MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Samson Gershom and #1 Construction, Inc.,

Appellants-Defendants,

v.

Triple N LLC, and Dansheer Designs, LLC,

Appellees-Plaintiffs.

September 6, 2022

Court of Appeals Case No. 21A-PL-2792

Appeal from the Marion Superior Court

The Honorable Cynthia J. Ayers, Judge

The Honorable Anne Flannelly, Magistrate

Trial Court Cause No. 49D04-2103-PL-8388

Altice, Judge.

Case Summary

[1] Triple N LLC and Dansheer Designs, LLC (collectively, Owners) hired #1 Construction to renovate an Indianapolis house (the Property). Sampson

Gershom and Jeremy Lee were the sole shareholders of #1 Construction, Inc. (#1 Construction), 51% and 49% shareholders respectively.[1] When #1 Construction failed to fulfill its obligations under the Construction Agreement (the Contract), Owners terminated the Contract. To settle outstanding issues, Lee executed a "No Claims Statement" (Settlement Statement), providing, in part, that Owners had paid in full and that #1 Construction had no claims against Owners. *Appendix* at 53. Gershom subsequently filed a mechanic's lien (Lien) on the Property, asserting that Owners still owed $36,830.37 to #1 Construction for material and labor. Thereafter, Gershom executed a release of the lien and obtained, without Owners' knowledge, a check in the amount of $36,830.37 from a title company consisting of funds that Owners had escrowed with the title company to complete a pending sale of the Property.

[2] Owners filed a complaint for compensatory and punitive damages against Gershom and #1 Construction (collectively, Defendants), asserting claims for breach of contract, unlawful clouding of title, interference with contract, and conversion. The trial court granted partial summary judgment in favor of Owners,[2] and Gershom and #1 Construction appeal, raising the following consolidated and restated issues:

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[1] The record indicates that #1 Construction is no longer operational. *See Appendix* at 113 (Lee's August 2021 affidavit referring to #1 Construction as being "now dissolved").

[2] The court found "no just reason for delay" and entered "final judgment as to all claims by all parties" "except as to" certain claims discussed more fully *infra*. *Id*. at 27.

I. Did the trial court abuse its discretion when, upon Owners' motion, it struck certain portions of Gershom's affidavit?

II. Did the trial court err in granting summary judgment to Owners on the issue of Lee's authority to sign the Settlement Statement and in finding no genuine issue of material fact as to whether Owners still owed money to #1 Construction?

[3] We affirm.

Facts & Procedural History

[4] In July 2020, Owners and #1 Construction entered into the Contract, which Lee signed on behalf of #1 Construction. There is no dispute that the Contract was valid, and, for several months, #1 Construction performed work on the Property as agreed. Lee handled the day-to-day operations of the remodeling project and was Owners' primary contact for #1 Construction; Gershom was residing in the Philippines and never visited or had access to the Property.

[5] On December 14, 2020, Lee emailed Owners, telling them that he could not complete the project because Gershom had removed all funds from #1 Construction's bank account and that he no longer had access to money, tools, or a truck necessary to complete the job.[3] On December 18, Owners received an email from a subcontractor, Mike Bourff, indicating that he had not yet been paid by #1 Construction.

[3] Lee copied Gershom on this email.

[6] On December 21, 2020, Owners informed Lee and Gershom by email that they were exercising their right to terminate the Contract.[4] They indicated further:

> We will pay the subcontractors, and to [sic] another contractor to finish the work. If you sign that you have no rights to this project and that we don't owe you any money - we will not ask to collect the late fees for the delays (which are more than 4k).

Id. at 91. Lee "acknowledged and accepted the notice." *Id*. at 38, 114

[7] Lee then executed and delivered to Owners the Settlement Statement, which was a one-page document titled "NO CLAIMS STATEMENT" prepared on #1 Construction letterhead, dated December 26, 2020, and signed by Lee as "Owner" of #1 Construction. *Id*. at 53. The Settlement Statement provided, in part, that (1) Owners had paid $32,630 to #1 Construction "in accordance to [sic] its progress," (2) #1 Construction did not finish work that had been agreed upon in the Contract, and (3) Owners paid Bourff $6000 and "had to pay a

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[4] Owners proceeded under Paragraph 8 of the Contract, which provided:

> [I]f the Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials, or fails to make prompt payment to Subcontractors for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, and fails within seven (7) calendar days after mailing of written Notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner may terminate the employment of the Contractor and take possession of the site and of all materials thereon and may finish the work by whatever methods the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment and shall pay the Owner a compensation for their damages.

