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When the Promisor Assumes Primary Responsibility and His Leading Object Is to Serve Some Interest or Purpose of His Own, Notwithstanding the Effect Is to Pay or Discharge the Debt of Another, the Oral Promise Is Not within the Statute of Frauds.

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adopted it including the state of New York. When such a respected pioneer in the area of state taxation radically alters its own law this poses a compelling reason for other jurisdictions to re-analyze their present positions.

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CONTRACTS—STATUTE OF FRAUDS—MAIN PURPOSE DOCTRINE—ADEQUACY OF CONSIDERATION—WHEN THE PROMISOR ASSUMES PRIMARY RESPONSIBILITY AND HIS LEADING OBJECT IS TO SERVE SOME INTEREST OR PURPOSE OF HIS OWN, NOTWITHSTANDING THE EFFECT IS TO PAY OR DISCHARGE THE DEBT OF ANOTHER, THE ORAL PROMISE IS NOT WITHIN THE STATUTE OF FRAUDS. *Haas Drilling Company v. First National Bank in Dallas,* 456 S.W.2d 886 (Tex. Sup. 1970).

The plaintiff, Haas Drilling Co., filed this action against the defendant, First National Bank in Dallas, alleging that the defendant had breached an alleged oral promise to answer for, assume, and to pay as its own debt, the account of another, B&B Gas Petroleum, Inc. Haas was a supplier of jetting gas to B&B Gas Petroleum, Inc. The purpose of the jetting gas was to keep the well from sanding up. B&B had a number of oil leases, the Cantu lease being mortgaged to the defendant. B&B encountered problems in its drilling operation and fell into default on certain mortgage payments to the Bank. Furthermore, a number of notes had been executed in favor of Haas for jetting gas that had been furnished to B&B. In January 1966 the Bank took control of the B&B leases, including the lease on which Haas held the notes. Haas notified the Bank concerning the outstanding debts of B&B and stated that he could no longer supply jetting gas unless the debt was paid in full. The Bank, realizing that if the gas was shut off all secondary operations would be lost, orally promised the plaintiff that they would take care of the outstanding debts of B&B, after the foreclosure sale was held on the mortgaged leases. After the sale the officer of the Bank that allegedly made the promise for the Bank, denied making such promise. This suit was brought to enforce that oral promise. The Bank filed an answer containing both special and general denials, and plead the statute of frauds. The jury in the trial court gave judgment for the plaintiff. The court of civil appeals reversed the judgment of the trial court.[1] Held—*Reversed, judgment of the trial court is reinstated.* When the promisor assumes primary responsibility and his leading object is to serve some interest or purpose of his own, notwith-

[1] First Nat. Bank in Dallas v. Haas Drilling Co., 446 S.W.2d 29 (Tex. Civ. App.—Dallas 1969, writ granted).

standing the effect is to pay or discharge the debt of another, the oral promise is not within the statute of frauds.

The law of Contracts as it was adopted in the United States, contained many areas where injustice, not justice, was the dominant theme. One form of injustice occurred where a promisee could be held liable to pay the debt of another when the sole supporting evidence of the oral promise was the honesty of the promisor.[2] To remove this injustice the Statute of Frauds was enacted by the Texas Legislature.[3] With the advent of the Statute of Frauds, however, it became clear that the statute while removing one injustice, made it possible for another to occur. Under the statute one party could orally promise to answer for the debt of another and at his option refuse to perform. With these possibilities in view, the ground work had been laid for the enactment of the "main purpose" or "leading object" rule.

The "main purpose" or "leading object" doctrine was mentioned initially in *Lemmon v. Box*,[4] in 1857. This decision of the Supreme Court of Texas seemed to establish the "main purpose" doctrine as a guiding force in future Texas decisions. However, in *Housley v. Strawn Merchandise Co.*,[5] decided by the Texas Commission of Appeals in 1927, the court ascribed a different meaning to the "main purpose" rule. The court stated:

> It means that, if the character of the promise is such that it creates an obligation independent of the obligation of the other party, and is therefore an original and not a collateral undertaking, it is not within the contemplation of the statute, even though the promise may be in form one to pay the debt of another. If the promise is, in substance, an undertaking to pay the debt of another, it is within the statute, *regardless of the purpose for which it was made*.[6] (Emphasis added.)

