

C. TODD CORPORATION	*	NO. 2002-CA-0071
VERSUS	*	COURT OF APPEAL
LINDA CIMO,	*	FOURTH CIRCUIT
ADMINISTRATRIX OF THE	*	STATE OF LOUISIANA
SUCCESSION OF JOSEPH H.	*	
CIMO; LAURA CIMO RUSSO,	*	
INDIVIDUALLY AND AS THE	*	
SURVIVING	*	
ADMINISTRATRIX OF THE	*	
SUCCESSION OF LUCY	* * * * *	
CIMO; LAURA CIMO, A/K/A		
LAURA CIMO RUSSO, ET AL.		

APPEAL FROM
 CIVIL DISTRICT COURT, ORLEANS PARISH
 NO. 95-3737, DIVISION "G"
 HONORABLE ROBIN M. GIARRUSSO, JUDGE
 * * * * *
JAMES F. MCKAY, III
JUDGE
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(Court composed of Chief Judge William H. Byrnes, III, Judge Charles R. Jones, Judge James F. McKay, III)

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AFFIRMED

The facts surrounding this case have been the subject of a great deal of litigation and controversy. The underlying facts giving rise to this case are found in this Court's opinion in C. Todd Corporation v. Cimo, 98-3019 (La.App. 4 Cir. 9/8/99), 745 So.2d 70. After the Supreme Court denied writs and the judgment in that case became final, the victorious defendants/appellees (the Cimo heirs) filed post-trial motions for costs, attorneys' fees, damages, and to have the Sheriff's sale of 520 St. Philip Street to C. Todd Corporation (C. Todd) set aside and rescinded. The trial court set aside and rescinded the sale of 520 St. Philip Street. Both C. Todd

and the Cimo heirs moved for summary judgment on the issue of the defendants/appellees' entitlement to attorneys' fees pursuant to Louisiana Civil Code Article 1958. The motions came before the trial court for hearing on July 27, 2001. The trial court denied and dismissed C. Todd's motion for summary judgment but granted summary judgment in favor of the Cimo heirs. It is from this judgment that C. Todd appeals.

The issue before this Court is whether the trial court erred in granting the Cimo heirs' motion for summary judgment with respect to the award of attorneys' fees under the auspices of Louisiana Civil Code Article 1958.

Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. Independent Fire Ins. Co. v. Sunbeam Corp., 99-2181, 99-2257 (La. 2/29/00), 755 So.2d 226,230. Summary judgment is properly granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966. Pursuant to amendments to article 966, summary judgments are now favored, and the rules regarding summary

judgments are to be liberally applied. La. Code Civ. P. art. 966 (A)(2). The amendments leveled the playing field for the litigants, required equal scrutiny of documentation submitted by the parties, and removed the earlier overriding presumption in favor of trial on the merits. Marrogi v. Gerber, 2000-1091 (La.App. 4 Cir. 5/16/01), 787 So.2d 1098, writ denied, 2001-1768 (La. 9/28/01), 798 So.2d 120.

In 1997, article 966 was further amended to alter the burden of proof in summary judgment proceedings. The initial burden of proof remains on the mover to show that no genuine issue of material fact exists. After the mover has met its initial burden of proof, the burden shifts to the non-moving party to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden at trial. La. Code. Civ. P. art. 966 (C) (2). If the non-moving party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. Code Civ. P. art 966; Schwarz v. Administrators of Tulane Educational Fund, 97-0222 (La.App. 4 Cir. 9/10/97), 699 So.2d 895, 897. When a motion for summary judgment is properly supported, the non-moving party may not rest on the mere allegations or denials of his pleading, but his

response, by affidavits or as otherwise provided by law, must set forth specific facts showing that there is a genuine issue of material fact for trial. La. Code Civ. P. art. 967; Townley v. City of Iowa, 97-493 (La.App. 3 Cir. 10/29/97), 702 So.2d 323, 326. *See also* Keppard v. AFC Enterprises, Inc., 2000-2474 (La.App. 4 Cir. 11/28/01), 802 So.2d 959.

In the instant case, the facts are as follows. The law firm of Waguespack, Seago & Carmichael obtained an invalid assignment of a judgment against one of the Cimo heirs. Representatives of the law firm met with Hugh Hohn, the former corporate secretary of Consolidated Technical Services, and paid him \$1,000.00 for the assignment of the judgment. At the time of this purported assignment, Consolidated Technical Services no longer existed; it had been sold to Commco Consolidated, Inc. and its name had been changed to Commco Construction Company of Louisiana, Inc. The corporate secretary of the new corporation was Brenda Steelman and not Hugh Hohn. Waguespack, Seago & Carmichael then transferred this purported assignment to its client, C. Todd Corporation. Thereupon, C. Todd requested the issuance of a writ of fieri facias to seize a 6.667% interest in 520 St. Philip Street. The writ was issued and the interest was

seized. A sheriff's sale was held at which C. Todd purchased the interest.

As stated above, this sale has since been rescinded.

Louisiana Civil Code Article 1958 states: "The party against whom rescission is granted because of fraud is liable for damages and attorney fees." Civil Code Article 1953 states: "Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction." These articles appear in Book III, Title IV of the Civil Code under the heading of Conventional Obligations Or Contracts. According to Civil Code Article 2439, a sale is a contract. Therefore, the sheriff's sale of 520 St. Philip Street to C. Todd Corporation was a contract. The actions that C. Todd and its attorneys orchestrated to gain possession of 520 St. Philip Street were at the very least suspect. It is without doubt that the sale of 520 St. Philip Street has been rescinded. It is also obvious that the district court awarded attorneys' fees pursuant to Civil Code Article 1958, it found that this rescission was because of fraud. Based on the record before this Court, we would reach the same conclusion. Accordingly, the judgment of the district court is affirmed.

AFFIRMED