ALICE M. ALDRIDGE	NO. 14-CA-610
VERSUS	FIFTH CIRCUIT
SHIVA A. KUMAR AKULA, INDIVIDUALLY AND ON BEHALF OF AND SHIVA KUMAR AKULA, LLC	COURT OF APPEAL STATE OF LOUISIANA

ON REHEARING

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 732-064, DIVISION "M"
HONORABLE HENRY G. SULLIVAN, JR., JUDGE PRESIDING

March 25, 2015

HANS J. LILJEBERG
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Hans J. Liljeberg

JOHNSON, J., DISSENTS WITH REASONS

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REHEARING GRANTED;
AFFIRMED

ON REHEARING

This case is before the Court on an application for rehearing filed by defendants, Shiva A. Kumar Akula, individually and on behalf of/and Shiva Kumar Akula, LLC ("Dr. Akula"). Upon review of the application, Dr. Akula correctly directs this Court's attention to La. C.C.P. art. 3612, which provides that an appeal may be taken as a matter of right from an order or judgment relating to a preliminary or final injunction. Accordingly, we grant Dr. Akula's application for rehearing and consider the merits of his appeal. For the following reasons, we affirm the judgment of the district court granting a permanent injunction from eviction in favor of plaintiff, Alice M. Aldridge ("Ms. Aldridge").

Assignment of Error

On appeal, Dr. Akula argues that the district court erred in finding that a valid oral lease existed between the parties, and thus, erred in granting a permanent injunction enjoining Dr. Akula from evicting Ms. Aldridge.

Law

A lease is a contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay. La. C.C. art. 2668. A lease may be made orally or in writing. La. C.C. art. 2681. Three elements absolutely necessary

to the contract of a lease are the thing, the price and the consent. La. C.C. art. 2670; *Richard v. Hall*, 03-1488 (La. 4/23/04), 874 So.2d 131, 144. While the price need not be in money but may consist of other considerations, it must be either certain or determinable through a method agreed by the parties. La. C.C. arts. 2675 and 2676; *Daigle v. Vanderpool*, 02-2005 (La.App. 1 Cir. 6/27/03), 858 So.2d 552, 556. The lease shall be for a term, the duration of which may be agreed to by the parties or supplied by the law, but may not exceed 99 years. La. C.C. arts. 2678 and 2679.

Discussion

Dr. Akula asserts on appeal that the district court erred in finding a valid oral lease between the parties. Specifically, Dr. Akula asserts that he did not consent to any agreement with Ms. Aldridge allowing her to reside at the Clearview Parkway property for her lifetime in exchange for the care and maintenance of the property. In the alternative, Dr. Akula maintains that even if he orally granted Ms. Aldridge residence at the Clearview Parkway property for her lifetime, such right is a limited personal servitude of habitation that is required to be in writing, and thus, is unenforceable.

At the hearings for the preliminary and permanent injunctions, Ms. Aldridge, Dr. Akula, and Jamie Akula testified. Ms. Aldridge testified that she was 74 years old at the time of the hearing. She explained that she helped Dr. Akula start his business and that Dr. Akula acquired the Clearview Parkway property at auction for $60,000.00. Ms. Aldridge testified that some time in 1999, she and Dr. Akula reached an agreement regarding the Clearview Parkway property. Ms. Aldridge testified that Dr. Akula came to her home and offered to let her reside at the property for the remainder of her lifetime so long as she renovated the run-down

property, cared for and maintained the property.[1] Ms. Aldridge renovated the property upon moving in, including purchasing a new roof, plumbing and flooring. Then, in 2005, the property sustained three to four feet of water damage in Hurricane Katrina, requiring the property to be fully gutted and renovated. Ms. Aldridge exhausted her savings and obtained an SBA Disaster Loan with the assistance of Dr. Akula.[2] Ms. Aldridge admitted into evidence a notarized letter, signed by her and Dr. Akula, wherein both parties acknowledged the existence of an option to purchase the property so that she could obtain the SBA loan in her name. Ms. Aldridge further explained that Dr. Akula did not transfer ownership of the property to her at that time because he stated the property would in the end revert to Dr. Akula's children anyway. Ultimately, Ms. Aldridge testified that she spent $75,000.00 in savings and obtained an SBA loan in the amount of $27,000.00 to repair and make improvements to the property post-Hurricane Katrina and admitted into evidence receipts for the repairs to the home.[3] In addition to renovations, repairs, and maintenance of the property, Ms. Aldridge testified that she paid the property taxes through the preceding year as well as flood and homeowner's insurance on the property.[4] She explained that she did not pay a monthly sum of rent as she paid to repair and maintain the property, therefore increasing the value of the property.

