

MOSKAU ACOUSTICS, INC.

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NO. 2001-CA-1652

VERSUS

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COURT OF APPEAL

COMMUNITY CARE, L.L.C.

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FOURTH CIRCUIT

D/B/A COMMUNITY CARE

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STATE OF LOUISIANA

HOSPITAL C.E.M. GENERAL

CONTRACTORS A/K/A

CONSTRUCTION &

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ENVIRONMENTAL

MANAGEMENT, LLC

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**APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS**

NO. 98-56842, SECTION "C"

Honorable Sonja M. Spears, Judge

JOAN BERNARD ARMSTRONG

JUDGE

(Court composed of Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Dennis R. Bagneris, Sr.)

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COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED.

This is a garnishment action. Moskau Acoustics, Inc. (“Moskau”) obtained a \$5,150 judgment against C.E.M. General Contractors, L.L.C. (“C.E.M.”). Moskau then instituted the present garnishment proceeding against Community Care, LLC, (“Community Care”) seeking to seize any funds (up to \$5,150) that Community Care owed to C.E.M. Community Care responded to Moskau’s garnishment interrogatories by denying that it owed any amounts to C.E.M. Moskau filed a rule to traverse Community Care’s answers to garnishment interrogatories. Following the trial of that rule, the trial court rendered judgment in favor of Moskau and against Community Care. Community Care appeals.

At trial, Community Care’s manager, Paul Kavanaugh, testified to the effect that there was a dispute between Community Care and C.E.M. as to whether Community Care owed any money to C.E.M. and that it was Community Care’s position that it did not owe any money to C.E.M.

However, Moskau introduced deposition testimony of Mr. Kavanaugh, taken in another proceeding, in which Mr. Kavanaugh appears to state that Community Care was holding \$30,000 that it owed to C.E.M. Community Care argued that Mr. Kavanaugh's deposition testimony was being mischaracterized and that, in any case, Mr. Kavanaugh's trial testimony should prevail.

The proper characterization of Mr. Kavanaugh's deposition testimony, and the weighing of it with his trial testimony, are issues of fact. Thus, the trial court's decision cannot be reversed unless it is clearly wrong/manifestly erroneous. We have reviewed the deposition testimony at issue as well as the trial transcript. While reasonable minds might differ, we cannot see any clear error/manifest wrongness. Therefore, we affirm the judgment of the trial court.

AFFIRMED.