IADC COMMITTEE NEWSLETTER

# CONSTRUCTION LAW AND LITIGATION

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## IN THIS ISSUE

*Charles E. Reynolds and Troy Vuurens highlight two recent Florida cases involving claims to enforce oral agreements; the first to share lottery winnings and the second to issue a 10 year window warranty. In each case, the court examines the duration of performance in determining whether the oral contract falls within the scope of the Statute of Frauds.*

# Lottery Tickets and Leaky Windows: Florida Courts Tackle Enforcement of Oral Contracts

## ABOUT THE AUTHORS

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## ABOUT THE COMMITTEE

The Construction Law and Litigation Committee consists of lawyers who represent general contractors, design/build firms, subcontractors, construction lenders, architects, engineers and owners. The Committee provides an opportunity to keep up to date on the latest developments in construction law, as well as a good networking and referral source for experienced construction litigators throughout the country. Members can also obtain information on liability and damage experts with e-mail inquiries to the Committee. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:

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In Florida, a frequently raised defense to a claim for breach of an oral contract is the statute of fraud defense, pursuant to section 725.01 Florida Statutes. In short, claims based on oral contracts which are not to be performed within one year are barred by the statute. The most oft-cited case that articulates the "one-year performance" provision has long been *Yates v. Ball*, 181 So. 341, (Fla. 1937). However, it is notable that in recent months two Florida appellate courts have chimed in on this very issue, including the Supreme Court of Florida.

In *Browning v. Poirier*, 165 So.3d 663 (Fla. 2015), an unmarried couple feuded over an oral agreement to split lottery winnings. The couple's agreement began in 1993 and continued without issue until 2007 when Poirier purchased a winning lottery ticket and collected one million dollars. Browning filed suit when Poirier refused to split the proceeds. The primary issue in dispute was whether the one-year performance provision of the statute of frauds rendered the oral agreement unenforceable. In its opinion issued on May 28, 2015, the Supreme Court of Florida held that while the oral agreement was one of indefinite duration, and indeed lasted 14 years, it still fell outside the statute of frauds since the agreement "could have possibly been performed within one year." *Id* at 666. As such, the oral agreement was enforceable. *Browning* is also notable for the court's admission that its prior decision in *Yates* was "inartful in its discussion of a general and qualifying rule" and should not be read to conflict with *Browning*. *Id* at 665.

On June 24, 2015, only one month after the *Browning* decision, the Florida First DCA issued its own opinion in a separate oral contract case. In the matter, *Loper v. Weather Shield Mfg., Inc*., 2015 WL 3875549[1], a homeowner filed suit against a window manufacturer alleging, among other things, breach of an oral agreement to replace leaky windows and issue a new 10 year warranty. The manufacturer disputed the agreement, but in the alternative it raised the statute of frauds defense on the basis that the agreement required performance beyond one year. Citing in part to the newly-minted decision in *Browning*, the court held that the oral agreement was not for warranting the windows over a 10 year period, but merely for issuing the warranty. *Id* at 7. As such, the agreement could have been performed within one year. Moreover, the court also noted that the homeowner had fulfilled his part of the agreement. This also defeats a statute of frauds defense since, "full performance by one party to the contract works to remove an oral agreement from the purview of the statute of frauds." *Terzis v. Pompano Paint & Body Repair, Inc*., 127 So.3d 592, 595 (Fla. 4th DCA 2012).

Florida is not alone. Recent appellate decisions in other states show similar rules. In 2015, a Georgia court clarified its rule that, "[t]o fall within the ambit of this statutory

[1] This opinion has not been released for publication in the permanent law reports. Until released, it is subject to revision or withdrawal.

provision, a contract must be *incapable* of being performed within a year; the possibility of performance of the contract within one year is sufficient to remove it from the Statute of Frauds." *Vernon v. Assurance Forensic Accounting, LLC*, 774 S.E.2d 197, 207 (Ga. Ct. App. 2015). Likewise, the Supreme Court of Montana recently held, "If there is any possibility that a contract may be performed within one year, it is not within the statute." *Superior Auto Body and Tow, Inc. v. Yeager*, 379 Mont. 536, 353 P.3d 507 (2015). In 2014, the Supreme Court of Nebraska held, "A contract 'not to be performed within one year' is one which by its terms cannot be performed within 1 year." *Linscott v. Shasteen*, 288 Neb. 276, 284 (2014).

The recent Florida decisions in *Browning* and *Loper,* as well as similar decisions in other jurisdictions, make it clearer than ever that it matters little whether performance of an oral agreement extends beyond one year, or whether the parties intended performance to extend beyond one year. Instead, it is the mere *possibility* that it could be fully performed within one year that dictates whether the oral agreement falls within the statute of frauds. As evidenced by *Browning*, this subtle distinction can literally make the difference in whether your client splits the lottery.

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