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COLUMBIA LANDLORD AND TENANT ACT

Section 704. Definitions.

In this act, unless the context indicates otherwise:

(1) "Lease" means an agreement, whether oral or written, for transfer of possession of real property, or both real and personal property, for a definite period of time.
(2) "Periodic tenant" means a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, with the interval between rent-paying dates normally evidencing that intent.
(3) "Tenancy" includes a tenancy under a lease, a periodic tenancy or a tenancy at will.
(4) "Tenant at will" means any tenant holding with the permission of the tenant's landlord without a valid lease and under circumstances not involving periodic payment of rent.

* * *

Section 710. Notice necessary to terminate periodic tenancies and tenancies at will.

(1) A periodic tenancy or a tenancy at will can be terminated by either the landlord or the tenant only by giving to the other party written notice complying with this section, unless any of the following conditions is met:

(a) The parties have agreed expressly upon another method of termination and the parties' agreement is established by clear and convincing proof.

(b) Termination has been effected by a surrender of the premises.

(2) A periodic tenancy can be terminated by notice under this section only at the end of a rental period. In the case of a tenancy from year-to-year the end of the rental period is the end of the rental year even though rent is payable on a more frequent basis. Nothing in this section prevents termination of a tenancy for nonpayment of rent or breach of any other

condition of the tenancy.

(3) Length of notice. Except as provided in § 714 of this act at least 28 days notice must be given.

(4) Contents of notice. Notice must be in writing and substantially inform the other party to the landlord-tenant relation of the intent to terminate the tenancy and the date of termination.

* * *

Section 714. Notice terminating tenancies for failure to pay rent, commission of waste, etc.

(1) If a periodic tenant or a tenant at will fails to pay any installment of rent when due, the tenant's tenancy is terminated if the landlord gives the tenant notice requiring the tenant to pay rent or vacate on or before a date at least 5 days after the giving of the notice and if the tenant fails to pay accordingly.

(2) If a periodic tenant or a tenant at will commits waste or breaches any covenant or condition of the tenant's lease, other than for payment of rent, the tenant's tenancy is terminated if the landlord gives the tenant a notice requiring the tenant to remedy the default or vacate the premises on or before a date at least 5 days after the giving of the notice, and if the tenant fails to comply with such notice.

* * *

Section 720. Waste by tenant, action for.

If a tenant under a lease, a periodic tenant, or a tenant at will commits waste, any person injured thereby may maintain an action at law for damages against such tenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court.

Cavallaro v. Stratford Homes, Inc.

Columbia Court of Appeal (2001)

The Cavallaros filed suit against Stratford Homes, Inc., seeking specific performance of an agreement for the purchase and sale of a lot and the construction of a home thereon, or, in the alternative, damages arising from Stratford's alleged breach of that agreement. The complaint alleged that the parties had executed a lot reservation agreement which reserved a particular lot and fixed the base price for the construction of one of Stratford's model homes until a sale and purchase agreement was executed. The lot reservation provided, among other things, that: "Should [a sale and purchase] agreement not be executed within 14 days of this date, purchaser and/or seller may, at either's option, void this lot reservation." In consideration for the lot reservation, the Cavallaros gave Stratford a $500 deposit. The complaint alleged that, although the parties had subsequently executed an enforceable sale and purchase agreement, Stratford breached the agreement by improperly refusing to construct their home.

The undisputed record evidence established that the Cavallaros entered into negotiations with Stratford for the construction of a home, but that a meeting of the minds was never reached as to the price and the terms of construction of the home which were essential terms to an enforceable contract. The Cavallaros requested several changes to Stratford's basic model over a period of several months. Plans were redone and new pricing was formulated on a number of occasions. Because no final agreement was reached as to those essential terms, the entry of judgment in favor of Stratford was correct.

Even if the parties had reached a meeting of the minds as to the essential terms, any such contract would have been unenforceable under Columbia's statute of frauds. Pursuant to the statute of frauds, no action can be brought to enforce a contract for the sale of land unless the contract is in writing and signed by the party to be charged. In order to be an enforceable land sales contract, the statute of frauds requires the contract to satisfy two threshold conditions. First, the contract must be embodied in a written memorandum signed

by the party against whom enforcement is sought. Second, the written memorandum must disclose all of the essential terms of the sale and these terms may not be explained by resort to parol evidence.

