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THIRD DIVISION

[G.R. No. 205810. September 9, 2020]

ESTATE OF VALERIANO C. BUENO and GENOVEVA I. BUENO, represented by VALERIANO I. BUENO, JR. and SUSAN I. BUENO, *Petitioners*, *v.* **ESTATE OF ATTY. EDUARDO M. PERALTA, SR. and LUZ B. PERALTA, represented by DR. EDGARDO B. PERALTA,** *Respondents*.

SYLLABUS

1. CIVIL LAW; CONTRACTS; DEFECTIVE CONTRACTS; UNENFORCEABLE CONTRACTS; LACK OF WRITING CAN BE CURED BY RATIFICATION OR ACKNOWLEDGMENT.— Our laws recognize four kinds of defective contracts. Among these is the unenforceable contract, or one that, for lack of authority, or of writing, or for incompetence of both parties, cannot be given effect unless properly ratified. But note that the lack of writing does not make the agreement void or inexistent. It merely bars suit for performance or breach. Such a defect can be cured by acknowledgment or ratification.

2. ID.; ID.; ID.; ID.; STATUTE OF FRAUDS; COVERED TRANSACTIONS MUST BE REDUCED IN WRITING SO AS TO BE ENFORCEABLE; EXCEPTIONS.— Quite recently, We had the opportunity to discuss the parameters of the Statute of Frauds in *Heirs of Alido v. Campano*, which reiterated that an unenforceable contract under Article 1403 (2) is not necessarily void since it can be ratified by failure to object to the presentation of oral evidence to prove the contract itself, or by the acceptance of benefits. The contract can be established by the express or implied conduct of the parties. The Court explained, thus:

> Article 1403 (2) of the Civil Code, or otherwise known as the Statute of Frauds, requires that covered transactions must be reduced in writing, otherwise the same would be unenforceable by action. In other words, sale of real property must be evidenced by a written document as an oral sale of immovable property is unenforceable.

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3. ID.; ID.; ID.; ID.; RATIFICATION OF ORAL CONTRACTS; CASE AT BAR.— With what transpired between the parties, the oral contract between Bueno and Atty. Peralta should be excluded from the application of the Statute of Frauds. The application of the exception in the first sentence of Article 1403, in relation to Article 1405 of the Civil Code should apply instead. Ratification as an exception to unenforceable contracts is addressed in the first sentence of Article 1403, while the modes of ratification are described in Article 1405.

. . .

Ratification is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation of the agreement or a waiver of the right to impugn the unauthorized act.

4. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; BY ADOPTIVE ADMISSION, REPEATED AND CONSISTENT REPRESENTATIONS FROM A PARTY ARE CONSIDERED JUDICIAL ADMISSIONS.— The Estate of Bueno argues against the existence of the condition for the transfer of the subject property to Atty. Peralta because it was never raised as an issue in the Answer. However, it is plain to Us, based on the allegations in the petition and the Reply, that the Estate of Bueno **reiterated** a **confirmation** of Bueno's **commitment** to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel demonstrate the *existence* of the contract between Bueno and Atty. Peralta, which the Court considers as **judicial admissions**.

On the aspect of reiteration of a factual statement, there is the acknowledged postulate on **adoptive admission** as a component of the concept on judicial admissions under Section 4, Rule 129 of the Revised Rules on Evidence. This concession of a disputed fact by the adverse party was also applied by this Court in *Republic v. Kenrick Development Corporation*:

> A party may, by his words or conduct, voluntarily adopt or ratify another's statement. Where it appears that a party clearly and unambiguously assented to or adopted the statements of another, evidence of those statements is admissible against him. This is the essence of the principle of adoptive admission.

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> An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person. By adoptive admission, a third person's statement becomes the admission of the party embracing or espousing it.

5. ID.; ID.; ID.; NEGATIVE PREGNANT STATEMENTS; CIVIL LAW; ESTOPPEL; A DENIAL PREGNANT WITH AN ADMISSION IS IN EFFECT AN ADMISSION OF THE AVERMENT TO WHICH IT IS DIRECTED AND CALLS INTO EFFECT THE PRINCIPLE OF ESTOPPEL.— We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as **negative pregnant** statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to. It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431 of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession of the subject property in 1962, and through the years that they occupied the same.

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.

6. ID.; ID.; ID.; ORAL ADMISSIONS; HEARSAY EVIDENCE; COMPETENT WITNESSES MAY TESTIFY TO WHAT THEY HEARD; CASE AT BAR.— An examination of the transcript reveals that the sole objection to Edmundo's testimony was that it was hearsay. But since the statement of Bueno was uttered in the presence of Atty. Nicdao, the latter had personal knowledge of such admission. There is no prohibition against a witness testifying to what he heard. . . .

Accordingly, the oral contract between Bueno and Atty. Peralta is removed from the application of the Statute of Frauds with failure of the Estate of Bueno's counsel to object to parol evidence of the contract, and Valeriano Jr.'s testimony confirming its existence, . . .

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To be sure, the counsel for the Estate of Bueno did object during the testimony of Dr. Peralta, arguing against the introduction of parol evidence of the contract between Bueno and Atty. Peralta . . .

However, such objection was effectively waived by the Estate of Bueno, when it introduced the testimony of Valeriano Bueno, Jr. (Valeriano Jr.), which tended to prove the oral contract between his father and Atty. Peralta . . .

7. ID.; ID.; ID.; IN EXAMINING THE STATEMENTS OF A WITNESS, VERBAL PRECISION IS NOT REQUIRED, AS LONG AS THE SUBSTANCE OF THE CONVERSATION OR DECLARATION IS STATED.— The importance of single words in oral discourse is comparatively much less than in writings, and memory does not retain precise words, except of simple utterances and for a short time. If the witness states the substance of the conversation or declaration, it is not error for the court to admit his testimony. Thus, in examining the statements of the witnesses, the Court is not looking for verbal precision, only that said utterances amount to an unequivocal admission of the contract.

8. ID.; ID.; OBJECTION TO THE ADMISSIBILITY OF ORAL EVIDENCE; WAIVER OF THE BENEFIT OF PAROL EVIDENCE RULE.— As early as 1910, in *Conlu v. Araneta* (*Conlu*), this Court had ruled that a contract of sale of real property that does not comply with the form required for its execution is not automatically invalidated by such defect. If the parties to the action fail to object to the admissibility of oral evidence to the contract of sale of real property during trial, then the contract will be just as binding upon the parties as if it had been reduced to writing.

In *Abrenica v. Gonda* (*Abrenica*), the Court explained the rule on the waiver of the benefit of the parol evidence rule, or the ratification by failure to object:

> Now then, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the

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presentation of the proof, the inadmissibility of the evidence is, or may be, inferred.

9. CIVIL LAW; CONTRACTS; SALES; THE EXISTENCE OF A PERFECTED CONTRACT CAN BE BASED ON THE CONDUCT OF THE PARTIES; CASE AT BAR.— Based on the admissions on record, it is readily apparent that, even way back in 1962, Bueno and Atty. Peralta have been mutually benefiting from the oral contract: in exchange for his legal services, Atty. Peralta received from Bueno the house and lot at 3450 Magistrado Villamor in Sta. Mesa.

The existence of a perfected contract of sale can be based on the conduct of the parties. . . .

. . .

Previous, simultaneous, and subsequent acts of the parties are properly cognizable indicia of their true intention. The courts may consider the relations existing between the parties and the purpose of the contract, particularly when it was made in good faith between mutual friends, as acknowledged in the petition itself.

Bueno's acts allowing Atty. Peralta and his family to stay on the property, introduce substantial improvements, and pay the real property tax thereon, coupled with the absence of any action to recover the subject property show the intention of Bueno to cede ownership over the same in favor of Atty. Peralta.

LEONEN, *J.*, *dissenting opinion*:

1. CIVIL LAW; CONTRACTS; STATUTE OF FRAUDS; ITS PURPOSE IS TO PREVENT FRAUD IN THE ENFORCEMENT OF OBLIGATIONS.— The Statute of Frauds was written into Article 1403 (2) of the Civil Code so that courts would not rely on the unassisted memories of witnesses in proving the terms of a contract, to prevent fraud in the enforcement of obligations. However, as correctly pointed out by my colleagues, the Statute of Frauds is not applicable to partially performed contracts.

In *Asia Production Company, Inc. v. Paño*, this Court explained that both the Statute of Frauds and the exceptions to its application are intended to prevent the perpetration of fraud.

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2. ID.; ID.; ID.; ORAL CONTRACTS; BEFORE PARTIAL PERFORMANCE MAY REMOVE THE CONTRACT FROM THE STATUTE OF FRAUDS, THE TERMS OF THE AGREEMENT MUST BE CLEAR AND THE ACTION MUST BE SHOWN TO HAVE BEEN PERFORMED BASED ON THE ALLEGED ORAL CONTRACT; CASE AT BAR.— Considering that there was an allegation of performance of an oral contract, I agree that it was proper to consider the possibility that the Statute of Frauds may not cover the agreement between Peralta and the Bueno Spouses. However, when there is no clear evidence from the contracting parties themselves that would signify their specific intentions when entering into the verbal agreement, courts must be careful in determining that a contract has been partially performed.

Before partial performance may remove an agreement for the sale of real property from the Statute of Frauds, the terms of the agreement must first be clear. . . .

The terms of an oral contract must have the degree of certainty required of a written contract before the courts may order its enforcement. This is a sound policy. Before the action may be deemed as performance of an obligation under an oral contract, its terms must be clear, because it must first be evident that the action was performed *pursuant solely to the alleged oral contract*, and nothing else. In other words, before an act may be considered partial performance, the evidence must convincingly show that the action was performed because of the alleged oral contract, to the exclusion of any other agreement.

3. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE; TO PROVE THE EXISTENCE OF AN ORAL CONTRACT, THE PAROLE EVIDENCE MUST BE CERTAIN, DEFINITE, CLEAR, UNAMBIGUOUS, AND UNEQUIVOCAL IN ITS TERMS AND BE CLEARLY ESTABLISHED BY EVIDENCE; CASE AT BAR.— The better rule is the one stated in *Babao*, where this Court said that the parol evidence relied on must be "certain, definite, clear, unambiguous, and unequivocal in its terms . . . and be clearly established by the evidence."

The majority correctly observes that specific words may not be necessary in all cases to establish the existence of an oral contract. Nonetheless, in cases such as this, where there is a

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clear statutory protection, courts must exercise greater caution and methodically consider the evidence presented and what it *actually proves*, step by step. The testimony of Bueno's son, Valeriano, Jr., on being aware of his father's willingness to transfer ownership over the property at a future date *if* Peralta "would render his services to [his] father until his retirement" is, for purposes of determining that an oral contract exists, and that the obligations of the parties had been fully fulfilled, too vague.

APPEARANCES OF COUNSEL

Jaso Dorillo & Associates for petitioners.
Allene M. Anigan for respondents.

D E C I S I O N

ZALAMEDA, *J.*:

This is a petition for review on *certiorari*[1] assailing the 31 August 2012 Decision[2] and 08 February 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 86410. The Court of Appeals set aside the 11 October 2005 Decision[4] of Branch 37 of the Regional Trial Court (RTC) Manila in Civil Case No. 96-76696. The CA ordered Valeriano Bueno, Sr. and the Heirs of Genoveva Bueno (collectively, Estate of Bueno) to execute a Deed of Conveyance over the Transfer Certificate of Title (TCT) No. 47603, which is located at No. 3450 Magistrado Villamor Street, Lourdes Subdivision, Sta. Mesa, Manila (subject property), in favor of the Estate of Atty. Eduardo

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 75-116; penned by Associate Justice Rosmari D. Carandang (now a Member of this Court), and concurred in by Associate Justices Ricardo R. Rosario (now a member of this Court) and Leoncia R. Dimagiba of the Court of Appeals, Manila.

[3] Id. at 118-119.

[4] Id. at 646-658; penned by Judge Vicente A. Hidalgo.

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M. Peralta, Sr. and Luz B. Peralta (Estate of Peralta), represented by one (1) of their children, Dr. Edgardo B. Peralta (Dr. Peralta).

Antecedents

A lawyer and a businessman entered into a supposed mutually beneficial arrangement. The businessman gave the lawyer real estate in exchange for the rendition of valuable legal services. With the knowledge and acquiescence of the businessman and his family, the lawyer established his family home, introduced several substantial improvements on the property, and paid its real property taxes. This arrangement went on for several decades and survived the lawyer's death. The heirs of the lawyer now ask for the execution of the proper deed of conveyance from the heirs of the businessman.

In 1957, Valeriano Bueno, Sr. (Bueno) and his wife Genoveva (collectively, Spouses Bueno) engaged Atty. Eduardo M. Peralta, Sr. (Atty. Peralta) to take care of their personal and business[5] legal matters. Atty. Peralta was legal counsel of and held several executive positions (President, Executive Vice-President, Secretary, Treasurer, or Director) in the Spouses Bueno's various companies for almost 26 years.

In 1960, the Spouses Bueno gave Atty. Peralta the subject property as partial consideration for professional services rendered. Atty. Peralta, together with his wife and children, occupied the property beginning in January 1962. Atty. Peralta requested for execution of a deed of conveyance, but because the subject property was encumbered, Bueno merely provided him a photostatic copy of the title for his reference and Bueno prevailed upon him to pay the real property taxes. Relying on Bueno's express and implied representations, Atty. Peralta and

[5] The amended complaint enumerated these companies: Bueno Industrial and Development Corp., Butuan Lumber and Manufacturing Co., Inc., Pampanga Sugar Mills, Inc., Mahogany Products, Inc., Big Country Ranch, Inc., Pantaron Range Development Co., Palanan Logging Enterprises, Inc., Mindanao Livestock Corp., Ilocos Mining and Smelting Corp., Puncan Plantation Co., Bulawan Plantation Co., Looc Bay Lumber Co., Sierra Madre Projects, Inc., and Continental Bank.

