



# Courtside *Newsletter*

## CA Court of Appeals Rules in Favor of Real Estate Agent in Statute of Frauds Case



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In February, the California Court of Appeal (“Court”) ruled on the question of whether a real estate agent can bring a lawsuit against the owners of a property for a commission if not all of the owners signed the listing agreement, but one owner allegedly signed on behalf of all owners. Long story short, the Court ultimately decided that a real estate agent should have the ability to bring a suit to prove the owner signed on behalf of others.

Bernice Jacobs (“Jacobs”) is a licensed California real estate broker who, in April 2013, entered in to a Vacant Land Listing Agreement (“Agreement”) for which she had the “exclusive and irrevocable right” to sell a parcel of real property in Marin County. Per the agreement, if Jacobs was able to obtain a buyer during the year-long listing period, she would receive a \$200,000 commission. The only caveat to the Agreement was that if an entity called “Open Space Land Trust” purchased the property, Jacobs would not receive a commission.

There were six owner signatories to the Agreement, but only one owner signed, [John B. Locatelli (“Locatelli”), as trustee of the John B. Locatelli Trust]. The other signature lines were left blank. Per Jacobs, Locatelli stated that he had the authority to act on behalf of the other owners and a written agency agreement existed to that effect (though Jacobs never saw the agreement). Furthermore, after the Agreement went into effect, Jacobs claims the other owners acknowledged her employment, were impressed by her performance, and even went so far as to inquire with her about working on other projects.

By mid-April 2013, Jacobs procured The Trust for Public Land (“TPL”) as a potential buyer. After Jacobs informed Locatelli of this, Locatelli allegedly became angry and stated that he had been speaking with TPL for three years. He demanded the contact information for the person Jacobs was working with and wanted to change the Agreement exception from “Open Space Land Trust” to “TPL.” Jacobs looked into Locatelli’s allegations, but her contact at TPL confirmed that he hadn’t known the property was for sale until Jacobs contacted him, and that he had never spoken to Locatelli before. Thereafter, Locatelli informed Jacobs that TPL had been instructed not to speak with her, and that he would be dealing with them directly. Later in 2013, the owners and TPL entered into an agreement for TPL to buy the property, leaving Jacobs out of the transaction. (Somewhat unsurprisingly, the transaction was never consummated due to issues between the owners and TPL.)

In April 2014, Jacobs filed a complaint against the owners (and TPL), alleging breach of contract and specific performance (the commission promised in the Agreement), amongst other causes of action. The owners demurred to the complaint, stating that the facts in Jacob’s complaint were insufficient to establish a cause of action and therefore the complaint should be dismissed. The owners relied on the Statute of Frauds codified in Code of Civil Procedure § 1624(a)(4) which states that a real estate broker’s contract must be “in writing and subscribed by the party to be charged or by the party’s agent.” The owners alleged that they did not sign the Agreement and that Locatelli did not sign on their behalf due to the fact that the property was held as tenants in common. The trial court sustained the demurrer and Jacobs amended her complaint, alleging the owners were part of a joint venture, the purpose of which was to invest in the property. Defendants demurred to the amended complaint contending the Agreement did not refer to a joint venture and was therefore still bound by the Statute of Frauds. The demurrer was sustained without leave to amend and Jacobs appealed.

According to prior caselaw, “the ‘courts have long had little sympathy for the broker who fails to adhere to the Statute of Frauds.’” Meaning, historically the Statute of Frauds has been strictly adhered to in the case of real estate licensees, even when it results in perceived unfairness. However, “‘The Statute of Frauds was not enacted to afford persons a means of evading just obligations... Therefore, if after a consideration of the surrounding circumstances, the pertinent facts and all the evidence in a particular case...the purpose of the Statute will best be served by holding the note or memorandum sufficient even though it is ambiguous or incomplete.’” (*Sterling v. Taylor* (2007) 40 Cal.4th 757.) In the instant action, the Court believed that the case should have moved forward in order to allow Jacobs the opportunity to introduce evidence that Locatelli signed the agreement on behalf of the owners, as a partner in a joint venture. The real issue, the Court contended, was whether this alleged joint venture was enough to satisfy the Statute of Frauds. The decision of the trial court was therefore reversed and the case was remanded for further litigation.

For REALTORS®, the ultimate takeaway from this case may be to make sure all of your contracts are fully executed in order to avoid costly litigation. However, the case also demonstrates that for those who do get a jump start on marketing a property, not all may be lost (except for attorney’s fees). The Statute of Frauds is a hard and fast law, but like most laws, it is not without some room for interpretation. The best takeaway is not to put yourself in the position of having to litigate your rights to compensation. Confirm signatures, the authority to act by signatories in writing, and the status of the entity.

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