SUPREME COURT OF ALABAMA

OCTOBER TERM, 2022-2023

1210193

Amanda Howard Real Estate, LLC

v.

Clair Lee and JRHBW Realty, Inc.

Appeal from Madison Circuit Court
(CV-19-000067)

PARKER, Chief Justice.

Amanda Howard Real Estate, LLC ("Howard Real Estate"), appeals a partial summary judgment in favor of Clair Lee and JRHBW Realty, Inc. ("RealtySouth"), in Howard Real Estate's suit to enforce a

noncompete agreement against Lee. The Madison Circuit Court ruled that the noncompete agreement was void because it was not signed by both parties as required by statute. We affirm the judgment because none of Howard Real Estate's arguments establish that it satisfied the statutory signatures requirement.

I. Facts

Lee began working for Howard Real Estate in 2010. In 2017, Howard Real Estate promoted Lee to Director of Sales. As part of that promotion, in January 2017, Lee signed "Addendum 1," entitled "Director of Sales Employee Job Description and Compensation." Addendum 1 contained a detailed description of Lee's duties and compensation. Two weeks later, Amanda Howard, chief executive officer of Howard Real Estate, signed Addendum 1 on behalf of Howard Real Estate.

Six months later, in July 2017, Lee signed a document entitled "Employment Position Agreement" ("the Position Agreement"). The Position Agreement stated that it "consists of this Position Agreement and its two addendums." The Position Agreement provided that "[Lee] will perform the job duties in Addendum 1" and that "[Lee] agrees to the

covenants in Addendum 2." The same day, Lee signed "Addendum 2," entitled "Confidentiality and Noncompete Agreement." Addendum 2 contained detailed confidentiality, noncompetition, and nonsolicitation sections. The noncompetition section provided that, for two years after the termination of the Position Agreement, Lee would not be employed by any other entity engaged in the real-estate business in Madison County and certain other north Alabama counties ("noncompete provision"). No representative of Howard Real Estate signed the Position Agreement or Addendum 2 at that time.

In May 2019, Lee resigned from Howard Real Estate. Later the same day, Howard signed the Position Agreement and Addendum 2. Three days later, Lee began working for RealtySouth as the managing broker for its new Huntsville office.

Howard Real Estate sued Lee and RealtySouth in the circuit court, alleging, among others, claims of breach of contract and civil conspiracy, based partly on the noncompete provision. Howard Real Estate sought damages and a permanent injunction.

Lee and RealtySouth each moved for a summary judgment. Among

other arguments, Lee and RealtySouth contended that the noncompete provision was unenforceable because it did not comply with § 8-1-192, Ala. Code 1975. That statute provides: "In order to be valid, any contract or agreement executed pursuant to this article [(Title 8, Chapter 1, Article 10, entitled "Restrictive Covenants")] shall be reduced to writing, signed by all parties, and be supported by adequate consideration." (Emphasis added.) Lee and RealtySouth emphasized that no representative of Howard Real Estate signed Addendum 2 until after Lee had resigned.

The court granted Lee's and RealtySouth's summary-judgment motions as to Howard Real Estate's breach-of-contract and civil-conspiracy claims to the extent that those claims were based on the noncompete provision. The court ruled that the noncompete provision did not comply with § 8-1-192 and therefore was void. The court denied the motions as to all other aspects of Howard Real Estate's claims. The court certified its order for permissive appeal under Rule 5(a), Ala. R. App. P., and certified the following question of law: "Does … § 8-1-192 void a noncompete agreement that was signed by the employee[] but was not

executed by the employer, where the employee and the employer signed other employment agreements that defined their employment relationship, following which the employee received the benefits of employment?" This Court granted Howard Real Estate permission to appeal.

II. Standard of Review

In a permissive appeal, we limit our review to the trial court's certified question of law, which we review de novo. Mid-Century Ins. Co. v. Watts, 323 So. 3d 39, 43 (Ala. 2020).

III. Analysis

Section 8-1-190(a), Ala. Code 1975, provides: "Every contract by which anyone is restrained from exercising a lawful profession, trade, or business of any kind otherwise than is provided by this section is to that extent void." Section 8-1-190(b) then lists six categories of restrictive covenants that are "allowed to preserve a protectable interest." One of those categories is covenants in which "[a]n ... employee of a commercial entity ... agree[s] with such entity to refrain from carrying on or engaging in a similar business within a specified geographic area so long as the

commercial entity carries on a like business therein, subject to reasonable restraints of time and place." § 8-1-190(b)(4). However, § 8-1-192 provides: "In order to be valid, any contract or agreement executed pursuant to this article shall be reduced to writing, signed by all parties, and be supported by adequate consideration." (Emphasis added.)