Jamie Akula corroborated Ms. Aldridge's testimony that she was present at the time Ms. Aldridge and Dr. Akula reached an oral agreement that Ms. Aldridge reside at the property until she died in exchange for Ms. Aldridge's upkeep of the

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[1] Ms. Aldridge testified that her daughter, Jamie Akula, was present at the time the parties confected the oral agreement.

[2] Ms. Aldridge explained that Dr. Akula took her to the Jewish Community Center on St. Charles Avenue to apply for the SBA loan.

[3] Ms. Aldridge testified that in addition to completely renovating the residence, she enclosed the carport, putting in an extra bathroom and kitchen and leveled the yard.

[4] Ms. Aldridge explained that State Farm switched the homeowner's insurance to renter's insurance due to the fact that Ms. Aldridge did not possess documents reflecting that she was the owner of the property.

property. Jamie Akula further testified that her mother twice renovated the property and insured the property. She further corroborated Ms. Aldridge's testimony that the property was unlivable following Hurricane Katrina and that Dr. Akula took her mother to apply for a SBA loan.

Dr. Akula testified that he acquired with separate funds the property located at 3701 Clearview Parkway in 1994 or 1995 at auction. Prior to Ms. Aldridge occupying the property, Dr. Akula rented the property for $900.00 per month. Dr. Akula categorically denied entering into any agreement with Ms. Aldridge to rent the property. He testified, rather, that Ms. Aldridge came to reside at the property at his wife's request and that Ms. Aldridge never paid rent. He further testified that he never told Ms. Aldridge that she could purchase the property. Dr. Akula testified that he spent $20,000.00 to $30,000.00 renovating the property prior to Hurricane Katrina. He additionally testified that he did not observe any damage to the property post-Hurricane Katrina. Although acknowledging his signature on the letter relating to the SBA loan obtained by Ms. Aldridge, Dr. Akula testified that he was completely unaware of the SBA loan. Dr. Akula stated that although he intended to formalize the arrangement in a written lease, he never requested that Ms. Aldridge sign a lease.

As we view the matter, Dr. Akula's testimony concerning his understanding of the agreement allowing his mother-in-law to reside at his Clearview Parkway property is diametrically opposed to the testimony of Ms. Aldridge. Ms. Aldridge's testimony is corroborated by her daughter's testimony as well as numerous exhibits, including receipts and cancelled checks for renovations by Ms. Aldridge, the notarized letter signed by Dr. Akula acknowledging an option to purchase the property, as well as SBA loan financing, a flood dwelling insurance policy, and a

homeowner's insurance policy all in Ms. Aldridge's name, and property tax remittiturs reflecting Ms. Aldridge's name.

The district court patently chose to accept the testimony of Ms. Aldridge concerning the agreement over that of Dr. Akula, clearly stating that Dr. Akula was not credible. Where there is a substantial conflict in the testimony, the reasonable evaluations of credibility and the reasonable inferences of fact made by the trier of fact should not be disturbed on appeal in the absence of manifest error. *D&D Invs. v. First Bank & Trust*, 02-440 (La.App. 5 Cir. 10/29/02), 831 So.2d 488, 492, citing *Rosell v. Esco*, 549 So.2d 840 (La. 1989); *Canter v. Koehring*, 283 So.2d 716 (La. 1973). We find no manifest error on the part of the district judge in accepting plaintiff's version of the oral agreement over that of Dr. Akula's. Nor do we find any error in the conclusion of law reached by the district court that a valid lease exists between the parties. As stated above, the necessary elements of a valid lease are the thing, the price and the consent. Based upon the foregoing, we find no manifest error in the district court's determination that the parties entered into a valid oral lease of the Clearview Parkway property for plaintiff's lifetime in exchange for the maintenance and increased value of the property.[5]

The standard of review for the issuance of a permanent injunction is the manifest error standard. *Mary Moe, LLC v. La. Board of Officers*, 03-2220 (La. 4/14/04), 875 So.2d 22, 29. Considering the foregoing, we find the district court did not err in granting plaintiff's request for a permanent injunction from eviction. We note, however, that said injunction does not bar a subsequent proceeding based upon a lawful eviction, *i.e.* violation of the lease agreement.

