BLANCHE JENKINS, ET AL	NO. 16-CA-38
VERSUS	FIFTH CIRCUIT
WILLOW INCORPORATED., NATIONAL HOME INSURANCE COMPANY – A RISK RETENTION GROUP, ET AL	COURT OF APPEAL STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 748-666, DIVISION "D"
HONORABLE SCOTT U. SCHLEGEL, JUDGE PRESIDING

May 26, 2016

JUDGE G. GRAVOIS
JUDGE

Panel composed of Judges Jude G. Gravois,
Marc E. Johnson, and Stephen J. Windhorst

JOHNSON, J., CONCURS WITH REASONS

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JUDGMENT OF *LIS PENDENS* REVERSED; JUDGMENT OF *RES JUDICATA* AFFIRMED AS AMENDED

INTRODUCTION

Plaintiffs/appellants, Blanche Jenkins, *et al*, all homeowners in the Village Green Subdivision in Jefferson Parish, appeal two judgments: the first granting defendant Willow, Inc.'s ("Willow") exception of *lis pendens*, and the second granting defendant National Home Insurance Company's ("NHIC") exception of *res judicata*. For the following reasons, we reverse the judgment granting the exception of *lis pendens* in favor of Willow and remand the matter for further proceedings consistent with this opinion; and we amend the judgment granting the exception of *res judicata* in favor of NHIC to reflect that such dismissal is "with prejudice" and affirm as amended.

FACTS AND PROCEDURAL HISTORY

This suit, filed on April 15, 2015, arises out of the development of the Village Green Subdivision, a gated community on the Westbank of Jefferson Parish. The petition alleged that defendant Willow marketed the home sites to plaintiffs between the years 2001-2007, and that as a marketing tool, offered plaintiffs an "insurance policy," included in the purchase price of the homes, to

protect the homeowners against foundation and structural failures for ten years from the date of purchase, with the homeowners to be listed as the insureds under said policies. The petition further alleged that plaintiffs' homes began to suffer foundation and structural damage, and that previously on March 23, 2011, plaintiffs filed suit against Willow and NHIC in the suit entitled *Hawkins, et al v. Willow, Inc., et al*, No. 699-678 of the 24th Judicial District Court (the suit which forms the basis for the judgments granting the exceptions currently on appeal before this Court), to collect damages from defendants for their homes' structural and foundation damages.

In the *Hawkins* suit, plaintiffs sought to recover damages for their homes' structural and foundation damages under a home warranty program, the 2-10 Home Buyer's Warranty Program, which was provided by Willow to the homeowners upon their respective acts of sale and whose warranty obligations were insured by NHIC, a risk retention group.[1] Therein, defendants Willow and NHIC filed dilatory exceptions of prematurity, alleging that plaintiffs failed to follow the necessary requisites contained in the warranty program, which included the obligation to arbitrate any claims falling thereunder. The trial court granted defendants' exceptions of prematurity on September 22, 2011 and October 6, 2011, respectively. Defendant NHIC was dismissed from the suit by the September 22, 2011 judgment. The matter was stayed against Willow, pending resolution of the claims in arbitration.

Plaintiffs thereafter proceeded with arbitration in multiple flights with different arbitrators. The first flight of arbitrations found the home warranties in effect and enforceable, but found that plaintiffs failed to bear their burden of proof that the damages their homes experienced were covered foundation and structural

[1] In *Hawkins*, plaintiffs sued multiple defendants, including the Parish of Jefferson, and numerous "ABC" insurance company defendants who were not more specifically identified nor served.

damages as defined by the 2-10 home warranty program. Subsequent flights of arbitrations had similar results. The remaining plaintiffs refused to participate in further arbitration flights.

