STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0480

AMERICAN BANK AND TRUST

VERSUS

E. LYNN SINGLETON AND SINGLETON FARM, INC.

Judgment Rendered: NOV 0 1 2017

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APPEALED FROM THE 21ST JUDICIAL DISTRICT COURT
ST. HELENA PARISH, LOUISIANA
DOCKET NUMBER 22,106, DIVISION "B"

HONORABLE CHARLOTTE FOSTER, JUDGE

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BEFORE: WHIPPLE, C.J., McDONALD, and CHUTZ, JJ.

McDONALD, J.

In this appeal, a bank, as mortgagee, challenges a judgment ordering cancelation of a mortgage on a corporation's immovable property and also ordering the bank to pay attorney fees and costs to the corporation for the bank's failure to timely dismiss one of its claims against the corporation. We reverse in part and affirm in part.

FACTUAL AND PROCEDURAL BACKGROUND

Singleton Farm, Inc. (SFI) is a Louisiana corporation in Greensburg, Louisiana.[1] SFI was incorporated in 1992 by Ernest and Evelyn Singleton, the original two directors. At some point, Mr. and Mrs. Singleton transferred ownership of their farm to SFI, which included about 157 acres of land containing a farm house, a dairy barn, three ponds, and some patches of timber (Singleton Farm). Records on file with the Louisiana Secretary of State show that Mr. and Mrs. Singleton were the only two SFI directors until their respective deaths in November and December 2001.

Mr. and Mrs. Singleton had one son, Ernest "Lynn" Singleton, an attorney whose practice was also in Greensburg. After his parents died, Lynn Singleton did not institute succession proceedings to deal with their estates. In 2001, however, he filed SFI's 2001 domestic corporation annual report with the Secretary of State, listing his deceased father and his surviving mother as directors, and signing the form designating himself as SFI's "Pres[ident]." In 2004, he again filed SFI's 2004 annual report, marking through his father's name as a director, and writing in his own name, address, and identifying himself as SFI's "President." Similar annual reports, identifying Lynn Singleton as SFI's president, were filed for later years, including 2007, 2008, 2009, and 2011.

In August 2010, Lynn Singleton personally obtained a $225,550 loan from American Bank and Trust (AB&T) with the stated purpose of "improvements to farm." The proceeds of this first loan were deposited into SFI's bank account. In July 2012, Lynn Singleton renewed the loan and borrowed additional money, for "business expenses," totaling $240,747.65. And, in November 2012, he obtained a third loan for $13,650 for "business expenses." All three loans to Lynn Singleton were secured by a

[1] The record is unclear whether Singleton Farm, Inc. became Singleton Farm, LLC, at some point during this litigation. Because the November 24, 2016 judgment at issue here was rendered in favor of "Singleton Farm, Inc.," we use that designation.

multiple indebtedness mortgage on Singleton Farm (the Mortgage), executed by him as SFI's purported president. At trial, Lynn Singleton testified that he used the loan proceeds to pay bills, to carry on his dozer business, and for his law practice.

In 2013, Lynn Singleton had developed Parkinson's disease, had had a long-term alcohol abuse problem, and was committed to a mental institution. In June 2013, his daughter, Stacy Head, was helping to clean out her father's office in preparation to close his law practice. She discovered her deceased grandparents' executed but unprobated wills, in which Mr. and Mrs. Singleton had left all of their property to each other, and if one predeceased the other, then each spouse left all of his/her property to Lynn's children, Ms. Head and her brother, Michael Singleton (grandchildren), to share.[2] This property included all SFI stock. Ms. Head also discovered documents showing that her father had previously obtained the three loans from AB&T and, as SFI's purported president, had granted AB&T the Mortgage to secure the loans. Before June 2013, the grandchildren did not know their grandparents had left wills naming them as legatees.

In July 2013, the grandchildren filed a petition, alleging the discovery of their grandparents' attached wills; that Mrs. Singleton had become Mr. Singleton's universal legatee in accordance with his will when he died in November 2001; that the grandchildren had become Mrs. Singleton's universal legatees in accordance with her will when she died in December 2001; and requesting that they be put into possession, without administration, of her property. On July 29, 2013, a district court signed a judgment of possession, recognizing the grandchildren as Mrs. Singleton's universal legatees, and giving them possession of enumerated property, including "[a]ll right, title and interest in and to 100% of corporate stock of [SFI]." Two days later, the grandchildren's attorney wrote a letter to AB&T, claiming that the Mortgage was invalid and asking that it be released. Also, about that time, SFI filed updated records with the Secretary of State listing Ms. Head as SFI's president and registered agent.

