

TIMBER PIRACY, STATUTORY INTERPRETATION, AND LEGISLATIVE INTENT: THE LOUISIANA SUPREME COURT'S DECISION IN *SULLIVAN V. WALLACE*

I. INTRODUCTION

“Timber piracy,” also known as “timber trespass,” has long been a problem in Louisiana.¹ Timber piracy is any act by which a person “cut(s), fell(s), destroy(s), remove(s), or divert(s) for sale or use, any trees growing or lying on the land of another, without the consent of . . . the owner or legal possessor. . . .”² Almost fifty percent of Louisiana’s fourteen million acres of land is covered by timber.³ This timber provides recreational opportunities and environmental benefits, such as habitats for wildlife and scenic beauty.⁴ Timber is also a valuable economic resource.⁵ In 2010, the timber product industries had a \$3.1 billion impact on Louisiana’s economy, and Louisiana forest landowners earned approximately \$400 million from their timber.⁶ Because eighty-one percent of those landowners are non-industrial, private owners whose timberland is located in remote areas, much of that timber is not subject to regular surveillance.⁷ Timber piracy is thus a major concern for almost 120,000 private Louisiana landowners.⁸

¹ See Louisiana Forestry Association, *What’s New Around Louisiana* (2011), <http://www.laforestry.com>; The Louisiana Supreme Court has deferred to the Louisiana Forestry Association for timber-related statistics. See *Allain v. Martco P’ship*, 851 So.2d 974, 980 (La. 2003).

² See LA. REV. STAT. ANN. § 3:4278.1.

³ Louisiana Forestry Association, *2011 Louisiana Forestry Facts* (2011), <http://www.laforestry.com>.

⁴ *Id.*

⁵ See *id.*

⁶ *Id.*

⁷ See *id.*; See *Sullivan v. Wallace*, 51 So.3d 702, 712 (La. 2010)(Knoll, J., dissenting)(stating: “No one disputes tree piracy is a serious concern in this State in which remote tracts of timberland and absentee co-owners abound . . .”).

⁸ See Louisiana Forestry Association, *2011 Louisiana Forestry Facts* (2011), <http://www.laforestry.com>.

If private timber owners die with multiple heirs, those heirs may come to co-own timberland in indivision pursuant to the Louisiana law of intestate successions.⁹ This creates a risk that one co-owner will perpetuate timber piracy against another.¹⁰ Until the 2011 Legislative Session, Louisiana law did not provide a single, clear remedy for this problem, which meant that timber piracy by co-owners could have been governed by two divergent remedial schemes.¹¹ The conflict between those two schemes was the subject of *Sullivan v. Wallace*, a case decided by the Louisiana Supreme Court in November 2010.¹² The first remedial scheme, set forth in Article 798 of the Louisiana Civil Code, provides that a timber-pirating co-owner must pay the other co-owners their proportional shares of the timber profits, after deduction of the costs of production.¹³ The second remedial scheme is set forth in Section 3:4278.1 of the Louisiana Revised Statutes, a punitive statute commonly referred to as the “Timber Piracy Statute,” or the “Timber Trespass Statute.”¹⁴ This remedy pro-

⁹ See LA. CIV CODE ANN. art. 797. According to this article, co-ownership, (also called “ownership in indivision”), occurs when the same thing is owned by two or more persons. In the absence of other provisions of law or juridical act, the shares of all co-owners are presumed to be equal; See also LA. CIV CODE ANN. art. 888.

¹⁰ See LA. CIV CODE ANN. arts. 797 and 888.

¹¹ See State of Louisiana, *Enrolled Act No. 226* (Regular Session, 2011), <http://www.legis.state.la.us/billdata/streamdocument.asp?did=760254>; See also LA. CIV CODE ANN. art. 798; See also LA. REV. STAT. ANN. § 3:4278.1.

¹² See *Sullivan v. Wallace*, 51 So.3d 702.

¹³ See LA. CIV CODE ANN. art. 798, which reads: “Co-owners share the fruits and products of the thing held in indivision in proportion to their ownership. When fruits or products are produced by a co-owner, other co-owners are entitled to their shares of the fruits or products after deduction of the costs of production.”

¹⁴ See LA. REV. STAT. ANN. § 3:4278.1. At the time of the *Sullivan* decision, and until the legislative revision effective August 15, 2011, the text of the Timber Piracy Statute read as follows:

- A. It shall be unlawful for **any person** to cut, fell, destroy, remove, or to divert for sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove, or to divert for sale or use, any trees, growing or lying **on the land of another**, without the consent of, or in accordance with the direction of, **the owner or legal possessor**, or in accordance with specific terms of a legal contract or agreement.
- B. Whoever **willfully and intentionally** violates the provisions of Subsection A shall be liable to the owner or legal possessor of the trees for civil damages in the amount of three times the fair market value of the trees cut, felled, destroyed, removed, or diverted, plus reasonable attorney's fees.
- C. Whoever violates the provisions of Subsection A **in good faith** shall be liable to the owner or legal possessor of the trees for three times the fair market value of the trees cut, felled, destroyed, removed, or diverted, if circumstances prove that the violator **should have been aware** that his actions were without the consent or direction of the owner or legal possessor of the trees.

vides that a timber-pirating co-owner owes the other co-owners treble damages plus reasonable attorney's fees and costs.¹⁵ In 2010, the *Sullivan* Court ruled that only the Civil Code remedy applied to timber-pirating co-owners, but in 2011, the Louisiana State Legislature changed the law so that timber-pirating co-owners now fall clearly within the ambit of the Timber Piracy Statute.¹⁶

Section II of this Note describes the facts and holding of the *Sullivan* decision. Section III traces the development of both the text and the judicial interpretation of the Timber Piracy Statute, an associated statute known as the Eighty Percent Rule, and the relevant articles in the Louisiana Civil Code. Section IV details the rationale of both the majority and dissenting opinions in *Sullivan*. Finally, Section V offers an analysis of those opinions, as well as the Louisiana State Legislature's recent amendment to the Timber Piracy Statute.

II. FACTS AND HOLDING OF *SULLIVAN V. WALLACE*

The plaintiff, Janice Sullivan, and the defendant, Bruce Sullivan, acquired a tract of timberland during their marriage.¹⁷ When the couple divorced, they retained the tract in co-ownership.¹⁸ Without the plaintiff's permission, the defendant cut and stacked timber on the land and

D. If a good faith violator of Subsection A fails to make payment under the requirements of this Section within thirty days after notification and demand by the owner or legal possessor, the violator shall also be responsible for the reasonable attorney fees of the owner or legal possessor.

E. The provisions of this Section shall not apply to the clearing and maintenance of rights of way or to utility service situations where a utility is acting in good faith to minimize the damage or harm occasioned by an act of God. The provisions of this Section shall not apply to land surveying by or under the direction of a registered professional land surveyor, duly registered under the laws of the state of Louisiana.

F. Whoever violates the provisions of Subsection A as they relate to the cutting of standing cypress trees on water bottoms owned by the state of Louisiana shall, in addition to the penalties otherwise provided in this Section, be subject to a fine not to exceed five thousand dollars, imprisonment not to exceed six months, or both.

G. Notwithstanding any other provision of law to the contrary, a civil action pursuant to provisions of this Section shall be subject to a liberative prescriptive period of five years. (emphasis mine)

¹⁵ *Id.*

¹⁶ See *Sullivan v. Wallace*, 51 So.3d at 710; See also State of Louisiana, *Enrolled Act No. 226* (Regular Session, 2011), <http://www.legis.state.la.us/billdata/streamdocument.asp?did=760254>.

¹⁷ *Sullivan v. Wallace*, 51 So.3d at 703.

¹⁸ *Id.*

arranged for a third party timber company to purchase the timber and remove it from the land.¹⁹ Through multiple acts of deception,²⁰ the defendant manifested his intent to avoid paying the plaintiff the proportional share of the timber profits that he owed to her pursuant to Article 798 of the Louisiana Civil Code.²¹ When the plaintiff discovered that the timber had been sold and most of it removed from the land, she brought suit against the defendant,²² seeking treble damages and attorney's fees pursuant to the Timber Piracy Statute.²³ The trial court ruled for the plaintiff, holding that the Timber Piracy Statute applies to co-owners who sell timber from a co-owned tract of land without the consent of the other co-owners.²⁴ The plaintiff was thus entitled to treble damages and attorney's fees.²⁵

The defendant appealed to the Louisiana Second Circuit Court of Appeal, arguing that the court should uphold its earlier decision in *Alexander v. Dunn* (2009), where it held that the Timber Piracy Statute does not apply to co-owners.²⁶ The plaintiff argued that the Timber Piracy Statute does apply to co-owners, as the Louisiana Third Circuit Court of Appeal held in *Prewitt v. Rodrigues* (2005).²⁷ The plaintiff pointed out this "circuit split" between the Second and Third Circuits and argued that the

¹⁹ *Id.* at 704; *See generally* LA. CIV CODE ANN. art. 801, which reads: "The use and management of the thing held in indivision is determined by agreement of all the co-owners"; *See also* *Alexander v. Dunn*, 15 So.3d 302, 308 (La. App. 2d Cir. 2009)(Caraway, J., concurring)(explaining that a co-owner's cutting and selling of co-owned timber without the unanimous consent of all co-owners is, in most instances, a violation of the joint management rule of La. C.C. art. 801.).

