Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-45

PHILLIP GILSTRAP AND PHILLIP GILSTRAP, INC. DBA DOORS OF NEW ORLEANS

versus

CROSS REALTY, INC.

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 830-469, DIVISION "O"
HONORABLE DANYELLE M. TAYLOR, JUDGE PRESIDING

December 23, 2025

MARC E. JOHNSON

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED AS AMENDED

MEJ
FHW

DISSENTS WITH REASONS

SJW

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

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CROSS REALTY, INC.
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JOHNSON, J.

Appellant, Cross Realty, Inc., seeks review of the 24th Judicial District Court's October 10, 2024 Judgment in favor of Appellees, Phillip Gilstrap and Phillip Gilstrap, Inc., ordering Cross Realty, Inc. to pay almost $270,000 for enrichment without cause related to repairs and renovations it performed on properties located in Metairie and River Ridge, LA. For the following reasons, we amend the amount of damages awarded and affirm the district court's judgment as amended.

FACTS AND PROCEDURAL HISTORY

Appellees, Phillip Gilstrap and Phillip Gilstrap, Inc., doing business as Doors of New Orleans (collectively, "Gilstrap"), filed a petition in the 24th Judicial District Court, seeking damages for unjust enrichment arising from work they performed on immovable property owned by Appellant, Cross Realty, Inc. ("Cross Realty"). Gilstrap alleged the parties entered into a verbal agreement wherein Gilstrap would undertake the renovations to the property, and then Cross Realty would sell "the building at issue at fair market to [Gilstrap], minus the amount the [Gilstrap] spent to fix both properties".

Cross Realty filed a Motion for Summary Judgment seeking dismissal of Gilstrap's claims. It argued that there was no evidence of a written contract as required by law for the sale of an immovable, and that Gilstrap did not have sufficient evidence to support all the elements of an alternative claim for unjust enrichment. After a hearing, the district court granted partial summary judgment and dismissed Gilstrap's contract claims. The district court held a bench trial on the merits of the unjust enrichment claim on October 10, 2024.

At the end of the trial, the court entered judgment in favor of Gilstrap for the sum of $218,927.41 for the property at 10015-10017 Jefferson Highway, and for the

sum of $50,912.74 for the property at 4741 Sanford Street "for enrichment without cause ...". This timely suspensive appeal followed.

ASSIGNMENTS OF ERROR

On appeal, Cross Realty argues that the district court erred when it overruled its objections to Phillip Gilstrap's testimony regarding the alleged agreement with the late George Cross, former President of Cross Realty, when the claims brought under that alleged contract had already been dismissed as the court had previously found that the contract was "non-existent" or unenforceable.

Further, Cross Realty argues that the district court erred when it found that Gilstrap proved all the required elements of an unjust enrichment claim, pursuant to La. C.C. art. 2298, and entered a money judgment against it without the introduction of competent evidence to establish the amount of damages Gilstrap sustained, over its objection.

LAW AND EVIDENCE

Unjust Enrichment

A person who has been enriched without cause at the expense of another person is bound to compensate that person. La. C.C. art. 2298. The term "without cause" is used in this context to exclude cases in which the enrichment results from a valid juridical act or the law. *Id.* The amount of compensation due is measured by the extent to which one has been enriched or the other has been impoverished, whichever is less. *Id.* The extent of the enrichment or impoverishment is measured as of the time the suit is brought or, according to the circumstances, as of the time the judgment is rendered. *Id*.

The remedy of unjust enrichment is subsidiary in nature and is not available if the law provides another remedy. *Id.*; *Harvest Time Cmty. Dev. Corp. v. St. John the Baptist Par. Sch. Bd.*, 24-571, p. 7 (La. App. 5 Cir. 3/19/25), 412 So.3d 227. To succeed in proving a claim for unjust enrichment, the claimant must show: (1) an

enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) an absence of justification or cause for the enrichment and impoverishment; and (5) no other available remedy at law. *5301 Jefferson Hwy, LLC v. A. Maloney Moving & Storage, Inc.*, 23-211 (La. App. 5 Cir. 5/29/24), 392 So.3d 337, 352. A claimant must prove all five elements; if any element is not proven, the claimant's recovery is barred. *Harvest Time Cmty. Dev. Corp.*, *supra*, *citing Coastal Environmental Specialists, Inc. v. Chem-Lig Intern., Inc.*, 00-1936 (La. App. 1 Cir. 11/9/01), 818 So.2d 12, 19. This Court will review the trial court's factual findings and whether Gilstrap proved the five elements of unjust enrichment under the manifest error standard of review. *See Arc Indus., L.L.C. v. Nungesser*, 17-704, p. 17 (La. App. 3 Cir. 3/7/18), *writ denied,* 18-522 (La. 5/18/18), 242 So.3d 1227.

Here, the parties stipulated that the first three elements required to establish a claim of unjust enrichment have been met[1]. Cross Realty contends that because Gilstrap did not attempt to perfect a written contract with Cross Realty and Gilstrap could have pursued reimbursement through a lien as a material supplier, the fourth and fifth elements for an unjust enrichment claim have not been proven.

