NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CA 0834

DONALD CARL HODGE, JR.

VERSUS

MICHAEL BABIN

DATE OF JUDGMENT: DEC 21 2018

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 656354, SECTION 23, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILLIAM A. MORVANT, JUDGE

* * * * * *

Donald Carl Hodge, Jr. Baton Rouge, Louisiana	Plaintiff/Appellant - Defendant in Reconvention Pro Se
Rusty M. Messer Baton Rouge, Louisiana	Counsel for Defendant/Appellee - Plaintiff in Reconvention Michael Babin

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

This appeal is taken from a judgment of a district court judgment sitting as an appellate court that affirmed in part and reversed in part a city court judgment. For the following reasons, we affirm the district court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Donald C. Hodge, Jr. and Michael Babin each own condominiums in the Goodwood Condominiums, which are located in Baton Rouge, Louisiana. As such, they were automatically members of the Goodwood Condominiums homeowners association ("the HOA"), which is a nonprofit corporation. Over the years, both men were active in the HOA, each serving as its president at different points in time. The record clearly reveals that their relationship was acrimonious.

An incident occurred at the conclusion of a meeting of the HOA on March 19, 2015, the facts of which are disputed by the parties. In any event, Mr. Hodge filed a petition in Baton Rouge City Court the next day seeking damages for a battery he alleged Mr. Babin committed on him the prior day. According to the petition, Mr. Hodge was exiting the HOA meeting when Mr. Babin "attempt[ed] to smash Petitioner between the door and door frame, grabbed the Petitioner's arm and started shaking him" while screaming, "YOU GOT IT COMING TO YOU."[1]

Mr. Babin filed an answer denying the allegations of Mr. Hodge's petition and a reconventional demand naming Mr. Hodge as defendant-in-reconvention. In the reconventional demand, Mr. Babin sought damages for an assault and battery he alleged he suffered at Mr. Hodge's hands as he was leaving the HOA meeting. Mr. Babin alleged he was attempting to close the door after another gentleman had exited the room when Mr. Hodge "grabbed the door" and "slammed it open against [Mr. Babin], knocking him off balance" so that he had to grab Mr. Hodge's arm to keep

[1] In addition to damages, Mr. Hodge sought injunctive relief and other relief that is not at issue in this appeal.

from falling. Mr. Babin also alleged that Mr. Hodge breached his fiduciary duties as an officer of the HOA by intentionally withholding funds paid by State Farm Insurance (the HOA's insurer) to cover Mr. Babin's claim for property damages to his condominium as a result of Hurricane Gustav in 2008. Mr. Hodge filed a general denial to Babin's reconventional demand, as well as a peremptory exception raising the objections of no cause of action, prescription and nonjoinder of a party, all of which were denied.

Following trial, the city court gave oral reasons for judgment finding that neither party had committed a battery. As to the claim concerning withheld insurance proceeds, the city court found that Mr. Hodge "engaged in willful and wanton misconduct" and there was an attempt "to deliberately withhold money that was due to Mr. Babin." In a written judgment, the trial court awarded Mr. Babin $6,800.00 for funds received by the HOA for the benefit of Mr. Babin that Mr. Hodge prevented him from receiving, $10,000.00 in general damages, and $5,767.50 for attorney fees, plus judicial interest. Pursuant to La. C.C.P. art. 5001(B), Mr. Hodge appealed the judgment to the 19th Judicial District Court.

After hearing oral arguments on the appeal, the district court rendered a written judgment affirming in part and reversing[2] in part the city court judgment. Specifically, the district court set aside the $10,000.00 award to Mr. Babin for general damages, finding it was unsupported by the record since the city court found no battery was committed upon him. The district court also set aside the $5,767.50 award for attorney fees, finding there no contractual or statutory basis entitling Mr. Babin to attorney fees. The city court judgment was affirmed in all other respects. Mr. Hodge has now appealed to this court the district court's judgment affirming in part and reversing in part the city court's judgment.

