

GULF TITLE CORPORATION

NO. 24-CA-349 C/W
24-CA-350

VERSUS

FIFTH CIRCUIT

MICHAEL THOMAS, THOMAS MEREDITH,
GLORIA CAPITANO GRASS AND JODY
GRASS

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 843-313, DIVISION "L"
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

April 09, 2025

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and John J. Molaison, Jr.

AFFIRMED IN PART; REVERSED IN PART; DISMISSED IN PART

FHW

JJM

WINDHORST J., DISSENTS IN PART WITH REASONS

SJW

COUNSEL FOR DEFENDANT/APPELLANT,
MICHAEL THOMAS AND THOMAS MEREDITH
Salvador I. Bivalacqua
Will C. Griffin

COUNSEL FOR DEFENDANT/APPELLEE-2ND APPELLANT,
JODY AND GLORIA GRASS
James M. Garner
Stuart D. Kottle
Thomas J. Madigan, II

WICKER, J.

In this concursus proceeding arising from a real estate dispute, both the sellers, Jody and Gloria Grass (“the sellers”), and the buyers, Michael Thomas and Thomas Meredith (“the buyers”) have filed appeals, which have been consolidated by this Court. In the sellers’ appeal, they seek review of a summary judgment rendered in favor of the buyers, allowing them to terminate the purchase agreement and awarding them the return of their deposit. They also challenge the denial of their motion to continue and/or strike the motion for summary judgment and their exception of no cause of action as to the buyers’ cross-claim. In the buyers’ appeal, they seek review of the trial court’s order regarding their motion for attorney’s fees and costs.

For the following reasons, we affirm the summary judgment granted in favor of the buyers and the denial of the sellers’ motion to continue and/or strike the motion. We reverse the denial of the sellers’ exception of no cause of action as to the buyers’ cross-claim, and we grant this exception. However, we dismiss the buyers’ appeal of the order denying their hearing request for attorney fees and costs, finding this Court lacks appellate jurisdiction to consider this ruling.

FACTS AND PROCEDURAL HISTORY

On July 24, 2023, Gulf Title Corporation (“Gulf Title”) filed a Petition for Concursus, naming the buyers and the sellers as defendants. In its petition, Gulf South indicated that, pursuant to a May 16, 2023 Purchase and Sale Agreement (“purchase agreement”) signed by Mr. Thomas and the sellers, it was given a \$200,000 deposit for a real estate closing involving the property located at 24 Royal Palm Dr. in Kenner.¹ Gulf Title stated that the contemplated real estate

¹ Mr. Meredith was not a party to the May 16, 2023 purchase agreement. However, on June 19, 2023, Mr. Thomas and Mr. Meredith signed an agreement by which Mr. Thomas assigned all of his right, title, and interest as the buyer under the purchase agreement to Mr. Meredith, and Mr. Meredith accepted the assignment and agreed to perform the buyer’s obligations under the purchase agreement. The agreement further provided that Mr. Thomas would remain legally responsible *in solido* with Mr. Meredith for the performance of the buyer’s obligations under the purchase agreement.

transaction never came to fruition, and there was a dispute as to the ownership of or entitlement to the deposit. Therefore, Gulf Title requested leave to place the deposit funds in the registry of the court for the defendants to assert their respective claims to them.

On June 25, 2023, the trial court granted Gulf Title leave to place the \$200,000 deposit into the registry of the court, ordered that Gulf Title be relieved of any liability to all defendants for the money deposited, and ordered defendants to assert their claims to the funds, contradictorily, against all other defendants.

On August 24, 2023, the buyers filed an answer and cross-claim against the sellers, claiming ownership of the \$200,000 deposit and asserting they were entitled to cancel the purchase agreement, because the sellers did not provide them with the required property disclosure document in accordance with La. R.S. 9:3198. They also asserted that the sellers breached a confidentiality agreement between the parties by disclosing Mr. Thomas' purchase of the property to unpermitted persons without his consent, and they sought damages. On August 24, 2023, the buyers also filed a motion for summary judgment, arguing they were entitled to judgment in their favor as a matter of law due to the sellers' failure to provide a property disclosure document in accordance with La. R.S. 9:3198.

On August 29, 2023, the sellers filed an answer to the concursus petition and a cross-claim against the buyers, asserting they were entitled to the full amount of the \$200,000 deposit in the registry of the court and seeking to enforce the purchase agreement or, at their option, to receive \$282,000 as stipulated damages pursuant to the purchase agreement, as well as consequential damages, attorney's fees, and costs. According to the sellers, they entered into the purchase agreement after Mr. Thomas made an unsolicited offer to buy their house for \$2.8 million. They asserted that although the purchase agreement provided for an "all cash" sale, the buyers were unable to close because they did not have sufficient financing.

