

## *Lapatin on the Law*

### WORD OF MOUTH

One of the basic distinctions between a lease and a tenancy at will was at the heart of *Langevin v. Booth-Desmarais*, a recent decision by the Massachusetts Appeals Court. The setting was a ranch house in Millbury, which became the scene of a hotly-contested family feud.

The house was owned by a widow, who lived there alone following the death of her husband. Searching for companionship, she asked her adult daughter to move in with her three children. To facilitate the move, she converted the garage into an additional bedroom and bathroom.

The daughter initially agreed orally to pay rent in the amount of \$625 per month. Because of rising costs, the rent was raised to \$775 two years later. The mother then moved to Florida. When she expressed a desire to come back to Massachusetts for Christmas, the daughter told her that she “couldn’t return to the house.” A few months later, after the mother determined that she could no longer afford to keep the house, she served the daughter with a notice to quit. When the daughter refused to budge, the mother initiated an eviction action.

In court, the daughter testified about a conversation in which the mother had agreed to allow the daughter and the kids to stay in the house until a date in 2025 when one of the children was scheduled to graduate from high school. In her own defense, the landlord acknowledged promising her grandchildren that they could live in the house until 2025, but only “if the money lasted and it hasn’t lasted.”

Fatal to the daughter’s argument was the fact that she couldn’t produce any written document signed by the mother and confirming the daughter’s entitlement to remain in occupancy until 2025. Such a document, establishing a tenancy for a specific period of time, is of course commonly known as a lease and a law entitled the Statute of Frauds stipulates that a lease requires the landlord’s signature. The trial judge found, and the Appeals Court agreed, that the daughter was nothing more than a tenant at will. Accordingly, the mother was within her rights to send the notice terminating that tenancy at the end of the next calendar month.

The purpose of the Statute of Frauds is – you guessed it – to prevent frauds. Letting a buyer or a tenant take over somebody’s property based solely on testimony about an oral understanding invites perjury and jeopardizes the sanctity of real estate. Be that as it may, the Appeals Court ruled in *Hickey v. Green*, a 1992 decision, that an oral agreement to sell property may be enforced “notwithstanding failure to comply with the Statute of Frauds if it is established that the parties seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by enforcement”.

The case centered upon involved an oral promise to sell a residential lot, where the seller, Mrs. Green, was well aware that the buyers, Mr. and Mrs. Hickeys, were planning to sell their current home and build a new one. The Hickeys, relying on Green’s oral promise, had quickly obligated themselves – in writing -- to sell their house to a third party. “There can be no doubt,”

ruled the court, “(a) that Mrs. Green made the promise on which the Hickeys so promptly relied, and also (b) she, nearly as promptly, but not promptly enough, repudiated it because she had a better opportunity. The stipulated facts require the conclusion that in equity Mrs. Green’s conduct cannot be condoned.”

In 1992, ten years after *Hickey*, landlords got their own dose of the same medicine when *Carolan v. Imperial Real Estate* was handed down by the Hampden Housing Court. The landlord in that case orally agreed to rent an apartment to a husband and wife. He also accepted payment of the first month’s rent. About fifteen minutes later, he changed his mind, deciding instead to deal instead with another applicant. The couple sought an injunction ordering the landlord to lease the apartment to them. The court agreed. The landlord’s behavior (like that of Mrs. Green a decade earlier) was characterized as inequitable. Maybe so, but it’s hard to believe that the would-be tenants had relied on the landlord’s promise to the same extent as the Hickeys. In fact, they hardly had a chance to do much of anything during the fifteen minute interval between the time the landlord agreed to rent the apartment and the time he had second thoughts. It’s nice to be able to report that the beleaguered mother in *Langevin* found the Statute of Frauds to be a more reliable shield against her daughter’s allegations.

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