NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

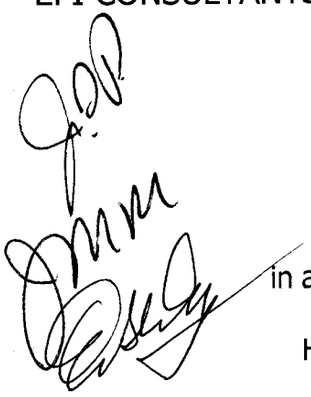
FIRST CIRCUIT

NO. 2016 CA 0145

ORACLE OIL, LLC

VERSUS

EPI CONSULTANTS, A DIVISION OF CUDD PRESSURE CONTROL, INC.



Judgment rendered October 28, 2016.

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Appealed from the
32nd Judicial District Court
in and for the Parish of Terrebonne, Louisiana
Trial Court No. 159,212
Honorable Randall L. Bethancourt, Judge

* * * * * *

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INC.

* * * * * *

BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

PETTIGREW, J.

The instant case was previously before this court on appeal of the trial court's judgment sustaining a prescription exception filed by defendant, EPI Consultants, A Division of Cudd Pressure Control, Inc. ("EPI"), and dismissing, with prejudice, the claims of plaintiff, Oracle Oil, LLC ("Oracle"). See **Oracle Oil, LLC v. EPI Consultants, Div. of Cudd Pressure Control, Inc.**, 2011-0151 (La. App. 1 Cir. 9/14/11), 77 So.3d 64, writ denied, 2011-2248 (La. 11/23/11), 76 So.3d 1157 ("**Oracle I**"). In **Oracle I**, we reversed the trial court's judgment and remanded the matter for further proceedings. **Oracle I**, 2011-0151 at 7-8, 77 So.3d at 70. The judgment before us on appeal now is the trial court's September 3, 2015 judgment granting summary judgment in favor of EPI and dismissing, with prejudice, Oracle's case. For the reasons that follow, we reverse and remand for further proceedings.

FACTS AND PROCEDURAL HISTORY

The parties are no strangers to this case, which now extends over multiple jurisdictions.[1] While the underlying facts of this case are well known to both this court and the parties herein, we include an excerpt from **Oracle I** of the facts and the procedural history through the prior appeal, which will provide a better understanding of the court's analysis that follows.

> At all times pertinent hereto, Oracle was the operator of the Lucille Broussard, et al. No. 1 well ("the Well") located in Vermillion Parish. Oracle asserted that it contracted with EPI to provide consulting engineering services, on-site supervision, and other services in connection with the Well from April 8, 2008 through May 18, 2008. In connection with this work for Oracle, EPI allegedly used over 13,000 feet of rusty, scaly drill pipe and failed to properly inspect and clean the pipe before running it in the Well. In July 2008, Oracle attempted a cement squeeze job on the Well, which failed. An investigation ensued, following which Oracle became aware of the deficiencies and negligence in EPI's work.
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> Oracle claimed that EPI failed to perform in a "good and workman-like manner" and negligently discharged its supervisory job duties, causing

[1] According to the record, Oracle filed three other suits concerning the same well that is the subject of the instant litigation. There were two suits filed in the 19th Judicial District Court, East Baton Rouge Parish, one against Robert V. Nicholson, Veazey & Associates, LLC, Michael Veazey, Sr., Michael Veazey, Jr., and Vermillion Operating, LLC, under docket No. 573741; and one against Wise Well Intervention Services, Inc. and ABC Insurance Company, under docket No. 584023. A third suit, filed in the United States District Court, Eastern District of Louisiana, and bearing docket No. 09-5504, named Warrior Energy Services Corporation as a defendant. There is no indication in the record as to the disposition of any of these suits.

