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Cole v. Thomas

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**THE FIRST CIRCUIT COURT OF APPEAL’S LIMITATIONS
ON A USUFRUCTUARY’S RIGHTS: *COLE V. THOMAS***

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I. INTRODUCTION

A reading of the Louisiana Civil Code shows that Louisiana law does not differ from major civil law jurisdictions when it comes to define usufruct and the distribution of rights and obligations between usufructuaries and naked owners.¹ A full owner who reserves for herself a lifetime usufruct over a property she donates has the right to enjoy the property as she pleases. As such, the naked owner is under an obligation not to interfere with that enjoyment.² However, in *Cole v. Thomas*, the First Circuit Court of Appeal limited the right of the usufructuary when it held that the usufructuary could

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1. See generally LA. CIV. CODE. ANN. arts. 550–606 (2022). Full ownership grants a person the right to use, enjoy, and alienate the thing. Full ownership may be divided into a usufruct and naked ownership. A usufructuary has the right to use and enjoy the property for a certain amount of time. When a usufructuary retains that right, the remaining right in the thing is called naked ownership. *Campbell v. Pasternack Holding Co., Inc.*, 625 So. 2d 477, 484 n.13 (La. 1993); JOHN RANDALL TRAHAN, LOUISIANA LAW OF PROPERTY: A PRÉCIS 184 (2012).

2. LA. CIV. CODE. ANN. arts. 539, 605 (2022).

not evict the naked owner solely on the basis that the usufructuary no longer desired the naked owner to live on the property.³

II. BACKGROUND

In 2005, Mrs. Cole donated the disputed land to Ms. Thomas, her granddaughter.⁴ The act of donation transferred the naked ownership of the property to the granddaughter, but the grandmother reserved the usufruct of the property for life.⁵ The granddaughter placed a mobile home on the donated property behind the grandmother's residence and moved onto the property.⁶ In 2007, the granddaughter executed an affidavit to immobilize the mobile home.⁷ The affidavit declared that the "mobile home shall be permanently attached to" the donated property.⁸ The grandmother signed the affidavit as a witness.⁹

In 2014, the grandmother brought an action against her granddaughter, seeking to dissolve the donation inter vivos pursuant to article 1562 of the Louisiana Civil Code, "which provides for the dissolution of a donation subject to a suspensive condition when the condition can no longer be fulfilled."¹⁰ The grandmother alleged that the donation was given with the understanding that her granddaughter would care for her and further alleged that the granddaughter failed to fulfill that obligation, thus failing to fulfill the suspensive condition.¹¹ Accordingly, the grandmother asked that the court invalidate the donation and evict the granddaughter, taking into account that the grandmother had a lifetime usufruct over the property and that she no longer desired her granddaughter to remain on the

3. *Cole v. Thomas*, 247 So. 3d 957, 963 (La. Ct. 1st App. 2018).

4. *Id.* at 958.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

property.¹² This gave rise to the issue as to whether or not the usufructuary of the property has a legal right to evict the naked owner from the property simply because she no longer desires for the naked owner to live on the property.¹³

The trial court held a bench trial and denied the grandmother's request to invalidate the act of donation.¹⁴ Based on the four corners of the document, the trial court found no legal basis to revoke the donation and therefore ruled that the granddaughter maintained naked ownership of the property.¹⁵ In other words, the donation was free of suspensive condition. However, the trial court granted the grandmother's request to evict the granddaughter from the property.¹⁶ Since the grandmother reserved the usufruct of the property for life and did not want her granddaughter on the property while the grandmother was alive, the trial court concluded that the latter, as the usufructuary, had the right to evict the granddaughter.¹⁷ The granddaughter appealed.¹⁸

On appeal, the granddaughter alleged that the grandmother was not entitled to a judgment of eviction.¹⁹ The First Circuit Court of Appeal agreed, holding that the grandmother, as usufructuary, was not entitled to a judgment of eviction under the provisions of article 4702 of the Louisiana Code of Civil Procedure.²⁰ The court noted that:

Eviction is a proper remedy for an owner of immovable property, who wishes to evict a lessee or "occupant" therefrom, after the purpose of the occupancy has ceased. . . . It is well settled that an eviction proceeding is not the appropriate remedy to determine real rights to immovable property.²¹

12. *Id.*

13. *Id.* at 959.

