

WHITNEY NATIONAL BANK * **NO. 2018-C-0357**
VERSUS *
GARY C. LANDRIEU AND * **COURT OF APPEAL**
MARIA CORTES LANDRIEU * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**
* * * * *

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2010-04501, DIVISION “L-6”
Honorable Kern A. Reese, Judge

* * * * *

Judge Paula A. Brown

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(Court composed of Judge Daniel L. Dysart, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

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**WRIT GRANTED; DISMISSED IN PART; VACATED IN PART; AND
REMANDED.**

JUNE 27, 2018

The instant dispute arises from a petition for a deficiency judgment. Respondent/Plaintiff, Whitney National Bank (“Whitney Bank”) held two promissory notes in favor of Relators/Defendants, Gary C. Landrieu and Maria Cortes Landrieu (collectively referred to as the “Landrieus”). Whitney Bank alleges that the Landrieus executed a collateral mortgage note as security for the promissory notes and the Landrieus encumbered their property, which included “a developed parcel on the 300 block of Chartres” (the “Property”) located in New Orleans, Louisiana. Respondents/Third-Party Defendant, H.O.D.C., L.L.C., d/b/a Keller Williams Realty of New Orleans (“Keller Williams”) was hired by the Landrieus to sell the Property.

Before the Landrieus could sell the Property, Whitney Bank foreclosed on it. The Property was sold in 2010 at a sheriff’s sale pursuant to a writ of seizure and sale. In 2017, Whitney Bank filed a “Petition for Deficiency Judgment” and a supplemental petition, against the Landrieus alleging that the sales proceeds from the Property were insufficient to satisfy the Landrieus’ obligations. In response, the Landrieus filed, collectively, an answer to the petition, exceptions, and affirmative defenses; a reconventional demand arising in tort against Whitney

Bank; and a third-party demand arising in tort and breach of contract against Keller Williams.

Keller Williams filed a peremptory exception of prescription as to claims asserted by the Landrieus' in their Third-Party Demand. A hearing was held, and a judgment was rendered on November 9, 2017 in favor of Keller Williams, in part, and against the Landrieus. The judgment dismissed, with prejudice, all tort claims asserted in the Landrieus' third-party demand.¹ The Landrieus filed a motion for new trial requesting the district court to reconsider that portion of the November 9, 2017 judgment granting the exception of prescription. A hearing was held on December 15, 2017. On December 28, 2017, the district court rendered judgment and denied the Landrieus' motion. On March 13, 2018, the Landrieus filed, in the district court, a notice of intent to seek review in this Court.

Whitney Bank filed peremptory exceptions of no cause of action and prescription as to the Landrieus' reconventional demand. A hearing was held on December 15, 2017, and a judgment was rendered on December 22, 2017. In this judgment, the district court denied both exceptions. On January 4, 2018, Whitney Bank filed a motion for new trial. Whitney Bank requested the district court to reconsider the December 22, 2017 judgment only as to the exception of prescription. A hearing on the motion for new trial was held on April 6, 2018. On April 18, 2018, the district court rendered a judgment dismissing with prejudice all tort claims asserted against Whitney Bank. The Landrieus timely sought review by this Court.

¹ The judgment denied Keller Williams' peremptory exception of prescription as to the breach of contract claims.

The Landrieus seek review of both judgments—the December 28, 2017 judgment denying the Landrieus’ motion for new trial and the April 18, 2018 judgment granting Whitney Bank’s motion for new trial. We will address each judgment separately.²

Denial of motion for new trial (Landrieus)

The Landrieus argue the district court erred in denying their motion for new trial to reconsider the granting of Keller Williams’ exception of prescription as to all tort claims. The Landrieus contend these claims, although prescribed, can be urged as defenses pursuant to La. C.C.P. art. 424; and, the claims should not be dismissed.³

The district court’s judgment that granted partial relief to Keller Williams was an interlocutory judgment, which the district court did not certify as a final judgment. La. C.C.P. art. 1915; *Wells Fargo Fin. Louisiana, Inc. v. Galloway*, 17-0413, pp. 4-5 (La. App. 4 Cir. 11/15/17), 231 So.3d 793, 798. Thus, the motion for new trial was not the proper procedural device for the Landrieus to seek review of the November 9, 2017 judgment. Instead, the Landrieus should have sought review via a timely filed supervisory writ application pursuant to Uniform Rules—Courts of Appeal, Rule 4-3.⁴ The Landrieus, however, filed the notice of intent in

² The exceptions and motions were resolved on the face of the pleadings.

