

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 1570

DON GALLATY

VERSUS

EDDIE TOURELLE'S NORTHPARK NISSAN, INC.

Judgment Rendered: March 26, 2010.

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On Appeal from the
22nd Judicial District Court,
In and for the Parish of St. Tammany,
State of Louisiana
Trial Court No. 2006-12392

The Honorable William J. Knight, Judge Presiding

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Company

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BEFORE: CARTER, C.J., GUIDRY AND PETTIGREW, JJ.

CARTER, C. J.

Before the court is the trial court's judgment dismissing Don Gallaty's claims against Eddie Touelle's Northpark Nissan, Inc. ("Northpark Nissan"), and its insurer, Columbia Casualty Company, by summary judgment.

Northpark Nissan urged two grounds for summary judgment: 1) that there was an absence of evidence to establish a duty, a breach of duty, and the existence of an unreasonable risk of harm; and 2) that it was immune from tort suit as Gallaty's sole remedy is pursuant to the Workers' Compensation Act. After orally granting the motion for summary judgment, the trial court clarified that its judgment was based on the merits of the tort claim (the first ground urged as a basis for summary judgment) and that it was "saving for another day [the] issues on the comp question." This decision is reflected in the trial court's judgment that dismisses Gallaty's claims *with* prejudice rather than *without* prejudice.¹

The trial court erred in failing to first consider the question of whether Gallaty's sole remedy is pursuant to the Workers' Compensation Act because it concerns the jurisdiction of the district court. It is the duty of the court to examine subject matter jurisdiction *sua sponte*, even when the issue is not raised by the litigants. **McGehee v. City/Parish of East Baton Rouge**, 00-1058 (La. App. 1 Cir. 9/12/01), 809 So.2d 258, 260.

The subject matter jurisdiction of the courts is established by the Louisiana Constitution, which provides that original jurisdiction over all civil and criminal matters is vested in the district courts, except as provided

¹ A judgment of dismissal with prejudice has the effect of a final judgment of absolute dismissal after trial. LSA-C.C.P. art. 1673.

by law for administrative agency determinations in workers' compensation matters. LSA-Const. art. V § 16 A(1). The jurisdiction of workers' compensation matters is "provided by law" in LSA-R.S. 23:1310.3E, which grants workers' compensation judges exclusive jurisdiction over all claims or disputes arising out of the Workers' Compensation Act. In short, the district courts do not have subject matter jurisdiction over workers' compensation matters. **Brewton v. Underwriters Ins. Co.**, 02-2852 (La. 6/27/03), 848 So.2d 586, 590.

The appellate court shall render any judgment that is just, legal, and proper upon the record on appeal. LSA-C.C.P. art. 2164. Considering the record before us, including Northpark Nissan's concession for purposes of the motion for summary judgment only that Gallaty is an independent contractor, we find it appropriate to vacate the trial court's judgment and remand this matter so that the trial court can evaluate the merits of Northpark Nissan's subject matter jurisdiction challenge.

Considering the foregoing, the judgment of the trial court is vacated, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed equally between the plaintiff (Don Gallaty) and the defendants (Eddie Tourelle's Northpark Nissan, Inc., and Columbia Casualty Company).

VACATED AND REMANDED.