

CASENOTES

WHEN A REAL ESTATE DEAL IS NOT A LAND DEAL

Raym v. Tupelo Mgmt.,

No. 02-21-00071-CV, 2022 WL 60722, at *1 (Tex. App.—Fort Worth Jan. 6, 2022).

By Lane Marie Brown*

In January 2022, the Fort Worth Court of Appeals decided a real estate case¹ involving claims of promissory estoppel² and quantum meruit.³ In *Raym v. Tupelo Management, LLC*,⁴ the disputing parties had entered a joint venture where one party would front the funds to acquire and renovate a house, the other party would reimburse the first party, and the partners would split the profits from the sale of the property.⁵ In analyzing the promissory estoppel claim, the court dropped

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1. *Raym v. Tupelo Mgmt.*, No. 02-21-00071-CV, 2022 WL 60722, at *1 (Tex. App.—Fort Worth Jan. 6, 2022, no pet.).
2. Promissory estoppel is a defense or cause of action where 1) defendant made a promise; 2) it was foreseeable that promisee would reasonably rely on the promise; and 3) promisee detrimentally relied. Plaintiff's remedy is reliance damages. *Raym*, 2022 WL 60722, at *7. "The doctrine of promissory estoppel may be used as an alternate means of recovery for a breach of contract claim." *Bearden Investigative Agency, Inc. v. Melvin*, No. 2-02-078-CV, 2003 WL 194729, at *7 (Tex. App.—Fort Worth Jan. 30, 2003, no pet.) (citing *Wheeler v. White*, 398 S.W.2d 93, 96 (Tex. 1965)).
3. Quantum meruit is an equitable remedy when nonpayment by a party receiving services or materials would result in unjust enrichment. The claimant must prove 1) valuable services or materials provided 2) to the person being charged; 3) the services and materials were accepted, used, and enjoyed; and 4) under the circumstances, that person had reasonable notice that the one performing expected payment. *Raym*, 2022 WL 60722, at *8–9.
4. No. 02-21-00071-CV, 2022 WL 60722, at *1 (Tex. App.—Fort Worth Jan. 6, 2022, no pet.).
5. *Id.* at *1.

a helpful footnote to explain that the statute of frauds⁶ does *not* apply to a joint venture to flip houses.⁷

First, the court explained the statute of frauds as defined by a 2020 Texas Supreme Court decision: “[C]ertain agreements, including a contract for the sale of real estate, are not enforceable unless the . . . agreement is in writing and signed by the person to be charged with the . . . agreement.”⁸ However, the court then acknowledged situations when promissory estoppel can create an exception to the statute of frauds. Here, the court explained its own 2003 decision⁹ where it analyzed promissory estoppel as a narrow exception barring the statute of frauds. It held that to invoke the doctrine of promissory estoppel, the proponent must “prove an oral promise to sign a written agreement that would comply with the statute of frauds.”¹⁰ But the court concluded that the statute of frauds does not apply in *Raym* because a real estate transaction for the sale of land was merely incidental to the joint venture to acquire and renovate real property.¹¹ The court stood on stare decisis from an ancient Texas Supreme Court real estate decision, *Gardner v. Randell*.¹²

In *Gardner*, the disputing parties had made an oral agreement to share the cost to purchase a lot with a brick store house built on it, take

6. TEX. BUS. & COM. CODE ANN. § 26.01(a), (b)(4) (Under the Texas statute of frauds, the types of contracts that must be in writing and signed by the party to be charged to be enforceable are 1) executorship or administration of an estate; 2) surety; 3) marriage; 4) sale of real property; 5) real estate lease for a term longer than one year; 6) performance not to be completed within one year from the making of the contract; 7) sales/purchase commissions on oil or gas mining lease, oil or gas royalty, minerals, or a mineral interest; and 8) cure relating to medical care made by a physician or health care provider.).

7. *Raym*, 2022 WL 60722, at *4 n.3.

8. *Id.* (cleaned up, citing *Copano Energy, LLC v. Bujnoch*, 593 S.W.3d 721, 727 (Tex. 2020)). (Cleaned up) is a new citation signal that U.S. Supreme Court Justice Thomas recently adopted. The single parenthetical signals that extraneous citation material has been omitted from a quote of a source that quoted an earlier source, without altering the underlying text. Here, the court quoted *Bujnoch*, 593 S.W.3d at 727, which quoted TEX. BUS. COM. CODE ANN. § 26.01(a), (b)(4). The new signal was noted in Debra Cassens Weiss, *Justice Thomas Goes Rogue on the Bluebook with “Cleaned Up” Citation—to the Delight of Appellate Lawyers*, ABAJOURNAL.COM (Mar. 15, 2021, 12:35 PM CDT), <https://www.abajournal.com/news/article/justice-thomas-goes-rogue-on-the-bluebook-with-cleaned-up-citation-to-the-delight-of-appellate-lawyers> (last visited Mar. 11, 2022).

9. *Bearden Investigative Agency, Inc. v. Melvin*, No. 2-02-078-CV, 2003 WL 194729, at *7 (Tex. App.—Fort Worth Jan. 30, 2003, no pet.).

10. *Id.* at *8.

