

**GRANVILLE M. SEMMES, III** \* **NO. 2016-CA-1169**  
**VERSUS** \*  
**GEORGE W. SEMMES AND** \* **COURT OF APPEAL**  
**KEY WEST HOMES, LLC** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\* \* \* \* \*

APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2011-00187, DIVISION "M"  
Honorable Paulette R. Irons, Judge  
\* \* \* \* \*

**Judge Roland L. Belsome**  
\* \* \* \* \*

(Court composed of Judge Edwin A. Lombard, Judge Roland L. Belsome, Judge Daniel L. Dysart)

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**AFFIRMED**

**JUNE 14, 2017**

This case arises out of a debt owed by George Semmes and Key West Homes, LLC (hereinafter “the Appellant”) <sup>1</sup>to Granville Semmes, III (hereinafter “the Appellee”).<sup>2</sup>

***Procedural History***

On October 14, 2010, the Appellant executed a promissory note in favor of the Appellee in the amount of \$100,000. The Appellant failed to make payments on the loan, and on January 7, 2011, the Appellee filed a Petition seeking the principle amount of the loan, interest, attorneys’ fees and costs. On that same day, the Appellant signed the Petition accepting service, and also executed and filed an answer confessing judgment and agreeing to a consent judgment for all sums requested by the Appellee. Thereafter, a Consent Judgment was executed by the Appellant and signed by the trial court on January 11, 2011. The content of the Consent Judgment was as follows:

Considering the petition herein; and the answer admitting liability and consenting to a judgment as prayed;

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<sup>1</sup> The appeal was taken by George Semmes individually.

<sup>2</sup> Appellant and Appellee are brothers.

IT IS ORDERED that there be judgment herein in favor of plaintiff, Granville M. Semmes, III, and against defendants, George W. Semmes and Key West Homes, LLC, jointly, severally and *in solido*, in the principle amount of \$100,000, with interest thereon at the rate of 6% percent per annum from October 14, 2010, until paid, plus attorneys' fees in the amount of \$15,000, and all costs of these proceedings.

When the Appellant failed to comply with the terms of the Consent Judgment, the Appellee took numerous steps to try and enforce the judgment starting in June 2011.<sup>3</sup> Then in June 2015, the Appellee filed Motion for Enforcement of Judgment by Means of a Charging Order. The Appellee further caused the judicial seizures by the Sheriff of Orleans Parish of the Appellant's undivided shares and interests in their parents' succession proceedings through a Notice of Seizure dated August 4, 2015.

Thereafter, on February 8, 2016, the Appellant filed a Petition for Nullity. The Appellant's petition sought to annul the January 11, 2011 Consent Judgment, and also requested damages. In response to the Petition for Nullity, the Appellee filed exceptions of no cause of action, prescription and preemption. The Appellee's exceptions were heard and granted by the trial court. This appeal followed.

### ***Assignments of Error***

On appeal, the Appellant maintains that the trial court erred in failing to apply the doctrine of *contra non valentem* to the discovery of fraud. However, the Appellant did not raise the issue of *contra non valentem* at the trial court level. For that reason, we will review the trial court's grant of the exception of prescription under the controlling statute for nullifying judgments, La. C.C.P. art. 2004.

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<sup>3</sup> The Appellee's efforts included setting and re-setting judgment debtor rules because he could not perfect service on the Appellant.

### ***Exception of Prescription***

Because the exception of prescription raises a question of law, this Court reviews the trial court's ruling on an exception of prescription *de novo*.<sup>4</sup>

Louisiana law allows for final judgments that are obtained through fraud or ill practices to be annulled.<sup>5</sup> In order for a plaintiff to avail himself of La. C.C.P. art. 2004, an action to annul a judgment must be brought within one year of the discovery of the fraud or ill practice.<sup>6</sup> The party seeking the nullity has the burden of establishing that the one-year period has not elapsed.<sup>7</sup>

In this case, the Appellant's Petition for Nullity alleges that the January 11, 2011 Consent Judgment should be annulled for fraud, misrepresentation, ill practice, and mistake. The fraud and ill practices complained of alleges, among other things, that the Appellee stated that he would not enforce the judgment. Therefore, the Appellant signed the Consent Judgment without reading the terms of the agreement. It is undisputed that the behavior complained of occurred at the time of the signing of the Consent Judgment, yet Appellant further claims that he did not become aware of the fraud and ill practices until 2015, when the Appellee attempted to seize property to satisfy the judgment.

Since the facts of the petition indicate more than a year had lapsed from the alleged acts of fraud and ill practices, it was the Appellant's burden to prove that

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<sup>4</sup> *In re medical Review Panel Claim of Scott*, 16-0145, p.7 (La.App. 4 Cir. 12/14/16), 206 So.3d 1049, 1055 (citations omitted).

<sup>5</sup> La. C.C.P. art. 2004.

<sup>6</sup> *Id.*

<sup>7</sup> *Haney v. Davis*, 06-1058, p.5 (La. App. 4 Cir. 2/14/07), 952 So. 2d 804, 807 (citing *Gennuso v. State*, 339 So.2d 335, 338 (La. 1976)).

the one year prescriptive period had not elapsed. In opposition to the exception of prescription, the Appellant reiterated the allegations of his Petition for Nullity but provided no supporting evidence. Other facts alleged by the Appellant in the Petition for Nullity include: i) that he did not understand or did not know the amount of attorneys' fees included in the Consent Judgment, ii) that he made a mistake in signing the Consent Judgment because it stated an interest rate allegedly different from the interest rate to which he agreed on the Promissory Note, iii) that the Consent Judgment did not properly reflect the amounts actually owed because it failed to include credits to which George Semmes was entitled, and iv) that the underlying Original Petition was not properly served on him.

The Appellant concedes that he had full knowledge of the execution of the Consent Judgment, but contends that he did not anticipate that the Appellee would exercise his legal rights under the judgment. However, this Court has held that under La. C.C.P. art. 2004 the prescription period commences when one has the knowledge of the facts that form the basis of the action for nullity, not when one becomes aware of the legal consequences.<sup>8</sup>

In this case, what is undisputed is that the Appellant's signature is on the acceptance of service for the original petition. The Appellant's signature is also found on the answer professing judgment on the promissory note, and the January 11, 2011 Consent Judgment. Additionally, the Appellant does not dispute that he was fully aware of the existence of the Consent Judgment beginning on January 11, 2011. He has provided no evidence to support the suspension or interrupt of the running of prescription under La.C.C.P. art. 2004(B).

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<sup>8</sup> *Haney*, 06-1058, p. 6, 952 So.2d at 808 (citing *Succession of Albritton*, 497 So.2d 10, 12 (La.App. 4th Cir.1986)).

Accordingly, we find that the Appellant did not carry his burden of proving that the one year prescriptive period did not commence on January 11, 2011. For that reason, we affirm the trial court's granting of the exception of prescription and the dismissal of the Petition for Nullity.

**AFFIRMED**