

# REAL ESTATE DEALS MUST BE WRITTEN

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## *ARE YOU SURE?*



### *COUNSEL'S CORNER*

Tom Sibley is a Beaumont real estate lawyer, first licensed in Texas in 1964. Mr. Sibley formed a professional corporation in 1981, and he signed a commercial office Lease in 2001 for space in Beaumont on behalf of his PC. The Landlord – Brentwood Investment Development Company, LP, did not sign it. The appellate opinion does not give us any guidance as to why Brentwood failed to do so.

The Lease was for 4,072 square feet, 10 year term, \$13.50 PSF for the first five years, \$14.50 for the second five years, plus some 'net' expenses of approximately \$1,272 per month.

Sibley PC moved in before October 1, 2001 – just about 10 years ago as I write this. For unstated reasons, Sibley did not make full rent payments for 38 months, to November 2005. In that period, Sibley only made partial rental payments in July, August and September 2005, according to Brentwood's records.

Brentwood filed a lawsuit against Sibley PC in March 2008. Brentwood alleged that Sibley PC owed \$214,993 in unpaid rent, plus other expenses. Brentwood won at trial; Sibley PC appealed.

Predictably, Sibley PC claimed at trial on appeal that there was no enforceable contract. The facts were clear and undisputed: Sibley signed the Lease; Brentwood did not.

The Appellate Court determined that the parties proceeded with the Lease as if it had been signed. Sibley PC occupied the space and operated a law firm from the premises. Sibley PC made a few rent payments. Brentwood maintained the building and common areas.

The Beaumont Court of Appeals then stated that “. . . the absence of a party's signature does not necessarily destroy an otherwise valid contract [citation omitted]. A party may accept a contract, and indicate its intent to be bound to the terms by acts and conduct in accordance with the terms.”

Hmmm you say? Sounds logical you said? Well, do a Google search on Texas “black-letter” law on this point. Check out 26.01(b)(4) and (5) of the Texas Business & Commerce Code: <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.26.htm#26.01>. The Sibley PC Lease had a 10-year term, so it is not excluded from the Statute of Frauds exception of 26.01(b)(5) or (6), regarding agreements with a term that is one year or less.

Texas law seems clear that for all leases with a term longer than one year, it must be in writing and signed to be enforceable. The Beaumont Court of Appeals is equally clear – no writing and no signature required in situations where the failure to sign appears to be inadvertent, and the parties performed as if there were an executed lease.

Brentwood Investment (the Landlord) wins. Sibley PC (the Tenant) loses. Thomas J. Sibley, P.C. v. Brentwood Investment Development Company, LP, No. 08-10-00033-CV, Texas 8<sup>th</sup> Court of Appeals, September 6, 2011.

#### Lessons learned:

1. Texas laws are written as statutes and govern our conduct in many areas, including business.
2. Texas judges and justices interpret those laws, and apply them to the facts of the case.
3. In a battle between law and doing what is fair and right, occasionally the law loses.

4. When the law loses to a just and correct decision, it may be difficult to thereafter plan future business decisions. Should you be guided by Texas law, or Texas judges and justices that may disregard Texas law?
5. If I had an answer to # 4, I would probably go to Tel Aviv because surely I could also resolve the mid-east conflict too.

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