

# IT MUST BE WRITTEN – CORRECT?



*COUNSEL'S CORNER*

Bobby Miller agreed to purchase two acres of land in Cass County from Leorris Thomas. Under the terms of the deal, Bobby was to pay Thomas' mortgage on the property. When it was paid in full, Bobby would own the property.

The contract was oral. Not written.

Bobby claimed that he had a conversation in 2003 with his brother-in-law Thomas, to the effect that if Bobby paid off the notes then Bobby would become the owner. Bobby said they shook hands to confirm their deal.

Evidently Bobby did not know how much was owing, to whom it was payable, or how long it would take to pay off the debt. Regardless, Bobby started making payments to TEXAR Federal Credit Union of \$113.76 per month. Bobby also paid the property taxes.

The target property contained two water wells and a house, which Thyra Miller (Bobby's wife) described as "condemned." Regardless, Bobby elected to repair the dilapidated home, and spent approximately \$30,000 to do so.

He also repaired the water wells, completing all renovations in 2006. Thomas, owner of a barbeque restaurant near the property, was aware of the work.

Cass County property records established that the property was appraised for \$13,490 in 2003, and \$35,460 in 2009.

Leorris Thomas hired an attorney in 2007, who sent a notice to M/M Miller that Thomas had elected to terminate their "verbal lease agreement," and that M/M Miller needed to vacate the premises.

M/M Miller did not vacate. Instead, they continued to remit monthly payments to the Credit Union until 2009 when Thyra Miller vacated because, as she states, Thomas

was harassing her. At that juncture, the note balance might have been approximately \$3,100, and M/M Miller had been paying property taxes for six years.

After Thyra moved out, Thomas sold the property to Clay Jiles and a Deed was executed and recorded. That prompted M/M Miller to file a lawsuit.

The primary defense asserted by Thomas was that the Texas Statute of Frauds requires that real estate sales contracts must be written. See Texas Business & Commerce Code Section 26.01(b)(4): <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.26.htm>. Indeed, that is precisely what the law requires.

The jury returned a verdict providing that Thomas agreed to deed two acres of property to Millers in exchange for Millers paying off a loan Thomas owed to TEXAR Federal Credit Union; M/M Miller repaired and improved the property; M/M Miller made six year of tax and mortgage payments; M/M Miller had occupied the property; and M/M Miller were entitled to damages.

The trial court entered Judgment for M/M Miller based on the verdict for \$40,000+. Leorris Thomas appealed.

The Appellate Court reviewed the Texas Statute of Frauds requiring that all real estate sales contracts must be written, and initially agreed that indeed the contract did not satisfy the Statute.

However, the Court found an exception to the Statute of Frauds. If a literal reading of the Statute would amount to a “. . . virtual fraud in the sense that the party acting in reliance on the [oral] contract has suffered a substantial detriment for which he has no adequate remedy, . . .” then justice will not allow a party to benefit merely because the contract was not written.

It is unknown if Bobby Miller will be able to collect his \$40,000+ Judgment. Regardless, Bobby Miller wins again.

See Thomas v. Miller; Cause No. 16-15-00095-CV; Tex. App. 6<sup>th</sup> Dist.; June 28, 2016: <http://law.justia.com/cases/texas/sixth-court-of-appeals/2016/06-15-00095-cv.html>.

#### Lessons learned:

1. Texas law clearly states that real estate contracts must be written. Clearly. As near as I can detect, we've had this law since 1967, likely much longer.
2. Sometimes, not everything goes the way it is planned. If someone is going to benefit at someone else's detriment, Texas judges are willing to pitch the law and focus on doing what is fair, regardless of what the law provides. I like that.

3. Although Texas judges might be willing to bend Texas statutes to assure the proper outcome, that may not help M/M Miller this time. Given the depth of debtor-exemptions available to Mr. Thomas, I will be shocked if M/M Miller recover the \$40k Judgment amount, or even an amount close to it. Hope I'm wrong. Do you want to see the list of Texas statutory exemptions including two guns, two horses, mules or donkeys, saddles, blankets and bridles for each, 12 cattle, 120 chickens, 60 other types of livestock, one motor vehicle (yes I was surprised the law does not say TRUCK instead of motor vehicle), one bible and more? You can read it here:

<http://www.statutes.legis.state.tx.us/Docs/PR/htm/PR.42.htm>.

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