[Cite as *Petrella v. Doughty*, 2026-Ohio-4367.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

MICHAEL PETRELLA ET AL.,

Plaintiffs-Appellees,

v.

MARK DOUGHTY, ET AL.,

Defendants-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 26 JE 0003

Civil Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case No. 23-CV-247

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Reversed.

Atty. Costa D. Mastros, for Plaintiffs-Appellees

Atty. Sophia A. Savastano and *Atty. Gregory P. Barwell*, Wesp Barwell Berardino, LLC, for Defendant-Appellant

Dated: October 30, 2026

WAITE, P.J.

{¶1} Appellant Mark Doughty appeals a January 15, 2026 judgment entry of the Jefferson County Court of Common Pleas granting judgment in favor of Appellees Michael Petrella, as a member of East Ohio Asphalt, LLC, Craig W. Petrella, as a member of East Ohio Asphalt, LLC, and Kyle Flitz, as a member of East Ohio Asphalt, LLC (collectively referred to as "Appellees"). Appellant argues that there is no evidence of a signed, written agreement on his part to make cash-call payments to the company. While Appellees offered some writings that were executed after the alleged obligation to pay arose, Appellant contends his signed agreement must precede the duty to pay. Because there is no signed writing to show agreement as to the supposed cash calls here and any alleged later agreement lacked certain essential elements to prove there was agreement, Appellant's arguments have merit and the judgment of the trial court is reversed.

Factual and Procedural History

The Company

{¶2} This matter involves a now defunct asphalt company, East Ohio Asphalt, LLC, which was formed in June of 2020. The members of the company included: Appellant (40% interest), Appellee Michael Petrella (25% interest), Appellee Craig W. Petrella ("Billy") (25% interest), and Appellee Kyle Flitz (10% interest). As the parties all concede, they did not execute a written agreement delineating the rights and responsibilities of each member, so the company operated without a written operating agreement. There is testimony in the record that the company loosely followed the draft of a proposed written agreement. The record reflects that occasional meetings among

the members occurred. Some were held in person, and some by conference call, group text, or group email.

Financial Distress and Cash Call Payments

{¶3} At the time of the company's formation, Craig and Michael Petrella contributed $31,000 each to the company and Kyle Flitz contributed $12,400. Although Appellees collectively agreed Appellant was to own the greatest percentage of interest in the company, he did not have many liquid assets. His contribution to the company was a paver machine. At some point, the company began experiencing financial hardship and became unable to pay its bills.

{¶4} In an attempt to resolve the company's financial issues, the parties began to make what Appellees refer to as "cash-call payments," which are personal funds of members used to cover company expenses. While Appellees described these as agreed to by all members during meetings in advance, this is the crux of the dispute on appeal. Apparently, all members except Appellant regularly made these payments. Appellant sometimes made monetary contributions into the company. However, at times he made payments in an amount less than Appellees requested and at times he did not contribute.

{¶5} By statute, cash calls are unenforceable unless there is a signed written agreement by the members to pay. At the center of the instant dispute are two "writings" used by Appellees to demonstrate to the trial court the existence of a signed, written agreement by Appellant to make regular cash-call payments pursuant to the cash-call statute. The first consists of several text message exchanges between the members regarding the need to generate owner driven income to pay the company's debts. The second is a real estate purchase agreement that was executed on April 6, 2022, long

after the debt allegedly was incurred. This agreement involved the sale of real estate and a building owned by Appellant and Appellee Flitz. Appellees Billy and Michael Petrella stated they purchased this real estate with the understanding that Appellant's sale proceeds were to be used to pay multiple debts, including cash-call payments.

Complaint and Legal Proceedings

{¶6} On June 30, 2023, Appellees filed a bare bones complaint against Appellant. The complaint provides "[n]ow come the Plaintiff, East Ohio Asphalt, LLC, by and through its Members, Michael Petrella, Craig W. Petrella, and Kyle Flitz, and hereby file this action for unpaid cash calls/owner deposits for the limited liability company known as East Ohio Asphalt, LLC (EOA)." The complaint does not assert any facts or raise any legal theories, but briefly establishes the court's jurisdiction and venue. It concludes with a prayer for relief of $22,704.59 plus interest, attorney fees, and costs. However, the complaint does state that the damages sought are for "unpaid cash calls/owner deposits," triggering application of R.C. 1706.281 which addresses owner contributions, or "cash calls," even though the statute was not specifically cited in the complaint.

{¶7} On October 15, 2024, Appellees filed a motion for summary judgment. In addition to seeking to hold Appellant liable for monetary contributions to the company, apparently pursuant to statute although it was not referenced in the complaint, Appellees' motion sought judgment based on claims of promissory estoppel/detrimental reliance.