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[2] Although the district court stated that it was "amend[ing]" the city court judgment, it did, in fact, reverse and set aside the awards made by the city court for general damages and attorney fees.

ASSIGNMENTS OF ERROR

1. The court erred in denying the exception of no cause of action.

2. The court erred in denying the exception of prescription.

3. The court erred in denying the exception of non-joinder of a party under La. C.C.P. article 641.

4. The court erred in awarding damages of $6,800.00 to Mr. Babin.

5. The court erred in allowing hearsay testimony.

NO CAUSE OF ACTION

Mr. Hodge argues the lower courts erred in failing to sustain his peremptory exception raising the objection of no cause of action. Because La. R.S. 9:2792.7(A) generally exempts uncompensated officers of a homeowner's association from individual liability, Mr. Hodge contends Mr. Babin's reconventional demand failed to state a cause of action against him. According to Mr. Hodge, any cause of action Mr. Babin may have, if any, is against the HOA, which withheld payment of the insurance proceeds due to Mr. Babin

We find no merit in Mr. Hodge's contentions. The purpose of the peremptory exception raising the objection 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 petition. No evidence may be introduced to support or controvert the exception of no cause of action. ***Reynolds v. Bordelon***, 14-2362 (La. 6/30/15), 172 So.3d 589, 594. The exception is triable on the face of the pleadings, and, for purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. The burden of demonstrating that a petition fails to state a cause of action is upon the mover. ***Id.*** at 594-95.

Mr. Hodge argues that Mr. Babin failed to state a cause of action against him because, as a HOA officer, he was exempt from individual liability under La. R.S. 9:2792.7(A), which provides:

> A person who serves as a director, officer, or trustee of a homeowners association and who is not compensated for such services on a salary basis shall not be individually liable for any act or omission resulting in damage or injury, arising out of the exercise of his judgment in the formation and implementation of policy while acting as a director, officer, or trustee of that association, or arising out of the management of the affairs of that association, **provided he was acting in good faith and within the scope of his official functions and duties, unless such damage or injury was caused by his willful or wanton misconduct.** [Emphasis added.]

This provision shields an officer of a homeowners association from individual liability only when his acts or omissions were made in good faith. Herein, Mr. Babin alleged in his reconventional demand that he was never told payment had been made on his insurance claim for the damages to his condominium and that Mr. Hodge informed the members of the HOA's board of directors ("the Board") that "he would not pay [Mr. Babin] his money." Mr. Babin further alleged that Mr. Hodge violated his fiduciary duties by "maliciously and intentionally depriving [Mr. Babin] of his damage claim that had been paid by the insurer for the damages to [Mr. Babin's] condominium." Mr. Babin asserted that Mr. Hodge's actions constituted "a misappropriation of funds and/or fraud" against him.

These allegations, including the allegation that Mr. Hodge maliciously and intentionally deprived Mr. Babin of the insurance proceeds due to him, must be accepted as true for purposes of considering the exception of no cause of action. ***Reynolds***, 172 So.3d at 594-95. Therefore, since the reconventional demand alleged acts by Mr. Hodge constituting willful and wanton misconduct, La. R.S. 9:2792.7(A) did not preclude Mr. Babin from stating a cause of action against Mr. Hodge for individual liability. This provision does not shield an officer of a homeowners association from individual liability under such circumstances. See ***Caracci v. Cobblestone Village Condominium Association***, 05-784 (La. App. 5th Cir. 3/28/06), 927 So.2d 542, 546 (members of a homeowners association board can be

held liable under La. R.S. 9:2792.7 if their conduct was in bad faith and constituted willful and wanton conduct).

