Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-516

CHEEMA LANDMARK, L.L.C.

versus

RUBY XI, L.L.C. AND NADIA ESMAIL

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 812-397, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

April 22, 2026

TIMOTHY S. MARCEL

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Timothy S. Marcel

REVERSED; REMANDED

TSM
FHW
SJW

COUNSEL FOR PLAINTIFF/APPELLANT,
CHEEMA LANDMARK, LLC

Timothy R. Richardson
Leonard L. Levenson

COUNSEL FOR DEFENDANT/APPELLEE,
RUBY XI, LLC & NADIA ESMAIL

William D. Aaron, Jr.
Dominic J. Gianna
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MARCEL, J.

In this case arising from the enforcement of a lease agreement brought by the property owner, plaintiff Cheema Landmark, LLC appeals a July 21, 2025 judgment of the trial court granting a peremptory exception of no right of action filed by defendants Ruby XI, LLC and Nadia Esmail. For the following reasons, we reverse the judgment of the trial court.

BACKGROUND

On October 9, 2012, defendant Ruby entered into a lease agreement with Airport Hotel Holdings, Ltd, the owner of a commercial property located at 1021 Airline Drive in Kenner, Louisiana, for the purposes of operating an IHOP restaurant on the first floor of the property, at which the "Days Inn New Orleans Airport" was also located. The lease commenced on November 1, 2012 with a termination date of October 19, 2033. Nadia Esmail signed as guarantor of the lease. On October 17, 2017, following purchase of the commercial property from Airport Hotel Holdings, Cheema Landmark, LLC became owner of the property at 1021 Airline Drive and successor to the lease agreement. Sometime in June of 2020, Ruby ceased making rent payments to Cheema Landmark.

On November 23, 2020, Cheema Landmark filed a petition for breach of lease, damages, and attorney fees against Ruby and Ms. Esmail. On January 19, 2021, defendants filed an answer with affirmative defenses wherein they denied plaintiff's allegations and asserted demands in reconvention against Cheema Landmark for breach of the same lease agreement and damages.

The parties proceeded to litigate the case for many years. On April 22, 2025, a trial on the merits of plaintiff's and defendants' claims occurred, at which time the court heard testimony from six witnesses and received into evidence dozens of exhibits. At the end of the proceedings, the court requested that both sides submit post-trial memoranda due by the end of day on May 23, 2025.

Between the close of evidence and the deadline for filing post-trial memoranda, defendants filed peremptory exceptions of no cause of action and no right of action on May 22, 2025, based on testimony and evidence submitted at the April 22, 2025 trial. The hearing on defendants' exception was held on July 15, 2025, at which time plaintiff argued that the peremptory exception of no right of action should not be considered because it was not timely filed. Nevertheless, the trial court proceeded with a hearing on the peremptory exception of no right of action, and on July 21, 2025, rendered judgment granting defendants' exception of no right of action. Plaintiff's timely appeal followed.

On appeal, Cheema Landmark argues that the trial court erred in granting the exception of no right of action (1) because the action was untimely filed, and (2) the evidence presented, including the lease agreement, shows that Cheema Landmark has a right to pursue its claims against defendants for breach of the lease agreement. We consider these assignments of error in our discussion below.

DISCUSSION

La. C.C.P. Art. 927 provides for the peremptory exception of no right of action, or no interest in the plaintiff to institute the suit, which is an exception that may be brought by the defendant, the trial court, or the appellate court on its own motion. The determination of whether a plaintiff has a right of action is a question of law, which the appellate court reviews *de novo*. *Khoobehi Properties, LLC v. Baronne Dev. No. 2, L.L.C.*, 16-506, p. 7 (La. App. 5 Cir. 3/29/17), 216 So.3d 287, 296, *writ denied*, 2017-0893 (La. 9/29/17), 227 So.3d 288. The exception of no right of action does not raise questions of the plaintiff's ability to prevail on the merits or whether the defendant may have a valid defense, but whether the plaintiff has a "real and actual interest" in the action. *Petition for Nullification of Donation Cotaya*, 22-539, p. 12 (La. App. 5 Cir. 5/31/23), 367 So.3d 806, 816. The

peremptory exception may be pleaded at any stage of the proceedings in the trial court before the case is submitted for a decision. La. C.C.P. art. 928.

