Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

BY Crain, J.:

2022-CC-00596 *DANIEL J. SALOOM, ET AL. VS. STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT* (Parish of Lafayette)

JUDGMENT VACATED AND CASE REMANDED. SEE OPINION.

SUPREME COURT OF LOUISIANA

No. 2022-CC-00596

DANIEL J. SALOOM, ET AL.

VS.

STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of Lafayette

CRAIN, J.

In this inverse condemnation proceeding, the state invokes equity as a defense to plaintiffs' claims for just compensation. We find equity inapplicable and hold the parties' rights are governed by controlling positive law.

FACTS AND PROCEDURAL HISTORY

The property at issue was part of a larger tract purchased by Clarence J. Saloom in 1953 during his marriage to Pauline Womac Saloom. The entire tract was about 80 acres and became known to the Saloom family as the "Pine Farm." Plaintiffs are Clarence and Pauline's three children, Patricia A. Saloom, Clarence J. Saloom Jr., and Daniel J. Saloom. Pauline died in 1973, and her one-half community interest in the Pine Farm was inherited by the plaintiffs. A judgment of possession recognizing them as owners of Pauline's one-half interest in the Pine Farm, subject to a usufruct in Clarence's favor, was signed on July 12, 1974, and recorded in the public land records of Lafayette Parish.

About two years later, the Louisiana Department of Highways, now the Department of Transportation and Development (the "state"), contacted Clarence about purchasing a piece of the Pine Farm in connection with a project to widen and improve La. Highway 339. The state needed 0.671 acres (the "property") and offered to buy it from Clarence for the full appraised value of $8,953.00. Clarence

agreed and on March 30, 1976, signed an act of sale conveying the property to the state with "all lawful warranties." The instrument identifies Clarence as "husband of Pauline Womac Saloom" but does not mention Pauline's death or plaintiffs' inheritance of her interest in the property. Plaintiffs are not identified in the act of sale, did not sign it, and apparently were unaware of it for several years.

The initial work on the property was limited. Highway 339 remained two lanes for many years, and the state's records indicate only occasional maintenance such as mowing and limb trimming. Similar maintenance was done by plaintiffs. Construction of permanent improvements did not begin until decades later in 2015.

In 1985, after learning of their father's 1976 conveyance, plaintiffs hired an attorney who informed the state that plaintiffs owned an undivided one-half interest in the property. Counsel spoke with a representative of the state and explained plaintiffs inherited their mother's one-half interest as reflected in the recorded judgment of possession. In a follow up letter to the state dated February 28, 1985, plaintiffs' counsel confirmed that the representative "advised that a copy of the Judgment of Possession in the Succession of Mary Pauline Womac, tentatively established that the right-of-way acquired from Clarence J. Saloom in May of 1976 . . . only provided for transfer of [Clarence's] interest in the property, and not that of his children." Counsel understood the matter would be referred to the state's legal department and, after their review, the state's representative would contact plaintiffs' counsel to further discuss the matter. The record reflects no further communications between the parties at that time.

Ten years later, Clarence died, leaving his entire estate to plaintiffs. A judgment of possession recognizing plaintiffs' acceptance of Clarence's succession and their inheritance of his estate was signed in 2004 and recorded in the public land records of Lafayette Parish.

In 2015, about twenty years after Clarence's death, the state began constructing improvements to Highway 339 on the property. Plaintiffs again contacted the state. In a May 18, 2016 letter, plaintiffs' counsel confirmed the same information he had relayed to the state over thirty years earlier, specifically the state did not purchase all of the property in 1976 because Clarence only owned an undivided one-half interest. Plaintiffs owned the other one-half interest, which the state never acquired.

In a reply letter, the state claimed "all interests in the property were acquired from Clarence Saloom, husband of Pauline Womac Saloom (deceased at the time of the purchase)." The state acknowledged "[t]he public records were clear that [Clarence] owned a one-half interest and was usufructuary of [Pauline's] one-half interest." However, according to the state, Clarence "was aware of being paid full price, to the exclusion of the underlying real or naked owner, as he was entitled to do under Louisiana statute [*sic*]." No statutory authority was cited. The letter closed by advising, "Since at this time the [state] is not acquiring any new property[,] we cannot offer compensation to your client for property already owned by the State of Louisiana."