As evidenced by the record in the *Hawkins* suit,[2] on February 28, 2014 plaintiffs filed against both Willow and NHIC (despite NHIC having been dismissed from the suit in 2011) an "Expedited Motion for New Trial to Rescind Order for Forced Arbitration and Pursuant to LSA[-]R.S. 22:629A(2)," and an amended motion for a new trial on June 5, 2014, seeking to avoid further arbitrations by having the arbitration clause in the warranty program declared null and void, and asking the trial court to rescind the arbitration order because of newly discovered evidence. The basis for these motions was the alleged "confession of fraud" made by Willow's representative, B. K. Sneed, in the course of depositions taken in 2013 and 2014 during the arbitration process. Willow opposed the motions for a new trial. NHIC opposed the motions for a new trial by filing an exception of lack of jurisdiction, or alternatively, a motion to strike the pleadings against it, noting that it had been dismissed from the suit by the judgment dated September 22, 2011, which judgment was final because plaintiffs did not appeal the same. A hearing on the various motions and the exception was held on July 15, 2014. The trial court rendered judgment on July 24, 2014, sustaining NHIC's exception of lack of jurisdiction and denying plaintiffs' motions for a new trial. Plaintiffs appealed those judgments to this Court. In an opinion rendered on November 19, 2015,[3] this Court affirmed the trial court's rulings. This Court also noted that in plaintiffs' motion for a new trial, it appeared that they were attempting to raise the issue of allegedly newly discovered evidence of fraud in the

[2] At plaintiffs' request, the appellate record in this matter was supplemented with the appellate record in *Hawkins, et al v. Willow, Inc., et al*, 15-71 (La. App. 5 Cir. 11/19/15), 181 So.3d 210, *writ denied*, 15-2326 (La. 2/19/16).

[3] See footnote 2.

inducement, which could not properly be raised in a motion, only in a direct action. This Court noted that "jurisprudence dictates that Appellants' allegations must be brought in an action for nullity." Meanwhile, on April 15, 2015, while the *Hawkins* appeal was pending in this Court, plaintiffs filed the *Jenkins* suit, which is the subject of this appeal.

In the instant suit, plaintiffs alleged that it was not until the third deposition of Mr. Sneed, Willow's director, on April 15, 2014 in the course of the arbitrations, that plaintiffs learned or "remembered" that he had mispresented certain facts to them while he was marketing the development, prior to the home sales. Plaintiffs allege that Mr. Sneed had represented to them that he was an insurance agent for NHIC, and that they would be receiving an insurance policy "like a flood insurance policy" against any foundation and structural damage, with the homeowner as the named insured, but what they in fact received was a home warranty from Willow with NHIC insuring Willow's obligations to the homeowners. In their petition, plaintiffs alleged that these representations were fraudulent in the inducement for them to buy their homes, and that but for these misrepresentations, they would not have purchased their homes. In this suit, plaintiffs sought reformation of the home warranties into insurance policies, and access to the courts of the State rather than arbitration.

On May 13, 2015, Willow filed an exception of *lis pendens*, arguing that the aforementioned suit, *Keela Hawkins, et al v. Willow, Inc. et al*, No. 699-678 of the 24th Judicial District Court, was a previously filed and still pending action between the same parties in the same capacities and arising out of the same transaction and occurrences (the sale of their homes and subsequent structural damage), and seeking the same objects and purposes (recovery of damages from Willow for their homes' foundation damage). Plaintiffs filed an opposition to the exception,

arguing that *lis pendens* did not apply because the *Hawkins* suit had 22 defendants, whereas the instant suit had only four defendants, thus the two suits were not between the same parties, and further that NHIC was not a party to the *Hawkins* suit, having been dismissed from that matter on September 22, 2011. They further argued that the objects of the two suits were different, the first suit seeking damages under the home warranties and the second suit seeking damages for fraud and reformation of the home warranties into insurance policies.

On August 3, 2015, NHIC filed an exception of prematurity and a peremptory exception of *res judicata*. Therein, NHIC argued that the instant suit was premature, because the home warranty booklets provided to plaintiffs at the act of sale, pursuant to which plaintiffs sought relief, required plaintiffs to submit any and all claims arising under the warranties, including fraud in the inducement, to arbitration. Regarding *res judicata*, NHIC argued that the judgment of September 22, 2011 rendered in *Hawkins*, dismissing NHIC from the suit and ordering the remaining parties to submit *all* of their claims to arbitration, was long final and thus *res judicata*. NHIC also referred to the warranty booklets, which provided that the homeowners were required to bring the claims asserted in this action (breach of contract and fraud in the inducement) in the arbitration proceedings that had already occurred and which arbitration judgments were final and of *res judicata* effect.[4]

Following a hearing on August 24, 2015, the trial court ruled from the bench, granting Willow's exception of *lis pendens* and then granting NHIC's exception of *res judicata*. The court pretermitted consideration of NHIC's exception of prematurity. The court issued a written judgment on August 31, 2015 granting Willow's exception of *lis pendens* and dismissing plaintiffs' suit against

[4] The record contains evidence that some of the arbitration awards were confirmed by the district court.

