

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

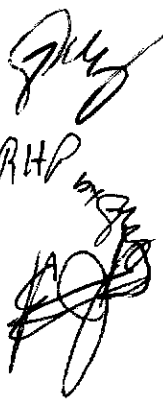
COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 0915

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;
WILLIS A. PALMER

Judgment Rendered: October 31, 2008

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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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BEFORE: PARRO, GUIDRY, AND GAIDRY, 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, 2005 CA 1122 (La. App. 1st Cir. 9/20/06) (unpublished opinion). The portion of the judgment relating to the exception raising

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 relate 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. Following a hearing on these exceptions, the trial court signed a judgment on December 21, 2007, granting the Glass defendants' exceptions. Plaintiffs now appeal from this judgment.

DISCUSSION

This court's appellate jurisdiction extends to final judgments. See La. C.C.P. art. 2083; Johnson v. Mount Pilgrim Baptist Church, 05-0337, p. 2 (La. App. 1st Cir. 3/24/06), 934 So. 2d 66, 67. A judgment must be precise, definite, and certain. Vanderbrook v. Coachmen Industries, Inc., 01-0809, p. 11 (La. App. 1st Cir. 5/10/02), 818 So. 2d 906, 913. A final appealable judgment must contain decretal language, and it must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied. Johnson, 05-0337 at p. 3, 934 So. 2d at 67.

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, 2005 CA 2540 (La. App. 1st Cir. 2/14/07) (unpublished opinion).

The judgment that is the subject of the instant appeal states:

The Court, after duly considering the exceptions, memorandum [sic] filed herein, and the applicable law, has determined that these exceptions are well taken and should be granted. These exceptions do not seek the dismissal of the claims of the originally named plaintiffs for their individual damages, and this judgment does not dismiss those claims. All other claims sought to be made by plaintiffs against these defendants were previously dismissed in the Court's judgment under date of January 12, 2007. The plaintiff's [sic] most recent supplemental and amending petition seeking to assert a derivative action against these defendants does not assert a cause of action, nor do plaintiffs have a right of action against these defendants.

The exceptions of defendants David Glass, Wade Glass, Glass Contracting of St. Tammany, Inc., Alternative Design/Build Group, L.L.C., Gary Salathe and Martin Murphy are hereby GRANTED.

However, we find that this judgment is defective in that it does not contain proper decretal language. The judgment, while granting the Glass defendants' exceptions, does not dismiss any of plaintiffs' claims.² Because this judgment is defective, we cannot consider it as a final appealable judgment for purposes of an immediate appeal. See La. C.C.P. art. 1915(B).

CONCLUSION

For the foregoing reasons, we find that this court lacks jurisdiction to review this judgment. Accordingly, we dismiss the appeal, without prejudice, and remand this matter to the lower court for further proceedings. See Carter v. Williamson Eye Center, 01-2016, p. 3 (La. App. 1st Cir. 11/27/02), 837 So. 2d 43, 44. Assessment of costs of appeal is to await final disposition of this matter.

APPEAL DISMISSED, WITHOUT PREJUDICE, AND REMANDED.

² We also note that the judgment is incorrect in stating that the court's previous judgment dated January 12, 2007 dismissed all of plaintiffs' claims other than their claims for individual damages. As stated above, the January 12, 2007 judgment granted the Glass defendants' exceptions raising the objections of no cause of action and no right of action, but gave the plaintiffs twenty days to amend their petition and made no mention of dismissal of any claims.