NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 1430

CINDY WILLIAMS

VERSUS

ASHLI RICHARDSON

Judgment Rendered: NOV 0 1 2017

* * * * * * *

Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Trial Court Number 158102

Honorable George J. Larke, Jr., Judge

* * * * * * *

J. Rene Williams
Houma, Louisiana

Attorney for Appellant
Defendant – Ashli Richardson

Mark D. Plaisance
Thibodaux, Louisiana

Attorney for Appellee
Plaintiff – Cindy Williams

* * * * * * *

BEFORE: PETTIGREW, McCLENDON, WELCH, CRAIN, AND HOLDRIDGE, JJ.

GDP Pettigrew, J. Concurs

Holdridge J. dissents w/ Reasons

WELCH, J.

The defendant/appellant, Ashli Richardson, appeals a trial court judgment in favor of the plaintiff/appellee, Cindy Williams. For the reasons that follow, we reverse the trial court judgment and render judgment against Ashli Richardson in the amount of $8,408.84 plus legal interest from the date of judicial demand.

FACTUAL BACKGROUND

In the instant matter, Cindy Williams ("plaintiff") filed suit seeking to enforce an oral contract involving profits derived from the sale of immovable property. In 2001, the plaintiff met Ashli Richardson ("defendant") when she sought assistance in connection with domestic issues she was experiencing with her then-husband. The defendant was the domestic abuse coordinator for the Houma Police Department. The parties developed a personal relationship over the course of time and eventually decided to rent a house together in 2003.

In July of 2004, the defendant purchased a house and property located at 704 Winrock Drive in Houma, which is the subject of the instant dispute. The parties and their children moved into the newly purchased house and continued to live together until May of 2008, when the defendant left the house. As per the agreement of the parties, the plaintiff and her child remained in the house until March of 2009, whereupon the defendant reoccupied the house. As discussed below, the Winrock property was eventually sold by the defendant to a third party in late-2010.

On August 6, 2009, after moving out of the house, the plaintiff filed a "Petition for Breach of Contract and, Alternatively, for Partition" against the defendant. The petition alleged that the plaintiff and the defendant agreed to jointly purchase the Winrock Drive property, but to place the title to the property in the defendant's name. The plaintiff alleged that she advanced the funds necessary for the down payment in the amount of $19,400.00, and that the parties agreed that

they would "jointly share the mortgage and insurance payments" on the home. Further, the petition alleged that the parties agreed that should they no longer both live at the property together, the party that remained would pay half of the equity in the home to the other party as well as any "other adjustments as may have been appropriate with regard to the sharing of the down payment expenses incurred exclusively by [the] plaintiff."

The petition alleged that on or about June 25, 2009, the defendant advised the plaintiff that she "wished to terminate their joint ownership of the property and indicated that she would purchase plaintiff's interest in same." According to the petition, the parties were unable to agree to a buy-out agreement. The plaintiff's petition prayed for one-half of the difference between the value of the home and property based on recent appraisals and the remaining mortgage balance, together with all appropriate adjustments to reflect the plaintiff's payment of the down payment. Alternatively, the plaintiff sought a partition of the property under private sale. The defendant filed an answer and reconventional demand.[1] The answer denied most of the allegations in the petition, only admitting that the defendant did offer to pay the plaintiff an undisclosed amount upon the plaintiff's departure from the house.

The record does not indicate a date, but at some point before April of 2010, the plaintiff filed a notice of lis pendens in the conveyance records, providing notification to third parties of the pendency of her claims to the Winrock Drive property made in the underlying suit. However, in a consent judgment signed

[1] In her reconventional demand, the defendant asserted a 50% ownership interest in insurance proceeds received by the plaintiff for damages to a leased camp following Hurricanes Katrina and Rita. There was some testimony at the trial in this matter, but no judgment or award was rendered as to the defendant's reconventional demand. Generally, silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. **Schoolhouse, Inc. v. Fanguy**, 2010-2238 (La. App. 1st Cir. 6/10/11), 69 So.3d 658, 664. Accordingly, the silence in the trial court's judgment on this issue is deemed as a rejection of the defendant's reconventional demand.

