

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2014 CA 0881**

**DIAMOND PROPERTIES HOLDINGS, INC.**

**VERSUS**

**ST. TAMMANY PARISH, ST. TAMMANY PARISH CODE ENFORCEMENT,  
ST. TAMMANY PARISH ASSESSOR'S OFFICE, LOUIS FITZMORRIS, AND  
RODNEY J. STRAIN, JR., IN HIS CAPACITY AS EX-OFFICIO TAX  
COLLECTOR**

**Judgment Rendered: DEC 23 2014**

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On Appeal from the Twenty-Second Judicial District Court  
In and for the Parish of St. Tammany  
State of Louisiana  
No. 2013-14692

Honorable Reginald T. Badeaux, III, Judge Presiding

\* \* \* \* \*

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\* \* \* \* \*

**BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.**

**McCLENDON, J.**

Plaintiff seeks review of the trial court's judgment granting multiple exceptions raised by the defendant and dismissing plaintiff's petition for declaratory judgment and writ of mandamus. For the following reasons, we reverse the trial court's judgment to the extent it dismissed plaintiff's petition and remand this matter for further proceedings.

**FACTS AND PROCEDURAL HISTORY**

Diamond Properties Holdings, Inc., the owner of immovable property in St. Tammany Parish, was cited for violation of three parish ordinances: (1) Section 14-010.00A—High Grass, (2) Section 14-002.00B—Accumulation of Junk/Trash/Debris, and (3) Section 14-002.00C—Harborage for Vermin. On March 7, 2012, an administrative hearing officer for the St. Tammany Parish Bureau of Administrative Adjudication determined that Diamond had violated the three ordinances. The hearing officer signed a judgment that same day ordering Diamond to pay a \$450.00 fine (\$150.00 each for the three violations) and costs in the amount of \$210.00. The judgment also provided that Diamond would be assessed a fine in the amount of \$50.00 per day per violation from March 28, 2012 until paid, up to a maximum of one hundred days. The judgment further provided that Diamond had twenty days to bring the property into compliance. On April 5, 2012, Diamond paid \$660.00 for the initial fine and court costs.

On July 19, 2012, St. Tammany, through its Bureau of Administrative Adjudication, sent Diamond correspondence to notify Diamond that it had not brought its property into compliance and that the Parish determined that the total debt now due was the maximum penalty of \$15,000.00 (\$150.00 per day fee for 3 violations x 100 days). Specifically, the correspondence provided, in pertinent part:

As per the judgment rendered against you on March 7, 2012, you had 30 days to pay the court costs and fines. Therefore you had until March 28, 2012, to submit payment. On April 16, 2012, we received your payment of \$660.00 via check #1524 to cover the initial court costs and fines for this property; however, since the matter was not corrected, the per diem fine continued to

run for the maximum time. To date, your total debt to the Parish of St. Tammany is \$15,000.00.

The correspondence further indicated that if the amount was not paid, the property would be sold at a tax sale. Further, the Parish indicated that it "will proceed without further notice."

A few months later, Diamond received a tax bill from St. Tammany, which included a code enforcement charge of \$15,000.00. Because Diamond failed to pay the tax bill, the sheriff seized the property and sold it at a tax sale on July 15, 2013.

On October 4, 2013, Diamond filed a "Petition for Declaratory Judgment and Writ of Mandamus,"<sup>1</sup> seeking to have the tax collector "adjust the 2012 Property Tax Bill to remove the improperly assessed Parish Code Enforcement charge, to cancel the improperly conducted sale of the property, ... and for any further and other legal and equitable relief as the Court deems necessary and proper."

In response, the St. Tammany Parish Government and St. Tammany Parish Code Enforcement (collectively, "St. Tammany") filed a dilatory exception raising the objections of unauthorized use of summary proceedings, improper cumulation of actions, and prematurity, as well as a peremptory exception raising the objection of peremption.

Following a hearing on February 18, 2014, the trial court granted all four exceptions raised by St. Tammany, and dismissed Diamond's petition. Diamond has appealed, asserting that the trial court erred in granting each of the four exceptions.

## **DISCUSSION**

### Overview of Administrative Adjudicatory Authority

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<sup>1</sup> We recognize that a writ of mandamus may be directed to a public officer to compel the performance of a ministerial duty required by law. LSA-C.C.P. art. 3863. Mandamus will not lie in matters in which discretion and evaluation of evidence must be exercised. The remedy of mandamus is not available to command performance of an act that contains any element of discretion, however slight. **Sund v. St. Helena Parish School Bd.**, 05-2473 (La.App. 1 Cir. 5/5/06), 935 So.2d 219, 221, writ denied, 06-1392 (La. 9/22/06), 937 So.2d 392. However, whether a mandamus action is proper under the facts herein is not before us at this time.

