NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2009 CA 1193

ELIZABETH A. ENGOLIO AS EXECUTRIX OF THE SUCCESSION OF DONALD LUKE LEDOUX

VERSUS

VERNA FUSELIER AND KELLY BOUGEOIS

PMc
BME
EJG

Judgment Rendered: JUL 29 2010

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On Appeal from the Eighteenth Judicial District Court
In and for the Iberville
State of Louisiana
Docket No. 64884

Honorable J. Robin Free, Judge Presiding

* * * * * *

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* * * * * *

Downing, J. concurs.

BEFORE: DOWNING, GAIDRY AND McCLENDON, JJ.

McCLENDON, J.

The plaintiff appeals a trial court judgment in favor of the defendants, which granted the defendants an offset to the plaintiff's conversion claims. Plaintiff's claims arose from an alleged breach of fiduciary duties owed to a now deceased interdict. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 3, 1993, Donald Luke LeDoux was struck by a Southern Pacific Railroad train while driving in Terrebonne Parish.[1] He was incapacitated and subsequently interdicted.[2] Mr. LeDoux's sister, Verna Fusilier, was named his curatrix and his daughter, Kelly Bourgeios, was named his undercuratrix. Mr. LeDoux died on February 18, 2005, and his succession was later opened.[3] He left a testament leaving the entirety of his estate to Paulette Guzzetta Arceneaux. Ms. Fusilier and Ms. Bourgeois disputed the validity of the will, but the will was determined to be valid and was eventually probated. While the trial court's ruling on the validity of the testament was being appealed, the court appointed an independent executrix, Elizabeth A. Engolio, to administer Mr. LeDoux's estate. After this court affirmed the ruling upholding the validity of the will and the supreme court denied Ms. Fusilier's and Ms. Bourgeois's application for writ of certiorari,[4] the trial court appointed Ms. Arceneaux as the dative testamentary executrix in Mr. LeDoux's succession.

This litigation began on March 7, 2007, when the independent executrix filed a petition for damages against Ms. Fusilier and Ms. Bourgeois, asserting that the defendants, while serving as curatrix and undercuratrix in the interdiction,

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[1] Mr. LeDoux's claims for personal injuries were litigated in the suit entitled **Paulette Guzzetta Arceneaux, et al. v. Southern Transportation Co.**, et al., Civil Action No. 108879, of the 32nd Judicial District Court, Parish of Terrebonne, State of Louisiana. Mr. LeDoux's claim was eventually settled and, after costs and attorneys' fees were paid, $720,053.58 was placed into a trust account for his use.

[2] See **Interdiction of Donald L. LeDoux**, Docket No. 14432, of the 17th Judicial District Court, Parish of Lafourche, State of Louisiana.

[3] See **Succession of Donald Luke LeDoux**, Probate No. 9135A, of the 18th Judicial District Court, Parish of Iberville, State of Louisiana.

[4] **In re Succession of Ledoux**, 06-1667 (La.App. 1 Cir. 6/8/07), 958 So.2d 1219 (unpublished opinion), writ denied, 07-1393 (La. 9/28/07), 964 So.2d 360.

converted Mr. LeDoux's funds for their own use and mismanaged his affairs, resulting in loss to the estate. On May 24, 2007, Ms. Fusilier and Ms. Bourgeois answered the petition, and Ms. Fusilier filed a reconventional demand, alleging that any recovery by Ms. Arceneaux should be completely offset by the amounts owed Ms. Fusilier for curatrix fees, attendant care fees, and rent. On August 2, 2007, Ms. Arceneaux filed a supplemental and amending petition requesting a jury trial. Ms. Arceneaux also filed an exception raising the objection of prescription to Ms. Fusilier's claims incurred prior to May 24, 2004, based on liberative prescription of three years. The exception of prescription was subsequently sustained.

