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STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2019 CA 1516

DODSON & HOOKS, APLC

VERSUS

THE LOUISIANA COMMUNITY DEVELOPMENT CAPITAL
FUND, INC. "CAPFUND"

CONSOLIDATED WITH

2019 CA 1517

THE LOUISIANA COMMUNITY DEVELOPMENT CAPITAL
FUND, INC. "CAPFUND"

VERSUS

DODSON & HOOKS, APLC

DATE OF JUDGMENT: **DEC 30 2020**

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBERS 642674 AND 652673, SECTION 27,
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE TODD W. HERNANDEZ, JUDGE

Alan W. Stewart
James H. Gibson
Michael O. Adley
Lafayette, Louisiana
Kenneth Henry Hooks, III
Baton Rouge, Louisiana

Counsel for Plaintiff/Defendant-
in-Reconvention – Appellee
Dodson & Hooks, APLC

Ernest L. Johnson
Arthur R. Thomas

Counsel for Defendant/Plaintiff-in-
Reconvention – Appellant

McDonald, J. concurs

Baton Rouge, Louisiana

Alfreda Tillman Bester
Baton Rouge, Louisiana

Louisiana Community Development
Capital Fund, Inc. "CAPFUND"

* * * * *

BEFORE: McDONALD, THERIOT, AND CHUTZ, JJ.

Disposition: REVERSED AND REMANDED.

CHUTZ, J.

Plaintiff-in-reconvention/appellant, Louisiana Community Development Capital Fund, Inc. (“Capfund”), appeals the June 28, 2018 judgment of the trial court rendered in favor of Defendant-in-reconvention/appellee, Dodson & Hooks, APLC (“Dodson & Hooks”), sustaining Dodson & Hooks’ peremptory exception of no cause of action as to Capfund’s reconventional demand and dismissing Capfund’s reconventional demand with prejudice. For the following reasons, we reverse the June 28, 2018 judgment and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

Dodson & Hooks, a law firm, and Capfund entered into an attorney-client contract. On February 9, 2015, Dodson & Hooks filed an arbitration proceeding with the American Arbitration Association on behalf of Capfund against CB&I Government Solutions, Inc. f/k/a Shaw Environmental & Infrastructure, Inc. (“CB&I”) for the payment of outstanding invoices in the amount of \$280,000.00. CB&I filed a counterclaim against Capfund in the arbitration proceeding. On or about September 18, 2015, CB&I directly paid Capfund \$207,934.91 as payment for the outstanding invoices.

Thereafter, Dodson & Hooks requested payment of its costs and fees from Capfund. Capfund refused to pay Dodson & Hooks, claiming no attorney fees were due to Dodson & Hooks from the CB&I payment, as they had not been earned *via* the arbitration proceeding. In response, Dodson & Hooks withdrew from its representation of Capfund and gave notice that it was asserting all rights under the attorney-client contract for fees and costs. Additionally, on November 5, 2015, Dodson & Hooks sent a letter to the American Arbitration Association,

requesting that a copy of its attorney-client contract with Capfund be filed into the arbitration record to assert its attorney fee lien.¹

On November 17, 2015, in the arbitration proceeding, CB&I made a \$10,000 settlement offer to Capfund in exchange for a full release from Capfund and Dodson & Hooks. Dodson & Hooks refused to release any claims it had against Capfund for attorney fees and costs. Capfund and CB&I were unable to reach a settlement of CB&I's claims, which proceeded to arbitration. CB&I succeeded on its counterclaim and was awarded \$83,156.82 in attorney fees and costs against Capfund.

On September 30, 2015, Dodson & Hooks filed a Petition to Enforce Contract, for Damages and for Writ of Sequestration against Capfund in the 19th Judicial District Court, bearing suit number 642,674 and seeking the sum of \$98,705.24, together with attorney fees, expenses, and costs. As requested, a sequestration order was issued, sequestering \$98,705.24 from Capfund's bank account(s).

In light of an arbitration provision in the attorney-client contract Dodson & Hooks filed a separate arbitration claim for attorney fees and costs against Capfund. On March 24, 2016, the arbitrator found Dodson & Hooks' claimed fee was excessive and awarded it \$25,000 in attorney fees and \$9,100 in reimbursement of expenses. Dodson & Hooks filed a Motion to Set Aside Award of Arbitration with the trial court. On October 14, 2016, the trial court held a hearing and set aside the arbitrator's award, ruling the arbitrator exceeded its lawful authority in limiting Dodson & Hooks' presentation of material evidence in support of its claim for attorney fees.

¹ In its transmittal letter, Dodson & Hooks stated that while it had not been allowed to intervene in the arbitration proceeding, they had been granted permission to be involved in discovery.

