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Court of Appeals  
Division II  
State of Washington  
11/15/2017 3:04 PM

No. 50268-2-II

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COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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JERRY C. REEVES

Appellant

vs.

TEDD RATERMANN, INDIVIDUALLY AND DBS AA&A  
RATERMANN INVESTMENTS; TEDD RATERMANN AS  
TRUSTEE OF THE RITA RATERMANN AND DOROTHY  
RATERMANN TRUST; TEDD RATERMANN AS TRUSTEE  
OF THE RITA RATERMANN ESTATE TRUST; TEDD  
RATERMANN AS TRUSTEE OF THE AA&A RATERMANN  
TRUST; CHARLES KENNETH POTTER AND DOES 1-10,

Respondents,

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**RESPONDENTS' BRIEF**

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I. Introduction.

The Appellant seeks to reverse the trial court's correct decision granting Summary Judgment of dismissal because the Agreement to Sell Real Estate did not contain a legal description and the multi-year Lease Agreement both lacked a legal description and was not acknowledged. The Appellant concedes the lack of a legal description, but erroneously argues that the following clause in the Agreement To Sell Real Estate satisfies the legal description requirement:

“(e) other Documents:

As Required by Law”

As set forth below, this clause does not satisfy Washington's strict rule requiring the inclusion of a legal description.

Appellant also concedes the multi-year Lease is not acknowledged but argues the acknowledgment is not necessary when the lease is between trusts and not individuals, based on an erroneous interpretation of RCW 60.04.010. Washington requires all multi-year leases, be they between individuals or trusts, be acknowledged.

II. Response to Assignments of Error.

a. The trial court correctly determined that the Agreement to Sell Real Estate and Lease were unenforceable because they lacked a legal description.

b. The trial court correctly determined that the Lease for four years was unenforceable because it was not acknowledged.

III. Facts.

On June 27, 2014 the Appellant and Respondents entered into two agreements. The first was a lease agreement for four years from July 1, 2014, to July 1, 2018, to lease premises located at “3036 and 3036T Lewis River Road, Woodland, Washington.” CP 38-42. The Lease Agreement is signed by Jerry C. Reeves and Tedd Ratermann, but neither signature is acknowledged.

On the same date the parties entered into an “Agreement To Sell Real Estate.” CP 43-48. The described real estate is “3036 and 3036T Lewis River Road, City of Woodland, State of Washington.” The laws of the State of Washington govern the agreement. Appellant prepared the paperwork for both agreements.

As set forth below, Washington requires both the Agreement to Sell Real Estate and the Lease Agreement to include a legal description of the property to meet the requirements of the statute of frauds. The street address of the property is not sufficient. Therefore, both agreements are unenforceable.

In addition, a lease for more than one year must be acknowledged.<sup>1</sup> The Lease Agreement is not acknowledged. Therefore, if not void for lack of a legal description, the Lease Agreement's term is void for lack of an acknowledgement.

#### IV. Argument.

##### A. The Agreement to Sell Real Estate and the Lease Agreement Violate the Statute of Frauds Because Neither Agreement Contains a Legal Description of the Property.

Beginning with Martin v. Seigel<sup>2</sup>, Washington has adopted the strict requirement that the statute of frauds requires a complete legal description of the property. In Martin, the Earnest Money Agreement recited "the following real property: at 309 E. Mercer and furniture as per inventory in the City of Seattle, County of King, State of Washington..."<sup>3</sup> After

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<sup>1</sup> RCW 59.04.010

<sup>2</sup> 35 Wash.2d 223, 212 P.2d 107 (1949)

<sup>3</sup> 35 Wash.2d at 224

acknowledging a more liberal rule allowing parol testimony to describe the property, the court adopted a strict approach.

“It will thus be seen that this court is at variance with the more liberal rule which permits parol testimony to explain what particular property the parties had in mind when they contracted to transfer real property described merely by a street number. We do not care to recede from the rule adopted by us, which had been stated in a long line of decisions over a number of years, and known and followed by the members of the bar and title men. We do not apologize for the rule. We feel that it is fair and just to require people dealing with real estate to properly and adequately describe it, so that courts may not be compelled to resort to extrinsic evidence in order to find out what was in the minds of the contracting parties.”<sup>4</sup>

Moreover, the court held the description by street number, city, county and state was insufficient.