Ms. Arceneaux next filed a motion for partial summary judgment regarding certain sums she alleged were owed to Mr. LeDoux's estate by Ms. Fusilier and Ms. Bourgeois, totaling $109,607.51. Specifically, Ms. Arceneaux asserted that after Mr. LeDoux died, Ms. Fusilier and Ms. Bourgeois used Mr. LeDoux's funds to pay $75,354.08 in legal fees and costs in contesting the validity of his will, without first seeking or obtaining court authority. Ms. Arceneaux further contended that Ms. Fusilier and Ms. Bourgeois used $1,000.00 of Mr. LeDoux's funds after his death for the payment of Ms. Fusilier's personal credit card charges. Lastly, Ms. Arceneaux alleged that, between December 1996 and May 2005, $33,254.13 of Mr. LeDoux's funds was spent on gifts, donations, and employee bonuses without court approval. Ms. Fusilier and Ms. Bourgeois conceded that these expenditures were made without the express authority of the court, but argued that they were made with tacit approval from the court or Ms. Arceneaux. Following a hearing, the trial court ruled in favor of Ms. Arceneaux in the above amounts, and judgment was signed on March 28, 2008.

On June 26, 2008, Ms. Fusilier and Ms. Bourgeois filed a motion for summary judgment to have Ms. Arceneaux's remaining claims dismissed. In their motion, Ms. Fusilier and Ms. Bourgeois alleged that the only remaining claims against them were for purported conversion of monthly checks from the

interdict's account made payable to cash in the amount of $500.00 over the period from April 1997 through February 2005. Ms. Fusilier and Ms. Bourgeois alleged that Ms. Arceneaux had no evidence to support her allegations that the funds were not used for the benefit of Mr. LeDoux. Ms. Arceneaux's opposition to the motion for summary judgment addressed only the $500.00 monthly checks and raised no other monetary claims.

Also on June 26, 2008, Ms. Fusilier and Ms. Bourgeois filed a motion to strike Ms. Arceneaux's claim for a jury trial, asserting that Ms. Arceneaux's remaining claims did not exceed $50,000.00. They also asserted that their own claims existed mostly as potential offsets against the sums awarded Ms. Arceneaux, as the claims prior to May 24, 2004, were prescribed, and that the non-prescribed claims that remained were well below the $50,000.00 threshold.

On July 15, 2008, Ms. Arceneaux filed a motion for summary judgment on the issue of rent, alleging that without a lease, there was no rent obligation. Ms. Fusilier filed a cross-motion for summary judgment on the issue of rent, asserting that $125.00 per month from April 1996 through February 2005, or $13,375.00, represented the fair market value of the rental obligation. She also made a claim of unjust enrichment.

On July 21, 2008, Ms. Arceneaux filed a motion for summary judgment and motion *in limine*, seeking to foreclose the defense of offset or compensation, and further seeking to prohibit Ms. Fusilier and Ms. Bourgeois from referring to the defense during trial and in the presence of the jury. On that same date, Ms. Arceneaux filed a second motion for summary judgment and motion *in limine*, asserting that if the trial court denied her motion for summary judgment on the issue of offset as to both defendants, she moved for summary judgment as to Ms. Bourgeois and to further prohibit Ms. Bourgeois from referring to the offset defense in the jury's presence.

Following a hearing on these various pre-trial motions, the trial court denied Ms. Arceneaux's motion for summary judgment on the issue of rent and denied Ms. Fusilier's and Ms. Bourgeois's cross-motion on the issue of rent. The

court further granted Ms. Fusilier's and Ms. Bourgeois's motion for summary judgment, dismissing Ms. Arceneaux's remaining claims. The court also granted their motion to strike the request for a jury trial. Ms. Arceneaux's first motion *in limine* and her second motion for summary judgment and motion *in limine* were denied as well.

