

**ASIA PRODUCTION CO., INC., WANG TA PENG AND WINSTON WANG,
PETITIONERS, VS. HON. ERNANI CRUZ PAÑO, AS JUDGE OF THE
COURT OF FIRST INSTANCE OF RIZAL (QUEZON CITY, BRANCH
XVIII), L...**

G.R. No. 51058. January 27, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

The simple issue in this case is whether or not an action for the refund of partial payments of the purchase price of a building covered by an oral agreement to sell it with an oral promise to assign the contract of lease on the lot where the building is constructed is barred by the Statute of Frauds.

Sometime in March 1976, private respondents, who claimed to be the owners of a building constructed on a lot leased from Lucio San Andres and located in Valenzuela, Bulacan, offered to sell the building to the petitioners for P170,000.00. Petitioners agreed because of private respondents assurance that they will also assign to the petitioners the contract of lease over the land. The above agreement and promise were not reduced to writing. Private respondents undertook to deliver to the petitioners the deed of conveyance over the building and the deed of assignment of the contract of lease within sixty (60) days from the date of payment of the downpayment of P20,000.00. The balance was to be paid in monthly installments. On 20 March 1976, petitioners paid the downpayment and issued eight (8) postdated checks drawn against the Equitable Banking Corporation for the payment of the eight (8) monthly installments, as follows:

Check No.

Amount

Due Date

10112253

P10,000.00

June 30, 1976

10112254

20,000.00

July 30, 1976

10112255

20,000.00

August 30, 1976

10112256

20,000.00

September 30, 1976

10112257

20,000.00

October 30, 1976

10112258

20,000.00

November 30, 1976

10112259

20,000.00

December 30, 1976

10112260

20,000.00

January 31, 1977

Relying on the good faith of private respondents, petitioners constructed in May 1976 a weaving factory on the leased lot. Unfortunately, private respondents, despite extensions granted, failed to comply with their undertaking to execute the deed of sale and to assign the contract despite the fact that they were able to encash the checks dated 30 June and 30 July 1976 in the total amount of P30,000.00. Worse, the lot owner made it plain to petitioners that he was unwilling to give his consent to the assignment of the lease unless petitioners agreed to certain onerous terms, such as an increase in rental, or the purchase of the land at a very unconscionable price.

Petitioners were thus compelled to request for a stop payment order of the six (6) remaining checks. Succeeding negotiations to save the transaction proved futile by reason of the continued failure of private respondents to execute the deed of sale of the building and the deed of assignment of the contract of lease.

So, on or about 29 December 1976, upon prior agreement with private respondents, petitioners removed all their property, machinery and equipment from the building, vacated the same and returned its possession to private respondents. Petitioners demanded from the latter the return of their partial payment for the purchase price of the building in the total sum of P50,000.00. Private respondents refused to return it. Hence, petitioners filed against private respondents a complaint[1] for its recovery and for actual, moral and exemplary damages and attorney's fees with the then Court of First Instance (now Regional Trial Court) of Quezon City, which was docketed as Civil Case No. Q-23593. The case was raffled to Branch XVIII of the court which was then presided over by herein respondent Judge.

Private respondent Lolita Lee Le Hua did not file an Answer; hence, she was declared in default.

Upon the other hand, private respondent Alberto Dy filed a motion to dismiss the complaint on the ground that the claim on which the action is based -- an alleged purchase of a building which is not evidenced by any writing -- cannot be proved by parol evidence since Article 1356 in relation to Article 1358 of the Civil Code requires that it should be in writing.[2] In their opposition[3] to said motion, petitioners argue that their complaint is essentially for collection of a sum of money; it does not seek to enforce the sale, but aims to compel private respondents to refund a sum of money which was paid to them as purchase price in a sale which did not materialize by reason of their bad faith. Furthermore, the execution of the document was an undertaking of the private respondents, which they refused to comply with. Hence, they cannot now be heard to complain against something which they themselves brought about.

In his Order[4] of 18 April 1979, respondent Judge granted the motion to dismiss on the ground that the complaint is barred by the Statute of Frauds. He says:

"It cannot be disputed that the contract in this case is condemned by the Statutes of Fraud (sic), it involves not merely the sale of real property (the building), it also includes an alleged lease agreement that must certainly be for more than one year (See Art. 1403, No. 2, subparagraph e, New Civil Code).

