



REAL ESTATE LAW AGREEMENTS:

Oral Agreements Related to the Purchase and Sale of Land – Are they Enforceable?

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Abstract

Oral agreements related to land that lack any supporting written evidence such as informal correspondence or documentation referring to the oral agreement can be difficult for a court to enforce. Section 4 of the Statute of Frauds was created to prevent fraudulent dealings in land based on perjured evidence and bars the court from enforcing oral real estate agreements unless there is some kind of written evidence authored by the seller referring to the oral agreement.

The requirements of the Statute of Frauds can be circumvented by the doctrine of part performance if one can demonstrate that they provided services in exchange for an oral agreement relating to land. These acts of service must be in reliance on and unequivocally referable to the oral agreement trying to be proven. In other words, it must be proven on the balance of probabilities that the acts would not reasonably be performed except as part performance of the specific oral contract in question.

Full Article

The 2013 Ontario Superior Court of Justice case of *Van v. Qureshi*, concerned a dispute over 123 acres of property (the “property”) purchased by the defendant. The plaintiff, who lived and resided on a property that abutted the disputed property, claimed he had an oral first right of refusal (“FROR”) with respect to the property that was breached when the property was sold to the defendant without giving the plaintiff an opportunity to match the defendant’s offer. Additionally, the plaintiff claimed he had a written agreement of purchase and sale (“APS”) with the seller of the property regarding 15 acres of the property. The APS was conditional on obtaining severance of the 15 acres in order to sever and attach that acreage to the property of the plaintiff. The plaintiff sought an order to delete the transfer of the property to the defendant and specific performance of the FROR of the property. In the alternative, the plaintiff sought specific performance of the APS with respect to the 15 acres of the property.



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Numerous witnesses testified they heard the seller tell the plaintiff he could have a FROR on the property, however the written evidence only contained correspondence referring to a FROR for the 15 acre parcel of land specified in the APS. The court decided that the witnesses' testimonies were not sufficient evidence for an oral agreement for FROR on the entire property as they were contradicted by the lack of written evidence suggesting the same. The lack of any written evidence was also a bar to the enforcement of the oral agreement under section 4 of the *Statute of Frauds*. The statute was created to prevent fraudulent dealings in land based on perjured evidence and requires there to be some trace of written evidence authored by the seller referring to the oral agreement.

The requirements of the *Statute of Frauds* can at times be side-stepped by the doctrine of part performance where one can demonstrate that they provided services in exchange for an oral agreement relating to land. Having provided the services in question, the service provider may seek the equitable remedy of specific performance of the agreement relating to the land. If the doctrine is applicable, the oral agreement becomes enforceable. The requirements in section 4 of the *Statute of Frauds* must give way in the face of part performance because the acts of part performance fulfill the very purpose of the written document - that is, they diminish the opportunity for fraudulent dealings with land based on perjured evidence.

The plaintiff argued that the *Statute of Frauds* was not applicable because he performed acts of part-performance on the property pursuant to the FROR including keeping trespassers off the property and maintaining walking trails. The court found that the plaintiff's acts were not unequivocally referable to any FROR as they were actually for his own benefit. The acts allowed the plaintiff to keep trespassers further away from his own property and use the subject property, which was uninhabited before it was sold, for various uses without any cost. Accordingly, specific performance was unavailable with regard to the oral agreement for a FROR.

With respect to the written APS for the 15 acres of land, the defendant argued that it was unenforceable because it was not possible to perform the APS. The APS was conditional upon a severance being granted and the defendant argued there was no realistic chance of that happening in the circumstances. This view was supported by the town planner who testified that there was less than a 1 percent chance that an application for severance of the land would be granted. The court stated that the chances of obtaining severance were too remote. Specific performance of the APS was not granted by the court.