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THE STATUTE OF FRAUDS IN THE PENNSYLVANIA LANDLORD AND TENANT ACT OF 1951

Although it is designed primarily to blend the salmagundi of old statutes and case law concerning the whole of the landlord-tenant relation, the new Landlord and Tenant Act of 1951 demands the particular attention of counsel when a lease is actually being drawn up.

The Statute of Frauds in the Act of 1772 is expressly repealed insofar as it applies to leases and is replaced by § 202 of the new act, which provides:

"Real property, including any personal property thereon, may be leased for a term of more than three years by a landlord to a tenant or by their respective agents lawfully authorized in writing. Any such lease must be in writing and signed by the parties making or creating the same, otherwise it shall have the force and effect of a lease at will only . . . unless the tenancy has continued for more than one year, and the landlord and tenant have recognized its rightful existence by claiming and admitting liability for rent . . . ."

Superficially, at least, the words of the Act of 1951 would seem to affirm the Statute of Frauds provision contained in the Act of 1772, which, in an almost like manner, provides:

"... all leases, interests of freehold, or term of years or any . . . uncertain interest of, in or out of any . . . land . . . created by livery of seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents, thereof lawfully authorized in writing, shall have the force and effect of leases or estates of will only . . . ."

The classic interpretation of this section of the Act of 1772 is that the lease (or contract to sell, or conveyance) must be signed by the "party creating the interest"—in other words, the vendor or lessor, and it has long been held that the lessee, vendee, optionee, or assignee of any of the former need not sign to comply with this section because such parties "... are not 'parties making or creating' the interest in the land, which arises from the agreement."  

The long line of precedent which supports this interpretation of the old act renders an inquiry into the soundness of its reasoning fruitless, no doubt, but nonetheless tempting, because the new act uses exactly the same phraseology as the Act of 1772, although it appears that the legislative intent of the new act is that both parties to the lease must sign it.

2 Act of March 21, 1772, 1 Sm.L. 389, § 1; 33 P.S. 1.  
3 Lowry v. Mehaffey, 10 W. 387 (1840); Everhart v. Dolph, 133 Pa. 628, 19 A. 431 (1890); Axe v. Potts, 349 Pa. 339 (1944).  
First of all, have the courts justification for holding that the Act of 1772 requires only that the party creating the interest sign the lease or other instrument? Note the wording of both acts: "... signed by the parties so making or creating the same..." It already has been pointed out that Pennsylvania case law universally interpreted "parties," as set forth, to mean "party," and the expression "party creating the interest" is common usage in the profession. Academically, the question could be made to turn on the further question, How many parties does it take to create an interest? Logically, it would seem that two parties are required, because even a gift requires a donee as well as a donor.

Perhaps the reason is semantical. Notice that the word "interest" has been substituted by the courts for the word "same" in the phrase "... signed by the parties making or creating the same..." The reason for this construction probably appears in the limbo of long forgotten cases, but its practical effect is obvious: "interest" implies the singular, thus reinforcing the adoption of "party" instead of "parties" by the courts, although the word "same" actually refers to the word "interests of freehold" with equal force. Since there are several types of estates set forth in the Act of 1772, among them, leases, freehold interests, terms for years or "any uncertain interest," it could be contended that the courts have based the substitution of the word "party" for "parties" upon the principle that "parties" in the act refers to the vendor in all four cases just mentioned.

But it is at this juncture that the context in which the phrase "signed by the parties so making or creating the same," as it also appears in the new act, loses its academic aspect and becomes extremely practical, because the Landlord and Tenant Act of 1951, as its title implies, refers not to four different types of estates, but only to leases. The new act requires that where real property is to be leased for more than three years "Any such lease... by a landlord to a tenant... must be in writing and signed by the parties making or creating the same... or by their agents lawfully authorized in writing." The phrase that requires the lease to be in writing is in precisely the same language as the Act of 1772, but here the only antecedent of the word "same" is "lease." Therefore, to what could the word "parties" refer in a lease except the lessee and the lessor? In addition, the same section requires that their agents be lawfully authorized in writing—surely it cannot be contended that the agents of both the vendor and the vendee need written authorization, but that only the agent of the vendor must sign!

Nevertheless, the new act will be subject to the vagaries of judicial construction, as was its predecessor, and it may be interpreted to mean that only the vendor must sign a lease intended to exceed a three year period. However, it is suggested that in the future attorneys insist on a lease signed by both the vendor and the vendee, or their agents under written authority, as a safeguard against the possibility that the courts may construe the new act as it is written.

5 Emphasis supplied, and text of the act slightly rearranged.
Another variation from the provisions of the Act of 1772 is presented by § 203 of the Act of 1951:

"No lease of any real property made or created for a term of more than three years shall be assigned, granted or surrendered except in writing signed by the party assigning, granting or surrendering the same or his agent, unless such assigning, granting or surrendering shall result from operation of law."

In this instance, the deviation from the old act is more explicit since, after the word "agent," the new act omits the phrase "... thereto lawfully authorized in writing ..." Written authority, a requisite under the Act of 1772, was rigorously construed by the courts, and lack of it could not be overcome, even if the agent, originally without written authority, received the rents or eventually became the owner, although written ratification or performance by the vendor would validate the lease. Since the Act of 1951 dispenses completely with the requirement it would seem that, in the future, courts will require the agent of the assignor to have written authority only by ignoring the act completely. But this possibility cannot be discounted entirely, and for the present, attorneys should see to it that the party assigning, or his agent authorizing in writing, have signed such a transfer.

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6 McDowell v. Simpson, 3 W. 129 (1834); Willis-Winchester Co. v. Clay, 293 Pa. 513, 520, 143 A. 227 (1928).
9 Reinbold v. Laufer (No. 2), 6 North. 376 (1899).