing plaintiff of judicial misconduct absolutely privileged); *Layne v. Builders Plumbing Supply Co., Inc.*, 210 Ill. App. 3d 966, 971-73 (1991) (statements to police accusing plaintiff of threatening, harassing and assaulting a co-worker absolutely privileged); *Vincent*, 279 Ill. App. 3d at 7-8 (statements to police accusing plaintiff of aggravated assault absolutely privileged); *Morris*, 392 Ill. App. 3d at 404-06 (statements to police accusing plaintiff of auto theft absolutely privileged); see also *Doe v. Kutella*, No. 93 C 7183, 1995 WL 758131 (N.D.Ill. Dec. 20, 1995) (stating that the absolute privilege for reporting crimes to law enforcement officials does not apply to complaints of police misconduct made to the City of Evanston's Internal Investigations Division). Here, the facts of the record, especially the prior termination of the Police Department's criminal investigation, demonstrate that Crespo's statements were not generated with the intent to institute criminal proceedings. It therefore cannot be said that the statements fall within the privilege relied on by Crespo. This is not to say that only statements made to law enforcement officials for the purpose of instituting criminal proceedings are absolutely privileged. We hold only that this particular privilege, the only claimed by Crespo, does not apply here.

¶ 19 Illinois courts have applied an absolute privilege to "actions required or permitted by law in the course of judicial or quasi-judicial proceedings as well as actions 'necessarily preliminary' to judicial or quasi-judicial proceedings." *Layne*, 210 Ill. App. 3d at 969. Crespo's unsupported assertion that an absolute privilege "should apply when * * * statements made to an Internal Affairs Investigator result in the imposition of discipline" could be read to mean that his statements to IAD

were made as part of quasi-judicial proceeding. Crespo does not, however, claim that the IAD is a quasi-judicial body, nor does the record establish it is a quasi-judicial body, and it is not our duty to make that argument for him.

> "Bare contentions in the absence of argument or citation to authority do not merit consideration on appeal and are deemed waived. [Citation.] A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993).

We note, in the interest of thoroughness, that:

> "Whether any given proceeding is quasi-judicial depends upon the nature of the proceeding and the powers and duties of the body conducting the proceeding. [Citation.] Six powers have been identified which differentiate a quasi-judicial body from a body performing merely an administrative function:
>
> > " '(1) [T]he power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) the power to enforce

> decisions or impose penalties.' " *Zych*, 363 Ill. App. 3d at 835 (quoting *Starnes v. International Harvester Co.*, 141 Ill. App. 3d 652, 655 (1986)).

"[N]ot all six powers are necessary to constitute a quasi-judicial body but the more such powers the body has the more likely it is to attain that status." *Id*.

¶ 20 The IAD appears to be charged with investigating complaints against police officers and making recommendations to the superintendent of police, who determines whether to seek to impose any discipline. The Municipal Code of Chicago provides that the IAD functions to investigate all misconduct complaints made against police officers that do not relate to the use of excessive force, domestic violence, coercion through violence, or verbal abuse. Chicago Municipal Code §§ 2-57-040(a), (b), (d). If, after conducting its investigation, the head of the IAD recommends sustaining an allegation made against a police officer, a recommendation for discipline is submitted to the superintendent of police. Chicago Municipal Code §§ 2-84-430, 2-84-330. The superintendent then decides whether to discharge or suspend the officer, and if the latter, for what period of time. Chicago Municipal Code § 2-84-050(4). Upon the filing of charges for which removal or discharge or suspension of more than 30 days is recommended, an evidentiary hearing before the Police Board is required. Chicago Municipal Code § 2-84-030. The Police Board, on the other hand, bears the hallmarks of a quasi-judicial body. It can hold evidentiary hearings, administer oaths, issue subpoenas and thereby secure the attendance and testimony of witnesses and written evidence, and its findings and decisions must be enforced by the superintendent. Chicago Municipal Code § 2-84-030. Having said that, we need not and do not decide that issue here.