The Cavallaros contend there is evidence in the record demonstrating that the parties executed a written contract. More specifically, the Cavallaros maintain that the sale and purchase agreement and addendum which was signed by them, but not by Stratford, when read in conjunction with a price list which was signed by Stratford's agent four days later, satisfied the written memorandum requirement of the statute of frauds. We disagree. In order for documents to be read in conjunction with each other to constitute a sufficient memorandum for purposes of the statute of frauds, the law strictly requires some internal reference between the documents. To that end, there must be some reference to the unsigned writing in the signed writing. Here, the signed price list did not make reference to the unsigned sale and purchase agreement.

The Cavallaros next argue that the trial court improperly rejected their claim that the partial performance doctrine removed the parties' alleged oral agreement from the requirements of the statute of frauds. We disagree that partial performance would apply in this case even if an oral agreement had been reached by the parties. The established rule is that in order to constitute partial performance sufficient to take an oral agreement to devise real property out from under the statute of frauds, delivery of possession of the real property is required. But the possession must be permissive and, most importantly, acquiescence by the parties to the terms of the agreement must be apparent. Here, a finding of partial performance could not be sustained because the Cavallaros never took possession of the property.

Having rejected all of the Cavallaros' claims of error, we affirm the trial court’s judgment.

Binninger v. Hutchinson

Columbia Court of Appeal (1978)

Genise Tatum Binninger appeals a judgment granting specific performance to Ralph Hutchinson, the intended purchaser, based upon an oral agreement for the conveyance of real property. Binninger was the owner of improved property in Bay County, Columbia, which Hutchinson was interested in buying. Binninger was then living in Houston, Texas. There is a conflict of testimony, which the trial court resolved against Binninger, as to whether an agreement was reached between the parties. While Mrs. Binninger stated no bargain was struck, Hutchinson testified that during a long distance telephone conversation, she agreed to sell him the property for $15,000, provided he pay her $10,000 and give her an installment note for the remaining $5,000. Hutchinson stated Mrs. Binninger told him that upon his making the above payment, the property was his.

Following the conversation, Hutchinson forwarded a warranty deed, mortgage, note and a check in the amount of $2,000 payable to "Genise Tatum Bissonett." The named payee was an obvious error. Bissonett was the name of the street where Binninger resided. Upon receipt of the check she attempted to call Hutchinson to advise him she was not selling the property, but without success. When she later discovered Hutchinson had taken possession, and was making substantial improvements, she returned the check uncashed to her attorney, who also attempted to contact Hutchinson, but, being unable to, left a message for Hutchinson to call him. Hutchinson finally contacted Mrs. Binninger within one or two months after receipt of the papers by her.

When further negotiations between the parties failed, Hutchinson brought an action seeking specific performance of the oral contract. The court found the parties entered into an oral agreement for the sale of the property for a price of $15,000. The prayer for specific performance was granted and the property conveyed to Hutchinson upon payment of $15,000 together with accrued interest. We reverse.

Binninger argues (1) an oral agreement was never reached, and (2) the statute of frauds bars Hutchinson from relief. Hutchinson responds there was competent substantial evidence for the trial court to determine the contract had been formed between the parties and since proof of both possession and payment of some part of the consideration was made, partial performance of the agreement was made, thus bringing into operation the partial performance exception to the statute of frauds.

Before the partial performance exception may be applied, delivery of possession must be made pursuant to the terms of the contract and acquiesced to by the other party. Even construing the conflicting testimony in Hutchinson's favor, as we must, we find no evidence entitling him to possession of the property. His possession was known to Mrs. Binninger only after she received the deed, mortgage, note and check and after she was told by relatives Hutchinson was making improvements upon the property. Hutchinson's proof concerning Mrs. Binninger's acquiescence to his possession was hardly clear and positive. Before a plaintiff may be allowed to give evidence of a contract for the sale of land not in writing, it is essential that he establish, by clear and positive proof, acts which take the contract out of the statute. The statement attributed by him to Mrs. Binninger, that after he paid $10,000 down and gave her a note for $5,000 the property was his, cannot be reasonably relied upon by Hutchinson as acquiescence for him to move onto the property without title and begin extensive improvements. The oral agreement was within the statute of frauds and unenforceable.

Additionally we find Hutchinson's forwarding of a $2,000 check, rather than the $10,000 which even he said was agreed upon by the parties, was no more than a counteroffer. It is hornbook law requiring no citations of authority, except common sense, that a contract once entered into may not thereafter be unilaterally modified; subsequent modifications require consent and a meeting of the minds of all of the initial parties to the contract whose rights or responsibilities are sought to be affected by the modification.

