NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 0204

WARREN "CHIP" PIERROTTI AND ELIZABETH T. PIERROTTI

VERSUS

GLENN LEE JOHNSON, KIM GRAHAM JOHNSON, STEPHEN COLSON AND PRESTIGE TITLE

Judgment rendered October 28, 2016.

* * * * * *

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C593673
Honorable Donald R. Johnson, Judge

* * * * * *

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* * * * * *

BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

McDonald, J. agrees in part and dissents in part. I do not believe the Louisiana Unfair Trade Practice Act is applicable to the facts of this case.

PETTIGREW, J.

In a previous appeal to this court, plaintiffs challenged the trial court's judgment that dismissed their suit against defendants as *res judicata* due to a prior arbitration between the parties. See **Pierrotti v. Johnson**, 2011-1317 (La. App. 1 Cir. 3/19/12), 91 So.3d 1056 ("**Pierrotti I**"). Finding error in the trial court's ruling on the *res judicata* issue, we reversed and remanded for further proceedings. **Pierrotti I**, 2011-1317 at 10-11, 91 So.3d at 1064-1065. Before us now, we have the trial court's June 29, 2015 judgment granting a partial summary judgment[1] in favor of plaintiffs and the trial court's October 20, 2015 judgment in favor of plaintiffs, awarding damages based on what the trial court previously concluded was a valid, enforceable, onerous contract between the parties. Defendants have appealed. For the reasons that follow, we affirm the June 29, 2015 judgment, granting partial summary judgment in favor of plaintiffs, and we affirm, as amended, the October 20, 2015 judgment in favor of plaintiffs.

FACTS AND PROCEDURAL HISTORY

While neither the parties nor this court are strangers to the facts and procedural history of this protracted litigation, we include our summary from **Pierrotti I**.

> According to the record, plaintiffs, Warren "Chip" Pierrotti and Elizabeth T. Pierrotti (collectively referred to hereafter as "Pierrotti"), and defendants, Glenn Lee Johnson and Kim Graham Johnson (collectively referred to hereafter as "Johnson"), were years ago partners in multiple business ventures. On January 15, 2004, Pierrotti and Johnson entered into a Master Settlement Agreement ("MSA") "to effect a settlement of all claims between the parties." It was the intent of the parties that by entering into the agreement, they were settling all claims between them, "whether asserted or not."
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> For purposes of this litigation, the important section of the MSA is Agreement #6, which sets forth the following:
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> > Johnson agrees to transfer to Pierrotti or his designee all of Johnson's right, title and interest in two parcels of real property in which Johnson is a co-owner with Pierrotti, including an office and warehouse facility located at 11862

[1] The granting of the motion for partial summary judgment was a partial final judgment from which no right to appeal existed absent a designation by the trial court. See La. Code Civ. P. arts. 1911 and 1915. However, after an appealable judgment is rendered in a case, the correctness of any interlocutory judgment can also be considered on appeal. **Vanderbrook v. Jean**, 2006-1975, p. 6 n.4 (La. App. 1 Cir. 2/14/07), 959 So.2d 965, 968 n.4. Accordingly, once the trial court signed the final judgment following the trial on the merits, defendants could seek review of the prior interlocutory ruling with regard to the partial summary judgment.

> Cloverland Court, Baton Rouge, Louisiana, 70808, and a rental parcel located at 3620 Nelson Road, Lake Charles, Louisiana 70605. The consideration for the transfer shall be the assumption of liability by Pierrotti and the release of Johnson from obligations as maker or guarantor; the act of transfer shall not occur until Johnson shall have been fully released as a maker and guarantor of notes and all other obligations associated with the parcels in question. Johnson agrees to execute the act of transfer simultaneously (*i.e.,* at the same closing) with his release from the obligations.
>
> Pierrotti agrees that during the period of time between the execution of this agreement and the transfer described in this section, he will maintain the property in good condition at his expense; he will keep casualty and liability insurance in place naming Johnson as an additional insured; and he will service the debt owed to lenders on a regular basis without permitting default. Further, Pierrotti agrees that he will not encumber the property without the knowledge and consent of Johnson. Johnson agrees that he will have no claim to the rental income earned through leases; and Johnson and Pierrotti agree that Johnson will not be shown as a recipient of passive income or losses for income tax purposes for 2003 or until Johnson transfers the property interests.
>
> In the event that Pierrotti fails to effect the transfer of real property from Johnson within 3 years from the date of this agreement, or in the event Johnson is called upon at any time to make any payment to creditors holding secured interests in the real property parcels, or required to pay delinquent taxes to taxing authorities to prevent the sale of the parcels for unpaid taxes, then the obligation of Johnson to transfer his ownership interest to Pierrotti shall, at the option of Johnson, be cancelled. All of the other obligations of the parties in this agreement shall remain in force and effect, even if the obligations under Agreement #6 are not fulfilled.

When the parties entered into the MSA on January 15, 2004, both parcels of property listed in Agreement #6 were mortgaged, and neither Pierrotti nor Johnson owned any equity in the properties. At some point in early 2005, Pierrotti sought to refinance the Cloverland property and arranged, in accordance with Agreement #6, for Johnson to be "fully released as a maker and guarantor of notes and all other obligations associated" with the Cloverland property. As further intended by the MSA, Johnson executed a document entitled "Act of Donation" on February 28, 2005, transferring his ownership interest in the Cloverland property to Pierrotti.

As evidenced by documents in the record, Johnson transferred his ownership interest in the Cloverland property to Pierrotti, Johnson was released as a maker and guarantor on all loans and obligations associated with the Cloverland property, and Pierrotti secured a new mortgage on the Cloverland property, which paid off the existing mortgage. For the next 5 years, Pierrotti made monthly payments on the mortgage totaling over

$200,000.00. Johnson never made a payment on the mortgage, nor was he ever called upon to make a payment on the Cloverland property.

According to the record, however, there was a problem with the Nelson property in early 2005. Johnson was contacted by the bank holding the mortgage on the Nelson property and informed that the note was 90 days past due. At that point, Johnson began making monthly payments on the Nelson property. Arbitration was invoked to enforce Agreement #6 of the MSA. The arbitrator found that pursuant to Agreement #6 of the MSA, because Johnson had been called upon to make payment on the Nelson property, his obligation to transfer his ownership interest in the property was cancelled. Thus, the arbitrator ruled in Johnson's favor, cancelling Johnson's obligation to transfer his ownership interest in the Nelson property to Pierrotti. The award of the arbitrator was signed November 15, 2005. Pierrotti then transferred ownership of the Nelson property to Johnson in exchange for Johnson reimbursing Pierrotti the amounts Pierrotti expended for mortgage payments on the Nelson property after the MSA became effective.

