

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

JEW
GH

NUMBER 2016 CA 0317

BRENT M. SABA AND JEANNE CHERAMIE SABA

VERSUS

SAMUEL C. EMERSON AND RENEE LOUISE APRIL EMERSON

Judgment Rendered: OCT 31 2016

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2014-14037

Honorable William J. Knight, Judge

Robert A. Barnett
New Orleans, Louisiana

Attorney for Appellants
Third-Party Plaintiffs –
Samuel C. Emerson and Renee Louise
April Emerson

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Third-Party Defendant – Victor P. Gustafson
d/b/a A-Pro and CVN Enterprises, LLC

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

Crain, J concurs

WELCH, J.

The third-party plaintiffs/appellants, Samuel C. Emerson and Rene Louise April Emerson, appeal a judgment dated November 25, 2015 sustaining a Peremptory Exception of No Cause of Action filed by the third-party defendant/appellant, Victor P. Gustafson d/b/a A-Pro and CVN Enterprises, LLC (“A-Pro”).¹ For the following reasons, we affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

The instant matter presents a claim for negligent misrepresentation. In May of 2014, Brent M. Saba and Jeanne C. Saba entered into a cash sale agreement to purchase the Emersons’ home located at 401 St. Louis Street in Mandeville, Louisiana. Following the sale, in the course of renovations, the Sabas discovered previously hidden termite damage in the home. On September 9, 2014, the Sabas filed suit against the Emersons asserting claims for fraud and redhibition, seeking the rescission of the sale with the return of the purchase price, and, in the alternative, damages associated with the loss of the use of the home and the cost of all repairs related to the defects.

The Emersons filed a third-party demand naming various parties, including their termite and exterminating contractor, a construction repair contractor hired by the Emersons to repair earlier termite damage, the real estate agent who handled the sale, various insurers, and the appellee, A-Pro.² A-Pro is a licensed home inspector who was hired by the Sabas to conduct a pre-purchase inspection of the Emerson home. The Emersons’ initial petition alleged that they had relied on the

¹ Mr. Gustafson is alleged to be a licensed home inspector. Under La. R.S. 37:1482, a home inspector license shall not be issued to a corporation, limited liability company, partnership, firm, or group; therefore, Mr. Gustafson is properly named as a party third-party defendant in this action. For ease of reference, we will refer to Mr. Gustafson as A-Pro.

² The Emersons’ suit asserts allegations of negligence against their termite contractor for recommending, installing, and maintaining an “incorrect” treatment plan for the baiting of subterranean termites from 2000 to 2014. Further, the Emersons make allegations of negligence against a contractor they paid in excess of \$150,000.00 to restore, repair and remediate various sections of the home due to known or visible termite damage.

findings in A-Pro's inspection report to be accurate and complete and to reduce the price of the home, and but for the inaccurate inspection report, they would have considered other options prior to the sale. Further, the Emersons' initial petition alleged that A-Pro was liable to them for losses associated with the reduction in price, as well as the Sabas' damages.

A-Pro countered with an exception of no cause of action asserting that the Emersons failed to allege any facts establishing the existence of either a statutory or jurisprudential duty owed to them by A-Pro. In a judgment rendered on August 5, 2015 and signed on August 18, 2015, the trial court sustained A-Pro's exception of no cause of action, but granted the Emersons thirty days in which to amend their petition.

The Emersons amended their petition twice in the month following the August 18, 2015 judgment to allege claims for negligent misrepresentation, detrimental reliance, and as third-party beneficiaries. The Emersons allege the Sabas retained the services of A-Pro to inspect the home and provide an inspection report. The petitions assert that A-Pro supplied the report to the Sabas and the real estate agent jointly representing the parties; and that the real estate agent delivered a copy of the report to the Emersons. The Emersons allege that based on their reliance on the findings in A-Pro's report, they agreed to reduce the price of the home.

The petitions generally assert that A-Pro knew or should have known that a pre-purchase inspection report is customarily used by purchasers and sellers of homes to negotiate sales prices and determine repair/remedial work to be performed by the seller. Further, the Emersons allege that it is customary and foreseeable to A-Pro that the seller would be given a copy of the home inspection report as an intended user and that the seller would rely on its contents to negotiate the price of a home. The Emersons additionally allege that they were the known,

intended and actual users of the report as evidenced by the fact that they reduced the price of the house based on its findings. According to the allegations of the petitions, but for A-Pro's negligence, "no claim could have been asserted by the Saba[s]" and the Emersons "would not have reduced the sale price as done." Finally, the petitions contain allegations that the Emersons foreseeably and detrimentally relied on A-Pro's report in reducing the sale price.

