

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

21-40

SOUTH RYAN HOLDINGS, LLC, ET AL.

VERSUS

WENDY AGUILLARD, AS CALCASIEU

TAX ASSESSOR, ET AL.

**APPEAL FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 2019-276
HONORABLE RONALD F. WARE, DISTRICT JUDGE**

**ELIZABETH A. PICKETT
JUDGE**

Court composed of Sylvia R. Cooks, Elizabeth A. Pickett, and Shannon J. Gremillion, Judges.

Cooks, J. Dissents.

AFFIRMED AND REMANDED.

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1 **PICKETT, Judge.**

2

3 The plaintiffs, South Ryan Holdings, LLC, 401 Property Investors, LLC, and
4 Opulence Krishna Hospitality, LLC, appeal the trial court's judgment denying their
5 Motion for Class Certification.

6

FACTS

7 South Ryan Holdings, 401 Property Investors, and Opulence Krishna
8 Hospitality, (collectively "the proposed class representatives") filed a Class Action
9 Petition for Damages and Declaratory Relief against Wendy Aguiard, the Calcasieu
10 Parish Tax Assessor, and Tony Mancuso, the Calcasieu Parish Sheriff Tax Collector.

11 The suit alleges that the tax assessor used an illegal method to calculate the value of
12 commercial property (non-residential land containing non-residential improvements)
13 in Calcasieu Parish, and this resulted in ad valorem property tax assessments that were
14 illegal and unconstitutional. The petition alleges that the proposed class
15 representatives, on their own behalf and on behalf of the class of similarly situated
16 owners of commercial property in Calcasieu Parish, meet the criteria of La.Code
17 Civ.P. art. 591. Thus, they should be allowed to be named class representatives and
18 pursue the claims as a class action.

19 The trial court found that while four of the five requirements (numerosity,
20 commonality, typicality, adequate representation, and definability) for class
21 certification were met, the numerosity factor was not satisfied by the proposed class
22 representatives.

23 Louisiana Revised Statutes 47:2134 requires that taxpayers must pay ad
24 valorem taxes under protest to preserve a legal claim for a disputed tax assessment.
25 This statute further requires the tax collector to set aside the contested portion of the
26 paid taxes in case it is determined that the taxes must be refunded. Only one of the
27 proposed class representatives, Opulence Krishna Hospitality, LLC, paid their 2018
28 taxes under protest. In fact, it purported to pay under protest on behalf of all those

1 similarly situated. At the time of the hearing on December 2, 2019, one additional
2 proposed class representative, South Ryan Holdings, LLC, had paid their 2019 taxes
3 under protest, on their own behalf and on behalf of similarly situated taxpayers. The
4 trial court found this insufficient, determined that there was only one member of the
5 proposed class who complied with the requirements of La.R.S. 47:2134, and denied
6 class certification.

7 The proposed class representatives now appeal.

8 **ASSIGNMENTS OF ERROR**

9 The appellants assert two assignments of error:

- 10 1. The trial court committed legal error in finding that “payment
11 under protest” cannot be made by the proposed class representative
12 (plaintiff) on behalf of the entire class for “numerosity purposes.
13
14
- 15 2. The trial court committed legal error in concluding that “payment
16 under protest” is an absolute requisite for filing suit challenging
17 the legality of ad valorem tax assessments and erred in resolving
18 the merits of this legal issue at the class certification stage.
19

20 **DISCUSSION**

21 This court has discussed the requirements for class certification in *Desselle v.*
22 *Acadian Ambulance Service, Inc.*, 11-742, pp. 5-6 (La.App. 3 Cir. 2/1/12), 83 So.3d
23 1243, 1248-49, *writ denied*, 12-518 (La. 4/13/12), 85 So.2d 1253:

24 Article 591, which sets forth the prerequisites for obtaining class
25 action status, reflects the purpose of class action suits. As explained in
26 *Dupree v. Lafayette Ins. Co.*, 09-2602, p. 6 (La.11/30/10), 51 So.3d 673,
27 679, the class action mechanism enables representatives with typical
28 claims “to sue or defend on behalf of, and stand in judgment for, a class
29 of similarly situated persons when the question is one of common interest
30 to persons so numerous as to make it impracticable to bring them all
31 before the court.”

