MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Grant E. Swartzentruber
Washington, Indiana

John B. Steinhart
Ashville, Indiana

ATTORNEYS FOR APPELLEES

Kathleen Crebo
Indianapolis, Indiana

Margaret L. Smith
Indianapolis, Indiana

Larry Jon Gesse
Franklin, Indiana

Peter C. King
Columbus, Indiana

IN THE COURT OF APPEALS OF INDIANA

Shad Truelove,
Appellant-Plaintiff,

v.

Matthew "Cully" Kinnick, Justine Kinnick, Gerald Yarnell, II, and Jennifer Mapalad,
Appellees-Defendants.

September 6, 2022

Court of Appeals Case No. 21A-PL-2095

Appeal from the Martin Circuit Court

The Honorable Lynne Elise Ellis, Judge

Trial Court Cause No. 51C01-2006-PL-95

Altice, Judge.

Case Summary

[1] Shad Truelove appeals the trial court's dismissal of his complaint for breach of contract against property owners Matthew Kinnick (Cully), Justine Kinnick, and Jennifer Mapalad (collectively, Owners), regarding the sale of real estate. Truelove also claims that the trial court erred in refusing to grant his request for leave to file an amended complaint and in granting summary judgment for Gerald Yarnell—also an owner of the property—because genuine issues of material fact remained as to whether a valid contract for the purchase of the property existed. Truelove further maintains that the trial court abused its discretion in not resolving discovery matters prior to considering Yarnell's motion for summary judgment, thus "denying his right to a fair determination of his claims." *Appellant's Brief* at 45.

[2] We affirm.

Facts and Procedural History

[3] Yarnell, Jennifer, and Justine are siblings whose parents deeded them the subject property consisting of 279 acres of land in Martin County (Real Estate). On May 20, 2020, Truelove made a verbal offer to Cully—Justine's husband and brother-in-law to Yarnell and Jennifer—to purchase the property for $624,450. Cully stated that he would convey the offer to Owners and Yarnell. Shortly after this conversation, Cully sent a text message to Truelove confirming the dollar amount of the offer. Cully also reaffirmed in that same message that he would convey the offer to the others. Cully typed his name at the end of the message. Sometime later that day, Cully communicated Truelove's offer to Owners and Yarnell, indicating that it was "another offer," as Cully had been negotiating the possible sale of the Real Estate with other potential buyers. *Appellant's Appendix Vol. V* at 219.

[4] On May 21, 2020, Cully texted Truelove, stating that "the offered dollar amount for our property is accepted." *Appellant's Appendix Vol. II* at 26. Cully, however, included additional terms in the text, stating "no survey, buyer to pay closing costs, $10,000 earnest money and agreement to purchase even if the bank appraisal does not appraise at the offered value." *Id.* Cully again typed his name in the text message. Thereafter, Cully texted Truelove, stating "when you are ready to write this up, let me know and I will send you how the names should be on the purchase agreement. Cully." *Id.* Truelove texted back: "ok," but he had to go "to the Martin County courthouse to verify parcel #s for purchase agreement." *Id.*

[5] While Truelove began making financial arrangements to purchase the Real Estate, including the initiation and preparation of loan documents with his lender, no written purchase agreement had been prepared or executed. Thereafter, on May 22, 2020, Cully informed Truelove via text message that Owners had received and accepted "an[other] offer that [they] could not refuse." *Id.*

[6] Four days later, Truelove, by counsel, sent a certified letter to Cully requesting that Owners honor the agreement and enclosed a check in the amount of $10,000 as earnest money. Owners did not respond, so Truelove sent two additional certified letters to Cully and Owners on June 2 and June 3, again demanding that Owners honor the agreement. Truelove filed a complaint and Notice of Lis Pendens against Owners on June 16, 2020 in light of Owners' failure to respond to his letters. Truelove alleged breach of contract, set forth his text message exchange with Cully in an exhibit to the complaint, and sought specific performance. Truelove averred in his complaint that "[Owners] breached the Agreement . . . by rescinding their offer after it was accepted and thereby failing to honor the agreement for the purchase of the subject real estate by the Plaintiff." *Id.* at 24. Truelove went on to assert that "Plaintiff initiating a loan to purchase the real estate constitutes, at minimum, an offer to complete his contractual obligations." *Id.* at 25.

