

NOT DESIGNATED FOR PUBLICATION

INTERNATIONAL MARINE * NO. 2011-CA-1258
CARRIERS, INC. AND *
TAMMANY HOLDING *
CORPORATION * COURT OF APPEAL
VERSUS * FOURTH CIRCUIT
*
PEARL RIVER NAVIGATION, STATE OF LOUISIANA
INC. AND CITY OF NEW * * * * *
ORLEANS

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2004-6949, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

* * * * *

Judge Dennis R. Bagneris, Sr.

* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Rosemary Ledet)

BELSOME, J., DISSENTS WITH REASONS

Sidney A. Cotlar
HERMAN, HERMAN, KATZ & COTLAR, L.L.P.
820 O'Keefe Avenue
New Orleans, LA 70113

**COUNSEL FOR PLAINTIFF/APPELLANT INTERNATIONAL
MARINE CARRIERS, INC.**

Wayne A. Collier
1137 Marina Drive
Slidell, LA 70458

**COUNSEL FOR PLAINTIFF/APPELLANT TAMMANY HOLDING
CORPORATION**

Edward F. LeBreton, III
John A. Scialdone
Todd G. Crawford
E. Stuart Ponder
John S. Garner
FOWLER RODRIGUEZ VALDES-FAULI
400 Poydras Street, 30th Floor
New Orleans, LA 70130

FEBRUARY 15, 2012

**COUNSEL FOR DEFENDANT/APPELLEE PEARL RIVER
NAVIGATION, INC.**

AFFIRMED

Plaintiffs/appellants, International Marine Carriers, Inc. and Tammany Holdings Corporation (collectively “IMC”), appeal a judgment of the trial court, which granted defendant’s/appellee’s, Pearl River Navigation, Inc.’s (“PRN”), motion for partial summary judgment.¹ The motion for partial summary judgment sought dismissal of IMC’s claim to annul an April 7, 2004, Sale of Adjudicated Property (“SOAP”) by the City of New Orleans to PRN. Because we find that IMC lacks standing to challenge the City of New Orleans sale to PRN, we hereby affirm the granting of PRN’s motion for summary judgment.

FACTS

IMC acquired the subject property, located at 19759 Chef Menteur Highway, New Orleans, Louisiana, in 1992. Because IMC failed to pay any taxes on the property, it was adjudicated to the City of New Orleans on August 29, 1997. Although IMC would have been able to redeem the property in 1997-2000, it failed to take any action. As of October 31, 2003, the outstanding taxes, interest, penalties and other fees on the property totaled \$49,589.24.

On April 7, 2004, the City of New Orleans sold the property to PRN pursuant to its power to sell blighted and abandoned property under La. R.S. 33:4720.11 *et seq.* Notice of the SOAP sale was sent to Mr. Robert Torres, IMC’s sole owner, at 800 Lakeshore Boulevard, Slidell, Louisiana 70461, which Mr. Torres testified to as being the proper address to send the notice². Upon receiving title to the property, PRN: (1) removed twenty to thirty dumpsters of trash off of

¹ Pursuant to La. C.C.P. Art. 1915(B)(1), the trial court “made an express determination that there is no just reason for delay” and designated the April 19, 2011 judgment as a partial final judgment.

² According to the United States Postal Service records, Mr. Torres received the notice at 1:02 p.m. on January 22, 2004.

the property; (2) used three thousand (3,000) cubic yards of limestone rock to build a limestone pad on the property; (3) removed at least one sunken barge from the property; and (4) drove thirty 50-foot pilings on the property.

The first action taken by Mr. Torres regarding the property was on May 7, 2004, when IMC filed a petition for Nullity of Sale and Injunction alleging that the City of New Orleans purported to sell property that it owned and possessed to PRN. Specifically, IMC alleges that it owned the property and “used the property to outfit and rig marine vessels, as well as to outfit and rig cranes and construction equipment, and to store and maintain heavy equipment, supplies, and scrap metal from various operations.” Although IMC acknowledges in its petition that the subject property was adjudicated to the City of New Orleans on August 29, 1997, for unpaid tax assessments, it alleges that it had open and notorious possession at all times. In its amending petition, IMC alleges that the Application for Post Adjudication Sale contained “false statements and false representations of material facts that resulted in the sale of the immovable property of IMC,” and that “there was collusion among the defendants and their agents to acquire the property of IMC and THC by deceit....” Thus, IMC argues that revocation of the act of sale between the City of New Orleans and PRN would afford IMC its rightful opportunity to redeem the property.

