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Ledet v. FabianMartins Construction LLC

Jeremy Carter

IMPROPER PLEADING OF STIPULATION POUR AUTRUI: *LEDET V. FABIANMARTINS CONSTRUCTION, LLC*

Jeremy Carter*

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I. INTRODUCTION

How can someone file a claim for insurance money if not a party to the insurance policy? In Louisiana, like in other civil law jurisdictions, contracts may produce effects for third parties only when provided by law.[1] The Louisiana Civil Code has an article allowing contracting parties to stipulate a benefit for a third party (stipulation pour autrui), but it does not provide much guidance for determining when such a stipulation exists.[2] This lack of a solid framework could lead practitioners to confuse stipulation pour autrui with other similar legal relationships that confer benefits on third parties, like a

* J.D./D.C.L. Candidate (May 2021) Paul M. Hebert Law Center, Louisiana State University. The author would like to thank Professor Olivier Moréteau for his help during the research and editing process.

1. LA. CIV. CODE ANN. art. 1985 (2019).
2. *Id.* at art. 1978.

trust: "It is only in cases not covered by legislation that a lawyer or judge may look for solutions elsewhere."[3] *Ledet v. FabianMartins Construction, LLC* demonstrates that discovering a stipulation pour autrui is sensitive legal analysis, which requires us to look past our civilian roots and into jurisprudence to identify its factors.[4] In this case, the benefit of the insurance was simply incidental, depriving the plaintiff of direct recourse against the insurer but, as will be seen, may leave a different cause of action rooted in the Louisiana Trust Code.

II. BACKGROUND

In *Ledet v. FabianMartins Construction LLC*, the court was tasked with determining the existence of this relationship. The plaintiff, Mr. Ledet, is the owner of unit 9-B of the Carrol Condominiums. A broken water pipe above his floor caused serious water damage to much of the complex, along with his individual unit. The Carol Condominium Association is a non-profit created by La. R.S. 9:1121.101 (Louisiana Condominium Act) for the management of the complex. Comprised and funded exclusively by unit owners, the Association has the affirmative duty of securing property insurance to cover any possible damage to the common elements and units of the condominium.

After the flooding, both the Association and Mr. Ledet filed a claim with the insurer. The Association received payment, but Mr. Ledet was denied payment due to him not being a named insured, additional insured, or a third party beneficiary. Mr. Ledet filed this suit against multiple parties for damage to his unit, but the only relevant issue in this case is his cause of action against the insurer.

The insurer, in its answer, claimed they were notified of Mr. Ledet's loss through the Association's claim, and adjusted

3. *Id.* at art. 1, comment (c).
4. Ledet v. FabianMartins Construction, LLC, 258 So. 3d 1058 (La. App. 5th Cir. 2018).

accordingly; further, they alleged, he had no right of action against the insurance company because he was not a named insured.[5] In response, Mr. Ledet claimed he had a cause of action as a third party beneficiary of the insurance policy, under the theory of stipulation pour autrui. In ruling against Mr. Ledet's theory the trial court stated, "there is no clear expression of intent to benefit the Plaintiff . . . [t]hus the Plaintiff is not a third party beneficiary and has no standing to assert a claim."[6] Mr. Ledet appealed.

III. DECISION OF THE COURT

Mr. Ledet's only means of establishing a right of action against the insurer rested in the finding of a stipulation pour autrui in his favor. Louisiana Civil Code article 1978 does not detail the analysis for establishing a stipulation pour autrui,[7] but based on doctrinal principles set forth by Professor J. Denson Smith,[8] the Louisiana Supreme Court has developed a working interpretation of this article. Smith's examples for a third party beneficiary relationship rested on establishing a promisor-promisee obligation that intended to discharge some other obligation the promisee may have with the third party.[9] This analysis was altered by the Supreme Court in the Joseph case, to a three-prong test.[10] Even though the insurance policy, the Condominium Act, and the declaration specifically mentioned that individual unit owners may be entitled to insurance proceeds, the court found this was insufficient to establish a stipulation pour autrui.

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5. *Id.* at 1063.
6. *Id.* at 1064.
7. LA. CIV. CODE ANN. art. 1978 (2019) ("A contracting party may stipulate a benefit for a third person called a third party beneficiary. Once the third party has manifested his intention to avail himself of the benefit, the parties may not dissolve the contract by mutual consent without the beneficiary's agreement.").
8. J. Denson Smith, *Third Party Beneficiaries in Louisiana: The Stipulation Pour Autrui*, 11 TUL. L. REV. 18 (1936).
9. Andrepont v. Acadia Drilling Co., 255 La. 347, 358 (1969).
10. Joseph v. Hospital Service Dist. No. 2 of St. Mary, 939 So. 2d 1206 (La. 2006).

