ELEMENT PICTURES, L.L.C.	*	**NO. 2018-C-0054**
VERSUS	*	
		COURT OF APPEAL
LIFT (LOUISIANA INSTITUTE OF FILM TECHNOLOGY), L.L.C.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-10253, DIVISION "C"
Honorable Sidney H. Cates, Judge
* * * * * *
Judge Regina Bartholomew-Woods
* * * * * *
(Court composed of Judge Roland L. Belsome, Judge Rosemary Ledet, Judge Regina Bartholomew-Woods)

Joseph S. Piacun
Thomas A. Gennusa, II
Reid S. Uzee
Gennusa, Piacun & Ruli
4405 North I-10 Service Road, Suite 200
Metairie, Louisiana 70006

COUNSEL FOR PLAINTIFF/RESPONDENT

Andrée Matherne Cullens
450 Laurel Street, 8th Floor (70801)
P.O. Box 2471
Baton Rouge, LA 70821-2471

Robert J. Burvant
KING, KREBS & JURGENS, PLLC
201 St. Charles Ave., 45th Floor
New Orleans, LA 70170

COUNSEL FOR STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF ECONOMIC DEVELOPMENT/ DEFENDANT/ RELATOR

WRIT DENIED
April 6, 2018

Defendant-Relator, State of Louisiana through the Department of Economic Development ("LED"), seeks supervisory review of the trial court's December 20, 2017 judgment denying its exceptions of improper cumulation of claims and venue. For the foregoing reasons, we find that the trial court did not err in denying the exceptions; therefore, we deny the writ.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff-Respondent, Element Pictures, L.L.C. ("Element"), is a Louisiana film production company. On December 27, 2004, LED and Louisiana Institute of Film, L.L.C. ("LIFT") entered into a "Multi-Party Certification Agreement" ("MPCA"), which set forth the procedures through which LIFT would receive tax credits, provided by law, for expenditures related to movie productions in Louisiana. On July 15, 2012, Element entered into a Production Agreement with LIFT for Element to be recognized as a third-party beneficiary or Investment Company under the MPCA between LIFT and LED.

According to Element, a dispute arose between LED and LIFT that resulted in arbitration pursuant to the MPCA and ultimately a decision in favor of LIFT. [1] Thereafter, LED filed a motion to vacate the arbitration award in the Civil District Court for the Parish of Orleans ("CDC"). Subsequently, LED and LIFT entered into a settlement agreement, which included an agreement to terminate the MPCA.

[1] The MPCA provided that the "[f]orum for arbitration shall be New Orleans."

On October 26, 2015, Element filed a petition for damages against LIFT in CDC asserting breach of contract and/or specific performance. Subsequently, Element filed an amended petition. Thereafter, Element filed a second supplemental and amended petition for damages joining LED as a defendant. Element alleged that LED improperly terminated the MPCA over objection by Element. Element asserted that the improper termination of the MPCA caused Element, as an Investment Company, to lose rights and claims to tax credits available under the MPCA. LED filed exceptions of improper cumulation of claims and venue. LED argued that there was no community of interest between Element's claim against LIFT for breach of the Production Agreement and Element's claim against LED for improper termination of the MPCA. Accordingly, LED asserted that the claims were improperly cumulated. Further, LED asserted that all of its decisions regarding the termination of the MPCA occurred in Baton Rouge, Louisiana; therefore, proper venue lies only in East Baton Rouge Parish.

In response, Element filed an opposition to LED's exceptions of improper cumulation of claims and venue. Element asserted the following: (1) venue was proper in Orleans Parish because the MPCA contemplated investment companies, such as Element; (2) the MPCA provided that jurisdiction for issues arising under the MPCA would be in Orleans Parish; (3) LED and LIFT engaged in arbitration in Orleans Parish; (4) LED filed a petition to vacate the arbitration award in Orleans Parish; and (5) LIFT filed suit against LED in the federal district court for the

Eastern District of Louisiana, which is located in Orleans Parish. Moreover, Element argued that the Production Agreement was derived from the MPCA.

On December 15, 2017, the trial court conducted a hearing on LED's exceptions of improper cumulation of claims and venue. On December 20, 2017, the trial court rendered judgment denying the exceptions. This writ application followed.

DISCUSSION

LED asserts that the trial court erred in denying its exceptions of improper cumulation of claims and venue.

Standard of Review –Venue

"Exceptions of improper venue are reviewed using the *de novo* standard of review, as venue is a question of law." *Matthews v. United Fire & Cas. Ins. Co. Doctor Pipe, Inc.*, 2016-0389, p. 3 (La. App. 4 Cir. 3/8/17), 213 So.3d 502, 505, *writ denied sub nom. Matthews v. United Fire & Cas. Ins. Co.*, 2017-0594 (La. 5/26/17), 221 So.3d 857; *Premier Dodge, L.L.C. v. Perrilloux*, 2005-0554, p. 2 (La. App. 4 Cir. 1/25/06), 926 So.2d 576, 577.

