

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2014 CA 1077**

**CLINT JOINER**

**VERSUS**

**SHANNON A. BROWN, SCOTT BROWN, AND CHARLES  
ALMOND**

**Judgment Rendered: APR 24 2015**

**Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Docket Number C505343**

**Honorable Wilson Fields, Judge Presiding**

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**BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.**

*McCleendon, J. concurs and assigns reasons.*

*CBW  
TMT*

## **WHIPPLE, C.J.**

In this appeal, plaintiff challenges the trial court's judgment, granting the motion for summary judgment filed by one defendant and dismissing his claims against that defendant. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

### **FACTS AND PROCEDURAL HISTORY**

On March 10, 2003, Clint Joiner filed suit against Shannon Brown; Charles Almond, Ms. Brown's father; and Scott Brown, Ms. Brown's ex-husband. Through his original and supplemental and amending petitions, Mr. Joiner alleged that, though they were not married, he and Ms. Brown had lived together in a trailer titled in Ms. Brown's name, which was located on immovable property bearing the municipal address 9001 Machost Road, Zachary, Louisiana, titled in Mr. Almond's name ("the Machost Road property"), but that after a disagreement between them, Mr. Joiner was asked to leave the property.

According to Mr. Joiner's allegations, he had given Mr. Almond \$12,700.00 in cash for the purchase of the Machost Road property and had spent additional sums for improvements to the property, including: (1) the purchase of a fence for the property; (2) the purchase of material to make improvements to the barn located on the property; (3) the purchase of gravel for the driveway; and (4) the purchase of an electric fence to surround the property. Based on these allegations, Mr. Joiner prayed to be recognized as a partial owner of the Machost Road property and to have the property partitioned and, although not required to be pled, further sought "all general

and equitable relief” to which he was entitled.<sup>1</sup> See LSA-C.C.P. art. 862.

During the pendency of this proceeding, Mr. Almond died, and his wife, Iris Almond, was substituted as a party defendant as the representative of Mr. Almond’s estate.<sup>2</sup> Thereafter, on March 24, 2014, Ms. Almond filed a motion for summary judgment and an exception of no cause of action on behalf of the Estate of Charles Almond.<sup>3</sup> In support of the motion for summary judgment, Ms. Almond contended that in his petitions, Mr. Joiner had prayed for two things: (1) to be recognized as an owner in indivision of the Machost Road property, and (2) for recovery of his personal property and monetary damages. She further contended that the claims for recovery of Mr. Joiner’s personal property and monetary damages were asserted only against Ms. Brown and Mr. Brown.

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<sup>1</sup>Mr. Joiner also contended that Ms. Brown allowed Mr. Brown to remove some of Mr. Joiner’s personal property from the residence and that Mr. Brown had then alienated the property. Thus, Mr. Joiner sought return of his property, damages for the alienation of his property, and a temporary restraining order and injunctions to prohibit the alienation of any of his remaining personal property during the pendency of the litigation. However, these claims against Ms. Brown and Mr. Brown and Mr. Joiner’s request for injunctive relief are not at issue in this appeal.

<sup>2</sup>In later pleadings, Ms. Almond is identified as “Iris Breaux Almond Comeaux” and “Iris Almond Comeau.” For simplicity, we simply refer to her herein as “Ms. Almond.”

<sup>3</sup>We note that on February 15, 2011, both Ms. Brown and Mr. Almond had filed motions to dismiss for want of prosecution, and on February 25, 2011, the trial court signed the orders attached to both motions to dismiss, dismissing Mr. Joiner’s action with prejudice. Thereafter, on July 5, 2011, Mr. Joiner filed a “Motion to Vacate Order,” and by judgment dated February 14, 2012, the trial court vacated its previous February 25, 2011 order of dismissal.

With regard to the timeliness of Mr. Joiner’s “motion to vacate” the February 25, 2011 order, we note that there is no evidence of record that notice of the February 25, 2011 order was ever served on Mr. Joiner. In fact, while both orders contain a typewritten notation to “Please Serve Plaintiff,” followed by his attorney’s address, there are handwritten notations on both orders, written next to Mr. Joiner’s attorney’s address, stating “(Hold service).” Accordingly, on the record before us, it appears that the 30-day period for filing a motion to set aside the order of dismissal, which runs from the date of service of the order by the sheriff, had not expired as of the date that Mr. Joiner filed his motion to vacate. See LSA-C.C.P. art. 561(A)(3) & (4).

