

NY Property Case Presents Sea Change For Oral Contracts

By **Massimo D'Angelo**

In *Korman v. Corbett*,^[1] which was decided on May 6, New York's Appellate Division, Second Department, carved out a new exception to the Statute of Frauds, holding that a court may utilize its inherent equitable powers to compel specific performance of an oral contract for the sale of real property where there is partial performance.^[2]



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Facts

In or around July 2016, the plaintiffs, who are domestic partners — one an attorney and the other a medical doctor — leased the second-floor apartment of a split-level home located in Brooklyn's Prospect Park neighborhood from the owner, Donna R. Barnes, now deceased.

Shortly after the plaintiffs moved into the home with the decedent, who had suffered a stroke in 2015, they befriended her and began providing small but frequent neighborly and personal assistance to the decedent, such as helping her with the use of her computer and phone, assisting her up the stairs, and running errands for her.

The Care for Sale Agreement

Although the victim of a stroke, the decedent was insistent on remaining in her home, and in 2017, started requiring significantly more assistance than her home health aide was capable of providing. Thereafter, the plaintiffs started increasing their role as actual caregivers to the decedent. It was at this juncture that the decedent's relationship with the plaintiffs quickly transformed into one beyond that of a routine landlord-tenant relationship.

In fact, the decedent had previously advised the plaintiffs on several occasions that she wanted them to remain in the home and purchase it upon her death, and the parties began engaging in serious discussions about an agreement, whereby the plaintiffs would remain in possession and act as family and caretakers for the decedent during her lifetime. Then, upon her death, the plaintiffs would purchase the home from her estate at an agreed-upon price.

As a result of the agreement, the plaintiffs were additionally tasked with, and began providing, serious care to the decedent at nights and on the weekends, as well as during most days. This enhanced assistance included, inter alia, helping the decedent ambulate and go to the bathroom, as well as assisting her with every other daily life activity, such as feeding her and processing her mail and bills. In addition, the plaintiffs began to undertake common homeownership responsibilities, like testing for lead, making repairs to the home, and funding common carrying charges.

Efforts Made to Reduce the Agreement to Writing

As the plaintiffs were performing their end of the bargain, the decedent took the necessary steps to ensure performance on her end. The decedent asked her lawyer to draft a written version of her agreement to sell her home to the plaintiffs upon her passing, and to appropriately incorporate this agreement into her will.

In furtherance of consummating the agreement, the decedent's lawyer even consulted with a certified public accountant and title insurer to guide him on the tax implications of a sale. Although the parties were leading up to reducing their agreement to writing, it could not be consummated because the decedent died in January 2018.

Upon the decedent's passing, her estranged sister was appointed executrix of the decedent's last will and testament, and she refused to honor the parties' care for sale agreement. Subsequently, the plaintiffs commenced an action in New York Supreme Court seeking, among other things, specific performance, together with a constructive trust in order to protect their rights and interests in the home.

The lower court dismissed the plaintiffs' complaint at the pre-answer stage finding that it violated the Statute of Frauds because the parties' care for sale agreement was not reduced to writing and signed by the parties from which order the plaintiffs appealed.

Issue

The central issue on appeal in *Korman* was whether the action was to be governed by General Obligations Law Section 5-701 or General Obligations Law Section 5-703, the resolution of which would determine whether the plaintiffs may be entitled to specific performance on an alleged oral agreement for the purchase and sale of the home.

The Statute of Frauds

The Statute of Frauds is codified in Section 5-701. Pursuant to the statute, in order to be enforceable, certain types of agreements cannot be oral; they must be in writing. Simply put, the purpose of the Statute of Frauds is to prevent perjury and fraud and to preserve the integrity of contracts.[3] Specifically, Section 5-107(a)(10) provides:

a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

...

10. Is a contract...negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein.

Therefore, if the parties' care for sale agreement was found to be governed by Section 5-701, requiring that a contract for the purchase of real estate is void, as a matter of law, unless in writing and signed by the party to be charged — the decedent — then the plaintiffs would have been without recourse to compel specific performance for the sale of the home.[4]

Legal Analysis

In a 2009 opinion in *Snyder v. Bronfman*,[5] the New York Court of Appeals held that the plaintiff's consigliere services in assisting the defendant's acquisition of Warner Music was barred under the Statute of Frauds' sweeping coverage, which applies to conduct at the outset, during the course of and at the conclusion of the services rendered in the absence of a signed agreement.[6]

Section 5-701 acts as the general provision delineating precisely what type of agreements must be in writing so as not to violate the Statute of Frauds. However, Section 5-701 does not contain any explicit statutory authority for a court, sitting in equity, to grant specific

performance of an oral agreement for the sale of real property.