11. *Raym*, 2022 WL 60722, at *4 n.3.

12. 70 Tex. 453, 7 S.W. 781, 782 (1888).

title as co-tenants, and then share the profits from rents.¹³ First, Gardner took a bond for title in his own name to make the purchase.¹⁴ Subsequently, the parties further agreed that Gardner would take out a brief mortgage to pay back the bond and take title, Randell would reimburse him half the cost before the mortgage was due, and then Gardner would convey a one-half interest in the property to his partner.¹⁵ The dispute arose when the party who purchased the real property refused to accept his partner's payment and convey an interest in the real property.¹⁶ Like in the *Raym* footnote, the *Gardner* court contemplated the statute of frauds as it applied to these real estate deals.¹⁷ The Texas Supreme Court held, "[A]n agreement between . . . persons for the *joint acquisition of land* is not a contract for the *sale of land*, and hence is not required by our statute of frauds to be in writing."¹⁸ Thus, a joint venture to acquire real property does not fall within the statute of frauds. This is the rule that the *Raym* court applied.

Additionally, the *Gardner* court found that the agreement to advance money for payment on a mortgage for "land *already acquired* [] is in no sense a 'contract for the sale of real estate.'"¹⁹ Thus, a financial arrangement involving advancing and repaying money, even if the loan is regarding real property that is *already acquired*, does not fall within the statute of frauds as a contract for the sale of land.²⁰

13. *Gardner*, 70 Tex. 453 at 781, 783.

14. *Id.* at 781.

15. *Id.* at 781–82.

16. *Id.* at 782.

17. *Id.* at 782–83.

18. *Id.* at 782 (emphasis added).

19. *Id.* at 782–83 (emphasis added).

20. TEX. BUS. & COM. CODE ANN. § 26.02 (Under the Texas statute of frauds, certain loan agreements must be in writing. Additionally, a loan agreement made by a financial institution must give statutory notices to the borrower. To be enforceable, a loan in an amount greater than \$50,000 must be in writing and signed by the party to be charged.); see *Farah v. Mafrige & Kormanik, P.C.*, 927 S.W.2d 663, 679 (Tex. App.—Houston [1st Dist.] 1996, no writ) (ruling a real estate loan does fall within the statute of frauds because it is secured by the title to real property); accord *Mathews Constr. Co. v. Jasper Housing Constr. Co.*, 528 S.W.2d 323, 325–26 (Tex. App.—Beaumont 1975, no writ) (ruling oral agreement to pay loan interest enforceable where contractor suggested subcontractor take out a loan until contractor could pay him and orally promised to pay the interest); accord *Cloakey v. Mills*, No. 13-96-342-CV, 1988 Tex. App. LEXIS 3361, at *7 (Tex. App.—Corpus Christi, 1998, no pet.) (ruling oral agreement that additional loans will be made unenforceable where the original loan agreement and deed of trust did not contain all the elements of additional loans nor had lender to be charged signed the documents). But see *Thomas v. Miller*, 500 S.W.3d 601, 610–11 (Tex. App.—Texarkana 2016, no pet.) (ruling oral contract for sale of land with term that buyer make monthly payments to the bank and would take title

In conclusion, a joint venture to flip houses can be an expensive endeavor with many variables. The *Raym* court teaches that a written agreement is not required under the statute of frauds, but it would certainly behoove such partners to memorialize their business arrangement in a signed writing.²¹

to the property when he had paid \$10,000 failed to meet the statute of frauds, but buyer's part performance removed the contract from the statute of frauds).

21. See *Sewing v. Bowman*, 371 S.W.3d 321, 330 (Tex. App.—Houston [1st Dist.] 2012, pet. dism'd) (Partnership agreement that merely contemplates real estate transactions “does not transform the partnership itself into a contract for the sale of [land].”); *accord Carr v. Weiss*, 984 S.W.2d 753, 761, 763–64 (Tex. App.—Amarillo 1999, no pet.) (holding joint-venture partners' oral agreement to acquire land in one partner's name and share the interests and benefits in agreed proportions enforceable because the oral agreement is not an oral transfer of title to land); *accord Wilhoite v. Sims*, 401 S.W.3d 752, 759 (Tex. App.—Dallas 2013, no pet.) (holding statute of frauds does not apply where 1) performance within one year is not impossible and 2) agreement to divide property repair expenses and share real estate sales profits is not a contract for the sale of land); *accord Sheela v. Mathew*, No. 14-07-00613-CV, 2008 Tex. App. LEXIS 4331, at *11 (Tex. App.—Houston [14th Dist.] June 12, 2008, pet. denied) (holding oral partnership agreement involving the purchase of a restaurant enforceable because purchase of a restaurant could have been performed within one year where the partnership agreement did not establish a timeframe; the agreement did not indicate that performance within one year was impossible; and performance within one year was not impossible, notwithstanding existence of 3-year sales contract and 5-year lease agreement). *But see Bookout v. Bookout*, 165 S.W.3d 904, 906–07 (Tex. App.—Texarkana 2005, no pet.) (holding unsigned contract for purchase of a chiropractic clinic enforceable because “partial performance remove[d] the contract from the statute of frauds”).