

**NOT DESIGNATED FOR PUBLICATION**

**BERNADETTE GILDS PINEL** \* **NO. 2001-CA-1988**  
**VERSUS** \* **COURT OF APPEAL**  
**JEAN PAUL PINEL** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
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\* \* \* \* \*

**CONSOLIDATED WITH:** **CONSOLIDATED WITH:**  
**JEAN PAUL PINEL** **NO. 2001-CA-1989**  
**VERSUS**  
**LA BELLE GALERIE, INC.**  
**AND BERNADETTE GILDS**  
**PINEL**

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NOS. 2000-3946 C/W 2000-11306, DIVISION "B-DRS 1"  
Honorable Rosemary Ledet, Judge

\* \* \* \* \*

**Judge Dennis R. Bagneris, Sr.**

\* \* \* \* \*

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr.,  
and Judge David S. Gorbaty)

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**AFFIRMED**

Jean Paul Pinel brought a shareholder's derivative action against La Belle Galerie, Inc. ("the Gallery"), and his wife, Bernadette Pinel, asserting her mismanagement and usurpation of the corporation which the two had operated as the Black Art Collection prior to the filing of Mrs. Pinel's divorce action. Also at issue was the alleged transfer of 51% of the Gallery stock from Mr. Pinel to then Mrs. Pinel. Initial judgment was rendered by the trial court on November 8, 2000 granting Mr. Pinel's application for Writ of Quo Warranto.

Ms. Pinel petitioned for and was granted a rehearing of the Writ of Quo Warranto based on newly discovered evidence. Based on this rehearing, the trial judge denied Mr. Pinel's application for Writ of Quo Warranto and vacated her previous judgment of November 8, 2000, now finding that Mrs. Pinel is 51% owner of the Gallery and that consideration was paid for the stock transfer by Ms. Pinel to Mr. Pinel in the form of

increased earning capacity and access to previously unavailable contracts.

Plaintiff now appeals, asserting five assignments of error. For the following reasons, we affirm the trial court's rehearing judgment denying the Writ of Quo Warranto and finding Mrs. Pinel to be the owner of 51 shares of the Gallery stock.

### **FACTS**

The events leading up to this action began in 1985. On September 5, 1985, Mr. Pinel, then unmarried, incorporated La Belle Galerie, Inc. as 100% shareholder of said corporation, at which time 100 shares of corporation stock were allegedly issued in his name. In July 1989, Mr. Pinel and Bernadette Gilds were married. Ms. Pinel alleges that the stock certificate for her 51 shares of Gallery stock was signed in September of 1994 and that the stock certificate for Jean Paul's 49% stock certificate was executed at the time although back-dated nearly ten years to the original incorporate date of September 1985. Mr. Pinel alleges, at length, his intent to endorse a stock certificate representing 51 shares for the limited purpose of qualifying for minority business set asides. In pertinent part:

You know, from the fact that when I accept [sic] to give this 51 percent share, which was for one deal particularly and only one, for one deal, it was absolutely not for my self to be stupid enough to give 51 percent of my corporation which took me many years to build, to give to her, in order to become an employee or depend on her. That was absolutely not what I explain. (Jean Paul Pinel is a naturalized American citizen of

French heritage).

During this period of time, Ms. Pinel worked as a salaried employee of the Gallery, handling accounting, bookkeeping and paperwork for the Gallery. During this period of time the Gallery was also successful in obtaining contracts with several businesses while representing itself as a minority owned business vis-à-vis Ms. Pinel's 51% ownership as an African-American female. The corporate records as filed with the state, as well as the defendant's tax returns give no indication that Ms. Pinel is a 51% owner of the Gallery, in contradiction to the above mentioned stock certificates.

In July of 2000, Bernadette Gilds Pinel filed for divorce from the defendant/appellant. In her petition for divorce, Ms. Pinel sought a temporary restraining order and preliminary injunction prohibiting the appellant from among other things, entering the Gallery.

### **PROCEDURAL HISTORY**

On July 21, 2000 Jean Paul Pinel filed a shareholder's derivative action against La Belle Galerie, Inc. and his wife Bernadette Pinel. In his petition, Mr. Pinel asserted Ms. Pinel's mismanagement and usurpation of the corporation chiefly by refuting the alleged transfer of 51 shares of Gallery stock from Mr. Pinel to then Mrs. Pinel. His pleadings sought a

Writ of Quo Warranto, directing Bernadette Pinel to show by what authority she claimed ownership and officer status within the corporation. On September 28, 2000, the matter was transferred and consolidated with the ongoing divorce proceedings between the Pinels.