Considering the fourth element, "'[c]ause' is not in this instance assigned the meaning commonly associated with contracts, but, rather, it means that the enrichment is justified if it is the result of, or finds its explanation in, the terms of a valid juridical act between the impoverishee [Gilstrap] and the enrichee [Cross Realty or between a third party [buyer] and the enrichee." *Edmonston v. A-Second Mortgage Co. of Slidell, Inc.*, 289 So.2d 116, 122 (La. 1974). "A valid juridical act with the enrichee is essential to a finding of 'cause'." *Id.*, *citing* Nicholas, Unjustified Enrichment in the Civil Law and Louisiana Law, Part I, 36 Tul. L. Rev. 622 (1962).

[1] According to the transcript of the October 24, 2023 hearing on the motion for summary judgment, the court stated the parties had stipulated that the first three elements of an unjust enrichment claim were met, then issued its ruling.

"If cause is found, the enrichment is not unjustified and the attempt to invoke the *Actio de in rem verso*[2] must fail. For it is not every unjust enrichment which warrants the resort to equity; only the unjust enrichment for which there is no justification in law or contract allows equity a role in the adjudication." *Id.* In this case, the ancillary repair and renovation work Gilstrap accomplished eventually facilitated the sale of Cross Realty's properties to the third-party buyer for the price Cross Realty received, notwithstanding the conflicting views and testimony about the quality of that work, and future repairs required.

The district court credited the evidence and testimony from Gilstrap and a business associate regarding the agreement with Cross Realty to either operate the business as a partnership or sell the Jefferson Highway Property to Gilstrap. It is clear from the record Gilstrap certainly did not intend to confer a benefit upon Cross Realty without receiving something in return, or to benefit the third party at all to the extent it may have. Further, prior to the sale, both Gilstrap and Cross Realty received a benefit through the rents they were able to collect by leasing the renovated office space; Gilstrap testified he had possession of the money and he reinvested his share of the rents back into the property. Accordingly, we find that there was no valid juridical act, or justification, for the cause of the enrichment or impoverishment in this case – thus, the fourth element is satisfied.

Next, we consider whether Gilstrap had any other alternative remedy at law available to him. The district court previously found there was no "action arising under contract" between Gilstrap and Cross Realty. A sale or promise of sale of an immovable must be made by authentic act or by act under private signature. *See* La.

[2] "The civil law has employed the *actio de in rem verso* to grant relief for unjust enrichment. *Minyard v. Curtis Products, Inc.,* 251 La. 624, 205 So.2d 422, 427 (1967). The *actio de in rem verso* originated in the Roman law concept of *condictio indebiti,* an action which lay for the recovery of payments of non-existent debts." *Illinois Cent. Gulf R. Co. v. Deaton, Inc.*, 581 So.2d 714, 717 (La. App. 4th Cir. 1991), *writ denied,* 588 So.2d 1117 (La. 1991), *citing* Barry Nicholas, *Unjustified Enrichment in the Civil Law and Louisiana Law,* 36 Tul. L. Rev. 604, 613 (1962).

C.C. art. 2440. "Courts may resort to equity only in cases of unjust enrichment for which there is no justification in law or contract . . . it must not 'perpetuate a fraud on the law.'" *Caldwell Wholesale Co., Inc. v. Cent. Oil & Supply Corp.*, 32,937 (La. App. 2 Cir. 5/10/00), 761 So.2d 684, 689, *as amended on reh'g* (6/28/00), *writ denied,* 00-2151 (La. 10/13/00), 771 So.2d 650.

We find that Gilstrap also established the fifth element of unjust enrichment. Once the district court determined that no contract existed and granted summary judgment on that issue, the unjust enrichment claim became Gilstrap's only recourse. Further, we do not find the district court erred when it allowed testimony regarding the agreement, or contract that did not exist, between Gilstrap and George Cross/Cross Realty. The testimony was relevant to determine the timing and scope of the work performed and to calculate damages. Also, it was offered to prove that Gilstrap did not intend to make a donation or gift to Cross Realty. Thus, we find that the trial court did not err when it found that Cross Realty was unjustly enriched by Gilstrap's actions.

Proof of Damages

Louisiana jurisprudence has consistently applied a two-fold limitation to recovery when formulating a substantive theory of recovery in the absence of a contract. *Bieber-Guillory v. Aswell*, 98-559 (La. App. 3 Cir. 12/30/98, 9-10), 723 So.2d 1145, 1151. First, the plaintiff cannot recover more than the actual value of his services and materials, plus a fair profit; and secondly, the plaintiff cannot recover more than the defendant was enriched by the plaintiff's services. *Id., citing Custom Builders & Supply, Inc. v. Revels,* 310 So.2d 862 (La. App. 3d Cir. 1975), *citing* Planiol, Chapter III Section 93B (Unjust Enrichment). Essentially, an individual establishing his right to recover under the doctrine of unjust enrichment is entitled to recover a reasonable amount for his services. *Id.* However, a court may not award speculative damages which have not been established with some degree