REVERSED.

Tanner v. Fulk

Columbia Court of Appeal (1985)

Plaintiff, George Tanner, filed an action against defendant, Michael Fulk, requesting that a land installment contract be terminated, that possession of the premises be restored to him, and that an additional judgment of $55,000 for deterioration and destruction of the premises be awarded.

A land installment contract is a type of conditional sale as, generally, possession is transferred immediately while legal title is held by the vendor until full payment of the contract price. A land installment contract means an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the vendor agrees to convey title in real property to the vendee and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation.

The court rendered a judgment which included findings of fact and conclusions of law. That judgment held as follows: 1) Fulk owed Tanner the actual amount called for in the land contract from its execution to the judgment canceling the contract and returning possession to Tanner, less payments made to Tanner; 2) Tanner was not entitled to any monies for destruction and deterioration of the property; 3) Tanner was not entitled to any monies based upon the fair rental value of the property; and 4) Fulk was not entitled to any monies from Tanner, and specifically could not recover the sum of $7,200 he had paid under the land contract prior to termination.

The election of the vendor to terminate the land installment contract is an exclusive remedy that bars further action on the contract unless the vendee has paid an amount less than the fair rental value plus deterioration or destruction of the property occasioned by the vendee's use. In such case the vendor may recover the difference between the amount paid by the

vendee on the contract and the fair rental value of the property plus an amount for the deterioration or destruction of the property occasioned by the vendee's use. Where the vendor of the land installment contract brings an action for forfeiture for vendee's default under the contract, the vendor has elected an exclusive remedy which prohibits further action except to recover any amount paid by the vendee which is less than the fair rental value plus any deterioration or destruction of the property occasioned by the vendee's use. However, if the amount paid by the vendee exceeds fair rental value plus any deterioration or destruction, the vendor is permitted to retain the excess amount paid.

This measure of damages is also consistent with the general principle that specific performance is unavailable to the seller. In a typical case, where the buyer is in default of payment, monetary damages are adequate to compensate the seller since what the seller bargained for was money. As such, a monetary award is the equivalent of specific performance.

In the instant case, the trial court specifically placed a zero amount on the difference between the amount paid by Fulk on the land contract prior to termination and the fair rental value. The trial court also placed a zero amount on destruction and deterioration. Both of these determinations are supported by competent and credible evidence. Finally, the trial court found no reason to award Fulk any of the amount of $7,200 he had paid under the land contract prior to termination. Neither do we.

AFFIRMED.

Hansen v. Academy Corp.

Columbia Court of Appeal (2002)

In 1987, Academy Corporation leased from Hansen a 22,500 square foot building located on a three-acre tract in Rosenberg, Columbia. As part of the lease agreement, Academy had exclusive use of the parking lot surrounding the building. The building and the parking lot did not comprise the entire three-acre tract.

Hansen brought a claim for intentional trespass, claiming that Academy, without his consent, used a small building and a small sign located outside the parking lot, but within the three-acre tract.

The trial court interpreted the contract as a matter of law, deciding that the disputed property upon which the small building and sign were located was outside Academy's lease of the building and its right to use the parking area. Based on that interpretation, the trial court submitted the question of trespass to the jury.

The jury charge defined "trespass to real property" as:

> any unauthorized intrusion or invasion of private premises or land of another, committed when a person enters another's land without consent. For purposes of a trespass claim, entry need not be in person, but may be made by causing or permitting something to cross the boundary of the property.

The jury was asked, "Did Academy trespass on Dr. Hansen's property?" As a matter of law, Academy neither leased nor had a right to use the disputed property. Academy's use of the disputed property was, therefore, unauthorized. We hold that this evidence was legally and factually sufficient to support the jury's finding that Academy trespassed on Hansen's property.

Academy also contends that there was no evidence or insufficient evidence of damages for trespass. Hansen offered evidence of the rental value of the sign and the small building. In Columbia, the scope of recoverable damages associated with damage to property depends on whether the injury is temporary or permanent in nature. If an injury to property is temporary in nature, the proper measure of damages is the reasonable cost of the repairs necessary to restore the property to its condition immediately prior to the injury plus the loss occasioned by being deprived of the use of the property. It has been repeatedly held that loss of rentals is an appropriate measure of damages for the temporary loss of the use of land. Given the nature of the injury in this case, we conclude that the damages for trespass based on rental values were permissible.