²⁰ *Alexander v. Dunn*, 15 So.3d at 308. The defendant had some of the checks from the timber company made payable to his girlfriend instead of to him. Additionally, the defendant maintained that he cut and sold the timber as a salvaging operation after the timber was damaged in an ice storm. Evidence later came to light that the ice storm occurred after the first load of timber was delivered to the timber company's mill, and the mill tickets showed that the timber was not damaged.

²¹ *See* LA. CIV CODE ANN. art. 798.; *See also* discussion *infra* Part III(B).

²² *Sullivan v. Wallace*, 51, So.3d at 704. The plaintiff also sued several co-defendants. These included the timber company itself, the owner of the timber company, and Bruce Sullivan's girlfriend. The plaintiff alleged that her ex-husband's girlfriend conspired with him to defraud her and steal her timber. When the case came before the Louisiana Supreme Court, the plaintiff's claims against each of these defendants had already been resolved, and only the claim against Bruce Sullivan, the plaintiff's ex-husband, remained. For that reason, this case note addresses only the plaintiff's claim against her ex-husband.

²³ *Id.*; *See also* La. R.S. § 3:4278.1.

²⁴ *Sullivan v. Wallace*, 51 So.3d at 704-05.

²⁵ *Id.*

²⁶ *Sullivan v. Wallace*, 27 So.3d 1120, 1125-26 (La. App. 2d Cir. 2010).

²⁷ *Id.* at 1126-27 (Brown, C.J., dissenting); *See Prewitt v. Rodrigues*, 893 So.2d 927 (La. App. 3d Cir. 2005).

Second Circuit should reverse its earlier decision in *Alexander v. Dunn*.²⁸ The Second Circuit reversed the trial court ruling and upheld its decision in *Alexander v. Dunn*, holding that the Timber Piracy Statute does not apply to co-owners and that the plaintiff's injury could be remedied through a simple application of Article 798 of the Civil Code.²⁹ The "circuit split" between the Second and Third Circuits remained.³⁰

The Louisiana Supreme Court granted certiorari to resolve the circuit split.³¹ The Supreme Court held that the punitive Timber Piracy Statute does not apply to co-owners of immovable property, and thus that a co-owner may not be held liable to his fellow co-owners for treble damages and attorney's fees when he cuts and sells timber without the unanimous consent of the other co-owners.³²

III. BACKGROUND

In resolving the *Sullivan* case, the Louisiana Supreme Court used statutes and interpretive jurisprudence from several areas of law, including longstanding principles of statutory interpretation, the basic law of co-ownership, and the law pertaining to timber piracy.³³ The *Sullivan* Court also interpreted the reasoning that the Second and Third Circuits used in *Prewitt v. Rodrigues* and *Alexander v. Dunn*, the two cases that created the circuit split.³⁴

A. Principles of Statutory Interpretation

The *Sullivan* Court relied on longstanding principles of statutory interpretation established both by statutes and case law.

1. Statutes

The current Louisiana Civil Code includes a section pertaining to the Interpretation of Laws.³⁵ According to these statutes, "[w]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation

²⁸ *Sullivan v. Wallace*, 27 So.3d at 1126-27.

²⁹ *Id.* at 1125-26 (holding: "We adhere, therefore, to our previous decision in *Alexander v. Dunn*, for the reasons set forth therein."). See also *Alexander v. Dunn*, 15 So.3d at 307; See also LA. CIV CODE ANN. art. 798.

³⁰ *Sullivan v. Wallace*, 27 So.3d at 1125-26.

³¹ *Sullivan v. Wallace*, 51 So.3d at 703.

³² *Id.* at 710.

³³ See *id.* at 702-13.

³⁴ See *id.*

³⁵ See LA. CIV CODE ANN. arts. 9-13, which became effective on January 1, 1988.

may be made in search of the intent of the legislature.”³⁶ When the law is not clear and unambiguous, different rules apply.³⁷ For instance, “[w]hen the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.”³⁸ Additionally, “[w]hen the words of a law are ambiguous, their meaning must be sought by examining the context in which they occur and the text of the law as a whole.”³⁹ Other general rules include the principles that “[t]he words of a law must be given their generally prevailing meaning” and that “[l]aws on the same subject matter must be interpreted in reference to each other.”⁴⁰

The Louisiana Revised Statutes contains additional provisions pertaining to statutory interpretation.⁴¹ Section 1:3 states, in part: “Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.”⁴² Section 1:4 states: “When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.”⁴³

2. *Jurisprudence*

The Louisiana Supreme Court has issued several rulings pertaining to statutory interpretation. According to the Court: “[W]here two statutes deal with the same subject matter, they should be harmonized if possible.⁴⁴ However, if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.”⁴⁵ The Court has also held, more particularly, that when a statute is “specifically directed to timberland, it must be treated as an exception to” the general rules of the Civil Code.⁴⁶ In reference to punitive statutes, the Court held that “[i]t is the universally recognized

³⁶ LA. CIV CODE ANN. art. 9.

³⁷ See LA. CIV CODE ANN. arts. 10 and 12.

³⁸ LA. CIV CODE ANN. art. 10.

³⁹ LA. CIV CODE ANN. art. 12; See also LA. CIV CODE ANN. art. 2, which states: “Legislation is a solemn expression of legislative will.” LA. CIV CODE ANN. art. 2, like Articles 9 through 13, became effective on January 1, 1988.

⁴⁰ LA. CIV CODE ANN. arts. 11 and 13.

⁴¹ See LA. REV. STAT. ANN. §§ 1:3 and 1:4.

⁴² LA. REV. STAT. ANN. § 1:3.

⁴³ LA. REV. STAT. ANN. § 1:4.

⁴⁴ *Kennedy v. Kennedy*, 699 So.2d 351, 358 (1996)(on rehearing), citing LA. CIV CODE ANN. art. 13.

⁴⁵ *Kennedy*, 699 So.2d at 358, citing *State ex rel. Bickman v. Dees*, 367 So.2d 283, 291 (La. 1978).

⁴⁶ See *Kennedy*, 699 So.2d at 358.

rule of law that [punitive statutes] must be strictly construed. . . .”⁴⁷ To strictly construe a statute means that “every doubt must be resolved against the imposition of the penalty” that the statute provides.⁴⁸

B. *The Basic Principles of Co-ownership*

The *Sullivan* Court also relied on several basic principles of co-ownership found in the Louisiana Civil Code.⁴⁹ According to these principles, co-owners must share the fruits and products of the co-owned thing in proportion to their ownership, and if a co-owner himself produces fruits or products, he is entitled to deduct his production costs before giving the other co-owners their shares.⁵⁰

The Code also contains provisions dictating which types of decisions co-owners may make unilaterally and which types of decisions require unanimous consent.⁵¹ Generally, all decisions involving the use or management of the co-owned thing require the unanimous consent of all co-owners.⁵² A co-owner must also obtain unanimous consent if he wishes to make substantial physical alterations or improvements to the co-owned thing.⁵³ However, a co-owner may make “conservatory acts,” which are necessary steps for the preservation of the co-owned thing, without the consent of any other co-owner.⁵⁴

Debates between co-owners pertaining to these rules, and particularly debates over use and management decisions, are to be remedied through partition of the co-owned thing.⁵⁵ Any co-owner may demand partition

⁴⁷ *Tichenor v. Tichenor*, 181 So. 863, 864-65 (La. 1938).

⁴⁸ *Id.*

⁴⁹ See LA. CIV CODE ANN. arts. 797 – 807, which became effective on January 1, 1991.

⁵⁰ La. C.C. art. 798; See also *supra* note 13; See also discussion of the conflict between the two remedial schemes in Part I, *supra*.

⁵¹ See LA. CIV CODE ANN. art. 800, *et seq.*

⁵² LA. CIV CODE ANN. art. 801; See also *Alexander v. Dunn*, 15 So.3d at 308 (Caraway, J., concurring)(explaining that a co-owner’s cutting and selling of co-owned timber without the unanimous consent of all co-owners is, in most instances, a violation of the joint management rule of LA. CIV CODE ANN. art. 801.).