Although no representative of Howard Real Estate signed Addendum 2 containing the noncompete provision (until after Lee resigned), Howard Real Estate contends that § 8-1-192's signatures requirement was nevertheless satisfied in three ways. First, Howard Real Estate contends that Howard's signature on Addendum 1 in January 2017 satisfied the signatures requirement because Addendum 1 was part of the same transaction as Addendum 2. Second, Howard Real Estate argues that it performed its obligations under Lee's employment agreement. Third, Howard Real Estate asserts that Lee cannot repudiate part of her employment agreement while claiming the benefits of that agreement.

Before noncompete agreements were governed by statute in this State, Alabama common law disfavored contracts in restraint of trade on

the basis that they were generally against public policy. See American Laundry Co. v. E. & W. Dry-Cleaning Co., 199 Ala. 154, 159, 74 So. 58, 60 (1917) ("Contracts in restraint of trade are in themselves, if not shown to be reasonable, bad in the eye of the law. [¶] Whatever restraint is larger than the necessary protection of the party with whom the contract is made is unnecessary and void, as being injurious to the interest of the public, on the ground of public policy."); Smith v. Webb, 176 Ala. 596, 600, 58 So. 913, 915 (1912) ("[T]he law does not look with favor upon restrictions against competition ....").[1] In 1923, the Legislature enacted Alabama's first statute regarding noncompete agreements. See § 6826, Ala. Code 1923; Shelton v. Shelton, 238 Ala. 489, 492, 192 So. 55, 57 (1939) (noting that § 6826 was "new to the Code of 1923"). That statute provided: "Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by the next two sections, is to that extent, void." § 6826. The

[1]A concise history of English and American law regarding noncompete agreements is contained in Will Hill Tankersley et al., Alabama Enacts Major Revision of Alabama Code 8-1-1, 76 Ala. Law. 384, 386 (2015).

next two sections provided exceptions for sales of businesses and dissolutions of partnerships. §§ 6827-28. In 1931, the Legislature added an exception for employee noncompete agreements. Ala. Acts 1931, Act No. 647.

Thereafter, the noncompete-agreement statutes remained substantively unchanged and were combined into one section in the 1975 Code. See Title 9, §§ 22-24, Ala. Code 1940; former § 8-1-1, Ala. Code 1975. Notably, the statutes carried forward the common law's disfavor toward noncompete agreements. See Pitney Bowes, Inc. v. Berney Off. Sols., 823 So. 2d 659, 662 (Ala. 2001) ("In adopting § 8-1-1, the Legislature has declared the public policy of this state against noncompete agreements."); Construction Materials, Ltd. v. Kirkpatrick Concrete, Inc., 631 So. 2d 1006, 1009 (Ala. 1994) ("Section 8-1-1 expresses the public policy of Alabama disfavoring contracts in restraint of trade ...."). Therefore, Alabama courts narrowly applied the statutory exception for employee noncompete agreements. See Construction Materials, 631 So. 2d at 1009 (holding that § 8-1-1's employee-noncompete-agreements exception did not apply, "in light of our public policy against restraints of

lawful trade and our correspondingly strict construction of" the exception); Pitney Bowes, 823 So. 2d at 665-66 (Harwood, J., concurring specially) ("[W]e are dealing with 'fundamental public policy,' and we are therefore required to employ 'strict construction' in interpretating the 'agent, servant, or employee' exception contained in § 8-1-1(b) ...."); Michael Edwards et al., The Enforceability of Covenants Not to Compete in Alabama, 65 Ala. Law. 41, 42 (2004) ("Consistent with the [Alabama Supreme C]ourt's general attitude toward post-employment restraints, Alabama courts have narrowly construed the employer-employee exception contained in ... § 8-1-1(b).").

In 2015, the Legislature enacted §§ 8-1-190 through -197 to replace § 8-1-1 and to clarify the law regarding noncompete agreements. See Act No. 2015-465, Ala. Acts 2015; §§ 8-1-190 to -197 & Ala. cmts.; Will Hill Tankersley et al., Alabama Enacts Major Revision of Alabama Code 8-1-1, 76 Ala. Law. 384 (2015). This new statutory scheme continues to embody the common law's posture of disfavor toward contracts in restraint of trade. As noted above, the current statutes provide that such contracts are "void," subject to certain exceptions, including an exception

for employee noncompete agreements. § 8-1-190. Accordingly, we continue to apply that exception narrowly in favor of competition, including the new requirement that the "contract or agreement" must be "signed by all parties," § 8-1-192.

