

DONALD L. ESSMEIER, DALTON
E. CRUSE AND JAMES SCHMIDT

: SECOND JUDICIAL DISTRICT COURT

VS. NO. 32,584

: PARISH OF JACKSON

TOWN OF JONESBORO,
HONORABLE LESLIE THOMPSON,
AS MAYOR AND INDIVIDUALLY,
HONORABLE LASTEVIC COTTONHAM,
AS TOWN COUNCILMAN AND
INDIVIDUALLY, HONORABLE DEVIN
FLOWERS, AS TOWN COUNCILMAN
AND INDIVIDUALLY, HONORABLE
CHARLA THOMPSON, AS TOWN
COUNCILWOMAN AND INDIVIDUALLY

: STATE OF LOUISIANA

FILED

MAR 27 2012

Laura Culpepper
LAURIE EPPER, D.Y. CLERK

MEMORANDUM IN OPPOSITION
TO DILATORY EXCEPTION OF PREMATURITY
AND NO CAUSE OF ACTION AND AFFIRMATIVE DEFENSE

MAY IT PLEASE THE COURT:

Defendants have filed a Dilatory Exception of Prematurity, a Peremptory Exception of No Cause of Action and an Affirmative Defense all based upon the incorrect assumption that there is a stay order or should be a stay order in effect.

Defendants state in their memorandum that the stay order signed on August 22, 2011 in connection with defendant's Application for Writs is still in effect. The writs have been denied. The Court of Appeal did not stay the proceedings when it denied the writs. The District Court has not stayed the proceedings after the denial. Therefore, there simply is no order staying the proceedings that is still in effect.

Our Second Circuit held in White vs. St. Elizabeth B.C. Bd. of Directors, 986 So.2d 202 (La. App. 2 Cir. 6/4/08) that prematurity of a cause of action is determined by the fact existing at the time the pleadings are filed. At the time that the pleadings were filed and up to the present date there is no stay order in effect.

The fact that defendants think that a stay order should be in effect has no legal relevance.

Defendants have cited no authority that because someone asks for a stay order from an Appellate Court that there can be no proceedings in the District Court while the application for a stay order is pending. An opposition has been filed in the Court of Appeal to defendants' motion for a stay order.

Defendants have cited no case to support their position. Neither have they cited any statute that supports their position. All they have cited is are *Louisiana Civil Code of Procedure Articles 926, 927 and 928*. Article 926 stated the objections that can be raised by a dilatory exception. Article 927 states the objections that can be raised by a peremptory exception. Article 928 states the time of pleading exceptions.

If all a person had to do was to state that the law allowed an exception of some nature to be filed, ever suit filed would be dismissed. Fortunately, that is not the case.

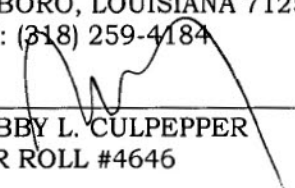
The pendency of a Motion for Stay with the Court of Appeal does not mean that there is any stay order in effect. Otherwise, in any case a person could file a motion for a stay order and the matter would be automatically stayed. That is not the law.

Defendants are required to allege something that brings the provisions of Louisiana Code of Civil Procedure into play. Again, the only allegation is that by some figment of the imagination the original stay order by the District Court that was issued in connection with the Application for Writs which was denied, is still in effect. Such is not the case.

Defendants' exceptions and affirmative defenses have no merit whatsoever and should be denied at the cost of defendants.

Respectfully submitted,

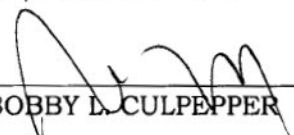
CULPEPPER & CARROLL, PLLC
ATTORNEYS AT LAW
525 EAST COURT AVENUE
JONESBORO, LOUISIANA 71251
PHONE: (318) 259-4184

BY: 
BOBBY L. CULPEPPER
BAR ROLL #4646

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been mailed, this date, to Mrs. Carol D. Powell-Lexing, Attorney at Law, 141 DeSiard Street, Suite 806, Monroe, Louisiana 71201 ~~and Mr. Louis Scott, Attorney at Law, 510 Pine Street, Monroe Louisiana 71210.~~

Jonesboro, Louisiana, this the 27th day of March, 2012.


BOBBY L. CULPEPPER