

FILED
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Mariyana T. Spyropoulos
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

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

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
STAY SUMMARY JUDGMENT BRIEFING SCHEDULE**

NOW COMES Defendant, BRANDON MCGIVERN, pro se, and respectfully
opposes Plaintiff's Motion to Stay Summary Judgment Briefing Schedule Pursuant to
Illinois Supreme Court Rule 191(b). In support thereof, Defendant states as follows:

I. INTRODUCTION

1. Plaintiff asks this Court to stay the summary judgment briefing schedule so he
can depose Defendant. This is the second time Plaintiff has filed this motion. The first
version was denied on January 26, 2026 because the supporting affidavit was signed by
counsel rather than the party, a basic Rule 191(b) requirement. Plaintiff refiled the
identical motion the same day with a corrected affidavit. The substance remains meritless
for five independent reasons: (a) Plaintiff's affidavit does not meet the mandatory
specificity requirements of Rule 191(b); (b) the affidavit mischaracterizes the parties'
communications and is contradicted by documentary evidence; (c) Plaintiff never served
any written discovery on Defendant in nine months of litigation; (d) Defendant's

summary judgment motion relies entirely on Plaintiff's own deemed admissions and documents, not Defendant's testimony; and (e) Plaintiff took no discovery action whatsoever after December 22, 2025.

**II. PLAINTIFF'S AFFIDAVIT FAILS THE MANDATORY REQUIREMENTS
OF RULE 191(b)**

2. Rule 191(b) provides that when material facts are "known only to persons whose affidavits affiant is unable to procure," the affiant must: (1) name the persons; (2) show why their affidavits cannot be procured; and (3) state "what affiant believes they would testify to if sworn, with his reasons for his belief." Ill. S. Ct. R. 191(b). These requirements are mandatory. *Jiotis v. Burr Ridge Park Dist.*, 2014 IL App (2d) 121293, 28.

3. Plaintiff's affidavit fails on elements (2) and (3). While it names Defendant as the person to be deposed, it does not state what Mr. Hadley believes Defendant would testify to. It vaguely references "factual assertions, intent-based arguments, and credibility determinations" (Hadley Aff. 8) without identifying a single specific fact that Plaintiff expects to elicit or explaining how that testimony would create a genuine issue of material fact.

4. These specificity requirements exist to prevent fishing expeditions disguised as discovery requests. A party cannot obtain a stay of summary judgment by filing an affidavit that says, in substance, "I need to depose the other side about general things." If that were sufficient, every summary judgment motion could be defeated by a boilerplate

affidavit requesting a deposition, rendering Rule 191(b) meaningless. This Court should deny the motion on this basis alone.

III. THE AFFIDAVIT MISCHARACTERIZES THE PARTIES'
COMMUNICATIONS

5. Mr. Hadley's affidavit states that Defendant "refused to provide any deposition availability unless Plaintiff first obtained leave of Court." (Hadley Aff. 4.) This is contradicted by Attorney Cole's own contemporaneous email.

6. Attorney Cole contacted Defendant by telephone in October 2025. The primary purpose of that call was to discuss settlement, not depositions. To the extent depositions were mentioned, it was in passing. On October 28, 2025, Attorney Cole emailed Defendant: "Regarding depositions, Parties can schedule depositions at any time, and leave of court is not necessary. I am requesting your availability to fit your schedule." (Exhibit A.) If Defendant had "refused" availability and "demanded leave of Court" during the call, Attorney Cole would not have followed up by politely requesting availability.

7. Defendant's October 30, 2025 response addressed settlement issues and the November 5, 2025 hearing. (Exhibit B.) It did not mention depositions, refuse a deposition, or demand leave of court.

8. Attorney Cole never followed up. His October 28 email threatened: "If you are unwilling to provide, we will simply issue a Notice and compel your availability." He never issued that notice. On November 5, 2025, Attorney Cole asked this Court to compel Defendant's deposition; the Court declined while five pending motions remained

unresolved. Those motions were resolved on December 22, 2025. From that point forward, Attorney Cole never served a deposition notice, never filed a motion for expedited deposition, never emailed Defendant requesting dates, and never served a single written discovery request.

9. This is not the first time Attorney Cole has made false statements in this litigation. On September 29, 2025, Attorney Cole stated on the record that he "completely fabricated" responses to Defendant's requests for admission. This Court granted Defendant's motion to strike Exhibit B as fabricated evidence. Attorney Cole's representations deserve no credibility.

IV. PLAINTIFF NEVER SERVED ANY WRITTEN DISCOVERY ON DEFENDANT

10. Plaintiff has never served a single written discovery request on Defendant; no interrogatories under Rule 213, no document requests under Rule 214, no requests for admission under Rule 216, no written deposition under Rule 212(b), and no deposition notice of any kind. In 287 days of litigation, Plaintiff served zero discovery on Defendant. By contrast, Defendant served comprehensive written discovery on Plaintiff just 35 days after suit was filed.

