IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MERCI CORPORATION,
Plaintiff-Appellee,

v.

WORLD INTERNATIONAL CORP.,
Defendant-Appellant.

Supreme Court Appeal No. 03-007-GA
Superior Court Civil Case No. 00-0173B

FOR PUBLICATION

OPINION

Cite as: ***Merci Corp. v. World Int'l Corp.,*** **2005 MP 10**

Argued and submitted on February 19, 2004
Rota, Northern Mariana Islands
Decided: June 27, 2005

Attorney for Appellant:
William M. Fitzgerald, Esq.
1st Fl. Macaranas Bldg.
Garapan Beach Road
P.O. Box 500909
Saipan, MP 96950

Attorney for Appellee
Robert B. Dunlap, Esq.
Cook, Yancey, King & Galloway
1700 AmSouth Tower
P.O. Box 22260
Shreveport, LA 71120-2260

BEFORE: MIGUEL S. DEMAPAN, *Chief Justice*; ALEXANDRO C. CASTRO, *Associate Justice*; JOHN A. MANGLONA, *Associate Justice*

MANGLONA, Associate Justice:

¶1 World International Corporation ("World") appeals from the trial court's January 23, 2003 Findings of Fact and Conclusions of Law and Order that found World liable to Merci Corporation as a holdover tenant for rent due in the amount of $145,760 in addition to attorneys fees and costs. We affirm.

I.

A. Factual Background

¶2 During the 1980's, Ito Suisan,[1] a Japanese corporation founded and run by Eizo Tambo ("Tambo"), entered into a business relationship with Takaharu Komoda ("Komoda"). On November 29, 1990, Komoda, who possessed a leasehold interest in property located in Garapan ("Sablan Lease"), executed a sublease agreement ("1990 Sublease") that transferred the Sablan Lease to Ito Suisan.[2] After obtaining this interest, Ito Suisan constructed the May Ten II Building on this property.

¶3 Prior and subsequent to the 1990 Sublease, Ito Suisan established several other leasehold interests in Saipan. These properties included the locations of the May Ten I Building, Hilltop Futaba Apartments and the Navy Hill employee dormitory building. In August 1994, Ito Suisan entered into an agreement with Komoda to oversee and manage

[1] Ito Suisan is a Japanese corporation that specializes in the food production business. It prepares, distributes and sells food products in high-end Japanese department stores.

[2] The original lease was executed on April 16, 1984 between Japan Enterprises, Inc. and Emilia C. Sablan for Lots Nos. 001 D 47 and 001 D 48, which is the location of the May Ten II Building. The lease term extended until April 15, 2009. On November 29, 1990, Japan Enterprises, Inc. subleased this property to Ito Suisan for a term extending to May 16, 2000. Consideration for the initial transfer of the sublease to Ito Suisan was continued rent payments and "key money" totaling ¥170M. On March 14, 1999, Japan Enterprises, Inc. and Ito Suisan entered into a subsequent sublease that extended the term until April 15, 2009.

its Saipan property interests.[3] In April 1995, the parties executed a subsequent General Lease Agreement whereby World, a local Saipan corporation owned by Komoda, was given the exclusive rights to sublet Ito Suisan's Saipan property interests in exchange for a set annual fee. Under this arrangement, World was financially responsible for paying all costs associated with the maintenance and utilization of the Saipan properties, but World was entitled to all profits received from rental income in excess of its obligation to Ito Suisan.[4]

¶4 On April 1, 1996, a new General Lease Agreement became effective and the annual rent due Ito Suisan was reduced to $400,000. No new General Lease Agreements were executed from April 1997 through March 1999.[5] During this time period World continued to possess and collect rent from the Saipan properties.

¶5 On June 2, 1996, Tambo died unexpectedly. After Tambo's death, his wife, Misea Tambo ("Mrs. Tambo"), took over the position of President of Ito Suisan. Hirofumi Nakayama ("Nakayama"), who had been hired a few months prior to Tambo's death, became Ito Suisan's Managing Director. Mrs. Tambo and Nakayama recognized several business challenges facing Ito Suisan and immediately set out to implement a strict business-like approach in an attempt to re-establish a sound economic footing for the corporation.