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his family introduced several substantial improvements to the subject property over the years.

Atty. Peralta passed away on 27 December 1983. In 1990, Dr. Peralta wrote Spouses Bueno to ask for the proper deed of conveyance of the subject property. Instead of granting the request, Spouses Bueno demanded the surrender of the physical possession of the subject property. Subsequent demands were made on Spouses Bueno to execute the proper deed of conveyance, but they were repeatedly refused. Later, Bueno and his daughter-in-law intruded into the property. Bueno himself attacked Edmundo Peralta (Edmundo), one of Atty. Peralta's children. This led to the filing of a criminal complaint against Bueno.[6]

Dr. Peralta, representing the Estate of Peralta, filed a complaint[7] for specific performance and prayed for execution of the appropriate deed of conveyance of the subject property.

In their Answer, Spouses Bueno maintained that the Estate of Peralta's claim was unenforceable under the Statute of Frauds. They alleged that Atty. Peralta never demanded that Spouses Bueno sell the subject property to him after he and his family were allowed to make use of the same. Moreover, specific performance is impossible as the subject property is encumbered with financial institutions. Thus, Bueno cannot do what the Estate of Peralta asks for unless the property is redeemed or the obligations were paid.

The complaint was later amended to implead the heirs of Genoveva Bueno, who passed away before trial began. Bueno himself passed away on 18 October 2000. Trial proceeded with the two (2) estates as contending parties.

After the Estate of Peralta filed its formal offer of evidence, the Estate of Bueno filed a Demurrer to Evidence and claimed that the former failed to prove that Bueno Spouses conveyed the property to Atty. Peralta back in 1960. The RTC denied

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[6] *Rollo*, pp. 467-468.

[7] Id. at 165-179.

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the demurrer in its 31 May 2002 Order.[8] The RTC rejected the Estate of Bueno's argument that the agreement between Bueno and Atty. Peralta was covered by the Statute of Frauds because the agreement was not an executory contract. The RTC also ruled that the Estate of Peralta's claim was not barred by prescription, since the action is essentially an action to quiet title. Such action is imprescriptible, especially since delivery of possession of the property is already consummated.

Ruling of the RTC

In its 11 October 2005 Decision,[9] the RTC dismissed the Estate of Peralta's complaint for lack of merit. The RTC declared Spouses Bueno and their heirs as rightful owners of the subject property.

The RTC found that Bueno sufficiently established that there was no perfected contract between Atty. Peralta and Spouses Bueno with respect to the transfer of the subject property. But, according to the RTC, it was undisputed that Spouses Bueno committed to award the subject property to Atty. Peralta if he serves them until retirement. Atty. Peralta, however, failed to fulfill the condition, as evidenced by his hand-written resignation letter dated 15 March 1975. This, the RTC said, gave Spouses Bueno the right to rescind the contract.

On the other hand, the RTC changed its view about the nature of the case. While it earlier construed the case as one for quieting of title, it now held that it was an action for the enforcement of an oral contract. Under Article 1145 of the Civil Code, such an action prescribed in six (6) years. Since the right to commence action was acquired in 1960, the same had already prescribed when the Estate of Peralta filed its complaint in 1996.

The Estate of Peralta filed a motion for reconsideration, which the RTC denied in its 19 December 2005 Order.[10]

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[8] Id. at 245-248.

[9] Id. at 645-658.

[10] Id. at 679-680.

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Ruling of the CA

In its 31 August 2012 Decision, the CA granted the Estate of Peralta's appeal and set aside the RTC's decision.

According to the CA, the contract between Bueno and Atty. Peralta is an innominate contract in the nature of a *facio ut des* (I do and you give) agreement. The parties agreed for Atty. Peralta to render legal services to Bueno and his companies (the *facio* or the "I do"). Then, upon his retirement, for Atty. Peralta to receive the property from Bueno (the *des* or "you give"). The CA cited the 1903 case of *Perez v. Pomar*[11] where the Supreme Court upheld the verbal *facio ut des* contract because one party had already rendered the service.

The CA also invoked the unjust enrichment rule in Article 22[12] of the Civil Code and decreed that Atty. Peralta's services were not gratuitously rendered and should be properly remunerated. The CA noted that the Estate of Bueno did not present evidence on Atty. Peralta's salaries or other forms of compensation from Bueno and his companies. According to Atty. Moises Nicdao (Atty. Nicdao), Atty. Peralta's law partner, the latter did not have a definite salary from Bueno.[13] Thus, the CA ruled that Atty. Peralta's occupation of the property was in the concept of an owner, as the property was given by Bueno with Atty. Peralta's services as a valuable consideration.

Moreover, the CA also observed that Bueno's relinquishment of possession of the subject property and Atty. Peralta's continued rendition of services to Bueno were vital pieces of evidence of the agreement and perfection of the *facio ut des* contract. The partial performance by both parties removed the *facio ut des* contract from the ambit of the Statute of Frauds under Article

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[11] G.R. No. L-1299, 16 November 1903, 2 Phil. 682-689 (1903).

[12] Article 22 provides: "Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

[13] Deposition taking of Atty. Nicdao, 12 December 1997, p. 11.

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1403 of the Civil Code because that provision applies only to executory, and not to executed, contracts.

The CA also gave credence to the Estate of Peralta's evidence that, despite submitting his resignation, Atty. Peralta continued to render his services as Bueno's counsel by filing pleadings and replying to queries. To the appellate court, apart from bare denials, the Estate of Bueno did not present any other evidence to prove that Atty. Peralta had stopped rendering his legal services by 1975. The Estate of Bueno even admitted that Atty. Peralta still represented them in cases as late as 1981, or just two years prior to Atty. Peralta's death. The CA declared:

> We therefore arrive at the conclusion that at the retirable age of 60 in August 1980, [Atty. Peralta] was still working as a lawyer for [Bueno] and his companies. Relating this to the controversy at hand, We find [Atty. Peralta] to have fulfilled the condition for him to work with [Bueno] and his companies, We find [Atty. Peralta] to have fulfilled the condition for him to work for [Bueno] and his companies until his retirement. From the moment he was entitled to his retirement on his birthday on 19 May 1980, he had also fulfilled the *facio* — his obligation to render service and became entitled to the [subject] property.
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> Thus, [Bueno] became obligated to perform his *des* — his obligation to give the [subject] property to [Atty. Peralta] as this had become demandable. [Bueno], however, had already partially performed this obligation when he delivered the [subject] property to [Atty. Peralta] when the latter first took possession of the [subject] property with him and his family's continued occupation of the same up to his 60th birth anniversary.[14]

The CA further ruled that the action had not prescribed. The six (6)-year period did not commence in 1960 because Atty. Peralta had not wholly perfected his right to demand the execution of the documents to transfer the title to the subject property to him as he still had to serve Bueno until his retirement. It was only upon Atty. Peralta's retirement that the ownership automatically vested upon him. The CA subscribed to the Estate

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[14] *Rollo*, pp. 109-110.

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of Peralta's view that the case is imprescriptible as it is an action for quieting of title. Similarly, the CA did not find the Estate of Peralta guilty of laches.

The CA concluded, thus:

> In arriving at Our decision, We have tried not to lose sight of the gist of this dispute. It is essentially about the agreement of two men who agreed that one should work for or the other until his retirement in return for which a house and land of the other would be given to the him [sic]. This much has been admitted by appellees and found by the trial court. The evidence has also shown that [Atty. Peralta] practically worked his whole professional life at the service of [Bueno] and his companies. In adjudging the property to the heirs of [Atty. Peralta], this Court is merely respecting a fundamental rule of fairness: no man must unjustly benefit and enrich himself at the expense of another.
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> WHEREFORE, the instant Appeal is GRANTED and the Decision of the Regional Trial Court is SET ASIDE. [The Estate of Bueno is] ordered to EXECUTE a Deed of Conveyance over the Transfer Certificate of Title of Lot No. 3450 Magistrado Villamor St., Lourdes Subdivision, Sta. Mesa, Manila in favor of the estates of Eduardo M. Peralta, Sr. and Luz B. Peralta.
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> Should [the Estate of Bueno] fail or refuse to do execute [sic] the aforementioned Deed of Conveyance within thirty (30) days from finality of this Decision, Brach 37 of the [RTC] of Manila shall ISSUE and Order divesting [the Estate of Bueno's] title to the property and vest it in favor of the [estates of Eduardo M. Peralta, Sr. and Luz B. Peralta] which shall have the force and effect of a conveyance executed in due form of law.
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> SO ORDERED.[15]

The Estate of Bueno's motion for reconsideration for lack of merit was denied by the CA in its 08 February 2013 Resolution.[16] Consequently, the Estate of Bueno filed the present petition for review.

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[15] Id. at 115-116.

[16] Id. at 118-120.

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Issues

The Estate of Bueno raises a lone assignment of error in this Petition: The Court of Appeals committed a reversible error of law and grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the decision of the trial court dismissing the complaint for specific performance filed by the Estate of Peralta against the Estate of Bueno, and ordering the Estate of Bueno to execute a deed of conveyance over the transfer certificate of title of lot number 3450 Magistrado Villamor Street, Lourdes Subdivision, Sta. Mesa, Manila in favor of the Estate of Eduardo Peralta, Sr. and Luz B. Peralta.[17]

During the course of deliberations in this case, the discussions focused on the applicability of the Statute of Frauds on the agreement between Bueno and Atty. Peralta. The majority maintains that there was ratification of the agreement despite the applicability of the Statute of Frauds. The dissent, on the other hand, argues that the terms and conditions of the oral contract were not sufficiently proved so the agreement is covered by the Statute of Frauds.

Ruling of the Court

The Statute of Frauds

The Statute of Frauds, as found in Article 1403 (2) of the Civil Code, reads:

> Article 1403. The following contracts are unenforceable, unless they are ratified:
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> x x x x x x x x x
>
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

[17] Id. at 23.

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(a) An agreement that by its terms is not to be performed within a year from the making thereof;

(b) A special promise to answer for the debt, default, or miscarriage of another;

(c) An agreement made in consideration of marriage, other than a mutual promise to marry;

(d) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

(f) A representation to the credit of a third person.

x x x x x x x x x.

Note that Art. 1403 (2) speaks of a general rule, but recognizes ratification as an exception.

Our laws recognize four kinds of defective contracts.[18] Among these is the unenforceable contract, or one that, for lack of authority, or of writing, or for incompetence of both parties, cannot be given effect unless properly ratified. But note that the lack of writing does not make the agreement void or inexistent. It merely bars suit for performance or breach. Such a defect can be cured by acknowledgment or ratification.[19]

Quite recently, We had the opportunity to discuss the parameters of the Statute of Frauds in *Heirs of Alido v. Campano*,[20] which reiterated that an unenforceable contract

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[18] Balane (2018), *Jottings and Jurisprudence in Civil Law (Obligations and Contracts)*, p. 695.

[19] Id., p. 752.

[20] G.R. No. 226065, 29 July 2019. (Emphases and citations omitted).

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under Article 1403 (2) is not necessarily void since it can be ratified by failure to object to the presentation of oral evidence to prove the contract itself, or by the acceptance of benefits. The contract can be established by the express or implied conduct of the parties. The Court explained, thus:

> Article 1403 (2) of the Civil Code, or otherwise known as the Statute of Frauds, requires that covered transactions must be reduced in writing, otherwise the same would be unenforceable by action. In other words, sale of real property must be evidenced by a written document as an oral sale of immovable property is unenforceable.
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> Nevertheless, it is erroneous to conclude that contracts of sale of real property without its term being reduced in writing are void or invalid. In *The Estate of Pedro C. Gonzales v. The Heirs of Marcos Perez*, the Court explained that failure to observe the prescribed form of contracts do not invalidate the transaction, to wit:
>
> > Nonetheless, it is a settled rule that the failure to observe the proper form prescribed by Article 1358 does not render the acts or contracts enumerated therein invalid. It has been uniformly held that the form required under the said Article is not essential to the validity or enforceability of the transaction, but merely for convenience. The Court agrees with the CA in holding that a sale of real property, though not consigned in a public instrument or formal writing, is, nevertheless, valid and binding among the parties, for the time-honored rule is that even a verbal contract of sale of real estate produces legal effects between the parties. Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance. Article 1358 does not require the accomplishment of the acts or contracts in a public instrument in order to validate the act or contract but only to insure its efficacy.
>
> Further, the Statute of Frauds applies only to executory contracts and not to those which have been executed either fully or partially. In *Swedish Match, AB v. Court of Appeals*, the Court expounded on the purpose behind the requirement that certain contracts be reduced in writing, *viz.*:
>
> > The Statute of Frauds embodied in Article 1403, paragraph (2), of the Civil Code requires certain contracts enumerated therein to be evidenced by some note or memorandum in order

to be enforceable. The term "Statute of Frauds" is descriptive of statutes which require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary to render it enforceable. Evidence of the agreement cannot be received without the writing or a secondary evidence of its contents.

The Statute, however, simply provides the method by which the contracts enumerated therein may be proved but does not declare them invalid because they are not reduced to writing. By law, contracts are obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. Consequently, the effect of non-compliance with the requirement of the Statute is simply that no action can be enforced unless the requirement is complied with. Clearly, the form required is for evidentiary purposes only. Hence, if the parties permit a contract to be proved, without any objection, it is then just as binding as if the Statute has been complied with.

The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.