Subsequently, on July 30, 2010, Pierrotti entered into a purchase agreement to sell the Cloverland property to a third party. During the buyer's due diligence period, their attorney, Brett Furr, noticed that the title company that handled the refinancing on the Cloverland property had failed to properly record the "Act of Donation" that Johnson had signed transferring his interest in the Cloverland property to Pierrotti. Mr. Furr also noticed that only one witness had signed the "Act of Donation." Mr. Furr contacted Johnson to obtain corrective documents. Mr. Furr was advised by Johnson's attorney that Johnson would sign whatever was needed to be signed "in order to uncloud the title." However, once Mr. Furr presented the documents for signing, Johnson refused to cooperate and acted to obstruct the sale.

On August 17, 2010, Pierrotti filed suit to clear the title to the Cloverland property and recover damages occasioned by Johnson's actions. Named as defendants were Johnson, Prestige Title, Inc., the company that handled the refinancing of the Cloverland property, and Stephen Colson, an employee of Prestige Title, Inc. Pierrotti sought a judgment finding that Johnson had transferred all ownership interest in the Cloverland property on February 28, 2005, and ordering that Johnson execute curative documents to formally notice the transaction. Pierrotti also requested damages for lost profits from the sale of the property and costs incurred relative to the lost sale.

In response to the petition, Johnson filed a general denial and exceptions raising the objections of *res judicata* and no cause of action. Johnson argued that the parties had previously arbitrated Agreement #6 of the MSA, the section upon which Pierrotti based his alleged claims, and that the previous arbitration award between the parties barred Pierrotti's suit due to its *res judicata* effect. The parties subsequently filed competing motions for summary judgment.

Pierrotti I, 2011-1317 at 2-4, 91 So.3d at 1058-1060.

The trial court rendered judgment on May 2, 2011, sustaining the *res judicata* and no cause of action exceptions filed by Johnson, and dismissing, with prejudice,

Pierrotti's claims against Johnson. The motions for summary judgment filed by both parties were declared moot. Following this court's reversal and remand in **Pierrotti I**, Pierrotti filed a motion for partial summary judgment, seeking to be declared the owners of the Cloverland property. Johnson, in turn, asked the court to reset his previously filed motion for summary judgment for hearing on the same day as Pierrotti's motion. After considering the evidence and applicable law, the trial court denied both motions on May 21, 2013.[2] Pierrotti's application for supervisory writ of review to this court was subsequently denied. **Pierrotti v. Johnson**, 2013-1056 (La. App. 1 Cir. 9/24/13) (unpublished writ action).

Thereafter, Pierrotti filed a first supplemental and amending petition, adding three additional allegations to his claims against Johnson. First, Pierrotti argued that Johnson was unjustly enriched by Pierrotti's detrimental reliance on Johnson's transfer of ownership of the Cloverland property to him. Pierrotti asserted that based on his reasonable belief that Johnson had transferred ownership in the Cloverland property to him, he entered into a new mortgage on the property, making monthly payments for over five years, totaling over $200,000.00. As such, Pierrotti claimed Johnson was liable to him for an accounting and credit for the mortgage payments, tax payments, all repairs and improvements, accrued equity, and any other increase in value caused by Pierrotti's detrimental reliance on Johnson.

Next, Pierrotti argued that Johnson's claims to the Cloverland property were barred due to *res judicata* as a result of the prior arbitration conducted between the parties in 2005. Pierrotti alleged that "Johnson had a legal obligation to raise the ownership issue of Cloverland in that arbitration" and that he "chose not to ... because he had already transferred ownership to Pierrotti and received complete freedom from any indebtedness to the property." Finally, Pierrotti argued that Johnson's claims to the Cloverland property as a result of any vice of consent or error/fraud/or failure of

[2] The Honorable Kay Bates was the presiding judge at this hearing. She has since retired and was replaced by the Honorable Donald Johnson, who rendered judgment in the case that is before us on review.

consideration in the act of donation were prescribed pursuant to La. Civ. Code art. 2032.

In response to Pierrotti's first supplemental and amending petition, Johnson filed a general denial and a reconventional demand. Johnson asserted a 50 percent ownership interest in the Cloverland property, seeking 50 percent of all income, profits, and/or benefits accruing from the property.

Pierrotti subsequently filed yet another motion for partial summary judgment, seeking to have the act of donation declared a valid, enforceable, onerous contract transferring the Cloverland property from Johnson to Pierrotti. In support of his motion, Pierrotti introduced the following exhibits: (1) a copy of the MSA; (2) a copy of the Act of Donation; (3) the exceptions and answer filed by Johnson; (4) a copy of the new collateral mortgage that Pierrotti obtained on the Cloverland property; (5) a February 25, 2005 letter between counsel for the parties regarding the Cloverland property settlement; (6) excerpts from the deposition of Glenn Johnson; (7) the affidavit of Brett Furr; (8) the affidavit of Ronnie Comeaux; (9) the award of arbitrator; (10) a copy of this court's opinion in **Pierrotti I**; and (11) a copy of the original petition for damages.

Johnson filed an opposition to the motion for partial summary judgment, arguing that there were material issues of fact relative to the act of donation, including but not limited to its meaning and enforcement as a simulation, whether it was induced through fraud, whether there was a lack of and/or failure of consideration, and whether it was to be held in trust. Thus, Johnson maintained, summary judgment was not appropriate. Johnson introduced the following exhibits: (1) the September 15, 2010 affidavit of Glenn Johnson; (2) excerpts from the deposition of Warren "Chip" Pierrotti; (3) the March 25, 2011 affidavit of Glenn Johnson; (4) the affidavit of Kim Graham Johnson; (5) a copy of the trial court's March 21, 2013 written reasons for judgment, denying the parties' cross motions for summary judgment; (6) Pierrotti's writ application following the trial court's denial of his original motion for partial summary judgment; and (7) a copy of this court's denial of Pierrotti's application for supervisory writs.

