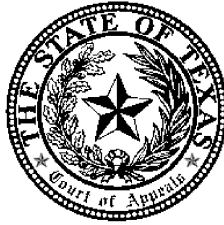


Affirmed and Opinion filed December 20, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00908-CV

**MAXEY VILLAGE, LTD., A TEXAS LIMITED PARTNERSHIP D/B/A MAXEY
VILLAGE APARTMENTS, Appellant**

V.

WEB SERVICE COMPANY, INC., Appellee

**On Appeal from the County Court at Law Number 4
Harris County, Texas
Trial Court Cause No. 727,969**

MEMORANDUM OPINION

Appellant Maxey Village, Ltd., a Texas Limited Partnership d/b/a Maxey Village Apartments (“Maxey Village”) asserts that the trial court erred by denying Maxey Village’s motion for judgment notwithstanding the verdict because, as a matter of law, the statute of frauds and the statute of conveyances barred the lease upon which appellee Web Service Company, Inc. (“Web”) relied at trial. Finding that Maxey Village has waived these issues because it did not object to the lease on these grounds when Web offered the lease into

evidence at trial, and because Maxey Village did not plead the statute of conveyances, we affirm the trial court's judgment.

I. Factual Background

Web operates a laundry service in the laundry rooms of the Maxey Village Apartments. After Maxey Village purchased these apartments, it took the position that Web had no right to possession of these laundry rooms and no right to operate a laundry service on the premises. Therefore, Maxey Village filed this forcible entry and detainer action against Web. After losing in the justice court, Maxey Village appealed to the county court at law. After a trial de novo, the jury found that Maxey Village was not entitled to possession of the leased premises. The trial court rendered judgment against Maxey Village.

II. Issues and Analysis

In its first issue, Maxey Village asserts the trial court erred by denying its motion for judgment notwithstanding the verdict because, as a matter of law, the lease upon which Web relied at trial was barred by the statute of frauds. *See* TEX. BUS. & COM. CODE ANN. § 26.01 (Vernon 1987). The lease in question is a written document signed by a representative of Web and a representative of Maxey Road Investments, L.L.C., one of the previous owners of the Maxey Village Apartments.

Without addressing the merits of Maxey Village's contention that this lease violates the statute of frauds, we hold that Maxey Village waived this argument by failing to voice this objection when Web offered this lease into evidence at trial. Even if the lease in question violated the statute of frauds, the lease would be voidable, not void. *Eland Energy, Inc. v. Rowden Oil & Gas, Inc.*, 914 S.W.2d 179, 186 (Tex. App.—San Antonio 1995, writ denied); *Scott v. Vandor*, 671 S.W.2d 79, 88 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.). To preserve its argument that the lease violates the statute of frauds, it was incumbent on Maxey Village to object to the lease on this basis when Web offered the lease into evidence at trial. *See Bohls v. Brazelton*, 336 S.W.2d 208, 211 (Tex. Civ. App.—Austin

1960, writ ref'd n.r.e.) (party waives statute of frauds if party fails to timely object on this basis to evidence of the agreement that allegedly violates the statute of frauds); *Enfield Realty & Home Bldg. Co. v. Hunter*, 179 S.W.2d 810, 811 (Tex. Civ. App.—Austin 1944, no writ); *Central Nat'l Bank of San Angelo v. Cox*, 96 S.W.2d 746, 748 (Tex. Civ. App.—Austin 1936, writ dism'd). When Web offered the lease into evidence, Maxey Village did not preserve error by objecting to the admission of the lease on the grounds that it violated the statute of frauds. Consequently, Maxey Village waived its statute of frauds argument. See *Bohls*, 336 S.W.2d at 211; *Enfield Realty & Home Bldg. Co.*, 179 S.W.2d at 811; *Central Nat'l Bank of San Angelo*, 96 S.W.2d at 748.

The trial court admitted the lease into evidence as a business record, and the jury was entitled to consider this lease as evidence in making its factual determination as to whether Maxey Village was entitled to possession of the leased premises. See *LaFreniere v. Fitzgerald*, 669 S.W.2d 117, 118-19 (Tex. 1984) (evidence admitted as a business record may be considered by the finder of fact as evidence of the truth of the matters asserted therein and may be considered as evidence supporting the findings of fact on appeal); *Overall v. Southwestern Bell Yellow Pages, Inc.*, 869 S.W.2d 629, 632-33 (Tex. App.—Houston [14th Dist.] 1994, no writ). We overrule Maxey Village's first issue.

In its second issue, Maxey Village asserts the trial court erred by denying its motion for judgment notwithstanding the verdict because, as a matter of law, the lease upon which Web relied at trial was barred by the statute of conveyances. See TEX. PROP. CODE ANN. § 5.021 (Vernon 1984). Maxey Village waived this issue in two ways. First, it never pleaded the statute of conveyances. See TEX. R. CIV. P. 94; *First Nat'l Bank in Dallas v. Zimmerman*, 442 S.W.2d 674, 675-77 (Tex. 1969). Moreover, Maxey Village did not assert this objection when Web offered the lease into evidence. See *Bohls*, 336 S.W.2d at 211; *Enfield Realty & Home Bldg. Co.*, 179 S.W.2d at 811; *Central Nat'l Bank of San Angelo*, 96 S.W.2d at 748. As a result, the jury was free to consider the lease in making its determination that Maxey Village was not entitled to possession of the leased premises.

Having found that Maxey Village waived its complaint based on the statute of conveyances, we overrule Maxey Village's second issue.

We affirm the trial court's judgment.

/s/ **Kem Thompson Frost**
 Justice

Judgment rendered and Opinion filed December 20, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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