POSNER, Circuit Judge.

This appeal in a diversity breach of contract case raises an interesting question concerning the statute of frauds, in the context of a dispute over a chair of more than ordinary value. The plaintiff, DF Activities Corporation (owner of the Domino’s pizza chain), is controlled by a passionate enthusiast for the work of Frank Lloyd Wright. The defendant, Dorothy Brown, a resident of Lake Forest (a suburb of Chicago) lived for many years in a house designed by Frank Lloyd Wright – the Willits House – and became the owner of a chair that Wright had designed, the Willits Chair. This is a stark, high-backed, uncomfortable-looking chair of distinguished design that DF wanted to add to its art collection. In September and October 1986, Sarah-Ann Briggs, DF’s art director, negotiated with Dorothy Brown to buy the Willits Chair. DF contends – and Mrs. Brown denies – that she agreed in a phone conversation with Briggs on November 26 to sell the chair to DF for $60,000, payable in two equal installments, the first due on December 31 and the second on March 26. On December 3 Briggs wrote Brown a letter confirming the agreement, followed shortly by a check for $30,000. Two weeks later Brown returned the letter and the check with the following handwritten note at the bottom of the letter: “Since I did not hear from you until December and I spoke with you the middle of November, I have made other arrangements for the chair. It is no longer available for sale to you.” Sometime later Brown sold the chair for $198,000, precipitating this suit for the difference between the price at which the chair was sold and the contract price of $60,000. Brown moved … to dismiss the suit as barred by the statute of frauds in the Uniform Commercial Code. See UCC § 2-201. (The Code is, of course, in force in Illinois, and the substantive issues in this case are, all agree, governed by Illinois law.) Attached to the motion was Brown’s affidavit that she had never agreed to sell the chair to DF or its representative, Briggs. The affidavit also denied any recollection of a conversation with Briggs on November 26, and was accompanied by both a letter from Brown to Briggs dated September 20 withdrawing an offer to sell the chair and a letter from Briggs to Brown dated October 29 withdrawing DF’s offer to buy the chair.

The district judge granted the motion to dismiss and dismissed the suit. DF appeals, contending that although a contract for a sale of goods at a price of $500 or more is subject to the statute of frauds, the (alleged) oral contract made on November 26 may be within the statutory exception for cases where “the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made.” UCC § 2-201(3)(b). DF does not argue that Brown’s handwritten note at the bottom of Briggs’ letter is sufficient acknowledgment of a contract to bring the case within the exemption in section 2-201(1).

At first glance DF’s case may seem quite hopeless. Far from admitting in her pleading, testimony, or otherwise in court that a contract for sale was made, Mrs. Brown denied under oath that a contract had been made. DF argues, however, that if it could depose her, maybe she would admit in her deposition that the affidavit was in error, that she had talked to Briggs on November
26, and that they had agreed to the sale of the chair on the terms contained in Briggs’ letter of confirmation to her.

There is remarkably little authority on the precise question raised by this appeal – whether a sworn denial ends the case or the plaintiff may press on, and insist on discovery. In fact we have found no authority at the appellate level, state or federal. Many cases hold, it is true, that the defendant in a suit on an oral contract apparently made unenforceable by the statute of frauds cannot block discovery aimed at extracting an admission that the contract was made, simply by moving to dismiss the suit on the basis of the statute of frauds or by denying in the answer to the complaint that a contract had been made. See, e.g., *M & W Farm Service v. Callison*, 285 N.W.2d 271, 275-76 (Iowa 1979). There is also contrary authority, illustrated by *Boylan v. G.L. Morrow Co.*, 468 N.E.2d 681, 682 (N.Y. 1984). The clash of views is well discussed in *Triangle Marketing, Inc. v. Action Industries, Inc.*, 630 F. Supp. 1578, 1581-83 (N.D. Ill. 1986), which, in default of any guidance from Illinois courts, adopted the *Boylan* position. We need not take sides on the conflict. When there is a bare motion to dismiss, or an answer, with no evidentiary materials, the possibility remains a live one that, if asked under oath whether a contract had been made, the defendant would admit it had been. The only way to test the proposition is for the plaintiff to take the defendant’s deposition, or, if there is no discovery, to call the defendant as an adverse witness at trial. But where as in this case the defendant swears in an affidavit that there was no contract, we see no point in keeping the lawsuit alive. Of course the defendant *may* blurt out an admission in a deposition, but this is hardly likely, especially since by doing so he may be admitting to having perjured himself in his affidavit. Stranger things have happened, but remote possibilities do not warrant subjecting the parties and the judiciary to proceedings almost certain to be futile.

