

<b>KENNETH LOBELL, ET AL</b>	*	<b>NO. 2018-CA-0600</b>
<b>VERSUS</b>	*	<b>COURT OF APPEAL</b>
<b>CINDY ANN ROSENBERG, ET</b>	*	<b>FOURTH CIRCUIT</b>
<b>AL</b>	*	<b>STATE OF LOUISIANA</b>
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### **LOBRANO, J., DISSENTS**

I respectfully dissent. I would reverse, in part, the district court's March 23, 2018 judgment and I would grant, in part, the Rosenberg's motion to assess post-trial rent, taxes, insurance, and interest for the period between April 30, 2013 (the date on which the district court found the lease terminated) and October 14, 2015 (the date on which the Louisiana Supreme Court affirmed the judgment of the district court).<sup>1</sup>

As the Rosenbergs argue, Lobell filed a rule for possession. By suspensively appealing the district court's judgment, the effects of terminating the lease were suspended while the appeal was pending. *See, e.g., Am. Branch Bldg. Corp. v. Bozeman*, 543 So.2d 1114, 1116 (La. App. 1st Cir. 1989)(citing *Jackson v. Maloney Trucking & Storage, Inc.*, 442 So.2d 849, 853 (La. App. 4th Cir. 1983)). Thus, Lobell's suspensive appeal deprived the Rosenbergs of the use of the property despite Lobell's failure to pay rent, taxes and insurance.

Nevertheless, I find that the Rosenbergs were not deprived of the use of the property after the Louisiana Supreme Court's October 2015 opinion became final. The October 2015 opinion affirmed the district court's judgment finding the lease

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<sup>1</sup> We note that the October 14, 2015 opinion became final on October 28, 2015, which was the deadline to file an application for rehearing. *See* La. C.C.P. art. 2167; Supreme Court Rule IX.

terminated. Even though the Supreme Court remanded the case to this Court to review the district court's award of damages, the appeal of the lease termination was exhausted, and that issue was final. There was no impediment to the Rosenberg's use of the property and pursuit of all actions afforded by law to a property owner, beyond the final October 2015 opinion. Thus, I find the Rosenbergs entitled to rent, taxes, insurance, and interest for the period between April 30, 2013 and October 28, 2015.