NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 0398

THE LOUISIANA OIL AND GAS ASSOCIATION, INC.

VERSUS

THE HONORABLE JAMES D. "BUDDY" CALDWELL, IN HIS CAPACITY AS THE ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

VERSUS

BOARD OF COMMISSIONERS FOR THE SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY-EAST

Judgment Rendered: FEB 18 2016

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. 626,798, Div. D

The Honorable Janice Clark, Judge Presiding

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BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

DRAKE, J.

The plaintiff, The Louisiana Oil and Gas Association, Inc. (LOGA), appeals a judgment of the trial court dismissing its petition for declaratory judgment and injunctive relief, following a bench trial, and issuing a declaratory judgment on a reconventional demand in favor of defendant, Honorable James D. "Buddy" Caldwell, in his capacity as Attorney General of the State of Louisiana (Attorney General). For the following reasons, we affirm, in part, and vacate, in part, the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

LOGA is a non-profit trade association whose membership includes individuals and independent oil and gas exploration, development, production and transportation companies conducting oil and gas activities in Louisiana and on public lands owned by the State of Louisiana. This litigation arises from the Attorney General's approval of a resolution submitted by intervenor, Southeast Louisiana Flood Protection Authority-East (SLFPA-E). The approval allowed SLFPA-E to contract with private attorneys on a contingency fee basis to represent it in a civil suit against numerous oil and gas companies, including members of LOGA, for environmental damage.[1] Prior to SLFPA-E filing suit against those oil and gas companies, it adopted "Resolution No. 06-06-13-04 – Engagement of Jones, Swanson, Huddell & Garrison, LLC," which provided:

> WHEREAS, the levee districts within jurisdiction of ... (SLFPA-E) have experienced damages due to land loss and erosion caused by third parties; and
>
> WHEREAS, retaining counsel to represent SLFPA-E in this matter will require a law firm with special expertise and experience.
>
> BE IT HEREBY RESOLVED, that the SLFPA-E authorizes its President or Vice president to engage Jones, Swanson, Huddell &

[1] SLFPA-E filed suit in Civil District Court for the Parish of Orleans on July 24, 2013. The case was removed to the United States District Court for the Eastern District of Louisiana and was dismissed on February 13, 2015, for failure to state a cause of action. *See Bd. of Comm'rs of Se. Louisiana Flood Prot. Auth.-East v. Tennessee Gas Pipeline Co., LLC,* 88 F. Supp. 3d 615 (E.D. La. 2015), *appeal docketed,* No. 15-30162 (5th Cir. 2/27/15).

> Garrison, LLC, on behalf of itself and the levee districts within its jurisdictions, regarding claims for damages due to land loss and erosion, for the benefit of and on behalf of the residents within its jurisdiction.
>
> BE IT FURTHER RESOLVED, that Jones, Swanson, Huddell & Garrison, LLC, shall be paid on a contingency basis ranging from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery.

The Attorney General approved the resolution on July 16, 2013.

LOGA filed a Petition for Declaratory Judgment and Injunctive Relief against the Attorney General in order to have the approval of the resolution declared invalid under Louisiana law. LOGA contended that: (1) the Attorney General is the exclusive counsel for the SLFPA-E and therefore, the hiring of special counsel is the responsibility of the attorney general; (2) alternatively, if SLFPA-E could hire private attorneys by resolution, the resolution did not comply with La. R.S. 42:263, which requires the full reason for the action and the compensation to be paid to be stated; and (3) some of the funds potentially received from the litigation must be deposited into the state treasury and therefore, the contingency fee contract deducts funds that are due to the State and is in violation of the legislative delegated power to appropriate state funds.

The Attorney General filed a reconventional demand requesting dismissal of LOGA's petition and a declaratory judgment that the Attorney General was counsel to SLFPA-E **only** when called upon to do so. Further, the Attorney General sought judicial clarification as to whether he could enter into certain legal service contracts pursuant to La. R.S. 30:29. LOGA responded by filing an Exception of No Cause of Action and/or Prematurity which the trial court denied in open court on February 24, 2014. SLFPA-E intervened on February 5, 2014, seeking dismissal of LOGA's claims, a declaration of authority to retain private counsel, and a declaration that the approval of the resolution was valid.