Louisiana's statutory scheme for parishes and municipalities in handling blighted, abandoned, or otherwise inadequately maintained property is addressed in Title 13, Chapter 8-C (the chapter). Any municipality or parish may prescribe civil fines for blighted property, abandoned property, or violation of public health, housing, fire code, environmental, and historic district ordinances in the municipality or parish by owners of immovable property, their agents, tenants, or representatives pursuant to the procedures for administrative adjudication provided in the chapter. LSA-R.S. 13:2575A(1). Any municipality or parish may adopt an ordinance or ordinances establishing an administrative adjudication hearing procedure, which shall provide for a time period for persons charged with owning blighted or abandoned property, or violating a public health, housing, fire code, environmental, and historic district ordinance to have a hearing in accordance with the chapter, and it shall provide for the appointment of one or more hearing officers. LSA-R.S. 13:2575B(1).<sup>2</sup>

The hearing officer has authority to levy fines, fees, penalties, and hearing costs. LSA-R.S. 13:2575B(3)(c). The hearing officer also has authority to order violators to correct violations within a stipulated time and to take necessary and lawful measures to effect correction of the violation if the violator fails to do so within the time allocated by the hearing officer. LSA-R.S. 13:2575B(3)(d) and (e). Further, the hearing officer has authority to record orders, judgments, notices of judgments, or liens in the mortgage office, and the municipality or parish shall have a lien or privilege against the immovable property in or on which the violation occurred. LSA-R.S. 13:2575B(3)(f) and C(1). The lien and privilege shall secure all fines, costs, and penalties which are assessed by the municipality or parish that are described in the order, judgment, notice of judgment, or lien. LSA-R.S. 13:2575C(1). Any person aggrieved by any decision

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<sup>2</sup> St. Tammany Parish adopted an ordinance addressing the powers of the hearing officer, the hearing officer practice and procedures, the non-exclusivity of the ordinance procedures, liens, and appeals. See St. Tammany Parish Ordinance Chapter 1, Section 1-012.08, 1-012.10, 1-012.12, 1-012.14, 1-012.16, and 1-012.18. St. Tammany Parish also has additional statutorily recognized administrative adjudication procedures and judicial review procedures. See LSA-R.S. 13:2575.2.

of the St. Tammany Parish hearing officer may present a petition to the district court within thirty days after the filing of the decision of the hearing officer. LSA-R.S. 13:2575.2B(1).

In order for the lien and privilege to arise, the order, judgment, notice of judgment, or lien shall be final and not subject to appeal when recorded in the mortgage office. LSA-R.S. 13:2575C(1). Any liens placed against such immovable property shall be included on the next annual ad valorem tax bill and shall be paid along with such taxes, subject, however, to any valid homestead exemption. LSA-R.S. 13:2575C(2).

### Merits of the Exceptions

At the outset, we note that the declaratory judgment action is an ordinary proceeding whereas the mandamus action is a summary proceeding. See Frierson v. Sheridan, 593 So.2d 655, 657 (La.App. 1 Cir. 1991) and LSA-C.C.P. art. 2592(6). As such, the declaratory judgment action and mandamus action utilize different forms of procedure.<sup>3</sup> Because the two proceedings employ different forms of procedure, the two actions should not be cumulated. See LSA-C.C.P. art. 462(2). Even so, because the cumulation is improper due to the different forms of procedure utilized, the Louisiana Code of Civil Procedure affords the trial court two options, neither of which is dismissal: (1) order separate trials of the actions; or (2) order the plaintiff to elect which actions he shall proceed with, and to amend his petition so as to delete therefrom all allegations relating to the action which he elects to discontinue. See LSA-C.C.P. art. 464. Accordingly, we conclude that the trial court did not err in granting the exceptions raising the objections of unauthorized use of summary proceedings as to the declaratory judgment action and improper cumulation of actions, but conclude that dismissal was not the proper remedy under Article 464.

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<sup>3</sup> Unlike ordinary proceedings, summary proceedings are those which are conducted with rapidity, within the delays allowed by the court, and without citation and the observance of all the formalities required in ordinary proceedings. LSA-C.C.P. art. 2591. Summary proceedings may be commenced by the filing of a contradictory motion or by a rule to show cause, except as otherwise provided by law. LSA-C.C.P. art. 2593.

Even so, St. Tammany contends that the trial court's judgment appropriately dismissed Diamond's suit because the trial court properly determined the suit was also premature and preempted. The trial court concluded that the action was premature because Diamond's petition requested the court to "change records" before having the administrative judgment vacated. Similarly, the trial court granted the peremptory exception raising the objection of preemption because it concluded that Diamond failed to timely appeal the prior administrative judgment and allowed all delay periods to elapse.