Id. at 44.

different contractor in order to finish the work." *Id*. The Settlement Statement further provided:

> Therefore, we hereby declare, confirm and undertake as follows:
>
> 1. The total and final amount we requested for all the work we performed by virtue of the [C]ontract or in connection with it and in exchange for all our obligations, is the amount specified above and already paid: $32,630 USD ("Final amount").
>
> 2. Since the Final amount was paid, we confirm it constitutes a final and complete removal of any final consideration we deserved.
>
> 3. Apart from the [F]inal amount, we do not have and will not have any claims, demands or requests of any kind and type towards [Owners], or to anyone on their behalf, in any matter related to the contract and/ or involving and/ or arising from a requirement of the [] Contract, as stated, whether it is known to us or will be known to us in the future, and we dismiss [Owners] of any liability to us.

Id.

[8] On January 24, 2021, Gershom – who later filed an affidavit averring, among other things, that he was not aware of the Settlement Statement – emailed Owners and told them that they still owed money to #1 Construction for work performed that was not included in the Contract and/or for upgraded items that Owners requested and advised that he intended to put a lien on the property. On February 3, 2021, Gershom served Owners with a Notice of Intention to Hold Mechanic's Lien, which asserted that $36,830.37 was still owed for work,

material, and labor and "the last date of work being within the past sixty days (December 12, 2020)." *Id*. at 98. Gershom recorded the Lien with the Marion County Recorder's Office on February 3, 2021.

[9] At some point not clear in the record, Owners procured a buyer for the Property and the closing was scheduled for March 26, 2021. On February 24, 2021, Owners' counsel, Matthew Griffith, emailed a letter to Gershom stating that the Lien "is defective and unlawful" and constituted "an unlawful clouding of [] title," because Owners had already paid in full, the last date of work was November 20, 2020 such that the lien statutorily had to be filed by January 19, 2021, and Owners had counterclaims for delayed and poor workmanship. *Id*. at 60-61. Griffith also advised Gershom that Owners had located a buyer "and your lien is causing the closing of that sale to be delayed, at best, or in complete jeopardy." *Id*. at 60. The letter indicated that Gershom had seven days from the date of the letter to release the Lien or Owners would be filing a complaint.

[10] On March 10, 2021, Owners filed their "Complaint for Compensatory and Punitive Damages & Relief as to Unlawful Cloud of Title," asserting that Owners fully performed their duties under the Contract, they owed no additional monies to #1 Construction pursuant to the Settlement Statement, and the Lien was tardy and void. *Id*. at 4. The complaint alleged claims for breach of contract, and unlawful clouding of title (against #1 Construction and Gershom individually), and requested compensatory damages, punitive damages, and attorneys' fees. On May 4, Defendants filed a motion to dismiss.

[11] Meanwhile, and according to Gershom, his counsel was contacted by a title company in early March inquiring about the pay-off amount for the Lien. On March 24, Gershom went to the title company, signed a release of the Lien as president of #1 Construction, and, in exchange, the title company gave a check, payable to #1 Construction, to Gershom in the amount of $36,830.37, which were funds that Owners had escrowed to complete the sale of the Property. Gershom filed the release of Lien with the Recorder's Office on March 25, 2021.

[12] On June 3, 2020, Owners filed an amended complaint, adding claims of intentional interference with contract and conversion. That same day, Owners filed a "Verified Response to Motion to Dismiss and Counter-Motion for Judgment" (Motion for Summary Judgment). *Id*. at 29. Owners argued that Lee was an owner and authorized agent of #1 Construction and "at all relevant times, acted for and on behalf of #l Construction, Inc. with regard to the [Contract] and the Property[.]" *Id.* at 66. Owners maintained that they had "settled their disagreements" with #1 Construction through the Settlement Statement, that the last day #1 Construction provided materials or labor was November 20, 2020, and that Gershom "knew or should have known" that the Lien, filed February 3, 2021, was "tardy, unlawful and in contravention of the Settlement [Statement]." *Id*. at 67, 68.

[13] In support of summary judgment, Owners designated, among other things, an affidavit of Einat Karin Shalev Inbar, who was a manager of Triple N LLC (one of the two Owners of the Property). Inbar averred, in part, that Lee was

Owners' "primary contact," that Gershom "never had access to the Property" and that "on December 26, 2020, #1 Construction Inc., by Lee, executed and delivered to [Owners]" the Settlement Statement. *Id*. at 38.

