NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 CA 1611

JOHN RIVER CARTAGE, INC.

VERSUS

LOUISIANA GENERATING, LLC, ET AL.

Judgment Rendered: DEC 19 2018

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Appealed from the
18th Judicial District Court
In and for the Parish of Pointe Coupee, Louisiana
Trial Court Number 44,406

Honorable Alvin Batiste, Jr., Judge

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

Chutz J. concurs and assigns reasons

WELCH, J.

The plaintiff, John River Cartage, Inc. ("JRC"), appeals a judgment in favor of the defendants, NRG Energy, Inc. ("NRG"); Louisiana Generating LLC ("LaGen"); and Headwaters Resources, Inc. ("HRI"), sustaining a partial peremptory exception raising the objection of no cause of action and dismissing, with prejudice, the anti-trust claims alleged in JRC's first amended master petition.[1] Because we find that the trial court improperly sustained a partial exception of no cause of action, we reverse the judgment of the trial court. In addition, since the judgment on appeal was premised on an earlier judgment of the trial court that also improperly sustained a partial exception of no cause of action, and dismissed, without prejudice, JRC's anti-trust claims set forth in its master petition, we vacate the earlier judgment and remand with instructions for further proceedings.

FACTUAL BACKGROUND[2]

In 1981, Cajun Electric Power Cooperative ("Cajun Electric") began operating Big Cajun II, a coal-fired electric utility plant in New Roads, Louisiana. Cajun Electric filed for Chapter 11 bankruptcy in 1994, and in October 1999, the bankruptcy court issued an order approving the sale of Big Cajun II to NRG and its wholly owned subsidiary, La/Gen (collectively "NRG/LaGen").

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[1] Generally, a judgment sustaining an exception in part is not a final judgment (and thus, is not immediately appealable) unless it is designated as a final judgment by the trial court after an express determination that there is no just reason for delay. See La. C.C.P. art. 1915(B). In this case, the judgment on appeal sustained an exception in part and does not contain the requisite designation pursuant to La. C.C.P. art. 1915(B); however, the judgment dismissed JRC's anti-trust claims, and La. R.S. 51:134-135 specifically authorizes the immediate appeal of such judgments.

[2] The factual background set forth herein is derived from allegations set forth in the plaintiff's various petitions, as the issue presented by this appeal pertains to a peremptory objection raising the objection of no cause of action, which requires us to accept all well-pleaded allegations of fact as true. See **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1235 (La. 1993); **City of New Orleans v. Board of Commissioners of Orleans Levee District**, 93-0690 (La. 7/5/94), 640 So.2d 237, 241.

As a result of burning coal in its steam-generating boilers, Big Cajun II produces coal combustion products ("CCPs"). Bottom ash and fly ash are two varieties of CCPs. Bottom ash is a coarse, angular ash particle that is too large to be carried up into the smoke stacks, so it forms in the bottom of the coal furnace. Fly ash is a very fine powdery material composed mostly of silica made from the burning of finely ground coal in a boiler. Fly ash is a valuable waste by-product/commodity sold to the concrete manufacturing industry because it acts as an additive or substitute ingredient for Portland cement and possesses chemical properties that allow the material to harden once exposed to water. Fly ash is also used in other applications, such as fill material for structural applications and embankments; an ingredient in waste stabilization and/or solidification; an ingredient in soil modification and/or stabilization; a component in road bases, sub-bases, and pavement; and a mineral filler in asphalt.

Big River Industries, Inc. ("Big River") exclusively marketed and sold the CCPs generated at Big Cajun II throughout south Louisiana during Cajun Electric's ownership of Big Cajun II. In 1998, Big River, in its ongoing efforts to sell excess CCPs, entered into a contract of sale with JRC. Big River sold Big Cajun II's excess CCPs to JRC at a discounted rate. JRC received the discounted rate because the material did not sell in the open market and JRC had to expend additional capital in manufacturing the CCPs into its final retail product, Grey Stone, which is a stone-like aggregate material made from hydrating and hardening a proprietary blend of Big Cajun II's CCPs. JRC sold Grey Stone for structural applications, embankments, soil stabilization projects, road bases, sub-bases, and pavement.