Further, officers and directors of nonprofit corporations owe a fiduciary duty to the members of the corporation. La. R.S. 12:226(A); ***Southern University System Foundation v. Slaughter***, 13-0791, p. 5 (La. App. 1st Cir. 9/4/14) (unpublished), writ denied, 14-2316 (La. 2/6/15), 158 So.3d 816; ***Terrebonne Concrete, LLC v. CEC Enterprises, LLC***, 11-0072 (La. App. 1st Cir. 8/17/11), 76 So.3d 502, 510, writ denied, 11-2021 (La. 11/18/11), 75 So.3d 464. As president of the HOA, Mr. Hodge owed a fiduciary duty to Mr. Babin, since he was a member of the HOA. Additionally, Mr. Hodge also owed a fiduciary duty to Mr. Babin under La. R.S. 9:1123.112(D) and Section 10(d) of the Goodwood Condominiums' bylaws, which provide that any insurance proceeds received by the HOA should be held "in trust for unit owners ... as their interests may appear." Therefore, we agree with the lower courts that the allegations of Mr. Babin's reconventional demand that Mr. Hodge intentionally deprived Mr. Babin of proceeds paid on his behalf for damages to his condominium was sufficient to state a cause of action against Mr. Hodge individually. Specifically, the allegations state a cause of action against Mr. Hodge for a breach of the fiduciary duties he owed to Mr. Babin.

PRESCRIPTION

According to Mr. Hodge, because Mr. Babin asserted a claim for money owed to him as a result of damages his condominium sustained when Hurricane Gustav struck Louisiana on September 1, 2008, Mr. Babin had only one year from that date to file his claim under La. C.C. art. 3492.[3] Mr. Babin's reconventional demand was not filed until April 2015. Therefore, Mr. Hodge argues it was prescribed. Alternatively, Mr. Hodge argues that Mr. Babin's claim was prescribed under La.

[3] Article 3492 provides for a one-year prescriptive period for delictual actions, commencing on the date damages are sustained.

R.S. 12:1502(C) & (D), which provide special prescriptive periods for actions against officers and directors of "business organizations" for breaches of fiduciary duties.

We find neither of the prescriptive provisions relied upon by Mr. Hodge to be applicable. As previously stated, Mr. Babin's reconventional demand states a cause of action for intentional breach of Mr. Hodge's fiduciary duties to Mr. Babin. Such actions are not governed by Article 3492, but are personal actions subject to a ten-year prescriptive period under La. C.C. art. 3499. See ***Mary v. Lupin Foundation***, 609 So.2d 184, 188 (La. 1992); ***Southern University System Foundation***, 13-0791 at p. 5. Thus, even assuming *agruendo* that prescription commenced when Hurricane Gustav struck in September 2008 rather than on the date of Mr. Hodge's alleged misconduct, Mr. Babin would have had until September 2018 to file his claim. Accordingly, the filing of his reconventional demand in April 2015 was filed prior to the expiration of that deadline.

We disagree with Mr. Hodge's contention that La. R.S. 12:1502, which provides prescriptive periods for certain claims, was applicable to Mr. Babin's reconventional demand. This provision states, in pertinent part:

> A. The provisions of this Section **shall apply to all business organizations** formed under the laws of this state **and shall be applicable to actions against any officer, director**, shareholder, member, manager, general partner, limited partner, managing partner, or other person similarly situated. ...
>
> B. **The term "business organization" includes any entity formed under the laws of this state engaged in any trade, occupation, profession, or other commercial activity including but not limited to professions licensed by a state or other governmental agency.** This Section shall apply without limitation to corporations, incorporated or unincorporated associations, partnerships, limited liability partnerships, partnerships in commendam, limited liability companies, or cooperative associations or other entities formed under the laws of this state.
>
> C. No action for damages against any person described in Subsection A of this Section ... for breach of fiduciary duty, including without limitation an action for gross negligence, but excluding any action

> covered by the provisions of Subsection D of this Section, shall be brought unless it is filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered or should have been discovered, but in no event shall an action covered by the provisions of this Subsection be brought more than three years from the date of the alleged act, omission, or neglect.
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> D. No action for damages against any person listed in Subsection A of this Section for intentional tortious misconduct, or for an intentional breach of a duty of loyalty ... or for acts or omissions in bad faith, or involving fraud ... shall be brought unless it is filed in a court of competent jurisdiction and proper venue within two years from the date of the alleged act or omission, or within two years from the date the alleged act or omission is discovered or should have been discovered, but in no event shall an action covered by the provisions of this Subsection be brought more than three years from the date of the alleged act or omission.

