SUPREME COURT OF NOVA SCOTIA
Citation: *McNeil v. McCormick*, 2022 NSSC 394

Date: 20230112
Docket: 511569
Registry: Sydney

Between:

Paula McNeil and Bradley McNeil

Applicants

v.

Blair McCormick and Susan McCormick

Respondents

Judge:	The Honourable Justice Patrick Murray
Written Submission:	June 29, 2022
Decision:	January 12, 2023
Counsel:	Alan Stanwick for Bradley and Paula McNeil Kelly O'Brien for Blair and Susan McCormick

By the Court:

Introduction

[1] This is an Application in Court by the Applicants, Paula McNeil and Bradley McNeil, for specific performance compelling the Respondents, Blair McCormick and Susan McCormick, to complete the sale of the three properties located on Broughton Road, Birch Grove, Nova Scotia.

[2] A Notice of Contest has been filed by the Respondents denying the grounds contained in the Application in Court.

Background- as stated by the Parties

[3] The Applicants approached the Respondents regarding the purchase of the three lots of land located at Birch Grove and bearing PIDs 15535297; 15535289; and 15583818 ("the property").

[4] The Applicants submit the parties reached an oral agreement whereby the Applicants would purchase the property from the Respondents for the sum of $25,000.00, plus the Applicants would be responsible for the associated legal fees.

[5] The Applicants made three separate deposits totalling $15,000. toward the purchase of the property. An Agreement of Purchase and Sale was drafted by the Applicants' lawyer.

[6] The Respondents state there is no written agreement between the parties providing for the sale of properties located on Broughton Road, Birch Grove, and bearing PIDs 15535297; 15535289; and 15583818.

[7] Further, the Respondents say the parties failed to reach a consensus as to the essential terms of the sale of the properties.

[8] Upon reviewing a draft Agreement of Purchase and Sale from the Applicants, the Respondents informed the Applicants that they no longer wished to proceed with the sale of the properties.

Question of Law

[9] At the outset of the hearing of this matter on May 18, 2022, counsel for the Respondents asked the Court to determine a question of law before the hearing of

application, in accordance with Civil Procedure Rule 12. The parties agreed on two questions of law to be determined before the hearing of the Application. These are as follows:

1. What is the proper test for the doctrine of part performance?

2. If the test is the test set out by the Supreme Court of Canada in ***Deglman v. Brunet Estate***, [1954] S.C.R. 725, [1954] 3 DLR 785, can the payment of money alone ever constitute a part performance?

Question #1 - What is the proper test for the doctrine of part performance?

[10] In ***Tabensky v. Hope***, 2008 NSCA 116, the court held that a Deed and signed agreement were sufficient to satisfy the requirements of the *Statute of Frauds*. The memorandum itself need not be a contract or in any particular form, nor need it contain all of the agreed terms, but it must contain the essential terms by identifying: 1) the parties; 2) the property being conveyed; and 3) the consideration. ***Deacon v. Adams***, (1982), 55 N.S.R. (2d) 218; ***Carvery v. Fletcher***, (1987), 76 N.S.R. (2d) 307.

[11] ***Hill v. The Attorney General of Nova Scotia***, [1997] 1 S.C.R. 69, involved the expropriation of a farm (owned by Hill) for the purpose of a highway. At issue was whether the Crown could rely on the absence of a written permit to deny that an interest was created to allow Hill to cross the highway which divided the farm into two parcels; and in particular, whether the province had granted an equitable interest in the lands permitting the movement of cattle and equipment across the highway. The Court held that the doctrine of part performance prevented the Crown from relying on the legislation (*Public Highways Act*), finding the terms of the agreement had been carried out, as the province complied with its promise by building gates, fences and ramps and maintained them for 27 years. Cory, J., held that "in this instance strict adherence to the liberal terms of the writing requirement would not serve the purpose for which the statute was devised, to prevent fraud" (Page 74).

[12] In ***Steadman v. Steadman***, [1974] 2 AII ER 977, the court considered the underlying purpose of the *Statute of Frauds*, to ensure that it was not used as "a variant of unconscionable dealing", or "to be used as an engine of fraud", against a party who acted to his/her detriment in carrying out their obligations, or some significant part of them, under an otherwise unenforceable contract.