of detail and specificity. *Smith v. First Nat'l Bank of DeRidder,* 478 So.2d 185 (La. App. 3d Cir. 1985). *Id.* "Since the assessment of an award based on the doctrine of unjust enrichment or quantum meruit is analogous to an award of damages, the record must clearly reveal the trial court abused its discretion before we will disturb the award." *Arc Indus., L.L.C. v. Nungesser*, 17-704 (La. App. 3 Cir. 3/7/18, 22-23), 2018 WL 1181737 at *11, *writ denied,* 18-522 (La. 5/18/18), 242 So.3d 1227, *citing Bieber-Guillory*, *supra*. "Moreover, in absence of proof of actual damages, the court should make an award of nominal damages." *Jones v. Louisiana Dep't of Pub. Safety & Corr.*, 24-387, p. 11 (La. App. 1 Cir. 11/22/24), 404 So.3d 674, 681.

Here, we find that the record does not support a finding that Gilstrap established the damages he was entitled to with the requisite amount of "detail and specificity". *See Smith*, *supra*. Gilstrap argues that his renovations and repairs allowed Cross Realty to commercially lease and eventually sell the once dilapidated Jefferson Highway property. He also avers that the work he performed on the Harvard/Sanford property was to be compensated via a credit towards the purchase of the Jefferson Highway property. Hence, he contends Cross Realty has at least been enriched by the amount Gilstrap spent on labor and materials.

Gilstrap entered the following into evidence:

- Annotated Photographs – Before, during, and after photos of renovations and repairs of Jeff Hwy and Harvard/Sanford properties
- Undated $13,058.87 quote from PGI Property Management to replace Jefferson Hwy roof.
- QuickBooks documents
  - Itemized transaction lists for the Jeff Hwy and Harvard/Sanford properties
  - Profit/Loss lists for both properties
  - Electrical work contract for $8,000 and plumbing repairs "contract"[3]
- Jefferson Parish Building Permit Application and Placard
- U.S. Small Business Administration Application for loan of $150,000

[3] The plumbing "contract" did not state the cost for the services listed.

- Engineering drawings and architectural floor plans for Jeff Hwy property

Gilstrap testified he initially was interested in leasing part of the facility (Cross Realty was trying to sell) and planned to renovate to benefit his business with Lowe's. He further testified that Mr. Cross was impressed with the work he did and proposed moving forward as partners; in the alternative he believed that Cross Realty would sell him the building. He explained his exhibits and stated that he did get the SBA loan and used part of the proceeds for the property. On cross-examination, Gilstrap replied that he "[p]ut the rents back into the building" when asked what he did with the $89,150 he collected. He also testified on cross that the person who did "the accounting [. . .] entered the receipts into QuickBooks. When Cross Realty's counsel inquired about the physical receipts, Gilstrap replied that details about Home Depot purchases could be accessed from his account through his phone.

Marion "Mike" Seghers testified that he has been a real estate broker since the late '60s. Mr. Cross approached him about buying the Jeff Hwy property before Gilstrap leased space there. He described the building as "condemned" and "deplorable". Over the objections of defense counsel, Mr. Seghers was allowed to testify as to his opinion of the work Gilstrap performed. He stated that Mr. Cross periodically asked him to visit the building and give him his opinion of the work being done. He became friends with Mr. Gilstrap and testified on cross that he visited the building once or twice a week. He stated that Mr. Gilstrap told him "[W]hen [Mr. Cross] finished everything he was going to sell him the property". He also testified that Mr. Cross told him about the arrangement he had with Gilstrap.

After Mr. Seghur's testimony, defense counsel re-urged his objections to the Plaintiff's Exhibits #5-8, the QuickBooks spreadsheets. Initially, defense counsel did not object to their admission, subject to cross-examination. Citing *Treen*, *infra*, he argued that Gilstrap did not submit evidence sufficient to prove that the charges

listed in the QuickBooks documents were actually paid and objected to the exhibits under the best evidence rule. Gilstrap's counsel responded that the spreadsheets were regularly kept business documents, supported by "testimony from multiple people" stating that the work was indeed done. The court overruled the objection, finding that the spreadsheets fall under the business exception rule to hearsay, observing that Gilstrap was not a contractor, and the instant case was "sort of a different case altogether."

La. C.E. art. 1002 provides:

> Computer printout sheets are admissible if relevant and material, without the necessity of identifying, locating, and producing as witnesses the individuals who made the entries in the regular course of business. The offeror of such evidence should establish that:
>
> (1) the computing equipment used is recognized as standard equipment;
>
> (2) the entries were made in the regular course of business at, or reasonably near, the time of the happening of the event recorded; and the foundation testimony satisfies the court that the source of information and method and time of preparation were such as to indicate its trustworthiness and justify its admission.

