

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2017 CA 0557

CLB61, INC. AND SC&T, LLC

VERSUS

HOME OIL COMPANY, LLC

CONSOLIDATED WITH

NO. 2017 CA 0558

HOME OIL CO., LLC

VERSUS

CLB61, ET AL

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Judgment rendered NOV 01 2017

Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C583654 c/w No. C583780
Honorable Janice Clark, Judge

RICHARD CREED, JR.
BATON ROUGE, LA

ATTORNEY FOR
PLAINTIFFS-APPELLANTS
CLB61, INC. & SC&T, LLC

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DEFENDANTS-APPELLEES
CHEVRON U.S.A., INC. AND HOME
OIL COMPANY, LLC

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

Guidry, J. concurs.
Crain, J. concurs and assigns reasons. JJ.

PETTIGREW, J.

In the instant appeal, plaintiffs challenge the trial court's March 8, 2017 judgment sustaining defendant's exception raising the objection of no cause of action and dismissing, with prejudice, plaintiffs' claims against defendant. For the reasons that follow, we reverse.

FACTS AND PROCEDURAL HISTORY

On October 19, 2009, CLB61, Inc. and SC&T, LLC (sometimes collectively referred to as "CLB") filed a petition naming Home Oil Company, LLC ("Home Oil") as the sole defendant. Plaintiffs alleged breach of contract by Home Oil and sought damages and attorney fees.¹ In a third supplemental and amending petition filed on July 20, 2015, plaintiffs named Chevron U.S.A., Inc. ("Chevron") as a defendant in this case for the first time.² Plaintiffs' petition set forth a series of allegations regarding an alleged fiduciary duty Chevron owed CLB based on a contract between Chevron and Home Oil. However, plaintiffs failed to set forth any factual allegations supporting such a conclusion. Chevron filed an exception raising the objection of no cause of action, and, in a judgment signed on May 9, 2016, the trial court sustained the exception as to the claims alleged against Chevron in the third supplemental and amending petition.

Plaintiffs filed a fourth supplemental and amending petition on April 21, 2016, attempting to set forth more detailed allegations regarding Chevron's breach of its fiduciary duty. Attached to the fourth supplemental and amending petition was a copy of a contract dated June 27, 2005, between Chevron and Home Oil, entitled "Investment Incentive Contract for Chevron Branded Retail Outlets" ("Marketer Agreement"). Plaintiffs asserted that CLB was a third-party beneficiary of the Marketer Agreement and that Home Oil was acting as Chevron's agent in its business dealings with CLB. In response to said

¹ On October 22, 2009, Home Oil filed a petition on open account against CLB and its owner Charles L. Bell in the Nineteenth Judicial District Court, bearing docket no. 583,780. Pursuant to a joint motion and order to consolidate filed by the parties, said petition was consolidated with the instant matter, bearing docket no. 583,654.

² In their second supplemental and amending petition filed on June 8, 2015, plaintiffs erroneously named Chevron Chemical Company, LLC as a party defendant, rather than the correct party defendant named in the third petition, Chevron U.S.A., Inc.

petition, Chevron filed a second exception raising the objection of no cause of action and an exception raising the objection of prescription. On September 29, 2016, the trial court denied the prescription exception but sustained the no cause of action exception, allowing plaintiffs five days to amend their petition to state a cause of action.

On October 5, 2016, plaintiffs filed a fifth supplemental and amending petition, further detailing their claims against Chevron. In addition to the Marketer Agreement, plaintiffs also attached a copy of the Fuel Supply Agreement entered into by Home Oil and CLB61, Inc. Plaintiffs alleged that because Chevron established Home Oil as its agent through the Marketer Agreement, Chevron owed a fiduciary duty to CLB to ensure fair dealing between CLB and Home Oil in accounting and funds due CLB. Plaintiffs further alleged that because Chevron, through its point of sale credit card system, has control of most of the money from plaintiffs' retail sales, Chevron owes a fiduciary duty to plaintiffs with respect to those funds and breached that duty, in part, by allowing Home Oil to overcharge for Chevron's fuel. Plaintiffs again asserted that CLB was a third-party beneficiary of the Marketer Agreement between Chevron and Home Oil.

