# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **30th day of September, 2021** are as follows:

**BY Crain, J.:**

2020-C-01031 FAIRBANKS DEVELOPMENT, LLC VS. CHARLES WOODROW JOHNSON AND JESSICA LYN PETERSEN (Parish of Ouachita)

AFFIRMED. CASE REMANDED. SEE OPINION.

Retired Judge James H. Boddie, Jr., appointed Justice ad hoc, sitting for McCallum, J., recused in case number 2020-C-01031 only.

Weimer, C.J., additionally concurs and assigns reasons.
Hughes, J., dissents and assigns reasons.
Genovese, J., dissents and assigns reasons.
Griffin, J., dissents for the reasons assigned by Justice Hughes and Justice Genovese.
Boddie, J., additionally concurs for the reasons assigned by Chief Justice Weimer.

**SUPREME COURT OF LOUISIANA**

**No. 2020-C-01031**

**FAIRBANKS DEVELOPMENT, LLC**

**VS.**

**CHARLES WOODROW JOHNSON AND JESSICA LYN PETERSEN**

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Ouachita

**CRAIN, J.***

We must decide which of the following determines one's status as a co-owner of immovable property: the authentic act conveying ownership of the property, or the source of the funds used to pay the purchase price. We find the authentic act controls and affirm the court of appeal's judgment.

## FACTS AND PROCEDURAL HISTORY

Jessica Petersen and Charles Johnson met as teenagers. They began a relationship and eventually started living together while Petersen was attending college in Georgia. Although Johnson worked as a mechanic, the couple's lifestyle was funded almost entirely by a trust created for Petersen's benefit by her grandfather. In 2000 they returned to Louisiana and purchased a house and surrounding acreage in Ouachita Parish. The act of sale expressly conveys ownership of the property to Johnson and Petersen, both of whom signed the deed before a notary public and two witnesses. The purchase price was paid in full at closing with funds from Petersen's trust. Shortly thereafter Petersen and Johnson acquired additional acreage adjacent to the original tract. This second act of sale also conveys ownership of the property to Johnson and Petersen, and both signed the deed before a notary public and two witnesses. The purchase price for this parcel

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* Retired Judge James Boddie, Jr., appointed Justice *ad hoc*, sitting for Justice Jay B. McCallum.

was paid with funds loaned to Petersen by her mother. Both pieces of immovable property will be collectively referred to hereinafter as "the property."

At the time of the purchases, Petersen and Johnson were not married. They married soon afterward, had the first of three children, and began a life in their new home. Two outbuildings, a concrete driveway, and an entrance gate were added to the property, again using funds from Petersen's trust. Throughout the marriage, the couple remained financially dependent on the trust, as neither Petersen nor Johnson worked outside the home.

Their relationship ended in divorce in 2006. Petersen was granted exclusive use of the home in the divorce proceeding and remained there until moving out of town and eventually out of state. A prospective buyer offered to purchase the property, but Johnson would not agree to the sale. In 2017 Johnson moved back into the house with his current wife and their children.

In 2018 Petersen sold an undivided one-half interest in the property to Fairbanks Development, LLC., which then instituted this proceeding to partition the property, naming both Petersen and Johnson as defendants. Petersen filed a cross-claim against Johnson claiming to be sole owner of the property, alleging her separate funds were used to purchase the property. Petersen specifically requested a judgment "naming and declaring her to be the owner of all the property." Notably, the cross-claim does not seek to reform or rescind the acts of sale conveying the property to both Petersen and Johnson. Petersen makes no claim of error, fraud, or duress in the execution of those authentic acts, nor does she allege the acts were modified by any subsequent agreement between the parties. Her claim of full ownership is based entirely on the fact that she paid for the property.

The claims proceeded to trial where there was no dispute about the essential aspects of the transactions. Johnson and Petersen acknowledged the property was acquired through the two acts of sale that name both of them as purchasers. Petersen

wanted Johnson's name included in the deeds, and the transactions were explained to them at the closings. Both gave similar explanations for Johnson being named a purchaser. According to Johnson:

> We were trying to start, you know, life together, and we were purchasing the property to live on . . . . We were moving from Georgia and buying us a house and property and fixing to have kids and have a family.

Petersen explained, "Like he said, we were starting a life together, and we had planned on having children and such." The parties likewise agreed that Johnson did not contribute to the purchase price of the property or pay for any of the improvements, although Johnson testified he did maintain and repair the property. The money to purchase and improve the house came from Petersen's trust fund, and the money to buy the additional acreage was a loan from Petersen's mother that Petersen repaid.

When the marriage failed, it was equally clear Petersen regretted her decision to include Johnson as an owner:

> The only thing I can tell you is [I was] young and dumb and made mistakes. That was my first love . . . . We were going in as partners, and he led me to believe he was going to do his portion of the partnership . . . . [H]e never contributed anything back to the relationship, to the marriage, emotionally, financially, anything.

In written reasons, the trial court found Petersen acquired sole ownership of the property because she paid the purchase price. The court further found Petersen conveyed half of her interest to Fairbanks and retained the remaining half interest. The court ordered the property partitioned by licitation. A judgment was signed decreeing Petersen and Fairbanks to be owners of an undivided one-half interest each in the property, declaring Johnson to have no ownership interest in the property, and ordering the property be partitioned. Johnson appealed.

The court of appeal reversed the ownership determination and held Johnson owns an undivided half interest in the property. *See Fairbanks Development, LLC*

*v. Johnson*, 53,427 (La. App. 2 Cir. 4/22/20), 295 So. 3d 1279, 1291. This court granted Petersen's writ application. *Fairbanks Development, LLC v. Johnson*, 20-01031 (La. 12/8/20), 305 So. 3d 865.