The sellers further stated that the buyers originally indicated they would not attend the closing on June 30, 2023, due to the sellers' breach of the confidentiality agreement between the parties, which is not grounds for termination of the purchase agreement. Then, over a month later and after the concursus proceeding was filed, the buyers raised the issue of failure to provide a residential disclosure document, which was a "mere excuse."

The sellers also filed exceptions of no cause of action, or alternatively, vagueness and ambiguity of the petition, and nonconformity of the petition with La. C.C.P. art. 891. They also filed a motion to continue and/or strike the buyers' motion for summary judgment, asserting it was prematurely filed before the sellers filed an answer to the cross-claim and before adequate discovery had taken place.

At a hearing on October 2, 2023, in order to allow for discovery, the trial court granted the sellers' motion to continue the motion for summary judgment. The judgment further provided that the sellers' "exceptions" were sustained and allowed the buyers fifteen days to file an amended cross-claim. The court signed a written judgment to this effect on October 11, 2023.

On October 13, 2023, the buyers filed an amended cross-claim in which they set forth additional facts and removed their request for damages. The sellers again, on October 24, 2023, filed exceptions of no cause of action, or alternatively, vagueness and ambiguity of the petition, and nonconformity with La. C.C.P. art. 891. On November 10, 2023, the buyers filed a second motion for summary judgment, arguing again that they were entitled to cancel the purchase agreement and receive their deposit back due to the sellers' failure to provide them with a residential property disclosure document in accordance with La. R.S. 9:3198. In support of their motion for summary judgment, the buyers submitted affidavits from Mr. Thomas and Mr. Meredith, each indicating that they never received a

property disclosure document from the sellers, never occupied the property, and never had title transferred to them.

On November 22, 2023, the sellers filed a motion to continue and/or strike the buyers' motion for summary judgment, as well as a motion to compel, asserting the buyers had refused to comply with their discovery requests or to allow them to take the depositions of the buyers. The sellers filed an opposition to the motion for summary judgment arguing they had rendered substantial performance of their obligations under the purchase agreement and that pursuant to La. C.C. art. 2014, the buyers could not use the sellers' failure to provide a property disclosure document "after the fact" as an excuse to back out of the sale. In support of their position, the sellers attached several exhibits, including the purchase agreement, photographs of the property, a property inspection report, and other documents.

On February 26, 2024, the motion for summary judgment, along with other pending motions and exceptions, came before the trial court for hearing. At the conclusion of the hearing, the trial court granted the buyers' motion for summary judgment. On March 14, 2024, the trial court signed a written judgment granting the buyers' motion for summary judgment and denying the sellers' motion to continue, motion to compel, and exceptions.² It also provided that the buyers had fifteen days to file a motion to fix costs and attorney fees.

At the sellers' request, the trial court issued reasons for judgment on March 26, 2024, finding that while there were multiple issues of contested fact, there was no genuine issue of material fact, where it was undisputed that the sellers did not execute or deliver a property disclosure document to the buyers. The sellers filed a motion for new trial on March 25, 2024, which was denied. On March 27, 2024,

² The judgment further provided that the \$200,000 deposit shall remain in the registry of the court until the delays for filing a suspensive appeal have run or until this Court's issues a decision on appeal.

the buyers filed a motion for attorney's fees and costs and included a proposed order to set a hearing, which was denied that same date.

The sellers filed an appeal of the summary judgment granted in favor of the buyers and the denial of their motion to continue and exceptions, and the buyers filed an appeal of the order regarding their motion for attorney's fees and costs.³ The sellers filed a motion to consolidate the two appeals in this Court, which was granted on August 13, 2024.

LAW AND DISCUSSION

The Sellers' Appeal

In their first assignment of error, the sellers argue the trial court erred by granting the buyers' motion for summary judgment and allowing them to withdraw from the purchase agreement, where there are genuine issue of material fact regarding whether the sellers had substantially fulfilled their obligations under the contract and whether the buyers used the missing property disclosure as a "mere excuse" to cancel the sale. They assert that La. C.C. art. 2014 precludes the dissolution of a contract on a "mere excuse" when the obligor has rendered a substantial part of the performance, and that both "substantial performance" and "mere excuse" are fact-intensive questions creating genuine issues of material fact that preclude summary judgment.

