

Judgment rendered August 19, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 56,956-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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THOMAS WAYNE BIRDSONG Plaintiff-Appellee

versus

HUNT OIL COMPANY, ET AL. Defendants-Appellees

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Appealed from the
Second Judicial District Court for the
Parish of Claiborne, Louisiana
Trial Court No. 43,522

Honorable William R. “Rick” Warren, Judge

* * * * *

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* * * * *

Before PITMAN, STONE, and HUNTER, JJ.

PITMAN, C. J., dissents with written reasons.

HUNTER, J.

Rosestone Operating Company, LLC, NR Resources, LLC, and CAPX Ventures Fund 2, LLC (collectively, “Defendants”) appeal a district court ruling denying the motion to strike, exceptions, and entering a judgment of eviction requiring the Defendants to vacate Thomas Wayne Birdsong’s (“Plaintiff”) property on a 24-hour notice. For the following reasons, we affirm the judgment of the trial court.

FACTS

The Plaintiff owns an 80-acre tract of property in Claiborne Parish, Louisiana (“the property”). In September 2018, the Plaintiff and Defendants executed a Surface Use Agreement (“SUA”) under a 1945 mineral lease, which permitted the Defendants to use the property’s surface for oil and gas operations. Per the agreement, the SUA required the Defendants to maintain the property in good repair, keep the premises clean, and refrain from depositing or scattering any waste. Additionally, the SUA required a \$2,000 annual rental payment due on September 30th of each year, payable within a week or two of the due date. After the Defendants failed to pay the rental beginning in October 2024 and the Plaintiff’s collection efforts were unsuccessful, the Plaintiff filed suit on February 12, 2025. The suit sought termination of the SUA for breach, eviction of the Defendants, and damages for abandoned tanks, environmental contamination, and alleged trespass occurring before and after the SUA termination. Subsequent to the filing of the lawsuit, the defendants attempted to pay the 2024 rental by issuing a check dated February 27, 2025, which the Plaintiff did not deposit or accept.

As a result of the Defendant’s violations, the Plaintiff provided notices to vacate on two separate occasions, which were ignored. In response

the Defendants removed the lawsuit to the United States District Court for the Western District of Louisiana (“Federal Court”), which remanded the Plaintiff’s suit to the state court. At trial, the district court found that the Defendants failed to pay the 2024 rental, kept the property in possession, spilled oilfield wastes on the property, injected saltwater into a well on the property, and failed to show cause why it should not deliver possession of the property to the Plaintiff. The district court entered judgment in favor of the plaintiff, finding that the Defendants had breached the agreement, and requiring them to vacate the property on 24 hours’ notice. The Defendants appeal the judgment.

DISCUSSION

Summary Eviction

The Defendants contend the district court erred in ordering a summary judgment eviction, as they complied with the SUA. More specifically, the Defendants argue that eviction is improper because they tendered payment before receiving any written demand and satisfied all obligations under the SUA.

In all civil cases, the appropriate standard for appellate review of factual determinations is the manifest error-clearly wrong standard, which precludes the setting aside of a trial court finding of fact unless that finding is clearly wrong in light of the record reviewed in its entirety. *Cenac v. Public Access Water Rights Assn*, 02–2660, p. 9 (La.6/27/03), 851 So. 2d 1023; *Hayes Fund for First United Methodist Church of Welsh, LLC v. Kerr-McGee Rocky Mountain, LLC*, 14-2592 (La. 12/8/15), 193 So. 3d 1115.

Generally, a trial court's judgment in an eviction case is reviewed under the manifest error standard of review. *Sizeler Real Estate Mgmt. Co., Inc. v. Family Dollar Stores of La., Inc.*, 01-1974 (La. App. 4 Cir. 3/20/02), 814 So. 2d 614; *Armstrong Airport Concessions v. K-Squared Rest., LLC*, 15-0375 (La. App. 4 Cir. 10/28/15), 178 So. 3d 1100. In other words, the appellate court may not reverse simply because it is convinced that had it been sitting as a trier of fact it would have ruled differently. *Orea v. Scallan*, 32,622 (La. App. 2 Cir. 1/26/00), 750 So. 2d 483.

