

**HOLLYWOOD CASINO
SHREVEPORT**

VERSUS

**SHREVEPORT
PADDLEWHEELS, L.L.C.,
WARREN L. REUTHER, JR.
AND JAMES E. SMITH, JR.**

* **NO. 2004-CA-0761**

* **COURT OF APPEAL**

* **FOURTH CIRCUIT**

* **STATE OF LOUISIANA**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2002-8240, DIVISION "A-5"
Honorable Carolyn Gill-Jefferson, Judge**

PER CURIAM

(Court composed of Judge Charles R. Jones, Judge Terri F. Love, Judge David S. Gorbaty)

Robert T. Lemon II
JONES, WALKER, WAECHTER, POITEVENT, CARRERE
& DENEGRE, L.L.P.
201 St. Charles Avenue
48th Floor, Bank One Center
New Orleans, LA 701705100

COUNSEL FOR PLAINTIFF/APPELLEE

Robert G. Harvey, Sr.
Kelly A. Loisel
ROBERT G. HARVEY, SR., APLC
2609 Canal Street

Fifth Floor
New Orleans, LA 70119

- AND -

W. Patrick Klotz
KLOTZ & EARLY
2609 Canal Street
Fourth Floor
New Orleans, LA 70119

COUNSEL FOR DEFENDANT/APPELLEE

Randall A. Smith
Andrew L. Kramer
SMITH & FAWER, L.L.C.
201 St. Charles Avenue
Suite 3702
New Orleans, LA 70170

COUNSEL FOR DEFENDANT/APPELLANT

REVERSED AND REMANDED

PER CURIAM.

The present matter arises out of a petition for concursus, declaratory judgment, and injunctive relief filed by the Appellee, Hollywood Casino Shreveport (hereinafter “Hollywood Casino”). The Appellant, Warren L. Reuther, Jr, devolutively appeals the February 11, 2004, judgment granting the Motion for Summary Judgment filed by Shreveport Paddlewheels, LLC

(hereinafter “Shreveport”) alleging that no genuine issue of fact existed as to Mr. Reuther’s lack of authority to alter the business arrangement between Shreveport and Hollywood Casino. We reverse and remand.

In *Hollywood Casino Shreveport v. Shreveport Paddlewheels, LLC, et al.*, No. 2003-1856, this Court exercised its supervisory jurisdiction to review a prior district court order denying Mr. Reuther’s Motion to Compel the return of funds to the registry of the court. In our December 11, 2003 judgment, we granted Mr. Reuther’s writ application and reversed the ruling of the district court based on our previous determination that a conversion of the concursus to a summary proceeding was inappropriate. *Hollywood Casino Shreveport v. Shreveport Paddlewheels, L.L.C., et al.*, 02-2134, p.8 (La.App. 4 Cir. 7/23/03), 853 So.2d 660, 665. Again, we reiterated the point that this matter should proceed via ordinary proceedings and should not be set expeditiously.

In the present matter, the transcript of the hearing on the motion for summary judgment reflects that the district court stated:

Motion for Summary Judgment is a procedural tool that can be used in an ordinary proceeding. To say as a matter of law, there is no need for trial in this matter, because ordinary proceeding does not mean that it has to be a trial. Ordinary proceedings means [sic] it has to follow procedural rules.

Motion granted.

However, pursuant to La. C.C.P. art. 966(A)(1), a party may move for

summary judgment any time **after** the answer is filed. As we stated previously, “Once Mr. Reuther was named as a defendant in the concursus proceeding, he was entitled to avail himself of the rules applicable to ordinary proceedings.” *Hollywood Casino*, 02-2134 at p.8, 853 So.2d at 665. As there has been no answer filed by Mr. Reuther, we find that the district court erred in granting Shreveport’s Motion for Summary Judgment. Accordingly, we reverse and remand to the district court for proceedings consistent with the views expressed both previously and herein.

REVERSED AND REMANDED