[7] On August 31, 2020, Owners moved to dismiss Truelove's complaint pursuant to Indiana Trial Rule 12(B)(6).[1] The motion to dismiss asserted that Truelove failed to state a claim upon which relief could be granted because the text message exchange between Cully and Truelove did not create an enforceable contract.

[8] On September 11, 2020, the trial court summarily granted Owners' motion to dismiss Truelove's complaint with prejudice and discharged the Notice of Lis Pendens. Truelove filed a motion to reconsider along with a request for leave to amend his complaint on September 15, 2020. In support of his request for leave to file an amended complaint, Truelove claimed that "recent facts have arisen . . . after the initial filing which are pertinent to Plaintiff's case and Plaintiff desires to amend his complaint to add such recent facts. . . ." *Appellant's Appendix Vol. II* at 50. Truelove further asserted that his motion should "be treated as one for summary judgment" in light of the provisions of T.R. 12(B)(6) that state

> if on a motion, asserting the defense number (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. In such case, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

---

[1] Yarnell did not participate in the motion to dismiss.

[9] In accordance with this provision, Truelove asserted that the time in which he was required to respond to Owners' motion to dismiss "is thirty days after service of the motion." *Appellant's Appendix Vol. II* at 50. Thus, Truelove maintained that a "response would be due on or before September 30, 2020, and not sooner," and that the facts outside the record "would be sufficient to avoid Owners' dispositive motions." *Id.*

[10] On September 29, 2020, the trial court summarily denied Truelove's motion to reconsider and rejected Truelove's request for leave to file an amended complaint. Truelove then appealed the trial court's 12(B)(6) order to this court on October 2, 2020.

[11] On November 13, 2020, Yarnell moved for summary judgment, contending that Truelove failed to answer requests for admission that established that the text message exchange between Truelove and Cully failed to satisfy Ind. Code § 32-21-1-1, the statute of frauds, regarding the sale of the Real Estate. On December 3, 2020, the trial court issued an order concluding that Truelove's pending appeal rendered the summary judgment proceedings moot.

[12] On January 29, 2021, this court *sua sponte* dismissed Truelove's appeal without prejudice, finding that Yarnell had not joined in the motion to dismiss and, therefore, the matter remained pending as to him. Thus, the attempted appeal was premature because there had been no final judgment from which Truelove could have appealed.

[13] On February 4, 2021, Yarnell re-filed his summary judgment motion and supporting documents, again asserting that Truelove's deemed admissions established that no enforceable contract existed. Yarnell's summary judgment motion presented the limited issue of whether the text messages between Cully and Truelove—on their face— constituted a writing that satisfied the statute of frauds or whether the writings at issue simply "demonstrate preliminary negotiations rather than a final agreement between the parties." *Appellant's Appendix Vol. II* at 58-63.

[14] Truelove requested and was granted additional time to respond to the summary judgment motion. Over the next several months, Truelove engaged in, and obtained, extensive discovery that included five depositions of four different individuals, two depositions of Yarnell, hundreds of interrogatories and numerous requests for the production of documents. Yarnell, however, declined to produce additional discovery materials, asserting that the remainder of Truelove's requested discovery was premature and irrelevant, and that those materials may ultimately be unnecessary if the trial court determined that the text messages did not satisfy the statute of frauds as a matter of law.

[15] Truelove filed a subsequent motion to compel discovery with fifty pages of legal argument and 383 pages of exhibits in support of that motion to compel. Yarnell again objected, arguing that the additional discovery requests were irrelevant to the issues relating to summary judgment and should be stayed until the trial court ruled on the pending summary judgment motion. Yarnell claimed that the only documents that pertained to the Real Estate had already

been submitted. The trial court agreed, stayed Truelove's discovery requests, and set the motion to compel for hearing on the same day as the summary judgment hearing.

