NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 2009

HAL LAMB AND KERRIE LYNN LAMB

VS.

BONNABEL LAND COMPANY, INC. AND GUION JONES

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JUDGMENT RENDERED: SEP 15 2006

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ON APPEAL FROM THE
TWENTY-FIRST JUDICIAL DISTRICT COURT
DOCKET NUMBER 2004-001158, DIVISION B
PARISH OF TANGIPAHOA, STATE OF LOUISIANA

HONORABLE BRUCE C. BENNETT, JUDGE

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BONNABEL LAND CO., INC. AND GUION JONES

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

Whipple, J. concurs
Carter, C.J.

McDONALD, J.

Defendants, Bonnabel Land Company, Inc. (Bonnabel) and Guion R. Jones, appeal a trial court judgment rendered against them. For the following reasons, we amend the judgment of the trial court and affirm the judgment as amended.

FACTUAL AND PROCEDURAL BACKGROUND

This matter arises out of a purchase agreement entered into between Hal D. Lamb and Bonnabel on November 11, 2003. The agreement was signed by Lamb and Jones, on behalf of Bonnabel. Under the agreement, Lamb was to purchase certain property in Tangipahoa parish from Bonnabel for the sum of $34,000. When he signed the purchase agreement, Lamb made a down payment of $5,000 toward the purchase price, with the balance due at the closing. The agreement further provided:

> Act of sale at expense of purchaser to be passed before seller's notary on or before 30 days from date, provided that if bona fide curative work in connection with title is required, or at seller's option, the parties herewith agree to and do extend the time for passing of act of sale by up to one hundred eighty days past the aforementioned closing date.

On December 1, 2003, Jones sent a letter to Roy S. Lilley of Evergreen Title Company, L.L.C., the notary before whom the act of sale was to be passed. In the letter, Jones exercised the seller's option to extend the time for passing the act of sale "until the last day of the year, 2003." Although Jones contends that he verbally advised Lamb that the time for completing the sale had been extended, Lamb testified that he never had a conversation with Jones about an extension during the initial thirty-day period. Regardless, the record is clear that no written notice of the extension was sent to Lamb.

On December 19, 2003, after the initial thirty-day period had passed, Lilley contacted Lamb in order to schedule the closing. Lamb told Lilley that he would call him back. Instead, however, Lamb called Jones, and insisting that he had a

bad feeling about Lilley, requested that Jones select a different notary to handle the closing. Jones advised Lamb that he did not want to change notaries at that point in the process.

When Lilley did not receive a return call from Lamb to schedule the closing, he sent Lamb a letter advising him that the closing was scheduled for December 23, 2003. Although Lamb acknowledged that he had received the letter on December 20, 2003, he and his wife failed to appear for the closing. Therefore, Lilley formally placed the Lambs in default, and Bonnabel retained the down payment, despite demand for its return by an attorney hired by Lamb.

On April 2, 2004, the Lambs filed suit against Bonnabel and Jones for return of the down payment, damages, and attorney's fees. After a bench trial, the trial court rendered judgment in favor of the Lambs and against Bonnabel and Jones, in solido, for the return of the $5,000 down payment, along with legal interest from the date of judicial demand until paid, attorney's fees in the amount of $2,000, and all costs of court. It is from this judgment that the defendants have appealed.

DISCUSSION

With their first three assignments of error, the defendants challenge the trial court's interpretation of the purchase agreement. Specifically, the defendants contend that the trial court erred in: (1) finding that the exercise of the option to extend the closing had to be communicated in writing to the purchaser; (2) finding that the purchase agreement was invalid because the sale had not been closed during the initial term of the agreement; and (3) not finding that the purchasers had breached the purchase agreement and had been properly placed in default.

The courts have long held that an extension of the time stipulated for passage of title to property in a written contract to purchase and sell real estate must be in writing. **Burk Development Co., Inc. v. Guillory**, 335 So.2d 512, 513 (La. App. 1 Cir. 1976); **Harrell v. Stumberg**, 220 La. 811, 815, 57 So.2d 692, 694

(La. 1952). Although the purchase agreement authorized the seller to extend the time for completing the sale, it is undisputed that no written notification of the extension was ever sent to Lamb. Therefore, we agree with the finding of the trial court that the extension was not properly invoked.

Having determined that the extension was not properly exercised, we now address the issue of the continued viability of the purchase agreement after the passage of the initial thirty-day period. Defendants contend that the purchase agreement remained in effect after the initial term passed, relying on the case of **Luna v. Atchafalaya Realty, Inc.**, 325 So.2d 835 (La. App. 1 Cir. 1976).

