NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0024

INVESTMENTS 2234, LLC

VERSUS

MARY LEE SHAVERS FORTUNE

Judgment Rendered: NOV 06 2015

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 604285

Honorable Robert D. Downing, Judge *Pro Tempore*

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Deborah Berthelot Baton Rouge, LA	Attorney for Appellant Defendant – Mary Lee Shavers Fortune
Stephen D. Morel Jessica C. Seale Metairie, LA	Attorneys for Appellee Plaintiff – Marquee Acquisitions, LLC

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

WELCH, J.

In this dispute arising out of a tax sale, the Estate of Mary Lee Shavers Fortune appeals a summary judgment granted in favor of Marquee Acquisitions, LLC ("Marquee"), which quieted title and confirmed Marquee's ownership as the sole and only owner of a specific piece of immovable property in Baton Rouge, Louisiana. For reasons that follow, we sustain a peremptory exception raising the objection of no right of action noticed by this court on our own motion, we vacate the judgment of the trial court, and we dismiss the petition herein with prejudice.

FACTUAL AND PROCEDURAL HISTORY

On August 12, 2011, Investments 2234, LLC ("Investments") filed a petition to confirm tax title and named as defendant Mary Lee Shavers Fortune. According to the petition, Investments claimed it was the sole and only owner of the following described immovable property in East Baton Rouge Parish, State of Louisiana ("the property at issue"):

> One certain lot or parcel of ground, together with all the buildings and improvements thereon, situated in that subdivision of the Parish of East Baton Rouge, State of Louisiana, known as EAST FAIRFIELDS and being more particularly described in accordance with the official map of said subdivision on file and of record in the Office of the Clerk and Recorder for East Baton Rouge Parish as LOT ELEVEN (11), SQUARE FIVE (5).
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> Municipal address: 4871 Washington Avenue, Baton Rouge, LA 70802-1043.

Investments alleged that it acquired the property at issue by quitclaim[1] deed dated June 25, 2010 from Munitax Fund, LLC ("Munitax"), which was recorded on July 2, 2010 in the official conveyance records of East Baton Rouge Parish (Original 330, Bundle 12251). Investments further alleged that Munitax acquired the property at issue by tax deed dated June 22, 2007 from Mary Lee Shavers Fortune pursuant to a tax sale held on June 4, 2007 by the Sheriff of East Baton

[1] Under Louisiana law, a quitclaim is an assignment of rights without warranty. See La. C.C. art. 2502 and the comments therein.

Rouge Parish for unpaid 2006 ad valorem taxes, which tax deed was recorded on June 22, 2007 in the official conveyance records of East Baton Rouge Parish (Original 587, Bundle 11963). Investments also alleged that Mary Lee Shavers Fortune acquired an undivided one-half interest in the property at issue from Henry Leslie Robertson and Audrey Brisco Robertson by act of sale with assumption of mortgage dated February 27, 1975 and recorded in the conveyance records of East Baton Rouge Parish that same date (Original 17, Bundle 9018), and that she acquired the remaining one-half interest in the property at issue from Albert Fortune by act of donation dated October 20, 1997 and recorded in the conveyance records of East Baton Rouge Parish on November 5, 1997 (Original 18, Bundle 10839).

Investments asserted that more than three years had elapsed since the date of recordation of the tax deed transferring the property at issue to Munitax, that the property at issue had not been timely redeemed for unpaid taxes, and that no suit had been filed to annul the tax sale reflected in the tax deed prior to the institution of this suit. Thus, Investments claimed that, as the sole owner of all right, title, and interest to the property at issue, it was entitled to have its sole ownership and title in the property at issue confirmed and quieted in accordance with La. Const. Art. VII, § 25 and La. R.S. 47:2266 (formerly La. R.S. 47:2228).

On February 14, 2012, Investments filed a motion to appoint an attorney. According to this motion, Investments requested service of process on Ms. Fortune at the address of the property at issue; however, she was unable to be served at that address. Investments asserted that when it attempted to locate Ms. Fortune, it discovered that Ms. Fortune had been deceased since May 29, 2007[2] and that no succession had been opened in her name in East Baton Rouge Parish. Accordingly, Investments sought and obtained an order appointing an attorney at

[2] Notably, Ms. Fortune died prior to the tax sale of the property at issue to Munitax.

law to represent the deceased Ms. Fortune and her unopened succession. See La. C.C.P. art. 5091(A)(1)(c) and (2)(a).

On April 26, 2012, the attorney appointed to represent the deceased Ms. Fortune and her unopened succession filed an answer to the petition, generally denying all of the allegations of fact therein for lack of sufficient information. The record does not reflect any further action taken by the appointed attorney on behalf of the deceased Ms. Fortune and her unopened succession.

