

DANIEL JOSEPH LECOMPTE * NO. 2000-CA-0566
VERSUS * COURT OF APPEAL
CHRISTINE BARCELLONA * FOURTH CIRCUIT
LECOMPTE PARKS * STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 99-00099, DIVISION "J-13"
Honorable Nadine M. Ramsey, Judge

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CHARLES R. JONES
JUDGE
* * * * *

(Court composed of Judge Joan Bernard Armstrong, Judge Charles R. Jones, and Judge Terri F. Love)

ARMSTRONG, J., CONCURS IN THE RESULT

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AFFIRMED

Defendant/appellant, Christine Barcellona Lecompte Parks appeals the judgment of the district court, which granted the Motion for Summary Judgment in favor of the plaintiff/appellee, Daniel Joseph Lecompte. Following a review of the record, we affirm the district court's judgment, which granted the Motion for Summary Judgment, with each party to bear his own costs.

FACTS

Mr. Lecompte and Mrs. Parks were married in 1957 and divorced on May 2, 1967. On October 16, 1967, the parties executed an extra-judicial Settlement of Community Property, which gave Mrs. Parks \$750 and distributed the remaining community assets to Mr. Lecompte. The agreement also called for an Act of Cash Sale to be executed between the parties to transfer the title of the family home to Mr. Lecompte; however, the act was not executed.

At the end of 1998, Mr. Lecompte decided to sell the community residence. However, the unsigned Act of Cash Sale created a cloud on the title. Mr. Lecompte's counsel contacted Mrs. Parks requesting execution of the act, but she refused, asserting that she was entitled to a portion of the

proceeds.

Mr. Lecompte then filed a Petition for Declaratory Judgment requesting that the district court declare him the sole owner of the property. In her Answer to the Petition, Mrs. Parks acknowledged the existence of the community property agreement, but added that at the time of the execution, she did not understand the impact of her signature. She also asserted that the agreement violated Louisiana Community Property laws. Therefore, she contended that she was entitled to a portion of the proceeds from any subsequent sale.

Mr. Lecompte later filed a Motion for Summary Judgment claiming that the Settlement of Community was an authentic act and that testimonial evidence could not be admitted to negate or vary the contents of the act.

Mrs. Parks then filed a Supplemental and Amending Answer asserting that the Settlement of Community should be rescinded due to *lesion* and that she was under duress at the time of the execution of the document.

The district court granted Mrs. Parks' motion to amend. However, after a hearing on Mr. Lecompte's summary judgment motion, the district court granted his Motion for Summary Judgment and designated the judgment as final. From this judgment, Mrs. Parks filed the instant appeal.

STANDARD OF REVIEW

A motion for summary judgment will be granted “if the pleading, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law.” La. C.C.P. art. 966 (B). *Hardy v. Bowie*, 98-2821 (La. 9/8/99), 744 So.2d 606, 609. Appellate courts review a motion for summary judgment *de novo*, and will not overrule the district court’s findings unless the plaintiff can present evidence of a *material* factual dispute. *Id.* (Emphasis added). The dispute must show that the existence or nonexistence of the contested fact(s) may be essential to the plaintiff’s cause of action under the applicable theory of recovery. *Smith v. Our Lady of the Lake Hosp. Inc.*, 93-2512 (La. 7/5/94), 639 So.2d 730. See also *Encalade v. United Ins. Co. of America*, 99-0085 (La. App. 4 Cir. 6/2/99), 735 So.2d 954.

DISCUSSION

Mr. Lecompte argued before the district court that Mrs. Parks wished to introduce parole evidence to negate an authentic act—the Settlement of Community—and that testimonial evidence could not be admitted to negate or vary the contents of the act. Though Mrs. Parks agrees with the general rule, she contends that the statute—LSA-C.C. art.1848—also provides that, in the interest of justice, evidence may be admitted to prove such

circumstances as vices of consent.

In rebuttal, Mr. Lecompte argues that Mrs. Parks' defenses of lesion have prescribed and cannot be asserted under La. C.C.P. 424 because his declaratory action seeks only to settle uncertainty and not the enforcement of a right. We agree.

La. C.C. art. 1848 provides:

Testimonial or other evidence may not be admitted to negate or vary the contents of an authentic act or an act under private signature. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent....

Mrs. Parks had alleged a vice of consent, which under this statute constitutes admissible evidence and would raise issues of material fact inappropriate for summary judgment.

However, we must now determine whether the lesion and vice of consent at issue is enforceable under La. C.C.P. art. 424. Our brethren at the Third Circuit have determined, as a matter of first impression, that a spouse could raise a prescribed lesion claim as a defense to a petition for specific performance and/or breach of community property petition. *Picard v. Picard*, 97-1258 (La. App. 3 Cir. 4/1/98), 708 So.2d 1292).

In *Picard*, a former wife filed a petition for specific performance and or breach of community property partition alleging that the former husband

breached the partition agreement by failing to disburse part of his benefits from the teacher's retirement system. The husband then filed a reconventional demand to revoke or to modify the community property settlement, alleging that the partition agreement was lesionary and asserted lesion as a defense. The Court found that:

...La.Code Civ.P. art. 424 states that:

A person who has a right to enforce an obligation also has a right to use his cause of action as a defense.

Except as otherwise provided herein, a prescribed obligation arising under Louisiana law may be used as a defense if it is incidental to, or connected with, the obligation sought to be enforced by the plaintiff. A prescribed cause of action arising under The Federal Consumer Credit Protection Act may not be used as a defense even if it is incidental to, or connected with, the obligation sought to be enforced by the plaintiff.

However, in connection with the enforcement of a negotiable instrument the defense of redhibition may not be used if it has otherwise prescribed.

This article is a reenactment of Article 20 of the 1870 Code of Practice. Comment (b) to Article 424 states with regard to that article that:

Art. 20 of the 1870 Code of Practice has long been recognized as the positive law basis in Louisiana for the Roman law maxim: *Quae temporalia sunt ad agendum perpetua sunt ad excipiendum* (Things which are temporary for the purposes of attack are permanent for the purposes of defense). Under

this maxim, the courts have repeatedly held that a cause of action which would be prescribed if the obligee attempted to sue the obligor, can nevertheless be used as a defense to an action...

While we were unable to find a case in which a prescribed cause of action for lesion was allowed to be asserted as a defense, the courts have allowed a variety of prescribed causes of action to be asserted as defenses pursuant to this article.

Id.

Thus, the *Picard* Court held that the trial court correctly allowed the husbands' prescribed claim of lesion to be raised as a defense to the wife's claim.

However, unlike *Picard*, the attack upon the community property agreement comes in a petition for declaratory judgment, not from an attempt to modify the judgment. Thus, this case is distinguishable from *Picard*, and error in granting Mr. Parks' motion for summary judgment.

DECREE

For the foregoing reasons, we affirm the district court's judgment, which granted the Motion for Summary Judgment on behalf of Mr. Lecompte. Each party to bear his own costs.

AFFIRMED

