6-1-1954

Procedure - Pleading Statute of Frauds in Pennsylvania

Adam B. Krafczek

Follow this and additional works at: https://ideas.dickinsonlaw.psu.edu/dlra

Recommended Citation
Adam B. Krafczek, Procedure - Pleading Statute of Frauds in Pennsylvania, 58 DICK. L. REV. 396 (1954). Available at: https://ideas.dickinsonlaw.psu.edu/dlra/vol58/iss4/10

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.
PROCEDURE — PLEADING STATUTE OF FRAUDS IN PENNSYLVANIA

The factual situation in the recent case of *Leonard v. Martling*,¹ so far as is pertinent for this discussion, was substantially as follows:

Plaintiff John J. Leonard, a dentist, brought an action in assumpsit to recover for professional services rendered to defendant Gerald E. Martling. In this same action the plaintiff joined Harvey B. Martling as co-defendant, averring that the latter, "orally guaranteed Plaintiff that he would pay any charges the Defendant Gerald E. Martling might incur by reason of the said services."

The defendant Harvey B. Martling denied making the guarantee either oral or in writing but failed to raise the defense of statute of frauds. Subsequently at trial defendant Harvey B. Martling made a motion for judgment on the pleadings in the nature of a demurrer contending that plaintiff's allegations predicated liability on an oral guarantee for the debt of another. The trial court dismissed the motion contending that defendant, having failed to raise the defense of statute of frauds as provided in The Pennsylvania Rules of Civil Procedure Rule 1030, had waived this defense. Defendant appealed from this ruling.

The superior court, reversing the trial court, held that since the complaint failed to allege facts showing circumstances removing the promise from the operation of the statute of frauds, it failed to state a cause of action on which relief could be granted and thus defendant was excused under Pa. R.C.P. Rule 1032 from the limitations of Pa. R.C.P. Rule 1030.

It is not the purpose of this note to make an extensive analysis of the various underlying legal theories expounded by the courts since the enactment of the original English Statute of Frauds,² nor the fundamental faults which inhere in each theory³ since "(t)he search for a logically consistent theory of universal application ends in confusion."⁴ It is believed it will suffice to examine the approach the Pennsylvania courts have taken with respect to pleading the statute of frauds in the light of present rules of civil procedure.

Under section 16 of the *Practice Act of 1915*⁵ it was provided that "(n)either party shall be permitted at the trial to make any defense which is not set forth in the affidavit of defense, or plaintiff's reply, as the case may be. . . ." While the statute was effective in requiring most defenses to be raised at the pleading stage, if they were to be raised at all, this was not wholly true of the defense of statute of frauds. The Pennsylvania courts have consistently held that the *Practice Act of 1915* did not limit the availability of this defense to a special plea in certain in-

---

¹ 174 Pa. Sup. 206, 100 A.2d 484 (1953).
² 29 Car. II, c. 3.
³ For a brief discussion of the various theories, see, *The Statute Of Frauds: Evaluation of Underlying Theories*, 14 Corn. L. Q. 102 (1928); see also, 39 Harv. L. Rev. 632 (1926).
⁴ Ibid., 14 Cornell L. Q. 102, 107.
stances. The rationale of the cases allowing the statute of frauds to be raised other than by special plea is based on the particular wording of the statute raised as a defense. It is herein that the distinction lies: where a statute uses such language as "no action shall be brought" or that the contract "shall not be enforceable by action," it is interpreted by the court to mean that the legislature provided "not mere rules of evidence, but limitations on the judiciary to afford a remedy;" i.e., unless the plaintiff pleaded satisfaction of the statute, he failed to state a cause of action upon which relief could be granted and thus allowed the defendant to raise the defense of statute of frauds at the pleading stage, by motion during the trial, after verdict, or even by the court on its own motion. Typical of the decisions is the following quotation from Sferra v. Urling by Mr. Chief Justice Kephart:

"The reason for the rule (is) section 4 of the Sales Act expressly provides that contracts within its inhibition shall be 'unenforceable,' and therefore constitutes a 'limitation on the power of the judiciary to afford a remedy,' as distinguished from a 'mere rule of evidence.' Since all remedy for the enforcement of the contract was taken away, it was wholly outlawed by section 4, which could not be treated as a personal defense."
To the same effect under the statute of frauds dealing with a promise to pay the debt of another:

"The authorities in other jurisdictions are in conflict as to the necessity of specially pleading the want of proper writing to support the guaranty of the debt of another. In some, the defense has been held to be personal; which the defendant may or may not take advantage of, as in the case of statute of limitations. In Pennsylvania this has not been declared, but it has been held that judgment should be entered for the defendant where the evidence shows the contract not to be legally sustainable."\(^{16}\)

However, where the statute of frauds does not contain such words as noted above, or words of similar import, it is not controlled by a legislative mandate; and it is to these that the procedural limitation properly applies. Where the court had before it the statute of frauds relating to the sale of land,\(^{17}\) the court points out that it "merely says oral leases of more than three years shall have the effect of tenancies at will" and does not deprive such leases "entirely of legal effect;"\(^{18}\) therefore, failure to timely assert the defense constituted a waiver.

