

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 1744

MID-SOUTH FIRE PROTECTION, INC.

VERSUS

HAPPY HAVEN HOMES, INC.

Judgment Rendered: March 26, 2008

On Appeal from the City Court of Hammond, Seventh Ward
In and For the Parish of Tangipahoa
State of Louisiana
Docket No. 1-0509-0035

Honorable Grace B. Gasaway, Judge Presiding

Jan P. Jumonville
Covington, Louisiana

Counsel for Defendant/Appellee
Happy Haven Homes, Inc.

Craig L. Kaster
Zachary, Louisiana

Counsel for Plaintiff/Appellant
Mid-South Fire Protection, Inc.

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

Handwritten signatures and initials on the left side of the page. The top signature appears to be 'JPC' with a flourish. Below it is another signature that is less legible. At the bottom is the initials 'JMM'.

McCLENDON, J.

Plaintiff appeals the judgment of the trial court awarding attorney fees to the defendant. For the reasons that follow, we reverse and remand.

On September 23, 2005, Mid-South Fire Protection, Inc. (Mid-South), filed a petition against Happy Haven Homes, Inc. (Happy Haven), in the City Court of Hammond, alleging that it had a contract with Happy Haven to perform certain work on sprinkler systems at its homes on Stein Road and Hinson Road¹ in Hammond, Louisiana, and that Happy Haven refused to pay \$4,078.72 for the work performed. Happy Haven answered the petition on October 10, 2005, generally denying its allegations. Happy Haven included in its answer a motion for sanctions pursuant to LSA-C.C.P. art. 863. No order was attached to the motion to set it for hearing, nor was the motion ever set for hearing. Trial on the merits of Mid-South's suit was held on April 25, 2006. Prior to trial, Happy Haven orally moved to dismiss Mid-South's suit, based on the exception of prescription. The trial court heard the exception, deferred its ruling, and proceeded to trial on the merits. Following the trial, the trial court took the matter under advisement, allowing the parties time to file post-trial memoranda.

On June 21, 2006, the trial court issued Reasons for Judgment, finding that no agreement or contract existed regarding the work performed. Without a contract, the court determined that the three-year prescriptive period pursuant to LSA-C.C. art. 3494 was applicable. Because the services were rendered in 1999 and 2000, and suit was not filed until 2005, the trial court granted Happy Haven's exception of prescription.

¹ Mid-South originally alleged that work was performed at a home on Perret Road, but the petition was amended to show the correct location to be Hinson Road in Hammond.

Thereafter, by letter to the trial court, dated September 10, 2006, counsel for Happy Haven informed the court that its reasons for judgment failed to address Happy Haven's claim for attorney fees and requested that the court amend its reasons to address the attorney fees claim. On November 14, 2006, the trial court issued Amended Reasons for Judgment to include attorney fees in the amount of \$500.00. Judgment was also signed on November 14, 2006, granting Happy Haven's exception of prescription, dismissing Mid-South's claim, and awarding \$500.00 in attorney fees against Mid-South. Mid-South then moved for a new trial, and Happy Haven filed an opposition to the motion and moved for an increase in attorney fees. The motions of both parties were denied.

Mid-South has appealed the award of attorney fees, and Happy Haven has filed an answer to the appeal, asking for an increase in the attorney fees award.

DISCUSSION

Louisiana Code of Civil Procedure article 863 provides, in pertinent part:

A. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading and state his address.

B. Pleadings need not be verified or accompanied by affidavit or certificate, except as otherwise provided by law, but the signature of an attorney or party shall constitute a certification by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact; that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

* * *

D. If, upon motion of any party or upon its own motion, the court determines that a certification has been made in violation of the provisions of this Article, the court shall impose upon the person who made the certification or the represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

E. A sanction authorized in Paragraph D shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.

While LSA-C.C.P. art. 863 authorizes a court to impose sanctions upon an attorney who signs pleadings without making an objectively reasonable inquiry into the facts and law, or upon the represented party, or both, those penalties “shall be imposed only after a hearing at which any party or his counsel may present any evidence or argument relevant to the issue of imposition of the sanction.” LSA-C.C.P. art. 863 E; **McDonald Enterprises, Inc. v. Age**, 00-1938, p. 4 (La.App. 1 Cir. 11/9/01), 818 So.2d 70, 72. In this matter, Happy Haven filed a motion for sanctions with its answer.² However, the motion was never scheduled for hearing. Further, at trial, Happy Haven did not mention Article 863 nor did it attempt to prove that Mid-South knew the claims in the petition were legally untenable or were not well grounded in fact when filed or that Mid-South interposed the petition for an improper purpose.

Accordingly, because LSA-C.C.P. art. 863 by its plain language requires a trial court hearing before the imposition of sanctions and because sanctions were in fact imposed without a hearing, we find that it was legal error for the trial court to award sanctions without a contradictory hearing.

² The pleading was entitled Defendant's Answer to Petition and Motion for Sanctions.

CONCLUSION

For the above and foregoing reasons, we reverse the judgment of the trial court only insofar as it awarded sanctions and remand the matter for a contradictory hearing on the motion for sanctions pursuant to LSA-C.C.P. art. 863. Costs of this appeal are assessed equally between Mid-South Fire Protection, Inc. and Happy Haven Homes, Inc.

REVERSED AND REMANDED.