

ORAL AGREEMENTS ARE UNENFORCEABLE

RIGHT OR WRONG?



COUNSEL'S CORNER

John Ganim and Farouk 'Frank' Alattar were buddies who were looking for investment property. Together they found a 3,800 acre tract in Washington County, Texas. Alattar signed a Contract as "Frank Alattar, Trustee." Then Frank and John negotiated and signed a limited partnership agreement, presumably to hold title to the acreage.

Despite signing the LP Agreement, a dispute arose whether it correctly identified the terms of their deal. So Frank notified John that he would not enter into a partnership, and that John had no interest in the property that would be acquired shortly by Frank. John sued Frank, and while the litigation was pending, the property was transferred to "Farouk Alattar, Trustee."

John Ganim's position at trial was that he and Frank Alattar agreed to purchase the property as partners, and the LP Agreement and related documents demonstrate that intent. Frank Alattar defended by claiming that he had no agreement to purchase the property with Ganim, and that he had purchased the property for himself and his family.

The jury believed John Ganim, and awarded almost \$2.5 million in damages. Frank Alattar appealed.

The Texas Court of Appeals reversed and rendered a judgment for Alattar, finding that the Texas Statute of Frauds prohibited an oral agreement relating to the sale of real estate that did not contain the contract's essential terms and the signature of the party to be charged.

John Ganim appealed.

Ganim argued to the Texas Supreme Court that his agreement with Alattar was for the joint acquisition of real property, and not subject to the Statute of Frauds.

The Statute of Frauds - Chapter 26 of the Texas Business and Commerce Code - requires that all contracts for the sale of real estate must be in writing. However, the Supreme Court interpreted that law to mean that an agreement between two or more persons for the joint acquisition of land is not a contract for the sale of real estate, and consequently is an exception to the Statute of Frauds.

To support its position, the Texas Supreme Court reached back to a case decided in 1851, and in the event any of us were unconvinced, the Supremes found further support in a secondary case of 1888.

John Ganim wins a seven-year litigation battle. Farouk Alattar loses, although with the economy in a deep recession one can only wonder who truly won and who really lost.

Ganim v. Alattar, No. 10-0592, Supreme Court of Texas, June 25, 2011.

Lessons learned:

1. Oral agreements are typically unenforceable, except when the Texas Supreme Court says otherwise.
2. The Texas Supreme Court says that oral joint venture types of agreements can be enforceable.
3. It is difficult to argue with any decision that uses case authority from 1851 as its foundation.

Stuart A. Lautin, Esq.*

Counsel to North Texas Commercial Association of REALTORS®, Inc.

* Board Certified,
Commercial (1989) and Residential (1988) Real Estate Law,
Texas Board of Legal Specialization
Higier Allen & Lautin, PC
5057 Keller Springs Road, Suite 600
Addison Texas 75001
P: 972.716.1888
E: slautin@higierallen.com
W: www.higierallen.com