

2009 WL 7217881 (La. Dist. Ct.) (Trial Motion, Memorandum and Affidavit)

District Court of Louisiana.

26th Judicial District

Bossier Parish

John C. SKANNAL,

v.

Dennis BAMBURG, Margie Dumas Bamburg and Sligo Hills, L.L.C.

No. 116,576-C.
February 17, 2009.

Plaintiff's Opposition to Defendants' Motion for New Trial

MAY IT PLEASE THE COURT:

Defendants have filed a Motion for New Trial citing five alleged errors of law. As Plaintiff, John Barron Skannal, as Testamentary Executor of the Succession of John C.

Skannal, more fully explains below, none of the grounds urged by Defendants have any merit whatsoever. Accordingly, Plaintiff opposes the Motion and prays that the Motion for New Trial be denied.

1. Defendants allege the Court incorrectly found fraud on the part of Dennis Bamburg pursuant to [La. Civ. Code art. 1954](#).

The Court rendered three separate opinions in this case: the Original Opinion filed on March 28, 2008 (the "Original Opinion"), a Supplemental Opinion filed on July 31, 2008 (the "Supplemental Opinion") and a third Opinion filed on December 29, 2008 awarding attorneys fees and expert witness costs (the "Fees and Expert Costs Opinion"). The factual findings on which the finding of fraud was made are found in both the Original Opinion and the Supplemental Opinion.

While it is understandable that the Defendants would contest the finding of fraud - since damages and attorneys fees of over \$807,000 were subsequently awarded as a result of such a finding - the finding of fraud resulted from factual findings which the Defendants do not challenge. Instead, they suggest that the conclusion that fraud was committed by Dennis Bamburg, based on the findings of fact made by the Court, was an error of law. Plaintiffs disagree.

The Court made the following factual findings in the Original Opinion that support the finding of fraud on the part of Dennis Bamburg:

A. The information for the preparation of the documents needed to complete the transactions executed by John C. Skannal between August 2003 and March 4, 2004, was supplied to the notaries and attorneys exclusively by Dennis Bamburg.

B. While both Dennis Bamburg and Margie Bamburg¹ were aware of the declining mental health of John C. Skannal and Dennis Bamburg knew that Skannal had been recommended for interdiction in October 2003, neither of the Bamburgs - both of whom were present at each of the closings - disclosed any of those facts to any of the notaries, witnesses or attorneys before whom a series of transactions took place in February and March 2004.²

C. The witnesses and notaries on the various documents only saw Skannal for a few minutes at the closings, never read any of the documents to him and never questioned him to test his understanding of the transactions.

D. Dr. Marjorie Fowler, a neuropathologist, found that more probably than not, Mr. Skannal was suffering from [Alzheimer's disease](#) in March 2004.

E. Drs. Ware, Seiden, Williams and Henry (corroborated by the test results obtained by Dr. Goebel) all testified that Skannal suffered from alcohol [dementia](#), [vascular dementia](#) and [dementia](#) caused by [Alzheimer's disease](#). Based on their unanimous opinions, by October 2003 (when Joint Exhibit 11, the Exclusive Right to Sell Agreement dated October 9, 2003, was executed), Skannal lacked the capacity to comprehend what he was doing and was unduly influenced by Dennis Bamburg to enter the various transactions that the Court nullified.

F. On October 9, 2003, when the Exclusive Right to Sell Agreement was signed by Skannal, authorizing Dennis Bamburg to pay himself a 10% real estate commission on any future land sales of Sligo Enterprises, Inc. - at a time when the representatives of the Municipal Police Employment Retirement System testified that a multi-million dollar deal to sell the remaining lots in Olde Oaks Subdivision had essentially already been reached - Dennis Bamburg knew that Skannal was in the mental ward at a local hospital and had been recommended for interdiction. And yet, Dennis Bamburg persisted in getting Skannal to sign the documents that Bamburg had prepared.