The parties here do not dispute the events regarding their signing of Addendum 1 in January 2017 and Lee's signing of the Position Agreement and Addendum 2 (which contained the noncompete provision) in July 2017. The parties dispute only the legal effect of those events. When the relevant historical facts are not disputed, the question is one of law for the court and thus is appropriate for determination at the summary-judgment stage. See Walker v. Wilson, 469 So. 2d 580, 582 (Ala. 1985) ("When the facts of a case are undisputed, as they are here, and the court's judgment is based solely upon a legal interpretation or conclusion, then the court may grant summary judgment.").

A. Same transaction

Howard Real Estate contends that Howard's January 2017 signature on Addendum 1 satisfied the signatures requirement of § 8-1-192, Ala. Code 1975, as to Addendum 2 (which contained the noncompete

provision) because they were part of the same transaction. Howard Real Estate analogizes § 8-1-192 to Alabama's general Statute of Frauds, § 8-9-2, under which a transaction that includes multiple documents can sometimes be validated by a signature on one of those documents. See White v. Breen, 106 Ala. 159, 165-69, 19 So. 59, 59-61 (1894); Borden v. Case, 270 Ala. 293, 294-99, 118 So. 2d 751, 752-56 (1960); Truck Rentals of Alabama, Inc. v. M.O. Carroll-Newton Co., 623 So. 2d 1106, 1111-12 (Ala. 1993); Restatement (Second) of Contracts § 132 (Am. L. Inst. 1981); 10 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 29:29 (4th ed. 2011). Importantly, however, § 8-1-192 provides: "In order to be valid, any contract or agreement executed pursuant to this article shall be ... signed by all parties ...." (Emphasis added.) Thus, the thing that must be signed by all parties is the "contract or agreement" containing the noncompete provision.

When Lee and Howard signed Addendum 1 in January 2017, the parties mutually assented to its detailed terms regarding Lee's employment duties and compensation. See I.C.E. Contractors, Inc. v. Martin & Cobey Constr. Co., 58 So. 3d 723, 725 (Ala. 2010) ("'"The

purpose of a signature on a contract is to show mutual assent ...."'" (citations omitted)). And Howard Real Estate does not argue that, at that time, the Position Agreement and Addendum 2 were presented to both parties for signature or were understood by them as included in the contract. Therefore, in January 2017, a contract was formed that included only the terms of Addendum 1. See Ex parte Riverfront, LLC, 129 So. 3d 1008, 1013 (Ala. 2013) (explaining that a contract is formed when there is an offer and an acceptance, consideration, and mutual assent).

In July 2017, Lee signed the Position Agreement and Addendum 2. Because a contract had been formed six months earlier, those documents were an attempted modification to Addendum 1. Logically, for a modification that contains a noncompete provision to satisfy § 8-1-192's requirement that the "contract or agreement" be signed by all parties, the modification must be so signed. Indeed, even under Alabama's general Statute of Frauds, which lacks the narrowness of application that pertains to § 8-1-192, a modification is required to be signed, see Gewin v. TCF Asset Mgmt. Corp., 668 So. 2d 523, 527 (Ala. 1995); DeVenney v.

Hill, 918 So. 2d 106, 115 n.12 (Ala. 2005).[2]

Howard Real Estate points to several facts in support of its contention that the January 2017 and July 2017 documents were all part of the same transaction. First, Howard Real Estate asserts that they all related to the same subject matter. However, the fact that the three

