

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0026

CHASE PIERSON

VERSUS

NORTH OAKS

**DATE OF JUDGMENT: SEP 19 2014**

ON APPEAL FROM THE CITY COURT OF HAMMOND  
NUMBER 1-1304-0001, SEVENTH WARD, PARISH OF TANGIPAHOA  
STATE OF LOUISIANA

HONORABLE L.J. HYMEL, JUDGE PRO TEMPORE

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\* \* \* \* \*

BEFORE: KUHN, PETTIGREW, AND WELCH, JJ.

**Disposition: JUDGMENT VACATED AND SET ASIDE; REMANDED WITH INSTRUCTIONS.**

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KUHN, J.

This appeal is taken from a judgment on cross motions for summary judgment, which denied the plaintiff-appellant, Chase Pierson's, two motions for summary judgment and granted summary judgment in favor of defendant-appellee, North Oaks, for \$3,554.94, plus interest and attorney fees. For the following reasons, we vacate and set aside the judgment and remand this matter to the trial court.

#### FACTS AND PROCEDURAL BACKGROUND

In October 2011, North Oaks hired Pierson as an at-will employee in their IT department. On January 16, 2012, Pierson signed a contract (CERTIFIED EPIC TRAINING PROGRAM AGREEMENT) with North Oaks agreeing to remain in his position for thirty-six months from the date he entered a specialized computer training program to be paid for by North Oaks. In the event he left North Oaks or was terminated for cause in less than thirty-six months, the contract provided that Pierson was to repay the unforgiven portion of the travel and training expenses incurred by North Oaks as a result of his participation in the training program, plus a penalty of fifty percent of the travel and training expenses. The contract further provided that one-thirty-sixth ( $1/36^{\text{th}}$ ) of the travel and training expenses would be forgiven for each month Pierson continued in North Oaks' employ. Lastly, the contract provided that if the amount due was not paid within thirty days of written demand, attorney fees and interest of 1.5% per month would also be due from Pierson.

Pierson did not remain employed at North Oaks for thirty-six months after signing the contract, leaving approximately twelve months later. As a result, North Oaks demanded that he repay \$4,739.92 in travel and training expenses ( $24/36$  of the total amount incurred), as well as \$3,554.94 in stipulated damages. Pierson paid the full amount demanded for travel and training expenses, but refused to pay

stipulated damages. He filed a suit for declaratory judgment seeking a declaration that the portion of the contract providing for the payment of fifty percent of the travel and training expenses as stipulated damages was unlawful and unenforceable. North Oaks answered the petition. As well as addressing the allegations of Pierson's petition, the answer also requested judgment declaring the stipulated damages portion of the contract to be lawful and enforceable and a monetary judgment for the amount due as stipulated damages. The pleading was not captioned as a reconventional demand and was served on opposing counsel by mail.

Subsequently, Pierson filed a motion for partial summary judgment seeking dismissal of North Oaks' demand for judgment in its favor. North Oaks filed a cross motion for summary judgment seeking monetary judgment for the amount of stipulated damages Pierson allegedly owed under the contract. Pierson then filed a second motion for summary judgment in which he requested for the first time the return of the \$4,739.92 in travel and training expenses he previously paid North Oaks, claiming that the portion of the contract requiring repayment of these expenses was invalid. Pierson did not amend or supplement his petition to request such relief.

Following a hearing, the trial court denied Pierson's motions for summary judgment and granted summary judgment in favor of North Oaks ordering Pierson to pay North Oaks \$3,554.94, plus accrued interest and \$1,000.00 in attorney fees. Pierson now appeals, alleging that the trial court erred in failing to order North Oaks to return the payment he made for travel and training expenses; in finding the contract's stipulated damages provision valid; in imposing attorney fees and costs; and in ordering the payment of a usurious interest rate.

## DISCUSSION

Initially, we note that the judgment rendered by the trial court was improper in view of the procedural posture of this case. Although North Oaks requested a monetary award in its answer to Pierson's petition for declaratory judgment, the answer does not clearly indicate it was a reconventional demand in addition to an answer. Under La. C.C.P. art. 1032, whenever a defendant incorporates an incidental demand in his answer to the principal demand, "the caption **shall** indicate appropriately the dual character of the combined pleading." (Emphasis added.) North Oaks failed to meet this requirement. Additionally, the answer was served on opposing counsel by mail even though service of a reconventional demand in this manner is not allowed. La. C.C.P. art 1063; La. C.C.P. art. 1314. Moreover, in accordance with La. C.C.P. art. 966(A)(1), a plaintiff may file a motion for summary judgment only *after* answer has been filed. In this case, Pierson never filed an answer to North Oaks demand.

Under the circumstances, North Oaks' demand for a monetary judgment was not properly presented to the trial court as a reconventional demand. See *Parish of West Feliciana ex rel. West Feliciana Parish Police Jury v. Thompson*, 08-2155, p. 3, n.2 (La. App. 1st Cir. 3/27/09) (unpublished), writ denied, 09-1261 (La. 9/18/09), 17 So.3d 978; *Nelson v. Windmill Nursery of Louisiana, L.L.C.*, 04-2717 (La. App. 1st Cir. 9/23/05), 923 So.2d 715, 717. The summary judgment awarding monetary damages to North Oaks was defective because it was rendered on issues never properly joined and, therefore, it must be vacated and set aside and this matter remanded to the trial court. See *Cook v. Matherne*, 432 So.2d 1039, 1042 (La. App. 1st Cir. 1983).

We are aware that Pierson also attempted to raise, in his second motion for summary judgment, the issue of his entitlement to a return of the payment he previously made to North Oaks for his travel and training expenses. This claim,

however, was not contained in his original petition, which only sought declaratory relief; nor did he amend or supplement his petition to request such relief. Therefore, this claim also was not properly before the trial court.<sup>1</sup>

We also note it is impossible to determine whether the motions for summary judgment were premature under La. C.C.P. art. 966(A)(1) due to the lack of procedural clarity created by noncompliance with the applicable rules of procedure regarding answers, service of pleadings, incidental demands, reconventional demands, and motions for summary judgment.

### CONCLUSION

For these reasons, the December 9, 2013 judgment of the trial court is vacated and set aside. This matter is remanded to the trial court for further proceedings, including holding a hearing after the issues are properly joined and rendering judgment clarifying what rights are being declared or denied. Each party is to pay one-half of the appeal costs.

**VACATED AND SET ASIDE; REMANDED WITH INSTRUCTIONS.**

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<sup>1</sup> The scope of relief sought in the parties' motions for summary judgment did not include Pierson's request for declaratory relief. Rather, his motions were directed towards North Oaks' and Pierson's respective requests for money judgments in their favor.