2010 WL 3533292

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

NOT DESIGNATED FOR PUBLICATION

Court of Appeal of Louisiana,
First Circuit.

Sheila VANDERBROOK Wife of/and Terry B. Trahan, Dolores DeLaune Wife of/and John B. Middleton, E. Ray Wilkes Jr., Anne Lester Wife of/and Robert R. Raposo, Sherie Landry Wife of/and Raymond C. Burkart Jr., and Stacy Miller Wife of/and Lance L. Engolia Sr.

v.

Christopher R. JEAN; Lee Road Development Company; Highland Lakes Development Corporation; Johnny F. Smith Truck and Dragline, Service Inc.; The Highlands Homeowners Association of St. Tammany Inc.; Palmers Inc.; Alternative Design/Build Group L.L.C.; North Lake Truck Center L.L.C.; Muller & Muller Attorneys at Law, A Limited Liability Company; Johnny F. Smith Testamentary Trust; Richard L. Muller; Silvia G. Muller; Janice Seal Smith Stumpf Individually and as Trustee of the Johnny F. Smith Testamentary Trust; Barney L. Core; Gary Salathe; Martin Murphy; David T. Glass; Wade Glass; Adrian Spell; Jodi McIntyre Wife of/ and Gregory “Scott” Bridges; Willis A. Palmer.

No. 2009 CA 1744. | Sept. 13, 2010.

Appealed from the Twenty-Second Judicial District Court, In and for the Parish of St. Tammany, State of Louisiana, Suit Number 2004-11723, Honorable William J. Burris, Presiding.

Attorneys and Law Firms

Raymond C. Burkart, Jr., Katherine O. Burkart, Covington, LA, for Plaintiffs/Appellants Sheila Vanderbrook, et al.

William J. Jones, Jr., Leland R. Gallaspy, Covington, LA, for Defendant/Appellee Lee Road Development.

Roger C. Linde, F. Forrester Willoz IV, Metairie, LA, for Defendants/Appellees Alternative Design/Build Group, L.L.C., Gary Salathe, & Martin Murphy.

Michael F. Weiner, Mark W. Frilot, Sandra Varnado, Mandeville, LA, for Defendants/Appellees Christopher R. Jean, Highland Lakes Development Corp., Johnny F. Smith Truck & Dragline Service, Inc., The Highlands Homeowners Association of St. Tammany, Inc., Johnny F. Smith Testamentary Trust, Janice Seal Smith Stumpf, and Barney L. Core.

Mitchell A. Palmer, Tom W. Thornhill, Slidell, LA, for Defendants/Appellees Palmers, Inc. and Willis A. Palmer.

Alan A. Zaunbrecher, Metairie, LA, for Defendants/ Appellees David Glass, Wade Glass, and Glass Contracting of St. Tammany, Inc.

Michael P. Mentz, Alayne R. Corcoran, Metairie, LA, for Defendants/Appellees Muller & Muller, L.L.C., Richard Muller, and Silvia Muller.

Adrian Spell, Bush, LA, Defendant/Appellee in proper person.

Lester F. Parks, Jr. Carole F. Parks Slidell, LA Defendants/ Appellees in proper person.

Jack E. Truitt, Nancy N. Butcher, Madisonville, LA, for Defendants/Appellees Jodi McIntyre, wife of/and Gregory “Scott” Bridges.

Before PARRO, GUIDRY, and HUGHES, JJ.

Opinion

GUIDRY, J.

***1** Plaintiffs, Sheila Vanderbrook, et al., appeal from a judgment of the trial court sustaining, in part, peremptory exceptions raising the objection of prescription filed by defendants, Richard Muller, Silvia Muller, and Muller & Muller, LLC (Muller defendants); Jodi McIntyre wife of/ and Gregory Bridges (Bridges defendants); and Palmers, Inc., and Willis A. Palmer (Palmer defendants), as to claims for damages raised in a cross-claim filed by defendant, The Highlands Homeowners Association of St. Tammany, Inc. (Highlands Homeowners Association). For the reasons that follow, we affirm and remand.

