

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,)		
)		
<i>Plaintiff,</i>)		
)		
v.)	Case No.	2025-CH-05527
)		
BRANDON MCGIVERN,)	Judge	Eve M. Reilly
)		
<i>Defendant.</i>)	Courtroom	2405

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Plaintiff, Kyle Hadley ("Plaintiff"), by and through his counsel, respectfully submits this Response in Opposition to Defendant Brandon McGivern’s ("Defendant") Motion for Judgment on the Pleadings and states as follows:

I. Introduction

1. Defendant’s Motion for Judgment on the Pleadings is procedurally premature and substantively meritless. Judgment on the pleadings is proper only where no material issues of fact exist and the movant is entitled to judgment as a matter of law. Here, multiple factual disputes remain, and Plaintiff has alleged facts that, if proven, entitle him to relief.

2. Defendant overstates the impact of the Court’s September 29, 2025 order deeming Requests to Admit admitted. While those admissions narrow issues, they do not dispose of Plaintiff’s equitable claims, nor do they resolve factual disputes concerning possession, payments, and improvements made to the property.

3. Defendant’s reliance on the Statute of Frauds is misplaced. Illinois law recognizes multiple exceptions to the Statute, including part performance, equitable estoppel, and reliance.

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Plaintiff has pleaded and produced evidence of such part performance—including payment of \$30,000 toward the property, continued possession, and improvements exceeding \$9,000—which courts have held sufficient to remove an oral agreement from the Statute.

4. Defendant’s attempt to frame this dispute as a mere debtor-creditor relationship ignores Plaintiff’s substantial allegations of joint ownership, reliance, and equitable entitlement to the property. These claims cannot be resolved on the pleadings because they require factual determinations.

5. Finally, Defendant’s assertions of fabrication and estoppel raise questions of credibility and intent—classic fact questions unsuited to judgment on the pleadings. For these reasons, and as set forth more fully below, Defendant’s motion must be denied.

II. Standard for Judgment on the Pleadings

6. A motion for judgment on the pleadings under 735 ILCS 5/2-615(e) is a drastic remedy and should be granted only where the pleadings disclose no genuine issue of material fact and the movant is clearly entitled to judgment as a matter of law. See *G.M. Sign, Inc. v. State Farm Fire & Cas. Co.*, 2014 IL App (2d) 130593, 385 Ill. Dec. 70, 18 N.E.3d 70.

7. In deciding such a motion, the court must accept all well-pleaded facts in the non-movant’s favor as true and draw all reasonable inferences in that party’s favor. See *Nat’l Fire Ins. Co. of Hartford v. Visual Pak Co.*, 2023 IL App (1st) 221160, 477 Ill. Dec. 608, 243 N.E.3d 888, 27. Courts repeatedly caution that judgment on the pleadings “is not intended to test the merits of a case” but only to dispose of matters where, on the face of the pleadings alone, no material dispute exists. See *Pied Piper Yacht Charters Corp. v. Corbel*, 17 Ill. App. 3d 281, 308 N.E.2d 35 (1974).

8. Even where admissions narrow the issues, judgment on the pleadings remains inappropriate if any material factual disputes survive. See *Granville Nat'l Bank v. Alleman*, 237 Ill. App. 3d 890, 178 Ill. Dec. 685, 605 N.E.2d 124 (1992). Because Plaintiff has alleged facts showing possession, payments, improvements, and reliance—facts that invoke equitable exceptions to the Statute of Frauds—genuine issues remain, and Defendant's motion improperly invites the Court to weigh allegations at the pleadings stage.

III. Plaintiff's Allegations of Partial Performance Create a Factual Dispute

9. Plaintiff has alleged—and Defendant does not dispute—that Plaintiff took possession of 6122 N. Winthrop Ave., Unit C, in reliance on the parties' agreement. Possession of the premises pursuant to the agreement is a key factor in establishing partial performance. This fact alone demonstrates that disputed issues remain.

10. Plaintiff has also documented payments of \$30,000 toward the property. These payments were not voluntary gifts but were made in reliance on the agreement that Plaintiff would obtain an ownership interest in the property. The existence of these payments creates factual issues inappropriate for judgment on the pleadings.

11. Plaintiff has invested over \$9,000 in improvements, repairs, and contractor expenses. Such improvements were made openly and with Defendant's knowledge, further demonstrating reliance on the agreement. These improvements strengthen Plaintiff's argument for part performance.

12. Illinois courts have consistently held that possession combined with payment or improvements constitutes part performance sufficient to remove an oral agreement from the

Statute of Frauds. *See, e.g.,* Leekha v. Wentcher, 224 Ill. App. 3d 344, (1991).¹ Plaintiff's allegations meet this standard and therefore preclude judgment on the pleadings.

13. Collectively, these facts create material issues that cannot be resolved on the pleadings. Defendant's motion improperly seeks dismissal of claims that require a fact-intensive inquiry. For this reason, the Court should deny the motion.

IV. Defendant's Reliance on Deemed Admissions Creates a Factual Dispute

14. Defendant contends that the Court's September 29, 2025 order deeming Requests to Admit admitted resolves this case. This assertion is incorrect and exaggerates the legal effect of admissions under Rule 216. The admissions cannot override equitable claims supported by independent facts.

15. The deemed admissions establish only that no formal written contract exists. However, they do not negate Plaintiff's allegations of part performance, reliance, possession, and improvements. These allegations stand independently of a written agreement.