On November 4, 2016, Capfund filed its own Petition for Damages against Dodson & Hooks in the 19th Judicial District Court, bearing suit number 652,673 and seeking damages for the “wrongful and unlawful filing of a lien by the defendant [Dodson & Hooks] in an arbitration proceeding in which defendant [Dodson & Hooks] was not a party.” Capfund attached several exhibits to its petition, including a copy of the attorney-client contract. On Capfund’s motion, the cases were consolidated on May 22, 2017.

In response to Capfund’s lawsuit, Dodson & Hooks filed a peremptory exception of no cause of action. The trial court sustained the exception of no cause of action but allowed Capfund to amend its petition to state a valid cause of action against Dodson & Hooks. In sustaining the exception, the trial court found as follows:

[T]he law fails to provide a cause of action or remedy against the [defendant Dodson & Hooks] as asserted in the petition for damages filed by this plaintiff [Capfund]. The plaintiff’s [Capfund’s] petition asserts that its cause of action arises out of the defendant’s [Dodson & Hooks’] unlawful and/or wrongful filing of a lien in the arbitration proceeding and that this conduct prevented a favorable settlement. The law specifically authorized the [defendant Dodson & Hooks] to pursue the protection of their rights and/or privilege by filing its lien in the arbitration proceeding.

Capfund filed its amending petition on October 2, 2017, again seeking damages from Dodson & Hooks “for wrongfully and unlawfully interfering in the arbitration suit [by Capfund against CB&I] by filing and recording a lien ... therein in bad faith and/or with malice.” Capfund also filed an answer and reconventional demand in Dodson & Hooks’ suit alleging that the privilege asserted by Dodson & Hooks did not exist because no attorney fees had been earned. Capfund attached to the answer and reconventional demand copies of the arbitrator’s award in favor of CB&I and the award of attorney fees and costs to CB&I in the amount of \$83,156.82, a copy of the 19th Judicial District Court judgment, dated July 18,

2016, confirming the arbitration award in favor of CB&I, and emails and correspondence between Capfund and Dodson & Hooks.

Dodson & Hooks filed a second peremptory exception objecting that Capfund failed to state a cause of action in its principal demand. Additionally, on November 22, 2017, Dodson & Hooks filed a peremptory exception asserting that Capfund's reconventional demand failed to state a cause of action. Dodson & Hooks attached to the exception Capfund's answer and reconventional demand and several of the exhibits attached thereto, the attorney-client contract, and the trial court's ruling on Dodson & Hooks' first exception of no cause of action. Dodson & Hooks sought to offer these exhibits in support of the exception.

At a hearing on January 30, 2018, Capfund objected to the introduction into evidence of all the exhibits attached to the exception of no cause of action filed by Dodson & Hooks with respect to the reconventional demand. The trial court took the matter under advisement. On April 5, 2018, the trial court sustained the exceptions of no cause of action. In its ruling, the trial court determined that, pursuant to the attorney-client contract, Dodson & Hooks had "the unquestionable right to assert a lien for nonpayment of attorney fees that they feel [are] lawfully owed to them." The trial court further noted it did "not find that the law affords to Capfund a remedy to sue for the claims ... which [it has] asserted in [its] principal demand and reconventional demand."

In conformity with its ruling, the trial court signed a judgment on June 28, 2018, dismissing Capfund's reconventional demand, with prejudice, and signed a separate judgment on July 23, 2018, dismissing Capfund's principal demand, with prejudice. Capfund now appeals the June 28, 2018 judgment that dismissed its reconventional demand, asserting the trial court erred in sustaining Dodson &

Hooks' exception of no cause of action.² Capfund assigns as error: (1) the trial court's finding that Capfund is not afforded a remedy for the claims it asserted in the reconventional demand; (2) the trial court's consideration of evidence not in the record; (3) the trial court's finding that Dodson & Hooks had the right to assert a lien for nonpayment of unearned attorney fees pursuant to the attorney-client contract; (4) the trial court's finding that Capfund did not have the right to file a reconventional demand for wrongful malicious breach of contract and issuance of a writ of sequestration; and (5) the trial court allowing certain evidence into the record over Capfund's objection.

