

NOT DESIGNATED FOR PUBLICATION

BRANDON JAFFE	*	NO. 2002-CA-0029
VERSUS	*	COURT OF APPEAL
LYNN PROPERTIES, INC., D/B/A NEW ORLEANS	*	FOURTH CIRCUIT
ATHLETIC CLUB, WILLIAM MORE, MIKE ANDERSON, AND FRANK TESSITORE	*	STATE OF LOUISIANA
	*	

**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-17523, DIVISION "J"
Honorable Nadine M. Ramsey, Judge

Judge David S. Gorbaty

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge David S. Gorbaty)

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APPEAL DISMISSED

Plaintiff, Brandon Jaffe, appeals the trial court's grant of a Motion to Dismiss for Failure to Comply with Facsimile Filing Requirements and the resulting dismissal of his suit, with prejudice. Because we find that plaintiff's appeal was untimely filed, we are compelled to dismiss his appeal for lack of jurisdiction.

FACTS AND PROCEDURAL HISTORY

On November 16, 2000, plaintiff facsimile filed a Petition for Damages with the Clerk of Court for the Parish of Orleans, naming as defendants various individuals and a corporation. On March 2, 2001, defendant, Lynn Properties, Inc., d/b/a New Orleans Athletic Club ("NOAC") filed a Motion to Dismiss the plaintiff's case for Failure to Comply with the Facsimile Filing Requirements of LSA-R.S. 13:850 and/or Exception of Prescription. After a hearing, the trial court, on May 24, 2001, issued a written judgment, accompanied by written reasons, granting NOAC's motion. The Notice of Signing of the judgment was mailed to the parties that same day.

On June 7, 2001, plaintiff facsimile filed a Motion for New Trial.

Plaintiff's motion was set for hearing, and was subsequently taken under advisement by the trial court. On August 6, 2001, the trial court issued a written judgment denying plaintiff's Motion for New Trial.

Plaintiff filed a Notice of Intention to Appeal the trial court's August 6, 2001 ruling on August 30, 2001. Subsequently on September 4, 2001, the plaintiff filed a Petition for Suspensive and/or Devolutive Appeal, which the trial court signed on September 12, 2001.

DISCUSSION

La. C.C.P. art. 2087 sets out the delay for taking a devolutive appeal. According to that article, a devolutive appeal may be taken within sixty days of: (1) the expiration of the delay for applying for a new trial or judgment notwithstanding the verdict, as provided by Article 1974 and Article 1811, if no application has been filed timely, or (2) the date of the mailing of the notice of the court's refusal to grant a timely application for new trial or judgment notwithstanding the verdict, as provided under Article 1914.

La.C.C.P. art. 1974, in turn, provides:

The delay for applying for a new trial shall be seven days, exclusive of legal holidays. The delay for applying for a new trial commences to run on the day after the clerk has mailed, or the sheriff has served, the notice of judgment as required by Article 1913.

An untimely-filed motion for new trial will not serve to interrupt the delays for taking a devolutive appeal. Worner v. Worner, 95-833 (La. App.

5th Cir. 1/8/96), 666 So. 2d 1232. A trial court has no authority to grant a new trial when the application for a new trial has not been timely filed.

Mitchell v. Louisiana Power and Light Co., 380 So. 2d 743 (La. App. 4 Cir. 1980). Moreover, a trial court's granting of an untimely application for new trial does not serve as an interruption of the delay period for taking a devolutive appeal. Succession of Blythe, 466 So. 2d 500 (La. App. 5 Cir. 1985). Absent a timely motion for appeal, the appellate court lacks jurisdiction over the appeal. Guillot v. Consolidated Freightways, 583 So. 2d 113 (La. App. 5th Cir. 1991).

In this case, plaintiff's new trial delay began to run on May 25, 2001, the day after the judgment granting NOAC's Motion to Dismiss was mailed by the clerk. The new trial delay expired on June 5, 2001. Plaintiff did not file his Motion for New Trial until June 7, 2001; thus, his motion was untimely. Because there was no timely filed Motion for New Trial, the sixty-day period allowed for taking a devolutive appeal of the May 24, 2001 judgment began to run on June 6, 2001. This devolutive appeal period expired on August 6, 2001. Plaintiff's appeal was not filed until August 30, 2001, well beyond the deadline allowed in La. C.C.P. art. 2087. Thus, his appeal was untimely and this court has no jurisdiction to review the case. (See Blythe, 466 So. 2d 500 (La. App. 5 Cir. 1985), and Falkins v. Jefferson

Parish School Bd., 97-26 (La. App. 5 Cir. 5/9/97), 695 So. 2d 1005 where appeals were dismissed on similar jurisdictional grounds).

CONCLUSION

Accordingly, for the foregoing reasons, plaintiff's appeal is dismissed at his cost.

APPEAL DISMISSED