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[3] The parties dispute the nature of this relationship. Komoda asserts that the relationship was part of an informal partnership agreement with Ito Suisan. Ito Suisan, however, maintains that the relationship was merely one establishing Komoda as an employee who was generously compensated to manage these properties. Komoda, Ito Suisan argues, was merely a "consultant" and nothing more.

[4] Under the original April 1995 General Lease Agreement, World was required to pay Ito Suisan $600,000 in annual rent.

[5] No new General Lease Agreements were executed during this time period because the rent due Ito Suisan was deferred for approximately two years.

¶6 Not familiar with the details of Ito Suisan's corporate activities in Saipan, Nakayama instructed the accounting firm of Arthur Andersen to audit Ito Suisan's interests in Saipan. In its report, Arthur Andersen recommended that several actions be taken concerning Ito Suisan's Saipan interests.[6] The report served as the basis for future plans concerning Ito Suisan's Saipan interests, including the turbulent financial relationship between Ito Suisan and Komoda through his corporate interests in Saipan.[7]

¶7 After analyzing this report and listening to the advice of its bankers in Japan, Ito Suisan decided that it should divest itself of the Saipan properties. Accordingly, Nakayama established a plan whereby Ito Suisan could divest itself and secure its outstanding debts due from Komoda personally and through his Saipan corporations, World and Japan Enterprises.[8] The divestiture plan involved the transfer of Ito Suisan's

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[6] These recommendations included (1) that all written contracts concerning the assignments of the rights to use lands in Saipan be located, or in the alternative, create new contracts establishing such interests, (2) obtain quotes and assess the validity of construction costs concerning the "Jinushi Building," (3) review the transaction value of World's role as a broker and caretaker of Ito Suisan's Saipan real estate interests, and (4) clarify in writing the details of World's obligations concerning the costs of maintenance and administration of buildings maintained as interests of Ito Suisan.

[7] It is clear that Komoda, through his holdings in various Saipan corporations, was a debtor of Ito Suisan. First, Komoda, through Japan Enterprises Corporation, borrowed $700,000 from Ito Suisan to facilitate a settlement of a labor case filed by the U.S. Department of Labor. Although Tambo held an interest in one of the defendant corporations, Ito Suisan was not named a defendant in the lawsuit. Second, to assist Komoda in the completion of the "Jinushi Building," Komoda's own personal property, Ito Suisan suspended lease payments due under the General Lease Agreement, which ultimately resulted in a two year deferment totaling $852,778. In addition, Ito Suisan loaned Komoda an additional $80,000 for the purpose of purchasing furniture and a generator for the building. Finally, Komoda regularly requested funds for "capitol improvements," but has not accounted for over $350,000 of these expenditures.

[8] Originally, the plan called for transfer of all Ito Suisan's Saipan interests to Komoda's Saipan corporation, Jaguar, Ltd., in a sale financed by Ito Suisan. Ito Suisan asserts that this plan was changed when Nakayama became aware of statements made by Komoda that he intended to "hijack" Ito Suisan's Saipan properties without paying for them. Reacting to this information, Ito Suisan planned to transfer the properties to a third party not controlled by Komoda who would then lease the properties to World. This plan was again changed when Komoda allegedly began to threaten Ito Suisan with implications that he had information potentially harmful to Ito Suisan. These alleged threats resulted in Nakayama secretly recording all future conversations with Komoda. These secret tapes were the source of dispute in the June 19, 2002 Motion to Vacate Order Granting Summary Judgment.

Saipan interests to a new corporation called Merci Corporation ("Merci").[9] Ito Suisan was to finance the transfer of its leasehold interests to Merci, which would be secured by a leasehold mortgage to Ito Suisan. Merci, in turn, would then lease the properties to World for a one-year term.[10] Under this plan, World would pay Ito Suisan an annual lease payment of $300,000, reduced from the previous annual amount of $400,000.