Willow without prejudice. Thereafter, on September 1, 2015, the trial court issued a written judgment granting NHIC's exception of *res judicata* and dismissing plaintiffs' suit against NHIC without prejudice. Plaintiffs' timely appeal followed.

On appeal, plaintiffs first argue that based upon this Court's ruling in *Hawkins, et al v. Willow, Inc., et al*, they were entitled to file a petition for fraud, errors, and breach of agreement, and thus the trial court erred in dismissing their petition. They further argue that the trial court erred in granting defendants' exceptions and dismissing their case against defendants. NHIC argues that the judgment granting its peremptory exception of *res judicata* should have dismissed plaintiffs' case *with* prejudice, rather than without prejudice, and asks this Court to amend the judgment in that respect.

ANALYSIS

Appellants first argue that in light of this Court's previous opinion in the *Hawkins* suit, No. 15-CA-71, stating that their allegations of fraud must be brought in a direct action for nullity and not in a motion or summary proceeding, the district court erred in dismissing their petition in this case. Appellants argue that their petition is in conformity with *Salassi v. Salassi*, 08-510 (La. App. 5 Cir. 5/12/09), 13 So.3d 670, which this Court cited in its opinion in *Hawkins*. Appellants also argue in brief that *res judicata* and *lis pendens* cannot apply to fraud discovered and admitted in arbitrations, because the fraud allegations were not previously litigated, citing this Court's 2015 opinion in *Hawkins*.

Appellees, however, correctly note that this Court's opinion in *Hawkins* did not exempt appellants' second suit from any procedural defenses and exceptions that may be raised by a defendant in the normal course of litigation. The *Salassi* case cited by this Court in *Hawkins* does not hold that appellants' suit cannot be dismissed on procedural grounds, but merely gives the applicable law for the

nullity of contracts on the grounds of vices of consent. Accordingly, the fact that appellants' suit was dismissed is not, in itself, error *per se*.

Appellants argue generally that the trial court erred in granting NHIC's exception of *res judicata* and Willow's exception of *lis pendens*. They argue that they discovered various acts of fraud in the course of the arbitrations: specifically, that the vice president of Willow represented that the homeowners would be receiving insurance policies, rather than home warranties, against foundation damage. Appellants' brief catalogs the various alleged acts of fraud in the inducement committed by Willow and proclaims that prematurity, *res judicata*, and *lis pendens* could not have occurred because their petition was filed within five years of the "discovery" of the fraud, and that such matters had not previously been litigated.

LIS PENDENS

La. C.C.P. art. 531 governs *lis pendens* and provides:

> 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 excepting thereto as provided in Article 925. When the defendant does not so except, the plaintiff may continue the prosecution of any of the suits, but the first final judgment rendered shall be conclusive of all.

The test for ruling on an exception of *lis pendens* is to inquire whether a final judgment in the first suit would be *res judicata* in the subsequently filed suit. *Wells v. Std. Mortg. Corp.*, 02-1934 (La. App. 4 Cir. 7/09/03), 865 So.2d 112, 115, citing *Domingue v. ABC Corporation*, 96-1224 (La. App. 4 Cir. 6/26/96), 682 So.2d 246, 248. The exception of *lis pendens* has the same requirements as the exception of *res judicata* and is properly granted when the suits involve the same transaction or occurrence between the same parties in the same capacities. *Id.*

The first requirement for granting an exception of *lis pendens* is that there are two or more suits pending. A suit is considered pending for *lis pendens* purposes if it is being reviewed by an appellate court. *Id.*, citing *Glass v. Alton Ochsner Medical Foundation*, 02-0412 (La. App. 4 Cir. 11/6/02), 832 So.2d 403, 406. On August 31, 2015, the date of the written judgment granting Willow's exception of *lis pendens*, the *Hawkins* suit was pending on appeal in this Court. (This Court's judgment in *Hawkins* was rendered on November 19, 2015. The Supreme Court denied writs in that case on February 19, 2016.) Thus, at the time the trial court ruled, both suits were still pending.