[13] Although the Court in ***Hill*** referred to ***Steadman***, the reference was with respect to the intended remedial purpose of the statute, which is not in dispute in this proceeding.

[14] In ***Steadman*** the House of Lords did not outright reject ***Deglman***, so as to accept in its place a more relaxed test of what acts of part performance will be sufficient to prevent the other party from relying on the writing requirement.

[15] The Court stated in ***Hill*** that "a verbal agreement that has been partly performed would be enforced". As noted by the Court, "Quite simply… equity recognizes as done, that which ought to have been done"

[16] One can see there will be aspects of each case that will determine the outcome, such as proof that the Plaintiff acted to their detriment, or proof that there was an agreement, even if it is unenforceable.

[17] In ***Self v. Brignoli Estate***, 2012 NSSC 81, Justice Coady dealt directly with these issues. After reviewing the competing tests, he identified the proper one as follows:

> One of the main differences between this test, and the test adopted in *Deglman*, is that acts of part performance need not be unequivocally referable to the contract asserted. *Steadman* only requires them to be consistent with an alleged oral agreement.

[18] In his decision Justice Coady discussed the evolution of cases since Cartwright, J. interpreted the bedrock case ***Madison v. Alderson***, (1883) 8 App. Cas. 467, in ***Deglman***, wherein he cited the comments of Lord Chancellor Sebourne, who stated that "all the acts done must be referred to the actual contract". Further Lord O'Hogan, stated that the acts of part performance "must have relation to the one agreement relied upon and the need for the acts to be 'unequivocal'", and then the words of Lord Hardwicke, such acts "as could be done with no other view or design that to perform the agreement".

[19] In ***Federal Savings Credit Union Ltd. v. Hessian***, (1979), 36 N.S.R. (2d) 166, Glube, J., cited with approval ***Lohnes v. Daw et al***, [1968] N.S.J. No. 19, in which the Court quoted Lord Hardwicke in ***Gunter v. Halsey***, (1739), Amb. 586, 27 E.R. 381, "as to the acts done with no other view."

[20] Justice Hallett's decision in ***Carvery*** has been cited with approval. (in ***Tabensky***, ***Self*** and ***Brekka v. 101252 P.E.I. Inc.***, 2015 NSCA 73) as a core decision in this area of law, an area described as "murky". In ***Carvery***, Justice

Hallett discussed the "practical difficulty" in attempting to determine how evidence supporting an oral contract, or how evidence adding to the written terms of a memorandum, should be admitted at trial. He stated that the problem had been already dealt with and resolved in the seminal case of ***McNeil v. Corbett***, (1907), 39 S.C.R. 608, and quoted Duff, J, who stated:

> … the plaintiff must first prove acts relied upon to support the existence of an oral contract and it is only after such acts that unequivocally refer in their own nature to a dealing with the land which is alleged to have been the subject of the contract sued upon have been proven that the plaintiff can then adduce evidence of the oral agreement. An analysis of the method of adducing evidence is contained in *Steadman v. Steadman* (1974), 3 W.R. 56 and referred to by Di Castri as a footnote to paragraph 136.

[21] Justice Coady provided a thorough analysis of the caselaw, in reaching the conclusion that the test in ***Deglman*** stands and is still the law in Canada. It would not do justice for this Court to repeat his analysis.

[22] In respect of his finding he referred to additional cases such as ***Neighbourhoods of Cornell Inc. v. 1440106 Ontario Ltd.***, [2003] O.J. No. 21919, and ***Alvi v. Lal***, [1990] O.J. N. No. 739. In ***Alvi***, Then, J. followed the "narrower view" that the "acts of part performance must be unequivocally referrable to some such agreement as that alleged".

[23] Respectfully, ***Steadman*** has been referred to in numerous cases on the subject of what acts shall constitute sufficient performance for equity to "play its hand", and take the contract outside of the *Statute of Frauds*.

[24] This led the Court in ***Self*** to state "While it may be argued that some Canadian Courts have adopted the '*Steadman* test', I find that the ***Deglman*** test is still the law in Canada" (Paragraph 17).