Plaintiffs cannot avoid the Statutes of Fraud (sic) by saying that this is merely an action for the collection of a sum of money. To be entitled to the sum of P50,000.00, it is necessary to show that such contract was executed and the same was violated -- but plaintiffs are prevented from proving this alleged agreement by parol evidence.

Neither may plaintiffs claim that by the payment of the sum of P50,000.00 the contract was removed from the Statutes of Fraud (sic). This is so because plaintiffs have not fully complied with their obligation to pay P170,000.00. If there had been full payment of P170,000.00, the situation would have been different.

Plaintiffs knew or should have known that their contract (as described by them in their complaint) was unenforceable; they had thereby voluntarily assumed the risks attendant to such contract. Moreover, the primordial aim of the Statutes of Fraud (sic) is to prevent fraud and perjury in the enforcement of obligations depending upon the unassisted memory of witnesses (*Shoemaker vs. La Tondeña*, 68 Phil. 24). The Court would find it difficult to determine whether the sum of P50,000.00 was paid because of the unenforceable contract or for some other transactions."

Their motion for reconsideration[5] having been denied by respondent Judge in his Order[6] of 21 June 1979 for the reason that the oral contract in this case was not removed from the operation of the Statute of Frauds because there was no full or complete performance by the petitioners of the contract as required in *Paterno vs. Jao Yan*[7] and *Babao vs. Perez*,[8] petitioners filed this petitions[9] on 16 July 1979, alleging therein as ground therefor grave abuse of discretion on the part of respondent Judge in issuing the orders of 18 April 1979 and 21 June 1979.

After private respondent Alberto Dy filed his Comment[10] to the petition in compliance with the resolution[11]

of 23 July 1979 and petitioners filed their Reply[12] to said comment on 2 April 1980, this Court gave due course[13] to the petition. Private respondent Lolita Lee Le Hua was considered to have waived her right to file her comment to the petition.[14]

Petitioners were subsequently required to file their Brief, which they complied with on 9 October 1981;[15] make the following assignment of errors:

“I

The lower court erred in holding that for a contract of purchase and sale to be removed from the operation of the Statute of Frauds, there must be full and complete payment of the purchase price.

II

The lower court erred in failing to appreciate the nature of petitioners’ cause of action.

III

The lower court erred in not finding that this case is not covered by the Statute of Frauds.

IV

The lower court erred in not following the procedure prescribed by this Honorable Court in cases when partial performance is alleged.

V

The lower court erred in dismissing the case."

Private respondents did not file their Brief.

We find merit in the petition. Respondent Judge committed grave abuse of discretion in dismissing the complaint on the ground that the claim is barred by the Statute of Frauds.

Article 1403 of the Civil Code declares the following contracts, among others, as unenforceable, unless they are ratified:

x x x

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

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

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

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

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

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

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

x x x

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.[16] 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*,[17] 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.*,[18] this Court held:

"x x x. It is well-settled in this jurisdiction that the Statute of Frauds is applicable only to executory contracts (*Facturan vs. Sabanal*, 81 Phil. 512), not to contracts that are totally or partially performed (*Almirol, et al. vs. Monserrat*, 48 Phil. 67, 70; *Robles vs. Lizarraga Hermanos*, 50 Phil. 387; *Diana vs. Macalibo*, 74 Phil. 70).

'Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief. It is well settled in Great Britain and in this country, with the exception of a few states, that a sufficient part performance by the purchaser under a parol contract for the sale of real estate removes the contract from the operation of the statute of frauds (49 Am. Jur. 722-723).'

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.' (Comments on the Rules of Court, by Moran, Vol. III [1957 ed.], p. 178). 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."

It follows then that the statute applies only to executory contracts and in actions for their specific performance. It does not apply to actions which are neither for violation of a contract nor for the performance thereof.[19]

