

PEDRO ALVAREZ

NO. 21-C-16

VERSUS

FIFTH CIRCUIT

TOMMY LEE'S II AUTO REPAIR, LLC

COURT OF APPEAL

STATE OF LOUISIANA

March 31, 2021

Nancy F. Vega
Chief Deputy Clerk

IN RE PEDRO ALVAREZ

APPLYING FOR SUPERVISORY WRIT FROM THE SECOND PARISH COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE ROY M. CASCIO, DIVISION "A", NUMBER 129-883

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and John J. Molaison, Jr.

WRIT GRANTED

Relator, Pedro Alvarez, seeks review of Second Parish Court's November 10, 2020 ruling granting Tommy Lee's II Auto Repair, LLC's exception of no right of action. According to the writ application and attachments, Mr. Alvarez sent interrogatories to Nelson Cantrelle, Tommy Lee's attorney. Mr. Cantrelle filed an exception of no right of action relative to the interrogatories, asserting that the interrogatories were improperly directed to him because he is not a party in this matter. Mr. Alvarez filed a motion to compel answers to the interrogatories against Tommy Lee's, which the court denied.

The exception of no right of action is a peremptory exception, the function of which is to have an action declared legally nonexistent or barred by law and tends to dismiss or defeat the action. La. C.C.P. arts. 923 and 927. An exception of no right of action assumes the petition states a valid cause of action and questions whether the plaintiff has a legal interest in the subject matter of the litigation. Krebs, Lasalle, Lemieux Consultants, Inc. v. G.E.C., Inc., 16-24 (La. App. 5 Cir. 7/27/16), 197 So.3d 829, 831. The exception of no right of action serves to question whether the plaintiff in the particular case is a member of the class of person that has a legal interest in the subject matter of the litigation. Id.

Because the purpose of the exception of no right of action is to defeat an action and is procedurally limited to the purpose stated above, not to object to discovery, we find the parish court erred in granting the exception of no right of action as to the

interrogatories. We therefore grant this writ, vacate the ruling on the exception of no right of action, and remand this matter for further proceedings.¹

Gretna, Louisiana, this 31st day of March, 2021.

SJW
MEJ
JJM

¹ The motion to compel actually deals with Mr. Alvarez's right to obtain answers to interrogatories, but relator has not raised the denial of that motion as an assignment of error or as an issue before this Court. As a result, we cannot address the denial of that motion. We note, however, that relator/petitioner's interrogatories are mistakenly directed in the prayer to "this Petitioner, through counsel," and not to the defendant or Tommy Lee's II Auto Repair, LLC, specifically. It appears that the issue could be resolved by simply redirecting the interrogatories specifically to Tommy Lee's II Auto Repair, LLC, through counsel.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT
NANCY F. VEGA
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **03/31/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-C-16

E-NOTIFIED

2nd Parish Court (Clerk)
Honorable Roy M. Cascio (DISTRICT JUDGE)
Honorable Sharlayne Jackson Prevost (DISTRICT JUDGE)
No Attorney(s) were ENOTIFIED

MAILED

Pedro Alvarez (Relator)
In Proper Person
1237 Cohen Street
Marrero, LA 70072

Nelson J. Cantrelle, Jr. (Respondent)
Attorney at Law
310 Weyer Street
Gretna, LA 70053