[16] When Truelove designated evidence in opposition to summary judgment on July 9, 2021, he included affidavits and exhibits that Yarnell alleged to contain inadmissible hearsay and legal conclusions.[2] Thus, Yarnell moved to strike those materials on July 19, 2021. The trial court set the matter for hearing on the same day as the other two pending motions.

[17] The trial court first addressed Owners' motion to strike at the hearing that commenced on August 27, 2021. The trial court commented that it had "read every word on every page that [had been] submitted." *Transcript Vol. II* at 14. Those materials included all designated evidence and depositions that Truelove tendered with regard to Yarnell's motion to strike, and over 100 pages of evidence that Truelove submitted in opposition to the motion to strike. Although the trial court did not specifically rule on the motion to strike at that time, it commented that it would not consider irrelevant and improper evidence. Truelove also brought two individuals to the hearing and requested the trial court to permit them to testify during the summary judgment hearing.

---

[2] For instance, Yarnell pointed out that Truelove's affidavit: (1) testified as to conversations that another person (Taj Eaton) purportedly had with a third person (Cully); (2) testified as to what other persons (Eaton, Cully) supposedly said; (3) included exhibits that allegedly lacked foundation and contained hearsay; and (4) testified as to legal conclusions. *See Appellant's Appendix Vol.* 5 at 2-13. Truelove also included exhibits that were alleged to contain improper speculation, along with an affidavit from Eaton in which Eaton: (1) testified as to conversations that other persons (John Schaefer, Jeff Graber) allegedly had with a third person (Cully); (2) testified as to what other persons purportedly said. *See id.* at 19-30.

The trial court denied Truelove's request on the grounds that a summary judgment hearing is restricted to legal argument based on the designated evidence that had already been presented in support of the summary judgment motion.

[18] The trial court next heard oral argument on the summary judgment motion and, while recognizing that a text message exchange could qualify as a writing that satisfied the statute of frauds under some circumstances, concluded the messages here did not. The trial court commented that "it is a writing. I don't have a problem with it being a writing. I just don't think it's a sufficient writing and the text messages that you have for me are insufficient to purchase 27[9] acres of land in Indiana." *Transcript* at 45, 47.

[19] At the conclusion of the hearing, the trial court granted Yarnell's motion for summary judgment and motion to strike, and denied Truelove's motion to compel on the grounds that it had become moot in light of the summary judgment ruling.

[20] Truelove now appeals.

Discussion and Decision

I. Motion to Dismiss

[21] Truelove contends that the trial court erred in denying his motion to reconsider the grant of Owners' motion to dismiss because it was "incontrovertible that

Truelove and the Owners understood [what] the Complaint alleged." *Appellant's Brief* at 21. Therefore, Truelove asserts that the trial court's dismissal with prejudice pursuant to T.R. 12(B)(6) was inappropriate because he adequately set forth a claim against Owners.

[22] T.R. 12(B)(6) provides in pertinent part that "every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by motion: (6) Failure to state a claim upon which relief can be granted." Where a motion to dismiss under T.R. 12(B)(6) is sustained by the trial court, the decision is subject to de novo review, and no deference is given to the trial court's decision. *Bellwether Properties, LLC v. Duke Energy Indiana, Inc.*, 87 N.E.3d 462, 466 (Ind. 2017). A complaint states a claim and, therefore, should not be dismissed "so long as it states any set of allegations, no matter how unartfully pleaded, upon which the plaintiff could be granted relief." *Graves v. Kovacs,* 990 N.E.2d 972, 976 (Ind. Ct. App. 2013). But where the facts alleged in the complaint are clearly insufficient to support relief under any circumstances, the trial court's grant of the motion to dismiss is proper. *Tillman v. Tillman,* 70 N.E.3d 349, 351 (Ind. Ct. App. 2013), *trans. denied*. Whether a motion to dismiss should be granted "turns on the legal sufficiency of the claim and does not require determinations of fact." *Arflack v. Town of Chandler,* 27 N.E.3d 297, 302 (Ind. Ct. App. 2015). Courts test the sufficiency of facts alleged regarding whether "they have stated some factual scenario in which a legally actionable injury has occurred." *Trail v. Boys & Girls Clubs of*

N.W. Ind., 845 N.E.2d 130, 134 (Ind. 2006). Conclusory, nonfactual assertions or legal conclusions need not be accepted as true. *Lei Shi v. Cecilia Yi,* 921 N.E.2d 31, 37 (Ind. Ct. App. 2010).

