

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2523

FELICIEN SANCHEZ AND VIOLET SANCHEZ

VERSUS

ITEQ TANK SERVICES, INC. AND AIR LIQUIDE PROCESS  
& CONSTRUCTION, INC.

Judgment Rendered: OCT 20 2006

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Appealed from the  
Nineteenth Judicial District Court  
In and for the Parish of East Baton Rouge, Louisiana  
Trial Court Number 475,442

Honorable R. Michael Caldwell, Judge

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Locke Meredith  
Sean D. Fagan  
Baton Rouge, LA

Attorneys for  
Plaintiffs – Appellees  
Felicien Sanchez and Violet Sanchez

Trenton J. Oubre  
Joell M. Keller  
Matthew P. Bonham  
Baton Rouge, LA

Attorneys for  
Defendant/Intervenor – Appellee  
James Industrial Constructors, LLC

Robert E. Kerrigan, Jr.  
Isaac H. Ryan  
New Orleans, LA

Attorneys for  
Defendant – Appellant  
National Union Fire Ins. Co. of  
Pittsburgh, PA

John E. W. Baay  
New Orleans, LA

Attorney for  
Defendants – Appellees  
ITEQ Tank Services, Inc. and  
ITEQ Construction Services, Inc.

David Nelson  
Erich P. Rapp  
Baton Rouge, LA

Attorneys for  
Defendant – Appellee  
Air Liquide Process and Construction,  
Inc.

\* \* \* \* \*

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

The appellant, National Union Fire Insurance of Pittsburgh, PA (National Union), appeals a judgment rendered in accordance with a jury verdict which found it liable to the plaintiff, Felicien Sanchez, in the amount of \$5,056,390.00, and to the plaintiff, Violet Sanchez, in the amount of \$300,000.00, for severe personal injuries sustained by Mr. Sanchez as a result of a workplace accident at the Air Liquide plant in Geismar, Louisiana, in which he was struck in the head by a brass pipe fixture which ruptured after a PVC line was pressurized by employees of ITEQ Tank Services, Inc. (ITEQ). (At the time of the accident, Mr. Sanchez was employed by James Industrial Constructors (JIC), which was performing construction services at the plant under a contract with Air Liquide.)

The plaintiffs filed an original petition naming as defendants ITEQ and Air Liquide; they filed a supplemental and amending petition adding as defendant National Union, the insurer of both ITEQ and Air Liquide. Several cross-claims, third-party demands, and an intervention were also filed, resulting in JIC being added as a party to the litigation, and raising issues concerning liability, insurance coverage, defense, reimbursement, contribution, and indemnity among the several parties. However, these incidental demands were either severed prior to trial or resolved by pre-trial stipulations and interlocutory orders of the court, and the sole issue at the trial was that of quantum.

National Union is the sole appellant of the final judgment on the issue of quantum. Its appeal urges that the quantum award is excessive. The plaintiffs answered the appeal countering that the award is inadequate. Also answering the appeal is JIC, as “third-party defendant/intervenor/appellee.” However, rather than addressing any issue related to quantum, JIC’s answer raises assignments of error and issues related to a interlocutory judgment rendered by the trial court in this matter on December 16, 2002, which granted summary judgment in favor of Air

Liquide and against JIC on the issue of contractual indemnity in the incidental demand.

Currently before this court in conjunction with this appeal are: (1) a Joint Motion to Dismiss the Appeal, filed jointly by the plaintiffs and National Union; (2) a Motion to Strike Brief and/or Dismiss Answer to Appeal [by JIC], filed by National Union; and (3) two writs, 2006 CW 0598, filed by National Union, and 2006 CW 0245, filed by JIC, which concern *post-appeal* actions by the trial court. These writ applications were referred to this panel to be handled in conjunction with this appeal based on representations in the writ applications that the issues raised therein were the same as those raised by JIC's answer to National Union's appeal.

#### **JOINT MOTION TO DISMISS THE APPEAL**

National Union and the Sanchezes have filed a Joint Motion to Dismiss the Appeal based on a settlement reached between them pending this appeal. There being no reason to deny this motion, the parties' settlement is recognized by the court and the appeal is hereby dismissed.

