

**A. FRANCES ARMSTRONG
D/B/A ARMSTRONG
PROPERTIES**

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NO. 2006-CA-0518

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**GREGG HUSKEY AND
COLDWELL BANKER GREGG
HUSKEY, INC.**

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STATE OF LOUISIANA

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

I respectfully concur in the result.

In the absence of a transcript, one is compelled to assume that the trial court applied the quasi-contractual theory of recovery of unjust enrichment in awarding a judgment in favor of the plaintiff. See La. C.C. art. 2298; *Creeley v. Leisure Living, Inc.*, 437 So.2d 816 (La. 1983). From the record on appeal, one cannot tell whether another theory of law might be applicable, which would preclude plaintiff's recovery under article 2298 and *Creeley* and its progeny.

The trial court clearly rejected the testimony of the defendants' witnesses as unworthy of belief. I am troubled by the fact that the plaintiff never reached an agreement with the defendants or vice-versa. Nevertheless, that the defendants apparently assumed the obligations of the plaintiff

implies, absent a transcript, that article 2298 *might* apply to the facts of this case.

The doctrine of unjust enrichment should rarely be invoked for, theoretically, every claim by a plaintiff could be said to establish a cause of action against a defendant by merely asserting that the defendant was unjustly enriched at the expense of the plaintiff; in such circumstances, no need would exist for any other laws.