A Verbal Contract Is Not Worth The Paper It's Written On[1]

Reuben Rosenblatt, Q.C.

rrosenblatt@mindengross.com

(416) 369-4110

Gus Sorkos was born in Greece and immigrated to Canada as a young man. In 1960 when he was 22 years old he was working as a short order cook in a small restaurant in London, Ontario. It was there that he met Victoria who was then a waitress and the mother of a young boy. Victoria and Gus started a common-law relationship which lasted about forty years until Victoria's death in 2001.

Although both Victoria and Gus had little formal education, they achieved financial success and acquired a number of real estate properties including a farm and two cottages. Victoria's son, Brian who died in 2008, had two children, both sons, Paul and Mark, who over the years spent more and more time with Gus, particularly at the farm and cottages.

Gus had no biological children. Mark and Paul called Gus and Victoria their "Papa" and "Nana". Gus treated the boys in all respects as his grandchildren.

At a breakfast meeting with Gus in 1985 when Paul was 17 and Mark was 13 years of age, Gus told them that he "would be asking a lot of them in the future" and that he expected them to assist him with the farm and cottage properties. They were to be available when needed and when asked. They would not receive any pay for their

[1] Samuel Goldwyn

services. In return he would leave them in his Will both the farm and the cottages and $350,000.00 each to maintain these properties. The boys agreed. All three shook hands. The Trial Judge referred to this meeting as the “1985 Breakfast Agreement”. Paul and Mark immediately and continuously lived up to their end of the 1985 Breakfast Agreement.

The boys at the expense of their personal relationships and their own priorities in life devoted themselves to all of the requests Gus made of them and assisted Gus with whatever was required at the farm and cottage. They remained true to their commitment to Gus until his death in 2009.

Although Gus had made a Will about 15 years after the 1985 Breakfast Agreement leaving the farm and cottages equally to Paul and Mark as well as $500,000 to each of them, he subsequently made other Wills.

After Victoria died in 2001, Gus married Eirini Sorkos who looked after Gus until his death in 2009.

In a Will dated December 17, 2003 Gus left $250,000 to his wife Eirini, $50,000 to Paul and $25,000 to Mark and the residue of his estate to his five siblings in Greece.

Paul and Mark brought a court action against Gus’ Estate for the farm and cottages. They relied on the 1985 Breakfast Agreement that he would leave them, as an inheritance, the farm and cottages in return for the time and energy they spent attending to tasks he requested of them.

The 1985 Breakfast Agreement was entirely verbal. Ordinarily agreements relating to land and the transfer of land are required to be in writing.

Paul and Mark gave evidence that for more than 25 years they worked for and assisted Gus on the farm and at the cottages as and when Gus asked. Their efforts and work over the years at the farm and cottages were connected to the 1985 Breakfast Agreement.

Paul and Mark called several witnesses to confirm their evidence of their relationship with Gus. At least four witnesses including one witness who had worked for Gus as a waitress for 20 years and then as his property manager testified that the boys carried out all the tasks that Gus requested and that he always stated that he was leaving the farm and cottages to the boys.

The Trial Court dealt with legal concepts of part performance and the doctrine of proprietary estoppel. The elements of proprietary estoppel can simplistically be summarized by saying that an equity arises when an owner of land (Gus) encourages others (Paul and Mark) to believe that they will have some rights over the property and in reliance upon this belief, the parties (Paul and Mark) acted to their detriment to the knowledge of the owner (Gus). When the owner (Gus) sought to take unconscionable advantage of Paul and Mark by denying them the benefits which they expected to receive, the doctrine of proprietary estoppel stepped in.

The court in this case ordered that the farm and the cottages be transferred to Paul and Mark.

The court summed up its decision as follows:

> In my view, when making out his December 17, 2003 Last Will and Testament purporting to leave the farm and cottage properties to his residuary beneficiaries (not Paul and Mark), Gus was no longer legally in a position to do so. To hold otherwise would be unconscionable to these Plaintiffs who had partially altered their lives for more than 25 years to Gus' benefit and to their detriment. The degree to which they had so altered their lives is like asking to "put Humpty Dumpty back together again". It is impossible.

Although Paul and Mark became entitled to the farm and cottages the Court declined to award them with $350,000.00 each as the promise to transfer these funds lacked the necessary corroboration.

With respect to the farm and cottages, Samuel Goldwyn was wrong.

With respect to the $350,000, Samuel Goldwyn was right.

Family disputes, to paraphrase Aristotle, are cruel.

As one judge characterized a family dispute "I would note at the outset that the Court has seldom experienced such hostile animosity or hatred…" or in another family dispute heard by a different judge "the themes emerging from the evidence reveals a cautionary tale of parental hopes dashed, sibling rivalry, and love for a place embittered".

In one case a 102-year old mother sued her 66-year old son to reclaim title to a house transferred by her to her son. The judge, in deciding that the son legally did not have to give back the house to his mother, concluded.

> One can say only, at most, that the son has chosen to ignore the Fifth Commandment – "Honor Thy Father and Thy Mother", which unfortunately is not a law within the jurisdiction of the court.

In a February 2013 decision a son ("Barry") sued his mother and two sisters because of a promise he testified was made to him by his father (James) that the property on which they operated a scrap yard business was to belong to Barry. Although he was a great son to his father and mother, the judge was not satisfied that the promises were made and that if the promises were made, they were not sufficiently clear, specific and authoritative.

The Judge, in concluding that Barry lost the case held:

> I also accept that parents usually try to be even-handed with their children. That may not be the case if a child has repudiated a parent or the relationship has been damaged for some other reason. However, there was no evidence that was the situation here. There was no evidence that James and Lois were in any way estranged from their daughters. The family dynamics seemed normal enough prior to James' death. Barry spent the most time with his parents because he lived next door to them. He may have been closest to James on an emotional level because of proximity and their shared interests. However, there is no reason to believe that James preferred Barry to his daughters.

In a 2012 decision by the Ontario Court of Appeal involving a lawsuit by a son suing his mother and two sisters for a dairy farm promised to him by his father, now deceased, the Chief Justice of the Court of Appeal ordering a new Trial, after more than $500,000 in legal fees had been incurred stressed that a "new trial is in neither side's interest". He said "This case cries out for a mediated, consensual resolution".

If, unfortunately, there are disagreements, then heed the Chief Justice's advice and seek a mediated, consensual resolution. The best thing, of course, is to avoid family disputes and not build brick walls dividing families.