The contract between Big River and JRC allowed JRC to operate its Grey Stone manufacturing processes at Big Cajun II and to stockpile its Grey Stone inventory at Big Cajun II. JRC expended considerable money to manufacture Grey

Stone in terms of structures, sorting equipment, human labor, and heavy equipment, and JRC treated its stockpiled Grey Stone as its corporate inventory/assets for all state and federal income tax purposes. In addition, the contract between Big River and JRC expressly prohibited JRC from re-selling the fly ash (since Big River exclusively marketed the fly ash), unless JRC obtained Big River's prior approval. The contract between Big River and JRC also expressly provided that ownership of the CCPs transferred to JRC once JRC removed the CCPs from Big Cajun II's storage silos and/or storage ponds for manufacturing purposes; however, the contract did not require final payment by JRC until after JRC's Grey Stone product left the plant premises and was weighed on Big Cajun II's plant scales.

Following the bankruptcy sale of Big Cajun II to NRG/LaGen in October 1999, NRG/LaGen contracted with Big River for the continued marketing and sale of CCPs generated at Big Cajun II and NRG/LaGen expressly permitted JRC to continue to operate its Grey Stone business (*i.e.*, the manufacturing, storage, and sale of Grey Stone) on Big Cajun II's premises. However, on January 20, 2011, NRG/LaGen terminated its contract with Big River and entered into an "Exclusive Marketing Agreement" with HRI ("the January 20, 2011 agreement").

On February 1, 2011, Big River notified JRC that the contract between Big River and NRG/LaGen had not been renewed and informed JRC that it had twenty days to remove its equipment and materials from the premises. JRC then contacted NRG/LaGen about removing its stockpiled Grey Stone material and was advised that its Grey Stone material was made a part of NRG/LaGen's new contract with HRI and that HRI had the exclusive right to market and sell JRC's inventory of Grey Stone. JRC then contacted HRI and was informed that HRI would not allow JRC to remove its Grey Stone inventory from the premises of Big Cajun II. Given the time frame JRC was required to exit Big Cajun II's premises, JRC left the

premises of Big Cajun II without its Grey Stone inventory. In addition, JRC had to hire a scrap metal company to dismantle JRC's buildings and equipment in exchange for the value of the scrap metal itself.

Notably, in 2011, there were three electric generating companies that produced nearly all of the CCPs and related products in Louisiana: (1) CLECO Power, LLC ("CLECO"), which owned and operated two coal-fired power plants—namely Dolet Hills (also known as Rodemacher 2) and Brame Energy Center (also known as Madison 3); (2) Entergy Gulf States-LA, LLC ("Entergy"), which owned and operated RS Nelson 6 in Westlake, Louisiana; and (3) NRG/LaGen, which owned and operated Big Cajun II. Prior to January 20, 2011, HRI possessed the exclusive marketing agreements with CLECO and Entergy for the sale of CCPs generated at their respective electric power plants in the Louisiana marketplace. HRI did not directly purchase and store the CCPs from CLECO and Entergy for resale; rather, CLECO, Entergy, and HRI each shared in a fixed percentage of the revenues generated for each company's respective contribution of products, labor, and services to the overall joint venture. Thus, prior to January 20, 2011, the joint venture by CLECO, Entergy, and HRI directly competed against Big River and NRG/LaGen for CCPs and related products sales in the Louisiana market.

Following JRC's exit from Big Cajun II's premises, JRC discovered that as early as August 2007, HRI began actively recruiting NRG/LaGen to join in its joint venture with Entergy and CLECO for the purpose of stabilizing and increasing prices through a monopolization of Louisiana's market for CCPs and related products. At that time, HRI was involved with five of seven electric plants owned and operated by NRG/LaGen; however, Big Cajun II was not one of those plants. In February 2010, HRI continued to seek the exclusive marketing agreement for the CCPs generated by Big Cajun II, and then on January 20, 2011, pursuant to the

January 20, 2011 agreement, NRG/LaGen awarded HRI the exclusive marketing rights for Big Cajun II's CCPs.

