

[Cite as *Seaman v. Fannie Mae*, 2009-Ohio-4030.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92751**

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**JAMES SEAMAN, ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**FANNIE MAE**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cleveland Municipal Court  
Case No. 08-CVH-08425

**BEFORE:** Rocco, P.J., Blackmon, J., and Stewart, J.

**RELEASED:** August 13, 2009

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

KENNETH A. ROCCO, P.J.:

{¶ 1} Plaintiffs-appellants, James Seaman and JMR Group Investments, LLC, appeal from a municipal court order dismissing their amended complaint. Appellants assert that the court erred by dismissing their complaint because the complaint gave notice of their claims for breach of contract and promissory estoppel. They further argue that if the contract attached to the complaint was insufficient, the proper remedy was a motion for a more definite statement, not dismissal. We find no error in the municipal court's decision and affirm its judgment.

{¶ 2} Appellants originally filed their complaint on April 3, 2008 and were given leave to amend it on August 18, 2008. Although the amended complaint was not separately filed thereafter, the amended complaint was attached to appellants' motion for leave to amend; the parties treated it as if it was filed, and appellee responded to it.

{¶ 3} The amended complaint alleged that appellants agreed to purchase certain real property from appellee, Fannie Mae, for three thousand dollars (\$3000). Appellants gave appellee an earnest money check. Thereafter, appellee informed appellants that it would not proceed with the sale. Appellants claimed appellee breached its contract with appellants. Appellants also claimed that they relied on appellee's promise to sell the property to them at the agreed upon price by paying the earnest money,

foregoing other purchases, and expending time and resources on this purchase.

{¶ 4} Three documents were attached to the amended complaint. First was a “Purchase Agreement,” which was initialed and executed only by the buyer, James N. Seaman. At the conclusion of this document, Seaman’s agent, Robert E. Kinison of Keller Williams, acknowledged receipt of five hundred dollars (\$500) in earnest money. The second attachment to the amended complaint was a part of another contract, apparently an addendum to the purchase agreement. This contract was also initialed and executed by James N. Seaman as “purchaser.” Finally, the third attachment to the amended complaint was a copy of an official check issued by Charter One to Remax Premier Properties in the amount of five hundred dollars (\$500).

{¶ 5} In response to the amended complaint, appellee filed a motion to dismiss. Appellee asserted that (1) appellant JMR Group Investments, LLC was not a party to the transaction at issue and therefore lacked standing; (2) appellants did not allege facts sufficient to demonstrate that there was a contract; they showed that they made an offer to appellee, but not that the offer was accepted; (3) appellants failed to allege that appellee made a clear, unambiguous promise that would support their claim for promissory estoppel; and (4) appellants did not satisfy the statute of frauds. Appellants responded to this motion and appellee replied.

{¶ 6} The municipal court concluded that appellants failed to allege the essential elements of a claim for promissory estoppel and their breach of contract claim was barred by the statute of frauds, R.C. 1335.05. Therefore, the court dismissed both counts of the amended complaint.

{¶ 7} A motion to dismiss pursuant to Civ.R. 12(B)(6) tests the sufficiency of the complaint. We must presume all factual allegations in the complaint to be true, and make all reasonable inferences in plaintiffs' favor. *Maitland v. Ford Motor Co.*, 103 Ohio St.3d 463, 465, 2004-Ohio-5717, ¶11. The motion may be granted only if it appears beyond doubt from the complaint (and the attachments to it) that the plaintiffs can prove no set of facts entitling them to relief. *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus.

{¶ 8} When a contract is attached to a complaint, Civ.R. 10(C) applies. Civ.R. 10(C) reads in part: "A copy of any written instrument attached to a pleading is a part of the pleading for all purposes." "Material incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12(B)(6) motion to dismiss." *State ex rel. Crabtree v. Franklin Cty. Bd. of Health*, 77 Ohio St.3d 247, 249 Fn.1, 1997-Ohio-274.

{¶ 9} In their first assignment of error, appellants contend that the court erred by dismissing their claim for breach of contract. They assert that the

complaint alleged that the defendants breached a contract between the parties and “notice pleading” requires no more.

{¶ 10} Appellants argue that a breach of contract claim is sufficiently stated when there is an allegation that there was a contract between the parties that the defendant breached. Whether or not we might agree with this proposition as a general matter,<sup>1</sup> it appears beyond doubt from the face of the complaint that the claim is barred by the statute of frauds, R.C. 1335.05. R.C. 1335.05 states that “no action shall be brought whereby to charge the defendant, upon a \* \* \* contract or sale of lands, tenements, or hereditaments, or an interest in or concerning them \* \* \* unless the agreement upon which such action is brought or some memorandum or note thereof, is in writing and signed by the party to be charged therewith \* \* \*.” Here, appellants specifically alleged that they executed a written agreement, but not that appellee did. The agreement attached to the complaint likewise supports the proposition that appellant Seaman executed a written agreement, but not that appellee did. This written agreement cannot be enforced against appellee under the statute of frauds.

