NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 0205

ALLEGRO MORTGAGE, INC. AND KANDI DAVID

VERSUS

JANET W. COOK AND GREGORY COOK

Judgment Rendered: December 21, 2007

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On Appeal from City Court of Denham Springs
Ward Two, Livingston Parish, Louisiana
Trial Court No.15018

Honorable Charles W. Borde, Jr., Judge Presiding

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Kandi B. David Denham Springs, LA	Plaintiffs/Appellees Allegro Mortgage, Inc. and Kandi B. David In Proper Person
Gregory Cook Janet W. Cook Baker, LA	Defendants/Appellants Janet W. and Gregory Cook In Proper Person

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BEFORE: WHIPPLE, PARRO, AND HUGHES, JJ.

HUGHES, J.

This is an appeal from a judgment of the City Court of Denham Springs that found in favor of appellees, Allegro Mortgage, Inc. and Kandi David, and against appellants, Gregory and Janet Cook, and ordered the Cooks to pay $850.00 for appraisals obtained in connection with a loan application. For the following reasons, we amend the judgment and, as amended, affirm.

FACTUAL BACKGROUND

On December 6, 2005 Mr. Cook contacted Kandi David, a loan officer employed by Allegro Mortgage, Inc. (Allegro). Mr. Cook was interested in purchasing two duplexes located at 3850/3852 and 3840/3844 Geronimo Street in Baton Rouge, Louisiana. Mr. Cook requested that Ms. David use a particular appraiser. Ms. David testified that she agreed to use the appraiser Mr. Cook chose as long as the appraiser was acceptable to the lender. Mr. Cook was given the loan application documents, which he signed and took home to his wife. Ms. Cook was to be the primary borrower and Mr. Cook was to be the co-borrower. The loan application documents included a "Notice to Applicant of Right to Receive Copy of Appraisal Report" which stated "[y]ou have the right to receive a copy of the appraisal report *to be obtained* in connection with the loan for which you are applying." (Emphasis added). The notice further stated that the applicant should request in writing a copy of the appraisal report within 90 days of notification that the appraisal had been performed or within 90 days of the applicant withdrawing his application.

On December 6, 2005 Mr. and Mrs. Cook signed the loan application documents. Ms. David testified that at that time she requested a credit card to cover the costs of the appraisals, but that Mr. Cook asked to provide a

company check instead. Ms. David further testified that because Mr. Cook had done a prior transaction with her wherein he had paid for the appraisal of a property that he ultimately did not buy, she "didn't have any reason to doubt that he would bring me the money back."

Purchase/Sell Agreements were executed regarding the properties.[1] On November 23, 2005 Mr. Cook executed one Agreement to Purchase/Sell offering to purchase the properties located at 3840/3844 and 3850/3852 Geronimo Street in Baton Rouge, Louisiana for the sum of $108,000.00, including a vacant lot to the south of the properties. As the properties housed tenants, he also requested that the purchase of the properties be subject to the leases that were in effect. Mr. Cook waived his right to any express and/or implied warranties on the properties, agreed to deposit $500.00 within three days of the seller's acceptance, and agreed to "close" the deal on or before December 15, 2005.

Ms. David testified at the trial that sometime after the November offer, Mr. Cook inspected the premises and notified her that there were "issues" with the duplexes, but on December 22, 2005 Mr. Cook informed her that the deals were "back on." Mr. Cook then executed two identical Agreements to Purchase/Sell: one for the property located at 3840/3844 Geronimo Street and one for the property located at 3850/3852 Geronimo Street. Under the terms of these offers, Mr. Cook offered to buy each property for $50,000.00 ($100,000.00 total), pay a deposit of $500.00, obtain loan approval by January 5, 2006, and "close" on or before January 11, 2006. Additionally, he specified in these offers that no pro-rated rental