On October 23, 2000, a hearing on Mr. Pinel's motions was held. On November 8, 2000, the trial court issued a judgment wherein it granted Jean Paul Pinel's application for Writ of Quo Warranto. Subsequently, Bernadette Pinel petitioned for and was granted a rehearing of the Writ of Quo Warranto based on newly discovered evidence. The rehearing was held on December 6, 2000 and after considering the law and evidence on January 24, 2001, the trial judge denied Jean Paul Pinel's application for Writ of Quo Warranto and vacated her previous judgment of November 8, 2000, finding that Ms. Pinel is the owner of 51 shares of Gallery stock and that Ms. Pinel gave valid consideration for the stock to Mr. Pinel in the form of increased earning capacity and access to previously unavailable contracts. In her reasons for judgment, the trial judge stated in pertinent part:

On rehearing, the Court finds that the transfer of fifty-one shares of Jean Paul Pinel's stock to Bernadette Pinel was supported by valuable consideration in the form of monetary revenue generated by business resulting from La Belle Gallerie's status as a minority and/or woman owned business. The record clearly establishes that the parties' art gallery received business opportunities from the Flamingo Casino, Smithsonian Institute, Liberty Bank and Trust Company, and the Zulu Social Aid and Pleasure Club along with an offer from

the Upper Pontalba Building Restoration Corporation for commercial lease space. Contract offers for business were offered because the gallery evidenced majority equity ownership and management control by an African American woman.

Mrs. Pinel's testimony established that when the gallery did not renew its lease on Royal Street it moved its business to Chartres Street. Ms. Pinel testified that the gallery's business to that point was primarily generated by street traffic that virtually was non-existent on Chartres. Using her status as an African American woman who owned a majority of the corporation's stock, Mrs. Pinel successfully marketed the gallery to obtain contracts that required minority and women participation. Her testimony was unrefuted that the gallery's financial success was largely due to Mrs. Pinel's efforts.

Mr. Pinel could not cite one example of a business opportunity obtained as a result of his direct effort following the transfer of stock to Mrs. Pinel. He allowed Mrs. Pinel to exercise management authority over the business and financial aspects of the gallery.

Mr. Pinel now wants the stock transfer to Mrs. Pinel cancelled because the price and terms for its issuance or sale did not comply with formal requirements of LSA – R.S. 12:52. The aim of this statute is to prevent the corporation from issuing stock without receiving full value and thereby diluting holdings of innocent stockholders and causing reliance by creditors or false or nonexistent capital resulting from the issuance of watered stock. Foster v. Blackwell, 747 So.2d 1203 (La. App.). Even though the parties did not comply with formal requirements, Jean Paul Pinel was sole shareholder at the time the stock was transferred to Mrs. Pinel. He had actual knowledge and gave his consent to the transfer. At the first hearing, the Court found that Mr. Pinel agreed to transfer 51% of his stock in the art gallery to his wife to obtain a minority contract to curate art for the Flamingo Casino. Thus, Mr. Pinel agreed to accept the earning capacity and ability of Mrs. Pinel to procure business contracts as valid consideration for the transfer.

Further, Mr. Pinel acquiesced to the transfer by his silence and acceptance of monetary remuneration from the contacts the parties received from Mrs. Pinel's minority and woman owned business status. For Mr. Pinel to argue that the consideration was not valid, he had the burden of proving the value of the stock upon formation of the corporation which he failed to do. Permafill Corporation of Louisiana v. Atiyeh, 710 So.2d 1098 (La. App. 1st Cir.). The true value of the corporation's stock was never established. The corporation's stock was issued from its inception without compliance with all the formalities provided in La. R.S. 12:52.

Mr. Pinel's argument that the transfer was a simulation is without merit because the Court finds there was valid consideration paid for the stock. LSA-C.C. art. 2026. Additionally, a supposed transfer cannot establish a simulation unless a written counter letter is produced. 29 Tul.L.Rev. 22, 30-31 (1954).