{¶8} On November 8, 2024, the court granted partial summary judgment in Appellees' favor. Although the court ruled in summary fashion, it appears the court did not actually rule on any of Appellees' specific claims, but instead ruled Appellees had produced a writing sufficient for purposes of the statute.

{¶9} In its entry granting partial summary judgment, the court determined that the real estate purchase agreement constituted a written, signed agreement for purposes of enforcing R.C. 1706.281, even though the court acknowledged that this writing was executed not only after the cash-call payments were allegedly agreed to, but also after they were claimed to be delinquent. The court rationalized that although the real estate agreement does not constitute "a call for capital" and "is not a written, signed agreement for capital contribution cash-calls," that "any written agreement counts" for purposes of the statute. The court determined that pursuant to statute the writing "need not be the cash call itself and it need not be the entire agreement showing consideration by all. A written promise from the party to be charged is sufficient." (11/8/24 J.E.) The court then noted there were issues remaining for trial relating to whether the real estate agreement amounted to a promise to pay the excess cash-call debt after the real estate proceeds were exhausted, whether Appellant agreed to be bound to future cash-call payments by means of the real estate purchase agreement, and whether Appellees could succeed on their claims of promissory estoppel.

{¶10} Thereafter, on March 24, 2025, Appellees filed an amended complaint, adding facts and providing a legal basis for their claims, citing R.C. 1756.62 for the first time. In addition, the complaint added East Ohio Asphalt as a defendant. On April 22, 2025, Appellant filed an answer to the amended complaint containing counterclaims against Appellees and raising a crossclaim against the company itself. Appellees filed a motion to strike Appellant's answer. Although their complaint contained newly added facts and legal citation, they claimed the complaint as amended did not raise any new

legal claims and merely added a necessary party. The court struck Appellant's counterclaims against Appellees, but permitted his claims against the company.

{¶11} On January 15, 2026, following a bench trial, the court found that two writings existed that, together, allowed Appellees' recovery under R.C. 1756.281: the real estate purchase agreement and certain text messages. The court again stated its belief that the statute merely requires a writing that shows some promise to pay, even if the promise is for an unspecified amount. The court determined that Appellees' "writings" bound Appellant to pay $19,704.59 in delinquent cash-call payments. Additionally, although not prayed for in the complaint, the court found Appellant liable in the amount of $3,000 for the paver Appellant provided the company, which had been repossessed. Hence, he determined Appellant was liable to Appellees in the total amount of $22,704. The court additionally ruled Appellant had failed to litigate his claim against the company and dismissed that crossclaim. Appellant has filed a timely appeal of this trial court decision.

Summary Judgment

{¶12} An appellate court conducts a de novo review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc*., 104 Ohio App.3d 598, 603 (8th Dist. 1995).

{¶13} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id*. at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.*, 122 Ohio App.3d 378, 386 (8th Dist. 1997).

{¶14} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

General Law

{¶15} This matter concerns cash calls, which are defined as obligatory monetary contributions to a limited liability company from its members to fund a company. Significantly, cash-call payments are governed by statute. The law concerning cash calls is found within R.C. 1706.281, which provides in full:

(A) A promise by a member to make a contribution to a limited liability company, or a series thereof, is not enforceable unless set forth in a writing signed by the member.

(B) A member's obligation to make a contribution to a limited liability company, or a series thereof, is not excused by the member's death, disability, or other inability to perform personally. If a member does not make a contribution required by an enforceable promise, the member or the member's estate is obligated, at the election of the limited liability company, or a series thereof, to contribute money equal to the value of the portion of the contribution that has not been made. The election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company, or a series thereof, may have under the operating agreement or applicable law.

(C)(1) The obligation of a member to make a contribution to a limited liability company may be compromised only by consent of all the members. A conditional obligation of a member to make a contribution to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

(2) The obligation of a member associated with a series to make a contribution to the series may be compromised only by consent of all the

members associated with that series. A conditional obligation of a member to make a contribution to a series may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that member. Conditional obligations include contributions payable upon a discretionary call of that series before the time the call occurs.

(3) Division (C)(1) of this section shall not apply to a member's obligation to make a contribution to a series of a limited liability company.

ASSIGNMENTS OF ERROR NOS. 1, 2, & 3

The Trial Court Was Clearly Erroneous When It Determined That The Cash Calls Were Undisputed.

Approval of Cash Calls By 60% of the Ownership Interest Does Not Satisfy the Signed Writing Requirement of R.C. 1706.281(A).