The sellers further argue that because the buyers did not raise the failure to provide a residential property disclosure document, as required by La. R.S. 9:3198, until well after the scheduled closing, this issue was waived. The sellers also contend that extensive inspections were performed and thus, the property condition was not an issue. They aver that emails between the attorneys suggest the inability

³ On January 6, 2025, this Court issued an order indicating the March 14, 2024 judgment did not specify the relief that was granted in the summary judgment and ordering the trial court to amend the judgment to include the appropriate and necessary decretal language. On January 7, 2025, the trial court signed an amended judgment, providing that the buyers' motion for summary judgment was granted "to the effect that Michael Thomas and Thomas Meredith shall be allowed to terminate the Purchase Agreement, and that Michael Thomas and Thomas Meredith shall be entitled to the return of their deposit."

to secure financing was the issue for the buyers, even though the purchase agreement provided for an “all-cash” sale. Therefore, the sellers contend that the property disclosure issue was a mere excuse for the buyers to back out of the sale.⁴

The buyers respond that it is undisputed that the sellers failed to comply with La. R.S. 9:3198(B), which requires the sellers of residential property to provide the buyers with a completed property disclosure document. They argue that under La. R.S. 9:3198(B), the failure of a seller to provide the buyer with a completed and signed property disclosure document allows the buyer to cancel the purchase agreement without any penalty. Additionally, the buyers aver that they produced financial records indicating they had the necessary funds to purchase the property, which shows financing was not the reason for termination of the purchase agreement.

Appellate courts review summary judgments *de novo* under the same criteria that govern a trial court's consideration of whether summary judgment is appropriate. *Larson v. XYZ Ins. Co.*, 16-745 (La. 5/3/17), 226 So.3d 412, 416; *Samaha v. Rau*, 07-1726 (La. 2/26/08), 977 So.2d 880, 882. La. C.C.P. art. 966(A)(3) provides that summary judgment shall be granted “if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.” *Marcade v. New York Marine and General Insurance Company*, 23-17 (La. App. 5 Cir. 10/4/23), 374 So.3d 166, 171; *Hines v. Garrett*, 04-806 (La. 6/25/04), 876 So.2d 764, 765.

A fact is material if it potentially ensures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute.

⁴ According to the sellers, two days before the scheduled closing on June 30, 2023, Mr. Thomas called Mr. Grass indicating the sale would not proceed due to an alleged breach of the confidentiality agreement unrelated to the sale. They contend that less than two hours before the closing, the buyers’ counsel notified them that it was “impossible” to proceed. Although the buyers did not appear, the sellers attended the closing on June 30, 2023 and formally recorded their readiness to proceed in a process verbal.

Marcade, 374 So.3d at 171. A genuine issue of material fact is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Id.*

In the present case, the trial court found that there are factual issues in this case, but there are no genuine issues of *material* fact. We agree.

The Residential Property Disclosure Act, La. R.S. 9:3196, *et seq.* (RPDA), requires a seller of residential property to complete and deliver a property disclosure document to the buyer which discloses, at a minimum, known defects in the property. *McDonald v. D'Amico*, 23-884 (La. App. 1 Cir. 3/22/24), 385 So.3d 1162, 1168, *writ denied*, 24-444 (La. 6/19/24), 386 So.3d 674. The RPDA does not provide a guaranty that no defects exist in the property, but rather requires disclosures of known defects to the best of the seller's information, knowledge or belief. *Williams v. Nelson*, 18-207 (La. App. 5 Cir. 12/19/18), 263 So.3d 466, 474, *writ denied*, 19-92 (La. 3/18/19), 267 So.3d 92.

La. R.S. 9:3198 provides, in pertinent part:

(A)(1) *The seller of residential real property shall complete a property disclosure document in a form prescribed by the Louisiana Real Estate Commission or a form that contains at least the minimum language prescribed by the commission. ...*

(B)(1) *The seller shall complete the property disclosure document in good faith to the best of the seller's belief and knowledge as of the date the disclosure is completed and signed by the seller. If the seller has no knowledge or information required by the disclosure document, the seller shall so indicate on the disclosure statement and shall be in compliance with this Chapter.*

(2) *The seller shall deliver or cause to be delivered the completed and signed property disclosure document to the purchaser no later than the time the purchaser makes an offer to purchase, exchange, or option the property or exercises the option to purchase the property pursuant to a lease with an option to purchase.*

(3) (a) *If the property disclosure document is delivered to the purchaser after the purchaser makes an offer, the purchaser may terminate any resulting real estate contract or withdraw the offer no later than seventy-two hours, excluding federal and state holidays and weekends, after receipt of the property disclosure document. Notwithstanding any other agreement between the purchaser and seller, if the purchaser terminates a real estate contract or withdraws an offer in accordance with this Chapter, the termination or withdrawal of offer is without penalty to the purchaser and any deposit or earnest money shall be promptly returned to the purchaser.*

(b) *Any rights of the purchaser to terminate the real estate contract provided by this Chapter are waived if not exercised prior to transfer of title or occupancy, whichever is earlier, by the purchaser in the case of a sale or exchange, or prior to the transfer of title in the case of a purchase pursuant to a lease with option to purchase.*

(Emphasis added.)

