

#440

DIV. M
HENRY J. BOGHE
JUDGE
PARISH OF TAMMANY

24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON
STATE OF LOUISIANA

NO. 040-534

DIVISION

ROSEMARY RICHETTE

VERSUS

GILMORE AUCTION & REALTY COMPANY AND FRANCIS BRAUD, JR.

FILED:

DEPUTY CLERK

PETITION FOR DAMAGES AND BREACH OF CONTRACT

The petition of Rosemary Richette, a person of full age of majority and a resident of the Parish of St. Tammany, State of Louisiana:

1.

The following parties are made defendants herein:

- (a) Gilmore Auction & Realty Company, is an entity licensed to do and doing business in the City of Kenner, Parish of Jefferson; and
- (b) Francis Braud, Jr., a person of full age of majority and resident of Kenner, Louisiana.

2.

Defendants are jointly, severally, and in solido, liable unto petitioner for the following reasons, to wit:

3.

On or about July 30, 2005, petitioner entered into an agreement to purchase a parcel of real estate from Shirley Aaron for \$325,000.00 plus a buyer premium of \$32,500.00. The property was located at 127 Gerard Street in Mandeville, Louisiana and was sold at auction to petitioner. The auction was conducted by defendant, Gilmore and its agent, Francis Braud, Jr., who had advertised the sale to the general public during the weeks leading up to the auction.

4.

The purchase agreement referred to above was drafted by defendants and was not subject to negotiation or bargain by petitioner.

5.

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Petitioner alleges that defendants had superior knowledge of regarding the terms and conditions contained in the agreement and had implied to petitioner at all relevant times herein that

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the agreement was a valid, legal and enforceable document that was customarily used in the industry and that the Seller, Shirley Aaron, was obligated to follow.

6.

Said agreement contained a provision that if a dispute arose between the parties to the agreement, the parties were required to settle same by mediation and then, if necessary, binding arbitration. The parties in this case were Seller, Shirley Aaron and Purchaser, Rosemary Richette. According to defendants, they were not parties and were not subject to the mediation or binding arbitration provision.

7.

On the same date the purchase agreement was signed by petitioner, petitioner deposited with Gilmore \$32,500.00 as a down payment on the property. The Seller, Shirley Aaron, signed the agreement agreeing to the terms of the sale two days later. Closing of the said property was to take place by September 2, 2005 but the contract did allow for more time if curative title work was needed and if the property was damaged between the signing of the purchase agreement and the act of sale.

8.

On August 29, 2005, Hurricane Katrina struck the New Orleans area causing the September 2, 2005 sale to be delayed and causing extensive damage to 127 Gerard Street. However, the sale was not nullified because the contract contained a provision which contemplated such event occurring. This provision, which is Paragraph 12 of the purchase agreement, reads:

"If the improvements are damaged by fire or other casualty prior to closing, and cost of restoration does not exceed ten percent (10%) of the sale price, costs of such restoration shall be an obligation, of the Seller and closing shall proceed pursuant to the terms of the Contract except the Seller may of its own right extend the time for closing by 80 days required to perform such repair. In the event the cost of repair or restoration shall be an amount equal to ten percent (10%) or more of the sale price, Purchaser shall have the option of either taking this property as is, together with any insurance proceeds payable by virtue of such loss or damage, or canceling this Contract and receiving return of all deposits made hereunder."

9.

Immediately after Hurricane Katrina, petitioner verbally advised Francis Braud, Jr. and Shirley Aaron that she wanted to proceed with the sale pursuant to Paragraph 12 of the agreement, and take the property "as is" together with the insurance proceeds that were to be received from Shirley Aaron's insurance companies. Petitioner did not want her deposit returned.

10.

Defendant, Braud, acknowledged Petitioner's right to proceed with the purchase and from late August to mid-December 2005 advised petitioner that she had to wait on proceeding to the act of sale because the amount of insurance proceeds that was owed by the insurance company was not known.

11.

However, on or about December 19, 2005, when Ms. Aaron finally obtained the bulk of her insurance proceeds, she advised Francis Braud, Jr. that she was not selling the property. In Ms. Aaron's mind, the agreement had expired. Ms. Aaron instructed Mr. Braud to send a termination letter to petitioner along with her deposit. Both were rejected by petitioner.

12.

Prior to December 19, 2005, Petitioner was previously advised by Francis Braud, Jr. that there was no need to get an attorney involved because the sale would go through once the value of insurance was known. After learning about Shirley Aaron's decision not to sell, Mr. Braud advised petitioner to seek counsel to have the sale enforced.

13.

Petitioner, upon learning that Ms. Aaron no longer wanted to sell her property and after speaking to Mr. Braud, contacted an attorney to schedule a mediation in accordance with the terms of the agreement and in order to enforce the agreement.

14.

