
Enforcing Oral Contracts

by STEVEN F. STUHLBARG

Although we lawyers usually advise our clients to put their contracts in writing, we recognize the reality that many business deals are consummated over a handshake, without any written record of the promises and obligations exchanged by the parties. You should be aware, however, that courts will be reluctant to enforce certain categories of oral contracts.

Concerned that unscrupulous persons may falsely allege the existence of an oral contract, in 1676 the British Parliament enacted “An Act for the Prevention of Frauds and Perjuries,” declaring certain broad categories of oral contracts unenforceable in any court. This Act, which over time became known simply as the “Statute of Frauds,” became the law not only in England, but also in all British colonies, including those that a century later became the United States. Some form of this original Statute of Frauds remains in effect in all 50 states, although the scope and wording of the modern statute varies from state to state.

In particular, the Statute of Frauds provides that the following types of contract must be in writing in order to be enforced by any court:

- Contracts purporting to transfer an interest in land (including leases);

- A promise to answer for the debt of another;
- Contracts in consideration of a marriage;
- Contracts that cannot be performed within one year.

By including the fourth category of contracts — contracts that cannot be performed within one year — within the Statute of Frauds, the law forces parties seeking to enforce oral agreements to be careful not to overstate or exaggerate their claims. Many an unwary party has lost an oral contract claim by broadly alleging that the parties had agreed that contractual obligations would extend for a period of time longer than one year. An oral contract falls under the Statute of Frauds, and so is unenforceable, if one party promises to provide a service, or to pay money, to the other party extending over a period of more than twelve months, while a similar oral contract will fall outside the Statute of Frauds, and therefore will be enforceable, if it provides that services will be provided or that money will be paid, over an indefinite period of time. That both parties may well have expected the indefinite period of time to extend for more than a year does not matter, so long as it is at least logically possible for the contract to be fully performed by all parties in less

than twelve months.

Although the original idea behind the Statute of Frauds was to protect the innocent from fraudulent breach of contract claims, over the years it became obvious that the Statute of Frauds was sometimes used to perpetrate fraud rather than to prevent it. The Statute gave unscrupulous persons a basis for refusing to pay parties who, ignorant of the law, had entered into oral contracts innocently, and performed their contractual obligations in good faith. Accordingly, over the years, courts created a series of exceptions to the Statute of Frauds. For example, courts developed the “doctrine of partial performance,” holding that, under certain circumstances, when one party partially or completely performs its obligations pursuant to an oral contract, courts won’t allow the other party to use the Statute of Frauds to avoid paying the innocent party for services rendered in good faith.

Another way courts have attempted to avoid unjust applications of the Statute of Frauds is to find that an “implied contract” or “quasi-contract” exists, and is enforceable, even though the alleged oral contract between the parties falls within the Statute. Under this “implied contract” doctrine, a person who sells goods

or performs services pursuant to an oral contract that is unenforceable due to the Statute of Frauds, may still recover the value of such goods or services under the theory that the opposing party was “unjustly enriched.” Also, there is a long line of cases in which, after one party demonstrates that the Statute of Frauds was being asserted for a fraudulent purpose, the courts enforce the oral contract against the defrauding party in order to protect the innocent, notwithstanding the Statute of Frauds.

Over the centuries, courts have interpreted, and even manipulated, the Statute of Frauds and its various exceptions in an attempt to reach perceived just results in each individual case — sometimes interpreting the Statute broadly in order to prevent dubious claims for breach of oral contracts from ever reaching a jury, and sometimes interpreting the Statute narrowly in order to prevent sincere claims for breach of oral contracts from being thrown out prematurely. After centuries of this sort of interpre-

tation and manipulation, navigating the shoals and reefs of exceptions, and exceptions to exceptions, to the Statute of Frauds can be subtle and difficult. Thus, whether you want to enforce an oral contract that arguably falls within the Statute of

Frauds, or whether you want the protection of the Statute of Frauds as a defense to a dubious claim for breach of an alleged oral contract, you should have an experienced navigator at your side — an attorney knowledgeable in this area of law. □



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