[23] Relevant here is our statute of frauds provision that states

> (b) A person may not bring any of the following actions unless the promise, contract, or agreement on which the action is based, or a memorandum or note describing the promise, contract, or agreement on which the action is based, is in writing and signed by the party against whom the action is brought or by the party's authorized agent:
>
> (4) An action involving any contract for the sale of land.

I.C. § 32-21-1-1(b)(4). This statute is designed to "preclude fraudulent claims which would probably arise when one person's word is pitted against another's." *Johnson v. Sprague,* 614 N.E.2d 585, 588 (Ind. Ct. App. 1993).

[24] An enforceable contract for the sale of land "must be evidenced by some writing: (1) which has been signed by the party against whom the contract is to be enforced or his authorized agent; (2) which describes with reasonable certainty each party and the land; and (3) which states with reasonable certainty the terms and conditions of the promises and by whom and to whom the promises were made." *Blake v. Hosford*, 387 N.E.2d 1335, 1340 (Ind. Ct. App. 1979). In accordance with *Blake,* each element set forth above is required to meet the statute of frauds. Even if only one of the requirements is missing, an enforceable contract will not be found to exist. *Perrill v. Perrill*, 126 N.E.3d 834,

840 (Ind. Ct. App. 2019), *trans. denied*. Moreover, parol evidence is not admissible to supply any of the essential terms of a contract within the statute of frauds which the writing may have failed to express. *Blake,* 387 N.E.2d at 1340.

[25] When examining the statute of frauds requirements in this case, we first note that the parties did not execute a written purchase agreement for the sale of the Real Estate. In the May 20, 2020 text message exchange, Cully identified himself by name to Truelove, as the two were not familiar with each other and had never previously corresponded by text message. While Truelove alleged in the complaint that Cully had signed "on behalf of the Owners," there is nothing to show that Cully had such authority. And although Truelove urges that the text message exchange should be construed as a writing and therefore an enforceable contract, the Owners were not named or identified in the exchange; nor was the Real Estate described with reasonable certainty that would furnish a means of identification. *See Blake,* 387 N.E.2d at 1340 (observing that while it is not necessary for the contract itself to identify the land, it must furnish the means of identification). Even though Cully's first text to Truelove includes the acreage of the Real Estate, no other information is offered that describes the property. Thus, the text message exchange does not satisfy the statute of frauds requirement.

[26] While the lack of description of the property and lack of Owner identification are fatal to the statute of frauds requirement, we further note that the text messages fail to establish terms and conditions of the promises with reasonable certainty. For instance, Cully's text message to Truelove proposed four

additional terms: 1) no survey, 2) buyer to pay closing costs, 3) earnest money in the amount of $10,000, and 4) a draft of an agreement to purchase. In our view, merely proposing such terms fails to constitute "establishing with reasonable certainty the terms and conditions of the promises." *See Johnson*, 614 N.E.2d at 588. This lack of additional information in the text message exchange further supports the conclusion that no enforceable contract existed.

[27] Nonetheless, in an effort to avoid the statute of frauds requirement, Truelove claims that his act of applying for a loan for the purchase of the Real Estate constituted part performance that removes these circumstances from the statute of frauds. Truelove correctly posits that our courts allow for a contract to be taken outside the Statute of Frauds in certain circumstances. More specifically, oral contracts may be enforced by a court of equity under the doctrine of part performance. *Summerlot v. Summerlot*, 408 N.E.2d 820, 828 (Ind. Ct. App. 1980). Where one party to an oral contract in reliance on that contract has performed his part of the agreement "to such an extent that repudiation of the contract would lead to an unjust or fraudulent result, equity will disregard the requirement of a writing and enforce the oral agreement." *Dubois Cnty. Machine Co. v. Blessinger*, 274 N.E.2d 279, 282 (Ind. Ct. App. 1971). Circumstances generally held sufficient to invoke the doctrine of part performance as an exception to the statute of frauds "are some combination of the following: payment of the purchase price or a part thereof, possession and lasting and valuable improvements on the land." *Id.*

