

**LUIS MUSA**

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**NO. 2018-C-1066**

**VERSUS**

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**COURT OF APPEAL**

**SHELLEY AUDETTE MUSA  
AND BERNADETTE R. LEE**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**LOBRANO, J., CONCURS IN PART, DISSENTS IN PART, AND ASSIGNS REASONS.**

I respectfully concur in part and dissent in part. I concur in the majority’s conclusion that the district court erred in overruling Attorney Lee’s exception of no cause of action. I dissent, however, from the majority’s decree remanding this case to the district court and permitting Mr. Musa to amend his petition. I find that amendment of the petition would be futile, and I would dismiss Mr. Musa’s claims against Attorney Lee.

The majority correctly cites to La. C.C.P. art. 934 for its holding that a district court must permit a litigant to amend a petition when the grounds for sustaining the exception can be removed. Nevertheless, “if the grounds of the objection raised through the exception cannot be so removed, ... the action ... shall be dismissed.” La. C.C.P. art. 934. A plaintiff’s right to amend his petition, to remove the grounds for an exception of no cause of action, “is not so absolute as to be permitted when an amendment would constitute a vain and useless act.” *Fasullo v. Finley*, 2000-2659, pp. 10-11 (La. App. 4 Cir. 2/21/01), 782 So.2d 76, 84 (citing *Vieux Carre Property Owners, Residents and Associates, Inc. v. Decatur Hotel Corp.*, 99-0731 (La. App. 4 Cir. 11/10/99), 746 So.2d 806). “For an amendment to be allowed there should be some indication that the defective petition can be

amended to state a lawful cause of action.” *Id.* In other words, “the right to amend a petition is qualified by the restriction that the objections be curable.” *Vance v. Fed. Nat’l Mortg. Ass’n*, 2017-219, p. 9 (La. App. 5 Cir. 12/20/17), 235 So.3d 1263, 1270, *writ denied*, 2018-0117 (La. 3/9/18), 237 So.3d 524.

Regarding the claim of tortious interference with a contract, Mr. Musa admits that Attorney Lee is not a corporate officer, and merely urges that this Court make new law to substantiate a cause of action. *C.f.*, *9 to 5 Fashions, Inc. v. Spurney*, 538 So.2d 228, 234 (La. 1989). No new alleged facts would cure his allegations concerning this claim.

With respect to the claim of improper *lis pendens*, as the majority acknowledges, Mr. Musa’s contention, that the agreement to sell divested Ms. Musa of her ownership interest in the Derby Place property, is contrary to law. *See Delapaz v. Monem*, 2001-1234, p. 4 (La. App. 5 Cir. 2/26/02), 811 So.2d 1062, 1065 (“an agreement to sell is not a sale where the execution of a later final act of sale is contemplated by the parties”).

Louisiana law does not recognize a claim against an adversarial attorney except in extremely limited circumstances, none of which exist in this matter. According to the standard set forth by the Supreme Court, the facts in Mr. Musa’s petition must establish that Attorney Lee intended to cause direct harm to Mr. Musa by filing the pleadings on Ms. Musa’s behalf. *See Montalvo v. Sondes*, 93-2813, pp. 6-7 (La. 5/23/94), 637 So.2d 127, 131. Mr. Musa’s claims are that, in her role as opposing counsel, Attorney Lee (1) gave her client legal advice, which her client followed, and (2) filed pleadings, which were allegedly incorrect and frivolous. Mr. Musa’s allegations do not state an actionable claim against opposing counsel under the law of this State. Mr. Musa’s mere contentions that Attorney Lee’s actions as counsel for his estranged wife were “deliberate,” “intentional,”

and “malicious” are insufficient as a matter of law. *See Montalvo*, 93-2813, pp. 6-7, 637 So.2d at 131.

In opposing Attorney Lee’s exception, Mr. Musa has not identified any new facts he would plead if granted leave to amend his petition. Likewise, under the circumstances of this case, I can conceive of no facts Mr. Musa could plead if given an opportunity to cure his petition. Thus, I do not find that Mr. Musa can successfully remove the grounds for this exception. Amendment of the petition would be a vain and useless act. Mr. Musa’s claims against Attorney Lee should be dismissed as a matter of law without further opportunity to amend his petition for damages. *See, e.g., Montalvo*, 93-2813, pp. 7-8, 637 So.2d at 132; *Vance*, 2017-219, p. 9, 235 So.3d at 1270; *Brookewood Investments Co. v. Sixty-Three Twenty-Four Chef Menteur Highway, L.L.C.*, 2007-0050, pp. 1-2 (La. App. 4 Cir. 5/16/07), 958 So.2d 1200, 1201; *Ezell v. Dyess*, 2002-0878, p. 1 (La. App. 4 Cir. 10/23/02), 831 So.2d 369, 370.

For these reasons, I would not remand this matter for amendment of the petition for damages, and I dissent from the majority on this issue. Accordingly, I would grant the writ, reverse the district’s judgment denying Attorney Lee’s exception, and dismiss Mr. Musa’s claims against Attorney Lee.