[25] Of course, it must be remembered that the Nova Scotia Court of Appeal, as recently as 2015, approved this test, stating unequivocally in ***Brekka***:

> [36] I respectfully disagree. Ms. Brekka's submissions do not accurately reflect settled law. The putative part performer doesn't get to pick from a plethora of parts, ultimately choosing a favorite so as to avoid the *Statute of Frauds*. That is not how it works. *In* ***Deglman v. Guaranty Trust Co. of Canada and Constantineau***, 1954 CanLII 2 (SCC), [1954] S.C.R. 725, Cartwright J. set out the test for part performance:
>
> > An interpretation similar to that in *McNeil v. Corbett* was placed upon the decision in *Maddison v. Alderson* by Turgeon J.A., with whom Haultain C.J.S. and Lamont and

> McKay JJ.A. agreed, in *Re Meston, Meston v. Gray et al.*[1925 CanLII 179 (SK CA), [1925] 4 D.L.R. 887]. At page 888, Turgeon J.A. said:—
>
> > …In order to exclude the operation of the Statute of Frauds, the part performance relied upon must be unequivocally referable to the contract asserted. The acts performed must speak for themselves, and must point unmistakably to a contract affecting the ownership or the tenure of the land and to nothing else. [Underlining mine]
>
> [37] Similarly, in ***Maddison v. Alderson***, [1881-85] All E.R. Rep 742 Lord O'Hagan:
>
> > But there is no conflict of judicial opinion, and, in my mind, no ground for reasonable controversy as to the essential character of the act which shall amount to a part performance in one particular. It must be unequivocal. It must have relation to the one agreement relied upon, and to no other. It must be such, in Lord Hardwicke's words in *Gunter v. Halsey* (19) (West temp Hard at p 681):
> >
> > "as could be done with no other view or design than to perform that agreement."
> >
> > It must be sufficient of itself, and without any other information or evidence, to satisfy a court, from the circumstances it has created and the relations it has formed, that they are only consistent with the assumption of the existence of a contract, the terms of which equity requires, if possible, to be ascertained and enforced. [pp.752-53] [Underlining mine]
>
> [38] This passage from Lord O'Hagan was also cited with approval by Rand J. in ***Deglman*** at p. 727.

[26] Without question "unequivocally referable" is the language used by the majority in ***Deglman***, and adopted by the Court of Appeal in ***Brekka***, as they in fact said. The minority decision stated "referrable only".

[27] One might ask, "referrable to what"? Cartwright, J. stated "unequivocally referrable in their own nature to, some dealing with the land". Rand, J. stated "referrable only to the contract alleged".

[28] In ***Brekka***, Saunders J.A. concluded:

> 39. Thus the test for part performance and the meaning to be given to the phrase "unequivocally referable" is and remains that which was articulated by the Supreme Court of Canada in ***Deglman***, and applied consistently by the courts of this province ever since. See for example, the analysis by Hallett J. (as he then was) in ***Carvery v. Fletcher*** (1987), 1987 CanLII 5367 (NS SC), 76 N.S.R. (2d) 307 (S.C.) and Coady J. in ***Self v. Brignoli Estate***, 2012 NSSC 81.

[29] Once again in ***Carvery*** and in ***Self*** the court held the essential character of the acts that amount to specific performance shall be "acts of part performance that are unequivocally referrable to the contract for land asserted by the Plaintiff". Both of these cases cited Duff, J. in ***MacNeil***, who identified the part performance as "such acts that unequivocally refer in their own nature to a dealing with the land, which is alleged to have been the subject of the contract sued upon".

[30] Counsel for the Applicants, Mr. and Mrs. McNeil submits that it is the "Rand test" that has been applied in Nova Scotia, and not the test of the majority, namely "referrable only to the contract alleged".

[31] The Applicants have provided additional authorities including ***Lensen v. Lensen***, [1987], 2 S.C.R. 672, where the alleged acts of part performance, as described in ***Steadman*** were not rejected by Chief Justice Dickson:

> 11. Turning to the issue of whether the acts allegedly in part performance of the contract displaced the requirement of s. 4 of the *Statute of Frauds*, Tallis J.A. reviewed the relevant authorities and concluded:
>
> > Learned counsel submits that the authorities do not go further and dictate that the acts must of necessity be referable to the interest in the land or the contract which is propounded. I do not read the recent Supreme Court of Canada authorities as applying such a stringent test that the acts must of necessity be referable to either the interest in the land or the contract which is being propounded. If the acts relied upon are "unequivocally referable in their own nature to some dealing with the land" the requisite test is met.