With regard to Mr. Joiner's claim to be recognized as an owner of the Machost Road property, Ms. Almond contended that, while it was not clear what type of action this was intended to be, this claim logically would be a petitory action, together with a request for partition of partnership property, claims which Mr. Joiner could not assert against Mr. Almond because he had sold the Machost Road property. Specifically, Ms. Almond averred that Mr. Joiner and Ms. Brown had approached Mr. Almond in her presence, expressing their desire to own the Machost Road property. However, neither Ms. Brown nor Mr. Joiner had the funds or credit worthiness to purchase the property. Thus, they sought to have Mr. Almond purchase the property to "get it off the market" and to then allow them to purchase the property from him once they were able to attain the resources or secure the credit to purchase it from him.

Ms. Almond further attested that while he was reluctant to do so, Mr. Almond agreed to purchase the property, but conditioned his agreement on the following: (1) He would secure the loan to purchase the property and would be the owner thereof; (2) Mr. Joiner and Ms. Brown would pay him rent each month, which would be in the amount of the note, paid directly to Mr. Almond's mortgage company; and (3) Upon their failure to pay the note timely and/or trouble occurring between them, he would sell the property immediately.

Ms. Almond additionally asserted that although Mr. Joiner alleged in his supplemental and amending petition that he had given Mr. Almond \$12,700.00 in cash for the purchase of the property, Mr. Almond's daughter, Ms. Brown, and not Mr. Joiner, brought Mr. Almond the cash. She further

asserted that it was only \$11,975.34.<sup>4</sup> She averred that Mr. Almond used the cash from his daughter as the down payment on the loan and that Mr. Almond did not know the source of those funds.<sup>5</sup> Thereafter, according to Ms. Almond, when trouble developed between Mr. Joiner and Ms. Brown, Mr. Almond decided to sell the Machost Road property as quickly as he could. Thus, when Ms. Brown was able to secure financing, he sold the property to her for the unpaid balance on the mortgage.<sup>6</sup>

Ms. Almond averred that because Mr. Almond had previously sold the property to his daughter, Mr. Joiner's petitory action was likewise between Mr. Joiner and Ms. Brown. Ms. Almond contended that there was no genuine issue of material fact with regard to any claims against Mr. Almond's estate and that summary judgment should be granted, dismissing Mr. Joiner's claims against the estate.

In support of the exception of no cause of action, Ms. Almond further contended that the pleadings did not state a cause of action against her husband or his estate. Again, with regard to the claims for return of, or damages for alienation of, Mr. Joiner's personal property, Ms. Almond contended that those claims were asserted only against Ms. Brown and Mr. Brown. Additionally, with regard to the claims relating to the Machost Road property, which she labeled as "[a] petitory action and a partition of

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<sup>4</sup>Notably, while Ms. Almond argued in her memorandum in support of the motion for summary judgment that Ms. Brown, and not Mr. Joiner, had given Mr. Almond the cash for the purchase of the Machost Road property and listed this assertion in her Statement of Uncontested Facts, she did not attest to this assertion in her affidavit. We further note that in her memorandum in support of the motion for summary judgment, the exact figure is listed as both \$11,975.43 and \$11,975.34.

<sup>5</sup>Ms. Almond asserted in her memorandum (although not in her affidavit) that while Mr. Almond did not know the source of the funds, he "felt that they were from both of them."

<sup>6</sup>A copy of the act of sale of the Machost Road property from the Almonds to Ms. Brown, filed in support of the motion for summary judgment, indicates that the sale took place three days prior to Mr. Joiner filing his petition herein.

partnership property,” Ms. Almond asserted that the pleadings did not demonstrate a cause of action against her deceased husband, Mr. Almond.