While the Statute of Frauds aim [sic] to safeguard the parties to a contract from fraud or perjury, its non-observance does not adversely affect the intrinsic validity of their agreement. The form prescribed by law is for evidentiary purposes, non-compliance of which does not make the contract void or voidable, but only renders the contract unenforceable by any action. In fact, contracts which do not comply with the Statute of Frauds are ratified by the failure of the parties to object to the presentation of oral evidence to prove the same, or by an acceptance of benefits under them.

Further, the Statute of Frauds is limited to executory contracts where there is a wide field for fraud as there is no palpable evidence of the intention of the contracting parties. It has no application to executed contracts because the exclusion of parol evidence would

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promote fraud or bad faith as it would allow parties to keep the benefits derived from the transaction and at the same time evade the obligations imposed therefrom.

The RTC errs in summarily dismissing respondent's claim of ownership simply because the sale between her and Alido was not supported by a written deed. As above-mentioned, an oral sale of real properly is not void and even enforceable and binding between the parties if it had been totally or partially executed.

The Court agrees with the observations of the CA that the Statute of Frauds is inapplicable in the present case as the verbal sale between respondent and Alido had been executed. From the time of the purported sale in 1978, respondent peacefully possessed the property and had in her custody OCT No. F-16558. Further, she had been the one paying the real property taxes and not Alido. Possession of the property, making improvements therein and paying its real property taxes may serve as indicators that an oral sale of a piece of land had been performed or executed.

In addition, while tax declarations are not conclusive proof of ownership, they may serve as *indicia* that the person paying the realty taxes possesses the property in concept of an owner. In *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago* the Court, thus, explained:

> In the instant case, it was established that Lot 2344 is a private property of the Santiago clan since time immemorial, and that they have declared the same for taxation. Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.

From 1978 until her death, Alido never questioned respondent's continued possession of the property, as well as of OCT No. F-16558. Neither did she stop respondent from paying realty taxes under the

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latter's name. Alido allowed respondent to exercise all the rights and responsibilities of an owner over the subject parcel of land. Even after her death, neither her heirs disturbed respondent's possession of the property nor started paying for the real property taxes on the said lot. Further, it is noteworthy that petitioners do not assail that respondent had acquired the property fraudulently or illegally as they merely rely on the fact that there was no deed of sale to support the said transaction. However, as manifested by the actions or inactions of Alido and respondent, it can be reasonably concluded that Alido had sold the property to respondent and that the said transaction had been consummated.

With what transpired between the parties, the oral contract between Bueno and Atty. Peralta should be excluded from the application of the Statute of Frauds. The application of the exception in the first sentence of Article 1403, in relation to Article 1405 of the Civil Code should apply instead. Ratification as an exception to unenforceable contracts is addressed in the first sentence of Article 1403, while the modes of ratification are described in Article 1405.

Art. 1403. The following contracts are unenforceable, **unless they are ratified** x x x.

Art. 1405. **Contracts infringing on the Statute of Frauds**, referred to in No. 2 of Article 1403, **are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them**. (Emphasis supplied)

Article 1405 is further bolstered by Articles 1392 and 1393 of the Civil Code:

Art. 1392. Ratification extinguishes the action to annul a voidable contract.

Art. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right.

Ratification is, in essence, consent belatedly given through express or implied acts that are deemed a confirmation of the

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agreement or a waiver of the right to impugn the unauthorized act.[21]

Both the trial court and the CA found that there was a contract to transfer the property from Bueno to Atty. Peralta. The trial court held:

> The undisputed fact is that the subject property was a subject of the commitment between [the] Buenos and Atty. Peralta whereby the latter shall be awarded of the same property if he could serve as counsel for the Buenos and the group of companies they owned until the time of his retirement.[22]

The trial court glaringly omitted Bueno's acts of ratification of the oral contract from 1960, or how the Estate of Bueno ratified the contract during trial. It limited its discussion to the "lack of personal knowledge of the alleged verbal transaction."

The CA, on the other hand, viewed Bueno's acts of ratification through the lens of partial performance of the contract and placed significant value on Atty. Peralta's legal services. In awarding the property to the Estate of Peralta, the CA recognized that "[Atty. Peralta] practically worked his whole professional life at the service of [Bueno] and his companies."[23] The CA stated:

> The agreement and perfection of this contract by [Bueno] and [Atty. Peralta] are evident by the subsequent acts of the both parties: [Bueno's] relinquishing possession of the property to [Atty. Peralta] and [Atty. Peralta's] continued rendition of services to [Bueno] and his companies.[24]

Effects of judicial admissions

It is a matter of record, too, borne by the Estate of Bueno's own recital of facts in the present petition, that Atty. Peralta,

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[21] *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, G.R. Nos. 194964-65, 11 January 2016, 776 Phil. 401-455 (2016); 778 SCRA 458, 505.

[22] *Rollo*, p. 654.

[23] Id. at 115.

[24] Id. at 100.

having been friends with Bueno since their younger years, was engaged to render legal services for the Bueno family's corporations beginning in 1960.[25]

This matter was further clarified during pre-trial when the Estate of Bueno admitted Atty. Peralta's physical possession of the subject property from January, 1962 up to the present. Likewise admitted was Atty. Peralta's rendition of legal services to the Spouses Bueno and their companies from 1957 to 1975.[26]

The Estate of Bueno argues against the existence of the condition for the transfer of the subject property to Atty. Peralta because it was never raised as an issue in the Answer.[27] However, it is plain to Us, based on the allegations in the petition[28] and the Reply,[29] that the Estate of Bueno **reiterated** a **confirmation** of Bueno's **commitment** to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel demonstrate the *existence* of the contract between Bueno and the Atty. Peralta, which the Court considers as **judicial admissions**.

On the aspect of reiteration of a factual statement, there is the acknowledged postulate on **adoptive admission** as a component of the concept on judicial admissions under Section 4, Rule 129 of the Revised Rules on Evidence. This concession of a disputed fact by the adverse party was also applied by this Court in *Republic v. Kenrick Development Corporation*:[30]

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[25] Id. at 76-78; *See* 1989 REVISED RULES ON EVIDENCE, Rule 129, Sec. 4; Rule 131, Sec. 2 (a); CIVIL CODE, Article 1431.

[26] *Rollo*, pp. 82-83.

[27] Id. at 78-79.

[28] Id. at 84. ". . . In addition, the late Valeriano Bueno, Sr. verbally expressed that the property would be given to Atty. Peralta, Sr. on condition that he would serve as legal counsel up to his retirement. . .";

[29] Id. ". . . the fact is that the subject property was a subject of the verbal commitment to Atty. Peralta, Sr. whereby the property of late Valeriano Bueno, Sr. shall be given to the latter if could serve as counsel for him and his company until the time of his retirement."

[30] G.R. No. 149576, 08 August 2006, 529 Phil. 876-886 (2006); 498 SCRA 220, 227-229. Citations omitted. Emphasis added.

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A party may, by his words or conduct, voluntarily adopt or ratify another's statement. Where it appears that a party clearly and unambiguously assented to or adopted the statements of another, evidence of those statements is admissible against him. This is the essence of the principle of adoptive admission.

An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as an admission of something stated or implied by the other person. By adoptive admission, a third person's statement becomes the admission of the party embracing or espousing it. Adoptive admission may occur when a party:

(a) expressly agrees to or concurs in an oral statement made by another;

(b) hears a statement and later on essentially repeats it;

(c) utters an acceptance or builds upon the assertion of another;

(d) replies by way of rebuttal to some specific points raised by another but ignores further points which he or she has heard the other make; or

(e) reads and signs a written statement made by another.

Here, respondent accepted the pronouncements of Atty. Garlitos and built its case on them. At no instance did it ever deny or contradict its former counsel's statements. It went to great lengths to explain Atty. Garlitos' testimony as well as its implications, as follows:

1. While Atty. Garlitos denied signing the answer, the fact was that the answer was signed. Hence, the pleading could not be considered invalid for being an unsigned pleading. The fact that the person who signed it was neither known to Atty. Garlitos nor specifically authorized by him was immaterial. The important thing was that the answer bore a signature.

2. While the Rules of Court requires that a pleading must be signed by the party or his counsel, it does not prohibit a counsel from giving a general authority for any person to sign the answer for him which was what Atty. Garlitos did. The person who actually signed the pleading was of no moment as long as counsel knew that it would be signed by another. This was similar to addressing an authorization letter "to whom it may concern" such that any person could act on it even if he or she was not known beforehand.

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3. Atty. Garlitos testified that he prepared the answer; he never disowned its contents and he resumed acting as counsel for respondent subsequent to its filing. These circumstances show that Atty. Garlitos conformed to or ratified the signing of the answer by another.

Respondent repeated these statements of Atty. Garlitos in its motion for reconsideration of the trial court's February 19, 1999 resolution. And again in the petition it filed in the Court of Appeals as well as in the comment 15 and memorandum it submitted to this Court.

Evidently, respondent completely adopted Atty. Garlitos' statements as its own. Respondent's adoptive admission constituted a judicial admission which was conclusive on it.

In addition, We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as **negative pregnant** statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to.[31] It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431[32] of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession

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[31] Regalado (2010), *Remedial Law Compendium*, 10th ed., Vol. I, p. 181, citing 1 Martin 306, *Guevarra v. Eala*, A.C. No. 7136, 01 August 2007, 555 Phil. 713-732 (2007); 529 SCRA 1; *Republic v. Sandiganbayan*, G.R. No. 189590, 23 April 2018, 862 SCRA 163 — "Moreover, the denial by private respondent Romeo of his ownership of the subject property is pregnant with an admission, i.e., that he has an interest in his wife's share in the property by virtue of their marital union. This is a negative pregnant, which is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party."

[32] Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. *See* 4 Wigmore on Evidence (1905), pp. 3619-3621.

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of the subject property in 1962, and through the years that they occupied the same.[33]

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.[34]

Ratification by failure to object to the presentation of oral evidence

To reiterate, the first mode of ratification under Article 1405 is failure to object to the presentation of oral evidence. The record is replete with such oral evidence that the Estate of Bueno failed to refute.

Noteworthy is the deposition[35] of Atty. Nicdao, taken in the presence of both parties' counsels. His testimony was offered by the Estate of Peralta for the following purposes:

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[33] Herrera (1999), *Remedial Law*, Vol. 5, p. 107, citing *Solivio v. Court of Appeals*, G.R. No. 83484, 12 February 1990, 261 Phil. 231-250 (1990); 182 SCRA 119.

[34] *Republic v. Menzi*, G.R. No. 183446, 13 November 2012, 698 Phil. 495-525 (2012); 685 SCRA 291, 312-313 — "Having been made by their executor during the trial of the case on the merits, these declarations are binding, at least insofar as the Estate is concerned. Pursuant to Section 4, Rule 129 of the Revised Rules on Evidence, an admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. It may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case. When made in the same case in which it is offered, "no evidence is needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made." The admission becomes conclusive on him, and all proofs submitted contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. Absent any showing in the record that the above-quoted declarations were made by Montecillo through palpable mistake, the Republic correctly argues that they are binding upon the Estate which, for said reason, is precluded from claiming that the funds deposited under TDC Nos. 162828 and 162829 came from the 1984 sale of Bulletin shares to US Automotive."

[35] The deposition was taken before Judge Tiburcio V. Empaynado, Jr. of the Municipal Trial Court of San Antonio, Nueva Ecija on 12 December

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1. To prove that the witness knew personally Atty. Eduardo Peralta, Sr., and Mrs. Luz Peralta, both are now deceased and he likewise knew the defendant spouses Valeriano C. Bueno and the late Genoveva Bueno.

x x x x x x x x x

3. That sometime in 1966 at the house and lot subject of this case, defendants unconditionally transferred and conveyed full ownership of the subject property in favor of the plaintiffs and that he was present during such incident.

x x x x x x x x x

5. That the property subject of this case was given to the plaintiff as partial consideration for the legal services rendered by the late Atty. Eduardo Peralta, Sr.

x x x x x x x x x.[36]

Atty. Nicdao likewise testified in open court and made the following statements under direct examination, without any objection from the counsel of the Estate of Bueno, to wit:

Q Pañero, let me call your attention to paragraph 4 of this affidavit which state and I quote:

"In fact I remember one incident sometime in 1966 at the residence of Atty. Peralta during which occasion, Mr. Valeriano Bueno reiterated his generosity to Atty. Peralta for the legal services rendered thus far in my presence and in the presence of other persons who were similarly invited for the occasion such as Mr. Jose Padilla to who I was also introduced by the late Atty. Peralta."

When you speak of the residence of Atty. Peralta, are you referring to the property subject of this case which is located at 3450 Majistrada [sic] Villamor St., Lourdes Subdivision, Sta. Mesa, Manila which is the property subject of this case?

A Yes Sir.

1997 and on 02 February 1998. Atty. Acerey Pacheco appeared for the Estate of Peralta, while Atty. Domingo Lalaquit appeared for Valeriano Bueno and the Heirs of Genoveva Bueno.

[36] *Rollo*, p. 419.

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Q Could you tell us now what do you remember of that incident sometime in 1966?

A I remember that was in the house of Atty. Eduardo Peralta, Sr. when there was an occasion, I think that was a birthday party. I am [sic] invited, Mr. Bueno, his wife, attorney-to-be Padilla, myself. That is in the evening, May 19 I think.

Q What transpired there, Mr. Witness?

A We took food and drink there, that is what transpired there. Mr. Bueno, if he followed only all the promises of Mr. Bueno, all the employees should have one lot each especially those lots acquired at Antipolo, Rizal. In this particular case, Atty. Peralta do [sic] not have any definite amount of salary. He only promised to give that house and lot to him and this Mr. Peralta told me about that and when there was a birthday we talked with each other that I witnessed personally that Mr. Bueno was really in his kindness, gave the house and lot to Mr. Peralta. It cannot be transferred yet because it is still indebted to Mitsubishi with the promise that when the obligation will be paid, he will legally transfer the property but the truth is verbally, the property was already given to Mr. Peralta on that date. What did Atty. Peralta do afterwards, he made renovations of the property. I think he spent more than P200,000.00 on the renovation.