¶8 Ultimately, Komoda signed two documents at the request of Ito Suisan. First, Komoda re-executed the 1990 Sablan Lease, which had never been recorded.[11] Further, on March 12, 1999, Komoda, through World, signed a General Lease Agreement that gave World a one-year leasehold interest in the Saipan properties for $300,000.[12] With the issue of Ito Suisan's divestiture of its Saipan properties now complete, the parties focused on reaching a satisfactory agreement concerning the alleged debts owed Ito Suisan by Komoda and his corporations and those allegedly owed Komoda by Ito Suisan. Negotiations involving several potential scenarios for repayment occurred, but the party's relationship rapidly deteriorated and an agreement was never reached.[13]

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[9] Merci was originally owned by Nakayama (80%), Komoda (10%), Hiromi Sawada (5%) and Hideaki Sawada (5%). Nakayama subsequently transferred his shares to Kai Corporation, in which he and Mrs. Tambo own a 16.6% share each.

[10] The duration of this leasehold interest is disputed. Komoda insists that the one-year term of lease does not accurately depict the parties understanding. Komoda insists that he only agreed to these terms to assist Ito Suisan with an immediate tax benefit from the transaction in Japan with the understanding that he would still maintain possession of the properties until 2009.

[11] No additional consideration was paid for this transaction.

[12] Importantly, neither the re-execution of the Sablan Lease nor World's execution of the General Lease Agreement provided Ito Suisan with a tax benefit. This was accomplished by the transfer of Ito Suisan's Saipan properties to Merci, which did not require Komoda or his corporation's participation.

[13] Ito Suisan originally proposed that Merci buy from Ito Suisan the accounts receivable due from Japan Enterprises and World. In addition, the "Jinushi Building" and another undeveloped property that Komoda owned would be transferred to Merci as partial payment of the accounts receivable due Ito Suisan. Komoda declined to adopt this plan, and instead reasserted his claim that Tambo had promised him ¥100M. The record does not show Tambo made such a promise to Komoda.

¶9 On January 29, 2000, Merci notified World, Jaguar, and Japan Enterprises that effective April 1, 2000, they must vacate all occupied premises pursuant to the General Lease Agreement. World, Jaguar and Japan Enterprises refused to vacate the premises.

B. Procedural Background

¶10 On April 10, 2000, Merci filed six separate actions against World, Jaguar Ltd. ("Jaguar") and Japan Enterprises, Inc. ("Japan Enterprises") (parties together referred to as "Defendants") seeking to (1) regain possession of the Saipan properties, (2) receive double-rent, and (3) recover attorney fees pursuant to the Commonwealth Holdover Tenancy Act, 2 CMC §§ 40201, *et seq*. ("Holdover Act"). The Superior Court, on World's motion, consolidated the six actions. *Merci Corp., v. World Int'l, Corp.,* Civ. No. 00-0173B (N.M.I. Super. Ct. July 14, 2000) ([Unpublished] Order Granting in Part and Denying in Part Defendant's Motion to Consolidate). On September 27, 2000, Merci filed a Motion for Summary Judgment, which World opposed. Finding World had failed to present sufficient evidence to establish a genuine issue of material fact, the trial court, on March 8, 2001, ruled in favor of Merci's summary judgment motion based on its determination of the issues of law.[14]