April 8, 2010, the plaintiff agreed to remove the notice of lis pendens from the conveyance records at the time of the sale, provided that the plaintiff was given ten-day notice of the terms of any proposed sale; after the sale occurred, the sum of $19,400.00 or one-half of the equity from the sale of said residence, whichever amount was greater, would be deposited in the registry of court. On December 13, 2010, pursuant to the consent judgment, the amount of $38,200.96 was deposited into the registry of the court. The sum represented one-half of the equity proceeds from the sale of the property.

The matter moved slowly until December 29, 2014, when the plaintiff filed a motion seeking release of the funds in the registry. However, the motion was continued without date, and the matter was eventually set for trial.

During the two-day trial, the plaintiff sought to establish a claim for breach of an oral contract. To that end, she submitted evidence to show the existence of an oral contract over $500.00, as required under La. C.C. art. 1846. Specifically, the plaintiff called two witnesses to testify on her behalf as to their personal knowledge regarding the existence and terms of the oral contract between the parties related to the purchase of the property. Also, the plaintiff testified on her own behalf as to her understanding of the parameters of the oral agreement with the defendant, and submitted documentary evidence regarding the down payment as well as payments she directly made on the mortgage itself.

Reviewing the plaintiff's testimony as a whole reveals that she understood that the oral agreement between the parties provided that she would be paid back all of the funds she put forth on the down payment and deposit on the house; each party would be reimbursed for funds each had "spent" on the house, including any mortgage notes she paid while the defendant was unemployed; and any equity remaining after the house was sold would be split equally between the parties. Initially, the plaintiff testified that she believed she was entitled to full

reimbursement of any mortgage payments she made, however, she adjusted her claim under cross-examination. According to the plaintiff, the parties agreed to place the house in the defendant's name "because of [plaintiff's] husband[,]" but understood that they would be co-owners. As to the down payment, the plaintiff testified that the defendant agreed to repay the full amount from funds the defendant anticipated receiving from a legal settlement. Craig Sampognaro, the plaintiff's first cousin, corroborated the plaintiff's testimony as to the parties' agreement regarding the down payment.

The defendant testified that the down payment was a loan and that there was never an oral contract between the parties to share ownership of the house, as evidenced by her name being the sole name on the title to the home. Importantly, the defendant acknowledged that the plaintiff was entitled to recovery for the remaining balance on the down payment. According to the defendant, the parties agreed to contribute $1,200.00 each towards the household expenses, a practice they had begun while renting together. However, according to the defendant, at a certain point, the plaintiff's $1,200.00 toward monthly expenses was paid directly to the mortgage at the advice of the plaintiff's divorce attorney. The defendant was unable to produce any documentary evidence to corroborate her testimony showing that she regularly contributed this amount every month during the time that the parties lived together.

In a judgment signed November 3, 2015, the trial court found that the defendant owed the plaintiff $38,265.07 (the amount representing half of the equity received from the sale of the property) "for the reasons orally assigned in open court."[2] The trial court also ordered that a check in that amount be issued by the clerk of court to the plaintiff. In its oral reasons, the trial court found as follows:

[2] This court notes a discrepancy in the amount deposited in the registry of the court, $38,200.96 and the amount awarded to the plaintiff.

> Here an oral contract in excess of $500 exists with the testimony of disinterested third-party witnesses ... and the corroborating documentation provided by the parties. The Court holds that there was an oral contract between [the plaintiff] and [the defendant]. The **oral agreement** detailed in the petition, [the plaintiff] would provide the initial down payment for the home on Winrock Drive in exchange for **ownership in indivision.**
>
> Thus when the home at Winrock Drive was sold, [the defendant] failed to give [the plaintiff] her one-half of the proceeds. Their oral contract was breached. Thus, due to the defendant's failure to perform in accordance with the contract, the [defendant is] liable, and the Court will award petitioner the sum of $38,200 for her share of the equity in the home. The Court also notes the petitioner limited her claim to the amounts secured within its registry; even though she may have been owed more. [Emphasis added.]

