

**NOT DESIGNATED FOR PUBLICATION**

**FINISHING TOUCHES BY  
MELANIE, L.L.C.**

\*

**NO. 2003-CA-1098**

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**COURT OF APPEAL**

**VERSUS**

\*

**FOURTH CIRCUIT**

**R. KATHERINE LONG**

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**STATE OF LOUISIANA**

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**APPEAL FROM  
FIRST CITY COURT OF NEW ORLEANS  
NO. 02-52447, SECTION "C"  
Honorable Sonja M. Spears, Judge**

\* \* \* \* \*

**Judge David S. Gorbaty**

\* \* \* \* \*

(Court composed of Judge Joan Bernard Armstrong, Judge Terri F. Love,  
Judge David S. Gorbaty)

Mitchell J. Hoffman  
Hilary Hurst Landry  
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**APPEAL DISMISSED, WITHOUT PREJUDICE**

Defendant/Appellant, R. Katherine Long (“Long”), appeals the trial court’s denial of her exception of improper venue. For the following reasons, we dismiss the appeal, without prejudice.

**FACTS AND PROCEDURAL HISTORY:**

This matter arises out of a contract entered into between Finishing Touches by Melanie, L.L.C. (“Finishing Touches”) and Long whereby Finishing Touches agreed to provide consultation services for a rehearsal dinner in New Orleans for Long’s son.

According to the petition, Finishing Touches was partially paid by Long for expenses it incurred and/or services it performed pursuant to the contract. After receiving no response to a demand letter mailed to Long on March 25, 2002, Finishing Touches filed the instant suit in the First City Court for the Parish of Orleans on April 11, 2002, seeking damages for breach of contract, plus attorney’s fees and costs.

Long responded to the petition by filing a declinatory exception of improper venue. Therein Long claimed that although the suit had been

characterized by Finishing Touches as one for breach of contract, it was actually a suit on open account, as evidenced by Finishing Touches request for attorney's fees. As a result, Long claimed that the parish of proper venue for suit against her was East Baton Rouge Parish, the parish of her domicile, rather than Orleans Parish, as dictated by the general venue rule found in La. Code Civ. Proc. art. 42.

Finishing Touches opposed the exception asserting that nothing in its petition supported Long's argument that the suit was one on open account. As such, Finishing Touches maintained that venue was proper in Orleans Parish, pursuant to La. Code Civ. Proc. art. 76.1, which provides that an action on a contract may be brought in the parish where the contract was executed or the parish where any work or service was performed under the terms of the contract, as she had alleged that all of the services under the contract had been performed in Orleans Parish.

Both parties filed supplemental memoranda.

Following a hearing on July 23, 2002, the trial court rendered judgment on September 7, 2002 denying Long's exception of improper venue. No reasons for judgment were given. Notice of signing of the judgment was issued on October 1, 2002.

On October 2, 2002, Long filed a Motion for New Trial/Rehearing

alleging that she had recently been made aware that La. Code Civ. Proc. art. 76.1 was possibly unconstitutional, in that the 1999 bill that enacted it had two separate objects contrary to La. Const. art. III, § 15(A). Finishing Touches filed an opposition to Long's motion.

Following a hearing on January 21, 2003, the trial court denied Long's motion by judgment dated February 13, 2003. Notice of signing of the judgment was issued on February 18, 2003. Again, no reasons for judgment were given.

Long filed by facsimile a Motion for Devolutive Appeal with the Clerk of First City Court on March 6, 2003. A hard copy of the motion was filed on March 11, 2003. The trial judge signed the order for appeal on March 20, 2003.

### **DISCUSSION:**

The initial issue to be resolved in this matter is the timeliness of Long's appeal.

Louisiana Code of Civil Procedure art 5002 dictates that an appeal from a judgment rendered by a city court may be taken only within ten days from the date of the judgment or from service of the notice of judgment, when such notice is necessary.

In the instant case, judgment was rendered on September 17, 2002,

with the notice of signing of the judgment being issued on October 1, 2002. Defendant, Long, timely filed a motion for new trial on October 2, 2002, which motion was denied by judgment dated February 13, 2003. Notice of signing of that judgment was issued on February 18, 2003. According to La. Code Civ. Proc. art. 5002 B, the delay for appealing that judgment commenced on the day after the motion was denied, or from service of the notice of the order denying the new trial, if such notice was necessary. In the instant case, Long filed her motion for devolutive appeal to the court by facsimile on March 6, 2003. Long stated in her motion for appeal that she had received a copy of both the February 13, 2003, judgment and the notice of signing of the judgment in an envelope postmarked February 19, 2003.

In *Myles v. Turner*, 612 So.2d 32 (La. 1993), the Louisiana Supreme Court held that the ten day time period within which an appeal must be taken from a city or parish court judgment commences upon receipt of the notice or judgment rather than upon the mere mailing of such notice. Further, the Court held, pursuant to La. Code Civ. Proc. art 5059 regarding computation of time, that the first day to be counted in the appeal period is the day following receipt of the notice of signing of judgment.

Long admits receiving a copy of both the February 13, 2003 judgment and the notice of signing of that judgment, however there is no record

evidence of when she **received** the judgment and notice of signing of judgment. However, the record does contain evidence that First City Court inexplicably lost the record for this matter, and prevailed upon Long's attorney to reconstruct the record so that it might be prepared for appeal. A letter dated April 8, 2003 from Long's attorney to the clerk of First City Court and the trial judge indicates that she provided copies of all pleadings, judgments and other correspondence maintained in her file to the court for preparation of the appeal record. The copy of the notice of judgment contained in the file is thus a copy of the notice received by Long's attorney at her office. The copy is date stamped as being received February 21, 2003. Accordingly, Long's appeal delay would have commenced on February 22, 2003, with the tenth day of the delay period being March 3, 2003. Long's appeal was not filed until March 6, 2003. As such, Long's appeal is untimely.

**CONCLUSION:**

For the foregoing reasons, this appeal is dismissed as untimely.

**APPEAL DISMISSED, WITHOUT PREJUDICE**