The starting point for the interpretation of any statute is the language of the statute itself. *Dejoie v. Medley*, 08-2223 (La. 5/5/09), 9 So.3d 826, 829. When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision must be applied as written, with no further interpretation made in search of the legislature's intent. *Id.*; La. C.C. art. 9; La. R.S. 1:4.

La. R.S. 9:3198(B) provides that the seller *shall* complete a property disclosure document in good faith and to the best of the seller's knowledge and belief, and the seller *shall* deliver the completed and signed document to the buyer. The word "shall" is mandatory. La. R.S. 1:3; *Auricchio v. Harriston*, 20-1167 (La. 10/10/21), 332 So.3d 660, 663. Under the well-established rules of statutory interpretation, the word "shall" excludes the possibility of being "optional" or even subject to "discretion," but instead means "imperative, of similar effect and import with the word 'must.'" *Id.*; *Louisiana Federation of Teachers v. State*, 13-120 (La.

5/7/13), 118 So.3d 1033, 1051. Therefore, the sellers had a mandatory obligation to provide a property disclosure document to the buyers.

The general rule of statutory construction is that, where there is a conflict, a specific statute controls over a broader, more general statute. *Newtek Small Bus. Fin., LLC v. Baker*, 22-1088 (La. 6/27/23), 366 So.3d 1230, 1233; *Burge v. State*, 10-2229 (La. 2/11/11), 54 So.3d 1110, 1113. However, the sellers claim that the more specific statute, La. R.S. 9:3198, does not preclude the application of La. C.C. art. 2014 and that these laws can be harmonized. La. C.C. art. 2014 provides, “[a] contract may not be dissolved when the obligor has rendered a substantial part of the performance and the part not rendered does not substantially impair the interest of the obligee.” However, La. R.S. 9:3198 does not provide for any exclusions in the event of substantial performance or any restrictions for “mere excuse.” It provides that a property disclosure document is mandatory and does not indicate any terms or circumstances under which its mandatory provisions would not apply.

The sellers also argue that the buyers waived the property disclosure issue, because they did not raise it until well after the scheduled closing and after this concursus proceeding was filed. La. R.S. 9:3198(B)(3)(a) provides that if the property disclosure document is delivered to the buyer after the buyer makes an offer, the buyer may terminate any resulting real estate contract or withdraw the offer within 72 hours, without penalty to the buyer and any deposit shall be returned to the buyer. La. R.S. 9:3198(B)(3)(b) specifically provides that the buyer’s rights to terminate the real estate contract are waived if not exercised prior to the transfer of title or occupancy. In the present case, it is undisputed that the sellers did not provide a property disclosure document to the buyers, the title was not transferred to the buyers, and the buyers never occupied the property.

In support of their position, the sellers cite *Clement v. Graves*, 04-1831 (La. App. 1 Cir. 9/28/05), 924 So.2d 196, in which the buyer and seller entered into a purchase agreement for the sale of a home, but the buyer refused to attend the scheduled closing or go through with the sale. According to the seller, the buyer initially indicated he would not honor the purchase agreement because of personal issues, but later indicated he was entitled to withdraw from the sale because the seller had not provided a property disclosure statement, as required under the purchase agreement. The trial court ruled in favor of the seller, finding the seller's failure to timely provide a property disclosure statement did not impair the buyer's interest, where a home inspection was performed and no repairs were requested, and the court awarded damages and attorney's fees to the seller. *Id.* at 199-200. On appeal, the First Circuit affirmed, relying on La. C.C. art. 2014, and held that a buyer could not use the absence of a property disclosure form as an excuse to rescind a sale, where the seller had substantially performed her obligations under the purchase agreement. *Clement*, 924 So.2d at 206-207.

However, as discussed in the *Clement* decision, the RPDA was enacted in 2003 and did not apply in *Clement*, where the purchase agreement was signed prior to the effective date of the RPDA.

