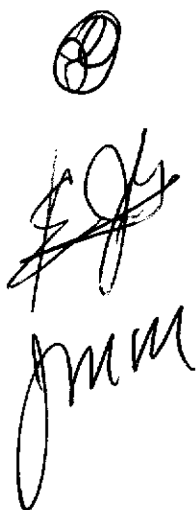
NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1533



JAMES STANLEY HARRIS

VERSUS

IAN E. JAMES

Judgment Rendered: MAY 04 2012

* * * * * * * * * *

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 573,018, Section "23"

Honorable William A. Morvant, Judge Presiding

* * * * * * * * * *

Brandon J. Babineaux
Andrew B. Ezell
Baton Rouge, La.

Counsel for Plaintiff/Appellee
James Stanley Harris

Stephen C. Carleton
Victor R. Loraso, III
Carmen T. Hebert
Vionne M. Douglas
Baton Rouge, La.

Counsel for Defendant/Appellant
Ian E. James

* * * * * * * * * *

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a judgment of the Nineteenth Judicial District Court (19th JDC) that ruled in favor of the plaintiff/appellee, Mr. James Stanley Harris, and against defendant/appellant, Mr. Ian E. James, finding Mr. James liable to Mr. Harris for his failure to make a good faith effort in securing financing pursuant to the terms of a purchase agreement. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

This cause of action arises from a failed "Louisiana Residential Agreement to Buy or Sell" (purchase agreement) entered into by Mr. Harris and Mr. James. Mr. Harris agreed to sell and Mr. James agreed to buy a home located at 17513 West Muirfield Drive in Baton Rouge, Louisiana for the price of $595,000.00.[1] The purchase agreement provided for the closing to take place on or before September 8, 2008 and was conditioned upon the ability of Mr. James to borrow, with the property as security for the loan, 80% of the sales price by a fixed rate mortgage loan or loans.

Thereafter, two extensions of the closing date were mutually agreed to in writing, wherein the closing date was extended first to September 12, 2008 and then to September 19, 2008. On September 19, 2008 Mr. James presented to Mr. Harris an addendum to the purchase agreement, wherein he requested an additional two-week extension of the closing date, the opportunity to re-inspect the property for possible damage caused by Hurricanes Gustav and Ike, and to condition the agreement on his ability to secure 95% financing at a rate not to exceed 6.75% interest. Mr. Harris rejected the offer and on November 25, 2008 he filed suit against Mr. James in the 19th JDC, demanding damages for breach of the purchase agreement.

[1] After an appraisal, the purchase price was lowered to $589,000.00 by mutual agreement.

A bench trial was held on April 19, 2011. At the close of the evidence, the trial court rendered judgment in favor of Mr. Harris concluding that the contract required Mr. James to "make application for and seek to obtain financing of 80 percent of the sales price" and that "[t]hat was never done." The trial court awarded Mr. Harris damages in the amount of $58,900.00, as stipulated by the purchase agreement. The court also awarded Mr. Harris attorney's fees in the amount of $14,725.00, and costs in the amount of $1,060.00. Mr. James appeals, and makes the following assignments of error:

> 1.) The evidence clearly preponderates that [Mr. James] made a timely, good faith application to obtain a loan, and the trial court was clearly wrong in holding otherwise.
>
> 2.) The purchase agreement in question governs the requirements for meeting the suspensive condition to obtain financing and thus clear error for the trial court to hold [Mr. James] to conditions not contained therein.
>
> 3.) Having found [Mr. James's] mortgage broker never sought financing pursuant to the terms of the purchase agreement in question, it was error for the trial court to impute fault to Mr. James for any of his mortgage broker's shortcomings.

LAW AND ANALYSIS

1. Contract Interpretation – What was required of Mr. James pursuant to the contract?

In his second assignment of error, Mr. James alleges that the trial court erred in its interpretation of the purchase agreement contract. Specifically, Mr. James argues that the trial court was clearly wrong in finding that the language of the agreement required him to apply for and seek an 80% loan.

Legal agreements have the effect of law upon the parties, and, as they bind themselves, they shall be held to a full performance of the obligations flowing therefrom. **Spohrer v. Spohrer**, 610 So.2d 849, 851-52 (La. App.

1st Cir. 1992). When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. **Spohrer v. Spohrer**, 610 So.2d at 852. The rules of interpretation establish that when a clause in a contract is clear and unambiguous, the letter of the clause should not be disregarded under the pretext of pursuing its spirit. **Spohrer v. Spohrer**, 610 So.2d at 852. Louisiana Civil Code article 2045 defines interpretation of a contract as "the determination of the common intent of the parties." **Lindsey v. Poole**, 579 So.2d 1145, 1147 (La. App. 2nd Cir.), writ denied, 588 So.2d 100 (La.1991). Such intent is to be determined in accordance with the plain, ordinary, and popular sense of the language used, and by construing the entirety of the document on a practical, reasonable, and fair basis. **Lindsey v. Poole**, 579 So.2d at 1147.

