NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0738

LARRIE OATIES AND IRENE OATIES

VERSUS

LARRY W. WARNER, SR. AND
WARNER & SONS TURCKING, INC.

Judgment Rendered: June 8, 2007

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 2003-14,035

Honorable Martin E. Coady, Judge

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Defendants – Appellees
Larry Warner, Sr. and Warner
& Sons Trucking, Inc.

KUHN, J DISSENTS AND ASSIGNS REASONS

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GUIDRY, J. CONCURS IN THE RESULT.

BEFORE: KUHN, GUIDRY, GAIDRY, HUGHES, AND WELCH, JJ.

WELCH, J.

This is an appeal by Larrie and Irene Oaties from a trial court judgment awarding damages, legal interest, and costs in their favor and against Larry W. Warner, Sr. and Warner & Sons Trucking, Inc. ("Warner & Sons"). For reasons that follow, we affirm in part, reverse in part, and render.

FACTUAL AND PROCEDURAL HISTORY

The plaintiffs in this matter, Larrie and Irene Oaties, are husband and wife. The defendant, Larry Warner, is the manager of Warner & Sons Trucking, Inc. Mrs. Oaties and Mr. Warner are second cousins. Mr. Oaties was employed as a truck driver with Warner & Sons from 1998 until July 25, 2003.

On May 30, 2001, Mr. Oaties and Mr. Warner entered into and signed an agreement which provided as follows:

> I, LARRY W. WARNER, SR. HEREBY IN AGREEMENT AM SELLING MY 1999 CAMARO VIN 2G1FP22K0X2141524 TO LARRIE OATIES WHO IS EMPLOYED BY WARNER & SONS'S TRUCKING. ALSO LARRIE OATIES WILL PAY 429.42 CAR PAYMENT AND INSURANCE 122.50 WEEKLY IN THE AMOUNT OF 138.00. ALSO IT WILL BE YOUR UNDERSTANDING THAT NO ONE UNDER THE AGE OF 21 WILL DRIVE THE CAR AND THE CAR WILL BE FULLY YOUR RESPONSIBILITY UPON RECEIPT AND THAT YOU WILL PAY FOR IT. AFTER 36 MONTHS YOU'LL BE GIVEN THE TITLE IN YOUR NAME.

Pursuant to this agreement, Mr. Oaties paid Mr. Warner $429.42 per month from May 2001 through the end of July 2003. On July 25, 2003, Mr. Oaties terminated his employment with Warner & Sons because Mr. Oaties learned that Mr. Warner was deducting workers' compensation insurance premiums from Mr. Oaties' paycheck. In August 2003, Mr. Oaties sent Mr. Warner a money order for the monthly amount due by certified mail; however, Mr. Warner refused to claim the mail. On August 19, 2003, Mr. Warner and his two sons went to Mr. and Mrs. Oaties' home with a tow truck and seized the vehicle.

On August 27, 2003, Mr. and Mrs. Oaties instituted these proceedings by filing a petition for damages. In this petition Mr. and Mrs. Oaties alleged that Mr. Warner had wrongfully seized the vehicle, had trespassed on their property, and had invaded their privacy. Therefore, they contended that Mr. Warner was liable to them for all sums they had paid for the vehicle, for the contents of the vehicle that Mr. Warner had refused to return, and all sums paid by Mr. Oaties to Mr. Warner for an extended warranty on the vehicle, as well as general damages for trespass, wrongful seizure, and emotional distress. Additionally, Mr. and Mrs. Oaties alleged that Mr. Warner and Warner & Sons had wrongfully deducted workers' compensation insurance premiums from Mr. Oaties' wages in violation of La. R.S. 23:1163,[1] and as such, Mr. Oaties was entitled to a full accounting and refund of said sums, together with legal interest from the date of deduction, attorney fees, and costs.[2]

After a trial on the merits, the trial court rendered judgment in favor of Mr. Oaties and against Warner & Sons in the amount of $7,764.24, plus legal interest and costs, for the workers' compensation premiums wrongfully deducted from Mr. Oaties' pay.[3] Additionally, the trial court determined that the agreement entered into between Mr. Warner and Mr. Oaties was a "contract to sell" pursuant to La. C.C. art. 2623, that all of the conditions of the contract to sell had not been fulfilled since the condition of payment for thirty-six months was not completed, and

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[1] In proceedings pending before the Office of Workers' Compensation Administration, Mr. Warner stipulated that Warner & Sons violated La. R.S. 23:1163, and on July 16, 2004, a workers' compensation judge assessed a fine against Warner & Sons for its violation of La. R.S. 23:1163.

