STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

WIL III

NUMBER 2020 CA 0196

LONNIE J. MELANCON

VERSUS

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Judgment Rendered: DEC 30 2020

* * * * * *

On appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Docket Number 2019-10964

Honorable William J. Knight, Judge Presiding

* * * * * *

Matthew J. Crain Covington, LA	Counsel for Plaintiff/Appellant Lonnie J. Melancon
Lawrence R. Anderson, Jr. Devon B. McKnight Allison N. Beasley Baton Rouge, LA	Counsel for Defendant/Appellee Commonwealth Land Title Insurance Company

* * * * * *

BEFORE: GUIDRY, McCLENDON, AND LANIER, JJ.

McClendon, J., concurs in the result and assigns reasons.

GUIDRY, J.

The Appellant challenges the trial court's judgment that dismissed his petition to annul the judgment and sustained the Appellee's peremptory exception of no cause of action. The Appellant further appeals the trial court's denial of his motion for new trial.[1] For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

This case arises from a default judgment, which was obtained on September 28, 2018, by the appellee herein, Commonwealth Land Title Insurance Company (Commonwealth), against the appellant herein, Lonnie J. Melancon, for sums which Commonwealth alleged it was owed. On February 20, 2019, Mr. Melancon filed a petition to annul Commonwealth's default judgment under La. C.C.P. art. 2002.[2] In his petition, Mr. Melancon alleged that Commonwealth's suit against him was not based on an "open account, a promissory note, negotiable instrument, or other conventional obligation; therefore, Commonwealth could not confirm the default judgment against [him] without a hearing." Mr. Melancon also alleged, in the alternative, that the default judgment was null under La. C.C.P. art. 2004 "as Commonwealth knew its claim did not arise from an open account, a promissory note or other negotiable instrument, a conventional obligation, or a check dishonored for nonsufficient funds."[3]

In response to Mr. Melancon's petition for nullity, Commonwealth filed a peremptory exception of no cause of action. The trial court, following a hearing on

---

[1] Because the appellant's challenge of the trial court's denial of his motion for new trial is part of the appeal from the final judgment, we may consider the issue on appeal. Arnouville v. Crowe, 16-0046, p. 1 (La. App. 1st Cir. 9/16/16), 203 So.3d 479, 481 n.1.

[2] Louisiana Code of Civil Procedure article 2002 provides, in relevant part, that a final judgment shall be annulled if it is rendered against a defendant "whom a valid final default judgment has not been taken."

[3] Louisiana Code of Civil Procedure article 2004 provides, in pertinent part, "[a] final judgment obtained by fraud or ill practices may be annulled."

May 29, 2019, granted Commonwealth's exception and dismissed Mr. Melancon's petition with prejudice. Judgment was signed on July 26, 2019.

On August 14, 2019, Mr. Melancon filed a motion for new trial, which was denied by judgment signed on October 24, 2019. Mr. Melancon now appeals; he contends the trial court erred in (1) determining that he failed to allege a viable cause of action, (2) "finding that legal subrogation is a conventional obligation," and (3) not allowing him to amend his petition.

STANDARD OF REVIEW

The peremptory exception of no cause of action tests the legal sufficiency of a pleading by determining whether the law affords a remedy on the facts alleged. Naquin v. Bollinger Shipyards, Inc., 13-1638, p. 3 (La. App. 1st Cir. 5/2/14), 147 So. 3d 207, 209, writ denied, 14-1091 (La. 9/12/14), 148 So. 3d 933. No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. Rather, the exception is triable solely on the face of the petition and any attached documents. Paulsell v. State, Department of Transportation and Development, 12-0396, p. 11 (La. App. 1st Cir. 12/28/12), 112 So. 3d 856, 864, writ denied, 13-0274 (La. 3/15/13), 109 So. 3d 386. The issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. The pertinent question is whether, 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. Paulsell, 12-0396 at p. 11, 112 So. 3d at 864. Because the objection 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 the exception is *de novo*. Scheffler v. Adams and Reese, LLP., 06-1774, p. 5 (La. 2/22/07), 950 So. 2d 641, 647.

DISCUSSION

In reviewing the issues raised in this appeal, we will first consider the argument raised in Mr. Melancon's second assignment of error, as resolution on the second issue will impact our consideration of the first issue. Mr. Melancon essentially argues in his second assignment of error that Commonwealth's claim was not based on a conventional obligation, and therefore the default judgment rendered against him is null because there was no hearing in open court. We find no merit in this argument.