LOGA's principal demand and the Attorney General's reconventional demand, as it related to the principal demand, were tried on February 24-25, 2014. The portion of the reconventional demand related to La. R.S. 30:29 was severed and tried on March 10, 2014. The trial court ruled on the principal demand and reconventional demand in open court on March 10, 2014, and adopted the post-trial memoranda of the Attorney General and SLFPA-E as its written reasons. A judgment in favor of the Attorney General was signed on March 24, 2014, dismissing LOGA's petition with prejudice and granting relief in favor of the Attorney General as sought in the request for declaratory judgment raised on reconventional demand. It is from this judgment that LOGA appeals.[2]

ASSIGNMENTS OF ERROR

LOGA assigns six errors as follows:

(1) The trial court erred in dismissing LOGA's Petition for Declaratory Judgment and Injunctive Relief.

(2) The trial court erred in concluding SLFPA-E is a political subdivision rather than a state agency; therefore, funds received in SLFPA-E's lawsuit are state funds.

(3) The trial court erred in finding and declaring the Attorney General represents SLFPA-E only when called upon to do so under La. R.S. 38:330.6.

(4) The trial court erred in finding SLFPA-E's resolution complied with La. R.S. 42:263.

[2] The judgment before this court was rendered on March 24, 2014. After the judgment was signed by the trial court, the Louisiana Legislature passed 2014 La. Acts 544, § 1, effective June 6, 2014, which enacted La. R.S. 49:214.36(O), and purportedly seeks to prohibit the filing of suits such as the present suit and to apply retroactively to actions pending on the Act's effective date. The trial court ruled that Act 544 was unconstitutional and signed a judgment on December 3, 2014. At the time of the hearing in this matter, both parties agreed that a notice of appeal regarding the December 3, 2014 judgment had been filed with the Louisiana Supreme Court seeking to appeal the ruling of the trial court on the constitutionality of Act 544. Any action taken by the Louisiana Supreme Court may have ramifications on the opinion issued by this court.

(5) The trial court erred in denying LOGA's Exception of No Cause of Action and/or Prematurity as to the Attorney General's reconventional demand.

(6) The trial court erred in declaring rights of the Attorney General to enter into legal service contracts pursuant to La. R.S. 30:29.

DISCUSSION

State Agency v. Political Subdivision

A declaratory judgment is one which simply establishes the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done, and its distinctive characteristic is that the declaration stands by itself with no executory process following as a matter of course, so that it is distinguished from a direct action in that it does not seek execution or performance from the defendant or the opposing litigants. Appellate courts review a district court's decision to grant or deny a declaratory judgment using the abuse of discretion standard. *Olde Nawlins Cookery, L.L.C. v. Edwards*, 2009-1189 (La. App. 1 Cir. 5/3/10), 38 So. 3d 1012, 1015. LOGA claims that the trial court erred in determining that SLFPA-E was a political subdivision rather than a state agency. The status of SLFPA-E is a question of law; statutory interpretation, which is a question of law, is reviewed under the *de novo* standard. *Olde Nawlins Cookery,* 38 So. 3d at 1016.

LOGA argues that Article VII, § 9 of the Louisiana Constitution provides: "All money received by the state or by any state board, agency, or commission shall be deposited immediately upon receipt in the state treasury." Article VII, § 10 provides that "money shall be drawn from the state treasury only pursuant to an appropriation made in accordance with the law." The appropriation of state money is vested in the Legislature pursuant to Article III, § 16. Relying on *Meredith v. Ieyoub,* 96-110 (La. 9/9/97), 700 So. 2d 478, LOGA claims that funds received by

a state agency cannot be used to pay private attorneys without express Legislative authority.

The first issue before this court is whether SLFPA-E is a political subdivision or a state agency, and whether the trial court erred in finding that SLFPA-E was a political subdivision. It is undisputed that La. R.S. 38:330.1(A)(1) created SLFPA-E and another flood protection authority and provides that those flood protection authorities "are established as levee districts pursuant to Article VI, Sections 38 and 38.1 of the Constitution of Louisiana." A "levee district" is defined as "a political subdivision of this state organized for the purpose and charged with the duty of constructing and maintaining levees, and all other things incidental thereto within its territorial limits." La. R.S. 38:281(6). The Attorney General asserts that an *in pari material* reading of these two statutes reveals that SLFPA-E was established as a levee district, and thus, is a political subdivision. SLFPA-E argues that La. R.S. 38:330.1 states that it was established as a "flood protection authority" pursuant to Article VI, Sections 38 and 38.1 of the Louisiana Constitution, and that Article VI refers to "Local Governments." Furthermore, SLFPA-E argues that it is not a state-funded agency but derives its funding from property taxes collected within its jurisdiction for the purpose of constructing and maintaining levees, levee drainage, flood protection, hurricane flood protection and other revenue from certain levee districts. *See* La. R.S. 38:330.3; *see also* La. Const. Art. VI, § 39.

