NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0739

FIRST AMERICAN BANK AND TRUST

VERSUS

KRISTINA AMELIA JACKSON

DATE OF JUDGMENT: MAR 06 2015

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
NUMBER 106030, DIVISION D, PARISH OF ASCENSION
STATE OF LOUISIANA

HONORABLE JESSIE M. LEBLANC, JUDGE

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Katherine Wheeler
Baton Rouge, Louisiana

Counsel for Appellant/
Defendant/Plaintiff-in-reconvention
Kristina Amelia Jackson

Michael H. Rubin
Brook L. Thibodeaux
Baton Rouge, Louisiana

Counsel for Appellee/
Plaintiff/Defendant-in-reconvention
First American Bank and Trust

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BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: APPEAL MAINTAINED; AFFIRMED.

CHUTZ, J.

Appellant/plaintiff-in-reconvention, Kristina Amelia Jackson, appeals a district court judgment dismissing her reconventional demand, with prejudice, for failing to state a cause of action. The dispositive issue is whether the prohibition provided in La. R.S. 6:1121 *et seq.* against enforcement of actions based on oral credit agreements precludes Ms. Jackson from stating a cause of action for detrimental reliance and/or unjust enrichment based on oral assurances she allegedly received from appellee/defendant-in-reconvention, First American Bank and Trust, in connection with a promissory note and mortgage she executed. Concluding the prohibition is applicable, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2007, Ms. Jackson and her brother, Kenneth M. Jackson, executed a promissory note in favor of First American in the amount of $224,220.00. As security for the promissory note, Ms. Jackson, on the same date, also executed a multiple indebtedness mortgage on immovable property she owned. In February 2013, First American filed a petition for deficiency judgment against Ms. Jackson, alleging that after a default on the promissory note and subsequent sale of the immovable property securing the note, a deficiency remained for which Ms. Jackson was liable.

Ms. Jackson answered the petition and filed a reconventional demand in which she claimed damages against First American for detrimental reliance and unjust enrichment. Specifically, she alleged that she executed the promissory note and mortgage solely due to oral assurances a First American bank officer employee gave her that the note and mortgage were a form of interim financing that would be cancelled and released within thirty days. In response, First American filed peremptory exceptions raising the objections of no cause of action and res judicata.

Following a hearing, the district court signed a judgment on September 13, 2013, maintaining First American's exceptions and dismissing Ms. Jackson's reconventional demand, with prejudice, at her costs. On December 17, 2013, the district court denied Ms. Jackson's motion for new trial with respect to that judgment. Ms. Jackson now appeals, arguing in two assignments of error that the trial court erred in finding that her reconventional demand failed to state a cause of action due to La. R.S. 6:1121 and that her claims were barred by res judicata.[1]

ANALYSIS

The purpose of the peremptory exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition. ***Ramey v. DeCaire***, 03-1299 (La. 3/19/04), 869 So.2d 114, 118. No evidence may be introduced to support or controvert the exception of no cause of action. La. C.C.P. art. 931. The exception is triable on the face of the pleadings and, therefore, the well-pleaded facts in the petition must be accepted as true. ***Ramey***, 869 So.2d at 118.

The burden of demonstrating that the petition states no cause of action is upon the mover. Because the exception raises a question of law based solely on

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[1] Due to a discrepancy between the specific judgments referenced in Ms. Jackson's motion for appeal and the appeal order signed by the district court, this Court issued a rule to show cause *ex proprio motu* in order to determine which judgment(s) was before us on appeal (the dismissal of Ms. Jackson's reconventional demand or a subsequent judgment on the principal demand). After both parties responded that the judgments sought to be appealed were the dismissal of Ms. Jackson's reconventional demand and the denial of her motion for new trial concerning that judgment, this Court issued an interim order remanding this matter to the district court to sign an order granting Ms. Jackson an appeal of those judgments. Following the supplementation of the appellate record with that order, another panel of this Court issued an action maintaining this appeal, but reserving for this panel (the merits panel) a final determination as to whether the instant appeal should be maintained.

Our review of the record indicates that Ms. Jackson filed a timely appeal of the September 13, 2013 judgment that dismissed her reconventional demand in its entirety. Accordingly, we reaffirm the earlier action of this Court maintaining the instant appeal. Further, although the denial of a motion for new trial is not itself an appealable judgment, when an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory rulings prejudicial to him, in addition to the review of the final judgment itself. ***Rao v. Rao***, 05-0059 (La. App. 1st Cir. 11/4/05), 927 So.2d 356, 360, writ denied, 05-2453 (La. 3/24/06), 925 So.2d 1232. We note, however, that Ms. Jackson has raised no issue as to the denial of her motion for new trial.

the sufficiency of the petition, appellate courts review a ruling on an exception of no cause of action *de novo*. The pertinent question is whether on the face of the petition, and in the light most favorable to plaintiff and with every doubt resolved in plaintiff's behalf, the petition states any valid cause of action for relief. ***Ramey***, 869 So.2d at 119.

In the instant case, First American's exception raising the objection of no cause of action is based on La. R.S. 6:1122, which is part of the Louisiana Credit Agreement Statute (LCAS), La. R.S. 6:1121 *et seq.* The Louisiana Legislature enacted the LCAS in 1989 for the primary purpose of establishing certainty as to the contractual liability of financial institutions, which in turn would limit lender liability lawsuits based on oral agreements. ***King v. Parish National Bank***, 04-0337 (La. 10/19/04), 885 So.2d 540, 546; ***Whitney National Bank v. Rockwell***, 94-3049 (La. 10/16/95), 661 So.2d 1325, 1329.