Plaintiffs filed suit against the state in 2018 seeking damages for inverse condemnation. After discovery, plaintiffs filed a motion for a partial summary judgment seeking to establish (1) they were owners of the property, (2) a "taking" of the property occurred when the state widened Highway 339, and (3) the state is liable to plaintiffs for the value of their one-half interest in the property. Plaintiffs' evidence includes the 1953 acquisition of the Pine Farm, the 1974 recorded judgment of possession in Pauline's succession, Clarence's 1976 conveyance of the property to the state, counsel's 1985 letter advising the state of plaintiffs' interest in the property, and the letters exchanged in 2016. In a statement of uncontested facts, the parties agreed plaintiffs acquired the naked-ownership of an undivided one-half

interest in the property from their mother. The state also does not dispute it received the 1985 letter from plaintiffs' counsel that confirmed that information.

The state filed a cross-motion for summary judgment asserting plaintiffs' inverse condemnation claims are barred by the equitable doctrine of "estoppel by deed," citing *Humble Oil & Refining Co. v. Boudoin*, 154 So. 2d 239 (La. App. 3 Cir. 1963), *writ refused*, 245 La. 54; 156 So. 2d 601 (1963). Under this doctrine, "when heirs accept the succession of their ancestor simply and unconditionally, they become bound by his warranty of title to such an extent that they are estopped to deny the full extent of the warranty." *Humble Oil*, 154 So. 2d at 248 (on rehearing). In the lower courts and here, the state argues plaintiffs' acceptance of their father's succession obligates them to his warranty obligation in the 1976 conveyance, which in turn estops plaintiffs from claiming the conveyance did not transfer full ownership of the property to the state. The state also asserted plaintiffs' claims are prescribed under Louisiana Revised Statute 13:5111A, providing, "Actions for compensation for property taken by the state . . . shall prescribe three years from the date of such taking."

The trial court rejected the state's arguments and granted a partial summary judgment declaring plaintiffs owned a one-half interest in the property; a taking occurred when the highway expansion project was completed and accepted on July 8, 2019; and the state is liable to plaintiffs for the value of their one-half interest in the property. The state appealed.

The court of appeal reversed, holding estoppel by deed precluded plaintiffs from asserting ownership contrary to what their father sold the state. *Saloom v. Department of Transportation and Development*, 21-666 (La. App. 3 Cir. 3/16/22), ____ So. 3d ____ (2022WL792086 at 6). Finding plaintiffs unable to prove a property right taken by the state, the court of appeal granted the state's cross-motion for summary judgment, dismissing plaintiffs' claims with prejudice. We granted a

writ of certiorari. *Saloom v. Department of Transportation and Development*, 22-00596 (La. 6/22/22), 339 So. 3d 622.

DISCUSSION

"Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property." La. Const. art. I, §4(A). "Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit." La. Const. art. I, §4(B)(1). To establish inverse condemnation, a party must show (1) a recognized species of property right has been affected, (2) the property has been taken or damaged in a constitutional sense, and (3) the taking or damaging was for a public purpose. *Suire v. Lafayette City-Parish Consolidated Government*, 04-1459 (La. 4/12/05), 907 So. 2d 37, 60.

The state does not dispute plaintiffs owned an undivided one-half interest in the property and that it was taken by the state for a public purpose. However, according to the state, the doctrine of estoppel by deed "prevents [p]laintiffs from asserting ownership" of the property and allows the state "to keep the property" without paying just compensation. Because estoppel is an equitable remedy, we begin our analysis by reviewing the sources of law in Louisiana. *See Howard Trucking Co., Inc. v. Stassi*, 485 So. 2d 915, 918 (La. 1986); *Humble Oil*, 154 So. 2d at 250.

Our primary sources of law are the constitution and legislation. *See Bergeron v. Richardson*, 20-01409 (La. 6/30/21), 320 So. 3d 1109, 1116; La. Civ. Code art. 1, Official Revision Comment (d). The Louisiana Constitution is the supreme law to which all legislative acts must yield. *See* La. Const. art. XIV, §18; *Faulk v. Union Pacific Railroad Co.*, 14-1598 (La. 6/30/15), 172 So. 3d 1034, 1043. Legislation is a solemn expression of legislative will and prevails over custom, a secondary source of law resulting from a long practice generally accepted as having acquired the force

of law. *See* La. Civ. Code arts. 2 and 3. If a legislative enactment solves a particular situation, then no jurisprudence, usage, equity or doctrine can prevail over the legislation. *See* La. Civ. Code art. 3; *Duckworth v. Louisiana Farm Bureau Mutual Insurance Co.*, 11-2835 (La. 11/2/12), 125 So. 3d 1057, 1064.