The Court erred in granting partial summary judgment finding that the 2022 Amendment to the Purchase Agreement constitutes a cash call.

{¶16} In his first three assignments of error, Appellant focuses the majority of his arguments on the lack of a signed, written agreement demonstrating that he agreed to make any cash-call payments. Appellant urges that all of the evidence offered by Appellees shows that the other members did agree to make payments, but then ordered him to pay a proportional amount only after the fact and without his prior agreement. Appellant contends that neither the real estate purchase agreement nor the text

messages qualify as "a writing" under the statute because they were executed after the payments demanded by Appellees were considered delinquent, and because they lacked the essential terms of an agreement. Appellant reasons that no agreement can exist where the alleged writing that is intended to bind him did not arise until that very payment became delinquent. Hence, Appellees do not seek to enforce an actual agreement to make certain cash calls, but seek to collect an alleged debt that he never agreed to pay.

{¶17} Appellees rely on the trial court's finding that the cash-call payments were voted on and agreed to by all members. As to the court's evidence of this, Appellees cite to the series of text messages offered to the court where Appellant texts that he is trying to get money together for payments, even though there is no reference in these texts regarding what sort of payments. Even if the texts and real estate purchase agreement were insufficient to show that Appellant agreed to make cash calls, which Appellees do not concede, Appellees contend that the three of them collectively own more of the company, so they could, and did, bind him to the payments by a majority vote.

{¶18} While this matter appears somewhat convoluted, its resolution turns entirely on whether writings that lack inclusion of the essential terms evidencing an agreement has been reached and formed only after the claimed obligation arises can qualify as a cash call pursuant to statute. We begin by noting that every agreement, in order to be binding, must include certain essential terms denoting the obligation. Whether the cash-call statute refers to the binding obligations as a "contract" or "agreement" matters little, as no matter the term, the statute would be wholly unnecessary unless a "meeting of the minds" is required.

{¶19} Ohio law places the burden on the party seeking to enforce an agreement to prove the existence and terms of that agreement. *Cleveland Cent. Catholic High School v. Mills*, 2018-Ohio-4873, ¶ 45 (8th Dist.), citing *Kostelnik v. Helper*, 2002-Ohio-2985, ¶ 16-17. The essential terms of the agreement must be " 'reasonably certain and clear' and mutually understood by the parties." *Id*., quoting *Rulli v. Fan Co*., 79 Ohio St.3d 374, 376 (1997). In addition, the one seeking judgment must also demonstrate that the parties had a "meeting of the minds" as to the essential terms of that agreement:

> A court cannot enforce a contract unless it can determine what it is. . . . [The parties] must have expressed their intentions in a manner that is capable of being understood. It is not even enough that they had actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are.

Id., citing *Rulli*, 79 Ohio St.3d at 376; 1 Corbin on Contracts, Section 4.1, at 525 (Rev.Ed.1993).

{¶20} It is axiomatic that the entire purpose in forming a limited liability corporation, or LLC, is to limit the members' liability associated with the entity. Hence, in order to bind members to certain liability that may arise, it is apparent that any agreement to accept liability must be very clear as to what and how much liability the member agrees to accept. The reason that R.C. 1706.281 was enacted was to ensure that any member of an LLC who agreed to forgo the LLC's protections provided understands and accepts such liability, and to document exactly what liability the member agrees to be responsible

for. It is apparent, then, that the written, signed agreement must clearly evince not only the nature of the liability, but the clear understanding of the liability and the member's clear acquiescence to this liability.

{¶21} The trial court ruled in partial summary judgment that the real estate purchase agreement signed by the parties after the dispute arose was a sufficient writing to satisfy the statute. Appellees claim that the text messages offered at trial, read as a whole, also constitute a written, signed agreement. They contend that as Appellant does not dispute he wrote the messages, this amounts to an electronic signature. We are not convinced Appellees are correct in this assertion. Even if we were to accept the text messages as a signed document, each of these messages are missing the essential terms of an agreement, even read as a whole. Among the missing necessary terms are: the amount due, the date due, and some clear acquiescence of the duty or promise to pay.

{¶22} Beginning with the question as to whether one can be bound to an agreement containing only a generic promise to pay an unspecified amount, this generality contradicts the basic principles of an agreement. No agreement to pay money can be found where the agreement is not clear as to the amount promised to be paid. There must be actual evidence that all parties to the agreement understood how much money was promised. This apparently did not occur, here, as evident from a series of text messages between Appellant and some of the other members.