The provisions of La. C.C.P. arts. 4701, *et seq.*, provide a summary process for eviction of a lessee by a lessor because the lease had ended due to expiration of its term or for other lawful causes. *Monroe Hous. Auth. v. Coleman*, 46,307 (La. App. 2 Cir. 5/25/11), 70 So. 3d 873; *Williams v. Bass*, 37,156 (La. App. 2 Cir. 5/14/03), 847 So. 2d 82. It is well settled that a summary action for eviction of a tenant or lessee under these articles involves the single issue of whether the lessor is entitled to receive back possession of the leased premises *Affordable Care, LLC v. Martin*, 54,286 (La. App. 2 Cir. 4/13/22), 337 So. 3d 621, *writ denied*, 22-00784 (La. 9/20/22), 346 So. 3d 291.

In an eviction proceeding, the lessor has the burden of proving, by a preponderance of the evidence, a valid lease and that the violation of the lease provides sufficient grounds for an eviction. *Guste Homes Resident Mgmt. Corp. v. Thomas*, 12-1493 (La. App. 4 Cir. 5/29/13), 116 So. 3d 990.

The lessee is bound to pay the rent in accordance with the agreed terms. La. C.C. art. 2683(1). If the lessee fails to pay rent when due, the lessor may dissolve the lease and may regain possession in the manner provided by law. La. C.C. art. 2704. Where a lessor customarily accepts

these late rental payments, such custom has the effect of altering the original contract with respect to punctuality of rent payments. *Versailles Arms Apartments v. Pete*, 545 So. 2d 1195 (La. App. 4 Cir. 1989); *Housing Auth. of the Town of Lake Providence v. Allen*, 486 So. 2d 1064 (La. App. 2 Cir. 1986); *Investor Inns, Inc. v. Wallace*, 408 So. 2d 983 (La. App. 2 Cir. 1981).

In such cases, the landlord's right to strict enforcement of the lease rental provisions is considered to have been waived; and the lessor must give advance notice of his intention to strictly enforce the lease in the future. The basis for such a rule is the general feeling that it is inequitable to allow a lessor to mislead or lull a tenant into a false sense of security by accepting late rent payments for an extended period, without a demand for punctuality, and then on a future date of his own choosing, cancel the lease for nonpayment of rent. *KM, Inc. v. Weil Cleaners, Inc.*, 50,209 (La. App. 2 Cir. 1/13/16), 185 So. 3d 118.

In the instant case, the Plaintiff admitted that he received and accepted the payments in 2022 and 2023 a week or two after the due date. However, the Defendants admittedly failed to pay the 2024 rent on time. Despite the Plaintiff's October 2024 notice of default, the Defendants did not attempt to pay until after being served with this lawsuit in March 2025 (although the check was dated February 27, 2025). The Defendants further argue that payments were made erratically and routinely late in the past; however, the Plaintiff rejected the post-suit payment and never accepted rent that was five months late. The Defendants presented no evidence that the plaintiff waived or excused their breach. Additionally, the Plaintiff filed an ordinary action against the defendants three weeks before the eviction suit, alleging breaches of their obligations under the SUA.

The record shows that the Plaintiff consistently treated the nonpayment as a default, did not request further work after the breach, and continuously pursued termination of the SUA and recovery of possession of the property. After reviewing this record, we find there was a reasonable factual basis for the district court's judgment, and that there was no manifest error in its grant of eviction for nonpayment of rent.

Existence of a Lease

In the second assignment of error, the Defendants argue that the district court improperly applied summary eviction provisions pursuant to La. C.C.P. art. 4701, *et seq.*, because SUA was not a "lease" subject to summary eviction proceedings.

A lease is a synallagmatic contract by which one party, the lessor, binds himself to give to the other party, the lessee, the use and enjoyment of a thing for a term in exchange for a rent that the lessee binds himself to pay. La. C.C. art. 2668. The particular terms of a lease form the law between the parties, defining their respective legal rights and obligations. *Pierre v. Gardner*, 53,715 (La. App. 2 Cir. 1/13/21), 311 So. 3d 584; *Garsee v. Makolli*, 54,452 (La. App. 2 Cir. 6/8/22), 341 So. 3d 880 (*citing CA One/Pampy's v. Brown*, 07-1377 (La. App. 4 Cir. 4/2/08), 982 So. 2d 909.) La. C.C. art. 2678 provides: The lease shall be for a term. Its duration may be agreed to by the parties or supplied by law. The term may be fixed or indeterminate.

