

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0682

NORTHSHORE EQUITIES, L.L.C.

VERSUS

ELITE DANCE ACADEMY, L.L.C.,
MICHAEL D. ARNOLD, JR. AND EILEEN S. ARNOLD

Judgment Rendered: APR 25 2014

APPEALED FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY PARISH
STATE OF LOUISIANA
DOCKET NUMBER 2011-13965

HONORABLE REGINALD T. BADEAUX, JUDGE

Wayne M. Aufrecht
Rachel Thyre Anderson
Covington, Louisiana

Attorneys for Plaintiff/Appellee
Northshore Equities, L.L.C.

Karen Sarradet McInnis
Frank E. Lamothe, III
Covington, Louisiana

Attorneys for Defendants/Appellants
Michael D. Arnold, Jr. and Eileen S.
Arnold, Elite Dance Academy, L.L.C.,
and My Dance Class Combo, L.L.C.

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

This is an appeal maintaining that the district court erred as a matter of law when it denied the defendants' motion to enjoin and dissolve a seizure order, denied their motion to vacate a writ of *feri facias*, and denied their motion to quash a judgment debtor rule.

Michael D. Arnold, Jr. and Eileen S. Arnold (the Arnolds) signed a lease on June 23, 2009 for commercial space owned by Northshore Equities, L.L.C. (Northshore Equities) in order to open a dance studio, Elite Dance Academy, L.L.C. (Elite Dance Academy) in the Crossroads Shopping Center in Mandeville. The lease was for one suite in the shopping center, with expansion into an adjacent suite when it became vacant, at the maximum rate (based upon use of both suites) of \$5,201.00 per month for the first year, \$5,357.00 per month for the second year, \$5,517.12 per month for the third year, \$5,682.39 per month for the fourth year, and \$5,851.71 per month for the fifth year. The Arnolds signed the lease as guarantors. Northshore Equities paid the build-out costs for the dance studio and, in return, the Arnolds signed a separate promissory note to Northshore Equities on July 22, 2009, for \$36,658.74, with 8 percent interest per annum on the unpaid balance, to be paid in monthly installments of \$753.56.

In May of 2011, the Arnolds moved out of the shopping complex and stopped making payments on both the lease and the promissory note. On July 8, 2011, Northshore Equities filed suit against the Arnolds and Elite Dance Academy (collectively the defendants) for the rent due for the entire term of the lease and the principle balance due on the promissory note, along with penalties, interest, attorney fees, costs, and all general and equitable relief.

The defendants filed an answer admitting that the property was vacated without notice, that no formal settlement negotiations were undertaken, and that the property was not subleased. The defendants raised two defenses to the suit,

namely, denial of quiet enjoyment of the property as provided for in the lease and, in the alternative, the plaintiff's failure to mitigate damages.

On October 11, 2011, Northshore Equities filed a motion for summary judgment asserting that there were no genuine issues of material fact concerning the defendants' liability on the lease and the note, and asked for judgment for the balance past due on the lease, \$16,993.79, late fees on the lease totaling \$1,730.00, and accelerated lease payments of \$139,317.10, for a total of \$158,040.89 due on the lease; and the balance due on the note, \$24,633.39. The defendants filed an opposition to the motion for summary judgment, asserting that Northshore Equities violated the warranty of peaceable possession and constructively breached the lease and evicted the defendants by failing to provide adequate parking, and that a genuine issue of material fact existed as to whether Northshore Equities could enforce the promissory note, as it was executed in conjunction with the lease.

After a hearing, the district court denied the motion for summary judgment filed by Northshore Equities with respect to the breach of the lease. The district court granted the motion for summary judgment in favor of Northshore Equities and against the Arnolds on the default of the promissory note, awarding \$24,633.39 in principal with interest at 8 percent interest per annum from May 1, 2011 until paid, attorney fees in the amount of \$2,463.34, and court costs. The judgment was signed by the district court on January 5, 2012.

On January 19, 2012, the defendants filed a motion for new trial on the issue of their liability on the promissory note. A hearing on the motion for new trial was set for March 13, 2012. On March 9, 2012, the defendants filed a motion to continue the hearing on their motion for new trial. At the hearing on March 13, 2012, the trial court denied the motion to continue, and denied the motion for new trial.

On June 19, 2012, Northshore Equities filed a request for a writ of *feri facias* directed to the St. Tammany Parish Sheriff as per the judgment dated January 5, 2012, against Elite Academy, L.L.C., and the Arnolds, *in solido*, for the sum of \$24,633.39 at 8 percent interest per annum from May 1, 2011 until paid, 25 percent of all monies owed as attorney fees, and all costs. Northshore Equities also filed a garnishment order and interrogatories directed to Regions Bank, as holder of property of the defendants.