AB&T then filed a petition for executory process against Lynn Singleton and SFI, alleging that Lynn Singleton had defaulted on the three loans and seeking seizure and

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[2] In codicils to their wills, Ernest and Evelyn both stated, "in the event there is any forced portion due my son, Lynn, from my estate, ... that forced portion is to be credited toward any and all indebtedness that Lynn owes me or my estate."

sale of Singleton Farm to satisfy his outstanding debt. SFI responded with an application for preliminary injunction to stop the seizure and sale of its property. After a hearing, the district court signed a judgment temporarily enjoining AB&T from proceeding with the sale, after finding that AB&T had not done "enough to protect [its] interest" before making the loans to Lynn Singleton.

AB&T later filed an amended petition, converting the matter to an ordinary proceeding and adding a claim for damages against SFI (in addition to the in rem claim against Singleton Farm), in the event the Mortgage against Singleton Farm was found unenforceable. According to AB&T, Lynn Singleton transferred part of the loan proceeds to SFI, and AB&T was entitled to recover those funds from SFI. SFI answered the amended petition, discovery was conducted, motions were filed, and the matter ultimately proceeded to a bench trial before a different judge than had issued the preliminary injunction.

On November 4, 2016, the district court signed a judgment: (1) in favor of AB&T against Lynn Singleton on the two promissory notes representing the three loans, in principal amounts of almost $251,600, plus late charges, interest, attorney fees, and collection costs; (2) declaring the Mortgage "null, void, and without legal effect"; (3) ordering Lynn Singleton to pay AB&T's court costs; (4) dismissing all of AB&T's claims against SFI; (5) ordering AB&T to pay SFI's court costs; and, (6) ordering AB&T to pay SFI $900 for attorney fees/costs incurred because of AB&T's failure to timely dismiss its money judgment claim against SFI.

AB&T appeals from the adverse judgment, claiming the district court erred as a matter of law: (1) in finding that an SFI Resolution did not authorize Lynn Singleton to enter into the Mortgage with AB&T on SFI's behalf; (2) in finding that Lynn Singleton did not have apparent authority to enter into the Mortgage with AB&T on SFI's behalf; (3) in excluding evidence that SFI authorized Lynn Singleton to take action on its behalf with regard to real property; and, (4) in rendering judgment against AB&T and to SFI for attorney fees/costs.

THE SFI RESOLUTION

In its first assignment of error, AB&T argues the district court erred in concluding that an August 5, 2010 "Corporate Resolution to Grant Collateral" did not authorize Lynn Singleton to mortgage SFI's property. Even if the resolution did allow an *authorized person* to mortgage SFI's corporate property for a personal debt, an issue we do not decide, Lynn Singleton was not an authorized person, because he was not a SFI officer, director, or shareholder. Immediately upon Mrs. Singleton's death, the grandchildren, as her universal successors under her will, acquired ownership of her estate, including all SFI shares. *See* LSA-C.C. arts. 934 and 935. Prior to the qualification of a succession representative, only universal successors may represent the decedent with respect to the heritable rights and obligations of the decedent. LSA-C.C. art. 935. And, the rights of a successor are transmitted upon the decedent's death, whether or not the successor knows that the rights accrued to him. *See* LSA-C.C. arts. 935 and 937. Thus, until a succession representative was qualified, which did not occur before July 2013, the grandchildren were the only ones who could represent Mrs. Singleton regarding SFI's rights and obligations. Lynn Singleton, who was not Mrs. Singleton's successor, did not have authority to appoint himself as an officer of SFI or to act on its behalf. Thus, the district court's conclusion that the August 5, 2010 resolution was invalid, and did not authorize Lynn Singleton to mortgage SFI's property, is correct. This assignment of error is meritless.

APPARENT AUTHORITY/PUTATIVE MANDATE

Although Lynn Singleton did not have *actual* authority to act as SFI's representative, we now address AB&T's second assignment of error – that the district court erred in finding that Lynn Singleton did not have *apparent* authority to enter into the Mortgage with AB&T on SFI's behalf.

In the past, Louisiana courts have jurisprudentially recognized the common law doctrine of apparent authority. *Walton Constr. Co., L.L.C. v. G.M. Horne & Co., Inc.,* 07-0145 (La. App. 1 Cir. 2/20/08), 984 So.2d 827, 835. Apparent authority is a doctrine by which an agent may bind his principal in a transaction with a third person when the principal has made a manifestation to the third person, or to the community of which the

third person is a member, that the agent is authorized to engage in the particular transaction, although the principal has not actually delegated this authority to the agent. *Tedesco v. Gentry Dev., Inc.*, 540 So.2d 960, 963 (La. 1989). Apparent authority operates only when it is reasonable for the third person to believe the agent is authorized and the third person actually believes this. *Id.*; *Walton Constr. Co.,* 984 So.2d at 835.