Thereafter, on August 22, 2012, Marquee filed a motion for summary judgment seeking to quiet its title on the property at issue. In addition to the chain of title alleged by Investments in the original petition, Marquee claimed that its evidence in support of the motion for summary judgment established that it (Marquee) acquired the property at issue from MACWCP II, LLC by quitclaim deed dated March 14, 2012 and recorded in East Baton Rouge Parish on April 23, 2012 (Original 140, Bundle 12404), and that MACWCP II, LLC acquired the property at issue from Investments by quitclaim deed dated August 23, 2011 and recorded in East Baton Rouge Parish on September 12, 2011 (Original 499, Bundle 12352).[3] Marquee further claimed that since more than five years had elapsed from the date that the tax sale of the property at issue to Munitax was recorded, Marquee was entitled to have the tax title confirmed and quieted pursuant to La. Const. Art. VII, § 25 and La. R.S. 47:2266, *et seq.*

On December 3, 2012, Marquee filed a motion to appoint another attorney/curator to represent the deceased Ms. Fortune and her unopened

[3] Although Marquee claimed to be a successor-in-interest to the rights of Investments in the property at issue and claimed, in several documents in the record, to have been substituted as plaintiff herein, we note that the record before us does not reflect that Marquee was ever substituted as the proper party plaintiff herein. See La. C.C.P. arts. 681 and 807. However, because we find, for reasons hereinafter discussed, that Munitax lacked a real and actual interest in the property at issue on the date it quitclaimed the property to Investments, Investments and its purported successors-in-interest (MACWCP II, LLC and Marquee), have no real and actual interest in the property at issue. Thus, the absence in the record of Marquee's substitution as proper party plaintiff for Investments is of no consequence to our decision herein.

succession. Marquee asserted that although the original attorney filed an answer, she failed to file a note of evidence. Marquee asserted that it attempted to contact the original attorney, but the attempts to contact her were unsuccessful. Therefore, Marquee sought and obtained an order appointing another attorney to represent the deceased Ms. Fortune and her unopened succession.

On March 12, 2013, the second appointed attorney filed a curator's return. According to the curator's return, letters were sent by regular and certified mail to the last known address of Ms. Fortune and an advertisement was placed in The Advocate asking that the heirs contact the curator's office. The curator set forth that, in response to the advertisement, Ms. Fortune's heirs contacted her, and the curator then identified Ms. Fortune's three heirs (Patsy Fortune Parker, Glen Fortune, and Wayne Fortune) and provided their contact information. According to the curator's return, Ms. Fortune's heirs were completely unaware of the tax sale, as they had also been paying taxes on the property. The curator noted that there appeared to be some confusion in that there were two separate tax bills for the property and that there needed to be further investigation to determine whether there had been a dual assessment or to see if the property was subdivided in a manner unbeknownst to the parties. The curator further noted that one of the heirs, Wayne Fortune, was currently living on the property at issue and had no interruption in his residency during the pertinent time period in the proceeding.

On May 22, 2013, Glen Fortune filed a "NOTICE OF INTENT TO SETTLE" essentially asserting that he intended to clear the tax debt on his parent's property (the property at issue) as soon as he found out what taxes were owed. He further stated that the property at issue had two tax bills (apparently because there are two lots), but since the house sits on both lots, he claimed that there should only have been one tax bill and that the assessment should have never been split. He asserted that he intended to fight to save his parents' family home, that he

would not abandon the property at issue, and that the property at issue was currently occupied by his brother, Wayne Fortune.

A hearing on Marquee's motion for summary judgment was then scheduled and the heirs were served with notice of the hearing. In response, the Estate of Mary Lee Shavers Fortune, through the heirs[4] ("the Estate") filed a peremptory exception raising the objections of no cause of action and no right of action, as well as an opposition to the motion for summary judgment. The issues raised by both the exception and the opposition to the motion for summary judgment focus on the fact that Munitax failed to pay the 2008 property taxes and as a result, the property at issue was adjudicated to the State of Louisiana for the benefit of East Baton Rouge Parish on June 1, 2009, which was recorded on June 23, 2009 (Original 118, Bundle 12162). The Estate argued that any interest or right Munitax obtained in the property at issue due to the June 2007 tax sale (from the deceased Ms. Fortune) was transferred to the State on June 23, 2009; and thus, on June 25, 2010, when Munitax quitclaimed the property at issue to Investments, Munitax held no rights or interests in the property at issue, and hence could not transfer any interest or rights to the property at issue to Investments.[5] Additionally, the Estate pointed out that the property remained on the adjudicated rolls in the name of Munitax on the date when this suit was filed by Investments, until it was redeemed

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[4] In the exception, the heirs of the Estate of Mary Lee Shavers Fortune were identified as Glen B. Fortune, Wayne R. Fortune, and Patsy F. Parker (the children of the deceased), as well as Anita Fortune Minor (succeeding by representation of her deceased parent, Albert Fortune, Jr.) and Sheena Fortune (succeeding by representation of her deceased parent, Harold Fortune).