16. Illinois law also recognizes that equitable doctrines such as unjust enrichment and constructive trust remain available despite the Statute of Frauds when necessary to avoid

¹ "Courts which have granted specific performance based on a party's partial performance have required far more significant action on the part of the party seeking to enforce an oral contract outside the Statute of Frauds than the present plaintiffs even allege. A binding contract has been found where the purchaser had paid full consideration for the property and also took possession; where the purchaser made a down payment and five monthly payments towards the purchase price, took possession of the property, and made improvements to the property; and where the party seeking relief has fully performed the agreement." *Leekha v. Wentcher*, 224 Ill. App. 3d 344, 350(1991) (internal citations omitted).

injustice. *See National Union Fire Insurance v. DiMucci*, 2015 IL App (1st) 122725, 67.² This preserves Plaintiff's ability to pursue equitable remedies.

17. The admissions streamline certain issues but do not extinguish Plaintiff's claims. They cannot resolve factual questions regarding payments, improvements, and Plaintiff's reliance. Those issues remain for trial.

18. Defendant's argument that admissions dispose of the entire case improperly elevates procedural rulings over substantive equity. For this reason, the Court should reject Defendant's reliance on admissions as grounds for judgment on the pleadings.

V. Equitable Doctrines Preserve Plaintiff's Claims

19. Illinois courts recognize that the Statute of Frauds cannot be used as an instrument of fraud. Where one party has relied to his detriment, equity provides remedies to prevent unjust enrichment. *See Montgomery v. Kirkpatrick*, 162 Ill. App. 59 (1911) (holding that part performance removed an oral agreement from the Statute of Frauds).³

20. Plaintiff has alleged detrimental reliance by selling a prior condominium, investing proceeds into the property, and maintaining possession under the agreement with Defendant. These allegations reflect concrete actions that equity protects. *See Klemp v. Hergott Group, Inc.*, 267 Ill. App. 3d 574, 581 (1st Dist. 1994) and *Geddes v. Mill Creek Country Club*,

² "A 'cause of action based upon unjust enrichment does not require fault or illegality on the part of [the] defendant; the essence of the cause of action is that one party is enriched and it would be unjust for that party to retain the enrichment.'" *Nat'l Union Fire Ins. Co. v. DiMucci*, 2015 IL App (1st) 122725, 67.

"Although some form of wrongdoing is generally required for the imposition of a constructive trust, wrongdoing is not always a necessary element... 'When a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not retain it, a constructive trust can be imposed to avoid unjust enrichment,' and it may be imposed in the case of mistake." *Id.* 76–77.

³ "The Statute of Frauds was not enacted to facilitate the perpetration of and to protect fraud, but to prevent it, and the courts will not permit the statute to be used as an engine of fraud." *Montgomery v. Kirkpatrick*, 162 Ill. App. 59 (1911).

Inc., 196 Ill. 2d 302, (2001)(recognizing equitable estoppel where a party reasonably relied on an agreement).⁴

21. Defendant's motion attempts to eliminate all equitable recourse by invoking the Statute of Frauds. This effort is contrary to Illinois precedent, which preserves equitable remedies where necessary to prevent injustice. See *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 844, (1998)(unjust enrichment is an independent remedy where equity demands relief).⁵

22. At a minimum, Plaintiff's claims for unjust enrichment, constructive trust, and quantum meruit cannot be dismissed on the pleadings. These claims turn on equitable balancing and factual inquiry into the parties' conduct. See *Tummelson v. White*, 2015 IL App (4th) 150151 (constructive trust is available to prevent unjust enrichment).⁶

23. Defendant's request for judgment on the pleadings seeks a premature decision on equitable claims requiring evidentiary development. Plaintiff's allegations are sufficient to survive this stage. The motion should therefore be denied.

VI. Conclusion

⁴ "A court will not rewrite a contract to suit one of the parties, but will enforce the terms as written." *Klemp v. Hergott Group, Inc.*, 267 Ill. App. 3d 574, 581 (1994).

The court also recognized that "Equitable estoppel may be defined as the effect of the person's conduct whereby the person is barred from asserting rights that might otherwise have existed against the other party who, in good faith, relied upon such conduct and has been thereby led to change his or her position for the worse." *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 256 Ill. Dec. 313, 751 N.E.2d 1150 (2001) 313.

⁵ "A plaintiff may recover under the theory of unjust enrichment if the defendant unjustly retained a benefit to plaintiff's detriment, and 'defendant's retention of the benefit violates the fundamental principals of justice, equity and good conscience.'" *Stathis v. Geldermann, Inc.*, 295 Ill. App. 3d 848, 864 (1998).

"A cause of action based upon unjust enrichment does not require fault or illegality on the part of defendants; the essence of the cause of action is that one party is enriched, and it would be unjust for that party to retain the enrichment." *Id.*

⁶ "A constructive trust rectifies unjust enrichment, not just wrongdoing. 'When a person has obtained money to which he is not entitled, under such circumstances that in equity and good conscience he ought not retain it, a constructive trust can be imposed to avoid unjust enrichment.'" *Tummelson v. White*, 2015 IL App (4th), 1, 27.

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's Motion for Judgment on the Pleadings in its entirety and permit this case to proceed to discovery and trial on the merits.

Dated: October 3, 2025

Respectfully Submitted,

By: /s/Mason Cole
Attorney for the Plaintiff

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