[2]None of the Statute of Frauds cases that Howard Real Estate cites, in which this Court held that multiple documents constituted a single transaction, involved a modification to an existing contract. See Truck Rentals of Alabama, Inc. v. M.O. Carroll-Newton Co., 623 So. 2d 1106 (Ala. 1993) (holding that invoices and checks were part of the same transaction as a sales contract); Borden v. Case, 270 Ala. 293, 118 So. 2d 751 (1960) (holding that a signed letter enclosing a lease agreement and referring to it as the "inclosed [sic] copy" was part of the same transaction as the lease agreement); Waters v. W.O. Wood Realty Co., 260 Ala. 527, 71 So. 2d 1 (1956) (holding that memorandum and contract were part of the same transaction when the contract referred to "figures" contained in the memorandum); Johnston v. King, 250 Ala. 571, 35 So. 2d 202 (1948) (holding that a will and a document containing witnesses' and testator's signatures were part of the same transaction when the document containing the signatures was attached to the will and was executed contemporaneously with it); Loftin v. Parker, 253 Ala. 98, 42 So. 2d 824 (1949) (holding that a contract for the sale of a business, a memorandum containing several terms of the sale, and a bill of sale were part of the same transaction, even though they were executed over the course of several days); Forst v. Leonard, 112 Ala. 296, 20 So. 587 (1896) (holding that bond securing construction of house should be read in conjunction with construction contract); O'Barr v. Turner, 16 Ala. App. 65, 75 So. 271 (1917) (holding that assignment given as security for note was part of the same transaction as note).

documents related to the same general subject matter -- Lee's duties and rights as Director of Sales -- does not establish that they were collectively one contract. An attempted modification necessarily relates to the same subject matter as the contract to which it applies, but that does not make it part of that contract. Rather, it becomes part of that contract only if it meets any statutory requirements for validity.

Next, Howard Real Estate contends that the three documents contained internal evidence of connection: Addendum 1 was partly titled an "Addendum"; the Position Agreement referenced both addenda; and Addendum 2 referenced the Position Agreement. But Addendum 1's titling as an "Addendum" did not prevent it from constituting a stand-alone contract, in light of its detailed terms. And the facts that the Position Agreement referenced Addendum 1 and that Addendum 2 referenced the Position Agreement do not establish that the Position Agreement and Addendum 2 were part of the original contract formed by Addendum 1. As explained above, those July 2017 documents were an attempted modification to the January 2017 contract, and it is natural for a modification to reference an original contract.

Howard Real Estate also points to the fact that, upon RealtySouth's request for a copy of Lee's employment agreement, Lee sent all three documents to RealtySouth in one electronic file. Howard Real Estate relies on a comment in the Restatement (Second) of Contracts: "It is sufficient [to connect multiple documents for Statute of Frauds purposes] … that the party to be charged physically attaches one document to the other or encloses them in the same envelope." Restatement (Second) of Contracts § 132 cmt. c (Am. L. Inst. 1981). However, even if in some cases physically or electronically connecting documents is sufficient to show that they are all part of the same transaction, it was not sufficient here. The documents were signed six months apart, and as explained above, the July 2017 documents were an attempted modification of the January 2017 contract. Just as a modification may reference an original contract, there is nothing unusual about a modification being later physically or electronically attached to the original contract.

Howard Real Estate additionally points out that, before Lee became Director of Sales, she reviewed a draft employment agreement and knew that it contained a noncompete provision. Whatever the contents of that

draft, however, no noncompete provision was in the Addendum 1 contract that the parties signed in January 2017. And Howard Real Estate does not argue that any terms outside that contract were before both parties, or were understood by them as being part of their contract, at that time. Lee's subjective perception of what an earlier contractual offer included does not determine the terms of the contract that was actually formed.

Last, Howard Real Estate relies on Howard's testimony that, when she signed Addendum 1 in January 2017, Howard Real Estate intended to assent to the Position Agreement and Addendum 2. But that assent was not sufficient to incorporate those documents into the contract, because it was not mutual assent; Howard Real Estate does not argue that Lee assented to the other two documents, or even that they were before her, at that time.

Accordingly, Howard Real Estate fails to demonstrate that Addendum 2 was part of the same "contract or agreement" as Addendum 1 for purposes of § 8-1-192's signatures requirement.

B. Performance by Howard Real Estate

Howard Real Estate presents several arguments why the

signatures requirement of § 8-1-192, Ala. Code 1975, was satisfied as to Addendum 2 (which contained the noncompete provision) by Howard Real Estate's performing its obligations under its employment agreement with Lee. We have concluded above that Howard Real Estate has not demonstrated that the Position Agreement and Addendum 2 were part of the same original contract as Addendum 1. Therefore, we construe Howard Real Estate's "performance" arguments as contending that its performance under the attempted modification, consisting of the Position Agreement and Addendum 2, satisfied the signatures requirement as to that modification.

1. Mutual assent by conduct

Howard Real Estate relies on the general common-law principle that mutual assent can be manifested in ways other than a signature, including by conduct, see Lanier Worldwide, Inc. v. Clouse, 875 So. 2d 292, 296 (Ala. 2003); 2 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 6:43 (4th ed. 2007). Howard Real Estate also contends that, even when a party has not signed a contract, that party's accepting the benefits of the contract and operating under it can show

that party's assent, see Quality Truck & Auto Sales, Inc. v. Yassine, 730 So. 2d 1164, 1169 (Ala. 1999).