11. The Court never entered a formal discovery stay. The November 5, 2025 Order (Plaintiff's own Exhibit 1) says nothing about discovery, it simply set the December 22, 2025 hearing date. The Court orally indicated it would not compel Defendant's deposition attendance while five motions were pending. That is not a discovery stay. Plaintiff remained free to serve written discovery at any time and chose to

pursue none.

12. Rule 191(b) requires due diligence. A party who never attempted any form of written discovery cannot claim he was "procedurally barred" from obtaining information. Plaintiff's exclusive demand for oral deposition, while ignoring every less-burdensome alternative, reveals this motion's true purpose: delay.

V. DEFENDANT'S SUMMARY JUDGMENT MOTION RELIES ON
PLAINTIFF'S OWN EVIDENCE

13. Defendant's Motion for Summary Judgment relies entirely on Plaintiff's own evidence:

- Deemed Admission #23: Plaintiff has no written agreement with Defendant
- Deemed Admission #22: Plaintiff knows oral real estate agreements are void
- Deemed Admission #21: Plaintiff is a licensed real estate agent
- Deemed Admission #15: Plaintiff texted "Sell the house. I'll move out"
- Deemed Admission #26: Plaintiff fabricated the equity tracking document
- Plaintiff's February 14, 2025 email demanding "return" of his \$30,000
- Plaintiff's Complaint 6: Admits Defendant is the "record titleholder"
- December 22, 2025 Order: Dismissing Plaintiff's ownership claims with

prejudice

14. Defendant's intent, credibility, or testimony is irrelevant because the case turns on Plaintiff's conduct, not Defendant's. The Statute of Frauds analysis is purely legal: Plaintiff admitted no written agreement exists, and as a licensed real estate

professional, Plaintiff cannot claim reasonable reliance on an oral agreement he knew was void. No deposition of Defendant can change Plaintiff's own judicial admissions, which are "conclusive" and "binding." *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 550 (1st Dist. 2005).

15. This Court's December 22, 2025 Order identified the remaining question as "whether there was partial performance of the oral agreement by Plaintiff as an exception to the Statute of Frauds." That question concerns Plaintiff's conduct, whether Plaintiff made payments referable exclusively to the alleged agreement, and whether Plaintiff's actions are consistent with ownership rather than tenancy. *See Fanning v. Iversen*, 2014 IL App (1st) 121625, 37 (partial performance requires acts "exclusively referable" to the oral agreement). Defendant's motion addresses this using Plaintiff's own admissions, including Admission #15 ("Sell the house. I'll move out"), Admission #16 (condo proceeds used for car, not property purchase), and Plaintiff's own email demanding return of his "investment." Deposing Defendant does not answer the question of what Plaintiff did.

VI. LESS BURDENSOME ALTERNATIVES EXIST AND HAVE BEEN OFFERED

16. Plaintiff's exclusive demand for oral deposition ignores all other discovery methods. To the extent Plaintiff identifies specific factual questions material to his opposition, Defendant is prepared to respond through written means: (a) written interrogatories under Rule 213 within fourteen days of service; (b) written deposition under Rule 212(b) within fourteen days of service; or (c) a sworn affidavit addressing

specific factual questions within seven days.

17. There is no legitimate discovery need that cannot be satisfied through written means. Plaintiff's refusal to pursue written alternatives, the same methods Defendant used to obtain discovery from Plaintiff, confirms that this motion is about delay, not information.

VII. PLAINTIFF MADE NO EFFORT SINCE DECEMBER 22, 2025

18. This Court resolved its five pending motions on December 22, 2025. Defendant filed his Motion for Summary Judgment on January 2, 2026. In the sixteen days between those events, Plaintiff did not serve a deposition notice, email Defendant requesting dates, file a motion for expedited deposition, or serve any written discovery. Instead, Plaintiff filed this motion to stay.

19. When this Court denied the motion on January 26, 2026 due to a defective affidavit, Plaintiff refiled the identical motion the same day rather than serving a single interrogatory. As of this filing, 70 days after December 22, Plaintiff has still served zero discovery of any kind. This demonstrates that Plaintiff's goal is delay, not information.

VIII. PREJUDICE TO DEFENDANT

20. This motion must be understood in context. The eviction case (No. 2025-M1-707919) is stayed "pending the outcome" of this Chancery case. Every procedural delay here extends that stay. On December 22, 2025, this Court dismissed Plaintiff's ownership claims (Counts III and IV) with prejudice and entered default judgment on Defendant's counterclaims. Plaintiff's only remaining claims (Counts I and

II) seek monetary damages that do not require continued occupancy.