³ La. C.C.P. art. 424 provides in part:

A person who has a right to enforce an obligation also has a right to use his cause of action as a defense.

Except as otherwise provided herein, a prescribed obligation arising under Louisiana law may be used as a defense if it is incidental to, or connected with, the obligation sought to be enforced by the plaintiff.

⁴ Uniform Rules—Courts of Appeal, Rule 4-3 provides:

the district court on March 17, 2018, well over thirty days of the November 9, 2017 judgment. Uniform Rules—Courts of Appeal, Rule 4-3. Further, “[t]he filing of a motion for new trial seeking reconsideration of an interlocutory judgment cannot interrupt the 30-day period for filing an application for supervisory writs established by Rule 4-3 of the Uniform Rules—Courts of Appeal.” *Carter v. Rhea*, 01-0234, p. 5 (La. App. 4 Cir. 4/25/01), 785 So.2d 1022, 1025.⁵ Accordingly, we find the Landrieus untimely sought supervisory review of the November 9, 2017 judgment, and this portion of the writ application is dismissed.

Grant of motion for new trial (Whitney Bank)

The Landrieus argue the district erred in granting Whitney Bank’s motion for new trial to reconsider the denial of Whitney Bank’s exception of prescription as to the tort claims alleged by the Landrieus. The Landrieus contend these claims, although prescribed, can be urged as defenses pursuant to La. C.C.P. art. 424; and, the claims should not be dismissed.

This Court explained in *Spencer v. U.S. Fid. & Guar. Co.*, 454 So.2d 340, 341-42 (La. App. 4 Cir. 1984) (citations omitted) that the denial of an exception of prescription is an interlocutory judgment. In *Llopis v. State*, 16-0041(La. App. 4

The judge who has been given notice of intention as provided by Rule 4-2 shall immediately set a reasonable return date within which the application shall be filed in the appellate court. The return date in civil cases shall not exceed 30 days from the date of notice, as provided in La. C.C.P. art. 1914. . . .

Upon proper showing, the trial court or the appellate court may extend the time for filing the application upon the filing of a motion for extension of return date by the applicant, filed within the original or an extended return date period. An application not filed in the appellate court within the time so fixed or extended shall not be considered, in the absence of a showing that the delay in filing was not due to the applicant's fault. The application for writs shall contain documentation of the return date and any extensions thereof; any application that does not contain this documentation may not be considered by the appellate court.

⁵ In *Carter*, *supra* (quoting *Clement v. American Motorists Insurance Co.*, 98-504, p. 3 (La. App. 3 Cir. 2/3/99), 735 So.2d 670, 672), this Court explained that a motion for new trial filed before the signing of a final judgment is “premature and without legal effect.”

Cir. 12/14/16), 206 So.3d 1066, this Court held that a party's recourse to seek review of an interlocutory judgment is to file an application for supervisory writ, not a motion for new trial. The *Llopis* Court found the trial court erroneously considered and granted the motion for new trial and explained that "there is no procedure by which a party may apply for a new trial following the denial of an interlocutory judgment." *Id.*, 16-0041, p. 4, 206 So.3d at 1069. As a result, this Court vacated the trial court's judgment and remanded the matter for further proceedings. *Id.*, 16-0041, p. 7, 206 So.3d at 1070.

As in *Llopis*, the denial of Whitney Bank's exception of prescription, which was not certified as a final judgment, was an interlocutory judgment; thus, the district court improperly considered Whitney Bank's motion for new trial.⁶ Accordingly, the December 22, 2017 judgment granting the motion for new trial in favor of Whitney Bank is vacated, and the matter is remanded to the district court for further proceedings.

CONCLUSION

The Landrieus untimely sought review of the November 9, 2017 judgment in favor of Keller Williams. Accordingly, this portion of the Landrieus' writ application is dismissed.

The district court erroneously reconsidered the December 22, 2017 judgment denying Whitney Bank's exception of prescription via a motion for new trial. Accordingly, the December 22, 2017 judgment is vacated, and the matter remanded to the district court for further proceedings.

⁶ Cf. La. C.C.P. art. 928(B); *Landry v. Blaise, Inc.*, 02-0822, p. 3 (La. App. 4 Cir. 10/23/02), 829 So.2d 661, 664 (citations omitted) (wherein this Court explained that "[a] party may re-urge a peremptory exception after a denial of the exception").

WRIT GRANTED; DISMISSED, IN PART; VACATED, IN PART, AND REMANDED.