

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0952

CONTIMORTGAGE CORPORATION

VERSUS

EARNEST PATTERSON AND RHODA SOUTHALL
PATTERSON

Judgment rendered May 4, 2007.

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 451,646
Honorable William A. Morvant, Judge

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LEON HEATING AND AIR CONDITION

* * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Hughes, J., concurs.

*J.C.M.
B.R.*

PETTIGREW, J.

The present litigation began as an executory proceeding initiated by the transferee of a promissory note that secured a mortgage encumbering certain immovable property owned by defendants and situated in East Baton Rouge Parish, Louisiana. In response to the executory proceeding, the defendants filed a reconventional demand against the transferee of the note, as well as a third-party demand against the originator of the loan and the general contractor. The unpaid subcontractor subsequently intervened in this action. After satisfaction of the indebtedness, demands by and against the transferee were released via summary judgment. Following a trial, judgment was issued in favor of the loan originator, rendering moot the third-party claims put forth by defendants. The intervention claim by the subcontractor was also dismissed. From this judgment, defendants now appeal. We affirm.

FACTS

A review of the record in this matter reveals that the original defendants, Earnest Patterson ("Mr. Patterson") and his wife, Rhoda Southall Patterson ("Mrs. Patterson"), were approached by a representative of Siding-For-Less, Inc., who proposed to install an air-conditioning system with ducts and vents in their family home situated at 10425 Avenue K in Baton Rouge, Louisiana, for \$8,000.00. Siding-For-Less thereafter contacted American Fidelity, Inc. ("American Fidelity"), which agreed to finance the air-conditioning system purchased by Mr. and Mrs. Patterson. Siding-For-Less thereafter subcontracted with Leon Johnson, d/b/a Leon's Heating & Air-condition Company, Inc. ("Leon's Heating & Air-condition"), for the installation of the air-conditioning system in the home of Mr. and Mrs. Patterson for \$5,850.00. Accent Title Company, representing the borrowers as well as the lenders, served as the closing attorneys on the Patterson's loan through American Fidelity. For this service, Accent Title was paid \$2,000.00.

American Fidelity purportedly agreed not to disburse the loan proceeds to Siding-For-Less until it received notification from Mr. or Mrs. Patterson that the contracted work had been satisfactorily completed. When the work was nearly complete, Mrs. Patterson received a telephone call from Mr. Johnson who advised that although American Fidelity

had previously disbursed the proceeds of the Patterson loan to Siding-For-Less, Mr. Johnson had not received any payment for his work.

Mrs. Patterson testified that she thereafter telephoned American Fidelity and learned that employees or agents of American Fidelity had inexplicably disbursed a check for \$8,000.00 to Siding-For-Less on September 8, 1997. Later, Mrs. Patterson received a certified demand letter sent to her on behalf of Mr. Johnson seeking payment for his services. Mr. and Mrs. Patterson subsequently obtained legal representation and were advised to cease further payments on the American Fidelity loan that had been transferred by notarial endorsement to Contimortgage Corporation ("Contimortgage") on September 3, 1997.

On July 15, 1998, Contimortgage filed a Petition for Executory Process naming Mr. and Mrs. Patterson as defendants therein. In its petition, Contimortgage asserted that it was the owner of a \$10,000.00 promissory note executed by Mr. and Mrs. Patterson and dated September 3, 1997. Pursuant to the said petition, an order for executory process was thereafter issued on July 17, 1998, and in furtherance thereof, the Sheriff of East Baton Rouge Parish seized the interests of Mr. and Mrs. Patterson in the subject premises.

On September 8, 1998, Mr. and Mrs. Patterson filed an Answer, Reconventional Demand, Third-Party Demand, and Petition for Injunction in an attempt to arrest the seizure and sale of their home. Mr. and Mrs. Patterson further put forth a third-party demand against American Fidelity and Siding-For-Less wherein they asserted that American Fidelity and Siding-For-Less should be held liable for the \$5,850.00 claim brought against Mr. and Mrs. Patterson by Leon's Heating & Air-condition. Following a hearing on November 23, 1998, the district court, after considering the law and the evidence, and for reasons orally assigned, denied the Pattersons' request to enjoin the sheriff's sale of their property. A judgment to this effect was later signed on December 8, 1998. Mr. and Mrs. Patterson's subsequent motion for a new trial was also denied.

