

PHILLIP J. CLESI

NO. 21-C-205

VERSUS

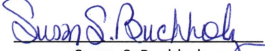
FIFTH CIRCUIT

BOATRAN T. LIEU, THANH H. TRANG
PHUONG B. LE

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Susan S. Buchholz
First Deputy, Clerk of Court

June 18, 2021

Susan Buchholz
First Deputy Clerk

IN RE PHUONG B. LE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE NANCY A. MILLER,
DIVISION "I", NUMBER 810-380

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and Hans J. Liljeberg

**WRIT GRANTED IN PART; JUDGMENT VACATED; MANDAMUS
RELIEF DENIED; MATTER REMANDED**

Relator, Phuong B. Le, seeks review of the trial court's judgment staying the litigation at issue pending resolution of an underlying tort suit. For the following reasons, we find that the trial judge abused her discretion in issuing a stay of the proceedings under the unusual factual circumstances presented in this case. Accordingly, we vacate the April 1, 2021 judgment issuing a stay and we remand this matter to the trial court for further proceedings.

On September 21, 2020, plaintiff, Philip J. Clesi, filed a "Petition for Revocatory Action" against defendants, Boatran¹ T. Lieu, wife of/ and Thanh H. Trang, attempting to revoke the sale of immovable property to relator, Phuong B. Le. The petition alleges that defendants, Trang and Lieu, sold their immovable property to relator-purchaser, Le, on June 16, 2020, for the amount of \$155,000.00. The petition further alleges that Le paid the sum of \$80,000.00 on the date of sale and executed a promissory note in favor of Lieu and Trang in the amount of \$75,000.00 with a 4% annual interest rate.

The petition alleges and the documents attached to the writ application reflect that plaintiff filed a tort suit against defendant Trang, currently pending in Civil District Court, arising out of a May 2018 motor vehicle accident in Orleans Parish.² Plaintiff alleges that defendant Trang is underinsured and that his personal

¹ Although the petition spells defendant Boatran's name as "BaoTRAN," the case caption and all other pleadings reflect defendant's name to be Boatran.

² Although Lieu was not a named defendant in the CDC suit, plaintiff alleges that the debt or obligation arising out of the accident owed to plaintiff is a community debt or obligation.

injuries and other damages exceed the amount of Trang's automobile insurance policy applicable in connection with the underlying CDC litigation. Plaintiff asserts that defendants' sale of their immovable property increased or caused their insolvency. However, plaintiff likewise alleges that, upon the sale of the immovable property, defendants-sellers Trang and Lieu received assets of an equivalent value to the property, i.e., \$80,000.00 on the date of sale and a promissory note in the amount of \$75,000.00. In his petition for revocatory action, plaintiff seeks to annul the sale pursuant to La. C.C. art. 2036, *et seq.*

Defendants filed a motion for summary judgment, seeking dismissal of plaintiff's claims. First, defendants contended that plaintiff's revocatory action is premature because outstanding issues concerning liability and damages exist in the underlying tort suit. Second, defendants argued that, even if plaintiff could prove liability against defendant Trang and damages exceeding Trang's liability insurance policy, plaintiff cannot prove that defendants Trang and Lieu were insolvent at the time of the sale of their property as required in a revocatory action.

On March 18, 2021, the trial court held a hearing on the motion for summary judgment. At the hearing, plaintiff's counsel stated that the parties previously contemplated staying discovery in this matter pending resolution of the underlying CDC suit. Plaintiff's counsel further stated that no discovery had been conducted in this case, asserting that "it really didn't make any sense to spend time and money for either side until we knew exactly or know exactly what is the resolution in the personal injury case." In response, defendants' counsel objected to any stay of discovery or other proceedings in the litigation pending resolution of the CDC litigation.

On April 1, 2021, the trial court did not rule on defendants' motion for summary judgment but rather issued a judgment ordering that "the litigation of this case is stayed pending the resolution of plaintiff's claim for damages against defendant, Thanh Trang, in case number 2019-2928 in the Civil District Court for the Parish of Orleans." In this writ application, relator-purchaser, Le, seeks review of the trial court's stay order, complaining that a stay of the proceedings causes "undue delay resulting in an injustice" and deprives Le "of her right to dispose of private property," and thus substantially affects Le's property rights. Relator further seeks mandamus relief from this Court, asking this Court to order the trial court to consider and issue a judgment on the merits of defendants' motion for summary judgment.

Louisiana Civil Code articles 2036–2043 provide the rules applicable to the revocatory action, pursuant to which "[a]n obligee has a right to annul an act of the obligor, or the result of a failure to act of the obligor, made or effected after the right of the obligee arose, that causes or increases the obligor's insolvency." La. C.C. art. 2036. In order for an obligee to annul an act of the obligor, he must show (1) an act of the obligor that causes or increases the obligor's insolvency, and (2) the act must occur after the obligee's rights arose. *Gaubert Oil Co., Inc. v. Bayou Fuel Marine & Hardware Supplies, Inc.*, 19-252 (La. App. 5 Cir. 10/23/19), 280 So.3d 1022, citing *Long Duc Bui v. Mughal*, 52,514 (La. App. 2 Cir. 2/27/19), 266 So.3d 494, 498. Proof that the transfer of assets caused or increased the insolvency of the creditor is an essential element in a revocatory action. La. C.C. art. 2036; 1029. Additionally, the jurisprudence requires that the obligee prove prejudice, injury, or damage as a result of the act. *Id.*

A trial court's ruling to issue or deny a stay is reviewed under the abuse of discretion standard. *Interdiction of Zimmer*, 17-0900 (La. App. 4 Cir. 3/14/18), 242 So.3d 669, 675. Under the facts of this case—recognizing that a stay of this litigation operates to affect substantial rights of an unrelated third-party purchaser, Le—we find the trial judge abused her discretion in issuing a stay of all discovery and proceedings in this litigation. Accordingly, we hereby grant this writ, vacate the April 1, 2021 judgment ordering a stay of the litigation in this case, and remand this matter to the trial court for further proceedings.³

Gretna, Louisiana, this 18th day of June, 2021.

FHW
JGG
HJL

³ In this writ application, relator seeks mandamus relief, requesting that this Court order the trial court to determine the motion for summary judgment as filed by defendants. Mandamus is an extraordinary remedy which should be applied only where ordinary means fail to afford adequate relief. *Louisiana Assessors' Ret. Fund v. City of New Orleans*, 01-0735 (La. 2/26/02), 809 So.2d 955, 956. Given that this Court has vacated the stay order, we find defendants may seek adequate relief by ordinary means and decline to grant mandamus relief. Upon remand, defendants may refile or reurge their motion for summary judgment or file other peremptory exceptions in an effort to dismiss the litigation. Although we find that a stay of all proceedings is an abuse of the trial judge's discretion, we do not opine on whether the trial judge, at this stage of the proceedings, must rule on the merits of the summary judgment at this time.

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



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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 **06/18/2021** 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-205

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Nancy A. Miller (DISTRICT JUDGE)
Brandon Melerine (Relator)
William H. Dunckelman, Jr. (Respondent)

MAILED

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