On May 7, 2008, IMC filed a motion for partial summary judgment requesting to annul the April 7, 2004 act of sale between the City of New Orleans and PRN. In support of its motion, IMC provides the following statement of uncontested facts:

1. The Property (hereinafter “Lots 44, 46, 48, 50, and 52”) subject to this litigation were [sic] adjudicated to the City of New Orleans on August 29, 1997.

2. The City of New Orleans purported to sell Lots 44, 46, 48, 50, and 52 pursuant to the authority of the Sale of Post-Adjudicated Property (“SOAP”) Program and state and local laws.
3. The April 16, 2004 Act of Sale between the City of New Orleans and Pearl River Navigation, Inc. (“PRN”) recited consideration for the sale which required PRN to complete the renovation of a mobile trailer located on one of the adjudicated lots.
4. There was not an office trailer on either Lot 44, 46, 48, 50, or 52, and there had never been an office trailer on either Lot 44, 46, 48, 50, or 52.
5. The office trailer referenced in the Act of Sale was located on Lot 42A, which was never part of the City of New Orleans’ adjudication proceeding.
6. Lot 42A is not included in immovable property subject to the Act of Sale executed by the City of New Orleans and PRN, identified by CIN Number 280915.
7. The Applicant, its assignees, and PRN have not and cannot provide the required consideration to the City of New Orleans to qualify for the sale of adjudicated property pursuant to the SOAP program because the trailer, renovation of which served as partial consideration for the sale, never existed on Lot 44, 46, 48, 50, or 52.
8. Adjudicated Lots 44, 46, 48, 50, or 52 are now and have always been commercial properties.
9. Adjudicated Lots 44, 46, 48, 50, or 52 were appraised by a residential appraiser contrary to the City’s SOAP program requirements, which require the use of a commercial appraiser for commercial properties.
10. The residential appraisal established a fair market value of \$80,000, based upon residential use as the highest and best use, while clearly noting that lots 44, 46, 48, 50, and 52 are “Commercial Sites” in the body of the appraisal, thus invalidating the validity of these lots’ residential nature.
11. The City of New Orleans only received \$40,000 based upon an incorrect and deficient appraisal-inadequate consideration for Lots 44, 46, 48, 50, or 52.

12. The City of New Orleans did not receive adequate payment based upon the face of the contract which was executed between the Applicant, its assignees, and PRN at a price of \$230,000 for the actual transfer of the right to acquire the property pursuant to the flaw-ridden SOAP program application.

13. IMC, as prior owner of Lots 44, 46, 48, 50, or 52, has the legal right to redeem the adjudicated lots; this was prevented because of the inherently deficient Act of Sale between the City of New Orleans and PRN.

Thereafter, PRN filed a motion for summary judgment on October 14, 2008, seeking to dismiss IMC's petition for lack of standing to sue to annul the April 7, 2004 sale. A hearing on the cross motions for summary judgment was held on April 15, 2011, whereby the trial court denied IMC's motion for summary judgment and granted PRN's motion for summary judgment in part, "to the extent that the claim by plaintiffs regarding the alleged nullity of the sale of the property described as Lots 44, 46, 48, 50 and 52 situated in the Third District of the City of New Orleans...is **DISMISSED WITH PREJUDICE.**" The trial court, pursuant to La. C.C.P. Art. 1915(B)(1), "made an express determination that there is no just reason for delay" and designated the April 19, 2011 judgment as a partial final judgment. IMC now appeals this final judgment.

STANDARD OF REVIEW

Appellate courts review the grant or denial of a motion for summary judgment *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181, p. 7 (La. 2/29/00), 755 So.2d 226, 230. A summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). A fact is material when its existence or nonexistence may be essential to the plaintiff's cause of action under the applicable theory of recovery; a fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-2512, p. 27 (La. 7/5/94), 639 So.2d 730, 751. A genuine issue is one as to which reasonable persons could disagree; if reasonable persons could reach only one conclusion, there is no need for trial on that issue and summary judgment is appropriate. *Id.*

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2). Summary judgments are favored, and the summary judgment procedure shall be construed to accomplish those ends. *Id.* La. C.C.P. art. 966(C)(2) provides that where, as in the instant case, the party moving for summary judgment will not bear the burden of proof at trial, their burden does not require them to negate all essential elements of the adverse party's claim, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's Claim. Thereafter, if the adverse party fails to produce factual support sufficient to establish that it will be able to satisfy its evidentiary burden of proof at trial, there is no genuine issue of material fact, and the movant is entitled to summary judgment as a matter of law.

