

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 2451

HOLLY & SMITH ARCHITECTS, INC.

VERSUS

ST. HELENA CONGREGATE FACILITY, INC.

AND ST. HELENA PARISH HOSPITAL

CONSOLIDATED WITH

NUMBER 2008 CA 2452

HOSPITAL SERVICE DISTRICT NO. 1 OF THE PARISH OF ST. HELENA

d/b/a ST. HELENA PARISH HOSPITAL

VERSUS

BEVERLY GORDON, CLERK OF COURT

Judgment Rendered: JUN 19 2009

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Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of St. Helena, Louisiana  
Trial Court Number 15,533 c/w 18,694

Honorable Wayne Ray Chutz, Judge

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No. 1

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

WELCH, J.

Plaintiff, Holly & Smith Architects, Inc. (Holly & Smith), appeals a judgment denying its motion for a writ of fieri facias directing the sheriff of the Parish of St. Helena to seize specified property belonging to defendants, St. Helena Congregate Facility, Inc. (Facility) and St. Helena Parish Hospital, to satisfy a money judgment rendered in its favor. We affirm.

### **BACKGROUND**

In March of 1992, Holly & Smith entered into a contract with the Facility to provide architectural services in connection with the construction of a congregate facility. A dispute arose between the parties, and the matter was arbitrated in 1996, resulting in the entry of an arbitration award against the Facility and in favor of Holly & Smith for \$38,000.00 plus half of the arbitration fees and costs. The award of the arbitrator was confirmed and made a judgment of the court. In 2002, the trial court pierced the Facility's corporate veil and ruled that the judgment against the Facility was also a judgment against St. Helena Parish Hospital.

On August 3, 2004, Hospital Service District No. 1 of the Parish of St. Helena, d/b/a St. Helena Parish Hospital (St. Helena Hospital), filed a petition for a writ of mandamus seeking cancellation of the inscription of three judgments rendered in connection with lawsuits filed by Holly & Smith, as well as a declaration that the judgments did not constitute a lien or encumbrance against its property. Holly & Smith filed a petition seeking a writ of mandamus to force payment of the judgment by St. Helena Hospital. The actions were consolidated, and following a hearing, the court denied St. Helena Hospital's and Holly & Smith's mandamus petitions.

St. Helena Hospital appealed the denial of its mandamus request to the Louisiana Supreme Court. In **Holly & Smith Architects, Inc. v. St. Helena Congregate Facility, Inc.**, 2006-0582 (La. 11/29/06), 943 So.2d 1037, the

supreme court granted writs for the limited purpose of determining whether the judgments should be erased from the mortgage records. The court observed that Article XII, § 10(C) of the Louisiana Constitution and Louisiana Revised Statutes 13:5109(B)(2) clearly and unambiguously provide the method by which judgments against the State and/or its political subdivisions are paid. Article XII, § 10(C) provides, in pertinent part:

[The legislature] shall provide a procedure for suits against the state, a state agency, or a political subdivision and provide for the effect of a judgment, but no public property or public funds shall be subject to seizure.... No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.

La. R. S. 13:5109(B)(2) provides:

Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.

The combined effect of Article XII, § 10(C) and La. R.S. 13:5109(B)(2) is clear: judgments against a political subdivision of the State may only be paid “out of funds appropriated for that purpose by the named political subdivision,” and under no circumstance shall “public property or public funds ... be subject to seizure.” **Newman Marchive Partnership, Inc. v. City of Shreveport**, 2007-1890, p. 5 (La. 4/8/08), 979 So.2d 1262, 1266.

In **Holly & Smith Architects, Inc.**, 2006-0582 at pp. 10-12, 943 So.2d at 1045-1046, the court found that there is nothing in the language of the cited provisions prohibiting the recordation of judgments against a political subdivision. However, the court concluded, in light of the clear and unambiguous language of Article XII, § 10(C), and La. R.S. 13:5109(B)(2), the recordation of the judgments could not secure payment of the judgments and thus could not constitute an

enforceable judicial mortgage on the property of the political subdivision. **Holly & Smith Architects, Inc.**, 2006-0582 at p. 12, 943 So.2d at 1046. The court did not address waiver and equitable estoppel arguments advanced by Holly & Smith in the appeal.

Thereafter, on July 19, 2007, Holly & Smith filed a motion and order to show cause why a writ of fieri facias should not issue directing the sheriff of St. Helena Parish to seize certain enumerated funds of the Facility and St. Helena Hospital. Holly & Smith advanced three main arguments in support of their claim: (1) federal funds received by the defendants were subject to seizure, (2) the defendants waived any right not to have their funds seized should a judgment be rendered against them by entering into the architectural contract with Holly & Smith, and (3) the constitutional and statutory provisions requiring appropriation of funds by the political subdivision in order to enforce a judgment against that political subdivision had been satisfied when the defendants budgeted money for architectural fees in connection with the public project and agreed to the payment of those fees.

The trial court denied Holly & Smith's motion for a writ of fieri facias, and this appeal followed. Holly & Smith advances the same three arguments asserted in the trial court. Holly & Smith focuses on the argument that the constitutional and statutory requirements that funds be "appropriated" by the political subdivision to satisfy a judgment has been met because St. Helena Hospital signed an agreement with Holly & Smith, earmarked architectural fees for the project, and continuously approved of the work performed by Holly & Smith.

However appealing Holly & Smith's arguments may be from an equitable standpoint, the law precludes the seizure of public funds to pay a judgment. The constitution delegated the power to determine how money judgments rendered against the State and its political subdivisions would be executed to the legislature.

La. Const. art. XII, § 10(C). The legislature acted on this authority when it passed La. R.S. 13:5109(B)(2) providing that a judgment against a political subdivision may be paid only “out of funds appropriated for that purpose by the named political subdivision.” **Newman Marchive Partnership, Inc.**, 2007-1890 at p. 7, 979 So.2d at 1267. La. R.S. 13:5109(B)(2) is the sole remedy at law for satisfaction of a judgment against St. Helena Hospital. See **Barriere Construction Co., L.L.C. v. Tangipahoa Parish Government**, 2007-2367, p. 7 (La. App. 1<sup>st</sup> Cir. 3/5/08), 985 So.2d 80, 85. In **Newman Marchive Partnership, Inc.**, 2007-1890 at p. 7, 979 So.2d at 1267, the supreme court interpreted La. R.S. 13:5109(B)(2) to require that a judgment against a political subdivision is payable only out of funds appropriated “for that purpose,” that is, “money set aside specifically to satisfy a particular judgment.” The court squarely held that La. R.S. 13:5109(B)(2) requires a “specific appropriation or disbursement of funds to pay a particular judgment” before disbursement of those funds may be compelled by a court. **Newman Marchive Partnership, Inc.** 2007-1890 at pp. 1, 12, 979 So.2d at 1264, 1271.

In this case, there has been no specific appropriation of funds by St. Helena Hospital to pay Holly & Smith’s judgment. Holly & Smith is constitutionally and statutorily prohibited from seizing the property of St. Helena Hospital to satisfy its judgment, and the trial court correctly denied Holly & Smith’s motion for a writ of fieri facias.

### **CONCLUSION**

For the foregoing reasons, the judgment appealed from is affirmed. All costs of this appeal are assessed to appellants, Holly & Smith Architects, Inc.

**AFFIRMED.**