**DISCUSSION**

The form requirements for conveyances of immovable property are well established. A transfer of immovable property must be made by authentic act or by act under private signature. La. Civ. Code art. 1839; *see also* La. Civ. Code art. 2440. An authentic act constitutes full proof of the agreement it contains, as against the parties, their heirs, and successors by universal or particular title. La. Civ. Code art. 1835. Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. La. Civ. Code art. 1848. However, in the interest of justice, testimonial or other evidence may be admitted to prove such circumstances as a vice of consent or to prove the written act was modified by a subsequent and valid oral agreement. *See id*. When the law requires a contract to be in written form, the contract may not be proved by testimony or by presumption, unless the written instrument has been destroyed, lost, or stolen. La. Civ. Code art. 1832.

To establish his ownership, Johnson relies on the acts of sale whereby the former owners of the property expressly conveyed their ownership interests to him and Petersen. These authentic acts constitute full proof of the agreements they contain. *See* La. Civ. Code art. 1835. Petersen does not assert a vice of consent invalidates the acts. No evidence was offered suggesting the prior owners mistakenly transferred the property to Petersen and Johnson due to some error, fraud, or duress. *See* La. Civ. Code arts. 1848 and 1948. To the contrary, the evidence uniformly establishes the conveyances were prepared, explained, and executed precisely as the parties directed and intended: the sellers conveyed ownership of the property to *both* Petersen and Johnson. The conveyances were in accordance with,

not contrary to, Petersen's instructions. While Petersen later regretted including Johnson in the conveyances, that regret, however legitimate, is not a vice of consent that permits negating the terms of authentic acts that correctly reflect the parties' intentions when the documents were executed. *See* La. Civ. Code arts. 1835 and 1848.

Despite the authentic acts of sale, Petersen and Fairbanks argue Johnson is not a co-owner of the property. They contend, and the trial court agreed, that Petersen acquired sole ownership of the property because she alone paid the purchase price. The payment of the purchase price, according to their argument, demonstrates a "mutual intent . . . that Petersen retain full ownership" of the property. To bypass the authentic acts that expressly say otherwise, Petersen and Fairbanks rely on Louisiana Civil Code article 797, which provides:

> Ownership of the same thing by two or more persons is ownership in indivision. In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal.

Petersen and Fairbanks contend this provision allows them to prove Johnson is not a co-owner by "rebutting the presumption of equal shares." They further maintain the trial court's conclusion in that regard is a factual finding subject to the manifest-error standard of review. We disagree with this interpretation of Article 797.

The interpretation of a statute presents a question of law subject to *de novo* review. *Kirt v. Metzinger*, 19-1162 (La. 4/3/20), ___ So. 3d ___ (2020WL1671571, *3). When a law is clear and unambiguous and its application does not lead to absurd consequences, its language must be given effect; and its provisions must be construed to give effect to the purpose indicated by a fair interpretation of the language used. *See* La. Civ. Code art. 9; La. R.S. 1:4. Words and phrases must be read in context and construed according to the common and approved usage of the language. La. R.S. 1:3. Courts are bound to give effect, if possible, to all parts of a law and to construe no sentence, clause, or word as

meaningless and surplusage if a construction giving force to and preserving every word can legitimately be found. *See Kirt*, ___ So. 3d at ___ (2020WL1671571, *3).

Article 797 has two sentences, each of which is significant. The first sentence declares that "ownership in indivision" occurs when two or more persons own the same thing. Louisiana Civil Code article 480 similarly provides, "Two or more persons may own the same thing in indivision, each having an undivided share." Under these provisions, the legal status of co-ownership is not the result of a presumption. It arises out of "[o]wnership of the same thing by two or more persons." *See* La. Civ. Code art. 797. When that fact exists, each of the involved individuals is a "co-owner," and their ownership is "in indivision," meaning it "bears upon the whole . . . of the thing held in common . . . striking every molecule of the thing." 1 Planiol & Ripert, *Treatise on the Civil Law* pt. 2, ch. 5, no. 2497, at 473 (Louisiana State Law Inst. trans., 12th ed. 1959). Here, Johnson and Petersen both rely on the same source to establish their ownership of the property: the acts of sale from the prior owners conveying the property to Johnson and Petersen. As a result of those juridical acts, Johnson and Petersen acquired ownership of the same thing and thus became co-owners under Articles 797 and 480.

The second sentence of Article 797 addresses the more specific question of each co-owner's *share* of ownership: "In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal." Under this sentence, if the ownership shares are not specified in the juridical act or provision of law vesting the ownership, the shares are presumed equal. In the context of a juridical act, this presumption of equal shares "functions as a rule of interpretation of that act." Symeon C. Symeonides & Nicole Duarte Martin, *The New Law of Co-Ownership: A Kommentar*, 68 Tul. L. Rev. 69, 85 (1993). A co-owner can rebut the presumption of equal shares with evidence establishing a contrary intention. *See id.*

To that end, courts have sometimes resolved share disputes between co-owners by looking to the amount of compensation contributed by each to the purchase price.[1]

However, this is not a case where parties acknowledge they are co-owners but disagree about the share owned by each. Instead, Petersen and Fairbanks contend Johnson is *not a co-owner at all*. In other words, they assert Article 797 allows them to "rebut" the presumption of equal shares to the point of proving that Johnson's share of ownership is zero. Construed in this manner, Article 797's rebuttable presumption would not merely function as a rule of interpretation of the authentic acts; it would permit *contradiction* of the authentic acts. The article cannot reasonably be construed to that end.