Q And at that time he made that declaration or pronouncement, could you tell us if Mrs. Genoveva Bueno was present on that occasion?

A Yes sir. Mrs. Bueno is in conformity with the giving of that property because whether she like [sic] or not, if Mr. Peralta would be paid, even three times the value of the property should be paid.

Q Would you affirm before this Honorable Court that from the time Defendant Sps. Bueno gave that property as partial consideration for his legal services, the plaintiff more particularly Atty. Peralta had occupied that property continuously, uninterruptedly and in the concept of an owner?

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A Atty. Peralta occupied the building and lot continuously up to his death. After his death, his heirs were the ones who lived there, sir.[37]

On cross examination, Atty. Nicdao further testified on Bueno's conveyance of the property:

Q And that Valeriano Bueno was already represented by another lawyer other than Atty. Peralta during that time, you don't know?

A You know Pañero, the issue here is whether or not Mr. Bueno had given the house and lot to Atty. Peralta and Mrs. Peralta. At the time when he gave that, Mrs. Bueno is also present and at the same in one occasion in 1966, Mr. Bueno with his wife there on the occasion reiterated that he had already given that house and lot and that is the reason why Atty. Peralta and Mrs. Peralta have made renovations of the building which I think he had even spent more than P300,000.00 for the renovation. That is only the issue that I know but with respect to other issues, I do not know. Suppose we deal on that issue here.

Q So, you do not know that Mr. Bueno imposed certain conditions to Atty. Peralta to own that house and lot already?

A What the condition was, any moment that he will be able to pay the obligation being answer [sic] to the house and lot, he will immediately issue, he will immediately execute a deed of sale sir.

Q And you do not know that Mr. Bueno imposed upon Atty. Peralta that he has to be his lawyer up to the time of his retirement from the practice of law, you don't know?

Atty. Pacheco It was already answered. In fact, the witness stated that there is only one condition set by Mr. Bueno. That the moment the loan had been paid then the deed of sale will be executed.

Court Already answered.

x x x x x x x x x

[37] Id. at 427-429.

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Q In Exh. "C", you said Mr. Valeriano Bueno reiterated that he is going to give Atty. Peralta the house and lot. Was it reduced into writing?

A Personally, we have to believe Bueno. In the first place, he is a millionaire at that time he is [sic] a billionaire. In the second place, I did not know yet that he is lying but I know that he is sincere in giving that. He gave that because of the services of Peralta. That is what I know sir.

Q So, it is now clear that there was no written document on that what you said that Mr. Bueno gave the house and lot to Atty. Peralta, there was no document?

A As far as I'm concerned, I don't know if after that occasion, he gave a document or not but what I know, he really gave that personally sir.[38]

On re-direct, Atty. Nicdao expounded on the circumstances surrounding conveyance of the property from Bueno to Atty. Peralta. Again, there was no objection from the counsel of the Estate of Bueno, thus:

Q Mr. Witness, Atty. Nicdao, you were stating a while ago that sometime in 1966 in one of the occasions held at the residence of Atty. Peralta, Mr. Bueno reiterated that he already gave that property to Atty. Peralta, is that correct?

A Yes sir.

Q So, you mean to tell us that it was as early as 1960 that Mr. Bueno gave that property to Atty. Peralta who physically took possession of that property in the concept of an owner?

A Because he was advised by Mr. Bueno and Mrs. Bueno to transfer to that house at [sic] Villamor St. and that will be their property sir.

Q And after that, after 1960, when Atty. Peralta and his family took physical possession of that property, he introduced improvements in the concept of an owner again?

A Yes sir.

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[38] Id. at 409-413.

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Q During the lifetime of Atty. Peralta, you are not aware of any acts committed or made by Mr. Bueno inconsistent with that agreement he had with Atty. Peralta regarding the giving or transfer of ownership over that property in favor of Atty. Peralta?

A I am not aware, sir. What I know is continuously, until now, he still in the house from 1960.[39]

On the other hand, Edmundo also testified on the agreement between his father and Bueno. The RTC described his testimony in the following manner:

Next witness for the plaintiff is Edmundo Peralta who testified to the fact that there was no condition imposed by Valeriano Bueno to his father, Eduardo Peralta, Sr., regarding the grant of the subject property to the latter. According to him, there was no negotiation whatsoever between Mr. Bueno, his son Jun Bueno and himself regarding the return of the property by way of three (3) million pesos although there was [a] previous proposal to sell the property to Mr. Bueno for that amount. He testified that **Mr. Bueno admitted that the property is really owned by the Peralta's for which reason he is willing to buy the property for three (3) million**. His father has been in continuous legal service for the Buenos up to the time of his death in December of 1983. He knows the fact because of some documents that he has and also the calendar of cases shows that he has been exclusively working on cases shows that he has been exclusively working on cases of Buenos [sic] up to the time of his death.[40]

An examination of the transcript reveals that the sole objection to Edmundo's testimony was that it was hearsay. But since the statement of Bueno was uttered in the presence of Atty. Nicdao, the latter had personal knowledge of such admission. There is no prohibition against a witness testifying

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[39] Id. at 413-414; deposition taking of Atty. Nicdao, 06 February 1998; Atty. Acerey Pacheco appeared for the Estate of Peralta, while Atty. Domingo Lalaquit appeared for Valeriano Bueno and the Heirs of Genoveva Bueno.

[40] Id. at 649.

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to what he heard.[41] The following explanation by a respected Justice is enlightening:[42]

> Admissions are original evidence and no foundation is necessary for their introduction in evidence.
>
> *Oral admissions*. – If the admission was made orally, it may be proved by any competent witness who heard them or by the declarant himself. [citing 31 C.J.S. 1153] **It is not necessary that the witness should be able to fix accurately the date of the conversation in which the admission was made. [citing 31 C.J.S. 1154]. It is not a condition that the exact words of the statement be repeated; the law does not require impossibilities. If the witness states the substance of the conversation or declaration, the admission of his testimony is not erroneous.**"

To be sure, the counsel for the Estate of Bueno did object during the testimony of Dr. Peralta, arguing against the introduction of parol evidence of the contract between Bueno and Atty. Peralta:

> As its last witness, plaintiff presented Dr. Edgardo Peralta who testified [that] he is residing in [sic] 3451 M. Villamor Street, Sta. Mesa, Manila since the year of 1962. He knows that the [sic] Mr. Bueno is the previous owner of the address 3450 M. Villamor Street[,] Sta. Mesa[,] Manila which [is] just across his present address. He said that at present they are the owner of the property because the same has been verbally given to his parents by Mr. Bueno. (In this regard, the defense entered its continuing objection to the question profounded [sic] citing Articles 1403 and 1358 of the Civil Code). He said that the title of the property was not given to his father because this was made a part of the collateral to a mortgage by Mr. Bueno. Thus, they made representation to the bank through a letter dated January 1, 1996 (Exhibit "G") sent by registered mail for the bank to honor the verbal agreement made by and between Mr. Bueno and his late father to which they received no reply.[43]

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[41] *People v. Valdez*, G.R. No. 127753, 11 December 2000, 401 Phil. 19-37 (2000); 347 SCRA 594.

[42] Francisco (1997), *The Revised Rules of Court in the Philippines*, Vol. 7, Part I, pp. 306-307, which is the same as Francisco (2017). *Basic Evidence* (3rd ed.), p. 148, Rule 130, Sec. 26.

[43] *Rollo*, p. 650.

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However, such objection was effectively waived by the Estate of Bueno, when it introduced the testimony of Valeriano Bueno, Jr. (Valeriano Jr.), which tended to prove the oral contract between his father and Atty. Peralta:

> As the last witness for the defendants, VALERIANO BUENO, JR., [who] was presented to the Court on September 29, 2003 who [sic] is the legitimate son of Spouses [Bueno]. He testified that he knew both the plaintiff Spouse Bueno and that Atty. Peralta worked for several years as legal counsel of his father and for the company of his father. Relative to paragraph six (6) of the Amended Complaint, he testified that he has no knowledge of the fact of that but from what he recalled, his father was willing to give Atty. Peralta the ownership of the subject property still in the name of his father if Atty. Peralta can render legal services to the witness' father until Atty. Peralta's retirement but Atty. Peralta resigned in 1974. He also recognized the document presented by the plaintiff concerning the financial arrangement with Edmundo B. Peralta, but nothing happened to it. After the witness confirmed the unfriendly encounters between his father and Edmundo Peralta, he also identified the reconstituted title and the suit he caused to be filed against Edgardo Peralta and Edmundo Peralta.
>
> On cross-examination he testified that he was only aware of the fact that his father was willing to give the property to Atty. Peralta on the condition that Atty. Peralta will serve his father until his retirement, and that during the lifetime of his father, his father did not file any ejectment case nor an action to recover possession against Atty. Peralta and Luz B. Peralta even after the two passed away. He also acknowledged that arrangement between him and Edmundo Peralta on the financial assistance, the improvements introduced by and at the expense of the plaintiff and their children like additional buildings on the subject property for which his father did not interpose any objection.[44]

Accordingly, the oral contract between Bueno and Atty. Peralta is removed from the application of the Statute of Frauds with failure of the Estate of Bueno's counsel to object to parol evidence of the contract, and Valeriano Jr.'s testimony confirming its existence, thus:

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[44] Id. at 651-652.

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On Direct Examination

Q: Now, in paragraph 6 of the amended complaint, the estate of Atty. Eduardo M. Peralta, Sr. and Luz B. Peralta claims that the property, including the improvements located at 3450 Magistrado Villamor Street, Lourdes Subdivision had been given to the former as partial consideration of the services rendered by Atty. Eduardo M. Peralta, Sr.

Now, my question is, what can you say about this allegation in paragraph 6 of the amended complaint?

A: I have no knowledge to that effect, Your Honor. From what I can recall, my father was willing to give him the ownership to the property they are [occupying] if [Atty. Peralta] would render his services to my father until his retirement.[45]

On Cross Examination

Q: And now, you said that you learned that your father was willing to give the property as long as Atty. Peralta will serve until his retirement, is that correct?

A: Yes, sir.

Q: So, there is in fact an agreement that this property will be transferred to Atty. Peralta, subject to that condition?

Court: Subject to that condition.

Q: When he was alive, your father, he did not file any ejectment case against Atty. Peralta?

A: No, sir.

Q: Your father did not even file any case for recovery of possession in the Regional Trial Court, is it not correct?

A: Yes, sir.[46]

Personal knowledge of a judicial admission is not required and competence of a witness to testify is determined at the time of testimony

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[45] TSN, 29 September 2003, p. 9.

[46] Id. at 33-35.

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The importance of single words in oral discourse is comparatively much less than in writings, and memory does not retain precise words, except of simple utterances and for a short time.[47] If the witness states the substance of the conversation or declaration, it is not error for the court to admit his testimony.[48] Thus, in examining the statements of the witnesses, the Court is not looking for verbal precision, only that said utterances amount to an unequivocal admission of the contract.

It is clear from Valeriano Jr.'s testimony that he was, in fact, aware of the transaction over the subject realty and he acknowledged that his father was willing to part ownership over the property in favor of Atty. Peralta. To repeat, such statement is in the nature of an "adoptive admission"[49] and, therefore, does not require that he has first-hand knowledge of the contract from its inception in 1960.[50]

In addition to ratification by failure to object during the hearing, the Estate of Bueno's Answer amounted to a ratification of the oral contract when it stated that the only reason for Bueno's failure to convey the property to Atty. Peralta was the encumbrance on the property: "Specific performance as

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[47] 29A Am. Jur., *Id.*, p. 122, citing *Edwards v. State*, 198 Md 132, 81 A2d 631, 26 ALR2d 874.

[48] Francisco (2017), *Basic Evidence* (3rd ed.), p. 148 citing 31 C.J.S. 1153-1154.

[49] Agpalo (2003), *Handbook on Evidence* (First ed.), p. 157 — "An admission may not necessarily be one made by the party himself. It may be an adoptive admission. An adoptive admission is a party's reaction to a statement or action by another person when it is reasonable to treat the party's reaction as admission of something stated or implied by the other person. The basis for admissibility of admissions made vicariously is that arising from the ratification or adoption by the party of the statements which the other person had made." (citing *Estrada v. Desierto*, 356 SCRA 108).

[50] Wigmore on Evidence, Vol. 2, p. 1222; 29A Am. Jur., 2nd ed. (1994), pp. 120-121, citing FRE Rule 602, *United States v. Ammar* (CA3 Pa) 714 F2d 238, 13 Fed Rules Evi Serv 849 and other cases; Jones on Evidence, Vol. 2, 5th ed. (1958), pp. 634-635; *Estrada v. Desierto, et al.*, G.R. Nos. 146710-15, 02 March 2001, 03 April 2001.

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prayed for by the plaintiff is very improbable if not impossible as the subject property of this case is encumbered with financial institutions that unless redeemed or obligations paid defendants spouses cannot act as prayed for."[51] The Estate of Bueno, likewise, failed to allege that Atty. Peralta's service until retirement was a condition of the contract.

As early as 1910, in *Conlu v. Araneta*[52] (*Conlu*), this Court had ruled that a contract of sale of real property that does not comply with the form required for its execution is not automatically invalidated by such defect. If the parties to the action fail to object to the admissibility of oral evidence to the contract of sale of real property during trial, then the contract will be just as binding upon the parties as if it had been reduced to writing.