LOGA argues that despite the language of La. R.S. 38:330.1(A)(1) and La. R.S. 38:281(6), the Legislature intended to create flood protection authorities as state agencies, not political subdivisions. LOGA claims that Article VI, § 38.1 grants the Legislature power to "establish regional flood protection authorities ... and provide for their territorial jurisdiction, governing authority, powers, duties, and function." Pursuant to that grant of power, the legislature enacted La. R.S.

38:330.1 *et seq.* LOGA claims that the Legislature's intent to create flood protection authorities as state agencies – not political subdivisions – is manifested in three ways: (1) La. R.S. 38:330.6 designates the Attorney General as counsel for SLFPA-E, meaning the Legislature intended to treat flood protection authorities different than levee boards in terms of counsel; (2) La. R.S. 38:330.2(G) subjects SLFPA-E to the Administrative Procedure Act (APA), La. R.S. 49:950 *et seq.*, which applies to agencies and not political subdivisions; and (3) La. R.S. 38:330.1(2) provides that SLFPA-E shall be subject to Title 49, Chapter 2, Part II, thereby elevating its role in the comprehensive state system for coastal management, which indicates SLFPA-E is a state agency rather than a political subdivision.

The resolution of this dispute turns on whether SLFPA-E was established as a state agency or a political subdivision. Our interpretation of these statutes are guided by well established rules of statutory construction. *See Katie Realty, Ltd. v. Louisiana Citizens Property Insurance Corporation,* 2012-0588 (La. 10/16/12), 100 So. 3d 324, 328. Legislation is the solemn expression of the legislative will; thus, the interpretation of legislation is primarily the search for legislative intent. *In re Succession of Boyter,* 99-0761 (La. 1/7/00), 756 So. 2d 1122, 1128. The starting point for interpretation of any statute is the language of the statute itself, as the text of the law is the best evidence of legislative intent. *See* La. R.S. 24:177(B)(1); *Rando v. Anco Insulations, Inc.,* 2008-1163 (La. 5/22/09), 16 So. 3d 1065, 1075. When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature. La. C.C. art. 9; La. R.S. 1:4; *In re Clegg,* 2010-0323 (La. 7/6/10), 41 So. 3d 1141, 1154 (*per curiam*). The words of a law must be given their generally prevailing meaning. La. C.C. art. 11.

Relying on the above principles of law, we find no ambiguity in either La. R.S. 38:330.1(A)(1), which establishes SLFPA-E as a "levee district," or La. R.S. 38:281(6), which defines a "levee district" as a political subdivision. The words of both statutes are clear and unambiguous. *See* La. C.C. art. 9. Therefore, we see no need to determine the intent of the legislature by resorting to interpreting (1) La. R.S. 38:330.6, and its designation of counsel for SLFPA-E; (2) La. R.S. 38:330(2)(G), and the effect of APA designation; or (3) La. R.S. 38:330.1(2), which subjects SLFPA-E to Title 49.

Additionally, we note that we do not agree with LOGA's interpretation of La. R.S. 38:330.6, which relates to its third assignment of error. Louisiana Revised Statute 38:330.6 states:

> The state attorney general and his assistants shall be and are hereby designated as counsel for each flood protection authority in the execution of the purposes of this Chapter and are hereby charged with the responsibility of representing each authority in any and all matters when called upon to do so.