14. *Id.*

15. *Id.*

16. *Id.* at 960.

17. *Id.*

18. *Id.*

19. *Id.* at 961.

20. *Id.* at 963.

21. *Id.*

For these reasons, the court found that the grandmother was not the owner of the property on which the granddaughter resided, and therefore, did not have a right to bring an eviction proceeding under the provisions of article 4702 of the Louisiana Code of Civil Procedure.²²

The granddaughter also argued that “the proper procedural vehicle for the resolution of an alleged disturbance of the usufructuary’s use and enjoyment of the property is a possessory action,” and that the grandmother “failed to prove the elements required to prevail in a possessory action.”²³ Again, the court agreed, noting that a usufruct is a real right which, on immovable property, is protected only by a possessory action.²⁴ Accordingly, the grandmother, as the usufructuary, failed to institute any of the appropriate real actions available to her that would have allowed her to protect her right to possession and enjoyment of the disputed property.²⁵

Even if the grandmother had brought a possessory action, the court explained that she “would have been required to demonstrate that there had been an eviction or some other physical disturbance preventing her from enjoying her possession of the property” in order to prevail.²⁶ According to the court, a usufructuary’s desire to no longer have the naked owner living on the property was insufficient grounds for eviction.²⁷ Therefore, the First Circuit Court of Appeal found that the trial court erred in concluding that the grandmother established legal grounds to evict her granddaughter and reversed the trial court’s judgment.²⁸

22. *Id.*

23. *Id.* at 961.

24. *Id.* at 962.

25. *Id.*

26. *Id.*

27. *Id.* at 963.

28. *Id.*

III. COMMENTARY

In *Cole v. Thomas*, the First Circuit Court of Appeal improperly limited the rights of a usufructuary when it held that the usufructuary could not evict the naked owner solely on the basis that the usufructuary no longer desired the naked owner to live on the property.²⁹ To understand the issues with the First Circuit's analysis, it is imperative to compare the rights of a full owner to the rights of a usufructuary and a naked owner.³⁰ There are three elements to ownership: *usus*, *fructus*, and *abusus*.³¹ *Usus* is the right to use the thing; *fructus* is the right to derive income from the thing; and *abusus* is the right to alienate the thing.³² Satisfaction of these three elements, known as full ownership, creates a right to "direct, immediate, and exclusive authority over a thing," thus allowing the owner to use, enjoy, and dispose of the property as permitted by law.³³

On the contrary, "[a] usufruct is a real right of limited duration on the property of another."³⁴ A real right, in turn, grants direct and immediate authority over a thing.³⁵ In the act of donation in *Cole v. Thomas*, the grandmother reserved the usufruct for life and donated the naked ownership to her granddaughter.³⁶ As the usufructuary, the grandmother was entitled to the *usus* and *fructus* of the property until her death.³⁷ The remaining right in the thing is called naked ownership.³⁸ Because the grandmother reserved the *usus* and *fructus* for herself, the act of donation merely transferred naked ownership

29. *Id.*

30. *See generally id.*

31. *Campbell v. Pasternack Holding Co., Inc.*, 625 So. 2d 477, 484 n.13 (La. 1993).

32. *Id.*

33. LA. CIV. CODE. ANN. art. 477 (2022).

34. LA. CIV. CODE. ANN. art. 535 (2022).

35. *Id.* at art. 476 cmt. (b) (citing YIANNOPOULOS, CIVIL LAW PROPERTY §§ 87, 90, 97 (1966)).

36. *Cole*, 247 So. 3d at 958.