G. As of the dates of the Exclusive Right to Sell Agreement (October 9, 2003), the sale of Skannal's interest in Sligo Hills, L.L.C. (February 27, 2004) and the sale of his mineral interests and his stock in Sligo Enterprises, Inc. (March 4, 2004), Skannal was grossly impaired and lacked the capacity to enter into the transactions.

H. Dennis Bamburg knew or should have known of Skannal's incapacity on those dates because he was aware of Skannal's hospitalizations from August to October 2003 and December 2003 through February 2004 and the fact that Skannal had been recommended for interdiction in October 2003.

I. Dennis Bamburg knew that Skannal had been released from a psychiatric ward on February 10, 2004, yet he failed to disclose that fact to the notaries, witnesses and others present when the documents were signed in February and March 2004.

J. At the time of the execution of the four documents in February and March 2004 (Jt. Ex. 11, 13, 15, 17), Skannal was incapable of giving free consent and, because he was particularly vulnerable, he was unduly influenced by Dennis Bamburg.

K. When John Skannal entered the hospital in August 2003, he was seriously demented. Dennis Bamburg admitted to frequent visits with Skannal during the period of that hospitalization and knew, or should have known, of his demented condition. Likewise, Margie Bamburg testified that she visited Skannal during that time period as well and would have had him interdicted had he been her father.

The Supplemental Opinion made no additional factual findings but instead related the findings of fact from the Original Opinion to the question of whether those actions constituted fraud. The Court concluded that the actions of Dennis Bamburg (due to Skannal's lack of capacity and Bamburg's undue influence over him) under the facts of this case "also constituted fraud as envisioned by the second paragraph of [Louisiana Civil Code Article 1954](#)." That article provides:

"Fraud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill.

"This exception does not apply when a relation of confidence has reasonably induced a party to rely on the other's assertions or representations."

The conclusion that the actions of Dennis Bamburg constituted fraud that vitiated Mr. Skannal's free consent was a factual finding based on the Court's analysis of all the evidence. Mr. Skannal testified in his deposition that he trusted Dennis Bamburg, there are numerous references in Mr. Skannal's medical records that Dennis Bamburg was the person to contact in the event of an emergency, and most importantly, Dennis Bamburg admitted on the witness stand that John Skannal trusted him completely. It was, in part, this "relation of confidence" between Dennis Bamburg and John C. Skannal that led the Court to conclude that Mr. Bamburg's actions fell within the exception to the rule set forth in [article 1954](#) (as well as [Civil Code arts. 1948, 1953 and 1957](#))³ and constituted fraud.

The parenthetical reference in the Supplemental Opinion by the Court to [Civil Code art. 1953](#) is, indeed, significant: in the Original Opinion, the Court specifically noted the failure of Dennis Bamburg to inform any of the attorneys, witnesses or notaries on any of the annulled transactions of significant matters related to Skannal's deteriorating mental and physical health and his capacity to be signing documents. Bamburg kept quiet because he knew that full disclosure (which, as an officer of both Sligo Enterprises, Inc. and Sligo Hills, L.L.C. he had a duty to make) might cause the attorneys, notaries and witnesses to halt the transactions until Mr. Skannal could either be assisted by someone who had his best interests in mind or until he could be interdicted. Interdiction was, of course, the last thing that Dennis Bamburg wanted for Mr. Skannal, since then the documents would have to be examined by someone with their full faculties who was not being unduly influenced by Bamburg.

Mr. Bamburg's silence and inaction at the closings (by failing to disclose Skannal's demented condition and lack of capacity to enter the transactions) constituted fraud "by silence and inaction" as proscribed by [Civil Code art. 1953](#). That the Bamburgs - both Dennis and Margie as vendees of the various stock, membership interests and mineral rights - were obtaining an unjust advantage for themselves and causing a loss to Skannal is obvious. Skannal was deprived of his property - whether the prices paid were less than the true values or not - and was induced to sell at a time when he lacked capacity to contract. At the closings, the Bamburgs misrepresented by their silence that John C. Skannal was competent to enter into the various transactions. That silence constituted fraud. Moreover, Skannal never gave valid consent to any of the nullified transactions, both because he lacked capacity to have done so, but also because Dennis Bamburg, by unduly influencing Skannal to enter the transactions, substituted his consent for that of John C. Skannal.

