

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 1969

BUSINESS BROKERS OF LOUISIANA, INC. D/B/A SUNBELT  
BUSINESS BROKERS, (SUNBELT)

VERSUS

PETER VAN DEN AARDWEG, RONALD TIM FREDERIC,  
FREDERIC MARINE SERVICES, INC. AND TURNKEY MARINE  
SERVICES, INC.

**Judgment rendered December 28, 2006.**

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Appealed from the  
16th Judicial District Court  
in and for the Parish of St. Mary, Louisiana  
Trial Court No. 110,570  
Honorable John E. Conery, Judge

\* \* \* \* \*

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PETER VAN DEN AARDWEG AND  
TURNKEY MARINE SERVICES, INC.

\* \* \* \* \*

**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

*Hughes, J. concurs.*

## **PETTIGREW, J.**

In this case Business Brokers of Louisiana, Inc., hereinafter referred to as "appellant," appeals the trial court's judgment of May 16, 2005, granting a summary judgment in favor of Peter Van Den Aardweg and Turnkey Marine Services, Inc., hereinafter referred to as "appellees," dismissing all of appellant's causes of actions and demands against appellees with prejudice.

Appellant had filed suit on June 10, 2002, against appellees and co-defendants, seeking damages against appellees for breach of a verbal listing agreement for the sale of appellees' business. Appellees sold their business assets and corporate stock to Turnkey Acquisition on or about September 27, 2001, for a total sum of \$795,205.00. Appellant is claiming a ten percent commission on said sale.

### **ASSIGNMENT OF ERROR**

Appellant has raised only one assignment of error as follows:

1. The trial court erred in finding that there was no genuine issues of material fact regarding the existence of an oral contract.

### **DISCUSSION**

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine factual dispute. **Sanders v. Ashland Oil, Inc.**, 96-1751, p. 5 (La. App. 1 Cir. 6/20/97), 696 So.2d 1031, 1034, writ denied, 97-1911 (La. 10/31/97), 703 So.2d 29. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B). Summary judgment is favored and "is designed to secure the just, speedy, and inexpensive determination of every action."<sup>1</sup> La. Code Civ. P. art. 966 A(2).

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<sup>1</sup> Prior to the 1996 amendments of Article 966, jurisprudence held that summary procedure should be used cautiously and sparingly, and that any reasonable doubt should be resolved against mover and in favor of a trial on the merits. See **Autin v. United Diesel, Inc.**, 95-1886, pp. 3-4 (La. App. 1 Cir. 4/30/96), 673 So.2d 316, 318. In **Pitre v. GAF Corporation**, 97-1024, pp. 7-8 (La. App. 1 Cir. 12/29/97), 705 So.2d 1149, 1152-1153, writ denied, 98-0723 (La. 11/19/99), 749 So.2d 666, this court noted that these statutory amendments were procedural in nature and should be applied retroactively.

The burden of proof on a motion for summary judgment is set forth in La. Code Civ. P. art. 966 C(2):

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact.

The initial burden of proof remains with the mover and is not shifted to the non-moving party until the mover has properly supported the motion and carried the initial burden of proof. Only then must the non-moving party "submit evidence showing the existence of specific facts establishing a genuine issue of material fact." See **Scott v. McDaniel**, 96-1509, p. 5 (La. App. 1 Cir. 5/9/97), 694 So.2d 1189, 1191-1192, writ denied, 97-1551 (La. 9/26/97), 701 So.2d 991. If the non-moving party fails to do so, there is no genuine issue of material fact, and summary judgment should be granted. La. Code Civ. P. arts. 966 and 967.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Sanders**, 96-1751 at 7, 696 So.2d at 1035. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Walker v. Phi Beta Sigma Fraternity (RHO Chapter)**, 96-2345, p. 6 (La. App. 1 Cir. 12/29/97), 706 So.2d 525, 528.

The appellant contends that it had a verbal listing agreement contract with the appellees entitling it to a ten percent commission on the sales price of \$795,205.00 of appellees' stock and company assets.

A contract arises only where both parties thereto have agreed to its terms. **Colgin v. Security Storage & Van Co.**, 23 So.2d 36, 40 (La. 1945); **Haney v. Maryland**

**Casualty Co.** 74 So.2d 332, 333 (La. App. 1 Cir. 1954). A verbal contract for an amount over \$500.00 is controlled by La. Civ. Code art. 1846, which states as follows:

When a writing is not required by law, a contract not reduced to writing, for a price or, in the absence of a price, for a value not in excess of five hundred dollars may be proved by competent evidence.

If the price or value is in excess of five hundred dollars, the contract must be proved by at least one witness and other corroborating circumstances.

It is well established in the jurisprudence of Louisiana that the party asserting a verbal contract has the burden to prove the contract. **Haney**, 74 So.2d at 333. In order to prove the existence of an oral contract for a price or a value exceeding \$500.00, only one witness and other generally corroborating evidence is required. **Peter Vicari General Contractor, Inc. v. St. Pierre**, 02-250, p. 8 (La. App. 5 Cir. 10/16/02), 831 So.2d 296, 301. Corroborating circumstances that are required to prove a verbal contract of a value over \$500.00 must come from a source other than the appellant. **Gulf Container Repair Services, Inc. v. FIC Business & Financial Centers, Inc.**, 98-1144, p. 5 (La. App. 5 Cir. 3/10/99), 735 So.2d 41, 43.

### **CONCLUSION**

After a thorough *de novo* review of the record, we agree with the trial court that there are no material issues of fact and that the appellant failed to present satisfactory evidence proving a verbal contract with appellees. We therefore affirm the summary judgment granted by the trial court in favor of the appellees.

This memorandum opinion is done in accordance with U.R.C.A. Rule 2-16.1B. All court costs of this appeal are assessed against appellant.

**AFFIRMED.**