In fact, the Court of Appeals went even further enunciating that in New York, no judicially created common law exception to Section 5-701 exists to permit a court to direct specific performance of an oral agreement for the sale of property, even in cases where there is part performance.[7]

However, the Korman court found that contrary to the generalized rule of Section 5-701, Section 5-703's explicit carveout stating that "[n]othing contained in [General Obligations Law Section 5-703] abridges the powers of courts of equity to compel specific performance of agreements in cases of part performance" relates to contracts concerning real property more specifically, and should therefore be applied to contracts for the sale of real property in the absence of an agreement signed between the parties.[8]

Thus, in Korman, the plaintiffs' contentions that the caregiving services that they provided to the decedent were unequivocally referable — the doctrine of part performance sufficient to remove an oral contract from the Statute of Frauds — to the oral option agreement to purchase the decedent's home, mandated that the case be governed by Section 5-703.[9]

In so holding, the court in Korman molded a new judicially created common law exception to Section 5-701, which had never previously been applied and that now allows parties to remove oral contracts for the sale of real property from the Statute of Frauds' ambit insofar as partial performance can be demonstrated.

More particularly, the court ruled that Section 5-703 trumps Section 5-701 because "[w]henver there is a general and a particular provision in the same statute, the general does not overrule the particular but applies only where the particular enactment is inapplicable." [10]

Here, Section 5-703, the more specific provision governing agreements concerning real property, is thus the operative statute. Moreover, the Korman court brushed aside the defendant's contentions that specific performance is unavailable where the plaintiffs could not fully perform their caregiving services before the end of a lifetime since the plaintiffs alleged that they did indeed complete such services during the decedent's lifetime.

Conclusion

The newly judicially created carveout exception to the Statute of Frauds promulgated by Korman presents a sea change under the law, which allows parties to seek specific performance under an oral contract to buy or sell real property so long as the party seeking the remedy can show that it partially performed their contractual duties.

It will be very interesting to see whether the Court of Appeals or, alternatively, the New York Legislature steps into the fray to either cement or modify Korman's judicial common law carveout. In any event, if and until that happens, parties may now circumvent the Statute of Frauds upon oral contracts to purchase real property where they have partially performed in connection with the underlying contract.

Ultimately, Korman has advanced a fundamental change to the practice of real estate law in New York, requiring parties negotiating for the sale of real property to exude a tremendous level of caution in those dealings, as their oral agreements may now translate into enforceable purchase and sale contracts for property that can be compelled by courts.

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Disclosure: D'Angelo represented the plaintiffs in *Korman v. Corbett*.

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[1] 2020 N.Y. Slip Op. 02637.

[2] General Obligations Law ("GOL") § 5-703.

[3] [William J. Jenack Estate Appraisers & Auctioneers, Inc. v. Rabizadeh](#), 22 N.Y.3d 470 (2013); see also 73 Am. Jur. 2d, Statute of Frauds § 403.

[4] GOL § 5-107(a)(10).

[5] 13 N.Y.3d 504, 506 (2009).

[6] GOL § 5-701(a)(10); see also JF Capital [Advisors LLC v. Lightstone Group LLC](#), 25 N.Y.3d 759 (2015).

[7] [Messner Vetere Berger McNamee Schmetterer Euro RSCG v. Aegis Group](#), 93 N.Y.2d 229 (1999).

[8] See GOL § 5-703[4].

[8] General Obligations Law § 5-703[3], "[a] contract to devise real property...or any interest therein or right with reference thereto"; see also [Messner Vetere Berger McNamee Schmetterer Euro RSCG v. Aegis Group](#), 93 N.Y.2d 229, 234 (1999); *Anostario v. Vicinanza*, 59 N.Y.2d 662, 663 (1983).

[9] McKinney's Cons Laws of NY, Book 1, Statutes § 238.