A plaintiff cannot withstand summary judgment by arguing that although in pretrial discovery he has gathered no evidence of the defendant’s liability, his luck may improve at trial. The statement in a leading commercial law text that a defense based on the statute of fraud must always be determined at trial because the defendant might in cross-examination admit the making of the contract, see JAMES J. WHITE & ROBERT S. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE 67 (1980), reflects a misunderstanding of the role of summary judgment; for the statement implies, contrary to modern practice, that a party unable to generate a genuine issue of fact at the summary judgment stage, because he has no evidence with which to contest an affidavit of his adversary, may nevertheless obtain a trial of the issue. He may not. By the same token, a plaintiff in a suit on a contract within the statute of frauds should not be allowed to resist a motion to dismiss, backed by an affidavit that the defendant denies the contract was made, by arguing that his luck may improve in discovery. Just as summary judgment proceedings differ from trials, so the conditions of a deposition differ from the conditions in which an affidavit is prepared; affidavits in litigation are prepared by lawyers, and merely signed by affiants. Yet to allow an affiant to be deposed by opposing counsel would be to invite the unedifying form of discovery in which the examining lawyer tries to put words in the witness’s mouth and construe them as admissions.

The history of the judicial-admission exception to the statute of frauds, well told in Robert S. Stevens, *Ethics and the Statute of Frauds*, 37 CORNELL L.Q. 355 (1952), reinforces our conclusion. The exception began with common-sense recognition that if the defendant admitted
in a pleading that he had made a contract with the plaintiff, the purpose of the statute of frauds – protection against fraudulent or otherwise false contractual claims – was fulfilled. (The situation would be quite otherwise, of course, with an oral admission, for a plaintiff willing to testify falsely to the existence of a contract would be equally willing to testify falsely to the defendant’s having admitted the existence of the contract.) Toward the end of the eighteenth century the courts began to reject the exception, fearing that it was an invitation to the defendant to perjure himself. Later the pendulum swung again, and the exception is now firmly established. The concern with perjury that caused the courts in the middle period to reject the exception supports the position taken by Mrs. Brown in this case. She has sworn under oath that she did not agree to sell the Willits Chair to DF. DF wants an opportunity to depose her in the hope that she can be induced to change her testimony. But if she changes her testimony this will be virtually an admission that she perjured herself in her affidavit (for it is hardly likely that her denial was based simply on a faulty recollection). She is not likely to do this. What is possible is that her testimony will be sufficiently ambiguous to enable DF to argue that there should be still further factual investigation – perhaps a full-fledged trial at which Mrs. Brown will be questioned again about the existence of the contract.

With such possibilities for protraction, the statute of frauds becomes a defense of meager value. And yet it seems to us as it did to the framers of the Uniform Commercial Code that the statute of frauds serves an important purpose in a system such as ours that does not require that all contracts be in writing in order to be enforceable and that allows juries of lay persons to decide commercial cases. The methods of judicial factfinding do not distinguish unerringly between true and false testimony, and are in any event very expensive. People deserve some protection against the risks and costs of being hauled into court and accused of owing money on the basis of an unacknowledged promise. And being deposed is scarcely less unpleasant than being cross-examined – indeed, often it is more unpleasant, because the examining lawyer is not inhibited by the presence of a judge or jury who might resent hectoring tactics. The transcripts of depositions are often very ugly documents.

Some courts still allow the judicial-admission exception to be defeated by the defendant’s simple denial, in a pleading, that there was a contract; this is the position well articulated in Judge Shadur’s opinion in the Triangle Marketing case. To make the defendant repeat the denial under oath is already to erode the exception (as well as to create the invitation to perjury that so concerned the courts that rejected the judicial-admission exception altogether), for there is always the possibility, though a very small one, that the defendant might be charged with perjury. But, in any event, once the defendant has denied the contract under oath, the safety valve of section 2-201(3)(b) is closed. The chance that at a deposition the defendant might be badgered into withdrawing his denial is too remote to justify prolonging an effort to enforce an oral contract in the teeth of the statute of frauds. If Dorothy Brown did agree on November 27 to sell the chair to DF at a bargain price, it behooved Briggs to get Brown’s signature on the dotted line, posthaste.

AFFIRMED.
FLAUM, Circuit Judge, dissenting.

Because I disagree with the majority’s holding that additional discovery is prohibited whenever a defendant raises a statute of frauds defense and submits a sworn denial that he or she formed an oral contract with the plaintiff, I respectfully dissent. Neither would I hold, however, that a plaintiff is automatically entitled to additional discovery in the face of a defendant’s sworn denial that an agreement was reached. Rather, in my view district courts should have the authority to exercise their discretion to determine the limits of permissible discovery in these cases. This flexibility is particularly important where, as here, the defendant’s affidavit does not contain a conclusive denial of contract formation. While district courts have broad discretion in discovery matters, I believe the district court abused that discretion in the present case.

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