

**SUPREME COURT OF LOUISIANA**

No. 01-C-1530

***RICHARD A. BERLIER***

*versus*

***A. P. GREEN INDUSTRIES, INC., ET AL.***

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FOURTH CIRCUIT, PARISH OF ST. BERNARD

**VICTORY, J, dissenting.**

I dissent from the majority’s holding that the settlement in this case constitutes a joint and indivisible obligation, binding each of the defendants for the full \$450,000.00. Initially, however, I must point out that in my view, it is not at all clear that there is a legally enforceable settlement agreement in this case under La. C.C. art. 3071, much less a “settlement agreement wherein the parties contracted for one lump-sum payment of \$450,000.00.” Slip Op. at 14.

While I agree with the majority’s finding that “there is no evidence of a ‘clear expression’ of the defendants’ intent to be solidarily bound” under La. C.C. art. 1796, I find that, for the same reasons that the majority made that finding, there was also no evidence that the defendants intended to be solidary bound for purposes of creating a joint and indivisible obligation under La. C.C. art. 1815. Based on the same evidence, the majority finds “there is no evidence of a ‘clear expression’ of the defendants’ intent to be solidarily bound,” yet then concludes “it is apparent that the parties to the settlement agreement intended that ‘the obligation should be executed as if it were indivisible.’” However, the obligation does not meet the requirements for

a joint and indivisible obligation under La. C.C. art. 1815 because there is no evidence that it was the intent of the parties to treat the object of the defendants' obligation, the payment of a sum of money, as an indivisible obligation. See Saul Litvinoff, Louisiana Civil Law Treatise: The Law of Obligations, § 9.5 (defining a conventional indivisible obligation as follows: "When an obligation would be divisible because the object of its performance is susceptible of division, the parties to a contract may agree that it shall be performed as if its object were indivisible, which makes the indivisibility conventional, rather than natural"). Not only is there no evidence that the defendants intended the payment of the \$450,000 to be indivisible, there is substantial evidence that they intended it to be divisible. The majority opinion discusses at some length the arrangements made between the defendants and the CCR clearly showing the defendants did not intend to be bound for the whole, but only for the percentage assigned in the Provider Agreement. Further, there is no evidence the plaintiffs intended the obligation to be indivisible for the defendants, as this settlement was so loosely structured that no amount was even stated on the record in open court.

The reason the code articles require that both parties intend that a joint obligation be either solidary under La. C.C. art. 1796 or indivisible under La. C.C. art. 1815, is because of the onerous effects on the obligors if the obligation is characterized as either of the above. To allow the intent of just one party, the obligee, which in this case is not even discernable, to impose solidary liability on the obligors is unjust. Further, La. C.C. art. 1818 clearly states that "[a]n indivisible obligation with more than one obligor or obligee is subject to the rules governing solidary obligations." La. C.C. art. 1796, requiring that a solidary obligation shall not be presumed and "arises from a clear expression of the parties' intent or from the law" is certainly a

“rule[] governing solidary obligations.” By providing a lower standard in the law for what constitutes a joint and indivisible obligation under La. C.C. art. 1815, which under the majority’s holding is an “apparent intent,” the majority opinion renders meaningless the requirement found in La. C.C. art. 1796, made applicable by virtue of La. C.C. art. 1818, that a clear expression of intent is need to create a solidary obligation, and, creates far too much uncertainty in the law on which contracting parties have relied in this state for years.

Therefore, I respectfully disagree with the majority’s holding that the parties intended this divisible obligation be treated as if it were indivisible under La. C.C. art. 1815, and I am of the firm view that the defendants are not solidarily liable in this case, neither by virtue of La. C.C. art. 1796 nor 1815.