SUPREME COURT OF LOUISIANA

No. 95-C-3058

SHIRLEY HARTMANN, Wife of/and RICHARD P. CARRIERE

versus

BANK OF LOUISIANA IN NEW ORLEANS

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,

FIFTH CIRCUIT, STATE OF LOUISIANA

ON REHEARING

Calogero, C.J. concurring.

When this case was before us on original hearing, the majority held that the Carrieres were entitled to recover under the terms of the lease agreement because BOL had "stepped into the shoes" of the lessee, thereby obviating the issue of whether the Carrieres could have recovered under a theory of unjust enrichment. I concurred in the original opinion because I agreed that the plaintiffs were entitled to recovery, but I concluded that the basis of that recovery was unjust enrichment, not the terms of the lease agreement as the majority held.

On rehearing, however, the opinion presents an in depth analysis of the unjust enrichment issue, and this analysis has prompted me to side with this majority. Unjust enrichment is an available recourse provided that all five of the following requirements are met: (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) absence of justification or cause for the enrichment and the impoverishment; and (5) no other remedy at law available to the plaintiff. Failure to satisfy any one of these criteria will preclude recovery. I now believe that there was justification both under the law and the contract of lease for the enrichment which enured to the benefit of the purchaser of the leasehold estate at the sheriff's sale. The plaintiffs therefore have not satisfied the fourth criterion. I am not sure that I agree with the majority's assertion that the fifth criterion was also not satisfied. However, this concern of mine is irrelevant as there existed a justification or cause for the enrichment and corresponding impoverishment, and that in itself is enough to bar their recovery under unjust enrichment.

Therefore, upon further consideration, while unjust enrichment initially seemed a viable remedy for the plaintiffs, I must now concede that the majority is correct that it is not, and for this reason I concur.