

NOT DESIGNATED FOR PUBLICATION

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MJ.

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2016 CA 1179

BLAKE AND COURTNEY FREEMAN, INDIVIDUALLY AND ON BEHALF
OF THEIR MINOR CHILDREN

VERSUS

FON'S PEST MANAGEMENT, INC. AND ABC INSURANCE COMPANY

Judgment rendered: DEC 07 2017

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On Appeal from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
No. 164252

The Honorable Randall L. Bethancourt, Judge Presiding

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Inc., and Certain Underwriters at
Lloyd's of London

BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

HOLDRIDGE, J.

Wells Fargo Bank, N.A., plaintiff and cross-claimant, appeals from a judgment of the trial court granting a motion for summary judgment and dismissing its claim against cross-claim defendants, Fon's Pest Management, Inc., LIPCA, Inc., and Certain Underwriters at Lloyds of London Policy No. LLB-17-17-215000962-02 (collectively, "Fon's") with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

The lawsuit underlying this appeal involved property located in Houma, Louisiana. The property was subjected to a mortgage executed between Blake and Courtney Freeman and Wells Fargo on September 4, 2009. The Freemans filed a lawsuit against Fon's, and its insurer, seeking damages for injuries sustained from termite treatment to their home.¹ On April 10, 2013, the Freemans amended their petition to name Wells Fargo as a defendant.

On or about October 25, 2013, Wells Fargo proceeded to foreclose on the Freemans' home in a separate proceeding.² Thereafter, on April 30, 2014, Wells Fargo filed a cross-claim in this case against Fon's for damaging the Freemans' property and sought a declaratory judgment recognizing its superior right to any and all proceeds of any claim that the Freemans had against Fon's up to the full amount of indebtedness that remained unpaid under the Freemans' mortgage. Fon's answered the cross-claim denying all allegations contained therein.

In response, Fon's filed a motion for summary judgment against Wells Fargo contending that it "ha[d] produced no evidence that Fon's had a duty or

¹ Fon's also filed a motion for summary judgment against the Freemans, which was granted by the trial court and affirmed by this court in the companion case Freeman v. Fon's Pest Management, Inc., 2016-0208 (La. App. 1 Cir. 10/2/17) ____ So.3d ____, ____ (2017 WL 4369175).

² The foreclosure proceedings were stayed pending this litigation.

contract with Wells Fargo or that Fon's breached the standard of care and, thus, Wells Fargo's claim against Fon's should be dismissed as a matter of law." Fon's further contended that no genuine issue of material fact existed regarding liability or causation and that it was entitled to summary judgment dismissing Wells Fargo's claim with prejudice.

On June 22, 2015, the trial court heard arguments from both parties on Fon's motion for summary judgment. On June 26, 2015, the trial court signed a judgment granting Fon's motion for summary judgment and dismissing all of Wells Fargo's claim with prejudice. Wells Fargo then devolutively appealed the June 26, 2015 judgment.³

On March 21, 2016, this Court issued, *ex proprio motu*, a rule to show cause whether the appeal should be dismissed due to the absence of a designation as a final judgment pursuant to La. C.C.P. art. 1915(B). On April 13, 2016, the trial court amended the judgment and designated it as a final judgment. The judgment further provided that "Wells Fargo Bank, N.A.'s cross-claim against Fon's Pest Management, Inc., LIPCA, Inc. and Certain Underwriters at Lloyds, London Syndicate are all DISMISSED WITH PREJUDICE[.]" The judgment was also designated as a final judgment pursuant to La. C.C.P. art. 1915(B). From this judgment, Wells Fargo now appeals asserting the following two assignments of error:

- I. The Trial Court erred in ruling that Wells Fargo cannot state a cause of action against Fon's because no privity of contract exists between Wells Fargo and Fon's, given that Louisiana jurisprudence expressly provides that a mortgagee can maintain a cause of action against a third party for damages to property which impair the mortgagee's interest in that property.

³ On May 31, 2016, this Court dismissed Wells Fargo's appeal of the June 26, 2015 judgment as untimely.