(Emphasis added.)

Under this provision, an action against an officer or director of a "business organization" for a negligent breach of his fiduciary duty must be brought within one year of the act, omission, or neglect complained of or the discovery thereof, but in no event more than three years thereafter. La. R.S. 12:1502(C). In the case of an intentional breach of a fiduciary duty, however, La. La. R.S. 12:1502(D) provides for a two-year prescriptive period, with the same limitation that the action must be brought no more than three years from the act, omission, or neglect.

It is presumed that every word, sentence, or provision in a law was intended to serve some useful purpose and that some effect is to be given to each such provision. Courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause or word as meaningless and surplusage. ***City of DeQuincy v. Henry***, 10-0070 (La. 3/15/11), 62 So.3d 43, 45. Section (A) of La. R.S. 12:1502 provides that it applies to all officers and directors of "business organizations." La. R.S. 12:1502(A). For purposes of its application, Section (B) states that "business organizations" include any entity "engaged in any trade, occupation, profession, or other commercial activity including but not limited to

professions licensed by a state or other governmental agency." We must presume that the Legislature intended this language to have meaning in determining which entities are to be considered "business organizations" within the contemplation of La. R.S. 12:1502. The HOA is a nonprofit corporation and is not engaged in any trade, occupation, or profession. Nor does the record reflect that it is engaged in any "commercial activity," which is defined as "[a]n activity, such as operating a business, conducted to make a profit." **Black's Law Dictionary** (10th ed. 2014).[4] Accordingly, the prescriptive periods provided in La. R.S. 12:1502 do not apply to Mr. Hodge's actions as an officer of the HOA. The prescriptive period applicable to Mr. Babin's claim is the ten-year prescriptive period provided by La. C.C. art. 3499 for personal actions. See ***Mary***, 609 So.2d at 188; ***Southern University System Foundation***, 13-0791 at p. 5.

HEARSAY EVIDENCE

Mr. Hodge complains that the city court erred in allowing Mr. Babin and another witness, Cheryl Hale,[5] to give hearsay testimony. He argues that the testimony, in addition to constituting double hearsay, should have been excluded because he did not receive reasonable notice that it would be given at trial as required by La. C.E. art. 804(B)(6).

At the beginning of trial on October 6, 2016, Mr. Hodge[6] objected to Ms. Hale testifying under the unavailable witness exception to the hearsay rule. Mr. Hodge

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[4] Additionally, **Black's Law Dictionary** (10th ed. 2014), defines "commercial," in pertinent part, as follows:

> **1.** Of, relating to, or involving the buying and selling of goods; mercantile... **2.** Resulting or accruing from commerce or exchange... **3.** Employed in trade; engaged in commerce... **4.** Manufactured for the markets; put up for trade... **5.** Of, relating to, or involving the ability of a product or business to make a profit... **6.** Produced and sold in large quantities...

The activities of the HOA do not fall within any of these categories of activities.

[5] This witness is referred to at various points in the record as Ms. Hale and at other points as Ms. Hail. We will refer to her throughout this opinion as Ms. Hale.