A bench trial was held on October 9, 2008, on the remaining claims. The trial court determined that Ms. Fusilier's and Ms. Bourgeois's claims for offset as it concerned the amounts previously awarded to Ms. Arceneaux in the judgment dated March 28, 2008, amounted to a complete and total offset of that judgment, based on the following relief granted to Ms. Fusilier and Ms. Bourgeois: $13,375.00 for rental obligation, $69,000.00 for curatrix fees, and $118,750.00 for attendant care fees. The offset claims granted in favor of Ms. Fusilier and Ms. Bourgeois as defensive relief totaled $201,125.00, plus legal interest thereon. The trial court further ordered that any affirmative relief granted in favor of Ms. Fusilier and Ms. Bourgeois was negated by the amounts awarded in the March 28, 2008 judgment and that each side would take nothing from this final judgment. Judgment was signed on October 28, 2008, and Ms. Arceneaux appealed.

ASSIGNMENTS OF ERROR

On appeal, Ms. Arceneaux assigns the following as error:

1. The trial court erred by granting summary judgment on the issue of her remaining claims for conversion when Ms. Fusilier's own deposition testimony created a genuine issue of material fact.
2. The trial court erred by granting defendants' motion to strike the demand for a jury trial.
3. The trial court erred by awarding Ms. Fusilier attendant care fees when the evidence did not support such a finding.
4. The trial court erred in awarding Ms. Fusilier rent when the evidence did not support such a finding.

5. The trial court erred by allowing compensation as a defense to the claims for conversion when the law prohibits such a defense to a claim of conversion.
6. The trial court erred by allowing the defense of compensation for the claims against Ms. Bourgeois when Ms. Bourgeois raised no claims against the estate.

DISCUSSION

Summary Judgment

Ms. Arceneaux initially asserts that the trial court erred when it granted the motion for summary judgment filed by Ms. Fusilier and Ms. Bourgeois seeking to dismiss Ms. Arceneaux's remaining claims. Ms. Arceneaux urged a claim for conversion of "roughly" $50,000.00 of the interdict's money during his lifetime, effected by writing monthly $500.00 checks made out to cash. Ms. Arceneaux contends that in Ms. Fusilier's deposition she contradicted herself numerous times, and thus her credibility was at issue and genuine issues of material fact exist.

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact. **Duncan v. U.S.A.A. Ins. Co.**, 06-0363, p. 3 (La. 11/29/06), 950 So.2d 544, 546-47. Appellate courts review summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Costello v. Hardy**, 03-1146, p. 8 (La. 1/21/04), 864 So.2d 129, 137. The summary judgment procedure is expressly favored in the law, and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. LSA-C.C.P. art. 966A(2). A motion for summary judgment should only be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the movant is entitled to summary judgment as a matter of law. LSA-C.C.P. art. 966B.

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. LSA-C.C.P. art. 966C(2). Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. **Babin v. Winn-Dixie Louisiana, Inc.**, 00-0078, p. 4 (La. 6/30/00), 764 So.2d 37, 40. See also LSA-C.C.P. art. 967B.

In support of their motion for summary judgment, Ms. Fusilier and Ms. Bourgeois submitted excerpts from Ms. Fusilier's deposition taken in the succession proceeding. Ms. Fusilier testified that checks for $500.00 were cashed each month to use as petty cash for miscellaneous expenses for Mr. LeDoux. Although Ms. Fusilier could not explain specific uses for the $500.00 cashed each month, she testified that the money was used for her brother's benefit and not for her personal use. In opposition to the motion for summary judgment, Ms. Arceneaux also filed excerpts from Ms. Fusilier's deposition, as well as a copy of Ms. Fusilier's answers to Ms. Arceneaux's request for admission of fact, in which Ms. Fusilier admitted that she cashed certain checks. Ms. Fusilier and Ms. Bourgeois replied, asserting that Ms. Arceneaux offered no evidence that sufficiently opposed the motion for summary judgment. Additionally, they submitted the affidavit of Ms. Fuslier, in which she reaffirmed that, although she could not recall the exact specifics as to the expenditure of the checks, none of the cashed checks were spent on anything other than Mr. LeDoux's benefit.

Based upon our *de novo* review of the evidence, we conclude that there is no genuine issue of material fact with regard to Ms. Arceneaux's remaining conversion claims. We determine that Ms. Fusilier and Ms. Bourgeois met their burden of proving that the cashed checks were spent for the benefit of Mr. LeDoux during the period of his interdiction, and Ms. Arceneaux failed to present sufficient factual support for her contentions. Therefore, summary judgment was appropriately granted.