LOGA claims that this statute mandates that the Attorney General act as counsel for any flood protection authority, including SLFPA-E. The Attorney General argues that it is required to be counsel for SLFPA-E **only** when called upon to do so. LOGA counters that the Attorney General is attempting to insert the word **only** into the statute. We disagree. The Legislature is clearly modifying the entire paragraph with the phrase "when called upon to do so." Otherwise, the Legislature could have ended La. R.S. 38:330.6 after "in any and all matters." In construing a statute, an appellate court is bound to consider all parts together, giving effect to all parts, if possible, not construing as surplusage any sentence, clause or word, if a construction can be legitimately found which will give meaning to and preserve all words of the statute. *Ritchie v. Louisiana Department of Public Safety and Corrections,* 595 So. 2d 1158, 1160 (La. App. 1 Cir. 1991), *writ denied,* 600 So. 2d 642 (La. 1992). We decline to read out of the statute

"when called upon to do so," as LOGA suggests. Therefore, La. R.S. 38:330.6 does not support LOGA's argument that SLFPA-E is a state agency, rather than a political subdivision. Furthermore, the trial court did not commit manifest error in declaring that pursuant to La. R.S. 38:330.6, the Attorney General represents SLFPA-E when called upon to do so.

Resolution Compliance with La. R.S. 42:263

LOGA claims that even if SLFPA-E is legally entitled to hire private counsel, the Attorney General's approval of the resolution at issue in this matter was improper, because the resolution failed to comply with La. R.S. 42:263(A), which provides, in pertinent part:

> No ... levee board ... or other local or state board shall retain or employ any special attorney or counsel to represent it in any special matter or pay any compensation for any legal services whatever **unless a real necessity exists, made to appear by a resolution thereof stating fully the reasons for the action and the compensation to be paid.** The resolution then shall be subject to the approval of the attorney general ...
>
> (Emphasis added).

LOGA asserts that the resolution did not fully state the reasons for the action, or the compensation to be paid, and that no real necessity existed.

The Attorney General found that the resolution complied with La. R.S. 42:263(A) and approved it. Richard McGimsey, the director of the civil division of the Attorney General's office, testified at trial that he was involved in the review of the resolution. Mr. McGimsey stated that there had been dozens of times that a flood protection authority sought the approval of the Attorney General to hire special counsel. With regard to the resolution, he had to determine if it was properly submitted by a political subdivision, whether the firm to be appointed was licensed to practice law, the fee, and the purpose for the political subdivision hiring special counsel. Mr. McGimsey believed that the submission of the resolution indicated a real necessity to hire special counsel. He further indicated that the

resolution stated that SLFPA-E wanted to hire the firm "regarding claims for damages due to land loss and erosion and for the benefit of and [sic] on behalf of the residents within its jurisdiction." Mr. McGimsey also testified that the statement in the resolution that "the contingency ranged from 32.5 percent to 22.5 percent of any gross recovery depending on the amount of the recovery" was sufficient notice of the compensation paid for both he and the first assistant, with whom he was required to review the fee, to approve the resolution. Mr. McGimsey determined that the resolution complied with La. R.S. 42:263.

LOGA relies upon *Board of Com'rs of Buras Levee Dist. v. Perez,* 202 La. 655, 12 So. 2d 670 (1943), and asserts that SLFPA-E failed to establish a "real necessity" for hiring private counsel. The *Perez* court found that there was no showing of a "real necessity" to hire special counsel when the descriptions in the resolution were vague and the levee boards "were ably represented by the Attorney General." *Perez,* 12 So. 2d at 675. However, we find the present matter more similar to *Cortina v. Gulf States Utilities-Cajun Elec. Power Co-op., Inc.,* 594 So. 2d 1326, 1330 (La. App. 1 Cir. 1991), *writ denied,* 600 So. 2d 666 (La. 1992) and *writ denied,* 600 So. 2d 667 (La. 1992), where this court determined that the evidence established the existence of the "need [for] outside help" and a "real necessity" for private counsel to represent the school board in a tax dispute where "the volume and technical aspects of the tax litigation [were] evident from the record." The resolution at issue in this matter specifically states that the "levee districts within jurisdiction of ... (SLFPA-E) have experienced damages due to land loss and erosion caused by third parties" and that the representation of SLFPA-E "will require a law firm with special expertise and experience." Mr. McGimsey testified as to the details regarding the approval of the resolution. He concluded that the resolution complied with the requirements of La. R.S. 42:263. Unlike *Perez,* where there was no evidence of a "real necessity" for hiring private

counsel, we agree with the trial court's finding that in this matter, a "real necessity" was shown to exist, as evidenced by the wording of the resolution and the obvious complexities of the case.