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[14] Merci's motion argued that it was entitled to summary judgment under the Holdover Act because World was a party to a specific lease agreement that terminated on March 31, 2000. In response, World argued summary judgment was inappropriate because there existed genuine issues of material fact. First, World asserted that Merci's January 2000 notices to terminate and vacate were invalid because Merci did not have possessory rights to the properties in question under the March 12, 2000 General Lease Agreement until September 20, 2000. The trial court ruled that the record supported a ruling that the parties had agreed to a closing date of March 12, 1999, for all assignments. Second, World argued that when Japan Enterprises terminated Ito Suisan's sublease for the May Ten II Building on March 31, 2000, the March 14, 2000 sublease between Ito Suisan and Merci was invalidated and Merci no longer had possessory rights to the building. The trial court ruled that the issue of the sublease default was a matter of contract and was not at issue pursuant to the holdover tenancy action before it. In addition, the trial court ruled that the parties had entered into an oral lease agreement that established a month-to-month tenancy. Third, World contended that it had the right to establish subleases extending beyond the term of the General Lease Agreement. The court ruled that a sublease made subsequent to a head lease was subject to the head lease and, therefore, the

¶11 A second summary judgment motion was filed on the issue of double rent and the trial court held hearings on the matter on February 20 and 22, 2002. On January 20, 2003, the trial court issued its Finding of Facts and Conclusions of Law supporting the decision to deny the motion. That ruling is not challenged in this appeal.

¶12 On June 19, 2002, World filed a Motion to Vacate Order Granting Summary Judgment pursuant to Com. R. Civ. P. 60(b)(2) and (3), which argued Ito Suisan had "suppressed" pertinent taped recordings that deprived the trial court of evidence that would have affected its summary judgment determination. The trial court held a hearing on the issue on July 31, 2002, and issued an Order on January 3, 2003 denying the motion to vacate. World filed a timely appeal.

II.

¶13 Jurisdiction is proper pursuant to Article IV, Section 3 of the Northern Mariana Islands Constitution and Title 1, Section 3102(a) of the Commonwealth Code.

III.

¶14 World appeals the trial court's ruling that granted summary judgment in favor of Merci on several theories.[15] Importantly, each theory relates to one overriding general

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termination of the primary lease operated as a termination of the subleases World had established beyond the limits of its lease. Finally, World argued it had possessory rights to the Saipan properties until 2009. The trial court ruled that the parties had intended for the General Lease Agreement to be the final expression of their agreement and refused to consider extrinsic evidence pursuant to the parole evidence rule. Thus the trial court ruled there were no genuine issues of material fact and awarded Merci attorney fees and costs allowed under the Holdover Act.

[15] In its most simple form, World's argument is as follows: (1) the General Lease Agreement does not reflect the party's true intentions because an oral promise of a longer lease was made in exchange for signing the General Lease Agreement in March 1999; (2) the Statute of Frauds is inapplicable to this "real estate partnership" or "joint venture"; (3) World detrimentally relied on the oral promise of an extended lease term; (4) the existence of the "real estate partnership" or "joint venture" is a material question of fact that should have survived summary judgment; and (5) the delay in producing the secret taped recordings hindered World from defending against the summary judgment motion.

theme, that is, the Plaintiff promised possession of the properties in question for longer than that stated in the March 1999 General Lease Agreement. World's argument on appeal also incorporates issues first addressed in the trial court's Order Denying Defendant's Motion to Vacate Amended Order Granting Plaintiff's Motion for Summary Judgment.[16]

¶15 We review an appeal from a decision awarding summary judgment on the *de novo* standard. *Santos v. Santos*, 4 N.M.I. 206, 209 (1994). Summary Judgment may be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.* If we determine that no genuine issue of material fact exists, our analysis shifts to whether the substantive law was correctly applied. *Id.*

A. The General Lease Agreement

¶16 We first address the trial court's initial summary judgment ruling that World did not raise any triable issues of material fact. Specifically at issue is whether the March 12, 1999 General Lease Agreement ("GLA") should be considered a wholly integrated contract. Komoda asserts that an oral promise was made to him by representatives of Ito Suisan assuring him of continued control of the leased properties until 2009. He contends that he signed the GLA only to facilitate Ito Suisan's immediate tax concerns and was told that other aspects of the agreement reached at the March 13, 1999 Hyatt Hotel

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In response, Merci argues that (1) the Statute of Frauds applies, because parol evidence cannot be used to supply essential terms requiring a writing; (2) regardless of what the business relationship was, a writing that satisfies the Statute of Frauds is still required; (3) the disputed issues of fact are not material; (4) the disputed parol evidence (i.e., the secret taped recordings) does not establish that there was a "real estate partnership" or a "joint venture"; and (5) although it was misconduct, failure to produce the secret taped recordings did not prejudice World.