On June 1, 2015, the trial court heard arguments on the motion for partial summary judgment. After considering the applicable law and the evidence in the record, the trial court granted Pierrotti's motion for partial summary judgment in a judgment signed on June 29, 2015.[3]

Thereafter, the matter proceeded to a two-day bench trial on damages. After hearing from numerous witnesses and considering the various exhibits introduced into evidence by the parties, the trial court rendered judgment on October 20, 2015, in favor of Pierrotti and against Johnson as follows:

> Following a determination of ownership via Motion for Partial Summary Judgment on June 1, 2015, in favor of Plaintiffs, Warren "Chip" Pierrotti and Elizabeth T. Pierrotti, and against Defendants, Glenn Lee Johnson and Kim Graham Johnson, finding that the Act of Donation entered into between the Plaintiffs and Defendants was a valid, enforceable, onerous contract transferring ownership of property located at 11862 Cloverland, Baton Rouge, Louisiana 70809, from Defendants to Plaintiffs as of March 1, 2005, this cause came before the Court with the Honorable Judge Donald Johnson presiding over the trial on June 29, 2015, and June 30, 2015, to determine whether Plaintiffs sustained any damages. ...
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> . . . .
>
> After the case was submitted to Judge Donald Johnson, he ruled in favor of Plaintiffs, Warren "Chip" Pierrotti and Elizabeth T. Pierrotti.
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> **IT IS ORDERED, [ADJUDGED], AND DECREED,** that **JUDGMENT** is entered in favor of Plaintiffs, Warren "Chip" Pierrotti and Elizabeth T. Pierrotti against Defendants, Glenn Lee Johnson and Kim Graham Johnson, jointly and *in solido*, as follows:
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> 1. That Plaintiffs proved by a preponderance of the evidence that:
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> a. Defendants, Glenn Lee Johnson and Kim Graham Johnson, breached the contract entitled "Act of Donation" that they entered into with the Plaintiffs which transferred ownership of 11862 Cloverland, Baton Rouge, Louisiana 70809, from Defendants to Plaintiffs, and that breach caused Plaintiffs to suffer damages.
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> b. Defendants knew that they had entered into a contract transferring ownership of 11862 Cloverland, Baton Rouge, Louisiana 70809, to Plaintiffs and Defendants intentionally, and in bad faith, failed to honor their obligations by clouding the

[3] According to the minutes from the June 1, 2015 hearing, the matter was "submitted with argument" and the trial court assigned oral reasons for judgment. Moreover, the court reporter notes the hearing lasted approximately thirty minutes, and there was a twenty-page transcript. However, the transcript of said hearing is not in the record before us.

title to 11862 Cloverland, Baton Rouge, Louisiana, 70809, and refusing to uncloud the title to 11862 Cloverland, Baton Rouge, Louisiana 70809, causing Plaintiffs to suffer actual damages and emotional distress, mental anguish, aggravation, inconvenience and humiliation pursuant to LSA-C.C. arts. 1986, 1997 and 2315.

c. Defendants intentionally purported themselves to be the owners of 11862 Cloverland, Baton Rouge, Louisiana 70809, which they knew did not belong to them with the intent to obtain an unjust advantage from the Plaintiffs and to cause the Plaintiffs to suffer a loss and inconvenience pursuant to LSA-C.C. arts. 1953 and 1957.

d. Defendants' actions amounted to unfair and deceptive conduct in violation of the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1409(A), causing the title to 11862 Cloverland, Baton Rouge, Louisiana 70809, to be clouded, blocking a sale the Plaintiffs attempted to enter into, and Defendants' conduct was committed with the intent to profit from property they did not own.

e. Defendants were put on notice by the Attorney General of Plaintiffs' Louisiana Unfair Trade Practices complaint, and, after receiving that notice, Defendants continued their unfair acts resulting in Plaintiffs being entitled to actual damages, attorney fees, costs and treble damages.

f. Plaintiffs incurred costs related to the litigation that arose as a result of the Defendants' intentional and unfair refusal to honor their obligations under the Act of Donation which was in violation of the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1409(A).

g. Plaintiffs incurred attorney fees related to the litigation that arose as a result of the Defendants' intentional and unfair refusal to honor their obligations under the Act of Donation which was in violation of the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1409(A).

2. The following damages are awarded in favor of Warren "Chip" Pierrotti and Elizabeth T. Pierrotti:

1. Treble Damages (3 times Actual Damages): $48,298.11

- General Damages Warren "Chip" Pierrotti ($5,000.00)
- General Damages Elizabeth Pierrotti ($5,000.00)
- 2/3 of Costs Incurred by Failed Sale ($6,099.37)

2. Attorney Fees: $96,817.00

3. Costs Incurred from Litigation: $ 6,574.46

GRAND TOTAL: $151,689.57

IT IS FURTHER ORDERED that Defendants shall pay judicial interest on the general damages awarded to Plaintiffs, above, from the

date of judicial demand until the judgment is paid in full, and that Defendants shall pay judicial interest on the attorney fees, costs, and punitive damages from the date of judgment until the judgment is paid in full.

Johnson filed a motion for new trial, which was denied by the trial court.[4]

It is from the October 20, 2015 judgment that Johnson has appealed, assigning the following specifications of error for our review:

1. Regarding Pierrotti's Motion for Partial Summary Judgment — the Trial Court improperly excluded the affidavit of Glenn Johnson, which raised defenses, including but not being limited to fraud, failure of consideration, lack of consent, and intent, as regards the Act of Donation in question.

2. Regarding Pierrotti's Motion for Partial Summary Judgment — despite unresolved issues of material fact, including but not being limited to fraud and intent, the Trial Court granted Pierrotti's Motion for Partial Summary Judgment and incorrectly determined that the Act of Donation was a valid transfer of ownership.

3. The Trial Court improperly allowed Pierrotti to offer evidence of [Johnson's] liability and subsequently [ruled] on said liability under the Louisiana Unfair Trade Practices Act (hereinafter sometimes "LUTPA"), for breach of contract, and for liability under Louisiana Civil Code Articles 1986, 1997, 2315, 1953, and 1957, when Pierrotti's Pretrial provided that it was a damages only trial.

4. The Trial Court improperly excluded evidence of Johnson's state of mind as regards the question of "bad faith," fraud, etc.