Further, we find that the QuickBooks printouts meet the regularly kept business records hearsay exception under La. C.E. art. 803(6)[4, 5]. The QuickBooks

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[4] Louisiana Code of Evidence art. 803:

> **(6) Records of regularly conducted business activity.** A memorandum, report, record, or data compilation, in any form, including but not limited to that which is stored by the use of an optical disk imaging system, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if made and kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make and to keep the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. This exception is inapplicable unless the recorded information was furnished to the business either by a person who was routinely acting for the business in reporting the information or in circumstances under which the statement would not be excluded by the hearsay rule. The term "business" as used in this Paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. Public records and reports which are specifically excluded from the public records exception by Article 803(8)(b) shall not qualify as an exception to the hearsay rule under this Paragraph.

[5] See also Prudential Ins. Co. of Am. v. Kinney Plantation, Inc., 498 So.2d 1211, 1212-13 (La. App. 3d Cir. 1986):

> In *State v. Hodgeson,* 305 So.2d 421 (La. 1975), the Louisiana Supreme Court adopted the Nebraska and Mississippi rules for the admission of computer records and print-outs:

documents are corroborating evidence, along with the pictures and testimony of all of the witnesses, to prove Gilstrap was impoverished as a result of actions he took in reliance on the contract found to be non-existent between Gilstrap and Cross Realty. However, Gilstrap has not presented sufficient evidence to prove the exact amount he was impoverished.

In *Treen Const., Inc. v. Reasonover*, 09-438, p. 6 (La. App. 5 Cir. 12/29/09), 30 So.3d 933, 937, we observed that the plaintiff has "the burden of proving each and every item of expense and should have presented evidence supporting every invoice" under a cost plus contract. In *Treen* we found itemized lists, without more, are self-serving. *Id.* Here, although there is no contract at issue at this point in the litigation, without the receipts used to populate the QuickBooks spreadsheets, bank account statements, and/or tax records, etc., or even the testimony of the accountant/bookkeeper who generated the records, we find that Gilstrap failed to meet his burden of proving the reasonableness of his expenses. *See id*; *Bieber-*Guillory, 723 So.2d at 1151 (finding the amount of damages awarded, $45,289, was reasonable considering the plaintiff offered twelve invoices in support of 180 items billed, and the invoices totaled were $26,000, which was approximately 10% of the total amount billed for the house project).

Further, the spreadsheets and electrical and plumbing contracts suggest amounts of indebtedness, but they are insufficient to prove the element of payment. On their faces, the contracts appear to be proposals and neither "suggests the work

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> "... [W]e hold that print-out sheets of business records stored on electronic computing equipment are admissible in evidence if relevant and material, without the necessity of identifying, locating, and producing as witnesses the individuals who made the entries in the regular course of business if it is shown (1) that the electronic computing equipment is recognized as standard equipment, (2) the entries are made in the regular course of business at or reasonably near the time of the happening of the event recorded, and (3) the foundation testimony satisfies the court that the sources of information, method and time of preparation were such as to indicate its trustworthiness and justify its admission."

was completed for the price stated." *See Burdette v. Drushell*, 01-2494 (La. App. 1 Cir. 12/20/02, 11-13), 837 So.2d 54, 63-64, *writ denied,* 03-0682 (La. 5/16/03), 843 So.2d 1132.

In this case, the photographs entered into evidence clearly show work was performed, and money spent, and all the witnesses testified that Gilstrap managed the properties' restoration and repair projects. But the documents, along with the testimony and spreadsheets, are insufficient to prove the money damages Gilstrap sustained – specifically, the exact amount he was impoverished. One cannot recover charges for which proof of payment was not shown. *Id.* at 15, *citing Schiro–Del Bianco Enterprises, Inc. v. NSL, Inc.,* 99-1237, at pp. 7-8 (La. App. 4 Cir. 5/24/00), 765 So.2d 1087, 1091-92, *writ denied,* 00-2509 (La. 11/13/00), 774 So.2d 146. Thus, we find the district court erred in its specific award of damages to Gilstrap.

Damages sustained, but unproven

Finally, we are left to consider how to resolve the instant matter; we are convinced that Gilstrap sustained damages and equally convinced that the specific amount of damages sustained was not proven by Gilstrap. La. C.C.P. art. 2124 provides "the appellate court shall render any judgment which is just, legal, and proper upon the record on appeal." The jurisprudence interprets this article to empower to remand a case for the consideration of new evidence. *See Dietz v. Dietz*, 227 La. 801, 80 So.2d 414 (La. 1955); *Jones v. LeDay*, 373 So.2d 787, 788-89 (La. App. 3d Cir. 1979).

The appellate court has much discretion in remanding a case, where, from the record, the court is unable to pronounce definitely on the cause, or where apparently available testimony has not been produced which might be material in a proper decision of the case. *Finn v. Nat'l Fire Ins. Co. of Hartford*, 100 So.2d 284, 288 (La. App. 2d Cir. 1957); *See also Dietz v. Dietz*, 227 La. 801, 80 So.2d 414 (1955). Courts have found that this discretion could be exercised whether or not a party was at fault

for the omission of the evidence at the previous trial. *See Finn*, *supra*, *citing Dreher v. Guaranty Bond & Finance Co.*, 184 La. 197, 165 So. 711, *on reh'g* (La. 1936); *Dietz*, *supra* (citing the Article 906 of the Code of Practice, predecessor to La. C.C.P. art. 2164).