Chevron once again filed exceptions raising the objections of no cause of action and prescription. The no cause of action exception proceeded to a hearing before the trial court on February 13, 2017. After considering the pleadings and the argument of counsel, the trial court sustained Chevron's exception and dismissed, with prejudice, all claims against Chevron. The trial court signed a judgment in accordance with these findings on March 8, 2017. It is from this judgment that plaintiffs have appealed. The sole issue presented for our review is whether the trial court erred in sustaining Chevron's exception raising the objection of no cause of action.

NO CAUSE OF ACTION

The function of the peremptory 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 in the pleading. **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1235 (La. 1993); **Copeland v. Treasure Chest Casino, L.L.C.**, 2001-1122, p. 3 (La. App. 1 Cir. 6/21/02), 822 So.2d 68, 70. All facts pled in the petition must

be accepted as true. **Rebardi v. Crewboats, Inc.**, 2004-0641, p. 3 (La. App. 1 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. **B & C Elec., Inc. v. East Baton Rouge Parish School Bd.**, 2002-1578, p. 4 (La. App. 1 Cir. 5/9/03), 849 So.2d 616, 619; see also La. Code Civ. P. art. 853 ("A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.") The exception is triable on the face of the pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. **Richardson v. Richardson**, 2002-2415, p. 6 (La. App. 1 Cir. 7/9/03), 859 So.2d 81, 86. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. **Perere v. Louisiana Television Broadcasting Corp.**, 97-2873, p. 3 (La. App. 1 Cir. 11/6/98), 721 So.2d 1075, 1077.

In the present case, as previously noted, plaintiffs' petitions contained annexed documents, which this court must consider on our review of the exception raising the objection of no cause of action. The only documentary evidence that may be considered on an exception raising the objection of no cause of action is that which has been annexed to the petition, unless the evidence is admitted without objection to enlarge the petition. **Woodland Ridge Ass'n v. Cangelosi**, 94-2604, p. 5 (La. App. 1 Cir. 10/6/95), 671 So.2d 508, 511.

In reviewing a trial court's ruling sustaining an exception raising the objection of no cause of action, the appellate court conducts a *de novo* review. The exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. **Fink v. Bryant**, 2001-0987, p. 4 (La. 11/28/01), 801 So.2d 346, 349; **B & C Elec., Inc.**, 2002-1578 at 4-5, 849 So.2d at 619. Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim that would entitle him to relief. Every reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity to present evidence at trial. **Richardson**, 2002-2415 at 7, 859 So.2d at 86. The question, therefore, is

whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the petition states any valid cause of action for relief. **Copeland**, 2001-1122 at 4, 822 So.2d at 70.

When a petition states a cause of action as to any ground or portion of the demand, an exception raising the objection of no cause of action must be overruled. Thus, if the petition sets forth a cause of action, none of the other causes of action may be dismissed based on an exception pleading the objection of no cause of action. Further, any doubts are resolved in favor of the sufficiency of the petition. **Copeland**, 2001-1122 at 3, 822 So.2d at 70.

As previously indicated, plaintiffs asserted a claim against Chevron as third-party beneficiaries of the Marketer Agreement between Chevron and Home Oil. Plaintiffs further alleged that Chevron owed them a fiduciary duty, which was breached.

The Louisiana Civil Code provides that a contracting party may stipulate a benefit for a third person called a third-party beneficiary. La. Civ. Code 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 Ben. Program**, 99-0897, p. 5 (La. App. 1 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, p. 9 (La. 10/15/06), 939 So.2d 1206, 1212; see also La. Civ. Code 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**, 2005-2364 at 8-9, 939 So.2d at 1212.