5. The Trial Court, holding that it was a damages only trial, improperly and inconsistently refused to allow Johnson to put on evidence as regards Johnson's alternative claim that the Act of Donation was subject to rescission for failure of consideration and/or fraud.

6. The Trial Court erroneously found that Johnson violated LUTPA and/or Louisiana Civil Code Articles 1986, 1997, 2315, 1953, and 1957.

7. The Trial Court incorrectly denied Johnson's Motion for a Directed Verdict on the question of whether the action of Johnson amounted to an unfair trade practice which would subject Johnson to punitive damages, general damages, costs, and attorney's fees.

8. The Trial Court erroneously found that Johnson breached the Act of Donation and that said breach was intentional, in bad faith, and done with the intention of causing harm to Pierrotti.

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[4] One of the issues raised by Johnson in the motion for new trial was the interest awarded by the trial court in the original judgment dated July 9, 2015. However, the trial court corrected the interest issue in its October 20, 2015 amended judgment and, thus, denied Johnson's motion for new trial.

9. The Trial Court failed to enter judgment in favor of Johnson declaring that, if assuming that the Act of Donation was valid, Johnson was entitled to rescind said transfer for fraud.

10. The Trial Court's award of damages to [Pierrotti] was incorrect in that it 1) erroneously awarded 2/3 of costs incurred by failed sale, 2) erroneously awarded costs incurred from litigation not proven, 3) erroneously awarded attorney's fees, or in the alternative, awarded excessive attorney's fees, 4) erroneously awarded general damages, 5) erroneously awarded treble damages, and 6) erroneously failed to allocate fault to defendants Stephen Colson and Prestige Title.

SUMMARY JUDGMENT
(Assignments of Error Nos. 1 and 2)

Through these assignments of error, Johnson challenges the trial court's judgment granting Pierrotti's partial summary judgment on the issue of ownership of the Cloverland property. Johnson contends the trial court erred in excluding the affidavit of Glenn Johnson when considering Pierrotti's motion for partial summary judgment. While acknowledging that the trial court did not express reasons for denying the introduction of the affidavit, Johnson notes the only argument made by Pierrotti in opposition to the affidavit was that parol evidence was inadmissible to vary the terms of an authentic act translative of title to immovable property. Johnson argues that parol evidence can be admitted to show fraud and lack of consent and/or consideration. Johnson further alleges the trial court erred in granting Pierrotti's motion for partial summary judgment as there were unresolved issues of material fact, including the issues of fraud, which preclude summary judgment on the issue concerning the transfer of ownership of the Cloverland property.

Summary judgment[5] is appropriate if the pleadings, depositions, answers to interrogatories, admissions, together with the affidavits, if any, admitted for purposes of the motion for summary judgment, show there is no genuine issue as to material fact and that the movant is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B)(2); **Tomaso v. Home Depot, U.S.A., Inc.**, 2014-1467, p. 3 (La. App. 1 Cir.

[5] The summary judgment law was recently amended by 2015 La. Acts No. 422, but the provisions of Act 422 do "not apply to any motion for summary judgment pending adjudication or appeal on [January 1, 2016]."

6/5/15), 174 So.3d 679, 681. The burden of proof remains with the movant. La. Code Civ. P. art. 966(C)(2). However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require that he negate all essential elements of the adverse party's claim, action, or defense. Instead, the movant must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If he fails to meet this burden, there is no genuine issue of material fact, and the movant is entitled to summary judgment. *Id.*

In determining whether summary judgment is appropriate, an appellate court reviews a trial court's grant of summary judgment *de novo,* using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. 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. **Janney v. Pearce**, 2009-2103, p. 5 (La. App. 1 Cir. 5/7/10), 40 So.3d 285, 289, writ denied, 2010-1356 (La. 9/24/10), 45 So.3d 1078.

Generally, legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. La. Civ. Code art. 1983; **Silwad Two, L.L.C. v. I Zenith, Inc.**, 2012-0282, p. 6 (La. App. 1 Cir. 12/21/12), 111 So.3d 405, 410. In other words, a contract between the parties is the law between them, and the courts are obligated to give legal effect to such contracts according to the true intent of the parties. La. Civ. Code art. 2045; **Hampton v. Hampton, Inc.**, 97-1779, p. 5 (La. App. 1 Cir. 6/29/98), 713 So.2d 1185, 1188-1189.

Courts are bound to give legal effect to all written contracts according to the parties' true intent. Although summary judgment is generally not appropriate to establish the intent of contracting parties, where the words of a contract are clear,

explicit and lead to no absurd consequences, the meaning and intent of the parties must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. **Hayden v. Phillips**, 94-0130, p. 4 (La. App. 1 Cir. 11/10/94), 646 So.2d 1014, 1016, writ denied, 95-0244 (La. 3/24/95), 651 So.2d 291; see also La. Civ. Code art. 1848.[6] Under those circumstances, the interpretation of the contract is a matter of law and summary judgment is appropriate. **Sims v. Mulhearn Funeral Home, Inc.**, 2007-0054, p. 10 (La. 5/22/07), 956 So.2d 583, 590.

Before addressing the merits of the partial summary judgment, we must consider whether the trial court erred in excluding the affidavit of Glenn Johnson. Johnson's argument is that fraud was specifically pled as a defense and that the Act of Donation was to be held in trust by the title company until such time as Pierrotti had fulfilled all of Pierrotti's obligations under the MSA. In opposition to Pierrotti's motion for partial summary judgment, Johnson submitted, along with other evidence, two affidavits by Glenn Johnson containing statements in support of these allegations.

During the trial on the merits, counsel for Johnson asked the trial court to clarify its ruling on the introduction of Glenn Johnson's affidavit. The trial court stated, "If I did not say it, it was my intent to deny the introduction of the exhibit." The parties then entered the following into the record:

> [**COUNSEL FOR JOHNSON:**] Your Honor, in connection with the partial motion for summary judgment filed, I believe that I had offered all of the attachments, the various exhibits that were attached to our opposition for introduction, and I would reoffer that again. And it's my understanding that [counsel for Pierrotti] has an objection -- had an objection to one of those exhibits.
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> [**COUNSEL FOR PIERROTTI:**] Your Honor, we objected at the motion for summary judgment hearing offer of evidence by the defendants to the admissibility of the affidavit of Glenn Lee Johnson. The objection was that it was [parol] evidence seeking to assert evidence contrary outside of the documents -- the contract itself. The case law was very clear that the issue before the court did not allow the introduction of

[6] Article 1848 provides as follows with regard to parol evidence:

> Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent or to prove that the written act was modified by a subsequent and valid oral agreement.

