

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

CM 11-1304

**KATHERINE A. RICHEY O/B/O
JOHN COOGAN RICHEY, SR.**

VERSUS

TLC PROPERTIES, INC.

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 2009-5383
HONORABLE CLAYTON DAVIS, DISTRICT JUDGE**

OSWALD A. DECUIR

JUDGE

Court composed of Oswald A. Decuir, Billy H. Ezell, and J. David Painter, Judges.

MOTION TO REMAND GRANTED.

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TLC Properties, Inc.**

DECUIR, Judge.

The Defendant-Appellee, TLC Properties, Inc., moves to remand and dismiss this unlodged devolutive appeal, on the ground that the Appellant is without the right, standing or capacity to proceed with this appeal. For the reasons given herein, we grant the motion to remand and preterm discussion of the motion to dismiss.

Trial in this matter was held on August 2, 2011. The trial court issued a judgment in favor of the Defendant, dismissing all of Plaintiff's claims with prejudice. The trial court signed a written judgment on August 19, 2011. The Plaintiff filed her motion and order for appeal, and the order granting a devolutive appeal was signed by the trial court on October 3, 2011.

In the Defendant's motion to remand/dismiss the Plaintiff's unlodged devolutive appeal, the Defendant claims that Plaintiff's power of attorney was rescinded on August 1, 2011, by John C. Richey, Sr. Therefore, the Defendant contends that the Plaintiff is not the proper party to proceed with this appeal on behalf of John C. Richey, Sr. The Defendant moves this court to remand this matter to the trial court and, following an evidentiary hearing, to dismiss this appeal pursuant to La.Code Civ.P. art. 2162.

We find that this matter should be remanded to the trial court because the consideration of the merits of this motion requires evidence which cannot be received by this court. Thus, in accordance with La.Code Civ.P. art. 2164, this court hereby remands this matter in order for the trial court to hold a contradictory evidentiary hearing regarding the Plaintiff's right to proceed with this appeal. We further preterm discussion of the Defendant's motion to dismiss appeal at this time.

MOTION TO REMAND GRANTED.