

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2021 CA 0330

LIBERTAS TAX FUND I, LLC

VERSUS

LERROY J. LAICHE, JR., CHRISTIE L. MAYEUX, STACI L. ESSAM,  
UNITED STATES OF AMERICA, UNITED STATES OF AMERICA,  
DEPARTMENT OF TREASURY – INTERNAL REVENUE SERVICE,  
STATE OF LOUISIANA AND STATE OF LOUISIANA, DEPARTMENT  
OF REVENUE

Judgment Rendered: DEC 22 2021

Appealed from the  
Twenty-Third Judicial District Court  
In and for the Parish of Ascension  
State of Louisiana  
Docket Number 126,090

The Honorable Thomas Kliebert, Judge Presiding

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BEFORE: WHIPPLE, C.J., PENZATO, AND HESTER, JJ.

*OBW*

*amp*  
*CHH*

## **WHIPPLE, C.J.**

This matter is before us on appeal by defendants, Leroy J. Laiche, Jr., Christie L. Mayeux, and Staci L. Essam, from a judgment of the trial court denying their cross motion for summary judgment and granting a motion for summary judgment in favor of Libertas Tax Fund I, LLC. For the reasons that follow, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

Libertas Tax Fund I, LLC (“Libertas”) acquired a certain piece of immovable property in Ascension Parish by virtue of a tax sale conducted by Jeffrey F. Wiley, Sheriff and Ex-Officio Tax Collector (“Sheriff”), on May 25, 2016, for unpaid 2015 *ad valorem* taxes. Pursuant to the sale, a tax sale certificate dated June 9, 2016 was recorded on that date in the official records of Ascension Parish under Instrument Number 899003. The property, identified as 15080 Rufus White Road, is legally described as follows:

A certain tract or parcel of land, situated in the Parish of Ascension, State of Louisiana, in the South one-half (S-1/2) of the Southwest one-quarter (SW-1/4) of Section 2, Township 9 South, Range 2 East, Southeastern District of Louisiana, and more particularly described as commencing at the Northeast corner of Lot Number 5-D as shown on that plat of survey by W. J. Cointment, Jr., dated February 21, 1978; thence proceed North 81 degrees, 42’34” East a distance of one hundred fifty-seven and seventeen [hundredths] (157.17’) feet to a point and corner; thence proceed South 00 degrees 21’34” East [to] a distance of two hundred seventy-seven and fifteen-hundredths (277.15’) feet to a point and corner; thence proceed South 81 degrees, 42’34” East a distance of one hundred fifty-seven and seventeen-hundredths (157.17’) feet to a point and corner; thence proceed North 00 degrees 21’34” West a distance of two hundred seventy-seven and fifteen hundredths (277.15’) feet to the point of beginning; and containing one (1) acre, more or less.

Prior to the tax sale, siblings, Leroy J. Laiche, Jr., Christie L. Mayeux, and Staci L. Essam (“the Laiches”), co-owned 100% of the property pursuant to a judgment of possession recorded as Instrument Number 591030 on November 5, 2004, as well as certain acts of donation recorded as Instrument Numbers 758375 on October 4, 2010, and 761079 on November 9, 2010. The United States of America,

Department of Treasury, Internal Revenue Service (collectively “IRS”) and the State of Louisiana, Department of Revenue (collectively “State Department of Revenue”), held encumbrances on the property pursuant to Instrument Numbers 849748 recorded on May 12, 2014, and 856996 recorded on August 25, 2014.

On July 9, 2019, Libertas filed a petition to confirm tax sale title and sole ownership of the property against the former property owners as well as state and federal tax collectors. Libertas averred that pursuant to LSA-R.S. 47:2266 and LSA-Const. art. VII, § 25, the three-year preemptive period to redeem the tax sale title to the property had expired, that the tax sale title had not been redeemed by any of the defendants, and no suit had been filed to annul the tax sale. Thus, Libertas requested that the trial court confirm its tax sale title and sole ownership of the property unless a proceeding to annul the tax sale was instituted by defendants within six months from the date of service of the petition pursuant to LSA-R.S. 47:2266.

