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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 AMENDED AFFIRMATIVE DEFENSES

NOW COMES Defendant, BRANDON MCGIVERN, pro se, pursuant to this Court's September 30, 2025 Order, Defendant repleads his affirmative defenses stricken without prejudice and, based on subsequent judicial determinations and newly discovered evidence from Plaintiff's admissions and discovery, asserts additional defenses that have become apparent through the litigation process.

INTRODUCTION

1. On September 29, 2025, this Court granted Defendant's Motion to Deem Admissions, establishing thirty (30) judicial admissions that conclusively prove Plaintiff Kyle Hadley, a licensed Illinois real estate agent, has no valid claim to the property at 6122 N. Winthrop Avenue, Unit C, Chicago, Illinois.
2. On the same date, this Court granted Defendant's Motion to Strike Exhibit B, finding that Plaintiff fabricated evidence central to his claims and imposing Rule 137 sanctions.
3. On June 23, 2025, Defendant filed a notarized Affidavit under penalty of perjury swearing he has no intention to sell the Property, intends to hold it as rental

investment generating \$2,900-\$3,200 monthly income, and has never listed the Property for sale, directly contradicting Plaintiff's claims of irreparable harm from potential sale and establishing Defendant's legitimate investment purpose versus Plaintiff's unauthorized subletting scheme.

4. These judicial determinations, combined with Plaintiff's deemed admissions and his own discovery productions, including bank records showing at least \$14,650 in undisclosed subletting income, establish multiple complete defenses to all claims asserted. Notably, Plaintiff ignored Defendant's formal July 29, 2024 letter providing a reasonable, extended five-month deadline to complete the purchase by December 31, 2024, responding only with silence and later repudiation.

I. FIRST AFFIRMATIVE DEFENSE
(Statute of Frauds - 740 ILCS 80/2)

5. Plaintiff's claims are barred by the Illinois Statute of Frauds, 740 ILCS 80/2, which renders void any oral agreement for the sale of real estate.

6. Through judicial admissions, Plaintiff has admitted: (a) he is a licensed real estate agent in Illinois (Admission #21); (b) as a licensed real estate agent, he knows oral real estate purchase agreements are void under Illinois law (Admission #22); and (c) he has never had a written real estate purchase agreement with Defendant (Admission #23).

7. These admissions are dispositive. Plaintiff, as a licensed professional with actual knowledge of the legal requirements, cannot claim equitable exceptions to the Statute of Frauds. His professional status and admitted knowledge preclude any claim of reasonable reliance on an agreement he knew to be legally void.

8. Part performance doctrine cannot rescue claims pursued by a real estate professional who admits knowing such agreements are void ab initio.

II. SECOND AFFIRMATIVE DEFENSE **(Judicial Estoppel/Fabricated Evidence)**

9. Plaintiff is judicially estopped from pursuing claims based on fabricated evidence this Court has already stricken and sanctioned.

10. On September 29, 2025, this Court found that Plaintiff fabricated Exhibit B to his Complaint, imposed Rule 137 sanctions, and struck the exhibit. Through judicial admissions, Plaintiff has further admitted: (a) he altered or fabricated portions of the equity tracking document (Admission #26); and (b) he changed the purchase price from \$320,000 to \$300,000 in the fabricated document (Admission #27).

11. Plaintiff cannot maintain claims in equity while presenting fabricated evidence to this Court. The doctrine of judicial estoppel bars parties from taking positions inconsistent with those successfully maintained in the same proceeding. Having been found to have fabricated evidence, Plaintiff cannot now claim entitlement to equitable relief.

12. The fabricated evidence goes to the heart of Plaintiff's damage calculations and claimed equity interest, rendering his entire complaint unreliable and unenforceable.

III. THIRD AFFIRMATIVE DEFENSE **(Unclean Hands)**

13. Plaintiff's claims are barred by the doctrine of unclean hands based on his pattern of admitted misconduct directly related to the transaction at issue.

14. Plaintiff's unclean hands include: (a) fabricating court documents as found by

this Court and admitted in Admissions #26-27; (b) concealing water damage to the property for over four months while claiming beneficial ownership (Admission #11); (c) ignoring Defendant's formal July 29, 2024 deadline providing five months to purchase by year-end while continuing to profit from the property; (d) operating an unauthorized subletting business generating profits while claiming inability to purchase (Admission #18); (e) collecting at least \$14,650 in undisclosed rental income per Plaintiff's own bank records produced in discovery, including \$11,450 from Timothy Lenihan (August 2022 through April 2025) and \$3,200 from Michael Sheets (December 2024 through March 2025), with each tenant paying up to \$800 monthly; (f) unauthorized disposal of functioning appliances (Admission #28); (g) denying the property owner access by changing locks in September 2024 and locking Defendant out of his own property; (h) refusing to permit property inspection on May 10, 2025, despite weeks of advance notice and his counsel Mason Cole's representations via phone and email that property access "should not be a problem"; (i) pursuing false claims of potential sale despite Defendant's sworn June 23, 2025 Affidavit stating under penalty of perjury he has no intention to sell; (j) professional misconduct in pursuing claims he admits as a licensed agent are legally void; and (k) filing this action within three hours of receiving an eviction notice, demonstrating retaliatory intent.