[5] Although the Estate raised this issue in its objection of no cause of action, we note that this issue raises a question of whether Marquee (or its predecessor, Investments) had a right to bring this action rather than whether the law provides a remedy against the Estate. As such, the issue is more properly raised through the exception raising the objection of no right of action rather than no cause of action. See **Badeaux v. Southwest Computer Bureau, Inc.**, 2005-0612 (La. 3/17/06), 929 So.2d 1211, 1216-17. Nonetheless, since every pleading must be construed so as to do substantial justice and because our courts look beyond the caption, style and form of the pleading to determine the substance of the pleading, we shall construe the issues raised by the objection of no cause of action as having been raised by the objection of no right of action. See La. C.C.P. art. 865; **Rochon v. Young**, 2008-1349 (La. App. 1st Cir. 2/13/09), 6 So.3d 890, 892, writ denied, 2009-0745 (La. 1/29/10), 25 So.3d 824, cert. dismissed, 560 U.S. 921, 130 S.Ct. 3325, 176 L.Ed.2d 1216 (2010).

by the heirs of Ms. Fortune on April 23, 2014. Accordingly, the Estate argued that Investments failed to state a cause of action, had no right of action, or alternatively, that the adjudication to the Parish of East Baton Rouge raised a genuine issue of material fact precluding summary judgment in favor of Marquee.

On August 4, 2014, after hearing argument of counsel and accepting into evidence the June 2009 tax sale adjudicating the property at issue to the State of Louisiana for the benefit of East Baton Rouge Parish, the trial court overruled the exceptions and granted Marquee's motion for summary judgment. In accordance with this ruling, on August 27, 2014, the trial court signed a judgment overruling the peremptory exception raising the objections of no cause of action and no right of action, and granting summary judgment in favor of Marquee and against the Estate, quieting title and confirming Marquee's ownership as the sole and only owner of the property at issue. From this judgment, the Estate appeals challenging, the trial court's decision to grant summary judgment in favor of Marquee.[6]

For the following reasons, we do not reach the merits of the Estate's arguments regarding the trial court's grant of summary judgment in favor of Marquee. Instead, we render judgment sustaining the peremptory exception raising the objection of no right of action.

NO RIGHT OF ACTION

Although the Estate has not challenged the trial court's ruling on the peremptory exception raising the objection of no right of action, it is well-settled

[6] On appeal, the Estate also challenges a purported ruling of the trial court requiring the heirs of a small succession to open a judicial succession and to have a succession representative appointed in order to defend the petition to quiet the tax title, when such a requirement is waived for small successions. Although this issue was raised by Marquee in argument and discussed between counsel and the trial court at the hearing on August 4, 2014, the judgment before us on appeal contains no such ruling. Generally, silence in a judgment of the trial court as to any issue, claim, or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. **Schoolhouse, Inc. v. Fanguy**, 2010-2238 (La. App. 1st Cir. 6/10/11), 69 So.3d 658, 664. Accordingly, the silence in the trial court's judgment on that issue is deemed as a rejection of that argument by Marquee; thus, that assignment of error presents no issue for review.

that this Court can notice or raise the objection on its own motion. See La. C.C.P. art. 927(B).

The peremptory exception pleading the objection of no right of action challenges whether the plaintiff has a real and actual interest in bringing the action. See La. C.C.P. arts. 681 and 927(A)(6); **Estate of Mayeaux v. Glover**, 2008-2031 (La. App. 1st Cir. 1/12/10), 31 So.3d 1090, 1093, writ denied, 2010-0312 (La. 4/16/10), 31 So.3d 1069. Whether a person has a right of action depends on whether the particular person belongs to the class in whose favor the law extends a remedy. In other words, the exception questions whether the plaintiff has an interest in judicially enforcing the right asserted. **Estate of Mayeaux**, 31 So.3d at 1093. Simply stated, the objection of no right of action tests whether this particular plaintiff, as a matter of law, has an interest in the claim sued on. **OXY USA Inc. v. Quintana Production Company**, 2011-0047 (La. App. 1st Cir. 10/19/11), 79 So.3d 366, 376, writ denied, 2012-0024 (La. 3/2/12), 84 So.3d 536.