On the other hand, other courts have acknowledged that authority under article 2164, but still found, after careful consideration of the facts, the plaintiff is not entitled to have the case remanded to enter additional evidence that would increase his award of damages. *See Whitehead v. Texada*, 520 So.2d 1189, 1190 (La. App. 3d Cir. 1988), *writ denied,* 522 So.2d 568 (La. 1988). In *Texas Pipe Line Co. v. Johnson*, 223 La. 380, 385-86; 65 So.2d 884, 886 (1953), the Louisiana Supreme Court stated it is not "disposed to permit litigants to try their cases by piecemeal and continue protracted litigation as to facts that could have been established on the original trial." "A party who fails to introduce his evidence at trial on the merits is not entitled to remand for the introduction of evidence." *McNeill v. Lofton*, 54,066, p. 3 (La. App. 2 Cir. 9/22/21), 327 So.3d 1066, 1068.

In this case, we find that Gilstrap could have presented his receipts and additional corroborating evidence at trial to prove the exact amount it was impoverished; therefore, we decline to exercise our authority under La. C.C.P. art. 2164 to remand the matter. At trial, defense counsel correctly cited *Treen*, *supra*, for the proposition that more is required to prove the exact amount of the expenses a plaintiff incurred. Although we have found that the QuickBooks spreadsheets and other evidence was sufficient to prove that Gilstrap was impoverished, and the business records hearsay exception applied to the spreadsheets for that purpose, more is required to prove the actual amounts spent and calculate the damages Gilstrap incurred. Mr. Gilstrap's testimony is self-serving; without the receipts, or other proof of payment, or the testimony of the person that made the QuickBooks

entries or actually paid the invoices, we find that the district court abused its discretion in awarding the exact amount of damages it awarded.

Because we have found that the record reveals that the district court abused its discretion in making its award, we must, regrettably, disturb the award. *See Giglio v. ANPAC Louisiana Ins. Co.*, 20-209, p. 8 (La. App. 5 Cir. 12/23/20), 309 So.3d 416, 423.

Mr. Gilstrap testified that he spent $324,000 of his own money to repair the properties. When questioned further, he stated that he spent $218,927.41, plus an additional $5,488.13 on the Jefferson Highway property; and $66,762,74 on the Harvard/Sanford property – that is a total of $291,1789.28. After an adjustment for his half of the $89,150 collected in rents, Mr. Gilstrap spent a total on $246,603.28 on renovations and repairs. Although he was not asked about what he charged or the amount of compensation he received, contractor Marks Amos testified that he oversaw electrical, plumbing and HVAC work on the project and provided quotes which specified the electrical and plumbing work to be done on the Jefferson Highway property. According to the QuickBooks spreadsheets, Gilstrap paid Marks Amos $26,826.63.

Gilstrap also entered the addendum and drawings provided by McKay & Associates, LLC into evidence – according to his QuickBooks records, he paid the company $7,000. The addendum and drawings bear the stamp of a professional engineer in civil engineering; the addendum also bears a stamp of Jefferson Parish's Inspection and Code Enforcement Plan Review Section.

Last, we consider the processed permit for the project on Jefferson Highway. Gilstrap paid the following in fees: building permit - $251.00; Plan Review - $50.00; and Violation - $600.00. The court also admitted a photograph of two Notices of Violation dated June 24 and 25, 2020, and a copy of the permit placard, dated August

5, 2020, into evidence. There was also an entry in the spreadsheet that noted that Gilstrap paid $82.69 by debit to Code Enforcement on August 20, 2020.

Considering the foregoing, after a *de novo* review of the testimony and exhibits, we amend the district court's awards of $218,927.41 and $50,912.74 in damages to Gilstrap to award $35,000 in damages instead, as Gilstrap failed to prove the exact amount of his losses, but the evidence offered and admitted sufficiently proved that he sustained losses. Thus, we find Cross Realty's assignment of error regarding the award of damages has merit.

DECREE

Considering the foregoing, we amend the portion of the district court's October 10, 2024 judgment awarding damages to Phillip Gilstrap, and Phillip Gilstrap, Inc. to award $35,000 in damages.

AFFIRMED AS AMENDED

Fifth Circuit Court of Appeal
State of Louisiana

NO. **25-CA-45**

PHILLIP GILSTRAP and PHILLIP GILSTRAP, INC.,
d/b/a DOORS OF NEW ORLEANS

versus

CROSS REALTY, INC.

WINDHORST, J., DISSENTS WITH REASONS

I respectfully disagree with the majority's disposition amending and affirming as amended the trial court's judgment rendered in favor of appellees/plaintiffs, Phillip Gilstrap and Phillip Gilstrap, Inc. d/b/a Doors of New Orleans. For the following reasons, I would reverse the trial court's judgment, render judgment in favor of appellant/defendant, Cross Realty, Inc., and dismiss plaintiffs' claims with prejudice.