[6] Mr. Hodge is an attorney, and he represented himself at trial.

stated that Mr. Babin's counsel had sent him a fax only the night before trial, which he did not read until the following morning, informing him that a portion of Ms. Hale's testimony would be hearsay testimony offered under the unavailable witness exception.[7] The testimony in question concerned what Ms. Hale was told during a conversation with Ms. Nell Doucet, a former Board member, regarding a statement Mr. Hodge made at a HOA meeting. Although Ms. Doucet was listed in discovery responses as a witness, she had passed away at the time of trial.[8]

In response to the objection, Mr. Babin's counsel argued that Mr. Hodge received notice that Ms. Hale would be a witness on September 27, 2016, when he emailed Mr. Hodge a copy of his letter to the clerk's office requesting trial subpoenas. The letter included Ms. Hale on the list. Mr. Babin's counsel further asserted that the testimony in question – concerning a statement made by Mr. Hodge to other Board members that he would not pay Mr. Babin his money – was not a surprise, having been known to Mr. Hodge for some time. In fact, an allegation that Mr. Hodge had made such a statement to Board members was included in Mr. Babin's reconventional demand.

The city court overruled Mr. Hodge's objection to Ms. Hale giving hearsay testimony, concluding Mr. Hodge had received "reasonable notice." On the same grounds, the city court also overruled the objection Mr. Hodge later made to Mr. Babin giving hearsay testimony similar to Ms. Hale's concerning what Ms. Doucet told him about Mr. Hodge's statement.

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[7] Louisiana Code of Evidence article 801(C) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay is not admissible, "except as otherwise provided by this Code [of Evidence] or other legislation." La. C.E. art. 802.

[8] Under La. C.E. art. 804(A)(4), a declarant who is deceased at the time of trial meets the definition of a declarant who is "unavailable as a witness."

On appeal, Mr. Hodge argues the notice he received was not reasonable notice as required by La. C.E. art. 804(B)(6). Article 804(B)(6) provides, in pertinent part:

> **B. Hearsay exceptions.** The following are not excluded by the hearsay rule **if the declarant is unavailable as a witness**:
>
> ***
>
> **(6) Other exceptions.** In a civil case, a statement not specifically covered by any of the foregoing exceptions if the court determines that considering all pertinent circumstances in the particular case the statement is trustworthy, and the proponent of the evidence has adduced or made a reasonable effort to adduce all other admissible evidence to establish the fact to which the proffered statement relates **and the proponent of the statement makes known in writing to the adverse party and to the court his intention to offer the statement and the particulars of it, including the name and address of the declarant, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it.** If, under the circumstances of a particular case, giving of this notice was not practicable or failure to give notice is found by the court to have been excusable, the court may authorize a delayed notice to be given, and in that event the opposing party is entitled to a recess, continuance, or other appropriate relief sufficient to enable him to prepare to meet the evidence. [Emphasis added.]

Generally, a trial court is granted broad discretion on its evidentiary rulings, and its determinations will not be disturbed on appeal absent a clear abuse of that discretion. ***Henry v. Sullivan***, 16-0564 (La. App. 1st Cir. 7/12/17), 223 So.3d 1263, 1274. In this case, it is undisputed that Ms. Doucet was unavailable as a witness to testify regarding the statement she heard Mr. Hodge make at a HOA meeting about not paying Mr. Babin his money. Moreover, the existence of this statement was known to Mr. Hodge from the time that Mr. Babin's reconventional demand was first filed. Consequently, we cannot say the city court abused its broad discretion in concluding the notice given to Mr. Hodge was reasonable under the circumstances.

NONJOINDER

Mr. Hodge argues his exception of nonjoinder of a party should have been sustained under La. C.C.P. art. 641(1). He maintains that the HOA, the HOA's insurer (State Farm), and the other members of the Board at the time in question

should have been joined as parties in this action since it was the HOA that withheld payment from Mr. Babin and Mr. Hodge never personally had possession of the money. Mr. Hodge argues complete relief cannot be accorded when he was the only party named in the reconventional demand.

