

STATE OF MICHIGAN
COURT OF APPEALS

WILHELM & ASSOCIATES,

Plaintiff-Appellant,

v

THE ORCHARDS GOLF LIMITED
PARTNERSHIP,

Defendant-Appellee.

UNPUBLISHED

December 15, 1998

No. 202541

Wayne Circuit Court

LC No. 96-632802 CK

Before: Gribbs, P.J., and Sawyer and Doctoroff. JJ.

DOCTOROFF, J. (concurring).

I agree with the result reached by the majority. However, I write separately because I believe that we should adopt a judicial admission exception to the statute of frauds.

Jurisdictions recognizing a judicial admission exception to the writing requirement of the statute of frauds hold that an admission of a contract made during a judicial proceeding renders the statute of frauds inoperable. *Timberlake v Heflin*, 180 W Va 644, 648; 379 SE2d 149, 153 (1989). The exception has been construed to include parol admissions in depositions or in open court. *Timberlake*, *supra*, 379 SE2d 153. The exception is justified on the basis that it furthers the purpose of the statute of frauds, which is to prevent the fraudulent enforcement of unmade contracts, not the legitimate enforcement of contracts that were in fact made. *Id.*

Our legislature has provided a judicial admission exception to the requirement that a contract for the sale of goods be in writing. MCL 440.2201(3)(b); MSA 19.2201(3)(b). I see no reason why the exception should not apply in other instances where a party against whom the enforcement of a contract is sought admits in a pleading, deposition, or in open court, that a contract was, in fact, made.

However, I agree with the majority's conclusion that, even if we were to adopt a judicial admission exception, the admission made by defendant in the instant case would not satisfy the exception. Ronald Dalby's statement "I'll take care of you," did not indicate the existence of a

contract or any of the essential terms of a contract. Accordingly, I agree with the majority's conclusion that defendant's motion for summary disposition was properly granted.

/s/ Martin M. Doctoroff