Article 797, by its express terms, applies only when there is "[o]wnership of the same thing by two or more persons." The fact of co-ownership is a prerequisite to the article's application. Here, that fact is established by the authentic acts of sale conveying the property to Petersen and Johnson. Their co-ownership of the property then triggers application of Article 797's rebuttable presumption that "the shares of all *co-owners* are presumed equal." (Emphasis added.) Fairbanks and Petersen attempt to use this provision to negate the very fact that renders the article applicable: Johnson and Petersen's co-ownership of the property. Article 797's rebuttable

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[1] *See Oxford v. Barrow*, 43 La. Ann. 863, 866, 9 So. 479 (1891); *LeDoux v. LeDoux*, 534 So. 2d 103, 107 (La. App. 3 Cir. 1988); *see also Manning v. Harrell*, 59 So. 2d 389, 391 (La. App. 2 Cir. 1952); *Succession of Washington*, 140 So. 2d 906, 911 (La. App. 4 Cir. 1962); *In re Succession of O'Krepki*, 16-50 (La. App. 5 Cir. 5/26/16), 193 So. 3d 574, 582, *writ denied*, 16-1202 (La. 10/10/16), 207 So. 3d 406. Other cases have found the financial contribution was not determinative of the co-owner's specific share based on the particular facts of the case. *See Olson v. Olson*, 48,968 (La. App. 2 Cir. 4/23/14), 139 So. 3d 539, 545, *writ granted*, 14-1063 (La. 10/3/14), 149 So. 3d 275, and *writ denied as improvidently granted*, 14-1063 (La. 1/28/15), 159 So. 3d 448; *Tassin v. Tassin*, 14-488 (La. App. 3 Cir. 12/3/14), 161 So.3d 818, 825; *Deklerk v. Deklerk*, 14-0104 (La. App. 4 Cir. 7/29/15), 174 So. 3d 205, 210; *Slimp v. Sartisky*, 11-1677 (La. App. 4 Cir. 9/17/12), 100 So. 3d 901, *amended on reh'g in part* (10/11/12), *writ denied*, 12-2430 (La. 1/11/13), 107 So. 3d 616; *Succession of LeBlanc*, 577 So. 2d 105, 108 (La. App. 4 Cir. 1991).

presumption is only available when property is owned by more than one person; it cannot be used to prove the property is *not* owned by more than one person.

Petersen and Fairbanks' proposed interpretation is also based on the faulty premise that payment of the purchase price reflects a "mutual intent" that Petersen be the sole owner of the property. That suggestion cannot be reconciled with the undisputed fact that, contemporaneous with that payment, Petersen executed authentic acts of sale that, at her direction, conveyed the property to *both* herself and Johnson. These authentic acts, which have not been contested, constitute full proof of the agreements and cannot be negated or varied by testimonial or other evidence. *See* La. Civ. Code arts. 1835 and 1848. When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. Civ. Code art. 2046. As recognized by the court of appeal, "If, at the time the purchases were made, Petersen intended to be the sole owner of the property, she could have made the purchases solely in her name." *Fairbanks*, 295 So. 3d at 1286.

This same conclusion was reached in *Morrison v. Richards*, 343 So.2d 375, 376 (La. App. 4 Cir. 1977), where immovable property was conveyed to a husband and wife. The couple had a prenuptial agreement that maintained their separate property regimes. Although both of their names were on the deed, the husband claimed he was the sole owner of the property because he paid for it. The wife's son, an heir, relied on the authentic act of sale to establish his mother's ownership of an undivided one-half interest in the property. The son argued parol evidence was inadmissible to controvert the provisions of an authentic act. *Morrison*, 343 So. 2d at 376. The trial court disagreed and found the husband to be the sole owner. The court of appeal reversed, explaining:

> The authentic act of sale before the notary and two witnesses is conclusive proof of the resulting co-ownership of the property by Mr. and Mrs. Richards. An authentic act is full proof of the agreement

> contained therein and cannot be attacked by parol evidence in the absence of allegations and proof of fraud, error, a counter letter, interrogatories or admissions of facts.
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> *Oxford*, *Manning* and *Washington* [*see* footnote 1 above] relied on by the trial judge only permit the introduction of evidence for the limited purpose of determining the respective interests of co-vendees listed in an authentic act, when such act is silent as to that issue. [Mr.] Richards should not have been allowed to introduce evidence to contradict what was actually contained in the act, that is, an ownership interest in Mrs. Richards.

*Morrison*, 343 So. 2d at 377 (citations omitted). We agree with this analysis and conclusion. Article 797's rebuttable presumption of equal shares cannot be used to divest a co-owner of his entire interest in immovable property in contravention of the authentic act that expressly conveys the interest to him. *See* La. Civ. Code arts. 1839, 1835, 1848. In short, Article 797 cannot be used to remove a co-owner's name from a valid deed.

Our conclusion is further supported by *Mitchell v. Clark*, 448 So. 2d 681 (La. 1984), where this court held ownership of immovable property is determined by the authentic act of sale conveying it, not the source of the funds used to pay the purchase price. In *Mitchell*, the plaintiff negotiated the purchase of a house, paid the full purchase price, and directed the seller to name her nephew as the purchaser in the deed. The seller complied and executed an authentic act conveying the property to Mitchell's nephew. *See Mitchell*, 448 So. 2d at 683. After the sale, Mitchell moved into the house, made improvements, and paid all related expenses, living in the home as if she owned it. Her nephew eventually sought to occupy the house, prompting Mitchell to file suit seeking to have the act of sale changed to identify her, rather than her nephew, as the owner of the property. *See Mitchell*, 448 So. 2d at 683.