Additionally, the resolution did state the compensation to be paid. LOGA points to no law or jurisprudence that states that a range of a contingency fee is insufficient to fully state compensation. The issues of whether a "real necessity" existed or if the contingency fee was sufficiently stated in the resolution are questions of fact which cannot be reversed in the absence of manifest error. In applying the manifest error-clearly wrong standard, the appellate court must determine not whether the trier of fact was right or wrong, but whether the fact-finder's conclusion was a reasonable one. *Young v. City of Gonzales,* 2014-1299 (La. App. 1 Cir. 3/12/15), 166 So. 3d 1070, 1073. Thus, if the fact-finder's conclusions are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.* Therefore, the trial court did not abuse its discretion in finding that the resolution complied with La. R.S. 42:263.

Attorney General's Reconventional Demand

The Attorney General filed a reconventional demand requesting a declaratory judgment on three issues: (1) that the Attorney General is designated, pursuant to La. R.S. 38:330.6, as counsel to flood protection authorities such as SLFPA-E and charged with representing them **only** when called upon to do so; (2) that in light of public statements made by LOGA challenging his legal authority to enter into legal services contracts, the Attorney General was entitled to a declaration that he could enter into such contracts pursuant to La. R.S. 30:29 when

certain terms were provided;[3] and (3) that the Attorney General was entitled to clarification that "said contracts are ***not*** contingency fee contracts in violation of State law because no State monies owed to the State will be paid to the attorneys."

LOGA filed an exception of no cause of action and/or prematurity in response to the Attorney General's reconventional demand regarding La. R.S. 30:29, contending that there are no claims in this action involving or implicating the Attorney General's rights under La. R.S. 30:29, and therefore, the Attorney General's request for declaratory judgment as to the issue of whether such contracts would be proper would amount to an improper advisory opinion on a hypothetical set of circumstances for which no justiciable controversy exists.

The trial court heard the matter on February 24, 2014, and denied the exceptions,[4] and rendered judgment stating, in pertinent part, that the Attorney General is authorized pursuant to La. R.S. 30:29 to enter into a legal services contract with a private law firm where the terms will provide that the attorneys will be awarded fees only through order of the Court and the State of Louisiana will not be responsible for any costs or fees. The court further ruled that such contracts are not contingency fee contracts in violation of state law, including *Meredith.*

We have already discussed in this opinion, with regard to the main demand, that pursuant to La. R.S. 38:330.6, the Attorney General is only designated as counsel for flood protection authorities when called upon to do so. The remaining

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[3] The Attorney General claimed that he could enter into private legal services contracts when the following terms were provided:

(1) the attorneys will be awarded fees only through order of the Court; and

(2) the State of Louisiana will not be responsible for any costs or fees.

[4] This court notes that although the trial court denied the exception of no cause of action and/or prematurity, there is nothing in the March 24, 2014 judgment denying the exception. Generally, silence in a judgment of the trial court as to any issue, claim or demand placed before the court is deemed a rejection of the claim and the relief sought is presumed to be denied. *Schoolhouse, Inc. v. Fanguy,* 2010-2238 (La. App. 1 Cir. 6/10/11), 69 So. 3d 658, 664. The transcript herein reflects that the exception was taken up or placed before the trial court and that it was denied in open court. Therefore, we consider the exception as denied by the trial court.

two issues of the reconventional demand involve La. R.S. 30:29, entitled "Remediation of oilfield sites and exploration and production sites," which "provides the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Department of Natural Resources" (Department). La. R.S. 30:29(A). The Attorney General has the right to intervene in such claims. La. R.S. 30:29(B)(2). The Department and the Attorney General may also bring an independent civil action for environmental damages. La. R.S. 30:29(B)(2). The Attorney General claims that La. R.S. 30:29 permits him to enter into contracts with private legal counsel based on Section (E)(2), which provides, in pertinent part:

> In any civil action in which the department or the attorney general, or their employees, are parties or witnesses, provide evidence, or otherwise contribute to the determination of responsibility for evaluation or remediation, or the approval of a plan of remediation, the department or attorney general shall be entitled to recover from the party or parties admitting responsibility or the party or parties found legally responsible by the court all costs thereof, including but not limited to investigation, evaluation, and review costs; expert witness fees; and reasonable attorney fees.

In addition, the Attorney General claims his position is also supported by La. R.S. 30:29(J)(2), which states:

> In the event a settlement is agreed to between the parties in a case in which the department or the attorney general has intervened, such agency shall be entitled to recover from the settling defendants all costs, including investigation, evaluation, and review costs; expert witness fees; and reasonable attorney fees.