This Court's findings of fact with respect to a finding of fraud would be reviewed by an appellate court under the manifest error standard. [Ballard's Inc. v. North American Land Development Corporation, 28,437 \(La. App. 2d Cir. 6/26/96\), 677 So. 2d 648](#). In other words, unless manifestly erroneous or clearly wrong, in the face of conflicting testimony, the reasonable evaluations of credibility and reasonable inferences of fact that this Court has already made should not be disturbed on review. [See Nugent v. Phelps, 33,366 \(La. App. 2d Cir. 4/23/02\), 816 So. 2d 349, writ denied, 02-1153 \(La. 5/10/02\), 815 So. 2d 850](#). One of those reasonable inferences was that the Defendants intended to obtain Skannal's stock in Sligo Enterprises, Inc., his membership interest in Sligo Hills, L.L.C. and his valuable mineral interests at a time when Mr. Skannal was not competent to negotiate with the Bamburgs or convey his property to the Bamburgs. But for this lawsuit, the Bamburgs would have obtained all that property for a fraction of its true worth.⁴ They clearly had the intent to obtain an unjust advantage over Skannal.⁵

The Defendants still argue - after two years of discovery, 16 days of trial, numerous pre-trial and post-trial hearings and three opinions of the Court - that "Bamburg never promised Skannal anything he didn't deliver. Bamburg never failed to pay a price agreed for land. Bamburg never told Skannal land was worth a price different from what he knew it to be."⁶ Those were not the issues the lawsuit was about. Mr. Bamburg still apparently thinks - since his counsel continue to argue - that he could force deals on a sick, alcoholic old man he *knew* to be incompetent and, as long as Bamburg paid what he said he would pay, it was a fair deal. That is not the law. The law prohibits dealing with incompetents and imbeciles, regardless of whether the deals are good deals or terrible deals. Based on the factual findings of the Court, Skannal could not give valid consent to the nullified transactions and yet Bamburg unduly influenced him to sign his name to the documents. The law dictates that what Mr. Bamburg did and the manner in which he did it rose to the level of fraud.

All of the essential elements of fraud have been proven by the Plaintiff. Defendants have shown no cause whatsoever for this Court to change its ruling in this Motion for New Trial concerning the finding of fraud against Dennis Bamburg.

2. Defendants allege that the Court made an error of law when it nullified the February 27, 2004 sale of Mr. Skannal's membership interest in Sligo Hills, L.L.C. to Dennis and Margie Bamburg.

The second ground of the Defendants' Motion for New Trial results from an incorrect reading by counsel for the Defendants of the pleadings filed in this case. In summary, Defendants allege that Plaintiffs never properly pled a demand for nullification of the Act of Sale of Membership Interest in Sligo Hills, L.L.C., dated February 27, 2004 (Jt. Ex. 13) and therefore the Court erred in setting aside that transaction.

The Original Petition was filed in this matter on March 14, 2005. In paragraph 12 of that pleading, the February 27, 2004 conveyance of Mr. Skannal's membership interest in Sligo Hills, L.L.C. was described as follows:

“12.

“There is no recorded instrument reflecting the exercise by defendant BAMBURG of the option to purchase all of the interest of petitioner SKANNAL in SLIGO HILLS, but it is believed that such purchase was completed on or about February 27, 2004. At that time, petitioner SKANNAL had very recently been released from Promise Specialty Hospital and was residing in The Arbor & Terrace, an assisted living facility in Bossier City, Louisiana. Petitioner SKANNAL was on numerous medications that had been prescribed by the psychiatrist under whose care he had been while hospitalized. As a result of both the medications he was taking and his deteriorating physical condition, petitioner SKANNAL does not know and cannot recall many details about numerous transactions involving the defendants, but would have never knowingly sold, for any price, the land and minerals that had comprised his family's ancestral home place for more than 150 years.”

