

No. 1035543

SUPREME COURT OF THE STATE OF WASHINGTON

RAMIRO CORTES,

Petitioner,

v.

MARIJKE DEUTSCHER AND ALLEN DEUTSCHER,

Respondents.

**RESPONDENTS' ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION AND RELIEF REQUESTED

Respondents Marijke and Allen Deutscher ask this Court to deny Petitioner Ramiro Cortes' request for review. The Court of Appeals' opinion dated June 17, 2024, reached a reasonable result. The decision should stand, and the relief granted to the Deutschers by the decision should be allowed without further delay.

The Deutschers own the residential real estate commonly known as 9234 Mountain View Road. They purchased this property in 2008. They have been the titled owners at all times material hereto. They have paid the property taxes and insured the property. The Deutschers have wanted to sell their property since 2021, but their long-time tenant, Mr. Cortes, refuses to vacate. The Deutschers cannot effectively market the property until Mr. Cortes vacates.

Mr. Cortes argues he should not be required to vacate because he claims to be owner of at least a portion of the subject residential real estate; the entire parcel of which

currently has an assessed value of nearly \$600,000. Mr. Cortes claims to own this property by virtue of an alleged oral contract where he allegedly traded undocumented labor for credit toward the purchase. Mr. Cortes has apparently received a free lawyer despite his claimed wealth, and with the assistance of the free lawyer Mr. Cortes has delayed being ejected/evicted by appealing a grant of summary judgment.

The Deutschers are charitable people, which is evidenced by their willingness to allow Mr. Cortes free or reduced rate lodging for many years (*i.e.*, from approximately 2008 through 2021). The Deutschers are not opposed to housing rights becoming increasingly protected under the law. However, housing issues should be the responsibility of society as a whole to solve. It should not be the Deutschers' burden alone to ensure housing for Mr. Cortes. The Deutschers' right to sell their property should not continue to be denied while Mr. Cortes' unbelievable claims go before yet another Court.

Mr. Cortes' claims would not as a matter of law ever be believed by a reasonable trier of fact. Moreover, Mr. Cortes failed to establish essential elements of his claims that were dismissed on summary judgment. Another round of appeals is not warranted.

II. DECISION

In an unpublished opinion filed April 15, 2024, the Court of Appeals affirmed dismissal of Mr. Cortes' breach of contract claim, affirmed dismissal of Mr. Cortes' fraud claim, and reversed dismissal of Mr. Cortes' unjust enrichment claim. *A 17-31*. Mr. Cortes made a motion for reconsideration of the Court of Appeal's decision. On June 17, 2024, the Court of Appeals denied Mr. Cortes' motion. At the same time, it withdrew its opinion dated April 15, 2024, and issued a new opinion. *A 1-15*.

A side-by-side comparison of the Court's June 17, 2024, opinion and the previous opinion dated April 15, 2024, reveals the only change to be to the "ANALYSIS" section in relation to the claim for breach of contract. There do not appear to have

been any changes in the opinion(s) related to other claims and/or other sections. Mr. Cortes again made a motion for reconsideration, and again on September 16, 2024, his motion was denied. *A 16.*

III. ISSUES PRESENTED FOR REVIEW

- 1. The Court of Appeals' decision is in alignment with previous decisions of this Court and published opinions of the Court of Appeals related to elements of a contract because Mr. Cortes cannot establish contract formation.**
- 2. The Court of Appeals' decision is in alignment with previous decisions of this Court and published opinions of the Court of Appeals related to the appropriateness of determining oral contracts because Mr. Cortes cannot establish contract formation and the Statute of Frauds applies.**
- 3. The courts are not being used to perpetuate fraud because this matter has been properly decided at every stage of these proceedings.**

IV. STATEMENT OF THE CASE

The Deutschers are a married couple. CP 32. The Deutschers purchased certain real property which consists of two residences commonly known as 9234 ("9234 Residence") and

9040 (“9040 Residence”) Mountain View Road SE, Yelm, WA 98597, Thurston County Tax Parcel Number 21713430106, (collectively, the “Property”). CP 36-37. At all times material hereto, the Deuschers have been the fee simple, titled owner of the Property; and kept the Property insured via a Landlord Protection Policy. CP 32; CP 36-37; CP 88. The Deuschers have made significant improvements to the Property, including paying for a complete remodel of the 9040 Residence. CP 25.