Whether a contract is ambiguous or not is a question of law. **Borden, Inc. v. Gulf States Utilities Company**, 543 So.2d 924, 928 (La. App. 1 Cir. 1989), writ denied, 545 So.2d 1041 (La. 1989). Appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. **Borden, Inc. v. Gulf States**, 543 So.2d at 928.

The relevant portions of the purchase agreement are set forth below:

> FINANCED SALE: This sale is conditioned upon the ability of BUYER to borrow with this Property as security for the loan the sum of 80% of the Sales Price by a mortgage loan or loans... The loan shall be secured by: Fixed Rate Mortgage.
>
> BUYER agrees to make good faith application, which includes ordering and paying for an appraisal and credit report if required for loan approval,...Written commitment by the lender to make loan(s), without contingencies except subject to approval of title, shall be obtained by BUYER and shall constitute final loan approval. Final loan approval shall be obtained on or prior to closing...**The BUYER acknowledges and warrants that he has available the funds which may be required to complete the sale of the Property including, but**

> **not limited to, the deposit, the down payment, closing costs, pre-paid items, and other expenses.**
>
> * * * *
>
> RETURN OF DEPOSIT: The Deposit shall be returned to the BUYER and this Agreement declared null and void without demand in consequence of the following events:
>
> * * * *
>
> 2.) If this Agreement is subject to BUYER'S ability to obtain a loan and the loan is not obtained by the date set forth in lines 64 through 70 of this Agreement **but only if the BUYER has made** timely application for the loan and made **good faith efforts to obtain the loan;**

(Emphasis added.)

The contract unambiguously states that: Mr. Harris will sell his home to Mr. James for the price of $595,000; that the sale is conditioned on the ability of Mr. James to secure 80% financing; and that Mr. James warrants that he has all other funds necessary to complete the sale, including the down payment. Thus, we cannot hold that the trial court was incorrect in concluding that the purchase agreement required Mr. James to make a good faith effort to obtain an 80% loan. This assignment of error lacks merit.

2. <u>Good Faith Application</u>

In his first assignment of error, Mr. James argues that the trial court was clearly wrong in finding that he did not make a good faith, timely effort to secure a loan. However, we note that, as stated above, the terms of the purchase agreement require that Mr. James not only make an effort to secure a loan, but that he make an effort to secure an 80% loan with his warrant that he had the funds for the 20% down payment available.

A stipulation in a contract to sell that makes a sale conditioned upon a purchaser's ability to obtain a stipulated loan to finance the purchase, imposes a duty on the purchaser to make a good faith effort to obtain that

loan. **Comprehensive Addiction Programs v. Mendoza**, 97-2979 (La. E.D. 5/27/99), 50 F. Supp.2d 581, 583, citing **Woods v. Austin**, 347 So.2d 897, 899 (La. App. 3 Cir. 1977). Whether a purchaser acted in good faith is a question of fact and circumstances. **Comprehensive**, 50 F. Supp.2d at 583. Only if a purchaser is unable to obtain the loan through no fault of his own is he released from his obligation to purchase. **Comprehensive**, 50 F. Supp.2d at 583.

A court of appeal may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). The supreme court has announced a two-part test for the reversal of a factfinder's determinations: (1) the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and (2) the appellate court must further determine that the record establishes that the finding is clearly wrong (manifestly erroneous). **Stobart v. State, Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993). See also **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Thus, the issue to be resolved by a reviewing court is not whether the trier-of-fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. **Stobart v. State, Department of Transportation and Development**, 617 So.2d at 882. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Stobart v. State, Department of Transportation and Development**, 617 So.2d at 883; **Wright v. Bennett**, 2004-1944, p. 25 (La. App. 1 Cir. 9/28/05), 924 So.2d 178, 193.

The documentary evidence and testimony at the trial established the following:

The purchase agreement was entered into on August 6, 2008. To help him get financing, Mr. James contacted Ms. Beki Lawrence, a loan officer at Louisiana Real Estate Mortgage. Ms. Lawrence testified that Mr. James requested a "100% interest only loan." Ms. Lawrence stated that she contacted Ms. Janie Spann of American Gateway Bank to apply to American Gateway for 100% financing on behalf of Mr. James.

In an August 21, 2008 letter provided to Mr. James, Ms. Lawrence stated that he "has applied and is approved to purchase home...with a Sale Price of $595,000...I have reviewed all documentation and submitted the loan for final approval." However, in a letter to Ms. Lawrence dated September 16, 2008, Janie Spann stated that "the bank is unable to approve the 100% loan that I initially though[t] I could provide to Mr. James. I can, however, approve the loan with a 10% down payment and a 20 year amortization."

In a subsequent September 19, 2008 letter to Ms. Lawrence, Ms. Spann stated "[a]s requested, we analyzed the request using both an 80% and 90% loan. Using year to date income at 90%, the debt to income ratio is too high. At 80%, based on the financials I was provided, there does not appear to be liquidity to put 20% down on a loan of that size." Ms. Spann testified that she was not specifically asked for an 80% loan by either Ms. Lawrence or Mr. James, but that after she determined that the bank would not be able to approve the requested 100% interest only loan, she attempted to determine what other alternative loans the bank could approve.