In *Powell v. J&R Enterprises-Shreveport, L.L.C.*, 47,013 (La. App. 2 Cir. 4/11/12), 91 So.3d 1185, the parties executed a purchase agreement in which the plaintiff agreed to sell and the defendant agreed to buy a cabin, "AS IS" and without warranties. The agreement also provided for waiver of any action for redhibitory defects. After the defendant refused to close on the cabin, the plaintiff filed suit for specific performance. The defendant answered the suit, arguing there were redhibitory defects. The trial court found that the parties had waived redhibition and the defendant could not vitiate the terms of the agreement based on the condition of the cabin. Nevertheless, the trial court found the plaintiff was not

entitled to specific performance, because he had failed to provide the defendant with a property disclosure document, as required by La. R.S. 9:3198(B). *Id.* at 1186-87.

On appeal, Second Circuit affirmed, stating “La. R.S. 9:3198(B)(2) is clear and unambiguous. The provision is mandatory and requires that the seller complete a property disclosure document and provide it to the buyer.” *Powell*, 91 So.3d at 1187. The Court pointed out that under subsection (B)(3), a buyer has 72 hours from receipt of the property disclosure document to terminate the contract or withdraw the offer without penalty to the buyer. It further stated that under the terms of subsection (B)(3), “the only way a purchaser waives the right to terminate the contract or withdraw an offer is when the transfer of title or occupancy occurs despite the seller’s failure to provide a property disclosure document.” The Court concluded that the defendant was legally entitled to terminate the contract or withdraw its offer to purchase the plaintiff’s cabin “at any time before [plaintiff] provided a property disclosure document and within 72 hours thereafter.” *Id.* at 1187-88.

La. R.S. 9:3198(B) provides that the seller “shall” provide the buyers with a property disclosure document, allows the buyer 72 hours from receipt of the document to withdraw from the contract, and indicates the right to terminate the agreement is waived when title transfer or occupancy occurs. In the present case, as in *Powell*, the sellers failed to comply with the mandatory requirement of providing a property disclosure document, and there was no transfer of title or occupancy. Under the provisions of La. R.S. 9:3198(B), the buyers were permitted to withdraw from the purchase agreement without penalty and to receive the return of their deposit.

Although there are factual issues as to whether the sellers substantially performed their obligations under the agreement and whether the failure to provide

a property disclosure document was an excuse to back out of the sale, these are not genuine issues of material fact precluding summary judgment. Based on our *de novo* review, we agree with the trial court that there are no genuine issues of material fact and the buyers are entitled to summary judgment as a matter of law.

The sellers further contend that the trial court erred by denying their motion to continue and/or strike the buyers' motion for summary judgment and their motion to compel discovery. The sellers assert that full discovery, including document production and the depositions of the buyers, was required before considering the motion for summary judgment in order to adequately support their case and show the disclosure issue was merely a pretext for the buyers to back out of the sale. The buyers respond that the trial court did not err by denying the sellers' motions to continue and to compel discovery, because discovery pertaining to facts that are not material to a determination of this case was unnecessary.

When discovery is alleged to be incomplete, a trial court has the discretion either to hear the summary judgment motion or to grant a continuance to allow further discovery. *Parquet v. Louisiana HomeCare of Lutchet, L.L.C.*, 21-451 (La. App. 5 Cir. 3/30/22), 337 So.3d 1002, 1009, *writ denied*, 22-802 (La. 9/20/22), 346 So.3d 801. A trial court's choice to hear a motion for summary judgment or to grant a continuance is reviewed under an abuse-of-discretion standard. *Id.* The only requirement is that the parties be given a fair opportunity to present their claims, and unless a plaintiff shows probable injustice, a suit should not be delayed pending discovery when it appears at an early stage that there is no genuine issue of material fact. *Id.*

Here, we find no abuse of the trial court's discretion in denying the sellers' motions to continue and to compel discovery. Where the sellers acknowledged they did not provide a property disclosure to the buyers, no material factual issues

remained and there was no reason to delay the hearing of the motion for summary judgment.

In their second assignment of error, the sellers argue that the trial court erred by prematurely granting summary judgment before the sellers had the opportunity to file an answer to the buyers' cross-claim, in violation of La. C.C.P. art. 966(A)(1). They also argue that the trial court erred by overruling their exception of no cause of action or, alternatively, their exceptions of vagueness and ambiguity, as to the buyers' breach of confidentiality and damages claims raised in their cross-claim. They assert these claims were entirely unsupported by factual allegations, arguing they do not specify when the breach occurred, to whom the information was disclosed, or what confidential information was involved.

The buyers respond that this is a concursus proceeding concerning the entitlement to the \$200,000 deposit, and they pleaded a cause of action in fifty-three paragraphs of specific, factual statements to support their claim for return of the deposit. They also argue that, as defendants in this concursus proceeding, their motion for summary judgment could be filed at any time, per La. C.C.P. art. 966(A)(1).

