

Judgment rendered September 4, 2013.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 48,356-CA
No. 48,357-CA
(Consolidated Cases)

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

No. 48,356-CA
IRB PROPERTIES, LLC

Plaintiff-Appellant

versus

NEIGHBORHOOD PROPERTY
MANAGEMENT, INC., ET AL

Defendants-Appellees

consolidated with

No. 48,357-CA
JEMICO INVESTMENTS, LLC, ET AL.

Plaintiffs-Appellees

versus

MS. WHITE, ET AL

Defendants-Appellants

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 548,813; No. 551,439

Honorable Jeanette Garrett, Judge

* * * * *

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* * * * *

Before BROWN, STEWART, and MOORE, JJ.

NOT DESIGNATED FOR PUBLICATION.
Rule 2-16.3, Uniform Rules, Courts of Appeal

BROWN, CHIEF JUDGE, dissents with written reasons.

STEWART, J.

At issue in this appeal by IRB Properties, L.L.C. (“IRB”), a plaintiff and defendant-in-reconvention, is whether the trial court erred in ordering it to reimburse Neighborhood Property Management, Inc. (“NPM”), a defendant and plaintiff-in-reconvention, rent it collected over a six month period prior to NPM’s sale of its interest in the rental property to IRB. Finding no error in the trial court’s equitable judgment, we affirm.

FACTS

In January 2010, IRB paid the City of Shreveport \$728.70 for an adjudicated property described as follows:

Lot 12, Block 1, Kansas City Southern Railway Subdivision, a Subdivision of the City of Shreveport, Caddo Parish, Louisiana, together with all buildings and improvements located thereon and having a municipal address of 3232 Lillian Street, Shreveport, LA 71109. (Assessor’s Geo. No. 171403-158-001200)

The cash sale deed between IRB and the city was filed in the conveyance records on January 19, 2010. When Kevin Schmidt (“Schmidt”), the owner and manager of IRB, visited its acquisition, he saw a house with the address 3232 Lillian Street on the corner lot and concluded that it was the property IRB purchased. Schmidt went to the house, which was a rental property, and advised the tenant, who is referred to in the record as “Ms. White,” that IRB was the new owner. Thereafter, Ms. White began paying rent of \$500 per month to IRB.

Unbeknownst to IRB at that time, the house at 3232 Lillian Street was actually located on property described as follows:

Lot Eleven (11), Block 1, Kansas City Southern Railway, a Subdivision of Caddo Parish, Louisiana as per plat recorded in the Conveyance Records of Caddo Parish, Louisiana,

together with all buildings and improvements thereon, known as municipal address 3232 Lillian, Shreveport, LA 71109. GEO 171403158001100.

NPM had acquired Lot 11 in 1999, but the property had been subject to a number of tax sales beginning when NPM had stopped paying taxes on it in 2005. However, NPM had remained in possession of the property and had been leasing the house at 3232 Lillian Street to Ms. White for three years until IRB claimed ownership. Clarence Sanders (“Sanders”), NPM’s owner, testified that Ms. White called him after speaking with Schmidt and that he advised her to cooperate. Sanders testified that he was recovering from a heart attack at the time and did not need stress. He also testified that he had looked into redeeming the property in 2009 but was unable to follow the paper trail of the tax sales.¹ Thus, he had not redeemed Lot 11.

In August 2010, Schmidt was contacted by Summa Stelly of Jemico Investments, L.L.C. (“Jemico”), who claimed that it had bought Lot 11, the property with the house on it.² After investigating the property and learning of NPM’s connection to it, Schmidt contacted Sanders and offered to buy NPM’s interest in Lot 11. Sanders agreed to sell for a price of \$1,000. Schmidt prepared a cash sale deed and went to Sanders’ house to have it

¹Exhibits entered into evidence show that Lot 11 was sold to “Fein, Sneil” after nonpayment of the 2005 property taxes. Lot 11 was then sold to Mooring Tax Asset Group via a tax sale deed on June 8, 2007, after nonpayment of the 2006 taxes. Lot 11 was again sold for nonpayment of the 2008 parish property taxes to Adair Asset Management, LLC / US Bank via a tax sale certificate dated May 22, 2009. The record also shows that Lot 11 had been adjudicated to Cody Investments, LLC, for nonpayment of the 2008 city taxes by Mooring Tax Asset Group and that IRB paid \$280.07 on October 8, 2010, to redeem the property from this tax sale.

²No exhibits evidencing Jemico’s purchase of Lot 11 were introduced into the record. Jemico and IRB settled their dispute over ownership of Lot 11 by consent judgment under which Jemico received all right, title, and interest in and to Lot 11.

signed and notarized. However, the deed mistakenly designated IRB as the grantor and NPM as the grantee.