37. *Id.*

38. JOHN RANDALL TRAHAN, LOUISIANA LAW OF PROPERTY: A PRÉCIS 184 (2012).

to the granddaughter.³⁹ Neither the grandmother nor the granddaughter retained full ownership of the disputed property.⁴⁰

The usufructuary and the naked owner have different rights in the property and owe different obligations to one another.⁴¹ The usufructuary is entitled to the *usus* and *fructus* of the property, whereas the naked owner is entitled to the *abusus* of the property.⁴² Because naked ownership is subject to the *usus* and *fructus* of another, the naked owner may only dispose of her naked ownership; the alienation or encumbrance of the property cannot affect the usufruct.⁴³ Furthermore, the naked owner is under an obligation not to interfere with the rights of the usufructuary.⁴⁴

It should be accepted that the usufructuary's right to use the thing is as extensive as an owner's right.⁴⁵ In other civil law jurisdictions, the usufructuary generally enjoys all of the rights that the owner enjoys.⁴⁶ The right of full ownership is "exclusive,"⁴⁷ meaning that the right to the enjoyment of a thing is attributed to a certain person, to the exclusion of all others.⁴⁸ "The owner has the power to exclude all third persons from any use, enjoyment or disposal of his property,"⁴⁹ even if the exclusion causes a third party to suffer some harm.⁵⁰ Since the usufructuary's right of *usus* and *fructus* should be as extensive as an owner's right, the court in *Cole v. Thomas* should have held that the grandmother, as the usufructuary, had the right to exclude the granddaughter from the use or enjoyment of her

39. *Cole*, 247 So. 3d at 958.

40. *Id.*

41. *See generally* LA. CIV. CODE. ANN. arts. 550–606 (2022).

42. *Campbell*, 625 So. 2d at 484 n.13.

43. LA. CIV. CODE. ANN. art. 603 (2022).

44. *Id.* art. 605.

45. 3 A.N. YIANNPOULOS, LA. CIV. L. TREATISE, PERSONAL SERVITUDES § 2.2 (5th ed. 2020).

46. *Id.*

47. TRAHAN, *supra* note 1, at 118.

48. 3 MARCEL PLANIOL & GEORGES RIPERT, TRAITÉ PRATIQUE ET THÉORIQUE: LES BIENS 220–21, at par. 212 (2d ed. 1952).

49. AUBRY & CHARLES RAU, DROIT CIVIL FRANÇAIS: PROPERTY § 191, 176, at par. 143 (7th ed. 1961), in 2 CIVIL LAW TRANSLATIONS (La. St. L. Inst. 1966).

50. PLANIOL & RIPERT, *supra* note 48.

property solely on the basis that the grandmother no longer desired the granddaughter to live on the property. Nevertheless, the court found that the usufructuary lacked the right to obtain the eviction of the naked owner both procedurally and substantively.⁵¹

A. The First Circuit's Procedural Analysis

Procedurally, the First Circuit held that the usufructuary was not entitled to bring an eviction proceeding under article 4702 of the Louisiana Code of Civil Procedure.⁵² Article 4702 provides that “an owner of [an] immovable property” can evict an “occupant” from the property once the purpose of the occupancy has ended.⁵³ The owner must deliver a written notice to vacate to the occupant, and the occupant has five days from its delivery to vacate the premises.⁵⁴ An *owner* is defined to include a lessee, and an *occupant* is defined to include “a sharecropper; half hand; day laborer; former owner; and any person occupying immovable property by permission or accommodation of the owner, former owner, or another occupant, except a mineral lessee, owner of a mineral servitude, or a lessee of the owner.”⁵⁵

The *Cole v. Thomas* ruling strictly construed the language “owner of immovable property,” to exclude usufructuaries.⁵⁶ The court noted, “It is well settled that an eviction proceeding is not the appropriate remedy to determine real rights to immovable property.”⁵⁷ Although the court cited jurisprudence to support this

51. See *Cole*, 247 So. 3d at 963.

52. See *id.*

53. LA. CODE CIV. PROC. ANN. art. 4702 (2022).

54. *Id.*

55. *Id.* art. 4704.