IV. COMMENTARY

Aligning with the Louisiana Supreme Court, the appellate court adopted the three-prong Joseph analysis to determine if the contract stipulates a benefit in Mr. Ledet's favor.[11] Based on this, a stipulation is found only if: "1) the stipulation for a third party is manifestly clear; 2) there is certainty as to the benefit provided [for] the third party; 3) the benefit is not a mere incident of the contract between the promisor and the promisee."[12]

An insurance policy is a contract between the insurer and the insured; therefore, its interpretation is grounded in contract law. The interpretation of a contract requires a determination of the common intent of the parties.[13] Mr. Ledet has the high burden of proving the insurer intended to grant him this benefit, since any party claiming an enforceable obligation has the burden of proof.[14] Analyzing the contract, the Condominium Act, and the declaration, the appellate court correctly failed to find a stipulation in Mr. Ledet's favor.

A. Manifestly Clear Stipulation

The first prong of the Joseph analysis requires the stipulation to be manifestly clear.[15] Reviewing the evidence presented, it is difficult to find a clear stipulation in Mr. Ledet's favor. Starting with the plain wording of the contract, "no party other than you [the Association, the named insured], having custody of the Covered Property will benefit from this insurance."[16] The words "you and your" only refer to the Association, and their rights are nontransferable without the insurer's consent.[17] This passage explicitly disproves any inten-

11. *Ledet*, 258 So. 3d at 1066.
12. *Id*.
13. LA. CIV. CODE ANN. art. 2045 (2019).
14. *Id*. at art. 1831 (2019): "A party who demands performance of an obligation must prove the existence of the obligation."
15. *Joseph,* 939 So. 2d at 1212.
16. *Ledet*, 258 So. 3d at 1068.
17. *Id.*

tion of the insurer to obligate itself to any party besides the Association. Any benefit that would be derived by Mr. Ledet would have to channel through the claims filed by the Association. This channeling of claims is implied given that the insurer reserves the option to pay owners directly as a credit of satisfaction for the Association's claims.[18]

Additionally, the insurance payment provision states that any loss "shall be payable to any insurance trustee designated for that purpose, or otherwise to the [A]ssociation."[19] The use of the word "shall" mandates the affirmative action of paying the insurance proceeds only to the listed parties, either the designated trustee (the Association) or the Association. Nowhere in this clause are the individual unit owners mentioned or implied to have a right to insurance proceeds directly from the insurer. Mr. Ledet did cite to a provision giving the insurer the option to adjust losses directly with the individual owners, "we may adjust losses with the owners of lost or damaged property if other than you," but this still is insufficient to fulfill this factor.[20] Mr. Ledet's counter argument more likely reserves rights only for the insurer when deciding how to adjust losses; since direct adjustment is contingent on the insurer's whim, this provision alone does not create a manifestly clear obligation.

The Louisiana Condominium Act and the Association's declaration implicitly limit the type of insurance the Association is supposed to obtain. The purpose is to cover the parts of the complex that unit owners do not own exclusively but share in common, such as parking, staircases, elevators, and other shared structures and spaces. The law requires the Association's insurance policy, but does not prevent unit owners from obtaining their own insurance.[21] Indeed, the Association's declaration states that "[e]ach Unit Owner shall be responsible for obtaining his own insurance on the contents

18. *Id.* at 1073.
19. *Id*. at 1067 (emphasis in original).
20. *Id.* at 1073.
21. LA. REV. STAT. ANN. § 9:1123.112 (2019).

of his own Unit."[22] The act created an obligation for the Association to obtain insurance which would not interfere with individual owners, while the declaration mandated unit owners to insure their own property. Reading the insurance policy, the law, and the declaration together negates any claims for a clear stipulation in a unit owner's favor.

B. Certainty as to the Benefit

The law creating the Association's duty to secure insurance brought with it a strict contingency clause for reimbursing the unit owners for their loss. "[U]nit owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus."[23] A unit owner's right to the insurer's payment is only triggered if the payment exceeds the cost of repair assumed by the Association. Since there is only potential entitlement to insurance proceeds, the unit owners have no certain benefit arising out of the policy. The only certainty deriving from this clause is the supremacy of the Association's claims to the insurance proceeds.

If there is any enforceable obligation, it is against the Association. This obligation is imposed by the Condominium Act; it is not derived from the insurance policy. Any such payment a unit owner could potentially be entitled to would depend on the actions of the Association in spending their insurance proceeds. Mr. Ledet's reliance on the payment provision allowing the insurer the option to adjust losses either with the Association or with unit owners individually (as mentioned earlier) is doomed to failure, as it is at the discretion of the insurer.