[14] In July 2021, Defendants withdrew their motion to dismiss and filed a response to Owners' motion for summary judgment and a designation of evidence. Defendants argued that Owners were not entitled to summary judgment for various reasons, including, as is relevant to this appeal, that Lee did not have authority to sign the Settlement Statement on behalf of #1 Construction, and, absent a valid agreement, a question of fact remained as to how much money Owners still owed to Defendants under the Contract and/or for additional work performed by #1 Construction.

[15] Defendants' designation of evidence included Gershom's affidavit. Among other things, Gershom averred that "Lee did not have authority to sign (whenever he did sign it) said Statement on behalf of #1 Construction, Inc." *Id*. at 84. With regard to Defendants' claim that Owners still owed money to #1 Construction, Defendants designated a December 9, 2020 email from Owners to Gershom and Lee, in which Owners stated that they agreed to a price of $32,000 for the project and already had paid $32,630, but acknowledged that they agreed to specified items above the contract price, which were to be paid upon an inspector's approval. Owners continued, "Only after we receive the inspector's approval will we then calculate the delays on the project, the penalty according to the [Contract] and the final amount to be paid." *Id*.

[16] On August 27, 2021, Owners filed a motion to strike, asking the court to strike twenty-five paragraphs of Gershom's affidavit and a number of the attached designated emails. The motion asserted that the designated materials were argumentative, irrelevant, constituted hearsay, were speculative, not based on personal knowledge, or were questions of law reserved for the court.

[17] Owners also filed a reply to Defendant's summary judgment response and designated an affidavit by Lee, averring, in part:

> 2. Defendant Gershom lived in the Philippines and had essentially no role of the day-to-day operations of #1 Construction.
>
> * * *
>
> 6. Affiant was [Owners'] primary contact for #1 Construction, acted on behalf of #1 Construction with regard to the [Contract] and the Property.
>
> * * *
>
> 9. On December 21, 2020, [Owners] exercised their right to terminate the [Contract], by sending notice to Affiant, and Affiant acknowledged and accepted the notice.
>
> 10. [Owners] and #1 Construction formally settled their disagreements and agreed to terminate their relationship.
>
> 11. On December 26, 2020, #1 Construction executed and delivered to [Owners] a written acknowledgment, titled "Subject: NO CLAIMS STATEMENT," ("Settlement Agreement")

> acknowledging that Plaintiffs had fully performed all their obligations under the [Contract], and that Plaintiffs owed no additional monies to #1 Construction under the [Contract]. A copy of the Settlement Agreement is attached hereto and incorporated herein by this reference as Exhibit A.
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> * * *
>
> 13. The last day on which #1 Construction provided materials or labor was November 20, 2020[.]

Id. at 113-14.

[18] On October 19, 2021, the court held a hearing on the pending motions, taking the matter under advisement. On November 15, 2021, the trial court issued a twenty-six-page order, granting Owners' motion to strike and granting partial summary judgment to Owners.[5] Summarized, the court determined that the evidence demonstrated:

- Lee had "actual and apparent authority" to resolve the dispute and execute the Settlement Statement on behalf of #1 Construction;
- Defendants unlawfully clouded Owners' title to the property and breached the Settlement Statement by filing the Lien;

[5] Before reaching the merits of its decision, the court observed, "[Owners] have been unnecessarily embroiled in the dispute between the two owner-officers of [] #1 Construction, Inc., which shareholders' dispute cannot be resolved in this cause." *Id.* at 13-14.

- "#1 Construction through Defendant [] Gershom, took monies from the title company," namely the $36,830.37 that Owners had placed in escrow, "in contravention of the Settlement [Statement]";

- "[T]o the extent that Gershom holds the disputed funds, he has made a distribution of corporate assets to himself, [] a shareholder, in violation of the Indiana Code" and "in violation of the Settlement [Statement]";

- #1 Construction "was voluntarily dissolved" and the corporate veil, "to the extent a voluntarily dissolved corporation even has a corporate veil," should be pierced for, among other things, Gershom's acts of taking disputed funds from the title company and draining the corporate account.

Id. at 13-14, 15, 17, 23.

[19] The trial court entered partial summary judgment in favor of Owners and against Defendants "jointly and severally," finding as a matter of law that Defendants breached the contract, filed the Lien that Defendants "knew or should have known to be false," tortiously interfered with "the verbal and written settlement agreements between Plaintiffs and #1 Construction," and "tricked the title company" into issuing a check of Owners' escrowed money to Gershom, payable to #1 Construction. *Id*. at 27.