Subsequently, in paragraph 15 of the Original Petition the following allegations are made:

“15.

“Defendant BAMBURG improperly used his relationship with petitioner SKANNAL and SKANNAL's dependence on him to take advantage of SKANNAL's misplaced trust in him and to defraud petitioner SKANNAL out of his property, his interest in SLIGO HILLS, his usufruct over the tracts on the former Sligo Plantation in Bossier Parish and, ultimately, his oil and gas interests, all as more fully shown below. Petitioner SKANNAL's transfers of property and mineral rights to defendants BAMBURG and SLIGO HILLS were the product of duress on the part of defendant BAMBURG and mistake on the part of petitioner SKANNAL, and were brought about by a long-term process of manipulation of SKANNAL by defendant BAMBURG. Moreover, the transfers were made when petitioner SKANNAL lacked the requisite legal capacity to execute such documents.”

Continuing with allegations in the Original Petition seeking a nullification of the sale of Mr. Skannal's interest in Sligo Hills, L.L.C., Plaintiff alleged:

“23.

“The various transactions between petitioner SKANNAL and the BAMBURG and SLIGO HILLS should be rescinded, nullified and set aside because petitioner SKANNAL lacked the requisite capacity to convey his interests in these various properties, because of mistake on the part of petitioner SKANNAL, because of fraud and misrepresentations on the part of defendant BAMBURG as more specifically alleged above, because of duress brought about by defendant BAMBURG and because of the inadequacy of the consideration paid by the defendants for the various interests conveyed.”

Finally, in the prayer of the Original Petition, Plaintiff prayed that:

“WHEREFORE, Petitioner JOHN C. SKANNAL, prays that citation and service issue herein and, after due proceedings had, there be judgment in his favor *rescinding, nullifying and setting aside the transfers described above*, for damages and attorneys fees and for all other relief to which petitioner is entitled, together with interest from date of judicial demand until paid in full and for all costs of court. Petitioner JOHN C. SKANNAL also seeks such additional orders as may be necessary in the premises, including an order directing the defendants to provide the full accounting requested above.” (Emphasis added.)

What is clear from the paragraphs quoted above in the Original Petition and continuing throughout the course of this protracted litigation, is that one of the remedies Plaintiff sought - at all times - was the nullification and rescission of the sale by John C. Skannal to Dennis and Margie Bamburg of Skannal's interest in Sligo Hills, L.L.C.

Counsel for Defendants incorrectly argues that the only transactions which Plaintiff sought to nullify were those enumerated in paragraph 35 of the Third Supplemental and Amending Petition. Prior to the trial in an Opinion filed on April 4, 2007, the Court had sustained exceptions of no right of action filed by Defendants concerning the transactions (*all of which involved Sligo Enterprises, Inc. - not Sligo Hills, L.L.C.*) enumerated in paragraph 35 of the Third Supplemental and Amending Petition based on the fact that, at the time of the filing of those allegations, Plaintiff was not a shareholder Sligo Enterprises, Inc. All of the transactions in paragraph 35 of the Third Supplemental and Amending Petition dealt with sales of property by Sligo Enterprises, Inc. The allegations made in paragraph 41 of the Fourth Supplemental and Amending Petition dealt primarily with the Exclusive Right to Sell Agreement, which had not even been discovered until the second deposition of Dennis Bamburg during pretrial discovery.

One need read no further than the Original Petition in this case to find allegations that the sale of Mr. Skannal's interest in Sligo Hills, L.L.C. to Defendants Dennis and Margie Bamburg should be nullified and set aside due to undue influence, lack of consent, fraud and mistake. The second ground of the Motion for New Trial lacks merit.

3. Defendants allege an error of law in rendering null the October 9, 2003 Exclusive Right to Sell Agreement (Joint Exhibit 11).