The second requirement for granting *lis pendens* is that the suits involve the same transaction or occurrence. *Wells*, *supra*, citing *Hy-Octane Investments, Ltd. v. G&B Oil Products, Inc.*, 97-28 (La. App. 3 Cir. 10/29/97), 702 So.2d 1057, 1060, citing Comment (a) to La. R.S. 13:4231. The *Hawkins* case and the *Jenkins* case both arise out of the same transaction and occurrence: the sales of homes to defendants with the included warranty, the subsequent foundation damage to the homes, and the homeowners' seeking to hold Willow and NHIC responsible for compensating them for the damages. In each case, the issue is the application of the 2-10 home warranty contract. Thus, the two suits arise out of the same transaction and occurrence.

The third requirement for granting *lis pendens* is that the suits involve the same parties in the same capacities. *Wells*, *supra*. Identity of parties does not mean the parties must be the same physical or material parties; rather, they must appear in the suit in the same quality or capacity. *Wells*, citing *Duffy v. Si-Sifh Corp.*, 98-1400 (La. App. 4 Cir. 1/6/99), 726 So.2d 438, 443. The only requirement is that the parties be the same "in the legal sense of the word." *Id.* That requirement is met. In both cases, the plaintiffs are homeowners in Village

Green Subdivision who purchased homes from Willow and who seek recovery for their homes' structural and foundation damages. Willow and NHIC are defendants in both suits against whom plaintiffs seek recovery (though NHIC was dismissed from the first suit).

However, because *lis pendens* does not address the merits of the disputes between the parties, a reviewing court considers *lis pendens* in the procedural and factual climate that exists at the time of review, rather than at the time of the trial court judgment. *Brooks Well Servicing, Inc. v. Cudd Pressure Control, Inc.*, 34,796 (La. App. 2 Cir. 8/22/01), 796 So.2d 66, 68-69, citing *La. Cotton Ass'n Workers' Compensation Group Self-Insurance Fund v. Tri-Parish Gin. Co. Inc.*, 624 So.2d 461(La. App. 2nd Cir. 1993). A review of a grant of *lis pendens* requires this Court to examine not only whether the trial court was correct when the exception was granted, but whether the exception is still correct at the time of appeal. *Id.*

The *Hawkins* case ceased to be pending on appellate review on February 19, 2016, as evidenced by the Supreme Court's writ denial (No. 2015-C-2326, La. 2/19/16). Ordinarily appellate courts may not receive new evidence, but an exception to the rule has been recognized where facts subsequent to the trial are not disputed and admitted. *Id.*, citing *Stonecipher v. Mitchell*, 26,575 (La. App. 2 Cir. 5/10/95), 655 So.2d 1381. In the instant case, it is not necessary for this Court to receive new evidence concerning the status of the *Hawkins* case. This Court may take judicial notice, as per La. C.E. art. 201, of the *Hawkins* appeal because it was pending in this Court. Additionally, appellants supplemented the record in this case with the record of the *Hawkins* case without objection. Accordingly, at the time of our appellate review, the first grounds for the granting of the exception of *lis pendens* has been removed: *i.e.*, the *Hawkins* suit is no longer pending.

Therefore, we must reverse the grant of the exception of *lis pendens* as it relates to defendant Willow, and remand the matter for proceedings consistent with this opinion.

RES JUDICATA

Appellants argue generally that *res judicata* cannot apply to this suit because the issue of fraud in the inducement was not litigated in the *Hawkins* suit or in the arbitrations. An examination of the law on *res judicata* shows that the trial court did not err in granting defendant NHIC's exception and again dismissing the suit against it.

As the Supreme Court recently stated in *Chauvin v. Exxon Mobil Corp.*, 14-0808 (La. 12/09/14), 158 So.3d 761, 765:

> Under La. Rev. Stat. 13:4231, a second action is precluded when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. *Burguieres v. Pollingue*, 02-1385, pp. 6-8 (La. 2/25/03), 843 So.2d 1049, 1052-53; see also *Chevron U.S.A., Inc. v. State*, 07-2469, pp. 10-11 (La. 9/8/08), 993 So.2d 187, 194. Since the 1990 amendment to the res judicata statute, "the chief inquiry is whether the second action asserts a cause of action which arises out of the transaction or occurrence that was the subject matter of the first action." *Id.* (citing *Avenue Plaza, L.L.C. v. Falgoust*, 96-0173, p. 6 (La. 7/2/96), 676 So.2d 1077, 1080, and La. Rev. Stat. 13:4231 cmt. a (1990)).