> [parol] evidence. The affidavit sought to introduce [parol] evidence in the manner of testimony from Mr. Johnson. On that grounds we had objected and it was our understanding that the -- the court had not ruled, but was inclined to sustain the objection and deny the admissibility of the affidavit.
>
> **THE COURT:** ... All right. I've considered the arguments and the affidavit along with the memorandum; I sustain the objection.

Although on appeal Johnson references the exclusion of a single affidavit by the trial court, we note there were two separate affidavits by Glenn Johnson introduced in opposition to the motion for partial summary judgment. Without the benefit of the summary judgment hearing transcript, we are unable to discern which affidavit the parties were referring to when they asked the trial court for clarification of its ruling regarding the admissibility of same. Nonetheless, we have reviewed both affidavits and are of the opinion that neither affidavit is admissible based on the facts and circumstances herein.

It is well settled in Louisiana law that agreements relating to the transfer of or option to purchase immovable property must be in writing and in a form prescribed by La. Code Civ. P. art. 1839. **East Tangipahoa Development Company, LLC v. Bedico Junction, LLC**, 2008-1262, p. 10 (La. App. 1 Cir. 12/23/08), 5 So.3d 238, 244, writ denied, 2009-0166 (La. 3/27/09), 5 So.3d 146. As is evidenced by the record before us, there is no supporting written documentation regarding Johnson's claim that the Act of Donation was to be held in trust. Thus, the parol evidence submitted by Johnson, *i.e.*, the affidavits of Glenn Johnson, is clearly inadmissible to prove that the Act of Donation was subject to any conditions.

Moreover, we have considered Johnson's argument that parol evidence is admissible to establish fraud and lack of consent as alleged. See **M.G. Mayer Yacht Servs., Inc. v. Ryder**, 2003-2225, p. 3 (La. App. 1 Cir. 10/29/04), 897 So.2d 72, 74 (Between the parties to an instrument, parol evidence is admissible to show fraud, mistake, illegality, want or failure of consideration, or to explain an ambiguity when such explanation is not inconsistent with the written terms.) To establish fraud, a party must prove the intent to defraud or gain an unfair advantage and a resulting loss or damage. See La. Civ. Code art. 1953. Fraud need only be proven by a preponderance

of the evidence and may be established by circumstantial evidence. La. Civ. Code art. 1957.

We have reviewed the record and find no evidence of any alleged fraud as argued by Johnson. Pierrotti's defaults on the Nelson property do not rise to the level of fraud that Johnson claims induced the signing of the Act of Donation. It is clear from the record that Pierrotti complied with the requirements of the MSA concerning the Cloverland property. Pierrotti relieved Johnson from all liability on the Cloverland property in exchange for Johnson's ownership interest in Cloverland, and Johnson was never called upon to make any payments on the Cloverland property. There is simply no evidence of any fraud. Johnson's argument that the affidavits were admissible to prove same is without merit.

With regard to the motion for partial summary judgment, the trial court issued the following written reasons for judgment on July 16, 2015:

> This Court finds that defendants, Glenn Lee Johnson and Kim Graham Johnson, transferred their ownership of the Cloverland property to plaintiffs through the "Act of Donation" that was voluntarily executed pursuant to the parties' agreement to end both their personal and professional relationships. Defendants agreed to transfer ownership to plaintiffs and therefore, had a duty to memorialize and perfect the transfer in accordance with their agreement.

Much of the evidence submitted by the parties on the motion for partial summary judgment was duplicative of evidence this court had already considered in **Pierrotti I**, *i.e.,* the pleadings in the record, the MSA, the Act of Donation, the arbitrator's award, excerpts from Glenn Johnson's deposition, the affidavits of Brett Furr and Ronnie Comeaux, the mortgage documents on the Cloverland property, and the February 25, 2005 letter between counsel for the parties regarding a proposed settlement on the Cloverland property. We have thoroughly reviewed the evidence in the record and relevant jurisprudence and agree with the trial court that Johnson transferred his ownership in the Cloverland property to Pierrotti through the agreement confected between the parties. The parties were in agreement that the Act of Donation was an onerous contract subject to the conditions specifically provided for in the MSA. It is clear from the record that Pierrotti fulfilled his obligations under the MSA by relieving

Johnson of all liability associated with the Cloverland property. And, as admitted to by Johnson, he was never called upon to make any payments on the Cloverland property. Thus, Johnson had a duty under the Act of Donation to "perfect the transfer" as found by the trial court. Johnson failed to bear his burden of producing evidence that there were any genuine issues of material fact remaining as to this issue. Accordingly, the partial summary judgment rendered by the trial court was appropriate.

EVIDENTIARY RULINGS ON TRIAL ON THE MERITS
(Assignments of Error Nos. 3 and 4)

In these assignments, Johnson contends the trial court made various erroneous evidentiary rulings. If a trial court commits evidentiary error that interdicts its fact-finding process, this court must conduct a *de novo* review. Thus, any alleged evidentiary error must be addressed first on appeal, inasmuch as a finding of error may affect the applicable standard of review. **Breitenbach v. Stroud**, 2006-0918, p. 3 (La. App. 1 Cir. 2/9/07), 959 So.2d 926, 930.

Johnson contends the trial court committed legal error: (1) in allowing Pierrotti to offer evidence of Johnson's liability under LUTPA, for breach of contract, and for liability under La. Civ. Code arts. 1986, 1997, 2315, 1953, and 1957; and (2) in excluding evidence of Johnson's state of mind regarding the question of bad faith and fraud.

Evidence of Johnson's Liability

Citing to the parties' Joint Pretrial Order, Johnson argues that the only issue remaining for the trial on the merits was the amount of damages owed to Pierrotti. Thus, when Pierrotti attempted to elicit testimony relative to facts establishing liability under LUTPA, breach of contract, and the aforementioned civil code articles, Johnson objected. The trial court allowed the objection to be made general, but overruled the objection, allowing the testimony to continue. Johnson asserts this ruling was prejudicial and requests that all testimony "presented by Pierrotti relative to Johnson's action or inaction and potential liability under LUTPA, for breach of contract, and for liability under [La. Code Civ. P. arts.] 1986, 1997, 2315, 1953, and 1957 be disregarded

and stricken from the record and judgment." Johnson further asks that several exhibits be stricken from the record as they relate to facts regarding same and are unrelated to the question of damages. We find no merit to these arguments.

