Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of January, 2023** are as follows:

BY Crichton, J.:

2022-C-00757 *HIDDEN GROVE, LLC VS. RICHARD A. BRAUNS AND LESLIE BRAUNS (Parish of Lafayette)*

REVERSED AND REMANDED. SEE OPINION.

Weimer, C.J., concurs in part and dissents in part and assigns reasons.

Hughes, J., additionally concurs and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2022-C-00757

HIDDEN GROVE, LLC

VS.

RICHARD A. BRAUNS AND LESLIE BRAUNS

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

CRICHTON, J.

We granted the writ application in this matter to review the court of appeal's determination that the plaintiff could not assert a claim for enrichment without cause under Civil Code article 2298 for failure to establish the "no other remedy at law" element of the claim. We find the court of appeal erred and remand the matter to the court of appeal for consideration of the pretermitted issues.

BACKGROUND

This case arises from a dispute regarding the excavation of lots located in the The Grove Subdivision between plaintiff Hidden Grove LLC ("Hidden Grove"), the developer of The Grove, and homeowner defendants Richard and Lisa Brauns (the Braunses). On August 30, 2011, the Braunses purchased a home located on Lot 14 of The Grove from a third party not involved in this litigation. The next day, on August 31, 2011, the Braunses purchased Lot 15 from Hidden Grove for $100,000. They also acquired a right of first refusal to purchase Lots 16 and 17.

The surface elevations of Lots 16 and 17 were eight feet higher than that of Lot 15. Because the Braunses intended to add on to their home and build a swimming pool on Lot 15, they sought to lower the elevation of Lots 16 and 17 to match the elevation of the lots they previously purchased. Hidden Grove agreed the Braunses could lower the elevation of Lots 16 and 17, at their own expense.

Before the parties executed a written agreement setting forth the engineering specifications for the excavation—including whether a retaining wall would be required—excavation began in January 2013, with the permission (given orally) of Hidden Grove. In June 2013, after the excavation was near completion, disputes arose between the parties, specifically as to whether the Braunses were required to extend the retaining wall onto Lots 16 and 17. When Richard Brauns told Hidden Grove that the wall would terminate at the boundary of Lot 15 and 16, Hidden Grove ordered the Braunses to stop work and "get off the property."

On September 25, 2013, Hidden Grove filed suit against the Braunses alleging breach of contract and requesting specific performance of concluding the excavation and construction of a retaining wall through the backs of Lots 16 and 17. Hidden Grove later amended its petition alleging, alternatively, that it was entitled to recovery under the theory of trespass and/or unjust enrichment. The Braunses answered the petition and filed a reconventional demand, alleging they relied to their detriment on representations of Hidden Grove. They further alleged that, but-for the agreement to lower the elevations of Lots 16 and 17 at their own expense, they would not have purchased the house on Lot 14 or the vacant Lot 15. By third party demand, the Braunses named Hidden Grove, LLC, Jeffrey Mark Gossen, and Gerald Millard Gossen as defendants due to their roles on the subdivision's Architectural Control Committee.

The case proceeded to a bench trial on January 21, 2021.[1] At trial Hidden Grove abandoned its claims as to Lot 17, confining its case to Lot 16. The trial court denied Hidden Grove recovery for breach of contract or trespass. The trial court further found that Hidden Grove successfully proved its entitlement to recovery

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[1] The matter was before the court of appeal several times before the trial. *Hidden Grove, LLC v. Brauns*, 17-0250 (La. App. 3 Cir. 11/2/17), 261 So. 3d 120 (affirming summary judgment in favor of Hidden Grove dismissing Braunses' detrimental reliance claims); *Hidden Grove, LLC v. Brauns*, 19-0576 (La. App. 3 Cir. 4/1/20), 2020 WL 1663917 (not reported) (reversing and remanding grant of summary judgment in favor of Braunses on procedural grounds).

under a theory of unjust enrichment and ordered the Braunses to pay damages totaling $53,600.