Defendants allege that the Court's granting of Defendants' exceptions of no right and no cause of action as to paragraph 35 of the Third Supplemental and Amending Petition meant that Plaintiffs were unable to nullify the October 9, 2003 “Exclusive Right to Sell Agreement” (Joint Exhibit 11), a document which Dennis Bamburg admitted at trial he prepared and took to John C. Skannal for execution while Mr. Skannal was an in-patient in a mental ward at a Shreveport hospital. As the Court noted in its Supplemental Opinion, there is no signed judgment of the Court in which the allegations related to Joint Exhibit 11 were ever dismissed prior to the trial.

There were no objections raised to the admissibility of Joint Exhibit 11 and no objections to testimony offered at trial from Dr. Keith Kessel and Plaintiff's medical expert witnesses concerning how improper it would be to have patients confined in a mental ward execute business documents. There was no objection from Defendants during the examination of Dennis Bamburg to the many questions about the circumstances of his having gone to Mr. Skannal's hospital room at Promise Hospital on October 9, 2003 to obtain Mr. Skannal's signature on the Exclusive Right to Sell Agreement, and the extensive testimony from other witnesses about the fact that at that time a deal had been reached in principal with the Municipal Police Employees Retirement System to purchase the remaining subdivision lots from Sligo Enterprises, Inc. (making the agreement to pay Dennis Bamburg an illegal real estate commission something less than an arm's length transaction between equals, since the sale was virtually guaranteed at that point). Therefore, the Defendants by failing to object to Joint Exhibit 11 or to the testimony from numerous witnesses related to that exhibit have waived any claims they may now raise in post-trial motions that nullification of Joint Exhibit 11 was not an issue that was before the Court.

In brief, Defendants argue that, while they failed to object to the admissibility of Joint Exhibit 11, they did not:

“stipulate that the exhibit was relevant or a matter in controversy. Defendant intended that the document be used as evidence that Skannal could read and write as evidenced by his signature on the document.”

No such position was ever enunciated on the record by either of Defendants' two trial counsel. The nullification of Joint Exhibit 11 was clearly briefed in all of Plaintiff's post-trial briefs and this Motion for New Trial is the first mention of such a claim by the Defendants.

The Court's ruling - that Joint Exhibit 11 differs from the various transactions covered in paragraph 35 of the Third Supplemental and Amending Petition because it bears the signature of Mr. Skannal at a point in time when he was hospitalized in a mental ward - is correct and the third stated basis for the Motion for New Trial is without merit and should be denied.

4. Defendants allege an error of law in the inclusion of Margie Bamburg in the Judgment

The fourth stated ground of the Motion for New Trial raises, for the second time, Defendants' claims that the judgment for fraud damages, repayment of the illegally paid real estate commission, attorneys fees and expert witness costs should have been entered against Dennis Bamburg alone and not against Margie Bamburg as well. The Court will recall that this same argument was made by counsel for Defendants at the hearing on the form and content of the judgment held on January 12, 2009. The Court rejected the Defendants' arguments at that hearing and the same result should be reached on this element of the Motion for New Trial.

As Plaintiff argued on January 12, 2009, the recipients of each of the now-nullified transactions (the transfer of stock in Sligo Enterprises, Inc., the sale of the interest in Sligo Hills, L.L.C. and the sale of the mineral rights) were *both* Dennis and Margie Bamburg. Dennis Bamburg testified at trial that he and his wife were a community property couple. Therefore, clearly, the *community of acquets and gains existing between Dennis Bamburg and Margie Dumas Bamburg* was the beneficiary of Dennis Bamburg's actions in defrauding John C. Skannal.

The second paragraph of [Louisiana Civil Code article 2363](#) provides:

“An obligation resulting from an intentional wrong *not perpetrated for the benefit of the community*, or an obligation incurred for the separate property of a spouse to the extent that it does not benefit the community, the family, or the other spouse, is likewise a separate obligation.” (Emphasis added.)

