

ROYANNE DAVIS

*

NO. 2014-CA-1316

VERSUS

*

COURT OF APPEAL

**CHEEMA, INC. AND
CENTURY SURETY
COMPANY**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

*

*

* * * * *

LOVE, J., CONCURS AND ASSIGNS REASONS

I concur with the results reached by the majority. However, I write separately to emphasize the discretionary nature of the law of the case doctrine at the appellate court level.

The law of the case doctrine “is a discretionary guide that will not be applied inflexibly.” *KeyClick Outsourcing, Inc. v. Ochsner Health Plan, Inc.*, 11-0598, p. 8 (La. App. 4 Cir. 3/14/12), 89 So. 3d 1207, 1212. *See also Scott v. Am. Tobacco Co.*, 09-0461, p. 4 (La. App. 4 Cir. 4/23/10), 36 So. 3d 1046, 1050. On appeal, we are permitted to disregard this doctrine if a “palpable error” is discovered in our first decision. *First Bank & Trust v. Duwell*, 11-0104, p. 5 (La. App. 4 Cir. 5/18/11), 70 So. 3d 15, 19. *See also Washington v. Aetna Life Ins. Co.*, 03-0790 (La. App. 4 Cir. 7/2/03), 853 So. 2d 34. An appellate court may also choose not to apply the law of the case doctrine to avoid “obvious injustice,” (*First Fed. Sav. & Loan of Warner Robins, Georgia v. Disiere*, 542 So. 2d 11, 13 (La. App. 4th Cir. 1989)), if “operative facts upon which the court’s prior decision was based have changed,” (*Bank One, Nat. Ass’n v. Velten*, 04-2001, p. 7 (La. App. 4 Cir. 8/17/05), 917 So. 2d 454, 459), or “when there is intervening case law.” *KeyClick*, 11-0598, p. 8, 89 So. 3d at 1212, *quoting Mann v. Brittany Place Associates Ltd.*, 99-1588, p. 3 (La. App. 4th Cir. 9/13/00), 770 So. 2d 25, 27.