[16] Although World raised the defenses of partnership or joint venture for the first time in this motion, the trial court ruled that World did not present any new factual issues that were not previously argued in its original opposition to summary judgment.

meeting would be worked out after the initial GLA was signed. In support, Komoda references an unsigned written memorandum allegedly prepared in June 1999 and delivered to him from Mr. Nakayama and Mrs. Tambo (i.e., Ito Suisan) that purportedly contains terms materially different from the commitments allegedly made at the Hyatt Hotel meeting. These terms, he argues, prove that the GLA does not reflect the entire agreement and raise a genuine issue to a material fact: whether Ito Suisan promised World a continued leasehold interest until 2009.

¶17 Generally, the parol evidence rule precludes evidence that contradicts the express terms of a contract or is contrary to the entire purpose of a written contract. *Mi Sook Seol v. Saipan Honeymoon Corp.*, 1999 MP 9 ¶12, 5 N.M.I. 238, 240 (*citing* RESTATEMENT (SECOND) OF CONTRACTS § 215 at 136 (1979)). In this instance, the GLA included an integration clause that plainly required any amendments to be made in writing. The inclusion of an integration clause in a written document is strong evidence that the parties intended that document to represent the entirety of their agreement. *Betaco, Inc. v. Cessna Aircraft Co.*, 103 F.3d 1281, 1286 (7th Cir. 1996).

¶18 When a contract is subject to the statute of frauds, gaps in essential terms cannot be filled by parol evidence. *See Whitney v. G. Harvey Kennington Revocable Trust*, 62 Fed. Appx. 794, 795 (9th Cir. 2003). Terms extending the GLA to 2009 clearly represent a transfer of an interest in land for more than one year, and must be put in writing under the statute of frauds, 2 CMC § 4912. Any previous oral promise concerning such an extension would not change this analysis because the oral promise must be put in writing to be enforceable.

¶19 In *PAC United Corp. (CNMI) v. Guam Concrete Builders*, 2002 MP 15, we stated, "[a] fact in contention is considered material only if its determination may affect the outcome of the case." *Id* at ¶ 24 (*citing Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248-49, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202, 211 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.")). The materiality of the June 1999 Memorandum and the Komoda Declaration that refers to it depends on a finding that an oral promise representing a transfer of an interest in land for more than one year trumps the statute of frauds. This is not the case. Because such a promise must be in writing, we find that the documents do not raise a triable issue of material fact.

B. Motion to Vacate Order Granting Summary Judgment

¶20 World's subsequent arguments on appeal stem from the trial court's denial of its Motion to Vacate Order Granting Summary Judgment. We review a decision to grant or deny a motion to vacate under an "abuse of discretion" standard. *United States v. Russell*, 578 F.2d 806, 807 (9th Cir. 1978); *Savarese v. Edrick Transfer & Storage, Inc*., 513 F.2d 140, 146 (9th Cir. 1975). It is not enough to show that the "grant of the motion might have been permissible or warranted; rather the decision to deny the motion must have been sufficiently unwarranted as to amount to an abuse of discretion." *Fackelman v. Bell*, 564 F.2d 734, 736 (5th Cir. 1977).

1. Timeliness of Appeal

¶21 As a threshold issue, Merci argues World is precluded from raising, on appeal, the issues put forth in the Motion to Vacate Summary Judgment because it is untimely. Merci argues that the order denying a motion to vacate summary judgment under

Commonwealth Rule of Civil Procedure 60(b) is final and appealable. Further, Merci argues any appeal of a Rule 60(b) motion must be filed separately from the appeal of a final judgment. We find that the appeal was timely.