[2] An employer's admitted violation of La. R.S. 23:1163 may, in a separate non-workers' compensation civil suit, provide a basis for recovery by a claimant from the employer of the amount deducted from his paycheck for the cost of his coverage, plus legal interest. **Chevalier v. L. H. Bossier, Inc.**, 95-2075, p. 7 (La. 7/2/96), 676 So.2d 1072, 1077.

[3] No issue has been raised in this appeal with regard to the propriety of the judgment in favor of Mr. Oaties and against Warner & Sons in the amount of $7,764.24 for the workers' compensation premiums wrongfully deducted from Mr. Oaties' pay. Accordingly, this portion of the judgment is hereby affirmed.

therefore, the trial court concluded "an actual sale did not occur." Accordingly, the trial court denied the claim for damages for the alleged wrongful seizure of the vehicle, and since Mr. Oaties had "use of the vehicle," the trial court denied Mr. Oaties' request recovery of the all sums paid between May 2001 and August 2003. However, since Mr. Oaties did not retain possession of the vehicle, the trial court rendered judgment in favor of Mr. Oaties and against Mr. Warner in the amount of $900.00, plus legal interest and costs, representing the sum paid by Mr. Oaties for the extended warranty. Additionally, the trial court awarded Mr. Oaties the sum of $1,000, representing the "down payment" to Mr. Warner for the car; however, this sum was subject to a credit of $1,000 in favor of Mr. Warner for damage to the vehicle caused by Mr. Oaties. The trial court also denied Mrs. Oaties claim for the jewelry that she left in the vehicle and that was not returned to her after Mr. Warner seized the vehicle.

A written judgment in conformity with the trial court's ruling was signed on June 24, 2005, and it is from this judgment that Mr. and Mrs. Oaties have appealed. On appeal, Mr. and Mrs. Oaties contend that the trial court erred by (1) recognizing the conditional sale of a movable, and (2) allowing Mr. Warner to use "self-help" and trespass on Mr. and Mrs. Oaties' property to seize their vehicle.

LAW AND DISCUSSION

Louisiana Civil Code article 2623 defines a contract to sell as follows:

> An agreement whereby one party promises to sell and the other promises to buy a thing at a later time, or upon the happening of a condition, or upon performance of some obligation by either party, is a bilateral promise of sale or contract to sell. Such an agreement gives either party the right to demand specific performance.
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> A contract to sell must set forth the thing and the price, and meet the formal requirements of the sale it contemplates.

A contract to sell does not transfer ownership of the property involved. **Hewitt v. Safeway Ins. Co. of La.**, 2001-0115, p. 4 (La. App. 3rd Cir. 6/6/01), 787

So.2d 1182, 1185; see also La. C.C. art. 2623, comment (c). Additionally, a contract to sell does not give the party seeking to purchase the property the right of possession of the property unless specifically provided for in the contract. *Id.*

In written reasons for judgment, the trial court stated:

> The [c]ourt ... finds the parties did enter into an agreement in May of 2001 for [Mr.] Oaties to buy the Camaro from [Mr.] Warner. The terms of the agreement are somewhat unclear. However, the agreement appears to be a promise to sell by [Mr.] Warner and a promise to buy by [Mr.] Oaties upon the occurrence of a condition, which was the payment of $429.41 for 36 months. According to the agreement, after payment for 36 months, [Mr.] Oaties would be given title to the vehicle.
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> ....
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> The contract to sell was never fulfilled in this case, as the condition for payment for thirty[-]six months was not completed, after [Mr.] Warner took the Camaro. Unfortunately, the contract to sell did not contain any provisions to address what would constitute a default of the contract, therefore, the [c]ourt finds this agreement between [Mr.] Warner and [Mr.] Oaties constituted a bilateral contract to sell or promise to sell with a condition that was not fulfilled. Therefore, ownership of the vehicle never passed to [Mr.] Oaties, and an actual sale did not occur.