Generally, the existence of a fiduciary duty and the extent of that duty depend upon the facts and circumstances of the case and the relationship of the parties. Basically, for a fiduciary duty to exist, there must be a fiduciary relationship between the parties. **Scheffler v. Adams & Reese, LLP**, 2006-1774, p. 6 (La. 2/22/07), 950 So.2d 641, 647. The defining characteristic of a fiduciary relationship is the special relationship

of confidence or trust imposed by one in another who undertakes to act primarily for the benefit of the principal in a particular endeavor. *Id.*, 2006-1774 at 7, 950 So.2d at 648. A fiduciary cannot further his own interests and enjoy the fruits of an advantage taken of such a relationship and must make a full disclosure of all material facts surrounding the transaction that might affect the decision of his principal. **Terrebonne Concrete, LLC v. CEC Enterprises, LLC**, 2011-0072, p. 10 (La. App. 1 Cir. 8/17/11), 76 So.3d 502, 510, writ denied, 2011-2021 (La. 11/18/11), 75 So.3d 464.

We have reviewed all of plaintiffs' petitions, including the fifth supplemental and amending petition, and are able to derive the causes of action asserted by plaintiffs. Accepting all of the allegations in the petitions and annexed documents as true, we find plaintiffs have stated a cause of action against Chevron for breach of fiduciary duty and as third-party beneficiaries of the Marketer Agreement.

Pursuant to these contracts, plaintiffs, Chevron, and Home Oil were bound in a 10-year contractual relationship. Reviewing the language of the Marketer Agreement, it is clear that plaintiffs were established as Chevron branded retail outlets. Plaintiffs benefitted from being Chevron branded retail outlets by participating in Chevron's incentive programs and receiving financial support from Chevron. Many of these benefits, however, were dependent upon plaintiffs meeting certain obligations and requirements set forth in the Marketer Agreement. Moreover, it seems clear that the Marketer Agreement and Fuel Supply Agreement provided Chevron with a way to have Home Oil act on its behalf, while still maintaining control of what funds were to be paid plaintiffs for fuel sales. Plaintiffs set forth numerous allegations of fact concerning instances of Chevron's breach of the fiduciary duty owed to them. Assuming as true those facts averred in the petitions, we find plaintiffs' fifth supplemental and amending petition sufficiently sets forth causes of action against Chevron. Thus, the trial court erred in sustaining Chevron's exception based on the failure of plaintiffs' petition to state a cause of action and in dismissing plaintiffs' claims against Chevron.

CONCLUSION

For the above and foregoing reasons, we reverse the March 8, 2017 judgment of the trial court and remand this matter to the trial court for further proceedings consistent with this opinion. We assess all costs associated with this appeal against defendant, Chevron U.S.A., Inc.

REVERSED AND REMANDED.

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 **CRAIN, J., concurring.**

I do not believe the Marketer Agreement, which is attached to the fifth supplemental petition and must be considered by the court in the disposition of the exception, creates a stipulation *pour autrui* in favor of the plaintiffs. However, the petition does state a cause of action with respect to Chevron's alleged use of the plaintiffs' funds to ostensibly allow Home Oil to overcharge the plaintiffs for Chevron's fuels. That claim is set forth in the following factual allegations, which, at this stage of the proceeding, must be accepted as true: (1) "CHEVRON held in trust almost all of the funds due plaintiffs from CHEVRON sales," (2) "CHEVRON would then send the money from those sales to HOME OIL," and (3) "CHEVRON violated its fiduciary duty to plaintiffs . . . by allowing HOME OIL to overcharge for all fuels." Whether invoking a contractual or fiduciary duty, these allegations are sufficient to state a cause of action against Chevron. *See* La. Civ. Code art. 1927; *Morphy, Makofsky & Masson, Inc. v. Canal Place 2000*, 538 So. 2d 569, 573 (La. 1989). Because one basis for relief is sufficient to maintain the petition, it is not necessary to consider whether the petition states a cause of action

in agency. *See Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.
2d 1234, 1239 (La. 1993).