

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0549

MSJ
TMH
W

CAROLYN BLAKEY AND CBLAKEY INVESTMENTS, L.L.C.

VERSUS

ACADIAN PROPERTIES AUSTIN, L.L.C. AND BRANDON BADEAUX

Judgment Rendered: **DEC 30 2020**

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Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Case No. 2019-16759

The Honorable Richard A. Swartz, Judge Presiding

* * * * *

Robert C. Stern
New Orleans, Louisiana

Counsel for Defendants/Appellants
Acadian Properties Austin, L.L.C.
and Brandon Badeaux

William H. Patrick, III
Michael E. Landis
New Orleans, Louisiana

Counsel for Plaintiffs/Appellees
Carolyn Blakey and CBlakey
Investments, L.L.C.

* * * * *

BEFORE: HIGGINBOTHAM, THERIOT, AND WOLFE, JJ.

THERIOT, J.

Acadian Properties Austin, LLC and Brandon Badeaux appeal the Twenty-Second Judicial District Court's January 7, 2020 order making a Texas default judgment executory. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On July 12, 2019, Carolyn Blakey and CBlakey Investments, LLC ("Appellees") filed their original petition against Acadian Properties Austin, LLC and Brandon Badeaux (collectively, "Appellants") in the 423rd Judicial District Court of Bastrop County, Texas. According to Appellants, Appellees alleged breach of contract, statutory fraud, and common law fraud, seeking a constructive trust, damages, and attorney's fees. Appellants claim that Appellees' suit identified Acadian Properties *of* Austin, LLC (emphasis added) as a foreign limited liability company, but failed to identify the principal place of business, the registered address, or the statutory or procedural authority under which Appellants could be served. Appellants further assert that Appellees identified Mr. Badeaux as a non-resident absent from the State of Texas, but failed to identify any statutory or procedural authority under which he could be served with process.

Appellants allege that, on July 12, 2019, Appellees requested issuance of a citation for Appellants. On the same day, the clerk allegedly issued citations directed to Mr. Badeaux, individually, and Acadian Properties of Austin, LLC, which Appellants distinguish from Acadian Properties Austin, LLC. Appellants assert that Appellees did not attempt to serve Acadian Properties Austin, LLC's registered agent at its registered office in Texas, but instead, on July 30, 2019 and September 16, 2019, attempted to serve Appellants at an address in Mandeville, Louisiana. Appellants further allege that, on September 25, 2019, a Louisiana private process server signed affidavits of service purportedly serving Appellants at another address in Mandeville.

According to Appellants, Appellees filed a notice of hearing on a motion for default judgment against Appellants on October 8, 2019. The motion for default judgment was filed the next day. On November 6, 2019, Mr. Badeaux filed, *pro se*, a document entitled Motion for Continuance and Notice of Hearing.

On November 7, 2019, the Texas court entered a default judgment in favor of Appellees and against Appellants in the amount of \$1,281,594.55, plus costs and interest. On December 26, 2019, Appellees filed an *ex parte* petition to make the Texas judgment executory in Louisiana. The *ex parte* petition was filed in the Twenty-Second Judicial Court.

On January 7, 2020, the trial court signed an order making the Texas judgment executory in Louisiana. A notice of enforcement of judgment was mailed to Appellants on January 8, 2020. Appellees assert that on February 7, 2020, after waiting the required thirty days in accordance with La. R.S. 13:4243, Appellees recorded the petition and order making the petition executory in the mortgage and conveyance records of St. Tammany Parish.

On February 26, 2020, Appellants filed a motion and order for devolutive appeal of the January 7, 2020 judgment. Appellants allege that on May 6, 2020, they filed a notice of restricted appeal of the Texas judgment.¹

ASSIGNMENTS OF ERROR

Appellants assert the following as error:

- (1) The trial court erred in making the Texas Judgment executory in this State in the absence of personal jurisdiction over Acadian Properties Austin, LLC and Mr. Badeaux in the Texas litigation.
- (2) The trial court erred in making the Texas Judgment executory in this State in the absence of a *prima facie* showing in either the Texas or Louisiana pleadings that the Texas Court had personal jurisdiction over Acadian Properties Austin, LLC when it entered its judgment.

¹ Texas Rules of Appellate Procedure 26.1 provides in pertinent part that “in a restricted appeal, the notice of appeal must be filed within six months after the judgment or order is signed[.]” The Texas judgment was signed November 7, 2019, and the notice of restricted appeal was purportedly filed on May 6, 2020. Thus, the notice of restricted appeal appears to be filed timely.

(3) The trial court erred in making the Texas Judgment executory in this State when it was/is subject to collateral attack in Texas through a restricted appeal.