A concursus proceeding is "one in which two or more persons having competing or conflicting claims to money...are impleaded and required to assert their respective claims contradictorily against all other parties to the proceeding." La. C.C.P. art. 4651; *McLean v. Majestic Mortuary Services, Inc.*, 11-1166 (La. App. 5 Cir. 5/22/12), 96 So.3d 571, 576. Each defendant in a concursus proceeding is considered as being both a plaintiff and a defendant with respect to all other parties. *Id.*; La. C.C.P. art. 4656.

A concursus proceeding is a special type of proceeding, in which the plaintiff's liability is limited to the amount of funds deposited in the registry of the court, and the issues are limited to the various defendants proving their rights to a

specific sum of money. *McLean*, 96 So.3d at 576; *Lestelle & Lestelle v. Campo Music Shopping Center Condo. Assoc.*, 21-77 (La. App. 4 Cir. 3/23/21), 315 So.3d 331, 335. “The jurisdiction of the court in a concursus proceeding is limited to disposing of funds on deposit and relieving the stakeholder from further liability to the impleaded claimants arising out of or as a result of the stakeholder’s ownership or possession of the fund.” *Setliff v. Cucchiara*, 22-792 (La. App. 1 Cir. 3/7/22), 341 So.3d 646, 653.

A peremptory exception of no cause of action questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. *Kendrick v. Estate of Barre*, 21-993 (La. 3/25/22), 339 So.3d 615, 617. Thus, we look to the allegations of the buyers’ cross-claim to determine if the buyers set forth a viable cause of action against the sellers.

In the buyers’ original answer and cross-claim, they asserted that the sellers breached the confidentiality agreement and therefore, the buyers were entitled to damages, as well as the return of their \$200,000 deposit. However, in their amended answer and cross-claim, while the buyers again alleged that the sellers breached the confidentiality agreement, they only sought return of the deposit, not damages.

The buyers captioned their pleading as an amended answer and cross-claim. However, courts must look through a pleading’s caption, style, and form to determine its substance and to do substantial justice to the parties. *Setliff*, 341 So.3d at 653; *Am. Turbine Tech., Inc.*, 16-707 (La. App. 5 Cir. 5/31/17), 222 So.3d 189, 196, *writ denied*, 17-1103 (La. 11/13/17), 230 So.3d 205. In a concursus proceeding, the parties named as defendants file answers to the concursus petition, and each defendant argues entitlement to the proceeds at issue. *Lestelle*, 315 So.3d at 335. In their amended answer and cross-claim, the buyers set forth allegations of failure to provide a property disclosure document, breach of the confidentiality

agreement, and failure to fulfill their obligations to the buyers under the purchase agreement, all as grounds for entitlement to the deposit. Based on the substance of the pleading, we find that the buyers' answer and cross-claim is, in substance, simply an answer to the concursus petition. No cause of action seeking any further relief against the sellers was properly pleaded as a cross-claim.

To the extent that the pleading purports to be a cross-claim against the sellers, we find the buyers have not stated a cause of action. Accordingly, after *de novo* review, we find the trial court erred by denying the sellers' exception of no cause of action as to the buyer's cross-claim. Therefore, we grant the exception of no cause of action and dismiss the buyers' cross-claim.

Finally, the sellers contend that the trial court should not have considered the buyers' motion for summary judgment until they answered the cross-claim. The buyers were defendants in this concursus matter, asserting their claims to the \$200,000 deposit. La. C.C.P. art. 966(A)(1) provides that a defendant's motion for summary judgment may be filed at any time. Thus, we find that the buyers were entitled to file their motion for summary judgment at any time, and the trial court did not err by considering the motion.

For the foregoing reasons, we affirm the trial court's judgment granting summary judgment in favor of the buyers and awarding them the return of their \$200,000 deposit.

The Buyers' Appeal

In their appeal, the buyers argue that the trial court erred by denying their request for attorney's fees and costs, because the purchase agreement mandated an award of attorney's fees and costs to the prevailing party. They assert that the trial court indicated in its March 14, 2024 judgment on the motion for summary judgment that the buyers could file a motion for attorney's fees and costs within

fifteen days, but then erroneously denied their motion without affording them a hearing.

The sellers respond that this Court does not have jurisdiction over the buyers' appeal, because the order at issue is not a final, appealable judgment. They argue that the order does not determine the merits of the action under La. C.C.P. art. 1841, is not a partial final judgment under La. C.C.P. art. 1915(A), and was not certified as final under La. C.C.P. art. 1915(B).

