

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

MURPHY J. PAINTER

NO. 2018 CW 1269
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VERSUS

STATE OF LOUISIANA, THROUGH THE OFFICE OF THE GOVERNOR, THE DEPARTMENT OF REVENUE AND TAXATION, ALCOHOL TOBACCO CONTROL COMMISSION, CYNTHIA BRIDGES, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF REVENUE AND TAXATION, THE OFFICE OF STATE INSPECTOR GENERAL, AND STEPHEN STREET, IN HIS OFFICIAL CAPACITY AS STATE INSPECTOR GENERAL

DEC 26 2018

In Re: State of Louisiana through the Department of Revenue and Taxation, Office of Alcohol Tobacco Control, Trevor McDonald and Louis Thompson, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 604308.

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

WRIT GRANTED IN PART WITH ORDER. The district court's August 27, 2018, judgment denying the State of Louisiana, through the Department of Revenue and Taxation, Alcohol Tobacco Control Commission, Trevor McDonald, and Louis Thompson's (collectively referred to as the "State Defendants") Exception of No Cause of Action to Murphy J. Painter's Seventh Amending and Supplemental Petition is hereby reversed. In order to state a cause of action for malicious prosecution, the plaintiff must allege the following elements: (1) commencement or continuance of an original criminal proceeding; (2) its legal causation by the present defendant against the present plaintiff, who was the defendant in the original proceeding; (3) the bona fide termination of the criminal proceeding in favor of the present plaintiff; (4) the absence of probable cause for such proceeding; (5) malice; and (6) damage to the present plaintiff. **Miller v. East Baton Rouge Parish Sheriff's Department**, 511 So.2d 446, 452 (La. 1987); **Cook v. American Gateway Bank**, 2010-0295 (La. App. 1st Cir. 9/10/10), 49 So.3d 23, 37, citing Miller, 511 So.2d at 452. If a defendant in a malicious prosecution claim commenced a criminal proceeding against the plaintiff or caused the continuance of such proceedings, that chain of causation may be broken due to a superseding, independent investigation. **Rombach v. State ex rel. Division of Administration**, 2015-0619 (La. App. 1st Cir. 12/23/15), 2015 WL 9464500, at *5 (unpublished). Here, Murphy J. Painter's Seventh-Amending Supplemental and Restated Petition for Damages contains numerous allegations regarding an investigation conducted by the Office of the State Inspector General after complaints were made regarding Mr. Painter. Since the district court must presume all well-pleaded facts as true on an exception of no cause of action, **HPC Biologicals, Inc. v. UnitedHealthcare of Louisiana, Inc.**, 2016-0585 (La. App. 1st Cir. 5/26/16), 194 So.3d 784, 792, the State Defendants

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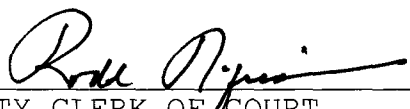
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demonstrated that Murphy J. Painter has failed to state a cause of action against them for malicious prosecution due to the intervening Office of the State Inspector General investigation. Likewise, Murphy J. Painter failed to sufficiently allege a cause of action for the vicarious liability of the State of Louisiana, through the Department of Revenue and Taxation, Alcohol Tobacco Control Commission. As such, the State Defendants' Exception of No Cause of Action to Murphy J. Painter's Seventh Amending and Supplemental Petition is granted, and this matter is remanded to the district court to afford Murphy J. Painter an opportunity to amend his petition. See La. Code Civ. P. art. 934.

JMG
AHP

Theriot, J., concurs in part and dissents in part. I would not afford Murphy J. Painter an opportunity to amend his petition.

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DEPUTY CLERK OF COURT
FOR THE COURT