# Oral deals Aren't binding. Right?

***COUNSEL'S CORNER***

David Duarte and Daniel Rojas were long-term friends. Duarte learned how to repair, maintain and program ATM machines. Knowing that Congress passed legislation permitting individuals to own and operate ATMs, Duarte sensed a sure-fire business.

David found several ATMs sitting in an El Paso warehouse. He bought one and approached Daniel about buying the others together. In the fall of 2002 they agreed to enter the ATM business together, splitting profits and losses equally.

So David Duarte testified.

Daniel Rojas had a different memory of the deal. Daniel recalled that he and David were not partners, but rather that Daniel was an independent contractor who was engaged to help David operate the ATM business.

For the initial three years the business was quite successful, but in May 2005 the parties were ready to end their relationship. Daniel told David he was keeping all of the ATMs and was going to pay David $1,000 per month. Duarte received a total of $2,500. Unhappy with the payout, David Duarte sued Daniel Rojas.

At trial Duarte presented evidence that the business was worth $420,000 and that he and Rojas had formed a lawful (but oral) general partnership. Duarte won the lawsuit. Rojas appealed.

Predictably, Rojas claimed that there was no evidence of a partnership.

The Court of Appeals determined that there are five factors to consider regarding the creation of a Texas general partnership: (1) right to receive profits; (2) intent to be partners; (3) right to participate in control of the business; (4) agreement to share losses or liabilities; and (5) agreement to contribute money or property to the business.

The Appellate Court evaluated all five factors and compared each to the facts as presented to the trial court. All five factors were proven to the satisfaction of the

Appellate Court. Judgment was affirmed that a Texas oral partnership agreement existed and was enforceable.

And so, dear reader, I am sure you are wondering why this is newsworthy enough to place in my valuable blog. *Right?*

And here is the answer. Note the total, unmitigated absence of any facts or laws that the partnership agreement must be in writing. It's not there. *Purposefully*. Texas law has always been, in my 30-year career and much longer, that general partnerships and joint ventures need not be written and signed to be enforceable.

Texas limited partnerships must be written and signed. Texas general partnerships and JVs – *not so much.*

See *Rojas v. Duarte;* 08-11-00072-CV; Texas Court of Appeals 8th District, El Paso Texas; November 30, 2012.

Lessons learned:

1. Texas general partnerships and joint ventures might be enforceable even though they are not written.

2. Oral / verbal partnerships and JVs are tailor-made for problems. Be sure that all of your personal agreements to share income are written and suggest to your principals that they do the same (but without practicing law!).

3. Best wishes for a healthy, happy and prosperous 2013!

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