⁵³ LA. CIV CODE ANN. art. 804.

⁵⁴ LA. CIV CODE ANN. art. 800; See also Official Revision Comment to LA. CIV CODE ANN. art. 800; See also LA. CIV CODE ANN. art. 806 (providing that a co-owner who incurs necessary expenses, expenses for ordinary maintenance and repairs, or necessary management expenses paid to a third person is entitled to reimbursement from the other co-owners in proportion to their shares).

⁵⁵ See LA. CIV CODE ANN. arts. 803 and 807; See also *Succession of Miller*, 674 So.2d 441, 443-44 (La. App. 4th Cir. 1996)(explaining that generally, courts may not resolve disputes between co-owners pertaining to the use and management of the co-owned property unless a partition is either literally or functionally unavailable).

at any time, subject to other specific laws and agreements, and courts may order either a partition in kind or a partition by licitation.⁵⁶

C. Laws Pertaining to Timber Piracy

To evaluate the Louisiana Supreme Court's reasoning in *Sullivan*, it is important to be familiar with the history and development of Louisiana timber piracy law as established by antiquated statutes, newer statutes, and the case law interpreting those statutes.

1. Early Timber Piracy Provisions: The Louisiana Civil Code of 1870

According to the Louisiana Civil Code of 1870, the punishment for a timber trespasser depended on whether he was in good faith, legal bad faith, or moral bad faith.⁵⁷ A trespasser was in good faith if he just had reason to believe, and did subjectively believe, that he owned the timber he cut.⁵⁸ A good faith trespasser was only liable for the stumpage value of the timber, which is the value of the standing timber in its place.⁵⁹ A trespasser was in legal bad faith but moral good faith if he subjectively believed that he owned the timber he cut but should have known from the circumstances that he did not.⁶⁰ A trespasser in legal bad faith but moral good faith was liable for the sale price of the timber with deduction of his production costs.⁶¹ A trespasser was in legal and moral bad faith if he knew that he did not own the timber but cut it anyway, or if he cut it with reckless disregard for whether he owned it or not.⁶² A trespasser in legal and moral bad faith was liable for the sale price of the timber without deduction of his production costs.⁶³ Because a timber trespasser's punishment under the Code of 1870 depended on his culpability, in some cases a landowner could recover what were effectively punitive damages.⁶⁴

The Timber Piracy Statute preserved the notion that punishment should depend on culpability and imposes even harsher penalties than the 1870 Code did.⁶⁵ According to the Timber Piracy Statute, a timber tres-

⁵⁶ See LA. CIV CODE ANN. arts. 807, *et seq.*

⁵⁷ A. N. YIANNOPOULOS, La. Civ. L. Treatise 2, Property § 294 (4th ed. 2010).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See *id.*

⁶⁵ See LA. REV. STAT. ANN. § 3:4278.1, *supra* note 14.

passer who “willfully and intentionally” cuts timber that does not belong to him is liable for three times the fair market value of the timber, plus reasonable attorney’s fees and costs.⁶⁶ This present-day trespasser who trespasses “willfully and intentionally” is equivalent to the 1870 Code’s trespasser in legal and moral bad faith, but the present-day trespasser is liable for three times the amount for which the 1870 trespasser was liable.⁶⁷

The Timber Piracy Statute also provides for the trespasser who cuts the timber in “good faith” but “should have been aware that his actions were without the consent or direction of the owner.”⁶⁸ Because this trespasser is merely negligent and is not pirating timber “willfully and intentionally,” his is liable for three times the fair market value of the timber but not for attorney’s fees and costs.⁶⁹ This present-day trespasser is analogous to the 1870 Code’s trespasser in legal bad faith but moral good faith, but the present-day trespasser is liable for three times the amount for which the 1870 trespasser would have been liable, and he may not recover his production costs.⁷⁰

While the Timber Piracy Statute does not contain a category for present-day timber trespassers who are in subjective good faith and are not negligent (equivalent to the 1870 Code’s trespasser in good faith), Louisiana courts have traditionally ruled that trespassers of this type are only liable for the fair market value of the timber.⁷¹ While the Timber Piracy Statute applies treble damages liability regardless of whether the trespasser was in “good faith” or acted “willfully and intentionally,” Louisiana courts have awarded treble damages only in cases of “palpable” bad faith.⁷²

⁶⁶ *Id.* The fair market value of the timber is the amount a purchaser would pay for standing timber to be cut and removed and does not include any profit that might be gained from selling the timber. *McConnico v. Red Oak Timber Co.*, 847 So.2d 191, 198 (La. App. 2d Cir. 2003).

⁶⁷ See YIANNOPOULOS, *supra* note 58; See also LA. REV. STAT. ANN. § 3:4278.1, *supra* note 14.

⁶⁸ LA. REV. STAT. ANN. § 3:4278.1.

⁶⁹ *Id.*

⁷⁰ See YIANNOPOULOS, *supra* note 57 See also LA. REV. STAT. ANN. § 3:4278.1.

⁷¹ See YIANNOPOULOS, *supra* note 57.

⁷² *Id.*, See also LA. REV. STAT. ANN. § 3:4278.1; See also *Brown v. Bedsole*, 447 So.2d 1177 (La. App. 3d Cir. 1984). In *Brown*, the Third Circuit held that where an adjoining landowner does not “willfully and intentionally” pirate his neighbor’s timber, and where the two properties are not divided by any visibly designated demarcation lines, it cannot be said that the trespasser “should have been aware” that the timber did not belong to him. See *id.* at 1183. Thus, this kind of timber trespasser is in good faith and is not liable for treble damages but only for the fair market value of the timber cut. *Id.*

2. Early Case Law

While the Code of 1870 did not deal specifically with the issue of timber piracy by co-owners, the Louisiana Supreme Court dealt with the issue directly when it decided *Cotten v. Christen* in 1903.⁷³ The *Cotten* Court held that where two co-owners each own an undivided one-half interest in a tract of timberland, one co-owner has no right to cut the timber without the other's consent because to do this is an act "in the nature of a trespass."⁷⁴ Thus, a plaintiff co-owner has a cause of action against a defendant co-owner when the defendant cuts co-owned timber without the plaintiff's consent.⁷⁵

In 1910, the Louisiana Supreme Court decided *Breaux v. Albert Hanson Lumber Co.*⁷⁶ The Court held that co-owners must "respect the rights" of other co-owners⁷⁷ and that one co-owner owes "some duty" to the others, "to the extent of not taking the property unless he is entirely certain that he has their consent."⁷⁸ The Court ruled that a co-owner who takes co-owned property without the consent of the other co-owners commits a trespass with respect to them, even though this type of trespass may be different from an "ordinary trespass" where the trespasser does not have an ownership interest in the land.⁷⁹

The Louisiana Supreme Court appeared to reach a different holding in 1955 when it decided *Juneau v. Laborde*.⁸⁰ In *Juneau*, the plaintiffs and

⁷³ See *Cotten v. Christen*, 110 La. 444 (La. 1903). In *Cotten*, the plaintiff and defendant each owned an undivided one-half interest in a tract of timberland. *Id.* at 597-98. The defendant cut the timber without the plaintiff's consent, and the plaintiff brought suit against the defendant, demanding an injunction, damages, and attorney's fees. *Id.*

⁷⁴ *Id.* at 598.

⁷⁵ See *id.*; The *Cotten* Court ruled that the co-owner's timber trespass could be stopped by injunction. *Id.* The Court did not address the issue of damages, in spite of the fact that the plaintiff brought suit for damages and attorney's fees, in addition to an injunction. *Id.* at 599. The issue of damages was remanded to the trial court. *Id.*

⁷⁶ See *Breaux v. Albert Hanson Lumber Co.*, 51 So 444 (La. 1910). In *Breaux*, the plaintiffs were several of the Breaux siblings. *Id.* at 445-46. Along with another of their siblings, Ernest Breaux, the plaintiffs co-owned one-third of an undivided tract of timberland. *Id.* Ernest owned 20 percent of this one-third interest, and so he owned approximately 6.7% of the entire tract. *Id.* The defendants, who co-owned another one-third of the undivided tract, obtained Ernest Breaux's consent to cut and remove timber from the land, but they did not obtain the plaintiffs' consent or even inquire as to whether the plaintiffs wished to cut and remove the trees. *Id.* at 446-47.

⁷⁷ *Id.* at 447, (citing *Cotten*, 110 La. at 447) (additional citations omitted).

⁷⁸ *Id.* at 447.

