

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 1252

INSPECTION CONSTRUCTION UNLIMITED, L.L.C.

VERSUS

ROBERT HARRINGTON

Judgment Rendered: December 23, 2008

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Appealed from the  
Sixteenth Judicial District Court  
In and for the Parish of St. Mary, Louisiana  
Trial Court Number 117,831

Honorable Lori A. Landry, Judge

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Inspection Construction  
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Defendant – Appellee  
Robert Harrington

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.



WELCH, J.

Inspection Construction Unlimited, L.L.C. (“Inspection Construction”) appeals a judgment in the amount of \$8,763.04 against the defendant, Robert Harrington, which the trial court ordered to be paid at the rate of \$500.00 per month. For reasons that follow, we amend the judgment, and as amended, affirm in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1(B).

On November 13, 2007, Inspection Construction instituted these proceedings against Mr. Harrington, seeking damages for conversion and to recover the outstanding balance on a loan account. Inspection Construction alleged in its petition that it loaned Mr. Harrington, its former employee, approximately \$27,500.00 and that the loan had a balance of approximately \$16,000.00. Additionally, Inspection Construction alleged that during Mr. Harrington’s employment, he was advanced funds for the purpose of paying business expenses incurred by him on behalf of Inspection Construction, but that he had converted approximately \$28,000.00 of those funds for his personal use. And, although Mr. Harrington had repaid a portion of those converted funds, Inspection Construction alleged that he still owed approximately \$20,208.17. Accordingly, Inspection Construction sought judgment against Mr. Harrington in the amount of \$36,208.17, plus general damages for conversion, and attorney fees. Mr. Harrington filed an answer essentially denying the allegations of Inspection Construction’s petition.

A trial on the matter was held on February 19, 2008. According to the minutes, after some evidence was introduced on behalf of Inspection Construction, the parties stipulated that Mr. Harrington would be given a credit in the amount \$7,791.83 for payments made during the time period between June 2004 and June 2006, and that the remaining balance due and payable to Inspection Construction

was the sum of \$4,070.94, which would be paid at the rate of \$100.00 per week. Thereafter, additional evidence was introduced on behalf of both Inspection Construction and Mr. Harrington. At the conclusion of trial, the trial court rendered judgment in favor of Inspection Construction and against Mr. Harrington in the total amount of \$8,763.04, with \$4,070.94 of that sum representing the previously stipulated amount owed by Mr. Harrington and the remaining \$4,692.10 representing the additional sums owed by Mr. Harrington to Inspection Construction. The trial court further ordered that the entire judgment was to be paid to Inspection Construction at the rate of \$500.00 per month until paid in full. A written judgment in conformity with the trial court's ruling was signed on February 21, 2008, and it is from this judgment that Inspection Construction has appealed.

On appeal, Inspection Construction asserts that: (1) the trial court manifestly erred in calculating the amount of expenses advanced by Inspection Construction and converted by Mr. Harrington, and (2) that the trial court erred in ordering that the money judgment be paid in monthly installments and instead, should have awarded a lump sum money judgment due and payable immediately.

In this case, the determination of the amount of expenses advanced by Inspection Construction and converted by Mr. Harrington was essentially a factual one. The appellate court's review of factual findings is governed by the manifest error-clearly wrong standard. The two-part test for the appellate review of a factual finding is: (1) whether there is a reasonable factual basis in the record for the finding of the trial court; and (2) whether the record further establishes that the finding is not manifestly erroneous. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987).

In this case, the record before us does not contain a transcript of the

testimony from trial, nor does it contain a narrative of the facts.<sup>1</sup> The appellant bears the responsibility of securing either a transcript or a narrative of the facts; therefore, an inadequacy in the record is imputable to the appellant. **Oliver v. Cal Dive International, Inc.**, 2002-1122, p. 7 (La. App. 1<sup>st</sup> Cir. 4/2/03), 844 So.2d 942, 947, writs denied, 2003-1230 and 2003-1796 (La. 9/19/03), 853 So.2d 638 and 649. In the absence of a transcript or narrative of the facts, this court does not possess the factual basis from which to determine whether the trial court's finding of the amount of expenses advanced by Inspection Construction and converted by Mr. Harrington was reasonable, and further, whether its finding was manifestly erroneous. Although the record before us contains the documentary evidence that was introduced at trial, absent a transcript of the testimony or a narrative of facts explaining those documents, that evidence sheds little light on how the trial court reached the factual findings that it did.

As a reviewing court, when the record before us does not contain a transcript, narrative of facts, or other satisfactory evidence and, to the extent that the trial court's judgment was based on factual findings, we are relegated to applying the presumption that the trial court's judgment is supported by competent evidence and must affirm the judgment. **Oliver**, 2002-1122 at p. 8, 844 So.2d at 947. Applying this presumption, that part of the February 21, 2008 judgment in favor of Inspection Construction and against Mr. Harrington in the total amount of \$8,763.04 is hereby affirmed.

However, we find that Inspection Construction is correct in claiming that the trial court erred in ordering Mr. Harrington to pay the entire judgment at the rate of

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<sup>1</sup> Louisiana Code of Civil Procedure article 2131 provides:

If the testimony of the witnesses has not been taken down in writing[,] the appellant must request the other parties to join with him in a written and signed narrative of the facts, and in cases of disagreement as to this narrative or of refusal to join in it, at any time prior to the lodging of the record in the appellate court, the judge shall make a written narrative of the facts, which shall be conclusive.

\$500.00 per month. After a money judgment is rendered and becomes final, the party in whose favor the money judgment is rendered, *i.e.*, the judgment creditor, has the right to enforce the judgment by any means provided by law. See generally State, Department of Health and Human Resources v. Duvigneaud, 99-2759, p. 3 (La. App. 4<sup>th</sup> Cir. 5/3/00), 763 So.2d 723, 725. The trial court does not have the authority to enforce the collection of a money judgment by ordering that it be paid in monthly installments, unless specifically agreed to by the parties or specifically provided for by law. *Id.*

In this case, the minutes from the trial court reflect that the parties stipulated that \$4,070.94 of the judgment would be paid at the rate of \$100.00 per week; however, the minutes do not reflect the same agreement for the remainder of the judgment. Accordingly, we hereby amend the February 21, 2008 judgment to provide \$4,070.94 of the total judgment shall be paid to Inspection Construction at the rate of \$100.00 per week until paid in full and that the remaining \$4,692.10 of the judgment is due and payable immediately.

For the reasons set forth above, the February 21, 2008 judgment of the trial court is amended and as amended, is affirmed.

All costs of this appeal are hereby assessed equally to the plaintiff/appellant, Inspection Construction Unlimited, L.L.C., and defendant/appellee, Robert Harrington.

**AMENDED, AND AS AMENDED, AFFIRMED.**