15. Plaintiff's denial of owner access while simultaneously claiming beneficial ownership epitomizes unclean hands. One cannot claim equitable ownership of property while physically barring the legal owner from entering. The May 10, 2025 incident is particularly egregious as Plaintiff's counsel had assured access would be provided, yet Plaintiff refused entry when Defendant arrived, conduct documented by police body

camera footage. Most tellingly, after receiving formal notice to purchase by December 31, 2024, Plaintiff collected at least \$14,650 in rental profits while claiming financial inability to purchase, profiting from property he refuses to buy while denying access to its legal owner.

16. These acts of misconduct relate directly to the property and transaction at issue, barring any equitable relief.

IV. FOURTH AFFIRMATIVE DEFENSE
(First Breach and Anticipatory Repudiation)

17. Plaintiff materially breached any alleged agreement first and cannot recover for his own breach.

18. Plaintiff's first breaches and repudiations include: (a) October 2023: using condominium sale proceeds to purchase an expensive vehicle instead of the property as required (Admission #16); (b) July 29, 2024: Defendant provided formal written notice requiring Plaintiff to complete purchase by December 31, 2024 or the property would need to be put on the market and sold to another buyer, Plaintiff responded with complete silence and ceased all communication; (c) October 9, 2024: after ignoring the purchase deadline for over two months, explicitly stating "Sell the house. I'll move out" and "I'm over it" (Admission #15); (d) February 14, 2025: sending written repudiation admitting inability to purchase and demanding return of funds (Admissions #19-20), despite having collected thousands in subletting income; (e) systematic non-communication including 23-day silence periods during critical negotiation windows; and (f) explicit refusal to proceed stating "I'm not in a position to buy a house for many months" in February 2025 while simultaneously collecting up to \$1,600 monthly from subtenants Lenihan and

Sheets.

19. Under Illinois law, the first material breach excuses the non-breaching party's performance. Plaintiff's complete silence after receiving the formal July 29, 2024 deadline constituted anticipatory breach, followed by his explicit October 2024 and February 2025 repudiations, which relieved Defendant of any obligations.

V. FIFTH AFFIRMATIVE DEFENSE
(Waiver, Estoppel, and Laches)

20. Plaintiff has waived any rights under any alleged agreement through conduct inconsistent with purchase intent and is estopped from asserting claims after unreasonable delay.

21. Waiver is established by: (a) Plaintiff's repeated statements abandoning purchase intent; (b) Plaintiff's complete silence after receiving formal July 29, 2024 deadline to purchase by year-end; (c) operation of a profitable rental arbitrage business collecting at least \$14,650 while claiming inability to purchase; (d) demanding return of investment rather than pursuing purchase; (e) acknowledging inability to obtain financing despite generating up to \$1,600 monthly from subtenants; and (f) changing locks in September 2024 and denying owner access on May 10, 2025, conduct wholly inconsistent with working toward a purchase agreement.

22. Estoppel applies because: (a) Plaintiff made representations that he would not pursue purchase, including complete silence after the July 29, 2024 deadline letter; (b) Defendant reasonably relied on these representations; (c) Defendant would suffer prejudice if Plaintiff could now claim ownership after repudiation; and (d) Plaintiff's professional knowledge precludes claiming ignorance of legal requirements.

23. Laches bars claims due to: (a) unreasonable delay in asserting ownership claims after ignoring the formal July 29, 2024 purchase deadline; (b) concealment of material property damage during the delay period; (c) prejudice to Defendant from the delay; and (d) Plaintiff's strategic timing of filing only after receiving eviction notice in May 2025, nearly 10 months after the deadline letter.

VI. SIXTH AFFIRMATIVE DEFENSE
(Failure of Consideration)

24. Any alleged agreement fails for lack of consideration as Plaintiff failed to provide the promised purchase consideration.

25. The undisputed facts establish: (a) Plaintiff sold his condominium in October 2023, generating funds designated for property purchase; (b) instead of using these funds for the agreed purchase, Plaintiff bought an expensive vehicle (Admission #16); (c) on July 29, 2024, Defendant provided formal written deadline for Plaintiff to complete purchase by December 31, 2024, which Plaintiff ignored; (d) Plaintiff never tendered the purchase price or demonstrated ability to close by the year-end 2024 deadline; (e) Plaintiff explicitly admitted in February 2025 he could not purchase "for many months"; and (f) simultaneously, Plaintiff collected at least \$14,650 from subtenants per his own bank records, with continuing monthly income of up to \$1,600 from Lenihan and Sheets, yet claimed financial inability to purchase.