A-Pro challenged the allegations contained in the Emersons' supplemental and amending petitions with a second exception of no cause of action. Following a hearing on November 25, 2015, the trial court signed a judgment sustaining A-Pro's exception and dismissing the Emersons' third-party demand against A-Pro with prejudice. The Emersons timely filed the instant appeal challenging the November 25, 2015 judgment.

ASSIGNMENTS OF ERROR

The Emersons identify the four following challenges to the trial court's judgment in their appellate brief. First, the trial court erred in failing to find that A-Pro owed a legal duty to the Emersons sufficient to support a cause of action for negligent misrepresentation. Second, the trial court erred in failing to find that the Emersons had plead a cause of action for detrimental reliance. Third, the trial court erred in failing to find that Emersons had plead a cause of action for stipulation *pour autrui*. Fourth, the trial court erred in sustaining A-Pro's peremptory exception of no cause of action and dismissing the Emersons' claims against A-Pro.

STANDARD OF REVIEW

The reviewing court conducts a *de novo* review of a trial court's ruling sustaining an exception of no cause of action because the exception raises a question of law, and the lower court's decision is based only on the sufficiency of the petition. **Adams v. Owens–Corning Fiberglas Corporation**, 2004-1296 (La. App. 1st Cir. 9/23/05), 921 So.2d 972, 976, writ denied, 2005-2501 (La. 4/17/06), 926 So.2d 514.

LAW AND DISCUSSION

The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged therein. **Ramey v. DeCaire**, 2003-1299 (La. 3/19/04), 869 So.2d 114, 118. All facts pled in the petition must be accepted as true. **Rebardi v. Crewboats, Inc.**, 2004-0641 (La. App. 1st Cir. 2/11/05), 906 So.2d 455, 457. Furthermore, the facts shown in any documents annexed to the *petition* must also be accepted as true. See **B & C Electric, Inc. v. East Baton Rouge Parish School Board**, 2002-1578 (La. App. 1st Cir. 5/9/03), 849 So.2d 616, 619; **Cardinale v. Stanga**, 2001-1443 (La. App. 1st Cir. 9/27/02), 835 So.2d 576, 578; see also La. C.C.P. art. 853 (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”) No evidence may be introduced to support or controvert the exception of no cause of action. La. C.C.P. art. 931.³

Any reasonable doubt concerning the sufficiency of the petition must be resolved by the court in favor of finding that a cause of action has been stated. **Livingston Parish Sewer Dist. No. 2 v. Millers Mutual Fire Insurance Company of Texas**, 99-1728 (La. App. 1st Cir. 9/22/00), 767 So.2d 949, 952, writ

³ The Emersons' opposition to the second exception of no cause action filed in the trial court attached printouts of A-Pro's website. In their brief to the trial court and this court, the Emersons allege A-Pro's website evidences assertions of warranty made by A-Pro and the scope of work. However, we note that these documents are not annexed to a petition; therefore, they cannot be considered to support or controvert the exception.

denied, 2000-2887 (La. 12/8/00), 776 So.2d 1175. However, because Louisiana retains fact pleading, the mere conclusion of the pleader, without supporting facts, does not set forth a cause of action. **Montalvo v. Sondes**, 93-2813 (La. 5/23/94), 637 So.2d 127, 131.

NEGLIGENT MISREPRESENTATION

Louisiana Civil Code articles 2315 and 2316 provide for the protection of individuals damaged by the negligent acts of others and encompass causes of action for negligent misrepresentation where privity of contract is absent. See **Barrie v. V.P. Exterminators, Inc.**, 625 So.2d 1007, 1014 (La. 1993). In determining whether to impose liability in a negligent misrepresentation case, Louisiana employs the duty/risk analysis on a case by case basis. *Id.*, 625 So.2d at 1016; see **Lemann v. Essen Lane Daiquiris, Inc.**, 2005-1095 (La. 3/10/06), 923 So.2d 627, 632-633. For liability to attach under a duty/risk analysis, a plaintiff must prove: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant failed to conform his conduct to the appropriate standard (the breach of duty element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element); and (5) actual damages (the damages element). **Roberts v. Rudzis**, 2013-0538 (La. App. 1st Cir. 5/28/14), 146 So.3d 602, 608-609, writ denied, 2014-1369 (La. 10/03/14), 149 So.3d 797.