The Property is residential real property located in Yelm, Washington. CP 85. The Property is one of many properties the Deuschers have purchased over the years as an investment. The Property was purchased with the Deuschers’ community funds for a reported price of \$295,000.00. CP 40.

Mr. Cortes moved into the 9234 Residence shortly after the Deuschers purchased the Property. CP 32. This was a friendly rental arrangement as the terms of Mr. Cortes’ tenancy were never reduced to a writing. CP 32; CP 139.

Mr. Cortes claims his employer at the time, Mrs. Deutscher, agreed that she would convey the entire Property to him (including the two residences) for \$270,000.00; despite the fact that Mr. and Mrs. Deutscher had just paid \$295,000.00. CP 96-97. Mr. Cortes never alleged that he had any agreement with Mr. Deutscher. *See* CP 152. The Deutschers have always denied the existence of this alleged oral purchase contract. CP 33.

Mr. Cortes claims Mrs. Deutscher orally agreed that Mr. Cortes could pay the alleged \$270,000.00 purchase price by providing work for Mrs. Deutscher's business above the amount of work for which Mr. Cortes was otherwise paid. Mr. Cortes was paid for working forty (40) hours per week at Mrs. Deutscher's business, and this is the level of income Mr. Cortes reported on tax returns. CP 95-97; CP 152-153; CP 227-232. There is no documentary evidence that supports these claims or any of these arrangements.

Mr. Cortes also claims that Mrs. Deutscher agreed to credit rental income from the 9040 Residence. CP 153. All of this

despite the fact that the Deutschers' property manager collected the rent for the 9040 Residence and the Deutschers reported it on their tax returns as rental income as opposed to a credit toward some alleged agreement. CP 85; CP 113.

Mrs. Deutscher and Mr. Cortes never discussed the alleged oral agreement during the many years that Mr. Cortes claims he was performing pursuant to its terms. For example, there was never any discussion about how much more was owed under the alleged agreement. Nevertheless, Mr. Cortes claimed after he left Mrs. Deutscher's employment that he worked just about the right amount to get the Property transferred to him.

Mr. Cortes does not indicate there was ever any agreement about the timing or amounts of periodic payments. Mr. Cortes does not indicate any interest is owed on the alleged agreement. Mr. Cortes does not indicate there was ever any agreement about a final due date for him to complete the alleged contract payment(s). CP 33. Even in a light most favorable to Mr. Cortes, his alleged performance of some oral contract can be explained

by a landlord-tenant relationship just as easily, if not more so, as a purchase and sale relationship.

Mr. Cortes asks for the Deutschers' community property (*i.e.*, the Property) to be transferred to his name, or for other claimed damages, based on an alleged oral contract Mr. Cortes states he entered with Mrs. Deutscher only. The Deutschers deny Mrs. Deutscher entered the alleged oral agreement with Mr. Cortes. CP 33. The Deutschers further deny the alleged oral contract would be valid even if Mrs. Deutscher had made the promises Mr. Cortes claims she made. Mr. Cortes' claims have been dismissed at every stage of these proceedings. Mr. Cortes' Petition for Review should be denied as well.

V. ARGUMENT

A. The Court of Appeals' decision is in alignment with previous decisions of this Court and published opinions of the Court of Appeals related to elements of a contract because Mr. Cortes cannot establish contract formation.

- 1. The essential terms of a real estate contract are illustrative as to the terms the parties must agree to for contract formation.**

Mr. Cortes argues he does not need to prove the elements of a real estate contract as set forth in *Hubbell v. Ward*, 40 Wn.2d 779, 246 P.2d 468 (1952), and subsequently in *Kruse v. Hemp*, 121 Wn.2d 715, 853 P.2d 1373 (1993) (hereinafter, “the *Hubbell* Factors”).