A person should be deemed needed for a just adjudication only when *absolutely necessary* to protect substantial rights. ***Rainey v. Entergy Gulf States, Inc.***, 01-2414 (La. App. 1st Cir. 7/2/03), 859 So.2d 63, 65-66, writ denied, 03-2107 (La. 11/14/03), 858 So.2d 426. Pursuant to La. C.C.P. art 641(1), a person may be considered a party needed for a just adjudication if, absent his presence, "complete relief cannot be accorded *among those already parties*." (Emphasis added.) On appeal, appellate courts review a trial court's ruling on a peremptory exception raising an objection of nonjoinder of a party under an abuse of discretion standard. ***Foster v. City of Leesville***, 17-1106 (La. App. 3d Cir. 6/13/18), 250 So.3d 302, 307.

In the instant case, Mr. Babin did not assert any claims against Mr. Hodge in his capacity as a Board member or former president of the HOA. Nor is Mr. Babin seeking to recover any of the insurance proceeds paid to the HOA. Rather, this action seeks damages from Mr. Hodge in his individual capacity for his willful and wanton conduct in preventing Mr. Babin from receiving his insurance proceeds. The substantial rights of the HOA, State Farm, and the other individual Board members were not affected by the adjudication of this issue between Mr. Hodge and Mr. Babin. Moreover, even in their absence, it was possible for complete relief to be accorded "among those already parties," *i.e.*, Mr. Hodge and Mr. Babin. Accordingly, we find no abuse of discretion in the city court overruling the exception of nonjoinder of a party.

CITY COURT'S FACTUAL FINDINGS

Attacking the city court's factual findings, Mr. Hodge argues the court erred in awarding damages to Mr. Babin because there was nothing Mr. Hodge did

personally or as a member of the Board to deprive Mr. Babin of the insurance proceeds paid for the hurricane damage to his condominium. Mr. Hodge contends Mr. Babin was not paid because he failed to follow the requirements established by the Board, and not because anyone denied him his money. Mr. Hodge points to the testimony of two other former Board members who testified similarly that Mr. Babin was not paid because he did not submit any receipts or estimates as the Board required.

The record reveals that after Hurricane Gustav, the HOA received proceeds from State Farm for hurricane-related property damages, including the damages to Mr. Babin's condominiums. The HOA initially used the proceeds to pay for repairs to several common items of the Goodwood Condominiums.[9] The Board then voted to require condominium owners to submit receipts or estimates for the repair of their condominiums in order to receive any insurance proceeds, despite the fact that State Farm had already performed repair estimates. It is undisputed that Mr. Babin never submitted any receipts or estimates to the Board. He indicated he knew nothing about such a requirement and, in fact, did not even know that the HOA had received the insurance proceeds.

At trial, Mr. Babin gave the following account of a conversation he had with Ms. Doucet regarding a statement Mr. Hodge made at a Board meeting where the insurance proceeds were discussed. Ms. Doucet, who was a Board member at the time the proceeds were received, told Mr. Babin that Mr. Hodge made a statement that "Mike Babin will never see a penny of his money as long as I got anything to say about it." Mr. Babin asked Ms. Doucet whether anyone said anything about that or just "let [Mr. Hodge] do what he wanted to do with my money." Ms. Doucet apologized to Mr. Babin and said, "it's been bothering me and that's why I wanted

[9] The HOA's use of the insurance proceeds to first pay for the repair of common elements was in accordance with both statutory law and the bylaws of the Goodwood Condominiums. See La. R.S. 9:1123.112(D); Goodwood Condominiums Bylaws, Section 10(d).

to tell you about it." Mr. Babin's testimony was corroborated by that of another witness, Ms. Hale, who testified that Ms. Doucet made a similar statement to her about what Mr. Hodge said at the Board meeting. Specifically, Ms. Doucet told her that Mr. Hodge stated, "Mike Babin will never see a penny of this money."