[32] The Applicants argue that in ***Lensen***, the Supreme Court of Canada approved by "implication" the ***Steadman*** test. Further, they submit that the House of Lords, formulated a new test which is different from that in ***Maddison v. Alderson***, [1881-85] All E.R. Rep 742. They say therefore the Court in ***Lensen*** in effect overruled ***Maddison***, and as such it is no longer good law in Canada:

> It follows, therefore, that if ***Maddison v. Alderson*** is no longer good law in England, it should no longer be good law in Canada, and as such, the ***Deglman*** test for part performance should no longer be considered good law in Canada.

[33] In ***Lensen***, Dickson, J. held the test is not so "stringent" that the acts must of necessity be referrable to "either the interest in the land or the contract that is being propounded". The wording settled upon by the Chief Justice, is set out in the last sentence:

> If the acts relied upon are "unequivocally referrable in their own nature to some dealing with the land", the requisite test is met.

[34] Cartwright, J. concluded in ***Deglman*** that the correct interpretation of ***Maddison*** was that given by Duff, J. in ***McNeil***, stating in paragraph 21:

> … I have reached the conclusion that the correct interpretation of the decision in *Maddison v. Alderson* is that adopted by this Court in *McNeil v. Corbett*. In that case the unanimous judgment of the Court was delivered by Duff J., as he then was. The judgment turns on the question whether the acts relied upon as part performance were sufficient to take the contract sued on, which was for the purchase of an interest in lands and of which there was no sufficient written memorandum, out of the operation of the Statute of Frauds. At pages 611 and 612 Duff J. says:—
>
> > With great respect, moreover, I must disagree with the view of the court below that the plaintiff has made out a case enabling him to take advantage of the doctrine known as the doctrine of part performance. A condition of the application of that doctrine is thus stated by Lord Selborne, in *Maddison v. Alderson.* at page 479:—
> >
> > > "All the authorities shew that the acts relied upon must be unequivocally, and in their own nature, referable to some such agreement as that alleged;"
> >
> > i.e. to an agreement respecting the lands themselves; and, as further explained in that case, a plaintiff who relies upon acts of part performance to excuse the non-production of a note or memorandum under the Statute of Frauds, should first prove the acts relied upon; it is only after such acts unequivocally referable in their own nature to some dealing with the land which is alleged to have been the subject of the agreement sued upon have been proved that evidence of the oral agreement becomes admissible for the purpose of explaining those acts. It is for this reason that a payment of purchase money alone can never be a sufficient act of performance within the rule.
> >
> > Here there is nothing in the nature of the acts proved which bears any necessary relation to the interest in land said to have been the subject of the agreement in question.

[35] In the case before me, I have reached the conclusion that the proper test for the doctrine of part performance is as set out by Cartwright, J. in ***Deglman***.

[36] Clearly this is the test that was accepted by Saunders, J. in ***Brekka***. There may be differences in the phraseology used on a case by case basis. Several things must be kept in mind: 1) In ***Brekka*** the Court considered ***Maddison***, noting that the passage of Lord O'Hagan was cited with approval by Rand J. in ***Deglman***; 2) The articulation of the test follows the reasoning of Duff, J. in adding "which is alleged

to be the subject of the agreement sued upon" following "land"; and 3) Saunders, J. considered ***Steadman*** in his reasons, and those of Justice Wood (as he then was) who said : "In England, that standard had been relaxed somewhat since the decision of the "House of Lords in ***Steadman v. Steadman****"*.

[37] I have found it instructive to look "within" the statute for guidance in determining what acts shall take matters "outside" of it. Section 7 reads that "No action shall be brought" … (d) upon any *contract* or sale of *land* or interest therein unless the "promise agreement or *contract, upon which the action is brought* … is in writing".

[38] There is no dispute as to the intended purpose of the statute, which is to prevent it from being used as an instrument of fraud in real estate transactions. Inevitably the Court turns its attention to the contract or agreement relied upon. The statute does not void such contracts but instead makes them unenforceable. The Courts of Chancery responded to the threat that it would be used to the detriment of someone having taken steps to perform their obligations, and this allows the contract to be enforceable.

