NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CW 1700

RAMONA PIERRE

VERSUS

STAR AFFORDABLE HOUSING ALPIC, MAX SPECIALITY INSURANCE COMPANY, SMITH SQUARE HOMES, AND SUMMIT APARTMENT MANAGEMENT

Judgment Rendered: DEC 22 2016

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On Appeal from the
21st Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Trial Court No. 2011-000810

The Honorable Brenda Bedsole Ricks, Judge Presiding

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* * * * *

BEFORE: PETTIGREW, McDONALD, AND CALLOWAY[1], JJ.

[1] Hon. Curtis Calloway, retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

McDonald, J. concurs.

CALLOWAY, J

Plaintiff, Ramona Pierre, appeals a partial summary judgment rendered by the trial court on the motion of defendant, Warren Construction Company, Inc. (Warren), on the issue of the fault of the dismissed co-defendants, Smith Square Development, APLIC, d/b/a Smith Square Homes (Smith Square), Summit Apartment Management Company, Inc. (Summit), and Max Specialty Insurance Company (Max Specialty). For the following reasons, we convert the appeal to an application for supervisory writs and deny the writ.

FACTS AND PROCEDURAL HISTORY

On October 13, 2009, Ms. Pierre entered into a one year Low Income Housing Tax Credit lease with owner Smith Square for the rental of a house located at 1309 Smith Square Drive, Hammond, Louisiana. The manager of Summit, the management company for Smith Square, executed the lease with Ms. Pierre. On July 23, 2010, Ms. Pierre was injured while climbing a pull down attic ladder at her leased house. Ms. Pierre originally filed suit against Smith Square, Summit, Star Affordable Housing, ALPIC (Star Affordable), and Max Specialty. Ms. Pierre later learned the identity of the construction company that built her leased house, Warren, and filed an amended petition adding Warren as a defendant on June 4, 2013. Ms. Pierre alleged that Warren was negligent in constructing the property located at 1309 Smith Square Drive.

Before Ms. Pierre added Warren as a defendant, Smith Square, Summit, Star Affordable, and Max Specialty filed a motion for summary judgment. Summit sought summary judgment on the basis that it did not assume responsibility for the property's condition and had no notice of the alleged condition. Star Affordable sought summary judgment claiming that it had no duty to the plaintiff and was brought into the litigation in error. After the May 28, 2013 hearing, but before the June 10, 2013 judgment, was signed, Ms. Pierre filed her amended petition adding

Warren as a defendant. The motion for summary judgment was granted as to Star Affordable and denied as to Summit and Smith Square.[2]

Smith Square, Summit, and Max Specialty (Smith Square defendants) re-urged their motion for summary judgment on October 14, 2014, claiming that Ms. Pierre was unable to produce any evidence to establish that any of these defendants knew or should have known of the defect that allegedly caused her injuries. On January 5, 2015, Warren filed its own motion for summary judgment asserting that it was entitled to summary judgment finding that former co-defendants Smith Square, Summit, and Max Specialty were without fault as a matter of law. Warren stated that it was "bringing [the Smith Square defendants'] motion back for hearing." Although Warren's motion referred to "former" co-defendants, this court notes that the order dismissing the Smith Square defendants was not signed until January 26, 2015. The dismissal of these defendants was based on a settlement with Ms. Pierre, and there is nothing in the record to indicate that the motion for summary judgment filed by these defendants was ever heard or a judgment ever signed.

Warren's motion for summary judgment, which only addressed the fault of the Smith Square defendants, was heard on April 13, 2015. A judgment granting Warren's motion for summary judgment was signed on July 9, 2015. At the hearing, Warren explained that it admitted fault and had filed the motion for summary judgment regarding the fault of the Smith Square defendants so that Warren could later file a motion that would dismiss it from the case. Warren had pled prescription in its answer. Ms. Pierre appealed the July 9, 2015 judgment to

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[2] It is unclear from the face of the judgment whether Star Affordable was dismissed from the litigation, as the judgment only grants the summary judgment as to Star Affordable and denies summary judgment as to Summit and Smith Square, without specifically dismissing any parties. However, it is apparent from the record that after the judgment signed on June 10, 2013, Star Affordable no longer participated in the litigation. Furthermore, the judgment makes no mention of Max Specialty, even though Max Specialty was named as one of the movants for summary judgment.

this court, which remanded the matter to the trial court for the limited purpose of signing an amended judgment after finding that the judgment did not contain proper decretal language.

