SUPREME COURT OF LOUISIANA

No. 95-C-3058

SHIRLEY HARTMANN, WIFE OF/AND RICHARD P. CARRIERE

Versus

BANK OF LOUISIANA

ON WRIT OF CERTIORARI

JOHNSON, Justice[*]

We granted certiorari to determine whether the court of appeal properly reviewed the trial court's judgment rendered in favor of the plaintiffs. Pursuant to a lease agreement, the plaintiffs were awarded $398,032.05 for past rents, taxes and attorney's fees as compensation for the use of their immovable property upon which defendant's separately owned restaurant was constructed. On appeal, the damage award for past rents was affirmed, but that portion of the judgment for attorney's fees was vacated and the case was remanded so that a determination could be made regarding the reasonableness of the amount. For the reasons that follow, we affirm the appellate court's decision.

FACTS

Plaintiffs owned a commercial plot of land located in Metairie, Louisiana bearing Municipal No. 2712 N. Arnoult Road. In order to develop this plot, the plaintiffs entered into a ground lease with Frank Occhipinti, Inc. (hereinafter referred to as Occhipinti) on April 23, 1982. The lease contemplated the development of a restaurant on plaintiffs' land. Occhipinti built the restaurant with financing through Gulf Federal Savings and Loan Association (hereinafter referred to as Gulf Federal). The lease was then amended to accommodate financing on January 10, 1983, and again on March 1, 1983.

The loan was refinanced through Bank of the South in 1987 resulting in a further amendment.

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[*] Marcus, J. not on panel. Rule IV, Part 2, § 3.

At that time, a collateral mortgage in the amount of $1,200.000.00 was executed on behalf of Bank of the South. As security, Occhipinti used the leasehold interest along with the restaurant and improvements located on plaintiffs' property. The lease was again amended to protect Bank of the South's interest by substituting it in place of Gulf Federal. Plaintiffs' original lease with Occhipinti was for a five year period commencing on October 23, 1982 but contained an option to extend the lease for two additional five year periods, or until 1997. However, after the substitution involving Bank of the South, the lease contained an additional option to extend it until 2002. As successor in interest, Bank of Louisiana (hereinafter referred to as BOL) acquired the assets of Bank of the South and became the holder of the note secured by the collateral mortgage on the leasehold interest.

Occhipinti filed for relief from his creditors in Bankruptcy Court in 1988. These proceedings were eventually converted from a Chapter 11 to a Chapter 7 proceeding on March 28, 1989. The bankruptcy trustee found the leasehold improvements contained no equity over and above the mortgage or liens affecting this property, and alternatively that if there was any equity, it was insufficient to justify administration. He then rejected the ground lease with improvements and dismissed it from the proceedings.[1]

Occhipinti failed to pay the 1988 property taxes as stipulated within the lease,[2] and in January 1988, he failed to make rent payments. The plaintiffs then issued a notice of default to Occhipinti. When the default was not cured, the plaintiffs declared the lease terminated and served Occhipinti with a notice to vacate the premises on July 7, 1989. BOL was provided with a copy of each notice. An eviction proceeding was then filed on July 19,1989 in the 24th Judicial District Court in the Parish of Jefferson.

On July 25, 1989, BOL filed a petition for executory process for the Occhipinti note and collateral mortgage. At a sheriff's sale held on September 20, 1989, BOL purchased Occhipinti's

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[1] The bankruptcy trustee filed a petition of disclaimer and abandonment on May 3, 1989 and an order approving his action was signed on that date.

[2] Paragraph 5 of the original lease entitled LESSEE'S COVENANTS, in part states:

(B) To bear, pay and discharge all future real estate taxes, charged or imposed, upon the demised premises or any improvements erected thereon by occupier in respect thereof during the term of this Lease and any extensions thereof, and to promptly deliver to the LESSOR at all times proper and sufficient receipts and other evidence of the payment and discharge of the same. LESSEE'S obligations hereunder shall be only to the extent of actual occupancy, its being agreed that the taxes for the beginning and the end of the term shall be prorated.

