THE ROMAN CATHOLIC CHURCH OF THE ARCHDIOCESE OF NEW ORLEANS	*	**NO. 2002-CA-0905**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
VERSUS	*	**STATE OF LOUISIANA**
SHELL NEW ORLEANS FEDERAL CREDIT UNION AND EILEEN HEYD WIFE OF/AND GEORGE J. HEYD	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-7727, DIVISION "C-6"
HONORABLE ROLAND L. BELSOME, JUDGE
* * * * * *
JUDGE MICHAEL E. KIRBY
* * * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby)

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The Roman Catholic Church of the Archdiocese of New Orleans

("Archdiocese") filed suit May 7, 2001 against Shell New Orleans Federal

Credit Union ("Shell") to collect on checks which had contained

unauthorized or missing indorsements. Previously, Shell merged with St.

Alphonsus Credit Union ("SACU") on November 15, 2000.

Allegedly, the Archdiocese drew checks on its account at the Whitney

National Bank ("Whitney"). The checks were made out to various payees.

The checks came into the possession of George J. Heyd ("Heyd"), treasurer

of SACU, who marked these checks "for deposit" and then systematically

deposited the checks into a non-descript regular business checking account.

SACU accepted the checks from Heyd when they had not been indorsed by

the payees. Heyd then misappropriated the funds through self-dealing and

otherwise diverted the funds to himself in an embezzlement scheme. The

missing funds total $189, 318.34.

The suit alleges that the checks were not properly payable and were

paid in contravention to La. R.S. 10:4-401; that Shell, as successor in

interest to SACU, is liable to the Whitney for breach of its presentment warranties as set out in La. R.S. 10:3-417; and that Whitney has subrogated and assigned its rights to collect the value of the checks to the Archdiocese.

Shell filed exceptions of no right of action and prescription. On December 11, 2001, the trial court sustained the no right of action exception and found the prescription argument moot. Specifically, the court found that "the Archdiocese failed to take ordinary measures to safeguard its checks/ or accounts, and that this failure substantially contributed to the making of the forged indorsements and consequently it is precluded from asserting those indorsements against SACU and its successor in interest Shell."

The peremptory exception of no right of action questions whether the party against whom it is asserted has an interest in judicially enforcing the right alleged against the exceptor. Touzet v. S. M. Seafood Services, Inc., 96-0225, p. 2 (La.App. 4 Cir. 3/27/96), 672 So.2d 1011, 1012. When considering the exception, the court must ask whether the plaintiff belongs to a particular class for which the law grants a remedy for a particular grievance or whether the plaintiff has an interest in judicially enforcing the right asserted. Id. at pp. 2-3, 672 So.2d at 1012. See also, Babineaux v. Pernie-Bailey Crilling Co., 262 So.2d 328 (La. 1972); Simmons v. Templeton, 99-1978 (La. App. 4 Cir. 4/12/00), 762 So.2d 63.

Here, the Archdiocese has a right of action in its own right pursuant to La, R.S. 10:4-205, and as assignees of presentment warranties pursuant to La. R.S. 10:3-417.

Here, the trial court did not distinguish between the Archdiocese's right to bring the suit and whether or not it will prevail on the merits. In its ruling, the trial court proceeded to examine the facts and to rule on the merits of the case, essentially finding that the Archdiocese had been negligent in not properly monitoring its account, and that it had not used ordinary care pursuant to La. R.S. 13-406(a). In so doing, the trial court erred.

The ruling maintaining the exception of no right of action is reversed.

REVERSED