Following our remand, the trial court signed two different judgments on November 23, 2015, one entitled "Judgment of No Liability" and one entitled "Amended Judgment." The November 23, 2015 judgments were appealed, and this court issued the following interim order:

> This Court's November 6, 2015 Rule to Show Cause Order provided the parties herein with the opportunity to present this Court with a judgment containing appropriate decretal language dismissing the case or disposing of or dismissing the claims of the petitioner. The parties have supplemented the record herein with two new judgments, neither of which contain appropriate decretal language. Furthermore, because two new judgments were signed by the district court, it is now impossible for this Court to determine which judgment is purportedly on appeal.

This court again remanded the matter to the trial court instructing it to sign one amended judgment complying with La. C.C.P. art. 1918 and *Carter v. Williamson Eye Center,* 2001-2016 (La. App. 1 Cir. 11/27/02), 837 So. 2d 43, 44.

The trial court signed an amended judgment on June 1, 2016, which states in pertinent part:

> IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Summary Judgment is GRANTED in favor of WARREN CONSTRUCTION CO., INC., and against Plaintiff, RAMONA PIERRE, finding that former Defendants, Smith Square Development, ALPIC, d/b/a Smith Square Homes, Summit Apartment Management Company[,] Inc., and Max Specialty Insurance Company were not at fault for the Plaintiff's damages.
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> IT IS FURTHER ORDERED, [ADJUDGED] AND DECREED, that this Judgment be designated as a Final Judgment pursuant to La. Code Civ. Proc. art. 1915.

This court issued an ex proprio motu rule to show cause as to whether this appeal should be dismissed, and, on August 26, 2016, referred the rule to show cause to this panel. Therefore, this court must first decide if there is an appealable judgment before us.

LAW AND ARGUMENT

Decretal Language

A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. *See* La. C.C.P. art. 1918; *Carter,* 837 So. 2d at 44. The June 1, 2016 amended judgment does not specifically dismiss any claims, as the claims against the Smith Square defendants had already been dismissed by the January 27, 2015 judgment. The amended judgment only states that the Smith Square defendants were not at fault. The trial court attempted to remedy the deficient decretal language by stating that the judgment was "designated as a Final Judgment pursuant to La. Code Civ. Proc. art. 1915."

At the outset, we note that Louisiana courts require that a judgment be precise, definite and certain. *Vanderbrook v. Coachmen Industries, Inc.,* 2001-0809 (La. App. 1 Cir. 5/10/02), 818 So. 2d 906, 913. The June 1, 2016 judgment does not dismiss Warren, the only remaining defendant, nor does it dismiss any claims.

In addition to the lack of specificity of the judgment, we must resolve whether the trial court properly designated the judgment as final pursuant to Article 1915. As an appellate court, we are obligated to recognize a lack of jurisdiction if it exists. This court's appellate jurisdiction extends to "final judgments," which are those that determine the merits in whole or in part. La. C.C.P. art. 1841 and 2083. *See Van ex rel. White v. Davis,* 2000-0206 (La. App. 1 Cir. 2/16/01), 808 So. 2d 478, 483. However, a judgment that only partially determines the merits of an action is a partial final judgment and, as such, is immediately appealable only if authorized by Article 1915. *Rhodes v. Lewis,* 2001-1989 (La. 5/14/02), 817 So. 2d 64, 66.

