

ROBERT R. REVEL

*

NO. 2005-CA-0976

VERSUS

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COURT OF APPEAL

ESSIE CHARAMIE

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 51-919, DIVISION "B"
Honorable William A. Roe, Judge

Judge Terri F. Love

(Court composed of Judge Terri F. Love, Judge Leon A. Cannizzaro Jr.,
Judge Roland L. Belsome)

CANNIZZARO, J., DISSENTS WITH REASONS

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D **AFFIRME**

Robert R. Revel (Mr. Revel) appeals the trial court’s granting of an exception of *lis pendens*. We affirm the judgment of the trial court, finding that the requisite elements, which allow for the granting of an exception of *lis pendens* are applicable to the case *sub judice*.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On May 5, 2003, Robbie Lee Bailey Overstreet (“Ms. Bailey”), as one

of the co-owners of the property located at 140 Lonnie's Lane in Venice, Louisiana, obtained a judgment of eviction against Essie Cheramie ("Ms. Cheramie") and Carol Crosby ("Ms. Crosby") who lived in a trailer located on the property, which is the subject matter of the instant litigation. Ms. Cheramie and Ms. Crosby appealed the eviction to the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, which was denied as untimely.

On May 29, 2003, Ms. Cheramie and Ms. Crosby filed a possessory action against Ms. Bailey, asserting that they were disturbed in their peaceable possession by virtue of the rule for eviction filed May 5, 2003. In response, Ms. Bailey filed an exception of *res judicata*, an answer, and reconventional demand. The trial court granted the exception of *res judicata* and reserved Ms. Bailey's right to proceed on the reconventional demand. Ms. Cheramie and Ms. Crosby filed a motion for new trial, which was granted and the exceptions were reset for hearing. However, the record is absent as to whether there was a ruling on the exceptions.

On May 11, 2004, Ms. Bailey and her co-owners sold the property in question to Robert R. Revel ("Mr. Revel") for \$23,000.00. On November 18, 2004, Mr. Revel filed a petition for possession against Ms. Cheramie, asserting that his peaceable possession of the property was disturbed by virtue of Ms. Cheramie's refusal to leave the property. In response, Ms.

Cheremie filed an exception of *lis pendens* due to the fact that the possessory action she filed naming Ms. Bailey as defendant was still pending. Ms. Crosby was not named in the exception of *lis pendens*. On April 21, 2005, the exception of *lis pendens* was granted in favor of Ms. Cheremie. The trial court granted the exception based on the pending reconventional demand in Ms. Cheremie's possessory action. Mr. Revel's timely devolutive appeal followed.

On appeal, Mr. Revel avers that the trial court erred in granting the exception of *lis pendens* because the two actions, i.e., Ms. Cheremie's possessory action and Mr. Revel's petition for possession against Ms. Cheremie, involve different parties and different causes of action. More specifically, Mr. Revel asserts that the action filed by Ms. Cheremie and Ms. Crosby is a possessory action of the trailer, not the immovable property, whereas his petition claims a possessory action of the immovable property. Mr. Revel further avers that there are different parties in each of the suits because Mr. Revel's action names only Ms. Cheremie, and not Ms. Crosby. Mr. Revel maintains that Ms. Crosby does not live on the property and, therefore, has no interest in these proceedings.

Ms. Cheremie counters that both actions center on her occupation of the land. Moreover, Ms. Cheremie argues that Mr. Revel's failure to name

Ms. Crosby as a defendant in his action does not defeat the exception of *lis pendens*.

STANDARD OF REVIEW

The standard of review of appellate courts in reviewing a question of law is simply whether the court's interpretative decision is legally correct. *Phoenix Assur. Co. of New York v. Shell Oil Co.*, 611 So.2d 709, 712 (La. App. 4th Cir. 1992). Furthermore, if the decision of the district court is based on an erroneous application of law rather than on a valid exercise of discretion, the decision is not entitled to deference by the reviewing court. *Kem Search, Inc. v. Sheffield*, 434 So.2d 1067, 1071-1072 (La. 1983).

