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# Contracts - Statute of Frauds - Signature Applicable to Only Part of a Memorandum

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CONTRACTS—STATUTE OF FRAUDS—SIGNATURE APPLICABLE TO ONLY PART OF A MEMORANDUM—Plaintiff buyer sought specific performance of an alleged contract for the sale of real estate. The instrument, denominated "deposit receipt," acknowledged receipt of the deposit, and then set forth the terms of the trade. This was signed "By Raymond Asmar," the alleged agent of the seller, in the place where the broker normally signs. Following this were two provisions. One, signed by plaintiff, stated that he agreed to purchase the property and that he confirmed the contract. A similar provision immediately following was not signed by defendant seller. The district court dismissed for failure to state a claim on which relief could be granted. On appeal, *held,* affirmed, one judge dissenting. The agreement does not satisfy the Florida statute of frauds.[1] Asmar did not sign as defendant's agent to sell; his signature merely acknowledged receipt of the money. *Moritt v. Fine,* (5th Cir. 1957) 242 F. (2d) 128.

Under statutes similar to the Florida statute requiring the memorandum to be "signed" by the party to be charged or his agent, the place of the signature is regarded as immaterial if the signature authenticates the whole memorandum.[2] Once it is determined that there is a signature on the instrument, parol evidence is generally admissible to determine if it was intended to authenticate the entire instrument.[3] Signatures have been held valid to satisfy the statute of frauds when found in the memorandum at the top,[4] in the body,[5] in the place provided for the signature of a witness,[6] and even where part of the writing appeared below the signature.[7] In similar fact situations, however, signatures have been held invalid both at the top[8] and in the body.[9] The unique element in the principal case is that, although the agent's signature did appear on the

[1] 2 Fla. Stat. (1955) §725.01. "No action shall be brought . . . upon any contract for the sale of lands . . . unless the agreement or promise upon which such action shall be brought, or some note or memorandum thereof shall be in writing and signed by the party to be charged therewith or by some other person by him thereunto lawfully authorized."

[2] See 2 CORBIN, CONTRACTS §521 (1950); 112 A.L.R. 937 (1938).

[3] See 2 CORBIN, CONTRACTS §520 (1950).

[4] Cohen v. Arthur Walker & Co., 192 N.Y.S. 228 (1922); Wright v. Seattle Grocery Co., 105 Wash. 383, 177 P. 818 (1919).

[5] Wood v. Connor, 205 Ark. 582, 170 S.W. (2d) 997 (1943); Kilday v. Schancupp, 91 Conn. 29, 98 A. 335 (1916).

[6] First Nat. Bank of St. Johnsbury v. Laperle, 117 Vt. 144, 86 A. (2d) 635 (1952); Felthauser v. Greeble, 100 Neb. 652, 160 N.W. 983 (1916).

[7] The Farmers Tobacco Warehouse Co. v. Eastern Carolina Warehouse Corp. and Tobacco Growers' Cooperative Assn., 185 N.C. 518, 117 S.E. 625 (1923); Burns v. Garey, 101 Conn. 323, 125 A. 467 (1924) (holding weakened on this point since court held there was sufficient part performance to remove case from statute of frauds).

[8] Mesibov, Glinert, & Levy, Inc. v. Cohen Bros. Mfg. Co., 245 N.Y. 305, 157 N.E. 157 (1927); Marks v. Walter G. McCarty Corp., 33 Cal. (2d) 814, 205 P. (2d) 1025 (1949), noted in 34 MINN. L. REV. 277 (1950).

[9] Guthrie v. Anderson, 47 Kan. 383, 28 P. 164 (1891), rehearing den. 49 Kan. 416, 30 P. 459 (1892); Lee v. Vaughan's Seed Store, 101 Ark. 68, 141 S.W. 496 (1911).

instrument, the court disposed of the statute of frauds issue on a motion to dismiss. The dissenting judge argued vigorously that the statute required only a signing, and the signature of the agent did appear. Since the nature of the signature was equivocal, parol evidence was admissible to establish whether or not it was intended to authenticate the entire instrument, and hence the case could not be disposed of on the pleadings. The holding of the majority represents a conclusion that the nature of the signature was unequivocal, and it could be determined from the face of the instrument itself that the signature was not intended to authenticate the whole instrument. Several cases have presented situations similar to that in the principal case. Where a signed affidavit of financial qualification of the sureties immediately followed an unsigned bond, the court in sustaining a demurrer determined that the signature to the affidavit did not execute the entire instrument; but the statute provided that no evidence of the agreement could be received other than the writing itself.[10] Where a signature appeared several times in reference to various clauses in the memorandum, it was held that the signatures did not authenticate the entire memorandum but had only a limited and particular effect.[11] In California, however, where the statute of frauds must be prima facie satisfied by looking only to the document itself, parol evidence of the intent to authenticate the whole instrument was held admissible where an unsigned declaration of homestead was followed by a signed verification clause.[12] Since the money receipted for by the seller's agent in the principal case was in the nature of a down payment, the seller could reasonably have believed that the buyer thought the seller bound to the whole transaction. This could have been held a sufficient ambiguity to satisfy the parol evidence rule. In holding that the signature in the principal case did not satisfy the statute of frauds and give grounds for admission of parol evidence, the Fifth Circuit has apparently gone farther than any other court. In view of the general rule that the specific location of the signature is immaterial and parol evidence admissible to show the intent to execute the entire memorandum, such a determination is justifiable only under peculiar circumstances. Such a finding would seem acceptable, however, when the signature on the instrument performs some separate and distinct legal function, it being much less probable in that case that it also served an additional purpose. Here, in acknowledging receipt of the deposit money, the agent's signature had such separate legal effect as to justify a determination that the signature was not intended, as a matter of law, to

[10] Commercial Credit Corp. v. Marden, 155 Ore. 29, 62 P. (2d) 573 (1936). The statute here required the name to be "subscribed," interpreted as a signature at the end of the writing, but since the name appeared at the bottom of the affidavit following the bond, the considerations should be the same as in the principal case.

[11] Caton v. Caton, L.R. 2 H.L. 127, 6 Eng. Rul. Cas. 256 (1867).

[12] In re Kossack, (S.D. Cal. 1953) 113 F. Supp. 884. The statute here required the name to be "subscribed," but "subscribed" was interpreted as synonymous with "signed."

execute the entire instrument, and on that basis the court's ruling can be accepted. The Fifth Circuit's departure from the general approach should be strictly confined to this narrow area.

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