Jury Trial Demand

In her next assignment of error, Ms. Arceneaux contends that it was error for the trial court to grant the motion to strike the demand for a jury trial. Ms. Arceneaux requested a jury trial in her First Supplemental and Amending Petition.[5] Thereafter, following the granting of the partial summary judgment in favor of Ms. Arceneaux on March 28, 2008, Ms. Fusilier and Ms. Bourgeois moved to strike the jury demand, asserting that Ms. Arceneaux had no remaining viable claims and, even if their contemporaneously filed motion for summary judgment seeking to dismiss the remaining claims was denied, Ms. Arceneaux's remaining claims did not exceed $50,000.00 exclusive of costs and interest as required by LSA-C.C.P. 1732. Ms. Fusilier and Ms. Bourgeois further asserted that their own claims existed only as potential offsets against the sums awarded Ms. Arceneaux, since the majority of their claims were prescribed and since the un-prescribed portion of their claims totaled well less than the $50,000.00 threshold required for a trial by jury.

The right to a jury trial in a civil case in a Louisiana court is a statutory as opposed to constitutional right. See LSA-C.C.P. arts. 1731-1814; **Riddle v. Bickford**, 00-2408, p. 5 (La. 5/15/01), 785 So.2d 795, 799. Nonetheless, Louisiana courts have recognized that the right to a civil jury trial is a basic right that should be protected in the absence of specific authority for its denial. **Brewton v. Underwriters Ins. Co.**, 02-2852, p. 4 (La. 6/27/03), 848 So.2d 586, 589. Therefore, when a party makes a timely request and complies with

[5] The amending petition added the following paragraph: "Petitioner prays for a trial by jury."

the other procedural requisites, its right to a jury trial cannot be violated. **Spencer v. State, through Dept. of Transp. And Dev.**, 03-0539, p. 7 (La.App. 1 Cir. 8/11/04), 887 So.2d 28, 33. The courts will indulge every presumption against a waiver, loss, or forfeiture of the right of a litigant to a civil jury trial. **Martello v. Circle K Stores, Inc.**, 04-0139, pp. 3-4 (La.App. 1 Cir. 2/11/05), 906 So.2d 547, 549, writ denied, 05-0649 (La. 4/29/05), 901 So.2d 1074.

The statutory source for of the right to a jury trial in civil cases is found in LSA-C.C.P. art. 1731, which provides that "[e]xcept as limited by Article 1732, the right of trial by jury is recognized." Article 1732 provides:

> A trial by jury shall not be available in:
>
> (1) A suit where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars exclusive of interest and costs.
>
> (2) A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.
>
> (3) A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workers' compensation, emancipation, tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce proceeding.
>
> (4) A proceeding to determine custody, visitation, alimony, or child support.
>
> (5) A proceeding to review an action by an administrative or municipal body.
>
> (6) All cases where a jury trial is specifically denied by law.

Thus, the legislature has restricted the right to a jury trial in certain types of cases, including those involving interdiction or probate proceedings, based on policy considerations, such as time constraints, the ongoing nature of certain proceedings, and the intimate or personal nature of some proceedings.

In the present matter, the succession representative filed suit against Ms. Fusilier and Ms. Bourgeois, asserting that they breached their fiduciary duties as the curatrix and undercuratrix for the interdict, Mr. LeDoux. Among the allegations against Ms. Fusilier and Ms. Bourgeois were the allegations that they

converted Mr. LeDoux's funds for their own use or the use of others, failed to file annual accounts, and mismanaged his affairs while serving as curatrix and undercuratrix, all of which resulted in loss to Mr. LeDoux's patrimony. At the time of trial, the issues remaining before the court were curatrix fees, attendant care fees, and rent, all amounts that Ms. Fusilier and Ms. Bourgeois contended were owed and that were incurred while Mr. LeDoux was alive and interdicted. Because the factual and legal issues unique to this particular matter are inextricably intertwined with and arise from the interdiction, we find no error by the trial court in granting the motion to strike. Accordingly, we find this assignment of error to be without merit.[6]

Rent and Attendant Care Fees

Ms. Arceneaux's next two assignments of error address the trial court's awards of rent and attendant care fees. In both instances, she asserts that no evidence supports the awards.