The purpose of the change in the doctrine of *res judicata* was to require the plaintiff to seek all relief and to assert all rights that arise out of the same transaction or occurrence, in so doing promoting the purpose of judicial economy and fairness. *Hy-Octane Investments, Ltd. v. G&B Oil Products, Inc.*, *supra*.

As noted above, the *Hawkins* suit is now final and the judgment is valid. The parties are the same[5] and appear in the same capacities. Both suits arise out of the same transaction or occurrence that was the subject matter of the same litigation.

Appellants also argue that the cause of action asserted in this suit, the action for nullity of the home warranties because of alleged fraud in the inducement, did not exist at the time of the previous judgments ordering the matters to arbitration, because the allegations of fraud were not discovered until the deposition of Mr. Sneed of Willow in April of 2014. However, our review of the records in both cases shows this assertion to be without merit. The various applicable warranty booklets were entered into evidence, and explain quite plainly that the home warranties were not insurance policies, nor were the homeowners "insureds" thereunder. The booklets also defined the damages that would be covered under the warranty. There was testimony and evidence that the homeowners signed the warranty booklets at the acts of sale acknowledging that they had read the provisions therein. Therefore, the homeowners would have been alerted to the difference between what Mr. Sneed had allegedly represented to them prior to the acts of sale and what they were actually receiving, no later than the date of their respective acts of sale.

Also, as the trial court noted, the aforementioned warranty booklets provide that all claims, including claims of misrepresentation or fraud in the inducement, must be brought in arbitration proceedings. The trial court's judgment of September 22, 2011, granting NHIC's exception of prematurity, dismissing NHIC from the case, and ordering "all claims be submitted to arbitration," is long final.

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[5] Appellants argued in the trial court that inclusion of 22 "ABC" insurance companies in the *Hawkins* suit that were not sued in the instant case defeats the "identity of parties" requirement. However, under the circumstances, we disagree. It does not appear that those 22 parties were further identified or in fact served, and thus they did not appear.

Appellants failed to bring these claims in the arbitrations that were ordered in 2011, though the evidence shows that appellants had facts and information relative to the alleged fraud by at least that time, if not earlier. Accordingly, the fact that the fraud in the inducement was not actually litigated does not defeat NHIC's exception of *res judicata*, and we find no error in the trial court's granting of that exception.

NHIC argues that the trial court erred in rendering the judgment on the exception of *res judicata* without prejudice.

As stated in La. R.S. 13:4231, which defines the terms of *res judicata*, if the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action. In *Springer v. Nannie O'Neal Senior Apts.*, 14-1125 (La. App. 3 Cir. 4/01/15), 162 So.3d 710, 715, the court held that although La. C.C.P. art. 934 did not explicitly say that a dismissal pursuant to the grant of a peremptory exception should be with prejudice, peremptory exceptions are intended to preclude a right of action. In that case, the court amended a judgment granting an exception of *res judicata* to reflect that such dismissal was "with prejudice."

Under La. R.S. 13:4231 and La. C.C.P. art. 934, therefore, a dismissal of an action pursuant to the grant of a peremptory exception of *res judicata* should be "with prejudice." It was legal error for the trial court judgment granting the peremptory exception to be "without prejudice." Pursuant to La. C.C.P. art. 2164, we amend the judgment to state that the dismissal of NHIC on the grounds of *res judicata* is "with prejudice."[6]

[6] In *Springer*, the grant of the exception of *res judicata* was silent regarding the "prejudice." The appellee answered the appeal to request that the judgment be amended to reflect that it was "with prejudice." In the instant case, NHIC did not answer the appeal but raised the issue in brief. Usually, a party who desires that the judgment be

CONCLUSION

For the foregoing reasons, the judgment granting the exception of *lis pendens* in favor of Willow is reversed, and the matter is remanded for further proceedings consistent with this opinion; and the judgment granting the exception of *res judicata* in favor of NHIC is amended to reflect that such dismissal is "with prejudice," and as amended, is affirmed.

JUDGMENT OF *LIS PENDENS* REVERSED; JUDGMENT OF *RES JUDICATA* AFFIRMED AS AMENDED

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modified or revised must appeal or answer the appeal as per La. C.C.P. art. 2133. However, the court in *Springer* also noted that La. C.C.P. art. 2164 gave it the authority to render any judgment that was just, legal, and proper on the record.

