No. 95-0947

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

HAMILTON BEACH/PROCTOR-SILEX, INC.,
a foreign corporation,

Plaintiff-Respondent-Cross Appellant,

v. **ERRATA SHEET**

MARVELLE ENTERPRISES OF AMERICA, INC., a Wisconsin corporation,

Defendant,

MARVELLE WORLDWIDE, INC., a California corporation,

Defendant-Appellant-Cross Respondent.

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PLEASE TAKE NOTICE that the attached pages nineteen, twenty, twenty-one and twenty-two are to be substituted for pages twenty and twenty-one in the above-captioned opinion which was released on April 11, 1996.

Dated this twenty-first day of December, 2006.

admission" of the existence of an oral contract generally renders the contract enforceable despite its noncompliance with the statute of frauds. *See* ***Triangle Marketing, Inc. v. Action Indus., Inc.,*** 630 F. Supp. 1578, 1581 (N.D. Ill. 1986). The official comment to § 402.201(3)(b) explains the exception:

> If the making of a contract is admitted in court, either in a written pleading, by stipulation or by oral statement before the court, no additional writing is necessary for protection against fraud. Under this section it is no longer possible to admit the contract in court and still treat the Statute as a defense.

U.C.C. § 2-201, cmt. 7.

In Marvelle's view, the rule is that if the mere existence of a contract is conceded--even though the admission makes no reference to any contract terms--that is sufficient to take the case out of the statute. We disagree. In order for a party's in-court statement to satisfy the statute, it must constitute "an unqualified or unconditional admission" of the contract; ambiguous or unclear statements or suggestions of a contract do not suffice. *See* ***Ivey's Plumbing & Elec. Co. v. Petrochem Maintenance, Inc.***, 463 F. Supp. 543, 550 (N.D. Miss. 1978). Moreover, the purported "judicial admission" must, like the written agreement, mention the quantity of the goods contracted for in order for the exception to apply. ***Dresser Indus., Inc. v. Pyrrhus AG***, 936 F.2d 921, 928 (7th Cir. 1991).[1]

Marvelle contends that several "admissions" qualify for the exception. The first is the testimony of several Hamilton Beach employees. Three employees indicated that "at some point in time a package [was] arrived at" and was "given a model number," that "a product was finally selected" and that Model 981 and 982 blenders were "promised to Larry Martony by Hamilton Beach." Marvelle also refers to statements by Parks that he "figured [he] had an

[1] Admissions which make no reference to quantity are insufficient because such admissions are "not enforceable beyond the quantity of goods admitted." ***Radix Org., Inc. v. Mack Trucks, Inc.***, 602 F.2d 45, 48 (2d Cir. 1979). And, even where an admission does contain a specific quantity term, "the contract [i]s only enforceable as to the quantity of goods admitted to." ***Darrow v. Spencer***, 581 P.2d 1309, 1312 (Okla. 1978).

agreement with [Martony]" and that in his mind, there was an "agreement binding on Hamilton Beach and binding on Larry Martony" and a statement by McLain asserting that any agreement was for blue blenders. Because this testimony does not refer to quantity and does not indicate in any way that the parties had concluded a "requirements" contract, it does not fit the rule.[2]

Second, Marvelle maintains that several of Hamilton Beach's answers to interrogatories meet the "judicial admissions" exception to the statute of frauds. The interrogatories requested the names of Hamilton Beach employees with "information relating to the agreement/contract between" Hamilton Beach and Marvelle, together with all documents (a) "discussing, showing, or suggesting that" Hamilton Beach "entered into an agreement or contract with" Marvelle, or (b) relating to its decision to "terminate the contract." Hamilton Beach responded with a list of names, a general statement that any documents could be inspected at counsel's offices, and a statement that "[t]he only document involving termination is the letter dated January 10, 1992." As before, none of the responses--including the January 10 letter, which we have discussed in some detail above--either state a quantity term or indicate the formation of a requirements contract.

[2] Marvelle argues that the statements of former employees Parks and McLain constitute binding admissions for the purpose of the statute of frauds despite the fact that they were former employees of HBPS at the time they made them. Because we hold that the statements do not constitute admissions sufficient to satisfy the statute of frauds, we need not address whether Parks's and McLain's statements are binding on HBPS.

Marvelle also claims that Hamilton Beach's motion *in limine* is itself an admission. This argument, too, is unavailing for Hamilton Beach never admitted to an agreement regarding a specific quantity of blenders in its motion. Indeed, it expressly denied the existence of *any* "blue-blender" contract.[3]

Finally, Marvelle argues that Hamilton Beach's general counsel admitted the existence of the contract at the hearing on its pretrial motion when he stated: "[O]ur contention is that an agreement existed, and it had to do with brown blenders." Counsel then stated that any blue-blender "agreement" between Marvelle and Hamilton Beach "[wa]s strictly oral," that it "[wa]s not an agreement," and that "[no] writing[s] ... mention anything at all about a blue agreement."

We are satisfied that counsel's statement does not approach the type of "unqualified or unconditional admission" Marvelle must show in order to prevail on its argument that Hamilton Beach breached a contract to supply it with blue blenders. *See* ***Ivey's Plumbing***, 463 F. Supp. at 550. Indeed, considered in context, the statement flatly denies the existence of any contract for blue blenders. None of the purported "admissions" offered by Marvelle satisfy § 402.201(3)(b), STATS.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

[3] As we have noted above, Hamilton Beach's pretrial motion, commenting on Marvelle's allegation that Hamilton Beach had contracted with Marvelle to develop and produce a blue-blender package, stated: "[Marvelle] concedes that this alleged agreement is oral, that no writing exists to confirm Marvelle's specifications, and that the alleged agreement itself is at best an `implied' `understanding.'"