[1] Although there are three "Agreement[s] to Purchase/Sell" in the record, there are really only two offers: the November offer and the December offer. The "Agreement to Purchase/Sell" executed in November includes all properties in one agreement (3840/3844 Geronimo and 3850/3852 Geronimo), but the agreements executed in December split the properties and there is one "Agreement to Purchase/Sell" for the 3840/3844 property and a separate "Agreement to

income would go to the seller, the rental deposits in possession of the seller would be given to him at the closing, and the seller would pay $1,500.00 per property towards the costs of closing. In this offer, Mr. Cook did not waive any express and/or implied warranties to which he was entitled regarding the properties. Ms. David testified that Mr. Cook also told her that he had been unable to reach the appraiser he wanted to use and that he was leaving town on vacation. Ms. David testified that at that time she advised Mr. Cook that she would need to proceed with ordering the appraisals in order to close the loan in time and he replied, "okay, fine." Ms. David testified that he again advised he would bring by a check for the appraisals before he left town, but he did not. Ms. David testified that due to the fact that she had previously dealt with Mr. Cook, she was not worried that he would not pay.

Ms. Marolyn F. Giroir, the seller, accepted the December offers on December 23, 2005 at 11:00 a.m. Pursuant to the contracts, Mr. Cook was bound to obtain loan approval on or before January 5, 2006.

These contracts were faxed to Allegro. At trial, Ms. David testified that she ordered the appraisals on December 27, 2005 and received the reports on December 30, 2005, while Mr. Cook was still out of town. Ms. David testified that on January 3, 2006 Mr. Cook contacted her and again informed her that he would bring the check for the appraisals to her office and that she should send the closing documents to Baton Rouge Title. Ms. David further testified that on January 9, 2006 Mr. Cook advised her that he was "having a problem because of something the tenants [of the duplexes] told him." Then, Ms. David testified, on January 12, 2006, Mr. Cook faxed a letter to her stating that he did not feel he owed for the appraisals.

Purchase/Sell" for the 3850/3852 property. The terms of the two December agreements are identical except for the address.

Allegro and Kandi David filed suit on March 7, 2006 against Janet and Gregory Cook, alleging that the Cooks were indebted unto them in the amount of $1,000.00, the costs of the two appraisals. On March 22, 2006, the Cooks filed "Exceptions of Vagueness & Ambiguity, Improper Joinder, and No Cause of Action." The hearing on the exceptions was set for July 19, 2006 but was continued at the request of defendants to August 16, 2006. After the hearing, the trial court dismissed defendants' exceptions. On August 25, 2006, the Cooks filed an answer to the petition, denying all claims and setting forth the affirmative defense of assumption of risk. The trial was held on November 15, 2006. The trial court rendered judgment in favor of Allegro and Ms. David and against the Cooks in the amount of $850.00, plus legal interest from the date of judicial demand and all costs of the action.

ASSIGNMENTS OF ERROR

The Cooks appeal the judgment and make the following assignments of error:

1.) The judgment by the trial court should be reversed because the plaintiffs had no express, implied, or apparent authority to order appraisals without the consent of the defendant purchasers.

2.) The judgment by the trial court should be reversed because execution of a real property purchase/sell agreement between the seller and the purchaser places no obligations on a lender to proceed with processing the application for a mortgage loan by obtaining an appraisal.

3.) The judgment of the trial court should be reversed because the general language of a purchase/sell agreement is inapplicable when subject to other provisions.

4.) The judgment of the trial court should be reversed because the trial court misinterpreted a one-time relationship between plaintiffs and defendants as one established by a course of dealing.

5.) The judgment of the trial court should be reversed because the trial court relied heavily upon hearsay and hearsay documents of plaintiffs.

