

SANDRA BONE

*

NO. 2018-C-0745

VERSUS

*

COURT OF APPEAL

**OTIS ELEVATOR COMPANY,
ET AL.**

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-10167, DIVISION "I-14"
Honorable Piper D. Griffin, Judge

Judge Joy Cossich Lobrano

(Court composed of Judge Edwin A. Lombard, Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins, Judge Dale N. Atkins)

BELSOME, J., DISSENTS

Stavros Panagouloupoulos
Kellie Fox
PELICAN LAW GROUP, LLC
650 Poydras Street, Suite 2525
New Orleans, Louisiana 70130

COUNSEL FOR PLAINTIFF/RESPONDENT

John K. Nieset
James A. Holmes
CHRISTOVICH & KEARNEY, LLP
601 Poydras Street, Suite 2300
New Orleans, Louisiana 70130

COUNSEL FOR DEFENDANT/RELATOR

WRIT GRANTED

DECEMBER 12, 2018

Defendant/relator, Otis Elevator Company (“Otis”), seeks review of the district court’s August 1, 2018 judgment denying its declinatory exception of lack of subject matter jurisdiction and dilatory exception of improper cumulation and/or misjoinder. For the reasons that follow, we grant the writ and reverse, in part, the district court’s judgment; we grant, in part, Otis’ exceptions of lack of subject matter jurisdiction and improper cumulation and/or misjoinder; and we dismiss the claims against Otis arising under the Federal Tort Claims Act (“FTCA”). However, we do not disturb the district court’s denial of the exceptions pertaining to claims *against defendants other than Otis*.

On October 20, 2017, plaintiff/respondent, Sandra Bone (“Bone”), filed a petition for damages in the district court. In her petition, she alleged that she injured while riding on an elevator at the Hale Boggs Federal Building when the elevator dropped several floors. According to Bone’s petition, Homeland Security Federal Protective Service provides security at the Hale Boggs Federal Building; the Industrial Development Board of the City of New Orleans owns the Hale Boggs Federal Building; and Otis manufactured and maintained the elevator. In her

petition, Bone raised claims against these defendants under both state law negligence and the FTCA.¹

In addition to the petition filed in the district court, Bone also filed a complaint in federal court under the FTCA. Bone voluntarily dismissed the federal court suit because the complaint was untimely; however, she maintained her state court action. After dismissing the federal court action, Bone did not amend the petition filed in the district court to remove the federal court defendants nor federal law claims.

Otis filed a declinatory exception of lack of subject matter jurisdiction and a dilatory exception of improper cumulation and/or misjoinder in the district court, seeking dismissal of all claims in Bone's petition. Bone opposed both exceptions. On July 20, 2018, the district court heard and denied both exceptions. At the hearing, the district court gave oral reasons that Otis lacked standing to seek dismissal of FTCA claims against other defendants. On August 1, 2018, the district court rendered a written judgment denying both exceptions. This writ application followed.

In this writ application, Otis contends that the district court erred by (1) failing to dismiss the lawsuit, even though it contained FTCA claims, and (2)

¹ The FTCA, found in 28 U.S.C. 1346(b)(1), states:

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

permitting Bone to cumulate state law claims with the FTCA claims, over which the district court lacks subject matter jurisdiction.

Jurisdiction is a question of law subject to *de novo* review. *Cannizzaro ex rel. State v. American Bankers Ins. Co.*, 2012-1455, p. 3 (La. App. 4 Cir. 7/10/13), 120 So.3d 853, 856. An exception of lack of subject matter jurisdiction is a declinatory exception. La. C.C.P. art. 925(A)(6). If the grounds pleaded in the declinatory exception cannot be removed by amendment of the pleadings, “the action, claim, demand, issue, or theory subject to the exception shall be dismissed.” La. C.C.P. art. 932(B). An exception of improper cumulation of actions is a dilatory exception. La. C.C.P. art. 926(A)(7). “When the court lacks jurisdiction of ... one of the actions cumulated, that action shall be dismissed.” La. C.C.P. art. 464.

28 U.S.C.1346(b)(1) vests exclusive jurisdiction over actions arising under the FTCA to the federal court. The petition for damages specifically raises claims *against Otis* arising under the FTCA. Otis properly challenged the district court’s jurisdiction to adjudicate the FTCA claims *against Otis only*. We find that the district court erred in denying Otis’ exceptions in their entirety.

Nevertheless, we find no error in the district court’s conclusion that Otis lacked standing to bring exceptions seeking dismissal of FTCA claims against other defendants. “An exception is a means of defense, ... used by the defendant, ... to retard, dismiss, or defeat the demand *brought against him*.” La. C.C.P. art. 921 (emphasis added). Under the facts before us, these exceptions are not an

available method by which Otis can seek dismissal of claims against other parties.²

Accordingly, for these reasons, we grant the writ and reverse, in part, the district court's judgment; we grant, in part, Otis' exceptions of lack of subject matter jurisdiction and improper cumulation and/or misjoinder; and we dismiss the claims against Otis arising under the FTCA. We do not disturb the district court's denial of Otis' exceptions relative to Bone's claims against the other defendants.

WRIT GRANTED

² We recognize that the district court may recognize claims over which it has no jurisdiction and may raise its own exception of lack of subject matter jurisdiction *sua sponte*. See *Boudreaux v. State, Dep't of Transp. & Dev.*, 2001-1329, pp. 7-8 (La. 2/26/02), 815 So.2d 7, 13. Nothing in this opinion should be construed as limiting the district court's authority in that regard.