leasehold interest which included the building as well as the improvements located on plaintiffs' land. Subsequent to this acquisition, the plaintiffs amended their eviction proceeding and named BOL as a defendant demanding that the lease be terminated and the premises vacated.[3] In a judgement rendered on January 8, 1990, the trial court ordered the defendants to vacate the premises, found that the lease had terminated and granted plaintiffs a lessor's privilege. BOL appealed this decision and the court of appeal reversed. The appellate court held that: the lessors could not terminate the lease and evict BOL, which was Occhipinti's successor; the lease did not terminate due to the bankruptcy trustee's rejection as an asset; and, a dispute as to ownership could not be decided in a summary proceeding. Carriere v. Frank A. Occhipinti, Inc., 570 So. 2d 43 (La. App. 5 Cir. 1990), writ denied, 575 So. 2d 392 (La. 1991).

On March 7, 1991 plaintiffs filed suit against BOL asserting that the bank was liable to them for rental payments under the lease from the date of the judicial sale, property taxes from 1988 through 1993 which represented Occhipinti's default period, and necessary repairs to the building. Their petition was amended seeking relief for unjust enrichment. BOL filed an answer and reconventional demand for slander of title. BOL then filed for summary judgment which the trial court granted, dismissing plaintiffs' suit. On appeal, it was held that summary judgment was precluded because a genuine issue of material fact existed as to whether the ground lease continued to remain in effect after the building was purchased at the sheriff's sale. Carriere v. Bank of Louisiana, 602 So. 2d 155 (La. App. 5 Cir. 1992). Accordingly, the trial court's judgment was vacated and the case was remanded to determine whether the ground lease was still in effect and if so, did it contemplate the present situation and, if not, what is the nature of the relationship between the landowners and BOL. Id. at 157

After a trial on the merits, judgment was rendered in favor of the plaintiffs in the amount of $398,032.05 representing past rent from September 20, 1989 to February 23, 1994 for a total of $330,820.01; property taxes in the amount of $12,212.04; and, attorney's fees in the amount of $55,000.00. BOL appealed and the appellate court affirmed in part, vacated in part and remanded. It held that: (1) its prior holding that the ground lease survived the sheriff's sale was the law of the

[3] Plaintiff's filed a supplemental and amending petition which was filed on September 28, 1989 wherein paragraph II states: "Petitioners further show that the said BANK OF LOUISIANA IN NEW ORLEANS shall now be made a party defendant to these proceedings."

case; (2) in purchasing lessee's leasehold interest, including the building and the improvements, BOL exercised its option under the lease and stepped into the shoes of lessee, thus obligating the bank to pay rent; (3) the record did not support an award of attorney's fees, and required remand for reconsideration of reasonableness. Carriere v. Bank of LA in New Orleans, 662 So. 2d 491 (La. App. 5 Cir. 1995). After a rehearing was denied by the court of appeal, BOL sought relief from this court. In a May 10, 1996 order, we granted relator's application for review. Shirley Hartmann, Wife of/and Richard P. Carriere v. Bank of Louisiana in New Orleans, 676 So. 2d 99 (La. 1996).

BOL'S CONTENTIONS

In its application, BOL contends that the fifth circuit's initial opinion in Carriere v. Occhipinti, supra properly reversed the eviction of BOL. BOL states that the appellate court lacked jurisdiction to reverse the trial court's ruling that the lease terminated and whatever that court said regarding termination was obiter dicta and cannot constitute the law of the case. Further, relator argues that the lease between plaintiffs and Occhipinti terminated in a number of ways. In June of 1989, it was terminated pursuant to default provisions. The lease provides that in the event of non-payment of rent, lessor may declare the said term ended and that is precisely what plaintiffs did on June 12, 1989. It also terminated when BOL acquired the building at the sheriff's sale. When BOL foreclosed, it acquired whatever right, title and interest Occhpinti had in the contract of lease. Occhipinti had no rights under the lease in September of 1989 when the building was acquired at the sale. BOL's only recovery was the building which plaintiffs argue is theirs and is consistent with the proposition that the lease terminated.

Next, BOL states that it never exercised an option to "step into the shoes" of Occhipinti. The appellate court erred when it penalized a foreclosing bank because it merely purchased whatever collateral it had at a sheriff's sale. By the time BOL was declared the adjudicatee at the sale, Occhipinti had declared bankruptcy.