¶22 The initial summary judgment order was issued on March 8, 2001, but was not made final until January 20, 2003. During this intermediate timeframe, the issue of misconduct concerning the secret taped recordings surfaced. As a result, World moved to vacate the initial summary judgment order. The motion to vacate was denied on January 3, 2003, before the final judgment was issued concerning the original summary judgment order.

¶23 An appeal from the denial of the motion to vacate could not be taken until after the final judgment was issued on the original summary judgment order, which took place on January 20, 2003. Thus, an appeal of the denial of the motion to vacate and the original summary judgment order could only take place after January 20, 2003, and, therefore, the February 10, 2003 appeal was timely.[17]

¶24 The two cases cited by Merci are not determinative because they refer to appeals of Rule 60(b) orders taken *after the final judgment was issued on the original summary judgment order*. *Federal Practice and Procedure* provides: "if the court hears and *denies the motion before the appeal time would have run*, the appeal must be taken with the prior period *measured from the date of the judgment, not from denial of the motion*." 10A CHARLES ALAN WRIGHT, ET AL., *Federal Practice and Procedure* § 2871 at 421 (2d ed. 1995) (emphasis added). In this case, the time for the appeal had not run because the final judgment had not yet been issued.

[17] World feels so strongly about this position it suggests Merci should be sanctioned for raising the issue.

D. Proper Legal Standard Applicable to a Motion to Vacate Summary Judgment

¶25 The parties dispute whether the trial court applied the proper legal standard to its analysis. At the heart of this dispute lies the issue of whether the secret taped recordings made by Nakayama of conversations between Komoda and himself, which were not initially turned over in the discovery process, prevented World from *fully and fairly presenting their case or defense*. *See Anderson v. Cryovac, Inc*., 862 F.2d 910, 925 (1st Cir. 1988); *See Com. R. Civ. P. 60(b)(2) and (3).* World contends this misconduct prevented it from fully defending against summary judgment because the information contained in the taped recordings could have assisted its counsel in pursuing a fiduciary defense theory based on partnership or joint enterprise and the defense theory of promissory estoppel. We find the trial court did not abuse its discretion when it ruled that the discovery misconduct surrounding the secret taped recordings did not prevent World from fully and fairly presenting its case or defense.

E. Partnership/Joint Venture Argument

¶26 World argues the statute of frauds is not applicable because agreements between partners to share profits and losses arising from the purchase and sale or transfer of interests in land do not require a writing. It contends the taped recordings provide evidence of an ongoing partnership or joint venture. At the very least, World asserts, the taped recordings provide information that raise a triable issue of fact as to whether a partnership or joint venture existed. This partnership, World argues, was “winding down” and a fiduciary relationship existed that defeats the statute of frauds defense.

¶27 A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." RESTATEMENT (SECOND) OF AGENCY § 14A (1958). Further, "[a] partnership [is] characterized by a 'voluntary contract of association for the purpose of sharing in the profits and losses . . . which may arise from the use of capital, labor or skill in a common enterprise, and an intention on the part of the principals to form a partnership for that purpose.'" *Kravitz v. Pressman, Frohlich & Frost, Inc*., 447 F. Supp. 203, 210 (D. Mass. 1978). While "no one factor is absolutely determinative, the entire factual setup must be examined as whole . . . court[s] look [] mainly to the right of a party to share in the profits, his liability to share losses, and the right to exert some control over the business." *Hayes v. Killinger*, 385 P.2d 747, 750 (Or. 1963). It is generally accepted that a joint venture exists when two or more persons combine in a joint business enterprise for their mutual benefit, with an express or implied understanding or agreement that they are to share in the profits or losses of the enterprise, and that each is to have a voice in its control or management. *Wells v. Whitaker*, 151 S.E.2d 422, 430-31 (Va. 1966).