A court may proceed according to equity only if a particular situation is not covered by legislation or custom. La. Civ. Code art. 4; *Donelon v. Shilling*, 19-00514 (La. 4/27/20), 340 So. 3d 786, 793. Estoppel is not favored and is a doctrine of last resort. *MB Industries, LLC v. CNA Ins. Co.*, 11-0303 (La. 10/25/11), 74 So. 3d 1173, 1181. Equitable considerations and estoppel cannot prevail when in conflict with positive written law. *Morris v. Friedman*, 94-2808 (La. 11/27/95), 663 So. 2d 19. Louisiana law has no place for a common law estoppel doctrine that addresses a subject encompassed within positive law of the Civil Code. *Leisure Recreation & Entertainment, Inc. v. First Guaranty Bank*, 21-00838 (La. 3/25/22), 339 So. 3d 508, 518.

The present dispute involves three central issues: the state's obligation to pay just compensation for property taken for a public purpose, the property owners' right to assert ownership in the property, and the available remedies for breach of the warranty against eviction. These matters are addressed by our constitution and numerous legislative acts. As previously noted, the Louisiana Constitution prohibits the state from taking property "except for public purposes and with just compensation paid to the owner or into court for his benefit." La. Const. art. I, §4(B)(1). This constitutional mandate is supplemented by extensive legislation specifying the procedures and recovery for a property owner, depending on the nature of the taking. *See e.g*. La. R.S. 13:5111 (appropriation); La. R.S. 19:1-381 (expropriation); and La. R.S. 48:441-460 ("quick taking" law).

Relative to plaintiffs' ownership rights, an entire book of the Civil Code is dedicated to modes of acquiring ownership of things, including immovable property.

See La. Civ. Code, Book III. One of the basic premises is that the "sale of a thing belonging to another does not convey ownership." La. Civ. Code art. 2452. Similarly, a usufructuary "may not dispose of nonconsumable things unless the right to do so has been expressly granted to him." La. Civ. Code art. 568. Several code articles and revised statutes specifically govern transfers of immovable property.[1] In deference to this legislation, this court has repeatedly observed that title to immovable property cannot be established by waiver or estoppel; it can only be divested in the manner prescribed by law, such as by deed, inheritance, or prescription. *See Monk v. Monk*, 243 La. 429, 437; 144 So. 2d 384, 388 (1962); *Koerber v. City of New Orleans*, 228 La. 903, 914; 84 So. 2d 454, 458 (1955); *Snelling v. Adair*, 196 La. 624, 637; 199 So. 782, 786 (1940).

A seller's warranties, which underlie the equitable doctrine at issue here, are also addressed in detail by our Civil Code. "The seller is bound to deliver the thing sold and to warrant to the buyer ownership and peaceful possession of, and the absence of hidden defects in, that thing." La. Civ. Code art. 2475. "The seller warrants the buyer against eviction, which is the buyer's loss of, or danger of losing, the whole or part of the thing sold because of a third person's right that existed at the time of the sale." La. Civ. Code art. 2500. If the seller breaches the warranty against eviction, the buyer's remedies are also specified by law. The buyer "may recover the price he paid, the value of any fruits he had to return to the third person who evicted him, and also other damages sustained because of the eviction with the exception of any increase in value of the thing lost." La. Civ. Code art. 2506. If the eviction is partial, the buyer "may obtain rescission of the sale if he would not have

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[1] *See e.g.* La. Civ. Code arts. 1839 (form of transfer of immovable property; recordation requirement), 1832 (testimonial proof admissible only if transfer destroyed, lost, or stolen), 1833 (requirements for authentic act), 1837 (requirements for act under private signature), 1848 (use of testimonial proof to show vice of consent), and 2440 (form for sale or promise of sale of immovable property); La. R.S. 9:2721-2730 (registry of instruments affecting immovables).

bought the thing without that part" or, if the sale is not rescinded, "a diminution of the price in the proportion that the value of the part lost bears to the value of the whole at the time of the sale." La. Civ. Code art. 2511. The code articles also address recovery for cost of improvements, potential deductions from recovery, waiver of the warranties, and subrogation. *See* La. Civ. Code arts. 2503, 2507, and 2509.