In **Luna**, the issue before the court was whether or not the contract had expired pursuant to its terms when title to the property was not passed by the deadline specified in the agreement due to delays in obtaining a loan. The initial deadline passed, and a new date was set for the closing. Both the seller and the purchaser were present at the closing, but the purchaser left prior to signing. The purchaser was ultimately advised by the realtor to take title or forfeit his deposit. The purchaser refused to take title and sued for the return of his deposit, contending that the contract was no longer effective once the date specified in the purchase agreement had passed without the execution of the act of sale. **Luna**, 325 So.2d at 835-837.

The First Circuit determined that the contract remained viable after the deadline specified in the purchase agreement because time was not of the essence of the agreement. The court found that the contract itself did not provide that time was of the essence, and the parties did not indicate by their actions that time was of the essence. Therefore, the court concluded that neither party was in default of the agreement until the seller demanded specific performance from the buyer. **Luna,** 325 So.2d at 838-839.

The facts in **Luna** are similar to those in the matter currently before this court; however, the cases are distinguishable. Unlike the agreement in **Luna**, the purchase agreement in this case contained the following clause:

> The seller shall deliver to purchaser a merchantable title, and his inability to deliver such title within the time stipulated herein shall render this contract null and void, reserving unto purchaser the right to demand the return of any monies paid from the holder thereof.

This clause also was found in the purchase agreement discussed in the case of **Wells v. Spears**, 255 So.2d 215 (La. App. 1 Cir. 1971). In **Wells**, title to the property was not passed by the date set in the purchase agreement. As in the case before this court, the agreement also provided for an extension if bona fide curative work in connection with the title were required. Neither party made any effort to complete the sale within the initial time period, nor did the parties obtain an extension in writing. The court determined that the purchase agreement had expired by its own provisions, since no action had been taken within the term of the contract. **Wells**, 255 So.2d at 220.

As in **Wells**, neither party in this case attempted to set the closing within the initial term contemplated by the purchase agreement. Therefore, by its own terms, the purchase agreement was null and void, reserving to the purchaser the right to demand the return of his down payment. Furthermore, because the purchase agreement was null and void upon the passage of the initial thirty-day period, Jones and Bonnabel no longer had the right to demand specific performance of the contract or place the Lambs in default on December 23, 2003. Accordingly, these assignments of error are without merit.

With their fourth assignment of error, the defendants contend that the trial court erred in awarding attorney's fees to the plaintiffs without evidence to prove

the time and effort expended by the plaintiffs' attorney.[1] A trial judge has great discretion in arriving at an award of attorney's fees, and such a ruling will not be reversed on appeal without a showing of clear abuse of discretion. **Burford v. Burford**, 95-2318, p. 5 (La. App. 1 Cir. 6/28/96), 677 So.2d 722, 725. There is no requirement that the trial court hear evidence concerning the time spent or the hourly rates charged to make an award of attorney's fees since the record will reflect much of the services rendered. **Burford**, 95-2318 at p. 5, 677 So.2d at 725.

In the matter before this court, the record indicates that plaintiffs' attorney filed suit on their behalf on April 2, 2004. He prepared for a bench trial in which he participated on the afternoon of May 3, 2005. Furthermore, he prepared various additional pleadings and the final judgment in this matter. Under the circumstances, we cannot say that an award of $2,000 for attorney's fees constitutes an abuse of discretion.

In their final assignment of error, defendants contend that the trial court erred in rendering judgment against Jones in his individual capacity. The record is clear that Jones was acting on behalf of Bonnabel, and not in his individual capacity, at all times pertinent to this matter. However, the record also indicates that the down payment Lamb paid was by check made to the order of Guion R. Jones. Furthermore, Jones testified at trial that he did not remember whether he deposited the check in Bonnabel's account or in his personal account. As noted above, the purchase agreement allowed the purchaser the right to demand the return of the down payment "from the holder thereof." Because it is not clear from the record into which account Jones deposited the down payment, judgment against him for return of the down payment, along with legal interest on that amount, is proper. However, as Jones was never a party to the purchase

[1] The purchase agreement provided, "Either party hereto who fails, for any reason whatsoever, to comply with the terms of this offer, if accepted, is obligated and agrees to pay all reasonable attorney's fees and costs incurred by the other party in enforcing their respective rights."

agreement, an award of attorney's fees may not be rendered against him in his individual capacity.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is amended to read, in part, as follows:

> IT IS ORDERED, ADJUDGED AND DECREED that judgment be granted in favor of the plaintiffs Hal Lamb and Kerrie Lynn Lamb and against the defendants Bonnabel Land Company, Inc. and Guion R. Jones, in solido, for the full sum of $5,000, plus legal interest from the date of judicial demand until paid, and for all costs of these proceedings.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be granted in favor of the plaintiffs Hal Lamb and Kerrie Lynn Lamb and against Bonnabel Land Company, Inc. for attorney's fees in the amount of $2,000.

In all other respects, the judgment of the trial court is affirmed. Defendants, Bonnabel Land Company, Inc. and Guion R. Jones, are cast for all costs of this appeal.

AFFIRMED, AS AMENDED.