In *Abrenica v. Gonda*[53] (*Abrenica*), the Court explained the rule on the waiver of the benefit of the parol evidence rule, or the ratification by failure to object:

> Now then, it has been repeatedly laid down as a rule of evidence that a protest or objection against the admission of any evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of the evidence is, or may be, inferred.
>
> A motion to strike out parol or documentary evidence from the record is useless and ineffective if made without timely protest, objection, or opposition on the part of the party against whom it was presented.
>
> > Objection to the introduction of evidence should be made before the question is answered. When no such objection is made, a motion to strike out the answer ordinarily comes too late. (De Dios Chua Soco vs. Veloso, 2 Phil. Rep., 658).

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[51] *Rollo*, p. 912.

[52] G.R. No. L-4508, 04 March 1910, 15 Phil. 387-391 (1910).

[53] G.R. No. L-10100, 15 August 1916, 34 Phil. 739-750 (1916).

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In the case of Conlu *vs.* Araneta and [Guanko] (15 Phil. Rep., 387) in which one of the points discussed was the inadmissibility of parol evidence to prove contracts involving real property, in accordance with the provisions of section 335 of the Code of Civil Procedure, no objection having been made to such evidence, this court said:

> A failure to except to the evidence because it does not conform with the statute, is a waiver of the provisions of the law.
>
> An objection to a question put to a witness must be made at the time question is asked. (Kreigh *vs.* Sherman, 105 III., 49; 46 Am. Dig., Century Ed., 932.)
>
> Objections to evidence and the reason therefor must be stated in apt time. (Kidder *vs.* Macllhenny, 81 N.C., 123; 46 Am. Dig., Century Ed., 933.)
>
> It is held in general that by failing to object to the proof of an oral contract a party waives the benefit of the statute and cannot afterward claim it. (20 Cycl., 320, where several decisions on the subject are cited.)

Many rulings have been made in regard to this matter by the courts of the United States, and among them we cite a few found in volume 46 of the American Digest, page 933:

> Where plaintiff without objection proved by parol evidence that certain land belonged to him, defendant cannot afterwards object that the deed should have been produced. (Clay *vs.* Boyer, 10 Ill. [5 Gilman], 506.)
>
> After a question has been repeatedly asked and answered without objection, it is too late to object to its repetition on the ground that the answer is in itself inadmissible. (Mckee *vs.* Nelson, 4 Cow., 355; 15 Am. Dec., 384.)
>
> An objection to the admission of evidence on the ground of incompetency, taken after the testimony has been given, is too late. (In re Morgan, 104 N.Y., 74; 9 N.E., 861.)
>
> Plaintiff having testified to conversation between defendant's son and himself until the direct examination extended through about 12 folios, defendant could not sit by and then object to the foregoing testimony. (Goehme *vs.* Michael, 5 N.Y. St. Rep., 492.)

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The first witness to testify at the trial was the plaintiff himself. From the first question put to him, it clearly appeared, as may be seen in folios 5, 6, and 7 of the stenographic notes, that the contract of pledge or mortgage of the lands, as the plaintiff himself improperly calls it, or the sale of said lands with right of repurchase, between him and the defendant Gonda, was verbal one and for the period of seven years, made in the course of a conversation between the plaintiff and said defendant in the house of Domingo Tamayo. The defendants' counsel, however, did not endeavor immediately to obtain from the witness a statement as to whether that contract was set forth in any instrument; he did not object to the witness continuing to testify in regard to the contract, nor did he in any way object to the questions they continued to ask the witness concerning the matter, though he did object to one question as leading and to another one as irrelevant, thus indicating that he had no other objection to make to those questions. Only after witness, the plaintiff, had finished answering all the questions put to him on the subject of the contract, did counsel for the defendants move that all of his testimony and statements be stricken out. It is obvious that the court should not have granted that motion; but we must also bear in mind that the court did not grant other similar and subsequent motions made during the examination of the other witnesses; he merely said that he would take them under advisement. The fact that the defendants' counsel asked various cross-questions, both of the plaintiff and of the other witnesses, in connection with the answers given by them in their direct examination, with respect to particulars concerning the contract, implies a waiver on his part to have the evidence stricken out.

It is true that, before cross-examining the plaintiff and one of the witnesses, this same counsel requested the permission of the court, and stipulated that his clients' rights should not be prejudiced by the answers of those witnesses in view of the motion presented to strike out their testimony; but this stipulation of the defendants' counsel has no value or importance whatever, because, if the answers of those witnesses were stricken out, the cross-examination could have no object whatsoever, and if the questions were put to the witnesses and answered by them, they could only be taken into account by connecting them with the answers given by those witnesses on direct examination.

As no timely objection or protest was made to the admission of the testimony of the plaintiff with respect to the contract; and as the motion to strike out said evidence came [too] late; and, furthermore,

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as the defendants themselves, by the cross-questions put by their counsel to the witnesses in respect to said contract, tacitly waived their right to have it stricken out, that evidence, therefore, cannot be considered either inadmissible or illegal, and [the] court, far from having erred in taking it into consideration and basing his judgment thereon, notwithstanding the fact that it was ordered to be stricken out during the trial, merely corrected the error he committed in ordering it to be so stricken out and complied with the rules of procedures hereinbefore cited.

The *Abrenica* rule has been consistently applied by the Court through the years.[54] One case that has been frequently cited in recent years is that of *Limketkai Sons Milling, Inc. v. Court of Appeals*,[55] (*Limketkai*) where we reiterated that cross-examination is a waiver of the defense of the Statute of Frauds, to wit:

In the instant case, counsel for respondents cross-examined petitioner's witnesses at length on the contract itself, the purchase price, the tender of cash payment, the authority of Aromin and Revilla, and other details of the litigated contract. Under the *Abrenica* rule (reiterated in a number of cases, among them *Talosig vs. Vda. de Nieba*, 43 SCRA 472 [1972]), even assuming that parol evidence was initially inadmissible, the same became competent and admissible because of the cross-examination, which elicited evidence proving the evidence of a perfected contract. The cross-examination on the contract is deemed a waiver of the defense of the Statute of Frauds (*Vitug*, Compendium of Civil Law and Jurisprudence, 1993 Revised Edition, *supra*, p. 563).

The reason for the rule is that as pointed out in *Abrenica* "if the answers of those witnesses were stricken out, *the cross-examination*

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[54] Among these cases are: *Sps. Reyes v. Court of Appeals*, G.R. No. 147758, 26 June 2002, 432 Phil. 1052-1072 (2002); 383 SCRA 471; *Maunlad Savings and Loan Association v. Court of Appeals*, G.R. No. 114942, 27 November 2000, 399 Phil. 590-603 (2000); 346 SCRA 35; *Cruz v. Court of Appeals*, G.R. No. 79962, 10 December 1990, 270 Phil. 299-314 (1990); 192 SCRA 209; *Barretto v. Manila Railroad Co.*, G.R. No. L-21313, 29 March 1924, 46 Phil. 964-967 (1924).

[55] G.R. No. 118509, 01 December 1995, 321 Phil. 105-129 (1995); 250 SCRA 523, 538.

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could have no object whatsoever and if the questions were put to the witnesses and answered by them, they could only be taken into account by connecting them with the answers given by those witnesses on direct examination" (pp. 747-748).

We see no reason to abandon the *Abrenica* rule now, especially as the rule is, like the Statute of Frauds, still found in our substantive law.

Ratification by acceptance of benefits

Based on the admissions on record, it is readily apparent that, even way back in 1962, Bueno and Atty. Peralta have been mutually benefiting from the oral contract: in exchange for his legal services, Atty. Peralta received from Bueno the house and lot at 3450 Magistrado Villamor in Sta. Mesa.

The existence of a perfected contract of sale can be based on the conduct of the parties.[56] In *Maharlika Publishing Corporation vs. Tagle*,[57] the Court held:

> x x x In other words, appropriate conduct by the parties may be sufficient to establish are agreement, and there may be instances where interchanged correspondence does not disclose the exact point at which the deal was closed, but the actions of the parties may indicate that a binding obligation has been undertaken.

As to the alleged resignation of Atty. Peralta, the records bear out that the same was ineffectual, or can be deemed as not a true resignation because he continued to render legal services to Bueno and his companies despite said resignation. Even assuming that Atty. Peralta did resign, he can be considered to have resumed his position and engaged as counsel until he reached the mandatory retirement age and even beyond. Thus, he can be considered to have complied with the condition.

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[56] *See MCC Industrial Sales Corporation v. Ssangyong Corporation*, G.R. No. 170633, 17 October 2007, 562 Phil. 390-441 (2007); 536 SCRA 408.

[57] G.R. No. 65594, 09 July 1986, 226 Phil. 456-470 (1986); 142 SCRA 553.

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Bueno should not be allowed to repudiate his own acts and representations to the prejudice of Atty. Peralta and his family who relied upon them. It does not matter that neither the receipt for the consideration nor the sale itself was in writing. In any event, by invoking the unenforceability of the arrangement under the Statute of Frauds, Bueno and subsequently, his heirs, acknowledged the existence of a contract between him and Atty. Peralta.[58]

Previous, simultaneous, and subsequent acts of the parties are properly cognizable indicia of their true intention.[59] The courts may consider the relations existing between the parties and the purpose of the contract, particularly when it was made in good faith between mutual friends,[60] as acknowledged in the petition itself.[61]

Bueno's acts allowing Atty. Peralta and his family to stay on the property, introduce substantial improvements, and pay the real property tax thereon, coupled with the absence of any action to recover the subject property show the intention of Bueno to cede ownership over the same in favor of Atty. Peralta. The Court likewise notes the testimony of Gaudencio Juan, initially a company forester and personnel manager but retired as Special Assistant to the President, that Bueno had the propensity to promise real property to his employees.[62]

The agreement between Bueno and Atty. Peralta arose not only to mutually benefit each other – legal services in exchange of real property – but was likewise borne out of kindness and

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[58] *See Municipality of Hagonoy v. Hon. Dumdum, Jr.*, G.R. No. 168289, 22 March 2010; 630 Phil. 305-323 (2010); 616 SCRA 315.

[59] *Vitalista v. Bantigue Perez*, G.R. No. 164147, 524 Phil. 440-461; *Velazquez v. Justo Teodoro*, G.R. No. L-18666, 17 February 1923, 46 Phil. 757 (1923); *Borromeo v. Court of Appeals*, G.R. No. L-22962, 28 September 1972, 150-B Phil. 770, 777 (1972); 47 SCRA 65, 73.

[60] Paras (2012), *Civil Code of the Philippines Annotated* (17th ed.), Vol. 4, p. 714, citing *Kidwell v. Cartes*, 43 Phil. 953 (1922).

[61] Petition, paragraph 4.5, p. 8.

[62] *Rollo*, p. 651.

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generosity. This was made public by Bueno himself as testified to by witness Atty. Nicdao.[63] This Court must not countenance the acts of Bueno and those of his heirs as they, by their silence, delay, and inaction, knowingly induced Atty. Peralta and his family to spend time, effort, and expense in paying real property tax and making improvements since 1962 only to spring an ambush and deny the claim of title when the relationship between the parties has turned sour.

Conclusion

It is human nature on the part of Atty. Peralta's family to assert their right before a court of justice when such is threatened. It is also human nature on the part of Bueno and his family to delay the filing of any claim of possession because of the clear absence of merit in their own claim.[64] However, the oral contract between Bueno and Atty. Peralta is ratified by both parties and thus must be enforced and upheld. This is in harmony with the principle that courts of equity will not allow the Statute of Frauds to be used as an instrument of fraud.[65] This is also in recognition of the valuable legal services already rendered by Atty. Peralta and from which Bueno and his family benefited.

WHEREFORE, the Petition is hereby **DENIED**. The 31 August 2012 Decision and the 08 February 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 86410 are **AFFIRMED**.

SO ORDERED.

Gesmundo, Inting,[*] and *Gaerlan, JJ.*, concur.

Leonen, J. (Chairperson), see separate dissenting opinion.

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[63] Id. at 703, *see* Brief for the Appellants, citing Annex A of the 17 January 1996 Complaint; *see* also p. 225, Comment/Opposition citing the TSN dated 12 December 1997.

[64] *Catholic Bishop of Balanga v. Court of Appeals*, G.R. No. 112519, 14 November 1996; 332 Phil. 206-226 (1996); 264 SCRA 181.

[65] *Carbonnel v. Poncio*, G.R. No. L-11231, 12 May 1958; 103 Phil. 655-661 (1958); 103 SCRA 655, 660.

[*] Designed additional member per raffle dated 22 January 2020.

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DISSENTING OPINION

LEONEN, *J.*:

The majority finds that an alleged oral contract to transfer interest in a real property was ratified through the failure to object to oral evidence, thus removing it from the ambit of the Statute of Frauds.

I disagree.

Before the partial execution of a contract of sale may remove an oral contract from coverage of the Statute of Frauds, the terms of the contract must be clearly established[1] to sufficiently deem the action alleged as partial performance as having been done solely pursuant to the alleged oral contract.

This case arose from a Complaint[2] for specific performance filed by the Estate of Atty. Eduardo M. Peralta, Sr. (Peralta) and Luz B. Peralta, represented by Dr. Edgardo B. Peralta, against Spouses Valeriano (Bueno) and Genoveva Bueno (Genoveva).

The Peralta Estate alleged that Peralta handled numerous legal cases for the Bueno Spouses,[3] and that as partial payment for his services, the Bueno Spouses gave him their real property at No. 3450 Magistrado Villamor St., Lourdes Subdivision, Sta. Mesa, Manila.[4]

In 1962, Peralta, his wife, and their legitimate heirs, except for Eduardo, Jr., moved to the property and introduced numerous improvements on it.[5] The Bueno Spouses gave Peralta a photocopy of the title over the property for reference, and had

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[1] *Dao Heng Bank, Inc. v. Spouses Laigo*, 592 Phil. 172-182 (2008) [Per J. Carpio Morales, Second Division].