The *Housley* court went further and attempted to clear from the legal corridors the "main purpose" rule when it stated:

> No useful purpose would here be served in discussing the rule, which has been adopted by courts of some other states to deter-

2 Davis v. Patrick, 141 U.S. 479, 487, 12 S. Ct. 58, 59, 35 L. Ed. 826, 828 (1891), where the United States Supreme Court stated: "The purpose of this provision was not to effectuate, but to prevent, wrong. . . . The reason of the statute is obvious, for in the one case if there be any conflict between the parties as to the exact terms of the promise, the courts can see that justice is done by charging against the promisor the reasonable value of that in respect to which the promise was made, while in the other case, and when a third party is the real debtor, and the party alone receiving benefit, it is impossible to solve the conflict of memory or testimony in any manner certain to accomplish justice."

3 TEX. BUS. & COMM. CODE ANN. § 26.01 (1968).

4 20 Tex. 329 (1857).

5 291 S.W. 864 (Tex. Comm'n App. 1927, holding approved).

6 *Id.* at 867.

> mine whether an oral promise to pay the debt of another was within the statute of frauds enacted by those states, termed the "main purpose rule." This rule is not applied in this state. A promise to pay the debt of another, if not in writing, does not have the effect to create a legal obligation.[7]

If the intention of the *Housley* court was to overrule *Lemmon v. Box*,[8] their findings were disregarded by the Dallas Court of Civil Appeals in *Brown v. Majors*,[9] where the court in considering an oral promise of one party to answer for the debt of another, stated:

> The applicable rule is that whenever the main object is not to answer for another's debt, but to subserve one's own purpose, the promise is not within the statute of frauds, although in form it is a promise to pay another's debt and incidentally has that effect.[10]

In viewing the *Housley, Brown,* and *Lemmon,* cases, lawyers in Texas were faced with uncertainty regarding the "main purpose" rule. Therefore, the Supreme Court of Texas in *Gulf Liquid Fertilizer Co. v. Titus*,[11] attempted to clarify the court's position concerning the "main purpose" rule:

> Whether therefore we regard the statement in the *Housley* case as dictum, or whether we consider it to be out of line with *Lemmon v. Box*, . . . , and the more recent opinions of the Court of Civil Appeals, we here hold that the "leading object" or "main purpose" doctrine announced in *Lemmon v. Box* should and does apply in this state.[12]

One of the major problems that courts have encountered in attempting to apply the "main purpose" rule has been the term *sufficient consideration*.[13] Where one party is attempting to invoke the jurisdiction and effect of the "main purpose" rule, something more than consideration per se has been deemed necessary.[14] The consideration must be

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7 *Id.*

8 20 Tex. 329 (1857).

9 251 S.W.2d 786 (Tex. Civ. App.—Dallas 1952, no writ).

10 *Id.* at 789.

11 163 Tex. 260, 354 S.W.2d 378 (1962).

12 *Id.* at 273, 354 S.W.2d at 386.

13 Haas Drilling Co. v. First National Bank in Dallas, 456 S.W.2d 886 (Tex. Sup. 1970).

14 2 CORBIN, CONTRACTS § 367 (1950). *See also:* WILLISTON, CONTRACTS, § 470 (Jaeger, 3d ed. 1960).

> But the distinction thus suggested is easily subject to misapprehension. The purpose or object of the promisor is always to acquire the consideration for which the promise is exchanged; that is why he gives his promise, not because his promise itself has a purpose; and if he wants the consideration enough, he will give the kind of promise for it that the promisee desires. Therefore, it is perfectly possible for a promisor to have as his leading purpose the 'gaining of some advantage' or 'promotion of some interest of his own' by becoming 'a mere guarantor or surety of another's debt'.

direct and the primary reason behind the promisor's promise.[15] Professor Corbin has stated:

> It should be noted in the beginning that a consideration may be sufficient to satisfy the requirement of the common law of contracts without being sufficient to satisfy the "leading object" rule and take the promise out of the Statute of Frauds. A promise is not out of the statute merely because there is a consideration for it.[16]

Professor Corbin went further in defining sufficient consideration:

> The statute is applicable to promises to answer for the debt of another for which there is some sufficient consideration. It appears, however, that certain kinds of consideration will prevent a promise from being one "to answer for the debt of another" and will make the promisor a debtor on his own account.[17]

