NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0866

JOHN ALLEN

VERSUS

KELLI SHIELDS

On Appeal from the 21st Judicial District Court
Parish of Livingston, Louisiana
Docket No. 110,020, Division "E"
Honorable Brenda Bedsole Ricks, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Judgment rendered February 14, 2007

PARRO, J.

John Allen appeals a judgment that sustained peremptory exceptions raising the objections of no right of action and no cause of action and dismissed his claims against Kelli Shields. We reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

On or about September 10, 2005, Allen and Shields entered into an "Agreement to Purchase and Sell" (the agreement), in which Allen agreed to buy a house owned by Shields. According to the agreement, the closing date for the act of sale was to be September 30, 2005. The document stated, "Any extension shall be agreed upon in writing and signed by Seller and Buyer." The sale did not close on that date or on any date thereafter, and on November 29, 2005, Allen filed suit against Shields.

Allen's petition alleged the above facts, and also stated that the failure to close on September 30, 2005, was not due to any fault on his part. It also stated that verbal and email communications from Shields had led Allen to believe the closing would occur at a later date. However, according to the petition, Shields, "without any valid basis, changed her mind and decided not to go through with this sale." The petition referenced a default clause in the agreement and sought 5% of the purchase price as stipulated damages, along with the return of the deposit, all brokerage fees, all attorney fees, and costs.

Shields' response alleged Allen had no right of action and no cause of action, because there was no written and signed agreement to extend the closing date for the sale, as required by the agreement, and because the petition did not allege that it was due to Shields' fault that the sale did not close on September 30, 2005. Therefore, there was no extension or subsequent contract giving Allen either a right or cause of action against her.[1]

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[1] Shields also denied Allen's claims and asserted a reconventional demand, alleging the same facts regarding the execution of the agreement and the failure to close the sale on the agreed date, but stating that the failure to close on that date was "through no fault of her own," but was "caused at least in part by [Allen's] fault or breach." She sought damages from him based on a default provision in the agreement, as well as consequential damages, because she had to cancel the purchase of another home in which she was to live after her house was sold to Allen. Shields also filed a third-party demand against the real estate company that had acted as a dual agent for both parties in connection with the transaction.

Following a hearing at which the agreement was admitted into evidence by the court, both exceptions were sustained, and Allen's claims against Shields were dismissed with prejudice at his costs. A judgment to this effect was signed February 21, 2006, and this appeal followed.

ANALYSIS

No Right of Action

The objection of no right of action tests whether the plaintiff has a real and actual interest in the suit. See LSA-C.C.P. art. 927(A)(5); Louisiana Paddlewheels v. Louisiana Riverboat Gaming Comm'n, 94-2015 (La. 11/30/94), 646 So.2d 885, 888. Stated another way, an exception raising the objection of no right of action determines whether the plaintiff belongs to the particular class to which the law grants a remedy for the particular harm alleged. Treasure Chest Casino, L.L.C. v. Parish of Jefferson, 96-1010 (La. App. 1st Cir. 3/27/97), 691 So.2d 751, 754, writ denied, 97-1066 (La. 6/13/97), 695 So.2d 982. The exception is appropriate when the plaintiff does not have an interest in the subject matter of the suit or legal capacity to proceed with a suit in a particular case. Strain v. Trinchard, 05-1433 (La. App. 1st Cir. 6/9/06), 938 So.2d 1008, 1012. Louisiana Code of Civil Procedure article 931 permits the introduction of evidence to support or controvert an exception of no right of action.

The agreement in this case has default provisions applicable to each party. Allen's claims are based on his capacity as the buyer under the agreement, alleging default by Shields, the seller under the agreement. The default provision applicable to his claim states:

> DEFAULT by SELLER and REMEDIES. In the event of default by Seller, Buyer shall have the right to demand and sue for a) specific performance; or b) at Buyer's option, an amount equal to 5% of the Purchase Price stipulated herein as stipulated damages. In either case, Buyer is entitled to return of the deposit. The Seller shall also be liable for brokerage fees and all attorneys' fees and other costs incurred in the enforcement of any and all rights under this agreement. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