{¶23} We must first note that nowhere in these messages do the parties refer to a cash call. On December 23, 2021, Appellant and Michael Petrella engaged in a text message exchange:

[Appellant]: Waiting on kassy to come back grab these boys and I can use her car to run to [the] bank and get you that money.

[Petrella]: Np. I'm a take everyone's and make there envelopes with it. Then pay dicky and put the checks in to balance the acct out of the negative

[Appellant]: [Thumbs up emoji]

[Petrella]: Hey not trying to bust ya but when are you coming ? The bank closes at 4

[Appellant]: Kass was supposed to be back by now. She's running late.

I'll get on her.

To be honest, you can also fuck off. I got let know this less than 24 hours ago. This is the most I've even heard from you all year. I'll get there when I get there,

I put my hours in, take it out of my last 2 paychecks I didn't get. Or the truck payment that didn't happen.

Kassys leaving the office now

[Petrella]: Mark I'm not sure why you are angry at me? It is common knowledge all year and especially after last months meeting how short we

> were and now there are even more bills coming in so this is not going to be the last time we have to put money into the company bc we are all the owners and are responsible to pay the company's bills.
>
> [Appellant]: Im not particularly mad at you Michael, but this should have been caught and handled earlier. This is MY reputation, I've built these relationships MYSELF. For the passed (sic) 4 years. Yes I understand you put more money in which yes you getting paid back is my first priority.

(sic in passim) (Plaintiff's Exh. 4.)

{¶24} The problem with this text exchange that, while it is clear that they are discussing funds to pay certain of the company's debts, nowhere does it mention a cash call. Even if this could somehow be gleaned from the texts, no part of these texts can be construed as an agreement to make a specific payment of a specific amount on a specific date. It appears to be an attempt to collect a past due debt, a debt there is no clear evidence to support. To have any value, Appellees needed to include evidence of the original agreement, not merely the attempt to collect on that agreement, if that is what is being discussed in these messages. In addition, Appellant expresses frustratration about the lack of communication apparently surrounding the company's financial situation: "Im not particularly mad at you Michael, but this should have been caught and handled earlier." (Plaintiff's Exh. 4.)

{¶25} Later that day a text contains the first reference to owner deposits, in a group text exchange between Appellant and Appellees Michael Petrella, Billy Petrella, and Kyle Flitz:

> [Billy Petrella]: Everyone should be aware and plan on that next week we will have to make owner deposits again to cover the first of the months bills.
>
> Also [Appellant] since you did not bring your full 40% of what we needed today to pay the employees and agreed upon/identified bills to be paid we are even further behind than we had planned when we left the meeting yesterday.
>
> [Appellant]: Wait, what, I gave 1500 I thought I owed 14 something.
>
> [Billy Petrella]: No not even close !
>
> [Appellant]: Where did I even get that number then?
>
> [Billy Petrella]. I have no idea lol ?

(sic in passim) (Plaintiff's Exh. 5.) Problematically, this exchange shows confusion on Appellant's part about what he allegedly may owe.

{¶26} Later, Appellee Billy Petrella texted the group. He apparently believes he resolved Appellant's confusion following a phone call with Appellant:

> Hey guys mark and I just spoke. We both plan To be at meeting on Wednesday at 1.
>
> Mark misunderstood and thought his total for today was the $1,480 figure to cover payroll not that figure plus the other $2.5k and change figure which he thought was due next week. Now that we got this weeks straight we do need to come up with what to sell first and another round of owner despots (sic) that will carry us hopefully to February 1st.

(sic in passim) (Plaintiff's Exh. 5.)

{¶27} There are, again, several problems with this exchange. First, while it states that Petrella and Appellant had reached an understanding regarding certain debt, it is entirely one-sided: this text did not come from Appellant and he did not endorse it or respond in any way. It also actually underscores Appellant's confusion and his lack of understanding as to the amount he was being asked to pay and what he was paying for, issues that support the determination that there was no meeting of the parties' minds, and so no agreement. While it appears, again, to be an attempt to collect a previously owed debt, it does not provide support that Appellant agreed to make any cash calls as defined by statute.

{¶28} In another text that is undated, Appellant texted the group about selling off his minerals: "I'm heading to Carrollton to meet with royalty company about selling my minerals. Ill (sic) have my portion once I finalize a deal as soon as I can." Again, Appellant clearly evinces he intends to raise money to pay something, but this text does not provide any information that would lead to a finding that he agreed to make a cash call. He

discusses selling his mineral interests and having his "portion," but the text lacks the specificity needed to arrive at the conclusion that he is addressing a cash call. While Appellees contend that "portion" refers to his cash-call payment, there is no way to tell from this text whether Appellees are correct. This cryptic reference to a "portion" could be anything, business related or personal. This falls far short of the requirement of statute that any promise to make a contribution to the company must be "a writing" signed by the promisor, or is unenforceable.