Whether a duty is owed is a question of law. **Mundy v. Department of Health and Human Resources**, 620 So.2d 811, 813 (La. 1993). In deciding whether to impose a duty in a particular case, the court must make a policy decision in light of the unique facts and circumstances presented. **Lemann**, 923 So.2d at 633; see also **Meany v. Meany**, 94-0251 (La. 7/5/94), 639 So.2d 229, 233. The initial inquiry is whether the defendant had a duty to "conform his

conduct to a specific standard.” **Lemann**, 923 So.2d at 633. In deciding whether a duty is owed in a particular case, Louisiana courts examine “whether the plaintiff has any law—statutory, jurisprudential, or arising from general principles of fault—to support his claim.” **Faucheaux v. Terrebonne Consolidated Government**, 615 So.2d 289, 292 (La. 1993).

The issue at hand is whether a licensed home inspector conducting a pre-purchase inspection of a home pursuant to a contractual arrangement exclusively with the buyer owes the seller a duty of reasonable care and competence in obtaining and communicating information as to hidden termite damage present in the home. See **Barrie**, 625 So.2d at 1015. The Emersons’ brief contains assertions that A-Pro owed a duty to them on the basis that A-Pro knew that the Emersons were intended users of the pre-purchase inspection report; that the report was known to be for their benefit; and that the Emersons would reasonably and foreseeably rely on the inspection report. In response, A-Pro argues that the Emersons failed to allege any facts to demonstrate that A-Pro knew that the inspection report was being prepared specifically for the benefit of anyone other than the Sabas, with whom A-Pro had contracted; thus, there is no basis to find a duty owed by A-Pro to the Emersons.

In support of their argument that A-Pro owed them a duty, the Emersons rely on the Louisiana Supreme Court’s decision in **Barrie v. V.P. Exterminators, Inc.** In **Barrie**, the buyers of a home sued a termite inspector alleging negligent misrepresentation where the termite inspection report negligently concluded that the home had no evidence of termite infestation. The buyers’ suit specifically alleged that the obligation to obtain the termite inspection report arose from the purchase agreement between the buyers and sellers, which required the seller to provide a clear termite inspection report as a necessary condition prior to the sale.

Id., 625 So.2d at 1008. The buyers' petition further alleged that the seller employed the termite inspector in compliance with the purchase agreement. *Id.*

The Louisiana Supreme Court reversed the lower courts and held that the termite inspector owed the buyer a duty to use reasonable care and competence in obtaining or ascertaining facts for and/or in communicating the facts or opinion in the wood destroying report. The court explained that a duty was owed to the buyers even though they were a third party without privity of contract, or direct or indirect contact, because they were known to the termite exterminator as the intended and expected users of the report. *Id.*, 625 So.2d at 1016. The court identified the buyers as members of the limited group for whose benefit and guidance the report was contracted and supplied, and explained:

V.P. owed the duty to the Barries because of its knowledge that the ultimate purpose for the report, and its employment, was to facilitate the sale of the dwelling it inspected. The Barries' expected use of the report made the magnitude of their loss a foreseeable probability. The obligation for the liability is imposed by law based upon policy considerations due to the tortfeasor's knowledge of the prospective use of the information which expands the bounds of his duty of reasonable care to encompass the intended user.

Id. (Citation omitted). Additionally, the court found it relevant that the termite inspector held himself out as an expert and gathered and conveyed the information in the context of a business transaction for which his company received compensation. *Id.*, 625 So.2d at 1017. Finally, the court made a determination that public policy was served by extending tort liability to third persons relying on the benefit and guidance of the wood destroying insect report on the basis that it "promotes the maintenance of a high quality of services by the licensed structural pest control operator and imparts confidence in those services to the contracting party and to those persons who, due to current business practices, are expected to receive and rely upon the contents of the report." *Id.*, 625 So.2d at 1017-1018.

The core of the Emersons' claim asserts that A-Pro negligently breached its duty to accurately discover and report the presence of the termite damage. The Emersons allege that it is customary for buyers and sellers to use such pre-purchase inspection reports to "determine repair/remedial work and/or negotiation of prices." The Emersons contend that they were provided the report by the joint realtor, who received it from A-Pro, and that they actually used the report as evidenced by their reduction of the price. The Emersons contend that this set of facts establishes that A-Pro understood that the Sabas were known and expected users of the report, who would rely on the information to their detriment. Further, the Emersons contend, in a conclusory fashion, that they were a member of the limited group for whose benefit and guidance the information was contracted, rendering their reliance on the report foreseeable and reasonable.