The courts of Texas have from time to time taken it upon themselves to clarify *consideration*, in light of the "main purpose" rule. In *Faver v. Leonard* the court stated:

> The promise made by Obadiah Callaway being a promise within the Statute of Frauds, and the consideration therefor, the hauling of the gravel by plaintiff, in an ordinary case would be a sufficient consideration; however, in a case involving the statute of frauds said consideration is not sufficient as there is no *new and independent consideration* flowing to Obadiah Callaway. "In order to take his promise out of the statute, he must be bargaining for a consideration that is beneficial to himself and that constitutes his primary objection of desire. So the court holds that where there is a *new and independent benefit or detriment* to the promisor, then the statute of frauds is no defense; but where there is no *new and independent benefit or detriment*, the promise is unenforceable as a violation of the statute of frauds."[18] (Emphasis added.)

The court was evidently of the opinion that since Obadiah Callaway had no interest in the land, he could not derive any new and independent consideration for the promise and therefore, the "main purpose" rule should not have been applied. What the court must have disregarded in this case was that although the foreman did not have any title interest in the ranch, he still maintained an interest, i.e. he was an employee of the ranch. As an employee, his further employment could have well been conditioned on the continuing supply of sand

15 Gulf Liquid Fertilizer Co. v. Titus, 163 Tex. 260, 354 S.W.2d 378 (1962).
16 2 CORBIN, CONTRACTS, § 367 (1950). *See also* Gulf Liquid Fertilizer Co. v. Titus, 163 Tex. 260, 354 S.W.2d 378 (1962).
17 *Id.*
18 383 S.W.2d 201, 205 (Tex. Civ. App.—Tyler 1964, no writ).

and gravel, and this should have been classified as sufficient consideration.

Applying this interpretation of the facts, the benefit the foreman derived from his promise was both the direct and primary reason behind his making the promise. In *Dallas Title & Guaranty Co. v. Jarrell*,[19] the plaintiff brought suit against the defendant upon an alleged breach of an oral promise. It appears that one party had ordered some merchandise from the plaintiff and the defendant told the plaintiff that they would pay the money at the time of the closing out of the house. In reliance upon this, the plaintiff delivered the merchandise. The court stated:

> . . . [T]he kind of benefit that takes the promise out of the Statute is one which the promisor receives or expects when he makes the promise, resulting in an original, independent undertaking by the promisor. *The consideration for the promise must be a direct benefit to the promisor and the primary object of making the promise, as distinguished from a benefit which is merely incidental, indirect, or remote.*[20] (Emphasis added.)

Basing their decision on this reasoning, the court held that the promise of the defendant created a new and independent obligation to pay the debt of another; that there was sufficient consideration.[21] Therefore, the defendant's promise was taken out of the Statute of Frauds. In the more recent case of *Womack v. Ballard Sales Company*,[22] the plaintiff brought suit against the defendant to settle an account between the two parties. The defendant promised to pay the plaintiff a debt owed by Charcoal, Inc. Upon trial, the defendant admitted making the promise but he contended that there was an insufficiency of consideration in order to take the promise out of the Statute of Frauds. The court replied:

> The testimony that delivery of the merchandise was made in reliance on the guarantee, and that credit would not have been extended to Charcoal, Inc., together with the fact that the merchandise was thereafter delivered, establishes consideration for the parol agreement to guarantee the debt.[23]

The leading case in this area was *Gulf Liquid Fertilizer Co. v. Titus*.[24] The plaintiff had filed a complaint against the defendant to recover a debt that was owed by the partnership of which Titus was a

19 320 S.W.2d 696 (Tex. Civ. App.—Dallas 1959, no writ).
20 *Id.* at 700.
21 *Id.*
22 411 S.W.2d 956 (Tex. Civ. App.—Houston 1967, no writ).
23 *Id.* at 957.
24 163 Tex. 260, 354 S.W.2d 378 (1962).

member and also on a debt that his partner had owed to the plaintiff, for which Titus had orally promised to pay. The court of civil appeals reversed a judgment of the trial court for the plaintiff on the basis that the oral promise of Titus to pay the debt of another was unenforceable under the Statute of Frauds. The plaintiff contended that Titus had promised to pay the debt of his partner in order that the plaintiff would continue to extend credit to the partnership. The trial court had found that the promise of Titus had sufficient consideration, that being the further extension of credit. If the plaintiff had refused to continue the credit the partnership might have lost its crops. The Texas Supreme Court stated:

> Assuming as we have that he made the promise to obtain the credit, the crucial point is that the consideration necessarily benefited him as a member of the partnership because he shared in the partnership's ultimate profits, if any, and the benefit he received as a member of the partnership is considered sufficient to satisfy the "main purpose" rule.[25]

In *Haas Drilling Co. v. First National Bank in Dallas*,[26] the Supreme Court of Texas held:

> When the promisor assumes primary responsibility and his leading object is to serve some interest or purpose of his own, notwithstanding the effect is to pay or discharge the debt of another, the oral promise is not within the Statute of Frauds.