⁷⁹ *Id.* at 447; Thus, the defendants, in appropriating the timber without regard to the plaintiffs' ownership interests, had committed a trespass with respect to the plaintiffs and owed the plaintiffs the value of the lumber from the trees. *Id.*

⁸⁰ See *Juneau v. Laborde*, 82 So.2d 693 (La. 1955).

the defendant were co-owners of a tract of land.⁸¹ The defendant possessed the whole of the land in an attempt to acquire ownership to the entire tract by acquisitive prescription.⁸² The Court held that although the defendant co-owner possessed the land in legal bad faith, he was not a trespasser with respect to the other co-owners.⁸³

3. Revised Statute Provisions and Relevant Case Law

In 1974, the Louisiana State Legislature added particular timber-related provisions to the Louisiana Revised Statutes, including Section 3:4278.1, the Timber Piracy Statute.⁸⁴ The Louisiana Supreme Court has held that the legislature's intent in enacting the Timber Piracy Statute was "to impose a severe penalty upon those who disregard the property rights of timber owners."⁸⁵ Applying the general principles of statutory interpretation,⁸⁶ the Court also held that the Timber Piracy Statute is a penal statute and thus must be strictly construed.⁸⁷

The 1974 additions to the Revised Statutes also include Section 3:4278.2, known as the "Eighty Percent Rule."⁸⁸ According to the Eighty

⁸¹ *Id.* at 695.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See LA. REV. STAT. ANN. § 3:4278.1, *supra* note 14; See also discussion of LA. REV. STAT. ANN. § 3:4278.1 in Parts I and III(C)(i), *infra*.

⁸⁵ *Hornsby v. Bayou Jack Logging, Inc.*, 902 So.2d 361, 369 (La. 2005), (*citing Morgan*, 441 So.2d 290, 296) and *Smith v. Myrick*, 412 So.2d 677 (La. App. 2d Cir. 1982).

⁸⁶ See discussion of the principles of statutory interpretation *infra* Part III(A).

⁸⁷ *Hornsby*, 902 So.2d at 369.

⁸⁸ See LA. REV. STAT. ANN. § 3:4278.2; The precise text of LA. REV. STAT. ANN. § 3:4278.2, which has not been changed since the time of the *Sullivan* decision, is as follows:

- A. A co-owner or co-heir of land may execute an act of timber sale whereby he sells his undivided interest in the timber, and any condition imposing a time period within which to remove the timber shall commence from the date of its execution.
- B. A buyer who purchases the timber from a co-owner or co-heir of land may not remove the timber without the consent of the co-owners or co-heirs representing at least eighty percent of the ownership interest in the land, provided that he has made reasonable effort to contact the co-owners or co-heirs who have not consented and, if contacted, has offered to contract with them on substantially the same basis that he has contracted with the other co-owners or co-heirs.
- C. A co-owner or co-heir of the land who does not consent to the exercise of such rights has no liability for the cost of timber operations resulting from the sale of the timber, and shall receive from the buyer the same price which the buyer paid to the other co-owners or co-heirs. The consenting co-owners or co-heirs shall agree to indemnify and hold harmless the nonconsenting co-owners or

Percent Rule, a timber buyer may not buy and remove timber from an undivided tract without obtaining the consent of the co-owners representing at least eighty percent of the ownership interest.⁸⁹ If the buyer does this, there is prima facie evidence that he has violated the Timber Piracy Statute and is liable for treble damages, attorney's fees, and costs.⁹⁰ Using the Eighty Percent Rule, the Louisiana Second Circuit held that when a timber buyer purchases co-owned timber having only received consent from one co-owner with a one-half ownership interest, that buyer is liable to the non-consenting co-owner under the Timber Piracy Statute.⁹¹

The Louisiana Supreme Court has held that the legislature's intent in enacting the Eighty Percent Rule was "to manage forest resources," to promote the benefit of Louisiana's economy and wildlife, and "not [to] penalize [co-owners with an eighty percent interest when the co-owners with a twenty percent interest] could not be located or for some reason refused to cut any timber."⁹² The Court also stated that the Eighty Percent Rule was intended to further the following policy interests:

[T]he State of Louisiana clearly has an interest in promoting the timber industry since the economy would greatly benefit by allowing the majority co-owners to sell their timber over the opposition of a few minority co-owners, who may contest the sale for unreasonable reasons. It would be unreasonable and against public policy to prevent the majority co-owners from selling the timber for marketing when it was ripe for harvest or to cause an unreasonable risk of substantial property loss to the majority because the minority withheld consent.⁹³

co-heirs for any damage or injury claims which may result from such operations.

- D. If the nonconsenting co-owner or co-heir fails or refuses to claim his portion of the sale price of the timber, the buyer shall be obligated to hold such funds in escrow, for and on behalf of such nonconsenting co-owner or co-heir and any interest or other income earned by such funds in escrow shall inure to the benefit of the co-owner or co-heir for whom they are held.
- E. Failure to comply with the provisions of this Section shall constitute prima facie evidence of the intent to commit theft of the timber by such buyer.
- F. The sale of an undivided interest in timber that constitutes community property shall be governed by the provisions of Chapter 2 of Title VI of Book III of the Civil Code.
- G. Notwithstanding any other provision of law to the contrary, a civil action pursuant to provisions of this Section shall be subject to a liberative prescriptive period of five years.

⁸⁹ *Id.*

⁹⁰ *Id.*; See also LA. REV. STAT. ANN. § 3:4278.1.

⁹¹ *McConnico v. Red Oak Timber Co.*, 847 So.2d 191, 194-95 (La. App. 2d Cir. 2003).

⁹² *Allain v. Martco P'ship*, 851 So.2d 974, 980 (La. 2003).

⁹³ *Id.*

D. The Circuit Split

The Louisiana Supreme Court granted writ of certiorari to review the *Sullivan* case to resolve the issue of whether the Timber Piracy Statute applied to co-owners.⁹⁴ The Louisiana Second and Third Circuits had delivered opposite rulings on the issue in *Prewitt v. Rodrigues* and *Alexander v. Dunn*.⁹⁵ In *Sullivan*, both the majority and dissenting opinions relied heavily on the reasoning that the Circuit Courts used in their respective decisions.⁹⁶

1. *Prewitt v. Rodrigues* (2005)

In *Prewitt v. Rodrigues*, the Third Circuit held that co-owners are subject to the Timber Piracy Statute and thus are liable for treble damages when they willfully and intentionally cut co-owned timber without any intention of paying the proportional shares of the profits to the other co-owners.⁹⁷ The court remarked on the legislative intent behind the Timber Piracy Statute, which was “to impose a severe penalty [treble damages] upon those who flagrantly disregard the property rights of timber owners,”⁹⁸ and to dissuade those who pirate timber for their own pecuniary gain from doing so.⁹⁹ According to the court, the imposition of treble damages would deter timber-pirating co-owners because rather than only having to pay the other co-owners the value of the trees taken pursuant to Article 798 of the Civil Code, timbering-pirating co-owners would have to pay treble damages, attorney’s fees, and costs and thus would be unable to break even when they are caught.¹⁰⁰

The Third Circuit found “nothing in [the Timber Piracy Statute] which would prevent its being applied to a co-owner.”¹⁰¹ Neither did the court believe that anything in the [Eighty Percent Rule] could be construed to

⁹⁴ *Sullivan v. Wallace*, 51 So.3d at 712-13.

⁹⁵ See *Prewitt v. Rodrigues*, 893 So.2d 927 (La. App. 3d Cir. 2005); *Alexander v. Dunn*, 15 So.3d at 308; See also discussion *infra* of the circuit split in Part II.

⁹⁶ *Sullivan v. Wallace*, 51 So.3d at 702-13.

⁹⁷ *Prewitt v. Rodrigues*, 893 So.2d at 935. In *Prewitt*, a father died, leaving a tract of timberland to his two children in indivision. *Id.* at 929. The brother contacted a logging company and had the timber cut and sold without his sister’s permission. *Id.* The sister brought claims against her brother and the logging company, alleging violations of LA. REV. STAT. ANN. §§ 3:4278.1 and 3:4278.2, seeking an injunction and treble damages. *Id.*

⁹⁸ *Morgan v. Fuller*, 441 So.2d 290, 296 (La. App. 2d Cir. 1983), *cert. denied*, 443 So.2d 596 (La. 1983), *cited in Prewitt v. Rodrigues*, 893 So.2d at 934-35.

⁹⁹ *Jordan v. Stevens Forestry Services, Inc.*, 430 So.2d 806, 809-10 (La. App. 3d Cir. 1983), *cited in Prewitt v. Rodrigues*, 893 So.2d at 934-35.