In opposition to the exception of no cause of action, Mr. Joiner contended the allegations in his supplemental and amending petition that he had given Almond \$12,700.00 for the purchase of the Machost Road property and that he had made multiple improvements to the property while Mr. Almond was the titled owner were sufficient to state causes of action against Mr. Almond for unjust enrichment and conversion. Additionally, in opposition to the motion for summary judgment, Mr. Joiner contended that there were material facts in dispute, including: whether he had given Mr. Almond \$12,700.00 for the purchase of the Machost Road property; whether Mr. Almond and Ms. Almond knew the source of the money; whether Mr. Almond and Ms. Almond acted together with Ms. Brown to alienate the Machost Road property and convert the investments Mr. Joiner made in the property into their own; whether Mr. Almond and Ms. Almond transferred the Machost Road property to Ms. Brown for the remaining balance on the mortgage and, thus, were joint actors in the acts of conversion; and whether Ms. Brown acted both individually and jointly with her father, Mr. Almond, and Mr. Brown to alienate Mr. Joiner from his personal property. Accordingly, Mr. Joiner contended that his petitions adequately set forth causes of action against the Estate of Charles Almond and that genuine issues of material fact existed, rendering summary judgment inappropriate.

Following a hearing on the motion and exception, the trial court rendered judgment, granting Ms. Almond’s motion for summary judgment and dismissing Mr. Joiner’s claims against the Estate of Charles Almond. From this judgment, Mr. Joiner appeals, contending that the trial court erred

in granting summary judgment where several genuine issues of material fact exist.

### **SUMMARY JUDGMENT**

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. All Crane Rental of Georgia, Inc. v. Vincent, 2010-0116 (La. App. 1<sup>st</sup> Cir. 9/10/10), 47 So. 3d 1024, 1027, writ denied, 10-2227 (La. 11/19/10), 49 So. 3d 387. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B)(2). Summary judgment is favored and “is designed to secure the just, speedy, and inexpensive determination of every action.” LSA-C.C.P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. However, if the moving party will not bear the burden of proof on the issue at trial, he need only demonstrate an absence of factual support for one or more elements essential to the adverse party’s claim, action or defense. Then, the non-moving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. LSA-C.C.P. art. 966(C)(2). If the opponent of the motion fails to do so, there is no genuine issue of material fact and summary judgment will be granted. McCorkle v. Gravois, 2013-2009 (La. App. 1<sup>st</sup> Cir. 6/6/14), 152 So. 3d 944, 947, writ denied, 2014-2179 (La. 12/8/14), 153 So. 3d 446.

Moreover, as consistently noted in LSA-C.C.P. art. 967(B), when the motion for summary judgment is supported as provided above, the opposing

party cannot rest on the mere allegations or denials of his pleadings, but must present evidence showing that there is a genuine issue for trial.

McCorkle, 152 So. 3d at 947. As this court has previously recognized:

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. A trial court cannot make credibility decisions on a motion for summary judgment. [Citations omitted.]

All Crane Rental of Georgia, Inc., 47 So. 3d at 1027.

Appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Boudreaux v. Vankerkhove, 2007-2555 (La. App. 1st Cir. 8/11/08), 993 So. 2d 725, 729-730. An appellate court thus asks the same questions as does the trial court in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact, and whether the mover-appellant is entitled to judgment as a matter of law. All Crain Rental of Georgia, Inc., 47 So. 3d at 1027.

### **DISCUSSION**

In support of his contention that the trial court erred in granting summary judgment herein, Mr. Joiner first notes that Louisiana operates under the fact-pleading doctrine. He further contends that the facts alleged in his pleadings set forth causes of action for unjust enrichment, conversion, and a revendicatory action, and that genuine issues of material fact exist with regard to these causes of action, rendering summary judgment inappropriate.

#### **What Causes of Action were Raised in the Petition?**

To determine whether the trial court erred in granting summary judgment herein and dismissing Mr. Joiner's causes of action against the Estate of Charles Almond, we must first ascertain what causes of action



were asserted in or raised by the factual allegations of Mr. Joiner's petitions against this defendant. The Louisiana Code of Civil Procedure provides that no technical forms of pleading are required. LSA-C.C.P. art. 854. Furthermore, LSA-C.C.P. art. 862 sets forth as follows:

Except as provided in Article 1703, a final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, *even if the party has not demanded such relief in his pleadings* and the latter contain no prayer for general and equitable relief. [Emphasis added.]