Effective January 1, 1998, the Louisiana legislature enacted LSA-C.C. art. 3021 to specifically address the liability of a principal that arises when he causes a third party to believe another person is his agent. *See* Morris, G. & Holmes, W., 8 La. Civ. Law Treatise, Business Organizations §33.08 (2016 ed.) In civilian terms, the common law "agent" is known as a "mandatary." *See* LSA-C.C. arts. 2989, et seq. Under LSA-C.C. art. 3021, one who causes a third person to believe that another person is his mandatary is bound to the third person who, in good faith, contracts with the putative mandatary. In interpreting LSA-C.C. art. 3021, this court has concluded that the pre-Article 3021 judicial understanding of apparent authority appears to be analogous to the concept of putative mandate in LSA-C.C. art. 3021. *Tresch v. Kilgore*, 03-0035 (La. App. 1 Cir. 11/7/03), 868 So.2d 91, 94-95; *also see Walton Constr. Co.*, 984 So.2d at 836.[3] As such, for a third person to prove a putative mandatary relationship, he still must show that the principal has made a manifestation to a third person, or to the community of which the third person is a member, that the putative mandatary is authorized to engage in the particular transaction. *See Amitech U.S.A., Ltd. v. Nottingham Const. Co.*, 09-2048 (La. App. 1 Cir. 10/29/10), 57 So.3d 1043, 1050, *writs denied*, 11-0866, 11-0953 (La. 6/17/11), 63 So.3d 1036, 1043. Then, the third person must show that he reasonably relied on the mandatary's manifested authority. *See McLin v. Hi Ho, Inc.*, 12-1702 (La. App. 1 Cir. 6/7/13), 118 So.3d 462, 468; *Walton Constr. Co.,* 984 So.2d at 836; *see also* Morris G. & Holmes, W., 8 La. Civ. Law Treatise, Business Organizations §33.08 at n.13 (2016 ed.) Thus, the third party may not blindly rely on the mandatary's assertions but has a duty to inquire into the nature and extent of the mandatary's power. *God's Glory*

[3] Other appellate courts have also applied pre-LSA-C.C. art. 3021 jurisprudence to analyze the existence of a putative mandate. For example, *see Fluid Disposal Specialties, Inc. v. Unifirst Corp.*, 50,356 (La. App. 2 Cir. 1/13/16), 186 So.3d 210, 218; *Lifetime Const., L.L.C. v. Lake Marina Tower Condo. Ass'n, Inc.*, 12-0487 (La. App. 4 Cir. 3/27/13), 117 So.3d 109, 114-15; *Color Stone Intern., Inc. v. Last Chance CDP, LLC*, 08-35 (La. App. 5 Cir. 5/27/08), 986 So.2d 707, 713; *Eakin v. Eakin*, 07-693 (La. App. 3 Cir. 12/19/07), 973 So.2d 873, 875-77.

& Grace, Inc. v. Quik Intl., Inc., 05-1414 (La. App. 1 Cir. 6/9/06), 938 So.2d 730, 735, *writ denied*, 06-1739 (La. 10/6/06), 938 So.2d 86.

A district court's determination as to whether a putative mandate exists is a factual determination that will not be reversed absent manifest error. *Tresch*, 868 So.2d at 95; *Fluid Disposal*, 186 So.3d at 219. If there is a reasonable factual basis for the district court's findings, the reviewing court cannot reverse. *Fluid Disposal*, 186 So.2d at 219. In written reasons for judgment issued after the bench trial, the district court made the following findings:

> From the testimony and evidence presented at trial, the Court finds that [Lynn] Singleton did not have any authority, either actual or apparent, to act on behalf of SFI. He was never the President of SFI. He was never on the Board of Directors of SFI. He was never a member of SFI. He was never an agent of SFI. The only parties who could have granted him any authority to act on behalf of SFI in 2010 and 2012 were Stacy [Head] and Michael Singleton. However, Stacy [Head] and Michael Singleton did not know they were the sole owners of SFI stock until 2013.
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> Apparent authority is a doctrine created by the courts to protect persons dealing in good faith with corporate officials where the corporation has taken such action or inaction as to justify a belief that the official has acted with authority. The doctrine has two requirements: (1) the principal must make some form of manifestation to an innocent third party; and (2) the third party must rely reasonably on the purported authority of the agent as a result of the principal's manifestations. ... *From the testimony received at trial, it is clear that no one from SFI ever represented to any one that [Lynn] Singleton had authority to act on behalf of SFI.* Accordingly, the [mortgage] at issue [is] null and void and SFI is not indebted to [AB&T] for the money borrowed by [Lynn] Singleton. [Citation omitted; emphasis added.]
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> [I]t is abundantly clear to the Court that [Lynn] Singleton did not borrow the money for farm improvements. Rather, [Lynn] Singleton used the bulk of the loan proceeds to pay personal and business debts and expenses. None of the money borrowed by [Lynn] Singleton benefitted Singleton Farm and therefore SFI. Accordingly, SFI is not liable to [AB&T] for the debt incurred by [Lynn] Singleton. [4]

