

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1855

H. J. BERGERON, INC.

VERSUS

SHARON D. PARKER A/K/A SHARON D. PARKER SMITH

Judgment rendered: June 8, 2007

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On Appeal from the 18<sup>th</sup> Judicial District Court  
Parish of Pointe Coupee, State of Louisiana  
Number 39, 783-D  
The Honorable William C. Dupont, Judge Presiding

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Jeffrey Scott Wittenbrink  
Baton Rouge, LA

Counsel for Appellant  
Sharon D. Parker

Michael E. Parks  
New Roads, LA

Counsel for Appellee  
H. J. Bergeron, Inc.

BEFORE: PETTIGREW, DOWNING AND HUGHES, JJ.

J. N. Pettigrew J. Concurs with Reasons

## **DOWNING, J.**

This matter comes before us on appeal from a judgment on rule for eviction ordering Sharon Parker, defendant/appellant, to vacate certain premises and deliver possession of them to the plaintiff/appellee, H.J. Bergeron, Inc. (Bergeron). Concluding that the trial court erred in mischaracterizing the agreement between Ms. Parker and Bergeron as a lease rather than a bond for deed and entering judgment accordingly, we reverse the trial court's judgment and vacate its orders.

### ***Pertinent Facts***

Sharon Parker had entered an agreement with Bergeron regarding certain property entitled, "Lease With Option to Purchase," to become effective on February 5, 2002. Ms. Parker took possession of the property at about that time.

Subsequently, in February 2006, Bergeron filed a lawsuit against Ms. Parker for "back due rent" and for eviction. At the rule for eviction,<sup>1</sup> the trial court ruled in favor of Bergeron and ordered Ms. Parker to vacate the premises and deliver possession of them to Bergeron, failing which a warrant of eviction would issue.

Ms. Parker now appeals, asserting two assignments of error summarized as follows:

- 1) The trial court erred in ruling that the "Lease With Option to Purchase" was not to be considered a bond for deed contract pursuant to La. R.S. 9:2941 *et seq.*;
- 2) The trial court erred in ruling that Ms. Parker was in default of the agreement without properly allowing her to cure the default in accordance with La. R.S. 9:2945, governing cancellation of a bond for deed upon default.

### ***Discussion***

The trial court held that a document entitled, "Lease with Option to Purchase," attached hereto, was a lease and not a bond for deed contract as

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<sup>1</sup>The issues of past due rents, penalties, attorney fees and costs were reserved for a later trial on the merits.

alleged by defendant/appellant. This document stated a price of \$19,000 at 9%, described the property, and provided for a \$1,200 down payment with \$200 monthly payments for 146 months (which would approximately amortize the balance of the “purchase price” of \$17,800).

The “Bond for Deed” definition statute, La. R.S. 9:2941, provides:

A bond for deed is a contract to sell real property, in which the purchase price is to be paid by the buyer to the seller in installments and in which the seller after payment of a stipulated sum agrees to deliver title to the buyer.

Here, we observe that the document at issue, prepared by the purported Lessor, provides a description of real property, a purchase price in installments and an agreement to deliver title after the payment of the “Sale Price.” Further, in the last paragraph of the document, it specifically refers to the parties as BUYER and SELLER. Similar documents have been held to be “Bond for Deed” contracts. See **Tabor v. Wolinski**, 99-1732 (La.App. 1 Cir. 9/22/00), 767 So.2d 972, and **Smith v. Miller**, 06-1049 (La. App. 1 Cir. 3/23/07), 953 So.2d 206 (table).<sup>2</sup>

The trial court here incorrectly held that because the document was not recorded pursuant to La. R.S. 9:2941.1 and because the vendee did not apply for a homestead exemption, the document was not a bond for deed contract. However, recordation is for the protection of the vendee and third parties and is not a requirement for the validity of the contract. Likewise, application for a homestead exemption does not affect the validity of the contract.

Accordingly, we conclude that the “Lease with Option to Purchase” is in fact a bond for deed contract. We further conclude that the seller, H.J.

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<sup>2</sup> **Smith v. Miller**, *supra*, correctly notes that “a disguised conditional sale will be regarded as a sale from its inception.” However, it then concludes that the agreement was a bond for deed contract. We believe that unless the bond for deed statute is strictly followed, the Civil Code should apply and this document should be considered a sale, and the vendor would have to seek recovery using his vendor’s lien. However, we are required to follow existing First Circuit jurisprudence. See Internal Rules of Court, First Circuit Court of Appeal, rule 2.1.d(1).