¹⁰⁰ *Id.*

¹⁰¹ *Prewitt v. Rodrigues*, 893 So.2d at 934.

mean that only buyers, but not co-owners themselves, should be subject to the penalties of the Timber Piracy Statute.¹⁰² In reference to the Eighty Percent Rule, the court stated:

[T]he provisions of [the Eighty Percent Rule] do not appear to exist in order to exempt a co-owner from the necessity of paying treble damages for timber trespass. Rather, those provisions [merely] impose penalties on those buyers who cut timber without having obtained the consent of [eighty percent] of the co-owners.¹⁰³

The court held that the punitive damages that the Timber Piracy Statute imposes are particularly justified in circumstances where a co-owner has “flagrantly disregard[ed] the property rights” of his fellow co-owners, willfully and intentionally selling timber that does not belong to him without any intention of paying the other co-owners their shares.¹⁰⁴ The court reasoned that in cases of this type, the mere requirement that a trespassing co-owner pay the other co-owners their shares of the profits will not dissuade those trespassers from taking their co-owners’ timber for their own gain.¹⁰⁵ The court thus ruled that the Timber Piracy Statute applies to co-owners and affirmed the trial’s court’s judgment awarding treble damages and attorney’s fees to the plaintiff.¹⁰⁶

2. *Alexander v. Dunn* (2009)

In *Alexander v. Dunn*, the Second Circuit held that co-owners are not subject to the Timber Piracy Statute but are only subject to the remedial scheme set forth in Article 798.¹⁰⁷ The court relied heavily on the principles of statutory interpretation.¹⁰⁸ The court reasoned that the Timber Piracy Statute “is a punitive statute and thus must be strictly construed,”¹⁰⁹ and also that the statute is “facially ambiguous with regard to co-owners, neither expressly including nor excluding these persons from its provisions.”¹¹⁰ The Timber Piracy Statute states that a person violates

¹⁰² *See id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 935.

¹⁰⁵ *Id.* at 934-935.

¹⁰⁶ *Id.*

¹⁰⁷ *Alexander v. Dunn*, 15 So.3d at 307; *See also* La Civ. Code Ann. art. 798, *supra* note 13.

¹⁰⁸ *Alexander v. Dunn*, 15 So.3d at 302-08.

¹⁰⁹ *Hornsby*, 902 So.2d at 369, *cited in Alexander v. Dunn*, 15 So.3d at 305.

¹¹⁰ *Alexander v. Dunn*, 15 So.3d at 306, *citing* La. R.S. § 1:4; *See also* discussion of LA. REV. STAT. ANN. § 1:4 in Part III(A)(i), *infra*. The *Alexander* court was arguing that because the Timber Piracy Statute was facially ambiguous, the court could not disregard the letter of the statute under the pretext of pursuing its spirit.

the provision when he cuts or removes trees “on the land of another.”¹¹¹ According to the Second Circuit, this language suggests that co-owners who cut co-owned timber are not subject to the statute because the land in question will not be the “land of another” but rather belongs to the co-owner himself.¹¹²

The court also stated that although older jurisprudence, such as *Cotten v. Christen*,¹¹³ recognized that the act of a co-owner cutting timber without the consent of the other co-owners was in the nature of a trespass, some newer jurisprudence, such as *Juneau v. Laborde*, “suggests that a co-owner who engages in wrongful conduct with regard to the whole property is not a trespasser with regard to his co-owners.”¹¹⁴

The Second Circuit also asserted that because co-ownership of timberland is the subject of the Eighty Percent Rule, the Timber Piracy Statute must be read “*in pari materia*” with the Eighty Percent Rule.¹¹⁵ The court remarked that: “Where two or more statutes deal with the same subject matter, they should be harmonized if possible; but if there is a conflict, the statute specifically directed to the matter at issue must prevail as an exception to the statute more general in character.”¹¹⁶ The court reasoned that if the Timber Piracy Statute were read to apply to co-owners, it would create a contradiction with the Eighty Percent Rule.¹¹⁷ The court explained:

The [Eighty Percent Rule] allows a timber buyer to cut standing timber when the buyer has the consent of co-owners holding [eighty percent] of the ownership interest. Because [the Timber Piracy Statute] does not explicitly refer to co-owners, it contains no exception for the [Eighty Percent Rule] in LA. REV. STAT. ANN. § 3: 4278.2. If [the Timber Piracy Statute] applies to co-owners, then one co-owner who holds more than [eighty percent] of the ownership interest and permits timber to be cut in accordance with [the Eighty Percent Rule] would nevertheless be liable to the other co-owners for treble damages under [the Timber Piracy Statute] even though the timber buyer would escape the penalty because of [the Eighty Percent Rule].¹¹⁸

¹¹¹ *Alexander v. Dunn*, 15 So.3d at 306; *See also* LA. REV. STAT. ANN. § 3:4278.1.

¹¹² *Alexander v. Dunn*, 15 So.3d at 306.

¹¹³ *See* discussion of *Cotten v. Christen* (decided in 1903) in Part III(C)(ii), *infra*.

¹¹⁴ *Alexander v. Dunn*, 15 So.3d at 306, *citing Juneau v. Laborde*, 82 So.2d at 693; *See* discussion of *Juneau v. Laborde* (decided in 1955) in Part III(C)(ii), *infra*.

¹¹⁵ *Alexander v. Dunn*, 15 So.3d at 306, *citing* LA. CIV. CODE ANN. art. 13; *See also* discussion of LA. CIV. CODE ANN. art. 13 in Part III(A)(i), *supra*.

¹¹⁶ *Alexander v. Dunn*, 15 So.3d at 306, *citing* La. Assoc. Gen. Contractors v. La. Dept. of Agric. & Forestry, 924 So.2d 90 (La. 2006); *See generally* LA. CIV. CODE ANN. art. 13; *See also* discussion of LA. CIV. CODE ANN. art. 13 in Part III(A)(i), *infra*.

¹¹⁷ *Alexander v. Dunn*, 15 So.3d at 306.

¹¹⁸ *Id.*

The court found that the legislature could not possibly have intended to create a contradiction of this type when it enacted these statutes.¹¹⁹

The Second Circuit went on to reason that in enacting the Timber Piracy Statute, the Eighty Percent Rule, and Article 798, the legislature recognized the fact that co-owners ordinarily act to promote their own economic self-interest.¹²⁰ “To apply the Timber Piracy Statute to co-owners would allow the owner of a [ten percent] share of timberland to recover treble damages from the owner of a [ninety percent] share who, following [the Eighty Percent Rule], obtains an excellent price for the timber and shares the proceeds with the [ten percent] owner.”¹²¹ The court held that this result would be nonsensical.¹²² For this reason, and because timber-pirating co-owners own a share of the land in indivision and thus are not pirating timber “on the land of another” as required by the Timber Piracy Statute, the phrase “any person” cannot apply to co-owners.¹²³ According to the Second Circuit, “[a]ny other application of the [Timber Piracy Statute] would violate the principle holding that such penalty statutes must be strictly construed.”¹²⁴

This reasoning led the Second Circuit to rule that because neither the Timber Piracy Statute nor the Eighty Percent Rule “governs the rights and duties of co-owners of timberlands vis-à-vis each other, the ordinary rules of” the Civil Code, specifically Article 798, apply.¹²⁵ The court thus reversed the trial court’s award of treble damages and attorney’s fees and amended the award to the fair market value of the plaintiffs’ share of the timber, pursuant to Article 798.¹²⁶

IV. THE LOUISIANA SUPREME COURT’S DECISION

The *Sullivan* decision includes both a majority and a dissenting opinion.¹²⁷ The majority held that the Timber Piracy Statute does not apply to

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 306-07.

¹²² *Id.* at 307.

¹²³ *Id.*

¹²⁴ *Id.*, citing LA. REV. STAT. ANN. § 1:3; See also discussion of LA. REV. STAT. ANN. § 1:3 in Part III(A)(i), *infra* (The statute reads: “Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.”); See also discussion of the strict construction of punitive statutes in Part III(A)(ii), *infra*.

¹²⁵ *Alexander v. Dunn*, 15 So.3d at 307; The *Alexander* court added: “On this point, we respectfully disagree with our brethren on the Third Circuit.” *Id.*, citing *Prewitt*, 893 So.2d 927; See also discussion of the *Prewitt* holding in Part III(D)(i), *infra*.

¹²⁶ *Alexander v. Dunn*, 15, So.3d at 307; See also LA. CIV. CODE ANN. art. 798.