LIS PENDENS

La. C.C.P. art. 531 governs *lis pendens* and states:

When two or more suits are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first suit dismissed by excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all.

The test for ruling on an exception of *lis pendens* is to inquire whether a final judgment in the first suit would be *res judicata* in the subsequently filed suit. *Domingue v. ABC Corp.*, 96-1224, p. 3 (La. App. 4 Cir. 6/26/96), 682 So.2d 246, 248. The exception of *lis pendens* has the

same requirements as the exception of *res judicata* and is properly granted when the suits involve the same transaction or occurrence between the same parties in the same capacities. *Id.*

The first requirement for granting an exception of *lis pendens* is that there are two or more suits pending. *Glass v. Alton Ochsner Medical Foundation*, 2002-0412, p. 4 (La. App. 4 Cir. 11/6/02), 832 So.2d 403, 406. In the case *sub jucice*, there are two suits pending in the Twenty-Fifth Judicial District Court for the Parish of Plaquemines. Thus, the requirement that there exist two or more pending cases has been met.

The second requirement for granting *lis pendens* is that the suits involve the same transaction or occurrence. *Hy-Octane Investments, Ltd. v. G & B Oil Products, Inc.*, 97-28, p. 5 (La. App. 3 Cir. 10/29/97), 702 So.2d 1057, 1060, citing Comment (a) to La. R.S. 13:4231. We find that both actions clearly arise out of the same occurrence, i.e., Ms. Cheramie's occupation of the property located at 140 Lonnie's Lane in Venice, Louisiana.

The third requirement for granting *lis pendens* is that the suits involve the same parties in the same capacities. The "identity of parties" prerequisite for *res judicata* does not mean that the parties must be the same physical or material parties, so long as they appear in the same quality or

capacity. *Berrigan v. Deutsch, Kerrigan & Stiles, L.L.P.*, 01-612, p.6 (La. App. 4 Cir. 1/2/02), 806 So.2d 163, 167. The only requirement is that the parties be the same “in the legal sense of the word.” *Id.* at p.6, 806 So.2d at 167.

In the present matter, Mr. Revel, as purchaser of the property, is the legal successor to Ms. Bailey and her co-owners and, therefore, the same party, “in the legal sense of the word.” Accordingly, we find that the “identity of parties” requirement has been met in this case.

Furthermore, we find that the failure to name Ms. Crosby in the second suit does not defeat the exception of *lis pendens* as to Ms. Cherie. In *Building Engineering Services Co., Inc. v. State of Louisiana*, 441 So.2d 417, 421 (La. App. 4 Cir. 1983), this Court held that *res judicata* would apply to the issue fully litigated by the common parties of the first and second suits regardless of whether defendants were added or omitted in one of the suits, provided that the parties added or omitted were not “critical to the resolution of issues between the parties in the first suit.” *Id.* 441 So.2d at 421. “By analogy, the identity of parties requirement for *lis pendens* is also not an absolute requirement, but turns on whether the parties added or omitted would be necessary to reach a judgment on all of the issues asserted against the common parties in both suits.” *Fincher v. Insurance*

Corporation of America, 521 So.2d 488, 490 (La. App. 4 Cir. 1988). See also *Fire and Cas. Ins. Co. of Connecticut v. Sewerage and Water Bd. of New Orleans*, 2001-0898, p. 7 (La. App. 4 Cir. 5/29/02), 820 So.2d 632, 635. Under this rationale, the test for *lis pendens* is satisfied as to the common parties in the pending suits, namely Ms. Cherie and Mr. Revel.

We find that the trial court, in the two different proceedings, were asked to make factual determinations as to issues based on the same occurrence between the same parties in the same capacities within the meaning of La. C.C.P. art. 531. Accordingly, Ms. Cherie is entitled under the doctrine of *lis pendens* to have the second suit dismissed.

DECREE

For the foregoing reasons, we affirm the trial court's judgment granting the exception of *lis pendens* in favor of Ms. Cherie.

AFFIRMED