Mr. Cortes argues that the essential elements of a contract are the subject matter, parties, promise, terms and conditions, and price or consideration. In support of this proposition, he cites to *DePhillips v. Zolt Constr. Co.*, 136 Wn.2d 26, 31, 959 P.2d 1140 (1998).

Mr. Cortes does not indicate he disputes that to establish a contract, it must be proven there was mutual assent to the essential terms—*i.e.*, a meeting of the minds. *See, e.g., Jacob’s Meadow Owners Ass’n v. Plateau 44 II*, 139 Wn. App. 743, 765, 162 P.3d 1153 (2007).

Assuming, arguendo, that the elements Mr. Cortes alleges are the only elements needed to establish the alleged oral contract, Mr. Cortes’ claims still fail.

Mr. Cortes has not sufficiently established the parties had a meeting of the minds as to the terms and conditions of any contract. For one, Mr. Cortes has continuously failed to establish that Mr. Deutscher, one of the owners of the Property and a necessary party to the alleged oral contract, ever agreed to sell the Property.

Further, Mr. Cortes admits that a required element of the alleged oral contract would be the “terms and conditions.” The *Hubbell* Factors come into the analysis to determine what types of terms and conditions must be agreed on in a real estate contract.

To win on a breach of contract claim, Mr. Cortes would need to show a valid agreement between the parties. *Univ. of Wash. v. Gov’t Emp. Ins. Co.*, 200 Wn. App 455, 467, 404 P.3d 559 (2017). Further, agreements to buy and sell real estate “must be definite enough on material terms to allow enforcement without the court supplying those terms.” *Setterlund v. Firestone*, 104 Wn.2d 24, 27, 700 P.2d 745, 747 (1985). Mr.

Cortes' alleged terms offer no specificity regarding payments, payoff date, or interest which would all be typical provisions of a contract to purchase real estate. By his own calculations, Mr. Cortes cannot establish the date certain if/when his obligations were fulfilled. Not to mention the fact that it is completely illogical for the Deutschers to agree to sell the Property for less than what they paid for it, at a 0% interest rate, on a perpetual loan. All of this while incurring additional expenses the Deutschers would not be compensated for nor receive any benefit of (*i.e.*, paying property taxes and insurance and remodeling the 9040 Residence).

Regardless of whether any certain number of specific terms must be agreed for a real estate contract, nothing in *Dankievitch*¹ or other cases changes the most basic concept for contract formation—*i.e.*, that there must be a meeting of the minds. *See, e.g., Peoples Mortg. Co. v. Vista View Builders*, 6 Wn. App. 744, 747, 496 P.2d 354 (1972). As noted above, there

¹ *Dankievitch v. Lawrence*, 22 Wn. App. 2d 749, 513 P.3d 804 (2022).

was no meeting of the minds as to how long Mr. Cortes might take to pay the alleged contract or other aspects relevant to the terms of an agreement. The Court correctly observed that Mr. Cortes failed to “present facts at to the general terms of the alleged contract.” A 7–8. It was proper to dismiss Mr. Cortes’ breach of contract claim when there was no evidence a contract was formed due to the lack of evidence showing there was a meeting of the minds, and thus, no valid contract.

As the Court of Appeals noted, Mr. Cortes submitted declarations from witnesses. However, even viewing these declarations in the light most favorable to Mr. Cortes, none of the declarations provide any evidence as to the essential terms of a contract, much less evidence sufficient to satisfy the clear, cogent and convincing standard that applies in this matter. A 8. What witnesses may have believed Mrs. Deutscher intended (*e.g.*, that she allegedly intended to give the Property to Mr. Cortes) is not evidence that Mrs. Deutscher and Mr. Cortes actually had a meeting of the minds to enter an agreement. *See*,

e.g., Portmann v. Herard, 2 Wn. App. 2d 452, 465, 409 P.3d 1199 (2018).