FACTS AND PROCEDURAL HISTORY

Plaintiffs, owners of immovable property and improvements in Highland Lakes Subdivision in St. Tammany Parish, filed

a lengthy petition on April 8, 2004, against a number of defendants seeking a declaratory judgment and damages as a result of the development, ownership, and construction of the lakes, earthen dams, spillways, and roadways of Highland Lakes Subdivision. In their petition, plaintiffs asserted claims against numerous defendants, including the Muller defendants, Bridges defendants, and Palmer defendants, for fraud, negligence, breach of duties, intentional acts, and respondeat superior. Plaintiffs also named the Highlands Homeowners Association as a defendant in the original suit.

Thereafter, plaintiffs filed a supplemental and amending petition to clarify their claims against the named defendants. [1] On June 14, 2007, plaintiffs filed a third supplemental and amending petition asserting a derivative action pursuant to La. C.C.P. art. 611 et seq. as immovable property owners in the Highland Lakes Subdivision and as members of the Highlands Homeowners Association. Plaintiffs subsequently filed a fourth supplemental and amending petition to clarify their derivative claims.

1 Plaintiffs amended their petition in response to a judgment of the trial court sustaining exceptions filed by several defendants raising the objections of vagueness and nonconformity of the petition.

On July 14, 2008, Highlands Homeowners Association filed a cross-claim against all other defendants, seeking damages, contribution and/or indemnification for any damages that Highlands Homeowners Association was liable for, reimbursement to Highlands Homeowners Association for repair costs, and a declaration of ownership of the roads, lakes, dams, and spillways in Highland Lakes Subdivision.

Thereafter, the Palmer defendants, Muller defendants, and Bridges defendants each filed exceptions raising the objection of prescription regarding the cross-claim. [2] Following a hearing on the exceptions, the trial court rendered judgment sustaining the exceptions in part, dismissing any and all tort claims presented in the cross-claim of Highlands Homeowners Association, but denying the exceptions in part as to the claim for contribution and/or indemnification.

2 Defendants Alternative Design/Build, LLC, Gary Salathe, and Martin Murphy also filed an exception raising the objection of prescription, which is the subject of a separate appeal decided this date in *Vanderbrook v. Jean*, 09-1746 (La.App. 1st Cir.9/10/10)(unpublished opinion).

Plaintiffs now appeal from this judgment. The Muller defendants and the Palmer defendants have filed motions to dismiss plaintiffs' appeal, asserting that the plaintiffs have no right to appeal from the trial court's judgment. Additionally, counsel for Willis A. Palmer has filed an exception raising the objections of no cause of action and no right of action, asserting that subsequent to the rendition of the trial court's judgment, Willis A. Palmer died.

DISCUSSION

Exception of No Right of Action and No Cause of Action

***2** The judgment sustaining in part the Palmer defendants' exception raising the objection of prescription was signed on March 5, 2009. On May 15, 2009, the trial court signed an order granting the plaintiffs' appeal. Thereafter, counsel for Willis A. Palmer filed, for the first time, an exception raising the objections of no cause of action and no right of action in this court, asserting that Willis A. Palmer died on March 21, 2009, and because the claims against him seek to establish his personal obligation to Highlands Homeowners Association for the alleged defects resulting from his participation as engineer and/or supervisor on the subdivision project made the basis of the Association's claim, such obligation is strictly personal under La. C.C. art. 1766 and abated on his death in accordance with La. C.C.P. art. 428. Accordingly, counsel argues that Highlands Homeowners Association no longer has a cause of action or right of action against Willis A. Palmer individually, and that the appeal should be dismissed.

Louisiana Code of Civil Procedure article 2163 provides, in pertinent part:

> The appellate court may consider the peremptory exception filed for the first time in that court, if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.

Counsel for Willis A. Palmer attached an affidavit of death, domicile, and heirship to the exception filed in this court; however, neither this affidavit, nor any other evidence of Willis A. Palmer's death appears in the record on appeal. An appellate court has no jurisdiction to receive new evidence, and cannot receive or consider any evidence outside of the record on appeal. *Lewis v. Jabbar*, 08-1051, p. 6 (La.App. 1st Cir.1/12/09), 5 So.3d 250, 255.