An appellate court should focus on whether the particular plaintiff has a right to bring the suit and is a member of the class of persons that has a legal interest in the subject matter of the litigation, assuming the petition states a valid cause of action for some person. **Eagle Pipe and Supply, Inc. v. Amerada Hess Corp.**, 2010-2267, 2010-2272, 2010-2275, 2010-2279, 2010-2289 (La. 10/25/11), 79 So.3d 246, 256. Ultimately, the determination of whether a plaintiff has a right to bring an action raises a question of law, which is reviewed *de novo* considering the record and the substantive law regarding the right of action. *Id.*; **Horrell v. Horrell**, 99-1093 (La. App. 1st Cir. 10/6/00), 808 So.2d 363, 368, writ denied, 2001-2546 (La. 12/7/01), 803 So.2d 971. Evidence supporting or controverting an objection of no right of action is admissible. **Jackson v. Slidell Nissan**, 96-1017 (La. App. 1st Cir. 5/9/97), 693 So.2d 1257, 1261. Furthermore, as is customary on consideration of an objection of no right of action, the averments of fact in the

pleadings will be taken as true in the absence of evidence to the contrary. **Horrell**, 808 So.2d at 368.

As previously set forth, according to the petition and evidence in the record, Ms. Fortune acquired an undivided one-half interest in the property at issue on February 27, 1975, and on October 20, 1997, she acquired the remaining one-half interest. Ms. Fortune died on May 29, 2007. On June 22, 2007, Munitax acquired the property at issue by tax deed from a tax sale held on June 4, 2007 by the Sheriff of East Baton Rouge for unpaid 2006 ad valorem taxes. Munitax subsequently failed to pay the 2008 property taxes on the property at issue and the property was then sold/adjudicated to the State for the benefit of East Baton Rouge Parish on June 1, 2009, which was recorded in the conveyance records on June 23, 2009. The property at issue remained on the adjudicated rolls of the East Baton Rouge Parish Tax Assessor until April 23, 2014, when the heirs of Ms. Fortune redeemed the property at issue.

Investments claimed to have acquired the property at issue from Munitax by quitclaim deed dated June 25, 2010 and recorded on July 2, 2010. Additionally, Marquee claims to have acquired the property at issue from MACWCP II, LLC by quitclaim deed dated March 14, 2012 and recorded on April 23, 2012, and that MACWCP II, LLC acquired the property at issue from Investments by quitclaim deed dated August 23, 2011 and recorded on September 12, 2011.

Quitclaim is a word of art with a defined legal meaning. **Franklin v. Camterra Resources Partners, Inc.**, 48,021 (La. App. 2nd Cir. 5/22/13), 123 So.3d 184, 187. The Louisiana Civil Code explains that what is called a quitclaim at common law is an assignment of rights without warranty in the civil law. La. C.C. art. 2502, comment (c). Louisiana Civil Code article 2502 provides, in pertinent part, that "[a] person may transfer to another whatever rights to a thing *he may then have*, without warranting the existence of any such rights. In such a case

the transferor does not owe restitution of the price to the transferee in case of eviction, nor may that transfer be rescinded for lesion." (Emphasis added). Additionally, "[i]f the transferor acquires ownership of the thing after having transferred his rights to it, *the after-acquired title of the transferor does not inure to the benefit of the transferee.*" (Emphasis added) *Id.* Thus, a quitclaim deed is one which purports to convey, and is understood to convey, nothing more than the interest or estate in the property described of which the grantor is seized or possessed, *if any, at the time*, rather than the property itself. **Franklin**, 123 So.3d at 187, citing **Waterman v. Tidewater Assoc. Oil Co.**, 213 La. 588, 35 So.2d 225 (1947).

Thus, the original June 25, 2010 quitclaim deed by Munitax to Investments conveyed only the rights or interests that Munitax had, if any, to the property at issue *on that date*. On that date, Munitax had no rights or interest in the property at issue because its rights or interest in the property at issue had been sold/adjudicated the year before (June 2009) to the State/Parish of East Baton Rouge due to Munitax's failure to pay the 2008 property taxes on said property. Since Munitax held no rights or interest in the property at issue on June 25, 2010, its quitclaim deed to Investments on that date transferred no rights or interest in the property at issue to Investments. Likewise, Investment's subsequent quitclaim of the property at issue on August 23, 2011 to MACWCP II, LLC, and MACWCP II, LLC's subsequent quitclaim of the property at issue on March 14, 2012 to Marquee transferred no rights or interest in the property at issue on those dates because the transferees (Investments and MACWCP II, LLC, respectively) had no rights or interest to transfer on the dates of those respective quitclaims.