[2] *Rollo*, pp. 165-179.

[3] Id. at 168.

[4] Id. at 172.

[5] Id. at 173-174.

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him pay the realty taxes for the property, which his heirs continued to pay after Peralta's death in 1983.[6]

After Peralta died, one of his sons, upon Bueno's request, turned over the records of the cases handled by Peralta.[7]

In a letter dated September 15, 1990, Dr. Edgardo B. Peralta, replying to a letter from Bueno's other lawyer, asserted Peralta's full ownership over the property and demanded that the Bueno Spouses execute documents conveying the real property to the Peralta's.[8] In response, the Bueno Spouses demanded that the Peraltas surrender possession of the property.[9]

Several demands were made to execute the conveyance documents over the property, which the Bueno Spouses refused to do.[10] Instead, they and their daughter-in-law intruded on the property and, one time, Bueno even went to the property and physically attacked Edmundo B. Peralta, one of Peralta's successors-in-interest.[11]

Thus, Peralta's heirs were constrained to file the Complaint, praying that the Bueno Spouses be ordered to execute a deed of conveyance over the property.[12]

In their Answer with Affirmative Defenses and Counterclaim,[13] the Bueno Spouses denied the allegations in the Complaint for being hearsay, baseless, and products of imagination. They argued, among others, that the Peralta Estate's claim was unenforceable under the Statute of Frauds. They maintained that Peralta and his family were merely allowed by the Bueno

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[6] Id. at 176-177.

[7] Id.

[8] Id. at 177.

[9] Id.

[10] Id. at 177-178.

[11] Id. at 178.

[12] Id. at 179.

[13] Id. at 911.

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Spouses to reside on the property, and Peralta himself never demanded that Bueno give or sell the property to him.[14] Moreover, they asserted that it would be impossible to convey the property to the Estate as it was encumbered with financial institutions, which had not yet been paid.[15]

The Peralta Estate later filed an amended Complaint, impleading the heirs of Genoveva, who had died before the trial started. The heirs moved to dismiss the Complaint, insisting among others that the action was barred by the Statute of Limitations.[16]

In a July 29, 1998 Order, the Regional Trial Court denied the Motion to Dismiss. It noted that the grounds alleged were not included in the Answer, which had not been amended after the Complaint had been amended.[17] This Order was assailed through a petition for certiorari before the Court of Appeals, which dismissed it for being prematurely filed, and for failure to move for reconsideration before filing the petition.[18]

On October 18, 2000, Bueno died.[19]

Meanwhile, trial on the merits ensued. After the Peralta Estate had formally offered its evidence, the defendants sought leave to file a demurrer to evidence. In their Demurrer to Evidence, they claimed that the Peralta Estate failed to prove that the Bueno Spouses gave the property to Peralta in 1960.[20]

The Regional Trial Court denied the Demurrer to Evidence.[21] Hypothetically admitting the allegations in the Complaint, it

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[14] Id. at 911-912.

[15] Id. at 912-913.

[16] Id. at 80.

[17] Id. at 81.

[18] Id. at 82.

[19] Id. at 452.

[20] Id. at 82.

[21] Id. at 245.

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rejected the argument that the verbal contract was covered by the Statute of Frauds, which it said applied only to executory contracts, not the verbal contract between Peralta and Bueno.[22] It also noted that the case was not barred by prescription, as it was essentially an action to quiet title, which is imprescriptible when delivery of possession of the property has been made.[23]

After trial, the Regional Trial Court dismissed the Peralta Estate's Complaint in an October 11, 2005 Decision.[24] It summarized the evidence presented as follows:

Evidence for the Plaintiff

The plaintiffs presented three witnesses namely: Atty. Moises Nicdao, Edmund[o] B. Peralta, and Dr. Edgardo D. Peralta.

During the deposition taking of witness for the plaintiff, Atty. Moises Nicdao, which was conducted in the Municipal Trial Court of San Antonio, Nueva Ecija, he testified, *inter alia*, to the following facts:

In the early days of his legal profession he established his own law office at Escolat, Marisol Building until he joined Atty. Eduardo Peralta, Sr. who was having an office at the Mercedes Building in Quiapo sometime between the year 1958 to 1959. He was prodded by the late Atty. Peralta to associate with the law firm headed by Atty. Peralta as Vice-President and Chief Legal Counsel to assist in the handling of cases of Valeriano Bueno and his several companies. He identified his sworn statement to the effect that he recalled an incident in 1966 at the residence of Atty. Peralta wherein he publicly reiterated his generosity to Atty. Peralta for the services the latter has rendered. During the said occasion Atty. Peralta told him that he was not receiving any definite salary from Mr. Valeriano Bueno but the latter made a promise to give him the subject property. The subject property could not be transferred immediately because of [sic] the same is encumbered. Valerian[o] Bueno verbally promised that upon

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[22] Id. at 247-247-A.

[23] Id. at 248.

[24] Id. at 646. The October 11, 2005 Decision in Civil Case No. 96-76696 was penned by Judge Vicente A. Hidalgo of the National Capital Judicial Region, Branch 37, Manila.

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the payment of the obligation, the said property shall be transferred to Atty. Peralta.

Next witness for the plaintiff is Edmundo Peralta who testified to the fact that there was no condition imposed by Valeriano Bueno to his father, Eduardo Per[al]ta Sr., regarding the grant of the subject property to the latter. According to him, there was no negotiation whatsoever between Mr. Bueno, his son Jun Bueno and himself regarding the return of the property by way of payment of three (3) million pesos although there was previous proposal to sell the property to Mr. Bueno for that amount. He testified that Mr. Bueno admitted that the property is really owned by the Peralta's for which reason he is willing to buy the property for three (3) million. His father has been in continuous legal service for the Buenos up to the time of his death in December of 1983. He knows the fact because of some documents that he has and also the calendar of cases shows that he has been exclusively working on cases of Buenos up to the time of his death. (TSN February 2, 2004, pp. 4-16)

On Cross-Examination, the witness was asked if he has any documents which would show that his father has served as counsel for Buenos on 1983 and he was able to present only documents of earlier dates of 1979 and 1976. His father never filed any case for the transfer of the property in his favor. Likewise, he has no knowledge of [the] existence of any documents executed in favor of Peralta's to show ownership of the property. Neither did her mother ever send any demand letter for the transfer of the property in Peraltas' favor even up to the time of his death in 1990. He confirmed that there is no document to show that they are the owner[s] of the property. After the death of his father they never execute[d] any deed of partition as the same has been privately arranged among them as heirs and they agreed to adjudicate the same to their youngest brother Eduardo Peralta, Jr. Further, he testified that they filed several criminal charges against Buenos for harassing and scandalous acts they have committed in trying to evict them from the premises. (TSN, July 12, 2004, pp. 10-24)

As its last witness, plaintiff presented Dr. Edgardo Peralta who testified he is residing in 3451 M. Villamor Street, Sta. Mesa[,] Manila since the year of 1962. He knows that the Mr. Bueno is the previous owner of the address 3450 M. Villamor Street[,] Sta. Mesa[,] Manila which [is] just across his present address. He said that at present they are the owner[s] of the property because the same has been

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verbally given to his parents by Mr. Bueno. (In this regard, the defense entered its continuing objection to the question pro[p]ounded citing Articles 1403 and 1358 of the Civil Code). He said that the title of the property was not given to his father because this was made a part of the collateral to a mortgage by Mr. Bueno. Thus, they made representations to the bank through a letter dated January 1, 1996 (Exhibit "G") sent by registered mail for the bank to honor the verbal agreement made by and between Mr. Bueno and his late father to which they received no reply.

Evidence for the Defense

The defense presented **GAUDENCIO JUAN Y PAGADOR**, 82 years old and residing at 8-A St. (sic) Mary St., Proj. 8, Quezon City who testified, among others, that he knows Spouses Valeriano Bueno and Genoveva Ignacio because he worked with their company for 38 years. He likewise knows Atty. Eduard Peralta, Sr. because he was working with the company of Spouses-defendants where he was working. Atty. Peralta started working in the company in the year 1957, as a retained counsel of Bueno group of companies, mostly of six (6) logging companies — Bueno Industrial & Development Corp., Butuan Lumber and Manufacturing Co., Inc., Mahogany Products, Inc., Palanan Logging Enterprise, Looc Bay Lumber Co., on a case to case basis. He recalled that initially he worked in the company as company forester and personnel manager at the same time and after he retired in 1985 he was still retained by the company as Special Assistant to the President. He testified that he knows that Spouses-Defendants Bueno are the owners of the subject property covered by Transfer Certificate Title No. 47603 (RT-192) the same property actually occupied by the Peraltas, more particularly the children of late Peralta Sr., namely: Edmundo, Edgardo and Eduardo all surnamed Peralta. Before the Peraltas occupied the property, the same was occupied by Juanti Merin, the Forester of Bueno Realty and group of companies. After Merin's resignation, the property was assigned to the Peraltas sometime in 1960 as additional benefits being granted to a lawyer of the company. He testified that Atty. Eduardo Peralta, Sr. resigned or severed his employment with the company of Bueno sometime in 1975 as evidenced by his letter-resignation dated May 19, 1975 (Exhibit "1").

On Cross-examination he testified that Atty. Peralta was retained as counsel by the Bueno group of companies in 1957 and the witness was hired as a company forester of the Bueno group of companies

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in 1964 up to the time he retired in 1985. Thereafter, and even after Valeriano Bueno Sr. died, he continued to act as consultant of Valeriano Bueno, Sr.'s son and the group of companies of the Buenos. During his cross-examination, he acknowledged that Mr. Bueno, Sr. also promised him that he will own a lot in one of the pieces of property of the Buenos at Antipolo, Rizal but it did not materialize. He said that he could not remember if Atty. Eduardo Peralta has rendered legal services in favor of Buenos after his resignation.

For his part, **DOMINGO LALAQUIT y GONZALES**, testified as the second witness for the defendants as follows:

He was hired by the company lawyer of Bueno sometime in 1973 and is presently connected with the same company as lawyer and stockholder of United Realty and Development Corp., Rich Golden School in Antipolo Rizal. He confirmed what had transpired during the pre-trial conference. The plaintiff's possession of the subject property and his lack of knowledge regarding the transfer of the subject property, his employment as counsel for the defendants in 1973 and his role in the cases referred to him by Bueno thereafter.

As the last witness for the defendants, **VALERIANO BUENO, JR.**, was presented to the Court on September 29, 2003 who is the legitimate son of Spouses. He testified that he knew both the plaintiff Spouse Bueno and that Atty. Peralta worked for several years as legal counsel of his father and for the company of his father. Relative to paragraph six (6) of the Amended Complaint, he testified that he has no knowledge of that but from what he recalled, his father was willing to give Atty. Peralta the ownership of the subject property still in the name of his father if Atty. Peralta can render legal services to the witness' father until Atty. Peralta's retirement but Atty. Peralta resigned in 1974. He also recognized the document presented by the plaintiff concerning the financial arrangement with Edmundo B. Peralta, but nothing happened to it. After the witness confirmed the unfriendly encounters between his father and Edmundo Peralta, he also identified the reconstituted title and the suit he caused to be filed against Edgardo Peralta and Edmundo Peralta.

On cross-examination he testified that he was only ware of the fact that his father was willing to give the property to Atty. Peralta on the condition that Atty. Peralta will serve his father until his retirement, and that during the lifetime of his father, his father did not file any ejectment case nor an action to recover possession against Atty. Peralta and Luz B. Peralta even after the two passed away. He

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also acknowledged the arrangement between him and Edmundo Peralta on the financial assistance, the improvements introduced by and at the expense of the plaintiff and their children like additional buildings on the subject property for which his father did not interpose any objection.[25] (Emphasis in the original)

Based on the evidence, the Regional Trial Court found that the Bueno Spouses and Peralta reached an agreement where Peralta would be awarded the property in exchange for his services as counsel for the Buenos and their companies until his retirement.[26] However, Peralta failed to fulfill this condition because he resigned in 1975, as shown in his handwritten resignation letter.[27] Together with the other pieces of evidence, this letter established that Peralta resigned eight years before his death in 1983,[28] and thus, did not render services until his retirement. Consequently, the Bueno Spouses had the right to rescind the contract.[29]

The Regional Trial Court also observed that Peralta never attempted to assert any rights or ownership over the property after it had allegedly been given to him. The trial court took this to mean that the Bueno Spouses had never unconditionally promised to convey the property, and Peralta was aware that he had not acquired any right of ownership over it. The trial court reasoned that Peralta must have realized that after his resignation, he and his family were being allowed to occupy the property out of the Bueno Spouses' goodwill and generosity.[30]

The Regional Trial Court further ruled that the cause of action had already prescribed. Although it had previously rejected the argument of prescription when it denied the Demurrer to Evidence, this rejection was based on the assumption that the

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[25] Id. at 648-652.

[26] Id. at 654.

[27] Id. at 655.

[28] Id.

[29] Id. at 656.

[30] Id.