The Braunses appealed, and Hidden Grove answered the appeal. The court of appeal reversed the trial court, finding the trial court manifestly erred in its determination that Hidden Grove met the elements of a claim for unjust enrichment. *Hidden Grove, LLC v. Brauns*, 21-0548 (La. App. 3 Cir. 2/9/22), -- So. 3d --. The court of appeal found that Hidden Grove failed to demonstrate its entitlement to unjust enrichment because it had not proven the fifth element of an unjust enrichment claim, *i.e.*, that there was no other remedy available at law. *Id.*, pp.10-11. The court of appeal also denied Hidden Grove's request to grant it judgment under a breach of contract or trespass theory. *Id.*, p.13. Further, the court of appeal did not consider, as pretermitted, three of the Braunses' claims, including whether (i) "the trial court erred as a matter of law in failing to recognize Hidden Grove failed to prove the fourth essential element of a cause of action for unjust enrichment"; (ii) "the trial court committed manifest error in holding Hidden Grove 'did not agree nor approve that engineering modification of lot 16'"; and (iii) "the trial court committed manifest error in holding Hidden Grove had been impoverished and the Braunses enriched." *Id.*, p.2.

This Court thereafter granted the writ application. *Hidden Grove, LLC v. Brauns*, 22-C-0757 (La. 10/4/22), 347 So. 3d 150.

ANALYSIS

The question presented is whether the court of appeal erred in reversing the district court's finding that plaintiff Hidden Grove could recover damages for a claim of unjust enrichment under Civil Code article 2298. Issues of statutory interpretation are questions of law, which this Court reviews *de novo*. *See generally Thibodeaux v. Donnell*, 08-2436, p.3 (La. 5/5/09), 9 So. 3d 120, 123. "After our review, we render judgment on the record, without deference to the legal conclusions of the

tribunals below. This court is the ultimate arbiter of the meaning of the laws of this state." *Id.* (citation omitted).

Louisiana Civil Code article 2298 ("Enrichment without cause") states:

> A person who has been enriched without cause at the expense of another person is bound to compensate that person. The term "without cause" is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. ***The remedy declared here is subsidiary and shall not be available if the law provides another remedy for the impoverishment*** or declares a contrary rule.

(Emphasis added.)

As a "subsidiary" remedy under the plain language of the statute, unjust enrichment is "only applicable to fill a gap in the law where no express remedy is provided." *Walters v. MedSouth Rec. Mgmt., LLC*, 2010-0351 (La. 6/4/10), 38 So. 3d 245, 246. Before the enactment of Article 2298, which codified existing jurisprudence, this Court set forth five requirements for proving unjust enrichment: "1) an enrichment on the part of the defendant; 2) an impoverishment on the part of the plaintiff; 3) a causal relationship between the enrichment and the impoverishment; 4) an absence of justification or cause for the enrichment or impoverishment; and 5) no other remedy at law." *Carriere v. Bank of Louisiana*, 95-3058, p. 17 (La. 12/13/96), 702 So. 2d 648, 651 (citations omitted). The parties have thus framed their dispute as whether Hidden Grove established the fifth element of enrichment without cause.

In finding plaintiffs failed to establish "no other remedy at law," the court of appeal stated:

> Th[e] language [of article 2298] is such that a remedy under unjust enrichment is based in equity as a last resort to fill a lacuna or gap in the law, *i.e.*, a general factual situation where no applicable law exists. Therefore, merely because no remedy exists under applicable law for a specific plaintiff against a specific defendant under the specific facts of a case does not dictate that the fifth element of unjust enrichment is met. ***Consideration of the reasonable actions or inactions of the specific parties in a case is relevant*** to whether one proves "no other remedy available at law." The question is not whether there is a gap in remedy available under the law as applied to these parties under these

> facts. ***Rather, the question is whether a gap exists because there is no remedy under the law had the parties acted reasonably and prudently***.
> . . .

