

**HEALTH EDUCATION
AUTHORITY OF LOUISIANA**

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NO. 2017-CA-0259

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VERSUS

COURT OF APPEAL

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**APCOA LASALLE PARKING
COMPANY, LLC**

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2013-11626, DIVISION "F"
Honorable Christopher J. Bruno, Judge

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Judge Terri F. Love

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(Court composed of Judge Terri F. Love, Judge Terrel J. Broussard, Pro Tempore,
Judge Marion F. Edwards, Pro Tempore)

EDWARDS, J., CONCURS

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**REVERSED AND REMANDED
SEPTEMBER 13, 2017**

This appeal arises from a challenge to the validity of a lease entered into by Plaintiff Health Education Authority of Louisiana (“HEAL”) and Defendant APCOA LaSalle Parking Company, LLC (“ALPC”) on December 1, 1998. The trial court granted summary judgment in HEAL’s favor after finding the 1998 Lease to be an absolute nullity for failure to comply with the Public Lease Law. On appeal, ALPC filed a peremptory exception on the basis that HEAL’s claims raised in its “First Amended Petition for Declaratory Judgment and Damages” are perempted pursuant to La. Const. art. VI §35(B) and La. Rev. Stat. §17:3056(G). We reverse the trial court’s granting of summary judgment in favor HEAL and remand the case to the trial court in order to determine the issue of prescription.

La. C.C.P. art. 2163 provides:

The appellate court may consider the peremptory exception filed for the first time in that court, if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.

If the ground for peremptory exception pleaded in the appellate court is prescription, the plaintiff may demand that the case be remanded to the trial court for trial of the exception.

Article 2163 “is silent as to any mandate on the appellate court to remand

the case upon the plaintiff's demand. We conclude that the article does not grant plaintiff an automatic right to remand upon his demand for such action. The appellate court has discretion to do so should the interests of justice require a full hearing.” *Talley v. Med. Ctr. of Louisiana at New Orleans*, 02-2488, p. 4 (La. App. 4 Cir. 2/12/03), 840 So.2d 628, 630 (quoting *Joseph v. Vanguard Ins. Co.*, 99-1475 (La. App. 3 Cir. 3/1/00), 758 So.2d 893, 895-896) (internal citations omitted); *See also McKeithen v. LeBlancEyeglasses*, 491 So.2d 807, 808 (La. App. 3rd Cir. 1986).

ALPC’s peremptory exception does not make a formal demand asking for a remand. Instead, ALPC asks this Court to enforce the peremptive periods, grant the exception, and dismiss with prejudice HEAL’s claims against ALPC challenging the legality of the 1998 lease. ALPC contends that HEAL’s claims are preempted because HEAL did not challenge the Amended and Restated Lease-Operating Agreement within thirty days of publication of the bond resolution in *The Time Picayune*; and therefore, HEAL’s challenging the validity of the 1998 Lease must be dismissed. In that “[t]he question of prescription has never been tried [and] evidence concerning possible interruption of prescription has never been presented” we find the interests of justice are better served to remand for a trial on the exception. *Id.*, 491 So.2d at 808.

For these reasons, the trial court’s ruling granting summary judgment is reversed and the matter is remanded to the trial court for proceedings consistent with this opinion.

REVERSED AND REMANDED