Subpart A of Article 1915 designates certain categories of partial judgments as final judgments subject to immediate appeal without the necessity of any designation of finality by the trial court, while Subpart B of Article 1915 provides that when a court renders a partial judgment, partial summary judgment, or sustains an exception in part, it may designate the judgment as final after an express determination that there is no just reason for delay.[3]

The June 1, 2016 judgment at issue herein, which, in part, grants summary judgment in favor of Warren on the basis that the Smith Square defendants were not at fault, does not fall within any of the categories identified in Subpart A of Article 1915. The judgment does not: (1) dismiss the suit as to any party; (2) grant a motion for judgment on the pleadings; (3) pertain to an incidental demand that was tried separately; (4) adjudicate the issue of liability; or (5) impose sanctions or disciplinary action. Moreover, while the June 1, 2016 judgment does grant a

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[3] Louisiana Code of Civil Procedure article 1915, in pertinent part, provides:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
> (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
> (2) Grants a motion for judgment on the pleadings, as provided by Articles 965, 968, and 969.
> (3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).
> (4) Signs a judgment on either the principal or incidental demand, when the two have been tried separately, as provided by Article 1038.
> (5) Signs a judgment on the issue of liability when that issue has been tried separately by the court, or when, in a jury trial, the issue of liability has been tried before a jury and the issue of damages is to be tried before a different jury.
> (6) Imposes sanctions or disciplinary action pursuant to Article 191, 863, or 864 or Code of Evidence Article 510(G).
> B. (1) 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 by the court after an express determination that there is no just reason for delay.
> (2) In the absence of such a determination and designation, any such order or decision shall not constitute a final judgment for the purpose of an immediate appeal and may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

motion for partial summary judgment, it constitutes a summary judgment under the provisions of La. C.C.P. art. 966(E), which authorizes the grant of a summary judgment "dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of a summary judgment does not dispose of the entire case as to that party or parties." However, summary judgments granted pursuant to Article 966(E) are specifically excluded from the types of partial summary judgments that are immediately appealable under Article 1915(A) without the need for a designation of finality. *See* La. C.C.P. art. 1915(A)(3).

Thus, because the June 1, 2016 judgment is not a final judgment for purposes of an immediate appeal under the provisions of Article 1915(A), this court's jurisdiction depends upon whether the judgment was properly designated as a final judgment pursuant to Article 1915(B)(1). *See* La. C.C.P. art. 1911(B) and 2083. We note that even a trial court's designation that a judgment is final is not determinative of this court's jurisdiction. *See Davis,* 808 So. 2d at 481, n. 2. Rather, we must determine whether the designation was proper. Moreover, since the record contains no reasons for judgment disclosing the basis for the trial court's finality designation, we are required to conduct a *de novo* review to determine whether the judgment was properly designated as final. *R.J. Messinger, Inc. v. Rosenblum,* 2004-1664 (La. 3/2/05), 894 So. 2d 1113, 1122 ("If no reasons are given but some justification is apparent from the record, the appellate court should make a *de novo* determination of whether the certification was proper."); *see also State through Dep't. of Transp. and Devel. v. Henderson,* 2009-2212 (La. App. 1 Cir. 5/7/10), 39 So. 2d 739, 741 (noting that *de novo* review was required where the trial judge "gave no explicit reasons" for its determination that no just reason for delay existed). Our *de novo* determination is made after consideration of the criteria set forth in *R.J. Messinger, Inc.,* 894 So. 2d at 1122.

Historically, our courts have a policy against multiple appeals and piecemeal litigation. Article 1915(B) attempts to strike a balance between the undesirability of piecemeal appeals and the need for making review at a time when it best serves the needs of the parties. Thus, in considering whether a judgment is properly designated as a final one pursuant to Article 1915(B), a trial court must take into account judicial administrative interests as well as the equities involved. *R.J. Messinger, Inc.,* 894 So.2d at 1122.

