NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0454

HANCOCK BANK OF LOUISIANA

VERSUS

MCELWEE BROTHERS, INC. AND MELVIN (MEL)
M.C. MCELWEE, JR.

Judgment Rendered: December 28, 2006

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket No. 2005-001577

Honorable Zorraine M. Waguespack, Judge

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Melvin M. L. McElwee, Sr. Independence, LA	Defendant/Appellant In Proper Person
Todd E. Gaudin Baton Rouge, LA	Counsel for Plaintiff-Appellee Hancock Bank of Louisiana

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Parro, J., concurs.
McClendon, J. Concurs.

GUIDRY, J.

Debtor appeals a judgment denying his request for injunctive relief to enjoin the creditor bank from repossessing by executory process a vehicle owned by the debtor.

FACTS AND PROCEDURAL HISTORY

The present matter comes before us pursuant to the trial court's denial of a petition to enjoin Hancock Bank of Louisiana (Hancock) from effecting the seizure and sale of a 2001 Ford F250 pickup truck by executory process.

On May 16, 2005, Hancock filed a "Petition to Enforce Mortgage on Movable Property by Executory Process without Notice to Pay" against McElwee Brothers, Inc., as maker, and Melvin (Mel) M. C. McElwee, Jr., as guarantor (collectively "McElwee"), of an installment note dated December 16, 2001. The note was issued in the principal amount of $16,358.65, payable in 60 months at 11.890 percent interest. To secure payment of the note, McElwee offered the aforementioned pickup truck as collateral. The trial court granted the relief requested in Hancock's petition and ordered the immediate issuance of a writ of seizure and sale.

In response to Hancock's petition, McElwee filed a petition for injunctive relief, alleging that Hancock's actions were premature and therefore should be enjoined. McElwee specifically asserted that the original agreement on which suit had been filed by Hancock had been modified by subsequent agreement of the parties, wherein Hancock allegedly agreed to forebear collection of the outstanding amount due on the installment note for a period of 30 days. Pursuant to McElwee's request for injunctive relief, the trial court issued a temporary restraining order to the Sheriff of Tangipahoa Parish to prohibit the sheriff from proceeding with the seizure and sale of the pickup truck. The trial court also issued a rule to show cause why a preliminary injunction should not be granted and Hancock's petition

dismissed based on McElwee's allegations that Hancock's actions were premature as the debt sued upon was not delinquent as a result of the extension agreement subsequently entered into by the parties.

A hearing on the rule to show cause was held before the trial court on June 20, 2005, following which the trial court denied McElwee's request for injunctive relief and authorized Hancock to proceed with the seizure and sale. McElwee filed a motion to suspensively appeal the judgment, which was converted to a devolutive appeal following McElwee's failure to timely post the security required to suspensively appeal.[1]

ASSIGNMENTS OF ERROR

On appeal, Mr. McElwee asserts that the trial court improperly denied his request for injunctive relief, alleging as error:

> The trial court's clerk's breaching of duty by not serving a notice of demand on the [defendant] prior to executing the proceedings in this executory process. ...
>
> The trial court's omission of the plaintiff-appellee's judicial confession, in this proceeding by executory process, that a forbearance was executed prior to executing this executory proceeding, and some part of the indebtness has been paid subsequent to the forbearance and that only a portion of it remains due at the original payment frequency and with a current maturity date of February 13, 2007. Thus reducing the amount of indebtness pro tanto.

DISCUSSION

McElwee appears before us in proper person to present his arguments on appeal. A layman who represents himself cannot be held to the same standards of skill and judgment that must be attributed to an attorney, although a layman assumes responsibility for his own inadequacy and lack of knowledge of both

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[1] Upon motion of Hancock, the trial court dismissed McElwee's appeal for failure to timely post the security required to suspensively appeal the judgment. McElwee applied for writs to this court seeking supervisory review of the trial court's October 24, 2005 order dismissing the appeal. This court vacated the trial court's order dismissing the appeal and ordered that the appeal be maintained as a devolutive appeal. Hancock Bank v. McElwee Brothers, Inc., 05-2458 (La. App. 1st Cir. 12/28/05)(unpublished writ action).

procedural and substantive law. Lapeyrouse v. Barbaree, 02-0086, p.7 (La. App. 1st Cir. 12/20/02), 836 So. 2d 417, 422. As such, we will grant more latitude to the arguments raised by McElwee on appeal.