[20] The court awarded Owners $36,830.37 in compensatory damages and $36,830.37 in punitive damages, plus statutory interest from the date of the Settlement Agreement (December 26, 2020) until paid in full, plus attorneys'

fees to be determined by the court. *Id*. at 27. The court found "no just reason for delay" and directed "entry of final judgment as to all claims by all parties, except as to" the following:

> (1) the question of whether Defendant Gershom was aware of the Settlement [Statement] at the time he took [Owners'] monies from the title company and any resulting punitive damages, and (2) the amount of attorneys' fees owed to [Owners.]

Id.

[21] Defendants now appeal. Additional facts will be supplied as necessary.

Discussion & Decision

[22] Summary judgment is a tool that allows a trial court to dispose of cases where only legal issues exist. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). When this Court reviews a grant or denial of a motion for summary judgment, we stand in the shoes of the trial court. *Arrendale v. Am. Imaging & MRI, LLC*, 183 N.E.3d 1064, 1067 (Ind. 2022) (quotation omitted). The moving party has the initial burden to show the absence of any genuine issue of material fact as to a determinative issue. *Hughley*, 15 N.E.3d at 1003. Once the movant meets its burden to show the absence of any genuine issue of material fact and that the party is entitled to judgment as a matter of law, the burden shifts to the non-moving party to come forward with contrary evidence showing an issue to be determined by the trier of fact. *Alexander v. Linkmeyer Dev. II, LLC*, 119 N.E.3d 603, 611 (Ind. Ct. App. 2019). "Although this contrary evidence may consist of as little as a non-movant's designation of a self-serving affidavit, summary

judgment may not be defeated by an affidavit which creates only an issue of law – the non-movant must establish that material facts are in dispute." *Id*.

[23] In determining whether summary judgment is proper, we consider only the evidentiary matter the parties specifically designated to the trial court. *Ebert v. Illinois Cas. Co.*, 188 N.E.3d 858, 863 (Ind. 2022) (citing Ind. Trial R. 56(C), (H)). We construe all factual and reasonable inferences in favor of the non-moving party. *Id*. The party appealing a summary judgment decision has the burden of persuading this court that the grant or denial of summary judgment was erroneous. *Cain Family Farm, L.P. v. Schrader Real Estate & Auction Co.*, 991 N.E.2d 971, 976-77 (Ind. Ct. App. 2013). While we are not bound by the trial court's findings and conclusions and give them no deference, they aid our review by providing the reasons for the trial court's decision. *Id*.

[24] In this appeal, Defendants confine their arguments to the position that Lee did not have authority to sign the Settlement Statement, and "in the absence of a valid settlement agreement, the designated evidence disclosed a dispute over the amount owed under the parties' contract." [6] *Appellant's Brief* at 5. That is, "the question of Mr. Lee's authority to sign the "Settlement Statement" affects the outcome of the case[.]" *Id*. at 14. We agree but observe that the converse is likewise true: If Lee had the authority to execute the Settlement Statement,

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[6] While Defendants' summary judgment response raised various other challenges, such as asserting questions of material fact existed on what date Lee executed the Settlement Statement, whether/when Gershom knew about it, and on what date material and labor were last supplied at the Property, those matters were not raised on appeal and we do not reach them.

then there is no dispute about if and how much Owners still owe because the Settlement Statement provided that Owners had paid in full and that #1 Construction would have no claims against them. As Lee's authority – or lack thereof – is dispositive, we begin by reviewing the types of authority that an agent[7] may possess under Indiana law.

Types of Authority

[25] Our Supreme Court has recognized three classifications of authority: (1) actual authority; (2) apparent authority; and (3) inherent authority. *Adsit Co. v. Gustin*, 874 N.E.2d 1018, 1024 (Ind. Ct. App. 2007) (citing *Gallant Ins. Co. v. Isaac*, 751 N.E.2d 672, 675 (Ind. 2001)). "Authority can be express or implied and may be conferred by words or other conduct, including acquiescence." *Id.*

[26] Actual authority exists when the principal has, by words or conduct, caused the agent to believe that the principal has authorized him or her to act on the principal's behalf. *Gallant*, 751 N.E.2d at 675. Apparent authority refers to a third party's reasonable belief that the principal has authorized the acts of its agent; it arises from the principal's indirect or direct manifestations to a third party and not from the representations or acts of the agent. *Cain Fam. Farm*, 991 N.E.2d at 977; *State Farm Mut. Auto. Ins. Co. v. Noble*, 854 N.E.2d 925, 931 (Ind. Ct. App. 2006), *trans. denied*. The principal's manifestation may include placing the agent in a position to perform acts that reasonably appear to give the