We address first whether the peremptory exception was timely filed. As noted, the Code of Civil Procedure allows for the peremptory exception to be pleaded at any stage of the proceeding in the trial court prior to the submission of the case for a decision. The transcript of the trial on April 22, 2025 indicates that the trial judge instructed the parties to submit post-trial memoranda and also recommended the parties to engage in mediation during that time. Under the circumstances presented in this case, we find that the peremptory exception was timely filed before the submission of the case for decision.

The primary basis of defendants' argument on the exception of no right of action is that they never interacted with Cheema Landmark, LLC ("Cheema Landmark") in its capacity as landlord, but rather with Cheema Hotel Group, LLC ("Hotel Group"), a management company set up by the owners of Cheema Landmark to manage the commercial property. Rents were paid to Hotel Group, and all communications concerning the property were between defendants and Hotel Group.

While they acknowledged that there had never been an assignment of the lease agreement from Cheema Landmark to Hotel Group, defendants argued that the original lease between Cheema Landmark and defendants was "mutually abrogated" by the parties and a new "novated" oral month-to-month lease arose between Hotel Group and defendants.[1] In his oral reasons for judgment at the July 15, 2025 hearing on the exception, the trial court agreed with this argument and found that, as a matter of law, Hotel Group was the landlord and lessor of the property.

[1] We observe the inconsistency of this argument with defendants' claims in their demand in reconvention, which are against Cheema Landmark for the breach of the original lease agreement.

On appeal, Cheema Landmark argues that it never transferred, sold, or assigned the lease agreement and that Hotel Group is simply a third party authorized by Cheema Landmark to collect the rent as is permitted by the terms of the lease agreement. Appellant argues further that the lease agreement prohibits modification of its terms, including by conduct of the parties, unless the modification is in writing.

A written contract is the law between the parties, and the parties will be held to full performance of the obligations flowing from their contract. *Shargian v. Power Plus Cleaning Sols., Inc.*, 24-131, p. 3 (La. App. 5 Cir. 10/30/24), 398 So.3d 1272, 1276. The party asserting that an obligation has been modified must prove by a preponderance of the evidence facts or acts giving rise to the modification. Novation is the extinguishment of an existing obligation by the substitution of a new one. La. C.C. art. 1879. The intention to extinguish the original obligation must be clear and unequivocal; novation may not be presumed. La. C.C. art. 1880. Novation takes place when, by agreement of the parties, a new performance is substituted for that previously owed, or a new cause is substituted for that of the original obligation. La. C.C. art. 1881. Mere modification of an obligation, made without intention to extinguish it, does not affect a novation. *Id*.

On *de novo* review, we find that the trial court erred in finding novation of the original lease agreement. The evidence in the record does not show any clear and unequivocal intention on the part of Cheema Landmark to extinguish the original lease agreement and substitute a new one, but rather that Cheema Landmark had authorized Hotel Group to collect rents and manage the property pursuant to the terms of the lease agreement that expressly permits much. We find that Cheema Landmark, as undisputed owner of the property at 1021 Airline Drive, has a real and actual interest in pursuing its claims for breach of the lease agreement for the property against the lessee defendants.

Accordingly, the July 21, 2025 judgment granting defendants' peremptory exception of no right of action is reversed, and this case is remanded to the trial court for further proceedings consistent with our decision herein.

REVERSED; REMANDED

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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 2-16.4 AND 2-16.5** THIS DAY **APRIL 22, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-CA-516

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)
LEONARD L. LEVENSON (APPELLANT)
TIMOTHY R. RICHARDSON (APPELLANT)
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