¶28 We find nothing in the record establishes that the trial court erred in finding that a partnership or joint venture did not exist between the parties. The record indicates World was a lessee, or more specifically, a paid consultant for Ito Suisan, and the profits derived from the agreement were profits World alone realized *after* the initial lease obligations were paid. Nothing in the record indicates that the profits realized by World were shared.

¶29 Importantly, the issue before the Court is whether World is entitled to possession of the properties beyond the one year term described in the GLA, not whether the lack of

a written partnership agreement affects the parties' ownership interests or right to share in profits. Because the record does not establish a partnership or joint venture, the trial court did not abuse its discretion when it omitted the taped recordings. The issue before the Court involves a transfer of an interest in land for more than one year, and is therefore subject to the following provision:

> No estate or interest in real property other than for leases for a term not exceeding one year, nor any trust or power in any manner relating thereto, can be created, granted, assigned, surrendered, declared or otherwise transferred except by operation of law, or by written conveyance or other written instrument subscribed by the party creating, granting, assigning, surrendering, declaring, or transferring the same, or by the party's lawful agent authorized in writing.

2 CMC § 4912. The agreement must be put in writing to be legally viable. Thus evidence of an oral agreement or the existence of a partnership is not material within this context because a written agreement is required regardless of the relationship.

F. Promissory Estoppel Argument

¶30 World next argues that the trial court erred when it ruled the taped recordings did not contain evidence of a clear and definite promise to extend possession of the properties to World until 2009. Specifically, World contends that proof of a clear and definite promise is not required, and in order to raise a genuine issue of fact it must only show that the taped recordings contain evidence that would have assisted World in establishing a defense of promissory estoppel.[18] Once this standard is met, World contends, the statute of frauds is not applicable.

[18] The trial court ruled that the discovery misconduct specific to the taped recordings did not "substantially" interfere with World's ability to fairly and fully present its case because the tapes do not contain probative evidence establishing a genuine issue of material fact.

¶31 Promissory estoppel can be invoked to defeat the defense of the statute of frauds. *Crest Unif. Co. v. Foley*, 806 F. Supp. 164, 169 (E.D. Mich. 1992). Importantly, this defense requires evidence of a *clear and definite promise*. *Id.* at 169 (emphasis added); *See Aguilar v. Int'l Longshore Men's Union*, 966 F.2d 443, 446-47 (9th Cir. 1991). The trial court found World failed to show evidence of a clear and definite promise and also failed to establish a genuine issue of material fact. Accordingly, the court held World did not satisfy the requisite elements of a defense of promissory estoppel. This Court can inquire into a question of fact when evidence of a definitive and clear promise exists. *Crest Unif. Co.*, 806 F. Supp. at 169.

¶32 Based on the record before us, we find that the taped recordings do not contain evidence of a promise to extend the lease until 2009. The tapes include comments made by Komoda, several references to a potential tax-break, and clearly show that Ito Suisan wanted to get the GLA signed quickly. This does not, however, evince that a clear or definite promise was made regarding an extension of the lease until 2009. Additionally, Nakayama did in fact indicate certain matters could be completed after April 1, and it is apparent that further negotiations about terms of a potential extension occurred, but this does not equate to a clear and definite promise for a lease extension. Moreover, World must show it acted to its detriment solely in reliance on the oral agreement. *Id.* Assuming, arguendo, a promise was made, Komoda did not act to his detriment in reliance on the alleged promise of a long-term lease extension. In fact, World's position was improved as a result of the GLA.[19] In short, the record does not establish that a

[19] Prior to signing the GLA, World had no right to possess the properties in question beyond 30 days. The GLA vested a one-year interest in the properties to World. In addition, the annual rent charged to World

promise was made, and even if we were to assume for an instant that a promise was made, World did not detrimentally rely upon it.

¶33 Therefore we find no error in the trial court's ruling that World failed to establish a genuine issue of material fact and the requisite elements of the defense of promissory estoppel.