In December 2010, Sanders was contacted by Jemico, who claimed to have purchased Lot 11. Sanders then sold his interest in Lot 11 to Jemico via a transfer deed.

On February 23, 2011, Jemico began proceedings in Shreveport City Court to evict Ms. White from 3232 Lillian Street. Claiming an ownership interest in the property, IRB intervened. IRB also sued NPM and Jemico in district court to reform the August 2010 cash sale deed between itself and NPM to correctly reflect IRB as the grantee and NPM as the grantor and to nullify the transfer deed between NPM and Jemico. Alleging that it had been unlawfully evicted and dispossessed of 3232 Lillian Street / Lot 11 by IRB, NPM reconvened against IRB for the rent it collected and for sums NPM spent on improvements.

IRB and Jemico resolved matters between them and reached a consent judgment. Each party waived its respective claims and IRB agreed to not dispute Jemico's claim of ownership and / or possession of Lot 11.

The claims between IRB and NPM were tried on October 10, 2012. On IRB's claim to reform the August 2010 cash sale deed, the trial court found that the parties intended for NPM to sell its interest in Lot 11 to IRB and that the deed should be reformed to reflect NPM as the vendor / grantor and IRB as the vendee / grantee. On NPM's reconventional demand, the trial court denied its claim for sums spent on improvements in 2009, prior to when IRB took possession of the property, but granted its claim for

reimbursement of rent payments collected by IRB. The trial court found that IRB had no claim to anything on Lot 11 and no right to collect the rent until it corrected the August 2010 cash sale deed. Judgment reforming the August 2010 cash sale deed and ordering IRB to pay NPM \$3,145 was signed on October 30, 2012. IRB now appeals.

DISCUSSION

IRB argues that NPM has no right to the reimbursement of rent as ordered by the trial court because it lost any ownership interest it had in Lot 11 when it failed to timely redeem the property following the tax sale after it failed to pay the 2005 taxes. Alternatively, IRB argues that NPM's conveyance of all of its interest in Lot 11 via the August 10, 2010, cash sale deed reformed by the trial court precludes it from recovering the rent collected between February and August 2010.

The record shows that NPM did not redeem Lot 11 after it was sold for the delinquent 2005 taxes. Former La. R.S. 47:2221, in effect at that time and in accordance with La. Const. Art. VII, §25, provided that property sold at a tax sale "shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption." Upon expiration of the three-year period without redemption, the tax title is valid and redemption is no longer available to the tax debtor, whose only recourse is to attack the validity of the tax sale as provided by law. *Securities Mortg. Co., Inc. v. Triplett*, 374 So. 2d 1226

(La. 1979). NPM's redemption period has expired, and it has not sought to invalidate the tax sale by which it lost title to Lot 11.

Nevertheless, it appears from the record that NPM remained in possession of Lot 11 through the years following its loss of title until IRB claimed to have purchased the property and demanded that Ms. White begin paying the rent to it. The record also shows that IRB had no interest in Lot 11 at any time, a fact overlooked by IRB in its arguments. IRB purchased Lot 12, not Lot 11, at the January 2010 tax sale. That purchase gave it no right to demand rent from Ms. White for the house located on Lot 11. Also, because NPM no longer owned Lot 11, as discussed above, it had no interests to convey to IRB via the August 10, 2010, cash sale deed. Thus, even though reformed to reflect the parties' true intent, the deed transferred no real rights.

For purposes of a possessor's right of accession, neither NPM nor IRB appear to have been possessors in good faith as defined by La. C. C. art. 487. A possessor in good faith is one who possesses by virtue of an act translative of ownership and does not know of any defects in his ownership. La. C. C. art. 487. While NPM, as the former owner, likely possessed by virtue of an act translative of ownership, it was aware of defects in its ownership due to the loss of the property to a tax sale for its delinquent 2005 taxes and its failure to thereafter timely redeem Lot 11. During the months in question, IRB, to the extent it possessed Lot 11, did not do so by virtue of an act translative of ownership. As stated, IRB had purchased Lot 12, not Lot 11, at the January 2010 tax sale. We note that this is not a case

where an owner is seeking to be reimbursed for the fruits collected by a possessor in bad faith. In such a case, the bad faith possessor would be bound to restore the fruits or their value, subject to his claim for reimbursement of expenses. *See* La. C. C. art. 486. Rather, this is a case involving the competing claims of two possessors, both of whom lacked good faith. With IRB having no rights at all to Lot 11, the equities weigh in favor of NPM, the former owner who had been in possession of the property for a number of years after losing it at a tax sale for delinquent 2005 taxes.

