

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0060

HENRY J. RICHARD

VERSUS

JOYCE BREAUx McELROY AND CAROLYN BREAUx

Judgment Rendered:

OCT 31 2008

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On Appeal from the Thirty-Second Judicial District Court
In and For the Parish of Terrebonne
State of Louisiana
Docket No. 147,922

Honorable George J. Larke, Judge Presiding

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

*Welch, J. concurs without reasons.
Parro, J. concurs.*

McCLENDON, J.

Multiple parties, who are involved in three related appeals over failed real estate transactions, challenge a judgment awarding damages. We reverse and remand.

Plaintiff, Mr. Henry Richard, filed a suit for damages and for specific performance of his agreement to purchase property owned by Joyce Breaux McElroy and Carolyn Breaux (sellers). Named as defendants were: the sellers; the listing real estate agency, Houma's Town & Country Real Estate, Inc. (Town & Country); its insurer, Continental Casualty Company; the real estate agency's owner and broker, Bill G. Boyd; the listing agent for the property, Faith Boudreaux; the buyer of the property, West Park Partners, L.P.; and Harold and Verlyn Foley, who held a purchase agreement dated prior to Mr. Richard's.

After the Richard suit was filed, various incidental demands were filed. The sellers filed a reconventional demand against Mr. Richard and a third party demand against the real estate defendants: Town & Country, Mr. Boyd, and Ms. Boudreaux. Mr. Howard Trahan, Ms. Beverly Marcel, and children, Seth Joseph Trahan and Keith John Boudreaux, filed an intervention against Mr. Richard, the sellers, and the real estate defendants, claiming damages from an aborted closing on a house that was located on the seller's property. The intervenors alleged that the house was excluded by the sellers from the purchase of the land subject to the house being removed from the property by the intervenors.¹

After signing two prior judgments that effectively dismissed all the claims in Mr. Richard's suit, the trial court, on March 26, 2007, rendered a judgment on the incidental demands. In the March 26 judgment, the trial court awarded the sellers all their attorney's fees incurred in defending the Richard's suit and in pursuing the real estate defendants. The trial court also found in favor of the intervenors, Mr. Trahan and Ms. Marcel. To the intervenors, the trial court awarded general damages for mental anguish suffered by the couple because of

¹ For a full recitation of the facts and procedural background, see **Richard v. McElroy**, 2008 CA 0064 and **Richard v. McElroy**, 2008 CA 0065, both rendered the same date as this opinion.

the inability to buy and move the house, and special damages in the form of rent for several months while the couple waited to see if the sale might go through. Fault was allocated as 75% to the real estate defendants and 25% to Mr. Richard.

Mr. Richard appealed. He asserted that his purchase agreement should have been honored, that he did not owe damages, and that he should be allowed to show proof of the damages he suffered. The intervenors appealed asking for higher damages and for attorney fees. The real estate defendants appealed assigning error to the award of attorney fees to the sellers and to the award of damages to the intervenors. The sellers answered the appeal and asked for higher damages and additional attorney fees for addressing and defending the various appeals, and that all the real estate defendants be held liable in solido with Mr. Richard.

Having considered the merits of all the related appeals, especially our finding on the interpretation of Mr. Richard's purchase agreement, a re-trial of the damages issues determined in the March 26 judgment is mandated. The issues of the fault of the various parties are so inextricably intertwined with the issue of damages that the present judgment cannot stand. We further find that this court cannot award damages on an appellate review of abuse of discretion in the absence of final determinations by the trial court on the linked legal and factual issues raised in Mr. Richard's suit, which would impact the liability determinations in the incidental demands as well. Thus, we reverse the March 26, 2007 judgment, and remand the matter to the trial court for further proceedings consistent with the opinions in these three related appeals. Based on the same reasoning, we also deny the sellers' requests in their answer to the appeal.

Therefore, we reverse the judgment, and remand for further proceedings consistent with this opinion and those in the related appeals. The costs of the three related appeals are to be totaled and are assessed one-half to the sellers: Joyce Breaux McElroy and Carolyn Breaux, and one-half to the real estate

defendants: Town & Country; its owner and broker, Bill G. Boyd; its agent, Faith Boudreaux; and its insurer, Continental Casualty Company.

REVERSED AND REMANDED.