

FILED

**Court of Appeals No. 348253
Chelan County Sup. Ct. No. 092001272**

JUN 07 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

**IN THE
COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III**

**JESUS GALVAN, et ux
Respondent / Plaintiff**

VERSUS

**MIGUEL GALVAN, et ux
Petitioners / Defendants**

**ON REQUEST FOR APPEAL FROM THE SUPERIOR COURT OF WASHINGTON IN
AND FOR THE COUNTY OF CHELAN**

OPENING BRIEF

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MIGUEL GALVAN, et ux**

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TABLE OF AUTHORITIES

CASE LAW

Saluteen – Maschersky v. Countryside Funding Corporation,
105 Wn. App 846, 855, 22 P.3d 801 (Div 1 2001). 6

Kruse v. Hemp 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). 8

Hubbell v. Ward 40 Wn.2d 779, 785, 246 P.2d 468 (1952). 8

Sea-Van, 125 Wn.2d at 129, (citing *Setterlund v. Firestone*,
104 Wn.2d 24, 25 – 26, 700 P.2d 745 (1985)). 8

Ecolite Mfg. Co. v. R.A. Hanson Co.,
43 Wn. App. 267, 272, 716 P.2d 937 (Div. 3 1986) 8

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STATUTES AND RULES

RCW 4.16.080(3) 8

ASSIGNMENTS OF ERROR

1. The trial court erred when found that an oral contract existed between the parties.
2. The trial court erred in finding that payments were made by plaintiff to defendants for the property.
3. The trial court erred by allowing the claim to survive a clear Statute of Limitations Violation

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Evidence submitted by plaintiffs did not support the trial courts finding that one half of the purchase price of the property was actually paid by the plaintiffs, per the alleged oral contract.
2. Evidence submitted at trial did not support the trial courts finding that consistent monthly payments were made by plaintiffs to defendants as consideration for the purchase of the subject property
3. Evidence presented at trial clearly indicates that the plaintiffs are barred from any action in contract against the defendants by the Statute of Limitations.

STATEMENT OF THE CASE

On or about March 30, 1989 Defendant-Appellants, Miguel and Maria Galvan, executed a written Real Estate Contract with seller Erma Adams to purchase property in Chelan County, Washington. The purchase price of this property was \$14,682.00. Miguel and Maria Galvan were the only purchasers listed on this contract, and the only purchasers to sign the contract.

From March 1989 until August 1995, defendants solely paid the monthly note on the property without the aid of plaintiffs or anyone else. On or about August 1995, defendants fulfilled the obligations of their contract with the seller, and were issued a Warranty Fulfillment Deed which was later filed into record at Chelan County Auditor's File No. 9509060004 on September 5, 1995.

On or about May 6, 2005, without notice and nearly *ten years* after the subject property was paid off by Miguel and Maria Galvan, plaintiffs filed a Claim of Lien against the property. The basis for plaintiffs' claim was an assertion that in 1989 they entered into an oral contract with Miguel and Maria Galvan whereby they would pay one half of the total note, in monthly installments of \$200, as consideration for one half interest in the subject property.

Defendants denied the existence of an oral contract with plaintiffs, and plaintiffs filed suit.

ARGUMENT

This case rests on the assumed existence of an *oral* contract. At trial, plaintiffs asserted the following: 1) That sometime prior to the legal purchase of the subject property by the defendants in March of 1989, plaintiffs entered into an oral contract with the defendants to partner financially in the purchase of the subject property; 2) Monthly payments in the amount of \$200 would be paid to defendants until the note was satisfied; 3) Payment by plaintiffs to

defendants in the amount of \$100 was refused in March of 1994; 4) That the subject property was paid for in full in August of 1995; and 5) plaintiffs learned that the subject property was solely in the name of the defendant-appellants sometime in 2005.

The law requires more than a naked assertion that an oral contract exists. There must be outward evidence of the parties' mutual intent to enter into an agreement.¹ In this case, there is none. However, in support of the alleged existence of an oral contract between the parties, plaintiffs cite an *unwitnessed* and *disputed* conversation in early 1989 whereby a contract was allegedly contemplated, formed, and agreed to by plaintiffs and defendants.

In support of these assertions, plaintiffs submitted statements drafted for litigation and written in English by persons whose first language is Spanish; three *blank* money orders totaling \$600; two checks written to a person *other than* the defendants; a check dated April 14, 1993 in the amount of \$168 written to Miguel Galvan (with no ledger entry); a check dated May 3, 1993 in the amount of \$100 written to Miguel Galvan (with no ledger entry); and an *unnegotiated* check dated March 1, 1994 in the amount of \$100 written to Miguel Galvan (with no ledger entry).² Plaintiffs also claim they "paid a share of the taxes of the property for each fiscal year", yet offer no proof. These items were all presented as evidence to the trial court.

As the court is aware, in cases involving oral contracts, the actions of the parties is critically important in determining whether or not a contract exists. The court must rely on the actions of the parties and any evidence suggesting the intent of the parties to determine whether or not an oral contract exists.

¹ *Saluteen – Maschersky v. Countryside Funding Corporation*, 105 Wn. App 846, 855, 22 P.3d 801 (Div 1 2001).

² See *Bates No. 028*

It is clear from the lack of physical evidence submitted by the plaintiffs that there was never a contract between the parties. Of the financial evidence entered into the record, only three checks are issued to defendants: two in 1993 totaling \$268, and one unnegotiated check in 1994 totaling \$100. According to plaintiffs, the agreed upon terms of payment to the defendants was \$200 per month.³ None of the three checks payable to defendants equal the alleged monthly payment, and Defendants asserted at trial that these payments were made to them as repayment on an unrelated matter.