We find the instant matter distinguishable from **Barrie** on several grounds. An obvious distinction between the instant matter and **Barrie** is that this case does not involve a termite inspection report by a termite expert, but, instead, a pre-purchase inspection by a licensed home inspector retained by the buyer. Termite inspections are designed to protect both parties by determining the presence of damage or infestation prior to the confection of the sale. See Kent v. Cobb, 35,663 (La. App. 2nd Cir. 3/8/02), 811 So.2d 1206, 1214, writ denied sub nom., Doug v. Cobb, 2002-1011 (La. 6/7/02), 818 So.2d 772. In contrast, the purpose of a home inspection report is to provide the home inspector's client with information regarding the condition of the systems and components of the home as observed at the time of inspection. See 46 La. ADC Pt. XL, § 305.

The Louisiana Home Inspectors Licensing Law, La. R.S. 37:1471 *et seq.*, and accompanying administrative provisions establish minimum Standards of

Practice for the conduct of home inspectors.⁴ See 46 La. ADC Pt. XL, § 301, *et seq.* The requirements for a contract between the home inspector and the client as well as a listing of the required contents of the report ultimately issued are outlined in 46 La. ADC Pt. XL, § 305(B). Generally, the application of the Standards of Practice is limited to residential resale buildings, and home inspections conducted in accordance therewith are “visual and are not technically exhaustive.” 46 La. ADC Pt. XL, § 307(A). Further, importantly, home inspectors are not required to inspect or report on “hidden, concealed or latent defects” nor “items not visible for inspection including the condition of systems or components which are not readily accessible.” 46 La. ADC Pt. XL, § 309(A)(9) and (10); see also 46 La. ADC Pt. XL, § 311(C). Moreover, the Standards of Practice expressly provide that home inspectors, among other things, “shall not”: (1) report on the market value of the property or its marketability; (2) report on the advisability or inadvisability of purchase of the property; or (3) **report on the presence or absence of pests such as wood damaging organisms**, rodents or insects; however, the home inspector *may* advise the client of damages to the building and recommend further inspection by a licensed wood destroying insect inspector. 46 La. ADC Pt. XL, § 309(C)(2), (3), and (5).

We find that the Sabas were the only intended users and persons for whose benefit and guidance the inspection report was compiled. This is a critical distinction between the instant matter and **Barrie**. As noted above, the intent of a home inspection report is to provide *the inspector’s client* with information regarding the condition of the systems and components of the home as observed at the time of inspection. 46 La. ADC Pt. XL, § 305. The Emersons contend that

⁴ In 1999, the Louisiana legislature enacted the Louisiana Home Inspectors Licensing Law, La. R.S. 37:1471 *et seq.*, which mandates licensure and regulation of home inspectors. See **Wartelle v. Louisiana State Board of Home Inspectors**, 2002-0870 (La. App. 1st Cir. 3/28/03), 845 So. 2d 553, 554. Under La. R.S. 37:1475(4), the Louisiana State Board of Home Inspectors (“Board”) shall adopt rules and regulations, in accordance with the Administrative Procedure Act, as the board deems necessary to govern the practice of home inspectors in the state.

they were intended users of the report and point to allegations that A-Pro knew that its home inspection report would be used to determine repair work and/or negotiation of price by both the buyer and seller.⁵ Taking this allegation to be true, we do not find that it establishes that A-Pro was “manifestly aware” that the Emersons would rely on and be guided by the inspection report to conclude their house did not contain hidden termite damage. See **Barrie**, 625 So.2d at 1016. Relevantly, there is no allegation that A-Pro held itself out as a specialist in structural pest control in the context of this inspection, which also distinguishes this matter from **Barrie**. *Id.*, 625 So.2d at 1017; see also **Bradley v. Prange**, 2004-1433 (La. App. 1st Cir. 12/17/04), 897 So.2d 721, 723, writ denied, 2005-0045 (La. 3/18/05), 896 So.2d 1007. Based on the above, we cannot find that the Emersons sufficiently alleged that their reliance on the report to establish the absence of termite damage as well as the resulting suit by the Sabas was a “foreseeable probability” to A-Pro. See **Barrie**, 625 So.2d 1016.