Clear, cogent, and convincing evidence of the existence of a contract—*i.e.*, proof there was a meeting of the minds and the terms of the contract—requires more than declarations indicating that third parties believed a contract existed. The Court’s decision to uphold dismissal of the breach of contract claim should stand.

2. Mr. Cortes fails to establish contract formation and is not entitled to relief under contract law regardless of if it is specific performance or damages.

As outlined above, Mr. Cortes has continuously failed to establish that a valid contract of any kind existed. He has failed to produce evidence of the alleged contract— *i.e.*, (1) no written agreement exists (not a rental agreement and not a purchase/sale agreement); (2) there is scant documentation evidencing Mr. Cortes worked overtime and no documentation he had payments withheld for housing expenses or reported income for the alleged

overtime work; (3) there is no evidence of damages; and (4) there is no evidence Mr. Deutscher agreed to the alleged oral contract.

Here, even taken in the light most favorable to Mr. Cortes, reasonable minds can meet but one conclusion: that no contract existed. To reiterate, there is no evidence of a meeting of the minds on essential terms. Thus, there is no valid contract. Mr. Cortes failed to prove his claims and is not entitled to relief regardless of the form that relief takes.

3. The court chose not to exercise its equitable authority to order the sale of real property under an oral agreement that lacks otherwise material terms.

The court did not overlook its equitable authority, but rather, chose not to exercise it.

Mr. Cortes' statements do not need to be taken as true or believed on summary judgment, as he keeps alleging. Mr. Cortes seems to conflate or confuse the standards under CR 56 with those under CR 12(b)(6). When reviewing a CR 12(b)(6) motion to dismiss, factual allegations are presumed true. *See, e.g.,*

FutureSelect Portfolio Mgmt. Inc., v. Tremont Grp. Holdings, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014). When reviewing a CR 56 motion for summary judgment, the evidence and all reasonable inferences must be viewed in a light most favorable to the non-moving party. *See, e.g., Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

Mr. Cortes appears to argue that specific performance should be granted because Mr. Cortes can complete the contract in a reasonable time; despite the fact this contradicts Mr. Cortes' allegations that he has already performed the contract. Specific performance is inappropriate because Mr. Cortes has failed to establish a valid contract. Even taking the evidence in the light most favorable to Mr. Cortes, the parties never agreed upon the material and essential terms of the oral contract such as price.

There is no way for any court to exercise equitable authority and order specific performance on a contract that lacks specificity on all terms, and thus, cannot be completed.

Further, Mr. Cortes overlooks the fact that the Statute of Frauds applies to this case. An oral contract for the sale or transfer of real property is in direct violation of the Statute of Frauds and is void and unenforceable. *Jacob's Meadow Owners Ass'n v. Plateau*, 44 II, LLC, 139 Wn. App. 743, 765, 162 P.3d 1153 (2007).

The Statute of Frauds exists because oral contracts are disfavored, and there is no evidence in this case that would support an exception to the Statute of Frauds. The alleged oral contract in this case cannot be enforced.

B. The Court of Appeals' decision is in alignment with previous decisions of this Court and published opinions of the Court of Appeals related to the appropriateness of determining oral contracts because Mr. Cortes cannot establish contract formation and other factors exist.

The oral contract at the heart of this matter is not a typical oral contract. Mr. Cortes is repeatedly overlooking the fact that the Statute of Frauds applies to this case. Due to the fact the Statute of Fraud applies, this matter is different than an oral

contract in almost any other situation. Here, the court does not need to evaluate the credibility of the witnesses to establish the elements of the oral contract. Assuming, *arguendo*, that the elements of contract formation were met, Mr. Cortes' alleged contract fails the Statute of Frauds.

It is disputed that Mrs. Deutscher and Mr. Cortes entered into an oral contract for the purchase of the Property. However, even if, as Mr. Cortes alleges, it was not disputed, Mr. Cortes would still need to establish an exception to the Statute of Frauds that would allow the contract to be enforced.