26. Without consideration, no enforceable agreement exists. Plaintiff had over two and a half years from June 2022 to December 2024 to arrange financing, including five months' formal notice after the July 29, 2024 deadline letter. His failure to purchase

while diverting funds to personal use and generating substantial rental profits constitutes complete failure of consideration.

VII. SEVENTH AFFIRMATIVE DEFENSE
(Impossibility of Performance)

27. Plaintiff's admitted inability to perform renders any alleged agreement unenforceable due to impossibility.

28. Plaintiff has admitted: (a) he cannot obtain mortgage financing; (b) despite five full months' notice from July 29, 2024 to December 31, 2024 deadline, he made no effort to secure financing; (c) he is "not in a position to buy a house for many months" (February 14, 2025 email); (d) he used designated purchase funds for other purposes; (e) he demanded return of investments rather than pursuing purchase; and (f) despite collecting at least \$14,650 from subtenants with ongoing monthly income up to \$1,600, he claims financial impossibility.

29. Illinois law does not require specific performance of impossible acts. Plaintiff's admitted financial inability to purchase, after having five full months' formal notice to secure financing, while simultaneously profiting from the property, makes performance impossible and bars equitable relief. Even with Defendant's sworn commitment in his June 23, 2025 Affidavit to hold the Property as rental investment rather than sell, Plaintiff admits he cannot perform the purchase he claims to seek.

VIII. EIGHTH AFFIRMATIVE DEFENSE
(Frustration of Purpose/Changed Circumstances)

30. The purpose of any alleged agreement has been frustrated by Plaintiff's transformation of the arrangement into an unauthorized commercial subletting operation.

31. The undisputed evidence from Plaintiff's own bank records shows: (a) any alleged agreement contemplated Plaintiff's personal residence pending purchase; (b) after receiving July 29, 2024 notice providing five months to complete purchase by year-end, Plaintiff instead expanded his rental arbitrage business; (c) Plaintiff collected \$11,450 from Timothy Lenihan from August 2022 through April 2025; (d) Plaintiff collected \$3,200 from Michael Sheets from December 2024 through March 2025; (e) each tenant pays between \$0-\$800 monthly per Plaintiff's discovery responses; and (f) Plaintiff has collected at least \$14,650 total while paying below-market rent to Defendant.

32. This fundamental change from prospective purchaser to commercial landlord, choosing to expand his unauthorized subletting business after receiving the July 29, 2024 purchase deadline rather than securing financing, frustrates any original agreement and renders it unenforceable. Meanwhile, Defendant's June 23, 2025 sworn Affidavit confirms his legitimate investment purpose: holding the Property for rental income of \$2,900-\$3,200 monthly as properly disclosed to the Court, not facilitating Plaintiff's undisclosed rental arbitrage scheme.

IX. NINTH AFFIRMATIVE DEFENSE
(No Adequate Remedy at Law Bars Equitable Relief/No Irreparable Harm)

33. Plaintiff has adequate legal remedies and cannot demonstrate irreparable harm necessary for equitable relief through constructive trust or injunction.

34. On June 23, 2025, Defendant filed a notarized Affidavit in this proceeding swearing under penalty of perjury that: (a) he has "no intention, plan, or desire to sell the Property"; (b) he intends to "hold it as a rental investment for the foreseeable future"; (c) rental income of \$2,900-\$3,200 monthly makes holding the Property "significantly more

financially advantageous" than selling; and (d) he has never listed the Property for sale nor taken any concrete steps toward selling. This sworn testimony, subject to felony perjury penalties under 735 ILCS 5/1-109, eliminates any claim of irreparable harm from potential sale.

35. If Plaintiff had any valid claim (which Defendant denies), money damages would fully compensate any alleged loss. The property is not unique - comparable rental units are readily available in Chicago. Plaintiff seeks monetary return of investments, confirming damages are calculable and adequate. Moreover, Plaintiff's true interest is profit, as evidenced by his collection of at least \$14,650 in subletting income and his failure to secure financing despite five full months' notice from July to December 2024, not ownership of this specific property.

36. Equity does not act where legal remedies suffice or where no irreparable harm exists. Plaintiff's request for extraordinary equitable relief, particularly injunctive relief to prevent a sale that Defendant has sworn under oath will not occur, must be denied.

X. TENTH AFFIRMATIVE DEFENSE
(Violation of Public Policy)

37. Enforcing Plaintiff's claims would violate Illinois public policy by permitting a licensed professional to benefit from pursuing claims he admits he knows are legally void.