The purpose of this article is to suppress the "theory of the case" doctrine and permit a court to grant the relief warranted by the averments contained in the pleadings and the evidence. Brown v. Brown, 348 So. 2d 699, 701 (La. App. 1st Cir. 1977). The nomenclature given a pleading is not controlling; the courts will look behind mere headings on pleadings to determine the substance and true nature thereof. Mid-City Investment Co. v. Young, 238 So. 2d 780, 784 (La. App. 1st Cir. 1970). Thus, a party may be granted any relief to which he is entitled so long as the facts pled gave the opposing party adequate notice of the existence of potential causes of action. Cameron v. Bruce, 42,873, 42,983 (La. App. 2nd Cir. 4/23/08), 981 So. 2d 204, 208, writ denied, 2008-1127 (La. 9/19/08), 992 So. 2d 940.

In the instant case, the facts alleged by Mr. Joiner in his petitions, as they relate to **Mr. Almond**, are that: Mr. Almond was the titled owner of the Machost Road property; Mr. Joiner gave Mr. Almond \$12,700.00 in cash for the purchase of the Machost Road property; and Mr. Joiner spent additional sums for improvements to the property, including: (1) the purchase of a fence for the property; (2) the purchase of material to make improvements to the barn located on the property; (3) the purchase of gravel for the driveway; and (4) the purchase of an electric fence to surround the property. Based on these factual allegations, Mr. Joiner sought in his

pleadings to be recognized “as partial owner of the immov[able] property” and that the court order “a partition by licitation” if the property could not be partitioned, as well as “all general and equitable relief.”

### **1. Petitory Action**

As noted by Ms. Almond, the claim of **ownership** of the immovable property asserted by Mr. Joiner appears to assert a **petitory action**. The petitory action is one brought by a person who claims the ownership, but who is not in possession, of immovable property, against another who is in possession or who claims the ownership thereof adversely, to obtain judgment recognizing the plaintiff’s ownership. LSA-C.C.P. art. 3651; Griffin v. Daigle, 99-1942 (La. App. 1st Cir. 9/22/00), 769 So. 2d 720, 724, writ denied, 2000-3406 (La. 2/2/01), 784 So. 2d 648. In his petition, Mr. Joiner alleged that: Mr. Almond is the titled owner of the Machost Road property; Joiner also has an ownership interest in the property; and Joiner has been denied access to, and thus is not in possession of, the property. Thus, he clearly alleged facts supporting a petitory action against Mr. Almond, and now his estate.

### **2. Revendicatory Action**

As to Mr. Joiner’s contention on appeal that the factual allegations of his pleadings are sufficient to set forth a revendicatory action, we note that in Louisiana, the revendicatory action for the recovery of immovable property is a **petitory action**, as governed by LSA-C.C.P. arts. 3651-3654. Todd v. State, Department of Natural Resources, 474 So. 2d 430, 436 (La. 1985); LSA-C.C. art. 526(b). Moreover, with regard to any potential revendicatory action as to **movable** property, we do not find that the factual allegations of the petition set forth such a claim against Mr. Almond or his estate.

Specifically, as to the movable property, i.e., the cash, that Mr. Joiner allegedly gave Mr. Almond to purchase the Machost Road property, while the revendicatory action is available to the owner or person entitled to possession for the recovery of the movable, Todd, 474 So. 2d at 436, the revendicatory action abates when the movable is no longer in possession of the defendant. Dual Drilling Company v. Mills Equipment Investments, Inc., 98-0343 (La. 12/1/98), 721 So. 2d 853, 856 n.1. While Mr. Joiner alleged that he gave the cash to Mr. Almond to use for the purchase of the Machost Road property, Mr. Joiner also contended in these factual allegations that Mr. Almond no longer had possession of the cash given to him by Mr. Joiner. However, even where the defendant is no longer in possession of the movable (in this instance, cash), and the revendicatory action has thus abated, the plaintiff may have a personal action for **damages** or **unjust enrichment** against the former possessor of the movable. Dual Drilling Company, 721 So. 2d at 856 n.1.

