

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 1172

RETAILERS CASUALTY INSURANCE COMPANY

VERSUS

INSURER'S SALVAGE AUCTION, INC.

Judgment Rendered: MAR 06 2015

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On Appeal from the  
19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. C607729

The Honorable William Morvant, Judge Presiding

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BEFORE: MCDONALD, CRAIN, AND HOLDRIDGE, JJ.

*McDonald, J. concurs.*  
*Crain, J. concurs*

**HOLDRIDGE, J.**

Defendant, Insurer's Salvage Auction, Inc., appeals a summary judgment granted in favor of plaintiff, Retailers Casualty Insurance Company, following a determination by the trial court that the defendant's memorandum in opposition and supporting affidavit were not timely served, and therefore were to be excluded from consideration. On appeal, defendant challenges the trial court's exclusion of its opposition memorandum and affidavit.

This matter involves a suit to recover unpaid insurance premiums. On December 29, 2013, the plaintiff filed a motion for summary judgment that was set for hearing on March 17, 2014. However, at the behest of the defendant, plaintiff subsequently requested a continuance of the hearing.

The hearing was re-set for Monday, May 19, 2014. Pursuant to La. C.C.P. art. 966B(1) and La. Dist. Ct. R. 9.9(c), defendant was required to serve all other parties with its opposition memorandum and supporting affidavit so that they were **received** at least eight calendar days before the hearing.<sup>1</sup> On Thursday, May 15, 2014, the defendant filed its memorandum in opposition and supporting affidavit (dated May 12, 2014) with the clerk of court.<sup>2</sup> The memorandum in opposition included a certificate of service that indicated that defendant served the plaintiff by mailing a copy to the plaintiff on Monday, May 12, 2014, seven days before the hearing. Because it was being mailed from New Orleans to Baton Rouge, the

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<sup>1</sup> Pursuant to La. Dist. Ct. R. 9.9(c), the defendant was also required to concurrently furnish a copy to the trial court.

<sup>2</sup> Defendant claims that it fax-filed its opposition with the clerk's office on Monday, May 12, 2014, but there is nothing in the record before us to substantiate this claim.

earliest that the plaintiff could have received it was Tuesday, May 13, 2014, six days before the hearing.<sup>3</sup> Thus, it was not timely served.<sup>4</sup>

After a thorough review of the record, and of the applicable code articles, district court rules, and jurisprudence, we find that the trial court did not abuse its discretion in excluding the untimely served memorandum in opposition and supporting affidavit. La. C.C.P. art. 966B(1); La. Dist. Ct. Rules 9.9(c) and 1.5; **Guillory v. Chapman**, 10-1370 (La. 9/24/10), 44 So.3d 272 (per curiam); **Buggage v. Volks Constructors**, 06-0175 (La. 5/5/06), 928 So.2d 536 (per curiam); **Gisclair v. Bonneval**, 04-2474 (La.App. 1 Cir. 12/22/05), 928 So.2d 39, 42; **Tolliver v. Broussard**, 14-738 (La.App. 3 Cir. 12/10/14), \_\_\_ So.3d \_\_\_ 2014 WL 6947681, pp. 4-5.

Further, we do not find that the trial court erred in granting summary judgment in favor of the plaintiff. Our *de novo* review indicates that the plaintiff's motion for summary judgment was well-supported and included, among its exhibits, an affidavit from the operations manager who was personally familiar with the defendant's insurance contract and account and attested that the defendant owed \$8,501.32 in unpaid premiums. Pursuant to La. C.C.P. art. 967B, it was incumbent on the defendant to respond, by affidavit or otherwise, to establish "specific facts showing that there [was] a genuine issue for trial." Because the defendant's opposition memorandum and affidavit were properly excluded, we find that the defendant failed to produce evidence of a genuine issue of material fact. We also conclude that the plaintiff was entitled to judgment as a matter of law. Therefore, we affirm the trial court's judgment in accordance with Uniform

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<sup>3</sup> Although the defendant claims that the transcript from the hearing indicates that the plaintiff received the opposition on Monday, May 12, 2014, all the transcript establishes is that the plaintiff "learned about" the opposition on that day, not that it was received on that date.

<sup>4</sup> Based on our conclusion, we need not address the defendant's failure to timely furnish the trial court with a copy.

Court of Appeal Rule 2-16.2A(2), (4), (6), and (7). Defendant, Insurer's Salvage Auction, Inc., is cast with all costs of this appeal.

**AFFIRMED.**