32
33 Paragraph (A) establishes five initial requirements for certification,
34 providing:

35
36 A. One or more members of a class may sue or be
37 sued as representative parties on behalf of all, only if:

- 38 (1) The class is so numerous that joinder of all
39 members is impracticable.
40
41

1 (2) There are questions of law or fact common to the
2 class.

3
4 (3) The claims or defenses of the representative
5 parties are typical of the claims or defenses of the class.

6
7 (4) The representative parties will fairly and
8 adequately protect the interests of the class.

9
10 (5) The class is or may be defined objectively in terms
11 of ascertainable criteria, such that the court may determine
12 the constituency of the class for purposes of the
13 conclusiveness of any judgment that may be rendered in the
14 case.

15
16 In its determination of whether a party has met the prerequisites
17 for obtaining class certification, a trial court must conduct what has been
18 described as a rigorous analysis. *Brooks v. Union Pac. R.R. Co.*, 08-2035
19 (La.5/22/09), 13 So.3d 546. In doing so, a trial court evaluates,
20 quantifies, and weighs the factors in determining to what extent the class
21 action would effectuate substantive law, judicial efficiency, and
22 individual fairness. *Id.* This analysis requires the trial court to actively
23 inquire into every aspect of the case. *Id.* The trial court must not hesitate
24 to require a showing beyond the pleadings. *Id.* In fact, a party seeking
25 certification must be prepared to prove that, in fact, the prerequisites are
26 present. *Price v. Roy O. Martin*, 11-853 (La.12/6/11), 79 So.3d 960
27 (quoting *Wal-Mart Stores, Inc. v. Dukes*, [564 U.S. 338], 131 S.Ct. 2541,
28 180 L.Ed.2d 374 (2011)). The trial court's analysis may frequently
29 overlap with the merits of the substantive claim. *Id.*

30
31 The party seeking to maintain the class certification bears the burden of proving that
32 the criteria found in La.Code Civ.P. art. 591 have been satisfied. *Dupree v. Lafayette*
33 *Inc. Co.*, 09-2602 (La. 11/30/10), 51 So.3d 673. On appellate review of a trial court's
34 determination to certify a class action, the trial court's factual findings are subject to
35 the manifest error standard of review. *Brooks v. Union Pacific R.R. Co.*, 08-2035 (La.
36 5/22/09), 13 So.3d 546. We review the court's ultimate decision regarding
37 certification of the class pursuant to the abuse of discretion standard. *Id.* We review
38 the trial court's legal conclusions *de novo*. *Id.*

39 In their first assignment of error, the proposed class representatives argue the
40 trial court legally erred in finding that the relevant statute regarding payment of
41 disputed ad valorem requires each taxpayer to pay under protest or lose the ability to
42 challenge the assessment. Further, they argue that both Opulence Krishna Hospitality

1 and South Ryan Holdings paid under protest on behalf of the entire class, such that
2 each member of the putative class was not required to make their disputed payments
3 under protest individually. The statute at issue does not support that argument.

4 Louisiana Revised Statutes 47:2134 provides the exclusive means for
5 contesting the assessment of ad valorem tax assessments in the courts of this state. It
6 states:

7 A. No court of this state shall issue any process to restrain, or
8 render any decision that has the effect of impeding, the collection of an
9 ad valorem tax imposed by any political subdivision, under authority
10 granted to it by the legislature or by the constitution.

11
12 B. (1) A taxpayer challenging the correctness of an assessment
13 under R.S. 47:1856, 1857, or 1998 shall timely pay the disputed amount
14 of tax due under protest to the officer or officers designated by law for
15 the collection of this tax. The portion of the taxes that is paid by the
16 taxpayer to the collecting officer or officers that is neither in dispute nor
17 the subject of a suit contesting the correctness of the assessment shall not
18 be made subject to the protest. The taxpayer shall submit separate
19 payments for the disputed amount of tax due and the amount that is not in
20 dispute and not subject to the protest.

21
22 (2)(a) If at the time of the payment of the disputed taxes under
23 protest the taxpayer has previously filed a correctness challenge suit
24 under the provisions of R.S. 47:1856, 1857, or 1998, such taxpayer shall
25 give notice of the suit to the collecting officer or officers in the parish or
26 parishes in which the property is located. This notice shall be sufficient
27 to cause the collecting officer or officers to further hold the amount paid
28 under protest segregated pending the outcome of the suit.