Regarding any other movable property, Mr. Joiner did not allege in his original or amended petitions that **Mr. Almond** had taken any of his personal property from the Machost Road property, instead contending that Ms. Brown and Mr. Brown had engaged in those actions. Thus, the allegations of the pleadings do not support a revendicatory action against the Estate of Charles Almond.

### **3. Unjust Enrichment**

However, although not specifically labeled in the petitions, the factual allegations of Mr. Joiner's pleadings do sufficiently set forth a cause of action for **unjust enrichment** against the Estate of Charles Almond. Regarding the theory of unjust enrichment, LSA-C.C. art. 2298 provides that "[a] person who has been enriched without cause at the expense of another

person is bound to compensate that person.” A person is enriched when his assets increase, without adequate compensation, or his liabilities diminish. Conversely, one is impoverished when his assets are diminished, a justified expectation of gain is prevented, or his liabilities are increased. Gulfstream Services, Inc. v. Hot Energy Services, Inc., 2004-1223 (La. App. 1<sup>st</sup> Cir. 3/24/05), 907 So. 2d 96, 101, writ denied, 2005-1064 (La. 6/17/05), 904 So. 2d 706.

In Bennett v. Dauzat, 2007-1555 (La. App. 3<sup>rd</sup> Cir. 5/21/08), 984 So. 2d 215, the plaintiff filed suit against his former girlfriend, alleging, in part, that the defendant had been unjustly enriched by his payment on the outstanding loan balance on her vehicle. In reversing the trial court’s refusal to order the return of the money paid on the defendant’s vehicle loan, the appellate court noted that the defendant had been enriched without cause and was thus bound to compensate the plaintiff in the amount that she had been unjustly enriched. Bennett, 984 So. 2d at 218.

Similarly, in the instant case, Mr. Joiner alleged through his petitions that he gave Mr. Almond \$12,700.00 in cash for the purchase of the Machost Road property. Consequently, that Mr. Almond’s assets were increased, and that Mr. Joiner’s assets were diminished by these actions. Thus, he has set forth a cause of action for unjust enrichment.<sup>7</sup>

#### **4. Reimbursement for Improvements Made to Immovable Property**

Additionally, we conclude that Mr. Joiner alleged sufficient facts to set forth a cause of action for **reimbursement for the improvements** he made upon the Machost Road property. Pursuant to LSA-C.C. art. 493,

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<sup>7</sup>Because all of the factual allegations necessary to support a cause of action for unjust enrichment were sufficiently and clearly set forth in Mr. Joiner’s petitions, we disagree with Ms. Almond’s contention that a recognition of this cause of action constitutes an expansion of the pleadings.

“[b]uildings, other constructions permanently attached to the ground, and plantings made on the land of another with his consent belong to him who made them.” When the owner of those improvements no longer has the right to keep them on the land of another, he may remove them subject to his obligation to restore the property to its former condition. LSA-C.C. art. 493. On the other hand, where improvements are incorporated in or attached to an immovable so as to become its component parts, such improvements belong to the owner of the immovable. LSA-C.C. art. 493.1. With regard to such component parts, LSA-C.C. art. 495 provides as follows:

One who incorporates in, or attaches to, the immovable of another, with his consent, things that become component parts of the immovable under Articles 465 and 466, may, in the absence of other provisions of law or juridical acts, remove them subject to his obligation of restoring the property to its former condition.

If he does not remove them after demand, the owner of the immovable may have them removed at the expense of the person who made them or elect to keep them and pay, at his option, the current value of the materials and of the workmanship or the enhanced value of the immovable.

Denying an individual the right to remove such improvements can be construed as an election by the owner of the immovable to keep and pay for the improvements. Smith v. State, Department of Transportation & Development, 2004-1317 (La. 3/11/05), 899 So. 2d 516, 533; Annina v. Eschette, 2000-1892 (La. App. 1st Cir. 11/21/01), 814 So. 2d 13, 16-17, writ denied, 2001-3375 (La. 3/8/02), 811 So. 2d 880.<sup>8</sup>

In the instant case, Mr. Joiner alleged that during the time that he was allowed to live on the property and prior to being asked to leave the

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<sup>8</sup>In Annina, the plaintiff, who had made improvements upon the land she leased, was evicted from the land and was told by the lessor at that time that she could not take anything with her except her mobile home. The lessor's actions were determined to constitute a decision to keep and pay for the improvements made by the plaintiff. Annina, 814 So. 2d at 16-17.

property, he made numerous improvements to the Machost Road property for which he has not been compensated. Accordingly, we conclude that these factual allegations support a **claim for compensation or reimbursement** for those improvements.