At trial, over defendant's objection, Mitchell testified she intended for her nephew to receive the property at her death. She directed the seller to convey the property directly to her nephew to avoid the future necessity and expense of a succession proceeding. The trial court allowed the testimony, found Mitchell to be

"the true vendee," and ordered the clerk of court to transfer the property into Mitchell's name. The court of appeal reversed, finding the trial court erred in allowing parol evidence to prove title to immovable property. This court agreed, explaining:

> [T]he trial judge should not have permitted the oral or testimonial proof of any facts relating to the land purchase because this litigation concerns the ownership of an immovable whose sale was effected by a written act. No mutual error in the description of lands is claimed. Nor is this an action by a vendor who alleges fraud or error, or by an heir or a creditor who argues that no sale has taken place and that the property remains in the vendor's estate.
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> By paying the purchase price, Mitchell had a right to demand that a deed translative of title be executed in her favor; she chose, instead, to have the property transferred to her nephew. The property was conveyed in accordance with the plaintiff's instructions. She brings this action not based on error, but based on a change of mind.

*Mitchell*, 448 So. 2d at 684.

The same is true here. It is undisputed the property was conveyed in accordance with Petersen's instructions. She does not claim the conveyances should be rescinded or reformed due to some mutual error or fraud. Instead, years after the transactions, she regretted that decision after her relationship with Johnson failed, changed her mind, and wanted sole ownership of the property. While we are not unsympathetic, we also cannot disregard the clear terms of authentic acts prepared, explained, and executed in accordance with the parties' intentions. *See* La. Civ. Code arts. 1835, 1848, and 2046. The trial court erred as a matter of law by concluding that Petersen's payment of the purchase price vested her with sole ownership of the property when the authentic acts of sale expressly provide otherwise.

## CONCLUSION

We affirm the court of appeal's judgment, reversing the trial court's judgment in part and remanding for further proceedings.[2]

**AFFIRMED; CASE REMANDED**.

[2] The court of appeal affirmed the portion of the trial court's judgment ordering a partition of the property by licitation. No party sought further review of that order. The court of appeal also noted that both Fairbanks and Petersen asserted reimbursement claims against Johnson. Because the trial court found Johnson was not a co-owner, it did not address the reimbursement claims. The court of appeal observed the reimbursement claims were not raised on appeal and, given the lack of evidence related thereto, "are issues for another day." *Fairbanks*, 295 So. 3d at 1291, n.5. We agree the parties' reimbursement claims may be considered on remand in connection with the partition by licitation and express no opinion on the merits of those claims.

**09/30/21**

# SUPREME COURT OF LOUISIANA

**NO. 2020-C-01031**

**FAIRBANKS DEVELOPMENT, LLC**

**VS.**

**CHARLES WOODROW JOHNSON AND JESSICA LYN PETERSEN**

*On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Ouachita*

**WEIMER, C.J.**, additionally concurring.

I agree with my colleague's analysis. I additionally concur based on the Louisiana Civil Code concept of cause. See La. C.C. arts. 1966.[1] Under the cause concept, Jessica Petersen's payment of the funds for the purchase of the property is of no moment. The cause or reason for her purchase of the property and the placement of her name and the name of Charles Johnson, as purchasers, on the property deeds was to further the goal of her and Johnson "starting a life together," as each testified. Indeed, they were subsequently married and had children together. Noteworthy is the absence in the property deeds of any resolutory or suspensive condition relative to the vesting of ownership.

As La. C.C. art. 1967 states in part, "[c]ause is the reason why a party obligates himself." Article 1967 "defines cause in terms of 'reason,' rather than 'motive,' for the purpose of enhancing the importance of judicial discretion in characterizing an obligation as enforceable." La. C.C. art. 1967, 1984 Revision Comment (a) (citing

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[1] La. C.C. art. 1966 provides that "[a]n obligation cannot exist without a lawful cause."

"1 Litvinoff, Obligations 381-382, 390-396 (1969)"). As 1984 Revision Comment (c) explains:

> "[C]ause" is not "consideration." The reason why a party binds himself need not be to obtain something in return or to secure an advantage for himself. An obligor may bind himself by a gratuitous contract, that is, he may obligate himself for the benefit of the other party without obtaining any advantage in return.[2]

In **Slimp v. Sartisky**, 11-1677, pp. 24-27 (La.App. 4 Cir. 9/17/12), 100 So.3d 901, 917-919, amended in part on reh'g (10/11/12), authored by Judge Max Tobias, Jr., the court found that an unmarried couple intended to own a house in indivision despite the disparity in their financial means, where the male contributed significantly more toward the purchase price. Of importance to the **Slimp** court was the fact that "[t]he parties were well aware of the disparity in their financial means" before purchasing the house, and the couple had been "living together for approximately six years" before deciding to purchase the home. ***Id.***, 11-1677 at 27, 100 So.3d at 919.

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[2] The astute and multi-lingual LSU Professor Alain Levasseur, who has studied, written about, and taught Obligations, made the following observations regarding cause:

> "[C]ause," has a ... hectic path. In the Civil Code of 1808, the word "cause" is not found in the French version of the articles on "Essential conditions for the validity of Conventions." In the English version of these articles, the word "purpose" can be found in article 8. But the title of Section IV is "Of The Cause" and the three articles which make up this Section only use "cause." In the Civil Code of 1825, the word "cause" is used in the French text of article 1779 while the word "purpose" is used in the English version. The title of Section IV has become in English: "Of the Cause or Consideration of Contracts" and the articles of this Section, in their English version, use the word "cause" only. It is later in article 1896, where "cause" is defined, that the word "consideration" appears. But, interestingly enough, the French version of this article uses the word "consideration." It is obvious that the word "consideration," with the acute accent, is used in its own legal and original sense in the civil law .... The present Civil Code of Louisiana makes use not only of the word "cause" itself, but more importantly also of its legal content as defined in article 1967-1 in this form: "Cause is the reason why a party obligates himself." An unofficial commentary which appears under this article adds that in this article, "cause is not consideration." Louisiana Civil Law has remained faithful to the historical concept of "cause" of the civil law, and it still exists today in the French Civil Code, the Quebec Civil Code, and the Argentinean Civil Code. It remains a concept "common" to many civil law jurisdictions. [Footnotes omitted.]