“In the present case, appellant contends that the description in the earnest money receipt is sufficient because the property is described not merely by street number, but also by city, county and state; and that this court should therefore adopt the liberal rule relative to descriptions of urban property as set forth in 37 C.J.S., Frauds, State of, § 188, p. 674, supra. While neither party has cited us any decision of this court in which the question of the sufficiency of such a description has been squarely presented, we find that this was before the court in one instance. In Thompson, Swan & Lee v. Schneider, 127 Wash. 533, 221 P. 334, 335, the action was brought for the specific performance of a contract to trade two pieces of real estate. In granting specific performance, this court held that the description, ‘An eight-room house and two lots at 5822, 46<sup>th</sup> Street, S.E., Portland, Ore., ‘was a sufficient legal description because ‘the property was

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<sup>4</sup> 35 Wash.2d at 228

bounded on two sides by streets and on the other two sides by fences and pointed out to appellants.’ We note that that point in the Thompson case has been cited but once since it was decided in 1923; see Kauffman v. Marlborough Investment Co., 154 Wash. 396, 282 P. 377. However, the decision in that case is not based on the Thompson case, for in the Kauffman case the description included not only the street address, but also a correct description by lots, block number and addition. We feel that the sufficiency of the description in the Thompson case is not in keeping with the trend of our later decisions noted earlier in this opinion. That trend has been away from indefinite and vague legal descriptions, and in the direction of preciseness and accuracy.

In the interest of continuity and clarity of the law of this state with respect to legal descriptions, we hereby hold that every contract or agreement involving a sale or conveyance of platted real property must contain, in addition to the other requirements of the statute of frauds, the description of such property by the correct lot number(s), block number, addition, city, county and state. In so far as the Thompson case, supra, conflicts with this rule, it is hereby overruled.”<sup>5</sup>

The Martin rule was challenged in Key Design, Inc. v. Moser<sup>6</sup>, where the contract referenced “Vince’s Fitness Center 1711 Hewitt Street in the City of Everett, Snohomish County, Washington”<sup>7</sup> but no legal description was provided. The trial court found the agreement violated the statute of frauds. On appeal, the Plaintiff asked the court to overrule Martin, adopt a judicial admission exception and reform the agreement to include the legal description. The court

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<sup>5</sup> 35 Wash.2d at 228-229

<sup>6</sup> 138 Wash.2d 875, 983 P.2d 653 (1999)

<sup>7</sup> 138 Wash.2d at 878

declined on all three issues.

“Since we retain the Martin rule, decline to recognize a judicial admissions exception to it, and hold the evidence does not support reformation due to mutual mistake, the absence of a legal description of the property in the agreement in this case makes that agreement unenforceable.”<sup>8</sup>

The Martin rule was recently affirmed in Home Realty Lynnwood, Inc. v. Walsh<sup>9</sup>, where the legal description was not part of the agreement but was contained in the folder at the real estate office.

“We conclude that the trial court erred in ruling that the statute of frauds was satisfied based solely on oral testimony of the parties’ intent to ‘attach’ the purchase and sale agreement and statutory warranty deed. This ruling plainly contravened Washington’s well-established strict rule against recourse to oral testimony in satisfying the statute of frauds. Although the court faulted the Lees for failing to submit competing evidence regarding the parties’ intent, in Washington, the legal description must be sufficiently adequate to avoid the need to examine intent.”<sup>10</sup>

Further, Appellant’s reliance on the “As Required by Law” language is misplaced. In Geonerco, Inc. v. Grand Ridge Properties IV, Inc.<sup>11</sup>, the Defendant argued a Purchase and Sale Agreement was not enforceable because it did not include a legal description. The Agreement, however,

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<sup>8</sup> 138 Wash.2d at 889

<sup>9</sup> 146 Wash. App. 231, 189 P.3d 253 (2008)

<sup>10</sup> 146 Wash. App. at 239

<sup>11</sup> 146 Wash. App. 459, 191 P.3d 76 (2008)

authorized the escrow agent to insert the legal description.