[7] There appears to be no dispute that Lee was an agent of #1 Construction.

agent authority to act on behalf of the principal. *Quality Foods, Inc. v. Holloway Assoc.*, 852 N.E.2d 27, 32 (Ind. Ct. App. 2006). Inherent authority is not grounded in the principal's communication or manifestation toward the agent or to a third party, and, rather, arises as a result of "the very status of the agent[.]" *Id.*; *see also Menard, Inc. v. Dage-MTI, Inc.*, 726 N.E.2d 1206, 1211 (Ind. 2000) (holding president of company had inherent authority). "The doctrine of inherent agency provides that an agent may derive his power to bind the principal wholly from his relation with the principal and exists for the protection of persons harmed by or dealing with a servant or other agent." *Menard, Inc.*, 726 N.E.2d at 1211.

I. Motion to Strike

[27] Defendants' arguments that summary judgment was improperly entered are based, in part, on the trial court's grant of Owners' motion to strike portions of Defendants' designated evidence. Specifically, Defendants challenge the court's decision to strike two portions of Gershom's affidavit, namely, his statements averring that (1) Lee did not have authority to sign the Settlement Statement on behalf of #1 Construction and (2) Owners still owed money to #1 Construction.[8] They maintain that when the improperly-stricken evidence concerning Lee's authority and the amount owed is considered, "there is a flat

[8] Although the trial court struck much of Gershom's affidavit and various attachments thereto, Defendants limit their challenge to the above-cited two exclusions.

contradiction between the parties' designated [] evidence" and, accordingly, summary judgment was improper. *Appellant's Brief* at 11.

[28] A trial court has broad discretion in ruling on the admissibility of evidence, and 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, 856-57 (Ind. Ct. App. 2018). Affidavits in support of or in opposition to a motion for summary judgment are governed by Indiana Trial Rule 56(E)[9], and the requirements of T.R. 56(E) are mandatory; hence, a court considering a motion for summary judgment should disregard inadmissible information contained in supporting or opposing affidavits. *Id*. at 857. "[D]esignated evidence at summary judgment must 'set forth facts as would be admissible at trial'; Trial Rule 56 'does not require that the [evidence as designated] itself be admissible.'" *Clark-Floyd Landfill, LLC v. Gonzalez*, 150 N.E.3d 238, 248 (Ind. Ct. App. 2020), *trans. denied*. We have held that properly designated evidence does not include "mere assertions [] of conclusions of law" in an affidavit. *Steak N Shake Operations, Inc. v. Nat'l Waste Associates*, *LLC*, 177 N.E.3d 816, 825 (Ind. Ct. App. 2021); *Riggin v. Rea Riggin & Sons, Inc.*, 738 N.E.2d 292, 305 (Ind. Ct. App. 2000).

[9] T.R. 56(E) provides: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

[29] The trial court struck Paragraph 25 of Gershom's affidavit, stating that "Jeremy Lee did not have the authority to sign (whenever he did sign it) said [Settlement] Statement on behalf of #1 Construction, Inc." *Appendix* at 84. The trial court struck the sentence on several bases, including that "it was offered to disprove a question of law, that being whether [] Lee, as an owner and corporate officer, had legal authority to sign contracts with [Owners,]" which "is a question of law for the Court to decide." *Id*. at 21. Defendants argue that it was an abuse of discretion for the court to strike Paragraph 25 because it "created a genuine issue as to Mr. Lee's actual authority." *Reply Brief* at 4.

[30] As an initial matter, we observe that Paragraph 25 does not assert any factual statement. That is, it is not a statement of what Gershom may have said to Lee concerning Lee's authority, nor is it a factual statement concerning any policy, rule, or authorization that #1 Construction may have had to grant or withhold Lee's authority to act on behalf of the corporation. Rather, to borrow Owners' analogy, Paragraph 25 is akin to a "naked conclusion" such as "Bill was negligen[t] in the car accident." *Appellees' Brief* at 16, 18. We find no abuse of discretion in the court's decision to strike Paragraph 25.