On January 16, 2020, Mr. Laiche filed an answer on behalf of himself and his siblings, generally denying the allegations set forth in the petition and, in “further answering the petition,” contended that the Sheriff failed to provide all record owners with required notice of the tax delinquency and sale. The Laiches thus prayed that Libertas’s suit be dismissed and that the May 25, 2016 tax sale be declared an absolute nullity.<sup>1</sup>

On June 24, 2020, the Laiches filed a “Supplemental and Amended Pleading and Motion to Enroll” supplementing and amending their “original answer and action for nullity,” naming Libertas as a defendant, requesting service upon Libertas, and requesting that attorney Kim Segura Landry be enrolled as their counsel of record. The Laiches alleged that although each sibling was listed on the tax roll as

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<sup>1</sup>The sole statutory grounds upon which a tax sale can be set aside or declared a nullity are for a redemption nullity, a payment nullity, or a sale to a prohibited person under LSA-R.S. 47:2162. These are all relative nullities. See LSA-R.S. 47:2286.

a co-owner, the Sheriff made no effort to send the assessment to the addresses of Ms. Mayeux and Ms. Essam in accordance with LSA-R.S. 47:2126,<sup>2</sup> but instead sent the delinquency and post-sale notices to all owners at the address of only one owner, Mr. Laiche, as follows:

Leroy J. Laiche, Jr., Christie L. Mayeux, and Staci L. Essam  
18507 Andrew Jackson Ave.  
Prairieville, LA 70769

The Laiches averred that individual notices should have been sent to each owner at their address, and that if the Sheriff had performed a computer search of digitized records and databases of the clerk of court or sheriff's office for addresses of other properties that "may be owned" by Ms. Mayeux and Ms. Essam, he would have "located the correct addresses" of these owners. The Laiches accordingly prayed for judgment in their favor declaring the May 25, 2016 tax sale a nullity.

On July 6, 2020, the Sheriff filed a petition for intervention against Libertas and all defendants in the original action, seeking judgment in his favor confirming the tax sale against the Laiches.<sup>3</sup> In his petition for intervention, the Sheriff maintained that on November 27, 2015, notice of the 2015 *ad valorem* property taxes was sent by first class mail to all assessed owners at 18507 Andrew Jackson Avenue, Prairieville, Louisiana, 70769. The Sheriff averred that on February 24, 2016, when

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<sup>2</sup>Louisiana Revised Statute 47:2126 provides that:

Each assessor shall deliver to the appropriate tax collector the tax roll for the year in which taxes are collectible by November fifteenth of each calendar year, except as otherwise provided by law. At the same time, the assessor may file the tax roll in the mortgage records of the parish in which property subject to the taxes is located. The assessor shall use reasonable efforts to list on the tax roll all co-owners of record of the property, or if there has been a tax sale to a party other than a political subdivision, the tax sale purchaser and the other owners, to the extent their interests were not sold at tax sale. The tax roll shall be updated as of January first or later of the year in which the taxes are collectible. There shall be only one assessment for each tax parcel, and the full assessment shall be on each tax bill sent pursuant to R.S. 47:2127(C); however, if requested by a tax debtor, the assessor may, but shall not be obligated to, make separate assessments for undivided interests in each tax parcel.

<sup>3</sup>The petition of intervention was filed by Robert "Bobby" Webre, who succeeded Sheriff Wiley as the Sheriff of Ascension Parish.

the 2015 taxes remained delinquent, a “Final Notice of Tax Sale” was issued in accordance with LSA-R.S. 47:2153(A)(1)(a), by certified mail, to the assessed owners at the same address and that the notice was accepted and signed for by “Sharon Laiche” on March 2, 2016. The Sheriff contended that the notice advised that the *ad valorem* tax for 2015 was delinquent and that the property would be sold pursuant to LSA-R.S. 47:2153, *et seq.*, if full payment of the delinquent tax was not received within twenty days. The Sheriff further contended that the delinquency and notice of tax sale was published in *The Gonzales Weekly Citizen* on April 28, 2016, and again on May 19, 2016, in accordance with LSA-R.S. 47:2153(B)(1)(a). The Sheriff noted that when the taxes were not paid, the property was sold at a tax sale on May 25, 2016. A tax sale certificate memorializing the actions taken prior to the tax sale and the result of the tax sale was recorded in the Ascension Parish Conveyance Records as Instrument Number 899003 on June 9, 2016.