[28] In this case, Truelove asserted in his complaint that he relied on the alleged contract, including "the initiation of loan paperwork with his lender." *Appellant's Brief* at 19. Truelove contends that this action constitutes, at minimum, an offer to complete his contractual obligations. Notwithstanding this claim, there is no indication or documentary evidence that Truelove inquired about a loan or actually obtained a loan. Truelove also does not claim to have incurred any monetary damages, that he paid any part of the purchase price, possessed the Real Estate, or made any lasting improvements on the Real Estate that is required to prove part performance. *Dubois Co. Machine Company*, 274 N.E.2d at 282. And there is no contention that Truelove performed any action to the extent that repudiation of the alleged contract would lead to an unjust or fraudulent result. As a result, Truelove's alleged actions fail to meet the standard for part performance that would except it from the statute of frauds requirement.

[29] In sum, even accepting Truelove's claims as true, he neither pleads with specificity demonstrating an entitlement to any relief nor does he support the allegations with evidence that might lead to a disposition of this cause on the merits. Therefore, we conclude that the trial court properly granted Owners' motion to dismiss and correctly discharged the Notice of Lis Pendens against the Real Estate.

II. Motion to Reconsider and Amend Complaint

[30] Truelove asserts that the trial court denied him the right to amend his complaint and further contends that the trial court should have granted his motion to reconsider the dismissal of his complaint.

[31] T.R. 12(b) provides that "when a motion to dismiss is sustained for failure to state a claim under subdivision (B)(6) of this rule the pleading may be amended once as of right pursuant to Rule 15(A) within ten [10] days after service of notice of the court's order sustaining the motion and thereafter with permission of the court pursuant to such rule." Absent filing the amended pleading within the ten-day deadline, T.R. 12(B) requires "permission of the court pursuant to [T.R. 15(A)]."

[32] In this case, Truelove did not file an amended complaint within ten days of the trial court's dismissal. Thus, the matter comes under the purview of the trial court's broad discretion under T.R. 15(A). More particularly, after the ten-day timeframe has expired, T.R. 15(A) provides that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires."

[33] This court has held that "although amendments to pleadings are to be liberally allowed, the trial court retains broad discretion in granting or denying amendments to pleadings." *Hilliard v. Jacobs*, 927 N.E.2d 393, 398 (Ind. Ct. App. 2010), *trans. denied*. We will reverse a trial court's ruling on a motion to amend "only upon a showing of an abuse of that discretion." *Id*. An abuse of discretion may occur if the trial court's decision "is clearly against the logic and

effect of the facts and circumstances before the court, or if the court has misinterpreted the law." *Id*. We consider whether a trial court's ruling on a motion to amend is an abuse of discretion by evaluating a number of factors, including "undue delay, bad faith, . . . undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment." *Palacios v. Kline*, 566 N.E.2d 573, 575 (Ind. Ct. App. 1991).

[34] In this case, the trial court granted Owners' motion to dismiss on September 11, 2020. Thus, under T.R. 12(B), Truelove had "ten (10) days after service of notice of the court's order" to amend his complaint "once as of right. . . ." Rather than amending his complaint within that ten-day period, however, Truelove filed his motion to reconsider the dismissal and asked for permission to amend his complaint. Truelove asserted that Owners' 12(B)(6) motion was converted to a summary judgment motion pursuant to T.R. 56 because "matters outside the pleading [were] presented to . . . the court." *Appellant's Appendix Vol. II* at 50. Therefore, Truelove contended—as he does now on appeal—that he was afforded thirty days from the service of Owners' motion to dismiss to respond in accordance with T.R. 56. We note, however, that no matters were presented "outside the pleading" in Owners' motion to dismiss. Thus, Owners' motion to dismiss remained a T.R. 12(B)(6) motion and it was not converted to a motion for summary judgment.