On July 10, 2012, defendants filed a motion for stay of the proceedings with the district court, which was denied. The defendants filed a motion for stay of the proceedings and an application for supervisory writs with this court. The motion for stay of the proceedings was denied. **Northshore Equities, L.L.C. v. Elite Dance Academy, L.L.C., Michael D. Arnold, Jr., and Eileen S. Arnold**, 2012 CW 1154 (La. App. 1 Cir. 7/31/12). The application for supervisory writs was also denied. **Northshore Equities, L.L.C. v. Elite Dance Academy, L.L.C., Michael D. Arnold, Jr., and Eileen S. Arnold**, 2012 CW 1154 (La. App. 1 Cir. 8/24/12). The defendants filed an application for supervisory and remedial writs with the Louisiana Supreme Court, which was denied. **Northshore Equities, L.L.C. v. Elite Dance Academy, L.L.C. Michael D. Arnold, Jr., and Eileen S. Arnold**, 2012 CC 2097 (La. 11/16/12).

On September 11, 2012, Northshore Equities filed a supplemental garnishment petition and interrogatories asking that the district court issue a writ of *feri facias* ordering the seizure and possession of all property rights and credits of the Arnolds, *in solido*, by the sheriff in an amount sufficient to pay the judgment on the promissory note. My Dance Class Combo, L.L.C. was made a garnishee and ordered to answer interrogatories. Northshore Equities also asked that Elite Dance Academy (as a debtor of the Arnolds or holder of their property) be made a garnishee and be ordered to answer interrogatories and condemned to pay the

amount of the writ, along with costs and fees. An order making Elite Dance Academy a garnishee and directing it to answer the interrogatories was signed by the district court on September 13, 2012. A judgment debtor rule was set for November 13, 2012 for the Arnolds.

On October 24, 2012, the Arnolds filed a motion to enjoin and dissolve the seizure, recall and vacate the writ of *feri facias*, and quash the judgment debtor rule. The Arnolds prayed that the district court enjoin the sheriff from proceeding with the seizure of their property under the writ of *feri facias*; recall and vacate the order granting Northshore Equities' supplemental petitions in garnishment against the Arnolds, Elite Dance Academy, and My Dance Class Combo; dissolve the seizure of the defendants' property, including \$958.89 obtained from Regions Bank, and the assets seized through service of garnishment petition and interrogatories upon Elite Dance Academy and My Dance Class Combo; quash the judgment debtor rule that was set for November 13, 2012; and recall and vacate the writ of *feri facias* signed by the clerk of court on June 20, 2012, with an issue date of June 21, 2012; reserving the defendants' right to submit opposition to plaintiff's judgment debtor rule and to proceed with damages and attorneys fees for unlawful seizure of assets, and all other proper relief. The Arnolds maintained that the January 5, 2012 judgment was not a final judgment subject to execution.

On November 13, 2012, the district court heard the Arnolds' motion to enjoin and the dissolve seizure, recall and vacate the writ of *feri facias* and quash the judgment debtor rule, along with Elite Dance Academy and My Dance Class Combo's exception, opposition and answers to Northshore Equities' supplemental petition and garnishment interrogatories. The district court overruled the exception of prematurity, denied the motion to vacate the judgment debtor rule, denied the motion to recall and vacate the writ of *feri facias*, denied the motion to seal the interrogatories, denied the motion for preliminary injunction, denied the motion to

quash the judgment debtor rule, continued the judgment debtor rule to December 5, 2012, and ordered counsel for defendants to provide documents responsive to the judgment debtor rule by November 16, 2012. That judgment was signed on December 10, 2012. The Arnolds, Elite Dance Academy, and My Dance Class Combo appealed that judgment.

In their appeal, the Arnolds make one assignment of error. The Arnolds maintain that the district court erred as a matter of law when it denied their motion to enjoin and dissolve the seizure, recall and vacate the writ of *feri facias* and quash the judgment debtor rule.

ANALYSIS

Louisiana Code of Civil Procedure article 1915 B(1) provides that when a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment adjudicating all the claims and the rights and liabilities of all the parties. The January 5, 2012 judgment was a partial summary judgment which did not dispose of all of the claims, demands, issues or theories against a party. Specifically, the defenses to the lease were not disposed of by the judgment.

No appeal may be taken from a partial final judgment under Article 1915 B until the judgment has been designated a final judgment under Article 1915 B. La. C.C.P. art. 1911. A judgment creditor may proceed with the execution of a judgment only after the delay for a suspensive appeal therefrom has elapsed. La. C.C.P. art. 2252. As an appeal could not be taken from the January 5, 2012 judgment, the judgment could not be executed upon. Thus, the district court erred as a matter of law when it denied the Arnolds' motion to enjoin and dissolve the

seizure, recall and vacate the writ of *feri facias* and quash the judgment debtor rule.

Therefore, for the foregoing reasons, we reverse the December 10, 2012 judgment, and we remand the case to the district court to allow any party to seek certification of the finality of the January 5, 2012 judgment if they so choose. Northshore Equities' motion for leave to file an attachment to their original brief is denied. Costs are assessed against Northshore Equities.

DECEMBER 10, 2012 JUDGMENT REVERSED; CASE REMANDED TO ALLOW ANY PARTY TO SEEK CERTIFICATION OF THE FINALITY OF THE JANUARY 5, 2012 JUDGMENT IF THEY SO CHOOSE; MOTION DENIED.