That Civil Code provision provides the answer and supports the Court's prior ruling that the judgment for damages and attorneys fees should be entered against both Dennis and Margie Bamburg - despite a finding that Margie Bamburg did not unduly influence John C. Skannal. Dennis Bamburg's actions against John C. Skannal constituted fraud - an intentional act. The beneficiaries of Dennis Bamburg's fraud were both Dennis Bamburg *and* Margie Bamburg. Despite the fact that the Court has found that Margie Bamburg did not unduly influence John C. Skannal, she was a direct beneficiary - as a vendee or transferee of the property the transfer of which has been set aside - of the fraud perpetrated by her husband and co-owner of the community of acquets and gains existing between them. The intentional wrong perpetrated by Dennis Bamburg was for the benefit of the community existing between him and Margie Bamburg. Therefore, the obligation to pay damages and attorneys fees is properly entered against both Dennis and Margie Bamburg. The obligation in the judgment to pay expert witness fees was, likewise, properly entered against both Dennis and Margie Bamburg. Both were Defendants in the entire litigation and the Court ruled against them and granted the Plaintiffs relief. Pursuant to La. R.S. 13:3666B, as one of the Defendants cast in judgment, Margie Bamburg bears the obligation of paying that portion of the Plaintiff's expert witness fees that were assessed against the losing parties by the Court.

Defendants cite *Wichser v. Major*, 94-1169 (La. App. 4th Cir. 5/16/95), 694 So.2d 924, for the proposition that an intentional harm by one spouse does not create a community obligation for damages. However, the facts of *Wichser* are completely distinguishable. George Wichser was a New Orleans policeman who, as a private homeowner, had contracted with Major Construction, Inc. (one of the defendants) for some home improvements. Wichser was dissatisfied with the contractor's work. In an encounter at a store after the project was completed, Wichser got into a fight with the contractor. Wichser's wife was not present. The Fourth Circuit found that the wife was not liable for the judgment rendered on the Major's reconventional demand against George Wichser because the husband's acts in assaulting the contractor were not perpetrated for the benefit of the marital community. Under the facts of the case, that ruling was correct.

Under the facts found by this Court, however, the fraudulent actions of Dennis Bamburg would have resulted in significant benefit to the marital community existing between Dennis and Margie Bamburg, had those actions not been nullified as a result of this lawsuit. His actions were for the benefit of the marital community and therefore liability for the damages and attorneys fees awarded as a result of his intentional actions belongs to *both* members of that marital community: Dennis Bamburg *and* Margie Bamburg.

The fourth ground for the Motion for New Trial is without merit and should be denied.

5. The Defendants allege an error of law in the court's failure to sustain an exception of no right of action directed to the substitution as Plaintiff of John Barron Skannal as Testamentary Executor of the Succession of John C. Skannal.

On April 12, 2007, shortly before trial began, Defendants filed an exception of no right of action asserting that John Barron Skannal, Testamentary Executor of the Succession of John C. Skannal, could not have been properly substituted as Plaintiff after the death of John C. Skannal in November 2005 because, Defendants alleged, the will under which he was appointed executor was not valid. The exception was referred to the merits of the case and denied at pages 18-19 in the Original Opinion.

No matter how hard and how often the Defendants try to bring the issue of the validity *vel non* of Mr. Skannal's 2005 will into this lawsuit, is not an issue before the Court. Regardless of Defendants' repeated efforts to make that will an issue in the current case, on the face of the public records, John Barron Skannal is the duly appointed, qualified and sworn Testamentary Executor of the Succession of John C. Skannal. Despite Dennis Bamburg's best efforts to muddy the waters of *Skannal v. Bamburg*, Mr. Skannal's 2005 will has never been set aside and John Barron Skannal is still the duly appointed Testamentary Executor.