On June 25, 2020, Libertas filed a motion for summary judgment, seeking a judgment against the Laiches confirming its title and sole ownership of the immovable property and forever enjoining and prohibiting the Laiches from claiming any right, title, or interest in the property, as the three-year preemptive period to redeem the tax sale title had expired and the six-month prescriptive period to file an action to annul the tax sale had lapsed. In support of its motion, Libertas attached: (1) an affidavit of its manager, Keith J. Richard; (2) a certified copy of the recorded tax sale certificate; (3) the October 29, 2004 judgment of possession; (4) a January 14, 2009 act of donation by Vesta W. Laiche to Mr. Laiche; (5) a March 1, 2010 act of donation by Troy Anthony Laiche to Mr. Laiche; (6) service of citation returns of each Laiche defendant; and (7) an affidavit of Kimberly D. Schexnaydre, Chief Deputy Tax Collector, along with copies of the tax notices, sale notices, and the recorded tax sale certificate.

On July 22, 2020, the Laiches filed a cross motion for summary judgment, seeking a judgment declaring the tax sale a nullity for lack of notice to Ms. Mayeux and Ms. Essam pursuant to LSA-R.S. 47:2156 or LSA-R.S. 47:2157 and dismissing Libertas's suit to confirm title. The Laiches filed a memorandum in support of their cross motion for summary judgment and in opposition to Libertas's motion for summary judgment, to which they attached: (a) the October 29, 2004 judgment of possession; (b) acts of donation by Vesta W. Laiche and Troy Anthony Laiche to Mr. Laiche; (c) the Ascension Parish Assessor 2020 Assessment Listing; (d) an affidavit of Chief Deputy Tax Collector Schexnaydre, along with notices, notices of sale, and recorded tax sale certificate; (e) an affidavit of Ms. Mayeux; (f) an affidavit of Ms. Essam; and (g) an affidavit of Sharon Laiche.

The Sheriff filed an opposition to the Laiches' cross motion for summary judgment, contending that all proper protocols and procedures were followed by the Chief Deputy Tax Collector in issuing notice to Ms. Mayeux and Ms. Essam. The Sheriff further contended that Mr. Laiche, who is a practicing attorney and represented his siblings, Ms. Mayeux and Ms. Essam, in the succession proceeding through which the siblings acquired the property, called the Ascension Parish Tax Collection Office on May 1, 2008, and specifically instructed that the tax bills for the property at issue herein be sent to his address, i.e., 18507 Andrew Jackson Avenue, Prairieville, Louisiana 70769. The Sheriff noted that Mr. Laiche had authority to accept notices on his own behalf as an heir and on behalf of Ms. Mayeux and Ms. Essam as their counsel of record. In support of his opposition, the Sheriff attached: (1) computer log entries of the pertinent property reflecting Mr. Laiche's May 1, 2008 request to change the address for notice; (2) tax receipts for previous years' taxes paid by Mr. Laiche; (3) certified mail service returns; (4) the June 9, 2016 tax sale certificate; (5) copies of issued tax notices; (6) affidavits of Chief Deputy Assessor Justin Champlin and Chief Deputy Tax Collector Schexnaydre.

Libertas likewise opposed the cross motion for summary judgment, urging the same arguments advanced by the Sheriff and further noting that the supplemental and amending pleading filed by the Laiches was without legal effect where it was filed without leave of court or written consent of the adverse party pursuant to LSA-C.C.P. art. 1151. Libertas contended that where an amended pleading does not relate back to allow timely assertion of the nullity of a tax sale, the nullity claim raised in the amended petition is untimely and should be rejected.

The motion and cross motion for summary judgment were heard before the trial court on October 8, 2020. On October 9, 2020, the trial court signed a judgment granting Libertas's motion for summary judgment, confirming full ownership and title of the property to Libertas, and denying the cross motion for summary judgment by the Laiches.<sup>4</sup> The trial court also issued written reasons for judgment, finding that a proceeding for relief is instituted by a petition or reconventional demand, which names the party against whom relief is sought and is served along with a citation, and that the answer filed by the Laiches did not comply with those basic principles to properly assert a cause of action in nullity. The trial court further noted that even if it were to assume that the answer filed by the Laiches qualified as a "proceeding to annul," the tax sale was not null because the Sheriff used "reasonable efforts" to provide written notice to each party of the tax delinquency pursuant to LSA-R.S. 47:2127(C) at the address Mr. Laiche provided. The trial court concluded that the Laiches failed in their efforts to annul the sale, as the property was not

