

STATUTE OF FRAUDS!



COUNSEL'S CORNER

In Texas a Statute of Frauds tells us that most contracts must be in writing. Actually in Texas real estate law we have *two* Statutes of Frauds. The 'generic' one is in the Business & Commerce Code. The one that is unique to real estate is in the Property Code.

But of course everyone knows this. Well not every one . . .

In January 2005 Randall May and Bill Buck (and others) signed a letter agreement regarding mineral rights in Leon County, Texas. Exhibit A was attached which provided a comprehensive description of four parcels of land, comprising 563 acres.

The letter agreement, however, also said that Buck would assign to May “. . . all the mineral rights and a 100-acre spacing centered around the David Morris Gas Unit # 1 in Leon County, Texas.”

Buck did not assign the mineral rights to May, so May filed a lawsuit. Buck defended based on a failure to satisfy the statute of frauds, meaning the letter agreement was unenforceable because the 100-acre parcel was not defined in the letter or in an attachment.

It appears that the issue at trial was not related to the location of David Morris Gas Unit # 1, but rather the boundaries of the 100-acre parcel. Predictably, one expert testified that he could not determine the location of the 100 acres. Now here's a big surprise. The other expert said he could determine with reasonable certainty the shape and location of the 100 acres. I know you were shocked to read that.

Then the experts argued that the parcel was in the shape of “rectangular halo,” “donut” or “picture frame,” while others were of the belief that since the well bore was at the center, the spacing must resemble a circle, square or oblong.

You can't make this stuff up.

The trial court ruled for Bill Buck and determined that the letter agreement failed. Because it did not satisfy the Texas statute of frauds.

Randall May appealed.

Texas law is about as clear as mud on this point. Basically, if enough data appears in the description that a person who is familiar with the area can find it, it is sufficient.

The Texas Court of Appeals concluded the description failed to meet the statute. And that made the letter agreement unenforceable. The Judgment of the trial court was affirmed.

Bill Buck wins. Again. Randall May lost. Again.

See May v. Buck; No. 05-09-01501-CV; Texas 5th Court of Appeals; July 11, 2012.

Lessons learned:

1. There are two Statutes of Frauds that relate to real property in Texas. Not just one.
2. References in an agreement or lease or contract to attached exhibits work fine. Sometimes even drawings are sufficient. But simply stating a “100-acre space” or similar, without anything more, means the deal may fail if challenged.
3. If the deal is challenged, and fails, bad things happen. Sellers, buyers, landlords, tenants, lenders and others are not happy. Unhappy people tend to sue those they think are responsible for their sense of unhappiness. Don’t be on the receiving end of unhappiness. Don’t be that person.

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