[5] We reject Dr. Akula's alternative argument on appeal that a right of habitation rather than a lease was perfected between the parties. Habitation is the nontransferable real right of a natural person to dwell in the house of another. La. C.C. art. 630. No evidence exists in the record that Dr. Akula intended to convey to Ms. Aldridge a real right in the Clearview Parkway property. To the contrary, by his own testimony, Dr. Akula had no intention of conveying ownership of the property to Ms. Aldridge.

Decree

Considering the foregoing, we grant the application for rehearing and affirm the judgment of the district court granting a permanent injunction from eviction.

REHEARING GRANTED;
AFFIRMED

ALICE M. ALDRIDGE	NO. 14-CA-610
VERSUS	FIFTH CIRCUIT
SHIVA A. KUMAR AKULA, INDIVIDUALLY AND ON BEHALF OF AND SHIVA KUMAR AKULA, LLC	COURT OF APPEAL STATE OF LOUISIANA

JOHNSON, J., DISSENTS WITH REASONS

I, respectfully, dissent from the majority opinion for the following reasons.

The judgment in this matter permanently enjoins Dr. Akula from evicting Ms. Aldridge from the property located at 3701 Clearview Parkway property. The majority opinion affirms the judgment by concluding there is an existence of a valid lease between the parties. Even if the agreement is an oral lease, I believe the trial court erred in granting Ms. Aldridge a permanent injunction from eviction from the Clearview Parkway property.

"An injunction is a harsh, drastic, and extraordinary remedy, and should only issue where the party seeking it is threatened with irreparable loss or injury without adequate remedy at law. *Reasonover v. Lastrapes*, 09-1104 (La. App. 5 Cir. 5/11/10); 40 So.3d 303, 308, citing *Lafreniere Park Foundation v. Friends of Lafreniere Park, Inc.*, 97-152 (La. App. 5 Cir. 7/29/97); 698 So.2d 449. "Irreparable injury means the moving party cannot be adequately compensated in money damages for his injury or suffers injuries which cannot be measured by pecuniary standards."

Although Ms. Alridge alleges that she would suffer irreparable harm, her damages resulting from a possible eviction by Dr. Akula could be compensated in money damages. Actually, in the alternative to the request for injunctive relief, Ms. Aldridge prayed for pecuniary damages concerning

a breach of contract and for unjust enrichment, in the event the court did not recognize the oral lease. Ms. Aldridge's petition acknowledged that her injuries could be measured by pecuniary standards. Inadvertently, Ms. Aldridge also acknowledged that she was not entitled to injunctive relief because she could be awarded monetary damages resulting from an eviction by Dr. Akula.

Furthermore, the ruling itself is inherently flawed. The ruling of the trial court states the following, in pertinent part:

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court finds in favor of Alice Aldridge, granting her request for a permanent injunction from eviction from the property located at 3701 Clearview Parkway, Metairie, Louisiana.

Although the majority opinion states that "said injunction does not bar a subsequent proceeding based upon a lawful eviction," the plain language of the judgment permanently enjoins Dr. Akula from ever evicting Ms. Aldridge, lawfully or unlawfully. The majority opinion insinuates that qualifying language applies to the judgment; however, the judgment does not provide for any qualifications or conditions. The judgment ignores the premise that Dr. Akula, the lessor, is entitled to dissolve the lease and lawfully evict Ms. Aldridge, the lessee, if she breaches the lease by failing to perform her obligations. (*See*, *Evans v. Does*, 283 So.2d 804, 806 (La. App. 2nd Cir. 1973) when the court held, "[w]e know of no basis for restraining the landlord from instituting an eviction proceeding against the plaintiff [lessee].") It is unreasonable to uphold a judgment that would consider Dr. Akula to be in violation of the permanent injunction enjoining him from filing an eviction proceeding against Ms. Aldridge if she breaches the lease in the future.

For the foregoing reasons, I find the trial court erred in granting Ms. Aldridge a permanent injunction from eviction by Dr. Akula from the Clearview Parkway property.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **MARCH 25, 2015** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

14-CA-610

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