



West View

"The New Voice of the West Village"

VOLUME 3, NUMBER 8

AUGUST 2007

Ask The Lawyers

But We Made An Oral Agreement!

by Sari Gabay-Rafiy and Anne Marie Bowler

Have you ever heard of the "Statute of Frauds"? It refers to a section of New York law that requires certain types of agreements to be in writing. The name comes from an old English law enacted to prevent fraud and abuse.

While certain exceptions to the Statute of Frauds may apply, it is generally a good idea to get a verbal agreement in writing if it falls under one of the following categories (easily remembered by the acronym – "MY LEGS"):

MARRIAGE an agreement made in consideration of marriage (prenuptial agreement)

YEAR a contract that cannot be performed within one year;

LAND sale of an interest in land.

EXECUTOR

executor of a will to pay debts of the estate with executor's own money;

GOODS

A contract for the sale of goods for a price of \$500 or more;

SURETY

A promise to answer for the debt of another person (guaranty).

If there is no writing memorializing a MY LEGS agreement, the contract is voidable but not void. That means that the party who may be evading its obligations under the contract can raise the Statute of Frauds as a defense.

So, if you are selling goods for \$500 or more, you may be wondering what kind of writing is sufficient. Well, a napkin may be fine so long as it: (1) indicates that an agreement exists; (2) is

signed by the party against whom enforcement is sought; and (3) specifies the quantity of goods for which the parties contracted. These are essential terms.

In this Internet age, a typed signature at the bottom of an email may even satisfy the Statute of Frauds requirement that a writing be subscribed. For instance, in *Rosenfeld v. Zerneck*, No. 24243 (N.Y. Sup. Ct., Kings

get a verbal agreement in writing

Co. May 4, 2004), the Supreme Court of New York recognized that the Statute of Frauds was amended in 1994 to provide that an electronic message may constitute a "writing". In that particular case, the party's intention to authenticate the email was manifested by the "act of typing his name at the bottom

of the e-mail." The message, however, did not constitute a binding contract of sale for the real property at issue because it lacked essential terms, such as the amount of the contract deposit.

So what do you do if you believe you've entered into an oral contract but it falls into one of MY LEGS? There may be no need to shake a leg because the Statute of Frauds does not apply where the parties do not dispute the existence of the contract or where one party has partially performed its obligations under the agreement. And, in the context of the sale of goods, the Statute of Frauds does not apply to oral agreements for goods specially manufactured for the buyer and not suitable for sale to others. Finally, if payment for the goods has been made and accepted or the buyer has received and accepted the goods, the Statute of Frauds cannot be invoked as a defense.

The safest thing to do

if you are worried about the enforceability of a verbal agreement is to get all of the essential terms in writing and be sure that the writing is properly subscribed. For more information, please contact Gabay-Rafiy & Bowler LLP, (212) 941-5025 www.gabaybowler.com.

To suggest topics of discussion for this column, please email us at gabay@gabaybowler.com. This article is designed only to give general information and is not intended to provide legal advice or give a legal opinion.