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<sup>1</sup>See *Maguire v. Natl. City Bank*, Montgomery App. No. 22168, 2007-Ohio-4570, ¶16 (complaint that alleged that a contract existed among the parties without specifying whether it was oral or written and without attaching any written agreement would survive a motion to dismiss on statute of frauds grounds).

{¶ 11} Appellants contend that their assertions of promissory estoppel may overcome the statute of frauds defense. The Ohio Supreme Court has recently addressed this issue in *Olympic Holding Co. v. Ace Ltd.*, 122 Ohio St.3d 89, 2009- Ohio-2057. In *Olympic Holding*, the supreme court held that promissory estoppel does not bar a party from asserting the statute of frauds as an affirmative defense to a breach of contract claim. *Id.* at ¶36. This holding squarely rejects appellants' argument. Therefore, we affirm the municipal court's judgment dismissing appellants' breach of contract claim based upon the statute of frauds.

{¶ 12} In their third assignment of error, appellants apparently claim that their complaint was sufficient despite the fact that the attached purchase agreement was unenforceable. Civ.R. 10(D)(1) requires a party to attach a copy of the written instrument upon which the party's claim is founded, or state the reason for the omission in the pleading. Therefore, the court could presume that the attachments represented the agreement on which the complaint was based, and rely upon the attachments to ascertain whether appellants could prove any set of facts entitling them to relief. Accordingly, we overrule the third assignment of error.

{¶ 13} Finally, Appellants' second assignment of error asserts that their complaint alleged a promissory estoppel claim. *Olympic Holding* confirms that a plaintiff may pursue an action for reliance damages under a

promissory estoppel theory, even though the statute of frauds bars their breach of contract claim.

{¶ 14} Ohio has adopted the view of promissory estoppel expressed in the Restatement of the Law 2d, Contracts (1973), section 90, which states: “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” *Talley v. Teamsters, Chauffeurs, Warehousemen & Helpers, Local No. 377* (1976), 48 Ohio St.2d 142, 146. “[I]n order to state a claim for promissory estoppel, the plaintiff ‘must establish the following elements: 1) a clear and unambiguous promise, 2) reliance on the promise, 3) that the reliance is reasonable and foreseeable, and 4) that he was injured by his reliance.’” *Stern v. Shinker*, Cuyahoga App. No. 92301, 2009-Ohio-2731, ¶9.

{¶ 15} The amended complaint alleges that appellee represented to appellants that the price and terms were agreed and instructed appellants to execute the purchase agreement attached to the complaint and to pay the earnest money to appellee. Appellants apparently claim that this constituted a promise to sell the property to them and that they detrimentally relied upon appellee’s promise “by paying the earnest money, foregoing the

purchase of other properties and spending time and resources on the purchase of the subject property.”

{¶ 16} On the face of the complaint and its attachments, it is apparent that appellants cannot show that they reasonably relied upon any promise made by appellee. The parties clearly contemplated that they would execute a written agreement. The complaint states that appellee instructed appellant Seaman to execute the purchase agreement. This “purchase agreement” anticipates that the parties will *both* execute the written agreement before it becomes a binding contract. Moreover, the addendum executed by Seaman states that “NO ORAL PROMISES \* \* \* OR AGREEMENTS MADE BY THE SELLER SHALL BE DEEMED VALID OR BINDING UPON THE SELLER UNLESS EXPRESSLY INCLUDED IN THIS AGREEMENT.” Given the terms of the written documents they were allegedly instructed to execute, appellants could not reasonably have believed that they had an agreement until the written contract was also executed by appellee.

{¶ 17} In most negotiations for transactions included within the statute of frauds, the parties contemplate that the contract will be reduced to writing.

If a written agreement is contemplated, reliance upon statements made before an agreement is signed will be unreasonable as a matter of law, particularly when sophisticated business parties are involved in the

negotiations. “Businessmen would be undesirably inhibited in their dealings if expressions of intent and the exchange of drafts were taken as legally binding agreements.” *Olympia Holding*, supra, at ¶37, quoting *Carcorp, Inc. v. Chesrown Oldsmobile-GMC Truck, Inc.*, Franklin App. No. 06AP-329, 2007-Ohio-380, ¶20.

{¶ 18} Accordingly, we find the municipal court did not err by dismissing appellants’ claim for promissory estoppel.

Affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and  
MELODY J. STEWART, J., CONCUR