Despite constitutional provisions and legislative enactments addressing the present issues, the state invokes equity to avoid paying just compensation to plaintiffs. The doctrine of estoppel by deed, sometimes called "estoppel by warranty," has various forms; however, the version relevant here generally estops a party from asserting ownership of property if he accepts the succession of someone who purported to sell the property. By accepting the seller's succession, the heir becomes bound by the seller's warranty obligation to the buyer and, thus, cannot deny the buyer's title. *See Humble Oil*, 154 So. 2d at 248.

An early application of the doctrine appears in *Stokes v. Shackleford*, 12 La. 170 (1838), where a wife sold sixty acres of community property without her husband's consent. After her death, the surviving husband and son sought recovery of the property. The court granted relief to the husband, finding the purchaser did not acquire his half interest. *Stokes*, 12 La. at 172. However, the court denied relief to the son, who claimed the mother's half interest by inheritance, because the mother's warranty obligation would have prevented her from reclaiming her interest in the property:

> The obligations of warranty descend to the heirs of the vendor, and one of the obligations of warranty, indeed the first, is the buyer's peaceable possession of the thing sold. . . . The minor plaintiff claiming through his mother, as heir at law, can have no better right than she had, and if she could not recover back the land, neither can her heir.

Stokes, 12 La. at 173. In that case, the contested ownership interest and the warranty obligation both came from the same person, the mother. Her warranty obligation

precluded her son from claiming her interest.[2]

Parties have also been estopped when the ownership interest and warranty obligation come from different sources. That occurred in *Griffing v. Taft*, 151 La. 442, 451; 91 So. 832, 835 (1922), where the plaintiffs inherited their mother's one-half interest in community property. The mother never purported to sell her interest in the property to a third party, so that interest was inherited by plaintiffs without a warranty obligation. However, after her death, plaintiffs' father signed an act of sale purporting to sell the entire property, including the former interest of the mother, to the defendant's ancestor-in-title. The father died, and plaintiffs accepted his succession. The court held plaintiffs were obligated by their father's warranty and were estopped from challenging defendant's title, "even the interest claimed by inheritance from their mother." *Griffing*, 151 La. at 452; 91 So. at 836.[3]

The *Griffing* form of estoppel by deed is urged here. The state argues plaintiffs are estopped from asserting the interest they inherited from their mother, because they accepted their father's succession and are thus bound by his warranty obligation. Although first judicially recognized in Louisiana over a century, this form of estoppel has never been legislatively adopted. It remains an equitable remedy existing only in the jurisprudence. Notably, the legislature has codified a different version of estoppel by deed that prevents a spouse from contesting a separate-property declaration in which he or she concurred. *See* La. Civ. Code art.

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[2] For similar applications, *see Boyet v. Perryman*, 240 La. 339; 123 So.2d 79 (1960); *McQueen v. Sandel*, 15 La. Ann. 140 (1860); *Louisiana Canal Co. v. Leger*, 237 La. 936; 112 So.2d 667, 668 (1959); *Arnett v. Marshall*, 210 La. 932; 28 So.2d 665 (1946); *Soule v. West*, 185 La. 655, 667; 170 So. 26 (1936); *see also Wilson v. Pierson*, 143 La. 287, 290; 78 So. 561, 562 (1918) ("The plea [of estoppel] is founded upon the doctrine that a claimant cannot dispute the title by which he claims.").

[3] For similar applications, *see Cook v. Martin*, 188 La. 1063, 1064; 178 So. 881 (1938); *Cherami v. Cantrelle*, 174 La. 995, 998; 142 So. 150, 151 (1932); *Berry v. Wagner*, 151 La. 456, 475; 91 So. 837, 844 (1921); *Cochran v. Gulf Ref. Co. of Louisiana***,** 139 La. 1010; 72 So. 718 (1916); *Smith v. Elliot*, 9 Rob. (LA) 3 (1844); *Walker v. Fort*, 3 La. 535, 536 (1832); *Wilturner v. Duhon*, 284 So.2d 138, 139 (La. App. 3 Cir. 1973); *Butler v. Butler*, 212 So. 2d 213 (La. App. 2 Cir. 1968), *writ refused*, 252 La. 877; 214 So. 2d 548 (1968); *Humble Oil*, 154 So. 2d at 248-49.