Ultimately, Mr. and Mrs. Patterson secured another loan for the purpose of paying off their indebtedness to Contimortgage and preventing the seizure and sale of their home. On July 12, 1999, Leon's Heating & Air-condition was granted leave of court and

allowed to intervene in this action.¹ Mr. Patterson died on April 18, 2000, and his daughter and sole heir, Rassie Patterson James ("Ms. James") joined her mother as a plaintiff in this matter.

On May 2, 2000, Contimortgage filed a motion for summary judgment with respect to the reconventional demand brought against it by Mr. and Mrs. Patterson and claimed that the unpaid mortgage that formed the basis of the original litigation had been paid in full. Contimortgage asserted in its supporting memorandum that no allegation of wrongful conduct was made against it, and that the subject litigation was essentially a dispute between the Pattersons and their contractor, subcontractor, or the disbursing title company.² Said motion was submitted to the court on briefs, and in a judgment signed on July 5, 2000, the trial court granted the motion for summary judgment and dismissed Contimortgage from this litigation based upon a showing that all costs and commissions had been satisfied.

Prior to the rendition of this judgment, third-party defendant, American Fidelity, filed a cross claim against the defendant in the third-party demand, Siding-For-Less. The matter thereafter proceeded to trial on the remaining issues, i.e., the Pattersons' third-party claims against American Fidelity and Siding-For-Less, the cross-claim of American Fidelity against Siding-For-Less, and the intervention claim put forth on behalf of Leon's Heating & Air-condition.

Following a bench trial, the trial court rendered judgment in favor of American Fidelity, dismissing the third-party demand filed against it by the Pattersons thereby rendering moot the third-party claim and cross claim put forth against Siding-For-Less. In addition, the intervention claim asserted by Leon's Heating & Air-condition was dismissed. A judgment to this effect was later signed on November 14, 2005.

¹ Leon's Heating & Air-condition filed a motion to intervene in this matter and asserted a claim against the Pattersons and American Fidelity for \$5,850.00. Inexplicably, Leon's Heating & Air-condition did not assert a claim against its contractor, Siding-For-Less, which hired it to perform the work on the Pattersons' home.

² The title company, Accent Title, was never made a party to this litigation.

Thereafter, Leon's Heating & Air-condition filed a motion requesting a new trial. Following a hearing, the trial court, on January 17, 2006, signed a judgment denying the motion for new trial filed on behalf of Leon's Heating & Air-condition.

On March 14, 2006, Mrs. Patterson and Ms. James moved for a devolutive appeal from the trial court's judgment of November 14, 2005, as well as its judgment of January 17, 2006, that denied the motion for new trial filed on behalf of Leon's Heating & Air-condition. Mrs. Patterson also moved to appeal the trial court's judgment of June 19, 2000, that released the original plaintiff, Contimortgage, via summary judgment.

ISSUES

In connection with their appeal in this matter, Mrs. Patterson and Ms. James set forth the following issues for consideration by this court:

1. Whether the third-party defendant, American Fidelity, Inc., is liable to the appellants when the closing attorney retained by them was negligent in paying the third-party defendant, Siding-For-Less, without obtaining the appellants' authorization that the terms of the contract between the appellants and Siding-For-Less had been completed to the appellants' satisfaction?
2. Whether the appellants are entitled to recover from the third-party defendant, American Fidelity, Inc. and the original plaintiff and defendant-in-reconvention, Contimortgage Corporation, the damages that they suffered as a result of the closing attorney's failure to pay the subcontractor for the installation of a heating and air-conditioning system in the home of the appellants and the original contractor had been improperly paid before the terms of the contract had been completed to the appellants' satisfaction?

STANDARD OF REVIEW

The Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extends to both law and facts. La. Const., art. V, § 10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. See **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882, n.2 (La. 1993). If the trial court or jury findings are reasonable in light of the record reviewed in its entirety, an appellate court may not reverse even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot

be manifestly erroneous or clearly wrong. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989).

DISCUSSION

In reviewing this matter, we note that Mrs. Patterson and Ms. James are seeking review of two judgments -- the judgment of July 5, 2000, which released Contimortgage via a motion for summary judgment and the concomitant reconventional demand brought against it by Mr. and Mrs. Patterson, and secondly, the judgment of November 14, 2005, that dismissed the Pattersons' third-party claims against American Fidelity and Siding-For-Less.

