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Statute of Frauds—Executory Land Contracts—Requisites and Sufficiency for a Written Description of Platted Land by Street Number, City, County and State

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were reached in *Beuret v. Stahl,* 76 Ind. App. 131, 129 N.E. 407 (1920), and *Manitowoc Steam Works v. Manitowoc Glue Co.,* 120 Wis. 1, 97 N.W. 515 (1903). Wisconsin has announced a rule that reasonable latitude must be allowed a buyer whose continued use was necessary to protect him from injury or inconvenience caused by the seller's breach of warranty. *Advance Rumely Thresher Co. v. Born,* 189 Wis. 309, 206 N.W. 904 (1926); *Fox v. Wilkinson,* 133 Wis. 337, 113 N.W. 669 (1907).

The Washington Court itself dealt more liberally with a buyer in *Empey v. Northwestern and Pacific Hypotheekbank,* 129 Wash. 392, 225 Pac. 226 (1924), which held that a purchaser of land did not waive his right to rescind by remaining in possession after giving notice of his election to rescind, and that an offer to restore the seller to his status quo was not a condition precedent to his cause of action for recission.

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Statute of Frauds—Executory Land Contracts—Requisites and Sufficiency for a Written Description of Platted Land by Street Number, City, County and State. In an action for specific performance of a real estate contract, *D* set up the plea of the statute of frauds, in that there was an insufficient legal description. *D* had signed an earnest money agreement containing the following description: "real property: at 309 E. Mercer, Seattle, King County, Washington." Held: the legal description is insufficient. Every contract for the sale or conveyance of platted real property must contain in addition to the other requirements of the statute of frauds, the description of such property by correct lot number(s), block, addition, city, county, and state. *Martin v. Seigel,* 35 Wn. 2d 223, 212 P. 2d 107 (1949).

The problem presented in the Martin case is what type of property description is necessary to make a contract enforceable under the statute of frauds. In Washington, executory contracts for the conveyance of real property, while required to be in writing, are not specialties, but are simple contracts, valid whether or not they are executed with the formalities required for the execution of deeds. See REM. REV. STAT. §§ 10550, 10551 [P.P.C. §§ 497-1, 498-1]. Thus in this field, resort must be had to the common law statute of frauds and prior case holdings.

The rule in the majority of states is that it is not essential that the description have such particulars of identification as to render resort to extrinsic aid entirely needless when the writing comes to be applied to the subject matter. It is enough if, with the assistance of extrinsic evidence, the description without being contradicted or added to can be connected with and applied to the very property intended, to the exclusion of all other property. Where the writing is in itself capable of application to something definite, the situation of the parties and the surrounding circumstances when the contract was made may be shown by extrinsic evidence so that the court may be placed in the position of the parties themselves, and if the subject matter is identified with reasonable certainty, it is enough. *Ryan v. U.S.,* 136 U.S. 68 (1889); *Corrado v. Monuovi,* 49 R.I. 78, 139 Atl. 791 (1928); *Sawert v. Lunt,* 360 Pa. 521, 62 A. 2d 34 (1948); *Bogard v. Barhan,* 52 Ore. 212, 96 Pac. 673 (1908); *Baller v. Spivack,* 213 Mich. 426, 182 N.W. 70 (1921); *People v. Abrahams,* 88 Cal. 245, 26 Pac. 99 (1891); *Heller v. Baird,* 191 Wis. 288, 210 N.W. 680 (1926); 1 *Restatement, Contracts* § 207(b).

Under the majority rule the opposite result would, in all probability, have been reached. But in Washington, a contract for the conveyance of a real interest is void under the statute of frauds when such a contract does not contain a description of the land sufficient to locate it without recourse to extrinsic evidence. *Gilman v. Brunton,* 94 Wash. 1, 161 Pac. 835 (1916); *Marshall v. Hillman Inv. Co.,* 151 Wash. 529, 276 Pac. 276 (1929); *Martinson v. Cruikshank,* 3 Wn. 2d 565, 123 P. 2d 335 (1940).

Seemingly at variance with the Washington rule stated above, is a long line of cases on legal description in the field of tax foreclosures where the court has consistently quoted verbatim, authority which as it is usually understood, represents with clarity the majority rule relating to certainty of legal description. This passage, taken from 1 JONES, LAW OF REAL PROPERTY IN CONVEYANCING § 323 (1898) states: "The first requisite of an adequate description is that the land shall be identified with reasonable certainty, but the degree of certainty required is always qualified by the application of the rule that that is certain which can be made certain. A deed will not be declared void for uncertainty if it is possible by any reasonable rules of construction to ascertain from the description, aided by extrinsic evidence, what property it was intended to convey. The office of description is not to identify the land, but to furnish the means of identification. The description will be liberally construed to afford the basis of a valid grant. It is only when it remains a matter of conjecture what property was intended to be conveyed, after resorting to such extrinsic evidence as is admissible, that the deed will be held void for uncertainty in the description of parcels. See *Ontario Land Co. v. Yordy,* 44 Wash. 238, 87 Pac. 257 (1906); *Opsjon v. Engebo,* 73 Wash. 325, 131 Pac. 1146 (1913); *Merges v. Adams,* 137 Wash. 208, 242 Pac. 43 (1926); *Wingard v. Pierce County,* 23 Wn. 2d 296, 160 P. 2d 1009 (1945); *Turpen v. Johnson,* 26 Wn. 2d 716, 175 P. 2d 495 (1946).

The variance between the Washington rule and the Jones quotation may be rationalized on either of two narrow grounds. First, extrinsic evidence is admissible, but only when the extrinsic evidence offered is incorporated by reference into the writing. See *Bingham v. Sherfey,* 38 Wn. 2d 886, 234 P. 2d 489 (1951). Or second, extrinsic evidence is admissible, but only when the writing already includes lot, block, addition, city, county and state.

The Martin rule presents very stringent requirements for a real estate contract involving platted land. It tends to work hardship in that it enables one party to defeat an otherwise valid contract. But subsequent cases, construing the Martin rule, indicate that in actual effect, part performance, judicial notice, and incorporation by reference tend to modify the harshness of the rule. See *Stephens v. Nelson,* 37 Wn. 2d 28, 121 P. 2d 520 (1950) (State and county omitted); *Bingham v. Sherfey,* 38 Wn. 2d 886, 234 P. 2d 489 (1951) (Description vague and erroneous); *Lofberg v. Viles,* 139 Wash. Dec. 459 (1951) (State and county omitted).

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Probate Decrees—Extrinsic Fraud—Personal Notice of Proceedings. *D* was appointed administratrix of the estate of her husband who died intestate in 1943. Notice of the probate proceedings was given by publication as provided in RCW 11.76.040 [RRS § 1532; PPC § 192-17]. *P,* a daughter of deceased by a former marriage, was not given personal notice of the probate proceedings, or of the final decree. However, she learned of the death within a few hours, and of the decree of distribution a few months after it was entered. The final decree was entered in 1944, awarding the entire estate to *D* as sole heir at law. This action was brought in 1948 as a collateral attack upon the probate decree, *P* alleging that *D* was guilty of extrinsic fraud. There was conflicting testimony as to whether *D* knew that *P* was a daughter of deceased. The trial court found that *D* did not know that *P* was a daughter of deceased and ruled for *D. Held:* Reversed. The Supreme Court found extrinsic fraud in obtaining the probate degree because *D* knew of *P*'s claim, and by failing to give personal notice of the proceedings she prevented *P* from presenting such claim in court. *D* was declared constructive trustee for *P* of one-half of the estate. *Francon v. Cox,* 38 Wn. 2d 530, 231 P. 2d 265 (1951).