

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 CA 2217

HWY. 21 N. COVINGTON, L.L.C.

VERSUS

FRENCH MARKET SUPPLY, L.L.C.

Judgment rendered **JUL 26 2011**

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Appealed from the  
22nd Judicial District Court  
in and for the Parish of St. Tammany, Louisiana  
Trial Court No. 2008-15408  
Honorable William J. Burris, Judge

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**BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.**

**PETTIGREW, J.**

In this case, plaintiffs, Hwy. 21 North Covington, L.L.C. ("Hwy. 21") and Murphy Oil USA, Inc. ("Murphy Oil"), challenge the trial court's grant of summary judgment in favor of defendant Habitat Investments, Inc. ("Habitat") that dismissed Hwy 21's petition to annul a tax sale. For the reasons that follow, we hereby affirm.

**FACTS**

Effective July 27, 1999, Murphy Oil allegedly sold to Restructure Partners, L.L.C. ("Restructure") two parcels of land situated in St. Tammany Parish, Louisiana – a .918 acre tract and an adjacent .39 acre tract. The .918 acre tract, upon which is located a convenience store with fuel pumps for the sale of gasoline, will be referred to hereinafter as the "Convenience Store parcel." The adjacent .39 acre tract serves as a rear parking area for the convenience store and will be referred to hereinafter as the "Parking Lot parcel."

Inadvertently, the Act of Cash Sale recorded with the St. Tammany Parish Clerk of Court on or about July 27, 1999, as Instrument No. 1163068, failed to include the Parking Lot parcel and only contained a description of the Convenience Store parcel. Unaware of this omission, Murphy Oil was fully paid for both parcels and delivered possession to its purchaser, Restructure.

In the belief that the Parking Lot parcel had been transferred to Restructure at the time of the sale of the Convenience Store parcel, Murphy Oil, in a letter dated December 9, 1999, advised the St. Tammany Parish taxing authorities of the July 27, 1999 sale and that the property taxes had been pro-rated at the time of closing. Accordingly, Murphy Oil stated that Restructure would be responsible for tax year 1999 forward and all future tax bills should be sent to Restructure at the address provided. In another letter dated December 9, 1999, and directed to David Wilson of Restructure, Murphy Oil enclosed copies of the parish and municipal tax bills for 1999. Murphy Oil advised that said tax bills should be paid by January 15, 2000, to avoid additional tax liability.

Neither Murphy Oil nor Restructure paid the property taxes for the following year, 2000; which resulted in the Parking Lot parcel being sold at tax sale in 2001. At the 2001

tax sale, the Parking Lot parcel was sold to French Market Supply, L.L.C. ("French Market") for unpaid taxes for 2000, on or about June 13, 2001. A Sheriff's Act of Sale or tax deed was thereafter recorded with the St. Tammany Parish Clerk of Court on June 29, 2001, as Instrument No. 1251982. The Sheriff's Act of Sale listed both Murphy Oil and Restructure as the owner/vendor of the Parking Lot parcel at the address of Restructure.

Following the 2001 tax sale, neither French Market, Restructure, nor Murphy Oil paid the 2001 property taxes, which resulted in the Parking Lot parcel being sold again at tax sale on or about June 5, 2002. When no one bid on the property at the 2002 tax sale, the Parking Lot parcel was adjudicated to the Parish of St. Tammany. A Sheriff's Act of Sale or tax deed was thereafter recorded with the St. Tammany Parish Clerk of Court on June 26, 2002, as Instrument No. 1309645. Despite the tax sale purchase by French Market in 2001, the Sheriff's Act of Sale still reflected both Murphy Oil and Restructure as the owner/vendor of the Parking Lot parcel at the address of Restructure.

Restructure later conveyed ownership of the adjacent Convenience Store parcel to Three W, L.L.C. ("Three W") by virtue of a Cash Sale Deed, recorded with the St. Tammany Parish Clerk of Court on or about September 22, 2004, as Instrument No. 1455090. Three W subsequently conveyed ownership of the Convenience Store parcel to Hwy. 21 North ("Hwy. 21") by virtue of an Act of Transfer, recorded with the St. Tammany Parish Clerk of Court on or about May 6, 2005, as Instrument No. 1493083.

In an attempt to cure the cloud caused by the omission of the Parking Lot parcel, Hwy. 21 acquired all of the right, title, and interest in the Parking Lot parcel held by Murphy Oil, the original ancestor-in-title, through a Quitclaim Deed, recorded with the St. Tammany Parish Clerk of Court on or about July 18, 2008, as Instrument No. 1692299. Additionally, Hwy. 21 attempted to redeem the 2002 tax sale by remitting payment for all property taxes attributable to the Parking Lot parcel from 2001 through 2007, together with costs, and statutory interest, for a total of \$13,579.87. In addition to the amount

paid to redeem the 2002 tax sale, Hwy 21 has paid the property taxes associated with the Parking Lot parcel since 2008.<sup>1</sup>

### **ACTION OF THE TRIAL COURT**

To confirm its title to the subject property, Hwy. 21 instituted the present suit against French Market on October 10, 2008, seeking to annul the 2001 tax sale whereby French Market acquired ownership of the Parking Lot parcel. Hwy. 21 alleged that all transfers of the Convenience Store parcel intended also to convey the adjacent Parking Lot parcel but inadvertently failed to include the legal description of the Parking Lot parcel in the acts transferring ownership of the larger parcel. Hwy. 21 further asserted that it acquired ownership of any and all right, title, and interest of French Market in the Parking Lot parcel through its redemption of the subsequent 2002 tax sale and all years thereafter to date.