[39] There have been several Supreme Court of Canada cases that have accepted the doctrine in ***Maddison*** including ***McNeil v. Corbett***, (1908), 39 S.C.R. 608; ***Brownscombe v. Public Trustee***, [1969] 68 WWR 483; and ***Thompson v. Guaranty Trust***, (1974), 39 DLR (3d) 408. The issue was discussed in depth in a 1980 law review article: see William H. Hurlburt, "Part performance: Colberg v. Braunberger's Estate, 18-2 Alberta Law Review 277 (1980). I have also consulted and made use of a more recent article by Jonnette Watson Hamilton, "Oral Promises of Land and Controversial Issues in the doctrine of Part Performance", University of Calgary Faculty of Law Blog, July 29, 2016.

[40] I acknowledge the Applicant has relied on cases that have taken time to consider the authorities in this area. In particular, there is the decision in ***Erie Sand and Gravel Ltd. v. Seres' Farms Ltd.***, 2009 ONCA 709, in which the Ontario Court of Appeal grappled with the "connection" between acts of performance and "a dealing" versus "some dealing" with the land. There is also the phrase "in their own nature" referrable to some dealing with the land. Gillese, J.A. said in ***Erie Sand and Gravel***:

> [88] Thus, the question becomes: are the acts of part performance as found by the trial judge "unequivocally referable in their own nature to some dealing with the [south side property]"?

[41] In ***Erie***, the Court held the doctrine of part performance is not limited to a consideration of the acts of the Plaintiff, but also the acts of the Defendant as per the decision in ***Hill***. (Paragraph 75). In ***Erie***, the Ontario Court of Appeal endorsed the test as established by Cartwright, J. in ***Deglman***.

[42] In ***Mountain v. TD Canada Trust Company***, 2012 ONCA 806, the trial judge held that the acts of part performance must be consistent "only with the alleged contract". Winkler C.J.O. held, referring to ***Erie***:

> [81] Gillese J.A. made it clear, at para. 75, that the doctrine of part performance is not limited to a consideration of the acts of the plaintiff:
>
> > In sum, it appears to me that given the decision of the Supreme Court in *Hill*, it is now settled law in Canada that the acts of both parties to an alleged oral agreement may be considered when a court is called on to determine if sufficient acts of part performance take an alleged agreement outside the operation of the *Statute of Frauds*.
>
> [82] Gillese J.A. also made it clear that the acts of part performance need not be "referable only to the contract alleged". Rather, the test as established by the majority judgment of Cartwright J. in ***Deglman v. Brunet Estate***, 1954 CanLII 2 (SCC), [1954] S.C.R. 725, [1954] S.C.J. No. 47, at p. 733 S.C.R., is that it is sufficient if the acts are "unequivocally referable in their own nature to some dealing with the land".

[43] I conclude, as others have, that "unequivocally referable in their own nature" refers to acts to which the statute must "give way" in order to fulfil the very purpose of the writing requirement, "to diminish the opportunity" for fraud in dealing with land.

[44] Whether the dealings are with respect to "some such agreement as that alleged or the land itself", it is the purpose of the *Act* that must be kept in mind when applying the test. Both the land and the contract are inextricably bound together by the wording in the *Act* itself.

Answer - Question #1

[45] ***Deglman*** remains the leading authority and is good law in Canada and in Nova Scotia. In answer to the first question, the proper test for the doctrine of part performance is that the acts of part performance must be unequivocally referrable to the contract for land asserted by the Plaintiff.

Question #2 – If the test is the test set out by the Supreme Court of Canada in *Deglman v. Brunet Estate*, [1954] S.C.R. 725, [1954] 3 DLR 785, can the payment of money alone ever constitute part performance?[1]

[46] The Respondents submit that under the ***Deglman*** test, the payment of money alone can never constitute part performance.

[47] In 1907, Justice Duff, writing for the Supreme Court of Canada in ***McNeil v. Corbett***, [1907] 39 S.C.R. 608, wrote:

> … a plaintiff who relies upon acts of part performance to excuse the non-production of a note or memorandum under the Statute of Frauds, should fist prove the acts relied upon; it is only after such acts unequivocally referable in their own nature to some dealing with the land which is alleged to have been the subject of the agreement sued upon have been proved that evidence of the oral agreement becomes admissible for the purpose of explaining those acts. It is for this reason that a payment of purchase money alone can never be a sufficient act of performance within the rule. (Emphasis added)

[48] In ***Alvi v. Lal***, [1990] O.J. No 739, 20 ACWS (3d) 1063, the Ontario Supreme Court – High Court of Justice, as it then was, addressed whether a $7,500. deposit was sufficient to constitute part performance of an alleged contract. The Court found that the payment of the deposit did not take the alleged contract outside the *Statute of Frauds*:

> Whatever may be the current judicial trend, it seems clear that until the Supreme Court of Canada accepts *Steadman, supra,* the payment of money cannot constitute part performance of a contract with respect to a contract involving land.