Howard Real Estate fails to recognize that the Legislature, by requiring that noncompete agreements be signed by all parties, altered the common-law rule that a signature is not necessary to show mutual assent. See § 1-3-1, Ala. Code 1975 (adopting common law, "so far as it is not inconsistent with the Constitution, laws and institutions of this state …, except as from time to time it may be altered … by the Legislature"). "If [a statute] requires the mutual assent to be expressed in writing, ... there can be no mutual agreement unless shown by the writing." Flinn v. Barber, 64 Ala. 193, 198 (1879). Section 8-1-192 requires that noncompete agreements be signed by both parties "[i]n order to be valid." Accordingly, the general common-law principle that mutual assent can be manifested by conduct does not apply.

2. Full-performance exception to Statute of Frauds

Next, Howard Real Estate argues that its full performance under the July 2017 attempted modification satisfied the signatures requirement of § 8-1-192, Ala. Code 1975, because that performance

brought the modification within the full-performance exception to the Statute of Frauds. Section 8-9-2, Alabama's Statute of Frauds, provides that certain types of agreements are void unless they are "in writing and subscribed by the party to be charged therewith." This Court has nevertheless recognized that the Statute of Frauds does not void a contract that has been fully performed by the party seeking to enforce it. Ex parte Ramsay, 829 So. 2d 146, 155 (Ala. 2002). Howard Real Estate contends that that Statute of Frauds exception should inform our application of § 8-1-192's requirement that noncompete agreements be signed by all parties.

We question whether, applying § 8-1-192 narrowly in favor of competition, the Statute of Frauds full-performance exception can properly be imported into our application of this statute. Nevertheless, we need not decide that question in this case. Even if the full-performance exception were generally applicable to § 8-1-192, that exception would not apply here. That is because we have previously declined to apply the full-performance exception when it would swallow the rule as to a whole category of contracts. Specifically, we have declined to apply the

exception to suretyship contracts because, in practically all such cases, the contract has been fully performed by the obligee, such that the exception would essentially negate the Statute of Frauds' writing requirement for suretyship contracts. Parker v. Williams, 977 So. 2d 476, 480 (Ala. 2007); see 10 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 27:19 (4th ed. 2011) ("[I]n no event can … full performance by one party removing the contract from the Statute [of Frauds] be applied to a promise to answer for the debt of another since the creditor will always have fully performed ....").

Similarly, in nearly all situations in which an employer seeks to enforce an employee noncompete agreement, the employer has fully performed its obligations. By that time, the employment relationship is invariably over, and the employer, having fulfilled its duty to pay the employee the required compensation, seeks to enforce the employee's purported postemployment obligations. If an employer could enforce a noncompete agreement that is not signed by all parties so long as the employer has fully paid the employee, § 8-1-192's signatures requirement would be rendered meaningless as to one of the categories of contracts to

which it expressly applies. Accordingly, if the full-performance exception were generally applicable to § 8-1-192, that exception would not apply to determining the validity of employee noncompete agreements.

3. Section 8-1-44

In addition, Howard Real Estate contends that its full performance entitled it to enforce the noncompete provision under § 8-1-44, Ala. Code 1975. That statute provides: "A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform, it on his part and the case is otherwise proper for enforcing specific performance." Howard Real Estate contends that, because Lee signed the July 2017 attempted modification and Howard Real Estate paid Lee everything it owed her under the modification, Howard Real Estate could compel Lee to perform under the modification's noncompete provision.

Section 8-1-44 provides for enforcement of a contract (via specific performance) only "if ... the case is otherwise proper for enforcing specific performance." Here, because of the absence of a signature of a representative of Howard Real Estate, the noncompete provision was not

"valid," § 8-1-192, and was "void," § 8-1-190(a). Without a valid noncompete provision, the case was not "otherwise proper for enforcing specific performance," 8-1-44. Therefore, § 8-1-44 did not entitle Howard Real Estate to enforce the noncompete provision.

For these reasons, Howard Real Estate's performance of its employment obligations did not satisfy § 8-1-192's signatures requirement.