STANDARD OF REVIEW

The Louisiana Constitution of 1974 provides that the appellate jurisdiction of the courts of appeal extends to both law and facts. La. Const., art. V, § 10(B). A court of appeal may not overturn a judgment of a trial court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. See *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880, 882, n. 2 (La. 1993). The two-part test for appellate review of a factual finding is: 1) whether there is a reasonable factual basis in the record for the finding of the trial court, and 2) whether the record further establishes that the finding is not manifestly erroneous. *Stobart*, 617 So.2d at 882. This test dictates that a reviewing court must do more than simply review the record for some evidence that supports or controverts the trial court's finding. The reviewing court must review the record in its entirety to determine whether the trial court's finding was clearly wrong or manifestly erroneous. *Id.*

Nevertheless, the issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the fact finder's conclusion was a reasonable one. Even though an appellate court may feel its own evaluations and inferences are more reasonable than the fact finder's, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. However, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable fact finder would not credit the witness's story, the court of appeal may find manifest error or clear wrongness even in a finding purportedly based on a credibility determination. *Id.*

DISCUSSION

Assignments of Error #1 and #2

In two related assignments of error, Appellants assert that the trial court erred in making the Texas judgment executory when personal jurisdiction is at issue in the Texas litigation. Appellees urge this court to ignore any references made by Appellants to documents and pleadings not contained within the record before us.

The only document from the Texas litigation within the record before this court is the default judgment rendered on November 7, 2019, which states in pertinent part:

The Court further finds that Defendants, duly and legally cited to appear and answer, failed to do so, and wholly made default. Citation was properly served according to law, and returned to the clerk where it remained on file for the time required by law.

As a general rule, appellate courts will not consider issues that were not raised in the pleadings, were not addressed by the trial court, or are raised for the first time on appeal. *Johnson v. Montoya*, 2013-1951 (La. App. 1 Cir. 5/2/14); 145 So.3d 418, 422; see also Uniform Rules-Courts of Appeal, Rule 1-3. A court of appeal is a court of review, and is limited in its review to the evidence submitted and entered into the record at the trial court level. *In re Succession of Feingerts*, 2014-0140 (La. App. 4 Cir. 3/18/15); 162 So.3d 1215, 1220; see also *Fontana v. Landry*, 2009-322 (La. App. 3 Cir. 10/7/09); 20 So.3d 578, 582. Accordingly, we cannot consider Appellants' arguments pertaining to personal jurisdiction, which have been raised for the first time on appeal. These assignments of error are without merit.

Assignment of Error #3

In their third assignment of error, Appellants argue that the trial court erred in making the Texas judgment executory when it is subject to collateral attack in

Texas through a restricted appeal. Appellees argue that this assignment of error also lacks merit because Appellants did not raise these arguments in the trial court, nor did they file a contradictory motion to stay enforcement of the foreign judgment pursuant to La. R.S. 13:4244.

Louisiana Revised Statutes 13:4242, which relates to the filing and status of foreign judgments, provides:

A copy of any foreign judgment authenticated in accordance with an act of congress or the statutes of this state may be annexed to and filed with an ex parte petition complying with Code of Civil Procedure Article 891 and praying that the judgment be made executory in a court of this state. The foreign judgment shall be treated in the same manner as a judgment of a court of this state. It shall have the same effect and be subject to the same procedures, and defenses, for reopening, vacating, or staying as a judgment of a court of this state and may be enforced in the same manner.

Additionally, La. R.S. 14:4243 pertains to the notice to be provided when filing the petition and foreign judgment and states:

A. At the time of the filing of the petition and foreign judgment, the judgment creditor shall file with the court an affidavit setting forth the name and last known address of the judgment debtor and the judgment creditor.

B. Promptly upon the filing of the petition, the foreign judgment, and the affidavit, the clerk shall send a notice by certified mail to the judgment debtor at the address given and shall make a note of the mailing in the record. The notice shall include the name and address of the judgment creditor and his attorney, if any. In addition, the judgment creditor may mail a notice of the filing to the judgment debtor and may file proof of mailing with the clerk. Failure to mail notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

C. No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until thirty days after the mailing of the notice of the filing of the foreign judgment.

The clear language of La. R.S. 13:4243 stays the execution or other enforcement of the foreign judgment for a thirty-day period commencing from the mailing of the notice of the filing of the foreign judgment. During this thirty-day

period, the judgment debtor may proceed by “contradictory motion,” seeking to prolong the stay in accordance with La. R.S. 13:4244, which provides as follows:

A. If the judgment debtor proves on contradictory motion that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

B. If the judgment debtor proves on contradictory motion any ground upon which the execution of a judgment of a court of this state would be stayed, the court shall stay enforcement of the foreign judgment upon requiring security for satisfaction of the judgment as is required in this state.

See Davis v. Thomas, 2019-1484 (La. App. 1 Cir. 10/6/20); 2020 WL 5905128, at *2-*3 (unpublished).

As stated above, the default judgment in Texas was rendered on November 7, 2019. Appellees filed their *ex parte* petition to make the Texas judgment executory in Louisiana on December 26, 2019. The trial court signed an order making the judgment executory on January 7, 2020. A notice of enforcement of judgment was issued to Appellants on January 8, 2020. Appellees assert that on February 7, 2020, after waiting the required thirty days in accordance with La. R.S. 13:4243, Appellees recorded the petition and order making the petition executory in the mortgage and conveyance records of St. Tammany Parish

As pointed out by Appellees, Appellants could have filed for a stay of execution pursuant to La. R.S. 13:4244 regarding the pending Texas appeal. According to the record before us, Appellants did not do so. This assignment of error lacks merit.

DECREE

For the above and foregoing reasons, the Twenty-Second Judicial District Court’s January 7, 2020 order making the Texas judgment executory is affirmed.

Costs are assessed to Appellants, Acadian Properties Austin, LLC and Brandon 'Badeaux.

AFFIRMED.