#### **MOTION TO STRIKE BRIEF and/or DISMISS ANSWER OF JIC**

It is important to note that the final judgment on appeal by National Union is the July 11, 2005 judgment on the principal demand awarding the plaintiff damages. *No other party was cast in judgment and no other party appealed that judgment.* As noted earlier, JIC's *answered* National Union's appeal and also filed a brief *as appellee*. Notably, JIC raises no issues and makes no argument on the assignments of error related to quantum raised by National Union's appeal. Instead, JIC's answer and brief raise assignments of error and issues related only to the interlocutory judgment rendered by the trial court in this matter on December 16, 2002, which granted summary judgment in favor of Air Liquide and against JIC on the issue of contractual indemnity in the incidental demand. (No writ or

appeal was taken from that December, 2002 judgment.) As noted earlier, Air Liquide was not a party at trial and is not a party to this appeal.

Pursuant to La. C.C.P. art. 2133:

An appellee shall not be obliged to answer the appeal unless he desires to have the judgment modified, revised, or reversed in part or unless he demands damages against the appellant. ... The answer filed by the appellee shall be the equivalent to an appeal on his part from any portion of the judgment rendered against him in favor of the appellant and of which he complains in his answer.

(Emphasis added). In **Giroir v. Theriot**, 498 So.2d 762, 764 (La. App. 1<sup>st</sup> Cir. 1986), we addressed the issue of the rights of a party answering an appeal against non-appealing parties in light of the “unambiguous terms” of La. C.C.P. art. 2133 and concluded that “an answer to the appeal is effective only as a response to an appeal taken by a party or parties who actually appealed, timely, the judgment or any part thereof which they believe to be wrong.” Hence, an answer to an appeal does not have the effect of an appeal with respect to any portion of the judgment rendered in favor of a party who is not an appellant. **Giroir**, 498 So.2d at 764.

JIC’s answer does not assign error to the trial court’s judgment against the appellant, National Union; rather, it assigns error to the trial court’s grant of summary judgment on December 16, 2002, against it on Air Liquide’s incidental demand. As such, and pursuant to the clear dictates of La. C.C.P. art. 2133, JIC’s answer is improper and should be stricken. JIC is impermissibly attempting to appeal the interlocutory judgment of December 16, 2002, and address issues concerning the incidental demand which has been severed and over which the trial court retained jurisdiction pursuant to La. C.C.P. art. 2088. No final judgment has been rendered on that incidental demand; hence, all issues raised concerning such are premature and not properly before this court on appeal. This court lacks jurisdiction to address that interlocutory judgment and JIC’s answer to National

Union's appeal is incapable of conferring jurisdiction on this court or of otherwise placing those issues before this court.<sup>1</sup>

Accordingly, the Motion to Strike the Answer is granted. Additionally, because the appeal has been dismissed by joint motion of the parties and order of this court, JIC's brief, as appellee, is moot.

### WRITS

There are two writs before us, addressing post-appeal actions by the trial court, that were transferred to this panel to be handled in conjunction with this appeal based on representations in those writ applications that the issues raised therein were the same as those raised by JIC in its "answer" to this appeal. Given that we have dismissed the answer, finding the issues raised therein to be improperly before us, and also since the appeal, by joint motion of the parties, has been dismissed, it is inappropriate to consider them under our appellate jurisdiction. However, in the interest of judicial efficiency, we have addressed those writs under our supervisory jurisdiction and render action on them this same date.

For all the foregoing reasons, National Union's Motion to Strike the Answer and brief of JIC is hereby granted; the Joint Motion to Dismiss the Appeal is also granted; and the writs referred to this panel are referred back for our consideration under our supervisory jurisdiction and handed down this same date. See Sanchez v. ITEQ Tank Services, Inc., 2006 CW 0598 and 2006 CW 0245.

**MOTION TO STRIKE JIC'S ANSWER AND BRIEF GRANTED;  
APPEAL DISMISSED.**

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<sup>1</sup> This conclusion is further buttressed by an order of the trial court dated June 15, 2005, in which the court adopted and approved a stipulation entered by National Union and Air Liquide dismissing Air Liquide with prejudice. This order expressly and clearly also provides: "*this dismissal is not intended to deprive National Union of any subrogation rights against [JIC], and that the determination of such rights will take place at a subsequent trial. James reserves all rights now available to it.*" (Emphasis added.)