On rehearing, the Court finds that to accept Mr. Pinel's argument that the stock transfer should be declared void because it was done solely to apply for contracts set aside for minority and women would reward him for fraud which at the least is against public policy and at the most illegal.

Plaintiff/Appellant briefed five assignments of error, arguing that the trial court erred in: (1) abusing its discretion when it granted Ms. Pinel a rehearing based on new evidence; (2) disregarding its own previous findings that the parties intended to transfer ownership of fifty-one percent of the shares of stock of La Belle Galerie, Inc. to Ms. Pinel by way of mutual agreement; (3) finding that the transfer of the stock of La Belle Galerie, Inc. was based on valid consideration; (4) finding that consideration existed in

the form of minority business patronage; and (5) in finding a valid transfer of stock ownership despite the lack of corporate or statutory formalities.

### **STANDARD OF REVIEW**

An appellate court may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882 (La. 4/12/93). Thus, an appellate court is not to decide whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Id.* Even though an appellate court may feel its own evaluations and inferences are more reasonable than the factfinder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. *Id.* The reason for this well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts. *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 9/24/73).

### **DISCUSSION**

The thrust of defendants' arguments centers on the issue of the alleged stock transfer to Ms. Pinel, asserting chiefly that no such agreement to



transfer the stock every existed, that any such alleged transfer was in fact a simulation, or in the alternative, was not supported by valid consideration, and that any such transfer was otherwise not properly evidenced by necessary corporate formalities.

### **ASSIGNMENT OF ERROR ONE**

Plaintiff argues that the trial court abused its discretion when it granted Ms. Pinel a rehearing based on new evidence. La. C.C.P. art. 1972 (2) states that a party is entitled to a new trial if the party has discovered new evidence that he could not have obtained with due diligence before or during the trial. A motion for new trial based on newly discovered evidence should be granted if the movant can demonstrate that: (1) the new evidence was discovered after trial; (2) the new evidence is not cumulative; (3) the new evidence would tend to change the result of the case, and (4) the new evidence could not have been discovered, with due diligence, before the trial was completed. *Harris v. Orleans Parish School Board*, 97-0724 (La. App. 4 Cir. 01/28/98), 706 So.2d 223, 225, citing *Barker v. Rust Engineering Co.*, 428 So.2d 391, 394 (La. 1983).

A point by point analysis of the Barker factors as applied to the instant case yields the following: (1) on November 20, Ms. Pinel's counsel moved for rehearing based on the assertion that the magnitude of the minority

patronage comprising the consideration for the stock transfer was not discovered until after the original proceedings had concluded; (2) as this information was not offered during the initial proceedings, it was not cumulative; (3) as asserted, such classification and patronage could potentially evidence valid consideration for the stock transfer; and (4) based on discovery undertaken in this matter, as indicated by the trial court, further testimony was required to determine the value of the labor and industry contributed by Ms. Pinel.

Evidence supporting these elements of Ms. Pinel's arguments was contained in the stock certificates, occupational licenses, Gallery tax returns, corporate reports, magazine articles, and plaintiff's own supplemental pleadings, as well as affidavits, deposition testimony and witness testimony, some of which was not adduced until after the initial proceedings. This evidence, in addition to the procedural combination of this matter with the Pinels's ongoing divorce proceedings, provided the trial court with ample justification for granting a new hearing. The trial court, as keeper of the record and manager of discovery, is in the best position to determine the novelty, importance and accessibility of that which is produced during the discovery process. Likewise, the trial court has great discretion in ruling on a motion for new trial based on newly discovered evidence and its decision

will not be disturbed on appeal absent an abuse of discretion. *Davis v. Wal-Mart*, 200-0445 (La. 11/28/00); 774 So.2d 84, 93. Where the existence of new, non-cumulative, and potentially dispositive evidence is demonstrated as is here, we find no abuse of discretion in the trial court's granting a rehearing on the matters brought before it. Accordingly this assignment of error is made without merit.