In determining that the trial was limited to damages related to Pierrotti's claims, the trial court reviewed its own notes, as well as the pleadings and the case management notations. As clearly set forth in the parties' Joint Pretrial Order, Johnson was well aware of all of the damages sought by Pierrotti, including damages for Johnson's fraudulent actions, bad faith, and violations of the LUTPA. All of these claims are fact-based and require testimonial evidence at trial to prove damages. Assignment of error number three is without merit.

Alleged Exclusion of Evidence of Johnson's State of Mind

Johnson argues the trial court improperly excluded evidence of his state of mind regarding the alleged bad faith and fraud. Having thoroughly reviewed the trial transcript, we find no evidence that Johnson was limited in presenting his defense on these issues. Thus, assignment of error number four is meritless.

EVIDENCE OF JOHNSON'S CLAIM FOR RESCISSION
(Assignments of Error Nos. 5 and 9)

In assignments of error numbers five and nine, Johnson challenges the trial court's refusal to allow him to present evidence regarding his claim that the Act of Donation was subject to rescission for failure of consideration and/or fraud and the trial court's failure to enter judgment declaring that Johnson was entitled to rescind the transfer of the Cloverland property based on fraud. As previously noted, the trial court determined that the scope of the trial was limited to a determination of the damages related to Pierrotti's claims. As the ownership of the Cloverland property was not at issue during the trial, Johnson's claim for rescission, dealing squarely with ownership, was not proper. Thus, these assignments of error are without merit.

APPLICABILITY OF LUTPA
(Assignment of Error No. 6)

Louisiana Revised Statutes 51:1405(A) provides that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or

commerce are hereby declared unlawful." A claim for damages under LUTPA requires a showing that the alleged conduct offends established public policy and is immoral, unethical, oppressive, unscrupulous, or substantially injurious. See **Cheramie Services, Inc. v. Shell Deepwater Production, Inc.**, 2009-1633, p. 10 (La. 4/23/10), 35 So.3d 1053, 1059. Louisiana courts determine LUTPA violations on a case-by-case basis. **Quality Environmental Processes, Inc. v. I.P. Petroleum Co., Inc.**, 2013-1582, p. 21 (La. 5/7/14), 144 So.3d 1011, 1025.

The manifest error standard of review applies to the review of such matters. **Doland v. ACM Gaming Co.**, 2005-427, p. 8 (La. App. 3 Cir. 12/30/05), 921 So.2d 196, 202. A court of appeal may not set aside a trial court's finding of fact in the absence of manifest error. The two-part test for the appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court; and 2) whether the record further establishes that the finding is not manifestly erroneous. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, the issue to be resolved is not whether the fact finder was right or wrong, but whether the fact finder's conclusion was a reasonable one. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). When there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous. **Stobart v. State, Through Department of Transportation & Development,** 617 So.2d 880, 883 (La. 1993). If the trial court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. **Sistler v. Liberty Mut. Ins. Co.**, 558 So.2d 1106, 1112 (La. 1990).

As noted by Pierrotti in brief to this court, the facts, as testified to by the parties, are indisputable that for five years after the Act of Donation was signed, Johnson did nothing financially or physically to either suggest or assert ownership in the property. Johnson never made a single payment for any debt related to the Cloverland property, nor was he called upon to make payments of any kind related to the property.

Furthermore, Johnson never attempted to use the property or collect rent from Pierrotti for his use of same.

It was not until Johnson was contacted by Ronnie Comeaux, a real estate broker who was working on the sale of the Cloverland property with Pierrotti, that Johnson did anything to upset Pierrotti's use of the property. According to Mr. Comeaux's affidavit, he spoke with both Glenn and Kim Johnson who each advised him "that they would do whatever they needed to do, including signing whatever they needed to sign, in order to free themselves from having anything to do with Mr. Pierrotti and/or anything to do with the Cloverland property." The Johnsons further advised Mr. Comeaux that they did not possess any ownership interest in the Cloverland property and that they had exchanged that property in a business separation years before with Pierrotti. Despite having told Mr. Comeaux they would sign whatever was needed to uncloud the title to the Cloverland property, the Johnsons thereafter retained legal counsel and refused to take Mr. Comeaux's calls or sign any documents.[7]

On July 30, 2010, Johnson filed a document entitled "Cancellation and Revocation" in the public records, purporting to cancel the obligation to transfer the Cloverland property as provided for in the Act of Donation. Glenn Johnson acknowledged that after refusing to sign any documents to uncloud the title to the property, he offered to "bow out of the situation" by having Pierrotti pay him for his half of the purchase price. Moreover, the record is clear that even after Johnson was notified by the Louisiana Attorney General's Office of Pierrotti's LUTPA complaint, he remained steadfast in his efforts to prevent Pierrotti from selling the Cloverland property. According to the record, Johnson later agreed to the sale of the property, but wanted the money from the sale held in trust.

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[7] Although Glenn and Kim Johnson both admitted during testimony that they spoke with Mr. Comeaux, they denied ever telling him that they did not have an interest in the Cloverland property or saying that they would sign whatever was needed to uncloud the title to the property. Nonetheless, it is well settled that the trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. See **Rosell**, 549 So.2d at 844.

In reaching the conclusion that Johnson's actions amounted to a violation of LUTPA, the trial court found that Johnson agreed to transfer ownership in the Cloverland property to Pierrotti and, thus, had a duty to perfect the transfer in accordance with their agreement. The trial court found further that Johnson "unfairly refused to uncloud the title to the Cloverland property after previously agreeing to transfer ownership of said property pursuant to the 'Act of Donation'" and that Pierrotti sustained actual damages as a result of Johnson's breach of the agreement. We agree. Our careful review of the entire record reveals no manifest error in the factual findings of the trial court. The trial court's findings were based in part on credibility determinations and were clearly reasonable in light of the record in its entirety. This assignment of error is meritless.

