

NOT DESIGNATED
FOR PUBLICATION

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 2006-CA-1261

Family Worship Center Church, Inc., On Its Own Behalf
and Derivatively On Behalf of Health Science Park, LLC

-- Versus --

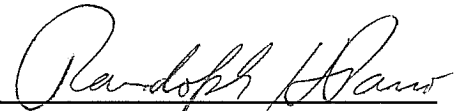
Gary N. Solomon, Stephen H. Jones, Terry D. Jones, and
Health Science Park, LLC

19th Judicial District Court
Case #: 537353
East Baton Rouge Parish

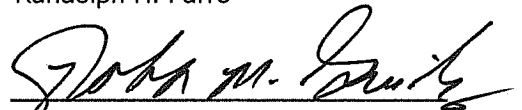
On Application for Rehearing filed 06/21/2007

Rehearing

For limited purposes granted



Randolph H. Parro



John M. Guidry

Page McClendon

McClendon, J. concurs.

Filed NOV 15 2007



Christine L. Crow, Clerk

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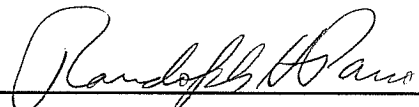
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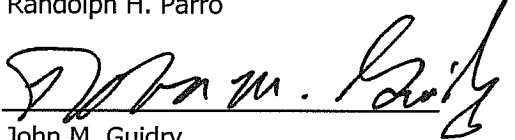
19th Judicial District Court
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On Application for Rehearing filed 06/22/2007

Rehearing

For limited purposes granted



Randolph H. Parro


John M. Guidry

Page McClendon

McClendon, J. concurs.

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FIRST CIRCUIT

NUMBER 2006 CA 1261

FAMILY WORSHIP CENTER CHURCH, INC., ON ITS OWN BEHALF AND
DERIVATIVELY ON BEHALF OF HEALTH SCIENCE PARK, L.L.C.

VERSUS

GARY N. SOLOMON, STEPHEN H. JONES, TERRY D. JONES AND
HEALTH SCIENCE PARK, L.L.C.

Judgment Rendered: NOV 15 2007

Opinion Granting Rehearing for Limited Purpose

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 537,353

Honorable William A. Morvant, Presiding

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

*McCleendon, J., concurs with the result reached
by the majority and assigns reasons
by [Signature]*

GUIDRY, J., on rehearing.

We grant a rehearing for the limited purpose of clarifying our determination that the trial court erred in dismissing Family Worship Center Church's breach of contract and termination claims and to limit the filing of Family Worship Center Church's second supplemental and amending petition to claims other than those seeking rescission and/or nullity of the option agreement.

In our original opinion, we stated the following regarding our review of the trial court's May 15, 2006 judgment and Family Worship Center Church's breach of contract and termination claims:

[I]n seeking summary judgment, Health Science Park specifically stated in its reply memorandum that "[Health Science Park's] alleged breach of the Option Agreement is not now before the Court." Accordingly, any claims that the Church may have based on any alleged breach of the Option Agreement, i.e., breach of contract or termination because of breach of contract, were not properly before the trial court on Health Science Park's motion for summary judgment. See Hoover v. Hoover, 01-2200, p. 8 (La. 4/3/02), 813 So. 2d 329, 334 (finding that a court cannot render a summary judgment dismissing a claim which has not been adequately placed at issue before the court by the mover). In fact, as stated above, the issues of termination and breach of contract were the subject of a separate motion for partial summary judgment filed by the Church and that motion was denied at a hearing on August 28, 2006. The judgment relating to this motion is currently pending before this court on a supervisory writ application. Family Worship Center Church, Inc. v. Solomon, 2006 CW 2143. As such, these claims were clearly not before the trial court on Health Science Park's motion for summary judgment, and the trial court erred in dismissing them.

However, despite our finding of error, we neglected to specifically reverse the trial court's judgment on these claims. Accordingly, we amend our original opinion to clarify that the trial court's May 15, 2006 judgment is reversed to the extent that it dismissed Family Worship Center Church's claims for breach of contract and termination.

Additionally, we stated in our original opinion that the trial court abused its discretion in denying Family Worship Center Church's request for leave of court to file a second supplemental and amending petition, and we reversed that portion of

the trial court's May 15, 2006 judgment. In reaching this determination, we noted that we reversed the trial court's granting of Health Science Park's motion for summary judgment as to the majority of Family Worship Center Church's claims, that the case had only been pending for six months, with only four months of discovery, at the time of the hearing on the motion for summary judgment, and that there was no set trial date. Considering all of these facts, together with the premise that the law takes a liberal approach toward allowing the amendment of pleadings to promote the interests of justice, we found that the trial court abused its discretion in failing to grant Family Worship Center Church's request to file a second supplemental and amending petition.

However, in our original opinion, we neglected to consider that Family Worship Center Church's second supplemental and amending petition re-urged claims seeking rescission and nullity of the Option Agreement. Because we vacated the trial court's February 8, 2006 judgment, based on a determination that the motion for partial summary judgment was moot because "the issue of rescission is no longer a contested issue before the court" as "neither party wants to have the agreement rescinded, but rather, wants to have the agreement either enforced as written or modified to reflect the true understanding and intent of the parties," this determination resulted in an inconsistency in our original opinion.

After again reviewing the record and the arguments of the parties, we find that the second supplemental and amending petition, while asserting new claims seeking rescission and nullity of the Option Agreement, also raises a claim for breach of contract and clarifies Family Worship Center Church's claims for reformation, unfair trade practices, and securities violations. Accordingly, we find that the trial court was correct in prohibiting Family Worship Center Church from re-urging claims seeking rescission and/or nullity of the Option Agreement. However, to the extent the second supplemental and amending petition asserts

and/or clarifies viable claims other than those seeking rescission and/or nullity of the Option Agreement, the trial court abused its discretion in denying Family Worship Center Church leave of court to file a second supplemental and amending petition. Therefore, we clarify our reversal of that portion of the trial court's May 15, 2006 judgment that denied Family Worship Center Church leave of court to file a second supplemental and amending petition extends only to Family Worship Center Church's claims that do not involve the rescission and/or nullity of the Option Agreement.

REHEARING GRANTED WITHOUT ORAL ARGUMENT FOR THE LIMITED PURPOSE OF CLARIFICATION OF THE ORIGINAL OPINION.

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VERSUS

**GARY N. SOLOMON, STEPHEN H. JONES, TERRY D. JONES AND
HEALTH SCIENCE PARK, L.L.C.**

McCLENDON, J., concurs and assigns reasons.

I do not believe that the trial court erred in barring Family Worship
Center Church from reasserting any claims previously withdrawn.
Therefore, I respectfully concur in the result reached by the majority.

*PMC
6/7
JMJ*