

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

NUMBER 2006 CA 0847

BEN R. FRANKLIN, III AND SAMARA ABIDE,  
CHAPTER 7 TRUSTEE

VERSUS

CALVIN BLOUNT AND JOHN BLOUNT

Judgment Rendered: February 9, 2007

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Appealed from the 19th Judicial District Court  
in and for the Parish of East Baton Rouge  
State of Louisiana  
Suit Number 494,801

Honorable Timothy E. Kelley, Judge

\*\*\*\*\*

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

**DISPOSITION: Affirmed**

Handwritten signatures and initials in black ink. At the top is a large, stylized signature. Below it are several smaller signatures and initials, including what appears to be 'JAW' at the bottom.

**KUHN, J.**

Finding a contract to provide real estate services null because the plaintiff lacked the required license, the trial court granted summary judgment in favor of defendants, dismissing plaintiff's claim for unpaid commissions. For the reasons that follow, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

Ben R. Franklin, III was licensed to perform real estate business in Louisiana before relocating to Florida. While he was living out of state, his license lapsed. Eventually, Mr. Franklin moved back to Louisiana. Upon his return, he began working as an independent real estate broker. John Blount and Calvin Blount, the owners of C & J Contractors, Inc. and C & H Development (hereinafter collectively referred to as "C & J"), provided Mr. Franklin with office space to conduct his business.

In 1992, John Blount, Calvin Blount, George Robinson, and Walter Bankston formed a corporation, Rolling Meadow, Inc. ("Rolling Meadow"), for the purpose of developing Rolling Meadow Subdivision.<sup>1</sup> Shortly thereafter, John Blount and Calvin Blount entered into an agreement with Mr. Franklin. The contract, drafted by Mr. Franklin and signed by the parties on April 27, 1992, specifically provided:

It is hereby understood and agreed that Ben R. Franklin III shall be the sales agent for Rolling Meadow Subdivision located on Old Jefferson Hwy[.] and Stumberg Lane, Baton Rouge, La. He shall be the marketing agent for the subdivision; he shall be responsible for coordination of all lot sales, and all sales shall go through him.

It is further agreed that Calvin Blount and John Blount shall pay Ben R. Franklin III 1.5% of the sales price of each lot sold in Rolling Meadow Subdivision. This fee will be paid in cash at the closing of each lot sale. If a commission is paid to another

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<sup>1</sup> Throughout the record, the entity having ownership of the subject property was variously referred to as "Rolling Meadows, Incorporated," "Rolling Meadows, LLC," "Rolling Meadows Group," and "Rolling Meadows Partnership." Nevertheless, it is undisputed that an entity operating as "Rolling Meadows" owned the property at issue.

realtor and C & J does not receive a fee on the lot sale, then Ben R. Franklin III will not receive a fee.

This agreement shall continue until the subdivision is sold out or November 30, 1997, whichever is sooner.

It is understood that should Ben R. Franklin III not be available to work this project through relocation or other work[,] then fees on lots that he has not handled will not be due or payable.

In April of 2002, Mr. Franklin filed suit against John and Calvin Blount seeking unpaid commissions pursuant to the contract.<sup>2</sup> The parties ultimately filed cross motions for summary judgment. Concluding that the contract was null because Mr. Franklin was not licensed to perform real estate business in Louisiana at the time the contract was confected, the trial court granted the Blounts' motion for summary judgment and denied Mr. Franklin's motion. This appeal by Mr. Franklin followed.

### **LAW AND DISCUSSION**

It is unlawful for any person to act as a real estate broker or salesperson in Louisiana without first obtaining a license, unless he is exempted from obtaining such a license pursuant to the Louisiana Real Estate License Law, La. R.S. 37:1430 *et seq.* La. R.S. 37:1436. It is undisputed that, to perform according to the terms of the contract, Mr. Franklin was required to be either licensed or specifically exempted from the licensing requirement. It is further undisputed that, at the time the contract was confected, Mr. Franklin was not licensed. Accordingly, Mr. Franklin contends that he was exempted from the licensing requirement pursuant to La. R.S. 37:1438 as it existed in 1992. That statute provided, in pertinent part, as follows:

(A) The provisions of [the Louisiana Real Estate License Law] shall not apply to:

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<sup>2</sup> Samara Abide, Chapter 7 Trustee for the Estate of Ben R. Franklin, III, joined as plaintiff in the suit in her capacity as trustee of said estate.

(5) Any person, partnership, association, or corporation, foreign or domestic, acting either individually or through their employees or representatives, engaged in the business of constructing, for sale or lease to others, any land development or buildings and related improvements on property owned by them...

Thus, the statute provides an exception for **property owners** acting either individually or through their employees or representatives. Mr. Franklin claims that he falls within this exception because he acted as a “representative” of C & J. However, it is unnecessary to address whether Mr. Franklin did indeed act in a representative capacity since the property in question was not owned by C & J or even by Messrs. Blount in their individual capacities; the land was owned by Rolling Meadow. Mr. Franklin never entered into any contract with Rolling Meadow. Accordingly, the foregoing exception offers no refuge for Mr. Franklin. Therefore, because Mr. Franklin lacked the necessary license, the contract was null *ab initio*. *See Towne Center, Ltd. v. Keyworth*, 618 So.2d 467, 470-471 (La.App. 4 Cir. 1993).

Louisiana Revised Statute 37:1445 provides:

No action or suit shall be instituted, nor recovery be had, in any court of this state by any person for compensation for any act done or service rendered, the doing or rendering of which is prohibited under the provision of this Chapter to other licensed brokers or licensed salespersons unless such person was duly licensed under this Chapter as a broker or salesperson **prior to the time of** offering to perform any such act or service or procuring any promise to contract for the payment of compensation for any such contemplated act of service. (Emphasis added.)

Hence, unlicensed persons may not recover a real estate commission, fee, or compensation of any sort, regardless of the benefit they may have provided to the seller. *Brown v. Williams*, 587 So.2d 732, 738 (La.App. 2 Cir. 1991). Nonetheless, on appeal, Mr. Franklin asserts for the first time that he is still

entitled to recover because: C & J was unjustly enriched by his actions; he was the procuring cause of the subdivision lot sales; and, he became licensed four months after the contract was executed. Generally, appellate courts will not consider issues raised for the first time on appeal, which were not pleaded in the court below and which the court below has not addressed. *Geiger v. State ex rel. Dept. of Health and Hosp.*, 2001-2206, p. 11 (La. 4/12/02), 815 So.2d 80, 86. Suffice it to say, positive written law controls the matters at issue herein. Equitable considerations and estoppel cannot be permitted to prevail when in conflict with positive written law. *Fishbein v. State ex rel. Louisiana State University Health Sciences Center*, 2004-2482, p. 15 (La. 4/12/05); 898 So.2d 1260, 1270; *see also City of New Orleans v. Board of Directors of Louisiana State Museum*, 98-1170, p. 15 (La. 3/2/99) 739 So.2d 748, 759 (A party who seeks equitable relief must be free from any unlawful or inequitable conduct with respect to the matter or transaction in question.)

### **CONCLUSION**

For all the foregoing reasons, the judgment of the trial court hereby is affirmed. Ben R. Franklin, III is cast with all costs of this appeal.

**AFFIRMED.**