

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1066

TYRONE WILLIAMS

VERSUS

FIRST HERITAGE CREDIT OF LA, LLC AND YOKUM
& YOKUM

Judgment Rendered: March 23, 2007.

On Appeal from the
21st Judicial District Court,
in and for the Parish of St. Helena
State of Louisiana
District Court No. 19199

The Honorable Zorraine M. Waguespack, Judge Presiding

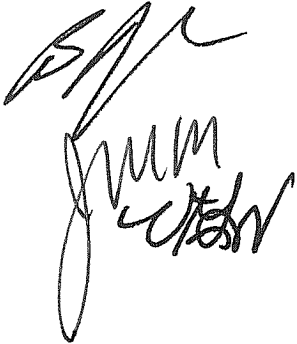
Tyrone Williams
Kinder, La.

Plaintiff/Appellant,
In Proper Person

John Chandler Loupe
Herschel C. Adcock, Sr.
Baton Rouge, La.

Counsel for Defendants/Appellees,
First Heritage Credit of Louisiana
and Yokum & Yokum

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.



CARTER, C.J.

Plaintiff, inmate Tyrone Williams, appeals the trial court's judgment dismissing his suit with prejudice. We affirm.

The record establishes that on January 6, 2003, plaintiff signed a promissory note in favor of Hallmark Credit. Five vehicles were offered as collateral. Plaintiff defaulted on the note, and on April 1, 2005, First Heritage Credit of Louisiana, LLC (Hallmark Credit's successor in title) filed a petition for executory process. Judgment was rendered in favor of Heritage Credit, and on April 15, 2005, a writ of seizure and sale was issued to the Sheriff of St. Helena Parish.

On January 13, 2006, plaintiff filed the present suit against First Heritage and Yokum & Yokum seeking return of his seized property or, in the alternative, damages. In response, First Heritage filed an answer, a motion for judgment on the pleadings, and a motion to dismiss plaintiff's suit as untimely and for failing to state a cause of action. The matter was taken up on March 10, 2006, and on March 27, 2006, a judgment was signed dismissing plaintiff's suit with prejudice.

Even if a defendant fails to file a peremptory exception raising the objection of no cause of action, a plaintiff's failure to disclose a cause of action may be noticed by the appellate court on its own motion. LSA-C.C.P. art. 927B; **Capital City Towing & Recovery, Inc. v. City of Baton Rouge**, 97-0098 (La. App. 1 Cir. 2/20/98), 709 So.2d 248, 251. The function of the peremptory exception raising the objection of no cause of action is to question whether the law extends a remedy against the defendant under the

factual allegations of the petition. **Hoag v. State**, 04-0857 (La. 12/1/04), 889 So.2d 1019, 1025.

In the general allegations of his petition, plaintiff challenges the validity of the promissory note and the executory process procedure. A debtor has two legal options available for raising objections to an executory proceeding. The first option is to file a petition for injunction in the court where the executory proceeding is pending, either in the executory proceeding or in a separate suit, “when the debt ... is extinguished, or is legally unenforceable, or if the procedure required by law for an executory proceeding has not been followed.” LSA-C.C.P. art. 2751. The second option is for the debtor to file a suspensive appeal from an order of seizure and sale. The suspensive appeal must be taken within fifteen days of the signing of the order directing the issuance of a writ of seizure and sale. LSA-C.C.P. art. 2642. **Antoine v. Chrysler Financial Corp.**, 00-0647 (La. App. 4 Cir. 3/7/01), 782 So.2d 651, 652-653. If a debtor allows the seizure and sale to proceed uncontested by a suit for injunction or by a suspensive appeal, all defenses and procedural objections to an executory process proceeding are waived. **Antoine**, 782 So.2d at 653. Plaintiff did not exercise either option; therefore, he has waived all defenses and procedural objections to the executory process.

We further note that although the caption of plaintiff’s petition includes the name of Yokum & Yokum, the petition contains no claims or identifying information regarding Yokum & Yokum. Plaintiff also makes allegations against the Sheriff’s office, maintaining the sheriff’s office

seized items not listed on the writ of seizure and sale. However, the sheriff's office is not named as a defendant in this litigation.

After a thorough review of the pleadings and the record in this matter, this court grants, *ex proprio motu*, a peremptory exception of no cause of action against the plaintiff and in favor of defendants. The trial court's judgment dismissing plaintiff's suit with prejudice is affirmed, and costs of this appeal are assessed to plaintiff/appellant, Tyrone Williams. This memorandum opinion is issued in accordance with Uniform Rules-Courts of Appeal, Rule 2-16.3B.

AFFIRMED.