56. *Cole*, 247 So. 3d at 963.

57. *Id.*

assertion,⁵⁸ these cases did not clearly articulate the strict construction of the phrase “owner of immovable property.”⁵⁹

In *Millaud v. Millaud*, the Fourth Circuit Court of Appeal addressed a similar issue relating to article 4702.⁶⁰ The Millauds, a husband and wife, each owned a one-half interest in the disputed property.⁶¹ As a result of the judgment of possession in the wife’s succession, the husband became the usufructuary of the entire property.⁶² Each of the Millauds’ two children inherited a one-third interest in their mother’s one-half share of the property.⁶³ The father filed a claim to evict his children under article 4702.⁶⁴ The *Millaud* court noted that the relationship between a usufructuary and a naked owner is not of the same nature as that between a lessor and a lessee.⁶⁵ Thus, the Fourth Circuit concluded that a naked owner is not an *occupant* envisioned by the eviction articles, and therefore, that eviction was not the proper remedy.⁶⁶

However, one dissenting judge argued that the father clearly qualified as an *owner*, while the children, as the partial naked owners, qualified as *occupants* within the meaning of the eviction articles.⁶⁷ The eviction articles were designed to give owners the right to expel “illegal tenants or occupants without the burdensome expense and delay of a petitory action.”⁶⁸ The dissenting judge

58. See *id.* (first citing *Champagne v. Broussard*, 401 So. 2d 1060, 1064 (La. Ct. App. 3d 1981); and then citing *Tartan Transp. & Constr., Ltd. v. McDonald*, 436 So. 2d 1270, 1271 (La. Ct. App. 1st 1983)).

59. *Id.*

60. *Millaud v. Millaud*, 761 So. 2d 44, 46–47 (La. Ct. App. 4th 2000).

61. *Id.* at 44–45.

62. *Id.*

63. *Id.* According to the judgment, the two children and the husband were “each naked owners of an undivided one-third interest in their mother’s half ownership of the property.” *Id.* at 45 n.3.

64. *Id.* at 46.

65. *Id.* at 45–46 (distinguishing that the naked owner has a third party vested with a real right before him, not a creditor. The usufructuary can ask no more of him than could any other third party. As long as the naked owner does not diminish nor disturb the usufructuary’s enjoyment, he is free of all responsibility towards the usufructuary).

66. *Id.* at 46.

67. *Id.* at 47 (Landrieu, J., dissenting).

68. *Id.*; *Skannal v. Jones*, 384 So. 2d 494, 495 (La. Ct. App. 2d Cir. 1980).

concluded that the term *occupant* should not be given a restrictive interpretation.⁶⁹ Rather, *occupant* should be broad enough to include anyone occupying the property without a legal right to do so.⁷⁰ Therefore, the partial naked owners did not have the right to continue to occupy the property over the objection of the usufructuary.⁷¹

As the Civil Code makes clear, laws are to be applied as written if they are clear and unambiguous and do not lead to absurd consequences.⁷² If the legislative language is susceptible of different meanings, then it must be interpreted as conveying the meaning that best conforms to the law's purpose.⁷³ The purpose of the eviction articles is to give owners the right to expel "illegal tenants or occupants" in a quicker and less expensive way than a petitory action.⁷⁴ However, the ruling from *Cole* does not conform to that purpose. Rather, that ruling indicates that when full ownership has been separated between a usufructuary and a naked owner, the quick and less expensive eviction procedure can never be used to evict an invader.

According to the First Circuit, the usufructuary does not have the right to evict the naked owner from the property because the usufructuary is not the "owner of immovable property" as required by the eviction articles.⁷⁵ Therefore, the usufructuary cannot use the eviction articles against any person, even if that person has no right to be on the property. Considering that the usufructuary's right to use the thing should be as extensive as an owner's right and that the legislature intended for owners to use these eviction articles as a quick solution for owners, the First Circuit erred procedurally when it denied the usufructuary the right to evict the naked owner under article 4702 of the Louisiana Code of Civil Procedure.

