BARRY LOCKETT	*	**NO. 2018-C-0082**
VERSUS	*	
		COURT OF APPEAL
AMTRUST NORTH AMERICA INSURANCE COMPANY, CFL FURNITURE & ANTIQUES, INC., USAA INSURANCE COMPANY, OSBORNE REAVES AND HERMAN CARTER	*	**FOURTH CIRCUIT**
		STATE OF LOUISIANA
	* * * * * * *	

ON APPLICATION FOR SUPERVISORY WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-02956, DIVISION "J"
HONORABLE Cherrell Sims Taplin, PRO TEMPORE
* * * * * *

Judge Joy Cossich Lobrano

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(Court composed of Judge Terri F. Love, Judge Joy Cossich Lobrano, Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew-Woods)

LOVE, J., DISSENTS

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WRIT GRANTED

APRIL 26, 2018

The Relators, United Services Automobile Association ("USAA") and Osborne Reaves, seek review of the district court's December 8, 2017, ruling denying the Relators' peremptory exception of no cause of action. Barry Lockett filed this suit against two sets of defendants: (i) Amtrust North America Insurance Company; CFL Furniture & Antiques, Inc.; and Stephen Pitard (collectively "Amtrust"); and (ii) Mr. Reaves, and USAA (collectively the "Relators"). Mr. Lockett's claims against Amtrust were for damages suffered in an accident that occurred on May 15, 2015 ("Accident One"); his claims against the Relators were for damages suffered in a second accident that took place on October 31, 2015 ("Accident Two").

Amtrust filed a cross-claim against the Relators, arguing that it was entitled to indemnity and contribution from the Relators for any damages that it is compelled to pay to Mr. Lockett. Amtrust contended that any injuries suffered by Mr. Lockett were caused by Accident Two. Amtrust's cross-claim reads as follows:

> Upon trial of this matter, to the extent that there is a judgment awarding damages in favor of Barry Lockett and against the Cross plaintiff. Cross plaintiffs are owed indemnity and/or contribution by

> Reaves, Carter[1] and/or USAA because plaintiffs['] injuries were, in fact, caused by the subsequent accident in which Reaves' vehicle struck plaintiffs vehicles ["Accident Two"].

In response to the cross claim, the Relators filed a peremptory exception of no cause of action. Denying the Relators' exception of no cause of action, the district court reasoned that "there is a cause of action in this matter and additional discovery is needed to determine whether, [the Relators] . . . contributed in any way, or are responsible for plaintiffs' injuries." This writ application followed.

For the reasons that follow, we grant the Relators' writ application, reverse the district court's ruling denying the Relators' peremptory exception of no cause of action, and render judgment dismissing the cross-claim.

A district court's ruling on a peremptory exception of no cause of action presents a legal question and is thus reviewed under the *de novo* standard of review. *Phillips v. Gibbs*, 10-0175, p. 3 (La. App. 4 Cir. 5/21/10), 39 So.3d 795, 797 (citing *Tuban Petroleum, L.L.C. v. SIARC, Inc.*, 09-0302, p. 3 (La. App. 4 Cir. 4/15/09), 11 So.3d 519, 522). The pertinent question on an exception of no cause of action is whether, when viewed in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the petition states any valid cause of action for relief. *Id*. (citing *Wright v. Louisiana Power & Light*, 06-1181, p. 15 (La. 3/9/07), 951 So.2d 1058, 1069). This exception is designed to test the legal sufficiency of a petition by determining whether a party is afforded a remedy in law based on the facts alleged in the pleading. *Phillips*, 10-0175, p. 3, 39 So.3d at 797-98 (citing *Foti v. Holliday*, 09-0093, p. 5 (La.10/30/09), 27 So.3d 813, 817).

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[1] Although Herman Carter is named as a defendant as to Accident Two, this writ application was filed only on behalf of USAA and Mr. Reaves. In their writ application, the Relators explain that, at the time of Accident Two, "Herman Carter driving a vehicle owned by Osborne Reaves and insured by United Services Automobile Association."

All well-pleaded allegations of fact are accepted as true and correct, and all doubts are resolved in favor of sufficiency of the petition so as to afford litigants their day in court. *Phillips*, 10-0175, p. 3, 39 So.3d at 798. The burden of demonstrating that a petition fails to state a cause of action is upon the mover. *Id*.

