NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2446

JUNE McMANUS PALMER

VERSUS

HEATHER MEADOWS-ODOM, FARMERS GROUP OF INSURANCE COMPANIES AND REGIONS BANK

Judgment Rendered: September 14, 2007

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 537,331

Honorable Donald R. Johnson, Judge Presiding

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Marvin E. Owen Baton Rouge, LA	Counsel for Plaintiff/Appellant June McManus Palmer
Leo J. D'Aubin Baton Rouge, LA	Counsel for Defendant/Appellee Heather Meadows-Odom
James R. Clary, Jr. Baton Rouge, LA	Counsel for Intervenors/Appellees James R. Clary, Jr., Clary & Overton, LLP, Clary Law Firm, Inc.
Richard T. Reed Baton Rouge, LA	Counsel for Defendant/Appellee Farmers Insurance Exchange

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BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

Hughes, J., concurs with reasons.

WHIPPLE, J.

This appeal challenges a trial court's judgment purportedly clarifying its earlier ruling regarding cross-motions for summary judgment filed by the parties. For the reasons that follow, we vacate the judgment and remand the matter to the trial court for further proceedings.

The facts in this matter are undisputed. Heather Meadows-Odom owned a condominium located at 11060 Red Oak Drive in Baton Rouge, which was encumbered with a mortgage in favor of Regions Bank (Regions).[1] The property was insured by a policy issued by Farmers Insurance Exchange (Farmers) naming Odom as the sole insured and Regions as the mortgagee. On April 30, 2001, Odom entered into a bond-for-deed contract in which she agreed to sell the condominium to Clinton Ward Palmer and his wife, June McManus Palmer. Pursuant to the terms of the contract, the Palmers were to pay Odom $20,000.00 at the time the contract was executed. Thereafter, the Palmers were required to make monthly mortgage payments of $439.49 to Regions. After all monthly payments had been made, including the amounts due for taxes and insurance, Odom would transfer title to the property to the Palmers.

Ms. Palmer lived in the condominium for several years and made the monthly payments.[2] On September 14, 2005, the condominium was substantially destroyed by fire. Ms. Palmer alleges that she attempted to contact Odom after the fire occurred to give notice that she was ready to pay off the mortgage and to have the title transferred into her name; however, she contends that Odom never responded. Although Ms. Palmer does not dispute that Odom was the only named beneficiary of the Farmers policy insuring the property, she apparently intended to

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[1]The mortgagee was originally Union Planters Bank; however, Union Planters is now Regions Bank.

[2]Mr. and Mrs. Palmer lived in the condominium together after the execution of the bond for deed contract; however, at some point, Mr. Palmer died. Ms. Palmer has been appointed executor in the succession proceedings.

pay the remaining mortgage balance by using the proceeds from that policy. Ms. Palmer contends that she was entitled to share in the proceeds pursuant to a clause in the bond for deed contract that provided:

> **PURCHASERS** further agree to carry, at **PURCHASERS'** expense, fire, and extended coverage and flood insurance in the minimum amount required by **SELLER**, that all necessary insurance policies to protect all parties will be made in the names of the respective parties, and that **PURCHASERS** and **SELLER** as required with a mortgage or loss payable clause be in favor of **SELLER** at the time of execution of this agreement. It is further understood and agreed upon that said insurance policies will be distributed between **SELLER** and **PURCHASERS** as their respective interest may exist at the time of the payment of such insurance policies.[3]

Ms. Palmer apparently never purchased an insurance policy covering the property pursuant to this clause. Furthermore, she was never listed as a beneficiary on the Farmers policy, although it does appear that payments for that policy were included in the monthly payments made by Ms. Palmer to Regions.

Ms. Palmer filed suit against Odom, Farmers, and Regions, seeking a TRO and injunctive and declaratory relief. Specifically, Ms. Palmer sought and obtained a TRO preventing Farmers from issuing a joint check for the insurance proceeds on the condominium without including Ms. Palmer's name as a payee. Ms. Palmer also sought preliminary and permanent injunctions to that effect, as well as a court order requiring Odom to transfer title of the property and the right to all insurance proceeds to Ms. Palmer.

On December 19, 2005, Ms. Palmer filed a motion for summary judgment, requesting that the trial court order Odom to transfer the property and all insurance

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[3]The plaintiff contends that this contractual language allows her to share in the insurance proceeds despite not being named as a beneficiary of the policy. Although we reach no conclusions about this argument, we note that any such interpretation is complicated by the fact that Louisiana has long held that insurance proceeds are treated as *sui generis*. See Graves v. Garden State Life Insurance, 2003-2208, 2003-2209, p. 3 (La. App. 1st Cir. 9/17/04), 887 So. 2d 506, 508; Abney v. Continental Casualty Company, 401 So. 2d 438, 439 (La. App. 1st Cir. 1981).

proceeds to her. Odom filed a cross-motion for partial summary judgment, seeking a declaration that she was the record owner and titleholder to the property. In her memorandum, Odom made specific requests for declarations: (1) that she was the sole owner and title holder to the property, and that Ms. Palmer had no ownership interest in the property; (2) that Ms. Palmer was entitled to the return of the down payment and monthly installments paid, subject to a credit for the fair rental value of the property during the period of Ms. Palmer's possession; and (3) that Ms. Palmer was not entitled to any of the insurance proceeds from the Farmers policy. Odom did not request a determination of the amount of the fair rental value at that time.