¶ 21 In *Zych v. Tucker*, this court held, albeit in the context of the Cook County Sheriff's Office, that statements made to an investigatory body are not absolutely privileged. 363 Ill. App. 3d at 836-37. In that case, a Cook County Sheriff's police officer filed suit against an arrestee who wrote a letter to the Office of Internal Affairs of the Cook County Sheriff's Police Department (OIA) accusing the officer of, *inter alia*, using excessive force. *Id*. at 833. The officer's claims for defamation and malicious prosecution were dismissed by the trial court pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2008)) on the ground that the letter to OIA was a "permissible step" in a quasi-judicial proceeding and consequently absolutely privileged. *Id*. at 834. The plaintiff appealed, contending that the defendant's statements were protected, at most, by a qualified privilege. *Id*. The defendant argued that his complaint to the OIA was an absolutely privileged communication because " 'it [was] a permissible action in the course of a disciplinary process which can result in a hearing' " before the Cook County Sheriff's Merit Board (Merit Board). *Id*. at 835. After considering the powers of the Merit Board and applying the criteria for distinguishing quasi-judicial bodies from bodies performing merely administrative functions, discussed above, the court agreed that the Merit Board is a quasi-judicial body. *Id*. at 835-36. However, it also concluded the defendant's letter was not a preliminary step in a quasi-judicial proceeding because the letter was sent to the OIA, which is charged only with investigating complaints and making disciplinary recommendations to the sheriff. *Id*. at 836. As is the case here, the record did not support the conclusion that the investigatory body possesses any quasi-judicial powers of its own. *Id*. at 836-37. Further, the court noted that as a purely investigatory body, the OIA lacked the procedural safeguards mandated for proceedings before the Merit Board. *Id*. at 837. The

court concluded that "a citizen's complaint to a police officer's supervisor or the division within a police department charged with investigating police misconduct" should be subject to a qualified privilege, which is "based on the policy of protecting *honest communications* of misinformation in certain favored circumstances in order to facilitate the availability of correct information." (Alteration in original.) *Id*. at 837 (quoting *Kuwik v. Starmark Star Marketing and Administration*, 156 Ill. 2d 16, 24 (1993)).

¶ 22 In this case, as in *Zych*, there is no evidence that the investigatory body to which Crespo's defamatory statements were made, the IAD, possesses any quasi-judicial powers. There is also no evidence, or even argument, that those statements were necessarily preliminary to a quasi-judicial proceeding. Therefore, it cannot be said, on this record, that Crespo's statements to the IAD are absolutely privileged. Moreover, Crespo does not contend that his statements are protected by a qualified privilege. We therefore affirm the trial court's finding that Crespo's statements are not privileged.

¶ 23 II. Breach of Contract

¶ 24

In his cross-appeal, Haleem challenges the trial court's finding for defendants on the breach of contract claim. Haleem argues that defense counsel judicially admitted the existence of an oral repair contract in his closing argument, and the manifest weight of the evidence supports the existence of that contract. Defendants respond that the trial court's ruling was not against the manifest weight of the evidence, and that defense counsel's relevant closing statements concerned legal issues not subject to judicial admission.

¶ 25 The trial court found, without additional clarification, that Haleem "failed to meet his burden of proof that Crespo authorized the repairs and use of the automobile." It is not clear whether the trial court meant by this that Haleem failed to establish offer and acceptance or a meeting of the minds. "[T]he issues of whether a contract existed, the parties' intent in forming it, and its terms are all questions of fact to be determined by the trier of fact." *Prignano v. Prignano*, 405 Ill. App. 3d 801, 810 (2010). "In reviewing a bench trial, we defer to the trial court's factual findings unless they are against the manifest weight of the evidence." *Lowe Excavating Co. v. International Union of Operating Engineers Local No. 150*, 327 Ill. App. 3d 711, 720 (2002). "A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence." *Brody v. Finch University of Health Sciences*, 298 Ill. App. 3d 146, 153 (1998).

¶ 26 "Judicial admissions are defined as deliberate, clear, unequivocal statements by a party about a concrete fact within that party's knowledge." *Smith v. Pavlovich*, 394 Ill. App. 3d 458, 468 (2009). They are "formal acts of a party or his attorney in court, dispensing with proof of a fact claimed to be true, and are used as a substitute for legal evidence at trial." *Lowe v. Kang*, 167 Ill. App. 3d 772, 776 (1988). "Attorneys are deemed agents of their clients for the purpose of making admissions in all matters relating to the progress and trial of an action." *Id*. "An admission by an attorney for a party during trial supersedes all proofs upon the point in question" and is binding on the client, regardless of the attorney's negligence. *Id*. "Whether or not a statement by an attorney in the course of a trial is a judicial admission depends upon the circumstances of the individual case and the giving of a consistent meaning to the statement within the context in which it is found." *Id*. at 777. In

noncriminal cases, "statements made by an attorney in closing arguments may be the basis from which a trial court finds a judicial admission." *Id.*; accord *Williams v. Cahill*, 258 Ill. App. 3d 822, 826 (1994).