The provisions authorizing a default judgment to be obtained without a hearing are found in La. C.C.P. arts. 1702(C) and 1702.1. Article 1702(C) states, in pertinent part:

> In those proceedings in which the sum due is on an open account or a promissory note, other negotiable instrument, or other conventional obligation, or a deficiency judgment derived therefrom, including those proceedings in which one or more mortgages, pledges, or other security for the open account, promissory note, negotiable instrument, conventional obligation, or deficiency judgment derived therefrom is sought to be enforced, maintained, or recognized, or in which the amount sought is that authorized by R.S. 9:2782 for a check dishonored for nonsufficient funds, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held.

Article 1702.1(A) further provides that when a party seeks to confirm a preliminary default without appearing for a hearing in open court, the party or counsel for the party must certify, in part, that the suit is one on an open account, a promissory note or other negotiable instrument, a conventional obligation, or a check dishonored for nonsufficient funds.

In this matter, Commonwealth certified its suit as follows:

> This is a suit on a subrogation claim by a title insurer for a payment on a note and mortgage owed by the defendant in order to settle a title claim by the holder of that insured note and mortgage based upon a prior recorded mortgage owed by the defendant resulting in a judgment against the defendant and sheriff's sale of the property subject to the insured mortgage and as to which plaintiff is subrogated and entitled to enforce for the amount paid.

Although Mr. Melancon argues, and the record before us shows, that Commonwealth did not expressly certify that its suit was one on a conventional obligation, a review of the record, and specifically Mr. Melancon's petition for nullity and the documents attached thereto, demonstrates that Commonwealth's suit was based on a conventional obligation.[4]

A mortgage is a conventional obligation. See La. C.C. arts. 3284 and 1906. Notably, the exhibits attached to Mr. Melancon's petition for nullity show clearly that a promissory/mortgage note was executed by Mr. Melancon, that the mortgage was insured by Commonwealth (title insurance), and that Commonwealth made a payment on a claim to its insured, the holder of Mr. Melancon's promissory/mortgage note. Commonwealth then stepped into the shoes of its insured, filing suit against Mr. Melancon.[5] See La. C.C. art. 1829; see also State Farm Mutual Automobile Insurance Co. v. Berthelot, 98-1011, p. 4 (La. 4/13/99), 732 So. 2d 1230, 1233.

Mr. Melancon argues that the district court improperly granted Commonwealth's default judgment in the absence of a hearing in open court. However, an examination of the petition establishes that the default judgment arose out of a conventional obligation. Commonwealth was merely substituted to the rights of its insured, and its insured had rights against Mr. Melancon on a conventional obligation. Therefore, the default judgment did not require a hearing in open court, and this assignment of error lacks merit.

---

[4] It has been held that the failure to include the certificate required by La. C.C.P. art. 1702.1 is not fatal to a default judgment, as long as the record contains documentation of all the elements necessary to establish the plaintiff's right to recover. Bridges v. Citifinancial Auto Corporation, 18-0734, p. 4 (La. App. 1st Cir. 11/5/18), 266 So. 3d 939, 942 n.2. The documents attached to Mr. Melancon's petition for nullity included Commonwealth's certification of default judgment as well as supporting affidavits and exhibits.

[5] The issue of whether Commonwealth was entitled to a subrogation claim is not before this court, and it was not presented or specifically pled to the trial court.

Having so found on the second assignment of error, we consequently find no merit in Mr. Melancon's first assignment of error that the trial court erred in finding Mr. Melancon had no viable cause of action. Because we found that no hearing was required in the confirmation of the default judgment, La. C.C.P. art. 2002 is inapplicable to this case.[6] In addition, the action for nullity based on fraud or ill practices, under La. C.C.P. art. 2004, is not intended as a substitute for an appeal or as a second chance to prove a claim which was previously denied for failure of proof. State, through Department of Health and Human Resources, Office of Family Security, In Interest of Brown v. Beauchamp, 473 So. 2d 323, 326 (La. App. 1st Cir. 6/25/85), writ denied, 477 So. 2d 1125 (La. 1985). La. C.C.P. art. 2004 is sufficiently broad to encompass any situation wherein a judgment is rendered through some improper practice or procedure which operates, even innocently, to deprive the party cast in judgment of some legal right. State, through Department of Health and Human Resources, Office of Family Security, In Interest of Brown, 473 So. 2d at 326. However, with no such situation alleged in the petition here, we conclude that the petition fails to sufficiently state any valid cause of action. Therefore, this assignment of error lacks merit.

In his third assignment of error, Mr. Melancon argues he should have been given the opportunity to amend his petition.[7] Mr. Melancon specifically states:

> To the extent that the court does not believe Mr. Melancon's petition currently states a cause of action to annul the default judgment, which is denied as discussed in Section A above, Mr. Melancon can easily amend his petition to remove the grounds for the exception of no cause of action. Mr. Melancon can amend his petition to include additional facts (including the facts shown in Section C below) related

[6] It is well settled that [Article 2002] applies only to technical defects of procedure or form of the judgment. The failure to establish the prima facie case required by La. C.C.P. art. 1702 is not a vice of form. A failure of proof must be raised in a motion for new trial or by appeal, not by an action for nullity. National Income Realty Trust v. Paddie, 98-2063 (La. 7/2/99), 737 So. 2d 1270, 1271.