Moreover, they allege that the court of appeal ignored multiple provisions in the lease. This lease was amended three times to assist Occhipinti in obtaining financing and to induce the lenders to advance construction funds with the expectation of being protected by the first mortgage. The court further erred in its application of the law.

PLAINTIFFS' ARGUMENT

The plaintiffs argue that BOL is liable for rent under the contract. The bank became a party

to the contract under paragraph 5 of the January, 1983 amendment which gave them the right to "step into the shoes" of the lessee and take over the lease. When this was done, BOL bound itself to pay rent as lessee. In simple and plain language of the lease, the lender had the right to step into the shoes, and the intent of the parties was that if BOL foreclosed and took over the property, it would be obligated to pay rent. The evidence substantially showed that BOL took over the building situated on plaintiffs' property, exploited the building and their land, and therefore "stepped into the shoes" of the lessee. When this occurred, BOL became obligated to pay rent.

The plaintiffs further argue that BOL is simultaneously liable for rent by operation of law. By foreclosing on the leasehold estate and building, BOL became liable for payment of rent to the Carrieres in accords with Louisiana law. Also, BOL had to have relied on some "right" which would justify its building remaining on plaintiffs' separately owned land. Plaintiffs submit that this right must be the lease in question, and by law, BOL is obligated to pay rent.

DISCUSSION

We wish to make it clear that the procedural history of this case reveals that any issue regarding the lease between these parties is res judicata. In the appellate court's initial opinion, it was held that as between BOL and the plaintiffs, the lease remained in effect. Therafter, the plaintiffs sought relief from this court but their application was denied.

Louisiana law allows buildings and other constructions permanently attached to the ground to belong to someone other than the owner of the ground. They are presumed to belong to the owner of the ground, unless separate ownership is evidenced in the conveyance record of the parish in which the immovable is located.[4] Article 493 of the La. civil code provides in pertinent part:

> "Buildings, other constructions permanently attached to the ground,... made on the land of another with his consent belong to him who made them. They belong to the owner of the ground when they are made without his consent.
>
> When the owner of the buildings, other constructions permanently attached to the ground,... no longer has the **right** to keep them on the land of another, he may remove them subject to his obligation to restore the property to its former condition. If he does not remove them within 90 days after written demand, the owner of the land acquires ownership of the improvements and owes nothing to the former owner."

Article 493 gives the owner of the improvements the right to remove them within a 90 day period after receiving a written demand to remove them. If he does not remove the improvements then the landowner acquires ownership. Guzetta v. Texas Pipe Line Co., 485 So. 2d 508 (La. 1986).

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[4] La. C.C. Art. 491.

Moreover, the article specifically states that there has to be a "right" to keep the building on the land of another. In order to resolve the issue at hand, we must look to the essence of this right. The Carrieres strongly argue that the right BOL had to continue to remain on their land derived from the original lease and its amendments. Whereas, BOL argues that the lease did not apply because it terminated and the only purchase made at the sheriff's sale in September, 1989 was that of a leasehold which does not contemplate the payment of rent, they acquired only the building, i.e. the right of occupancy.

Our jurisprudence has recognized the distinction between the sale of a lease which includes the obligation to pay rent and the sale of the mere right of occupancy which does not include the rental obligation, as far back as 1887. See Walker v. Dohan, 39 La. Ann. 743, 2 So. 381 (La. 1887); Ranson v. Voiron, 176 La. 718, 146 So. 681 (La. 1933); and Morrison v. Faulk (La. App. 4 Cir. 1963) 158 So. 2d 837, writ refused, 160 So. 2d 229 (La. 1964). However the facts and circumstances of those cases are distinguishable from the instant matter. In Walker, that which was sold at a sheriff's sale was "the right of occupancy". In Ranson, plaintiff brought suit for unpaid monthly notes and after obtaining a writ of fieri facias, the sheriff seized and advertised for sale, defendant's right of occupancy to the leased premises at issue. Likewise, in Morrison, after defendant defaulted for nonpayment of rent, the sheriff auctioned off the "right of occupancy" of the leased premises along with the movables situated therein.