In an October 22, 2008 letter, Ms. Lawrence summarized her efforts to obtain 100% interest only financing for Mr. James. While she submitted loan inquiries to several banks, every bank declined that loan. However, the letter evidences that First Bank & Trust offered Mr. James an 80% loan with

20% down, and Teche Federal Bank offered Mr. James an 85% loan, with 15% down. Ms. Lawrence testified that Mr. James could not accept those loans because "[h]e did not have assets to put 20% down." (Plaintiff's Exhibit 11) She further testified that at no time did Mr. James specifically request that she apply for an 80% loan on his behalf, and that she did not seek such a loan because of his inability to pay a 20% down payment.[2]

At the trial, Mr. James testified that he never intended to finance only 80% of the price of the home. Instead, he intended to seek either a 100% line of credit, or a 100% interest only loan. Alternatively, he would seek an 80% first mortgage loan with a 20% second mortgage loan, both with the property as collateral. He further stated that he did not actually read the contract, and did not understand that he was required to apply for an 80% loan. However, the law is clear that when the parties sign a document, they are presumed to have consented to its contents. **Griffin v. Lago Espanol, L.L.C.**, 00-2544 (La. App. 1 Cir. 2/15/02), 808 So.2d 833, 840; **Sonnier v. Boudreaux**, 95-2127, (La. App. 1 Cir. 5/10/96), 673 So.2d 713, 717. Signatures to obligations are not mere ornaments. **Tweedel v. Brasseaux**, 433 So.2d 133, 137 (La. 1983). A party to a contract cannot avoid its obligations by contending that he did not read it or he did not fully understand it. **Bogalusa Community Medical Center v. Batiste**, 603 So.2d 183, 186 (La. App. 1 Cir.1992). Even a misrepresentation does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skills. **Sonnier v. Boudreaux**, 673 So.2d at 718.

Mr. James warranted that he had "available the funds which may be required to complete the sale of the Property including, but not limited to,

---

[2] While a 100% loan might appear superior to an 80% loan from a buyer's perspective, a lesser down payment weakens the equity position of the seller/mortgagee.

the deposit, the down payment, closing costs, pre-paid items, and other expenses." Only if his failure to apply for or secure the loan is through no fault of his own will the financing contingency cause the contract to be null and void. While Mr. James testified "I told her, make the loan happen," he does not dispute that he never specifically instructed Ms. Lawrence to seek, and in fact did not know that he was required to seek, an 80% loan as stated in the agreement. There is a substantial basis in the record for the trial court's finding that Mr. James did not make application for and seek to get financing for the type of loan stipulated in the agreement. We cannot say that this finding was manifestly erroneous.

Moreover, even assuming for the sake of argument that Ms. Spann's letter of September 19, 2008 denying Mr. James an 80% loan fulfilled his obligation of application, that loan was denied because he did not have the funds available for the 20% down payment.[3] Likewise, even assuming that the counter offers were equivalent to unapproved applications, it was again Mr. James's lack of a down payment that prevented his acceptance. Simply put, he warranted in the agreement to have something that he did not have. We cannot say that the trial court was manifestly erroneous in determining that Mr. James breached the agreement in this case.[4] This assignment of error lacks merit.

---

[3] In brief, Mr. Harris cites as authority the cases of **Mendoza**, cited above, and **Century 21Acadia Realty and Dev. Co., Inc. v. Brough**, 393 So.2d 287 (La. App. 1 Cir. 1980), for his position that he need not formally apply for a specific loan. However, in those cases there was no evidence that either buyer was denied financing due to his own fault.

[4] We note the similarity of this case to **Louisiana Real Estate Commission v. Blakes**, 04-216 (La. App. 5 Cir. 7/27/04), 880 So.2d 79, wherein the appellate court reversed the trial court's granting of a motion for summary judgment in favor of the buyers, finding that genuine issues of fact remained as to whether the contract failed due to the buyers' inability to obtain financing, which could render the contract null, or whether the contract failed due to the buyers' misrepresentation that they possessed the requisite cash down payment, which would result in a breach of the contract on their part.

3. The Fault of Beki Lawrence

In his third assignment of error, Mr. James argues that the trial court erred in imputing to him Ms. Lawrence's fault in failing to seek the type of loan required by the contract. However, Mr. James admitted that he did not know he was required to seek an 80% loan, although the contract required that he do so. It appears that Ms. Lawrence attempted to secure whatever type of loan was available, including an offer of an 80% loan from First Bank and Trust, but in every instance it was the lack of funds for a down payment that caused these efforts to fail. This assignment of error lacks merit.

CONCLUSION

For the reasons assigned herein, the judgment of the 19th JDC is affirmed. All costs of this appeal are assessed to defendant/appellant, Ian James.

AFFIRMED.