C. Benefit of the contract

Finally, Howard Real Estate relies on the general principle that a party "'cannot simultaneously claim the benefits of a contract and repudiate its burdens and conditions,'" Ballard Servs., Inc. v. Conner, 807 So. 2d 519, 523 (Ala. 2001) (citation omitted). But Lee does not claim benefits under the July 2017 attempted modification; she seeks only to avoid its noncompete provision. Thus, she is not estopped from contesting the validity of that provision.

IV. Conclusion

Based on the foregoing, we affirm the judgment.

AFFIRMED.

Shaw, Wise, Bryan, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Sellers, J., dissents, with opinion.

SELLERS, Justice (dissenting).

I respectfully dissent. Under the facts and circumstances presented, Amanda Howard, chief executive officer of Amanda Howard Real Estate, LLC ("Howard Real Estate"), complied with the signature requirements of § 8-1-192, Ala. Code 1975, thus making the noncompete agreement between Howard Real Estate and Clair Lee valid, binding, and enforceable. While working for Howard Real Estate, Lee signed documents that were interrelated and mutually dependent, with appropriate cross-references, to create a composite, single agreement, to wit: (1) Addendum 1, entitled "Director of Sales Employee Job Description and Compensation," (2) the "Employment Position Agreement," and (3) Addendum 2, entitled "Confidentiality and Noncompete." Howard, on behalf of Howard Real Estate, signed the job-description and compensation document; however, unlike Lee, she did not sign the latter two documents until the day Lee resigned from Howard Real Estate in order to work for JRHBW Realty, Inc. ("RealtySouth"), a major competitor of Howard Real Estate. The timing of her signing makes little difference because the documents anticipated

certain behavior on the part of Howard Real Estate, namely the payment of compensation, which, once accepted by Lee, ratified the terms and conditions of the agreements that Lee had signed two years before and could not then repudiate. "[A]ssent to a contract may be manifested when a plaintiff accepts the benefits of a contract." Lyles v. Pioneer Hous. Sys., Inc., 858 So. 2d 226, 229 (Ala. 2003). We have also held that "[a] [party] cannot simultaneously claim the benefits of a contract and repudiate its burdens and conditions." Southern Energy Homes, Inc. v. Ard, 772 So. 2d 1131, 1134 (Ala. 2000).

The record clearly demonstrates that all three referenced documents were parts of a single agreement, specifically related to the terms and conditions of Lee's employment with Howard Real Estate. As the main opinion notes, separate writings can nevertheless be "but a single contract as if embodied in one instrument" when they are "connected by reference one to the other, or simultaneously made, with respect to the same subject matter and proved to be parts of an entire transaction …." Moorer v. Tensaw Land & Timber Co., 246 Ala. 223, 226, 20 So. 2d 105, 107 (1944). Here, although they were not simultaneously

signed, the documents have myriad referential connections to one another -- the Position Agreement references the other two documents, and the noncompete agreement references the Position Agreement. The subject matter of the documents also substantially overlaps, creating a whole, unified agreement detailing all aspects of Lee's employment and concomitant compensation. Before RealtySouth hired Lee, it requested her employment agreement; Lee sent all three referenced documents combined into a single file. See Restatement (Second) of Contracts § 132 cmt. c (Am. L. Inst. 1981) ("It is sufficient [to connect multiple documents for Statute of Frauds purposes] … that the party to be charged physically attaches one document to the other or encloses them in the same envelope."). The facts are clear that, by her action, Lee believed that all three documents were part and parcel of a single agreement of employment that any future employer would need to review. Therefore, there can be no dispute that the three documents together composed Lee's employment agreement with Howard Real Estate; the documents contained different terms and related to different aspects of employment,

but they completely interrelated to form one integrated agreement under which Lee was compensated.

Moreover, the record demonstrates that the parties both assented to the agreement when Lee signed the documents in 2017. Lee, a well-educated person, willingly signed the noncompete agreement and thus evidenced her intent to be bound by that agreement. Although Howard did not sign two of the documents until the day Lee resigned, there is nothing in § 8-1-192 requiring those signatures to have been made sooner, much less simultaneously. And both parties operated under the terms and conditions of the agreement for two years. Pursuant to the agreement, Lee was promoted to sales director, thus making her a top employee of Howard Real Estate and vesting her with significant responsibility and confidential knowledge; she received a substantial salary increase of over $200,000 per year; and she was being trained to become the future leader of the company. Despite having received those benefits for two years after signing the noncomplete agreement, Lee now seeks to escape its burden. Such a result is legally inappropriate, grossly inequitable, and factually unwarranted. Accordingly, I dissent.