

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 CA 0173

BRIAN J. AUTHEMENT

VERSUS

BRENDA KRAFT VERGES

Judgment Rendered:

SEP 13 2010

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket No. 2005-11465

Honorable Reginald T. Badeaux III, Judge

Robert C. Stern
New Orleans, LA

Counsel for
Plaintiff-Appellant
Brian J. Authement

Eric A. Bopp
Mandeville, LA

Counsel for
Defendant-Appellee
Brenda Kraft

BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

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GUIDRY, J.

In this action for reimbursement of the costs expended in repairing, refurbishing, and maintaining a boat, appellant seeks reversal of the trial court's ruling that the former owner of the boat is not liable by contract or under the theory of unjust enrichment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

In December 2000, while married to Wade T. Verges, Brenda Kraft purchased a 1993 Luhrs Yacht for \$110,000, which she named *The Brenda*. The yacht was purchased and titled solely in the name of Brenda Kraft Verges.¹ For the first two years that she owned the yacht, Ms. Kraft² kept it docked at a waterfront apartment complex that she helped manage and arranged for one of the other managers at the complex to assist her and Mr. Verges in maintaining the yacht.

In January 2003, Mr. Verges moved the yacht to a camp that he had recently purchased in Slidell, Louisiana, and one of his sons was primarily responsible for maintaining the yacht while it was docked at the camp. Later that year, however, Mr. Verges arranged for his friend, Brian J. Authement, to take possession of the yacht. On taking possession of the yacht, Mr. Authement moved it to a boat house that he had leased, and he maintained possession of the boat for approximately a year.

In late 2004, Ms. Kraft initiated divorce proceedings to terminate her marriage to Mr. Verges, and as a consequence, she reclaimed possession of *The Brenda*. In response to Ms. Kraft reclaiming the yacht, Mr. Verges and Mr. Authement filed liens against the boat in federal court, pursuant to maritime law,

¹ Mr. Verges and Ms. Kraft entered into a marriage contract establishing a separate property regime on May 25, 1995, wherein they expressly agreed that "[a]ny property acquired by either spouse shall be the sole property of the spouse in whose name the property is acquired, without any obligation to reimburse the other spouse for any labor or property."

² Although all pleadings filed by the defendant were in the name of Brenda Kraft Verges, during trial, defendant indicated that she preferred to be called "Ms. Kraft."

and had the boat seized, but the order of seizure was later vacated and the liens cancelled. In the meantime, Mr. Authement filed the underlying suit, claiming that he was entitled to be reimbursed "for all services, facilities, equipment, tools and other supplies utilized in outfitting/refurnishing THE BRENDA pursuant to his capacity as a mandatary, or pursuant to the doctrine of unjust enrichment and/or other applicable legal doctrines."

Following a bench trial, the trial court rendered judgment in favor of Ms. Kraft and dismissed the suit without prejudice in a judgment signed September 30, 2009. It is from that judgment that Mr. Authement appeals, asserting that the trial court erred in rejecting his claim "for the monetary value of materials and labor" he expended on *The Brenda*.

DISCUSSION

Mr. Authement's primary contention on appeal is that the trial court erroneously characterized his claim as being one that sounds exclusively in unjust enrichment, whereas, based on his petition and evidence presented during trial, he also presented an alternate claim that Ms. Kraft implicitly or tacitly agreed to compensate him for his services, based on her awareness of the work he had performed on the yacht and her acquiescence in allowing him to perform the work. In other words, Mr. Authement contends that a binding contract was formed between him and Ms. Kraft based on her knowledge of and acquiescence to the work he performed.³

A contract is formed by the consent of the parties established through offer and acceptance. Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or

³ At trial, Mr. Authement admitted that all conversations regarding his being reimbursed or obtaining an ownership interest in the yacht in exchange for the labor and materials expended on the boat were with Mr. Verges, but it was his "understanding" that Ms. Kraft concurred in the agreement.

inaction that under the circumstances is clearly indicative of consent. La. C.C. art. 1927. In this case, Mr. Authement asserts that Ms. Kraft's knowledge of the work he was performing on the yacht and her failure to object to his performing such work established her consent.

Consent of the parties is necessary to form a valid contract. Where there is no meeting of the minds between the parties, a contract is void for lack of consent. Aaron & Turner, L.L.C. v. Perret, 07-1701, p. 10 (La. App. 1st Cir. 5/4/09), 22 So. 3d 910, 917, writ denied, 09-1148 (La. 10/16/09), 19 So. 3d 476. Thus, critical to the merits of Mr. Authement's claim is whether the evidence presented at trial was sufficient to establish that Ms. Kraft consented to an agreement to compensate Mr. Authement for the materials and services he expended on *The Brenda*.

The only evidence presented at trial regarding the alleged agreement derives from the testimony of the parties. The existence or nonexistence of a contract is a question of fact not to be disturbed on appeal unless clearly wrong. Belin v. Dugdale, 45,405, p. 9 (La. App. 2d Cir. 6/30/10), ___ So. 3d ___, ___. When consent is not express, or when the law creates no presumption of consent, the trial judge is to ascertain, from the facts and circumstances of the case, whether the parties' consent is to be implied from them. Knecht v. Board of Trustees for State Colleges and Universities and Northwestern State University, 591 So. 2d 690, 694 (La. 1991). Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous. In re Succession of Wagner, 08-0212, p. 21 (La. App. 1st Cir. 8/8/08), 993 So. 2d 709, 723.

In its reasons for judgment, the trial court in this case stated that "[g]iven the contradictory nature of the parties' testimony regarding the existence of a contract between them and the lack of corroborating evidence, this Court finds that Plaintiff has not shown there to be such a contract." Having carefully reviewed the evidence, we find no manifest error in this determination and, therefore, reject this

argument by Mr. Authement. See Yelverton v. Massenberg, 387 So. 2d 664, 665 (La. App. 1st Cir. 1980).

Likewise, we find no merit in Mr. Authement's alternative argument that the trial court erred in finding he was not entitled to recover pursuant to the remedy of unjust enrichment. According to La. C.C. art. 2298, unjust enrichment is referred to as "enrichment without cause" and that article expressly states that the subsidiary remedy is not "available if the law provides another remedy for the impoverishment or declares a contrary rule." In this case, as noted by the trial court in its reasons for judgment, there are other remedies available to Mr. Authement, in that he could seek reimbursement from Mr. Verges. As such, we find no error in the trial court's determination that Mr. Authement is not entitled to recover pursuant to the remedy of unjust enrichment or "enrichment without cause."

CONCLUSION

Considering on the foregoing review, we affirm the judgment of the trial court based on its finding that a valid contract did not exist between the parties and that appellant is not entitled to be reimbursed under the remedy of "enrichment without cause." All costs of this appeal are assessed to the appellant, Brian J. Authement.

AFFIRMED.