29
30 (b) If at the time of the payment of the protested tax, a correctness
31 challenge suit is not already pending under the provisions of R.S.
32 47:1856, 1857, or 1998, then a suit seeking recovery of the protested
33 payment need not be filed until thirty days from the date a final decision
34 is rendered by the Louisiana Tax Commission under either R.S. 47:1856,
35 1857, or 1998. The taxpayer making the payment under protest under
36 these circumstances must advise the collecting officer or officers in the
37 parish or parishes in which the property is located at the time of the
38 protest payment that the protest payment is in connection with a
39 correctness challenge and must promptly notify the collecting officer or
40 officers when a final decision is rendered by the Louisiana Tax
41 Commission under either R.S. 47:1856, 1857, or 1998. The collecting
42 officer or officers shall continue to segregate and hold the protested
43 amount in escrow until a timely correctness challenge suit is filed.

44
45 (c) If a suit is timely filed contesting the correctness of the
46 assessment pursuant to R.S. 47:1856, 1857, or 1998 and seeking the
47 recovery of the tax paid under protest, then that portion of the taxes paid

1 that are in dispute shall be deemed as paid under protest, and that amount
2 shall be segregated and shall be further held pending the outcome of the
3 suit.

4
5 (3) In a correctness challenge suit under either R.S. 47:1856, 1857,
6 or 1998 the officer or officers designated for the collection of taxes in the
7 parish or parishes in which the property is located, the assessor or
8 assessors for the parish or district, or parishes or districts, in which the
9 property is located, and the Louisiana Tax Commission shall be the sole
10 necessary and proper party defendants in any such suit.

11
12 (4) If the taxpayer prevails, the collecting officer or officers shall
13 refund the amount to the taxpayer with interest at the actual rate earned
14 on the money paid under protest in the escrow account during the period
15 from the date such funds were received by the collecting officer or
16 officers to the date of the refund. If the taxpayer does not prevail, the
17 taxpayer shall be liable for the additional taxes together with interest at
18 the rate set forth above during the period from the date the notice of
19 intention to file suit for recovery of taxes was given to the officer until
20 the date the taxes are paid.

21
22 C. (1) A person resisting the payment of an amount of ad valorem
23 tax due or the enforcement of a provision of the ad valorem tax law and
24 thereby intending to maintain a legality challenge shall timely pay the
25 disputed amount due under protest to the officer or officers designated by
26 law for the collection of the tax and shall give such officer or officers,
27 notice at the time of payment of his intention to file suit for the recovery
28 of the protested tax. The portion of the taxes that is paid by the taxpayer
29 to the collecting officer or officers that is neither in dispute nor the
30 subject of a suit contesting the legality of the assessment shall not be
31 made subject to the protest. The taxpayer shall submit separate payments
32 for the disputed amount of tax due and the amount that is not in dispute
33 and not subject to the protest. Upon receipt of a notice, the protested
34 amount shall be segregated and held by the collecting officer for a period
35 of thirty days.

36
37 (2) A legality challenge suit must be filed within thirty days from
38 the date of the protested payment. If a suit is timely filed contesting the
39 legality of the tax or the enforcement of a provision of the tax law and
40 seeking recovery of the tax, then that portion of the taxes paid that are in
41 dispute shall be further deemed as paid under protest, and that amount
42 shall be segregated and shall be further held pending the outcome of the
43 suit. The portion of the taxes that is paid by the taxpayer to the collecting
44 officer or officers that is neither in dispute nor the subject of a suit
45 contesting the legality of the tax shall not be made subject to the protest.

46
47
48 (3) In any such legality challenge suit, service of process upon the
49 officer or officers responsible for collecting the tax, the assessor or
50 assessors for the parish or district, or parishes or districts in which the
51 property is located, and the Louisiana Tax Commission shall be sufficient
52 service, and these parties shall be the sole necessary and proper party
53 defendants in any such suit.

1
2 (4) If the taxpayer prevails, the collecting officer or officers shall
3 refund such amount to the taxpayer with interest at the actual rate earned
4 on the money paid under protest in the escrow account during the period
5 from the date such funds were received by the collecting officer or
6 officers to the date of the refund. If the taxpayer does not prevail, the
7 taxpayer shall be liable for the additional taxes together with interest at
8 the rate set forth above during the period from the date the notice of
9 intention to file suit for recovery of taxes was given to the officer until
10 the date the taxes are paid.