### **ASSIGNMENT OF ERROR TWO**

Plaintiff argues that the parties never intended to transfer ownership of fifty-one shares of Gallery stock to Ms. Pinel; that there was never an agreement, but rather the endorsed stock certificates were part of a simulation or subterfuge to facilitate the application for minority business. La. C.C. art. 2025 provides that “[A] contract is a simulation, when, by mutual agreement, it does not express the true intent of the parties. If the true intent of the parties is expressed in a separate writing, that writing is a counterletter.” “A simulation is absolute when the parties intend that their contract shall produce no effects between them.” La. C.C. art. 2026. In this regard, the law imposes a strict rule of evidence in contests between the parties to a simulation, and only written proof will suffice to establish the true agreement where one party disputes it. *Ridgedell v. Succession of Kuyrkendall*, 98 1224 (La. App.1 Cir. 5/19/99), 740 So.2d 173. In order to

prove that a transaction was in fact a simulation, the burden rests on the plaintiff to establish that fact and to show that the named party received the property without giving consideration. *Adams v. Trichel*, 304 So.2d 740 (La.App. 2 Cir. 1974). Additionally, this court draws the parties' attention to the following:

The civil law concept of cause, as distinguished from common-law concept of "consideration," which is an exchange of equivalent values, is akin to motive, or reason why a party obligates himself; even if there is not something of value akin to common-law consideration or quid pro quo given in exchange for execution of a simulation, a transaction may still be valid under Louisiana law if there is cause for its execution.

*Matter of Zedda*, 103 F3d 1195, Bankr. L. Rep. P 77, 224,11 Tex. Bankr. Ct. Rep. 84 5<sup>th</sup> Cir. (La.).

Plaintiff's chief source of evidence that the parties did not intend to transfer ownership of the shares is his own testimony, and the testimony of attorney Robert Buras. Mrs. Pinel's testimony is also relied on by the plaintiff, as both Pinels testified at trial that Mr. Pinel agreed to transfer the stock to Mrs. Pinel to become a minority owned business; the purpose of which was to secure a minority set aside contract with the Hilton Corporation. Plaintiff's own testimony acknowledges a transfer of 51 shares of Gallery stock for the purpose of "obtain[ing] the deal." The trial court concluded, based on its weighing of the testimony presented, that the parties

intended to transfer ownership of fifty-one percent of the shares to Ms. Pinel.

Where credibility of witness testimony is concerned, the trial court's findings should not be overturned in the absence of clear error, even if other conclusions from the same evidence are equally reasonable. *Martin v. Dupont*, 32-490 (La. App. 2 Cir. 12/08/99), 748 So.2d 574, 578, citing *Goodwin v. Goodwin*, 618 So.2d 579 (La. App. 2 Cir. 1993). Based on the evidence presented and the trial court's reasons for judgment, this court cannot say that it is manifest error to find that the Gallery stock shares were intentionally transferred by Mr. Pinel. At the very least, Mr. Pinel admits his cause for endorsing the stock certificate to Ms. Pinel, thereby providing the court with reason to uphold the transfer. Whether the trial court chooses to call it consideration or cause becomes moot, as the result is the same.

Ample evidence was adduced at trial to support the trial court's findings that the stock was intentionally transferred to Ms. Pinel for a current or anticipated value; namely, the minority business status and its anticipated financial benefits. Absent a vice of consent, which is neither asserted by the plaintiff nor apparent in our review of the record, we find no manifest error in the trial court's findings on this issue. Therefore, this assignment of error is made without merit.

### **ASSIGNMENTS OF ERROR THREE AND FOUR**

Plaintiff asserts that no valid consideration was ever received for the alleged stock transfer and that minority business classification and patronage cannot constitute valid consideration. Consideration, in the context of price and sale, is valid even if presented in the form of services or other non-monetary form. See generally *Morgan v. Richmond*, 1876, 28 La. Ann. 838. In the context of stock ownership, services can be rendered as valid consideration for transfer of shares. *Henry v. Hodges*, 323 So.2d 207, 210 (La. App. 4 Cir. 1975).

In the instant case, Mr. and Mrs. Pinel both testified to the nature and timing of their minority business status and to the particular benefits rendered to the company. Tax returns and other corporate documents further indicate that measurable and considerable financial benefits were received from businesses that contracted with the Gallery because of their minority ownership status. Though the Pinels's testimony differed as to the exclusivity of this minority patronage being the result of Ms. Pinel's efforts, it was clearly established that this characterization afforded the gallery the opportunity to obtain business from such as Liberty Bank, the Zulu Social Aid and Pleasure Club, Essence Communications, the Smithsonian Institute, the Ritz Carlton Hotel, and the Monteleone Hotel. Additional testimony was

given by expert Zannette Austin, Terri Kelley-James and Philip Baptiste, the thrust of which (collectively) was that Ms. Pinel's ownership of the Gallery was a primary, if not sole, motivating factor as to why this business was transacted with the Gallery. It is also noteworthy that Mr. Pinel's silence and acceptance of the monetary remuneration from these contracts provides compelling proof that the Gallery received the benefit he contemplated during Mr. Pinel's endorsement of the stock certificate to Ms. Pinel.