While we recognize the severability involving the right of occupancy from the obligation to pay rent, unlike these cases, the sheriff's sale in September, 1989 involved more than the mere right of occupancy. BOL purchased the leasehold interest which had to include the lease, because as mentioned previously, any issue involving the enforceability of the lease is res judicata. The only manner in which BOL or any other entity could occupy the premises was to assume the position that its predecessor had under the lease, and along with assuming the right to occupy the building, for reasons further explained attaches the obligation to pay rent.

But what is a leasehold? This term is found in several sections of our revised statutes which contemplate the existence of a lease. See La. R.S. 9:1131.10; 9:1131.24; 44:1; 56:499.2; and, 56:700.11. Because these statutes are not directly on point as to a concrete definition, we must look elsewhere. Leasehold is defined in Black's Law Dictionary as: "An estate in real property held by lessee/tenant under a lease. The four principal types of leasehold estates are the estate for years,

periodic tenancy, tenancy at will, and tenancy at sufferance. The asset representing the right of the lessee to use leased property."[5] In U.C.C. §2A-103, **Leasehold interest** is defined as the interest of the lessor or the lessee under a lease contract.

By its plain wording, the definition calls for a lease. Therefore, we reject BOL's persistent argument that they did not acquire the obligation of having to pay rent because the law clearly states that there must be some "right" to allow a building, improvements or crops to belong to someone other than the owner of the ground. Here, the right is clearly stated in the lease and BOL became a party when it acquired the assets of its predecessor, Bank of the South. If not, then as contended in the eviction proceeding naming BOL as a defendant, the plaintiffs could have became owner of the improvements after the expiration of the 90 day period cited in La. C.C. art 493. The final result is that by operation of law, BOL must have a right to allow its building to remain on the property of another. This court is not persuaded by BOL's argument that the lease terminated when the leasehold was purchased at sheriff's sale.

DID THE LEASE TERMINATE?

The next issue which we must decide is whether BOL as separate owner of the building and improvements is labile to pay rent to the plaintiffs as owners of the land on which the building is constructed, pursuant to a lease executed between the owners of the ground, the original lessee as developer of the improvements placed on the land, and the lender who provided financing for the improvements before taking over the premises and occupying it for its intended use. Before deciding whether or not rent is owed from BOL, initially we must decide if the lease terminated.

A lessee's failure to pay timely does not automatically terminate a lease. Huckabay v. Red River Waterway Com'n, 663 So. 2d 414 (La. App. 2 Cir. 1995), writ denied 667 So. 2d 529 (La. 1996). Although the Carrieres attempted to terminate the lease because of non-payment, the appellate court ruled that the issue of whether the ground lease was still in effect could not be decided in a summary fashion. Because cancellation of a lease is not favored in Louisiana and the lessor's right to terminate a lease upon lessee's failure to timely remit rental payments is subject to judicial control, we find that the appellate court properly overruled the trial court's judgment of January 8, 1990 which terminated the lease. Huckabay, supra; Ergon, Inc. v. Allen, 593 So. 2d 438 (La. App.

[5] See Black's Law Dictionary Sixth Edition, at 890.

2d Cir. 1992).

In Ergon, supra, the defendant owned a piece of property located in Union Parish which he leased to the plaintiff who was in the natural gas business. In order to transport its product, a compressor station was constructed on the leased premises. At that time, Ergon, Inc. was grossing over $3,000.000.00 per year in sales while paying $350.00 annually pursuant to its lease. The rental payment was due on or before May 26 of each year, but in 1986, for the second time, defendant paid the rent untimely. Ergon attempted to tender the past due rent but plaintiff refused. Ergon then filed a petition to expropriate the property and Allen reconvened praying that the plaintiffs be evicted from his land for non-payment, and that all improvements remain because they had not been removed within 180 days after termination of the lease. Relying on Atkinson v. Richardson, 393 So. 2d 801 (La. App. 2d Cir. 1981) the trial court invoked the doctrine of judicial control for the termination of leases.[6] The lower court held that all parties intended for the lease to continue for at least 15 years and that cancellation would cause substantial financial harm to plaintiff, royalty owners and consumers. After a written judgment was approved by the attorneys of record declaring that the lease was valid and enforceable, defendant appealed claiming that the trial court erred when it invoked the doctrine of judicial control. On appeal, the Second Circuit opined as follows:

"As we interpret the application of judicial control, Louisiana courts are vested with discretion under certain circumstances to decline to grant a lessor cancellation of a lease although such right appears to be available to him. See Lee v. Abernathy, 19 So. 2d 670 (La. App. 2d Cir 1944); Farmers Gas Co. v. LaHaye, 195 So. 2d 329 (La. App. 3d Cir. 1967); Housing Authority of City Of Lake Charles v. Minor, 355 So. 2d 271 (La. App. 3d Cir. 1977), writ denied 355 So. 2d 355 So. 2d 1323 (La. 1978); and Tullier v. Tanson Enterprises, Inc., 359 So. 2d 654 (La. App. 1st Cir. 1978) reversed on other grounds, 367 So. 2d 773 (La. 1979). Although LSA-C.C. Art. 2712 would seem to mandate the cancellation of a lease upon failure to comply with its terms, cancellation of leases is not favored in Louisiana law. Tullier v. Tanson Enterprises, supra; Stoltz v. McConnell, 202 So. 2d 451 (La. App. 4th Cir. 1967), writ denied 203 So. 2d 559 (La. 1967)."

Ergon at 440.[7] The appellate court upheld the trial court's application of this doctrine based on the unusual circumstances involved, namely the overwhelming affects on Ergon, the royalty owners and consumers against plaintiff's loss of $350.00 in annual rent.

We find that application of the doctrine of judicial control is proper because of the unusual

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[6] The trial judge presiding over Ergon was E.J. Bleich, J. Since that time, Bleich, J. was elected to the Louisiana Supreme Court and is on the panel deciding this matter.

[7] The author of the appellate court's opinion was J. Victory. Since that time, J. Victory was elected to the Louisiana Supreme Court and is on the panel deciding this case.

circumstances present. Here, the owners of the land were being totally deprived of the use and enjoyment of their property while they continued to have the obligation of paying taxes. On the other hand, BOL acquired ownership of the building and improvements during the time that plaintiffs were in the process of acquiring the right to occupy the building placed on their land. BOL had the benefits of: (1) not having to pay rent to the landowner; (2) having the landowner pay the property taxes; and (3) use and enjoyment of the land and building. Therefore, we do not find that the lower court erred when it applied this doctrine.

The appellate court followed the decision of Hae Woo Youn v. Maritime Overseas Corp., 605 So. 2d 187 (La. App. 5 Cir. 1992), and applied the "law of the case" principle and held that the lease had not terminated and was still in effect after the sheriff's sale. This rule is applied to appellate level cases with regards to parties who have had the identical issue presented and decided earlier by that appellate court in an earlier proceeding. Mayer v. Valentine Sugars, Inc., 444 So. 2d 618 (La. 1984). The law of the case principle concerns the binding force of trial court rulings during later stages of trial, conclusive effects of appellate rulings on remand, and that ordinarily, an appellate court will not reconsider its only rulings of law on subsequent appeal in the same case. Barnett v. Jabush, 649 So. 2d 1158 (La. App. 3 Cir. 1995); Greater New Orleans Car Dealer Ass'n v. Louisiana Tax Com'n, 663 So. 2d 797 (La. App 5 Cir. 1995); Dodson v. Community Blood Center of Louisiana, Inc., 633 So. 2d 252 (La. App. 3 Cir. 1993), writ denied 634 So. 2d 850 (La. 1994), writ denied 634 So. 2d 851 (La. 1994). Applying this rule to the instant matter we find the issue regarding whether the lease had terminated was decided in Carriere v. Occhpinti, supra. There, the same parties were involved (Carrieres and BOL) and the issue of the lease was decided. Therefore the court of appeal properly applied the "law of the case" doctrine in finding that the lease had not terminated. The court correctly pointed out that even BOL recognized that the leasehold belonged to Occhipinti, not the Carrieres.[8] By analogy, the appellate court concluded that had the ownership of the leasehold been vested in the plaintiffs, the building would have belonged to them subject to the mortgage and they too would have appeared as a defendant at the sheriff's sale. However, because the facts show that only Occhipinti appeared as a defendant at the sheriff's sale, we find this conclusion proper.