However, because the ground alleged as a basis for the exception did not arise until after the judgment was rendered in the district court, and because we cannot render a valid judgment in this matter until the exception is resolved or a proper person defendant-appellee is substituted for Willis A. Palmer, we remand this matter to the district court for consideration of Willis A. Palmer's exception raising the objections of no cause of action and no right of action. *See Smith v. State, Department of Transportation and Development*, 04-1317, p. 23 (La.3/11/05), 899 So.2d 516, 530 (*citing Lewis v. Lewis*, 155 La. 231, 99 So. 202 (1923) for the proposition that an appellate court may remand an exception of res judicata to the trial court because the grounds alleged for the exception did not come into existence until after the appeal had been lodged); *Rainey v. Entergy Gulf States, Inc.*, 01-2414, pp. 4-5 (La.App. 1st Cir.6/25/04), 885 So.2d 1193, 1197, *writs denied*, 04-1878 (La.11/15/04), 887 So.2d 478, and 04-1883 (La.11/15/04), 887 So.2d 479, and 04-1884 (La.11/15/04), 887 So.2d 479 (finding that the appellate court could not render a valid judgment in that case unless a proper person plaintiff-appellee was substituted for the decedent, because a judgment rendered for or against a dead person is a nullity).

Motion to Dismiss the Appeal

***3** The Muller defendants and the Palmer defendants also seek dismissal of the plaintiffs' appeal, asserting that the plaintiffs have no right to appeal from the district court's judgment sustaining in part the defendants' exceptions raising the objection of prescription as to the Highlands Homeowners Association's cross-claim.

An appeal is the exercise of the right of a party to have a judgment of a trial court revised, modified, set aside, or reversed by an appellate court. La. C.C.P. art.2082. It is not necessary that a person have a judgment directly against him in order to have the capability of appealing. Any party "aggrieved" by a judgment or who may be aggrieved has a right to appeal. *Bossier Bank & Trust Company v. Fryar*, 488 So.2d 428, 433 (La.App. 3rd Cir.1986). The object of an appeal is to give an aggrieved party recourse for the correction of a judgment, and such right is extended not only to the parties to the action in which the judgment is rendered, but also to a third-party when such party is allegedly aggrieved by the judgment. *ANR Pipeline Co. v. Louisiana Tax Commission*, 08-1148, p. 14 (La.App. 1st Cir.10/17/08), 997 So.2d 92, 101, *writ denied*, 09-0027 (La.3/6/09), 3 So.3d 484.

In support of their exception, the Muller defendants and the Palmer defendants assert that the plaintiffs have no interest in changing the judgment and have not been aggrieved by the district court's judgment because the Highlands Homeowners Association filed a motion in the district court to voluntarily dismiss its cross-claim, which was granted with prejudice. However, from our review of the record, Highlands Homeowners Association's motion to dismiss was filed on June 9, 2009, almost one month *after* the district court granted plaintiffs' order of appeal from the judgment sustaining in part the defendants' exception of prescription as to the Association's cross-claim.

Louisiana Code of Civil Procedure article 2088(A) provides that "[t]he jurisdiction of the trial court over all matters in the case reviewable under the appeal is divested, and that of the appellate court attaches, on the granting of the order of appeal and the timely filing of the appeal bond in the case of a suspensive appeal, or on the granting of the order of appeal, in the case of a devolutive appeal." Because the cross-claim was a matter in the case reviewable on appeal, the trial court did not have jurisdiction to grant the motion to dismiss the cross-claim. Accordingly, we vacate the order dismissing the cross-claim. Therefore, we find the Muller defendants' and the Palmer defendants' argument that the dismissal establishes that the plaintiffs have no interest in appealing the judgment sustaining, in part, their exceptions of prescription to be without merit.

Further, we find, based on the circumstances of this case, that the plaintiffs have an interest in appealing the district court's judgment and are aggrieved by that judgment. As stated above, the plaintiffs are individual homeowners in Highland Lakes Subdivision and are members of Highlands Homeowners Association. The ownership of the roads of Highland Lakes Subdivision is still an unresolved issue in the pending litigation.[3] Accordingly, because the Association's cross-claim has been dismissed, and because the plaintiffs' derivative action has already been attacked by other named defendants,[4] the individual plaintiffs may be left with no recourse if it is determined that the roads are owned by the Association. Therefore, we find that the plaintiffs have a legal right to appeal the district court's judgment and deny the Muller defendants' and the Palmer defendants' motion to dismiss the appeal.