> increased costs to be incurred by Oracle, including the loss of reserves, loss of revenue, and loss of business opportunities. On May 18, 2009, Oracle filed suit against EPI in the 19th Judicial District Court, asserting negligence and breach of contract claims and demanding damages for their alleged losses, including the cost of drilling a replacement well in the future. In response thereto, EPI filed exceptions raising the objections of prescription, improper venue, vagueness or ambiguity of the petition, and nonconformity of the petition with the requirements of La. Civ. Code art. 891. Following a hearing on August 24, 2009, the trial court found that venue was improper in the 19th Judicial District Court and granted EPI's venue exception. The trial court ordered the matter transferred to the 32nd Judicial District Court. The trial court took no action on the remaining exceptions, but specifically reserved the matters to the 32nd Judicial District Court to decide. A judgment in accordance with the trial court's findings was signed on September 16, 2009.
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> In response to the transferred petition in the 32nd Judicial District Court, EPI once again filed the same exceptions it had raised in the 19th Judicial District Court. Following a hearing on April 9, 2010, the 32nd Judicial District Court maintained EPI's exception raising the objection of vagueness or ambiguity of the petition and granted Oracle time to supplement and amend its petition to cure the defects. The trial court overruled the prescription exception as premature. A judgment was signed in accordance with these findings on April 16, 2010.
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> On May 5, 2010, Oracle filed a first supplemental and amending petition. EPI subsequently filed an exception raising the objection of prescription. EPI argued that Oracle's claim was delictual in nature and subject to a one year liberative prescriptive period pursuant to La. Civ. Code art. 3492. EPI alleged that although Oracle originally filed suit on May 18, 2009, presumably within the one year prescriptive period, it filed suit in an improper venue and did not serve EPI within the prescriptive period in order to interrupt prescription. Thus, EPI asserted Oracle's claim was prescribed and should be dismissed with prejudice. The matter proceeded to hearing on August 6, 2010. After hearing arguments and reviewing the evidence submitted, the trial court, adopting as its reasons for judgment EPI's "Memorandum In Support Of Peremptory Exception Of Prescription," granted EPI's prescription exception and dismissed Oracle's claim with prejudice. A judgment in accordance with the trial court's findings was signed on August 17, 2010.

Oracle I, 2011-0151 at 2-3, 77 So.3d at 66-67 (footnotes omitted).

Following this court's remand in **Oracle I**, Oracle filed a second supplemental and amending petition, naming Cudd Pressure Control, Inc. ("Cudd") as a defendant. Cudd filed an answer, generally denying the allegations contained in the second supplemental and amending petition.

Thereafter, EPI filed a motion for summary judgment arguing that there were no genuine issues of material fact as to Oracle's claims and that it was entitled to summary

judgment as a matter of law.[2] EPI argued that Oracle could not support either its allegation that EPI was responsible for contaminating the Well with rust and scale or its allegation that there was a split in the casing of the Well for which EPI was also responsible. Attached to its motion for summary judgment were excerpts from various depositions and an affidavit of the consultant for EPI who worked with Oracle at the Well site.

Oracle filed a memorandum in opposition to EPI's motion for summary judgment. Oracle alleged a trial was in order because there was ample evidence in the record to "clearly demonstrate that EPI [had] failed to negate any element of Oracle's causes of action." In support of its position, Oracle introduced excerpts from various depositions, along with several affidavits and the expert reports of an engineer and an independent consultant, both of whom were hired by Oracle to review documents and testimony pertinent to the cement squeeze on the Well.

On August 28, 2015, the trial court heard arguments on the motion for summary judgment. After considering the applicable law and the evidence in the record, the trial court granted EPI's motion for summary judgment, dismissing Oracle's case with prejudice. The trial court offered the following written reasons for judgment on September 3, 2015:

> After full consideration [of the] evidence adduced at the hearing, the arguments of counsel, the record of this matter including the supporting, opposing and reply memoranda and the summary judgment exhibits, it appears and the court finds that there is no triable issue of any material fact concerning claims Oracle Oil advanced against mover in connection with the Lucille Broussard No. 1 Well in Vermilion Parish, and that ... the movers are entitled to judgment as a matter of law for the reasons advanced[.]
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> IT IS ORDERED that the summary judgment motion filed on behalf of [EPI], is hereby GRANTED and that judgment will be entered in favor of [EPI], and against [Oracle]. The Court adopts the following as its reasons for so ruling: EPI's original motion and memorandum filed on January 15th, [2015]; EPI's reply memoranda filed on August 25th, 2015; and the arguments EPI advanced at the hearing on August 28th, 2015.

