

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2014 CA 1810**

**SUSAN RABORN**

**VERSUS**

**PEDICONS, INC.**

**Judgment Rendered: JUN 05 2015**

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On Appeal from the Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
No. C632301

Honorable Timothy E. Kelley, Judge Presiding

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Counsel for Defendant/Appellee  
Pedicons, Inc.

\* \* \* \* \*

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

*Handwritten initials:*  
JME  
WSN  
TMH

**McCLENDON, J.**

A shareholder appeals a trial court judgment denying her petition for writ of mandamus that sought payment of corporate dividends. The corporation has answered the appeal, seeking review of the trial court's judgment denying its exception raising the objection of prematurity. For the following reasons, we grant the corporation's answer to appeal and reverse the trial court's judgment denying the objection of prematurity, vacate the trial court's judgment on the merits of the mandamus, and remand this matter to the trial court.

**FACTS AND PROCEDURAL HISTORY**

On July 28, 2014, plaintiff Susan Raborn filed a Petition for Writ of Mandamus, naming Pedicons, Inc., a closely held corporation, as a defendant. Ms. Raborn alleged that she owns 245 out of 1000 shares issued by Pedicons, with the remaining shares being owned by her two siblings. Ms. Raborn averred that Pedicons paid dividends to her siblings on November 13, 2013 and April 10, 2014, but failed to pay any dividends to her. Ms. Raborn noted that Pedicons placed the dividends attributable to her portion of the stock, \$61,250.00 and \$36,750.00, respectively, into an escrow account entitled "Pedicons Inc. Escrow Account" through Regions Bank. Because at that time she was recognized as a shareholder on the corporation's books, Ms. Raborn asserted that she was entitled to receive her *pro rata* share of dividends.<sup>1</sup>

In response, Pedicons filed a dilatory exception raising the objection of prematurity. Pedicons noted that Ms. Raborn was named as a defendant in an earlier filed suit — Charles P. Raborn v. Susan Maria Raborn, Docket Number 624,303 — which was docketed in another division of the 19th Judicial District Court ("the rescission suit"). In the rescission suit, Ms. Raborn's father, Dr. Charles P. Raborn, who sold the stock to his daughter on September 29, 2006, sought to rescind the sale. Mr. Raborn alleged that his daughter failed to make payments on a promissory note as required in the act of sale. In addition to a

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<sup>1</sup> According to Pedicons, Ms. Raborn also filed an ordinary action against Pedicons in the 19th Judicial District Court to recover the dividends, which is docketed as number 633,888.

rescission of the sale, Dr. Raborn sought return of all prior dividends and fruits received by Ms. Raborn as a result of her possession of the stock. Further, in the rescission suit, Pedicons filed a motion to consolidate the two actions. The hearing on the underlying mandamus action occurred before the trial court in the rescission suit considered the motion to consolidate. Pedicons asserted that until such time as there was a final judgment in the rescission suit, the underlying mandamus action was premature.

Ms. Raborn opposed Pedicons' exception of prematurity, asserting that she was entitled to her portion of the dividends because Pedicons' records reflect that she was, at all pertinent times, owner of the stock. Ms. Raborn asserted that Pedicons had no discretionary authority to pay all other record shareholders' dividends, but withhold dividends from her.

On August 22, 2014, a hearing was held on Pedicons' exception of prematurity and Ms. Raborn's petition for writ of mandamus. Following the hearing, the trial court signed a judgment denying both Pedicons' exception of prematurity and Ms. Raborn's petition for writ of mandamus.

Ms. Raborn has appealed, asserting that the trial court erred in denying her petition for writ of mandamus. Pedicons has answered the appeal, asserting that the trial court erred in denying its exception of prematurity.

### **DISCUSSION**

In its answer to Ms. Raborn's appeal, Pedicons maintains the underlying mandamus action is premature while ownership of the stock is in dispute. Generally, because we cannot address the underlying merits if the action is premature, we will address the exception raising the objection of prematurity first. See LSA-C.C.P. art. 923 and 929.

Pedicons asserts that if the court determines that Ms. Raborn is not a shareholder and rescinds the stock sale, then Ms. Raborn has no action in mandamus. Alternatively, if the court determines that the stock sale should not be rescinded, Pedicons avers that the mandamus action may be appropriate at

that time. Pedicons concludes that in either event, Ms. Raborn's rights depend upon a final ruling on the rescission issue.

Louisiana Code of Civil Procedure article 926(A)(1) provides for the dilatory exception raising the objection of prematurity. The objection is designed to retard the progress of the action rather than to defeat it. LSA-C.C.P. art. 923. A suit is premature if it is brought before the right to enforce the claim sued on has accrued. LSA-C.C.P. art. 423. The objection of prematurity raises the issue of whether the judicial cause of action has yet come into existence because some prerequisite condition has not been fulfilled. **Mathies v. Blanchard**, 06-0559 (La.App. 1 Cir. 2/21/07), 959 So.2d 986, 988. The viability of the exception is determined by the facts existing at the time the lawsuit is filed. **Id.**<sup>2</sup>

The judicial cause of action for payment of a dividend to shareholders came into existence once Pedicons declared a dividend to shareholders. However, while the right came into existence for such dividends to be paid, the question as to whom the dividend is owed is still in dispute.<sup>3</sup> As noted above, litigation is pending regarding ownership of the shares at issue. Therefore, the mandamus action is premature at this time. Accordingly, we conclude that the trial court erred in denying Pedicons' dilatory exception raising the objection of prematurity.

Because we find merit in Pedicons' answer to the appeal, we pretermitt discussion of Ms. Raborn's assignment of error.

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<sup>2</sup> We note that the suit to rescind the sale of the shares was filed prior to the filing of the petition for writ of mandamus.

<sup>3</sup> At the time of the proceedings, Louisiana Revised Statutes 12:79, which was in effect and cited by the trial court, provided:

Except as otherwise provided in the articles or by-laws, a corporation, and its directors, officers and agents, **may** recognize and treat a person registered on its records as the owner of shares, as the owner in fact thereof for all purposes, and as the person exclusively entitled to have and to exercise all rights and privileges incident to the ownership of such shares; and rights under this section shall not be affected by any actual or constructive notice which the corporation, or any of its directors, officers or agents, may have to the contrary. (Emphasis added.)

This statute afforded protection to a corporation when it exercised its discretion to treat an individual registered on its records as the owner of the shares. However, we cannot find that it mandated the corporation to make payments to the registered shareholder. The statute has since been repealed and replaced by a new comprehensive scheme by 2014 La. Acts 328, § 5, effective January 1, 2015.

## **CONCLUSION**

For the foregoing reasons, we reverse the trial court's September 29, 2014 judgment, to the extent that it denied Pedicons' exception raising the objection of prematurity, and we grant the exception. Further, we vacate the portion of the judgment denying Ms. Raborn's request for a writ of mandamus. We remand this matter to the trial court for further proceedings consistent herewith. Costs of this appeal are assessed to appellant, Susan Raborn.

**ANSWER TO APPEAL GRANTED; REVERSED IN PART; VACATED IN PART; AND REMANDED.**