Eviction is also a remedy available to an owner of immovable property who wishes to evict the occupant therefrom, after the purpose of the occupancy has ceased. La. C.C.P. art. 4702, *PTS Physical Therapy Serv. v.*

Magnolia Rehab. Serv., Inc., 40,558 (La. App. 2 Cir. 1/27/06), 920 So. 2d 999.

In the matter before us, the Defendants were occupants of the property, permitted by the Plaintiff to use it in exchange for annual rent, while the Plaintiff retained ownership rights and responsibility for property taxes. Therefore, the SUA constituted a lease. As the district court noted, even if the SUA was not a lease, summary eviction was proper because the Defendants' right to occupy the property ended when they failed to pay rent. The Plaintiff remained the property owner and, although neither the SUA nor the law required it, he, nevertheless, provided the Defendants with notice to vacate before seeking eviction. Therefore, the Plaintiff was entitled to evict the Defendants as tenants or occupants, regardless of whether the SUA was characterized as a lease. Based on the record, we find no legal error in the district court's application of the law in determining that the parties' agreement constituted a lease.

Exceptions to Motion for Eviction

In the third assignment of error, the Defendants argue the district court erred in failing to dismiss the motions to evict based on improper cumulation of actions, unauthorized use of summary proceedings, and the declinatory exception of *lis pendens*. The Defendants assert that the Plaintiff improperly pursued a summary eviction against only them on a single issue, while related claims involving numerous parties and additional issues were already pending in an ordinary proceeding under a different procedural framework. The Defendants also assert that because the ordinary proceeding was filed first, the summary proceedings are subject to the *lis pendens* exception.

A dilatory exception is a procedural device to delay the progress of the action, not defeat it. La. C.C.P. art. 923. The exception of improper cumulation of actions is a dilatory exception. La. C.C.P. art. 926(7).

Regarding an exception for improper cumulation of actions, La. C.C.P. art. 462 provides:

A plaintiff may cumulate against the same defendant two or more actions even though based on different grounds, if: (1) Each of the actions cumulated is within the jurisdiction of the court and is brought in the proper venue; and (2) All of the actions cumulated are mutually consistent and employ the same form of procedure.

An objection to unauthorized use of summary proceeding is a dilatory exception which must be pleaded prior to answer or is deemed waived. La. C.C.P. art. 926(3). There is nothing improper about the use of summary proceedings in an eviction matter. *Stoker v. Johnson*, 28,168 (La. App. 2 Cir. 4/3/96), 671 So. 2d 1207.

When two or more suits are pending in a Louisiana court or courts on the same transaction or occurrence, between the same parties in the same capacities, the defendant may have all but the first suit dismissed by filing the declinatory exception of lis pendens. La. C.C.P. art. 925A(3); *Wagoner v. Chevron USA, Inc.*, 48,119 (La. App. 2 Cir. 7/24/13), 121 So. 3d 727, writ denied, 13-2037 (La. 11/15/13), 126 So. 3d 470, and writ denied, 13-2041 (La. 11/15/13), 126 So. 3d 471, and writ denied, 13-2466 (La. 11/15/13), 126 So. 3d 473, and writ denied, 13-2272 (La. 11/15/13), 129 So. 3d 523. The doctrine of lis pendens prevents a plaintiff from litigating a second suit when the suits involve the same transaction or occurrence between the same parties in the same capacities. *Aisola v. La. Citizens Prop. Ins. Co.*, 14-1708

(La. 10/14/15), 180 So. 3d 269; *Peddy v. Lott Oil Co., Inc.*, 55,320 (La. App. 2 Cir. 11/15/23), 374 So. 3d 290.