MOTION FOR DIRECTED VERDICT
(Assignment of Error No. 7)

Initially we note that although Johnson moved for a directed verdict at the close of Pierrotti's case in chief, a directed verdict is only appropriate in a jury trial. Louisiana Code of Civil Procedure article 1672(B) provides the basis for an involuntary dismissal at the close of a plaintiff's case in an action tried by the court without a jury. Nevertheless, that error is one of form rather than substance, as the ultimate object of both motions is the same. **Gillmer v. Parish Sterling Stuckey**, 2009-0901, p. 3 n.2 (La. App. 1 Cir. 12/23/09), 30 So.3d 782, 785 n.2.

Regarding the motion for involuntary dismissal, Article 1672(B) affords the trial court the discretion to render judgment or to decline to render any judgment until the close of all evidence. Thus, the purely discretionary decision of the trial court to deny a motion for involuntary dismissal at the close of a plaintiff's case leaves nothing for this court to review on appeal. **Townsend v. Delchamps, Inc.**, 94-1511, p. 2 n.1 (La. App. 1 Cir. 10/06/95), 671 So.2d 513, 514 n.1, writ denied, 95-2648 (La. 1/12/96), 667 So.2d 522.

In the instant case, the trial court, in its discretion, denied Johnson's motion to dismiss and heard all of the evidence presented in the matter before rendering its

decision. Under these circumstances, and in accordance with the law detailed above, there is nothing for this court to review on appeal. Accordingly, we find this assignment of error to be without merit.

BREACH OF ACT OF DONATION
(Assignment of Error No. 8)

In assignment of error number eight, Johnson asserts the trial court erred in finding that he breached the Act of Donation and that said breach was intentional, in bad faith, and done with the intention of causing harm to Pierrotti. As noted above, it is well settled that an appellate court cannot set aside a trial court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. **Rosell**, 549 So.2d at 844. In order to reverse a fact finder's determination of fact, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding, (2) further determine that the record establishes that the fact finder is clearly wrong or manifestly erroneous. **Stobart**, 617 So.2d at 882. After reviewing the record in the present case, we find that a reasonable factual basis exists for the finding that Johnson's actions were intentional and in bad faith, and the record does not establish that the trial court was clearly wrong.

DAMAGE AWARD
(Assignment of Error No. 10)

The final assignment of error by Johnson concerns the damages awarded by the trial court. Johnson asserts the trial court was in error in (1) awarding 2/3 of the costs incurred by the failed sale of the Cloverland property; (2) awarding court costs incurred from litigation not proven; (3) awarding attorney fees, or in the alternative, awarding excessive attorney fees; (4) awarding general damages; (5) awarding treble damages; and (6) failing to allocate fault to defendants, Stephen Colson and Prestige Title.

Cost Incurred by Failed Sale

Johnson first challenges the trial court's award of $6,099.37 as 2/3 of the cost incurred by the failed sale of the Cloverland property. Johnson asserts that this amount appears to be 2/3 of the amount of a check from Air Environmental Services, Inc. to Taylor Porter, which, pursuant to a motion in *liminie* filed by Johnson, was excluded

from evidence by the trial court. In response, Pierrotti alleges that the award is reasonable and supported by the evidence in the record, including the testimony of Brett Furr, an attorney with Taylor Porter, who testified at trial regarding work his firm did relative to the potential sale of the Cloverland property.

In connection with Mr. Furr's testimony, a copy of an invoice was introduced, reflecting $6,392.50 in professional services and $834.40 in expenses, for a total of $7,226.90 due and owing. Mr. Furr indicated they would not have incurred any of the time they did working on the sale had they known about the issue with the title to the property. According to Mr. Furr, Pierrotti paid a portion of the Taylor Porter bill, "as [he] recall[s] two-thirds, three-quarters, something like that." Based on the facts and circumstances herein, we find an award is warranted. However, as we are unable to discern from the record how the trial court settled on $6,099.37 as 2/3 of the costs incurred by the failed sale of the Cloverland property, we amend same to reflect an award of $4,817.93 (2/3 of the Taylor Porter invoice).

Court Costs

Johnson next contends that the trial court's award of $6,574.46 in court costs should be vacated as they were not proven at the trial below. During the trial of this matter, over the objection of Johnson, Pierrotti introduced copies of various checks paid to the clerk of court for the 19th Judicial District Court, as well as billing invoices for the costs incurred throughout this protracted litigation. Testimony revealed that court costs totaling $6,574.46 were paid by Pierrotti over the years as a result of this case.[8] In an appellate review of a trial court's costs assessment, only a showing of an abuse of discretion warrants a reversal. **Griffin v. Louisiana Sheriff's Auto Risk Ass'n**, 99-2944, p. 38 (La. App. 1 Cir. 6/22/01), 802 So.2d 691, 716, writ denied, 2001-2117 (La. 11/9/01), 801 So.2d 376. We find no abuse of discretion here.

[8] We are unable to verify this amount from the documents in the record. Nonetheless, because Johnson does not challenge the exact amount awarded, but rather questions whether the evidence supports any award for court costs, we will not adjust the amount as awarded by the trial court.

Attorney Fees

LUTPA gives a right of action to anyone who suffers any ascertainable loss of money or movable property, corporeal or incorporeal, as the result of an unfair trade practice and provides for the recovery of actual damages, including court costs and attorney fees. La. R.S. 51:1409(A). As set forth in La. R.S. 51:1409(A), "[i]n the event that damages are awarded under this Section, the court shall award to the person bringing such action reasonable attorney fees and costs." As previously noted, we find no error in the trial court's finding that Johnson's conduct was actionable under LUTPA. Thus, an award of attorney fees was appropriate.

Johnson argues that based on the amount of damages, $16,099.37 (excluding attorney fees and treble damages), the award of $96,817.00 in attorney fees was excessive. Pierrotti counters that as of June 2015, the time expended on the litigation for this case by counsel of record was 498.5 hours, totaling $96,817.00 in attorney fees as supported by the affidavits of his attorneys, which were introduced into evidence at the trial.

The Louisiana State Bar Association's Rules of Professional Conduct, Rule 1.5(a), provides a list of factors to be considered by an attorney to determine whether a fee is reasonable. As part of an inherent authority to regulate the practice of law, courts review attorney fees for reasonableness using various factors derived from Rule 1.5(a). **Rivet v. State, Dept. of Transp. and Development**, 96-0145, p. 11 (La. 9/5/96), 680 So.2d 1154, 1161. These factors include: (1) the result obtained; (2) the responsibility incurred by the attorney; (3) the importance of the litigation; (4) the amount of money at issue; (5) the extent and character of the work performed; (6) the legal knowledge and skill attained by the attorneys; (7) the number of appearances involved; (8) the complexity of the facts and issues; (9) the diligence and skill of counsel; and (10) the court's own knowledge. **State, Dept. of Transp. and Development v. Williamson**, 597 So.2d 439, 442 (La. 1992).