Alain Levasseur & Vicenç Feliú, The English Fox in the Louisiana Civil Law Chausse-Trappe: Civil Law Concepts in the English Language; Comparativists Beware!, 69 La. L. Rev. 715, 728-29 (2009).

Based on those facts, the **Slimp** court determined that the male's contributions to the purchase were not in contemplation of marriage, nor did he expect reimbursement from his partner when he indicated that she did "not have to contribute any more than she was already paying for her [previous] home." ***Id***. After observing the text of La. C.C. arts. 1966 and 1967 and the comments to Article 1967, the **Slimp** court stated:

> Louisiana does not follow the common law tradition that requires consideration to effect an enforceable contract. Rather, the mere will of the parties will bind them, without what a common law court would consider to be consideration to support a contract, so long as the parties have a lawful "cause." The cause need not have any economic value. **Sound/City Recording Corp. v. Solberg**, 443 F.Supp. 1374, 1380 (D.C.La.1978).

**Slimp**, 11-1677 at 24-25, 100 So.3d at 918 (quoting **Aaron & Turner L.L.C. v. Perret**, 07-1701, p. 7 (La.App. 1 Cir. 5/4/09), 22 So.3d 910, 915). The Louisiana Civil Code does not adopt the common law's so-called "peppercorn"[3] theory of consideration or require something in exchange. Instead, the civil law concept of cause allows one to be obligated by that individual's will only. See **Slimp**, 11-1677 at 25, 100 So.3d at 918 (quoting **Aaron & Turner L.L.C.**, 07-1701 at 7, 22 So.3d at 915). As recognized in **Slimp**:

> The difference has been analogized to a civilian contract-consent approach compared to a common law contract-bargain approach. Consideration is an objective element required to form a contract, whereas cause is a more subjective element that goes to the intentions of the parties. Therefore, in Louisiana law, a person can be obligated by both a gratuitous or onerous contract. **Bains v. Young Men's Christian Association of Greater New Orleans**, 0006-1423, p. 5 (La.App. 4 Cir.

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[3] Peppercorn is "[a] small or insignificant thing or amount; nominal consideration" used to support the formation of a binding contract. BLACK'S LAW DICTIONARY 1156 (7th ed. 1999). See **In re SemCrude, L.P.**, 504 B.R. 39, 55 n.54 (Bankr. D. Del. 2013), adopted sub nom. **In re Semcrude, L.P.**, No. 14-CV-357 (SLR), 2015 WL 4594516 (D. Del. July 30, 2015), aff'd sub nom. **In re SemCrude L.P.**, 864 F.3d 280 (3d Cir. 2017) (quoting **Chappell & Co. Ltd. v. Nestle Co. Ltd.**, [1960] A.C. 87 (H.L. 1959)) ("The English House of Lords has observed that '[a] peppercorn does not cease to be good consideration if it is established that the promisee does not like pepper and will throw away the corn.'").

> 10/3/07), 969 So.2d 646, 649, writ denied, 2007-2146 (La.1/7/08), 973 So.2d 727.

***Id.*** (quoting **Aaron & Turner L.L.C.**, 07-1701 at 7-8, 22 So.3d at 915). Applying this reasoning, the **Slimp** court found the parties intended to be co-owners of the house. The case makes it clear that the intent of the parties at the time of the formation and execution of the contract is critical.

In the instant matter, as noted by the appellate court, at the time they signed the property deeds, Ms. Petersen and Mr. Johnson intended to be partners. Ms. Petersen could have placed the property solely in her name if she intended to be the sole owner. Alternatively, if the parties intended something other than co-ownership, they could have specifically stated their intent regarding each's ownership interests in the property deeds, or they could have executed a counterletter or declaration to express their intent relative to ownership of the property and recorded it in the conveyance records. See La. C.C. art. 2025.[4] By doing none of these things, the will of the parties at the time the property deeds were executed, as confirmed by Ms. Petersen, was that Ms. Petersen and Mr. Johnson would be co-owners, even in the absence of any financial contribution by Mr. Johnson. This finding is supported by Ms. Petersen's testimony that they "were going in as partners" and had agreed to "start[] a life together." Although Ms. Petersen now contends she was "young and ... made

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[4] La. C.C. art. 2025 provides:

> 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.

Furthermore, "[a] sale . . . of an immovable must be made by authentic act or by act under private signature." La. C.C. art. 2440; see La. C.C. art. 1839. "When a writing is required for the validity of a contract, other acts related to that validity also require a writing." 5 SAUL LITVINOFF, LOUISIANA CIVIL LAW TREATISE: THE LAW OF OBLIGATIONS § 12.12 at 295 (2d ed. 2001). The record here is devoid of a separate written contemporaneous collateral agreement relative to ownership between the purchasers in connection with either of the sales.

mistakes" with regard to the purchases of the property, it is noteworthy that she made no attempt to make any changes to the deeds during the subsequent six years she and Mr. Johnson were together. The fact that she now regrets "mistakes" which she may have made when she was younger does not change the nature of her intent at the time the parties made the purchases.

In conclusion, I further note it would be a legal and logical anomaly for someone to be declared a co-owner, yet own zero percent of the property. One is either a co-owner or not a co-owner. However, one with a zero percent co-ownership interest cannot be a co-owner.

For these reasons and those set forth in the majority opinion, I agree with the appellate court's finding that Ms. Petersen and Mr. Johnson mutually intended to be co-owners and that, based on the law of cause, intent is sufficient to consummate the transaction.

09/30/21

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*On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Ouachita*

**Hughes, J., dissenting.**

Respectfully, the majority opinion presents a false choice. The issue is not Mr. Johnson's "status as a co-owner." He most certainly is a co-owner. There is no question concerning whether the authentic act or the source of funds determines this "status" of co-owner, it is the authentic act, always. While the analysis below and argument have been less than precise, it is the duty of this court to properly frame the issue and apply the correct law to the facts.