¹²⁷ See *Sullivan v. Wallace*, 51 So.3d at 703-13.

co-owners.¹²⁸ In evaluating the case, the majority relied on the basic principles of statutory interpretation.¹²⁹ The majority reasoned as follows: “The issue in this case is a legal one requiring us to interpret [the Timber Piracy Statute.] The fundamental question in all cases of statutory interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the legislature to enact the law.”¹³⁰

The majority cited to the following principles of statutory interpretation: To interpret a statute, a court must begin with the plain language of the statute itself.¹³¹ If the language of the statute is clear and unambiguous and its application does not lead to absurd consequences, no search should be made into the intent of the legislature in enacting the statute, and the law should be applied as written.¹³² If the language of the statute is susceptible of different meanings, a court must interpret the language as having the meaning that best conforms to the purpose of the law, and the words of law must be given their generally prevailing meaning.¹³³ When the language of a statute is ambiguous, a court must examine the context in which the language occurs and attempt to harmonize the statute with laws on the same subject matter.¹³⁴ Additionally, because the Timber Piracy Statute is a punitive statute, it must be strictly construed.¹³⁵

The majority underwent the following “strict construction” of the Timber Piracy Statute:

We agree with the court of appeal in *Alexander v. Dunn* that, although the statute is directed to “any person” who cuts, fells, destroys, removes, or diverts for sale or use any trees, the statute is facially ambiguous with regard to co-owners of the timberland, neither expressly including nor excluding these persons from its provisions. When viewed strictly, the statute is violated only when “any person” acts with respect to trees growing or lying “on the land of another” and when this action is taken without “the consent of ... the owner or legal possessor.”¹³⁶

The majority adopted another piece of the *Alexander* court’s reasoning pertaining to the contradiction that results between the Timber Piracy Statute and the Eighty Percent Rule if the Timber Piracy Statute is held

¹²⁸ *Id.* at 706.

¹²⁹ *Id.*; See also discussion of the principles of statutory interpretation in Part III(A), *infra*.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*, citing LA. CIV. CODE. ANN. art. 9.

¹³³ *Id.*, citing LA. CIV. CODE. ANN. arts. 10 and 11.

¹³⁴ *Id.*, citing LA. CIV. CODE. ANN. arts. 12 and 13.

¹³⁵ *Hornsby*, 902 So.2d at 369 (La. 2005), cited in *Sullivan v. Wallace*, 51 So.3d at 707.

¹³⁶ *Sullivan v. Wallace*, 51 So.3d at 709.

to apply to co-owners.¹³⁷ The majority held that the legislature could not have intended a contradiction of this kind and thus could not have intended for the Timber Piracy Statute to apply to co-owners.¹³⁸

The majority further reasoned that the legislature demonstrated its intent for the Timber Piracy Statute by placing the statute in a part of the Revised States entitled "Protection and Reforestation," within a chapter entitled "Forests and Forestry."¹³⁹ The majority held that this placement suggests that the legislative purpose behind the Timber Piracy Statute was "to protect those with interests in trees from loggers who enter their property without permission to harvest timber illegally."¹⁴⁰ The Court held that co-owners could not fit into this category and thus that the legislature could not have intended for the Timber Piracy Statute to apply to co-owners.¹⁴¹

Although the majority based its decision solely on the principles of statutory interpretation, it also acknowledged the relevant policy considerations.¹⁴² The Court stated:

We recognize the important policy considerations invoked by the Louisiana Forestry Association in its amicus curiae brief filed in support of the plaintiff. However, our decision today is directed by the statutory construction required of a statute that is penal in nature. Any change in the law must be made by the legislature.¹⁴³

For these reasons, the majority held that the Timber Piracy Statute is inapplicable to co-owners of timberland.¹⁴⁴ The Court thus ruled that the defendant, Bruce Sullivan, was not liable for treble damages but merely owed the plaintiff, Janice Sullivan, her proportional share of the timber profits pursuant to Article 798.¹⁴⁵

¹³⁷ *Id.* at 709-10; See discussion of the *Alexander* court's reasoning in Part III(D)(ii), *infra*; See also *Sullivan v. Wallace*, 51 So.3d at 708 (Guidry, J., majority)(explaining that the Louisiana Forestry Association, in its amicus curiae brief to the *Sullivan* Court, posited that the *Alexander* court's ruling provided "a loophole around the Eighty Percent Rule to allow unscrupulous contractors to purchase interests in the property," become co-owners, "and therefore avoid the penalties of [the Timber Piracy Statute].")

¹³⁸ *Sullivan v. Wallace*, 51 So.3d at 709.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See *id.*

¹⁴² *Id.* at 710.

¹⁴³ *Id.* at 710 n.7; The types of policy concerns involved in the case included good forest management practices, deforestation, encouraging landowners to reforest their trees, and preserving Louisiana's valuable timber resources. See *Sullivan v. Wallace*, 51 So.3d at 711-13 (Knoll, J., dissenting).

¹⁴⁴ *Id.* at 710.

¹⁴⁵ *Id.* at 703-704; See also LA. CIV. CODE ANN. art. 798.

The *Sullivan* decision also includes a strong dissenting opinion.¹⁴⁶ According to the dissent, the way that the majority interpreted the Timber Piracy Statute neither comported with the “clear and unambiguous language” of the statute nor furthered the explicit intent of the legislature.¹⁴⁷ The dissent reasoned that nothing in the language of the Timber Piracy Statute would prevent its application to co-owners or restrict its application to third parties.¹⁴⁸ For the dissent, the majority’s holding created a jurisprudential limitation of the Timber Piracy Statute that exceeds the function of the judiciary.¹⁴⁹

The dissent also relied heavily on the basic principles of statutory interpretation,¹⁵⁰ beginning by analyzing the plain language of the Timber Piracy Statute.¹⁵¹ The dissent reasoned that a timber-pirating co-owner falls under the umbrella of “any person” who “intentionally or willfully” steals timber and that co-owned land, which is “land owned by one co-owner with another,” thus falls under the umbrella of “land of another.”¹⁵² The dissent thus held that interpreting the Timber Piracy Statute to apply to co-owners comports with the plain language of the statute and with the legislature’s clear intent that the statute be applied broadly, as expressed by the legislature’s use of very broad statutory language.¹⁵³ According to the dissent, this interpretation of the statute also comports with longstanding jurisprudence set forth in *Cotten v. Christen*, which established that co-owners can be trespassers with respect to other co-owners when they pirate co-owned timber.¹⁵⁴ The dissent also argued that the fact that the Eighty Percent Rule immediately follows the Timber Piracy Statute¹⁵⁵ and the fact that the Eighty Percent Rule explicitly refer-

¹⁴⁶ See *Sullivan v. Wallace*, 51 So.3d at 710-13.

¹⁴⁷ *Id.* at 710-11.

¹⁴⁸ *Id.* at 711.

¹⁴⁹ *Id.*

¹⁵⁰ See *id.* at 710-13.

¹⁵¹ *Id.* at 711.

¹⁵² *Id.*; See LA. REV STAT. ANN. § 3:4278.1.

¹⁵³ *Id.* at 711-12; See also LA. REV STAT. ANN. § 3:4278.1.

¹⁵⁴ *Sullivan v. Wallace*, 51 So.3d. at 711, citing *Cotten v. Christen*, 110 La. at 447 (holding that a co-owner “has no right to cut the timber on the land without the consent of his co-owner...for the act is in the nature of a trespass.”); See also discussion of early case law pertaining to timber piracy, including *Cotten* in Part III(C)(ii), *infra*.

¹⁵⁵ The two statutes are LA. REV STAT. ANN. § 3:4278. 1 and LA. REV STAT. ANN. § 3:4278.2.

ences co-owners¹⁵⁶ imply that the legislature intended for the Timber Piracy Statute to apply to co-owners.¹⁵⁷

The dissent also maintained that because the legislature enacted the Timber Piracy Statute as a specific statute to govern timber piracy, and because “it is well established [that] specific provisions prevail over more general provisions,” the Timber Piracy Statute must be held to trump the general, default rules of Civil Code.¹⁵⁸ Thus, the dissent held that the Timber Piracy Statute, and not Article 798, should apply to co-owners.¹⁵⁹

Expanding on its interpretation of the legislative purpose behind the Timber Piracy Statute, the dissent reasoned that the legislature enacted the statute in an attempt to further various policy interests, including: preserving Louisiana’s valuable timber resources, combating deforestation and bad forest management practices, and deterring timber piracy, which is “a serious concern in this State in which remote tracts of timberland and absentee co-owners abound.”¹⁶⁰

The dissent adopted the position of the *Prewitt* court, which stated: “The provisions of [the Eighty Percent Rule] do not appear to exist in order to exempt a co-owner from the necessity of paying treble damages for timber trespass. Rather, those provisions impose penalties on those buyers who cut timber without having obtained the consent of [eighty percent] of the co-owners.”¹⁶¹ The *Sullivan* dissent argued that exempting co-owners from the severe penalties of the Timber Piracy Statute would create a “catch me if you can” policy under which a co-owner who owns as little as a one percent undivided interest could pirate the co-owned timber and, if caught, only pay a pro rata share to each of the other co-owners.¹⁶² According to the dissent, the intent of the legislature was to impose a substantial and deterring penalty on co-owners who, in bad faith, flagrantly disregard the property rights of their timber co-owners, and Bruce Sullivan was “unquestionably . . . one such co-

¹⁵⁶ See LA. REV. STAT. ANN. § 3:4278.2.