Bergeron, Inc., did not comply with La. R.S. 9:2945<sup>3</sup> and, therefore, the judgment ordering Ms. Parker to vacate the premises and deliver possession of them to Bergeron should not have been issued.

We find merit in Ms. Parker's assignments of error. We will reverse the judgment of the trial court, vacate the orders therein, and remand for further proceedings consistent with this opinion.

*Decree*

For the foregoing reasons, we reverse the judgment of the trial court and vacate its orders. We remand this matter for further proceedings consistent with this opinion. Costs of this appeal are assessed to H.J. Bergeron, Inc.

**REVERSED; ORDERS VACATED; REMANDED**

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<sup>3</sup> Louisiana Revised Statutes 9:2945 provides as follows:

§ 2945. Cancellation of bond for deed upon default

A. If the buyer under a bond for deed contract shall fail to make the payments in accordance with its terms and conditions, the seller, at his option, may have the bond for deed cancelled by proper registry in the conveyance records, provided he has first caused the escrow agent to serve notice upon the buyer, by registered or certified mail, return receipt requested, at his last known address, that unless payment is made as provided in the bond for deed within forty-five days from the mailing date of the notice, the bond for deed shall be cancelled.

B. Where there is no mortgage or privilege existing upon the property, and the buyer shall be in default, the seller shall exercise the right of cancellation in the same manner.

P-1 LEASE WITH OPTION TO PURCHASE <sup>CELL</sup> 2397256  
STATE OF LOUISIANA EXHIBIT P-1 638-9923010  
SUIT # 39, TRB-D 17035477644  
PARISH OF Point COUPEE FILED IN EVIDENCE THIS  
25<sup>TH</sup> DAY OF March 10<sup>2006</sup> 618-0598 (HOME)

BEFORE ME, the undersigned duly commissioned and qualified Notary Public, in and for the aforesaid jurisdiction, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared H. J. BERGERON <sup>cell</sup> whose mailing address is 8091 Bayou Fountain #803, B.R., LA 70820 hereinafter referred to as LESSOR, who declared that he does by these presents, let and grant a Lease unto, SHARON D. PARKER, resident of the lawful age of majority of the 8678 ST. CECELIA, NEW ORLEANS, LA 70760, hereinafter called LESSEE, on the following terms and considerations, the following described property, to-wit:

7/10/06 ONE (1) CERTAIN LOT OR PARCEL OF GROUND, together with all the buildings and improvements thereon, situated in that subdivision of the PARISH of Pointe COUPEE State of LOUISIANA, known as JACKSON S/D EAST SUBDIVISION, and being more particularly described according to the official subdivision map, on file and of record in the office of the Clerk and Recorder for said PARISH and state, as LOT LOT TEN - #10, said subdivision: said lot having such measurements and dimensions as shown on said map. SALE PRICE - \$19,000. <sup>ST</sup> @ 990

7/10/06 This lease is made for a term of \$1,200. DOWNPAYMENT - 146 MONTHS <sup>(12.3 YRS)</sup>, commencing on the 5<sup>TH</sup> day of FEB., 2002. Monthly rental payments shall be in the amount of TWO - HUNDRED - \$200. <sup>ST</sup>. The first rental payment shall be due and payable on the 5<sup>TH</sup> day of FEB., 2002; and the others payable respectively on the same day of each month thereafter until all have been paid. Payments shall be made to LESSOR unless agreed otherwise by all parties in writing. Payments shall be deemed delinquent if not received by the 8th day of each month and subject to a late charge in the amount of twenty-five dollars (\$25).

The sole possession and control of the property herein leased shall be and remain in the lessee or tenant during the term hereof, and the tenant covenants and agrees to protect and save harmless the lessor of and from any and all claims for injury, loss or damage to any person or persons, or property in or upon the leased premises, and tenant assumes responsibility for the condition of the premises: lessor will not be liable for injury or property loss caused by any defect therein to the

Unless the lessor knew of should have known of the defect or had received notice thereof and failed to remedy said defect within a reasonable time.

Lessor shall have or be granted reasonable access to inspect said premises upon the giving of reasonable notice to lessee.

All property of every kind, both movable and/or immovable, which may be in or on said leased premises during the term thereof, shall be at the sole risk of the tenant, and in the event of the termination of this lease, lessee shall remove all improvements thereon at lessee's cost and it is further expressly understood that lessor shall not be responsible to lessee for the value of improvements left on the leased premises by lessee. It being further understood and agreed that no improvements shall be made to the property without the prior written consent of the Lessor.