During his testimony, Mr. Hodge denied making any such statement about Mr. Babin's insurance proceeds. In fact, he testified he believed it may have been Ms. Doucet who stated at a Board meeting that "she didn't want [Mr. Babin] to get the money" because she had had some issues with him in the past. Two witnesses who were Board members at the time in question also denied hearing Mr. Hodge make such a statement. Additionally, Mr. Hodge and the two former Board members indicated that Mr. Babin was treated no differently than other condominium owners, and the reason he was not paid was because he did not submit any receipts or estimates for repairs.

In concluding that Mr. Hodge was guilty of "willful and wanton misconduct while serving as President of the [HOA], which resulted in a financial loss" to Mr. Babin, the city court obviously accepted the testimony given with respect to Mr. Hodge's intention to deprive Mr. Babin of his insurance proceeds. In its oral reasons for judgment, the city court explained:

> And as the president of a homeowner's association and an attorney[,] I cannot imagine that you would not look at some backup documentation to show that the [insurance proceeds] check that you were putting your signature on ... should have been paid to cover not only ... [the] expenses of the homeowner's association as well as the expenses of the various parties who had been damaged by Hurricane Gustave [sic]. And then I'll go further into that letter that ... Mr. Hodge emailed to Ms. Raynaud [a Board member] on February 2, 2010. The testimony that Mr. Hodge presented was that no money was received unless the person presented an estimate or receipts. ... I don't have Ms. Raynaud's email to the homeowners, but I have Mr. Hodge['s] email that says, Paragraph Two, State Farm Insurance requires Goodwood [Condominiums] to account for all monies spent with receipts ... if you are receiving this letter it is because, according to our records, we have not received the receipts for monies paid to you from the Goodwood Condominium account for Hurricane Gustave [sic] damage. So, there was no need according to the email Mr. Hodge drafted, introduced as

> evidence. ... So, everything about you had to have receipts first and ... Mr. Babin didn't give his receipts, it doesn't sound like you needed to give the receipts according to your letter Mr. Hodge. So, the–there is some attempt to deprive Mr. Babin of the money that was due him. You gave it to others and I go back to ... I do not believe that an officer of the Court and a president of an association would put their signature on a check that totaled over $190,000.00 and not see some documents supporting their signature being put on there. So, the documents that ... were introduced into evidence that came from State Farm they all have–they have Mr. Babin's estimate in there. There was no need for Mr. Babin to go and get another estimate. State Farm did the estimate ... Somebody in charge decided not to give [Mr. Babin] his money. You gave other people their money because your email on February 2, 2010 says, now we need your receipts because you've already gotten your money, not the other way around. Give us the receipts and then we'll give you your money. No, give us your receipts to back-up the money we've already given ... So, the Court finds that the money was wrongfully withheld.

An appellate court may not set aside a trial court's finding of fact in the absence of manifest error. The two-part test for the appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court; and 2) whether the record further establishes that the finding is not manifestly erroneous. The issue to be resolved is not whether the factfinder was right or wrong, but whether the factfinder's conclusion was a reasonable one. ***Bihm v. Deca Systems, Inc.***, 16-0356 (La. App. 1st Cir. 8/8/17), 226 So.3d 466, 476. When there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. If the trial court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. ***Bihm***, 226 So.3d at 476. Moreover, when findings are based on credibility determinations, the manifest error standard demands that deference be given to the factfinder's findings, since only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. ***Ardoin v. Firestone Polymers, L.L.C.***, 10-0245 (La. 1/19/11), 56 So.3d 215, 219.

Based on our review, we cannot say the record contains no reasonable factual basis for the city court's factual findings or that those findings were manifestly erroneous, particularly considering the obvious credibility determinations made by the court. Thus, we find no error in the judgment of the city court awarding damages to Mr. Babin.

CONCLUSION

For the above reasons, we affirm the judgment of the district court sitting as an appellate court that affirmed in part and reversed in part the December 29, 2016 judgment of the city court. All costs of this appeal are to be paid by Mr. Hodge.

AFFIRMED.