Moreover, evidence of a continued lease stems from the amendments made to the lease after

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[8] Their petition was filed on July 25, 1989. The parties to this proceeding were Frank A. Occhipinti, Inc. who was named defendant, and BOL as petitioner.

January, 1983 which added another party to the lease. This party is the lender, BOL who intervened in the lease.

DID BOL STEP INTO OCCHIPINTI'S SHOES?

Next, we must be decide whether or not BOL exercised its option to stand in the shoes of the lessee. In the January 10th amendment, article 5 states:

"LESSOR and LESSEE agree that the lender shall be permitted, at its option, to "stand in the shoes" of the LESSEE and to exercise, on behalf of the LESSEE or itself, all options, charges or expense encumbered upon LESSEE to pay. However, the exercising of these rights and meeting these obligations shall not be mandatory on the part of the LENDER but shall be optional."

The facts of this case reveal that BOL purchased the lease and the building at sheriff's sale and attempted to rent the building on at least two occasions. During trial, the building was being operated as its intended use, i.e., a restaurant. The appellate court concluded that these actions equate to "stepping into the shoes" of lessee.[9] This conclusion is well supported by the evidence, therefore we will not disturb it.

Is BOL liable for rent? Even if the lease is held to have applied to BOL, they argue that the court of appeal ignored express provisions which were included to induce the lender to make the subject loan and to protect it in the event of default. They rely on paragraph 10(E) of the original ground lease which states:

"No liability for the payment of rental or the performance of any of Lessee's covenants and agreements hereunder shall attach to or be imposed upon any mortgagee or holder of any indebtedness secured by any mortgage upon the leasehold estate, all such lability being hereby expressly waived by Lessor."

The appellate court determined that this provision did apply to BOL after Occhpinti's default and their purchase at sheriff's sale. Article 10 of the original lease entitled MORTGAGING OF LEASEHOLD ESTATE dealt with a situation where the lessee would mortgage its leasehold, but because the mortgagee (BOL) purchased the leasehold at sheriff's sale, Occhipinti's debt to the bank was extinguished by confusion.[10] Therefore, this provision does not apply to the instant situation because the mortgage placed on the leasehold no longer existed after BOL made the purchase at the sheriff's sale. Confusion extinguished the mortgage. See Ranson, supra, where a lessor purchased

[9] Carriere v. Bank of LA in New Orleans, Supra at 497.

[10] See La. C.C. article 1903.

lessee's right of occupancy at a sale under the execution of a judgment and their lease was terminated by confusion.

The lease is a synallagmatic contract[11], therefore the intent of the parties must be ascertained.[12] During trial, plaintiff Richard Carriere stated it was his impression that whoever would buy the building and own it would step into the shoes of Occhipinti, meaning that they would become lessee. His attorney, Marshall Favret testified that he drafted the original ground lease and stated that rent is due from the party who steps into the shoes of the lessee. The following colloquy took place when Favret was questioned as to his interpretation of the "step into shoes" clause:

Q. With respect to paragraph five of the amendment, what was the intent or the understanding that you discussed with the Carrieres as they are advised that with respect t o negotiation and execution of that provision?

A. My understanding and what I explained to the Carrieres and what our intent was, was that the lender had the right to step into the shoes of the lessee, take over the lease, cure defects, but had no obligation to do that. It was optional, but if they wanted to protect the lease or their rights, they had the right to do so.

Q. If they did do so, what would be the consequences?
A. They would have to meet all the obligations of the lease. They would have all the rights, but all the obligations as well, specifically to pay rent, to pay insurance, to pay taxes, to keep the premises in good, in proper conditions, make repairs.