38. Public policy considerations include: (a) Plaintiff is a licensed real estate agent subject to professional standards; (b) he admits knowing oral real estate agreements are void (Admission #22); (c) he admits having no written agreement (Admission #23);

(d) he ignored a formal July 29, 2024 deadline providing five months to purchase by December 31, 2024 while collecting rental profits; (e) he fabricated evidence to support legally void claims; (f) he continues discovery violations including producing 708 pages with identical Bates numbers; (g) he seeks injunctive relief based on false claims of potential sale despite Defendant's sworn June 23, 2025 Affidavit filed under penalty of perjury; and (h) enforcement would encourage professional misconduct and reward a licensed professional for violating the very laws he is licensed to uphold.

39. Illinois courts will not enforce agreements that violate public policy or reward professional misconduct. A licensed real estate agent who ignores formal purchase deadlines while profiting from unauthorized subletting, then seeks to enjoin a sale that the owner has sworn under oath will not occur, cannot seek equity's aid.

XI. ELEVENTH AFFIRMATIVE DEFENSE **(Mutual Rescission/Abandonment)**

40. The parties' conduct demonstrates mutual rescission and abandonment of any alleged agreement.

41. Evidence of mutual abandonment includes: (a) Defendant's formal July 29, 2024 letter providing year-end deadline to purchase, which Plaintiff ignored; (b) Plaintiff's silence and non-communication after receiving the deadline; (c) Plaintiff's October 2024 text: "Sell the house. I'll move out"; (d) Plaintiff's February 2025 email repudiating purchase and demanding investment return; (e) Defendant's acceptance of Plaintiff's repudiation through eviction proceedings; (f) Plaintiff's operation of a profitable rental business collecting at least \$14,650, inconsistent with any purchase agreement; and (g) extended periods of non-communication demonstrating abandonment.

42. Where both parties' conduct shows abandonment of an alleged agreement, no enforceable contract remains. Plaintiff's complete failure to respond to the formal July 29, 2024 deadline letter, followed by his explicit October 2024 abandonment stating "Sell the house. I'll move out," demonstrates mutual agreement to terminate any alleged purchase arrangement.

XII. TWELFTH AFFIRMATIVE DEFENSE
(Res Judicata/Collateral Estoppel Effect of Admissions and Affidavit)

43. Plaintiff's judicial admissions and Defendant's sworn affidavit conclusively establish facts that bar all claims as a matter of law.

44. The thirty deemed admissions, combined with Plaintiff's own bank records showing at least \$14,650 in subletting income and Defendant's notarized June 23, 2025 Affidavit swearing under penalty of perjury that he has no intention to sell the Property, constitute binding judicial evidence that: (a) withdraws these facts from dispute; (b) binds the parties in all proceedings; (c) cannot be contradicted by other evidence; and (d) establishes Defendant's complete defenses as a matter of law.

45. These binding admissions and sworn testimony, combined with Plaintiff's documented failure to respond to the formal July 29, 2024 purchase deadline, preclude Plaintiff from establishing any element of his claims, particularly his request for injunctive relief based on alleged threat of sale that Defendant has sworn will not occur.

CONCLUSION

For the foregoing reasons, Plaintiff's Complaint must be dismissed with prejudice. Plaintiff Kyle Hadley, a licensed real estate professional who admits he has no written agreement and knows oral real estate agreements are void, fabricated evidence to pursue

legally impossible claims. Despite being given five months' formal notice from July 29, 2024 to December 31, 2024 to complete the purchase, a reasonable deadline he ignored, Plaintiff instead concealed property damage, operated unauthorized commercial enterprises that generated at least \$14,650 in undisclosed income, and physically barred the property owner from access.

Most egregiously, Plaintiff seeks injunctive relief to prevent a sale that Defendant has sworn under penalty of felony perjury will not occur, as documented in Defendant's June 23, 2025 notarized Affidavit filed in this proceeding. No court of equity will aid a plaintiff who profits from property while claiming poverty, locks out the legal owner while demanding ownership rights, fabricates evidence while demanding truth from others, and seeks to enjoin conduct that exists only in his imagination.

WHEREFORE, Defendant Brandon McGivern respectfully requests this Court:

- A. DISMISS Plaintiff's Complaint with prejudice;
- B. ENTER judgment in favor of Defendant on all counts;
- C. AWARD Defendant costs and fees incurred defending against claims based on fabricated evidence;
- D. GRANT such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, *Pro Se*
5701 N Sheridan Rd #23G
Chicago, IL 60660



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Amended Affirmative Defenses** was served upon Plaintiff's counsel by email to mcole@colesadkin.com on October 20, 2025.

/s/ Brandon McGivern
Brandon McGivern, Pro Se