



"MOORE" BURGER v. PHILLIPS PETROLEUM CO.

492 S.W.2d 934 (1973) | Cited 119 times | Texas Supreme Court | March 7, 1973

ON MOTION FOR REHEARING

Respondents read the Court's opinion to make any promise enforceable, though within the proscription of the statute of frauds, if foreseeable action or forbearance by the promisee meets the requirements of Section 90 of the RESTATEMENT OF CONTRACTS (or fulfills Section 217A of the RESTATEMENT, SECOND, Supp. Tent. Draft No. 4, 1969). This is not the holding.

The promise which is determinative here is the promise to sign a written agreement which itself complies with the statute of frauds. No other promise was discussed by the Court in the recitation of the summary judgment evidence, whereas promises to sign were set forth at two points, followed by the recitation that, relying on these promises, "Moore" Burger did not bid at the sale of the City land. This is the significance of the emphasis upon Section 178, comment f, RESTATEMENT, CONTRACTS, and the citation to Cooper Petroleum Co. v. La Gloria Oil and Gas Co., 436 S.W.2d 889, 896 (Tex. 1969), where "the promise was to sign a written guaranty, and a written guaranty would have been enforceable." See also 3 WILLISTON, CONTRACTS § 533A at 786 (3d ed. Jaeger 1957); Comment, Agreements to Reduce To Writing Contracts within the Statute of Frauds, 15 Va. L. Rev. 553 (1929).

The motions for rehearing are overruled. The parties are given fifteen days in which to file further motions for rehearing.

Thomas M. Reavley, Associate Justice

Opinion DELIVERED: March 7, 1973.