There can be no dispute that the instant case is not for specific performance of the agreement to sell the building and to assign the leasehold right. Petitioners merely seek to recover their partial payment for the agreed purchase price of the building, which was to be paid on installments, with the private respondents promising to execute the corresponding deed of conveyance, together with the assignment of the leasehold rights, within two (2) months from the payment of the agreed downpayment of P20,000.00. By their motion to dismiss, private respondents theoretically or hypothetically admitted the truth of the allegations of fact in the complaint.[20] Among the allegations therein are: (1) that the P50,000.00 sought to be recovered represents the downpayment of P20,000.00 and two (2) monthly installments of the purchase price, and (2) that petitioners decided, in effect, to withdraw from the agreement by ordering the stop payment of the remaining six (6) checks and to return the possession of

the building to private respondents because of the latter's failure to comply with their agreement. The action is definitely not one for specific performance, hence the Statute of Frauds does not apply. And even if it were for specific performance, partial execution thereof by petitioners effectively bars the private respondents from invoking it. Since it is for refund of what petitioners had paid under the agreement, originally unenforceable under the statute, because petitioners had withdrawn therefrom due to the "bad faith" of the private respondents, the latter cannot be allowed to take shelter under the statute and keep the P50,000.00 for themselves. If this were the case, the statute would only become a shield for fraud, allowing private respondents not only to escape performance of their obligations, but also to keep what they had received from petitioners, thereby unjustly enriching themselves.

Besides, even if the action were for specific performance, it was premature for the respondent Judge to dismiss the complaint by reason of the Statute of Frauds despite the explicit allegations of partial payment. As this Court stated in *Carbonnel vs. Poncio, et al.*:^[21]

"For obvious reasons, it is not enough for a party to allege partial performance in order to hold that there has been such performance and to render a decision declaring that the Statute of Frauds is inapplicable. But neither is such party required to establish such partial performance by documentary proof before he could have the opportunity to introduce oral testimony on the transaction. Indeed, such oral testimony would usually be unnecessary if there were documents proving partial performance. Thus, the rejection of any and all testimonial evidence on partial performance, would nullify the rule that the Statute of Frauds is inapplicable to contracts which have been partly executed, and lead to the very evils that the statute seeks to prevent.

x x x

When the party concerned has pleaded partial performance, such party is entitled to a reasonable chance to establish by parol evidence the truth of this allegation, as well as the contract itself. 'The recognition of the exceptional effect of part performance in taking an oral contract out of the statute of frauds involves the principle that oral evidence is admissible in such cases to prove both the contract and the part performance of the contract' (49 Am. Jur. 927)."

We thus rule that an action by a withdrawing party to recover his partial payment of the consideration of a contract, which is otherwise unenforceable under the Statute of Frauds, by reason of the failure of the other contracting party to comply with his obligation, is not covered by the Statute of Frauds.

WHEREFORE, the petition is hereby GRANTED. The challenged Orders of 18 April 1979 and 21 June 1979 in Civil Case No. Q-23593 of the court below are hereby ANNULLED and SET ASIDE, and the complaint in said case is hereby ordered REINSTATED. The default order against private respondent Lolita Lee Le Hua shall stand and private respondent Alberto Dy is ordered to file his Answer to the complaint with the court below within ten (10) days from receipt of this decision. This decision shall be immediately executory.

Costs against private respondents.

IT IS SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

[1] Annex "A" of Petition; Rollo, 11-16.

[2] Annex "B" of Petition; Id., 17-18.

[3] Annex "C" of Petition; Rollo, 19-20.

[4] Annex "D" of Petition; Id., 21-22.

[5] Annex "E" of Petition; Rollo, 23-28.

[6] Annex "F" of Petition; Id., 29.

[7] 1 SCRA 631.

[8] 54 O.G. 2888.

[9] Op. cit., 3, et seq.

[10] Id., 35.

[11] Id., 31.

[12] Id., 104.

[13] Resolution of 3 November 1980; Rollo, 127.

[14] Id., 128.

[15] Id., 138.

[16] 37 C.J.S. 513; Shoemaker vs. La Tondeña, 68 Phil. 24.

[17] 48 Phil. 67 (1925).

[18] 103 Phil. 655 (1958) at 658-659. See also Iñigo vs. Estate of Adriana Maloto, etc., 21 SCRA 247 (1967).

[19] Facturan, et al. vs. Sabanal, et al., 81 Phil. 512 (1948); Eusebio vs. Sociedad Agricola del Balarin, et al., 16 SCRA 569 (1966).

[20] Palma v. Graciano, 99 Phil. 72; Carreon vs. Province of Pampanga, 99 Phil. 808; Pangan vs. Evening News Publishing Co., Inc., 110 Phil. 409; Philippine National Bank vs. Hipolito, et al., 13 SCRA 20.

[21] Supra., underscoring supplied.

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