Marquee does not dispute that the property at issue had been adjudicated to the State/Parish of East Baton Rouge at the time Munitax quitclaimed the property to Investments and prior to the chain of conveyance transfers to Marquee.

However, Marquee urges that it has a right of action because the redemption of the property on April 23, 2014 by the heirs of the Estate, *i.e.*, by Glen Fortune, inures to the benefit of Munitax and its successors in interest, thereby restoring Munitax's ownership interests under the tax sale deed and all subsequent transfers thereof. In support of this argument, Marquee relies solely on the provisions of former La. R.S. 47:2224, which provided in pertinent part that "[a]ll certificates [of redemption] issued under the provisions of this section [redeeming adjudicated property] shall be in the name of the original owner, to inure, however, to the benefit of any and all persons holding rights under such owner."

We find no merit to Marquee's argument. First, we note that former La. R.S. 47:2224 was repealed by 2008 La. Acts, No. 819, §2. The repeal of La. R.S. 47:2224 was effective on January 1, 2009. Accordingly, this statute was no longer in effect on either the date the property at issue was redeemed (April 23, 2014) *or on the date the property at issue was adjudicated* (June 1, 2009) and recorded (June 23, 2009). Thus, we find that the provisions of former La. R.S. 47:2224 are not applicable herein.

Furthermore, even if the subsequent redemption of the property at issue by the heirs of the Estate does inure to the benefit of Munitax, this does not change the fact that on June 25, 2010, Munitax held no rights or interest in the property at issue, and thus, did not transfer any rights or interests to Investments in the property at issue by virtue of the quitclaim deed. See La. C.C. art. 2502. And, Munitax's subsequent acquisition of a right, interest, or ownership in the property at issue (*i.e.*, by a redemption in its favor or by action to quiet and confirm title) would not inure to the benefit of Investments or its successors-in-interest—MACWCP II, LLC and Marquee—because the doctrine of after-acquired title[7]

[7] The doctrine of after acquired title provides that when a vendor sells property which he does not own and later acquires title, ownership immediately vests in the buyer. See **Mayo v. Simon**, 94-0590 (La. 11/2/94), 646 So.2d 973, 975.

does not apply to conveyances by quitclaim deed. See La. C.C. art. 2502; **Franks Petroleum, Inc. v. Mayo**, 438 So.2d 696, 698 (La. App. 2nd Cir.), writ denied, 443 So.2d 595 (La. 1983); **Waterman**, 213 La. at 611-612, 35 So.2d at 233-234.

Therefore, because Investments and its successors-in-interest, MACWCP II, LLC and Marquee, never obtained a real and actual interest in the property at issue under the chain of conveyance transfers (the quitclaim deeds), we find that Marquee (and its predecessor Investments) does not have a right of action against the deceased Ms. Fortune, her Estate, or heirs to quiet and confirm the tax title to the property at issue. Therefore, we render judgment sustaining the peremptory exception raising the objection of no right of action, properly noticed on our own motion. See La. C.C.P. art. 927(B). Thus, we hereby vacate the trial court's judgment granting summary judgment in favor of Marquee, which quieted title and confirmed Marquee's ownership as the sole and only owner of the property at issue, and we dismiss the petition herein with prejudice.[8] See La. C.C.P. art. 934.

CONCLUSION

For all of the above and foregoing reasons, we vacate the trial court's August 27, 2014 judgment, which granted summary judgment in favor of Marquee. Additionally, we find there are no facts or other evidence of record establishing that Marquee (or its predecessor Investments) has any real or actual interest in the property at issue herein. Thus, the petition and record herein fails to disclose their right of action against the deceased Ms. Fortune, her Estate, or her heirs, to quiet and confirm the tax title obtained by Munitax in June 2007. Therefore, we sustain the peremptory exception raising the objection of no right of action, properly noticed on our own motion, and dismiss this action with prejudice.

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[8] Since there are no additional facts that can be pleaded or established to provide Marquee with a right of action herein, the grounds for the objection of no right of action cannot be removed by amendment of the petition. Therefore, it is unnecessary to permit the plaintiff the opportunity to amend its petition.

All costs of this appeal are assessed against the appellee, Marquee Acquisitions, LLC.

AUGUST 27, 2014 JUDGMENT VACATED; JUDGMENT RENDERED SUSTAINING OBJECTION OF NO RIGHT OF ACTION AND DISMISSING PETITION WITH PREJUDICE.