The main inquiry of the court in the instant case was whether the promise of the officer of the bank was made with the view to become a surety on the debt owed to Haas by B&B or if the intention of the bank officer, acting for the bank, was to assume primary responsibility for the debt of another. The court found that the promise made by the officer of the bank was founded in the bank's desire to maintain and to protect the well from sanding up, in order to protect the value of the land.[27] This desire of the bank was the direct benefit, i.e., the something more than consideration, that the court deemed necessary to satisfy the "main purpose" rule.

Viewing the decision of the Supreme Court of Texas in *Haas*,[28] in light of the other decisions rendered by our courts that have dealt with the issue of what constitutes sufficient consideration, the Court has

25 *Id.* at 273, 354 S.W.2d at 387.
26 456 S.W.2d 886 (Tex. Sup. 1970).
27 *Id.*
28 *Id. See also*, Walker v. Lorehn, 355 S.W.2d 71 (Tex. Civ. App.—Houston 1962, writ ref'd n.r.e.), Cooper Petroleum Co. v. LaGloria Oil and Gas Co., 436 S.W.2d 889 (Tex. Sup. 1969), Seay v. Griffin, 308 S.W.2d 182 (Tex. Civ. App.—Eastland 1957, writ ref'd n.r.e.), West Texas Production Cr. Ass'n. v. Harding Chemicals, Inc., 407 S.W.2d 950 (Tex. Civ. App.—San Antonio 1966, writ ref'd n.r.e.).

again failed to make it perfectly clear regarding the amount of consideration that is necessary to take the promise of one person to answer for the debt of another out of the Statute of Frauds. In *Faver v. Leonard*,[29] the court held that the consideration must be "new" and "independent." In *Dallas Title & Guaranty Co. v. Jarrell*,[30] the court stated that "*The consideration for the promise must be a direct benefit to the promisor and the primary object of making the promise, as distinguished from a benefit which is merely incidental, indirect or remote.*" (Emphasis added.) *In Gulf Liquid Fertilizer Co. v. Titus*,[31] the court stated that ". . . the crucial point is that the consideration necessarily benefited him as a member of the partnership because he shared in the partnership's ultimate profits, if any, ..." Finally, in *Haas Drilling Co. v. First National Bank in Dallas*,[32] the court stated that "When the promisor assumes primary responsibility and his leading object is to serve *some interest or purpose of his own*, ..." (Emphasis added.) These statements clearly show the ambiguity that surrounds the issue of what constitutes sufficient consideration to take the promise of one to answer for the debt of another out of the Statute of Frauds. Therefore, in any further application of the "main purpose" rule, the courts of Texas should consider the following questions. Should a qualitative or quantitative quotient be employed in deciding whether there was sufficient consideration? Should the intention of one who promises to pay the debt of another be considered, or should the individual's words speak for themselves?

The purpose of law in our complex and often confusing society is to promote and initiate justice between all segments of our society: the rich and the poor, the seller and the buyer, and the intelligent and the illiterate. Therefore, the courts of Texas must strive to promote the ends of all judicial decisions, that being *justice*. With this goal in view, the courts of Texas should attempt to establish more definite criteria as to when a promise to answer for the debt of another is that of a surety or that of a person who is assuming primary responsibility. One of the shortcomings of the law today is its lack of definiteness. Courts must play an instrumental part in trying to promulgate definite tests and principles to broad generalities.

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29 383 S.W.2d 201 (Tex. Civ. App.—Tyler 1964, no writ).
30 320 S.W.2d 696, 700 (Tex. Civ. App.—Dallas 1959, no writ).
31 163 Tex. 260, 268, 354 S.W.2d 378, 387 (1962).
32 456 S.W.2d 886 (Tex. Sup. 1970).