Mr. Cortes did not meet his burden to establish the part performance exception to the Statute of Frauds. Not only does he fail the three factors for part performance, his arguments continuously ignore the fact that he has failed to show his acts unequivocally refer to and result from a purchase and sale agreement and cannot be explained by or accounted for on some other hypothesis.

Under the partial performance doctrine, an agreement to convey an estate in real property that violates the Statute of Frauds may be specifically enforced if there is sufficient part performance of the agreement. *Berg v. Ting*, 125 Wn.2d 556, 562, 886 P.2d 564 (1995) (stating that a party must establish there has been part performance in addition to submitting evidence of the contract and its material terms.). The burden is on the party asserting the part performance to show acts “unequivocally referring to, and resulting from, [an alleged] agreement.” *Fridl v. Benson*, 25 Wn. App. 381, 609 P.2d 449 (1980). These acts must “point unmistakably and exclusively to the existence of the claimed agreement.” *Miller v. McCamish*, 78 Wn.2d 821, 826, 479 P.2d 919 (1971). If the acts point to “some other relationship, such as that of a landlord and tenant, or may be accounted for on some other hypothesis, they are not sufficient.” *Granquist v. McKean*, 29 Wn.2d 440, 445, 187 P.2d 623 (1947).

Viewed in the light most favorable to Mr. Cortes, he did not meet his burden creating genuine issues of material fact regarding any of the three elements of partial performance. Mr. Cortes has not provided evidence that would establish an exception and take the oral contract outside of the Statute of Frauds. Further, he has never addressed the fact that the acts he points to as part performance do not point unmistakably and exclusively to the existence of a purchase agreement.

C. The courts are not being used to perpetuate fraud because this matter has been properly decided at every stage of these proceedings.

Proving the terms of the oral contract is an essential part to availing oneself to the partial performance exception to the statute of frauds. *See Kruse v. Hemp*, 121 Wn.2d 715, 725, 853 P.2d 1373 (1993) (party cannot use partial performance doctrine to establish terms that the parties had never agreed upon).

To reach the issues regarding the Statute of Frauds, there first must be a contract. Here, as argued above, Mr. Cortes has

failed to establish contract formation. Further, Mr. Cortes has never alleged he had a contract with Mr. Deutscher, which is fatal to his arguments.

Mr. Cortes has had his days in court. His arguments have been considered by numerous judges across all spectrums of the legal system. Yet, each one has come to the same conclusion and rejected Mr. Cortes' claims.

Further, Mr. Cortes argues that if all other elements of fraud are met, there is an inference that Mrs. Deutscher knew her representations that she was selling him the Property were false. This assertion is not supported by law. Simply because the court has found evidence creating a genuine issue of material fact as to some elements exists does not mean all elements have been established. Mr. Cortes complains it is nearly impossible for him to prove Mrs. Deutscher knowingly made a false statement. Yet, it is his burden to prove the same.

“The state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what

the state of a man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else.” See *Kritzer v. Moffat*, 136 Wash. 410, 419, 240 P. 355 (1925) (quoting *Edgington v. Fitzmaurice*, 29 Ch. Div. 459, 483).

Even if Mrs. Deutscher made a promise to Mr. Cortes in 2008, there is no evidence Mrs. Deutscher believed in 2008 that such statement was false, and there is no evidence such alleged statement was made recklessly.

The court is not perpetuating fraud or creating barriers to justice by appropriately applying the law and holding Mr. Cortes accountable for the burden of establishing his claims.

VI. CONCLUSION

Mr. Cortes failed to establish the terms of the terms and conditions of a contract and a meeting of the minds to form the contract. There was no contract. No breach of contract remedy is available, whether it might be specific performance or damages. Further, Mr. Cortes failed to establish the elements of fraud. Mr. Cortes' Petition for Review should be denied.

Pursuant to RAP 18.17(c), I hereby certify that the number of words contained in the foregoing document is 3,622.

RESPECTFULLY SUBMITTED this 13th day of November, 2024.

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 13th day of November, 2024, at Olympia, Washington.

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