Unlike the buyers in **Barrie**, the Emersons do not allege that the Sabas’ procurement of the pre-purchase inspection report was a condition for completing the sale or that the confection of that sale was contingent on a finding by A-Pro that there was no termite damage or activity in the home. See *Id.*, 625 So.2d at 1017. Therefore, it cannot be said that A-Pro knew that a determination regarding termite damage was the “ultimate purpose” of the report.⁶

⁵ We note the allegation that the Emersons lowered the asking price of their home in response to A-Pro’s inspection report has no bearing on the question of whether A-Pro had a duty to provide accurate information regarding the presence of termite damage in the home to the Emersons. If anything, the Emersons’ allegation supports the finding that the inspection report was produced for the benefit and guidance of the Sabas in identifying issues with the home, which the Sabas then took into consideration when negotiating with the Emersons. The Emersons do not allege that the lowered price was provided by A-Pro, and we note that home inspectors are prohibited from reporting on the market price of a home they inspect. See 46 La. ADC Pt. XL § 309(C)(2).

⁶ During oral argument before this court, the Emersons also asserted that **Alley v. Courtney**, 448 So.2d 858 (La. App. 2nd Cir.), writ denied, 450 So.2d 360 (La. 1984) is also controlling in this matter. We disagree. In **Alley**, a professional construction appraiser and inspector appealed a judgment against him for out of a bank’s reliance upon two inspection reports prepared by him that were found to have erroneously stated that a particular residence under construction on each

Finally, we cannot find that extending tort liability in these circumstances would serve public policy. The accurate reporting of the presence of termite damage does not fall within the scope of a home inspector's assigned obligations under the Louisiana Administrative Code. Thus, whereas in **Barrie**, the court found public policy was served by the maintenance of a high quality of services by licensed pest control operators that would impart confidence in those who rely on such services, no such similar basis exists herein. *Id.*, 625 So.2d at 1017-1018.

For the above reasons, we find as a matter of law that A-Pro, a home inspector contracted by the buyer to perform a pre-purchase inspection, did not owe a duty to the Emersons, as sellers, to accurately report the presence of termite damage. In the absence of such a duty, the Emersons' petitions fail to state a cause of action for negligent misrepresentation.

DETRIMENTAL RELIANCE

On the basis of the same facts giving rise to their negligent misrepresentation claims, the Emersons argue that they are entitled to relief under the doctrine of detrimental reliance. A-Pro asserts that the Emersons have alleged insufficient facts to support a detrimental reliance claim. We agree.

Under the theory of detrimental reliance, "[a] party may be obligated by a promise when he knew or should have known that the promise would induce the

of two lots had been completed to the stage of "first inspection." The trial court found that work on the two lots had not progressed to the point where a proper first inspection certificate should have been issued. The Second Circuit found that the record supported the trial court's finding that, if the loan officer had known that construction had not reached the stage of first inspection, the bank might have perceived the builder's financial straits and ceased making loans to the builder, notwithstanding the continuing guaranty of the bank. The court noted as follows regarding the defendant's duty:

As a professional appraiser and inspector, defendant knew or should have known that each of his reports would be relied on to the detriment of a lender if the report was erroneous. Under such circumstances, defendant's duty was not owed solely to the builder, but extended to plaintiff and others that might suffer reasonably foreseeable and direct injury because of a breach of the duty owed by defendant.

Id., at 860.

We find that this case is distinguishable from **Alley**. The inspector in **Alley** erroneously reported information that was within the scope of his duty to report. As discussed in detail herein, in the present case, the intent of the home inspection report was to provide the Sabas with information regarding the condition of the systems and components of the home as observed; however, there was no duty on A-Pro's part to accurately report the presence of termite damage.

other party to rely on it to his detriment and the other party was reasonable in so relying.” La. C.C. art. 1967. The purpose of the doctrine of detrimental reliance is to “prevent injustice by barring a party from taking a position contrary to his prior acts, admissions, representations, or silence.” **Suire v. Lafayette City–Parish Consolidated Government**, 2004-1459 (La. 4/12/05), 907 So.2d 37, 59 (quoting **Orr v. Bancroft Bag, Inc.**, 29,046 (La. App. 2nd Cir. 1/22/97), 687 So.2d 1068, 1070.)