The January 20, 2011 agreement provided for a 50%/50% revenue sharing from the sale of all fly ash produced at Big Cajun II. In addition, pursuant to the January 20, 2011 agreement, HRI sold JRC's stockpiled Grey Stone inventory at a retail price below JRC's retail price. Furthermore, immediately after executing the January 20, 2011 agreement, HRI significantly increased prices on CCPs generated at Big Cajun II. Pursuant to the January 20, 2011 agreement, HRI obtained total control over the supply of CCPs generated in Louisiana and has steadily increased its prices. HRI continues to market and sell Big Cajun II's CCPs to the present day.

PROCEDURAL HISTORY

On January 25, 2012, JRC filed a petition seeking damages from HRI, NRG, and LaGen. Initially, JRC's claim for damages—both compensatory and treble—was based on the alleged wrongful conversion and conspiracy to commit conversion of JRC's stockpiled Grey Stone and for alleged violations of the Louisiana Unfair Trade Practices and Consumer Protection Law ("LUTPA"), La. R.S. 51:1401, *et seq.* However, after engaging in discovery, JRC subsequently filed a first supplemental petition to add allegations that HRI, NRG, and LaGen violated Louisiana's anti-trust laws, La. R.S. 51:122 and 51:123, and that they were solidarily liable for JRC's damages because of their joint venture.

In response to the first supplemental petition for damages, HRI filed a peremptory exception raising the objection of no cause of action, arguing that the first supplemental petition failed to state a cause of action under Louisiana anti-trust law. More specifically, HRI maintained that JRC failed to plead facts

establishing the existence of an agreement that restrained trade. However, the hearing on the objection of no cause of action was passed without date.[3]

On March 29, 2017, JRC filed a second amended petition to specifically allege that the agreement between HRI and NRG/LaGen constituted a horizontal conspiracy or agreement that violated Louisiana's anti-trust law by restraining trade because it restricted the supply of CCPs to the South Louisiana marketplace and unreasonably drove up customer prices.[4] Thereafter, HRI's peremptory exception raising the objection of no cause of action was reset. After a hearing on May 31, 2017, the trial court sustained the objection of no cause of action as to JRC's first amended petition and granted JRC thirty days to amend its factual allegations with respect to its restraint of trade claims.

Thereafter, JRC requested and was granted permission to file a "superseding" master petition in order to thoroughly outline, in detail, its anti-trust claims. On August 18, 2017, JRC filed its master petition for damages, which

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[3] HRI also filed a motion for summary judgment seeking the dismissal of all of JRC's claims against it, as set forth in both the original and first supplemental petition for damages on the basis that the conversion claims were barred based on JRC's lack of ownership and that its anti-trust claims were barred by *res judicata* and prescription. NRG and LaGen subsequently joined HRI in that motion for summary judgment, and also filed their own motion for partial summary judgment seeking the dismissal of the anti-trust claims on the basis that there was a lack of horizontal conspiracy or agreement to restrain trade, and thus, no violation of Louisiana's anti-trust law. HRI then joined NRG and LaGen in their motion for partial summary judgment seeking the dismissal of the anti-trust claims. However, like the hearing on the objection of no cause of action, the hearing on the motions for summary judgment and partial summary judgment were passed without date.

[4] As previously noted, JRC's anti-trust claims were based on allegations that HRI and NRG/LaGen violated Louisiana's anti-trust laws, *i.e.*, La. R.S. 51:122 and 51:123. Louisiana Revised Statutes 51:122(A) provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in this state is illegal." Additionally, La. R.S. 51:123 provides, in pertinent part, that "[n]o person shall monopolize, or attempt to monopolize, or combine, or conspire with any other person to monopolize any part of the trade or commerce within this state."

In analyzing an agreement to restrain trade, the first step is to determine whether the agreement should be categorized as horizontal or vertical. A horizontal conspiracy is an agreement between competitors that restrains trade at the same level of distribution, and such agreements are generally considered *per se* violations of anti-trust law. A vertical conspiracy is imposed by persons at different levels of distribution, usually by one higher up in the distribution chain than the party restrained. When a plaintiff alleges a vertical conspiracy, the plaintiff must show that the restraint of trade violates the "rule of reason." **Van Hoose v. Gravois**, 2011-0976 (La. App. 1st Cir. 7/7/11), 70 So.3d 1017, 1022; see also **Plaquemine Marine, Inc. v. Mercury Marine**, 2003-1036 (La. App. 1st Cir. 7/25/03), 859 So.2d 110, 117-118.

