

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 1354

RICHARD W. EGLE D/B/A EGLE ASSOCIATES

VERSUS

GUIDRY ASSOCIATES, LLC

Judgment Rendered: **MAR 23 2012**

**Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2008-10165**

The Honorable August J. Hand, Judge Presiding


**Darryl J. Becnel
Reserve, Louisiana**

**Counsel for Defendant/Appellant
Guidry Associates, LLC**

**Clint L. Pierson, Jr.
Covington, Louisiana**

**Counsel for Plaintiff/Appellee
Richard W. Egle d/b/a Egle
Associates, LLC**

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Handwritten signature and initials, possibly "JMM" or similar, with some scribbles above it.

GAIDRY, J.

This suit stems from an agreement between the parties to split the profits from a business deal. For the reasons set forth herein, we dismiss the appeal.

FACTS AND PROCEDURAL HISTORY

Following the occurrence of Hurricane Katrina, Chris Guidry of Guidry Associates, L.L.C. ("Guidry") contacted Richard Egle ("Egle") to discuss working together to sell hurricane safe buildings to local governments as part of the hurricane rebuilding efforts. The hurricane safe buildings would be manufactured by Kontek Industries, and a 6% commission would be paid by Kontek on the sales of the buildings. Guidry and Egle reached an agreement to work together to sell the buildings and to split the 6% commission equally.

After buildings were sold to Jefferson Parish, Kontek paid Guidry a sales commission of \$82,000.00. However, Guidry refused to pay Egle his share under their agreement, and Egle ultimately filed suit seeking his half of the commission under the parties' agreement.

After a bench trial, the court concluded that there was a contractual agreement between the parties which was corroborated by the testimony of Egle and Guidry that they would equally split any commissions earned from the sale of Kontek Industries' hurricane safe houses in Jefferson Parish and other surrounding areas. The court found that Guidry received \$82,000.00 in commissions from these sales. Accordingly, the court rendered judgment in favor of Egle in the amount of \$41,000.00. Guidry filed a motion for new trial, which was denied, and this appeal followed.

On appeal, Guidry asserts that the court erred in finding that an agreement existed, in finding that there was a meeting of the minds, and in admitting hearsay over Guidry's objection.

DISCUSSION

Guidry first argues that the trial court erred in finding that an agreement existed between the parties and that there was a meeting of the minds. The existence or non-existence of a contract is a question of fact, and the trial court's determination of this issue will not be disturbed unless manifestly erroneous or clearly wrong. *Townsend v. Urie*, 00-0730, p. 6 (La.App. 1 Cir. 5/11/01), 800 So.2d 11, 15, writ denied, 01-1678 (La. 9/21/01), 797 So.2d 674. Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989).

The trial court's finding that the parties had reached an agreement to split any commissions earned from the sale of hurricane safe houses in Jefferson Parish was based upon the testimony of both parties regarding their agreement. Our review of the record reveals that the evidence supports the trial court's conclusion and the court's conclusion was not manifestly erroneous or clearly wrong. This assignment of error is without merit.

Guidry also argues that the court erred in admitting hearsay evidence over Guidry's objection. Specifically, Guidry alleges that he objected to the introduction of emails containing statements of parties who were not testifying, and the court allowed the introduction of the emails over his

objection. Hearsay is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801(C). When a statement is not offered to prove the truth of the matter asserted, it is not hearsay. See, e.g., Patrick v. Iberia Bank, 05-783 (La. App. 5 Cir. 3/14/06), 926 So.2d 632, 636.

Guidry's brief does not specify which exhibits he alleges were inadmissible hearsay. However, from the transcript of the trial, it appears that he objected to the introduction of plaintiff's exhibits 3, 4, and 8, all of which were strings of emails between the parties which also contained emails forwarded from others involved in the business deal. It was to the portions of the email strings written by others that Guidry objected. However, the statements in these emails were not offered to prove the truth of the matters asserted; rather the emails were simply used to show that Egle was included or involved in the whole process. As such, the emails were not hearsay and the court did not err in allowing them to be introduced into evidence. This assignment of error also lacks merit.

CONCLUSION

Prior to the issuance of this opinion, this court received a Motion to Dismiss from the parties stating that a settlement has been reached in this matter and requesting dismissal of the appeal. Finding that the appeal is now moot given the settlement of the matter, we dismiss the appeal. Costs of this appeal are to be shared equally by the parties.

APPEAL DISMISSED.

COURT OF APPEAL

FIRST CIRCUIT

STATE OF LOUISIANA

2011 DB
NUMBER: 2011-CA-1354

RICHARD W. EGLE, D/B/A
EGLE ASSOCIATES, LLC

VERSUS

GUIDRY ASSOCIATES, LLC

COURT OF APPEAL
1ST CIRCUIT
FILED

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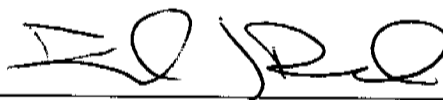
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JOINT MOTION TO DISMISS APPEAL

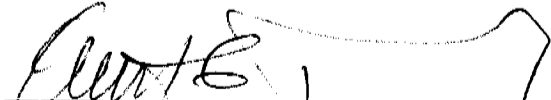
On motion of the appellant, Guidry Associates, LLC, and appellee, Richard W. Egle, d/b/a/ Egle Associates, LLC, appearing herein through undersigned counsel, and upon suggesting to this Honorable Court that the above entitled and numbered appeal has been fully compromised and settled and that same should be dismissed, with full prejudice, each party to bear its own costs.

Respectfully submitted,



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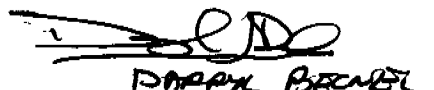
-AND-



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Certificate of Service

I hereby certify that I have served a copy of this pleading on all counsel of record by U.S. MAIL to Fax on this 16th day of March 2012


DARRYL BECNEL