C. Benefit Not a Mere Incident

A stipulation pour autrui requires a party to intend to confer an obligation directly in favor of a third party. Here, the intent of the

22. *Ledet*, 258 So. 3d at 1063, 1074.
23. LA. REV. STAT. ANN. § 9:1123.112 D (2019).

insurance contract is most likely to be for the discharge of the Association's duty under the Condominium Act to maintain insurance over the complex. This is evidenced by the Association's premier claim to the insurance proceeds, while leaving the individual owner's rights dependent on the Association's actions. The only means whereby the unit owners would have dealt with the insurer is through individual adjustments that the insurer would use as credit toward the Association's claims against it. Reading the act, the declaration and the policy together, the unit owners were not to have a claim for the insurance proceeds, but only the incidental benefits of the repaired common elements of the condominium and potentially any money left over if the Association failed to spend it all.

The benefits that the individual unit owners would gain from the insurance on the complex passed through the Association's insurance contract. Where coverage of the individual units was not the intent of the Association's contract, the unit owners do receive some incidental benefit from the Association carrying insurance. This benefit is explicitly mentioned to cover the common areas and might allow unit owners to collect insurance proceeds if they filed a claim with the Association and there is a surplus. The clear intent was only to create a relationship between the individual unit owners and the Association.

D. Trust Relationship

On appeal, Mr. Ledet claimed he had a right of action against the insurer due to the insurance trust relationship set up in his favor. Evidence of this trust relationship can be found throughout the cited policy provisions and the declaration naming the Association as the "trustee" for the insurance funds.[24] The court correctly refused to recognize an enforceable trust relationship directly against the insurer, but did not delve into much analysis. The court could have clarified this issue by stating Mr. Ledet's proper recourse was not directly

24. *Ledet*, 258 So. 3d at 1063, 1064-1073.

against the insurer, but against the Association in its capacity as trustee.

For Mr. Ledet to sue the insurer, his action would have to fall under La. R.S. 9:2222(1) of the Trust Code, but this only applies "if the trustee improperly refuses, neglects, or is unable for any reason to bring an action against the obligor."[25] Unfortunately, the issue was not properly raised on appeal; therefore, the court was not called to pronounce on the duties of the Association as a "trustee." The court could have simply reiterated the general rule with La. R.S. 9:2222: "A trustee is the proper plaintiff to sue to enforce a right of the trust estate."[26] To even fall under the exception, Mr. Ledet would have had to allege fault on the part of the Association, which would have been difficult given that the insurer was "notified of the loss by [the Association] and adjusted same in accordance with the terms of the Policy."[27] Mr. Ledet incorrectly alleged fault on the part of the insurer as a means of satisfying a stipulation pour autrui claim when he should have been asserting fault claims against the trustee for refusal or negligent handling of his damage claims.

V. CONCLUSION

The sources of law in Louisiana are legislation and custom.[28] While our French style Civil Code is broad enough to cover most legal issues in its purview, recourse to jurisprudence and doctrine is often necessary when it comes to applying general provisions to the specific facts of a case. The Fifth Circuit correctly searched for the existence of a stipulation pour autrui inspired by doctrine and jurisprudence constante when interpreting Louisianan Civil Code article 1978. Since a stipulation is never presumed, Mr. Ledet had a high burden of establishing his right of action. The court rightly determined that he was not a third-party beneficiary; instead, he benefited

25. LA. REV. STAT. ANN. § 9:2222 (2019).
26. *Id*.
27. *Ledet*, 258 So. 3d at 1063.
28. LA. CIV. CODE ANN. art. 1 (2019).

incidentally from the insurance policy, giving him no right of action against the insurer.

However, further analysis shows that he was in a trust relationship with the insured, namely the Association entrusted by law with the duty to purchase insurance for the protection of the condominium. As beneficiary of a trust, he could have sued the Association in its capacity as trustee of the insurance money. Because he did not, the court cannot be blamed for refusing to address the trust relationship, though the discussion points in that direction. Stipulation pour autrui and trusts are very different devices. Though both would benefit the same third party, the stipulation would have created a contractual obligation enforceable against the insurer where a trust would not. In addition to having plead the wrong doctrine, the plaintiff also sued the wrong defendant. It is only where the Association, in its capacity as trustee, "improperly refuses, neglects, or is unable for any reason, to bring an action against the obligor" (here, the insurer),[29] that Mr. Ledet would have the right to sue both of them. There was no such allegation in the present case.

29. LA. REV. STAT. ANN. § 9:2222.