

BEN S. GRAVOLET

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NO. 2003-CA-0392

VERSUS

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COURT OF APPEAL

**FAIR GROUNDS
CORPORATION**

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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**ARMSTRONG, C.J., CONCURS IN PART AND DISSENTS IN PART,
WITH REASONS.**

We granted rehearing in order to reconsider our original opinion in light of suggestions made in the appellee's motion for rehearing. Because I believe the appellant's allegations of breach of fiduciary duty raise issues of material fact that make summary judgment inappropriate in the present posture of this case, I respectfully dissent from that portion of the opinion that affirms the trial court's judgment granting a summary judgment on the issue of liability.

It is clear that Mr. Gravolet is correct in his contentions that the Fair Grounds Corporation (FGC) knowingly and voluntarily agreed in its original lease agreement with Mr. Keyworth to return the property to its original condition. In order to protect its sizeable investment in the improvements to

the property, FGC received an option to purchase the property for a fixed price. It is equally clear that FGC had the right to rely on its agents, Messrs. Gravolet and Roussel and on Mr. Roussel in his additional capacity as their counsel, to act, as provided for in the corporate resolution authorizing their agencies, "for AND ON BEHALF OF" FGC. If FGC can prove its allegations at trial, then the trier of fact could conclude that the alleged actions of Messrs. Gravolet and Roussel in exercising FGC's option to purchase for Mr. Gravolet's own account effectively eliminated FGC's ability to protect its investment in improvements to the leased property. The material fact to be determined is whether once Mr. Gravolet purchased the property, FGC effectively was deprived of the benefit of the lease provision allowing FGC to purchase the property on favorable terms.

Based on the documentary evidence adduced at the hearing on the motion for summary judgment, there exist genuine issues of material fact as to whether the alleged actions of these agents constituted a breach of their fiduciary duties as agents to their principal. These facts are material as they affect the validity of the exercise of the option by the agent, rather than by the corporation on whose behalf he was authorized to act. Absent a valid exercise of the option to purchase, Mr. Gravolet has no right to enforce the obligations of the lease.

The appellee argues that FGC's actions in signing an extension of the lease in effect ratified the agents' alleged actions. However, FGC claims that at the time it paid rent to Mr. Gravolet and agreed to the extension of the lease, it was unaware of the alleged breaches of the agents' fiduciary duties as agents and as attorney for FGC. FGC claims that once it became aware of the basis of its allegations of breach of fiduciary duty affecting the validity of Mr. Gravolet's exercise of the option to purchase, it amended its answer to include these allegations. These are genuine issues of material fact that require determination at a full trial on the merits.

I concur with the majority's scholarly and lucid discussion of the attorney's fee and quantum issues, should liability be found.