This then brings us to the principal case and the Pa. R.C.P. of 1947.\(^{19}\) The court unquestionably indicates that the new rules of civil procedure will not change the position of the courts with respect to pleading satisfaction of the statute of frauds in those cases where the statute is in the nature of a substantive mandate.

Rule 1030\(^{20}\) provides, "The defense of . . . statute of frauds . . . shall be pleaded in a responsive pleading under the heading 'New Matter.' " (Emphasis supplied); and Rule 1032 providing in part, "a party waives all defenses and objections which he does not present either by preliminary objection, answer or reply, except . . . failure to state a claim upon which relief can be granted. . . ." (Emphasis supplied.) Relying upon the foregoing rules, the trial court ruled that the defendant, having failed to interpose the defense of statute of frauds according to Rule 1030, lost his opportunity to subsequently rely on this defense. However, the defendant argued that because the plaintiff failed to allege satisfaction of the statute of frauds, he failed to state a cause of action and thus defendant was governed by the exception under Rule 1032.

\(^{16}\) Bayard v. Pennsylvania Knitting Mills Corp., n. 6, supra.

But this was not the view under the common law. "So, in the case of a promise to answer for the debt, default, or miscarriage of another person, which was good by parol, at common law, but, by the statute of frauds, is not valid unless the agreement, or some memorandum or note thereof, be in writing, and signed by the party, etc., the declaration on such promise need not allege a written contract." Shipman, Common Law Pleading (3rd ed.), § 307, p. 307 (1923). Nor is this the view in the majority of American jurisdictions, see, II Williston, Contracts, § 527.

\(^{17}\) Act of 1772, March 21, 1 Sm. L. 389, 33 P.S. 1.

\(^{18}\) Sferra v. Urling, n. 6, supra.

\(^{19}\) Pennsylvania Rules of Civil Procedure, 12 P.S. Appendix.

\(^{20}\) Ibid., p. 394.
It is apparent the ultimate determination resolves itself in whether or not the plaintiff, by alleging an oral contract, failed to state a cause of action so as to allow defendant to interpose the defense otherwise than by preliminary objection, answer or reply. The court, relying on the wealth of authority under the Practice Act of 1915, reversed the lower court:

"Plaintiff has, therefore, failed to 'state a claim upon which relief can be granted' and the defendant's failure to plead the statute of frauds was excused by Pa. R.C.P. No. 1032."

"A statute of frauds, such as the one in the instant case, which constitutes a substantive rule of law cannot be included in the operation of rule 1030."

It is important to note that the decision is based again on the interpretation of the language of the particular statute of frauds relied on as a defense; the promulgation of new rules of civil procedure did not in any way affect the substantive requirements of the statute.

The court also reviews, and cites with approval, the previous decisions discussed herein relating to the statute of frauds under the Sales Act, and contracts for the sale of realty:

"The statutes of frauds required to be pleaded by Pa. R.C.P. No. 1030 are...[contracts for the sale of realty], where noncompliance does not deprive the agreement of legal effect nor limit the power of the judiciary to afford a remedy."

Since the passage of the Uniform Commercial Code in Pennsylvania will supercede the Uniform Sales Act, it requires some comment. It is believed the statute of frauds section under the Uniform Commercial Code will not affect the pleading requirements heretofore discussed under the Sales Act since the language is practically identical: "...a contract...is not enforceable by way of action or defense. ..." (Emphasis supplied.)

Adam B. Krafcek
Member of the Middler Class

---

21 Or, under the Uniform Sales Act, failure to show satisfaction of the statute of frauds by part performance. But where plaintiff had alleged facts constituting part performance, he was not within the purview of the statute and thus defendant, having failed to interpose his defense at the proper time, had waived his defense, Martin v. Wilson, n. 11, supra.
22 Rule 1032 (1) provides that the legal sufficiency of the complaint may be attacked either by preliminary objection, answer, motion for judgment on the pleadings or by motion at the trial on the merits.
23 Act of 1953, April 6, P.L. 1 Act No. 1 (Effective date, July 1, 1954).
24 Ibid., § 2-201.