THIRD DIVISION

G.R. No. 205810 – 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, herein represented by DR. EDGARDO B. PERALTA,** *Respondents.*

Promulgated:
September 9, 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]

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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*, p. 165–179.
3 Id. at 168.
4 Id. at 172.

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 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 Peraltas.[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 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]

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5 Id. at 173–174.
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.
14 Id. at 911–912.
15 Id. at 912–913.

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

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16 Id. at 80.
17 Id. at 81.
18 Id. at 82.
19 Id. at 452.
20 Id. at 82.
21 Id. at 245.
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.

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 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 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 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 Peraltas 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 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 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.
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> 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.
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> 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 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

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25 Id. at 648–652.
26 Id. at 654.
27 Id. at 655.
28 Id.
29 Id. at 656.

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 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.
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> 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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30 Id.
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.

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]

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

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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.
45 Id. at 103–107.
46 Id. at 109 citing 148 Phil. 579 (1971) [Per J. Castro, En Banc].

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:

> 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:
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> > ". . . 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.
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> > '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

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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].

> 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.'
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> 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 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:

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51 Id. at 477–479.

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

"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 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 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]

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:

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53 Id. at 765–767.
54 Ponencia, pp. 12–13.
55 d. at 16–20.
56 Id. at 16–17.

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 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.

. . . .

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?

> 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 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

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57 Id. at 17–20.
58 Id. at 18.
59 Id.
60 Id. at 17.
61 Id. at 28–29.
62 *Republic v. Silim*, 408 Phil. 69 (2001) [Per J. Kapunan, First Division].

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 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

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[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].

> 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, 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

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[66] Id. at 872–874.

> 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 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 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,

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67 Id. at 871–872.
68 Id. at 873.
69 Id. at 874.

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

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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.

> 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 ASISDE**, and the Regional Trial Court's October 11, 2005 Decision in Civil Case No. 96-76696 be **REINSTATED**.

MARVIC M.V.F. LEONEN
Associate Justice

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[73] Id. at 13–16.