¹⁵⁷ *Sullivan v. Wallace*, 51 So.3d. at 711 n.1; See also LA. CIV. CODE ANN. art. 13; See also discussion of LA. CIV. CODE ANN. art. 13 and the other principles of statutory interpretation in Part III(A), *infra*.

¹⁵⁸ *Sullivan v. Wallace*, 51 So.3d. at 712, citing *Kennedy*, 699 So.2d at 358; See also discussion of the *Kennedy* case and other principles of statutory interpretation in Part III(A), *infra*.

¹⁵⁹ See *Sullivan v. Wallace*, 51 So.3d. at 712.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 711 n.1, citing *Prewitt v. Rodrigues*, 893 So.2d at 934.

¹⁶² *Id.* at 712.

owner.”¹⁶³ Therefore, the dissent held that the Timber Piracy Statute should apply to Bruce Sullivan, the exact type of person that the statute was intended to punish and deter.¹⁶⁴ For these reasons, the dissent ruled that the Timber Piracy Statute should apply to co-owners and thus that the plaintiff, Janice Sullivan, was entitled to treble damages and attorney’s fees.¹⁶⁵

V. ANALYSIS

The majority held that the Timber Piracy Statute did not apply to co-owners and only awarded the plaintiff her proportional share of the timber profits pursuant to Article 798. While the majority’s decision was technically correct, it is unsatisfactory as a policy matter. Moreover, the majority could have held that the Timber Piracy Statute did apply to co-owners and awarded the plaintiff treble damages without offending the rules of statutory interpretation and legislative intent. Given the 2011 Legislative Session’s amendment to the Timber Piracy Statute, it is now clear that the legislature did, in fact, intend for co-owners to be subject to the statute.

A. *The Debate Over Statutory Interpretation and Legislative Intent*

The *Sullivan* majority largely based its decision on the principle that punitive statutes must be strictly construed,¹⁶⁶ meaning that if there is any doubt whatsoever as to whether a court should apply a penalty in a particular case, the court must refrain from imposing the penalty.¹⁶⁷ Thus, if the majority identified a mere trace of doubt as to whether the punitive Timber Piracy Statute applied to co-owners, it would be forced to rule that it did not apply, pursuant to the strict construction rule.¹⁶⁸ The majority reasoned that the “facial ambiguity” of the Timber Piracy Statute, in “neither expressly including nor excluding [co-owners] from its provisions,” created a doubt as to whether co-owners were subject to the stat-

¹⁶³ *Id.*; See also *infra* note 20, explaining the various acts of deception and bad faith performed by Bruce Sullivan.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 712-13; See also the language of LA. REV. STAT. ANN. § 3:4278.1.

¹⁶⁶ See discussion of the *Sullivan* majority’s reasoning in Part IV, *infra*.

¹⁶⁷ See discussion of the principles of statutory interpretation in Part III(A)(ii), *infra*; See also *Tichenor*, 181 So. at 864-65, notes 47 and 48, *supra*.

¹⁶⁸ See *id.*

ute.¹⁶⁹ The majority held that because of this doubt, it could not rule that the Timber Piracy Statute applied to co-owners.¹⁷⁰

The dissent denied the existence of such a doubt, holding that the plain language of the statute, which was “clear and unambiguous,” demonstrated the legislature’s intent to make co-owners subject to the statute.¹⁷¹ Although the dissent’s plain-language interpretation of the statute is convincing, the very fact that the majority and dissent disagreed over how to interpret the plain language of the statute gave the majority the trace of doubt that it needed to hang its hat on.¹⁷² Once the majority identified this doubt as to whether the Timber Piracy Statute applied to co-owners, it had no choice but to rule that the statute did not apply.¹⁷³

However, the majority could have reasonably found that no such doubt existed. The majority maintained that the language of the Timber Piracy Statute was “ambiguous” and that this ambiguity led to doubt.¹⁷⁴ In *McConnico*, the Second Circuit interpreted the same provisions and stated that the statute was “not ambiguous, but rather contain[ed] patently bad grammar” and was “poorly drafted.”¹⁷⁵ Thus, although the language of the statute may have been grammatically imperfect, it was not necessarily ambiguous in a way that required the majority to doubt whether the statute applied to co-owners. This was evidenced by the fact that the dissent analyzed the same grammatically imperfect provisions and was able to offer a plain-language interpretation that clearly indicated the statute’s applicability to co-owners.

Even if the majority was not entirely convinced by the dissent’s plain-language interpretation of the statute, an analysis of the legislature’s intent in enacting the Timber Piracy Statute would also have allowed the majority to rule for the plaintiff. The majority began its analysis of the case by saying that “[t]he fundamental question in all cases of statutory

¹⁶⁹ See discussion of the *Sullivan* majority’s reasoning in Part IV, *infra*.

¹⁷⁰ See *id.*

¹⁷¹ See discussion of the *Sullivan* dissent’s reasoning in Part IV, *infra*: The dissent reasoned that a timber-pirating co-owner falls under the umbrella of “*any person*” who “*intentionally or willfully*” steals timber and that co-owned land, which is “land owned by one co-owner with *another*,” thus falls under the umbrella of “*land of another*.” The dissent thus held that interpreting the Timber Piracy Statute to apply to co-owners comports with the plain language of the statute, as well as with the legislature’s clear intent that the statute be applied broadly, as expressed by the legislature’s use of very broad statutory language.

¹⁷² See discussion of the *Sullivan* majority and dissent’s reasoning in Part IV, *infra*.

¹⁷³ See discussion of the principles of statutory interpretation in Part III(A)(ii), *infra*; See also *Tichenor*, 181 So. at 864-65, notes 47 and 48, *infra*.

¹⁷⁴ See discussion of the *Sullivan* majority’s reasoning in Part IV, *infra*.

¹⁷⁵ *McConnico*, 847 So.2d at 194.

interpretation is legislative intent and the ascertainment of the reason or reasons that prompted the legislature to enact the law.”¹⁷⁶

There is a host of evidence that the legislature intended for the Timber Piracy Statute to apply to co-owners. First of all, the legislature used very broad language in drafting the statute, stating that “any person” who pirates timber is subject to punitive damages.¹⁷⁷ Additionally, both the Timber Piracy Statute and the Eighty Percent Rule are extensive, specific provisions providing for harsh punishments for timber pirates and careless or negligent timber buyers.¹⁷⁸ The imposition of heavy punitive damages indicates the legislature’s desire to punish timber piracy in all its forms and to deter timber pirates of all kinds.¹⁷⁹ Given this clear intent, it would be counterintuitive to presume that the legislature also intended to create such a sizeable exception to the Timber Piracy Statute by exempting all co-owners from its provisions. This presumption seems particularly unlikely in light of the fact that the State of Louisiana abounds with timber co-owners, many of whom are disgruntled family members, ex-spouses, or absentee landowners and thus are clearly potential victims and perpetrators of timber piracy.¹⁸⁰

This legislative intent, the pursuit of which is the “fundamental question in all cases of statutory interpretation,” buttressed by the dissent’s reasonable plain-language interpretation of the statute, gave the majority exactly what it needed to find that there was no doubt as to whether the statute applied to co-owners. Thus, the court could have correctly ruled that the statute did, indeed, apply to co-owners while staying well within the bounds of the principles of statutory interpretation and without flying in the face of the strict construction rule. Unfortunately, the majority chose not to rule this way, knowing full well that its ruling would be unsatisfying from a policy standpoint.¹⁸¹

¹⁷⁶ See discussion of the *Sullivan* majority’s reasoning in Part IV, *infra*.

¹⁷⁷ See LA. REV. STAT. ANN. § 3:4278.1.

¹⁷⁸ See *id.*; See also LA. REV. STAT. ANN. § 3:4278.2, note 88 *supra*.

¹⁷⁹ See *id.*

¹⁸⁰ Louisiana Forestry Association, *2011 Louisiana Forestry Facts* (2011), <http://www.laforestry.com>.

¹⁸¹ See *Sullivan v. Wallace*, 51 So.3d at 710 n. 7: “We recognize the important policy considerations invoked by the Louisiana Forestry Association in its amicus curiae brief filed in support of the plaintiff. However, our decision today is directed by the statutory construction required of a statute that is penal in nature. Any change in the law must be made by the legislature.”