The mediation, which was held in the Spring of 2006, failed and from the arbitration, which was held in December of 2006, came a ruling in favor of Shirley Aaron which basically stated that petitioner waited too long to exercise her option to purchase the property after Hurricane Katrina.

15.

According to the decision of the arbitrator, Ms. Aaron did not have to sell the property because:

"It is my opinion that paragraph 12 gave the purchaser control: she could have exercised her option and obtained the property. However, it is the delay of exercising her option that collapses her right to consummate the sale. The real question is what is a "reasonable amount of time" in which to exercise her option. If one were to look to a guide, one could use the expiration of the Governor's Executive Orders as being a portal to a zone of what would be a reasonable time by which to act. Those Orders have nothing to do with contractual matters but some time between October 25, 2005 and the sending of

the letter of termination in December of 2005 would have been a "reasonable" time in which to do something by the purchaser: she could have requested a written extension of time to complete all paper work; she could have asked that the seller tender title and reserved her rights to a reduction in costs depending on the insurance proceeds that were applied to the seller's loan/mortgage. The point is that the purchase did nothing: she can not be free to effectively take the property out of commerce while she waits for insurance companies to pay or not pay. Although the purchaser complains that the Broker, Mr. Braud, lulled her into inactivity, he had no authority to make any statement on behalf of the seller. This is clear from his testimony via deposition." (Emphasis added).

16.

According to the arbitration decision, petitioner had the duty to force a sale within a reasonable time after Katrina struck. However, petitioner did not force a sale because she was instructed by Mr. Braud, who was the agent of Shirley Aaron, to wait. Although Mr. Braud did not have the authority to instruct petitioner on what to do or what not to do, he did, and by doing so harmed petitioner by causing her to lose the ability to purchase 127 Gerard.

17.

By advising the petitioner to be patient and not forcing a sale, petitioner has been damaged and has incurred substantial legal fees and other costs. Because Francis Braud, Jr., is an agent of defendant, Gilmore Auction & Realty. Gilmore is liable in solido with Mr. Francis Braud under the doctrine of respondent superior and Article(s) 2320 and 2315 of the Louisiana Civil Code.

18.

Petitioner detrimentally relied on the expertise advice of Francis Braud, Jr. not to pursue the sale until the value of the insurance proceeds were known. Her reliance on defendant was reasonable since the purchase agreement was drafted by defendants. It was also reasonable for petitioner to assume that her following the advise of the creator of the agreement and who was the agent of the seller would not cause her to lose the ability to purchase 127 Gerard Street.

19.

Damages suffered by petitioner which were caused by defendants include but are not limited to the following:

- a. Inability to purchase 127 Gerard Street, Mandeville, LA;
- b. Loss of business income, rents and profits;
- c. Non-pecuniary damages;

- d. Attorney fees and costs, and
- f. Emotional damages and embarrassment.

20.

Petitioner advises that the controversy in question exceeds the minimum value required for a trial by a jury.

WHEREFORE, petitioner, Rosemary Richette, prays that defendants, Gilmore Auction & Realty and Frank Braud, Jr. be served with a copy of this Petition, and be duly cited to appear and answer same, and after all legal delays and due proceedings are had herein, there be judgment in favor of petitioner, Rosemary Richette, *in solido*, for such damages as are reasonable in the premises, together with all legal interest therein from the date of judicial demand until paid, and for all costs of these proceedings, for statutory penalties and for all general and equitable relief.

Respectfully submitted:

THE LAW OFFICES OF J. PATRICK CONNICK, LLC


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Telephone: (504) 885-4391
Attorney for Plaintiff

PLEASE SERVE:

GILMORE AUCTION & REALTY COMPANY

through its registered agent:

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FRANCIS BRAUD, JR.

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Kenner, LA 70065

LAW OFFICE OF J. PATRICK CONNICK, L.L.C.

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January 3, 2007

Clerk of Court
Parish of Jefferson
24th Judicial District Court
P. O. Box 10
Gretna, LA 70054

Re: Rosemary Richette v.
Gilmore Auction & Realty Company, et al.
Our File No.: 07-531

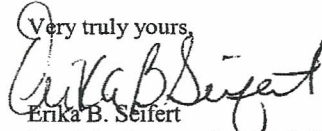
Dear Clerk:

Enclosed please find an original and four (4) copies of a Petition for Damages and Breach of Contract which I ask that you file into the record of the above captioned matter. Please return a conformed copy in the enclosed self-addressed, stamped envelope.

I also enclose check No. 2289 in the amount of \$440.00 which I understand to be the costs due for filing and service fees.

With kind regards, I remain,

Very truly yours,



Erika B. Seifert

Legal Assistant to J. Patrick Connick

JPC/ebs
Enclosures

2007 JAN -9 PM 2:28
PARISH OF JEFFERSON, LA
DEPUTY CLERK

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