When two people are named as buyers and both sign an act of sale, they are co-owners. Cause and intent and plans for the future are irrelevant. Title examiners do not search for "cause" or calculate future plans when running a title in the conveyance records. There is no contract between the buyers requiring cause, they are co-owners by definition and operation of law. The only contract is between the buyers and the seller. The seller's "cause" is to get the purchase price. The buyers' "cause" is to get the property.

It is undisputed that Mr. Johnson did not contribute to the purchase price in this case. But let's suppose that Mr. Johnson put up 25% of the purchase price, and 30 minutes after the closing on their property, he and Ms. Petersen "flipped" the property for a huge profit. Johnson and Petersen would convey a perfectly

merchantable title, and the new buyer would receive a good and clear title that could immediately be sold again or mortgaged without hindrance.

The rub, perhaps, may come when the closing attorney goes to distribute the sales proceeds to Mr. Johnson and Ms. Petersen. The law presumes that they should each receive half. However, at this point, Ms. Petersen might perhaps demur. Since the law provides only a presumption, she may wish to offer evidence that the shares of ownership are not equal, rather that Mr. Johnson's share is 25% and hers is 75%, based on proof that is what they each paid toward the purchase price. If these facts are proven, than Ms. Petersen would be entitled to 75% of the sales proceeds.

Does this court hold that Mr. Johnson would come out better by contributing nothing rather than 25%?

Louisiana Civil Code article 797 provides as follows:

> Ownership of the same thing by two or more persons is ownership in indivision. In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal.

The shares of co-owners are *presumed* to be equal. But if the presumption is overcome, which the law certainly allows, and the shares of ownership are expressed as a percentage, then there are a hundred possibilities. A factual finding of a 0/100 split has the same validity as one of 25/75 or 60/40. It does not change the law or the status of the co-owners as co-owners. No one can go out to the courthouse and erase a name off the title. Both signatures would still be required to sell or mortgage the property. There is no legal or logical justification for treating a 0/100 split any differently than a 25/75 split. The status of the parties as co-owners is not "changed," the only issue is how the spoils are to be divided.

The majority opinion states that "this is not a case where the parties acknowledge that they are co-owners but disagree about the shares owned by each. Instead, Relators contend Johnson is *not a co-owner at all*."

Respectfully, I question that assessment. In brief to this court, Ms. Petersen assigns as error that the court of appeal was in error in finding that Ms. Petersen "failed to sustain her burden of rebutting the presumption of equal ownership… ." Even so, this court is not bound by less than precise analysis or argument. The fact is, this case is precisely a case where there are co-owners and a factual finding has been made that the presumption of equal shares has been overcome. The deed controls, the parties are co-owners, and the factual determination by the trial court is subject to a manifest error review.

**09/30/21**

**SUPREME COURT OF LOUISIANA**

**No. 2020-C-01031**

**FAIRBANKS DEVELOPMENT, LLC**

**VS.**

**CHARLES WOODROW JOHNSON AND JESSICA LYN PETERSEN**

On Writ of Certiorari to the Court of Appeal, Second Circuit, Parish of Ouachita

**GENOVESE, J., dissents and assigns the following reasons.**

I respectfully dissent from the majority opinion in this case, which effectively converts the rebuttable presumption of co-ownership in indivision set forth in La. C.C. art. 797 and related jurisprudence into an irrefutable presumption in all cases where one party asserts that the other party made *no* contribution to the purchase of property and thus has *no share* in that property. As discussed below, I disagree with the majority's conclusion that the trial court "erred as a matter of law" in examining the parol evidence in this case and determining that Johnson's share in the property was zero. In my view, the court of appeal inappropriately substituted its judgment for that of the trial court, as the record provides a reasonable factual basis for the trial court's finding that Johnson made no contribution toward the purchase, and this finding was not clearly wrong. *Stobart v. State through Dep't of Transp. & Dev.*, 617 So.2d 880, 882 (La.1993). Because no valid gratuitous contract existed between the parties, I would reverse the court of appeal and affirm the trial court's judgment finding that Johnson never had an ownership interest in the subject property.

As the parties were not married at the time the property was purchased, the rights of the parties with respect to the property must be determined solely pursuant to the Louisiana Civil Code regarding ownership in indivision. In 1990, the Louisiana legislature added La. C.C. art. 797 to the rules of co-ownership, which

specifies that the shares of all co-owners are presumed to be equal in the absence of other provisions of law or juridical acts.[1] This article is in keeping with the then-existing standard in jurisprudence, which has not been overruled:

> In such instances where property is acquired by several vendees and their specific shares are not stipulated in the act of conveyance, a presumption arises that such interests shall be considered equal. The presumption is rebuttable to the extent that the court will decree ownership in proportion to the amount and consideration contributed by each of the vendees.

*Succession of LeBlanc,* 577 So.2d 105, 107 (La.App. 4th Cir.1991) (*citing Manning v. Harrell,* 59 So.2d 389 (La.App. 2nd Cir.1952)).[2]

This Court has yet to render an opinion pursuant to La. C.C. art. 797, and there is little jurisprudence exploring the means by which the presumption of equal ownership of an item held in indivision may be rebutted pursuant to this article. As noted by the majority, the trial court found that Johnson had *no* share of ownership of the property based on the evidence presented, despite the appearance of his name on the acts of sale. In my view, falls squarely within in the parameters of La. C.C. art. 797 and the related jurisprudence, which indeed allow introduction of parol evidence to determine ownership "in proportion to the amount and consideration contributed by each of the vendees," in explicit derogation of the otherwise presumed interpretation of an authentic act. *LeBlanc*, 577 So.2d at 107.[3] Where that

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[1] Notably, Johnson's brief argues that, where there are no provisions of law or juridical acts specifying the ownership shares, La. C.C. art. 797 creates an "irrebuttable conclusive presumption." However, Johnson cites no authority for this conclusion, which is not supported by either jurisprudence or the plain language of the article.