In reviewing the propriety of the trial court's finality designation, we consider the "overriding inquiry" of "whether there is no just reason for delay," as well as the other non-exclusive criteria trial courts use in making the determination of whether certification is appropriate, known as the *Messinger* factors, which include:

> (1) The relationship between the adjudicated and the unadjudicated claims;
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> (2) The possibility that the need for review might or might not be mooted by future developments in the trial court;
>
> (3) The possibility that the reviewing court might be obliged to consider the same issue a second time; and
>
> (4) Miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.
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> *R.J. Messinger, Inc.,* 894 So. 2d at 1122.

In the instant case, Warren, the contractor who built the house and the attic stairs that caused Ms. Pierre's injuries, has admitted in its motion for summary judgment that if there was any defect that existed at the time of construction, it was Warren's fault. At the hearing on motion for summary judgment, Warren's counsel stated, "I must say it's the first time in twenty-nine years of practice that I filed a motion for summary judgment saying that my client is at fault...." There

has been no judgment determining Warren's fault. The issues to be resolved at trial are both Warren's fault and the proper measure of damages owed to Ms. Pierre for her loss. Warren's motion for summary judgment sought a determination that the Smith Square defendants, who have settled their claims with Ms. Pierre, were not at fault. The judgment appealed from only determines the fault of dismissed parties, but leaves the issues of Warren's fault and Ms. Pierre's damages yet to be adjudicated. We believe that an immediate appeal from a judgment determining the fault of dismissed parties, only encourages multiple appeals and piecemeal litigation, causing unnecessary delay in the resolution of this matter. Warren has not been dismissed, no claim against Warren has been dismissed, and no matter how the appeal before us is decided, Warren's fault and the issue of damages remain to be litigated and may be appealed again in the future by either party. We find no compelling reasons for certifying the judgment as final and immediately appealable that would outweigh these judicial administrative interests. Therefore, we find that the trial court erred in certifying the judgment as a final one for the purpose of an immediate appeal.

However, we believe that this case is an appropriate one for the exercise of this court's supervisory jurisdiction. As this partial judgment was not certified as final by the trial court, we lack jurisdiction to hear this appeal. However, because the record is already before us, judicial efficiency and the interests of justice may best be served by asserting our plenary power to exercise supervisory jurisdiction, given that this court has already remanded this matter twice for the trial court to correct defective judgments. For these reasons, we convert the appeal to an application for supervisory review, address the merits of this matter, and deny the writ. *See Latiolais v. Jackson,* 2006-2403 (La. App. 1 Cir. 11/2/07), 979 So. 2d 489, 492.

SUMMARY JUDGMENT

Louisiana Code of Civil Procedure article 966(B)(2) provides that summary judgment "shall be rendered forthwith" when "there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law."[4] After adequate discovery, a motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. arts. 966(B)(2) & (C)(1) (prior to amendment by 2015 La. Acts, No. 422).[5] The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. *See* La. C.C.P. art. 966(A)(2).

The mover bears the burden of proving that he is entitled to summary judgment. However, if the mover will not bear the burden of proof at trial on the subject matter of the motion, he need only demonstrate the absence of factual support for one or more essential elements of his opponent's claim, action, or defense. La. C.C.P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422).[6] If the moving party points out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense, then the nonmoving party must produce factual support sufficient to satisfy his evidentiary burden at trial. La. C.C.P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422). If the nonmoving party fails to make this requisite showing, there is no genuine issue of material fact, and summary judgment should be

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[4] Article 966 was amended by 2015 La. Acts, No. 422, § 1, effective January 1, 2016. Section 2 provides, "The provisions of this Act shall not apply to any motion for summary judgment pending adjudication or appeal on the effective date of this Act." As the motion for summary judgment at issue in this matter was pending as of January 5, 2015, we apply the prior version of Article 966.

[5] Now La. C.C.P. art. 966(A)(3).

[6] Now La. C.C.P. art. 966(D)(1).

granted. *See* La. C.C.P. art. 966(C)(2) (prior to amendment by 2015 La. Acts, No. 422). If, however, the mover fails in his burden to show an absence of factual support for one or more of the elements of the adverse party's claim, the burden never shifts to the adverse party, and the mover is not entitled to summary judgment. *LeBlanc v. Bouchereau Oil Co., Inc.,* 2008-2064 (La. App. 1 Cir. 5/8/09), 15 So. 3d 152, 155, *writ denied*, 2009-1624 (La. 10/16/09), 19 So. 3d 481.