G. Parol Evidence and Contract Integration

¶34 Finally, World argues that even though parol evidence generally may not be admitted to vary the terms of an integrated agreement, evidence of fraudulent oral misrepresentations may be admitted into evidence to establish the invalidity of an integrated agreement. *See Price v. Wells Fargo Bank*, 261 Cal. Rptr. 735, 745 (Cal. Ct. App. 1989). World argues the taped recordings contain evidence of an oral promise to extend the lease until 2009. Thus the GLA did not represent the parties' final expression or intent and was only signed to facilitate Ito Suisan's immediate financial concerns with the express understanding that the remainder of the agreement (i.e., the lease extension until 2009) would be formalized at a later date.

¶35 The trial court ruled that the issue of whether an agreement is completely or partially integrated is a question to be decided by the court prior to the application of the parol evidence rule. *See Greenberg v. Tomlin*, 816 F. Supp. 1039, 1053 (E.D. Pa. 1993). The trial court then referenced the explicit provision contained within the GLA that read, "[n]either Landlord nor Tenant shall be entitled to rely upon any statement or representation not specified in this Lease and already described elsewhere." This provision alone was enough to support the original ruling granting summary judgment.

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was reduced to $300,000 from $400,000. Finally, it is noteworthy that Mr. Komoda is a shareholder of Merci and therefore held an ownership interest in the properties once transferred to that corporation.

¶36 The trial court revisited the issue in its Denial of Motion to Vacate Summary Judgment Order. It considered whether the newly admitted secret taped recordings contained evidence that the GLA was not integrated because details of the agreement to extend the lease terms until 2009 would be finalized later. The trial court then reviewed the transcripts of the taped recordings and ruled no evidence exists in the taped recordings to support World's argument.

¶37 An alleged oral agreement is integrated into a written agreement only if "the parties, situated as were the ones to the contract, would naturally and normally include the one [the oral agreement] in the other [the written agreement] if it were made." *Mellon Bank Corp v. First Union Real Estate Equity & Mortgage Invs.*, 951 F.2d 1399, 1405 (3d Cir. 1991). Importantly, if they relate to the same subject matter, and are so interrelated that both would be executed at the same time and in the same contract, the scope of the subsidiary agreement must be taken to be covered by the writing. *Hershey Foods Corp. v. Ralph Chapek, Inc*., 828 F.2d 989, 995 (3d Cir. 1987).

¶38 The trial court determined that had the parties actually agreed to any extension of possessory rights until 2009, the parties would certainly have put such an important detail in the written agreement. It then ruled that the taped recordings did not contain probative evidence of an agreement of continued possession until 2009.

¶39 We are limited to the record presented on appeal. We cannot speculate as to what may have been said or what the parties may have understood the GLA to mean. The taped recordings do not expose an oral agreement to extend an interest in the leased properties until 2009. Any promise or subsequent agreement to extend the possessory interest in the properties until 2009 would still require a writing under the statute of

frauds. We find the trial court did not err in finding that the parties would "naturally and normally" have included the terms of such an oral promise in the express terms of the written agreement had they actually made an agreement that Komoda would control the leased properties until 2009. Because the taped recordings do not establish the existence of an oral agreement, they are not material to the summary judgment determination, and, therefore, the discovery misconduct concerning the taped recordings did not substantially interfere with World's ability to fully and fairly present their case.

IV.

CONCLUSION

¶40 In conclusion, we AFFIRM the trial court's decision because (1) the taped recordings contain no evidence of an agreement to extend the lease until 2009, (2) the existence of the alleged oral promise is barred by the parol evidence rule, (3) the issue of whether there was a partnership or joint venture is immaterial, (4) statute of frauds requirements were not satisfied and (5) the delay in producing the tape recordings did not substantially interfere with World's ability to present its defense against summary judgment.

SO ORDERED this 27th day of June 2005.

/s/_____
MIGUEL S. DEMAPAN
Chief Justice

/s/_____
ALEXANDRO C. CASTRO
Associate Justice

/s/_____
JOHN A. MANGLONA
Associate Justice