

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 0918

SHEILA VANDERBROOK WIFE OF/AND TERRY B. TRAHAN,
DOLORES DeLAUNE WIFE OF/AND JOHN B. MIDDLETON,
E. RAY WILKES, JR., ANNE LESTER WIFE OF/AND ROBERT R. RAPOSO,
SHERIE LANDRY WIFE OF/AND RAYMOND C. BURKART, JR.,
AND STACY MILLER WIFE OF/AND LANCE L. ENGOLIA, SR.

VERSUS

CHRISTOPHER R. JEAN; LEE ROAD DEVELOPMENT COMPANY;
HIGHLAND LAKES DEVELOPMENT CORPORATION; JOHNNY F. SMITH
TRUCK AND DRAGLINE SERVICE, INC.; THE HIGHLANDS HOMEOWNERS
ASSOCIATION OF ST. TAMMANY, INC.; PALMERS, INC.;
ALTERNATIVE DESIGN/BUILD GROUP, L.L.C.; NORTHLAKE TRUCK
CENTER, L.L.C.; MULLER & MULLER, ATTORNEYS AT LAW, A LIMITED
LIABILITY COMPANY; JOHNNY F. SMITH TESTAMENTARY TRUST;
RICHARD L. MULLER; SILVIA G. MULLER; JANICE SEAL SMITH STUMPF
INDIVIDUALLY AND AS TRUSTEE OF THE JOHNNY F. SMITH
TESTAMENTARY TRUST; BARNEY L. CORE; GARY SALATHE; MARTIN
MURPHY; DAVID T. GLASS; WADE GLASS; ADRIAN SPELL; JODI
McINTYRE WIFE OF/AND GREGORY "SCOTT" BRIDGES; AND
WILLIS A. PALMER

Judgment Rendered: December 23, 2009

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 2004-11723

Honorable William J. Burris, Presiding

* * * * *

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*J. Pettigrew, J. concurs and Assigns Reasons
C. J. Concur*

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BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

GUIDRY, J.

In this appeal, plaintiffs seek review of the trial court's judgment granting peremptory exceptions raising the objections of no cause of action and no right of action filed by defendants, David Glass, Wade Glass, Glass Contracting of St. Tammany, Inc., Alternative Design/Build Group, L.L.C., Gary Salathe, and Martin Murphy (collectively "Glass defendants"). For the reasons that follow, we dismiss the appeal and remand this matter to the trial court for further proceedings.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, owners of immovable property and improvements in Highland Lakes Subdivision in St. Tammany Parish, filed a lengthy petition against a number of defendants seeking a declaratory judgment and damages as a result of the development, ownership, and construction of the lakes, earthworks, dams, spillways, and roadways of Highland Lakes Subdivision. Included in this petition were claims against the Glass defendants arising from their participation in the construction of a residence for defendants, Jodi and Gregory Bridges. Plaintiffs generally alleged that the Glass defendants' trucks caused damage to the subdivision roads.

Thereafter, plaintiffs filed a first supplemental and amending petition. Multiple defendants responded by filing multiple exceptions. Following a hearing on these exceptions, the trial court rendered judgment on March 31, 2005, granting the Glass defendants' dilatory exception raising the objection of improper cumulation of actions and dismissing plaintiffs' claims, granting other defendants' dilatory exceptions raising the objection of vagueness, and denying, without prejudice, the remaining exceptions.¹

¹ The judgment relating to the Glass defendants was affirmed by this court to the extent that it granted the exception raising the objection of improper cumulation of actions; however, this court reversed the dismissal of plaintiffs' action and ordered that a separate trial be had on plaintiffs' action against these defendants. Vanderbrook v. Jean, 05-1122 (La. App. 1st Cir. 9/20/06), 937 So. 2d 937 (Table)(unpublished). The portion of the judgment relating to the exception raising the objection of vagueness was subsequently reversed by this court in Vanderbrook v. Jean, 06-1975 (La. App. 1st Cir. 2/14/07), 959 So. 2d 965, and Vanderbrook v. Jean, 05-2540 (La. App. 1st Cir. 2/14/07), 949 So. 2d 676 (Table)(unpublished).

On July 1, 2005, plaintiffs filed a second supplemental and amending petition. Thereafter, on October 18, 2006, the Glass defendants filed peremptory exceptions raising the objections of no cause of action and no right of action. Following a hearing on these exceptions, the trial court signed a judgment on January 12, 2007, overruling the Glass defendants' exceptions as they relate to the damage claims of the individual plaintiffs. However, the trial court sustained the exceptions as they related to other damages and gave the plaintiffs twenty days from the mailing of the notice of judgment to amend their petition.

On June 14, 2007, plaintiffs filed a third supplemental and amending petition asserting that they were bringing their action individually and as representatives of the Highlands Homeowners Association of St. Tammany, Inc. Again, the Glass defendants filed exceptions raising the objections of no cause of action and no right of action as to the plaintiffs' shareholders derivative action. Following a hearing on these exceptions, the trial court signed a judgment on December 21, 2007, sustaining the Glass defendants' exceptions and specifically reiterating that the exceptions did not seek dismissal of the claims of the originally named plaintiffs for their individual damages.