Louisiana Revised Statutes 6:1122 precludes any action against a creditor based on an oral credit agreement, expressly providing that "[a] debtor shall not maintain an action on a credit agreement *unless the agreement is in writing*, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and the debtor." (Emphasis added.) Moreover, the Louisiana Supreme Court has made it clear that this prohibition applies to any action for damages arising from oral credit agreements, *regardless of the legal theory of recovery asserted*, since the intent of the LCAS would otherwise be thwarted. ***King***, 885 So.2d at 547; ***Jesco Construction Corporation v. Nationsbank Corporation***, 02-0057 (La. 10/25/02), 830 So.2d 989, 992. Under La. R.S. 6:1121(1), a "credit agreement" is defined as "an agreement to lend or *forbear repayment of money* or goods or to otherwise extend credit, *or make any other financial accommodation.*" (Emphasis added.)

On appeal, Ms. Jackson argues that the LCAS is inapplicable to the claims of detrimental reliance and unjust enrichment set forth in her reconventional demand because she is not a debtor who received the benefit of a loan or promise of a loan from First American. She further argues that the oral assurances she received from the First American bank officer also did not constitute a credit agreement within the meaning of the LCAS. We disagree.

In her reconventional demand, Ms. Jackson makes the following specific allegations regarding her execution of the 2007 promissory note and mortgage:

> 1.
>
> Bank officer Brian Izzo is or was at the time of the transactions identified in [First American's] petition an officer and employee of [First American], authorized to make representations on behalf of [First American] with respect to the terms and conditions of loans and encumbrances on property securing loans.
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> 2.
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> In connection with the execution of the instructions identified in [First American's] petition, [Ms. Jackson] executed said instruments solely on the basis of representations and assurances made by Brian Izzo that the note and mortgage she executed constituted a form of interim financing with no consideration or value obtained by her in exchange therefor and that said note and mortgage would be cancelled and released within 30 days and the encumbrance on her property released also at that time.
>
> 3.
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> [Ms. Jackson] executed said instruments in good faith reliance on the representations of [First American's] agent and employee Brian [I]zzo, and in detrimental reliance thereon, has suffered significant damages, including the seizure and sale of her property.
>
> 4.
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> [Ms. Jackson] executed said instruments without consideration, under mistake of fact which vitiated her consent, and in detrimental reliance on the representations of [First American's] agent, Brian [I]zzo.
>
> 5.
>
> As a result, [Ms. Jackson] suffered significant damages which she is entitled to recover from [First American].

Even accepting the allegations of Ms. Jackson's reconventional demand as true, based on our *de novo* review, we agree with the district court that this pleading fails to state a valid cause of action. Any cause of action by a debtor based on an oral credit agreement, regardless of the theory of recovery asserted, is barred by La. R.S. 6:1122. ***King***, 885 So.2d at 547; ***Jesco***, 830 So.2d at 992. Contrary to her contentions, Ms. Jackson clearly is a debtor within the contemplation of La. R.S. 6:1121(3), which defines a debtor, in part, as "a person ... who owes money to a creditor." The promissory note executed in favor of First American by Ms. Jackson as a co-maker with her brother, Kenneth Jackson, unequivocally establishes that she owed money to First American. Further, First American is a creditor within the meaning of the LCAS, which defines a creditor as "a financial institution ... that extends credit or extends a financial accommodation under a credit agreement with a debtor." La. R.S. 6:1121(2).

All of Ms. Jackson's claims arise from the breach of the alleged oral assurances she received to the effect that she and her property would be released from all liability on the note and mortgage after thirty days. Further, these oral assurances were made in connection with and were part of the process resulting directly in the execution of the note and mortgage by Ms. Jackson. Thus, the alleged oral assurances meet the definition of a credit agreement provided in La. R.S. 6:1121(1) because they were, in effect, an agreement by First American to forbear both repayment as delineated in the note and the security provided by the mortgage and/or constituted a financial accommodation made to Ms. Jackson in conjunction with her execution of the note and mortgage. See ***King***, 885 So.2d at 548 (alleged assurance by a bank that a loan consolidation would not impair the borrower's financial welfare as long as he kept his obligations to the bank current was an agreement to make financial accommodations to the borrower and constituted a credit agreement); ***Knight v. Magee***, 01-2041(La. App. 1st Cir.

9/27/02), 835 So.2d 636, 638 (alleged promise to forebear collection of sums due on the mortgage note until a proposed act of sale occurred constituted a credit agreement). Since the alleged assurances constituting the credit agreement were not reduced to writing, Ms. Jackson is precluded by La. R.S. 6:1122 from asserting any cause of action against First American based on those oral assurances.

Finally, we note that under La. C.C.P. art. 934, if the grounds of an objection raised by a peremptory exception cannot be removed by amending the pleading, the action shall be dismissed without allowing any opportunity for amendment. Because we have concluded that Ms. Jackson cannot state a cause of action against First American for damages arising out of the alleged oral assurance made to her in connection with the promissory note and mortgage, the district court properly dismissed the reconventional demand, with prejudice, without allowing any opportunity to amend. See ***Guzzardo-Knight v. Central Progressive Bank***, 99-1449 (La. App. 1st Cir. 6/23/00), 762 So.2d 1243, 1247, writ denied, 00-2298 (La. 6/15/01), 793 So.2d 208.

CONCLUSION

For the reasons assigned, it is hereby ordered that this appeal be maintained. Further, we affirm the district court judgment maintaining First American's exception of no cause of action and dismissing Ms. Jackson's reconventional demand, with prejudice.[2] All costs of this appeal are assessed to appellant, Ms. Jackson.

APPEAL MAINTAINED; AFFIRMED.

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[2] We pretermit consideration of Ms. Jackson's second assignment of error regarding the ruling on First American's exception of res judicata. It is unnecessary to reach this issue in view of our decision affirming the district court judgment on the exception of no cause of action.