[7] Mr. Melancon asserts this argument in his motion for new trial. The parties agreed that the motion for new trial would be submitted on briefs.

> to the transaction between Commonwealth and Flagstar to show that Mr. Melancon was not a party to the agreement between Commonwealth and Flagstar, he made no false representations to Commonwealth, and received no benefit from any payment made by Commonwealth to Flagstar pursuant to their voluntary contractual agreement.
>
> Additionally, as Commonwealth's attorney admitted at the hearing, Mr. Melancon can remove the grounds for the exception of no cause of action by amending its Petition to remove Exhibit 1.

Pursuant to La. C.C.P. art. 934, "[w]hen the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed." The right to amend one's petition is qualified by the restriction that the objections to the petition be curable. Savoie v. Charles, 10-1008, p. 8 (La. App. 3rd Cir. 2/2/11), 55 So. 3d 1029, 1035, writ denied, 11-0461 (La. 4/25/11), 62 So. 3d 87. The decision to allow amendment of a pleading to cure the grounds for a peremptory exception is within the discretion of the trial court. Pearl River Basin Land and Development Company, L.L.C. v. State, through the Governor's Office of Homeland Security and Emergency Preparedness, 09-0084, p. 7 (La. App. 1st Cir. 10/27/09), 29 So. 3d 589, 594.

In the present case, we recognize that the additional facts with which Mr. Melancon seeks to amend his petition would nevertheless fail to set forth necessary allegations to state a valid cause of action against Commonwealth. See State, through Department of Health and Human Resources, Office of Family Security, In Interest of Brown, 473 So. 2d at 327, with emphasis added ("***A party seeking annulment of a judgment must demonstrate how he was prevented or excused from asserting any defenses he may have had***, i.e., that he was deprived of the

knowledge of the existence of the defense relied on, or of the opportunity to present it, by some fraud or ill practice on the part of the other party, and ***he cannot maintain an action for nullity of a default judgment based on allegations which should have been presented as a defense in the original suit absent a valid and sufficient reason for his failure to defend.***"). Arguing to amend his petition, Mr. Melancon asserts defenses he may have had to Commonwealth's suit, however he does not allege that he was deprived of the opportunity to present those defenses by some fraud or ill practice. Consequently, Mr. Melancon failed to present any facts or allegations which would cure his petition and allow him to maintain the nullity action. We therefore conclude that the trial court did not abuse its discretion by denying Mr. Melancon the opportunity to amend.

Finally, regarding the motion for new trial, La. C.C.P. art. 1972 provides as follows:

> A new trial shall be granted, upon contradictory motion of any party, in the following cases:
>
> (1) When the verdict or judgment appears clearly contrary to the law and the evidence.
>
> (2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.
>
> (3) When the jury was bribed or has behaved improperly so that impartial justice has not been done.

In addition to the above, a discretionary ground for a new trial is set forth in La. C.C.P. art. 1973, which authorizes a trial court to grant a new trial in any case if there is good grounds therefor.

Louisiana jurisprudence is clear that a new trial should be ordered when the trial court, exercising its discretion, is convinced by its examination of the facts that the judgment would result in a miscarriage of justice. Pope v. Roberts, 13-1407, p. 8 (La. App. 1st Cir. 4/16/14), 144 So. 3d 1059, 1065. The denial of a

motion for new trial, whether on peremptory or discretionary grounds, should not be reversed unless there has been an abuse of the trial court's discretion. Rao v. Rao, 05-0059, p. 7 (La. App. 1st Cir. 11/4/05), 927 So. 2d 356, 367, writ denied, 05-2453 (La. 3/24/06), 925 So. 2d 1232.

Applying these precepts to the case before us, we find no error in the trial court's judgment. The record clearly demonstrates that the judgment is not contrary to the law and the evidence; nor do the facts established indicate that the judgment would result in a miscarriage of justice.

CONCLUSION

For the above and foregoing reasons, the July 26, 2019 judgment of the trial court granting the appellee's, Commonwealth Land Title Insurance Company's, peremptory exception of no cause of action and dismissing the appellant's petition to annul the judgment is affirmed. The October 24, 2019 judgment denying the appellant's motion for new trial is also affirmed. All costs of this appeal are assessed to the appellant, Lonnie J. Melancon.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2020 CA 0196

LONNIE J. MELANCON

VERSUS

COMMONWEALTH LAND TITLE INSURANCE COMPANY

****

PMC by DM

McClendon, J., concurring.

I concur in the result reached by the majority.