Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ESTATE OF VALERIANO C. BUENO and GENOVEVA I. BUENO, represented by VALERIANO I. BUENO, JR. and SUSAN I. BUENO,
Petitioners,

- versus -

ESTATE OF ATTY. EDUARDO M. PERALTA, SR. and LUZ B. PERALTA, represented by DR. EDGARDO B. PERALTA,
Respondents.

G.R. No. 205810

Present:

LEONEN, *J.*, Chairperson
GESMUNDO,
INTING,*
ZALAMEDA, and
GAERLAN, *JJ.*

Promulgated:

September 9, 2020

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DECISION

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.

* Designated additional member per raffle dated 22 January 2020.
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.

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

[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.

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 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.

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6 *Rollo*, pp. 467-468.
7 Id. at 165-179.
8 Id. at 245-248.

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 its 19 December 2005 Order.[10]

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

[9] Id. at 645-658.
[10] Id. at 679-680.
[11] G.R. No. 1299, 16 November 1903, 2 Phil. 682-689 (1903).

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 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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[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.

> 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 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]

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[14] *Rollo*, pp. 109-110.
[15] Id. at 115-116.

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.

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
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> (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

[16] Id. at 118-120.
[17] Id. at 23.

> 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:
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> (a) An agreement that by its terms is not to be performed within a year from the making thereof;
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> (b) A special promise to answer for the debt, default, or miscarriage of another;
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> (c) An agreement made in consideration of marriage, other than a mutual promise to marry;
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> (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.

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 vs. Campano*,[20] 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

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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).

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.
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> 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.:
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> > 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.
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> 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.
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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.

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 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 property 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 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 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.
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> 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 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

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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.

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, 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

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[23] Id. at 115.

[24] Id. at 100.

[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."

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]

> 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:
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> **(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.
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> 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:

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

> 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.
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> 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.
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> 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

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[31] Regalado (2010), *Remedial Law Compendium*, 10th ed, Vol. 1, 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.

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.[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:

> 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
>
> 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.

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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. 50 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 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.

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.[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.

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,

[36] *Rollo*, p. 419.

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?

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.

[37] Id. at 427-429.

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

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.

[38] Id. at 409-413.

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?

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

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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.

[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 1, pp. 306-307, which is the same as Francisco (2017). *Basic Evidence* (3rd ed.), p. 148, Rule 130, Sec. 26.

> 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]

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

[43] *Rollo*, p. 650.

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:

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.

[44] Id. at 651-652.
[45] TSN, 29 September 2003, p. 9.

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

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]

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[46] Id. at 33-35.

[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. No. 146710-15, 02 March 2001, 03 April 2001.

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 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).
>
> 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

[51] *Rollo*, p. 912.
[52] G.R. No. 4508, 04 March 1910, 15 Phil. 387-391 (1910).
[53] G.R. No. 10100, 15 August 1916, 34 Phil. 739-750 (1916).

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 Ill., 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.)

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, 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

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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).

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 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:

> xxx In other words, appropriate conduct by the parties may be sufficient to establish an agreement, and there may be instances where

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

[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. L-65594, 09 July 1986, 226 Phil. 456-470 (1986); 142 SCRA 553.

> 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.

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]

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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.

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 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 the 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 18 February 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 86410 are **AFFIRMED**.

SO ORDERED.

RODIL V. ZALAMEDA
Associate Justice

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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.

WE CONCUR:

see separate dissenting opinion

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

ALEXANDER G. GESMUNDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice