

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2016 CA 1116

LOIS GUILLORY

VERSUS

PERCY J. GOULETTE AND ALAN P. SAGELY

Judgment rendered APR 20 2017

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On Appeal from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
No. 22587

The Honorable Kathryn J. Jones, Judge Presiding

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BEFORE: WELCH, CRAIN, AND HOLDRIDGE, JJ.

GH
LJ
JEW by LJ

HOLDRIDGE, J.

In this appeal, Lois Guillory seeks review of a trial court judgment granting an exception of no cause of action in favor of Percy J. Goulette and dismissing her petition with prejudice as to him. After reviewing this matter, we reverse.

FACTUAL AND PROCEDURAL HISTORY

Ms. Guillory filed the present suit on January 11, 2016 against Mr. Goulette and Alan P. Sagely. She sought to recover the amount due on a note defendants executed on February 24, 2014 for \$40,000 with interest of \$5,000, which was to be repaid on or before February 24, 2015. She alleged that she lent the defendants the money and that they personally obligated themselves to repay the loan. According to Ms. Guillory, despite amicable demand and despite acknowledgment of the debt, defendants refused to pay the obligation.

Ms. Guillory attached a copy of the note to her petition as an exhibit. The note dated February 24, 2014, states:

Owners, Alan P. Sagely and Percy J. Goulette, of Goulette Ice, INC., at 14709 Hwy 10 St. Francisville, LA 70775, hereby promise to pay back, in full, the borrowed amount of \$40,000.00, forty thousand dollars, plus interest, of \$5,000.00, five thousand dollars, to Lois Guillory of Watson, La. This money will be used for business expenses.

The total payment in the amount of \$45,000.00, must be paid in full by February 24, 2015.

Thank you for your cooperation.

Signed Borrowers,
s/Alan P. Sagely
Owner (Alan P. Sagely)

s/Percy J. Goulette
Owner (Percy J. Goulette)

Signed Lender,
s/Lois Guillory
Lender (Lois Guillory)

Mr. Goulette filed an exception of no cause of action, contending that he was an agent for Goulette Ice, Inc., that Goulette Ice borrowed the money, and that he did not borrow the money individually.¹ He also alleged that there was no evidence that he individually guaranteed repayment of the note.

The trial court held a hearing on the exception.² Subsequently, the trial court granted the exception and dismissed Ms. Guillory's petition against Mr. Goulette. From this judgment, Ms. Guillory appeals. Specifically, in her assignments of error, Ms. Guillory contends that the trial judge erred in granting the exception of no cause of action and in failing to offer her the opportunity to amend her petition.

DISCUSSION

As used in the context of the peremptory exception, a "cause of action" refers to the operative facts which give rise to the plaintiff's right to judicially assert the action against the defendant. Reynolds v. Bordelon, 2014-2362 (La. 6/30/15), 172 So.3d 589, 594. 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. Id. 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, for purposes of resolving the issues raised by the exception, the well-pleaded facts in the petition, and any exhibits that are written instruments attached to the petition, must be accepted as true. See Reynolds, 172 So.3d at 594-95; Cardinale v. Stanga, 2001-1443 (La. App. 1 Cir. 9/27/02), 835 So.2d 576, 578.³ Louisiana retains a system of fact pleading, and mere conclusions of the plaintiff unsupported

¹ According to the petition, service was withheld on Mr. Sagely, but Mr. Goulette in brief states that Mr. Sagely never answered the petition.

² Plaintiff's counsel failed to attend the hearing, although plaintiff was there.

³ Louisiana Code of Civil Procedure article 853 states, in pertinent part, "A copy of any written instrument which is an exhibit to a pleading is part thereof for all purposes."

by facts will not set forth a cause or right of action. Id. The burden of demonstrating that a petition fails to state a cause of action is upon the mover. Id. Because the exception of no cause of action raises a question of law and the trial court's decision is based solely on the sufficiency of the petition, review of the trial court's ruling on an exception of no cause of action is de novo. Id. The pertinent inquiry is whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. Id.

We have reviewed the petition and the note attached to it as an exhibit. Ms. Guillory alleged that Mr. Goulette was personally liable for the debt. The note does not repudiate his personal liability because it is not clear that he signed it as a representative of his corporation. The note is a negotiable instrument under the Louisiana Uniform Commercial Code because it is signed by the makers, contains an unconditional promise to pay a sum certain in money, is payable at a definite time, and is payable to order. See La. R.S. 10:3-104, 3:109(b). Louisiana Revised Statutes 10:3-402 concerning signatures affixed to an instrument in a representative capacity provides in pertinent part as follows:

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to Subsection (c) [concerning checks], **if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.**

(emphasis added).

Mr. Goulette's signature on the note does not show unambiguously that he was signing as a representative of Goulette Ice, Inc. because he and Mr. Sagely both signed the note beneath the phrase "Signed Borrowers." Moreover, while Mr. Sagely's and Mr. Goulette's names were above the word "Owner" followed by each of their names in parentheses, the word "Owner" could arguably be used as a title identification as opposed to describing the representative character in which the signatures were affixed. See Fidelity National Bank of Baton Rouge v. Red Stick Wholesale Music Distributors, Inc., 423 So.2d 15, 16-17 (La. App. 1 Cir. 1982); Homer National Bank v. Springlake Farms, Inc., 616 So.2d 255, 259 (La. App. 2 Cir. 1993). Additionally, the note states that the owners, Mr. Sagely and Mr. Goulette, promise to pay Ms. Guillory, as opposed to stating that the corporation would pay her. Also, Mr. Sagely and Mr. Guillory are referred to as the "borrowers," whereas if the corporation was the borrower, the singular form of the word "borrower" would be used.

The trial court erred in granting Mr. Goulette's exception because the petition clearly states a cause of action against him for nonpayment of a loan of money evidenced by a note he signed, which does not clearly indicate he was signing as a representative of a corporation. Mr. Goulette's contention that he was acting in a representative capacity for a corporation is a factual question, which

cannot be adjudicated through an exception of no cause of action. Therefore, the trial court erred in sustaining the exception of no cause of action.⁴

CONCLUSION

For all of the foregoing reasons, the March 29, 2016 judgment of the trial court is reversed and this matter is remanded for further proceedings. Costs of this appeal are to be paid by Percy J. Goulette.

REVERSED AND REMANDED.

⁴ Because we have determined that the trial court erred in granting the exception of no cause of action, we pretermitted Ms. Guillory's assignment of error that the trial court erred in failing to allow her to amend her petition.