[35] In support of his claim that the trial court abused its discretion in denying his request for leave to file an amended complaint, Truelove contends that facts arose "after the initial filing [of his complaint] which are pertinent to his case."

Id. We note, however, that Truelove does not identify the nature of such "pertinent" facts that had arisen; nor does the record reflect any additional facts that would warrant an amendment to the complaint. In other words, Truelove advances no argument that any alleged newly discovered evidence could not have been discovered or was not available to him prior to initiating his cause of action. Moreover, when considering the Notice of Lis Pendens that burdened the Real Estate, Owners would likely suffer undue prejudice by permitting Truelove to amend his complaint, absent a convincing reason to do so. For these reasons, we conclude that the trial court did not abuse its discretion in denying Truelove's request to amend his complaint. *See, e.g., Hilliard,* 927 N.E.2d at 401 (holding that the trial court did not abuse its discretion in denying the plaintiff's request to amend his complaint when it was determined that plaintiff sought leave to amend only after it became apparent that the initial claims against the defendant would fail, and plaintiff had offered "no convincing reason for foregoing the opportunity to fully present these claims in a more timely fashion").

II. Summary Judgment

[36] Truelove next claims that the trial court erred in granting Yarnell's motion for summary judgment. Truelove argues that he presented circumstantial evidence that Cully was acting as the agent of Yarnell and Owners and, therefore, Cully's "status as agent, his authority, and his intent are contested issues which are required to be resolved by the trier of fact at trial." *Appellant's Brief* at 23.

[37] Our standard of review on summary judgment is well-settled: "[t]he party moving for summary judgment has the burden of making a prima facie showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Kluger v. J.J.P. Enterprises, Inc.*, 159 N.E.3d 82, 86 (Ind. Ct. App. 2020), *trans. denied*. Once these two requirements are met by the moving party, the burden then shifts to the non-moving party to show the existence of a genuine issue by setting forth specifically designated facts. *Id.* at 87. Any doubt as to any facts or inferences to be drawn therefrom must be resolved in favor of the non-moving party. *Id.* Summary judgment should be granted only if the evidence sanctioned by T.R. 56(C) shows there is no genuine issue of material fact and that the moving party deserves judgment as a matter of law. *A House Mechanics, Inc. v. Massey*, 124 N.E.3d 1257, 1262 (Ind. Ct. App. 2019). We may affirm a grant of summary judgment "if it can be sustained on any theory or basis in the record." *DiMaggio v. Rosario*, 52 N.E.3d 896, 904 (Ind. Ct. App. 2016), *trans. denied.* And although our review is de novo, a trial court's judgment "comes to the appellate court clothed with a presumption of validity, and the appellant bears the burden of proving that the trial court erred." *Knapp v. Estate of Wright*, 76 N.E.3d 900, 906 (Ind. Ct. App. 2017), *trans. denied.* Finally, we note that "whether the undisputed language of a document constitutes a contract is a question of law." *Hrezo v. City of Lawrenceburg*, 934 N.E.2d 1221 (Ind. Ct. App. 2010).

[38] The parties agree that the central issue in this case is whether the text message exchange between Truelove and Cully constitutes a writing that satisfies the

statute of frauds and thus created an enforceable contract. As discussed above, if even one of the requirements of the statute of frauds is missing, an enforceable contract will not be found to exist. *Perrill*, 126 N.E.3d at 840. And critically important here is that the essential terms must appear on the face of the writing itself. *Knapp,* 76 N.E.3d at 906. That is, the terms cannot be established by "resort to parol evidence." *Id.; see also Hrezo,* 934 N.E.2d at 1229n.9 (observing that before parol evidence can be considered, "the threshold issue—whether an agreement was satisfactorily reduced to a writing—must be resolved because an agreement required to be in writing must completely contain the essential terms without resort to parol evidence in order to be enforceable." *Id.* (quoting *Coca-Cola Co. v. Babyback's Intern., Inc.,* 841 N.E.2d 557, 565 (Ind. 2006)).