In an effort to circumvent this obvious mathematical discrepancy, plaintiffs claim that the balance of these monthly payments as well as all unaccounted for payments to defendants were made in cash. They offer no ledger, bank statements, ATM receipts, or any other documentation to support this claim. It is conspicuously convenient, to say the least, that plaintiffs explain the glaring lack of payment history as “times they paid in cash”.

Perhaps more troubling is the fact that plaintiffs were unable to produce any records or evidence proving that they actually contributed one half of the purchase price of the property; a material and necessary term of the alleged oral contract. Additionally, plaintiffs fail to explain the lack of payments to defendants between March 1989 and April 1993, the date listed on the *first* check written to Miguel Galvan. Plaintiffs again attempt to explain away *years* of payments by simply claiming they “paid in cash”. Even *if* there was an oral contract and *if* these three checks were intended to be payment on an oral contract for the property, lack of payment between 1989 and 1993 along with incomplete payments would certainly void said contract. All other documentary submissions are too vague to carry weight. Blank money orders should not even have been considered.

³ See *Bates No. 058, 079, and 088*

Plaintiffs further assert that on March 1, 1994 a check in the amount of \$100 was issued as payment on the contract to the defendants and that payment was refused.⁴ This is of particular importance because had an oral contract existed, this would have triggered a formal breach of said oral contract. This alleged refusal of payment would serve as notice of breach to plaintiffs and “start the clock” for a claim.

Under the Statute of Limitations in Washington State, generally an action to enforce breach of an oral contract must be brought within three years of the alleged breach.⁵ In this case, *eleven years* pass between the alleged refusal of the \$100 check on March 1, 1994 and the May 6, 2005 filing of Claim of Lien by plaintiffs. Clearly, plaintiffs’ claims are untimely.

When it comes to contracts involving real estate, courts expect a substantial degree of precision.⁶ *Hubbell v. Ward* lays out thirteen material terms essential to the formation of an enforceable real estate contract.⁷ In essence, “agreements to buy and sell real estate ‘must be definite enough on material terms to allow enforcement without the court supplying those terms.’”⁸

It is difficult to justify forcing a party to specifically perform a purported contract when many of the necessary terms are completely absent. To justify a ruling of specific performance, the terms of the contract require the absence of vagueness and ambiguity in its essential elements. The terms must be sufficiently clear so “that the court can understand them and

⁴ *Id.*

⁵ RCW 4.16.080(3)

⁶ *Kruse v. Hemp* 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

⁷ *Hubbell v. Ward* 40 Wn.2d 779, 785, 246 P.2d 468 (1952).

⁸ *Sea-Van*, 125 Wn.2d at 129, (citing *Setterlund v. Firestone*, 104 Wn.2d 24, 25 – 26, 700 P.2d 745 (1985)). *See also*, *Ecolite Mfg. Co. v. R.A. Hanson Co.*, 43 Wn. App. 267, 272, 716 P.2d 937 (Div. 3 1986) (in which the court affirmed the summary dismissal of an action to enforce a “contract” where the parties had not reached a final agreement on such material terms as the property description, forfeiture and default provisions, tax liabilities and protective covenants).

interpret them, without supplying anything or supplanting vague and indefinite terms by clear and definite ones through forced or strained construction.”⁹ Given the contested existence of an oral contract in this case, and the sparse physical evidence, it is clear that the trial court in this case not only filled in blanks, but filled in *everything*.

This is simple. According to the plaintiffs, there was an oral contract with defendants whereby plaintiffs would pay \$200 a month towards the purchase price of the property. In return, they would receive one-half interest in the property. There is no evidence, other than vague testimony that any payments were made to defendants between 1989 and 1993. In 1993 two checks are written to defendant, Miguel Galvan, totaling \$268. The purpose of these checks is disputed. In 1994, a single check in the amount of \$100 is written to Miguel Galvan and never negotiated. There is no notation in the memo of any of these checks. There is no evidence that consistent payments for the property were ever made to defendants, and there is no evidence that one half of the purchase price of the property was paid by plaintiffs. Plaintiffs wait eleven years after the last check, written in 1994, to file formal action against defendants.

Defendants are distressed that with no verifiable payment history, disputed oral contract, and clear statute of limitations violation they are being ordered by the trial court to adhere to the terms of the alleged oral contract. Without consideration, there can be no contract, and without timely filing, the claim is forever lost.

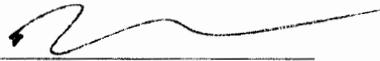
There are glaring contractual issues, evidentiary issues, and statute of limitation issues associated with this case. None of them are in the favor of plaintiff-respondents.

⁹ *Osterhout v. Peterson*, 198 Wash. 166, 173, 87 P.2d 987 (1939)

CONCLUSION

For each of the foregoing reasons, the Appellants respectfully request that the Court of Appeals direct that the Judgment of the Trial Court be vacated and that it be deemed to have been unenforceable during its existence.

Respectfully submitted,



Myles J. Johnson #47642

Date: 6/5/17

DECLARATION OF SERVICE

I, Myles J. Johnson, declare that on 6/5/17, I served this document on Counsel for Plaintiff, Mr. Brian C. Huber at: 2600 Chester Kim Road, Wenatchee, WA 98801, by placing same in U.S. mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Respectfully submitted,



Myles J. Johnson #47642

Date: 6/5/17

Place: Kirkland, WA