11
12 D. The right to sue for recovery of a tax paid under protest as
13 provided in this Section shall afford a legal remedy and right of action in
14 any state or federal court having jurisdiction of the parties and subject
15 matter for a full and complete adjudication of all questions arising in
16 connection with a correctness challenge or the enforcement of the rights
17 respecting the legality of any tax accrued or accruing or the method of
18 enforcement thereof. The right to sue for recovery of a tax paid under
19 protest as provided in this Section shall afford a legal remedy and right of
20 action at law in the state or federal courts where any tax or the collection
21 thereof is claimed to be an unlawful burden upon interstate commerce, or
22 in violation of any act of the Congress of the United States, the
23 Constitution of the United States, or the constitution of the state. The
24 portion of the taxes which is paid by the taxpayer to the collecting officer
25 or officers that is neither in dispute nor the subject of such suit shall not
26 be made subject to the protest.

27
28 E. (1) Upon request of a taxpayer and upon proper showing by the
29 taxpayer that the principle of law involved in an additional assessment is
30 already pending before the courts for judicial determination, the taxpayer,
31 upon agreement to abide by the pending decision of the courts, may pay
32 the additional assessment under protest but need not file an additional
33 suit. In such cases, the tax so paid under protest shall be segregated and
34 held by the collecting officer or officers until the question of law
35 involved has been determined by the courts and shall then be disposed of
36 as provided in the decision of the court.

37
38 (2) If the taxpayer prevails, the officer or officers shall refund such
39 amount to the taxpayer with interest at the actual rate earned on the
40 money paid under protest in the escrow account during the period from
41 the date such funds were received by the officer or officers to the date of
42 the refund. If the taxpayer does not prevail, the taxpayer shall be liable
43 for the additional taxes together with interest at the rate set forth above
44 during the period from the date the notice of intention to file suit for
45 recovery of taxes was given to the officer until the date the taxes are paid.

46
47 Next, the proposed class representatives argue that the procedure outlined in
48 La.R.S. 47:1621 allows for refunds of an overpayment of taxes. This provision
49 applies only to taxes collected by the Department of Revenue. The proposed class
50 representatives further argue that the language of La.R.S. 47:2134(C)(2) allows for the

1 filing of a suit to give notice to the tax collector that the taxes are paid under protest.
2 An *in pari materia* reading of the remainder of Section C, however, shows that the
3 taxes in dispute must be paid under protest for a cause of action to lie in district court.
4 We find no legal error in the trial court’s determination that taxes must be paid under
5 protest for a taxpayer to challenge the assessment of ad valorem taxes.

6 This conclusion is bolstered by the remainder of the statute, which requires the
7 taxing authority to set aside the amount paid under protest so that it is not distributed
8 to the governmental entities authorized to receive the tax payments. Thus, the
9 contested portion is readily available for refund should the suit contesting the
10 assessment be successful. Allowing one taxpayer to pay under protest for all similarly
11 situated taxpayers thwarts this procedure and would allow taxpayers to demand
12 refunds of money that has already been distributed and spent by government entities.

13 The fourth circuit has reached the same conclusion regarding class actions in
14 *Cooper v. City of New Orleans*, 01-115 (La.App. 4 Cir. 2/14/01), 780 So.2d 1158,
15 *writ denied*, 01-720 (La. 5/11/01), 792 So.2d 734. Interpreting the provisions of then-
16 La.R.S. 47:2110 (now La.R.S. 47:2134), the court found that even though the
17 evidence suggested that more than 10,000 taxpayers paid a contested penalty, only
18 fourteen taxpayers followed the “payment under protest” procedure. The trial court
19 had determined that the penalty provision was related to the ad valorem tax
20 assessment, and therefore the provisions of La.R.S. 47:2110 were applicable. Since
21 only fourteen taxpayers met the requirements of the statute, the trial court found that
22 the proposed class did not meet the numerosity requirement. The fourth circuit
23 affirmed the trial court.

24 The proposed class representatives also argue that, even if their legality
25 challenge to the ad valorem tax requires payment under protest by each member of the
26 proposed class, their petition on behalf of the putative class also seeks reassessment of
27 the property subject to the tax. Their plea for reassessment, though, contests the