The defendant appeals and asserts two alternative assignments of error. First, the defendant contends that the trial court erred in finding that the plaintiff met the required burden of proof to establish the existence of an oral contract. Second, the defendant avers that the trial court erred in holding the plaintiff could acquire an ownership interest in the Winrock Drive property through an oral agreement.

In her appellee brief to this court, the plaintiff contends that based on the evidence presented at trial, she established that the parties entered into an oral agreement whereby the parties agreed that in exchange for the plaintiff's contribution of the down payment and other expenses, the plaintiff would share equally in the proceeds from the sale of the property. Alternatively, the plaintiff asserts that in the absence of an oral contract, she is entitled to recoup her share of the proceeds on the sale of the property under the theory of unjust enrichment.

DISCUSSION

Breach of Contract

A party claiming the existence of a contract has the burden of proving that the contract was perfected between himself and his opponent. La. C.C. art. 1831; See **Key Office Equip., Inc. v. Zachary Community School Bd.**, 2015-1412 (La.

App. 1st Cir. 4/15/16), 195 So.3d 54, 59, writ denied, 2016-0841 (La. 6/17/16), 192 So.3d 772. Here, the plaintiff sought recovery for breach of an oral contract under La. C.C. art. 1846.

Unless required by law, a contract need not be in writing. See La. C.C. arts. 1846 and 1927; **Suire v. Lafayette City-Parish Consolidated Government**, 2004-1459 (La. 4/12/05), 907 So.2d 37, 58. When a writing is not required by law, a contract not reduced to writing, for a price or value above $500.00, must be proved by at least one witness and other corroborating circumstances. *Id.*; La. C.C. art. 1846. To meet the burden of proving an oral contract by a witness and other corroborating circumstances, a party may serve as his own witness and the "other corroborating circumstances" may be general and need not prove every detail of the plaintiff's case. **Imperial Chemicals Ltd. v. PKB Scania (USA), Inc.**, 2004-2742 (La. App. 1st Cir. 2/22/06), 929 So.2d 84, 90-91. The corroborating evidence, however, must come from a source other than the plaintiff. *Id.* at 91.

Whether there were corroborating circumstances sufficient to establish an oral contract is a question of fact, and our review of the factual conclusions is limited to a review of the entire record to determine if those conclusions are clearly wrong. *Id.*; **Percy v. Perkins**, 468 So.2d 815, 818 (La. App. 1st Cir.), writ denied, 475 So.2d 355 (La. 1985).

Contracts related to immovable property are distinguishable from those for movable property. A sale or promise of sale of an immovable must be made by authentic act or by act under private signature, except as provided in La. C.C. art. 1839.[3] La. C.C. art. 2440. Parol evidence is inadmissible to create a title in one

[3] Louisiana Civil Code article 1839 provides:

> A transfer of immovable property must be made by authentic act or by act under private signature. Nevertheless, an oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath.

who never owned the immovable property or to show that the vendee was in reality some other person than the person named in the act of sale. **Campbell v. Cerdes**, 2013-2062 (La. App. 1st Cir. 8/10/15), 181 So.3d 41, 49, writ denied, 2015-1658 (La. 10/30/15), 180 So.3d 302. Moreover, the parol evidence rule has been applied by our courts not only in cases involving contracts which directly affect title to realty but also in others where the litigants merely sought to derive benefits growing out of verbal agreements relating to the sale of immovable property. See **Hayes v. Muller**, 245 La. 356, 158 So.2d 191, 198 (La. 1963); **Brignac v. Barranco**, 2014-1578 (La. App. 1st Cir. 9/10/15), 182 So.3d 88, 94, writ denied, 2015-1889 (La. 11/20/15), 180 So.3d 318.

The defendant contends that the trial court legally erred in finding that the plaintiff acquired an ownership interest in the property via an oral agreement between the parties. The provisions of La. C.C. art. 1846 expressly exclude contracts that are required to be in writing by law. It is axiomatic that contracts related to the transfer of title to immovable property must meet the writing requirements of La. C.C. arts. 1839 and 2440. Based on these legal principles, we are constrained to find that the trial court legally erred in finding of the existence of an oral contract rendering the parties co-owners in indivision of the Winrock property, as well as the finding that the plaintiff acquired an ownership interest in the profits from sale thereof.

