

NOT DESIGNATED FOR PUBLICATION

ELAINE DOUCET, ET AL

NO. 01-CA-1088

VERSUS

COURT OF APPEAL,
FIFTH CIRCUIT

FIFTH CIRCUIT

HUFFINE ROOFING AND
CONSTRUCTION, INC., ET AL

FILED FEB 23 2002

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 533-587, DIVISION "O"
HONORABLE ROSS LADART, JUDGE

FEBRUARY 26, 2002

**THOMAS F. DALEY
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr.,
Thomas F. Daley, and Walter E. Rothschild

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CONTINENTAL CASUALTY COMPANY

APPEAL DISMISSED

T.D.
EADK
NGR

The plaintiffs have filed this appeal seeking review of the trial court's denial of their Motion for Summary Judgment. For the reasons which follow, we dismiss this appeal.

This matter stems from an action filed by students of L.W. Higgins High School, who were allegedly exposed to toxic fumes at the school for a period in excess of eight months. Plaintiffs sued, among others, an architectural firm, Plateo & Silcio, Christian P. Plateo, Architects, A Professional Corporation, and their insurer, Continental Casualty Insurance Company. The policy issued by Continental has a \$250,000.00 policy limit. Plaintiffs reached an agreement to settle with Continental for the policy limits. However, the policy contains a defense cost shifting provision that provided that the expenses incurred in defending the claim would be deducted from the policy limit.

Plaintiffs filed a Motion for Partial Summary Judgment claiming this defense cost shifting provision was against public policy and statutory law. Continental

opposed the motion contending the provision was not against public policy and must be enforced as written.

The trial court orally denied plaintiffs motion on June 22, 2001. On August 13, 2001, plaintiffs filed a Motion and Order for Appeal. Recognizing that a written judgment was required for appeal, Continental submitted a written judgment, which was signed by the trial judge on August 20, 2001. In its appeal to this court, plaintiffs seem to acknowledge that the denial of a Motion for Summary Judgment may be reviewed by this court only under its supervisory jurisdiction and urge that this court consider this matter under its supervisory jurisdiction.

We are unable to comply with plaintiffs request. Louisiana Code of Civil Procedure article 968 expressly states "An appeal does not lie from the court's refusal to render any judgment on the pleading or summary judgment." Appellate courts have consistently recognized that the proper procedural method for seeking review of the trial court's denial of a Motion for Summary Judgment is by supervisory writ. Furlough v. Union Pacific R.R. Co., 33,658 (La. App. 2 Cir. 8/31/00), 766 So.2d 751, rehearing denied, writ denied 2000-2929 (la. 1/12/01), 781 So.2d 556. There have been rare cases in which an appellate court has agreed to exercise its supervisory jurisdiction over the district court when an appeal has been filed because the trial court's ruling was arguably incorrect and a reversal would terminate the litigation. See Charlet v. Legislature of State of La., 97-0212 (La. App. 1 Cir. 6/29/98), 713 So.2d 1199. In such instances, the appeal has in effect been converted to a supervisory writ. However, in the case before us, we see no error warranting us to exercise supervisory jurisdiction over this matter.

For the foregoing reasons, this appeal is dismissed.

APPEAL DISMISSED



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. McMANUS
WALTER J. ROTHSCILD

JUDGES

Court of Appeal

FIFTH CIRCUIT
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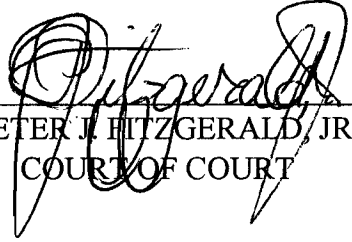
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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY FEBRUARY 26, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:


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