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<sup>4</sup>Upon examination of the October 9, 2020 judgment following the lodging of this appeal, this court issued an interim order advising the parties that considering pleadings beyond the four corners of the judgment, all issues between Libertas and the Laiches may have been resolved, yet the judgment did not dismiss any claims or parties from the litigation. We thus remanded this matter to the trial court for the limited purpose of signing an amended judgment correcting the deficiencies in judgment. An amended judgment was subsequently signed by the trial court on November 2, 2021, and was supplemented in the record of this appeal.

redeemed within the three-year redemptive period. Thus, the trial court confirmed Libertas's title and full ownership of the property.

The Laiches filed the instant suspensive appeal, contending that:<sup>5</sup>

- (1) The trial court committed manifest error in its determination that the pleadings filed by Appellants did not constitute a proceeding to annul within the meaning of La. R.S. 47:2266.
- (2) The trial court committed manifest error in finding the Sheriff used reasonable efforts to provide written notice of the tax delinquency to each of the property owners by mailing the notice to the address of only one of the property owners.
- (3) The trial court committed manifest error in failing to find the tax sale was null and void due to the Sheriff's failure to provide the required notice to each individual property owner at the proper address of each property owner.

## **DISCUSSION**

### **Summary Judgment**

The granting of a motion for summary judgment is a final, appealable judgment. LSA-C.C.P. art. 1915(A)(3). The denial of a motion for summary judgment is an interlocutory judgment and is appealable only when expressly provided by law. Leisure Recreation & Entertainment, Inc. v. First Guaranty Bank, 2019-1698 (La. App. 1<sup>st</sup> Cir. 2/11/21), 317 So. 3d 809, 817. However, where there are cross motions for summary judgment raising the same issues, this court can review the denial of a cross motion for summary judgment in addressing the appeal of the granting of the motion for summary judgment. Pelle v. Munos, 2019-0549 (La. App. 1<sup>st</sup> Cir. 2/19/20), 296 So. 3d 14, 18 n.2.

Appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Leet v.

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<sup>5</sup>As to the defendant tax collectors, following the entry of a preliminary default against the IRS and State Department of Revenue, Libertas and the State Department of Revenue entered into a "Consent Partial Final Judgment," resolving all claims between them by erasing and cancelling a recorded encumbrance on the property, which was signed by the trial court on November 4, 2020. A final judgment confirming the default judgment against the IRS, declaring Libertas the sole owner of the property, and enjoining the IRS from claiming any right, title, or interest in the property, was signed by the trial court on October 28, 2020.

Hospital Service District No. 1 of East Baton Rouge Parish, 2018-1148 (La. App. 1<sup>st</sup> Cir. 2/28/19), 274 So. 3d 583, 587. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(A)(3).

The burden of proof is on the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. LSA-C.C.P. art. 966(D)(1).

#### **Assignments of Error**

In their three assigned errors, the Laiches cite the trial court's written reasons for judgment and contend that the trial court "committed manifest error" in certain determinations set forth therein.

At the outset, we note that appellate courts review judgments and not reasons for judgment. Walton v. State Farm Mutual Automobile Insurance Company, 2018-1510 (La. App. 1<sup>st</sup> Cir. 5/31/19), 277 So. 3d 1193, 1199. In fact, judgments are often upheld on appeal for reasons different than those assigned by a trial court. Wooley v. Lucksinger, 2009-0571 (La. 4/1/11), 61 So. 3d 507, 572. The written reasons for judgment are merely an explication of the trial court's determinations and do not alter, amend, or affect the final judgment being appealed. Davis v. Allstate Property & Casualty Insurance Co., 2019-0285 (La. App. 1<sup>st</sup> Cir. 11/15/19) (unpublished)

