

Birch Ledge Farm, Inc. v. Kojima, No. S0954-07 Cncv (Katz, J., May 19, 2008)

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STATE OF VERMONT  
Chittenden County, ss.:

SUPERIOR COURT  
Docket No. S0954-07 CnCiv

BIRCH LEDGE FARM, INC.

v.

KIMBERLY KOJIMA AND  
PENELOPE KOJIMA

#### ENTRY

Plaintiff Birch Ledge Farm, Inc. filed this action against Defendants Kimberley and Penelope Kojima, alleging that the Kojimas failed to pay monthly rental fees to reserve stalls for their five horses at Plaintiff's horse boarding facility. Birch Ledge claims that the parties had an agreement that provided, among other things, that the Kojimas were obligated to pay monthly rent to reserve their stalls during the winter months, when their horses were in Florida. Birch Ledge also claims that the Kojimas agreed to pay a one-month termination fee upon deciding to remove their horses from the facility. In support of its claims, Birch Ledge has produced a Boarding Agreement, which it says was provided to the Kojimas. The Kojimas, in turn, claim they never saw this version of the Boarding Agreement, containing the termination fee provision, and, in any event, they never signed any version of the Boarding Agreement.

The Kojimas have filed a motion for partial summary judgment that the statute of frauds bars Birch Ledge's claim regarding the termination fee because the boarding of their horses constitutes an interest in land and they never signed the Boarding Agreement. 12 V.S.A. § 181 sets forth the Vermont statute of frauds. The statute bars a party from bringing suit to recover on certain listed categories of contracts if they are not reduced to a writing and signed by the party to be charged. Id. One category of contracts encompassed by the statute is contracts "for the sale of lands, tenements or hereditaments, or of an interest in or concerning them." Id. § 181(5). However, contracts that do not convey an actual interest in land, such as agreements to give board and lodging, fall outside the statute of frauds. Restatement (Second) of Contracts § 127, illus. 5; Williston on Contracts, § 25:13. Here, assuming that an agreement was ever reached between the parties, it was a combined contract for services and the use of horse stalls, and did not convey any interest in Birch Ledge's land, as that concept is contemplated in the statute of frauds. Therefore, 12 V.S.A. § 181(5) does not apply.

Moreover, there is a triable factual dispute with respect to the nature of any agreement between the parties regarding Birch Ledge's boarding of the Kojimas' horses.

For the foregoing reasons, the Kojimas' motion for partial summary judgment is DENIED.

Dated at Burlington, Vermont, May \_\_\_\_, 2008.

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M. I. Katz, Judge