Joint Venture

The plaintiff in her appellee brief argues that in the absence of a finding on an oral contract, at the minimum, there is a basis for finding that a joint venture existed between the parties. This issue was not raised in the trial court, however,

---

An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located.

we find consideration proper under La. C.C.P. art. 2133(B).[4] It is well settled that while what constitutes a joint venture is a question of law, the existence or nonexistence of a joint venture is a question of fact. **Grand Isle Campsites v. Cheek**, 262 La. 5, 11, 262 So.2d 350, 357 (1972). Since the essential elements of a joint venture and a partnership are the same, joint ventures are generally governed by partnership law. **Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Authority**, 2004-0211 (La. 3/18/04), 867 So.2d 651, 663. Louisiana Civil Code article 2801 defines "partnership" as "a juridical person, distinct from its partners, created by a contract between two or more persons to combine their efforts or resources in determined proportions and to collaborate at mutual risk for their common profit or commercial benefit." This court has identified the following criteria for the existence of a joint venture:

> (1) A contract between two or more persons;
> (2) A juridical entity or person is established;
> (3) Contribution by all parties of either efforts or resources;
> (4) The contribution must be in determinate proportions;
> (5) There must be joint effort;
> (6) There must be a mutual risk *vis-à-vis* losses;
> (7) There must be a sharing of profits.

Coffee Bay Investors, L.L.C. v. W.O.G.C. Co., 2003-0406 (La. App. 1st Cir. 4/2/04), 878 So.2d 665, 670, writ denied, 2004-1084 (La. 6/25/04), 876 So.2d 838.

The facts presented in the instant matter do not establish a basis for what can be properly deemed a joint venture. It is clear after reviewing the record, there was no intent by either party to enter into an agreement that could be classified as a "joint venture." The relationship between the plaintiff and the defendant was personal not professional. See **Smith v. Lonzo**, 2002-1053 (La. App. 3rd Cir.

---

[4] Louisiana Code of Civil Procedure art. 2133(B) provides, as follows:

> B. A party who does not seek modification, revision, or reversal of a judgment in an appellate court, including the supreme court, may assert, in support of the judgment, any argument supported by the record, although he has not appealed, answered the appeal, or applied for supervisory writs.

2/5/03), 838 So.2d 918, 921. Unrefuted testimony at trial established the Winrock property was acquired after the parties had lived together as part of a domestic arrangement. The parties then lived in the house with their children for approximately four years. Further, the domestic arrangement ended as a result of a breakdown in the personal relationship between the parties. Even assuming that the parties agreed to share the profits upon the sale of the property or to buy each other out in the event that one of them wished to leave the house, acquiring a profit was not the object or cause of the venture. See La. C.C. art. 1967. The intent of the parties was to purchase a home to reside in.[5] We find no merit in the plaintiff's assertion that a joint venture existed between the parties.

Unjust Enrichment

We also consider the plaintiff's argument that if it is found that there was no enforceable oral agreement between the parties, then she should be entitled to recover the profits from the sale of the property under the theory of unjust enrichment. The plaintiff points to her payment of various expenses associated with the house in support of her claim.

Louisiana Civil Code article 2298, codifies a claim for unjust enrichment, and provides, in pertinent part:

> A person who has been enriched without cause at the expense of another person is bound to compensate that person. The term "without cause" is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment or declares a contrary rule. [Emphasis added.]

---

[5] We note the instant matter is factually distinguishable from cases like **Grand Isle Campsites, Inc.** and **Brignac**, where the courts allowed the plaintiffs to pursue a claim for breach of fiduciary obligation without affirmative evidence of an express/written joint venture agreement. In both **Grand Isle Campsites, Inc.** and **Brignac**, the defendants had pre-existing business relationships with the plaintiffs, and in both instances the defendants had been engaged in a readily identifiable business endeavor with the plaintiffs. Finally, the parties in those cases had set up business entities in anticipation of a venture, but the defendants had misled the joint-venture partners and had profited from their self-dealing.