sought compensatory and treble damages from HRI and NRG/LaGen due to their (1) wrongful conversion and conspiracy to commit conversion of JRC's stockpiled inventory of Grey Stone; (2) violations of LUTPA; and (3) violations of Louisiana's anti-trust law, including (a) an agreement or contract to restrain trade in coal combustion products (CCP) and related products marketed in Louisiana in violation of La. R.S. 51:122 and (b) a conspiracy to monopolize CCP and related products marketed in Louisiana in violation of La. R.S. 51:123.[5] In response to the master petition, HRI and NRG/LaGen each filed answers generally denying the allegations of the master petition and asserting affirmative defenses, and also filed peremptory exceptions raising the objections of no cause of action seeking the dismissal of the anti-trust claims with prejudice. More specifically, HRI filed its objection of no cause of action "with respect to two of the four claims in [JRC's master petition]—the anti[-]trust claims under [La.] R.S. 51:122 and [La.] R.S. 51:123." Likewise, NRG/LaGen asserted its objection of no cause of action relating only to JRC's anti-trust claims under La. R.S. 51:122 and 51:123.

JRC subsequently filed a motion for partial summary judgment on the issues of *per se* anti-trust mode of analysis and joint venture,[6] and in support thereof,

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[5] The expert report of John P. Bigelow, Ph.D., an anti-trust economics expert, was attached to the master petition.

[6] In its motion for summary judgment, JRC asserted that there was no genuine issue of material fact and that it was entitled to judgment as a matter of law on the issue of whether the *per se* anti-trust mode of analysis was applicable to its anti-trust claim. See footnote 5. JRC maintained that HRI entered into separate joint ventures for the sale of CCPs with Louisiana's three coal fired electric plant owners: NRG/LaGen, Entergy, and CLECO, and consequently, HRI invited NRG/LaGen to join in a horizontal price-fixing and market allocation cartel as a horizontal competitor, thereby resulting in a horizontal restraint of trade requiring the application of the *per se* anti-trust mode of analysis. Alternatively, JRC maintained that Louisiana's three coal-fired electric plant owners delegated pricing, ordering, and production/market allocation authority to a common and exclusive sales agency (*i.e.*, HRI) with the known and express purpose of fixing and stabilizing CCP commodity prices, thereby resulting in a horizontal restraint of trade requiring application of the *per se* anti-trust mode of analysis. And in the last alternative, JRC maintained that HRI and Louisiana's three coal-fired electric plant owners entered into a hub-and-spoke conspiracy to fix and stabilize CCP commodity prices, thereby resulting in a horizontal restraint of trade requiring application of the *per se* anti-trust mode of analysis.

relied on the affidavit and expert report of John P. Bigelow, Ph.D., an anti-trust economics expert.[7]

After a hearing, by judgment signed on May 2, 2018, the trial court sustained the objections of no cause of action filed by HRI and NRG/LaGen "related to all anti-trust claims under La. R.S 51:122 and 51:123" and dismissed, without prejudice, all such claims, subject to JRC's right to re-file its petition within thirty days, and in JRC's default thereof, all such claims were dismissed with prejudice. In addition, the trial court denied, as moot, JRC's motion for partial summary judgment.

On May 10, 2018, JRC filed its first amended master petition for damages to add additional allegations with respect to its anti-trust claims and injuries. Again, HRI and NRG/LaGen each responded by filing peremptory exceptions raising the objection of no cause of action seeking the dismissal of the anti-trust claims under La. R.S. 51:122 and 51:123. After a hearing and by judgment signed on October 25, 2018, the trial court sustained the objections of no cause of action and dismissed, with prejudice, the anti-trust claims alleged in JRC's first amended master petition. From this judgment, JRC has appealed.

NO CAUSE OF ACTION

The function of the peremptory exception raising the objection of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy based on the facts alleged in the pleading. **Everything on Wheels Subaru, Inc. v. Subaru South, Inc.**, 616 So.2d 1234, 1235 (La. 1993). No evidence may be introduced to support or controvert the objection of no cause of action. La. C.C.P. art. 931. Therefore, the court reviews the petition and accepts well-pleaded allegations of fact as true. **Everything on Wheels Subaru,**

[7] NRG/LaGen filed an opposition to JRC's motion for partial summary judgment with supporting documents; however, the record before us does not contain an opposition filed by HRI.