In her reconventional demand, Ms. Fusilier sought attendant care fees of no less than $2,000.00 per month from February 1997 through February 2005. The trial court awarded Ms. Fusilier $1250.00 per month for ninety-five months, or $118,750.00. Ms. Arceneaux asserts that because Mr. LeDoux was being provided attendant care by compensated caregivers twenty-four hours a day, seven days a week, and because Ms. Fusilier did not keep track of and did not remember how often she cared for Mr. LeDoux, there simply was no evidence to support the award.

Gregory M. Ellis, an expert certified public accountant and expert in financial planning and money management, testified at trial that Ms. Fusilier saved the estate approximately $2100.00 a month acting as an attendant care coordinator, rather than having an outside service perform that function. Additionally, in his affidavit, Mr. Ellis stated that any professional healthcare sitter service would have charged Mr. LeDoux a substantial amount of money to

[6] We recognize that Ms. Fusilier and Ms. Bourgeois filed their motion to strike the jury trial based on LSA-C.C.P. art. 1732(1) rather than LSA-C.C.P. art. 1732(3).

manage and administer his healthcare needs. According to Mr. Ellis, the fair market value of the services that Ms. Fusilier provided to Mr. LeDoux was $188,845.00.

The trial court awarded Ms. Fusilier $125.00 per month in rent for the months that Mr. LeDoux lived in the home built for him on Ms. Fusilier's property.[7] Ms. Arceneaux asserts that because there was no contract for rent, nor a court order for the payment of rent by Mr. LeDoux, it was error by the trial court to award Ms. Fusilier $125.00 per month for 107 months, or $13,375.00. To the contrary, Ms. Fusilier argues that failing to allow her to use the $13,375.00 rental amount as a defense would amount to unjust enrichment. See LSA-C.C. art. 2298.

Mr. Ellis testified at trial that $125.00 per month was a fair market value for a rental obligation for Mr. LeDoux's home. He also stated that because Ms. Fusilier deferred her rent request while providing a home for Mr. LeDoux on her property, the residual value of the estate increased. He also attested in his affidavit that Ms. Fusilier's decision not to ask for reimbursement for the rental value of her land, as well as for her attendant care services, during Mr. LeDoux's lifetime was of great value to the maintenance and preservation of his funds.

Upon review of the record, we find no error in either the attendant care services amount or the rental amount as determined by the trial court.

Compensation

Ms. Arceneaux's last two assignments of error pertain to the defense of compensation. Ms. Arceneaux asserts that in this matter compensation is not a valid defense to the claim of conversion. She also contends that Ms. Bourgeois cannot use the defense since she had no claims against the estate.

Louisiana statutory law and jurisprudence recognize three kinds of setoff, or compensation: legal, which is effected by operation of law; contractual, which is effected by the will of the parties; and judicial, which is effected by the courts.

[7] Ms. Fusilier was granted court authorization to build or purchase a home in Grosse Tete for Mr. LeDoux.

Richard v. Vidrine Automotive Services, Inc., 98-1020, pp. 7-8 (La.App. 1 Cir. 4/1/99), 729 So.2d 1174, 1178. See also **Tolbird v. Cooper**, 243 La. 306, 315, 143 So.2d 80, 84 (La. 1962).