69. *Millaud*, 761 So. 2d at 47 (Landrieu, J., dissenting).

70. *Id.*

71. *Id.*

72. LA. CIV. CODE. ANN. art. 9 (2022).

73. *Id.* art. 10.

74. *Millaud*, 761 So. 2d at 47 (Landrieu, J., dissenting); *Skannal*, 384 So. 2d at 495.

75. *Cole*, 247 So. 3d at 963.

B. The First Circuit's Substantive Analysis

Regarding the substance of the matter, the First Circuit held that the usufructuary cannot evict the naked owner solely on the basis that the usufructuary no longer desired the naked owner to live on property.⁷⁶ The court correctly noted that the usufruct of immovable property is protected by the possessory action.⁷⁷ However, the court incorrectly held that she “failed to prove the elements required to prevail in a possessory action.”⁷⁸

To maintain a possessory action, the possessor must allege and prove that (1) she had a real right at the time the disturbance occurred; (2) she had possession quietly and without interruption for more than a year immediately prior to the disturbance; (3) the disturbance was one in fact or law; and (4) the possessory action was instituted within a year of the disturbance.⁷⁹ The *Cole* court failed to consider whether the grandmother properly alleged a disturbance in fact.⁸⁰

Satisfying a disturbance-in-fact element is simple. A disturbance in fact is any physical act that prevents the possessor of a real right from enjoying her possession quietly or that throws any obstacle in the way of that enjoyment.⁸¹ The usufructuary has the right to enjoy the property, and the naked owner has the obligation not to interfere with the rights of the usufructuary.⁸² The grandmother suffered a disturbance in fact when the granddaughter refused to leave the property after the grandmother told her to, as there was no contractual right, such as a lease, to allow the granddaughter to stay.⁸³ The refusal to leave the property is enough to satisfy a disturbance in fact because it is a physical act that throws an obstacle in the

76. *Id.*

77. *See id.* at 961.

78. *Id.*

79. LA. CODE CIV. PROC. ANN. art. 3658 (2022).

80. *See Cole*, 247 So. 3d at 962.

81. LA. CODE CIV. PROC. ANN. art. 3659 (2022).

82. LA. CIV. CODE. ANN. arts. 539, 605 (2022).

83. *See generally Cole*, 247 So. 3d 957.

grandmother's unfettered right of using the land as she pleases and enjoying her possession quietly. Thus, the usufructuary asserting that she had the legal right to evict the naked owner solely because she no longer desired the naked owner to live on the property is enough to satisfy that she suffered a disturbance in fact.⁸⁴ The First Circuit erred substantively when it held that the grandmother failed to prove the elements required to prevail in a possessory action.

IV. CONCLUSION

In *Cole v. Thomas*, the First Circuit Court of Appeal strictly construed the provisions of article 4702 of the Louisiana Code of Civil Procedure and held that article 4702 cannot be used for an eviction proceeding by a usufructuary.⁸⁵ The First Circuit failed to accept that the usufructuary's right to use the thing is as extensive as an owner's right.⁸⁶ Rather, the First Circuit limited the rights of the usufructuary by holding that the fact that the usufructuary no longer desiring the naked owner to live on the property was not sufficient to justify eviction. The Louisiana civil law grants the usufructuary broad rights to enjoy the property, and, in the absence of contractual arrangements, any interference by the naked owner presents a disturbance in fact.⁸⁷ Therefore, the holding in *Cole v. Thomas* contradicts those laws. The grandmother, as the usufructuary, had the legal right to evict the granddaughter, as the naked owner. The First Circuit erred procedurally and substantively in its interpretation of the case.

84. *Id.*

85. *Id.* at 963.

86. *See id.*

87. LA. CIV. CODE. ANN. arts. 539, 605 (2022).