II. The Trial Court erred in granting Fon's Motion for Summary Judgment because Wells Fargo provided evidence that the Property was deemed "unfit to occupy" and "environmentally compromised" after it was treated for termites by Fon's, which refutes Fon's contention that it did not breach the standard of care of a Louisiana pest control operator in its treatment of the Property, thereby creating genuine issues of material fact precluding summary judgment.⁴

DISCUSSION

On appeal, Wells Fargo raises several issues for review regarding the merits of its claim. However, we do not address these issues. Instead, we address the appropriate question for this appeal: whether Wells Fargo's appeal is moot. An issue is moot when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." In re E.W., 2009-1589 (La. App. 1 Cir. 5/7/10), 38 So.3d 1033, 1037. Thus, a case is moot when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. In re E.W., 2009-1589 (La. App. 1 Cir. 5/7/10), 38 So.3d 1033, 1036. If the case is moot, there is no subject matter on which the judgment of the court can operate. That is, jurisdiction, once established, may abate if the case becomes moot. The controversy must normally exist at every stage of the proceeding, including appellate stages. Stevens v. St. Tammany Parish Government, 2016-0197 (La. App. 1 Cir. 1/18/17), 212 So.3d 562, 566-67.

In the instant matter, Wells Fargo's claim is moot in light of the disposition in Freeman, 2017 WL 4369175, at *10. All of the legal questions arising from the controversy between Wells Fargo and Fon's became moot, abstract, or hypothetical upon the dismissal of the Freeman's original claim against Fon's in

⁴ We note that although this appeal is deemed moot, Wells Fargo has failed to brief its second assignment of error. Wells Fargo only restates its second assignment of error in the body of the brief. Therefore, we regard Wells Fargo's second assignment of error as abandoned. *See* Uniform Rules, Louisiana Courts of Appeal, Rule 2-12.4(B)(4); State v. Sealey, 2016-1389 (La. App. 1 Cir. 4/12/17) 2017 WL 1376469 *10.

Freeman, 2017 WL 4369175, at *10. The basis of the claim in which Well Fargo sought relief in this matter was that Fon's damaged the property of the Freemans and, in turn, damaged the security interest of Wells Fargo. However, once the Freemans' property claim against Fon's was dismissed, Wells Fargo's contingent claim was also extinguished in that it sought the same property damages from Fon's and further requested that it receive preference over the Freemans for any amount which may have been awarded to the Freemans up to the amount owed to Wells Fargo. Thus, Wells Fargo claimed it was entitled to relief in the instant matter based upon the damages which would be awarded to the Freemans, which damage claim has been dismissed.⁵ See Freeman, 2017 WL 4369175, at *10. Because the Freemans' property claim against Fon's has been dismissed, Wells Fargo's claim for any property damages from Fon's or to be paid in preference to the Freemans no longer exists and this proceeding is deemed moot. See Council of City of New Orleans v. Sewerage And Water Bd. of New Orleans, 2006-1989 (La. 4/11/07) 953 So.2d 798, 800-01.

Even though the requirements of justiciability are satisfied when the suit is initially filed, when the fulfillment of these requirements lapses at some point during the course of litigation before the moment of final disposition, mootness occurs. In such a case, there may no longer be an actual controversy for the court to address, and any judicial pronouncement on the matter would be an impermissible advisory opinion. See City of Hammond v. Parish of Tangipahoa, 2007-0574 (La. App. 1 Cir. 3/26/08) 985 So.2d 171, 178 (citing Cat's Meow, Inc. v. City of New Orleans Through Department of Finance, 98-0601 (La. 10/20/98) 720 So.2d 1186, 1193-94). We find that any opinion in the instant matter would be

⁵ Summary judgment was granted in Fon's favor and the Freemans original claim against Fon's were dismissed with prejudice. See Freeman, 2017 WL 4369175, at *10.

purely advisory, and rendition of such opinions is reprobated by law. Accordingly, we conclude that Wells Fargo's claim is moot.

CONCLUSION

For the above reasons, Wells Fargo's appeal of the April 13, 2016 is hereby dismissed as moot. Costs of the appeal are assessed against Wells Fargo Bank, N.A.

APPEAL DISMISSED.