

NOT DESIGNATED FOR PUBLICATION

A. FRANCES ARMSTRONG * **NO. 2006-CA-0518**
D/B/A ARMSTRONG
PROPERTIES * **COURT OF APPEAL**

VERSUS * **FOURTH CIRCUIT**

GREGG HUSKEY AND * **STATE OF LOUISIANA**
COLDWELL BANKER GREGG
HUSKEY, INC. * * * * *

APPEAL FROM
SECOND CITY COURT OF NEW ORLEANS
NO. 2002-396

Honorable Mary "KK" Norman, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge Charles R. Jones, Judge Dennis R. Bagneris, Sr.,
and Judge Max N. Tobias, Jr.)

TOBIAS, J., CONCURS IN THE RESULT AND ASSIGNS REASONS

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AFFIRMED

Defendant/Appellant, Coldwell Banker Gregg Huskey, Inc., appeals a trial court judgment, which found in favor of plaintiff/appellee, Ms. A. Frances Armstrong, in the amount of \$7,500.00. For the following reasons, we affirm.

FACTS

Because the court reporter has certified that, due to Hurricane Katrina, she cannot provide the transcript of the trial proceeding in this matter, we will adopt the facts as outlined by the trial court in its written reasons for judgment:

In January of 2002, the plaintiff [Ms. A. Frances Armstrong] decided to retire from her business as a real estate broker and real estate management company and move out of state. Upon making such decision, the plaintiff began to seek buyers for her business. She approached Charles White and offered to sell Mr. White her business, which included management agreements for several New Orleans rental properties. Mr. White testified that he could not afford the business, but that a friend of his, defendant Gregg Huskey, said that he might be interested in purchasing the rental management agreements from the plaintiff.

White set up a meeting with the plaintiff and Huskey. Huskey then informed the plaintiff that his company, defendant Coldwell Banker Gregg Huskey, Inc., might be interested in the plaintiff's rental management contracts. The plaintiff quoted a price of \$20,000.00 to \$25,000.00 for the contracts which Huskey rejected outright. Later, a second meeting was

arranged. Again, Huskey, Armstrong, and White each appeared. Again the parties discussed price, but Huskey was silent and did not accept any offer.

At trial, Huskey testified that he did want the plaintiff's contracts, but that he knew that he "had an advantage" in the negotiations because the plaintiff was retiring and had to move her properties soon.

A third meeting was arranged between Huskey and Armstrong. Mr. White did not attend this third meeting. At that meeting, the parties discussed the contracts and the profits generated from each. The plaintiff offered to sell the contracts to Coldwell Banker Gregg Huskey, Inc. for \$10,000.00. Huskey stated that he did not believe the contracts were worth \$10,000.00, but no counteroffer was made. Huskey spoke with the plaintiff several more times on the telephone about the deal, but he never agreed to any price.

Despite the plaintiff's stated and obvious desire to sell and despite Huskey's stated and obvious desire to buy, no contract was ever perfected. Still, on March 5, 2002, the plaintiff sent word to her property owners that all of her contacts would be handled in the future by Coldwell Banker Gregg Huskey, Inc. By May 1, 2002, it appears that all of the plaintiff's contracts had, in fact, been transferred to Coldwell Banker Greg Huskey, Inc., and that company was managing all the plaintiff's former contracts.

Coldwell Banker Greg Huskey, Inc., accepted the transfers and began servicing the contracts for a profit. At trial, Mr. Huskey and his associate testified that the company made a profit on the contracts and that they had even sold eight or nine of the units, making the seller's commission on each. Neither Mr. Huskey nor his associate could recall the exact amount of profits recovered and neither had brought any information about the units with them to trial.

After a one-day trial, the trial court ruled in favor of plaintiff and against Coldwell Banker Gregg Huskey, Inc., in the amount of \$7,500.00.

Specifically, the trial court found as follow:

The Court finds that Mr. Huskey...knowingly induced the plaintiff into negotiations and led her to believe that he was going to purchase her contracts. The Court further finds that the defendant extended and stalled those negotiations with the specific intent to maximize, as the defendant himself put it at trial, his "advantage over her." Since the defendant knew the plaintiff was leaving town, he stalled and delayed negotiations as long as possible, in order to get the contracts he wanted at a bargain basement price. The Court specifically rejects the testimony of Mr. Huskey and his associate, Bonnie Morel, who both stated that the contracts had no value and the company was not really interested in the contracts anyway. Both arguments are belied by the facts that the defendant actually took over the management of the contracts and proceeded to make a good deal of money on them.

Clearly, the plaintiff was wrong to simply turn over her business contracts to the defendant without having had a final deal in place beforehand. Even though the defendant led the plaintiff to believe that he would make the deal, he never signed any contract. Nevertheless, it would be folly for the defendant to believe that these contracts were nothing but a gift, given the ongoing negotiations with the plaintiff. The defendant is clearly not that naïve. More likely, the defendant saw the plaintiff's hasty act of prematurely turning over her contracts as a chance to obtain a windfall and to obtain the contracts for nothing.

Having found that the cause of action for unjust enrichment is maintained, the Court must assign a value for the case....For the forgoing reasons, the Court finds in favor of the plaintiff in the amount of \$7,500.00, plus court costs and judicial interest.

DISCUSSION

The sole assignment of error on appeal is whether the trial court's

judgment was supported by the law and evidence presented at the trial.

Unfortunately, as stated above, there is neither a transcript nor a narrative of facts in this matter for this Court to determine the merits of this appeal. As stated in *Olivier v. Cal Dive International, Inc.*, 2002-1122 (La. App. 1 Cir. 4/2/03), 844 So.2d 942, 947:

The appellant bears the responsibility of securing either a transcript or a narrative of facts; therefore, an inadequacy in the record is imputable to the appellant. *Carter v. Barber Brothers Contracting Co., Inc.*, 623 So.2d 8, 10 (La.App. 1st Cir.), writ denied, 629 So.2d 1180 (La.1993). In the absence of relevant portions of the transcript or a narrative report, this court does not possess the factual basis from which to determine whether the trial court abused its discretion in awarding Mr. Oliver \$650,000.00 in general damages. *Leger v. Lancaster*, 423 So.2d 88, 89 (La.App. 1st Cir.1982). As a reviewing court, we are relegated to apply the presumption that the trial court's judgment is supported by competent evidence and affirm the judgment. *Succession of Populus*, 95-1469, p. 4 (La.App. 1 Cir. 2/23/96), 668 So.2d 747, 749. Accordingly, the award for general damages is affirmed.

Likewise, because we are a reviewing court, we are relegated to apply the presumption that the trial court's judgment is supported by competent evidence and affirm the trial court judgment.

AFFIRMED