After reviewing the entire record, with particular emphasis on the trial testimony and documentary evidence, we conclude that there is a reasonable factual basis for the district court's conclusions that Lynn Singleton's loans were personal and that he did not have a putative mandate (apparent authority) to mortgage SFI's property to secure his personal loans. AB&T goes to great lengths to show that Lynn Singleton "took over" and

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[4] The district court's written reasons for judgment were filed with the district court's clerk of court as shown by a "St. Helena Clerk of Court" date/time stamp; but, the reasons are not included in the appellate record. At argument before this Court, the parties orally stipulated to our consideration of the written reasons. *See* LSA-C.C.P. art. 2132.

had "exclusive control" of Singleton Farm after his parents' deaths in 2001 and "held himself out to the community as the rightful owner of Singleton Farm" for 12 years. However, when the putative mandatary alone has contact with the third party, and leads the third party to believe that he has the principal's authority to conduct business on the principal's behalf, but the principal itself has never made such manifestations, then the principal is not bound by the putative mandatary's acts. *See Fluid Disposal*, 186 So.3d at 219; *also see McLin*, 118 So.3d at 469 (finding that reliance on the purported agent's actions alone, without manifestations by the principal, is insufficient to bind a corporation under the doctrine of apparent authority). *Accord Nine-O-Five Royal Apt. Hotel, Inc. v. Atkins*, 14-0325 (La. App. 4 Cir. 10/8/14), 151 So.3d 739, 748 (finding that corporate officers did not represent or manifest to a bank that the purported mandate was authorized to execute a mortgage binding the corporation's single asset).

To establish a putative mandatary relationship (apparent authority) here, AB&T was required to prove that SFI, not Lynn Singleton himself, manifested to AB&T, or to the community to which AB&T belonged, that Lynn Singleton was authorized to mortgage SFI's property. Between 2001 (when their grandparents died) and 2013 (when they discovered their grandparents' wills), SFI's owners, Ms. Head and Michael Singleton, did not know they were the owners of Singleton Farm. As such, neither of them could have manifested to AB&T, or to its community, that Lynn Singleton was authorized to mortgage SFI's property. As the district court pointed out, "it is clear that no one from SFI ever represented to any one that [Lynn] Singleton had authority to act on behalf of SFI." We find no manifest error in the district's court's determination that AB&T failed to prove that SFI, the principal, made manifestations of Lynn Singleton's putative mandate. As such, we need not address whether AB&T reasonably relied on Lynn Singleton's manifestations that he was authorized to mortgage Singleton Farm for his personal loans. *His* manifestations do not equate to *SFI* manifestations. *See McLin*, 118 So.3d at 468; *Walton Constr. Co.*, 984 So.2d at 836. This assignment of error is meritless.

EXCLUSION OF EVIDENCE

In its third assignment of error, AB&T claims the district court erred in excluding evidence of a "Quitclaim and Mutual Cancellation of Act of Cash Sale" signed by Lynn

Singleton on June 2, 2013, purportedly on SFI's behalf. AB&T argues this evidence was admissible to: (1) impeach Lynn Singleton's trial testimony that SFI owned two undeveloped lots, when the evidence shows SFI, through Lynn Singleton, transferred these lots to Lynn Singleton's wife, Kathryn Singleton, and (2) show that SFI allowed Lynn Singleton to act on its behalf.

Evidence contradicting a witness' testimony is admissible to attack his credibility, unless the court determines that the probative value of the evidence on the issue of credibility is substantially outweighed by the risks of undue consumption of time, confusion of the issues, or unfair prejudice. *See* LSA-C.E. art. 607D(2). Generally, the district court has broad discretion when making its evidentiary rulings, and this Court will not disturb such a ruling absent a clear abuse of that discretion. *In re Succession of Cannata*, 14-1546 (La. App. 1 Cir. 7/10/15), 180 So.3d 355, 375, *writ denied*, 15-1686 (La. 10/30/15), 180 So.3d 303. Further, error may not be predicated upon a ruling that excludes evidence unless a substantial right of the party is affected. *See* LSA-C.E. art. 103A(2); *Maddox v. Bailey*, 13-0564 (La. App. 1 Cir. 5/19/14), 146 So.3d 590, 594.

