JOHN M. BERNARD AND SONIA MOTLAGH BERNARD	*	**NO. 2001-CA-2234**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
IBERIA BANK		
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-7745, DIVISION "A"
Honorable Carolyn Gill-Jefferson, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Judge Steven R. Plotkin, Judge Miriam G. Waltzer, Judge Patricia Rivet Murray)

PLOTKIN, J., CONCURS IN PART, DISSENTS IN PART WITH REASONS

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AFFIRMED

The plaintiffs, John and Sonia Bernard, appeal the trial court's granting of a motion for summary judgment in favor of the defendant, IBERIABANK. For the reasons that follow, we affirm.

The issue raised by the motion for summary judgment was whether the defendant's predecessor, Jefferson Savings and Loan, had forgiven a portion of the principal due on a promissory note executed by the plaintiffs in 1984.

In November of 1984, the plaintiffs obtained a loan from Jefferson Savings and Loan to purchase a condominium unit on Greenspoint Drive in New Orleans, Louisiana. The principal amount of the loan was $47,600.00, with the terms providing for 180 payments of $610.11 at an interest rate of 13.25 per cent. In 1ate 1990, the plaintiffs sent Jefferson Savings and Loan a "Request for Indulgence in Interest Rate Collected on Mortgage Loan." Jefferson Savings and Loan agreed to reduce the interest rate to 7.0 per cent. The plaintiffs further requested an additional reduction in their monthly payments. On October 31, 1990, Jefferson Savings and Loan agreed to a reduction in the monthly payments to $400.00 per month, effective August of 1990. The plaintiffs made payments every month in the amount of

$400.00 until the expiration of the term of the original mortgage, i.e. December 19, 1999. During this period, Jefferson Savings and Loan was merged into IBERIABANK. Upon payment of the last monthly payment, the plaintiffs requested that IBERIABANK execute a cancellation of the mortgage. The bank refused to cancel the mortgage, informing the plaintiffs that there was an unpaid balance of $12,029.12.

The plaintiffs filed a petition for declaratory judgment seeking to have their loan declared as satisfied in full and to have the court order IBERIABANK to cancel the mortgage on the property. The defendant answered the petition and filed a reconventional demand, alleging that plaintiffs still owed on the balance and demanding that IBERIABANK's mortgage be recognized. The plaintiffs answered, contending that the original loan had been forgiven and a new loan agreement created when the bank's predecessor had agreed to the monthly payments of $400.00. IBERIABANK then filed its motion for summary judgment, alleging that there were no genuine issues of material fact and that it was entitled to a judgment, as a matter of law, that plaintiffs were responsible for the balance due on the original loan. After a hearing on February 23, 2001, the trial court rendered its written judgment on April 20, 2001, granting IBERIABANK a money judgment against the plaintiffs for the balance due

on the original promissory note and recognizing the bank's mortgage interest in the property.

On appeal, the plaintiffs argue that the trial court erred in granting the motion for summary judgment, as the defendant did not meet its burden of proving that there were no genuine issues of material fact. The plaintiffs contend that there were genuine issues of material fact concerning the intent of the defendant's predecessor, Jefferson Savings and Loan, to forgive the original loan and create a new loan. The plaintiffs assert that a new credit agreement was created when Jefferson Savings and Loan agreed to accept monthly payments in the amount of $400.00.

La. R.S. 6:1122 requires that credit agreements be in writing. The statute provides that "[a] debtor shall not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." La. R.S. 6:1123 states:

> A. The following actions shall not give rise to a claim that a new credit agreement is created, unless the agreement satisfies the requirements of R.S. 6:1122:
> * * * * * *
> (3) The agreement of a creditor to take or not to take a certain action, such as entering into a new credit agreement, forbearing from exercising remedies under a prior credit agreement, or extending installments due under a prior credit agreement.
>
> B. A credit agreement shall not be implied form the

> relationship, fiduciary or otherwise, of the creditor or the debtor.

The plaintiffs argue that the letter by which Jefferson Savings and Loan agreed to the monthly payments of $400 constituted a new credit application. The plaintiffs contend that the letter, on its face, meets two of the requirements: it is in writing and is signed by both the creditor and the debtor. The plaintiffs then suggest that parole evidence can be used to show that there was consideration and to explain the relevant terms and conditions. The plaintiffs specifically note that Jefferson Savings and Loan provided them with a payment book for $400.00 a month and that Jefferson, and later IBERIABANK, accepted the payments.

The plaintiffs' argument fails, however, because the law is clear that parole evidence is not admissible to show a prior or contemporaneous agreement varying the terms of a written contract. La. C.C. article 1848. The meaning and intent of the parties to a written agreement is determined from within the four corners of the document, and its terms cannot be explained or contradicted by extrinsic evidence. Brown v. Drillers, Inc., 93-1019 (La. 1/14/94), 630 So.2d 741, 748. A writing cannot qualify as a credit agreement if parole evidence must be received in order to establish that status. The written agreement must be perfect and complete within itself. Fleming Irr. v. Pioneer Bank & Trust, 27,262, p.5 (La. App. 2 Cir. 8/23/95),

661 So.2d 1035, 1038.

In an analogous case, Whitney Nat. Bank v. Rockwell, 94-3049, p.13 (La. 10/16/95), 661So.2d 1325,1332, the Louisiana Supreme Court held:

> The alleged oral agreement by the Bank to require interest-only payments for a period of time and then to amortize the payments over a period of years was clearly an agreement to forbear repayment and to make financial accommodations that constituted a credit agreement under the statute which could not be enforced in an action or reconventional demand for damages unless the agreement was in writing.
>
> The alleged acceptance by the Bank of interest payments for three years was simply the forbearing from exercising remedies under the prior credit agreement, an action which under La. Rev. Stat. 6:1123 A(3) did not give rise to a claim that a new credit agreement was thereby created.

In the present case, the document upon which the plaintiffs rely is insufficient to establish the existence of a new credit agreement. Although the letter is in writing and is signed by both the debtor and creditor, it does not recite the consideration or the relevant terms of the alleged new credit agreement. At best, the letter represents the granting of an indulgence by Jefferson Savings and Loan and the bank's willingness to make financial accommodations under the original credit agreement.

As the plaintiffs were unable to meet their burden of proof at the hearing on the motion for summary judgment and would be unable to meet their burden of proof at trial, the trial court did not err in granting the defendant's motion. The defendant produced the documentation concerning

the original promissory note and mortgage, as well as the payments made by the plaintiffs. The documentation supports the defendant's argument that a balance was still due under the original promissory note.

Accordingly, the trial court's judgment is affirmed.

AFFIRMED