[49] The case of ***Kang Corporation v. KRTT Group Ltd***, (2007) 56 R.P.R. (4th) 278 (Ct. J) is instructive in some respects and in particular the Court stated:

> [20] While under the "strict" approach established in *Deglman* mere payments of money cannot amount to part performance, these payments are different: they were directed to the lawyer handling the purchase of the subject property just days before the closing, and one of the cheques by its notation, was earmarked specifically for this property. It defies logic to suggest this was merely coincidence, or, as defence counsel suggest, that these payments could be referable to some other business arrangement between the parties. The context and timing surrounding the payments suggest to me they were unequivocally referable to this transaction, and therefore constitute further acts of part performance.

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1 Portions of the legal briefs submitted have been referenced herein.

[50] The Applicants submit that in ***Kang***, Baltman, J. discusses the conflicting lines of authority as to whether the payment of money can constitute an act of part performance. In doing so the Applicants refer to paragraphs 13 and 14 where 1) payment of purchase money alone cannot take the contract out of the operation of the Statute and 2) the payment of money may, in itself, amount to specific performance. In the former the reason is because mere payment is not indicative of the alleged contract. In the latter the reason is because the conduct need only point to the existence of some agreement for a sale of land but not the very agreement alleged.

[51] The Applicants further submit that in ***Kang***, after finding that the Plaintiffs had shown sufficient indicia of part performance (Paragraph 16), the Court addressed the issue of whether the payment of $180,000. toward the deposit (Paragraph 18) constituted an act of part performance. Referring to paragraph 20 above, the Applicants submit that ***Kang*** stands for the proposition that the payment of money as a deposit can constitute an act of part performance in light of all of the surrounding circumstances.

[52] The Respondents submit that in ***Kang***, in finding that the "context and timing surrounding the payments suggest they were unequivocally referable to this transaction, and therefore constitute further acts of part performance", Justice Baltman was actually relying on the fact that the transaction for the purchase of the commercial plaza closed as an act of part performance. They say this distinguishes ***Kang*** from the case at hand.

[53] The Court is not deciding the Application at this point. Rather, it is attempting to answer the question of law placed before it.

[54] The Applicant has submitted that in ***Steadman***, Lord Salmon stated his view that if the payment of money, in part or in whole, can never be considered an act of part performance, then the circumstances surrounding its payment would be irrelevant (page 1007):

> …I think, however, that the Court of Appeal were bound to accept this proposition by the authorities referred to with approval by the Earl of Selborne LC in *Maddison v. Alderson*. On this basis, the reasons given by Edmund Davies LJ for reluctantly dismissing the appeal appear to me to be impeccable. The proposition has, however, never yet been debated before his House. In *Maddison v Alderson* it was assumed, without argument, to be correct: in any event it was wholly unnecessary for the decision of that appeal. This house is, therefore, not bound to accept the proposition and, for my part, I am unable to do so. I believe that the analysis of the proposition which I have attempted demonstrates that the proposition is fundamentally unsound and would lead to grave injustice.

[55] The question before this Court is can the payment of money "alone" constitute part performance? There are cases that have considered admissible evidence of surrounding circumstances to show that the payment of money can, in light of those circumstances, constitute an act of part performance.

[56] The answers to these questions continue to relate back to the views expressed in ***Deglman*** and ***Steadman***. Given that this Court accepts ***Deglman*** as the leading authority, I accept the view provided by Duff, in ***MacNeil and Corbett*** , writing for the Supreme Court of Canada, that the payment of purchase money alone is not sufficient to constitute part performance that would "excuse the non-production of a note or memorandum under the Statute of Frauds".

Answer – Question #2.

[57] The Court therefore finds the answer to the second question to be "No". The payment of money alone cannot constitute part performance.

[58] In terms of avoiding the "grave injustice" referred to above, the note or memorandum required by the statute, and the relevance such documents will vary on a case by case basis.

Murray, J