We have reviewed the proffered evidence and conclude that no substantial right of AB&T was affected by its exclusion. Although Lynn Singleton's credibility may have been an issue in this case, we do not find that the proffered evidence would have had significant bearing on the district court's assessment of his credibility or on the court's view of the evidence. Further, Lynn Singleton's execution of a cash sale in 2013 is not relevant to whether he was SFI's putative mandate years before when he mortgaged SFI's property for his personal loans. This assignment of error is meritless.

ATTORNEY FEES/COSTS

In its last assignment of error, AB&T contends the district court erred in awarding SFI $900 in attorney fees/costs for AB&T's failure to timely dismiss its claim for a money judgment against SFI.

As earlier mentioned, after AB&T filed its original petition seeking an in rem judgment against Singleton Farm, AB&T then amended its petition to seek damages against SFI to recover any loan proceeds Lynn Singleton allegedly transferred to SFI. On the morning of the trial, AB&T's attorney told the district court that AB&T would not be

pursuing its damages claim against SFI, and the parties' attorneys then stipulated to dismissal of that claim on the record. In response to the district court's question as to whether there were any costs or attorney fees associated with the stipulation, SFI's attorney reserved SFI's right to "consider the impact of this dismissal at this time." In its appellate brief, SFI contends the attorneys later had a "telephone hearing" with the district court, after which the district court purportedly determined AB&T's late dismissal of the damages claim caused SFI unnecessary trial preparation, including the cost of exhibits and preparation of witness questions, and accordingly, awarded SFI $900. And, at argument before this court, SFI's counsel maintained that the district court's award was a sanction under LSA-C.C.P. art. 863.

First, we note that this Court cannot accept factual assertions made in brief or in argument that are not in the appellate record. *Niemann v. Crosby Dev. Co., L.L.C.*, 11-1337 (La. App. 1 Cir. 5/3/12), 92 So.3d 1039, 1045. Thus, we do not accept SFI's assertions purportedly explaining the circumstances leading to the $900 award. Further, the judgment does not specify that the district court made the $900 award under LSA-C.C.P. art. 863; there is no evidence in the record that the district court held the purported "telephone hearing," or, if it did, that the hearing complied with LSA-C.C.P. art. 863E's requirement that the parties or their counsel be allowed to present evidence or argument regarding the sanctions issue. *See Lee v. Woodley*, 615 So.2d 349, 352 (La. App. 1 Cir.), *writ denied,* 618 So.2d 411 (La. 1993) (noting that, under LSA-C.C.P. art. 863, a hearing must be held before sanctions are imposed). Nor is there evidence that the district court expressly determined that AB&T's conduct constituted a violation of Article 863 as is required by Section G of the article. Without the above required record proof, we cannot conclude that the district court's $900 award was proper as an Article 863 sanction. Attorney fees are recoverable only where specifically authorized by statute or contract. *Campbell v. Melton*, 01-2578 (La. 5/14/02), 817 So.2d 69, 80. Because there is inadequate proof to discern the basis of the $900 award under LSA-C.C.P. art. 863, any other statute, or under any contract, we reverse the district court's $900 attorney fee/cost award to SFI.

We also note that, in its appellate brief, SFI contends AB&T's appeal is frivolous and requests additional attorney fees under LSA-C.C.P. art. 2164. An appellee who wishes to have a judgment modified must file an appeal or an answer to the appeal as provided in LSA-C.C.P. art. 2133. Thus, because SFI neither appealed nor answered the appeal, we do not address SFI's request for additional attorney fees. *See Price v. Kids World*, 08-1815 (La. App. 1 Cir. 3/27/09), 9 So.3d 992, 997, *writ not considered*, 09-1340 (La. 9/25/09), 18 So.3d 94; *Robinson v. P.M.I.*, 01-0926 (La. App. 1 Cir. 5/10/02), 818 So.2d 937, 940-41.

CONCLUSION

For the reasons stated herein, the November 14, 2016 judgment is reversed insofar as it ordered American Bank and Trust to pay $900 attorney fees/costs to Singleton Farms, Inc. In all other respects, the judgment is affirmed. Appeal costs are assessed to American Bank and Trust.

REVERSED IN PART, AFFIRMED IN PART.