The plaintiffs appealed from the December 21, 2007 judgment, but in Vanderbrook v. Jean, 08-0915 (La. App. 1st Cir. 10/31/08), 994 So. 2d 157 (Table)(unpublished) this court dismissed the appeal and remanded the matter to the trial court upon finding that the judgment was defective for lack of proper decretal language. Specifically, this court found that while the judgment sustained the Glass defendants' exceptions, it failed to dismiss any of plaintiffs' claims. As such, this court determined that because the judgment was defective, we could not consider it a final appealable judgment for purposes of an immediate appeal and cited to La. C.C.P. art. 1915(B), which relates to partial judgments.

On remand, the trial court rescinded its December 21, 2007 judgment and substituted a new judgment signed on December 30, 2008. Plaintiffs now appeal from this judgment.

DISCUSSION

The December 30, 2008 judgment reads:

IT IS ORDERED, ADJUDGED AND DECREED that the Exceptions of No Right of Action and No Cause of Action filed by defendants David Glass, Wade Glass, Glass Contracting of St. Tammany, Inc., Alternative Design/Build Group, L.L.C., Gary Salathe and Martin Murphy to the claims against them in the Third Supplemental and Amending Petition of Sheila Vanderbrook, Terry B. Trahan, Delores DeLaune, John B. Middleton, E. Ray Wilkes, Jr., Anne Lestor, Robert R. Rapaso, Sherie Landry, Raymond C. Burkhart, Jr., Stacy Miller and Lance Engolia, Sr. (Plaintiffs) are sustained and the Plaintiffs' claims are hereby dismissed at their cost.

As stated in this court's previous opinion, our jurisdiction extends to final judgments. See La. C.C.P. art. 2083; Johnson v. Mount Pilgrim Baptist Church, 05-0337 (La. App. 1st Cir. 3/24/06), 934 So. 2d 66, 67. A final judgment must be precise, definite, and certain. Vanderbrook v. Coachmen Industries, Inc., 01-0809, p. 11 (La. App. 1st Cir. App. 5/10/02), 818 So. 2d 906, 913. Furthermore, as to partial judgments, La. C.C.P. art. 1915(B) states:

(1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories, whether in an original demand, reconventional demand, cross-claim, third party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

(2) In the absence of such a determination and designation, any order or decision which adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties and shall not constitute a final judgment for the purposes of an immediate appeal. Any such order or decision issued may be revised at any time prior to rendition of the judgment adjudicating all the claims and the rights and liabilities of all the parties.

In the instant case, the December 30, 2008 judgment sustains the Glass defendants' exceptions as related to the plaintiffs' third supplemental and amending

petition and dismisses those claims. However, the judgment does not adjudicate the remaining claims between the parties. Therefore, the judgment is a partial judgment, and in order for it to constitute a final judgment for purposes of an immediate appeal, it must be designated as a final judgment by the court after an express determination that there is no just reason for delay. La. C.C.P. art. 1915(B)(1); see also La. C.C.P. arts. 1911 and 2083. Because the judgment at issue does not contain the proper designation, it is not a final judgment, and this court lacks jurisdiction to review this matter.² Latiolais v. Jackson, 06-2403, p. 5 (La. App. 1st Cir. 11/2/07), 979 So. 2d 489, 492.

CONCLUSION

For the foregoing reasons, we find that this court lacks jurisdiction to review the December 30, 2008 judgment. Accordingly, we dismiss the plaintiffs' appeal, without prejudice, and remand this matter to the trial court for further proceedings. All costs of appeal are to await final disposition of this matter.

APPEAL DISMISSED, WITHOUT PREJUDICE, AND REMANDED.

² We also decline to exercise our plenary power of supervisory jurisdiction, as the merits of the instant case do not meet the criteria set forth in Herlitz Construction Co. v. Hotel Investors of New Iberia, Inc., 396 So. 2d 878 (La. 1981). Further, though the plaintiffs assert that the trial court erred procedurally in failing to give them an opportunity to amend their petition to remove the grounds for the objection, we note that the plaintiffs had already been given one opportunity to amend their petition, and the trial court is vested with discretion in determining whether to allow the plaintiff additional opportunities to amend pursuant to La. C.C.P. art. 934. See Ramey v. DeCaire, 03-1299, p. 9 (La. 3/19/04), 869 So. 2d 114, 119.

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BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J., CONCURS, AND ASSIGNS ADDITIONAL REASONS.

A final judgment must be precise, definite, and certain. **Vanderbrook v. Coachmen Industries, Inc.**, 2001-0809, p. 11 (La. App. 1 Cir. 5/10/02), 818 So.2d 906, 913. After reviewing the trial court's judgment of December 30, 2008, I cannot ascertain what claims of the plaintiffs were dismissed without referring to and reviewing other extraneous pleadings in the record. In my opinion, the judgment was not precise, definite, or certain.