B. *Unsatisfactory Policy Implications of the Majority Decision*

The majority admitted that its decision, while technically correct, is unsatisfactory as a policy matter and suggested that certain policy considerations militate in favor of applying the Timber Piracy Statute to co-owners.¹⁸² These considerations include environmental concerns such as encouraging landowners to preserve good forest management practices and to reforest their timberland, as well as curbing deforestation and preserving Louisiana's valuable timber resources.¹⁸³ The dissent pointed out that if the Timber Piracy Statute is not applied to co-owners, "landowners will be reluctant to reforest trees, knowing their valuable forests are exposed to an increased risk of piracy from their very own co-owners."¹⁸⁴

The majority's decision, in exempting co-owners from the Timber Piracy Statute, also erodes the deterrent value that the legislature intended to create.¹⁸⁵ The majority seemed less concerned with deterrent value than it was with sympathy toward the hypothetical co-owner with a ninety percent interest in timberland who cannot convince a stubborn co-owner with the remaining ten percent interest to consent to a timber sale. The effect of the majority's ruling is that the ninety-percent co-owner may cut and remove the timber when it is economically beneficial for him to do so without being forced to pay treble damages and attorney's fees to the unreasonable ten-percent co-owner. The ninety percent co-owner will merely have to give the ten-percent co-owner his proportional share of the profits, deducted by costs of production.¹⁸⁶

The dissent, on the other hand, sympathized with co-owners like Janice Sullivan who are victims of timber piracy by their fellow co-owners. One such co-owner, owning fifty percent of the timber interest, may not wish to cut the timber because he does not believe it is the most economically beneficial time to do so, or because he is absent, or for some other legitimate reason. In those cases, the other fifty percent co-owner may cut the timber without the first co-owner's consent or intentionally steal it out from under his nose. It is unsettling that the timber-pirating co-owner will not be subject to punitive damages but will only be obligated to pay his victim the proportional share of the profits.¹⁸⁷

¹⁸² See *id.*

¹⁸³ See *Sullivan v. Wallace*, 51 So.3d at 711-13 (Knoll, J., dissenting); See also discussion of the value of timber resources in Part I, *infra*.

¹⁸⁴ *Id.* at 712.

¹⁸⁵ See *id.*

¹⁸⁶ See LA. CIV. CODE. ANN. art. 798.

¹⁸⁷ See *id.*

Even more troublesome is the fact that the timber-pirating co-owner will be able to recover half of the production costs from his victim.¹⁸⁸

The *Alexander* court attempted to downplay this problem by reasoning that in enacting both the Timber Piracy Statute and Article 798, the legislature recognized that co-owners ordinarily act to promote their own economic self-interest.¹⁸⁹ But this is precisely the problem. Timber-pirating co-owners like Bruce Sullivan are indeed acting in their own economic self-interest when they steal co-owned timber with the intention of keeping the profits for themselves without delivering to the other co-owner's their proportional shares. Under the majority's holding, even those timber-pirating co-owners who steal co-owned timber "willfully and intentionally" will be exempt from paying punitive damages and will only be forced to pay out the other co-owners' proportional shares *if they are caught*.¹⁹⁰ Thus, the majority's ruling creates the very "catch me if you can" policy that the dissent warned against and strips the Timber Piracy Statute of its deterrent value in the realm of co-ownership.¹⁹¹

The majority's decision also seems unfair given the particular facts of *Sullivan*. The defendant, Bruce Sullivan, was in blatant bad faith¹⁹² and thus is the quintessential timber pirate that the legislature intended to punish through the Timber Piracy Statute. Given the preceding analysis pertaining to principles of statutory interpretation and legislative intent, the majority could have ruled in the plaintiff's favor while remaining within the bounds of the law.¹⁹³ However, the majority failed to do this, and its only response to the counterarguments pertaining to fairness and policy concerns was to maintain that its hands were tied by the strict construction rule and that "[a]ny change in the law must be made by the legislature."¹⁹⁴

C. The 2011 Legislative Session and the Amended Timber Piracy Statute

The *Sullivan* decision made clear that the language of the Timber Piracy Statute presented difficulties for statutory interpretation and was, as the Second Circuit remarked, grammatically imperfect.¹⁹⁵ Thus, in the wake of *Sullivan*, it became apparent that the legislature needed to take action. The legislature did just that during the 2011 Legislative Session

¹⁸⁸ See *id.*

¹⁸⁹ *Alexander v. Dunn*, 15 So.3d at 306.

¹⁹⁰ See LA. REV. STAT. ANN. § 3:4278.1.

¹⁹¹ See *Sullivan v. Wallace*, 51 So.3d at 712.

¹⁹² See *infra* note 20.

¹⁹³ See discussion in Part V(A), *infra*.

¹⁹⁴ See *infra* note 183.

¹⁹⁵ See *infra* note 178.

when it enacted Act 226, an amendment to the Timber Piracy Statute that became effective on August 15, 2011.¹⁹⁶ The text of this amendment puts a decisive end to the debate over whether the legislature intended for the Timber Piracy Statute to apply to co-owners because the provision now explicitly states that co-owners are, indeed, subject to the provisions of the statute.¹⁹⁷ Additionally, a new provision of the amended Timber Piracy Statute establishes the way in which the statute will interact with the Eighty Percent Rule, which remains unchanged.¹⁹⁸ This new provision indicates the legislature's intent to ensure that the two statutes can be read consistently without leading to contradiction or absurdity.¹⁹⁹

The question of whether the amended Timber Piracy Statute sufficiently addresses all of the concerns arising out of *Sullivan* is out of the scope of this case note. If subsequent case law makes it clear that the amended statute is insufficient to address those concerns, the legislature

¹⁹⁶ See State of Louisiana, *Enrolled Act No. 226* (Regular Session, 2011), <http://www.legis.state.la.us/billdata/streamdocument.asp?did=760254>; The text of the Timber Piracy Statute (La. R.S. § 3:4278.1), as amended, is as follows:

A. (1) It shall be unlawful for any person to cut, fell, destroy, remove, or to divert for sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove, or to divert for sale or use, any trees, growing or lying on the land of another, without the consent of, or in accordance with the direction of, the owner or legal possessor, or in accordance with specific terms of a legal contract or agreement.

(2) It shall be unlawful for any co-owner or co-heir to cut, fell, destroy, remove, or to divert for sale or use, any trees, or to authorize or direct his agent or employee to cut, fell, destroy, remove, or to divert for sale or use, any trees, growing or lying on co-owned land, without the consent of, or in accordance with the direction of, the other co-owners or co-heirs, or in accordance with specific terms of a legal contract or agreement. The provisions of this Paragraph shall not apply to the sale of an undivided timber interest pursuant to R.S. 3:4278.2.

B. Whoever willfully and intentionally violates the provisions of Subsection A of this Section shall be liable to the owner, co-owner, co-heir, or legal possessor of the trees for civil damages in the amount of three times the fair market value of the trees cut, felled, destroyed, removed, or diverted, plus reasonable attorney fees and costs.

C. Whoever violates the provisions of Subsection A of this Section in good faith shall be liable to the owner, co-owner, co-heir, or legal possessor of the trees for three times the fair market value of the trees cut, felled, destroyed, removed, or diverted, if circumstances prove that the violator should have been aware that his actions were without the consent or direction of the owner, co-owner, co-heir, or legal possessor of the trees.

D. If a good faith violator of Subsection A of this Section fails to make payment under the requirements of this Section within thirty days after notification and demand by the owner, co-owner, co-heir, or legal possessor, the violator shall also be responsible for the reasonable attorney fees and costs of the owner, co-owner, co-heir, or legal possessor.

¹⁹⁷ See LA. REV. STAT. ANN. § 3:4278.1(A)(2).

¹⁹⁸ *Id.*

¹⁹⁹ See *id.*

could potentially find it necessary to perform a complete legislative overhaul of both the Timber Piracy Statute and the Eighty Percent Rule.

VI. CONCLUSION

In future cases involving instances of co-owner timber piracy that occurred after August 15, 2011, litigants will have no doubt that the amended Timber Piracy Statute applies to them and that punitive damages will be imposed on all violators. However, cases involving instances of co-owner timber piracy that occurred within the last five years up until August 15, 2011 will continue to be governed by the un-amended version of the Timber Piracy Statute, and *Sullivan v. Wallace* will remain the reigning jurisprudence over such cases.²⁰⁰ It is therefore possible that Louisiana will see future judgments that, like *Sullivan v. Wallace*, are technically correct but that perpetuate unsound public policy and unjust results for plaintiffs like Janice Sullivan.

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²⁰⁰ See LA. CIV. CODE ANN. art. 6, effective January 1, 1988, which states: “In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretative laws apply both prospectively and retroactively, unless there is a legislative expression to the contrary”; See also LA. REV. STAT. ANN. § 3:4278.1(G) (un-amended), pertaining to liberative prescription.