The trial court's ruling on the exception of lis pendens presents a question of law and is therefore reviewed de novo. *Gamble v. Gamble*, 54,595 (La. App. 2 Cir. 1/18/23), 354 So. 3d 864; *Dave v. Witherspoon*, 20-0239 (La. App. 4 Cir. 11/4/20), 310 So. 3d 596. Moreover, because lis pendens does not address the merits of the dispute between the parties, the reviewing court considers the issue in the procedural and factual climate that exists at the time of review, rather than at the time of the trial court's ruling. *Chumley v. LaCour*, 54,499 (La. App. 2 Cir. 5/25/22), 339 So. 3d 769, writ denied, 22-01129 (La. 12/6/22), 350 So. 3d 871; *Matter of Commitment of Cole*, 18-1760 (La. App. 1 Cir. 4/17/19), 276 So. 3d 608.

Evidence may be introduced to support or controvert the declinatory exception raising the objection of lis pendens when the grounds for the exception do not appear from the petition. La. C.C.P. art 930. If no evidence is presented at trial, then the court must render its decision based on the facts alleged in the petition, with all allegations therein being accepted as true. *LaCoste v. Pendleton Methodist Hosp., L.L.C.*, 07-0008 (La. 9/5/07), 966 So. 2d 525.

Herein, the Defendants argue this matter should be dismissed because an ordinary proceeding seeking damages and determinations against numerous Defendants cannot be cumulated. However, our review of the record reveals the district court bifurcated the summary proceeding to evict and the ordinary proceeding for damages. The court further found that a summary eviction proceeding was proper because Louisiana's eviction statutes are intended to allow landowners to remove occupants efficiently,

and the Defendants named in the action were the only current occupants of the property and therefore the only parties subject to eviction. Moreover, based on the record, the Defendants failed to formally admit any evidence in support of their exception of *lis pendens* or to state how their ability to defend against eviction was prejudiced by the mere coexistence of the damages number under the same docket. We reject the totality of this argument, and we find no error in the district court's denial of the exceptions for the motions to evict.

Notice

The Defendants argue the district court erred in failing to strictly comply with the terms of La. C.C.P. art. 4701, *et seq.* According to the Defendants, the SUA contained its own "termination procedure," which displaces the summary eviction procedure, and the SUA termination provisions do not allow for immediate termination for nonpayment of rent.

La. C.C.P. art. 4701 provides with emphasis added:

When a lessee's *right of occupancy* has ceased because of the termination of the lease by expiration of its term, action by the lessor, nonpayment of rent, or for any other reason, and the lessor wishes to obtain possession of the premises, the lessor or his agent shall cause *written notice* to vacate the premises to be delivered to the lessee. The notice shall allow the lessee not less than five days from the date of its delivery to vacate the leased premises.

If the lease has no definite term, the notice required by law for its termination shall be considered as a notice to vacate under this Article. If the lease has a definite term, notice to vacate may be given not more than thirty days before the expiration of the term.

A lessee may waive the notice requirements of this Article by written waiver contained in the lease, in which case, upon termination of the lessee's right of occupancy for any reason, the lessor or his agent may immediately institute eviction proceedings in accordance with Chapter 2 of Title XI of the Louisiana Code of Civil Procedure.

La. C.C.P. art. 4702 provides with emphasis added:

When an *owner of immovable property wishes to evict the occupant* therefrom, after the purpose of the occupancy has ceased, the owner, or his agent, shall first cause a written notice to vacate the property to be delivered to the *occupant*. This notice shall allow the *occupant* five days from its delivery to vacate the premises.

La. C.C.P. art. 4703 provides with emphasis added:

If the premises are abandoned or closed, or if the whereabouts of the *lessee or occupant* is unknown, all notices, process, pleadings, and orders required to be delivered or served on the *lessee or occupant* under this Title may be attached to a door of the premises, and this shall have the same effect as delivery to, or personal service on, *the lessee or occupant*.

La. C.C.P. art. 4704 provides with emphasis added:

Unless the context clearly indicates otherwise, as used in this Title the following terms have the following meanings:

...

“Occupant” includes...any person occupying immovable property by permission or accommodation of the owner, former owner, or another occupant, except a mineral lessee, owner of a mineral servitude, or a lessee of the owner;

...