### **5. Conversion**

However, with regard to Mr. Joiner's contention on appeal that his pleadings set forth a claim of **conversion** against Mr. Almond, we disagree. A conversion consists of an act in derogation of the plaintiff's possessory rights. Any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion. Johnson v. Hardy, 98-2282 (La. App. 1st Cir. 11/5/99), 756 So. 2d 328, 333.

Mr. Joiner clearly alleged in his petitions acts of conversion by **Ms. Brown and Mr. Brown**, but not by **Mr. Almond**. And while Mr. Joiner asserts on appeal that Mr. Almond and Ms. Brown "took possession over his property without paying him and without his consent," resulting in "a viable claim for conversion" and "alienated and converted his property because [Mr. Joiner] invested much of his own separate property into" the Machost Road property, a reading of the petitions indicates that no such factual allegations were made against **Mr. Almond** to support a claim of conversion against him or his estate. Mr. Joiner's allegations that he "gave" Mr. Almond cash for the purchase of the Machost Road property and that he (apparently voluntarily) spent additional funds to improve that property, which by his own admission, he knew was titled in another's name, simply do not amount to allegations of conversion.

Moreover, while the evidence submitted in support of Ms. Almond's motion for summary judgment seeking dismissal of the petititory action

indicates that the Almonds sold the Machost Road property to Mr. Almond's daughter Ms. Brown for only the remaining balance on the loan, with no attempt to recoup the down payment allegedly given to Mr. Almond by Mr. Joiner or any return for added value from the improvements allegedly made to the property by him, Mr. Joiner never amended his petition to plead these facts or to allege that these actions constituted a conversion of either the funds he gave Mr. Almond for the purchase of the Machost Road property or the funds he expended on improvements to the property.

**Was Summary Judgment Properly Granted to Dismiss the Causes of Action Raised in the Petitions?**

Having concluded that Mr. Joiner's petitions and the factual allegations therein sufficiently set forth claims against the Estate of Charles Almond for a **petitory action** and related **request for partition of immovable property**, as well as **compensation or reimbursement for improvements** made to the Machost Road property and **unjust enrichment**, we must now consider whether the trial court properly granted Ms. Almond's motion for summary judgment and dismissed those claims against the Estate of Charles Almond.

Turning first to the petitory action and related request to partition the property, as stated above, the petitory action is one brought by a person who claims the ownership, but who is not in possession, of immovable property, against another who is in possession or who claims the ownership thereof adversely. LSA-C.C.P. art. 3651; Griffin, 769 So. 2d at 724. In support of her motion for summary judgment seeking dismissal of the petitory action and request for partition, Ms. Almond presented evidence that she and Mr. Almond sold the Machost Road property to Ms. Brown prior to the date that Mr. Joiner filed suit herein. Additionally, she attested that during the time

that she and Mr. Almond owned the property, neither she nor Mr. Almond “visited” or “went upon” the Machost Road property. Thus, in establishing that Mr. Almond did not own and was not in possession of the subject property at the time the petitory action was commenced against him, Ms. Almond established the absence of factual support for one or more elements essential to Mr. Joiner’s petitory action. The burden then shifted to Mr. Joiner to produce factual support sufficient to establish that he would be able to satisfy his evidentiary burden at trial. See Brown v. Amar Oil Company, 2011-1631 (La. App. 1<sup>st</sup> Cir. 11/8/12), 110 So. 3d 1089, 1092-1093, writ denied, 2012-2678 (La. 2/8/13), 108 So. 3d 87.

However, in response to Ms. Almond’s evidence in support of the motion for summary judgment, Mr. Joiner did not produce any factual support to establish that he will be able to satisfy his evidentiary burden of proof at trial as to Mr. Almond’s ownership or possession of the Machost Road property or that an issue of fact remained as to Mr. Almond’s alleged ownership or possession. Accordingly, we find no error in the trial court’s grant of summary judgment and dismissal of Mr. Joiner’s petitory action and related request for partition of the Machost Road property against this defendant, the Estate of Charles Almond.