2342 ("A declaration in an act of acquisition that things are acquired with separate funds as the separate property of a spouse may be controverted by the other spouse unless he concurred in the act."); *see also Monk*, 243 La. at 435; 144 So. 2d at 387. However, the estoppel by deed asserted by the state here remains an equitable remedy only.[4]

This court has not recently relied upon this equitable doctrine and will not do so here. Unlike the cited cases, the party invoking equity here, the state, was fully aware of the plaintiffs' ownership interests in the property for many years and chose not to pursue its legal remedies against its seller. When the state was notified in 1985 of the plaintiffs' interest in the property, it had a remedy: it could have sued Clarence for breach of his warranty and either (1) rescinded the sale and recovered the full purchase price, or (2) maintained the sale and recovered half the purchase price. *See* La. Civ. Code art. 2511 (effective 1995); La. Civ. Code (1870) arts. 2511 and 2514. Instead, it waited over 30 years and invoked equity, complaining that absent such relief, it may have "to pay for the same property twice." That scenario is what the Civil Code articles were enacted to prevent.

> The genius of our law does not favor the claims of those who have long slept on their rights and who, after years of inertia, conveying an assurance of acquiescence in a given state of things, suddenly wake up at the welcome vision of an unexpected advantage and invoke the aid of the courts for relief, under the effect of a newly discovered technical error in some ancient transaction or settlement.

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[4] A reference to estoppel appears in a comment to Louisiana Civil Code article 2503. That article addresses wavier of a seller's warranty against eviction and, in relevant part, provides a "seller is liable for an eviction occasioned by his own act, and any agreement to the contrary is null." In Revision Comment (c), the editor notes: "Under this Article, the seller is estopped to deny the sufficiency of his vendee's title." This is followed by citations to *Boyet*, *Louisiana Canal Co.*, and *Arnett*. Those cases address rights in property inherited from the same party who previously sold the property and whose warranty obligation was assumed when their succession was accepted. *See* footnote 2 above and accompanying text. Here, the ownership rights were inherited from the mother, who never sold her interest. We do not construe Article 2503 to be a legislative adoption of the estoppel by deed urged here by the state.

Lafitte v. Godchaux, 35 La. Ann. 1161, 1163 (1883). Equitable relief cannot be reconciled with the state's prolonged disregard for the remedies provided it by positive law.

Plaintiffs' ownership interest in the property was also reflected in the public land records of Lafayette Parish before the 1976 conveyance. The judgment of possession in Pauline's succession was recorded in 1974, making it effective against third parties. *See* La. Civ. Code art. 1839 ("An instrument involving immovable property shall have effect against third persons only from the time it is filed for registry in the parish where the property is located."). The state could have easily determined the true ownership of the property by reviewing the public land records. It did not. A party having the means readily and conveniently available to determine the true facts, but who fails to do so, cannot claim estoppel. *Luther v. IOM Co. LLC*, 13-0353 (La. 10/15/13), 130 So. 3d 817, 826; *Morris v. Friedman*, 94-2808 (La. 11/27/95), 663 So. 2d 19, 25.

We recognize that a purchaser of immovable property is not required to conduct a title search to maintain a warranty action against his seller. *See Richmond v. Zapata Development Corp.*, 350 So. 2d 875, 878 (La. 1977) ("[A] buyer is under no obligation to search the public land records to ascertain what his vendor has sold and what it has not, and the vendee is entitled, as between himself and his vendor, to rely upon his deed as written."). However, the state is not pursuing—and, in fact, has never pursued—a warranty claim against anyone in connection with the 1976 sale. Instead, it seeks to use an equitable doctrine to defend plaintiffs' inverse condemnation claim. We find that doctrine inapplicable in this case.

CONCLUSION

The court of appeal judgment reversing the trial court's judgment and granting the state's motion for summary judgment is vacated. Because the court of appeal did not consider the state's remaining arguments in support of its motion and in

opposition to plaintiffs' motion for summary judgment, we remand the matter to the court of appeal for consideration of the state's remaining assignments of error.

JUDGMENT VACATED AND CASE REMANDED.[5]

[5] After oral arguments, the state filed a motion for leave to file a supplemental brief. This motion is denied.