Inc., 616 So.2d at 1235. Furthermore, the facts shown in any annexed documents must also be accepted as true. **Cardinale v. Stanga**, 2001-1443 (La. App. 1st Cir 9/27/02), 835 So.2d 576, 578. If the allegations of the petition state a cause of action as to any part of the demand, the exception must be overruled. **Pitre v. Opelousas General Hospital**, 530 So.2d 1151, 1162 (La. 1988). An appellate court conducts a *de novo* review of a trial court's ruling sustaining a peremptory exception raising the objection of no cause of action because the exception raises a question of law and the trial court's decision is based only on the sufficiency of the petition. **Industrial Companies, Inc. v. Durbin**, 2002-0665 (La. 1/28/03), 837 So.2d 1207, 1213.

As previously noted, in the October 25, 2018 judgment on appeal, the trial court sustained the objection of no cause of action with respect to JRC's anti-trust claims alleged in JRC's first amended master petition; however, the judgment did not dismiss JRC's claims against HRI and/or NRG/LaGen that were based on conversion or on violations of LUTPA. Hence, the judgment on appeal is a judgment partially sustaining a peremptory exception raising the objection of no cause of action.

Generally, an exception of no cause of action should not be maintained in part; the purpose of this general rule is to prevent a multiplicity of appeals that forces an appellate court to consider the merits of the action in a piecemeal fashion. **Everything on Wheels Subaru, Inc.**, 616 So.2d at 1236. If there are two or more items of damages or theories of recovery that arise out of the operative facts of a single transaction or occurrence, a partial judgment on an exception of no cause of action should not be rendered to dismiss an item of damages or theory of recovery. **Everything on Wheels Subaru, Inc.**, 616 So.2d at 1239. In such a case, there is truly only one cause of action, and a judgment partially maintaining the exception is generally inappropriate. *Id.* However, if two or more actions are cumulated that

could have been brought separately because they were based on operative facts of separate and distinct transactions or occurrences, a partial judgment may be rendered to dismiss one action on an exception of no cause of action, while leaving the other actions to be tried on the merits. *Id.* In such a case, there are truly several causes of action, and a judgment maintaining the exception as to one separate and distinct cause of action is generally appropriate. *Id.*

Thus, in considering an exception of no cause of action in multi-claim litigation in which the court might rule in favor of the exceptor on less than all claims or on the rights of less than all parties, the court must first determine whether (1) the petition asserts several demands or theories of recovery based on a single cause of action arising out of one transaction or occurrence; or (2) the petition is based on several separate and distinct causes of action arising out of separate and distinct transactions or occurrences. **Everything on Wheels Subaru, Inc.**, 616 So.2d at 1242. If the former, then the court should overrule the exception of no cause of action when the petition states a cause of action as to any demand or theory of recovery; if the latter, then the court should maintain the exception in part. *Id.*

In this case, JRC's claims against the defendants are based on the operative facts culminating in the January 20, 2011 agreement between HRI and NRG/LaGen and the effects of that agreement. Based on the facts alleged, JRC asserts that it is entitled to damages from HRI and NRG/LaGen based on three distinct possible theories of recovery—wrongful conversion (and conspiracy to commit conversion), violations of LUTPA, and violations of anti-trust law, *i.e.*, La. R.S. 51:122 and 51:123. The defendants do not maintain or dispute that JRC's master petition—both original and amended—has stated a cause of action for conversion or for violations of LUTPA; rather, they only argue that JRC has failed to state a cause of action for violations of anti-trust law. However, based on our *de*

novo review of JRC's master petitions, we find that JRC's claims against HRI and NRG/LaGen for conversion, violations of LUTPA, and violations of anti-trust law, arise out of the same operative facts of a single transaction or occurrence—*i.e.*, the January 20, 2011 agreement.