These motions were heard on February 21, 2006, after which the trial court took the matter under advisement. On February 24, 2006, the trial court issued a ruling in open court, denying Ms. Palmer's motion and granting Odom's motion. On April 25, 2006, the trial court signed a judgment, denying Ms. Palmer's motion and specifically denying her request for an order requiring Odom to transfer ownership of the property and the insurance proceeds. The judgment further granted Odom's motion, stating only that Odom was the record owner and titleholder of the property in question. Ms. Palmer appealed the judgment to this court.

On October 10, 2006, this court issued a rule requiring the parties to show cause why the appeal should not be dismissed, since the trial court had not designated the judgment as final in accordance with LSA-C.C.P. art. 1915(B). No such designation was ever filed into the record, and the appeal was dismissed by order of this court on January 8, 2007.

On July 17, 2006, while the above appeal was pending in this court, Odom filed a second motion for partial summary judgment in the trial court, seeking a

declaration that the bond-for-deed contract was dissolved. Odom also sought a declaration that she was entitled to the insurance proceeds and that Ms. Palmer had no right to use, occupy, or possess the property.[4] Ms. Palmer responded by filing a motion to strike Odom's motion on the basis that the trial court no longer had jurisdiction over the matter on appeal. Ms. Palmer also requested that sanctions be levied against counsel for Odom for filing the second motion for partial summary judgment. At the hearing on these issues, counsel for Odom stated that he believed that the issues he raised in the second motion had been addressed by the court's first judgment, but that Ms. Palmer's counsel had contended that the only issue addressed by the trial court's original judgment was the ownership of the property.

On October 5, 2006, the trial court signed a judgment purportedly "reaffirm[ing]" and "clarifying" its earlier ruling. The judgment further denied the motion to strike and the motion for sanctions filed by Ms. Palmer, and continued Odom's second motion for partial summary judgment without date. Ms. Palmer opposed the "clarification" in open court and in writing. On October 24, 2006, the trial court signed an order declaring the above "clarifying judgment" to be a final judgment. This appeal by Ms. Palmer followed.

At the time the trial court rendered the "clarifying judgment," the original judgment had already been appealed to this court. Pursuant to LSA-C.C.P. art. 2088, the trial court's jurisdiction over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of the appeal in the case of a devolutive appeal. Thereafter, the trial court has jurisdiction in the case only over those matters not reviewable under the appeal. LSA-C.C.P. art. 2088. Because the trial court issued this judgment as a

[4]By the time this motion was filed, Farmers had, with the consent of Ms. Palmer and Odom, paid the remaining balance due on the mortgage to Regions. In addition, Farmers had deposited the sum of $25,914.89 into the registry of the court. This sum represented the undisputed portion of the remainder of the proceeds of the policy.

clarification of its prior ruling, the second judgment clearly concerned matters reviewable under the appeal. Thus, the trial court lacked jurisdiction to render the clarifying judgment. See Miley v. United States Fidelity and Guaranty Company, 94-1204, p. 13 (La. App. 1 Cir. 4/7/95), 659 So. 2d 792, 799, writ denied, 95-1101 (La. 6/16/95), 660 So. 2d 436. Accordingly, we vacate the clarifying judgment signed October 5, 2006.[5]

Moreover, because the appeal of the original interlocutory judgment was dismissed by order of this court, there is presently no judgment for this court to review. Thus, this matter is remanded to the trial court for further proceedings consistent with this opinion. In doing so, we express no position as to the merits of the judgments rendered by the trial court.

JUDGMENT VACATED AND REMANDED.

[5]A partial summary judgment rendered pursuant to LSA-C.C.P. art. 966(E) may be immediately appealed during an ongoing litigation only if the trial court has properly designated the judgment as final. LSA-C.C.P. art. 1915(B). Although the trial court designated the partial summary judgment in this matter as final, that designation is not determinative of this court's jurisdiction. Templet v. State ex rel. Department of Public Safety and Corrections, 2005-1903, p. 6 (La. App. 1 Cir. 11/3/06), 951 So. 2d 182, 185. Here, the "clarifying judgment" in this matter did not dismiss any party from the proceedings, and the parties acknowledged at oral argument before this court that there are several issues remaining to be resolved by the trial court. Thus, we question whether the trial court properly designated the clarifying judgment as final in accordance with LSA-C.C.P. art 1915(B). However, as we have vacated the clarifying judgment, we need not decide this issue.

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HUGHES, J., concurring

I respectfully concur.

While I would prefer to address the merits based upon the fourth paragraph from the bottom and the last sentence of page 2 of the contract, I believe the majority opinion is technically correct.