*AM*  
*SP* **Lessee shall be responsible for all taxes on the leased premises and on all improvements. Lessee shall maintain insurance on the home, including but not limited to liability, hazard/fire, and insurance on the contents of the home. Lessee shall pay to the lessor each year, ALL PAID BY LESSEE dollars (\$20K) for owners liability insurance.**

**LIABILITY.** In addition to maintaining liability insurance on these premises, lessee assumes all liability for injuries suffered by any person on this property and agrees to hold lessor harmless and indemnify lessor for any and all claims filed on behalf of any person, including attorney fees and court costs.

Failure on the part of lessee to pay any monthly installment of rent when due, or to comply with others provisions of this lease within FIVE (5) days after compliance is demanded in writing by lessor, or at lessee's abandoning the leased premises, or lessee being adjudicated a bankrupt, or a receiver being appointed for lessee, shall without any putting in default, give lessor the right at his option to declare the unpaid installments of the rental immediately due and exigible, or, at the option of lessor, to cancel this lease by written notice of the cancellation of the lease and collect rental accrued to date of said cancellation. Lessor shall also have the right, in spite of such delinquency and in spite of any notices of delinquency, to treat the lease as being still in force and to collect the rental thereunder as such becomes due. Any default or delinquency on the part of lessee or any failure of lessor to exercise any option given him or the exercise by the lessor of the right to sue for any accrued rental shall not bar or abridge the right of lessor to exercise any of said options, upon any subsequent delinquency or to insist thereafter upon a strict compliance with said provisions.

This lease is non-assignable, nor shall lessee have the right to sublease the said premises without the express, written consent of the lessor first obtained.

Should it become necessary to employ an attorney at law to collect any rents or to enforce any claim arising out of lessee's failure to abide by this lease, lessee agrees to pay reasonable attorney fees to lessor.

SAP  
SAP

**OPTION OF PURCHASE:** Lessee shall have the option to purchase the above described property upon payment to lessor the full sum of NINETEEN THOUSAND DOLLARS hundred fifty dollars (\$19,000). Lessee shall receive credit on each lease payment according to amortization table (attached) at the rate of 9% interest made pursuant to this agreement.

In consideration of the granting of this option to purchase, lessee has further paid unto Lessor this date the sum of TWELVE HUNDRED Dollars (\$1,200). This option to purchase shall expire upon termination or default of the lease. Further, this option is extended concurrent with and as a condition of this lease agreement. In the event lessee should default under the provisions of the agreement resulting in cancellation or termination of this agreement, then this option to purchase is null and void and Lessor will retain the previously described sum of principal and interest as liquidated damages.

SAP  
SAP

**BUYER(S)** hereby acknowledge and recognize that this sale is in an "AS IS" condition, and accordingly, hereby relieve and release **SELLER** and all previous owners there of from any and all claims for any vices or defects in said property, whether obvious or latent, known or unknown, easily discoverable or hidden, and particularly for any claim or cause of action for redhibition pursuant to LOUISIANA Civil Code Articles LA, et seq., or for diminution of purchase price pursuant to LOUISIANA Civil Code Articles 2541, et seq. **BUYER(S)** acknowledge they understand that Louisiana redhibition law enables them to hold **SELLER** responsible for any obvious or hidden defects in the property existing on the act of sale date, and that they are waiving that right.

THUS DONE, READ AND SIGNED in the presence of the undersigned competent witnesses, Joseph B. Major

WITNESSES:

X Paula Ann Crockett  
Joseph B. Major

H. J. Bergeron INC #72-1353350  
HAR J. BERGERON, LESSOR

X Sharon J Parker SSN 433-33-9887  
Sharon J Parker

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NOTARY PUBLIC

H. J. BERGERON, INC.

NUMBER 2006 CA 1855

VERSUS

COURT OF APPEAL

SHARON D. PARKER A/K/A SHARON  
D. PARKER SMITH

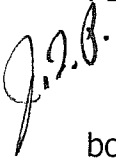
FIRST CIRCUIT

STATE OF LOUISIANA

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

PETTIGREW, J., CONCURS, AND ASSIGNS REASONS.

PETTIGREW, J., concurring.

 I agree with the majority that the specific contract involved in this dispute is a bond for deed contract. I take this opportunity and humbly suggest that the Louisiana Legislature should revisit whether we should rescind legislation on bond for deeds. Louisiana has more adequate alternatives that safeguard both the vendor's and vendee's rights under Louisiana law; such as, a sale with mortgage. In my humble opinion, the bond for deed concept has led to nothing but confusion in real estate titles and abuse of various parties.