Diamond avers that it had no reason or need to initially challenge the administrative judgment until it received notice of the tax assessment. Diamond contends that its challenge is to St. Tammany's interpretation of the judgment, not the judgment itself. Diamond asserts that the administrative ruling required it to pay the \$450.00 fine (\$150.00 for three separate violations) and costs in the amount of \$210.00, for a total of \$660.00. Diamond notes that the judgment also provided that Diamond would be assessed a fine in the future in the amount of \$50.00 per day per violation until paid. Diamond submits that it paid the judgment in full by submitting the \$660.00 payment on April 5, 2012. Diamond contends that since it did not contest the \$660.00 sum due, it did not need to take legal action to seek review of the judgment. Diamond further avers that it did not need to take legal action until St. Tammany ordered it to pay \$15,000.00 in penalties.

In opposition, St. Tammany submits that the administrative judgment was a final judgment. St. Tammany contends that because the administrative judgment has not been vacated, declared illegal, or invalid by any court of law, the underlying action is premature. Moreover, St. Tammany asserts that it had the right to file the administrative judgment into the parish's property records where it acts as a lien or judicial mortgage. See LSA-R.S. 13:2575C(1) and St. Tammany Parish Ordinance Chapter 1, Section 1-012.16(1). If that lien is not paid, then St. Tammany is authorized to add it to the next ad valorem tax bill. LSA-R.S. 13:2575C(2) and St. Tammany Parish Ordinance Chapter 1, Section 1-

012.16(2). St. Tammany asserts that while Diamond paid the initial court costs and fine in accordance with the administrative judgment, Diamond failed to bring its property into compliance. Further, Diamond was notified that an additional \$15,000.00 would be added to its property tax assessment. Additionally, St. Tammany maintains that because the administrative judgment was not appealed and became final, Diamond is attempting to use the declaratory judgment action as a "second bite at the apple." St. Tammany asserts that because Diamond did not appeal the prior judgment, this action has been preempted and Diamond should be prohibited from seeking review now.

We disagree. Following the March 7, 2012 administrative hearing, the hearing officer concluded that Diamond had violated three ordinances. In connection therewith, the hearing officer signed a judgment that same day ordering Diamond to pay a \$450.00 fine (\$150.00 each for the three violations) and costs in the amount of \$210.00. The only sum certain that was due and payable in accordance with the plain language of the March 7, 2012 judgment at the time it was signed was \$660.00. The noncompliance penalties set forth in the judgment did not begin to accrue until March 28, 2012. Therefore, we reject St. Tammany's argument that the administrative judgment is final as to a penalty that had not begun to accrue at the time the judgment was signed.<sup>4</sup> In order for the lien and privilege contemplated in LSA-R.S. 13:2575C to arise, the judgment must be final. LSA-R.S. 13:2575C(1).<sup>5</sup>

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<sup>4</sup> See **Vanderbrook v. Coachmen Industries, Inc.**, 01-0809 (La.App. 1 Cir. 5/10/02), 818 So.2d 906, 913 quoting **Fontelieu v. Fontelieu**, 116 La. 866, 41 So. 120, 125 (La. 1906) ("[I]f a judgment purports to be final and is given upon a money demand, the amount of the recovery must be stated in it with certainty and precision. If the amount remains to be determined by a future contingency, or ascertained by references, or diminished by the allowance of an unliquidated credit, or is otherwise indefinite and uncertain, it is no proper judgment.")

<sup>5</sup> While LSA-R.S. 13:2575.2B(1) affords a person aggrieved by a decision of the St. Tammany hearing officer thirty days after the decision is filed by the hearing officer to seek review in the district court, the only judgment signed by the hearing officer that is included in the record was the judgment in the amount of \$660.00. Further, the July 19, 2012 correspondence, wherein the Parish indicated that Diamond owed an additional \$15,000.00 since the prior judgment was entered, does not indicate that the penalty of \$15,000.00 was an order or judgment of the hearing officer.

Accordingly, we conclude that the trial court erred in granting the dilatory exception raising the objection of prematurity and the peremptory exception raising the objection of peremption.

### **CONCLUSION**

For the foregoing reasons, the trial court's March 10, 2014 judgment is hereby reversed to the extent it granted the Parish's exceptions raising the objections of prematurity and peremption and dismissed Diamond's petition. We remand this matter to the trial court to proceed in accordance with LSA-C.C.P. art. 464. Costs of this appeal in the amount of \$1,634.59 are assessed to the appellee, St. Tammany Parish Government and St. Tammany Parish Code Enforcement.

**REVERSED IN PART AND REMANDED.**