To establish a claim for detrimental reliance, a party must prove three elements: (1) a representation by conduct or word; (2) justifiable reliance; and (3) a change in position to one’s detriment because of the reliance. *Id.* Louisiana law does not require proof of a formal, valid, and enforceable contract to prevail on a detrimental reliance claim. *Id.*

The Emersons’ three petitions contain several allegations that they detrimentally relied on A-Pro’s inspection report and the recommendations contained therein, which resulted in them lowering the asking price of their home, and but for the report, they would have considered other options with regard to the house. The Emersons also allege that the Sabas retained the services of A-Pro to conduct a pre-purchase inspection of the property “upon which buyer, seller and real estate appraiser would rely.” These allegations, though the Emersons used the words “relied” and “detriment,” do not state a cause of action against A-Pro for detrimental reliance.

Notably absent is any allegation that A-Pro made a promise to the Emersons. “The first element of proof of the Article 1967 detrimental reliance cause of action is that a *promise* was given by the defendant to the plaintiff.” **Wooley v. Lucksinger**, 2006-1167 (La. App. 1st Cir. 5/4/07), 961 So.2d 1228, 1238. In **Wooley**, the court citing, H. Johnson, 18 La. Civ. Law Treatise 2d, *Civil Jury*

Instructions, § 19.08, p. 401 (2001), recognized the definition of a promise as follows:

A promise is a *declaration* which binds the person who makes it, either in conscience or law, to do a specific thing, which then gives to the other person a right to expect or claim the performance of that thing. Another definition of a promise is that it is *an offer* which is definite and certain and which the promisor intends to be binding. A promise must be clear and unambiguous in order to be enforceable. The mere expression of an intention is not a promise.

Id., at 1239. The results conveyed in A-Pro's inspection report, which was conducted as the result of a contractual arrangement with the Sabas, were not promises to the Emersons for La. C.C. art. 1967 detrimental reliance purposes. See Wooley, 961 So.2d at 1239. There was no promise by A-Pro in favor of the Emersons, thus, we find that the Emersons have failed to state a cause of action for detrimental reliance.

STIPULATION POUR AUTRUI

The Louisiana Civil Code provides that a contracting party may stipulate a benefit for a third person called a third-party beneficiary. La. C.C. art. 1978. A contract for the benefit of a third party is referred to as a stipulation *pour autrui*. **Paul v. Louisiana State Employees' Group Benefits Program**, 99-0897 (La. App. 1st Cir. 5/12/00), 762 So.2d 136, 140. A stipulation *pour autrui* is never presumed. **Joseph v. Hospital Service District No. 2 of Parish of St. Mary**, 2005-2364 (La. 10/15/06), 939 So.2d 1206, 1212; see also La. C.C. art. 1831. Three criteria for determining whether contracting parties have provided a benefit for a third party have been identified: (1) the stipulation for a third party is manifestly clear; (2) there is certainty as to the benefit provided the third party; and (3) the benefit is not a mere incident of the contract between the promisor and the promisee. **Joseph**, 939 So.2d at 1212. The "most basic requirement" of a stipulation *pour autrui* is that the contract manifest a clear intention to benefit the

third party; absent such a clear manifestation, a party claiming to be a third party beneficiary cannot meet his burden of proof. *Id.*

Our review of the petitions filed by the Emersons reveals no factual allegation that the contract between the Sabas and A-Pro manifested a clear intention to provide or stipulate a benefit for the Emersons. The Emersons make only vague allegations relating to their receipt of a benefit, including “[t]hat [the Emersons were] a known & intended beneficiary of and [were] guided by the information supplied by [A-Pro]” and “[A-Pro] knew or should have known that [the Sabas] and/or [the Emersons] would benefit from an inspection report in that buyers & sellers of real estate use such reports to determine repair/remedial work and/or negotiation of sales prices.” However, without an allegation that the contract between the Sabas and A-Pro manifested a clear intention to benefit the Emersons, the most basic requirement of a stipulation *pour autrui* is absent. See *Id.*, 762 So. 2d at 142.

We find that the Emersons’ claims for negligent misrepresentation, detrimental reliance, and third-party beneficiary are not properly alleged in their petitions as per La. C.C.P. art. 891, nor supported by facts required by the same article. Therefore, the trial court did not err sustaining the peremptory exception of no cause of action filed by A-Pro and dismissing the Emersons’ third-party demand against A-Pro.

CONCLUSION

For the foregoing reasons, the judgment of the trial court sustaining the peremptory exception of no cause of action filed by A-Pro and dismissing the Emersons’ claims against A-Pro is affirmed. All costs of this appeal are assessed against third-party plaintiffs/appellants, Samuel C. Emerson and Rene Louise April Emerson.

AFFIRMED.