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Complaint was an action to quiet title, which is imprescriptible. After evidence had been presented, however, it found that the Complaint was not an action to quiet title, but one anchored on a right to enforce an oral contract, which prescribes in six years.[31] The right of action was allegedly acquired in 1960, and thus, had already prescribed when the Peralta Estate filed the Complaint in 1996.[32]

The dispositive portion of the Regional Trial Court Decision reads:

> WHEREFORE, premises considered, the complaint is hereby ordered DISMISSED for lack of merit. The defendants SPOUSES VALERIANO and GENOVEVA BUENO and their heirs are declared as rightful owner of the subject property.
>
> SO ORDERED.[33]

The Peralta Estate moved for reconsideration,[34] but the Motion was denied in the Regional Trial Court's December 19, 2005 Order. Thus, the Peralta Estate appealed before the Court of Appeals.[35]

The Court of Appeals granted the Peralta Estate's appeal in an August 31, 2012 Decision.[36] It found that Peralta and the Bueno Spouses entered into an oral conditional contract with a suspensive condition of Peralta's retirement. Thus, the Bueno Spouses were obligated to convey the property to Peralta upon his retirement.[37]

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[31] Id. at 657 citing CIVIL CODE, Art. 1145.

[32] Id. at 657-658.

[33] Id. at 658.

[34] Id. at 659-675.

[35] Id. at 679.

[36] Id. at 75-116. The August 31, 2012 Decision in CA-G.R. CV No. 86410 was penned by Associate Justice Rosmari D. Carandang (now a member of this Court) and concurred in by Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba of the Court of Appeals Fifth Division, Manila.

[37] Id. at 96-97.

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The Court of Appeals reasoned that the oral agreement was enforceable as a verbal *facio ut des* contract. It cited *Perez v. Pomar*,[38] where this Court invoked the unjust enrichment rule and enforced an oral *facio ut des* contract because it was established that a party had already rendered services pursuant to the agreement.[39]

The Court of Appeals further appreciated that the Peralta Estate's witness, Atty. Moises Nicdao (Atty. Nicdao), said that Peralta did not have a definite salary. It noted that the Bueno Estate did not present any evidence on Peralta's salary or any compensation, and that Peralta's possession of the property was the result of Bueno's generosity. Thus, the Court of Appeals concluded that the property formed the compensation for Peralta's services, and that his possession of the property was for a valuable consideration. It found it unlikely that Peralta would have accepted free rent of the property as part of his compensation.[40]

The Court of Appeals further held that this oral agreement was not covered by the Statute of Frauds. It reasoned that the contract must have been perfected, because Bueno relinquished possession of the property while Peralta rendered his legal services.[41]

Further, the Court of Appeals found that Peralta served Bueno until retirement. It pegged Peralta's retirement to be when he reached the age of 60, reasoning that the Ministry of Labor and Employment prescribed 60 years as the age of retirement.[42] It reversed the Regional Trial Court's finding that Peralta had completely resigned in 1975,[43] as the evidence preponderantly showed that he continued to work for the Buenos even after the supposed resignation.[44]

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[38] 2 Phil. 682 (1903) [Per J. Torres, En Banc].

[39] *Rollo*, pp. 97-98.

[40] Id. at 99-100.

[41] Id. at 100.

[42] Id. at 109.

[43] Id. at 107.

[44] Id. at 103.

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To support this finding, the Court of Appeals noted how after 1975, Peralta continued to work on various engagements for the Buenos.[45] Among others, it noted that in 1980, when Peralta was at the retirement age of 60, he was still the counsel on record for the Buenos in the Supreme Court case, *Bueno Industrial v. R.C. Aquino Timber*.[46]

The Court of Appeals also found that the action had not prescribed. It reasoned that, contrary to the Regional Trial Court's finding, the Complaint was not an action to enforce an oral contract, because both parties had already performed their obligations under the contract. It deemed the contract as an action to quiet title, and was therefore imprescriptible since the Peralta Estate was in possession of the property.[47] It also rejected the argument of laches, being "merely a form of equitable relief[.]"[48]

This led to the Petition before this Court.

I maintain that the Petition is meritorious.

The Statute of Frauds was written into Article 1403 (2) of the Civil Code so that courts would not rely on the unassisted memories of witnesses in proving the terms of a contract, to prevent fraud in the enforcement of obligations.[49] However, as correctly pointed out by my colleagues, the Statute of Frauds is not applicable to partially performed contracts.

In *Asia Production Company, Inc. v. Paño*,[50] this Court explained that both the Statute of Frauds and the exceptions to its application are intended to prevent the perpetration of fraud:

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[45] Id. at 103-107.

[46] Id. at 109 citing 148 Phil. 579 (1971) [Per J. Castro, En Banc].

[47] Id. at 111.

[48] Id. at 114.

[49] *Heirs of Claudel v. Court of Appeals*, 276 Phil. 114 (1991) [Per J. Sarmiento, Second Division].

[50] 282 Phil. 469 (1992) [Per J. Davide, Jr., Third Division].

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The purpose of the statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. It was not designed to further or perpetuate fraud. Accordingly, its application is limited. It makes only ineffective actions for specific performance of the contracts covered by it; it does not declare them absolutely void and of no effect. As explicitly provided for in the above-quoted paragraph (2), Article 1403 of the Civil Code, the contracts concerned are simply "unenforceable" and the requirement that they — or some note or memorandum thereof — be in writing refers only to the manner they are to be proved. It goes without saying then, as held in the early case of *Almirol, et al. vs. Monserrat*, that the statute will apply only to executory rather than executed contracts. Partial execution is even enough to bar the application of the statute. In *Carbonnel vs. Poncio, et al.*, this Court held:

> ". . . It is well-settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts, not to contracts that are totally or partially performed.
>
> > 'Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief. It is well settled in Great Britain and in this country, with the exception of a few states, that a sufficient part performance by the purchaser under a parol contract for the sale of real estate removes the contract from the operation of the statute of frauds.'
>
> In the words of former Chief Justice Moran: 'The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud.' However, if a contract has been totally or partially performed, the exclusion of parol evidence would promote fraud or bad faith, for it would enable

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> the defendant to keep the benefits already derived by him from the transaction in litigation, and, at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby."[51] (Citations omitted)

Considering that there was an allegation of performance of an oral contract, I agree that it was proper to consider the possibility that the Statute of Frauds may not cover the agreement between Peralta and the Bueno Spouses. However, when there is no clear evidence from the contracting parties themselves that would signify their specific intentions when entering into the verbal agreement, courts must be careful in determining that a contract has been partially performed.

Before partial performance may remove an agreement for the sale of real property from the Statute of Frauds, the terms of the agreement must first be clear. In *Babao v. Perez*,[52] this Court emphasized:

> Assuming *arguendo* that the agreement in question falls also under paragraph (a) of Article 1403 of the new Civil Code, *i.e.*, it is a contract or agreement for the sale of real property or of an interest therein, it cannot also be contended that that provision does not apply to the present case for the reason that there was part performance on the part of one of the parties. In this connection, it must be noted that this statute is one based on equity. It is based on equitable estoppel or estoppel by conduct. It operates only under certain specified conditions and when adequate relief at law is unavailable. And one of the requisites that need be present is that the agreement relied on must be certain, definite, clear, unambiguous and unequivocal in its terms before the statute may operate. Thus, the rule on this matter is as follows:
>
> > "The contract must be fully made and completed in every respect except for the writing required by the statute, in order to be enforceable on the ground of part performance. The parol agreement relied on must be certain, definite, clear, unambiguous, and unequivocal in its terms, particularly where the agreement is between parent and child, and be clearly established by the

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[51] Id. at 477-479.

[52] 102 Phil. 756-769 (1957) [Per J. Bautista Angelo, First Division].

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evidence. The requisite of clearness and definiteness extends to both the terms and the subject matter of the contract. Also, the oral contract must be fair, reasonable, and just in its provisions for equity to enforce it on the ground of part performance. If it would be inequitable to enforce the oral agreement, or if its specific enforcement would be harsh or oppressive upon the defendant, equity will withhold its aid. Clearly, the doctrine of part performance taking an oral contract out of the statute of frauds does not apply so as to support a suit for specific performance where both the equities and the statute support the defendant's case."

. . . . . .

"Obviously, there can be no part performance until there is a definite and complete agreement between the parties. In order to warrant the specific enforcement of a parol contract for the sale of land, on the ground of part performance, all the essential terms of the contract must be established by competent proof, and shown to be definite, certain, clear, and unambiguous.

"And this clearness and definiteness must extend to both the terms and the subject-matter of the contract.

"The rule that a court will not specifically enforce a contract for the sale of land unless its terms have been definitely understood and agreed upon by the parties, and established by the evidence, is especially applicable to oral contracts sought to be enforce on the ground of part performance. An oral contract, to be enforced on this ground, must at least have that degree of certainty which is required of written contracts sought to be specifically enforced.

"The parol contract must be sufficiently clear and definite to render the precise acts which are to be performed thereunder clearly ascertainable. Its terms must be so clear and complete as to allow no reasonable doubt respecting its enforcement according to the understanding of the parties."

"In this jurisdiction, as in the United States, the existence of an oral agreement or understanding such as that alleged in the complaint in the case at bar cannot be maintained on vague, uncertain, and indefinite testimony, against the reasonable presumption that prudent men who enter into such contracts

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> will execute them in writing, and comply with the formalities prescribed by law for the creation of a valid mortgage. But where the evidence as to the existence of such an understanding or agreement is clear, convincing, and satisfactory, the same broad principles of equity operate in this jurisdiction as in the United States to compel the parties to live up to the terms of their contract."[53] (Citations omitted)

The terms of an oral contract must have the degree of certainty required of a written contract before the courts may order its enforcement. This is a sound policy. Before the action may be deemed as performance of an obligation under an oral contract, its terms must be clear, because it must first be evident that the action was performed *pursuant solely to the alleged oral contract*, and nothing else. In other words, before an act may be considered partial performance, the evidence must convincingly show that the action was performed because of the alleged oral contract, to the exclusion of any other agreement.

Courts should be particularly cautious in cases such as this, where the person whose actions were deemed as partial performance pursuant to an oral contract had never once in his lifetime palpably asserted any rights pursuant to the contract. Closer scrutiny is appropriate, since partial performance is an exception to a statutory safeguard to prevent fraud in evidence.

Here, the records do not show any evidence that convincingly attribute Peralta's legal services to Bueno as done pursuant to an agreement that he would serve until his retirement in exchange for the property.

The majority also held that the alleged contract was removed from the ambit of the Statute of Frauds because it was ratified under Article 1403, in relation to Article 1405, of the Civil Code. To the majority, petitioners' failure to object to the presentation of oral evidence to prove the oral contract, and the acceptance of Peralta's legal services under the oral contract, ratified the contract.[54]

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[53] Id. at 765-767.

[54] Ponencia, pp. 12-13.

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The majority maintains that the record is replete with oral evidence that the Bueno Estate did not refute.[55] It points out that Atty. Nicdao's testimony was offered to prove, among others, that the Bueno Spouses gave the real property to Peralta as partial consideration for his legal services; that they "unconditionally transferred and conveyed full ownership" over the real property to Peralta; and that Atty. Nicdao was present at that incident.[56] It cites the following excerpts from Atty. Nicdao's testimony as oral evidence presented to prove the oral contract:

> A We took food and drink there, that is what transpired there. Mr. Bueno, if he followed only all the promises of Mr. Bueno, all the employees should have one lot each especially those lots acquired at Antipolo, Rizal. In this particular case, Atty. Peralta do [sic] not have any definite amount of salary. He only promised to give that house and lot to him and this Mr. Peralta told me about that and when there was a birthday we talked with each other that I witnessed personally that Mr. Bueno was really in his kindness, gave the house and lot to Mr. Peralta. It cannot be transferred yet because it is still indebted to Mitsubishi with the promise that when the obligation will be paid, he will legally transfer the property but the truth is verbally, the property was already given to Mr. Peralta on that date. What did Atty. Peralta do afterwards, he made renovations of the property. I think he spent more than P200,000.00 on the renovation.
>
> Q And at that time he made that declaration or pronouncement, could you tell us if Mrs. Genoveva Bueno was present on that occasion?
>
> A Yes sir. Mrs. Bueno is in conformity with the giving of that property because whether she like[d] it or not, if Mr. Peralta would be paid, even three times the value of the property should be paid.
>
> Q Would you affirm before this Honorable Court that from the time Defendant Sps. Bueno gave that property as partial

[55] Id. at 16-20.

[56] Id. at 16-17.

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consideration for his legal services, the plaintiff more particularly Atty. Peralta had occupied that property continuously, uninterruptedly and in the concept of an owner?

A Atty. Peralta occupied the building and lot continuously up to his death. After his death, his heirs were the ones who lived there sir.

. . . . . .

Q And that Valeriano Bueno was already represented by another lawyer other than Atty. Peralta during that time, you don't know?

A You know Pañero, the issue here is whether or not Mr. Bueno had given the house and lot to Atty. Peralta and Mrs. Peralta. At the time when he gave that, Mrs. Bueno is also present and at the same in one occasion in 1966, Mr. Bueno with his wife there on the occasion ***reiterated that he had already given that house and lot*** and that is the reason why Atty. Peralta and Mrs. Peralta have made renovations of the building which I think he had even spent more than P300,000.00 for the renovation. That is the only issue that I know but with respect to other issues, I do not know. Supposed we deal on that issue here.

Q So, you do not know that Mr. Bueno imposed certain conditions to Atty. Peralta to own that house and lot already?

A What the condition was, ***any moment that he will be able to pay the obligation being answer*** [sic] to the house and lot, he will immediately issue, ***he will immediately execute a deed of sale sir***.

Q And you do not know that Mr. Bueno imposed upon Atty. Peralta that he has to be his lawyer up to the time of his retirement from the practice of law, you don't know?

Atty. Pacheco It was already answered. In fact, the witness stated that there is only one condition set by Mr. Bueno. That the moment the loan had been paid then the deed of sale will be executed.

Court Already answered.

. . . . . .

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Q In Exh. "C", you said Mr. Valeriano Bueno reiterated that he is going to give Atty. Peralta the house and lot. Was it reduced into writing?