[39] In light of our discussion as to Owners' motion to dismiss, that same rationale is applicable with regard to the summary judgment issue. For instance, the only description of the property was Cully's statement that "we have 203 acres in back and 76.26 acres up front." *Id.* The text messages contain no reference to the approximate location of the various parcels. To be sure, the purported identification of the Real Estate provides even less description than what our courts have previously rejected as insufficient to satisfy the statute of frauds. *See, e.g., Cripe v. Coates,* 116 N.E.2d 642, 646 (Ind. Ct. App. 1954) (recognizing that although boundaries may be established with relation to fixed monuments, boundaries related to monuments to be established are too speculative to furnish adequate means of identification); *see also Thompson v. Griffith*, 133 N.E.

596, 597-98 (Ind. Ct. App. 1922) (holding that the statute of frauds was not satisfied where the subject real estate was described as "The southwest quarter (1/4) of the southeast quarter of section 23, 12, 3, containing 40 acres more or less. Also part of the west half of the northeast quarter of section 26, 12, 3, containing 43.62 acres, more or less").

[40] Additionally, the Real Estate is owned by four different individuals. Both Truelove and Cully understood the importance of the identification of each owner as evidenced by Cully's text message to Truelove that stated, "when you are ready to write this up, let me know and I will send you how the names should be on the purchase agreement. Cully." *Appellant's Appendix Vol. II* at 26.

[41] As we have concluded above, the text message exchange between Cully and Truelove fails to state with reasonable certainty the terms and conditions of the promises, does not describe each party with reasonable certainty, and fails to describe the Real Estate with reasonable certainty. The failure of the text messages to satisfy even one of these requirements does not pass the statute of frauds test for the sale of land. And here, the text message exchange failed all three. The trial court properly entered summary judgment for Yarnell.

III. Hearing on Pending Motions

[42] Truelove claims that the trial court should have heard and resolved the pending motion to strike and motion to compel before issuing a ruling on the summary judgment motion. Truelove argues that the trial court's decision to grant Yarnell's motion for summary judgment before ruling on the discovery motions

"added . . . serious prejudice to [his] ability to defend against the summary judgment motion" and constituted an abuse of discretion. *Appellant's Brief* at 24.

[43] We initially observe that that "the sequence and timing of discovery has been left to the almost unlimited discretion of the trial court." *Walker v. Cuppett*, 808 N.E.2d 85, 103 (Ind. Ct. App. 2004). Although it is generally improper to grant summary judgment when discovery requests are pending, summary judgment may be granted when pending discovery is unlikely to develop a genuine issue of material fact. *Smith v. Taulman*, 20 N.E.3d 555, 563 (Ind. Ct. App. 2014). For instance, pending discovery is unlikely to develop a genuine issue of material fact when the information sought is not related to the dispositive issue on summary judgment. *Id.* at 565. A trial court also does not abuse its discretion in entering summary judgment despite pending discovery when it appears that the party seeking discovery is doing so merely to delay summary judgment. *Id.*

[44] Whether a writing satisfies the statute of frauds must be based solely upon the four corners of the writing itself and not by "resort to parol evidence." *Knapp*, 76 N.E.3d at 906. Hence, before parol evidence may be considered, the question of whether an alleged agreement was satisfactorily reduced to a writing must be resolved because an agreement required to be in writing "must completely contain the essential terms without resort to parol evidence in order to be enforceable." *Hrezo*, 934 N.E.2d at 1229; *see also Babyback's Intern., Inc.*, 841 N.E.2d at 565.

[45] In this case, the trial court reviewed the extensive discovery that Truelove obtained in relation to whether the text message exchange—on its face—constituted a writing that satisfied the statute of frauds. Truelove's motion to compel sought additional discovery that far exceeded the limited issue presented on summary judgment.[3] Thus, the trial court reserved a ruling on the motion to compel until it decided the threshold dispositive question.