The Second Supplemental and Amending Petition was filed by John Barron Skannal as Testamentary Executor of the Succession of John C. Skannal on February 13, 2006. Defendants filed a Dilatory Exception of Vagueness or Ambiguity on March 6, 2006 and did not challenge the procedural capacity of John Barron Skannal as Testamentary Executor of the Succession of John C. Skannal, an issue that must be raised by the dilatory exception. *See* La. Code of Civ. Proc. art. 926A. (6). *See also* *Rogers v. Reed*, 355 So.2d 46 (La. App. 2d Cir. 1978) (the correct way to challenge the capacity of a succession administrator is to file a dilatory exception of lack of procedural capacity, which is waived by the filing of an answer). The Defendants' exception of vagueness was granted but only as to paragraph 35 by Judgment on Exception dated May 19, 2006. John Barron Skannal, as Testamentary Executor of the Succession of John C. Skannal then filed the Third Supplemental and Amending Petition on June 16 2006. Again the Defendants filed an Exception of Vagueness (dated August 3, 2006) which the Court denied on August 23, 2006. On October 2, 2006, Defendants filed their Answer to Third Supplemental and Amending Petition and Reconventional Demand. That pleading cut off the Defendants' rights to file a dilatory exception of lack of procedural capacity, which was the only procedural device available in this lawsuit to challenge the right of John Barron Skannal, acting as the Testamentary Executor of the Succession of John C. Skannal, to act as the substitute plaintiff.

The Defendants seek to re-label the dilatory exception of lack of procedural capacity - which they failed to file - as an exception of no right of action, which the Court correctly previously denied because the validity of Mr. Skannal's 2005 will (and the appointment of John Barron Skannal as the Testamentary Executor under that will) was simply not an issue before the Court. As the old saying goes, "You can call a horse a cow but you won't be able to milk it." You can try to re-label a dilatory exception

as a peremptory exception, but that cannot change the true nature of the exception. For their own reasons, Defendants chose not to file the dilatory exception of lack of procedural capacity. Their filing of an answer to a supplemental petition filed by the person whose procedural capacity they now improperly seek to challenge by an exception of no right of action cut off their right to litigate that issue.

The final ground asserted in the Motion for New Trial raises no issue of merit.

CONCLUSION

None of the issues raised in Defendants' Motion for New Trial establishes any issue that is "clearly contrary to the law and the evidence" as required by [Louisiana Code of Civil Procedure article 1972\(1\)](#). Defendants do not suggest the discovery of any new evidence and merely rehash arguments they have previously made without success. For the reasons shown above, Plaintiff respectfully submits that the same result should be reached by the Court again and the Motion for New Trial should be denied.

Respectfully submitted,

JONES, ODOM, DAVIS & POLITZ, L.L.P.

BY: <<signature>>

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Footnotes

- 1 Margie Bamburg admitted on cross-examination that she had visited John C. Skannal when he was hospitalized at LifeCare Hospital during the August-October 2003 hospitalization and, if he had been her father, she would have had him interdicted. Transcript Vol. XVI, p. 2733, lines 10-14.
- 2 The sale to Dennis and Margie Bamburg of Skannal's interest in Sligo Hills, L.L.C. took place on February 27, 2004 (Jt. Ex. 13). The sales of Skannal's stock in Sligo Enterprises, Inc. (Jt. Ex. 15) and his mineral interests took place on March 2, 2004 (Jt. Ex. 17). In each transaction, Dennis and Margie Bamburg were the vendees and were present at the execution of the documents.
- 3 [Article 1948](#) provides that consent can be vitiated by fraud. [Article 1953](#) provides that fraud "is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction." [Article 1957](#) provides that fraud need only be proven by a preponderance of the evidence and can be proven by circumstantial evidence.

- 4 The Court heard the testimony of Henry Coutret and Scott Massey, both of whom testified that Skannal did not receive a fair deal in the nullified transactions. Scott Massey went further and characterized the manner in which Mr. Bamburg took advantage of Mr. Skannal as financial **abuse** of the **elderly**.
- 5 The citations to [La. Civ. Code art. 1479](#) and various treatises that discuss that article at pages 2-3 of Defendants' Memorandum in Support of Motion for New Trial ("Defendants' Memorandum") are inapplicable in this case. That article deals with donations *inter vivos* and *mortis causa*. All of the transactions nullified by the Court in this case were onerous contracts.
- 6 Defendants' Memorandum, page 3.

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