In their writ application, the Relators contend that the district court erred in denying their exception given that non-contractual, solidary liability was abrogated by the 1996 amendment to La. C.C. art. 2324, which provides that tortfeasors are only liable for their percentage of fault.[2] Furthermore, the Relators contend that even before the 1996 amendment, tortfeasors who caused two separate accidents were held not to be solidarily liable.[3] The Relators' arguments are persuasive.

"In cases arising after the 1996 amendment to Article 2324, a joint tortfeasor is not solidarily liable, cannot be made to pay more than his or her share [of fault], and, accordingly, has no claim of subrogation or contribution by operation of law from other tortfeasors." Frank L. Maraist & Thomas C. Galligan, Jr., LOUISIANA TORT LAW, §12-8(c)(1996). The Louisiana Supreme Court similarly explained

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[2] As amended in 1996, La. C.C. art. 2324 states, in pertinent part:

> A. He who conspires with another person to commit an intentional or willful act is answerable, in solido, with that person, for the damage caused by such act.
>
> B. If liability is not solidary pursuant to Paragraph A, then liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such other person's insolvency, ability to pay, degree of fault, immunity by statute or otherwise, including but not limited to immunity as provided in R.S. 23:1032, or that the other person's identity is not known or reasonably ascertainable.

[3] *See McCreary v. Commercial Union Assurance Co*., 372 So.2d 745 (La. App. 4th Cir. 1979); *Bolin v. Hartford Accident & Indemnity Co*., 204 So.2d 49 (La. App. 2d Cir. 1967); *see also Perez v. State Farm Ins. Cos*., 458 So.2d 218, 221 (La. App. 5th Cir. 1984).

the impact of the 1996 amendments on the contribution rights among joint tortfeasors as follows:

> Louisiana's [new] policy is that each tortfeasor pays only for that portion of the damage he has caused and the tortfeasor shall not be solidarily liable with any other person for damages attributable to the fault of that other person. With the advent of this new policy, the right of contribution among solidary tortfeasors also disappeared since it is no longer necessary in light of the abolishment of solidarity.

Dumas v. State ex rel. Dep't of Culture, Recreation & Tourism, 02-0563, p. 14 (La. 10/15/02), 828 So.2d 530, 538. Applying these principles, Amtrust's cross claim for contribution fails to state a cause of action.

As to Amtrust's cross claim for indemnity, the Louisiana Supreme Court has summarized the jurisprudence on indemnity claims as follows:

> Indemnity in its most basic sense means reimbursement, and may lie when one party discharges a liability which another rightfully should have assumed. *Black's Law Dictionary* 769 (6th ed.1990); 42 *C.J.S Indemnity* § 2 (1991). It is based on the principle that everyone is responsible for his own wrongdoing, and if another person has been compelled to pay a judgment which ought to have been paid by the wrongdoer, then the loss should be shifted to the party whose negligence or tortious act caused the loss. *42 C.J.S. Indemnity* at § 32. The obligation to indemnify may be express, as in a contractual provision, or may be implied in law, even in the absence of an indemnity agreement. *Id*. at § 29. An implied contract of indemnity arises only where the liability of the person seeking indemnification is solely constructive or derivative and only against one who, because of his act, has caused such constructive liability to be imposed. *Bewley Furniture Co., Inc. v. Maryland Cas. Co*., 285 So.2d 216, 219 (La. 1973). Thus, because the party seeking indemnification must be without fault, a weighing of the relative fault of tortfeasors has no place in the concept of indemnity. *Id*.

Nassif v. Sunrise Homes, Inc., 98-3193, pp. 2-4 (La. 6/29/99), 739 So.2d 183, 185.

Applying those principles here, Mr. Lockett avers in his petition that Amtrust caused Accident One, as a result of which Mr. Lockett sustained injury. Amtrust is alleged to be at fault and thus is barred from bringing an indemnity claim. Regardless, as the Relators point out, if no damages were caused by

Accident One, or if Amtrust was not at fault in causing Accident One, Amtrust cannot be cast in judgment to Mr. Lockett for any damages; conversely, the Relators, who were not involved in Accident One, cannot be held responsible for the damages that arise from Accident One. As the Relators further point out, the actions of parties not involved in Accident One cannot be deemed to have caused "constructive or derivative liability" to be imposed on cross claimants for the damages that arise from that accident. Amtrust's cross claim for indemnification thus fails to state a cause of action.

Accordingly the Relators' writ is granted, the district court's ruling is reversed, and Amtrust's cross-claim is dismissed.

WRIT GRANTED