2019 WL 6044635, \*2, citing Walton v. State Farm Mutual Automobile Insurance Company, 277 So. 3d at 1199.

Additionally, the standard of review of a summary judgment by an appellate court is *de novo*. Because this court reviews summary judgments *de novo*, we afford no deference to the trial court's underlying reasoning for its judgment.<sup>6</sup> John River Cartage, Inc. v. Louisiana Generating, LLC, 2020-0162 (La. App. 1<sup>st</sup> Cir. 3/4/20), 300 So. 3d 437, 453 n.12, citing King v. Allen Court Apartments, 2015-0858 (La. App. 1<sup>st</sup> Cir. 12/23/15), 185 So. 3d 835, 839, writ denied, 2016-0148 (La. 3/14/16), 189 So. 3d 1069. Accordingly, we will review the summary judgment *de novo* to determine whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. See LSA-C.C.P. art. 966(A)(3); cf. Jones v. Baton Rouge General Medical Center-Bluebonnet, 2020-1250 (La. App. 1<sup>st</sup> Cir. 6/4/21), \_\_\_ So. 3d \_\_\_, \_\_\_.

### Legal Precepts

Louisiana Constitution Article VII, Section 25 sets forth the constitutional provisions for tax sales in Louisiana. At the expiration of the year in which the taxes are due and after notice to the delinquent “in the manner provided by law,” the collector shall advertise for the sale of the property for which the taxes are due. LSA-Const. art. VII, § 25(A)(1). A tax deed by a tax collector shall be *prima facie* evidence that a valid sale was made. LSA-Const. art. VII, § 25(A)(1). Property sold at a tax sale shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption. LSA-Const. art. VII,

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<sup>6</sup>We recognize that to the extent that LSA-C.C.P. art. 966(C)(4) requires the trial court to state reasons for granting or denying a motion for summary judgment, these reasons may be relevant when determining whether the trial court exceeded its authority by rendering summary judgment as to issues not set forth in the motion under consideration by the court. See LSA-C.C.P. art. 966(F); Cutrone v. English Turn Property Owners Association, Inc., 2019-0896 (La. App. 4<sup>th</sup> Cir. 3/4/20), 293 So. 3d 1209, 1215-1216. No such argument has been raised herein on this basis.

§ 25(B)(1). The manner of notice and form of proceeding to quiet tax titles shall “be provided by law.” LSA-Const. art. VII, § 25(D).

The laws governing the payment and collection of property taxes, tax sales, and redemptions are codified in LSA-R.S. 47:2121, *et seq.* As set forth in LPR, L.L.C. v. Naquin, 2020-0847 (La. App. 1<sup>st</sup> Cir. 2/19/21), 319 So. 3d 369, 376, a “tax sale property” is defined as property for which tax sale title is sold pursuant to LSA-R.S. 47:2154 (providing the procedure for tax sales), and “tax sale title” is simply the set of rights acquired by a tax sale purchaser. See LSA-R.S. 47:2122(20) & (22). A tax collector no longer auctions the immovable property itself at a tax sale; rather, a tax sale title is auctioned, and the tax collector issues a tax sale certificate to evidence the set of rights acquired. LSA-R.S. 47:2122(22), 2154, and 2155. See also Central Properties v. Fairway Gardenhomes, LLC, 2016-1855 (La. 6/27/17), 225 So. 3d 441, 448-449. A “tax sale certificate” is defined as the written notice evidencing a tax sale, which is to be filed in accordance with LSA-R.S. 47:2155 and 2196. LSA-R.S. 47:2122(18).

The term “tax sale” actually denotes that it is a tax lien that is purchased in the form of a tax sale title, albeit with future rights of ownership after due notice to all “tax sale parties” and the expiration of the redemptive period, as well as the filing of a suit to quiet title. Central Properties v. Fairway Gardenhomes, LLC, 225 So. 3d at 449. The tax sale purchaser does not acquire title and full ownership in a tax sale property until there is a judgment in a suit to quiet title (LSA-R.S. 47:2266), a monition proceeding (LSA-R.S. 47:2271, *et seq.*), or a suit to terminate the interests of the property owner (LSA-R.S. 47:2157). LPR, L.L.C. v. Naquin, 319 So. 3d at 376. However, no tax sale shall be set aside except for a payment nullity,

redemption nullity, or a nullity under LSA-R.S. 47:2162, all of which are relative nullities.<sup>7</sup> LSA-R.S. 47:2286.

The nullity claimed herein by the Laiches is the redemption nullity. A “redemption nullity” is statutorily defined as “the right of a person to annul a tax sale in accordance with R.S. 47:2286 because he was not duly notified at least six months before the termination of the redemptive period.” LSA-R.S. 47:2122(10).