Elements of Unjust Enrichment

On appeal, defendant argues that the trial court erred in finding that plaintiffs met all of the requirements of unjust enrichment. In the brief to this court, defendant does not contest the existence of the first three elements of unjust enrichment.[1] However, defendant contends that plaintiffs did not provide credible evidence to support elements four and five.

[1] The majority's disposition incorrectly states that the parties "stipulated" that the first three elements for unjust enrichment were met. The record does not contain a "stipulation" by the parties regarding what elements were satisfied and not contested. However, in its brief to this court, defendant asserts that in its prior motion for summary judgment it "admitted the existence of the first three elements," and on appeal, defendant only contests the trial court's findings that the fourth and fifth elements were satisfied by plaintiffs.

Regarding the fourth element, an absence of justification or cause for the enrichment and impoverishment, defendant argues that plaintiffs had an opportunity to obtain a written contract with defendant regarding the renovations and the alleged agreement that plaintiffs would have the opportunity to purchase the property located at 10015-10017 Jefferson Highway, with credit given for their improvements but failed to do so, establishing a lack of cause or justification.[2] As for the fifth element, no other available remedy at law, defendant asserts that "the fact that the remedy was not pursued nor successfully pursued does not allow" plaintiffs to recover. Specifically, defendant asserts that plaintiffs had the right to file and pursue a lien as a material supplier under R.S. 9:4803 A(2), but failed to do, and thus, the fifth element was not satisfied.

I agree that plaintiffs did not satisfy the fourth and fifth elements of unjust enrichment, but for different reasons than those argued by defendant.

Unjust enrichment requires an individual who has been enriched without cause at the expense of another person to provide compensation to that person. La. C.C. art. 2298. The remedy of unjust enrichment is subsidiary in nature, and is "only applicable to fill a gap in the law where no express remedy is provided." Hidden Grove, LLC v. Brauns, 22-757 (La. 1/27/23), 356 So.3d 974, 977 (citing Walters v. MedSouth Rec. Mgmt., LLC, 10-351 (La. 6/4/10), 38 So.3d 245, 246). Thus, unjust enrichment is not available if the law provides another remedy. La. C.C. art. 2298; Hidden Grove, LLC, 356 So.3d at 977; Kitziger v. Mire, 19-87 (La. App. 5 Cir. 9/24/19), 280 So.3d 302, 308, writ denied, 19-1858 (La. 1/28/20),

[2] A similar argument was rejected by the Supreme Court in Hidden Grove, LLC, 356 So.3d at 978-980. In that case, the Supreme Court found that the court of appeal's interpretation of La. C.C. art. 2298, requiring a party claiming enrichment without cause to act preventively, in advance of any dispute between the parties and in advance of any litigation, "inserts concepts and words where none are present, limits the remedy of enrichment without cause in contravention of the Civil Code's plain language. Id. at.979. The Supreme Court held that La. C.C. art. 2298, unjust enrichment, "does not include any requirement that parties act as reasonably prudent persons or require any preventive action in advance of the dispute arising." Id. For these reasons, we find defendant's argument as asserted to be without merit.

291 So.3d 1055. To establish unjust enrichment, the claimant must prove (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) the absence of justification or cause for the enrichment and the impoverishment; and (5) no other available remedy at law. Harvest Time Community Development Corporation v. St. John the Baptist Parish School Board, 24-571 (La. App. 5 Cir. 3/19/25), 412 So.3d 235, 241, writ denied, 25-486 (La. 9/10/25), 415 So.3d 1272. A claimant must prove all five elements; if any element is not proven, the claimant's recovery is barred. Id.

Because the remedy of unjust enrichment is "subsidiary," we must determine whether a claim existed in contract or tort. Hidden Grove, LLC, 356 So.3d at 978.[3]

Phillip Gilstrap testified at trial that that in September 2019, after contacting George Cross, he leased "the whole back building"[4] of the property located at 10015-10017 Jefferson Highway, for $1,400 a month. He said the back building had a "five-hundred square foot office on the far left, a five-hundred square foot next to it, and then a thousand that used to be two units but it was opened up into one," for a total of two thousand square feet.

Mr. Gilstrap explained that he was looking for a building for his business, Doors of New Orleans, because Lowes wanted him to open a warehouse. He testified that the "deal" he made with Mr. Cross regarding leasing the property was that he could fix up the back building, "do what I wanted to the property because it was in disarray, it wasn't really usable." Mr. Gilstrap stated that he paid Mr. Cross a $1,400 deposit and $1,400 for the rent "to get going." He further

[3] It is undisputed that the trial court previously granted in part defendant's motion for summary judgment, dismissing plaintiffs' contract claims regarding the alleged sale of the immovable property located at 10015-10017 Jefferson Highway because there was no evidence of a written contract as required by law.

[4] He testified that there were two buildings at this location (*i.e.*, a "front" and a "back"). He specifically noted that the front building was vacant, dilapidated, and condemned.

testified that he moved quickly in fixing up the back building and that he "*basically* rebuilt the back building in about a month and a half." (Emphasis added.) Mr. Gilstrap added that over that month and a half, he had spent "about $12,000" in "real money." He expounded "I wanted a nice building, I knew Lowes was going to be having meetings in it. I was trying to make it better for me."