BLANCHE JENKINS, LISA HENDERSON, MARY S. HARRIS, TROY D. BANKS, NICKI AND ANISE GARNIER, KITAMI PARKER JOHNSON, KEELA HAWKINS, ANNA VU, JUAN JONES, IKE AND LATOYA STERLING, KEVIN HILL, MARVIN AND KAREN WILLIAMS, LONG NGYUEN, CHARLES JACKSON, DESIREE J. JONES, TOYA BAPTISTE AND ELSIE JOHNSON, NGOC HUYNH, DARNELL LEE, ROCHON BARTHELEMY, TIFFANY BARNES, GEORGE WALKER, JR., ARSHAD AZIZ TAHIR, CRYSTAL FAULKNER, CAROL L. BARNES, ZACHARY WASHINGTON, EBERT JOACHIN, JONAS ESCARMENT, DEVON AND SANDRA RICHARDSON, DELTON AND JANICE BURRIS, JOSEPH WILSON, TRACY AND CARYL HATFIELD, DEXTER AND SHERLINE VARMALL, IRVIN A. JOSEPH, ERIC L. AVANT, CHARLES COLEMAN, JOSE D. VASQUEZ, SOIRILE PIERRE, RICKEY LEE, PRENTISS MARTIN, THEODORE AND RUTH SMITH, LARRY AND LANELL GUILFORD, MONICA SMALLWOOD, CLARA OCHOA, JIHAD S. KATTOUM, BELLAL A. KATTOUM, ALLISON WEBER, RALPH AND GWENDOLYN MORRIS, DERRICK HOUSTON, GERARD WALKER, TROY AND CARLETTA BROWN, PETER AND DEL MOSBY, JAMES MILAZZO, DANIEL T. BROWN, III, SHANDRA BANKS, GAYLE M. POLITE, KENNETH MENDEZ, QLLE VAN LE, AUGUST JOHNSON, III, DAVID B. COLLINS, NGHIA NGUYEN, NGHIA AND HANG NGUYEN, LIONEL AND CHARLENE SIMMS., JR., AURELIA SENTMORE, WENDI LAGASSE, ASYECHA ANDERSON, JIMMIE AND TERMEKA MCGOWANE, REYNELLE CELESTAINE, EUNICE SYLVEST, J. GUERRIER, DEBRA COLAR-HUGHES, DWIGHT AND BRENDA PAYNE, SR., TERRENCE JAMES, ULYSSES A. BARNES, BRIAN AND GAYLE STANSBURY, DONALD R.

NO. 16-CA-38

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

FISHER, DINH X. NGUYEN, TIFFANY NGUYEN, QUOC NGUYEN, VU XUAN NGUYEN, LOC XUAN NGUYEN, CLEAVON WILLIAMS, MONICA T. CORDIER, HOWARD AND SHARON IRVING, GREGORY AND ANITA GUY, SR., PHIL PATRICK WALKER, HUDA KHELIK, CANDY ROGERS, DAMON ADAMS, NHAN H. LUONG, NLIU PHUONG NGUYEN, MICANOR CAMILLE, ROBERT NARCISSE, KEITH AND SHANNON TARANTO, MICHAEL AND DARAH JONES, GILBERTO AND ALMA FRANCO, LISA JEFFERSON, DARRIL PROUT, JR., CONRAD WYRE, WARREN AND HENRIETTA DUPRE, JR., KEVIN AND JAMIE BARNES, TARA RANDLE, CELINE FANG, CHUEN TSANG, JAMES B N DAO, STEPHEN TRAN, JOHNNY AND DIANE WALKER, PHAT TRAN, JENNIFER LE, EDWARD AND CHRISTIE SAPP, CATHY TONI CHASE, NICOLE JEFFERSON, MOHAMMED AMIN, HERBERT WATLER, JULIUS AND MICHELLE MYERS, HONG HUYEN NGUYEN, RAEDOTHAM ABDELMGEED, THU DO, NORWOOD AND VALERIA BORNE, MARLON AND TOYA BORDELON, LAWRENCE TERREL, III, THEODIS AND BRENDA QUARLES, JOHN KEMP, DEREK MEYERS, EARL AND AMELIA DONALD, CHRISTOPHER AND JENNIFER PUGH, GARRY AND KAYE ROLLAND, EMILIO AND DAYSI CRESPO, KAREN LOCKWOOD, DAMOSTHENIS MODRIAGA, CHARLES AND PAMELA ARBUTHNOT, REGINALD ALLEN, JR., DANA THOMAS, WANDA BERGERON, RIGOBERTO AND ALBA RENDON, S. N. MURTHY, JOSHUA AND KRISTA LAWRENCE, MICHELLE BARTHOLOMEW, CORY P. SIMONEAUX, BARBARA WEARY, FITZPATRICK S. NEDD, VAN MAY LE, JEANNE BROCKS, EARL AND JESSICA ROBIN, JR., SHOLIAN FREEMAN, GARY AND SHARON POLEATE, THOMAS AND RHONA DRIGHT,