“A judgment is the determination of the rights of the parties in an action and may award any relief to which the parties are entitled.” La. C.C.P. art. 1841; *Input/Output Marine Systems, Inc. v. Wilson Greatbatch, Techs., Inc.*, 10-477 (La. App. 5 Cir. 10/29/10), 52 So.3d 909, 915. A judgment that determines the merits in whole or in part is a final judgment. La. C.C.P. art. 1841; *Jackson v. Usey*, 20-402 (La. App. 5 Cir. 2/10/21), 315 So.3d 377, 378. This Court cannot determine the merits of an appeal unless our appellate court jurisdiction is properly invoked by a valid final judgment. *Id.*

On March 27, 2024, the buyers filed a motion for attorney's fees and costs asserting that, as the prevailing parties to this litigation, they are entitled to attorney's fees and costs pursuant to the terms of the purchase agreement.

Although the buyers included a proposed order to set a hearing on the motion for attorney's fees and costs on May 6, 2024, the trial court stamped, “DENIED,” across the proposed order. The order does not indicate that the motion for attorney's fees and costs was dismissed or denied on the merits; rather, it simply denies the requested hearing on May 6, 2024, and is an interlocutory ruling that is not appealable.

After review, we agree with the sellers that the order at issue does not constitute a final judgment. Because this Court lacks jurisdiction in the absence of

a final, appealable judgment, we must dismiss the buyers' appeal of the March 27, 2024 order denying their motion for attorney's fees and costs.

DECREE

For the foregoing reasons, we affirm the summary judgment granted in favor of the buyers, allowing termination of the purchase agreement and the return of the buyers' \$200,000 deposit. We reverse the trial court's ruling denying the sellers' exception of no cause of action as to the buyers' cross-claim and grant this exception. We also dismiss the appeal of the trial court's March 27, 2024 order denying the proposed hearing date for the buyers' motion for attorney's fees and costs, finding this Court lacks appellate jurisdiction over this ruling.

**AFFIRMED IN PART; REVERSED IN PART;
DISMISSED IN PART**

GULF TITLE CORPORATION
VERSUS
MICHAEL THOMAS, THOMAS
MEREDITH, GLORIA CAPITANO
GRASS AND JODY GRASS

NO. 24-CA-349 C/W 24-CA-350
FIFTH CIRCUIT
COURT OF APPEAL
STATE OF LOUISIANA

WINDHORST J., DISSENTS IN PART WITH REASONS

I respectfully disagree with the majority opinion, and dissent. I would reverse the summary judgment and remand for the following reasons. I agree with the majority on granting the sellers’ exception, and dismissal of buyers’ appeal.

As the majority states, it is well settled in Louisiana that when a statute is clear and unambiguous, *and when its application* does not lead to absurd consequences, the provision must be applied as written. [Emphasis added.] Dejoie v. Medley, 08-2223 (La. 5/5/09), 9 So. 3d 826, 829. The statute applied here is the residential property disclosure provisions of La. R.S. 9:3198 B(3), and the provisions therein are clear. There need be no analysis or argument over legislative intent.

But the analysis does not conveniently end there. The *application* of this unambiguous statute must also not lead to absurd consequences. Absurd consequences are certainly a rare occurrence, and rightly so. The label of absurd consequences cannot be employed as a pretext for getting around a statute. I do not recall ever seeing truly absurd consequences result from a clearly-worded, correctly interpreted statute in 24.5 years on the bench, but I see absurdity here.

In this case, Michael Thomas (“buyer”) lives or lived in a home in the gated and very upscale Gabriel subdivision of Kenner. Thomas also owns a nearby lakefront vacant lot in the same subdivision. His vacant lot is adjacent to the lakefront home owned by Jody and Gloria Glass (“sellers”) located at 24 Royal Palm Drive, Kenner, Louisiana, the subject of this litigation.

Sellers were the original owners of the home, which was custom designed for them in 2014, and their home was not for sale. Buyer solicited the sale of the home, and on May 16, 2023, offered to purchase the home for \$2.82 million, an amount he assured he had readily available, and which he assured would be paid in cash. Via email on May 16, 2023, buyer Michael Thomas expressly requested an expeditious closing date of June 30, 2023, and a 14-day due diligence period for inspections and so forth, to which sellers agreed.

Sellers accepted, and two days later on May 18, 2023, the parties signed a Purchase and Sale Agreement (the “PSA”) in which all of buyer’s conditions were met. Buyer-warranted that the sale would be an “ALL CASH SALE,” and that the buyer had the cash, and that the cash is readily available for closing on June 30, 2023. To the contrary, exhibits in the record indicate he was unable to do so and was, in reality, attempting to obtain financing.

