

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

KATHLEEN POWELL, JEREMY PHILLIPS,
BRANDI PHILLIPS, DONALD DAWSON,
BARBARA DAWSON, MICHAEL
MONTALBANO, EVELYN MONTALBANO,
MITCHELL KIMBALL, AND KATHERINE
KIMBALL

NO. 2021 CW 0933

VERSUS

STATE OF LOUISIANA THROUGH THE
TERREBONNE LEVEE AND CONSERVATION
DISTRICT, TERREBONNE PARISH
CONSOLIDATED GOVERNMENT, AND
COASTAL PROTECTION AND RESTORATION
AUTHORITY

NOVEMBER 29, 2021

In Re: Kathleen Powell, Jeremy Phillips, Brandi Phillips,
Donald Dawson, Barbara Dawson, Michael Montalbano,
Evelyn Montalbano, Mitchell Kimball, Katherine
Kimball, and Milton Constrantivitch, applying for
supervisory writs, 32nd Judicial District Court,
Parish of Terrebonne, No. 190344.

BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

WRIT GRANTED. The district court's July 7, 2021 judgment granting the motion to strike filed by Defendant, Terrebonne Levee and Conservation District, is reversed. A court must deny a motion to strike if there is any question of fact or law. **Nationstar Mortg., LLC v. Schales**, 2018-439 (La. App. 3d Cir. 12/12/18), 261 So.3d 912, 918, citing **Federal Deposit Ins. Corp. v. Niblo**, 821 F.Supp. 441 (N.D. Tex. 1993). Matters involving the interpretation of a statute present a question of law. See **Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.**, 2010-0193 (La. 1/19/11), 56 So.3d 181, 187. A decision as to whether the class action allegations in Plaintiffs' petitions are appropriate necessarily requires the district court to determine whether the Levee Taking Statute (La. R.S. 38:301, et seq.) applies. Accordingly, the district court abused its discretion in granting Terrebonne Levee and Conservation District's "Motion to Strike Class Action Allegations," which is hereby denied.

JMG
WRC

Holdridge, J., concurs. Under La. Code Civ. P. art. 592, a motion for a demand for certification of a class action may be stricken only if the proponent fails to file a timely motion for certification within the delay allowed and only after a contradictory hearing. A motion to strike is not the proper procedural pleading in this case where the proponent has not yet answered the petition and the plaintiffs have not filed a motion to certify the class.

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DEPUTY CLERK OF COURT
FOR THE COURT