

**REGIONS BANK OF
LOUISIANA**

VERSUS

**I. F. HINGLE AS SHERIFF
AND EX-OFFICIO TAX
COLLECTOR FOR THE
PARISH OF PLAQUEMINES**

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NO. 2000-CA-2373

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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**APPEAL FROM
PLAQUEMINES 25TH JUDICIAL DISTRICT COURT
NO. 46-015, DIVISION "B"
HONORABLE WILLIAM A. ROE, JUDGE**

**JAMES F. MCKAY, III
JUDGE**

(Court composed of Judge Charles R. Jones, Judge James F. McKay, III,
Judge David S. Gorbaty)

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REVERSED AND WRIT OF MANDAMUS

RECALLED

The issue in this matter is whether the trial court erred in granting a writ of mandamus ordering the Sheriff of Plaquemines Parish to serve garnishment interrogatories upon a corporation domiciled in Plaquemines Parish, pursuant to a judgment rendered in First City Court for the Parish of Orleans, without first requiring the judgment creditor to make the judgment executory in Plaquemines Parish.

STATEMENT OF THE CASE

On September 29, 1997, Regions Bank of Louisiana (Regions), filed suit in First City Court for the Parish of New Orleans (No. 97-57160) against Ron A. LeBlanc to recover on a debt incurred in conjunction with the purchase of an automobile. When Mr. LeBlanc failed to answer that suit, Regions obtained a default judgment against him. First City Court then issued a Writ of Fieri Facias directing the Constable of that court to seize Mr. LeBlanc's property to satisfy the judgment. On July 14, 1999, Regions filed a Supplemental Petition for Garnishment with Garnishment Interrogatories directed to Mr. LeBlanc's employer, C.F. Bean, Inc. (C.F.

Bean), a corporation with its registered office located in Plaquemines Parish. An order was signed naming C.F. Bean as garnishee and ordering it to answer the interrogatories. The Clerk of First City Court issued a citation to C.F. Bean, and forwarded it, along with the Writ of Fieri Facias and the garnishment pleadings, to the Constable. The Constable then forwarded the documents to the Sheriff of Plaquemines Parish, I. F. Hingle (Sheriff Hingle), for service upon C.F. Bean.

On August 11, 1999, Sheriff Hingle's office sent a letter to Region's counsel informing him that the garnishment needed to be made executory in that parish before the garnishment could be processed because "the business is located here and the defendant is employed in this parish."

On May 16, 2000, Regions filed a Petition for Writ of Mandamus in the Twenty-fifth Judicial District Court for the Parish of Plaquemines against I. F. Hingle in his capacity as Sheriff of Plaquemines Parish. The Petition asked the court to issue an alternative writ of mandamus directing Sheriff Hingle to serve the garnishment interrogatories upon C.F. Bean. Following a hearing on August 1, 2000, the court signed a judgment on August 8, 2000 granting the writ and ordering the sheriff to serve the garnishment interrogatories on the garnishee. Sheriff Hingle then filed a Motion and Order for Suspensive

Appeal and For Stay Order, which the judge signed on August 28, 2000.

APPLICABLE LAW

A writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. La. C.C.P. art. 3863. A writ of mandamus may be issued in all cases where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice. La. C.C.P. art. 3862. Further, a writ of mandamus is an extraordinary remedy that must be used sparingly and only where there is a clear and specific legal right to be enforced or a duty, which ought to be performed. It should never issue in a doubtful case. Acadian Ambulance Service, Inc. v. Parish of East Baton Rouge, 97-2119 (La. App. 1 Cir. 11/6/98), 722 So.2d 317.

In his sole assignment of error, Sheriff Hingle asserts that the trial court erred in granting the writ of mandamus ordering him, in his capacity as Sheriff of Plaquemines Parish, to serve garnishment interrogatories upon a corporation domiciled in Plaquemines Parish, in direct contradiction of Louisiana law. In support of that assignment of error, Sheriff Hingle asserts that Regions did not have a clear and specific legal right to have its garnishment interrogatories and order served upon a corporation domiciled in Plaquemines Parish without first making its judgment from First City

Court executory in Plaquemines Parish. In addition, Sheriff Hingle argues that the venue provisions of the FDCPA do not preempt and supersede Louisiana law with respect to venue requirements for garnishment proceedings.

The threshold question in this appeal is whether Regions was entitled to have the writ of mandamus issued in the first place. According to the plain wording of La. C.C.P. art. 3862, a writ of mandamus may be issued **where the law provides no relief by ordinary means or where the delay involved in obtaining ordinary relief may cause injustice** (emphasis added). In its Petition for Writ of Mandamus, Regions made no allegation that the law provided it with no relief by ordinary means or that any delay involved in the obtaining of ordinary relief would cause it to suffer injustice. The law clearly provides Regions with relief by ordinary means. It could have simply filed the garnishment in Plaquemines Parish or it could have made the judgment against LeBlanc executory in Plaquemines Parish, where it sought to have the garnishment effected against C.F. Bean. La. C.C.P. art. 2416; La. C.C.P. art. 2417 ; American Agency Underwriters, Inc. v. Roger Williams Ins. Co., 421 So.2d 383 (La. App. 1 Cir. 1982). See also the comments to La. C.C.P. art. 2781, concerning when judgments may be made executory by other courts, which provides as follows:

“(b) Ordinarily the judgment rendered by another Louisiana

court will be enforced through the writ of fieri facias authorizing the sheriff where the debtor's property is located to seize and sell it under this writ to satisfy a judgment. (citations omitted). Hence, usually there is no necessity to make the judgment of another Louisiana court executory. There are two instances where it is absolutely necessary to make the judgment of the other court executory; (1) in garnishment proceedings under the writ of fieri facias, where the garnishee is domiciled in another parish, Art. 2416, supra;..."

The letter from Sheriff Hingle informing Regions that it needed to make its garnishment executory in Plaquemines Parish was mailed on August 11, 1999. Regions did not file its Petition for Writ of Mandamus until May 16, 2000, over nine months later. The matter was initially set for hearing on June 6, 2000, but Regions continued it without objection, until August 1, 2000. According to La. C.C.P. art. 3782, a petition for writ of mandamus shall be assigned for hearing not less than two or more than ten days after service of the writ. Regions' delay in filing the mandamus, coupled with its continuance of the hearing on the writ until over two months after it had been filed, evidences to this Court that Regions would suffer no injustice if ordered to proceed with its action via ordinary process. If Regions truly needed to proceed summarily through the extraordinary remedy of mandamus, it would have filed its Petition for Writ of Mandamus sooner and it would have had the matter set for hearing within the delays provided for by La. C.C.P. art. 3782.

Accordingly, we reverse the ruling of the trial court and recall the
Writ of Mandamus.

REVERSED AND WRIT OF MANDAMUS

RECALLED