Hidden Grove, LLC v. Brauns, 21-0548, p.9 (La. App. 3 Cir. 2/9/22), -- So. 3d -- (emphasis added). The court of appeal then held that Hidden Grove's failure to protect its interests by obtaining a written contract before beginning excavation work left it with no remedy, but "does not constitute a gap in the law for prudent parties such that equity demands a remedy." *Id.*, 21-0548, p.11. Because Hidden Grove would have had a remedy had it acted prudently and secured a written agreement, the court of appeal held that Hidden Grove did not prove the fifth element of unjust enrichment and reversed the judgment of the trial court.

As an initial matter, because the remedy is "subsidiary," we must determine whether a claim existed in contract or tort, as alleged in Hidden Grove's petition. As to the contract claim, Plaintiff appears to have abandoned that claim at this juncture.[2] Though Plaintiff does argue that the trial court erred in finding it did not successfully establish its trespass claim, we agree with the trial court and court of appeal that, based on the specific facts presented, the Braunses could not be considered trespassers. *See generally Pepper v. Triplet*, 03-0619 (La. 1/21/04), 864 So. 2d 181, 197 (trespasser is "one who goes upon the property of another ***without the other's consent***") (emphasis added).

Despite agreeing with the court of appeal on the question of whether there was trespass, we find the court of appeal's additional interpretation of the "no other remedy at law" element of Civil Code article 2298 to be in error, for two specific reasons. First, the court of appeal erroneously held that the inquiry into whether another remedy exists requires that the parties have acted in a preventive manner as "reasonable and prudent" persons, by reducing the agreement between the parties to

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[2] Hidden Grove argued in the court of appeal that the trial court erred in failing to find a breach of contract claim, but did not assign the court of appeal's affirmance of that ruling as an error here.

writing "prior to the excavation commencing on the immovable property." *Hidden Grove, LLC v. Brauns*, 21-0548, p.10-11 (La. App. 3 Cir. 2/9/22), -- So. 3d --. The Civil Code directs that the court attempt to ascertain the meaning of the statute under review by first looking to the language of the statute. *See*, *e.g.*, *Guffey v. Lexington House, LLC*, 2018-1568 (La. 5/8/19), 283 So. 3d 1001, 1008. Civil Code article 9 provides: "When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." Article 2298 instructs only that the remedy shall not be available where "the law provides another remedy for the impoverishment or declares a contrary rule." Further, the term "without cause" in the article only excludes cases in which the enrichment results from a valid juridical act.

The court of appeal's interpretation of Article 2298, on the other hand, requires a party claiming enrichment without cause to act preventively, in advance of any dispute between the parties and in advance of any litigation. According to the court of appeal, that preventive action must also be one that is "reasonabl[e]" and "prudent[]." This interpretation of the Civil Code, which inserts concepts and words where none are present, limits the remedy of enrichment without cause in contravention of the Civil Code's plain language. Article 2298 does not include any requirement that parties act as reasonably prudent persons or require any preventive action in advance of the dispute arising. Indeed, under the court of appeal's interpretation, it is not clear that enrichment without cause could ever be asserted successfully as a remedy, as there is generally—in any dispute that merits litigation—something that the parties could have done to better protect themselves before the dispute arises. By failing to adhere to the article's plain language, the court of appeal's interpretation would also render nearly meaningless the remedy of enrichment without cause. *See generally State v. All Pro Paint & Body Shop, Inc.*,

93-1316, p.14 (La. 7/5/94), 639 So. 2d 707, 716 ("[I]n construing statutes courts must endeavor to give an interpretation that will give the statutes effectiveness and purpose rather than one which renders them meaningless.").[3]