{¶29} On January 21, 2022, Appellant communicated with Appellee Michael Petrella in a text exchange: "My day didn't go as planned today, I got stuck in Columbus longer than I anticipated, then deal with the boys. I have money and this spreader box for you. Are you free to sit down and talk for like 10 mins. I might have a possible better scenario." (Plaintiff's Exh. 4.) Again, nowhere in this exchange is a cash-call payment addressed, a specific amount of money due discussed, or any explanation of what the money Appellant apparently intends to give Appellee Michael Petrella may be for. The money Appellant says he has for Appellee, here, could very well be intended as a gift to Appellee, personally.

{¶30} On March 14, 2022, the group again exchanged text messages regarding the company's dire financial status:

> [Michael Petrella]: Hey guys, we need to put money (owner deposits) in ASAP. The account is negative plus we have Marches bills to cover quickly. Plus sent some money to push off some of the creditors to buy us some more time (RnL carries, frost Brown, dickie mccamey, rest of signs,

and church hill) I will send pictures of list. can everyone put money in ASAP? We need $7,337.9

[Appellant] would be $2,935.15

Billy would be $1,834.48

Mike would be $1,834.48

Kyle would be $733.79

(sic in passim) (Plaintiff's Exh. 6.) Again, Appellant did not respond to or participate to this text, hence it does not serve as evidence that he agreed to pay this suggested amount, or any other amount, in any sort of cash call.

{¶31} On March 28, 2022, Appellee Michael Petrella texted:

[Michael Petrella]: Our account is in the negative. More of our creditors are calling and demanding payment, putting late fees on, etc. Worker's Compensation did our (annual) true up and we owe an additional amount so the total is roughly $16,000. This will give you us (sic) a little money to send people some money that we haven't paid on.

This is April deposit $15,288

[Appellant] $6,115

Mike $3822

Billy $3822

Kyle $1529

If we can get these deposited in the bank by Thursday that be (sic) great. Thanks!

(Plaintiff's Exh. 6.) Again, Appellant did not respond to this text in any way. As Appellant did not acquiesce to these payments, this message cannot serve as evidence Appellant signed any written agreement to make a cash call.

{¶32} On May 9, 2022, the group again exchanged text messages. Appellant's allegedly delinquent account was a topic of conversation:

[Billy Petrella]: [Appellant] do you know your total for unpaid or not paid in full owner deposits ? (sic)

[Appellant]: I wanna say its around 9k and I'm hoping couple weeks, everything is approved just waiting on title.

[Billy Petrella]: I'm not being smart I'm just asking but are you going to deposit this weeks on Thursday?

[Appellant]: I won't have it, I haven't brought in a dollar since November, that's why I'm pissed to (sic). He's dragging me along, when I could have went and got a job somewhere. But he's not buying without me. So I'm fucked either way.

[Billy Petrella]: Ok I think Mike should have updated total of what your outstanding owner deposits are including this weeks??

[Appellant]: Ok

I just remember

Before March was around 7 then I owed March was 3600 or something

[Billy Petrella]: [An emoji of a person shrugging their shoulders with their hands in the air]

(Plaintiff's Exh. 6.)

{¶33} Again, while Appellant clearly references some sort of payment and responds to a comment about "owner deposits," this does not serve as evidence that there was an agreement Appellant was to pay $9,000 pursuant to the cash-call statute. Again, this actually supports Appellant's contention he never had an understanding of the financial obligations to the company he was being asked to take on and never signed any agreement to pay any specific amount. This text reveals other members are also not sure how much Appellant may have owed. As Appellant boldly stated that he was unable to pay what the Appellee members asked him to pay, the text actually provides evidence that Appellant did not agree to any cash call.

{¶34} While it seems the trial court may have believed that Appellant had promised, verbally, to make the requested payments and was simply trying to avoid his debt by use of a legal technicality, it is clear that Ohio law requires a written, signed

agreement to pay a cash call or series of calls before a person can be bound to pay any liability of an LLC. The record here contains no written, signed agreement wherein Appellant agrees to make a specific cash-call payment, or even that Appellant understands what he is being asked to pay. At most, it contains his understanding that Appellees believe he owed certain debt. While Ohio law requires a written, signed agreement in order to enforce a cash call, and this requires that it contain the essential elements of a contract, including a meeting of the minds, this record actually supports the conclusion that Appellant and Appellees did not have a mutual understanding of what was allegedly owed or when. And while it may be possible under some set of facts for a member to agree to pay any and all cash calls that are requested of him or her, that blanket agreement must be apparent in a written, signed document. All of Appellees' "documents," even when taken as a whole, fail to show Appellant's understanding of what he was asked to pay and fail to provide proof of his clear agreement, even if certain of the texts can be interpretated as "signed" by him.