The plaintiff's argument under La. C.C. art. 2298 necessarily fails under the definition of "without cause." See **Conn-Barr, LLC v. Francis**, 2012-348 (La. App. 3rd Cir. 11/7/12), 103 So.3d 1208, 1214, writ denied, 2013-0227 (La. 3/8/13), 109 So.3d 364. Courts may resort to equity only in cases of unjust enrichment for which there is no justification in law or contract. **Edmonston v. A-Second Mortgage Co. of Slidell**, 289 So.2d 116, 122 (La. 1974). "Cause" in the context of unjust enrichment is not assigned the meaning commonly associated with contracts; instead it means the enrichment is justified if it is the result of, or finds its explanation in, the terms of a valid juridical act between the impoverishee and the enrichee **or** between a third party and the enrichee. *Id.*; see also **Nature Conservancy v. Upland Properties, LLC**, 2010-0516 (La. App. 1st Cir. 10/29/10), 48 So.3d 1257, 1261.

Although the defendant was enriched by the sale of the Winrock Drive property, that enrichment resulted from a valid juridical act, insofar as it resulted from the defendant's sale of the property to a third party. It is undisputed that the defendant was the title owner of the property, and, thus had the right to use, enjoy, and dispose of it within the limits and under conditions established by law. La. C.C. art. 477(A). Further, the plaintiff had a separate legal remedy of recovering the reimbursement of expenses she paid by alternatively requesting reimbursement of any monies she felt that she was not obligated to pay – a claim which the plaintiff did in fact unsuccessfully attempt to assert at the trial on the matter. [6]

[6] The evidence at trial established that the plaintiff paid the mortgage at various times, but no corroborating evidence was admitted to support her claims that an agreement existed between the parties that she would be reimbursed for expenses and mortgage payments made during the parties' domestic arrangement. The plaintiff's witness, Mr. Sampognaro, offered no testimony on this issue, and Ms. Hutchinson testified only that "Cindy was going to pay for most everything, and they were going to split the proceeds of the equity in the home." Thus, we can find no evidentiary basis to establish that the plaintiff had an oral agreement to be reimbursed for her contributions to the shared household in addition to any other agreements the parties may have had.

Down Payment

Louisiana Code of Civil Procedure article 2164 provides that an appellate court shall render any judgment which is just, legal, and proper upon the record on appeal. **Grand Isle Campsites, Inc.**, 262 So.2d at 354. Based on its finding that the plaintiff's claims were limited to those funds deposited in the registry representing one-half of proceeds from the sale of the property, the trial court ruled only on the issue of the plaintiff's entitlement to the profits derived from the sale. The trial court made no express award as to the plaintiff's claims to the remaining balance owed to plaintiff in connection with the down payment.

As to the down payment, we find that the evidence at trial established sufficient evidence to support a claim that the down payment was a loan of cash, a movable, which can be the object of an oral contract under La. C.C. art. 1846. Both parties understood that the down payment was in the nature of a loan, and that only $10,000.00 on the balance was paid to date. It was unrefuted that the plaintiff gave the defendant cash to pay the down payment in the amount of $17,408.85 and a $1,000.00 deposit in connection with the purchase agreement. Sufficient evidence exists to find an oral contract amounting to a loan between the parties as to the down payment and deposit under La. C.C. art. 1864 was confected. As such, we find the plaintiff is entitled to a judgment against the defendant rendered in the amount of $8,408.84, representing the balance owed on the down payment and related deposit, with legal interest from the date of the judicial demand.

CONCLUSION

For the reasons set forth above, we reverse the November 3, 2015 judgment of the trial court in the amount of $38,265.07 against the defendant, Ashli Richardson, and in favor of the plaintiff, Cindy Williams; and render judgment against Ashli Richardson and in favor of Cindy Williams in the amount of $8,408.84, representing the balance owed on the down payment and deposit, with legal interest from the date of the judicial demand. The Clerk of Court for the Parish of Terrebonne shall issue a check through the Court Registry to Cindy Williams in the amount of $8,408.84 plus legal interest from the date of judicial demand. After disbursement of the above-described funds to Cindy Williams, the Clerk of Court shall then issue a check for the balance of the funds in the Court Registry to Ashli Richardson. All costs of this appeal are to be paid in equal portions by the appellant, Ashli Richardson, and the appellee, Cindy Williams.