DISCUSSION

The purpose of an exception raising the objection of no cause of action is to determine the sufficiency in law of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. **Calloway v. Lobrano**, 2016-1170 (La. App. 1st Cir. 4/12/17), 218 So.3d 644, 648. For purposes of the exception, the well-pleaded facts in the petition must be accepted as true. **City of New Orleans v. Board of Commissioners of Orleans Levee District**, 93-0690 (La. 7/5/94), 640 So.2d 237, 241; *see* La. Code Civ. P. arts. 927 and 931. Furthermore, the facts shown in any documents annexed to the petition must also be accepted as true. **Cardinale v. Stanga**, 2001-1443 (La. App. 1st Cir. 9/27/02), 835 So.2d 576, 578; *see also* La. Code Civ. P. art. 853 ("A copy of any written instrument that is an exhibit to a pleading is a part thereof."). The burden of demonstrating no cause of action has been stated is on the exceptor. **Home**

² Capfund also separately appealed the July 23, 2018 judgment dismissing its principal demand, asserting the trial court erred in sustaining Dodson & Hooks' exception of no cause of action. This court affirmed the judgment dismissing Capfund's principal demand, but the Supreme Court granted Capfund's writ application and vacated the judgment sustaining the exception of no cause of action. *See* **Dodson & Hooks, APLC v. Louisiana Community Development Capital Fund, Inc.**, 2018-1784 (La. App. 1st Cir. 12/18/19), 302 So.3d 1127, vacated, 2020-01002 (La. 11/24/20), ____ So.3d ____.

Distribution, Inc. v. Dollar Amusement, Inc., 98-1692 (La. App. 1st Cir. 9/24/99), 754 So.2d 1057, 1060.

In ruling on an exception of no cause of action, the trial court must determine whether the law affords any relief to the claimant if he were to prove the factual allegations in the petition and annexed documents at a trial. **Adams v. Owens-Corning Fiberglas Corporation**, 2004-1296 (La. App. 1st Cir. 9/23/05), 921 So.2d 972, 975, *writ denied*, 2005-2501 (La. 4/17/06), 926 So.2d 514. An exception of no cause of action is triable solely on the face of the petition and any annexed documents thereto. *See* La. Code Civ. P. art. 931; **Calloway**, 218 So.3d at 648; **Cardinale**, 835 So.2d at 578; **Rhodus v. Lewis**, 2015-1454 (La. App. 1st Cir. 4/15/16), 193 So.3d 215, 219. The only documentary evidence that may be considered on an exception of no cause of action is that annexed to the petition, unless the evidence is admitted without objection to enlarge the petition. **Calloway**, 218 So.3d at 648.

In reading a petition to determine whether a cause of action has been stated, it must be interpreted, if possible, to maintain the cause of action instead of dismissing the petition. **Adams**, 921 So. 2d at 975-76. Any reasonable doubt concerning the sufficiency of the petition must be resolved in favor of finding a cause of action has been stated. *Id.* at 976. However, the correctness of conclusions of law is not conceded for the purposes of a ruling on an exception of no cause of action. **CamSoft Data Systems, Inc. v. Southern Electronics Supply, Inc.**, 2015-1260 (La. App. 1st Cir. 9/23/15), 182 So.3d 1009, 1016. Additionally, on appeal, the reviewing court conducts a *de novo* review of a trial court's ruling sustaining an exception of no cause of action, since the exception raises a question of law. **Adams**, 921 So.2d at 976.

We first address Capfund's evidentiary assignments of error. In its second assignment of error, Capfund asserts the trial court erred in considering evidence

outside of the record in ruling on the instant exception of no cause of action, but points to no specific evidence the trial court purportedly improperly considered. In its fifth assignment of error, Capfund argues the trial court erred in considering, over Capfund's objection, the petition (Exhibit 1), the amending petition (Exhibit 6), and the attorney-client contract (Exhibit 5) in ruling on the exception of no cause of action.

Capfund objected to all the exhibits Dodson & Hooks sought to offer in support of both its exceptions of no cause of action. The trial court sustained the objection, with the exception of allowing the petition, the amending petition, and the attorney-client contract to be considered. In brief, Dodson & Hooks admitted it offered the petition on Capfund's principal demand and its amending petition only as exhibits in support of the exception directed to Capfund's principal demand rather than in support of the exception directed to Capfund's reconventional demand. However, Dodson & Hooks argue the attorney-client agreement was properly considered because it was attached as an exhibit to Capfund's petition.

None of the documents considered by the trial court were attached to Capfund's reconventional demand. While the attorney-client contract was attached to the petition in Capfund's principal demand, we do not consider it for purposes of determining the exception directed to Capfund's reconventional demand.³ In deciding whether the reconventional demand states a cause of action, only the reconventional demand and any attachments *thereto* may be considered. *See* La. Code Civ. P. art. 931; **Calloway**, 218 So.3d at 648. Accordingly, the trial court erred to the extent it considered the petition on Capfund's principal demand, the

³ Consolidation pursuant to La. Code Civ. P. art. 1561 is a procedural convenience designed to avoid multiplicity of actions and does not cause a case to lose its status as a procedural entity. **Johnson v. Shafor**, 2008-2145 (La. App. 1st Cir. 7/29/09), 22 So.3d 935, 941, *writ denied*, 2009-1921 (La. 11/20/09), 25 So.3d 812. The consolidation of actions does not merge them unless the records clearly reflect an intention to do so. **Id.** On the records before us, we find no evidence reflecting an intention to merge the actions.

amending petition, and/or the attorney-client agreement in determining whether Capfund's reconventional demand stated a cause of action. Our *de novo* review is limited to the allegations of the reconventional demand and the attachments annexed thereto. **Rhodus**, 193 So.3d at 219.

