

Tennessee: Court of Appeals Holds Oral Promise to Convert Construction Loan to Permanent Loan Does Not Satisfy Statute of Frauds

By Jerry Morgan

There was a time when someone's word and a firm handshake was as good as a contract. This particular case, in which the Tennessee Court of Appeals upholds that the promise or commitment by a lender to extend credit or lend money must be in writing to be enforceable, is a reminder that there's a good reason we moved to a system of definitive and verifiable written agreements. *Sanders v. First Tennessee Bank National Association, et al.*, No. E2017-01814-COA-R3-CV.

The Power of the Written Word

The handshake deal or oral promise may be highly symbolic and desirable to many people, but, as well as being highly impractical, they generally mean very little from a legal perspective, especially within the context of lending credit.

Not only are the acts insufficient in setting forth the specific details and terms of an agreement — who is involved, what their roles and rights are — they generate no evidence they ever happened, and in consequence, hold no weight in a court of law.

When dealing in matters of business or high importance, for any agreement or transaction to be clear, fair, and legally enforceable, it needs to be in writing.

Unfortunately, though, due to ideological morals and the endless and unexpected activities of life, particularly when in the process of something like building a new home, ensuring you get written proof can often be something that is overlooked, forgotten, or dismissed.

This brings us to the case in question regarding plaintiffs, Hershel and Alma Sanders, and their decision to take out a construction loan with First Tennessee Bank to build a home in Cumberland County, Tennessee.

The problems began when the first contractor did not finish the job as per agreed, and First Tennessee urged the Sanders to hire a new contractor — which they did, under the impression from an oral promise that they would be supported by First Tennessee with a permanent loan.

When the second contractor finished the construction, however, the bank refused to make the loan permanent. The result: the property went into foreclosure, and the Sanders sued the bank along with other defendants while alleging various theories of recovery.

Choosing to represent themselves, the Sanders proceeded by filing their case in court. This included a copy of their complaint and several documents with exhibit stickers, but it lacked any statement of facts, was organized without any clear order, and, overall, presented no solid argument to review.

In its discretion, the courts recognized the right to give parties representing themselves who are untrained in the law a certain amount of leeway in drafting their pleadings. And so, fortunately for the Sanders, the case was not dismissed outright but allowed to proceed.

Ultimately, however, their case was weak, resting on the only remaining defendant, First Tennessee Bank, as to the only remaining theory: breach of contract to make the plaintiffs a permanent loan.

In response, First Tennessee Bank filed a motion to dismiss and for judgment on the pleadings. Despite the courts recognition of the Sanders' position and legal training, or lack thereof, it also had to be mindful of the boundary between fairness to those representing themselves and those that represented parties. Thus, the trial court determined that because there was no written agreement signed by First Tennessee Bank reflecting a promise to convert the loan to a permanent one, the matter was barred by Tennessee's Statute of Frauds, Tenn. Code Ann. § 29-2-101 (2012).

Accordingly, the trial court dismissed the matter.

Court of Appeals

The Court of Appeals affirmed, holding that the absence of a written agreement to convert the loan to a permanent one was a complete bar to the case.

The Court of Appeals first noted in support of the requirement in Tenn. R. Civ. P. 10.03 that if a claim is founded upon a written instrument, *"a copy of such instrument or the pertinent parts thereof shall be attached to the pleading as an exhibit . . ."*

But as the plaintiffs' complaint was based on an alleged oral promise, they had failed to attach a written document reflecting the alleged promise of the bank to convert the loan to a permanent one.

Next, the court looked to Tennessee's Statute of Frauds, which states:

"No action shall be brought against a lender or creditor upon any promise or commitment to lend money or to extend credit, or upon any promise or commitment to alter, amend, renew, extend or otherwise modify or supplement any written promise, agreement or commitment to lend money or extend credit, unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the lender or creditor, or some other person lawfully authorized by such lender or creditor."

Tenn. Code Ann. § 29-2-101(b)(1) (emphasis supplied).

Put simply, this means that without a written agreement, there can be no case: *“No written agreement means no action shall be brought. The plaintiffs’ claim is barred.”*

While the circumstances of the Sanders’ case were fairly narrow, the language in the Statute of Frauds is much broader, and can be applied defensively in a wide variety of instances. One of the most common allegations made by defaulting borrowers is that the lender or servicer “promised” a loan modification. However, in today’s world, where the written word is more precise, evidentiary, and thus more powerful than any other form of communication, oral promises and handshakes within the context of lending money or extending credit have long been disregarded as a contract and are in no capacity legally enforceable in a court of law.

As such, any case that argues the contrary, no matter how innocent or unintentional, should be discarded by the trial court.