On May 25, 2023, buyer had a comprehensive day-long inspection of the property, which resulted in a thorough 36-page report on the house. Prior thereto, sellers provided numerous pictures, architectural plans and specifications showing every detail of the house. Buyer requested and received an extension of the 14-day due diligence period in order to conduct an additional air quality and mold inspection, which was later performed. In requesting the extension of time for receipt of the additional inspection, buyers confirmed that they “definitely still want the place,” and that they still intended to close on June 30, 2023.⁵

Neither party had an agent, and the PSA provided for extensive inspections. Neither party was aware of the requirement of a form disclosure, nor *as a practical matter*, was one needed by buyers. Neither party was aware that the law requires provision of a Louisiana Real Estate Commission “box check” form.

⁵ On June 19, 2023, Michael Thomas executed documents which effectively made Thomas Meredith also a buyer. Thus, some references are to “buyer” others are to “buyers.”

Meanwhile, in reliance on the enticements and assurances made by buyers, sellers began moving in order to vacate and deliver the property upon the act of sale. The record shows that by June 24, 2023, sellers were “50% moved out of the house.” Based on continuing assurances and unwavering indications that the buyers would go forward with the sale through and including communications on June 27, 2023, sellers continued to invest considerable time, money, and resources into packing and moving in order to be able to deliver possession of the property at the closing on June 30, 2023. Yet on June 30, 2023, buyers did not show up for the act of sale, and a procès verbal was taken.

Sellers have been put through an outrageous ordeal. Their home was not for sale, but sellers were solicited and cajoled to sell it by a neighbor who also owned the vacant adjoining lot. Once convinced, sellers cooperated in every way to make the expeditious sale date that buyers wanted to happen, including moving.

It is clear from the record that buyers’ failure to appear at the act of sale had nothing whatsoever to do with the lack of a disclosure form which would have provided no information unknown to buyers. It is true that La. R.S. 9:3198, correctly interpreted, does not require that it does. As quoted above, when a statute is clear and unambiguous, *and when its application does not lead to absurd consequences*, the provision must be applied as written. [Emphasis added.] Dejoie, 9 So. 3d at 829.

It therefore follows that when the strict application of a statute leads to an absurd result, it should not be so strictly applied. A strict application of this statute, under these extraordinary facts, *does* lead to absurd consequences, and to a terribly unfair and unjust result, which the law always seeks to avoid.

Considering the voluminous reports of inspections, and the documents and information provided by the sellers, there was virtually nothing the buyers could have learned from receipt of the disclosure form. Even the newly required

provisions in the form regarding existing building restrictions and covenants would not have been news to buyer Michael Thomas because he has already lived in and owned property in the Gabriel subdivision which were purchased subject to those restrictions and covenants, and which would have been disclosed in previous acts of sale.

The words, “when its application does not lead to absurd circumstances” is not meaningless surplus language. Under the unique facts and underhandedness evident in the record of this case, penalizing the sellers and rewarding the buyers here is certainly an absurd consequence and an unfair result.

The Requirements of Summary Judgment Were Not Met

Granting of summary judgement requires that there be no genuine issue of material fact, ***and*** that under those undisputed facts, the mover is entitled to judgment ***as a matter of law***. Whether the strict application of La. R.S. 9:3198 has led to absurd consequences in this case involves mixed issues of fact and law. Whether the result in this case is an absurd consequence of the strict application of the statute is an issue of fact, and the trial court has not heard argument, received evidence, or considered whether there were absurd consequences. Lastly, whether this apparently absurd consequence is such that the movers are, or are not entitled to summary judgment ***as a matter of law*** is also at issue.

Further, La. C.C.P. art. 966 A(3) requires that parties be given an adequate opportunity for discovery. It does not appear that sellers had sufficient time to conduct adequate discovery to develop facts relative to these issues.

For the reasons above, I would reverse and deny the summary judgment, and remand to the trial court.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETN, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. WISEMAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

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
APRIL 9, 2025 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT
REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

24-CA-349
C/W 24-CA-350

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)		
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)		
WILL C. GRIFFIN (APPELLANT)	JAMES M. GARNER (APPELLANT)	THOMAS J. MADIGAN, II (APPELLANT)

MAILED

WAYNE A. MAIORANA, JR. (APPELLEE)	SALVADOR I. BIVALACQUA (APPELLANT)	STUART D. KOTTLE (APPELLANT)
ATTORNEY AT LAW	ATTORNEY AT LAW	ATTORNEY AT LAW
3501 NORTH CAUSEWAY BOULEVARD	650 POYDRAS STREET	909 POYDRAS STREET
SUITE 300	SUITE 2615	28TH FLOOR
METAIRIE, LA 70002	NEW ORLEANS, LA 70130	NEW ORLEANS, LA 70112