Standard of Review – Cumulation of Claims

An exception of improper cumulation is "a final judgment subject to a manifest error standard of review." *Dietz v. Superior Oil Co.*, 2013-657, p. 3 (La. App. 3 Cir. 12/11/13), 129 So.3d 836, 839. Pursuant to La. C.C. art. 463, two (2) or more parties may be joined in the same suit, either as plaintiffs or as defendants, if

the following three (3) requirements are satisfied: (1) there is a community of interest between the parties joined; (2) each of the actions cumulated is within the jurisdiction of the court and is brought in the proper venue; and (3) all of the actions cumulated are mutually consistent and employ the same form of procedure. This Court, in *Albarado v. Union Pac. R.R. Co.,* provided that

> [t]he test in determining whether the parties have a community of interest is whether the cumulated causes of action arise out of the same facts or whether they present the same factual or legal issues. *Strahan et. al. v. Maytag Corp., et al.,*[19] 99-0869, 760 So.2d 463, 468 (La. App. 4 Cir.2000). Essentially, community of interest is present between different actions or parties, where enough factual overlap is present between the cases to make it commonsensical to litigate them together. *See also First Guaranty Bank v. Carter,* 89-0862, 563 So.2d 1240 (La. App. 1 Cir.1990) (*citing,* The Official Revision Comments to Article 463 which states that a review of Louisiana case law indicates that a community of interest and common interest refer to exactly the same concept).

2000-2540, pp. 10-11 (La. App. 4 Cir. 4/25/01), 787 So.2d 431, 438 *rev'd on other grounds,* 2001-1537 (La. 9/14/01), 796 So.2d 666.

Analysis[2]

LED argues that the trial court erred in denying its exception of improper venue because the trial court failed to apply La. R.S. 13:5104,[3] the mandatory

[2] Because the analysis for both the exceptions of improper cumulation of actions and improper venue are intertwined, they will be discussed together.

[3] La. R.S. 13:5104 (A) provides, in pertinent part, that:

> "[a]ll suits filed against the state of Louisiana or any state agency or against an officer or employee of the state or state agency for conduct arising out of the discharge of his official duties or within the course and scope of his employment shall be

general venue statute applicable in suits against state agencies, such as LED. *Impastato v. State, Div. of Admin.*, 2010-1998, p. 1 (La. 11/19/10), 50 So.3d 1277, 1278. The aforementioned statute is to be applied unless another more specific venue provision is applicable. *Id.* In *LeBlanc v. Thomas,* 2008-2869 (La. 10/20/09), 23 So.3d 241, the Louisiana Supreme Court cited its decision in *Colvin v. Louisiana Patient's Compensation Fund Oversight Board,* 2006-1104 (La. 1/17/07), 947 So. 2d 15, and reasoned that "[i]n cases against state agencies involving administrative decisions, East Baton Rouge Parish is the district having jurisdiction, and the district in which the cause of action arises under L[a.] R.S. 13:5104(A)." *LeBlanc*, 2008-2869 p. 11, 23 So.3d at 247. The Court further reasoned "that East Baton Rouge Parish is the proper venue for a suit against a state agency where an administrative decision is involved." *Id.*

Based on the aforesaid jurisprudential authorities, we find that technically East Baton Rouge Parish is the proper venue for Element's claims against LED – a state agency, and the decision by LED to terminate the MPCA was an administrative decision; however, because we find that there is a more specific venue provision applicable, i.e., the ancillary venue doctrine, we find that the trial court did not err in denying LED's exceptions.

When the matter was pending before the trial court, Element, in opposing the exceptions, raised the ancillary venue doctrine, albeit not by name. Element argued that its claim against LED was properly cumulated because the cause of

> instituted before the district court of the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises."

action against LIFT arose in Orleans Parish. Element also raised the doctrine, by name, before this Court, in its opposition to LED's writ application, stating:

> [A]ncillary jurisdiction over both defendants may be maintained in New Orleans. The original Petition for Damages filed by Element named only LIFT as a defendant; the State/LED was added as an additional defendant through a supplemental and amended petition. There is no factual or legal dispute that New Orleans is a proper venue for Element's claims against LIFT (a New Orleans entity); in fact, there is no basis to maintain venue in East Baton Rouge Parish solely for Element's claims against LIFT. Element has alleged that LIFT and the State/LED are jointly and severally liable to Element for its claims and resulting damages that arise out of the same transaction and occurrence. Thus, New Orleans (Civil District Court) is an appropriate venue for LIFT and the State/LED as joint and solidary obligors. *See Underwood v. Lane Mem. Hosp*., [19]97-1997 (La. 7/8/98), 714 So.2d 715.

The Louisiana Supreme Court has held that "[a]ncillary venue applies when separate claims involving common or identical questions of fact share no common venue. The concept of ancillary venue allows such claims to be tried together for reasons of judicial economy and efficiency, even though venue is not proper technically for one claim or one party." *Underwood v. Lane Mem'l Hosp*., 1997-1997, p. 8 (La. 7/8/98), 714 So.2d 715, 719. Stated otherwise, ancillary venue has been applied when "venue is proper as to one claim, the disposition of which will necessarily affect a related second claim as to which venue might otherwise be improper." *Smith v. Baton Rouge Bank & Tr. Co*., 286 So.2d 394, 397 (La. App. 4th Cir. 1973).