[31] Regardless, any error in striking Paragraph 25 would have been harmless because, even if Paragraph 25 could be construed as a statement that Gershom, as president, "had not given authority to [] Lee to sign" the Settlement Statement, as Defendants suggest, this would, at most, address whether Lee had actual authority. *Reply Brief* at 4. And, as discussed below, other, undisputed

designated evidence establishes that, as a matter of law, Lee had apparent authority to sign the Settlement Statement on behalf of #1 Construction, thus resulting in a binding contract.

II. Summary Judgment – Lee's Authority

[32] Defendants argue that the trial court erred "by entering summary judgment on the issue of Mr. Lee's authority" because the determination of his authority presented a question of fact. *Appellants' Brief* at 13. Defendants are correct that the question of whether an agency relationship exists and of the agent's authority is generally a question of fact. *Heritage Dev. of Ind., Inc. v. Opportunity Options, Inc.*, 773 N.E.2d 881, 888 (Ind. Ct. App. 2002), *trans. dismissed.* "However, if the evidence is undisputed, there are times when summary judgment is appropriate in agency cases." *Cain Fam. Farm*, 991 N.E.2d at 977.

[33] Here, Lee signed the Contract on behalf of #1 Construction, which Defendants agree resulted in an enforceable construction agreement. *See Appendix* at 81 (Gershom agreeing in affidavit that #1 Construction entered into a construction agreement with Owners). At all relevant times during the project, Gershom was out of the country and performed no work on the Property. Indeed, although the Contract was signed in July 2020, it was not until December 9, 2020 that Inbar, by email, "introduce[d]" herself and the other Owner to Gershom, thereby reflecting that Gershom had had little to no communication with Owners up to that point. *Id*. at 88. Thus, there is no disagreement that

Lee was Owners' primary contact with #1 Construction throughout the project, as Lee and Inbar each averred. On this record, we agree with Owners that:

> It is virtually impossible to formulate an argument that Mr. Lee could execute and enter into a contract with a customer; manage the daily operations of the company; be responsible for the delivery of services to that custom[er]; be the sole spokesperson for the company; be the sole owner, director and officer in the United States and in Indiana at all relevant times; and somehow not also have the authority to resolve contractual disputes with that customer.

Appellees' Brief at 30.

[34] #1 Construction placed Lee in a position to act on behalf of the corporation – contracting and performing work while Gershom was out of the country. #1 Construction's manifestations in that regard would give a third-party such as Owners the reasonable belief that Lee had the authority to resolve the contractual dispute. Accordingly, we find that, as matter of law, Lee had apparent authority to execute the Settlement Statement on behalf of #1 Construction.[10] *See Cain Fam. Farm*, 991 N.E.2d at 978 (finding that one of four members of an LLC, which was the sole general partner of a limited partnership, had apparent authority as a matter of law to execute a purchase

[10] Because we find that Lee had apparent authority, we need not decide whether he had actual authority to bind #1 Construction. Also, having found that Lee had authority to execute the Settlement Statement, we need not reach Defendants' arguments that the trial court abused its discretion when it struck "Defendants'[] evidence on the amount owed" and that a "factual dispute over the amount owed" precluded entry of summary judgment. *Appellants' Brief* at 11, 16; *Reply Brief* at 8.

agreement to sell property owned by the limited partnership, where the LLC and the partnership had placed the member in position to perform acts such as executing a purchase agreement and gave the buyer the reasonable belief that the member possessed such authority).

[35] Because Lee had the authority to execute the Settlement Statement on behalf of #1 Construction, no genuine issue of fact remains as to whether Owners still owed additional money to #1 Construction under the Contract. We affirm the trial court's grant of partial summary judgment to Owners on the issue of Lee's authority. [11]

[36] Judgment affirmed.

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

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[11] We note that the court's Order awarded $36,830.47 in compensatory damages and $36,830.47 in punitive damages but thereafter excluded from final judgment "the question of whether Defendant Gershom was aware of the Settlement [Statement] at the time he took Plaintiffs' money from the title company *and any resulting punitive damages*." *Id*. at 27 (emphasis added). From this language, it is unclear whether the trial court intended to award punitive damages or to reserve the determination of such for a subsequent hearing. Defendants, however, do not raise any issue regarding punitive damages on appeal. Also, as to the reserved question of whether Gershom "was aware of the Settlement Statement" when he obtained the funds from the title company, Gershom's affidavit states that he went to the title company and picked up the check on March 24, 2021, and the original complaint, filed on March 10, 2021, referred to the Settlement Statement and attached it as an exhibit. The record thus reflects that Gershom was aware of the Settlement Statement when he went to the title company on March 24, 2021.