[2] The presumption of equal ownership was repeatedly examined in cases where unmarried couples were living together, as the law at the time deemed that couples living in "open concubinage" were legally prohibited from gifting each other any donation of immovables; thus, it was important to determine whether the "concubine" contributed anything independent of the concubinage toward an immovable purchase when her name was on a deed of sale along with her "paramour." *See, e.g., Brown v. Brown,* 459 So.2d 560 (La.App. 1st. Cir.1984); *Succession of Washington,* 140 So.2d 906 (La.App. 4th Cir.1962); *Manning,* 59 So.2d 389. As the laws pertaining to this antiquated legal paradigm have now been repealed, the related jurisprudence is largely obsolete.

[3] Where an act of sale of immovable property is silent as to the proportions of the respective interests of the co-vendees listed, our jurisprudence allows the introduction of parol evidence for the limited purpose of determining those respective interests. *In re Succession of O'Krepki,* 16-50, pp. 12-13 (La.App. 5 Cir. 5/26/16), 193 So.3d 574, 582*, writ denied sub nom. Succession of*

amount and consideration is found to be entirely absent and where no valid gratuitous contract exists between the parties, as in this case, it is my view that the trial court does not legally err or abuse its discretion in finding that a vendee listed on an act of sale has *no* ownership share.

I find the cases relied upon by the majority to be readily distinguishable from the present one. In *Morrison v. Richards*, 343 So.2d 375 (La.App. 4 Cir.), *writ denied* 345 So.2d 503 (La. 1977), a husband and wife with a separate property regime purchased a house. After the wife's death, her husband asserted that the house had been purchased with his separate funds, claiming that her two sons from a prior marriage had no interest in the property. However, noting that both parties were listed on the authentic act of sale, the court of appeal affirmed the trial court's finding that the husband had not rebutted the presumption that the wife had an undivided one-half interest in the property, further stating:

> Parol evidence can be introduced to controvert an authentic act where admissions of fact to the contrary are made by the parties thereto. *Elrod v. Leny*, 193 So.2d 299 (La.App. 4 Cir. 1966). In the case herein there have been no such admissions of fact. The co-vendee is deceased[,] and we find no reason to controvert the transaction as reflected by the authentic act of sale.

*Id.* at 377. In this succession case—where one spouse contested the ownership of property bought jointly during marriage to thwart the interests of children of a previous marriage, and the other spouse was not alive to testify regarding her contributions—the court of appeal declined to disturb the trial court's finding that the husband could not rebut the presumption of equal ownership in indivision merely by showing that his separate funds were used to purchase the property. These circumstances are clearly distinguishable from the present case, where Petersen and Johnson are both alive to testify as to the circumstances surrounding the purchase of

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*O'Krepki,* 16-1202 (La. 10/10/16), 207 So.3d 406 (*citing Succession of LeBlanc,* 577 So.2d 105, 107 (La.App. 4th Cir.1991), (citing *Oxford v. Barrow,* 43 La. Ann. 863, 9 So. 479 (1891)); *Manning,* 59 So.2d 389; *Succession of Washington,* 140 So.2d 906).

the property at issue and heavily dispute that they mutually intended equal ownership of that property.

Likewise, I find *Mitchell v. Clark,* 448 So.2d 681 (La. 1984), to be wholly inapposite to the present case. In *Mitchell*, the plaintiff was an aunt who had put *only* her nephew's name on the deed of a property that she had purchased wholly with her funds. She stated that her intent was to ensure that her nephew received it after her death without the expense and bother of succession proceedings. *Id.* at 684. Because *only* the nephew's name was on the deed of the property at issue—the authentic act wherein Mitchell expressly evidenced her intent to give the property to her nephew—La. C.C. art. 797 and the presumption of equal ownership in indivision was *never* at issue. Accordingly, as the aunt did not allege error or fraud in the confection of the sale, the court held, "We cannot give relief to the plaintiff without abrogating the consistent rule of property that excludes parol evidence to prove that one not named in the deed is the real vendee." *Id.* at 687. In contrast, because Petersen is named in the deeds at issue in this case, parol evidence *is* allowed to rebut the presumption of equal ownership in indivision.

Here, the court of appeal based its conclusion that the parties mutually intended to be equal co-owners on the fact that the parties both signed the deeds with "an intent at that time… to start a life together, to have a family, and to have a family home." *Fairbanks Dev., LLC v. Johnson,* 53,427, p. 11 (La.App. 2 Cir. 4/22/20), 295 So.3d 1279, 1286, *reh'g denied* (7/16/20)*, writ granted,* 20-01031 (La. 12/8/20), 305 So.3d 865. However, I disagree that mutual intent to start a life together as romantic partners is identical with mutual intent to equally co-own a piece of property in indivision. Likewise, the fact that Petersen granted Johnson the right to use the house, or that she asked for Johnson's consent for sale at some point, do not necessarily mean that Petersen intended at the time of purchase for the two to be equal co-owners.

As between the parties, a contract of sale is perfected when the thing, the price, and consent concur. *Williams v. Bowie Lumber Co.*, 214 La. 750, 38 So.2d 729, 755 (La. 1948); La. C.C. art. 2439. Thus, transfer of ownership of the property was perfected at the time the deeds were signed, though the parties' words and actions after the purchases may provide evidence confirming the intent of the parties at the time. [4] In line with the relevant jurisprudence, I find that the trial court was entitled to consider parol evidence relevant to the contributions provided (including any non-monetary contributions) by Petersen and Johnson at the time the deeds were signed.[5] Here, it is undisputed that Johnson did not contribute anything financially to the purchase of the property. Notably, it is not even clear that Johnson raised an argument regarding non-monetary contributions before the trial court. When asked whether Johnson's case would rely on his non-monetary contributions, Johnson's counsel replied that he would be "sticking with" the intent of the parties.