3 David Glass, Wade Glass, Glass Contracting of St. Tammany, Inc., Alternative Design/Build Group, LLC, Gary Salathe, and Martin Murphy filed peremptory exceptions raising the objections of no cause of

action and no right of action as to the plaintiffs' claims. In reasons for judgment, the district court stated that the "roads are owned by the Highlands Homeowners Association." However, the plaintiffs and the Association in its cross-claim requested a declaratory judgment as to the ownership of the roads, which has not been granted or denied, and there has been no final judgment as to ownership.

4 By judgment dated December 30, 2008, the district court dismissed plaintiffs' derivative claims contained in their third supplemental and amending petition as they relate to the Glass defendants and the Alternative Design defendants. The plaintiffs appealed from this judgment, but this court found that the judgment was a partial final judgment without the proper designation as required by La. C.C.P. art. 1915(B)(1), dismissed the appeal, and remanded the matter to the trial court. *Vanderbrook v. Jean,* 09-0918 (La.App. 1st Cir.12/23/09)(unpublished opinion.)

Exceptions Raising the Objection of Prescription

***4** In the instant case, the plaintiffs filed their action on April 8, 2004, naming Highlands Homeowners Association as a defendant. The Highlands Homeowners Association filed a cross-claim against all other named defendants in the main demand on July 14, 2008, asserting virtually identical claims as those raised by the plaintiffs in the main demand, and seeking contribution and/or indemnification for the payment of all damages for which the Association may be liable. The Muller and Bridges defendants and Palmers, Inc. assert that because the cross-claim was filed four years after the main demand, it is prescribed pursuant to La. C.C.P. art. 1067.

Generally speaking, delictual actions are subject to a liberative prescription of one year pursuant to La. C.C. art. 3492. However, La. C.C.P. art. 1067 creates a limited exception for incidental demands. *See Reggio v. E.T.I.,* 07-1433, p. 7 (La.12/12/08), 15 So.3d 951, 956. Louisiana Code of Civil Procedure article 1067 provides:

> An incidental demand is not barred by prescription or peremption if it was not barred at the time the main demand was filed and is filed within ninety days of date of service of main demand or in the case of a third party defendant within ninety days from service of process of the third party demand.

A cross-claim is classified as an incidental demand by La. C.C.P. art. 1031. For purposes of the exception of prescription, we assume that Highlands Homeowners Association's cross-claim was not barred by prescription or peremption at the time the main demand was filed. [5] However, as stated above, the Association's cross-claim was not filed until July 14, 2008, over four years after service of the main demand. Accordingly, we find that the cross-claim is clearly prescribed on its face. *See Baldi v. Mid-American Indemnity Company,* 526 So.2d 281, 283 (La.App. 3rd Cir.), *writ denied,* 531 So.2d 276 (La.1988).

5 We note that the parties do not seem to dispute that the cross-claim was not barred by prescription or peremption at the time the main demand was filed. Rather, the Muller and Palmer defendants argue that the cross-claim is now prescribed because the Highlands Homeowners Association failed to file its cross-claim until nearly four years after the filing of the main demand, well outside the ninety-day grace period.

The plaintiffs assert that Article 1067 is not controlling in this matter because Article 1067 only applies if the cross-claim is otherwise prescribed at the time it is filed. Plaintiffs re-assert Highlands Homeowners Association's arguments, which were raised in the district court in opposition to the defendants' exceptions, that the Association's cross-claim was not prescribed at the time it was filed because prescription was interrupted against the other previously-named defendants pursuant to the holding in *Allstate Insurance Company v. Theriot,* 376 So.2d 950 (La.1979); that the timely filing of the main demand in a court of competent jurisdiction and venue on April 8, 2004, interrupted prescription as to all joint and solidary obligors; and that prescription was suspended under the doctrine of *contra non valentem* while the defendants controlled the board of directors of the Association. [6]

6 The Highlands Homeowners Association's claims against the Muller defendants arise from their alleged legal malpractice. Louisiana Revised Statute 9:5605(A) provides that "[n]o action for damages against an attorney ... whether based upon tort, or breach of contract, or otherwise, arising out of an engagement to provide legal services shall be brought unless filed in a court of competent jurisdiction and proper venue within one year from the date of the alleged act, omission, or neglect, or within one year from the date that the alleged act, omission, or neglect is discovered ...; however, even as to actions filed within one year from the date of such discovery, in all events such actions shall be filed at the latest within three years from the date of the alleged