Compensation takes place by operation of law when two persons owe to each other sums of money or quantities of fungible things identical in kind, and these sums or quantities are liquidated and presently due. LSA-C.C. art. 1893; **Buck's Run Enterprises, Inc. v. Mapp Const., Inc.**, 99-3054, p. 5 (La.App. 1 Cir. 2/16/01), 808 So.2d 428, 431. In such a case, compensation extinguishes both obligations to the extent of the lesser amount. LSA-C.C. art. 1893. A claim is liquidated when the debt is for an amount capable of ascertainment by mere calculation in accordance with accepted legal standards. **Buck's Run**, 99-3054 at p. 5, 808 So.2d at 431-32. Compensation of obligations may take place also by agreement of the parties, even though the requirements for compensation by operation of law are not met. LSA-C.C. art. 1901; **Buck's Run**, 99-3054 at p. 5, 808 So.2d at 432. Judicial compensation takes place when a court decides two parties are mutually indebted to each other and adjusts the amounts owed in fixing the judgment. LSA-C.C. art. 1902[8]; **Buck's Run**, 99-3054 at p. 5, 808 So.2d at 432. The most usual case in which judicial compensation arises is one where the conditions for legal compensation do not exist and the party who is sued on a debt files a reconventional demand. In these cases, the trial court finds for each party and renders judgment for the difference between the amounts found to be owed. **Standard Roofing Co., Inc. v. Ragusa Bros., Inc.**, 338 So.2d 119, 122 (La.App. 1 Cir. 1976).

In this matter, when Ms. Fusilier filed her reconventional demand, she alleged that any recovery by Ms. Arceneaux should be completely offset by the amounts owed to her for curatrix fees, attendant care fees, and rent. After Ms. Arceneaux's exception of prescription was maintained, and when the trial court granted the partial summary judgment in favor of Ms. Arceneaux on March 28,

[8] Article 1902 provides that "[a]lthough the obligation claimed in compensation is unliquidated, the court can declare compensation as to that part of the obligation that is susceptible of prompt and easy liquidation."

2008, the court specifically recognized that Ms. Fusilier and Ms. Bourgeois could assert their viable claims, as well as their prescribed claims, as a defense to offset Ms. Arceneaux's claims. Thereafter, following trial, the trial court concluded that the parties were mutually indebted to each other, and balanced the amounts found to be owed in fixing the judgment. Thus, this is a case of judicial compensation. Furthermore, because most of Ms. Fusilier's claims were prescribed and therefore were not due and payable, the requirements of legal compensation could not be met.

Ms. Arceneaux contends that it was error to allow the defense of compensation since she obtained a judgment for conversion. She cites LSA-C.C. art. 1894 which provides:

> Compensation takes place regardless of the sources of the obligations.
>
> Compensation does not take place, however, if one of the obligations is to return a thing of which the owner has been unjustly dispossessed, or is to return a thing given in deposit or loan for use, or if the object of one of the obligations is exempt from seizure.

The source of the bar to compensation as set forth in the second paragraph of LSA-C.C. art. 1894 arises from an equitable principle and is meant to apply when the one seeking compensation has "plundered" another or is guilty of bad faith or wrongdoing. In looking at the source and reason for this exception, the supreme court in **Tolbird** looked to the French commentators:

> "There are, however, some debts, against which the debtor cannot propose a compensation.
>
> "1st. In the case of spoliation, no compensation can be opposed against the demand for the restitution of the thing of which any person has been plundered, according to the well known maxim, *spoliatus ante omnia restituendus* * * *." 1 Pothier, op. cit. supra, p. 460. This Latin maxim means that "A party despoiled [forcibly deprived of possession] ought first of all to be restored". ... Planiol agrees that the maxim is the basis for the exception. "'The demand for restitution of a thing of which the proprietor has been unjustly deprived,' ... . This is the application of the maxim established by the canon law: 'spoliatus ante omnia restituatur' * * *." 2 Planiol, op. cit. supra, n[o] 581, p. 320.
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> The motive of equity is evident, say Planiol and Ripert; nothing ought to hinder the restitution of a thing taken away by an illegal act; it primes all other consideration. 7 Planiol et Ripert,

> Traite pratique de droit civil francais (2e ed. 1954), n[o] 1289, p. 699.