Even though no time sheets or evidence were produced as to the time Pierrotti's attorneys spent on the case, we can review the reasonableness of the attorney fees

award by examining the record. See **Cochran v. American Advantage Mortg. Co. Inc.**, 93-1480, p. 9 (La. App. 1 Cir. 6/24/94), 638 So.2d 1235, 1240. This case has been pending for over five years. In addition to the multiple court appearances below, the parties have been before this court on two separate occasions, *i.e.*, the appeal in **Pierrotti I** (which was decided favorably to Pierrotti) and Pierrotti's unsuccessful writ application following the trial court's denial of his original motion for partial summary judgment. Furthermore, there are numerous filings contained within the record, evidencing extensive preparation throughout this litigation. And, Pierrotti's attorneys were successful in not only proving Pierrotti's entitlement to damages for Johnson's actions, but garnering the ultimate result for Pierrotti, a good and clear title to the Cloverland property, an asset worth over $500,000.00.

Given the record before the trial court, the factors employed by Louisiana law, and the great discretion afforded the trial court, we cannot conclude that the attorney fee award itself, though high relative to damages awarded, was an abuse of discretion. The award was justified and not excessive. Thus, we decline to disturb the trial court's award of $96,817.00 in attorney fees.

We note that in brief to this court, Pierrotti requests additional attorney fees for work performed on appeal. However, it is well settled that an appellee who neither appeals nor answers an appeal is not entitled to additional attorney fees for legal services rendered on appeal. La. Code Civ. P. art. 2133; **Starr v. Boudreaux**, 2007-0652, p. 11 (La. App. 1 Cir. 12/21/07), 978 So.2d 384, 392. Pierrotti did not appeal the trial court's judgment, nor did they answer Johnson's appeal and request additional attorney fees. Accordingly, Pierrotti is not entitled to an increase in attorney fees for defending this appeal. **Allstate Ins. Co. v. Reid**, 2004-1620, p. 12 (La. App. 1 Cir. 11/30/05), 934 So.2d 56, 64, writ denied, 2006-2099 (La. 11/17/06), 942 So.2d 534.

General Damages

Initially, we find no merit to Johnson's argument that Pierrotti was not entitled to general damages. As previously indicated, Johnson's actions were in violation of

LUTPA, thus affording Pierrotti the right to damages under La. R.S. 51:1409(A). Thus, we need only review the amount awarded by the trial court for general damages.

In **Guillory v. Lee**, 2009-0075, p. 14 (La. 6/26/09), 16 So.3d 1104, 1116, the Louisiana Supreme Court reiterated well-settled law that a trial court is given great discretion in its assessment of the appropriate amount for damages. Further, the trial court's assessment of damages is a factual determination that is entitled to great deference on review. *Id.* Because the discretion vested in the trier of fact is great, and even vast, an appellate court should rarely disturb an award on review. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied, 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

In the instant case, the trial court awarded $5,000.00 in general damages to Warren "Chip" Pierrotti and $5,000.00 in general damages to Elizabeth Pierrotti. We have thoroughly reviewed the testimony in the record concerning the humiliation, anxiety, stress, embarrassment, and frustration they have suffered and still continued to suffer at the time of trial because of Johnson's actions. Mindful of the deferential standard of review this court is obligated to follow, it cannot be said that the trial court's general damage award was an abuse of discretion.

Treble Damages

Pursuant to La. R.S. 51:1409(A), "[i]f the court finds the unfair or deceptive method, act, or practice was knowingly used, after being put on notice by the attorney general, the court shall award three times the actual damages sustained." As previously discussed, Pierrotti filed a complaint with the Louisiana Attorney General regarding Johnson's LUTPA's violations. Johnson acknowledged receipt of said complaint, adding that even after being notified of the complaint, he continued to take actions to prevent Pierrotti from selling the Cloverland property as his own. Treble damages were clearly warranted in this case pursuant to La. R.S. 51:1409(A).

Allocation of Fault to Stephen Colson and Prestige Title

Johnson argues the trial court erred in failing to allocate fault to Stephen Colson and Prestige Title for their failure to record the Act of Donation. Pierrotti contends that

Stephen Colson and Prestige Title's failure to record the Act of Donation has no bearing on Johnson's intentional fraud in purporting to be the owners of the Cloverland property. Citing to La. Civ. Code arts. 1839 and 3338, Pierrotti maintains that recordation only serves to affect the rights of third parties.

The trial court's intentions with respect to this matter were clear—this was a trial limited to a determination of the damages related to Pierrotti's claims against Johnson. The alleged action and/or inaction by Stephen Colson and Prestige Title were never litigated below. In fact, according to the record, neither party has been served with Pierrotti's original petition for damages, as service instructions read "**PLEASE HOLD SERVICE**" for both parties. Thus, the issue of the allocation of fault to Stephen Colson and Prestige Title is not properly before us for review.

CONCLUSION

For the above and foregoing reasons, we affirm the June 29, 2015 judgment granting the motion for partial summary judgment. We amend, in part, that section of the trial court's October 20, 2015 judgment that awards damages as follows:

> 2. The following damages are awarded in favor of Warren "Chip" Pierrotti and Elizabeth T. Pierrotti:
>
> **1. Treble Damages (3 times Actual Damages): $44,453.79**
>
> - General Damages Warren "Chip" Pierrotti ($5,000.00)
> - General Damages Elizabeth Pierrotti ($5,000.00)
> - 2/3 of Costs Incurred by Failed Sale ($4,817.93)
>
> **2. Attorney Fees: $96,817.00**
>
> **3. Costs Incurred from Litigation: $ 6,574.46**
>
> **GRAND TOTAL: $147,845.25**

In all other respects, we affirm the October 20, 2015 judgment and assess all costs associated with this appeal against appellants, Glenn Lee Johnson and Kim Graham Johnson.

JUDGMENT ON MOTION FOR PARTIAL SUMMARY JUDGMENT AFFIRMED; JUDGMENT ON THE MERITS AFFIRMED AS AMENDED.