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[2] Although EPI and Cudd share representation in this matter, we note that the motion for summary judgment was filed solely on behalf of EPI. Thus, Oracle's claims against Cudd remained viable even after the trial court's September 3, 2015 judgment granting summary judgment in favor of EPI and dismissing, with prejudice, Oracle's case.

Also on September 3, 2015, the trial court signed a judgment in accordance with these findings as follows:

> Considering the Order granting summary judgment in favor of defendants, [EPI] and against plaintiff, [Oracle], and the Court finding that there is no just reason for delay as to the entry of judgment, accordingly:
>
> IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants [EPI] and against plaintiff, [Oracle] dismissing this case with prejudice at plaintiff's cost. This is a FINAL JUDGMENT.

It is from this judgment that Oracle appeals, assigning the following specification of error for our review: "The Trial Court erred in granting [EPI's] Motion for Summary Judgment when considering [Oracle's] factual support contained in properly submitted evidence that clearly demonstrate contested issues of material [fact] which preclude [EPI's] Motion for Summary Judgment."

APPLICABLE LAW AND DISCUSSION

After adequate discovery, a motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B)(2) & (C)(1) (prior to amendment by 2015 La. Acts, No. 422, effective January 1, 2016).[3] The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of nondomestic civil actions. La. Code Civ. P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. La. Code Civ. P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422, effective January 1, 2016).[4]

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[3] Now, see La. Code Civ. P. art. 966(A)(3).

[4] Now, see La. Code Civ. P. art. 966(D)(1).

If the moving party points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. La. Code Civ. P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422, effective January 1, 2016). If the nonmoving party fails to make this requisite showing, there is no genuine issue of material fact, and summary judgment should be granted. La. Code Civ. P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422, effective January 1, 2016). If, however, the mover fails in his burden to show an absence of factual support for one or more of the elements of the adverse party's claim, the burden never shifts to the adverse party, and the mover is not entitled to summary judgment. **LeBlanc v. Bouchereau Oil Co., Inc.**, 2008-2064, p. 4 (La. App. 1 Cir. 5/8/09), 15 So.3d 152, 155, writ denied, 2009-1624 (La. 10/16/09), 19 So.3d 481.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. **Hines v. Garrett**, 2004-0806, p. 1 (La. 6/25/04), 876 So.2d 764, 765 (per curiam). Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Willis v. Medders**, 2000-2507, p. 2 (La. 12/8/00), 775 So.2d 1049, 1050 (per curiam).

In **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751, the Louisiana Supreme Court set forth the following parameters for determining whether an issue is genuine or a fact is material.

> A "genuine issue" is a "triable issue." More precisely, "[a]n issue is genuine if reasonable persons could disagree. If on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue. Summary judgment is the means for disposing of such meretricious disputes." In determining whether an issue is "genuine," courts cannot consider the merits, make credibility determinations, evaluate testimony or weigh evidence. "Formal allegations without substance should be closely scrutinized to determine if they truly do reveal genuine issues of fact."
>
> A fact is "material" when its existence or nonexistence may be essential to plaintiff's cause of action under the applicable theory of recovery. "[F]acts are material if they potentially insure or preclude

> recovery, affect a litigant's ultimate success, or determine the outcome of the legal dispute." Simply put, a "material" fact is one that would matter on the trial on the merits. Any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of a trial on the merits. [Citations omitted.]

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **East Tangipahoa Development Company, LLC v. Bedico Junction, LLC**, 2008-1262, p. 8 (La. App. 1 Cir. 12/23/08), 5 So.3d 238, 243-244, writ denied, 2009-0166 (La. 3/27/09), 5 So.3d 146. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Pumphrey v. Harris**, 2012-0405, p. 5 (La. App. 1 Cir. 11/2/12), 111 So.3d 86, 89.