In ruling on a motion for summary judgment, the trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. *Hines v. Garrett,* 2004-0806 (La. 6/25/04), 876 So. 2d 764, 765 (*per curiam*). Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. *Willis v. Medders*, 2000-2507 (La. 12/8/00), 775 So. 2d 1049, 1050 (*per curiam*).

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *East Tangipahoa Development Company, LLC v. Bedico Junction, LLC,* 2008-1262 (La. App. 1 Cir. 12/23/08), 5 So. 3d 238, 243, *writ denied*, 2009-0166 (La. 3/27/09), 5 So. 3d 146. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. *Pumphrey v. Harris*, 2012-0405 (La. App. 1 Cir. 11/2/12), 111 So. 3d 86, 89.

EVIDENCE PRESENTED/ANALYSIS

In the present matter, Warren filed a motion for summary judgment requesting the trial court to determine whether the Smith Square defendants knew or should have known of the defect that caused Ms. Pierre's injuries and whether

those co-defendants were at fault. The trial court agreed that based on the evidence, the Smith Square defendants were not at fault for Ms. Pierre's damages.

Ms. Pierre alleges in her petition that the Smith Square defendants were strictly liable to her under La. C.C. arts. 2317, 2696 and 2697. She also alleges that the Smith Square defendants were negligent in failing to repair the dangerous condition and in failing to warn her of the condition. Warren sought summary judgment for a determination of the liability of the Smith Square defendants based on La. R.S. 9:3221, which provides:

> Notwithstanding the provisions of Louisiana Civil Code Article 2699, the owner of premises leased under a contract whereby the lessee assumes responsibility for their condition is not liable for injury caused by any defect therein to the lessee or anyone on the premises who derives his right to be thereon from the lessee, unless the owner knew or should have known of the defect or had received notice thereof and failed to remedy it within a reasonable time.

The original tenant of 1309 Smith Square Drive rented the property from October 2005, to August 2009, and never reported any problems with the attic stairs. Ms. Pierre began leasing the property in October 2009, and she signed a lease that shifted the responsibility for the condition of the property and for damages caused by vices or defects to Ms. Pierre with the following language:

> Lessee assumes responsibility for the condition of the premises. Lessor will not be responsible for damage caused ... or any vices or defects of the leased property, or the consequences thereof, except in the case of positive neglect or failure to take action toward the remedying of such defects within reasonable time after having received written notice from Lessee of such defects and the damage caused thereby. Should Lessee fail to promptly so notify Lessor, in writing, of any such defects, Lessee will become responsible for any damage resulting to Lessor or other parties.

Furthermore, Smith Square and Summit entered into a Management Agreement on January 1, 2007, that provided in pertinent part: "Agent assumes no liability whatsoever for any acts or omissions of Owner, or any previous owners of the Premises, or any previous management or other agent of either." Smith Square

and Summit also agreed that Summit did not assume responsibility for the premises.

When the lessee has assumed responsibility for the premises, the lessor may be held responsible only upon showing that the lessor knew of the defect, or should have known of the defect, or had received notice of the defect and failed to remedy it within a reasonable time. La. R.S. 9:3221. *Thomas v. Do,* 2013-0504 (La. App. 1 Cir. 11/1/13), 2013 WL 5915013 (unpublished).

In granting summary judgment in favor of the Smith Square Defendants, the trial court, concluded:

> Based upon the statutory language of La. R.S. 9:3221, the lease agreement between [Ms. Pierre] and Defendant Smith Square Homes shifts responsibility for the condition of the property and for any damage caused by vices or defects therein, to [Ms. Pierre]. As such [Ms. Pierre] must show that Smith Square Homes knew or should have known of the defect in order to establish all elements of her claim under La. Civil Code arts. 2696 and 2697 and a duty on the part of [the Smith Square Defendants]. [Ms. Pierre] has failed to present evidence that [the Smith Square] Defendants had any knowledge or notice of a defect in the attic stairs. Neither Smith Square, nor [Summit], had received any notice or complaints prior to [Ms. Pierre's] accident. Additionally, the apartment building passed the building inspection required for a building permit and also passed inspection for Section 8 Housing.