A Personally, we have to believe Bueno. In the first place, he is a millionaire at that time he is [sic] a billionaire. In the second place, I did not know yet that he is lying but I know that he is sincere in giving that. He gave that because of the services of Peralta. That is what I know sir.

Q So, it is now clear that there was no written document on that what you said that Mr. Bueno gave the house and lot to Atty. Peralta, there was no document?

A As far as I'm concerned, I don't know if after that occasion, he gave a document or not but what I know, he really gave that personally sir.

. . . . . .

Q Mr. Witness, Atty. Nicdao, you were stating a while ago that sometime in 1966 in one of the occasions held at the residence of Atty. Peralta, Mr. Bueno reiterated that he already gave that property to Atty. Peralta, is that correct?

A Yes Sir.

Q So, you mean to tell us that it was as early as 1960 that Mr. Bueno gave that property to Atty. Peralta who physically took possession of that property in the concept of an owner?

A Because he was advised by Mr. Bueno and Mrs. Bueno to transfer to that house at [sic] Villamor St. and that will be their property sir.

Q And after that, after 1960, when Atty. Peralta and his family took physical possession of that property, he introduced improvements in the concept of an owner again?

A Yes Sir.

Q During the lifetime of Atty. Peralta, you are not aware of any acts committed or made by Mr. Bueno inconsistent with that agreement he had with Atty. Peralta regarding the giving or transfer of ownership over that property in favor of Atty. Peralta?

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A I am not aware, sir. What I know is continuously, until now, he still in (sic) the house from 1960.[57] (Emphasis supplied)

From this, the majority concludes that the oral contract was ratified due to petitioner's failure to object to the presentation of Atty. Nicdao's testimony.

One must take a closer look at what Atty. Nicdao testified to, and what contract he claimed to have personally witnessed, if any. He testified that in 1966, he personally witnessed that Bueno, "in his kindness, gave the house and lot to Mr. Peralta"; that "verbally, the property was already given to Mr. Peralta"; and that there was only ***one condition***, that Bueno would execute a deed of sale once the loan on the property had been paid.[58] As to Genoveva's supposed consent, Atty. Nicdao did not testify that he heard her consent, but only that she was "in conformity with the giving of that property because whether she like[d] it or not, if Mr. Peralta would be paid, even three times the value of the property should be paid."[59]

Thus, as Atty. Nicdao testified, Bueno had given Peralta the property in 1960, and reiterated in 1966 that it had already been completely given, without condition for Peralta to perform any additional obligation in return. Atty. Nicdao even specified that Bueno gave the house "in his kindness[.]"[60]

Although the contract was deemed analogous to a contract of sale, where the purchase price had been completely paid, the majority itself concludes that the oral contract was "borne out of kindness and generosity[,]" pointing out that Bueno "had the propensity to promise real property to his employees."[61] Atty. Nicdao also testified that Peralta had *no reciprocal obligation* to transfer the real property. Thus, the contract

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[57] Id. at 17-20.

[58] Id. at 18.

[59] Id.

[60] Id. at 17.

[61] Id. at 28-29.

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testified to by Atty. Nicdao and accepted as proved was a donation.[62]

Donations of real property, however, must comply with other requirements for validity, which should be addressed if the contract testified to by Atty. Nicdao was the one that was deemed ratified.

True, under Article 1405 of the Civil Code, the failure to object to the presentation of oral evidence to prove contracts infringing on the Statute of Frauds ratifies those contracts. However, neither the Court of Appeals nor this Court's majority accepted that Atty. Nicdao's testimony described the contract accurately or completely, as neither concluded that Bueno had given the property entirely out of kindness. Yet, to the majority, the terms of the oral contract allegedly witnessed by Atty. Nicdao were the ones purportedly ratified through the counsel's failure to object.

The majority also maintained that the conduct of the parties established the existence of the contract. It cites *Heirs of Alido v. Campano*,[63] where this Court concluded that the actions and inactions of the parties established that a sale of real property had been consummated because, among others, the buyer's possession had not been questioned during the seller's lifetime, and the seller had allowed the buyer to exercise all the owner's rights and responsibilities over the real property.[64]

Heirs of Alido, in turn, cited *Ortega v. Leonardo*[65] to assert that possession of a property and making improvements on it may serve as indicators that the real property has been sold. *Ortega*, however, did not conclusively determine that an oral contract had been entered into and partially performed. Rather, it observed that certain acts, under proper circumstances, could potentially constitute partial performance, and decided only

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[62] *Republic v. Silim*, 408 Phil. 69 (2001) [Per J. Kapunan, First Division].

[63] G.R. No. 226065, July 29, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65542> [Per J. Reyes, Jr., Second Division].

[64] Id.

[65] 103 Phil. 870 (1958) [Per J. Bengzon, En Banc].

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that trial should proceed to determine whether the contract existed and had been partially performed:

> Thus, it is stated that "The continuance in possession by a purchaser who is already in possession may, in a proper case, be sufficiently referable to the parol contract of sale to constitute a part performance thereof. There may be additional acts or peculiar circumstances which sufficiently refer the possession to the contract. . . . Continued possession under an oral contract of sale, by one already in possession as a tenant, has been held a sufficient part performance, where, accompanied by other acts which characterize the continued possession and refer it to the contract of purchase. Especially is this true where the circumstances of the case include the making of substantial, permanent, and valuable improvements."
>
> It is also stated that "The making of valuable permanent improvements on the land by the purchaser, in pursuance of the agreement and with the knowledge of the vendor, has been said to be the strongest and most unequivocal act of part performance by which a verbal contract to sell land is taken out of the statute of frauds, and is ordinarily an important element in such part performance. . . . Possession by the purchaser under a parol contract for the purchase of real property, together with his making valuable and permanent improvements on the property which are referable exclusively to the contract, in reliance on the contract, in the honest belief that he has a right to make them, and with the knowledge and consent or acquiescence of the vendor, is deemed a part performance of the contract. The entry into possession and the making of the improvements are held on amount to such an alteration in the purchaser's position as will warrant the court's entering a degree of specific performance."
>
> Again, it is stated that "A tender or offer of payment, declined by the vendor, has been said to be equivalent to actual payment, for the purposes of determining whether or not there has been a part performance of the contract. This is apparently true where the tender is by a purchaser who has made improvements. But the doctrine now generally accepted, that not even the payment of the purchase price, without something more, . . . is a sufficient part performance.
>
> And the relinquishment of rights or the compromise thereof has likewise been held to constitute part performance.
>
> In the light of the above four paragraphs, it would appear that the complaint in this case described several circumstance[s] indicating partial performance: relinquishment of rights continued possession,

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building of improvements, tender of payment plus the surveying of the lot at plaintiff's expense and the payment of rentals.[66] (Citations omitted)

Thus, *Ortega* stated that when partial performance has been *alleged*, the party so alleging must have the opportunity during trial to establish the partial performance, and in so doing, the terms of the contract.

Moreover, unlike this case, the terms of the oral contract in *Ortega* were alleged by an actual party to the contract, and were also clear:

> Stripped of non-essentials, the complaint averred that long before and until her house had been completely destroyed during the liberation of the City of Manila, plaintiff occupied a parcel of land, designated as Lot I, Block 3, etc. (hereinafter called Lot I) located at San Andres Street, Malate, Manila; that after liberation she reoccupied it; that when the administration and disposition of the said Lot I (together with other lots in the Ana Sarmiento Estate) were assigned by the Government to the Rural Progress Administration plaintiff asserted her right thereto (as occupant) for purposes of purchase; that defendant also asserted a similar right, alleging occupancy of a portion of the land subsequent to plaintiff's; that during the investigation of such conflicting interests, defendant asked plaintiff to desist from pressing her claim and definitely promised that if and when he succeeded in getting title to Lot I, he would sell to her a portion thereof with an area of 55.60 square meters (particularly described) at the rate of P25.00 per square meter, provided she paid for the surveying and subdivision of the Lot, and provided further that after he acquired title, she could continue holding the lot as tenant by paying a monthly rental of P10.00 until said portion shall have been segregated and the purchase price fully paid; that plaintiff accepted defendant's offer, and desisted from further claiming Lot I; that defendant finally acquired title thereto; that relying upon their agreement, plaintiff caused the survey and segregation of the portion which defendant had promised to sell, incurring expenses therefor, said portion being now designated as Lot I-B in a duly prepared and approved subdivision plan; that in remodelling her son's house constructed on a lot adjoining Lot I she extended it over said Lot I-B; that after defendant had acquired Lot I plaintiff regularly paid him the monthly rental of P10.00; that in July 1954, after the plans of subdivision and segregation of the lot

[66] Id. at 872-874.

had been approved by the Bureau of Lands, plaintiff tendered to defendant the purchase price which the latter refused to accept, without cause or reason.[67] (Citations omitted)

Since those terms were alleged by an actual party to the alleged contract, a discernible and clear link could be drawn between the actions alleged as partial performance and the alleged oral contract. Thus, it was possible to determine that the acts done as partial performance were "referable exclusively to the contract, in reliance on the contract[.]"[68]

Furthermore, *Ortega* was careful to point out that it was the *confluence of each of the enumerated bases* that could establish partial performance for purposes of removing the contract from the coverage of the Statute of Frauds:

> We shall not take time to discuss whether one or the other or any two or three of them constituted sufficient performance to take the matter away from the operation of the Statute of Frauds. Enough to hold *that the combination of all of them* amounted to partial performance, and we do so line with the accepted basis of the doctrine, that it would be a fraud upon the plaintiff if the defendant were permitted to oppose performance of his part after he has allowed or induced the former to perform in reliance upon the agreement.
>
> The paragraph immediately preceding will serve as our comment on the appellee's quotations from American Jurisprudence itself to the effect that "relinquishment" is not part performance, and that neither "surveying the land'' nor tender of payment is sufficient. The precedents hereinabove transcribed oppose or explain away or qualify the appellee's citations. And at the risk of being repetitious we say: granting that *none* of the three circumstances indicated by him, (relinquishment, survey, tender) would *separately* suffice, still the *combination* of the three with the others already mentioned, amounts to more than enough.[69]

This Court in *Ortega* did not rule on whether an oral contract had been partially performed, and it was also careful to enumerate

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[67] Id. at 871-872.

[68] Id. at 873.

[69] Id. at 874.

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a number of actions that must be present to constitute partial performance. It is thus improper in this case to rely on *Heirs of Alido*, which in turn relied on *Ortega*. To do so would be to disregard the purpose of the general rule that sales of real property must be in writing to be enforceable.

The better rule is the one stated in *Babao*, where this Court said that the parol evidence relied on must be "certain, definite, clear, unambiguous, and unequivocal in its terms . . . and be clearly established by the evidence."[70]

The majority correctly observes that specific words may not be necessary in all cases to establish the existence of an oral contract. Nonetheless, in cases such as this, where there is a clear statutory protection, courts must exercise greater caution and methodically consider the evidence presented and what it *actually proves*, step by step. The testimony of Bueno's son, Valeriano, Jr., on being aware of his father's willingness to transfer ownership over the property at a future date *if* Peralta "would render his services to [his] father until his retirement"[71] is, for purposes of determining that an oral contract exists, and that the obligations of the parties had been fully fulfilled, too vague.

Yet, the majority cites Valeriano, Jr.'s testimony, where he expressly said that he had "no knowledge" that the property had been given to Peralta as partial consideration for legal services rendered. He only said that he learned that his father was willing to give Peralta the property.[72]

The majority also maintains that petitioners judicially admitted that Bueno committed to transfer the property:

> [I]t is plain to Us, based on the allegations in the petition and the Reply, that the Estate of Bueno reiterated a confirmation of Bueno's commitment to transfer the property to Atty. Peralta. Such repeated and consistent representation from the Estate of Bueno and their counsel

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[70] *Babao v. Perez*, 102 Phil. 756, 765 (1957) [Per J. Bautista Angelo, First Division].

[71] Ponencia, p. 22.

[72] Id. at 22-23.

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demonstrate the existence of the contract between Bueno and the Atty. Peralta, which the Court considers as judicial admissions.

. . . . . .

In addition, We note explicit remarks from the Estate of Bueno during the various stages of the suit that can be deemed as negative pregnant statements, or that form of denial which is at the same time an affirmative assertion favorable to the opposing party. It is said to be a denial pregnant with an admission of the substantial facts in the pleading responded to. It is in effect an admission of the averment to which it is directed.

These statements call into effect the principle of estoppel under Article 1431 of the New Civil Code. Any other evidence to prove the agreement is unnecessary in light of the Estate of Bueno's conduct over the years, from the time the agreement was made, to the moment Atty. Peralta and his family took possession of the subject property in 1962, and through the years that they occupied the same.

Consequently, the Court may disregard all evidence submitted by the Estate of Bueno contrary to, or inconsistent with, their judicial admissions.[73] (Citations omitted)

Since the very reason for the Statute of Frauds is to prevent fraud, the evidence relied on to evade coverage of the Statute of Frauds must be clear.

Whatever agreement there may have been on the transfer of interest in the real property, it remains unclear what the obligations of this agreement were; and whatever these obligations were, it is likewise unclear if they had not already been fulfilled. If it is true that Bueno committed to transfer ownership of the property to Peralta, this had not been reduced to writing. Under the Statute of Frauds, this Court cannot enforce such agreement.

ACCORDINGLY, I vote that the Court of Appeals' August 31, 2012 Decision and February 18, 2013 Resolution in CA-G.R. CV No. 86410 be **REVERSED and SET ASIDE**, and the Regional Trial Court's October 11, 2005 Decision in Civil Case No. 96-76696 be **REINSTATED**.

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[73] Id. at 13-16.