Mr. Gilstrap contended that around that time, his agreement with Mr. Cross "morphed" and on October 3, 2019, Mr. Cross wrote him a check for "five grand to pitch in to help me if I would help him with the front building because the back building was getting so nice." Mr. Gilstrap testified that Mr. Cross refused his rent check at the end of November and from that point forward "we started literally saying we were partners." He stated that they began to move forward with work on the front building at the Jefferson Highway property.

A lease may be made orally or in writing. La. C.C. art. 2681. Thus, oral leases are generally valid under Louisiana law. Bridges v. Anderson, 16-432 (La. App. 4 Cir. 12/19/16), 204 So.3d 1079, 1081, writ denied, 17-194 (La. 3/24/17), 216 So.3d 817; See also D'Antonio v. Simone, 94-798 (La. App. 5 Cir. 3/15/95), 653 So.2d 678, 680. To be valid, a lease must have three essential elements: the thing, the price and consent. La. C.C. art. 2670; Bridges, 204 So.3d at 1081; D'Antonio, 653 So.2d at 680.

Based on Mr. Gilstrap's undisputed testimony, the parties initially entered into what appears to be an oral lease for the "whole back building" of the property located at 10015-10017 Jefferson Highway, for $1,400 a month. Neither party to this appeal has argued that a valid lease regarding this building was not confected or that it was reduced to writing. Furthermore, the petition(s) and answer(s) confirm that a lease was initially entered into between the parties for a portion of the property located at 10015-10017 Jefferson Highway. The object of the lease and the monthly rental amount, to which the parties consented, are clear and

undisputed. Consequently, the lease is a valid juridical act, which provides a justification or cause, at least in part, for the enrichment to defendant.

Moreover, even in the absence of a contract, La. C.C. art. 2695 provides for the rights and obligations of the parties (*i.e.*, remedies) with regard to attachments, additions, or other improvements made to an immovable by a lessee.[5] Because plaintiffs had a remedy at law pursuant to La. C.C. 2695, at least in part, for attachments, additions, and improvements made to the back building of the Jefferson property, this remedy precludes, at least in part, plaintiffs' unjust enrichment claim. Furthermore, plaintiffs, who had the burden of proof, did not present evidence distinguishing what work was performed on the back building during the lease as opposed to after termination of the lease and what work was performed on the front building of the property located at 10015-10017 Jefferson Highway.

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[5] La. C.C. art. 2695 provides:

> In the absence of contrary agreement, upon termination of the lease, the rights and obligations of the parties with regard to attachments, additions, or other improvements made to the leased thing by the lessee are as follows:
>
> (1) The lessee may remove all improvements that he made to the leased thing, provided that he restore the thing to its former condition.
>
> (2) If the lessee does not remove the improvements, the lessor may:
>
> (a) Appropriate ownership of the improvements by reimbursing the lessee for their costs or for the enhanced value of the leased thing whichever is less; or
>
> (b) Demand that the lessee remove the improvements within a reasonable time and restore the leased thing to its former condition. If the lessee fails to do so, the lessor may remove the improvements and restore the leased thing to its former condition at the expense of the lessee or appropriate ownership of the improvements without any obligation of reimbursement to the lessee. Appropriation of the improvement by the lessor may only be accomplished by providing additional notice by certified mail to the lessee after expiration of the time given the lessee to remove the improvements.
>
> (c) Until such time as the lessor appropriates the improvement, the improvements shall remain the property of the lessee and the lessee shall be solely responsible for any harm caused by the improvements.

Accordingly, I do not believe that plaintiffs established the essential elements of unjust enrichment as to the property located at 10015-10017 Jefferson Highway.

The Proof of Damages Element

Even if plaintiffs established all of the essential elements of unjust enrichment, plaintiffs did not meet their burden as to proof of damages.

First, I disagree with the trial court's and the majority's finding that the QuickBooks printouts (exhibits P-5 through P-8) submitted by plaintiffs were admissible under the business records exception as set forth in La. C.E. art. 803(6).

In Achary Elec. Contractors, L.L.C. v. SimplexGrinnell LP, 15-542 (La. App. 5 Cir. 1/27/16), 185 So.3d 888, 890, this court set forth the admissibility requirements of business records under La. C.E. art. 803(6) as follows:

> La. C.E. art. 803(6) provides that business records are an exception to the hearsay rule if the proponent can establish that the records sought to be admitted were (1) made at or near the time by, or from information transmitted by, (2) a person with knowledge, (3) made and kept in the course of a regularly conducted business activity, and (4) that it was the regular practice of that business activity to make and to keep the information. See also, Finch v. ATC/Vancom Mgmt. Servs. L.P., 09-483 (La. App. 5 Cir. 1/26/10), 33 So.3d 215, 220.
>
> A party who seeks to submit written hearsay evidence pursuant to La. C.E. art. 803(6) must authenticate it by a qualified witness. The witness laying the foundation for admissibility of the business records does not have to be the preparer of the records. Id. La. C.E. art. 803(6) allows the custodian "or other qualified witness" to establish the essential foundational predicate. Id. A qualified witness only needs to be familiar with the record-keeping system of the entity whose business records are sought to be introduced. Id. The custodian of the record or other qualified witness must testify as to the record-keeping procedures of the business and thus, lay the foundation for the admissibility of the records. State v. Juniors, 03-2425 (La. 6/29/05, 915 So.2d 291, 327. If the foundation witness cannot vouch that the Code of Evidence requirements have been met, the evidence must be excluded. Id.