Oracle's claims in this case are based on the alleged negligence of EPI in the performance of its duties. Louisiana courts have adopted a duty-risk analysis in determining whether liability exists under the facts of a particular case. Under this analysis, a plaintiff must prove five separate elements: (1) the defendant had a duty to conform his or her conduct to a specific standard of care; (2) the defendant failed to conform his or her conduct to the appropriate standard of care; (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries; (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries; and (5) actual damages. **Pinsonneault v. Merchants & Farmers Bank & Trust Co.**, 2001-2217, p. 6 (La. 4/3/02), 816 So.2d 270, 275-276.

In moving for summary judgment, EPI argued that Oracle could not support its allegations that EPI was responsible for either contaminating the Well with rust and scale or for the existence of a split in the Well casing at 13,910 feet, much less that EPI caused the split. With regard to the harm that may have been caused to the Well by the rust and scale in the workstring pipe, EPI alleged that it was simply following the specific instructions of Oracle, through its owner, Robert Brooks, and that EPI took no part in deciding to use the pipe owned by Mr. Brooks' company, Delphi Drilling, LLC

("Delphi"). EPI further asserted that there was a complete absence of factual support for Oracle's claim against EPI for the alleged cracked casing "[b]ecause Oracle's allegations of negligence regarding the retainer are based ***entirely*** on the location of the retainer at 13,910', and because the evidence irrefutably shows that Oracle, not EPI, determined the location for the retainer," and "[b]y Oracle's own allegations, setting the retainer at 13,910' caused the alleged damage to the casing." (Emphasis in original.) In support of its motion for summary judgment, EPI submitted deposition excerpts from various individuals regarding their knowledge of the Well in question.

Oracle, on the other hand, opposed the motion for summary judgment, arguing that there remained genuine issues of material fact requiring a trial on the merits. According to Oracle, only five of the twenty-six "uncontested facts" labeled as such by EPI remain uncontested by the evidence submitted, *i.e.*, (1) that Oracle, a company with only one principal, Mr. Brooks, was the operator of the Well in question; (2) that Oracle hired EPI to provide consulting services in connection with the Well; (3) that the Well was being reworked and sidetracked from a well that was originally drilled in the 1970s; (4) that no x-ray or camera was used to determine whether there was a split in the casing and that now it is too late to do so; and (5) that Delphi, like Oracle, is owned solely by Mr. Brooks. Oracle notes that none of these uncontested facts negate any essential element of its cause of action against EPI. Rather, Oracle points to several unresolved genuine issues of material fact essential to its cause of action.

Oracle contends that because EPI was specifically brought onto the job to insure efficacy, it cannot now escape liability as it was incumbent on EPI's consultant to "advise Oracle as to the proper procedures and engineering practices in conducting remedial squeeze job operations." Oracle maintains that EPI's consultant knew or should have known that using the rusty pipe and setting the retainers repeatedly at the same depth carried an associated risk of rupturing the casing.

Following an exhaustive review of the applicable law and evidence submitted by the parties herein, we disagree with the trial court's findings regarding Oracle's claims. As previously indicated, any doubt as to a material issue of fact must be resolved against

granting a motion for summary judgment and in favor of a trial on the merits. Moreover, in deciding a motion for summary judgment, the trial court cannot make credibility determinations, evaluate testimony, or weigh evidence. See **Smith**, 93-2512 at 27, 639 So.2d at 751. In the instant case, the evidence before the trial court sufficiently raised genuine issues of material fact as to whether EPI contaminated the Well by using a rusty, scaly pipe and whether EPI caused a split in the Well casing. Resolution of these unresolved issues is essential to Oracle's claims against EPI. Thus, the trial court erred in granting summary judgment in favor of EPI because doing so required the trial court to decide disputed genuine issues of material fact and to make credibility determinations, both of which should have been reserved to the trier of fact. Summary judgment was inappropriate.

CONCLUSION

For the above and foregoing reasons, we reverse the trial court's September 3, 2015 judgment granting summary judgment in favor of EPI and dismissing, with prejudice, Oracle's case, and we remand the case for further proceedings. This memorandum opinion is issued in compliance with Uniform Rules--Courts of Appeal, Rule 2-16.1(B). Costs associated with this appeal are assessed to plaintiff-appellant, Oracle Oil, LLC.

REVERSED AND REMANDED.