In its remaining assignments of error, Capfund argues its reconventional demand sufficiently alleged Dodson & Hooks had no contractual or statutory right to file its lien in the arbitration proceeding for nonpayment of attorney fees, because such fees were not earned. Capfund further asserts that, accepting the allegations of the reconventional demand as true, it has pled a cause of action for wrongful and malicious breach of contract and wrongful issuance of a writ of sequestration against Dodson & Hooks. Capfund also claims allowing Dodson & Hooks to recover the full contractual fees, without provision of all legal services, violates the Code of Professional Responsibility, DR2-106, and La. R.S. 37:218.⁴ Additionally, although Capfund argues for the first time on appeal that it asserted a breach of contract claim, the reconventional demand asserts no such claim.

According to the allegations of Capfund's reconventional demand, a contract existed between Capfund and Dodson & Hooks. An attorney who has a written contract affording him an "interest" in his client's claim may have a privilege to the extent of his earned fee on any recovery obtained by settlement. *See* La. R.S. 37:218; *Calk v. Highland Construction & Manufacturing*, 376 So.2d 495, 499 (La. 1979). However, as previously noted, the contract was not attached to the reconventional demand and our review is limited to the reconventional demand and any attached exhibits for purposes of the exception of no cause of action seeking dismissal of Capfund's reconventional demand.⁵

⁴ Pursuant to La. R.S. 37:218, an attorney may acquire an interest in a "suit, proposed suit, or claim" of a client by contingency fee contract, which operates as a privilege on funds eventually obtained in the suit or claim. **Dodson & Hooks, APLC**, 2019 WL 6906636 at *4.

⁵ Conversely, in this court's prior decision regarding the dismissal of Capfund's principal demand on Dodson & Hooks' exception of no cause of action, the attorney-client contract was

In the reconventional demand, Capfund alleges no privilege existed in favor of Dodson & Hooks because the legal matter in which Dodson & Hooks represented Capfund “was not settled, resolved_[,] or a final judgment rendered” in Capfund’s favor. Capfund alleges that “[a]ccording to the contract ... [Dodson & Hooks] is not entitled to fees until they are earned after settlement and judgment.” Further, Capfund asserts that, while the contract provides a “discharged” attorney with a right to assert a lien for earned fees and costs that are not paid, Dodson & Hooks was not entitled to such a lien because they were not “discharged” by Capfund. Finally, Capfund asserts it has suffered damages as a “direct” result of Dodson & Hooks’ actions, including “[i]nstigating claims” in the arbitration proceeding between Capfund and CB&I and the “[wrongful] issuance of a writ of sequestration.”

For purposes of Dodson & Hooks’ exception of no cause of action, these allegations of fact must be accepted as true. *City of New Orleans*, 640 So.2d at 241; *Woodland Ridge Association v. Cangelosi*, 94-2604 (La. App. 1st Cir. 10/6/95), 671 So.2d 508, 510. According to the allegations, Dodson & Hooks did not earn any fees under the terms of its contract with Capfund and, therefore, was not entitled to file a lien for unearned fees, but nevertheless caused damage to Capfund by instigating claims in Capfund’s arbitration proceeding with CB&I and filing a wrongful sequestration. Interpreting the reconventional demand to maintain the cause of action rather than to dismiss it, and drawing all reasonable inferences in Capfund’s favor, we find Capfund has alleged facts sufficient to state a cause of action against Dodson & Hooks.⁶ The trial court erred in sustaining

attached to the petition and could be considered in ruling on the exception of no cause of action as to Capfund’s principal demand. See *Dodson & Hooks, APLC*, 2019 WL 6906636 at *4.

⁶ We note other procedural methods are available for Dodson & Hooks to attempt to resolve Capfund’s claims prior to trial. See *Dodson & Hooks, APLC*, 2019 WL 6906636 at *6 (Holdridge, J., dissenting).

Dodson & Hooks' peremptory exception of no cause of action as to Capfund's reconventional demand.

CONCLUSION

For these reasons, we reverse the trial court's June 28, 2018 judgment, sustaining Dodson & Hooks, APLC's peremptory exception of no cause of action as to Louisiana Community Development Capital Fund, Inc.'s reconventional demand and dismissing Louisiana Community Development Capital Fund, Inc.'s reconventional demand, with prejudice. We remand this case for further proceedings. All costs of this appeal are assessed against the appellee, Dodson & Hooks, APLC.

REVERSED AND REMANDED.