In the instant case, plaintiffs failed to meet their burden that the QuickBooks printouts were admissible as business records exception to the hearsay rule pursuant to La. C.E. art. 803(6). Mr. Gilstrap testified that (1) the entries were not

performed in the normal course of business for Phillip Gilstrap, Inc.; (2) Lynn Lee, "a girl that does the accounting," prepared the QuickBooks printouts; (3) the "door business that we're in we don't actually buy any materials;" (4) if his business did have an expense, "material or something else," "it could be" put in QuickBooks; (5) the printouts were a recordation of the materials used on the Jefferson Highway and Sanford properties; (6) he is not a QuickBooks expert; (7) the profit and loss statement for the Jefferson Highway property was "missing" a few things from the amount spent and that he knew "some of the things are a little off;" (8) the amount spend on the Jefferson Highway property had discrepancies (*i.e.*, the amount spent should be $218,927.41 plus $5,488.13); and (9) the amount spent on the Sanford/Harvard property was $66,762.74.

Mr. Gilstrap explained that Ms. Lee would enter the receipts for items as they were bought in QuickBooks. He stated that he had the physical receipts from Home Depot in his phone, but he did not offer or admit them into evidence. Nor did he offer any other physical receipts from other stores listed in QuickBooks. Mr. Gilstrap also confirmed that he collected $89,150 in rents but only $44,700 was listed in QuickBooks. He explained "I didn't know how to do it when I was trying to get all my ducks in a row for you guys so I just put the rent right there and then we just divided them, you know."[6]

Based on Mr. Gilstrap's testimony and jurisprudence, plaintiffs did not lay the foundational predicate required to find that the QuickBooks printouts were admissible under the business records exception of the hearsay rule as set forth in La. C.E. art. 803(6). Even assuming the QuickBooks printouts were properly admitted, which I do not find, plaintiffs did not present evidence sufficient to

[6] Earlier in his testimony, Mr. Gilstrap also acknowledged that when he found out that Mr. Cross had dementia he was "in a bad position," stating that he did not know who he was dealing with, he had already spent "so much money," and that he prepared the timeline (exhibit P-1 timeline with photographs) "so that I could give it to whoever wanted it because I didn't know who I was dealing with at the time."

prove the amount of damages sustained, *i.e.*, the exact amount plaintiffs were impoverished. See Treen Const. Inc. v. Reasonover, 09-438 (La. App. 5 Cir. 12/29/09), 30 So.3d 933.

The majority's opinion correctly finds that the record does not support a finding that plaintiffs established the damages they were entitled to with the requisite amount of "detail and specificity." The majority explains that "without the receipts used to populate the QuickBooks spreadsheets, bank account statements, and/or tax records, etc., or event the testimony of the accountant/bookkeeper who generated the records," plaintiffs failed to meet his burden of proving the reasonableness of his expenses. The majority further explains that "the spreadsheets and electrical and plumbing contracts suggest amounts of indebtedness, but they are insufficient to prove the element of payment;" noting that the plumbing and electrical contracts on their face appear to proposals, which do not suggest "the work was completed for the price stated." The majority concludes that "the documents, along with the testimony and spreadsheets, are insufficient to prove the money damages Gilstrap sustained – specifically, the exact amount he was impoverished." The majority then finds that since plaintiffs could have presented his receipts and additional corroborating evidence at trial to prove the exact amount of damages he was impoverished, this court declines to exercise our authority under La. C.C.P. art. 2164 to remand the matter for the introduction of evidence. Accordingly, the majority finds the trial court abused its discretion in its award of damages to plaintiffs.

Despite these specific and correct findings, the majority then amended the award of damages to plaintiffs, finding on *de novo* review, that plaintiffs are entitled to an award of $35,000 in damages based on what appears to be randomly selected entries in the QuickBooks printouts, which the majority has already found are not corroborated by sufficient evidence. While I am sympathetic to the fact

that plaintiffs clearly spent money fixing up the properties, plaintiffs had the burden of proving the essential elements of unjust enrichment ***and*** the exact amount of damages sustained, but did not do so with competent, admissible evidence.

Accordingly, for the reasons stated above, I would reverse the trial court's judgment, render judgment in favor of defendant, and dismiss plaintiffs' claims against defendant with prejudice.

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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 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 23, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-CA-45

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE DANYELLE M. TAYLOR (DISTRICT JUDGE)
JARRED P. BRADLEY (APPELLEE)
IRL R. SILVERSTEIN (APPELLANT)

MAILED