The interpretation of a contract is the determination of the common intent of the parties. La. C.C. art. 2045. When the words of a contract, given their generally prevailing meaning, are clear and explicit, and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. arts. 2046 and 2047. In such cases, the meaning and intent of the parties to the written contract must be sought within the four corners of the instrument and cannot be explained or contradicted by parol evidence. La. C.C. art. 1848; **Allain v. Shell Western E & P, Inc.**, 99-0403, p. 8 (La. App. 1st Cir. 5/12/00), 762 So.2d 709, 714. Contracts, subject to interpretation from the instrument's four corners without the necessity of extrinsic evidence, are to be interpreted as a matter of law. *Id.*

Based upon our review of the May 30, 2001 agreement between Mr. Warner and Mr. Oaties, we find that the trial court erred in determining that the agreement

was unclear, was a contract to sell, and did not transfer ownership of the vehicle.[4]

The terms of the agreement clearly and explicitly provide that Mr. Warner and Mr. Oaties were entering into an immediate sale of the vehicle from Mr. Warner to Mr. Oaties. This is evidenced by the present tense of the first sentence of the agreement, which provides: "I, Larry W. Warner, Sr. ... *am selling* my 1999 Camaro ... to Larrie Oaties...." (Emphasis added). Had Mr. Warner and Mr. Oaties intended to enter into a contract to sell, as found by the trial court, they would have indicated in the agreement that the *sale* of the vehicle would be completed at a future date—they did not do so. Notably absent from the agreement is a "promise" by either party to sell or to buy the car at a "later time." See La. C.C. art. 2623. While the last sentence of the agreement provides that "[a]fter 36 months, [Mr. Oaties will] be given the title in [his] name," this provision merely indicates parties' intent that the *title* of the car would not be transferred until Mr. Oaties had paid the sum of $429.42 per month for thirty-six months—it does not indicate that the *sale* would take place after thirty-six months. Certificate of title to a vehicle need not be transferred in order for the sale of the vehicle to be a valid. **Biggs v. Prewitt**, 95-0315, p. 5 (La. App. 1st Cir. 10/6/95), 669 So.2d 441, 443, writ denied, 96-1035 (La. 5/31/96), 674 So.2d 264. Thus, based on the record before us, we find that the trial court legally erred[5] in determining that the agreement was a contract to sell.

Moreover, we find that the agreement immediately transferred ownership of

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[4] Whether a contract is ambiguous or not is a question of law. When appellate review is not premised upon any factual findings made at the trial level, but is, instead, based upon an independent review and examination of the contract on its face, the manifest error rule does not apply. In such cases, appellate review of questions of law is simply whether the trial court was legally correct or legally incorrect. **Freeport-McMoran, Inc. v. Transcontinental Gas Pipeline Corp.**, 2004-0031, p. 8 (La. App. 1st Cir. 10/14/05), 924 So.2d 207, 213.

[5] A legal error occurs when a trial court applies incorrect principles of law and such errors are prejudicial. Legal errors are prejudicial when they materially affect the outcome and deprive a party of substantial rights. **Evans v. Lungrin**, 97-0541, 97-0577, pp. 6-7 (La. 2/6/98), 708 So.2d 731, 735.

the vehicle to Mr. Oaties. Louisiana Civil Code article 2456 provides that "[o]wnership is transferred between the parties as soon as there is agreement on the thing and the price is fixed, even though the thing sold is not yet delivered nor the price paid." Generally, Louisiana does not recognize common law conditional sales contracts for movables in which the vendor remains the owner of property until the full price is paid. **Hewitt**, 2001-0115, p. 5; 787 So.2d at 1186.[6] Although the price was not paid in full at the time Mr. Warner and Mr. Oaties entered into the agreement, the agreement did establish a fixed price ($429.42 per month for 36 months) for the thing purchased (the Camaro) as required by La. C.C. art. 2456. Thus, we find ownership of the vehicle was transferred, the trial court erred in determining otherwise, and we hereby reverse that portion of the judgment of the trial court.

Additionally, the trial court's award of damages was limited to sums attributable to the fact that Mr. Oaties did not retain possession of the vehicle (i.e., the extended warranty and the down payment), was reduced by the damage to the vehicle caused by Mr. Oaties, and did not include any general damages for the wrongful seizure. Thus, the trial court's legal error in determining that the agreement was a contract to sell rather than an actual sale interdicted its factual findings with regard what damages were actually warranted in this case.

