

ORAL CONTRACTS – BINDING OR NOT?



COUNSEL'S CORNER

We have all been told that oral agreements are not binding. But don't tell that to David Reyes and Sonia Valenzuela.

In 1993 David and Sonia approached Annette Burrus and inquired about buying one of her lots in Tornillo Texas. Tornillo is a *colonia* in El Paso County, on the border, with a population of 1,568 as of the last census.

Burrus claims she advised them that she had no lots for sale, but instead she offered to rent them a portion of her 11-acre tract. Burrus offered to purchase a mobile home of their choice, which she would move to the property at her expense. Thereafter, David and Sonia and their children could rent the mobile home and the lot from Burrus on a month-to-month basis.

Burrus purchased a mobile home as selected by David and Sonia, and had the home moved to the lot. David and Sonia paid \$500 before moving into the mobile home in September 1994, and thereafter paid \$200 per month. For 17 years.

Although Burrus saw the relationship as Landlord and Tenant (but evidently Burrus neither repaired nor maintained any portions of the lot and home), David and Sonia believed that they had agreed to purchase the mobile home from Burrus for \$21,000, that their initial \$500 payment was a down payment on the lot, and that the \$200 monthly payments were to be applied as principal and interest on a seller-financed Note.

As would be the case in a contract for deed transaction, David and Sonia anticipated they would receive full title to both the mobile home and lot from Burrus once they paid off the loan.

Shortly after they moved in, David and Sonia erected a chain link fence around the perimeter of the lot, installed plumbing fixtures, lighting and ceramic tiles in the home, built a shed and dog kennel and planted trees. Then they added a porch and several

rooms to the mobile home, moved the home to the center of the lot and paid to have a concrete slab poured on which to build the additions.

In all, David and Sonia spent over \$22,000 in materials for the improvements with no reimbursement from Burrus.

In March 2011 Burrus began negotiating to sell her acreage to Tornillo DTP VI, LLC, which included the lot where David and Sonia were living. Evidently Tornillo DTP was buying the property to lease it to Dollar General, which intended to build a retail store at the site.

Burrus signed a contract with Tornillo DTP in January 2012, in which she would receive \$90,000 for the sale, with a closing date in February 2012. After Burrus informed David and Sonia of the closing, demolition crews hired by Tornillo DTP came onto their property and began removing improvements including the fence, trees and dog kennel. So David and Sonia sued both Burrus and Tornillo in April 2012, attempting to stop the demolition.

David and Sonia resolved their dispute with Tornillo DTP, then turned their gun turrets towards Burrus. The jury determined that an oral agreement existed for Burrus to sell her property to David and Sonia, Burrus breached the agreement, and David and Sonia were damaged.

The trial court entered judgment awarding David and Sonia \$70,000 in damages, \$92,000 in attorney's fees and \$23,000 related to Burrus' failure to render annual accounting statements as provided by Texas' contract for deed statutes.

Burrus appealed, contending that oral agreements regarding real estate are prohibited in Texas.

The appellate court first concluded that ordinary real estate transactions in Texas must be written. But also that there were exceptions to that rule when valuable and unreimbursed improvements were made to the property, and when fairness and equity requires Courts to enforce an unwritten agreement.

I'll spare you the 23-page single-spaced analysis written by the Court, but you can already guess the outcome. The trial court's judgment for David and Sonia is affirmed.

See *Burrus v. Reyes*, Case No. 08-14-00265-CV, Texas Court of Appeals, 8th District, March 8, 2017:
http://scholar.google.com/scholar_case?case=18368523796023647491&q=burrus+v.+reyes&hl=en&as_sdt=6,44.

Lessons learned:

1. Beware the oral agreement. Yes Texas law still says that real estate agreements regarding the purchase and sale of property must be written. And yet judges and juries can still find a way to ignore the law.
2. The oral-agreements-are-not-binding-in-Texas-theory is even more problematic regarding leasing, where real estate leases for a term of one year or less need not be written. That can be particularly dangerous in the context of short-term executive office leasing, short-term warehouse leasing or a “holiday” lease of retail space.
3. The B/L: If for no other reason than clarity, get it in writing!

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