An action to annul a tax sale on grounds of a redemption nullity shall be brought within six months after a person is duly notified using a notice, other than the notice provided in LSA-R.S. 47:2156 that is sent between the time that the redemptive period ends and five years after the date of the recordation of the tax sale certificate. LSA-R.S. 47:2287(A)(1); LSA-Const. art. VII, § 25(C). The action shall be brought in the district court of the parish in which the property is located and may be brought as a reconventional demand or an intervention in an action to quiet title under LSA-R.S. 47:2266. LSA-R.S. 47:2286.

Applying these precepts to the instant matter, the record reflects that on July 19, 2019, Mr. Laiche and Ms. Mayeux were served with Libertas’s petition to confirm tax title and that on September 15, 2019, Ms. Essam was likewise served with Libertas’s petition to confirm tax title. Thus, Mr. Laiche and Ms. Mayeaux had until January 20, 2020, to bring an action to annul the tax sale and Ms. Essam had until March 16, 2020, to bring an action to annul the tax sale. LSA-R.S. 47:2287(A)(1).

On January 16, 2020, the Laiches filed an “Answer,” wherein they alleged that the Sheriff failed to provide all record owners with the legally required notice of the tax delinquency and sale pursuant to LSA-Const. art. VII, § 25(A), and prayed

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<sup>7</sup>Louisiana Revised Statute 47:2162 prohibits the tax collector or tax assessor for the political subdivision from buying, either directly or indirectly, any property or tax sale title sold or offered for sale for *ad valorem* taxes imposed by that political subdivision and provides that any such sale shall be subject to an action for nullity.

that the May 25, 2016 tax sale be declared an absolute nullity and that Libertas's suit be dismissed. Their answer, however, did not name any defendants. Thus, as a threshold issue, we must determine whether the Laiches' answer constitutes an action for a redemption nullity.

An action for redemption nullity may be brought as a reconventional demand or an intervention in an action to quiet title under LSA-R.S. 47:2266, which are both incidental demands. See LSA-R.S. 47:2286 and LSA-C.C.P. art. 1031. An incidental demand shall be commenced by a petition which shall comply with the requirements of LSA-C.C.P. arts. 891, 892 and 893. While an incidental demand instituted by the defendant in the principal action may be incorporated in his answer to the principal demand, the caption shall indicate appropriately the dual character of the combined pleading. LSA-C.C.P. art. 1032. The mode of procedure, including service, employed in the incidental action shall be the same as that used in the principal action. LSA-C.C.P. art. 1036. A reconventional demand shall be served on the plaintiff in the principal action in the manner prescribed by Article 1314 whether incorporated in the answer to the principal action or filed separately.<sup>8</sup> Citation of the plaintiff in the principal action shall not be necessary. LSA-C.C.P. art. 1063.

On review, we find that although allegations of improper service of the tax notice were made in the Laiches' answer, such allegations do not constitute a proper reconventional demand. Pursuant to LSA-C.C.P. art. 1032, whenever a defendant incorporates an incidental demand in his answer to the principal demand, "the caption **shall** indicate appropriately the dual character of the combined pleading." (Emphasis added.) The caption of the answer herein failed to indicate the dual nature of the combined pleading. Moreover, the answer did not name a specific defendant

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<sup>8</sup>Louisiana Code of Civil Procedure article 1314 provides for service of a pleading by the sheriff.

or request service on a defendant. Thus, the record before us is devoid of any evidence that a reconventional or incidental demand was properly pleaded or served. See Nelson v. Windmill Nursery of Louisiana, L.L.C., 2004-2717 (La. App. 1<sup>st</sup> Cir. 9/23/05), 923 So. 2d 715, 717.