DISCUSSION

On appeal, IMC alleges the following assignments of error: (1) the trial court erred in granting PRN's motion for summary judgment and partially dismissing IMC, with prejudice, for lack of standing; (2) the trial court erred in

determining that the sale of the subject property from the City of New Orleans to PRN was not an absolute nullity; and (3) the trial court erred in finding that IMC has no right to redeem the subject property.

The Louisiana Legislature enacted legislation in 1994 authorizing political subdivisions to sell abandoned and adjudicated property. La. R.S. 33:4720.11, *et seq.* Specifically, “the legislature found that it needed to provide a mechanism whereby political subdivisions could sell abandoned properties to control the rising number of such properties and to slow urban blight” and “saw this mechanism as a way to revitalize economically depressed areas by placing abandoned properties back into the stream of commerce.” *Laney v. City of New Orleans ex. Rel. Dept. of Finance*, 05-0521, p.1 (La. App. 4 Cir. 10/27/06), 945 So.2d 79, 80.

The issue before this Court today is whether IMC has standing to challenge the act of sale between the City of New Orleans and PRN. A 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. *Thomas v. State*, 545 So.2d 632, 637 (La. App. 4 Cir. 5/25/89). 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. *In re G.E.T.*, 529 So.2d 524, 526 (La. App. 1 Cir. 7/15/88). When the facts alleged in the petition provide a remedy to someone, but the plaintiff who seeks the relief for himself is not the person in whose favor the law extends the remedy, the petitioner lacks standing. *In re Melancon*, 05–1702, p. 10 (La.7/10/06), 935 So.2d 661, 668. Standing may exist for a portion of a party's claim, but be lacking for a different portion of the same claim. *Id.* Although IMC may have standing for its remaining

claim regarding damages in connection with the moveable property, we find it has no standing to challenge the act of sale between the City of New Orleans and PRN.

Specifically, La. R.S. 33:4720.12 (2004) defined “abandoned property” as “immovable property that had been adjudicated to a political subdivision for non-payment of taxes, and which property is vacant or not lawfully occupied³” and it decreed that, for purposes of the three-year redemptive period of Article VII, Sec. 25 of the State Constitution, “an adjudication of property to a political subdivision for non-payment of taxes shall be deemed a tax sale.” In this case, IMC’s property was adjudicated to the City of New Orleans on August 29, 1997. Thus, IMC had until August of 2000 to redeem the property; when the property was not redeemed within the three year period, IMC’s rights to the property were extinguished. Once the City of New Orleans decided to sell the abandoned property, the rights afforded to IMC as the former owner are contained in La. R.S. 33:4720.17 (2004), which provides: (1) that 60 days prior to the sale of the adjudicated property, notice shall be sent to IMC, and (2) that at any time prior to the execution of the Act of Sale from the City to the purchaser, IMC shall have the right to redeem the property by payment of all tax, interest, costs, and penalties. Here, it is undisputed that notice was mailed to IMC in accordance with the statute and that IMC made no attempt to redeem the property prior to the act of sale between the City of New Orleans and PRN. La. R.S. 4720.18 makes it clear that “[a] post-adjudication sale conducted pursuant to this Chapter shall transfer the property to the purchaser free and clear of any liens or privileges.” Further, IMC

³ According to La. R.S. 4720.12, the term “vacant or not lawfully occupied” shall include but not limited to any premises which is not actually occupied by its owner, lessee, or other invitee, and has been left unsecured or inadequately secured from unauthorized entry to the extent that the premises may be entered and utilized by vagrants or other uninvited persons as a place of harborage or any premises which by

has raised no genuine issue of fact that would be a basis for finding that the sale between the City and PRN was illicit, immoral, or against public policy, which is necessary to render the sale an absolute nullity. The City of New Orleans has testified that it is satisfied with PRN's compliance with the SOAP program and subsequent restoration of the property, and has raised no objection to the sale. After reviewing the applicable legislation, we do not find IMC has an interest in judicially enforcing an alleged relative nullity of a sale between the City of New Orleans and PRN; rather the City of New Orleans is the only entity in whose favor the law extends a remedy.

Accordingly, we find no legal error in the trial court's judgment, which granted PRN's motion for summary judgment in part and dismissing IMC's claim regarding the alleged nullity of sale between the City of New Orleans and PRN.

AFFIRMED

reason of dilapidation, deterioration, state of disrepair, or other such status is otherwise detrimental to or endangers public safety, health, or welfare.