21. Since December 22, 2025, serial procedural motions have produced three months of delay without any party addressing the merits of Defendant's summary judgment motion:

- January 7, 2026: Motion to Stay MSJ (attorney affidavit)
- January 26, 2026: Denied; refiled same day with corrected affidavit
- January 27, 2026: Motion to Strike Prove-Up — filed one day after raising no objection at the hearing
- February 2, 2026: Summary judgment briefing stayed; hearing pushed to March 17, 2026

22. The financial harm is concrete and ongoing. Plaintiff occupies Defendant's furnished three-bedroom townhouse at \$2,080 per month, far below the \$3,259 average market rate established by 14 comparable properties. Defendant carries \$2,303.69 per month in mortgage obligations, guaranteeing a monthly deficit of \$223.69. The gap between use-and-occupancy and market rate represents \$1,179 per month in foregone rental income. Each additional month of delay costs Defendant \$1,402.69 in combined losses. Meanwhile, Plaintiff continues collecting unauthorized subletting income from Defendant's property (Deemed Admission #18), profiting from the very delay these motions create.

23. Granting this stay would reward the very misconduct this Court has repeatedly sanctioned: fabrication of evidence, defaults on discovery obligations, and serial procedural delay.

IX. CONCLUSION

WHEREFORE, Defendant Brandon McGivern respectfully requests this Court:

- A. DENY Plaintiff's Motion to Stay Summary Judgment Briefing Schedule;
- B. Find that Plaintiff's Rule 191(b) affidavit fails the mandatory specificity requirements by omitting any statement of what Plaintiff believes Defendant would testify to and any reasons for that belief;
- C. Find that Plaintiff's failure to serve any written discovery in nine months of litigation precludes Rule 191(b) relief;
- D. In the alternative, if the Court is inclined to permit additional discovery, order that: (i) Plaintiff serve written interrogatories or written deposition questions under Rule 212(b) within seven (7) days; (ii) Defendant shall respond within fourteen (14) days of service; (iii) no extension of the current briefing schedule shall be granted; and (iv) Plaintiff's response to Defendant's Motion for Summary Judgment shall be due within fourteen (14) days of Defendant's discovery responses;
- E. Grant such other and further relief as this Court deems just and proper.

Dated: March 1, 2026

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, *Pro Se*

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Response in Opposition to Plaintiff's Motion to Stay Summary Judgment Briefing Schedule.** was served upon Plaintiff's counsel by email to mcole@colesadkin.com on March 1, 2026.

/s/ Brandon McGivern
Brandon McGivern, *Pro Se Defendant*

EXHIBIT INDEX

Exhibit A: October 28, 2025 Email from Attorney Cole to Defendant (requesting deposition availability)

Exhibit B: October 30, 2025 Email from Defendant to Attorney Cole (response addressing settlement and hearing)

EXHIBIT A

October 28, 2025 Email from Attorney Cole to Defendant
(requesting deposition availability)



Brandon McGivern [REDACTED]

Re: Hadley v. McGivern, 25-CH-05527--Plaintiff's settlement offer - RULE 408 - SETTLEMENT COMMUNICATION

Mason Cole <mcole@colesadkin.com>

Tue, Oct 28, 2025 at 8:49 AM

To: Brandon McGivern [REDACTED]

Cc: Carly Brandt <admin@colesadkin.com>

Brandon, lots to unpack here, but I appreciate there is a fundamental difference between the Parties [REDACTED]
[REDACTED] I think we should have [REDACTED] at this
early stage to avoid the cost and time of litigation. But I appreciate I cannot force you to participate.

Regarding depositions, Parties can schedule depositions at any time, and leave of court is not necessary. I am requesting your availability to fit your schedule. If you are unwilling to provide, we will simply issue a Notice and compel your availability.

[Quoted text hidden]

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EXHIBIT B

October 30, 2025 Email from Defendant to Attorney Cole
(response addressing settlement and hearing)



Brandon McGivern [REDACTED]

Re: Hadley v. McGivern, 25-CH-05527--Plaintiff's settlement offer - RULE 408 - SETTLEMENT COMMUNICATION

Brandon McGivern [REDACTED]

Thu, Oct 30, 2025 at 6:01 PM

To: Mason Cole <mcole@colesadkin.com>
Cc: Carly Brandt <admin@colesadkin.com>
[REDACTED]

Mason,

My settlement offer expired at 5:00 PM today. There are no ongoing settlement negotiations.

[REDACTED] proposal ignored:

- [REDACTED] in defaulted counterclaims [REDACTED]
- [REDACTED] in additional, continuing, holdover damages ([REDACTED])
- [REDACTED] in unpaid rent
- [REDACTED] in pending sanctions
- The Court's September 29 findings of fabricated evidence and 30 deemed admissions confirming fabrication

You demanded [REDACTED] owes me [REDACTED] while illegally occupying my property. A settlement conference requires good faith positions from both sides.

See you November 5.

Brandon McGivern

Brandon McGivern
[REDACTED]

[Quoted text hidden]

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