With respect to the judgment of July 5, 2000 that released Contimortgage, we conclude that said judgment constituted a partial final judgment pursuant to La. Code Civ. P. art. 1915(A), and could have thereafter been appealed. Louisiana Code of Civil Procedure article 1915 provides in pertinent part that

[a] final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court . . . [d]ismisses a suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.

La. Code Civ. P. art. 1915(A)1.

As no appeal was taken following the trial court's grant of Contimortgage's motion for summary judgment on July 5, 2000, said judgment has become definitive and as such, is no longer subject to appeal.

The second judgment that Mrs. Patterson and Ms. James seek to appeal is the judgment of November 14, 2005. This judgment dismissed the Pattersons' third-party claims against American Fidelity and Siding-For-Less. At the conclusion of the trial on October 19, 2005, the trial court, in transcribed oral reasons for judgment opined in pertinent part:

The loan documents and [former American Fidelity loan officer] Mr. Drake's testimony reflect that it was the borrower's responsibility to deliver checks to the creditors. The settlement statement that's contained in the record shows that the funds to be distributed were to a single creditor, Siding for Less, in the amount of \$8,000. There is no escrow agreement in the record. There is no retainage agreement between the Pattersons and American Fidelity requiring them to hold the proceeds under the terms and

conditions of that escrow or retainage agreement. However, Mr. Drake testified that he was verbally requested by the Pattersons to hold the check and although it was under no requirement to do so under the loan documents, did so as a courtesy to the Pattersons. Mr. Drake then testified that approximately one week after the closing he received a call from a female who identified herself as Ms. Patterson, although Ms. Patterson has testified today it was not her. That individual advised Mr. Drake that the work had been done and, therefore, the check was released. Even assuming that – and I’m going to take this fact as established for the purposes of my ruling, that there was an oral request to hold it, first, I don’t find that there was a breach of that request, or even if there was, it does not render American Fidelity liable for the disbursement of that check because, actually, the disbursement was consistent with the settlement statement that was executed by the parties at the closing. So for those reasons, the Court is going to grant judgment in favor of American Fidelity on the third-party demand by the Pattersons. That will also moot or dismiss American Fidelity’s cross-claim against Siding for Less. There is a third-party demand that was filed by the Pattersons against Siding for Less and an intervention filed against the Pattersons by Leon’s Air Conditioning. As I appreciate the testimony that’s been presented to the Court today, and this is based on the testimony of Mr. Leon Johnson who was the owner of Leon’s Air Conditioning and Ms. Rhoda Patterson, and again, looking at the November 23, ’98, transcript testimony, what I’m dealing with is two separate contracts. I’ve got a contract between the Pattersons and Siding for Less for the installation of an air conditioning and heating unit at their residence. I’ve got a second contract between Siding for Less and Leon’s Heating & Air Conditioning for the same job at the Patterson’s residence. Neither of these appear to have been recorded and it doesn’t appear that this is a case under the Private Works Act. And in fact, Mr. Leon Johnson testified that he was supposed to be paid on this job by Siding for Less, that [he] had done prior jobs for them in the past and had been paid by Siding for Less for those jobs. Again, I’ve got the Pattersons executing a contract with Siding for Less. I’ve got Mr. Leon Johnson executing a contract with Siding for Less. The record establishes, and I don’t think that there is any dispute whatsoever, that after the closing and after Mr. Drake received the phone call, which he assumed was from Ms. Patterson – that fact is in dispute – that the \$8,000 disbursement check was released to Siding for Less in full payment of the contractual obligations that the Pattersons entered into with Siding for Less. I think that at that point it extinguishes any responsibilities y’all have for Siding for Less, and I think that any recovery Mr. Johnson is going to have would not be against the Pattersons, but is going to be against the person for whom he entered the contract with and to whom Mr. Leon Johnson testified that he looked to for payment, that being Siding for Less. So I will dismiss the intervention of Mr. Johnson as against the Pattersons. In doing so, that basically moots the Pattersons claim against Siding for Less. I can’t see under any stretch of the imagination how the Pattersons are going to be required to pay \$8,000, plus \$5,800 for an air conditioning unit. I think you’ve discharged your obligations once that disbursement check was tendered to the creditor pursuant to the terms of the settlement disclosure sheet.

Based upon a thorough review of the record in this matter, and the well-reasoned findings made by the trial court, we find no manifest error. This issue is without merit.

DECREE

For the above and foregoing reasons, the judgments of the trial court are hereby affirmed. All costs associated with this appeal shall be assessed against Mrs. Patterson and Ms. James.

AFFIRMED.