Unsurprisingly, there is no testimony regarding the details of the alleged non-monetary contributions of work done on the properties in Georgia or Louisiana**.** Furthermore, Johnson's post-trial brief did not offer any evidence of these alleged contributions, much less advocate for their relevance. However, on appeal, the Second Circuit relied heavily on the alleged existence of those contributions, finding that "Johnson's situation was no different from many women who did not work outside the home, but contributed in other ways, while men who possessed the means financed the communal life." *Fairbanks*, 295 So.3d at 1286-87. I find this to be a strained interpretation of the record, and the trial court did not manifestly err in

[4] Notably, this Court has previously found that a purported act of sale between co-purchasers was a disguised onerous donation and declared the donor to be the sole owner of the property. *Garcia v. Dulcich*, 237, La. 359, 111 So.2d 309 (La.1959). However, in this case, neither party has alleged that this sale was a disguised agreement of another form.

[5] "Louisiana does not follow the common law tradition that requires consideration to effect an enforceable contract." *Aaron & Turner*, *L.L.C.,* 22 So.3d at 915; La. C.C. art. 1967, Comment (c). As discussed below, Petersen could have gratuitously agreed to equal ownership of the house.

failing to adopt it, especially considering that Johnson failed to advance this argument at trial.

Here, the couple began their relationship in 1999 and moved to Louisiana in 2000. According to Johnson, he quit his job and sidelined his career to travel with Petersen, assisted in mowing the lawn and keeping the house in Georgia "presentable," and did "work" of unspecified quality and quantity on the property at issue along with Petersen after the couple moved to Louisiana. However, even if taken as true, these facts do not support reversal of the trial court's finding as manifestly erroneous or clearly wrong. Johnson's acts of 1) leaving his job at a grocery store to travel with Petersen, 2) keeping a house in Georgia presentable for sale, and 3) doing indeterminate work on the property with Petersen after purchase, where Petersen fully paid all of the couples' living expenses and where neither party alleged that Johnson's role was to tend to household affairs before or after the purchase, are not obviously analogous to the years of non-monetary contributions of caring for households and children made by the spouses in the cases cited by the court of appeal.

At the time of the purchase of the property, Petersen and Johnson were not married. There was no community of acquets and gains, nor were there established marital duties to fulfill. Moreover, to the extent that the parties had come to some amorphous, informal agreement on what Johnson's non-monetary contributions toward the purchase of the property should be, Petersen testified unambiguously that Johnson failed to make those contributions.

As this Court stated in in *Rosell*, 549 So.2d at 844:

> When findings are based on determinations regarding the credibility of witnesses, the manifest error—clearly wrong standard demands great deference to the trier of fact's findings; for 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.

Here, the trial court was in the best position to weigh the respective parties' credibility, and its decision to discredit Johnson's testimony regarding his alleged contributions and to credit Petersen's testimony as to the lack thereof should not have been disturbed. Although the court of appeal may have viewed the evidence differently and considered Johnson's actions valid non-monetary contributions, it was not entitled to substitute its appraisal of the facts for the trial court's finding that it "was not convinced (by any attempts) that [Johnson] contributed anything toward the purchase of the subject property."

Importantly, Louisiana recognizes wholly gratuitous contracts, where one party has no obligation. La. C.C. art. 1910; La. C.C. art. 1967, Comment (c). Johnson's testimony at times reflected a belief that Petersen's cause for giving him an interest in the property was gratuitous, as he answered, "I mean I guess so," when he was asked by the trial court whether he was expecting "to get it [for] free." However, under Louisiana law, "Reliance on a gratuitous promise made without required formalities is not reasonable." La. C.C. art. 1967. Comment (f) to La. C.C. art. 1967 (emphasis added) elaborates:

> In other words, a party should place no reliance on his belief that he has entered a gratuitous contract when some formality prescribed for the validity of such a contract has been omitted. **Thus, reliance on a gratuitous donation not made in authentic form is not reasonable.** See C.C. Arts. 1523 and 1536 (1870).

Interest in immovable property must be transferred by authentic act or by act under private signature. La. C.C. art. 1839. Here, there is no act evidencing Petersen's express intent to give Johnson a one-half interest in the property at issue.[6] To find that Petersen effectively gifted Johnson a half interest in the property simply by listing his name on the deeds at issue would transform the "presumption" of equal shares between co-owners in indivision into an unbreakable rule, where every

[6] *Id.* at 687. In contrast, Petersen is named in the deeds at issue, and parol evidence is allowed to rebut the presumption of equal ownership in indivision.

deed with co-purchasers listed would **automatically** constitute irrefutable evidence in authentic form of a donation of an equal share of ownership to any co-purchaser who contributed nothing to the purchase, even if the co-purchaser who paid for the property had relevant evidence to the contrary.

Based on my review of the record herein, I find that the court of appeal erred in substituting its appraisal of the facts for that of the trial court. The court of appeal erred in reversing the judgment of the trial court, as there was a reasonable basis in the record for the trial court's finding, and the trial court's finding was not manifestly erroneous or clearly wrong. *Stobart*, 617 So.2d at 882. I find that the record supports the trial court's ruling that Petersen rebutted the presumption of equal ownership in indivision and its allocation of half of the ownership interest in the property to Fairbanks and the other half interest to Petersen. Therefore, I would reverse the court of appeal and reinstate the judgment of the trial court.