> act, omission, or neglect." The one-year and three-year periods of limitation are peremptive periods within the meaning of La. C.C. art. 3458 and, in accordance with La. C.C. art. 3461, may not be renounced, interrupted, or suspended. La. R.S. 9:5605(B). Accordingly, because the Association's cross-claim was not filed until over *four years* after the filing of the main demand, it is clearly perempted under La. R.S. 9:5605, and plaintiffs' arguments regarding interruption and suspension are without merit with respect to the Muller defendants. *See Naghi v. Brener,* 08-2527 (La.6/26/09), 17 So.3d 919 (holding, in an action governed by La. R .S. 9:5605, that after the termination of the peremptive period the cause of action no longer exists and any right to assert the claim is destroyed; thus, there is nothing to which an amended or supplemental pleading filed thereafter can relate back.)

First, we find the argument that the supreme court's decision in *Allstate* applies to the instant matter to be misplaced. *Allstate* involved a third party intervening in an action, seeking personal injury damages arising out of the same accident giving rise to the main demand. The supreme court found that prescription was interrupted as to the subsequent claimant because he was closely connected in relationship and interest to the original plaintiff, and he entered the timely-filed suit to assert a claim based upon the same factual occurrence as that timely pleaded. *Allstate,* 376 So.2d at 953-954. A similar analysis has been followed when an amended petition seeks to add or substitute a plaintiff. *See Calbert v. Batiste,* 09-514, p. 6 (La.App. 3rd Cir.11/4/09), 23 So.3d 1031, 1035, *rev'd on other grounds,* 09-2647, 09-2646 (La.3/12/10), 29 So.3d 1240, 31 So.3d 332.

***5** However, in the instant case, Highlands Homeowners Association, a named defendant in the main demand, filed a cross-claim against all other previously named defendants, and was not entering the suit as a new or substituted party. Though the Association, after a change in board composition, in essence re-aligned itself with the plaintiffs in the main demand by asserting claims identical to those asserted by the plaintiffs in the derivative action, it does not change the fact that the Association had been a party to the action since April 8, 2004, and failed to timely assert any claim against the other named co-defendants. Accordingly, we find the rationale for applying the above analysis is inapplicable to the instant matter.

Further, we find plaintiffs' argument that the timely filing of the main demand interrupted prescription as to all joint and solidary obligors to be without merit when applied to another obligee. The interruption of prescription against one solidary obligor is effective against all solidary obligors and their heirs. La. C.C. art. 1799. Likewise, interruption of prescription against one joint tortfeasor is effective against all joint tortfeasors. La. C.C. art. 2324(C). Prescription is interrupted when the obligee commences an action against the obligor in a court of competent jurisdiction and venue, and an interruption of prescription resulting from the filing of such a suit continues as long as the suit is pending. La. C.C. arts. 3462 and 3463.

Plaintiffs contend that the filing of their main demand asserting that all named defendants were jointly and/or solidary liable interrupted prescription in favor of all claims between all the parties. However, we do not find that the above provisions provide that a suit filed by an obligee against all joint and solidary obligors interrupts prescription as to any claim brought by another oblige/co-obligor against other co-obligors who are joint or solidary tortfeasors. To read these provisions so broadly would extend the concept of interruption of prescription to the point that virtually all claims would be imprescriptable and would render La. C .C.P. art. 1067 meaningless. [7]

7 Plaintiffs also argue that the fundamental purpose of prescription statutes is to afford a defendant security of mind and affairs if no claim is made timely, to protect him from stale claims and the loss of non-preservation of relevant proof, and to protect him against lack of notification of a formal claim within the prescriptive period. *See Nini v. Sanford Brothers, Inc.,* 276 So.2d 262, 264 (La.1973); *Giroir v. South Louisiana Medical Center, Div. Of Hospitals,* 475 So.2d 1040, 1045 (La.1985). Accordingly, plaintiffs assert because they timely filed an action against the named defendants, who are the same defendants named in Highlands Homeowners Association's cross-claim, and because the claims of the plaintiffs and the Association are identical, that the fundamental purposes of prescription statutes are satisfied. However, we note that the cases applying this rationale all involve amendment of petitions to add plaintiffs or to substitute parties, or involve an intervention by a party and whether said intervention "relates back ." Accordingly, we find the above principles do not apply to the instant case, where a defendant originally named in the main demand files a cross-claim against other originally named co-defendants four years following the filing of the main demand.