“Premises” includes the land and all buildings and improvements thereon leased by a tenant or possessed by an occupant.

In the event the lessor accepts rental payment after the notice to vacate has been given, the notice is vitiated and the tenant’s possession is maintained. *Fort Miro Subdivison P’ship v. Gix*, 53,591 (La. App. 2 Cir. 4/14/21), 316 So. 3d 189.

Here, the Plaintiff filed his motion for eviction proceedings on April 29, 2025. The record further shows that the Plaintiff filed a written notice to vacate with the Defendants’ registered agent on April 7, 2025, which was more than five days before the suit was filed. Additionally, the Plaintiff

testified that he notified the Defendant's field supervisor, J.D. Bailey, that rent was past due on two occasions in 2024, a fact unrefuted by the Defendants. Thus, our review of the record reveals that this argument has no merit.

Attorney Fees

In the final assignment of error, the Defendants allege that the district court erred in allowing and awarding attorney fees in the amount of \$50,220.00. They argue that the amount awarded was unreasonable, improper, and excessive, and any attorney fees awarded should be reduced only for work related to the eviction proceedings.

If the lessee or occupant fails to comply with the notice to vacate, the lessor or owner, or agent thereof, may cause the lessee or occupant to be cited summarily by a court of competent jurisdiction to show cause why he should not be ordered to deliver possession of the premises to the lessor or owner. La. C.C.P. art. 4731(A). The court may award costs and attorney fees to the prevailing party for actions brought pursuant to this Article. La. C.C.P. art. 4731(A)(3).

A trial court's award of attorney fees is reviewed using an abuse of discretion standard. *Covington v. McNeese State Univ.*, 12-2182 (La. 5/7/13), 118 So. 3d 351. In applying the standard, the role of the reviewing court is not to determine what it considers to be an appropriate award, but rather it is to review the exercise of discretion by the trier-of-fact. *Id.*

In applying La. C.C.P. art. 4731(A) to the case at hand, the record shows that the Defendant was still on the premises, ignored two separate notices to vacate, and removed the matter to federal court between receiving those notices. Because of the Defendant's actions, the Plaintiff sought

eviction and incurred attorney fees and costs in the process. At the eviction hearing, the Defendants presented no evidence to refute the Plaintiff's entitlement to possession of the property. Additionally, the Defendants made no argument that the fees awarded by the lower court were unreasonable. The Plaintiff is the "prevailing party" contemplated by the language in La. C.C.P. art. 4731(A)(3) and continues to incur costs and attorney fees related to this eviction. On review, we do not find that the trial court abused its discretion in awarding costs and attorney fees in the amount of \$50,200.00. However, although the Plaintiff requested additional attorney fees in his appeal brief, he did not request them pursuant to La. C.C.P. art. 2133; thus, an increase in the award of attorney's fees will not be granted.¹

CONCLUSION

For the reasons set forth above, the judgment of the trial court is hereby affirmed and additional attorney fees award denied.

AFFIRMED.

¹ In brief, the plaintiff/appellee argued that "this Court should increase the award of costs and attorney fees for the additional costs and attorney fees expended by [the plaintiff] for this appeal." However, the plaintiff did not file an answer to the appeal. However, an appellee who neither answers an appeal nor appeals from the trial court's judgment is not entitled to additional attorney fees for legal services rendered on appeal. La. C.C.P. art. 2133. Although a request for additional attorney fees is made in his appeal brief, the plaintiff did not correctly request them by answering this appeal. Thus, we will not increase his award for attorney fees incurred in the process of the appeal. See, *Fortenberry v. Evans*, 55,660 (La. App. 2 Cir. 5/22/24), 387 So. 3d 921; *Intelligent Mortg. & Consulting Servs., LLC v. Arbor Lending Grp., L.L.C.*, 23-1183 (La. App. 1 Cir. 10/29/24), 405 So. 3d 899, *writ denied*, 24-01446 (La. 2/19/25), 400 So. 3d 931.

PITMAN, C. J., dissents.

I dissent. I do not follow the majority's reasoning to affirm the trial court.