Vogel v. Pardon

Columbia Supreme Court (1990)

Anton and Ruth Vogel appeal from a district court judgment awarding them damages for waste arising out of the lease of an apartment building. We affirm.

In 1981 the Vogels leased an apartment building in Bismarck to Richard Pardon, Paul Rasmussen, Ronald Klein and A. Gaylord Folden (the Partners). The Partners quit making payments in September 1985, and the Vogels subsequently canceled the lease pursuant to the lease provisions and state law. The cancellation was effective March 31, 1986.

The Vogels then commenced this action seeking damages for waste. The Vogels asserted that the property had been in good repair when the Partners took possession in 1981, and that the property was in an unrentable condition when returned in 1986, due to the Partners' failure to make necessary repairs. The Partners asserted that the building, which had been constructed in 1963, was in an advanced state of disrepair when they contracted with the Vogels in 1981, and that any damage was caused by ordinary wear and depreciation of the property, not by any waste on their part.

The case was tried to the court. The court found that the Partners had failed to properly repair the roof of the building, resulting in water damage to the building and contents, for which it awarded the Vogels $4,000 in damages. The court also awarded damages of $500 for furniture which was discarded, sold, or converted by the Partners. Judgment was entered accordingly and the Vogels appealed.

The Vogels argue that the court erred in failing to award damages for waste to various items, including appliances, carpeting and linoleum. Waste may be defined as an unreasonable or improper use, abuse, mismanagement, or omission of duty touching real estate by one rightfully in possession, which results in a substantial injury. Waste implies neglect or misconduct resulting in material damage to property, but does not include

ordinary depreciation of property due to age and normal use.

The evidence on whether there was waste to appliances, carpeting and linoleum was conflicting and the trial court found that these items were nearing the end of their useful lives when the building was leased and had simply worn out due to ordinary wear and age, rather than from any wrongful conduct of the Partners. We conclude that the trial court's findings in this regard are not clearly erroneous. The Vogels were not entitled to recover damages for items which had reached the end of their useful lives through ordinary wear.

The object of an award of damages in an action for waste is to compensate without unjust enrichment. If recovery of the replacement cost of the roof were allowed in this case, the Vogels would be unjustly enriched. The Vogels leased the Partners an eighteen-year-old building with an eighteen-year-old roof. There was testimony that the normal useful life of a roof of this type was approximately twenty years. During the period that the Partners were in possession, the roof reached the end of its useful life through ordinary depreciation, wear, and age. If the Vogels were allowed to now recover the replacement cost, they would enjoy the benefit of a brand new roof with another twenty-year life expectancy. Conversely, the Partners, through the happenstance of possessing a building with a roof nearing the end of its useful life, would be forced to bear the cost of its replacement, even though the roof required replacement through no fault of their own. Clearly, such a result would unjustly benefit the Vogels. We conclude that the trial court did not err in refusing to award damages for the replacement of the roof.

The Vogels assert that the trial court used an incorrect measure of damages. Their argument on this issue is intertwined with their assertion that the court should have awarded damages for the cost of replacing appliances, flooring, and other items of personal property in the building. The trial court, however, found, with sufficient evidentiary support, that replacement of those items was necessitated by ordinary wear and age, not by any act constituting waste by the Partners.

The Vogels' argument is, however, relevant to the award of damages for furnishings which were discarded, sold or converted. The trial court found that the parties intended that the furnishings be included in the lease and that the Partners were therefore liable for the value of any furniture lost or damaged. The trial court awarded $500 for the value of the furniture which was discarded or sold. The Vogels assert that the court should have assessed damages based upon replacement cost of the furniture, rather than its actual value.

The trial court's resolution of this issue is in accordance with the general rule that where the waste alleged to have been committed on the leased premises resulted from the destruction or removal of something from the premises, and the thing thus destroyed or removed, though a part of the realty, had a value which could be ascertained accurately without reference to the soil on which it was located, the measure of the damages recoverable by the landlord for the waste may be based on the value of the thing destroyed or removed, instead of on the diminished market value of the premises.

The object of an award of damages in a waste case is to compensate without unjust enrichment. If the Vogels were allowed to replace old, well-worn furnishings with new (or, at the least, newer) furnishings, they would be unjustly enriched. By allowing damages based upon the actual value of the items lost, the Vogels receive adequate compensation but not over compensation.

Judgment is affirmed.