

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 2016

CHRISTINE E. NEESE

VERSUS

CATHERINE F. ROMERO, THE ULTIMATE HANDBAG CONNECTION, INC., THE ULTIMATE HANDBAG ELITE, INC., HANDBAGS & ACCESSORIES WAREHOUSE, L.L.C., CR MANUFACTURING, INC., AND DESIGNS BY C, INC.

Judgment Rendered: May 7, 2010 .

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On Appeal from the
23rd Judicial District Court,
in and for the Parish of Ascension
State of Louisiana
District Court No. 88,509
The Honorable Alvin Turner, Jr., Judge Presiding

* * * * *

L.J. Hymel
Michael Reese Davis
Tim P. Hartdegen
Baton Rouge, La.

Counsel for Plaintiff/Appellee,
Christine E. Neese

Catherine F. Romero
Lafayette, La.

Defendant/Appellant,
Appearing Pro Se

* * * * *

BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

*Guidry, J. dissents and will write separate
J. Pettigrew, D. Adams*

CARTER, C.J.

Defendant/Appellant, Catherine F. Romero, seeks review of the district court's judgment granting a motion for partial summary judgment in favor of the plaintiff and against the defendants, finding the defendants are indebted to the plaintiff in the amount of \$1,145,000.00 plus judicial interest.

After *de novo* review, we find no error in the trial court judgment. See La. Code Civ. P. art. 966. Further, we find that no jurisprudential purpose would be served by the issuance of a written opinion and, therefore, affirm the district court's judgment by summary opinion in accordance with Rule 2-16.2A(6) of the Uniform Rules of Louisiana Courts of Appeal. All costs of this appeal are assessed to the defendant/appellant, Catherine F. Romero.

AFFIRMED.

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 **GUIDRY, J., dissents and assigns reasons.**

GUIDRY, J., dissenting.

The trial court stated that it was certifying the partial summary judgment as final because "funds have been ordered to be released to plaintiff Christine Neese." In R.J. Messinger, Inc. v. Rosenblum, 04-1664, p. 14 (La. 3/2/05), 894 So. 2d 1113, 1122, the Louisiana Supreme Court recognized that miscellaneous factors such as economic and solvency considerations are proper factors to be considered by courts in deciding whether to certify a judgment as final. As such, I do not find the trial court abused its discretion in certifying the judgment as final.

As to the merits of the appeal, I believe the partial summary judgment should be reversed. The trial court apparently granted the partial summary judgment based on a statement in Ms. Romero's deposition wherein she admitted she owed money to Ms. Neese. The exact question and testimony presented in the deposition was the following:

Q. And as we sit here today, and we are in September of 2008, you do not dispute the fact that \$1.2 million of this lady's money went to you?

A. I do not dispute that the money is owed. I have never disputed that fact.

Yet, throughout the deposition, Ms. Romero stated that the money was "loaned" as evidenced, in part, by several promissory notes contained in the record.

Ms. Romero also stated in her deposition that full payment of the amounts loaned was not due and owing and that she had made some payments on the amounts loaned. Ms. Romero, who appeared and responded to the partial motion for summary judgment *pro se*, submitted an affidavit reciting the same contentions that the money had been loaned to her and was not due and owing. She also submitted copies of notarized documents and copies of promissory notes along with the affidavit as proof that the money given to her by Ms. Neese was, at least in part, loans. She also presented evidence that she had been released from the obligation to repay the loans evidenced by the promissory notes. One of the release documents purports to transfer the indebtedness of three promissory notes to a Mr. Roy Martel as an assumption of the notes and the other release documents simply release Ms. Romero from the obligation to repay the remaining promissory notes in exchange for a partial interest in one of Ms. Romero's companies. It is further observed that in the language quoted above, Ms. Romero does not specifically acknowledge that "she" owes the money, but rather simply acknowledges that the money "is owed."

In her answer to Ms. Neese's petition, also filed *pro se*, Ms. Romero denied the allegations that the money given to her by Ms. Neese was simply invested, but instead she characterized the payments as loans in her responses.

This evidence seems to raise a genuine issue of material fact as to whether the total sum demanded was actually owed, especially since there was no ruling by the trial court invalidating the acts of release. And it would appear that a finding that the total amount awarded (in the partial summary judgment) is owed is contingent, in part, on the trial court's finding that Ms. Romero perpetrated a fraud,

which finding was not made by the trial court in the context of the partial motion for summary judgment.

Thus, based on the foregoing issues of fact discussed, I believe that the partial summary judgment was improperly granted. Therefore, I respectfully dissent.