Finally, plaintiffs assert that the Highlands Homeowners Association's cross-claim is not prescribed because

prescription was suspended under *contra non valentem* while the Association was controlled by defendant board members. The doctrine of contra non valentem provides that prescription does not run against one who is ignorant of the facts upon which his or her cause of action is based, and is an exception to the statutory prescriptive period where, in fact and for good cause, a plaintiff is unable to exercise his cause of action when it accrues. *Jackson v. Jefferson Parish Clerk of Court*, 07-963, p. 5 (La.App. 5th Cir.4/15/08), 981 So.2d 156, 160, *writ denied*, 08-1150 (La.10/31/08), 993 So.2d 219. The doctrine is applied in four situations, [8] but it is only the third situation, which provides that prescription is suspended when a defendant himself has done some act effectually to prevent plaintiff from availing himself of his cause of action, that plaintiffs contend applies in the instant case. *See Renfroe v. State, Department of Transportation and Development*, 01-1646, p. 9 (La.2/26/02), 809 So.2d 947, 953.

8 As stated by the supreme court in *Renfroe v. State Department of Transportation and Development*, 01-1646 (La.2002), 809 So.2d 947, 953, the four factual situations in which the doctrine of *contra non valentem* applies, so as to prevent the running of liberative prescription, are:

> (1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action;
> (2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting;
> (3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; or
> (4) where the cause of action is neither known nor reasonably knowable by the plaintiff even though plaintiffs ignorance is not induced by the defendant.

***6** According to plaintiffs, the Highlands Homeowners Association was unable to avail itself of its cause of action because the board of directors of the association was controlled by other individually named co-defendants. However, mere passivity on the part of the defendant board members in failing to pursue legal remedies available to the Association does not rise to the level of actively engaging in a course of conduct designed to prevent the Association from acting. *See Cyr v. Louisiana Intrastate Gas Corporation*, 273 So.2d 694, 697-698 (La.App. 1st Cir.1973). Further, neither the plaintiffs nor the Association have alleged that such inaction on the part of the defendant board members rises to the level of concealment, misrepresentation, fraud, or ill practices. *See Fontenot v. ABC Insurance Co.*, 95-1707, p. 5 (La.6/7/96), 674 So.2d 960, 963. Finally, as evidenced by the plaintiffs' own petitions, the individual homeowner members of the Association were not deprived of knowledge of the existence of the right. *See Cyr*, 273 So.2d at 698. Therefore, based on the circumstances of this case, and because the doctrine of *contra non valentem* applies only in exceptional circumstances and must be strictly construed, we find that *contra non valentem* does not apply to suspend the running of Highlands Homeowners Association's cross-claim. *See Ellender v. Goldking Production Co.*, 99-0069, p. 9 (La.App. 1 st Cir. 6/23/00), 775 So.2d 11, 17, *writ denied*, 00-2587 (La.2/16/01), 786 So.2d 96.

CONCLUSION

For the foregoing reasons, we remand this matter to the district court as to defendant, Willis A. Palmer, for consideration of the exception raising the objections of no cause of action and no right of action filed by counsel for the deceased Mr. Palmer. Additionally, we vacate the order dismissing the cross-claim and deny the Muller defendants' and the Palmer defendants' motions to dismiss the appeal. In all other respects, we affirm the judgment of the district court, sustaining, in part, the peremptory exceptions raising the objection of prescription and dismissing the Highlands Homeowners Association's tort claims as presented in its cross-claim against the defendants/appellees. All costs of this appeal are assessed to the plaintiffs/appellants.

MOTION TO DISMISS APPEAL DENIED; ORDER DISMISSING CROSS-CLAIM VACATED; JUDGMENT AFFIRMED AND REMANDED.

Parallel Citations

2009-1744 (La.App. 1 Cir. 9/13/10)

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