The evidence in the record is that 1309 Smith Square Drive passed a building inspection conducted on November 5, 2004. The Hammond Housing Authority also inspected 1309 Smith Square Drive in October 2009, prior to Ms. Pierre moving into the property. The Smith Square Defendants had no notice of any defect in the attic stairs prior to Ms. Pierre's accident.

Ms. Pierre opposed the motion for summary judgment and relied on numerous exhibits. The only evidence that could possibly indicate that the Smith Square defendants had knowledge or should have known of the defective condition is contained in an affidavit of Ms. Pierre, which states:

> On at least two occasions, prior to the attic ladder collapse incident, [Summit] employees accessed the attic via the pull-down attic ladder to repair the air conditioner in 1309 Smith Square Drive.

We do not find that the affidavit of Ms. Pierre is evidence that the Smith Square defendants either knew or should have known of the defect. Therefore, we agree with the trial court that Ms. Pierre has failed to present evidence that the Smith Square defendants had any knowledge or notice of a defect in the attic stairs.

We also note that the Smith Square Defendants had no duty to inspect the premises for defects. Relying on *Chau v. Takee Outee of Bourbon, Inc.*, 97-1166 (La. App. 4 Cir. 2/11/98), 707 So. 2d 495, 497-98 (quoting *Gilliam v. Lumbermens Mut. Cas. Co.*, 240 La. 697, 124 So. 2d 913 (La. 1960), this court agreed that La. R.S. 9:3221 "was undoubtedly designed to relieve the owner of some of the burdens imposed upon him by law in cases where he had given dominion or control of his premises to a tenant under a lease." *Stuckey v. Riverstone Residential SC, LP,* 2008-1770 (La. App. 1 Cir. 8/5/09), 21 So. 3d 970, 978, *writ denied,* 2009-2328 (La. 1/8/10), 24 So. 3d 873. Louisiana courts have concluded that the phrase "should have known" in the statute "should not be construed to impose expansive burdens upon the owner lessor," and that "imposing such a duty to inspect would all but completely deny [the owner] the relief granted ... by La. R.S. 9:3221" and would "frustrate the legislative purpose." *Chau,* 21 So. 3d at 498; *Stuckey*, 21 So. 3d at 978; *Jamison v. D'Amico,* 2006-0842 (La. App. 4 Cir. 3/14/07), 955 So. 2d 161, 164-65, *writ denied,* 2007-0764 (La. 6/1/07), 957 So. 2d 179 (concluding a lessor had no duty to inspect the premises, and there was no basis to conclude that he should have known of a defect, because the lease contained a clause shifting responsibility under La. R.S. 9:3221).

There is no evidence that the Smith Square defendants created the condition of the attic stairs, had knowledge of the condition, or had any duty to make any

inspection of the condition. Accordingly, we find that the record supports the trial court's grant of partial summary judgment in favor of Warren on the issue of the Smith Square defendant's liability.

CONCLUSION

For the above and foregoing reasons, we conclude that the June 1, 2016 trial court judgment was improperly designated as final for purposes of appeal; we convert this appeal to an application for supervisory review and we deny the writ. The partial summary judgment in favor of Warren Construction Company, Inc. determining that co-defendants, Smith Square Development, APLIC, d/b/a Smith Square Homes, Summit Apartment Management Company, Inc., and Max Specialty Insurance Company, were not at fault is hereby affirmed. We remand this case to the trial court for proceedings consistent with this opinion. Costs of this appeal are assessed to plaintiff, Ramona Pierre.

APPEAL CONVERTED TO APPLICATION FOR SUPERVISORY WRIT; WRIT DENIED.