In his first assignment of error, McElwee alleges error relative to the failure to serve him with notice of the proceedings prior to issuance of the writ of seizure and sale. We note that typically, pursuant to confession of judgment language included in the security agreement, such notice is waived by the debtor and thus would not be required. Hancock asserted in its petition for executory process that such language was included in the agreement sued upon. McElwee does not refute the existence of said agreement or its terms. Accordingly, this assignment of error lacks merit.

In his second assignment of error, McElwee contends that Hancock prematurely instituted executory proceedings in this matter, alleging that at the time the proceedings were instituted the McElwee account was not delinquent because the parties had entered into a subsequent agreement for a forbearance extension of the credit agreement. Hancock, however, argues that McElwee did not pay the fee that it charged for granting the extension and, therefore, the extension agreement was of no effect, but in any event, the agreement did not involve a forbearance.

By law, the agreement of a creditor to forbear exercising remedies under a prior credit agreement or to extend installments due under a prior credit agreement is not effective unless the agreement is (1) in writing, (2) expresses consideration, (3) sets forth the relevant terms and conditions, and (4) is signed by the creditor and debtor. La. R.S. 6:1122 and 1123. The subsequent agreement relied on by

McElwee, entitled "Hancock Bank Extension Agreement," provides, in pertinent part:

> For valuable consideration, it is mutually agreed that the contract by and between the undersigned and the Hancock Bank be amended as follows:
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> | | |
> |---|---|
> | Time Period Extended | 30 (days) |
> | Present Balance Extended | $8427.72 |
> | Amount of Extension Charge | $82.50 |
>
> Reason for extension: financial difficulties.
> Except for modification above stated, said original agreement shall remain in full force and effect unchanged.

The extension agreement is dated March 24, 2005,[2] and is signed by McElwee and a representative of Hancock Bank.

As a credit agreement, we must interpret the meaning and intent of the parties to the agreement within the four corners of the document as the writing cannot qualify as a credit agreement if parol evidence must be received in order to establish that status. The written agreement must be perfect and complete within itself. Bernard v. Iberia Bank, 01-2234, pp. 3-4 (La. App. 4th Cir. 10/30/02), 832 So. 2d 355, 357.

Hancock asserts that the agreement was not effective because McElwee did not pay the extension fee. The agreement clearly states that it was made for "valuable consideration." It has been held that the promise or agreement to pay a sum can constitute such consideration. See Andrus v. Andrus, 326 So. 2d 882, 884 (La. App. 3d Cir. 1976). The agreement did not require that the fee had to be paid contemporaneously or prior to the granting of the extension; thus, the mere acknowledgement of the obligation to pay the fee or promise to pay the fee was sufficient to give effect to the document.

Nonetheless, even giving effect to the agreement does not result in the outcome proposed by McElwee. McElwee insists that the extension agreement

functioned as a refinancing agreement wherein the delinquent installments were simply added back into the principal of the loan, the original loan term was extended by thirty days, and the payment obligation started anew with the April installment. The plain wording of the agreement does not support such an interpretation; rather, the extension agreement, read in conjunction with the original credit agreement, which was to remain in full force and effect under the terms of the extension agreement, provides that the balance of the payments owed under the agreement were to be deferred for thirty days. In other words, McElwee was granted thirty additional days in which to make current his obligations owed under the agreement.

The agreement indicates that the present balance of the loan, not just a specific month's installment, was extended by 30 days. According to Hancock's petition, the original credit agreement encompasses an installment note payable in 60 monthly installments, beginning January 13, 2002. An account summary introduced into evidence by Hancock at the hearing on the request for injunctive relief shows that McElwee failed to pay the installments due for the months of January, February, and March 2005. On March 31, 2005, McElwee remitted payment in the amount of $725.96, which equaled two monthly installments, so that as of April 29, 2005, the date the account summary was printed, McElwee was only two months in arrears – for the months of March and April. At the injunction hearing, McElwee presented evidence of a further payment of $362.98 made on June 15, 2005.

Thus, at the time Hancock instituted executory proceedings for the seizure and sale of the pickup truck, McElwee was at least two months delinquent in paying the installments owed under the agreements. Accordingly, Hancock was

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[2] The agreement also states that McElwee acknowledged receipt of a copy of the agreement on March 25, 2005.

not premature in foreclosing on the loan and instituting the executory proceedings against McElwee.

CONCLUSION

Therefore, based on the foregoing discussion, we affirm the judgment of the trial court denying McElwee's request for injunctive relief. All costs of this appeal are assessed to McElwee Brothers, Inc. and Melvin (Mel) M. C. McElwee, Jr.

AFFIRMED.