Therefore, since there is no dispute that JRC has asserted a cause of action for damages for conversion and violations of LUTPA, we must conclude that a judgment maintaining an exception of no cause of action in part with respect to JRC's anti-trust claims was clearly improper. The exception of no cause of action should have been overruled; therefore, we reverse the October 25, 2018 judgment of the trial court. In accord **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2015-1260 (La. App. 1st Cir. 9/23/15), 182 So.3d 1009, 1016 (in an action involving a claim for violations of anti-trust law as well as conspiracy to commit fraud, conspiracy to commit tortious interference with a contract, and conspiracy to convert confidential business information, the trial court correctly overruled a partial exception of no cause of action with respect to the claim for violations of anti-trust law because the allegations in the petition, when taken as true, established a cause of action and "only one cause of action need be established in order to overrule an exception of no cause of action ....").

In addition, we note that the October 25, 2018 judgment was premised on the May 2, 2018 judgment, which also sustained a partial exception of no cause of action relating to JRC's anti-trust claims under La. R.S. 51:122 and 51:123, as set forth in its master petition and dismissed, without prejudice, all such claims, subject to JRC's right to re-file its petition within thirty days, and in JRC's default thereof, all such claims were dismissed. Therefore, for the same reason that we find the October 25, 2018 judgment improperly sustained a partial objection of no cause of action, we likewise find that the May 2, 2018 judgment was an improper sustaining of a partial objection of no cause of action. Therefore, we vacate the

May 2, 2018 judgment of the trial court. See La. C.C.P. art. 2164; see also **State ex rel. Caldwell v. Takeda Pharmaceuticals America, Inc.**, 2017-0498 (La. App. 1st Cir. 10/3/18)(*unpublished*) (wherein this Court, pursuant to La. C.C.P. art. 2164, vacated an earlier judgment of the trial court that was not the judgment on appeal because the earlier judgment resulted in the subsequent assertion of and improper sustaining of a partial objection of no cause of action).

Lastly, we note that the May 2, 2018 judgment of the trial court also denied, as moot, JRC's motion for partial summary judgment. Since all of the trial court's rulings with respect to the objections of no cause of action filed by HRI and NRG/LaGen have been reversed or vacated herein, JRC's motion for partial summary judgment on the issues of *per se* anti-trust mode of analysis and joint venture are ripe for judicial determination. Therefore, we remand this matter to the trial court with instructions that it consider and rule on JRC's motion for partial summary judgment in accordance with the procedures set forth in La. C.C.P. art. 966 and 967.

CONCLUSION

For all of the above and foregoing reasons, we find that the trial court improperly sustained a partial objection of no cause of action and therefore, the October 23, 2018 judgment of the trial court sustaining the peremptory exceptions raising the objections of no cause of action filed by NRG Energy, Inc.; Louisiana Generating LLC; and Headwaters Resources, Inc. and dismissing, with prejudice, John River Cartage, Inc.'s anti-trust claims set forth in its first amended master petition, is reversed. Additionally, the May 2, 2018 judgment of the trial court sustaining a partial exception of no cause of action filed by NRG Energy, Inc.; Louisiana Generating LLC; and Headwaters Resources, Inc., which related to John River Cartage, Inc.'s anti-trust claims under La. R.S. 51:122 and 51:123, as set forth in its master petition and dismissing, without prejudice, all such claims,

subject to John River Cartage, Inc.'s right to re-file its petition within thirty days, and in default thereof, all such claims were dismissed, is vacated. This matter is remanded to the trial court with instructions for further proceedings.

All costs of this appeal are assessed to the defendants/appellees, NRG Energy, Inc.; Louisiana Generating LLC; and Headwaters Resources, Inc.

OCTOBER 23, 2018 JUDGMENT REVERSED; MAY 2, 2018 JUDGMENT VACATED; REMANDED WITH INSTRUCTIONS.

JOHN RIVER CARTAGE

VERSUS

LOUISIANA GENERATING, LLC, ET AL.

FIRST CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

NO. 2018 CA 1611

WRC by FLW

CHUTZ, J., concurring.

I disagree with the majority's conclusion that it is necessary to vacate the trial court's May 2, 2018 judgment. Nevertheless, I respectfully concur with the result reached by the majority because I believe the May 2, 2018 judgment was an interlocutory, conditional judgment since the trial court made the dismissal subject to the plaintiff's right to file another petition. Therefore, once the plaintiff's amended petition was filed, I believe the May 2, 2018 judgment was moot and of no effect, making it unnecessary for this court to vacate it.