Thus, where the Laiches' answer, which contained an allegation of lack of notice giving rise to an "absolute nullity," did not meet the requirements of and was not properly presented to the trial court as a reconventional demand, the original answer is insufficient to constitute an action for redemption nullity. See Parish of West Feliciana ex rel. West Feliciana Parish Police Jury v. Thompson, 2008-2155 (La. App. 1<sup>st</sup> Cir. 3/27/09) (unpublished) 2009 WL 839525, \*3 n.2, writ denied, 2009-1261 (La. 9/18/09), 17 So. 3d 978; Pierson v. North Oaks, 2014-0026 (La. App. 1<sup>st</sup> Cir. 9/19/14) (unpublished) 2014 WL 4667597, \*2 (where a monetary award was requested in an answer not clearly captioned as a reconventional demand in addition to an answer and service of same was not that required of a reconventional demand, judgment awarding a monetary award was defective because it was rendered on issues never properly joined).<sup>9</sup> Accordingly, we find the trial court properly denied the Laiches' cross motion for summary judgment.

To the extent that the Laiches later supplemented and amended their answer on June 24, 2020, we pretermitt any determination of whether this pleading is sufficient to constitute an action for redemption nullity as any nullity action had prescribed and any potential nullity had been cured.<sup>10</sup> See LSA-R.S. 47:2287(A)(1).

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<sup>9</sup>See also Dave v. Witherspoon, 2020-0239 (La. App. 4<sup>th</sup> Cir. 11/4/20), 310 So. 3d 593, 598 (where the former property owner brought an action to annul the tax sale separate from tax sale purchaser's action to quiet title while the action to quiet title was already pending, the court found that, under the plain language of the statute, the proper course for the former property owner to address her claims for nullity and redemption would have been to assert them as reconventional demands, and affirmed the judgment of the trial court maintaining an exception of *lis pendens* dismissing her nullity claims in a separate suit).

<sup>10</sup>A claim of a redemption nullity can be cured by the giving of notice and the passage of time under this Chapter. LSA-R.S. 47:2286, Comment (c).

Having determined that the Laiches failed to properly assert an action for a redemption nullity, we must nonetheless determine whether Libertas met its burden of establishing that it was entitled to judgment as a matter of law on its petition to confirm tax sale title and whether the trial court was correct in granting its motion for summary judgment.

A tax purchaser's suit to quiet tax title puts that title at issue and the former owners may avail themselves of any defense sufficient to defeat the tax title. Pamplemoussier, L.L.C. v. Poche, 2012-1829 (La. App. 1<sup>st</sup> Cir. 9/13/13), 187 So. 3d 480, 481-82, citing Smitko v. Gulf South Shrimp, Inc., 2011-2566 (La. 7/2/12), 94 So. 3d 750, 757. A tax sale is presumed to be valid and the tax deed is *prima facie* evidence of the regularity of the tax adjudication proceedings. See LSA-Const. art. VII, § 25 A(1); Cressionnie v. Intrepid, Inc., 2003-1714 (La. App. 1<sup>st</sup> Cir. 5/14/04), 879 So. 2d 736, 739. The jurisprudence is clear that at that point, because tax sales are presumed valid and a tax deed constitutes *prima facie* evidence of the validity of the sale, the burden then shifts to the party attacking the tax sale to prove that the sale was invalid. Krieger v. USDT Properties/Mutual of Omaha Bank, 2015-1563 (La. App. 1<sup>st</sup> Cir. 8/22/16), 199 So. 3d 1194, 1198.

In support of its motion for summary judgment, Libertas offered the tax sale certificate evidencing the tax sale dated June 9, 2016, filed and recorded Instrument No. 00899003 in Ascension Parish. This tax deed is *prima facie* evidence that a valid sale was made. LSA-Const. art. VII, § 25(A)(1). The burden then shifted to the Laiches to prove an alleged irregularity in the tax adjudication proceeding. Pamplemoussier, L.L.C. v. Poche, 187 So. 3d at 482.

Aside from their argument alleging improper notice of the tax delinquency, which was not properly raised below, the Laiches have failed to set forth any evidence in opposition to Libertas's motion for summary judgment to establish a material issue of fact remains as to any purported irregularity in the sale. Thus, the

Laiches failed to rebut the presumptive validity of the tax sale. Accordingly, we find no error in the trial court's determination that Libertas was entitled to summary judgment confirming full title and ownership of the property as a matter of law.

### **CONCLUSION**

For the above and foregoing reasons, the November 2, 2021 judgment of the trial court is hereby affirmed. Costs of this appeal are assessed to the defendants/appellants, Leroy J. Laiche, Jr., Christie L. Mayeux, and Staci L. Essam.

**AFFIRMED.**