¶ 27 In this case, during closing arguments, defense counsel stated:

> "We will accept Mr. Haleem's testimony that there was an express agreement that you would fix the car and that Mr. Crespo would pay him whatever it costs, that there was no mention made of storage charges, and that there was a provision in that express agreement, as the plaintiff said, that if Mr. Crespo did not pay for the repairs, the plaintiff would take that signed title and take it in his own name, take possession of the car. That's what the specific contract, the meeting of the minds was between the parties based on the evidence of record.
>
> That's what's before you, that's what the plaintiff testified to, and we're accepting that. That's what they agreed to and that's what he got. He did the repairs. He had asked Mr. Crespo, pay me. Mr. Crespo said, no, I'm not going to pay you. And Mr. Haleem signed the title over to himself and got the title in his name, and the contract has been fully executed. Nothing else is there to complain about in that contract. There's no quantum meruit. There's nothing else. He got the $10,000 car. He did the repairs.
>
> Later, there's evidence that Mr. Haleem gave the car back. If he gave the car back, he made a gift. He did it because somebody in the police department forced

> him to. It doesn't matter why he did it. He gave it back. That wasn't part of the contract. He can't sue Mr. Crespo because I gave it back to you, because I've decided to give it back and I'm reneging on my deal. I want to rescind my acceptance and performance of the contract. I want to give you back the car, and I want you to give me money for it. They had a deal.
>
> The deal was, you fix the car, I'll pay you for it. If I don't pay you for it, you take title to the car. That's the deal. That's fully consummated."

Setting aside the obvious legal conclusions in these statements and viewing the remaining portions in context, it is plain that defense counsel admitted pertinent factual matters, including the existence of an agreement that (1) Haleem would repair the Miata, (2) Crespo would pay for those repairs, and (3) if Crespo failed to pay, Haleem would keep the vehicle. These are binding judicial admissions, not expressions of opinion or law. This does not, however, necessarily mean plaintiff should prevail on his contract claim.

¶ 28 "To meet his burden in a breach of contract action, the plaintiff must establish an offer and acceptance, consideration, definite and certain terms of the contract, plaintiff's performance of all required contractual conditions, the defendant's breach of the terms of the contract, and damages resulting from the breach." *Mannion v. Stallings & Co.*, Inc., 204 Ill. App. 3d 179, 186 (1990). "A meeting of the minds between the parties will occur where there has been assent to the same things in the same sense on all essential terms and conditions." *Prichett v. Asbestos Claims Management Corp.*, 332 Ill. App. 3d 890, 896 (2002). "A contract 'is sufficiently definite and certain to be enforceable if the court is enabled from the terms and provisions thereof, under proper rules of

construction and applicable principles of equity, to ascertain what the parties have agreed to do.' " *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 29 (1991) (quoting *Morey v. Hoffman*, 12 Ill. 2d 125 (1957)). "When material terms are not ascertainable, there is no enforceable contract, even if the intent to contract is present." *Wagner Excello Foods Inc. v. Fearn Intern, Inc.*, 235 Ill. App. 3d 224, 229-30 (1992).

¶ 29 Even accounting for defense counsel's admissions, there was no apparent meeting of the minds on several essential terms. For instance, there was no agreement as to a price term, labor rate, or even a basic price structure, such as a cost-plus-fixed-fee arrangement. See *Panko v. Advanced Appliance Service*, 55 Ill. App. 3d 301, 304 (1977) (finding no meeting of the minds on oral repair contract where there was no evidence of agreement on the price term). Nor was there any discernable agreement as to the type and extent of repairs to be performed on the vehicle. These are essential terms. Indeed, we note that the Automotive Repair Act (815 ILCS 306/1 *et seq*. (West 2008)), which governs persons engaged in the business of automotive repair for compensation, requires customers be provided with, *inter alia*, a written estimated price for labor and parts for each specific repair to be performed, or a written price limit for each specific repair, and expressly prohibits performing additional repairs or exceeding that limit without the consent of the consumer. 815 ILCS 306/15(b) (West 2008). It also requires consumers' prior consent to any unanticipated repairs. 815 ILCS 306/25 (West 2008). Whether this lack of agreement is what the trial court relied on in denying Haleem's claim is irrelevant, as "we may affirm on any basis supported by the record, regardless of whether the trial court based its decision on the proper ground." *In re Marriage of Gary*, 384 Ill. App. 3d 979, 987 (2008). The trial court's judgment as to count II of the complaint is affirmed.

¶ 30 III. Eloida Cruz

¶ 31

Lastly, Haleem contends that the trial court erred in finding that Cruz was not actively involved in this matter and thus not liable for defamation. Characterizing that finding as "remarkably lenient and unprincipled," Haleem argues that Cruz's actions "should not be countenanced by this Court any more than our criminal courts [would] allow a jilted lover to throw acid in the face of an incident [*sic*] woman. The fact that Cruz used words instead of hydrochloric acid really makes no difference. Either way the victim is scared [*sic*] for life." We are not persuaded. The pertinent actions and events underlying this dispute were between Haleem and Crespo. It is undisputed that Cruz had no contact with Haleem until he returned the Miata to her in July 2003. The trial court's finding that Cruz is not involved in this matter is not against the manifest weight of the evidence.

CONCLUSION

¶ 32 Based on the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.