In ruling the Purchase and Sale Agreement enforceable, the court held:

“To comply with the statute of frauds, Washington strictly requires a legal description of the property that an agreement purports to convey. But, there is an exception to this rule where, although a purchase and sale agreement itself includes no legal description the agreement authorizes an agent to insert the legal description of the properties over their signatures at a later time.”<sup>12</sup>

In this case, neither the Sale Agreement nor Lease authorizes any third party to attach a legal description. Without an authorization in the agreements, both violate the statute of frauds.

Moreover, Appellant’s argument would eviscerate Washington’s strict rule requiring a legal description. Form Purchase and Sale Agreement would simply recite that other documents will be added, “As required by Law” and the requirement would be met regardless of whether the description is added at a later time. In this case, for example, the Appellant urges the court to hold the Agreement to Sell Real Estate is valid and enforceable even though there is no evidence the legal description was ever

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<sup>12</sup> 146 Wash. App. at 469

attached. The narrow holding in Geonerco was that the parties could authorize an agent to insert a legal description at a later time. To be effective, there must be a specific authorization to a specific person to insert a legal description, as opposed to a general statement that allows the inclusion of documents required by law. Geonerco requires a specific request, with accountability. The language in the Agreement To Sell Real Estate is general with no accountability. The “Required by Law” statement does not meet neither Washington’s strict requirement to include a legal description nor Geonerco’s narrow exception.

Since Martin, Washington has held that the street description, even if supplemented by city, county and state, is insufficient to satisfy the statute of frauds. Accordingly, the Agreement to Sell Real Estate and Lease Agreement violate the statute of frauds and the decision of the trial court must be affirmed.

B. The Lease Agreement is Void Because It Is Not Acknowledged.

Washington law requires that leases longer than one year be acknowledged.

“Tenancies from year to year are hereby abolished, except when the same are crated by express written contract. Lease may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgement, witnesses or seals.”<sup>13</sup>

The Lease Agreement between the Appellant and Respondents is a four-year lease. Because it is longer than one year, it must be acknowledged. But it is not. The Respondents request the court find the term of the unacknowledged lease is unenforceable.

The Appellant’s argument that the need for an acknowledgement is not required when the property is held by a trust is easily dismissed. RCW 64.04.010, states, in part: “PROVIDED, that when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record...” The Appellant’s argument fails for two reasons. First, the property must be held “in trust”, not “in a trust” as is the case here. If property is held “in trust”, it is held for the benefit of some person or entity subject to the limitations of the trust. If property is held “in a trust”, it is simply another form of ownership, not necessarily subject to any restrictions. The trust is free to use, sell, lease or gift the property as the Trustee chooses.

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<sup>13</sup> RCW 59.04.010

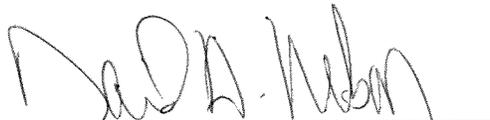
Second, the terms and conditions of the trust must be “of record.” This requires the terms of the trust be part of the public record either by recording them onto the property title, or filing them in a court proceeding. There is no evidence that the “terms and conditions” of the Ratermann Trusts were “of record” prior to the time the Lease was signed. For these reasons, Appellant’s argument that the existence of a trust relaxes the requirement that a multi-year lease be acknowledged must fail.

V. Conclusion.

The trial court’s decision that the Agreement To Sell Real Estate and Lease are unenforceable because they lack a legal description must be affirmed. Further, the Lease term is unenforceable because the Lease was not acknowledged. The Respondent requests that this appeal be dismissed.

DATED this 15<sup>th</sup> day of November, 2017.

NELSON LAW FIRM, PLLC

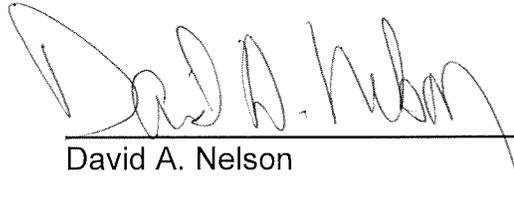


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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 15, 2017, a copy of the attached document was sent via first-class mail to the following:

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\_\_\_\_\_  
David A. Nelson

**NELSON LAW FIRM PLLC**

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**Transmittal Information**

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