

## **When does a party's partial or full performance validate an oral agreement?**

**By: Charles B. Jimerson, Esq. and Hans Wahl, Esq.**

The Statute of Frauds is a doctrine of Florida law that governs the enforceability of contracts. The doctrine requires that certain contracts be in writing in order to be enforceable. Specifically, the following agreements must be captured in a written contract, and signed by the parties, to be a valid and enforceable contract within the state of Florida: contracts involving the sale of goods worth more than \$500; promises made in consideration of marriage; contracts that cannot be performed within one year; contracts for the sale or transfer of an interest in land; a promise by one party to act as a surety (i.e., a personal guarantor) for the debts of another; and a promise by the executor of a will to personally pay the debts of the estate. § 725.01, FLA. STAT. (2012).

The purpose of the Statute of Frauds is to prevent one party from committing perjury in regards to an agreement and to also prevent the enforcement of agreements “based on memories made faulty by the lapse of time or loose verbal statements.” Rowland v. Ewell, 174 So.2d 78, 80 (Fla. 2d DCA 1965). The Statute of Frauds, however, is a peculiar doctrine of contract law as there are a few exceptions that make an otherwise unenforceable oral agreement enforceable. This bLAWg focuses on two such exceptions: part performance (or partial performance) and full performance of an oral agreement.

Regarding the doctrine of part performance, this exception exists for oral agreements involving the sale or transfer of land. Miller v. Murray, 68 So.2d 594, 596 (Fla. 1953). A situation where part performance might be invoked arises when the purchaser has performed under the oral agreement to sell or transfer land yet the seller has not. The part performance exception prevents the seller from using the Statute of Frauds as a defense to negate the oral agreement. However, for the purchaser to use the doctrine of part performance successfully, the purchaser's part performance must include specific acts. For example, the purchaser must show full or partial payment of the purchase price, that he or she has taken possession of the property, and that he or she made valuable and permanent improvements to the property. Battle v. Butler, 138 Fla. 392, 402 (Fla. 1939). According to the Florida Supreme Court, mere payment, even if in full, is not sufficient, nor is possession without payment, but rather, “Each of these three elements is indispensable, and they must all exist” in order to apply the doctrine of part performance. Id.

It is important to note that the doctrine of part performance is only applicable in oral agreements for the sale or transfer of land and does not apply to other types of oral agreements. To illustrate, courts have held the part performance doctrine does not apply to contracts for personal services. Food Fair Stores, Inc. v. Vanguard Inv. Co. LTD., 298 So.2d 515, 517 (Fla. 3d DCA 1974); see also Johnson v. Edwards, 569 So.2d 928, 929 (Fla. 1<sup>st</sup> DCA 1990) (It is “well established that partial performance of a contract for personal services is not an exception to the provisions of the Statute of Frauds.”); Miller Constr. Co. v. First Indus. Tech. Corp., 576 So.2d

748, 751 (Fla. 3d DCA 1991) (holding that partial performance does not apply to personal service contracts). This exclusion for personal services encompasses oral agreements for such things as home renovations, architectural designs, landscaping, and lawn servicing, along with various other personal services. And what falls under personal services is broadly construed. Courts have held that work involving artistic and unique abilities, such as requiring peculiar skills, knowledge, and expertise, will fall under the heading of personal services. Miller, 576 So.2d at 751.

The reason for the distinction between land sale agreements and personal service agreements in regards to applying the doctrine of part performance is due to the remedy sought for a breach of such agreements. In land sale agreements, the purchaser will almost always seek the equitable remedy of specific performance, meaning the purchaser seeks the actual sale and transfer of the specific parcel of land agreed upon. With personal service agreements, the non-breaching party usually seeks a remedy at law for monetary damages to compensate for the lack of payment for the work partially performed. According to the courts, where the remedy sought is equitable relief, such as specific performance, the doctrine of part performance is available to defeat a Statute of Frauds defense, but when the remedy sought is monetary damages, part performance is not available. See Hosp. Corp. of Am. v. Assocs. In Adolescent Psychiatry, 605 So.2d 556, 558 (Fla. 4<sup>th</sup> DCA 1992); see also Collier v. Brooks, 632 So.2d 149, 153 (Fla. 1<sup>st</sup> DCA 1994) (holding that “the doctrine of part performance is not available in an action solely for [monetary] damages at law.”).

If the doctrine of part performance is not available to someone seeking to enforce an oral agreement for personal services when the other party fails to meet its obligation, is there any doctrine that is available to that person? Yes, and this brings us to the exception for full performance.

A person’s full performance of a promise under an oral agreement for personal services can prevent the non-performing party from making a Statute of Frauds defense. Courts have held that when an oral agreement has been fully performed, the party who received the benefit of that full performance cannot avoid its obligation under the contract by invoking the Statute of Frauds. W.B.D., Inc. v. Howard Johnson Co., 382 So.2d 1323, 1327 (Fla. 1<sup>st</sup> DCA 1980). For example, if a builder and a homeowner enter into an oral agreement in April to build an enclosed back porch in June of that same year, and the builder fully performs by completing the enclosed back porch, the homeowner cannot avoid its obligation to pay by making a Statute of Frauds defense.

However, there is another twist to this exception concerning the doctrine of full performance. The full performance exception to an oral agreement only applies “if the agreement is capable of being performed within a year and was, in fact, performed within one year.” LaRue v. Kalex Constr. and Dev., Inc., No. 3D11-2368, 2012 WL 3587263, at 2 (Fla 3d DCA 2012). Stated another way, the Statute of Frauds defense will always apply to any contract

that cannot be performed within one year. § 725.01, FLA. STAT. (2012). If a party fully performed, but did so under an oral agreement that took more than one year to complete, the non-performing party can still invoke the Statute of Frauds as a defense to avoid its obligation under that oral agreement. LaRue, No. 3D11-2368, 2012 WL 3587263 at 4. To summarize, an oral agreement for personal services is only enforceable if the non-breaching party fully performs its obligation within one year.

One other issue that may arise with oral agreements for personal services is that it might be difficult to determine whether the services were to be performed within one year or not. According to Florida law, “The primary factor to be utilized in determining whether or not an oral contract is to be performed within the one year limitation of the statute is, of course, the intent of the parties.” First Realty Inv. Corp. v. Gallaher, 345 So.2d 1088, 1089 (Fla. 3d DCA 1977). The court’s default position is to assume the performance can be completed within one year unless it is expressly clear by the parties’ intent that it cannot. Cent. Nat’l. Bank of Miami v. Cent. Bancorp., Inc., 411 So.2d 358, 362 (Fla 3<sup>rd</sup> DCA 1982). “When no definite time is fixed by the parties for performance of the agreement, and there is nothing in its terms to show that it cannot be performed within a year according to the intent and understanding of the parties, it will not be construed as being within the statute of frauds.” Id.

Therefore, if the performance under a personal services agreement is something that is possible to complete within a year, then the oral agreement will not fall under the Statute of Frauds and full performance by one party makes the agreement enforceable. If the oral agreement contemplates certain performances that must take place after more than one year, then the Statute of Frauds defense applies. Id. In that latter situation, not even the doctrine of full performance will defeat a Statute of Frauds defense because the performance cannot be completed within a year.