Habitat subsequently acquired all of the right, title, and interest in the Parking Lot parcel held by French Market, the subsequent transferee of Murphy Oil, through a Deed Without Warranty, recorded with the St. Tammany Parish Clerk of Court on or about March 2, 2009, as Instrument No. 1716584. On March 3, 2009, a Motion to Substitute Party Defendant was jointly filed by French Market and Habitat, requesting that as French Market had previously been made a defendant in this action questioning its ownership of the Parking Lot parcel and French Market had previously transferred all of its right, title, and interest to Habitat, Habitat be substituted for French Market as the proper party to defend the suit to annul the 2001 tax sale. Habitat filed a reconventional and third party demand and prayed that the recorded act of sale between Murphy Oil and Restructure be reformed to reflect the full legal description as corrected in the quitclaim deed.

On May 20, 2010, this matter was presented to the trial court on cross Motions for Summary Judgment. Habitat sought the dismissal of the claims of Murphy Oil and Hwy. 21, and prayed for judgment in its favor that reformed the act of sale recorded June 27,

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<sup>1</sup> In its brief to this court, Habitat Investments, Inc. alleges that a Final Judgment of Confirmation against Restructure confirming Habitat's tax title was rendered on August 18, 2008. Said judgment was never appealed and does not form part of the instant appeal.

1999, to include the legal description of the .39 acre Parking Lot parcel. Highway 21 and Murphy Oil sought a judgment declaring the 2001 tax sale to be null and void and further sought the dismissal of Habitat's reconventional demand upon its showing that the taxes due prior to the tax sale in question were paid. Following oral argument, the trial court granted Habitat's Motion for Summary Judgment and denied the motion of Hwy 21. The trial court further ordered that Hwy. 21's suit to annul the 2001 tax sale be dismissed. A judgment was later signed by the trial court on June 11, 2010. Hwy 21 and Murphy Oil thereafter appealed.

### **ISSUES PRESENTED FOR REVIEW**

In connection with their appeal in this matter, Hwy. 21 and Murphy Oil present the following issues for review and consideration by this court:

1. Whether the quitclaim deed dated June 25, 2008, from Murphy Oil to Hwy. 21 conveyed any right, interest, title or other privileges in the parking lot parcel?
2. Whether the trial court's judgment goes beyond the scope of the relief prayed for by the appellee, Habitat?
3. Whether the trial court erred in dismissing Hwy. 21's suit in its entirety before considering the effect of the 2002 tax sale, the redemption by Murphy Oil and Hwy. 21 and the payment of subsequent years' taxes by Hwy. 21 on the ownership interest of Habitat in the Parking Lot parcel?

### **SUMMARY JUDGMENT**

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Johnson v. Evan Hall Sugar Co-op, Inc.**, 01-2956, p. 3 (La. App. 1 Cir. 12/30/02), 836 So.2d 484, 486. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B). Summary judgment is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. P. art. 966(A)(2); **Thomas v. Fina Oil and Chemical Co.**, 02-0338, pp. 4-5 (La. App. 1 Cir. 2/14/03), 845 So.2d 498, 501-502.

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before

the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. Code Civ. P. art. 966(C)(2); **Robles v. ExxonMobile**, 02-0854, p. 4 (La. App. 1 Cir. 3/28/03), 844 So.2d 339, 341.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority**, 02-1072, p. 5 (La. 4/9/03), 842 So.2d 373, 377. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Foreman v. Danos and Curole Marine Contractors, Inc.**, 97-2038, p. 7 (La. App. 1 Cir. 9/25/98), 722 So.2d 1, 4, writ denied, 98-2703 (La. 12/18/98), 734 So.2d 637.

## DISCUSSION

In their initial assignment of error, Hwy. 21 and Murphy Oil question whether the quitclaim deed dated June 25, 2008, from Murphy Oil to Hwy. 21, conveyed any right, interest, title, or other privileges in the Parking Lot parcel. A quitclaim is a common law concept fully recognized by the jurisprudence of this state, and has been considered by Louisiana courts many times. **Waterman v. Tidewater Associated Oil Co. et al.**, 213 La. 588, 35 So.2d 225, 230 (La. 1947). The 1993 revision comments accompanying La. Civ. Code art. 2502 state that said article gives legislative formulation to conclusions established by Louisiana jurisprudence and describes the effects of an act referred to at common law as a quitclaim deed. Louisiana Civ. Code art. 2502 provides in pertinent part:

**Art. 2502. Transfer of rights to a thing**

A person may transfer to another whatever rights to a thing he may then have, without warranting the existence of any such rights.