{¶35} This record also shows that the system the members had in place for their operation was not compliant with Ohio law. Instead of obtaining individual agreement of all members, one person, who appears to be Appellee Billy Petrella, calculated the payment amounts sought from the others based on the financial need of the company, and divided that figure using the members' percentage of ownership. He then instructed each member to pay the amount he calculated. The problem with this method is that, in order to bind a person to a cash-call payment, Ohio law requires that person to agree to the payment in a signed, written document. This record supports the conclusion that the Appellee members agreed to cash-call payments and simply told Appellant he must pay

an amount they agreed, as there is no evidence of any vote or other writing that Appellant's agreement was sought or obtained. Appellees did admit into evidence a document that appears to contain a handwritten accounting of Appellant's credits and debts. This document is not signed by Appellant. It appears to be Appellee Billy Petrella's own record keeping notations. This document clearly did not provide the court with evidence there was a signed, written agreement to make a cash-call payment or payments on the part of Appellant.

{¶36} In its earlier judgment entry, which the trial court refers to as partial summary judgment, the court undertook to determine the threshold issue of whether a written, signed agreement existed. The court conceded that "[i]nitially there was no such writing. However, later there was one." (J.E.) Again, logically the agreement to make a cash-call payment must occur before any attempts to recover delinquent funds can be undertaken. It is axiomatic that the mere attempt to collect on an alleged debt cannot serve as proof there was an agreement to establish that debt. And while the statute does not explicitly state that any later-ratified agreement (so long as it is in writing and signed by contributing member) cannot serve to meet the requirements of statute, any such later writing must show clearly that the member not only agrees to pay, but fully understands the amount and nature of his or her agreement.

{¶37} Nowhere in this record is there a signed, written agreement in any form that serves to evince Appellant agreed to make cash-call payments. Instead, the most that can be gleaned from this record is that Appellant acknowledged that his fellow members informed him they required him to make payments that he did not have the funds to make, which he conveyed to Appellees at the time payment was demanded.

{¶38} While the statute does not specifically contain language requiring the amount of the agreed payment be stated, this is obviously required, or else the agreement cannot be enforceable. No court would enforce an open-ended agreement to pay whatever amount was later asked. Again, it is apparent that the statute's requirement there be a written agreement triggers application of basic contract law. Based on established contract law, Appellees' theory that a person can be bound after-the-fact to a cash-call payment for any amount that the remaining members demand is clearly misguided, at least absent an explicit writing stating this by the member being bound.

{¶39} This observation takes us to Appellees' assertions regarding the real estate agreement. It cannot serve as the basis for finding there was a knowing agreement to make cash-call payments, as it clearly seeks to obtain some delinquent payment or payments. Appellees argue that the agreement states that proceeds of the sale are to be put towards various debt, including cash calls. But the fatal problem with that argument is that the real estate purchase agreement occurred after payment of the supposed cash calls were sought. Appellees have presented no evidence of any prior agreement and its essential terms. The real estate purchase agreement provided:

> The remainder of what is left after the payment to ALP Capital, LLC shall go directly to East Ohio Asphalt, LLC towards the deficit amount owed by [Appellant] for various cash calls and other debts that [Appellant] still owes to the company. . . . **The payment to East Ohio Asphalt, LLC is for the past due "Cash calls"** owed by [Appellant] as of March 17, 2022.

(Emphasis added.) (Real Estate Agreement.)

{¶40} The purchase agreement referenced both cash calls and "other debts." The mention of "other debts" suggests that some of the amounts discussed in the text messages may have been a debt to the company other than a cash call, as the parties clearly state there are "other debts" in addition to the alleged cash-call payments they claim are owed to the company. No evidence in the record provides proof of which portion of these debts constitute cash-call payments and which are "other debts." It does show that Appellant may have agreed to pay cash calls and certain other amounts to the company that were not cash calls, and apparently failed to make those payments. Crucially, there is no evidence of Appellant's previous agreement to pay anything to the company. There is no evidence that clearly shows how much Appellant agreed to pay or when he agreed to pay it. The parties' lax operation of this company from the start and obvious failures in record keeping are clearly apparent. Hence, instead of bolstering the contents of the text messages for evidentiary purposes, the real estate purchase agreement casts doubt on the substance of Appellant's agreement as to cash calls and also as to Appellees' reliance of those non-specific text message exchanges in attempting to collect any alleged debt.