CYNTHIA A. BUSH, RONALD YOST, MY LE, KENT SMITH, LUCCES SATAILLE, THAM DO, DUKE NOVICK, DINH CHU, SABRINA SMITH, JOSHUA DARENSBURG, MARIA SCHAEFER, ASHLEY KEITH, ROBERT AND JOMARIE STEWART, REGINALD AND LISA SMITH, BINH T. DIEU, DAVID AND PAMELA KINBERGER, JON L. SMITH, SHANA AND SHELVA DAVIS, TERRY GADDIS, JR., JULIE S. FIRSTLEY, NIRMILA P. MANSINGHANI, DARRELL AND SHANELLE SULLIVAN, OAI TU TRAN, JARVIS, M. JONES, TYRONE AND STEPHANIE MYLES, TUNG NGUYEN, AUGUSTAVE MOISE, JASON POPLIN, RONALD AND SONJI SKIPPER, DAVID AND DEMETRIA QUINN, RONALD AND RONDALYN BEVERLY, SAED AND DEBORAH ABUNASER, ALTON ROCHE, RAQUIA COMPASS, HANA JABBAR, COREY MITCHELL, THIET NGUYEN, MILTON AND GERMAINE CARTER, KRISTA MOORE, CHARLES AND KYALYNSEIA HARRISON, III, FELICIA WILEY, TODD AND HEATHER ROYER, JIMMI NG, ABDEL ABDEL, DAVID AND JACQUETTA WRIGHT, KIP AND TWANA SMITH, RICHARD YESNACH, JR., ROSE THONG, DARLENE IRVING, TRUONG XUAN DINH, CHANDA CAMESE, MICHAEL CUMMINGS, SHARI RODGERS, CLARENCE JACKSON, LEBARON FISHER, JOSE AND JUANA PEREZ, VINCENT NGUYEN, LINH DO, INEZ WILLIAMS, CANDIDA VERAS, WENDY JUSTO, KISHORE AND KAVITA MANSUKHANI, ADAM AND AUDREY PROUT, DONALD SIPP, TUNG PHAN, BICH NGO, TRACY COLEMAN, JANICE MICHELLE WALKER, THUY LINH LE, STEVEN AND MARY ANDRY, JONATHAN SHIRLEY, JAHMAL AND JOANN TILLMAN, CHRISTOPHER AND TRICHINA WILLIAMS, TIFFANY BARTHELEMY AND CHRISTOPHER FLETCHER, TINA JONES, ANTHONY AND KALISA SYNIGAL, KIMBERLY

THAI, AND WILLIE AND CHERLYN SMITH, JR., AND KENDRICK AND TOSHIBA ALLEN, MICHAEL AND CYNTHIA WALK, HORACE AND BARBARA WASHINGTON, RIKKI PARKER, GERALYNN CORTES, CARLOS R. MUNOZ, CHRISTINE CHAMPAGNE, VERNON AND JENNIFER BUSH, WILSON JAJONTE, ANNA M. COLLINS AND TOMMIE AND STEPHANIE JONES

VERSUS

WILLOW INC., NATIONAL HOME INS. CO., A RISK RETENTION GROUP, ABC INS. CO. AND DEF INS. CO.

JOHNSON, J., CONCURS WITH REASONS

I agree with the portion of the opinion that reverses the judgment of *lis pendens*. While I agree that the judgment of *res judicata* should be affirmed as amended, I disagree with that portion of the analysis that discusses the evidence and knowledge of the homeowners, as I find that discussion to be dicta and has no jurisprudential value.

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **Uniform Rules - Court of Appeal, Rule 2-20** THIS DAY **MAY 26, 2016** TO THE TRIAL JUDGE, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CHERYL Q. LANDRIEU
CLERK OF COURT

16-CA-38

E-NOTIFIED
JAY H. KERN

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