In their first assignment of error, Mr. and Ms. Cook allege that they should not be liable for the costs of the appraisals because Allegro did not have the authority to order the appraisals. Upon review of the record, we find that the trial court did not err in determining that Ms. David had the verbal authorization of Mr. Cook to proceed with ordering the appraisals. At trial, Ms. David testified that Mr. Cook gave her express, verbal authorization to order the appraisals from an appraiser of her choice because he had been unable to locate his preferred appraiser. The record is devoid of any contradictory testimony. In fact, when given the opportunity to testify that Ms. David did not have any such authority, Mr. Cook stated, "I'm not going to testify myself because I can't cross examine myself." Further, when Ms. Cook was questioned, she testified that she had "no information on that." As such, absolutely no testimony was presented at trial to rebut that of Ms. David. Therefore, we cannot find that it was error for the trial judge to accept Ms. David's testimony.

We also note that according to the testimony of Mr. Timothy Bain, an expert who was offered by Mr. Cook and accepted without objection by the court, mortgage lenders will order an appraisal upon the verbal authorization of the customer. Mr. Bain further testified that loan officers do not always obtain payment for appraisals up front. Accordingly, we find that this assignment of error lacks merit.

In their second, third, and fourth assignments of error, the Cooks allege that the judgment of the trial court should be reversed because the purchase/sell agreements placed no obligation on the lender to proceed with ordering the appraisals, that the purchase/sell agreements were subject to

other "unwritten" terms and were therefore ineffective, and that there was no "course of dealing" between Mr. and Ms. Cook and Allegro. Based upon the uncontradicted testimony that Ms. David ordered the appraisals pursuant to the express verbal authorization of Mr. Cook, it is immaterial whether the purchase/sell agreements did or did not obligate the lender to proceed, whether the Cooks' purchase/sell agreements were subject to other terms, or whether there was a "course of dealing" relationship. These assignments of error also lack merit.

In their fifth and final assignment of error, the Cooks urge this court to reverse the trial court's judgment because certain documents and testimony upon which the court relied were inadmissible or hearsay. Specifically, they allege that the phone log of Ms. David was inadmissible under the Louisiana Code of Evidence and that Ms. David's statements regarding what a co-worker allegedly overheard were inadmissible as hearsay.

Although we do not agree that the phone log was inadmissible under the Code of Evidence, we need not address this allegation since a thorough review of the record indicates that the Cooks made no objection to the admissibility of the phone log at the trial. "To preserve an evidentiary issue for appellate review, it is essential that the complaining party enter a contemporaneous objection to the evidence or testimony and state the reasons for the objection." **Hasney v. Allstate Insurance Company**, 2000-0164 (La. App. 4th Cir. 2/7/01), 781 So.2d 598, 604. The Cooks made no objection to the phone log at the time of its admission. They are, therefore, precluded from obtaining relief on the basis of such an objection now.

Regarding Ms. David's "hearsay" statement, a review of the record indicates that Ms. David stated a co-worker overheard Mr. Cook state to Ms. David that he was going to bring her a company check. The Cooks made no

objection to the statement at that time. On cross-examination, Mr. Cook questioned Ms. David about the statement and remarked "I--I think it's hearsay, actually." No formal objection was made. There is absolutely no testimony to contradict Ms. David's testimony that she had the direct, verbal authorization of Mr. Cook to obtain the appraisals. Even excluding the portion of Ms. David's testimony to which the Cooks object, the trial court did not err in its judgment. As such, we find that this assignment of error also lacks merit.

On our own motion, we note that although Kandi David is a plaintiff in this action, she has no right of action against the Cooks individually. Her actions in this matter were taken in the course and scope of her employment with Allegro and therefore it is Allegro that holds the right of action as to the Cooks. The record, however, indicates that Ms. David paid the appraisal fee out of her personal earnings from Allegro. We amend the judgment of the city court to indicate that the judgment is in favor of Allegro Mortgage, Inc., only.

CONCLUSION

The judgment of the trial court is amended in favor of Allegro Mortgage, Inc., only. Further, that judgment is affirmed as amended. Costs of this appeal are assessed against appellants, Mr. and Mrs. Cook.

AMENDED; AFFIRMED AS AMENDED.