In reviewing the propriety of the trial court's judgment ordering IRB to pay NPM the rent collected for the house on Lot 11, we find that it must be viewed as an equitable remedy in line with the doctrine of unjust enrichment or enrichment without cause under La. C. C. art. 2298. One enriched without cause at the expense of another is bound to compensate that person. La. C. C. art. 2298. A claim of unjust enrichment requires (1) an enrichment, (2) an impoverishment, (3) a connection between the enrichment and resulting impoverishment, (4) an absence of justification or cause for the enrichment and impoverishment, and (5) no other remedy at law available to the plaintiff. *Finova Capital Corp. v. IT Corp.*, 33,994 (La. App. 2d Cir. 12/15/00), 774 So. 2d 1129, *citing Baker v. Maclay Properties Co.*, 94-1529 (La. 1/17/95), 648 So. 2d 888.

Here, IRB obtained an enrichment by collecting the rent from the tenant of the house on Lot 11 during the months of February through August 2010. This resulted in an impoverishment to NPM, which was deprived of the rent it had been collecting as possessor and former owner of

Lot 11. There was no justification or cause for IRB's enrichment or NPM's impoverishment considering that IRB, which had not purchased Lot 11 at the January 2010 tax sale, had no right to demand and collect the rent from Ms. White. Lastly, there appears to be no other remedy at law available to NPM to obtain the rent of which it was deprived by IRB's actions. On this basis, we affirm the trial court's judgment ordering IRB to pay NPM \$3,145 for the rent collected over the six month period from February to August 2010.

CONCLUSION

For the reasons stated, we affirm the trial court's judgment. Costs of appeal are assessed to the appellant, IRB.

AFFIRMED.

BROWN, CHIEF JUDGE, dissents

NPM had no rights at all to Lot 11 and, as found by the majority, was a bad faith possessor. How is it possible that the equities weigh in favor of a bad faith possessor? NPM agreed that it intentionally collected rent for several years knowing that it did not own the property. NPM acquiesced in IRB's possession because NPM knew that it did not own the property.

On January 8, 2010, IRB purchased at a tax sale a corner lot next to the property. Specifically, IRB purchased Lot 12 Block 1, Kansas City Southern Railway Subdivision, *bearing the municipal address of 3232 Lillian Street, Shreveport, Louisiana*. Lot 12 was actually an empty lot. IRB possessed by virtue of an act translative of ownership—they just mistakenly possessed beyond their title. The act transferring title to IRB identified the property as 3232 Lillian Street. Lot 11 is 3232 Lillian Street. IRB mistakenly believed that the property it had purchased included the house located next to Lot 12 because the house displayed a sign with the address “3232 Lillian Street.” This resulting confusion caused IRB to conclude that it was the owner of the house being rented to Ms. White.

From January to August 2010, IRB collected rent. For the several previous years NPM intentionally collected rent knowing it did not own the property. IRB was mistaken while NPM knew. Both were unjustly enriched: NPM by \$6,000 per year (for exactly how many years is unclear) and IRB by \$3,145.

NPM rather than IRB possessed Lot 11 in bad faith. Louisiana law defines a bad faith possessor as a possessor who knows, or should know,

that he is not the owner of the thing that he possesses. La. C.C. art. 3481. A possessor in bad faith is bound to restore to the owner the fruits he has gathered, or their value, subject to his claim for reimbursement of expenses. La. C.C. art. 486. Civil fruits are revenues derived from another thing, such as rentals, interest, and certain corporate distributions. La. C.C. art. 551. As a bad faith possessor, NPM was not entitled to collect rental payments. In fact, NPM should pay back rent it collected; but to whom is unclear.

Lastly, NPM did not possess the legal capacity to file a claim in court to seek reimbursement of past rental payments from IRB. The Louisiana Code of Civil Procedure provides that a peremptory exception of no right of action is appropriate when the plaintiff does not have the legal capacity to proceed with suit in a particular case. La. C.C.P. art. 927; *Sivils v. Mitchell*, 96-2528 (La. App. 1st Cir. 11/07/97), 704 So. 2d 25. A peremptory exception based upon no right of action may be pled in the appellate court or may be noticed by the appellate court on its own motion. *Teachers Retirement System of La., et. al. v. La. St. Employees' Retirement System*, 456 So. 2d 594 (La. 1984).

Neither IRB nor NPM owned the property and neither was entitled to the rent. Further, NPM had no right of action. Thus, I respectfully dissent.