{¶41} Appellant was asked about the real estate purchase agreement's reference to cash calls:

> Q So you agree that you owed that debt to East Ohio, correct –
>
> A I –
>
> Q -- for cash calls?

A East Ohio owed debt to unpaid bills.

Q I didn't ask you that. You signed this document, right?

A Yes.

Q And it says that you owe these monies for past cash calls, right? That's what it says. The document speaks for itself.

[Appellant's Counsel]: I'm going to object, your Honor. He's standing above the witness, badgering him.

[Appellee's Counsel]: I'm sorry, your Honor.

[The Court]: I think the witness is being evasive as hell.

[Appellant's Counsel]: He's answered the question.

[The Court]: He's being evasive as hell.

[Appellant's Counsel]: Be nicer to the witness who is being evasive.

[Appellee's Counsel]: Yes, sir.

[Appellant]: I just – I've never been in this situation before, so I apologize, Judge.

[The Court]: Well, here's how this works. You're asked a question. You just answer the question and tell the truth.

[Appellant]: Okay. Yes.

[The Court]: When you see in front of your face that the document you signed is for cash calls, I expect you to say, "Oh, yeah, look, It's for cash calls."

[Appellant]: Okay. Thank you.

[The Court]: But you can continue to be the way you've been.

[Appellant]: Sorry, your Honor.

(Hrg., pp. 111-113.)

{¶42} Appellees urge that Appellant "admitted" that the real estate agreement was designed to pay past cash calls, and thus, Appellant admitted that he entered into an agreement to make cash-call payments. There are two problems with Appellees' conclusion. First, the testimony only came after the trial court essentially made Appellant's "admission" for him. Appellant merely stated that the company had unpaid bills. Second, it does not change the fact that the real estate agreement was signed and executed well after he was alleged to have agreed to the cash calls and these were, according to Appellees, delinquent. No underlying evidence of Appellant's agreement which established the legal obligation to pay any cash calls was ever before the court. The real estate purchase agreement is not evidence that supports the establishment of any specific cash call. While it shows the parties to the real estate transaction believed cash calls had been made in the past and apparently not paid by Appellant, it provides absolutely no evidence that the original debt was, in fact, legally binding as a cash call

absent a writing signed by Appellant showing his agreement to be bound, how much he was to pay, and any other necessary indication of any or all agreements to pay money. Further, the purchase agreement is silent as to any amounts, either of cash calls or any other debt. Hence, it does not show Appellant's agreement sufficient to meet the statute and which can be legally enforced.

{¶43} As we find that the text messages and real estate agreement do not qualify in whole or part as a signed, written agreement pursuant to R.C. 1706.281, the cash call statute, we move to Appellees' alternative argument that they collectively own more of the company and were able to vote to bind Appellant to pay the company's operating expenses.

{¶44} "While it is true that a limited liability company can have an oral operating agreement, Ohio law requires that certain documents pertaining to limited liability company members must be in writing." *Owens v. Owens*, 2025-Ohio-359, ¶ 38 (5th Dist.). In this case, a draft of a written operating agreement was offered into evidence. That draft provided that cash-call payments were to be decided by a vote. However, this document is unsigned, and includes several handwritten notes and question marks indicating that it never reached the status of a final agreement. The unsigned document, that was apparently intended to serve as an operating agreement had it been signed, cannot be used to give Appellees the power to bind Appellant to make the payments based on a term within that unsigned document. The document submitted as an "operating agreement" has absolutely no contractual authority, despite Appellees' contention the parties were loosely operating pursuant to this draft agreement.

{¶45} While it is true that an operating agreement can be oral, a cash call agreement cannot be oral pursuant to law. See *Gardner v. Paxton,* 2018-Ohio-4586 (4th Dist.). *Gardner* involves an earlier version of the statute, R.C. 1705.09(B), however, that version similarly provided: "[a] promise by a member to contribute to the limited liability company is not enforceable unless it is set forth in a writing signed by the member." The only difference between the former and current version of the cash-call statute is that the latter includes the phrase "or a series thereof" between "company" and "is." Thus, the current version also applies to a series of agreed contributions.

{¶46} Significantly, the *Gardner* court found that the contribution agreement at issue was oral, not written. As no written agreement existed, the oral promise to pay was deemed unenforceable pursuant to R.C. 1705.09(B). Despite the fact that an operating agreement can be oral, any aspect of the parties' agreement statutorily required to be written cannot be enforced pursuant to that oral agreement. Clearly, no oral operation agreement can be used to avoid the requirement that cash-call agreements must be in writing. As such, this argument also fails.