The function 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 pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.,* 616 So. 2d 1234, 1235 (La. 1993); *Copeland v. Treasure Chest Casino, LLC,* 2001-1122 (La. App. 1 Cir. 6/21/02), 822 So. 2d 68, 70. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. The exception is triable on the face of the

pleading, and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the pleading must be accepted as true. *Richardson v. Richardson,* 2002-2415 (La. App. 1 Cir. 7/9/03), 859 So. 2d 81, 86. Thus, the only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Perere v. Louisiana Television Broadcasting Corp.,* 97-2873 (La. App. 1 Cir. 11/6/98), 721 So. 2d 1075, 1077.

In reviewing a trial court's ruling sustaining an exception raising the objection of no cause of action, the appellate court should subject the case to a *de novo* review. The exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. *Fink v. Bryant,* 2001-0987 (La. 11/28/01), 801 So.2d 346, 349. Simply stated, a petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff or plaintiff-in-reconvention can prove no set of facts in support of any claim that would entitle him to relief. *Richardson,* 859 So. 2d at 86. Every reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff or plaintiff-in-reconvention the opportunity of presenting evidence at trial. *Id.* The question, therefore, is whether, in the light most favorable to the plaintiff or plaintiff-in-reconvention, and with every doubt resolved in his behalf, the petition states any valid cause of action for relief. *Copeland,* 822 So. 2d at 70.

Louisiana Code of Civil Procedure article 1871 authorizes the judicial declaration of "rights, status, and other legal relations whether or not further relief is or could be claimed." A declaratory judgment action is designed to provide a means for adjudication of rights and obligations in cases involving an actual controversy that has not reached the stage where either party can seek a coercive remedy. *Code v. Dep't of Pub. Safety & Corr.,* 2011-1282 (La. App. 1 Cir. 10/24/12), 103 So. 3d 1118, 1126, *writ denied,* 2012-2516 (La. 1/23/13), 105 So.

3d 59. The function of a declaratory judgment is simply to establish the rights of the parties or express the opinion of the court on a question of law without ordering anything to be done. *Id.* at 1127. But our jurisprudence has limited the availability of declaratory judgment by holding that "courts will only act in cases of a present, justiciable controversy and will not render merely advisory opinions." *Id.*

Because of the almost infinite variety of factual scenarios with which courts may be presented, a precise definition of a justiciable controversy is neither practicable nor desirable. *Id.* However, a justiciable controversy has been broadly defined as one involving "adverse parties with opposing claims ripe for judicial determination," involving "specific adversarial questions asserted by interested parties based on existing facts." *Id. (quoting Prator v. Caddo Parish,* 2004-0794, (La. 12/1/04), 888 So. 2d 812, 816). A justiciable controversy for purposes of declaratory judgment is one involving uncertain or disputed rights in "an immediate and genuine situation," and must be a "substantial and actual dispute" as to the legal relations of "parties who have real, adverse interests." *Id. (quoting Prator,* 888 So. 2d at 817).

The Attorney General asserts that LOGA has challenged its authority to enter into private legal services contracts both in various public representations, such as on a website, and in its responsive pleadings. Furthermore, the Attorney General relies upon Louisiana Code of Civil Procedure article 1872, pertaining to declaratory judgments, and its interpretation in *Morial v. Guste*, 365 So. 2d 289, 293 (La. App. 4 Cir.), *writ denied*, 365 So. 2d 1375 (La. 1978) and *writ denied*, 365 So. 2d 1375 (La. 1978)(quoting *Abbott v. Parker*, 259 La. 279, 249 So. 2d 908, 918 (1971)).

> "A 'justiciable controversy' connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a

> decree of conclusive character. Further, the plaintiff should have a legally protectable and tangible interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment."
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> *Morial,* 365 So. 2d at 293.

The court in *Morial* found that a serious question existed as to whether the holding of a meeting would be in violation of the Public Meetings Law when a meeting had already been called. The public officials were concerned about the proper performance of the duties of their office. Therefore, the court held there was an existing actual and substantial dispute which qualified as a justiciable controversy. *Morial,* 365 So. 2d at 293.