REVERSED; RENDERED.

CINDY WILLIAMS **STATE OF LOUISIANA**

VERSUS **COURT OF APPEAL**

ASHLI RICHARDSON **FIRST CIRCUIT**

NO. 2016 CA 1430

HOLDRIDGE, J., dissenting.

I respectfully dissent from the majority opinion.

Both parties in this case agreed that they entered into an oral agreement to share the expenses of the household when they began living together. Both parties further agreed that the defendant, Ashli Richardson, would purchase a home in which they would both live and that the plaintiff, Cindy Williams, would pay the down payment of $19,400.00 that was necessary to purchase the home. Both parties further agreed that after purchasing the home, they would contribute $1,200.00 towards the household expenses and mortgage payments. The evidence also showed that from the spring of 2005 until June 2008, the plaintiff paid the $1,200.00 mortgage note directly to the mortgage company. During this period, the defendant was unable to produce any evidence showing that she contributed any amount to the household expenses. Upon the sale of the home, the defendant received one-half of the equity in the house or $38,200.96. The parties then entered into a stipulated judgment that the other one-half of the equity in the house would be deposited into the registry of the court. The plaintiff would then be entitled to proceed to trial to prove that she should be reimbursed from the funds on deposit for her payment of the down payment on the home, payment of the mortgage note, or other expenses that she paid for the defendant's residence. The plaintiff stipulated that she would limit any judgment to the amount deposited into the registry of the court.

In a judgment signed on November 3, 2015, the trial court granted a judgment in favor of the plaintiff and against the defendant in the amount of $38,265.07. The trial court stated in its oral reasons that "the petitioner limited her claim to the amount secured within [the court's] registry. Even though she may have been owed more."[1]

In this case, the two parties entered into an agreement for the defendant to purchase a residence with the plaintiff making the down payment. They further agreed to share all of the expenses of the residence and when the residence sold, each party would be reimbursed for the expenses they paid up to one-half of the equity in the home. This is not a case of an oral contract to own one-half of immovable property or a contract involving immovable property nor is it a case of joint venture or unjust enrichment. It is simply a case of two parties orally agreeing for one party to purchase a residence, one party to make the down payment, and for both parties to share the expenses until the house sold and then for both of the parties to be reimbursed for the expenses that were paid. Clearly, if the reimbursement owed to the plaintiff did not exceed the amount of one-half of the equity, the defendant, as owner, would be entitled to that amount. However, as the evidence in this case proved, the plaintiff contributed a far greater amount than the defendant to the expenses of the residence by making the down payment on the home and paying a majority of the mortgage notes.

The trial court recognized this fact in its oral reasons, holding that the plaintiff "may have been owed more." This factual finding of the trial court should

---

[1] In its oral reasons for judgment, the trial court stated "The court holds that there was an oral contract between [the plaintiff] and [the defendant]. The oral argument detailed in the petition, [the plaintiff] would provide the initial down payment for the home ... in exchange for ownership indivision." The trial court is correct in that there was an oral agreement between the parties, but incorrect in finding that the plaintiff became an owner in indivision of the home. However, it is well-settled that the trial court's oral or written reasons for judgment form no part of the judgment, and that appellate courts review judgments, not reasons for judgment. See Wooley v. Lucksinger, 2009-0571 (La. 4/1/11), 61 So.3d 507, 572.

not be disturbed absence a finding of manifest error. See Point Proven, LLC v. City of Monroe, 51,074 (La. App. 2 Cir. 1/13/17), 214 So.3d 912, 915, writ denied, 2017-0292 (La. 4/7/17), 218 So.3d 111. In this case, the trial court's judgment was factually, legally, and morally correct and not manifestly erroneous. Therefore, I respectfully dissent with the majority's decision to reverse the judgment.