Tolbird, 243 La. at 314-15, 143 So.2d at 83. In further support of this interpretation, the comments to Article 1894 note that "wrongdoers or parties who have acted in bad faith are not allowed to set up the plea of compensation." LSA-C.C. art. 1894, Comment (b).[9]

In this matter, it is undisputed that Ms. Fusilier failed to seek court approval for certain expenditures and that summary judgment was granted in Ms. Arceneaux's favor totaling $109,607.51. However, in opposing the motion, Ms. Fusilier attested by affidavit that the $75,354.08 spent on attorneys' fees and the $33,254.13 spent on gifts, donations, and employee bonuses during her brother's lifetime were expended on behalf of and in the best interests of the interdict, Mr. LeDoux, and that it was her belief that the expenditures would have received court approval. Ms. Fusilier also testified at trial that the $33,254.13 amount included expenses for the wedding of Mr. LeDoux's daughter, Ms. Bourgeois. With regard to the $1,000.00 used to pay a personal credit card, Ms. Fusilier testified that the credit card was paid by mistake. She stated that she had her checkbook and her brother's checkbook in her purse, and she grabbed the wrong one. Once Ms. Fusilier realized what she had done, she deposited $1,000.00 into her brother's account.

The trial court, in denying Ms. Arceneaux's motions *in limine*, specifically concluded that Ms. Fusilier did not steal anything and that there was no knowledge or intent to steal. The trial court found no intent of wrongdoing or of

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[9] While recognizing that compensation in the Civil Code refers to legal compensation, the supreme court in **Tolbird** found it applicable to judicial compensation, stating:

> In a case then where there is a main demand and a demand in reconvention and the judge finds for each party and renders judgment for the difference between the amounts found to be owed, he thus effects compensation - a judicial compensation - whereby two payments are avoided.
>
> The maxim "A party despoiled ought first of all to be restored" is as applicable to this kind of compensation for obvious reasons as it is to the legal compensation in the Code. The motive of equity is equally evident here. Where the plunderer sets up his opposing claim by way of reconvention, here also nothing ought to hinder the one plundered from being first of all restored.

Tolbird, 243 La. at 318-19, 143 So.2d at 85.

bad faith, and we find no manifest error in this factual determination. See **Stobart v. State, through Dep't of Transp. and Dev.**, 617 So.2d 880 (La. 1993). Accordingly, under the specific facts of this case, we find the exception to compensation in LSA-C.C. art. 1894 inapplicable and find no prohibition to Ms. Fusilier's defense of compensation. Thus, in accordance with judicial compensation, the trial court had the authority to declare the debts offset when the amount of Ms. Fusilier's claims were determined.

Ms. Arceneaux made the further argument that Ms. Fusilier's prescribed claims could not be used as a defense, since there was no connexity between their claims.

Louisiana Code of Civil Procedure article 424 provides, in pertinent part:

> A person who has a right to enforce an obligation also has a right to use his cause of action as a defense.
>
> Except as otherwise provided herein, a prescribed obligation arising under Louisiana law may be used as a defense if it is incidental to, or connected with, the obligation sought to be enforced by the plaintiff.

In the instant case, Ms. Fusilier's reconventional demand was based on claims for payment or reimbursement in managing Mr. LeDoux's estate. These claims were incidental to and connected with the claims regarding the improper management of Mr. LeDoux's estate sought to be enforced by Ms. Arceneaux. Therefore, pursuant to LSA-C.C.P. art. 424, Ms. Fusilier's prescribed claims could be used as a defense to Ms. Arceneaux's main demand.

Although Ms. Fusilier was unable to recover the full amount of $201,125.00 awarded to her for curatrix fees, attendant care fees, and rent because of the plea of prescription, she was able to assert the prescribed obligations in satisfaction of Ms. Arceneaux's claims totaling $109,607.51. Thus, the obligation owed to Ms. Arceneaux is extinguished by judicial compensation. See **Young v. Fremin-Smith, Inc.**, 265 So.2d 341, 342 (La.App. 4 Cir. 1972). Accordingly, Ms. Arceneaux's last two assignments of error are without merit.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Ms. Areceneaux.

AFFIRMED.