> The purpose of the declaratory judgment articles in the Code of Civil Procedure is to provide a remedy for one contemplating action which may result in criminal or civil sanction and avoid acting at his own risk in areas where his rights are not clear. Since one purpose of declaratory judgments is to clarify the legal significance of actions before they take place, appellant's third argument is without merit.
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> *Id.*

LOGA claims that the trial court's declaration regarding La. R.S. 30:29 was "based on hypothetical and non-existent facts without any justiciable controversy at issue," so that its exception of no cause of action and/or prematurity should have been granted. LOGA relies upon *Louisiana Fed'n of Teachers v. State,* 2011-2226 (La. 7/2/12), 94 So. 3d 760, 763 (*quoting Abbott,* 249 So. 2d at 918), which states that a "justiciable controversy" is "an existing actual and substantial dispute, as distinguished from one that is merely hypothetical or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests." In *Louisiana Fed'n of Teacher*s, the teachers' union filed a petition for declaratory judgment, seeking a declaration that a recent legislative act, which granted waivers to certain school districts when approved by a majority of teachers within the district, was unconstitutional. The trial court found that the Act was unconstitutional. On direct appeal, the Supreme Court did not address the

constitutionality of the act, but instead found that the challenge was premature and presented no justiciable controversy as no waivers had been sought or granted at that time. As stated therein, "[i]f a claim depends on 'contingent future events that may not occur as anticipated, or indeed may not occur at all,' then it is not ripe for adjudication." *Id.* at 764, citing *Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257, 140 L.Ed.2d 406 (1998) (quoting *Thomas v. Union Carbide Agricultural Products Co.*,473 U.S. 568, 580-581, 105 S. Ct. 3325, 87 L.Ed.2d 409 (1985)).

LOGA argues that the present case is similar to *Louisiana Fed'n of Teachers* because the Attorney General has failed to demonstrate any real hardship or "immediate dilemma of complying with a law or risking penalties or where enforcement of the law is certain." Louisiana Revised Statute La. R.S. 30:29(A) "provides the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Department of Natural Resources," and La. R.S. 30:29(B)(2) allows the Attorney General the right to intervene in such cases. Once the Attorney General intervenes, La. R.S. 30:29(E)(2) and La. R.S. 30:29(J)(2), determine the attorney fees available to the Attorney General. However, LOGA argues that La. R.S. 30:29 "does not contain any language granting the Attorney General specific authority to enter into legal service contracts."

The Attorney General claims that *Louisiana Fed'n of Teachers* is distinguishable from the present case not because of the resolution passed, but because LOGA has challenged through various public representations, including its website, the Attorney General's legal authority to enter into legal services contracts under Louisiana law.

We do not agree that the reconventional demand seeking a declaration as to the rights of the Attorney General pursuant to La. R.S. 30:29 is based on hypothetical and nonexistent facts. The Attorney General sought a declaration

regarding his rights pursuant to La. R.S. 30:29 to enter into legal services contracts based on a challenge from LOGA. Louisiana Code of Civil Procedure article 1871 permits the declaration of rights when there is an actual controversy. We agree with the trial court that upon the facts of this matter there is an existing actual and substantial dispute which involves a legal relationship of the parties who have real adverse interests. Therefore, the trial court properly denied the exception of no cause of action.

LOGA further asserts that the Attorney General's action for a declaratory judgment was brought prematurely. This assertion is based on the fact that La. R.S. 30:29 "provides the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the jurisdiction of the Department of Natural Resources." La. R.S. 30:29(A). The Attorney General is granted the right to intervene in such cases. La. R.S. 30:29(B)(2). Once the Attorney General intervenes, the statute permits the recovery of reasonable attorney's fees in certain circumstances. La. R.S. 30:29(E)(2); La. R.S. 30:29(J)(2).