{¶47} It appears clear Appellant understood Appellees expected him to help keep his company financially afloat. Appellant apparently intended to do so. The question here is how much money Appellant expected to pay and whether he incurred the legally binding obligation to fulfill any cash-call payment. As there is no valid written, signed agreement to pay cash calls in this record, contrary to the trial court's determination, there is no legally enforceable agreement to pay in this case. As a side issue, we note that Appellee Billy Petrella testified that after closing on the real estate subject to the above discussed agreement, the sale proceeds did, in fact, get paid to Appellees, apparently to

pay company debt. (Hrg., p. 38.) These proceeds amounted to $3,165.95, which, according to Appellees, still left a sizeable company debt. (Hrg., p. 38.) The record reveals that Appellant understood he had made some separate payments to Appellees. This shows Appellant felt some obligation to financially support the company, even though this cannot serve to support collection of an alleged cash call. However, we also note where a party has voluntarily satisfied a judgment, the issue becomes moot on appeal. *State v. Auber,* 2024-Ohio-2741, ¶ 14 (7th Dist.), citing *Blodgett v. Blodgett*, 49 Ohio St.3d 243 (1990).

{¶48} Again, there is no legally enforceable promise to pay a cash call or series of calls shown in this record. However, because Appellant voluntarily sent some money to Appellees prior to filing of the complaint and voluntarily satisfied a portion of whatever debt Appellees believed he owed, he is not entitled to a refund of previously paid monies despite our determination that he owed no legally enforceable cash call debt.

{¶49} Appellant's first, second, and third assignments of error have merit and are sustained.

Conclusion

{¶50} Appellant argues that there is no evidence in a signed writing that he agreed to make cash-call payments to the LLC at issue. While Appellees provided some writings that tend to show Appellant understood he was expected to financially contribute when the company ran into monetary trouble, these were all written after he allegedly incurred debt to Appellees. It is apparent from these writings that Appellant did not understand or acquiesce on an amount he would pay or when he would pay it. Appellant argues that the signed writing required by the cash-call statute must precede the duty to pay. Whether

this is true, any promise made pursuant to statute must explicitly show Appellant agreed to pay cash calls and understood exactly what this agreement entailed. Otherwise, the promise is not legally binding. The evidence in this record shows that Appellant did not, and never agreed to make any certain amount of payments in a signed, written agreement as required. For the reasons provided, Appellant's arguments have merit and the judgment of the trial court is reversed.

Robb, J., concurs.

Hanni, J., dissents with dissenting opinion.

Hanni, J., dissenting.

{¶51} With regard and respect to my colleagues, I must dissent from the majority opinion. I would affirm the trial court's granting of partial summary judgment in favor of Appellees.

{¶52} The majority holds that the real estate purchase agreement fails to qualify as a signed written agreement under R.C. 1706.281(A). They find the statute is not satisfied because the agreement contained no evidence of Appellant's agreement to pay the original cash call debt, and the agreement lacked a due date or specific amount owed.

{¶53} The majority adds requirements into the statute that are not there. R.C. 1706.281(A) merely states: (A) A promise by a member to make a contribution to a limited liability company, or a series thereof, is not enforceable unless set forth in a writing signed by the member. It requires a promise in writing signed by the member. It does not require the agreement concerning the original cash call, a due date, an exact amount owed, or that the written promise occur before the obligation accrues.

{¶54} The real estate agreement here meets R.C. 1706.281(A). Appellant signed the agreement. The agreement stated that the remainder of the proceeds from the real estate sale shall go toward cash calls and other debts owed by Appellant to East Ohio Asphalt, LLC. This constituted a promise by Appellant in a signed writing to pay for cash calls. That is all that R.C. 1706.281(A) requires.

{¶55} The text messages constitute additional evidence that supplements the real estate agreement, providing more detail as to the promise. Plaintiff's Exhibit 5 was a text message to all members, including Appellant, in which Bill Petrella notified them that they would each have to make deposits to cover bills due the first of the month. When Bill

notified Appellant in the text that they were further behind because he failed to pay his 40% of the total needed, Appellant responded, “Wait, what, I gave 1500 I thought I owed 14 something?” This constitutes an acknowledgment by Appellant not only that he paid for past cash calls, but that he still owed for other cash calls.

{¶56} Accordingly, I would find the trial court properly granted summary judgment in favor of Appellees based on the real estate agreement signed by Appellant in which he agreed to direct proceeds towards his cash call obligations.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Jefferson County, Ohio, is reversed. Costs to be taxed against the Appellees.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.