

**NOT DESIGNATED FOR PUBLICATION**

**JONATHAN TRAN** \* **NO. 2004-C-1949 C/W NO.**  
**VERSUS** \* **2004-C-1950**  
**LINH VAN TRAN, ET AL.** \* **COURT OF APPEAL**  
\* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\*  
\* \* \* \* \*

APPLICATIONS FOR WRITS DIRECTED TO  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2004-8149, DIVISION "A"  
Honorable Carolyn Gill-Jefferson, Judge

\* \* \* \* \*

**Judge Dennis R. Bagneris, Sr.**

\* \* \* \* \*

(Court composed of Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., and Judge Edwin A. Lombard)

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**WRIT APPLICATION GRANTED; RELIEF DENIED**

Linh Van Tran (Linh) and his wife, Van Thi Thanh Pham (Van), and Charfin Financial Services (relators) seek supervisory review of the lower court judgment overruling their exception of no cause of action.

**FACTS**

Linh and his brother Vinh Van Tran a/k/a Steve Tran (Steve) owned the immovable property located at 13900 Chef Menteur Highway. The Whitney Bank held a first mortgage on the property. On February 9, 2004, Linh signed a contract to sell the property to Jonathan Tran (plaintiff). The parties agreed upon a price of \$310,000.00. Incident to the agreement, the plaintiff maintains that he gave Linh a \$110,000.00 cash deposit on the property.

In April 2004, Linh advised the plaintiff he wanted to return the deposit because his brother/co-owner of the property, Steve, was dissatisfied with the purchase price. On April 14, 2004, plaintiff filed the purchase agreement in the Orleans Parish public records. At some point, Charfin Financial Services (Charfin) purchased Whitney Bank's rights as first mortgage holder and was subrogated to the bank's position. On April 15,

2004, Linh, Van and Steve (collectively owners), dationed the property to Charfin in lieu of foreclosure for \$189,000.00. The dation was filed in the public records on April 16, 2004, two days after plaintiff filed the purchase agreement.

On June 3, 2004, upon learning of the dation from the owners to Charfin, plaintiff sued Linh, Van, and Steve seeking specific performance and damages, and alternatively, for return of the deposit.

On June 10, 2004, Charfin transferred the property to Bac Cao Nguyen and his wife, Tuyet Thi Ha (collectively purchasers).

On August 11, 2004, plaintiff filed a motion for writ of attachment.

On September 8, 2004, plaintiff amended his suit and named Charfin and the purchasers as additional defendants. The amended petition seeks judgment nullifying the transfer of the property from Linh, Van and Steve to Charfin, and from Charfin to purchasers, and alternatively for judgment ordering the return of the cash deposit. Linh, Van and Charfin interposed exceptions of no cause of action, which the trial court denied. Relators now seek this Court's supervisory review.

## **DISCUSSION**

A defendant's peremptory exception of no cause of action is designed to test the legal sufficiency of the plaintiff's petition. It poses the question

“whether the law affords a remedy on the facts alleged in the pleading.” *Id.* Louisiana has a system of fact pleading, and “[t]he mere conclusion of the pleader unsupported by facts does not set forth a cause or right of action.” *Montalvo v. Sondes*, 93-2813, p. 6 (La.5/23/94), 637 So.2d 127, 131. As this Court noted, “[i]t is insufficient to state a cause of action where the petition simply states legal or factual conclusions without setting forth facts that support the conclusions.” *Bibbins v. City of New Orleans*, 2002-1510, p. 5 (La.App. 4 Cir.5/21/03), 848 So.2d 686, 691, *writ denied*, 2003-1802 (La.10/10/03), 855 So.2d 357.

The exceptor has the burden of proving that the petition fails to state a cause of action. This burden serves the public policy of affording the plaintiff his day in court to present his case. “When it can reasonably do so, the court should maintain a petition against a peremptory exception so as to afford the litigant an opportunity to present his evidence.” *Kuebler v. Martin*, 578 So.2d 113, 114 (La.1991). “An exception of no cause of action is likely to be granted only in the unusual case in which the plaintiff includes allegations that show on the face of the petition that there is some insurmountable bar to relief.” *City of New Orleans v. Board of Directors of Louisiana State Museum*, 98-1170, p. 10 (La.3/2/99), 739 So.2d 748, 756.

In this case, the plaintiff’s petition states that he had a valid purchase

agreement with Linh, which was not honored, and that he tendered a \$110,000.00 deposit to Linh, which has not been refunded to the plaintiff, even though title to the property has passed to other purchasers. The plaintiff has stated causes of action for specific performance and alternatively for return of his deposit under the equitable theory of unjust enrichment.

Charfin maintains that plaintiff has no cause of action for specific performance against it. Charfin argues that there was no binding agreement between the plaintiff and owners of the property for want of contractual form, i.e., no legal description of the property or price. Therefore, because there was no valid contract filed of record, Charfin, as a third-party acquirer, is not bound by the public records doctrine. See *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909).

La. C.C. art. 2623 provides in part:

A contract to sell must set forth the thing and the price, and meet the formal requirements of the sale it contemplates.

In this case, though the agreement executed between the plaintiff and the owners is in very simplistic form, it clearly indicates the property to be conveyed and the sale price, thus satisfying statutory requirements. Moreover, there is no question that the agreement to purchase was filed of record prior to the dation between owners and Charfin and Charvin and the

purchasers. Despite Charvin's argument to the contrary, plaintiff is entitled to the protection afforded by the public records doctrine. Plaintiff has stated a demand for specific performance to nullify the transfer of the property from the owners to Charfin and from Charfin to the purchasers. Moreover, plaintiff has stated a cause of action for damages against the owners and Charfin based upon the plaintiff's assertion that he sold a business in Mississippi relying upon the contract to purchase he executed with the owners. Based upon the showing made, the trial judge did not err in overruling relators' exceptions of no cause of action.

**WRIT APPLICATION GRANTED; RELIEF DENIED**