When a prejudicial error of law interdicts the trial court's finding of a material issue of fact and causes it to pretermit other issues, the appellate court is required if it can—if the record is otherwise complete—to render judgment on the record by applying the correct law and determining the essential material facts *de novo*. **Evans v. Lungrin**, 97-0541, 97-0577, pp. 6-7 (La. 2/6/98), 708 So.2d 731,

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[6] However, an exception to this general rule is a financed lease under the Louisiana Lease of Movables Act. See La. R.S. 9:3302. The agreement between Mr. Warner and Mr. Oaties does not meet the requirements for a lease or a financed lease, nor does it provide for a security interest. Therefore, this provision is inapplicable to this appeal.

735. Accordingly, we shall conduct a *de novo* review of the record to determine the appropriate measure of damages.

In this case, since Mr. Oaties was the owner of the vehicle, Mr. Warner's actions in trespassing on Mr. Oaties property and personally seizing the vehicle on August 19, 2003 were improper, if not illegal. Mr. Warner did not have a security interest in the vehicle nor did he pursue any legal process—executory or otherwise—which would authorize such action. Accordingly, Mr. Oaties was entitled to damages for the wrongful seizure of the vehicle.

Mr. Oaties testified the 1999 Camaro he purchased from Mr. Warner was the only "running" vehicle that he and Mrs. Oaties owned and he felt Mr. Warner's actions in trespassing on their property and improperly seizing the vehicle were wrong. As a result of Mr. Warner's actions, the Oaties were left without any means of transportation, and Mr. Oaties had to borrow his son's pick-up truck. Accordingly, we find an award of $1,500 to each Mr. Oaties and Mrs. Oaties is warranted, and we hereby render judgment against Mr. Warner and in favor of Mr. and Mrs. Oaties, in the amount of $1,500 each for general damages for the wrongful seizure of the Camaro. See generally **Taylor v. Hancock Bank of Louisiana**, 95-0666, pp. 3-4 (La. App. 1st Cir. 11/9/95), 665 So.2d 5, 7 (determining that damages for an illegal or wrongful seizure can include damages in compensation for embarrassment, humiliation, mental anguish and worry).

Additionally, at trial Mr. Warner did not disclose the present whether he was still in possession of the Camaro or whether he had sold it, thus, Mr. and Mrs. Oaties are entitled to damages for the loss of their equity in the Camaro when it was improperly seized. The testimony of both Mr. Oaties and Mr. Warner indicated that the vehicle at issue was a red, 1999 Chevrolet Camaro, with a "T" top. Mr. Warner purchased the vehicle in July 1999 for $20,932.34. Mr. Oaties

testified that on August 19, 2003, when Mr. Warner seized the vehicle, the vehicle's odometer read approximately 87,000 miles. The record contains a Kelley Blue Book report[7] dated May 6, 2005, printed from the internet website "www.kbb.com," indicating that a 1999 Chevrolet Camaro in "fair"[8] condition with 87,000 miles had a "Private Party Value"[9] of $4,975, and a "Suggested Retail Value"[10] of $7,695 through an automobile dealer. Additionally, the record contains a copy of the automotive section of the classified ads from the April 22, 2005 edition of *The Times-Picayune*, which contains two advertisements for the sale of two 1999 Chevrolet Camaros, for the sum of $6,999 and $7,850 respectively. Based on this evidence, we find that the 1999 Chevrolet Camaro at issue in this case had a value of approximately $7,000 on August 19, 2003, the date it was improperly seized.

The record also reflects that Mr. Oaties made payment in the amount of $429.42 per month to Mr. Warner from June 2001 through July 2003 (or twenty six months). However, the contract of sale required Mr. Oaties to pay this sum to Mr. Warner for thirty-six months. Thus, Mr. Oaties still owed Mr. Warner the sum of $4,294.20 ($429.42 x 10 months) toward the purchase price of the car when Mr. Warner seized the vehicle.