A second legal error in the court of appeal opinion is its statement (which informed its determination that Hidden Grove failed to act prudently) that because the case "invoke[d] obligations affecting immovable property," the law required the agreement be reduced to writing. Civil Code Article 1839 provides: "A ***transfer*** of immovable property must be made by authentic act or by act under private signature." (Emphasis added.) Black's Law Dictionary defines "transfer" as "[a]ny mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance." Black's Law Dictionary (11th ed. 2019). Merriam-Webster defines "transfer" as "to convey from one person . . . to another." *Merriam-Webster.com*, Jan. 4, 2023, https://www.merriam-webster.com/dictionary/transfer. The acts at issue here, notably the excavating and building (or failing to build) a retaining wall upon a neighboring property, are plainly not a "transfer" of immovable property. La. Civ. Code art. 9. Indeed, Louisiana jurisprudence is replete with cases involving obligations that ***affect*** or ***pertain*** to immovable property, but not all such contracts are required to be in writing.[4]

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[3] The court of appeal failed to cite any jurisprudence in support of its novel reasonably prudent person element. The reason appears clear, as courts have often approved awards for unjust enrichment despite a plaintiff's apparent lack of "prudence." *See USA Disaster Recovery Inc. v. St. Tammany Parish Gov't*, 13-0656 (La. 5/31/13), 145 So. 3d 235 (reinstating trial court finding of unjust enrichment despite the fact that the parties did not reduce their respective rights or obligations to writing for road clearing services after an emergency); *Gulfstream Services, Inc. v. Hot Energy Services, Inc.*, 04-1223 (La. App. 1 Cir. 3/24/05), 907 So. 2d 96 (plaintiff had claim for unjust enrichment despite fact that parties had no contract or lease agreement for purchase of portable tanks for barges), *writ denied*, 05-1064 (La. 6/17/05), 904 So. 2d 706.

[4]*See generally Boyett v. Moore*, 14-578 (La. App. 3 Cir. 12/10/14), 2014 WL 6911104 (verbal contract for building retaining wall); *Sartori v. Hunter*, 158 So. 2d 457 (La. App. 2d Cir. 1963) (verbal contract for building retaining wall and flower box); *Rocquin v. Simmons*, 187 So. 3d 472 (La. App. 4 Cir. 1966) (verbal contract for grading and landscaping work).

Further, and as set forth in the plain language of the article, the requirement of a writing for a transfer is itself not absolute. *See* La. Civ. Code art. 1839 ("[A]n oral transfer is valid between the parties when the property has been actually delivered and the transferor recognizes the transfer

CONCLUSION

For the reasons set forth above, we find that plaintiff Hidden Grove successfully proved the "no other remedy at law" element of enrichment without cause. The court of appeal is therefore reversed and the judgment of the trial court is reinstated on this issue. The matter is remanded to the court of appeal for consideration of the remaining pretermitted issues, including whether and to what extent Hidden Grove was impoverished and the Braunses were enriched by the actions at issue in this case.

REVERSED AND REMANDED

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when interrogated on oath."). The Code does provide other situations where contracts that affect immovables require writing, but none involve retaining walls. *See* La. Civil Code art. 2440 (contract to sell); article 2993 (mandate).

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Parish of Lafayette

WEIMER, C.J., concurring in part; dissenting in part.

I fully concur in the analysis and conclusion of the majority with respect to its determination that the court of appeal erred in ruling that the "no other remedy at law" element of an action for enrichment without cause was not proved in this case. Where I depart from my colleagues is in the decision to remand this matter to the court of appeal for consideration of the pretermitted issues. Specifically, I believe addressing the issues would benefit the development of the law of unjust enrichment and aid litigants and courts in this area of the law. The evidence concerning those issues was fully developed at trial and briefed by the parties. Considering the time this litigation has been pending and the completeness of the record, I would have the court exercise its appellate jurisdiction of both law and fact in civil matters in the interest of judicial efficiency and resolve the pretermitted issues now, rather than remand. See **Wooley v. Lucksinger**, 09-0571, 09-0584, 09-0585, 09-0586, p. 136 (La. 4/1/11), 61 So.3d 507, 608; see also La. Const. art. V, § 5(C).

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Hughes, J., additionally concurs with reasons.

I agree with the opinion to remand to address pretermitted issues, but note that I believe the trial court was correct in its award of damages.