Nonetheless, finding that genuine issues of material fact remain as to Mr. Joiner’s causes of actions for unjust enrichment and compensation or reimbursement for improvements made to immovable property against the Estate of Charles Almond, we must conclude that the trial court erred in dismissing these claim on Ms. Almond’s motion for summary judgment.

In support of the motion for summary judgment, Ms. Almond argued that the cash down payment for the Machost Road property was given to Mr.



Almond by his daughter, Ms. Brown, rather than by Mr. Joiner.<sup>9</sup> However, as noted above, while she made these allegations in her memorandum in support of her motion for summary judgment, she did not attest to these alleged facts in her affidavit or offer any other evidence to establish these alleged facts. Moreover, she simply did not address Mr. Joiner's contentions in his petitions that he expended additional sums to improve the Machost Road property. Thus, Ms. Almond failed to carry her burden of demonstrating an absence of factual support for one or more elements essential to Mr. Joiner's claims for unjust enrichment and compensation or reimbursement for improvements to the Machost Road property. Because Ms. Almond failed in her burden of proof to show an absence of factual support for one or more elements of Mr. Joiner's unjust enrichment claim, the burden never shifted to Mr. Joiner. See Asberry v. The American Citadel Guard, Inc., 2004-0929 (La. App. 1st Cir. 5/6/05), 915 So. 2d 892, 894.

Notably, while the burden never shifted to Mr. Joiner to demonstrate that factual issues remained as to his claim for unjust enrichment, Mr. Joiner nonetheless submitted his own affidavit attesting that he gave Mr. Almond the sum of \$12,700.00 for the cash down payment to the Machost Road property, money that he received from the sale of other immovable property he owned, and further detailing the improvements he made to the Machost Road property. Additionally, Mr. Joiner offered copies of financial records to demonstrate the manner in which he acquired the funds and to show removal of funds from his personal savings account within the months

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<sup>9</sup>As noted above, she further averred in her memorandum that Mr. Almond "felt that [the funds] were from both [Mr. Joiner and Ms. Brown]," which certainly does not suggest the absence of factual support for Mr. Joiner's claim of unjust enrichment for the funds he asserts he gave to Mr. Almond for the purchase of the property.

immediately preceding Mr. Almond's purchase of the Machost Road property.

Accordingly, based on our *de novo* review of the record, we conclude that Ms. Almond failed to show an absence of factual support for one or more of the elements of Mr. Joiner's **unjust enrichment** and **reimbursement or compensation claims** against the Estate of Charles Almond and, thus, was not entitled to summary judgment as to these causes of action. See Asberry, 915 So. 2d at 894. Thus, the trial court erred in dismissing Mr. Joiner's cause of action for unjust enrichment against the Estate of Charles Almond.

### **CONCLUSION**

For the above and foregoing reasons, the November 3, 2014 judgment of the trial court is affirmed in part to the extent that it dismisses Clint Joiner's petitory action and related request for partition of property against the Estate of Charles Almond. The judgment is reversed to the extent that it dismissed Clint Joiner's claims for unjust enrichment and compensation or reimbursement for improvements made to immovable property against the Estate of Charles Almond. This matter is remanded to the trial court for further proceedings consistent with the views expressed herein. Costs of this appeal are assessed equally between Clint Joiner and the Estate of Charles Almond.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2014 CA 1077**

**CLINT JOINER**

**VERSUS**

**SHANNON A. BROWN, SCOTT BROWN, AND CHARLES ALMOND**

\*\*\*\*\*

 **McCLENDON, J., concurs.**

While I do not agree with the majority's analysis under LSA-C.C. arts. 463 and 465 as to some of the alleged improvements made by Mr. Joiner, I nevertheless find that Mr. Joiner's petition sufficiently states a cause of action for unjust enrichment. I further find that appellee failed to establish that no genuine issue of material fact existed as to this cause of action. As such, the trial court improperly granted summary judgment in this regard. Therefore, I concur with the result reached by the majority.