Accordingly, we hereby render judgment against Mr. Warner and in favor of Mr. and Mrs. Oaties awarding them damages in the amount of $2,705.80,

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[7] The Kelley Blue Book and the NADA Blue Book are market reports that are widely used and relied upon by the public, and hence, are admissible into evidence and may be used by a court in determining the value of a vehicle. See **State v. Batiste**, 99-1481, p. 4 (La. App. 1st Cir. 3/31/00), 764 So.2d 1038, 1040, writ denied, 2000-1648 (La. 6/22/01), 794 So.2d 778; **Neloms v. Empire Fire & Marine Ins. Co.**, 37,786, pp. 11-12 (La. App. 2nd Cir. 10/16/03), 859 So.2d 225, 232.

[8] "'Fair' condition means that the vehicle has some mechanical or cosmetic defects and needs servicing but is still in reasonable running condition."

[9] "Private Party Value is what a buyer can expect to pay when buying a used car from a private party."

[10] "Suggested Retail Value is representative of dealers' asking prices and is the starting point for negotiation between a consumer and a dealer."

representing the value of the 1999 Camaro ($7,000) less the sum of still owed to Mr. Warner ($4,294.20).

CONCLUSION

For the above and foregoing reasons, the June 24, 2005 judgment on appeal is hereby affirmed insofar as it rendered judgment in favor of Mr. Oaties and against Warner & Sons in the amount of $7,764.24 for the workers' compensation premiums wrongfully deducted from Mr. Oaties' pay; in all other respects, the judgment is reversed. Additionally, judgment is hereby rendered against Mr. Warner and in favor of Mr. and Mrs. Oaties for damages with regard to the 1999 Camaro in total amount of $5,705.80.

All costs of this appeal are assessed to the defendant/appellee, Larry W. Warner, Sr.

AFFIRMED IN PART, REVERSED IN PART; RENDERED.

LARRIE OATIES AND IRENE OATIES

VERSUS

LARRY W. WARNER, SR. AND WARNER & SONS TRUCKING, INC.

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

NO. 2006 CA 0738

KUHN, J., dissenting.

I disagree with the report's conclusion that the trial court erred in determining the agreement the parties entered into was a contract to sell, and with its determination that the agreement was actually a contract of sale evinced by the explicit and unambiguous terms of the written agreement. While I agree that the written agreement clearly and explicitly identifies the "thing" the parties agreed to transfer, I do not see anything that plainly and clearly determines the "price." See La. C.C. art. 2439. The agreement says only that Oaties would be given title in his name after 36 months. It does not state that the payment of $429.42 would be for 36 months. It states, "ALSO LARRIE OATIES WILL PAY $429.42 CAR PAYMENT AND INSURANCE OF $122.50 WEEKLY IN THE AMOUNT OF $138.00." This language creates an ambiguity.

To conclude from a review of only the four corners of the written agreement that the price of the car was $429.42 x 36 months, or $15,459.12, overlooks the stipulation that Oaties agreed to pay a weekly sum of $138.00, which includes an amount for insurance. (Is insurance part of the "price"?) The total of $429.42 (the car payment) added to $122.50 (insurance) is $137.98 when divided into 4 weekly payments. Interestingly, this amount is just shy of the $138.00 weekly payment the parties agreed Oaties would make. Because there are 52 weeks in a year, over 36 months, which is 3 years, Oaties has agreed to pay $138.00 for 156 weeks for a total of

$21,528.00. Of this amount, $4,777.50 is attributable to insurance. ($122.50 divided by 4 is $30.62 and then it is multiplied by 156 weeks for a total of $4,777.50.) Subtracting the amount attributable to insurance from the total payments of $21,528.00 leaves the amount of $16,746.60 actually collected by Warren pursuant to the agreement. Thus, under the terms of the agreement, is the "price" of the vehicle $15,459.12 or $16,746.60? Yet another "price" would result if the 36-month term were converted on a 4.3 weeks/month basis.

I believe an ambiguity was created by the use of the terms "ALSO LARRIE OATIES WILL PAY $429.42 CAR PAYMENT AND INSURANCE OF $122.50 WEEKLY IN THE AMOUNT OF $138.00." In other words, a payment schedule in a weekly amount creates an ambiguity in applying the stipulated monthly term of payment, assuming that 36 months for title to be given to Oaties constituted a stipulated term of payment. Thus, I believe the trial court correctly examined parole evidence and concluded that the agreement was a contract to sell. Accordingly, finding no manifest error in the trial court's factual findings or an abuse of discretion in the sums it awarded, I would affirm the judgment.