[46] As discussed above, the trial court correctly granted Yarnell's motion for summary judgment because the text message exchange failed to satisfy the statute of frauds. The trial court then denied Truelove's motion to compel, concluding that the request for further discovery had become moot in light of the summary judgment ruling. We conclude that Truelove has failed to show that the trial court abused its discretion in holding its ruling on the motion to compel in abeyance. *See, e.g., Diaz v. Carpenter,* 650 N.E.2d 688, 693 (Ind. Ct. App. 1995) (observing that even if certain interrogatories would have disclosed

---

[3] For instance, Truelove sought any and all documents

> which concern communication between [Yarnell] and any other defendant in the last five years . . ., any attempt you have made to offer the property for sale in the last five years, including but not limited to any listing agreements, advertising materials, websites, or offers of sale, any offer to purchase the property, which you have received or been notified about in the last five (5) years, including but not limited to any verbal offers, purchase agreements, or contracts, any offer to sell the property, which you have made or been notified about in the last five (5) years, including but not limited to any verbal offers, purchase agreements, or contracts, any contract you have entered into concerning the property within the last five (5) years, any and all documents which concern any contract any other defendant has entered into concerning the property within the last five (5) years, [and] any valuation of the property which was completed within the last five (5) years.

Appellant's Appendix Vol. III at 26, 27.

disputes of fact, the disputes are immaterial to the arguments associated with the motion for summary judgment, which centered on the statute of limitations).

[47] Truelove also maintains that the trial court should have specifically ruled on Yarnell's motion to strike before conducting the summary judgment hearing. Again, our trial courts have broad discretion in ruling on the admissibility of evidence. Such discretion extends to rulings on motions to strike affidavits on the grounds that they fail to comply with the summary judgment rules. *Webb v. City of Carmel*, 101 N.E.3d 850, 856 (Ind. Ct. App. 2018).

[48] Truelove responded to Yarnell's motion to strike only two weeks before the scheduled summary judgment hearing. As a matter of efficiency, the trial court set that matter to be heard on the same day as the other pending motions. Truelove does not challenge the trial court's ruling with regard to the grant of the motion to strike on the merits. Rather, as with the motion to compel, Truelove claims that the trial court abused its discretion in refusing to rule on that motion prior to granting summary judgment.

[49] We note that Truelove does not direct us to any authority—nor have we found such authority—that prohibits the resolution of the motion to strike in conjunction with deciding a case on the merits. Moreover, Truelove has not shown how he suffered any harm by this practice. In short, the trial court's decision to hear all pending motions together and to hold its ruling on Yarnell's

motion to strike in abeyance until it resolved the issue of summary judgment was not an abuse of discretion.

[50] Finally, Truelove claims that he should have been permitted to present live testimony at the summary judgment hearing. But the trial court rejected Truelove's request, explaining that a summary judgment hearing is not an evidentiary hearing but is instead legal argument based on the evidence that had already been presented to the trial court.

[51] T.R. 56(C) requires each party to a summary judgment motion to "designate to the court all parts of pleadings, designations, . . . and any other matters on which it relies for purposes of the motion." *Rosi v. Business Furniture Corp*., 615 N.E.2d 431, 434 (Ind.1993) (emphasis in original). "The trial court may consider only properly designated evidence when deciding [a] motion for summary judgment." *Ebert v. Illinois Cas. Co.,* 188 N.E.3d 858, 863 (Ind. 2022). Similarly, when conducting appellate review, we may consider only the evidence that was properly and specifically designated to the trial court. *Id.* Even if the material fact and its evidence is in the record of the case, it is not available for appellate review unless it was so designated to the trial court. *Dinsmore v. Fleetwood Homes of Tennessee, Inc.,* 906 N.E.2d 186, 189 (Ind. Ct. App. 2009).

[52] Here, if the trial court would have permitted Truelove to present supplemental live testimony at the hearing, it would have been error because Truelove did not include that potential testimony as part of his designated evidence. Thus, for all

these reasons, the trial court did not abuse its discretion in preventing Truelove from offering witness testimony at the summary judgment hearing.

CONCLUSION

[53] We conclude that the trial court properly denied Truelove's motion to reconsider its grant of Owners' motion to dismiss, and it did not abuse its discretion in denying Truelove's request for leave to file an amended complaint. The trial court also properly granted Yarnell's motion for summary judgment and it did not err in refusing to resolve discovery matters prior to granting summary judgment.

[54] Judgment affirmed.

Vaidik, J. and Crone, J., concur.