The dilatory exception of prematurity as provided in La. C.C.P. art. 926 questions whether the cause of action has matured to the point where it is ripe for judicial determination. *Moreno v. Entergy Corp.*, 2011-2281 (La. 2/18/11), 62 So. 3d 704, 706. This is a different purpose that an exception of no cause of action, which tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Moreno,* 62 So. 3d at 706. Furthermore, an exception raising the objection of prematurity pursuant to La. C.C.P. art. 926(A)(1) raises the issue of whether the judicial cause of action has not yet come into existence because some prerequisite condition has not been fulfilled. *Ginn v. Woman's Hosp. Foundation, Inc.*, 99-1691 (La. App. 1 Cir. 9/22/00), 770 So. 2d 428, 430-431, *writ denied,* 2000-3397 (La. 2/2/01), 784 So. 2d 647. The

objection contemplates that the plaintiff has filed his action prior to some procedure or assigned time, and it is usually utilized in cases wherein the applicable law or contract has provided a procedure for one aggrieved of a decision to seek administrative relief before resorting to judicial action. *Girouard v. State Through Dept. of Educ,* 96-1076 (La. App. 1 Cir. 5/9/97), 694 So. 2d 1153, 1155. The party that raises the objection of prematurity has the burden of showing that an administrative remedy is available, by reason of which the judicial action is premature. *Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Bd.,* 99-2241 (La. App. 1 Cir. 3/7/01), 798 So. 2d 143, 147, *writ denied,* 2001-0818 (La. 1/4/02), 805 So. 2d 1188.

On reconventional demand, the Attorney General sought a judicial clarification regarding his rights pursuant to La. R.S. 30:29 to enter into legal services contract with private law firms when the terms provide as follows:

(1) the attorneys will be awarded fees only through order of the Court;

and

(2) the State of Louisiana will not be responsible for any costs or fees.

The Attorney General further sought clarification that "said contracts are <u>not</u> contingency fee contracts in violation of State law because no State monies owed to the State will be paid to the attorneys."

In the instant case, LOGA asserts that the Attorney General's action for a declaratory judgment was brought prematurely since the declaratory judgment sought by the Attorney General regarding his right to enter into legal service contracts pursuant to La. R.S. 30:29 did not set forth a cause of action that was matured to the point where it was ripe for judicial determination and did not relate to the main demand. Here, the Attorney General sought a declaratory judgment regarding legal services contracts, but there is no evidence that he has entered into any such contracts. Simply stated, absent any evidence of the terms of the contract

that the Attorney General seeks to enter into with private counsel, we cannot determine whether such a contract would constitute a **contingency fee contract** entered into without a statute authorizing him to do so, as prohibited by *Meredith. See Meredith,* 700 So. 2d at 484. Rather, the agreement could be that attorney fees will be limited to the amount specifically awarded by the trial court as attorney fees, pursuant to La. R.S. 30:29. Such contractual terms arguably could be distinguishable from those at issue in *Meredith.* However, without knowing the terms of any contract, since none was introduced into evidence by any party, and without record evidence that the Attorney General even seeks to enter into such a contract, it is premature at this point for this court to determine if such a contract is distinguishable from the contingency fee contract prohibited by the Supreme Court in *Meredith,* by which this court is bound. The legality of the exercise of the Attorney General of his rights under La. R.S. 30:29 to enter into a legal services contract with a private law firm will depend on the terms of the contract. Therefore, the claim of the Attorney General is dependent on contingent future events that may or may not occur, and it is not ripe for judicial adjudication. *See Louisiana Fed'n of Teachers,* 94 So. 3d at 764.

The trial court erred in denying the exception of prematurity and in reaching the merits declaring the rights of the Attorney General under La. R.S. 30:29 to enter into private legal services contracts. Therefore, we sustain the exception of prematurity as raised by LOGA in response to this claim by the Attorney General and thereby, vacate that portion of the trial court judgment declaring the Attorney General's rights under La. R.S. 30:29.

CONCLUSION

In summation, we affirm that portion of the trial court judgment that dismisses LOGA's petition for declaratory judgment and injunctive relief and that portion of the judgment granting the Attorney General's reconventional demand

and declaring that, pursuant to La. R.S. 38:330.6, the Attorney General acts as counsel to flood protection authorities and is charged with representing those authorities **only** when called upon to do so. However, we vacate that portion of the judgment reaching the merits and declaring the rights of the Attorney General under La. R.S. 30:29 to enter into private legal services contracts. We hereby grant LOGA's exception of prematurity, and we vacate that portion of the judgment declaring the Attorney General's rights under La. R.S. 30:29. Costs of this appeal are assessed equally to LOGA and the Attorney General, but since the Attorney General is exempt from the payment of costs under La. R.S. 13:4521(A)(1), we merely assess one-half of these costs to the plaintiff and defendant-in-reconvention, LOGA.

AFFIRMED IN PART; VACATED IN PART.