Ancillary venue is a cumulation of claims concept. Explaining this connection between venue and cumulation, a commentator has observed:

> Frequently, separate claims will involve common or identical questions of fact, but there is no common venue for the claims. If the defendant objects, the Code apparently would require separate trials of

> the individual claims. Cumulation or joinder of separate claims against the same defendant or joinder of two or more defendants is permitted only if "[e]ach of the actions cumulated is . . . brought in the proper venue." Thus if the plaintiff cumulates separate claims involving common questions of fact, but lacking a common venue, and a defendant timely objects, joint trial of the actions is literally precluded. Some courts have avoided this undesirable result by fashioning a rule of "ancillary venue" which permits litigation of both claims in a venue proper as to one of the claims. In one of the early applications of "ancillary venue," the Fourth Circuit [in *Smith*, *supra*] expressed the rule in these terms:
>
> > [W]here venue is proper as to one claim, the disposition of which will necessarily affect a related second claim as to which venue might otherwise be improper, the court has the authority to decide both claims in the interest of efficient judicial administration.

1 Frank Maraist, LA. CIV. L. TREATISE, CIVIL PROCEDURE § 3:6 (2d ed. 2017) (internal footnotes omitted).[4] In sum, the underlying basis of the doctrine is that, when two (2) claims arise out of the same transaction or occurrence, it is judicially efficient that both claims be tried in the same venue despite the fact that venue may be technically improper as to one of those claims.

For ancillary venue to apply, the jurisprudence has required that three (3) elements be present: (i) no common venue;[5] (ii) interrelated claims;[6] and

[4] The governing statutory provision on cumulation of claims is La. C.C.P. art. 463, which provides as follows:

> Two or more parties may be joined in the same suit, either as plaintiffs or as defendants, if:
>
> 1. There is a community of interest between the parties joined;
>
> 2. Each of the actions cumulated is within the jurisdiction of the court and is brought in the proper venue; and
>
> 3. All of the actions cumulated are mutually consistent and employ the same form of procedure.
>
> Except as otherwise provided in Article 3657, inconsistent or mutually exclusive actions may be cumulated in the same suit if pleaded in the alternative.

[5] *See Solow v. Heard, McElroy & Vestal, L.L.P.*, 2005-1028, p. 5 (La. App. 4 Cir. 4/12/06), 937

(iii) circumstances of the particular case warranting invoking the doctrine.[7] In the present matter, all three (3) requirements are satisfied.

There is no common venue. Venue as to LED is proper only in East Baton Rouge Parish, given that this suit arises out of its administrative decisions made in East Baton Rouge Parish. *See* La. R.S. 13:5104(A). As Element points out, "there is no basis to maintain venue in East Baton Rouge Parish solely for Element's claims against LIFT." Venue as to LIFT, a New Orleans-based company, thus would not be proper in East Baton Rouge Parish.

The claims are interrelated. Indeed, Element has alleged in its First Amended Petition that the defendants, LIFT and LED, are liable jointly and severally to it. Although the claims against LIFT arise out of the production agreement and the claims against LED arise out of the MPCA, the MPCA contemplated that there would be "investment companies," such as Element. As Element points out, its claims under the production agreement are derivative of LIFT's rights under the MPCA; and its claims against LIFT and LED present a significant community of interest, rights, and facts.

So.2d 875 (declining to apply the ancillary venue doctrine to find proper venue in Orleans Parish because the plaintiffs shared a common venue in Caddo Parish and collecting cases).

[6] A requirement of cumulation of claims is that there be an interrelationship or connexity of claims. *See Mauberret-Lavie v. Lavie*, 2003-0099, p. 2 (La. App. 4 Cir. 6/11/03), 850 So.2d 1, 2-3 (stating that "[t]he test in determining whether the parties have a community of interest is whether the cumulated causes of action arise out of the same facts or whether they present the same factual or legal issues. . . . [C]ommunity of interest is present between different actions or parties, where enough factual overlap is present between the cases to make it commonsensical to litigate them together"); *see also Parish of Plaquemines v. Total Petrochemical & Ref. USA, Inc*., 64 F.Supp.3d 872, 882-83 (E.D. La. 2014) (observing that "[t]he community of interest standard for cumulation of actions under article 463 is a 'liberal' one").

[7] *See Underwood*, 1997-1997 at p. 9, 714 So.2d at 719 (observing that that it did "not necessarily embrace the doctrine of ancillary venue as a solution to all venue problems in multiparty litigation," but that ancillary venue applied "to resolve this 'unprovided for' situation" before it).

Finally, given the connexity of the claims, it would be judicially inefficient to require these interrelated claims to be tried in separate venues. The circumstances of this case warrant invoking the ancillary venue doctrine.

DECREE

For the aforementioned reasons, we find that the trial court did not err in denying LED's exceptions; therefore, we deny the writ.

WRIT DENIED