As these factual findings are based largely on witness testimony, the trial court's conclusions should not be overturned absent manifest error. *Sander v. Brousseau*, 2000-0098 (La App. 4 Cir. 10/04/00, 772 So. 2d 709, 710, citing *Rosell, v. ESCO*, 549 So.2d 840 (La. 1989). The record supports the reasonable possibility of this conclusion, so this court finds that it was not manifest error to find that consideration was given by Ms. Pinel and was received by the Gallery in the form of minority business status and patronage. Accordingly, these assignments of error are made without merit.

#### **ASSIGNMENT OF ERROR FIVE**

Plaintiff lastly asserts that the trial court erred in finding a valid transfer of stock ownership because of an absence of corporate or statutory formalities in the alleged stock transfer. Plaintiff cites LA R.S. 12:52 and its specification of consideration for the issuance of shares, the aim of which is

to prevent corporations from issuing stock without receiving full value and thereby diluting holdings of innocent stockholders and causing reliance by creditors on false or non-existent capital resulting from the issuance of watered stock. LA. R.S. 12:52; *Foster v. Blackwell*, 98-1654 (La. App. 3 Cir. 11/24/99), 747 So.2d 1203. As there are no innocent stockholders at risk of receiving diluted holdings, and Jean Paul Pinel was the sole stockholder of the Gallery, La. R.S.12:52 provides little support for Mr. Pinel's avoidance of the stock transfer.

Any restrictions or conditions on the transferability of shares must be stated on the certificate, and there are no such restrictions or conditions contained in nor stated on the Gallery certificates. See LA.R.S. 12:57(F). Also, consideration is not required to be shown for the transfer of corporate shares in Louisiana if the share certificates are properly endorsed. *Fremin v. Beyer*, 345 So.2d 1312, 1313 (La. App. 3 Cir. 1977). Evidence related to this issue consists primarily of two stock certificates: one representing 51 shares/51% of the Gallery stock, dated September 8 1994, endorsed to one Bernadette Pinel, and the other representing 49 shares/49% of the Gallery stock, issued in the name of Jean Paul Pinel. The latter was executed at the same time although back-dated nearly ten years to the original incorporate date of the Gallery, September 5, 1985.



“The person... in whose name a certificate representing shares of stock stands, or to whom a certificate is endorsed, whether in full or in blank, and who has possession of said certificate, shall be regarded as the legal owner.” See La. R.S. 12:601 (West 2002). Actual corporate ownership may be determined from all facts and circumstances of the case. *Hartnett v. LGD Properties, Inc.*, 99-2539, 99-2540 (La.App. 4 Cir. 5/3/00), 767 So.2d 88. The presumption that the person to whom a stock certificate is issued is the owner arises only in cases where no contrary evidence exists; when contrary evidence exists, the fact that stock is issued to a particular party is considered only prima facie evidence of stock ownership. *Id.*

In the instant case the stock certificates are properly endorsed by each party, with the stock transfer certificate bearing the signature of Jean Paul Pinel’s attorney, Robert Buras. When Mr. Pinel transferred the stock he agreed to the procurement of business contracts and accepted Ms. Pinel’s ability to procure such contracts as valid consideration to the stock transfer. As par value was never established for the stock, Ms. Pinel’s services and her minority-qualifying ownership can serve as valid consideration for the transfer of stock. See La. R.S. 12:52A .

Given the nature and content of the evidence presented on this issue, we cannot say that the trial court was manifestly erroneous in its

consideration of all facts and circumstances in finding that Mr. Pinel did not overcome the presumption of ownership that Ms. Pinel's validly endorsed 51 share stock certificate creates. Accordingly, we find that this assignment of error is made without merit.

This court finds that there was sufficient evidence in the record to support the trial court's findings. Accordingly the judgment of trial court is affirmed.

**AFFIRMED**