Hwy. 21 and Murphy Oil claim that the quitclaim deed between them, dated June 25, 2008, transferred to Hwy. 21 all right, title, and interest in the Parking Lot parcel that Murphy Oil held, up until the 2002 tax sale. In the alternative, and only in the event it is determined that the 2002 tax sale did not restore ownership of the Parking Lot parcel in Murphy Oil and its successor-in-interest Hwy. 21, then, and in that event, Hwy. 21 and Murphy Oil contend the 2008 quitclaim deed transferred to Hwy. 21 a right of reimbursement for its redemption and payment of all property taxes attributable to the Parking Lot parcel since 2001.

By way of response, Habitat cites and relies upon **Exxon Corporation v. Garber**, 99-0317, p. 5 (La. App. 3 Cir. 10/13/99), 747 So.2d 639, 642, for the proposition that “[a] redemption of a tax title to real estate simply effaces the tax sale and restores title to the status existing before the sale. It does not create a new title.” [Citation omitted.] **Garber** is also cited and relied upon by Hwy. 21 for the same proposition. Habitat argues that the effect of Hwy. 21’s redemption of tax title was to return title to the Parking Lot parcel to the status it had prior to the 2002 tax sale. In other words, the tax sale redemption had the effect of erasing the 2002 tax sale as if it never happened. It is the position of Habitat that since its ancestor-in-title, French Market, was the owner of record at the time of the 2002 tax sale, it was the title of French Market that was restored by virtue of Hwy. 21’s redemption. Since French Market subsequently transferred its ownership interest to Habitat, the single title chain remains uninterrupted.

We agree. This assignment is without merit.

The next assignments raised by Hwy. 21 and Murphy Oil question whether or not the trial court’s judgment goes beyond the scope of the Prayer for Relief contained in Habitat’s Motion for Summary Judgment and thereby serves to prejudice Hwy. 21’s right to pursue alternate causes of action. Hwy. 21 and Murphy Oil complain that the trial court’s blanket dismissal of its entire lawsuit not only affects the claims and rights of the

parties relative to the annulment of the 2001 tax sale, but also affects Hwy. 21's right to pursue alternate causes of action arising out of its redemption of the 2002 tax sale. Hwy. 21 and Murphy Oil further complain that the trial court's judgment prejudices Hwy. 21's right to reimbursement for property taxes it has paid on the Parking Lot parcel since 2001.

Habitat responds with the argument that Hwy. 21 and Murphy Oil have raised the issues of reimbursement and unjust enrichment for the first time on appeal. Habitat argues that the initial Petition to Annul Tax Sale prayed only for annulment of the 2001 tax sale to French Market/Habitat and for confirmation of Hwy. 21's ownership together with a general plea for equitable relief. It is further asserted that aside from failing to put forth a claim for reimbursement in the trial court, Hwy. 21 and Murphy Oil also neglected to file a copy of the redemption deed in this matter, or submit proof of amounts that were paid. Hwy. 21's right to reimbursement of the taxes it paid was never presented for consideration by the trial court either in a pleading or in argument at the hearing on summary judgment. Accordingly, Habitat avers that Hwy. 21 and Murphy Oil cannot raise these claims for the first time in the appellate court.

We agree. It is well-settled jurisprudence that appellate courts will not consider issues raised for the first time on appeal that are not pleaded in the court below and which the trial court has not addressed. **Johnson v. State**, 02-2382, p. 4 (La. 5/20/03), 851 So.2d 918, 921. Due to the failure of Hwy 21 and Murphy Oil to put forth an alternative demand in their petition for reimbursement of the taxes paid, reimbursement was not an issue before the trial court. Accordingly, the trial court correctly dismissed this action.<sup>2</sup> Hwy 21 may nevertheless have a right to seek reimbursement of the taxes it paid through the filing of a separate action.

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<sup>2</sup> Louisiana Code of Civil Procedure article 2124 authorizes appellate courts to "render any judgment which is just, legal and proper upon the record on appeal." If Hwy. 21 and Murphy Oil had prayed for the particular relief now sought, this court would likely order additional briefing on this issue. See **Merrill v. Greyhound Lines, Inc.**, 10-2827 (La. 4/29/11), 60 So.3d 600, wherein the court required briefing before the appellate court reached an issue not briefed by the litigants.

## **CONCLUSION**

For the above and foregoing reasons, the judgment of the trial court granting the motion for summary judgment filed by defendant, Habitat Investments, Inc., is hereby affirmed. All costs associated with this appeal shall be assessed against plaintiff-appellants, Hwy. 21 N. Covington, L.L.C. and Murphy Oil USA, Inc.

**AFFIRMED.**