John A. Mmahat testified that he represented Gulf Federal in the lease negotiation and that from 1964 through 1986 he almost exclusively did transaction law dealing mostly with real estate and some real estate leases. Mr. Mmahat acknowledged that if the bank decided to take over Occhipinti's position, it would have the obligation to pay rent. When asked by the court why paragraph 5 was placed in the amended lease agreement, he stated:

A. Well, it gave us the option to come in and take over the lease in the event that the lessee, the restaurant operator were to fail or desire not to pay the rent. We were stuck out with a loan made on the property and we wanted the option to come in and stand in the shoes so to speak which is shorthand for simply saying that we wanted to take over his position. And we wanted this in an option fashion so we could decide to do it or not. If we did it, we would get all the benefits he would have under the lease. That is mainly the right of possession. If we would option to do it, we would also of course incur all of the obligations that he had under the lease which means paying the rent, paying the taxes, paying the insurance, keeping the building in good shape, all those same things that the lessee had to do. And we wanted to be able to in fact stand in his shoes. It sounds colloquial but it has a great descriptive power to those words.

When asked if it was the bank's intention to not pay rent if the bank foreclosed and bought the

[11] La. C.C. art 2669.

[12] La. C.C. art. 2045.

property at judicial sale, in no uncertain terms Mr. Mmahat stated that the bank would have to pay rent. His response was:

> A. Oh absolutely not. In fact, rent is an integral part. There can't be a lease without paying rent. You have to have consideration for it. And we at all contemplated paying the rent on the leasehold. We would in turn hopefully obtain greater rent by letting out the improvements and letting out the property but we never intended not to pay rent any more than we intended not pay fire insurance coverage, pay for the real estate, to pay for maintaining the property to keep it in shape. All those things go with the territory. That's the essence. In fact, it would have been discomforting to us not paying the rent because we could, the only way that you're assured of not being dispossessed to make sure you're paying what the landowner is required to be paid under the lease.

Edmond Miranne testified at trial as the legal representative of Bank of the South that this amendment was to induce the lender to make the loan and that the bank had the right, but not the obligation to step into the shoes of the lessee. On cross examination, he asked what his understanding was on the part of the bank to constitute stepping into lessee's shoes. His response was "I think going in and operating. They would step into the shoes of the lessee. I imagine if they went in and took over all of the rights and they advised the lessor of that and everything else." Clearly, BOL is liable for rent because they took over lessee's operation, enured to the benefits provided for under the lease but also incurred the obligations of the lease, one of which is the obligation to pay rent.

UNJUST ENRICHMENT

In their amended petition for damages, the Carrieres assert that they have a cause of action against BOL for "unjust enrichment". An action for unjust enrichment is allowed only when the plaintiff has no other remedy at law. However where there is a rule of law directed to the issue, an action must not be allowed to defeat the purpose of said rule. Taylor v. Woodpecker Corp. 562 So. 2d 888 (La. 1990). The basic principle behind this theory is that a plaintiff has suffered an economic detriment while the defendant has received a benefit for which he has not paid. Harper v. Kennedy, 561 So. 2d 830 (La. App. 2 Cir. 1990). To recover, a plaintiff must show the following: enrichment on the part of the defendant; impoverishment on the part of plaintiff; casual relationship between the enrichment received by the defendant and the plaintiff's impoverishment; and a lack of other remedy at law. Edwards v. Conforto, 636 So. 2d 901 (La. 1993) on rehearing, and rehearing denied;

Are the five criterion for unjust enrichment present under the facts of this case? First of all, BOL has acquired the economic benefit of acquiring this property and operating it for its intended purpose. Admittedly, BOL has not paid rent to the landowners (enrichment). Secondly, because the

Carrieres have not received any rental income for their property, they have been impoverished at the hands of BOL. Without any doubt, there is more than a casual relationship between BOL's enrichment and the plaintiffs' economic detriment, therefore the third element for unjust enrichment is present. Next, while BOL owns the building and improvements located on the Carrieres' separately owned land, we see no legal justification for BOL's enrichment nor plaintiff's impoverishment. Finally, we must decide whether the plaintiffs have any other remedy at law. Because we hold that the Carrieres are entitled to recover under the terms of the lease agreement, we do not rely on the doctrine of unjust enrichment.

DECREE

For the reasons assigned, the decision of the appellate court is affirmed.

RENDERED AND AFFIRMED.