

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2009 CA 0874**

**SAMUEL K. EDDY, III**

**VERSUS**

**STATE FARM FIRE AND CASUALTY COMPANY**

**Judgment rendered: APR - 9 2010**

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**On Appeal from the 22<sup>nd</sup> Judicial District Court  
Parish of St. Tammany, State of Louisiana  
Suit Number: 2006-11249; Division: G  
The Honorable Larry J. Green, Judge Presiding**

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**BEFORE: DOWNING, GAIDRY AND MCCLENDON, JJ.**

*McClendon, J. concurs and assigns reasons.*

## **DOWNING, J.**

Samuel K. Eddy appeals a judgment dismissing his claims for hurricane damage against State Farm Fire and Casualty Company (State Farm). Eddy also complains of the underlying “Declaratory Judgment” entered in State Farm’s favor declaring that Eddy entered a stipulation limiting the value of his claims against State Farm. For the following reasons, we reverse the judgment of the trial court and remand for further proceedings.

### **PERTINENT FACTS AND PROCEDURAL HISTORY**

The facts and procedural history of this case, including assignments of error, were fully set forth in our interim opinion ordering that this matter be remanded for further proceedings.<sup>1</sup> We also resolved several pertinent issues in that opinion.

This matter returns to us after we remanded the proceeding to the trial court for a hearing to determine the nature and effect of the “Irrevocable Stipulation” that Eddy made. We ordered that the trial court was to determine whether State Farm knew or had knowledge of the claims asserted in Eddy’s amended petition such that State Farm was not misled or deceived by their inclusion in the lawsuit.

On remand, the trial court made several pertinent findings of fact. Regarding the tree removal claims only, the trial court found that the “‘Irrevocable Stipulation’ was a judicial confession that was clearly and explicitly limited to the tree removal claims.” (Emphasis added.) The trial court explained that “[a]mending or altering the lawsuit to change the scope of the tree removal claims would result in State Farm having been misled or deceived.” According to the trial court, the effect of the “Irrevocable Stipulation” was to eliminate Eddy’s attorney fee and penalty claims and federal jurisdiction as issues in the litigation.

Regarding “other claims” beyond tree removal, however, the trial court found differently. The trial court found that the evidence supported State Farm’s

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<sup>1</sup> Eddy v. State Farm Fire & Cas. Co., 09-0874 (La. App. 1 Cir. 12/23/09) (unpublished).

and Eddy's admissions that they were aware of the "other claims" at the time the "Irrevocable Stipulation" was entered. The trial court found that neither party chose to raise the issue of "other claims" at the time of the remand motion in federal court, though either party could have. The trial court further found that in acquiescing in the "Irrevocable Stipulation," State Farm gained the elimination of Eddy's attorney fee and penalty claims while giving up federal court as a venue for this litigation. The trial court found that State Farm "knowingly chanced that either [Eddy] would not assert the 'other claims' in State Court or State Farm could preclude them from being asserted." The trial court found that "there was no evidence introduced that the parties actually agreed that the 'Irrevocable Stipulation' would eliminate the 'other claims.'"

Accordingly, the trial court found "that State Farm was not misled, deceived or duped by the later inclusion of the 'other claims.'"

#### DISCUSSION

In our prior interim opinion ordering a remand, we discussed the circumstances in which judicial admissions or stipulations can be amended or revoked. *See Eddy v. State Farm Fire & Cas. Co.*, 09-0874 at pp. 6-7, where we observed that party litigants are not bound by factual allegations made in the same lawsuit unless his opponent was misled or deceived by those allegations to his detriment, as follows:

In *Scoggins v. Frederick*, 98-1815, 98-1816, 1998-1814 (La.App. 1 Cir. 9/24/99), 744 So.2d 676, 681-82, this court made several pertinent observations about judicial confessions. First, the court observed that a party is not inexorably bound by factual allegations contained in pleadings from a prior suit. *See Id.* Therefore, allegations made in the federal suit arguably may not be binding in the state litigation. More pertinently here, though, the *Scoggins* court continued: "Other cases have further indicated that a party litigant is not even bound by factual allegations made in the same suit unless his adversary was misled [sic] or deceived by those allegations to his detriment." *Id.* at 682.

Here, given the trial court's finding that State Farm was not misled or deceived, which is not clearly wrong, we conclude that Eddy was not barred from amending or supplementing his petition to add "other claims," as he is entitled to do pursuant to La. C.C.P. arts. 1151 and 1155. We agree with the trial court that the effect of the "Irrevocable Stipulation" was to waive Eddy's claims for attorney fees and penalties in connection with the tree removal claims.

Accordingly, we find merit in Eddy's third assignment of error. We will reverse the judgments of the trial court granting State Farm's motion for declaratory judgment and the subsequent judgment dismissing Eddy's amended claims. We pretermitt discussion of the remaining assignments of error.<sup>2</sup>

#### **DECREE**

For the foregoing reasons, we reverse the judgment declaring that Eddy limited the value of his claims against State Farm to \$75,000.00 and reverse the judgment of the trial court dismissing Eddy's claims with prejudice. We remand for further proceedings. Costs of this appeal are assessed against State Farm Fire and Casualty Company.

**JUDGMENT REVERSED; DECLARATORY JUDGMENT REVERSED; REMANDED**

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<sup>2</sup> A declaratory judgment action is an ordinary proceeding that must be commenced by petition. *See Ghassemi v. Ghassemi*, 07-1927, p. 8 n.11 (La.App. 1 Cir. 10/15/08), 998 So.2d 731, 737 n.11. It appears that the trial court may have been treating State Farm's Motion for Declaratory Judgment as a reconventional demand, which does not require citation. *Id.* Because of our disposition in this matter, however, we pretermitt discussion of whether the motion was in a procedurally correct posture for consideration by the trial court.

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**McCLENDON, J., concurs and assigns reasons.**

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by RDB

Under the unique facts of this case, I concur with the result reached by the majority based on the trial court's finding that State Farm was fully aware of the "other claims" and was not misled or deceived by the inclusion of the "other claims" in the state court action. Further, as judicial estoppel is an equitable doctrine and based on State Farm's choice not to raise the issue of the "other claims" in response to the remand motion, I agree that the doctrine of judicial estoppel need not be applied.

Additionally, while I question the authority of this court to issue an interim opinion, I believe the prior opinion, which did nothing more than remand for further proceedings, was essentially an interim order.

Thus, I concur with the result reached by the majority.