There is no dispute that Allen signed the agreement as the buyer, that Shields signed the agreement as the seller, and that the transaction contemplated by that agreement did not occur. Allen has alleged that through no fault on his part and without any valid

basis, Shields changed her mind and decided not to go through with the sale, either on the specified closing date or thereafter. The agreement does not specify what might constitute a default. However, the sole purpose of the agreement was to transfer title to a certain piece of immovable property. Clearly, title was not transferred, and Allen has claimed that Shields made a unilateral decision not to meet her obligation under the agreement. Therefore, as the buyer, Allen has alleged default on the part of the seller, Shields, and has claimed a right granted to him in the agreement to sue for certain damages. Under the terms of the agreement, he is the only person with a legal right to make such a claim. Therefore, we conclude that Allen has a real and actual interest in the suit, and the trial court erred in ruling that he had no right of action.

No Cause of Action

A cause of action, for purposes of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. Ramey v. DeCaire, 03-1299 (La. 3/19/04), 869 So.2d 114, 118. The function of the exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. Rebardi v. Crewboats, Inc., 04-0641 (La. App. 1st Cir. 2/11/05), 906 So.2d 455, 457.

Generally, no evidence may be introduced to support or controvert the exception raising the objection of no cause of action. LSA-C.C.P. art. 931; Ramey, 869 So.2d at 118. In addition, all facts pled in the petition must be accepted as true, and any doubts are resolved in favor of the sufficiency of the petition to state a cause of action. Id. If the petition alleges sufficient facts to establish a case cognizable in law, the exception raising the objection of no cause of action must fail. Rebardi, 906 So.2d at 457. Furthermore, when a petition states a cause of action as to any ground or portion of a demand, the exception should be overruled. Ramey, 869 So.2d at 119; Livingston Parish Sewer Dist. No. 2 v. Millers Mut. Fire Ins. Co. of Texas, 99-1728 (La. App. 1st Cir. 9/22/00), 767 So.2d 949, 952, writ denied, 00-2887 (La. 12/8/00), 776 So.2d 1175. The burden of demonstrating that no cause of action has been stated is on the party

filing the exception. Adams v. Owens-Corning Fiberglas Corp., 04-1296 (La. App. 1st Cir. 9/23/05), 921 So.2d 972, 975, writ denied, 05-2501 (La. 4/17/06), 926 So.2d 514.

Appellate courts review a judgment sustaining a peremptory exception raising the objection of no cause of action *de novo.* This is because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. Ramey, 869 So.2d at 119; Bayou Liberty Ass'n, Inc. v. St. Tammany Parish Council, 05-1228 (La. App. 1st Cir. 6/9/06), 938 So.2d 724, 728.

Applying the above precepts to the matter at hand, we conclude the trial court erred in sustaining the exception raising the objection of no cause of action. Allen's petition stated that he signed an agreement to purchase and sell; that in this document he agreed to buy certain immovable property from Shields; that the agreement established a closing date of September 30, 2005, for the transaction; that through no fault of his own, that date was not met; that Shields represented to him that the transaction would be closed at some later date; that without any valid basis, Shields eventually changed her mind and decided not to proceed with the sale; and that a default provision in the purchase agreement indicated that if there were a default by the seller, the buyer would have a right to 5% of the purchase price as stipulated damages, as well as return of the deposit, all brokerage fees, all attorney fees, and costs. Based on these allegations of the petition, Allen has stated facts that, taken as true, establish a cognizable claim in law against Shields for breach of the agreement and enforcement of a default penalty provision in that agreement. The fact that he also claimed detrimental reliance on a purported extension of the agreement is irrelevant to the question of whether he stated a cause of action in his petition. Contrary to Shields' arguments, Allen's claims against her were not based merely on her representations concerning additional time to close the sale. Rather, they were based squarely on the default provision in the agreement.[2] While we express no view as to whether Allen can prove these allegations or whether Shields has some defense that will defeat his claims,

[2] We note that the validity and enforceability of the purported extension confected by email communications between Shields and the realtor, who was acting as the agent of both parties in this transaction when those emails were exchanged, is one of the issues yet to be resolved.

we conclude that Allen has stated a claim upon which relief could be granted. Thus, the exception should have been overruled.

CONCLUSION

The judgment of February 21, 2006, is reversed, and this matter is remanded to the trial court for further proceedings. All costs of this appeal are assessed to Shields.

REVERSED AND REMANDED.