Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-453

BELLA AND ASSOCIATES, LLC

versus

JUNIUS CHAUVIN

ON APPLICATION FOR SUPERVISORY REVIEW FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 847-181, DIVISION "K"
HONORABLE ELLEN SHIRER KOVACH, JUDGE PRESIDING

November 04, 2026

JUDE G. GRAVOIS

JUDGE

Panel composed of Judges Jude G. Gravois,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT GRANTED; JUDGMENT REVERSED; SUMMARY JUDGMENT GRANTED; RECONVENTIONAL DEMAND DISMISSED; MATTER REMANDED

JGG
JJM
SUS

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

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BELLA AND ASSOCIATES, LLC

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JUNIUS CHAUVIN

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GRAVOIS, J.

Relator/defendant-in-reconvention, Bella & Associates, LLC, seeks this Court's supervisory review of the trial court's September 15, 2026 judgment which denied Bella's motion for summary judgment on the reconventional demand filed against it by defendant/plaintiff-in-reconvention, Junius Chauvin. Bella claims that discovery sanctions issued against Mr. Chauvin, which include a prohibition against him from testifying at trial, prohibit him from submitting his own affidavit in opposition to Bella's motion for summary judgment, and thus makes it impossible for him to prove the multiple allegations he makes against Bella in his reconventional demand. Bella argues herein that the trial court erred when it failed to rule upon Bella's timely objection to Mr. Chauvin's affidavit. Therefore, Bella seeks summary judgment dismissing Mr. Chauvin's reconventional demand. For the following reasons, we grant the writ, reverse the judgment denying Bella's motion for summary judgment as to Mr. Chauvin's reconventional demand against Bella, grant Bella's motion for summary judgment as to Mr. Chauvin's reconventional demand against Bella, dismiss Mr. Chauvin's reconventional demand against Bella with prejudice, and remand the matter to the trial court for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

By way of background, Bella's suit against Mr. Chauvin is a petition to enforce a lien and for breach of contract and related claims.[1] Bella performed home repairs for Mr. Chauvin following Hurricane Ida. After the repairs were completed, there remained an outstanding partial balance on the contract—the total contract was for approximately $89,500, with the balance due on the contract allegedly being approximately $32,700.[2]

Mr. Chauvin later filed an amended answer and reconventional demand against Bella, alleging that Bella committed fraud, negligent misrepresentation, breach of contract, claim in warranty, and

[1] The original petition is not contained in the writ application.

[2] The writ application indicates that in his answer, Mr. Chauvin apologized and said he was waiting on insurance payments.

detrimental reliance. As the suit progressed, Mr. Chauvin was found in contempt of court and sanctioned for discovery violations (for failing to respond to discovery timely and also failing to appear for his duly noticed deposition), which sanctions include being prohibited from testifying at trial and being prohibited from introducing any additional documents or other evidence responsive to Bella's discovery requests that were not produced to Bella on or before January 21, 2026 to support his claims against Bella and his defenses in this proceeding. The crux of Bella's argument in its motion for summary judgment is that the discovery sanctions issued against Mr. Chauvin make it impossible for him to prove the multiple allegations made by him against Bella in his reconventional demand. Bella made a timely objection to Mr. Chauvin's affidavit that was attached to his opposition to Bella's motion for summary judgment. Bella argues that the trial court erred in denying its motion for summary judgment without first ruling on its objection to Mr. Chauvin's affidavit submitted in support of his opposition to Bella's motion for summary judgment.

LAW AND ANALYSIS

"After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(A)(3). "The burden of proof rests with the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law." La. C.C.P. art. 966(D)(1).

Appellate courts review summary judgments *de novo* using the same criteria as the trial courts to determine whether summary judgment is appropriate. *Lapuyade v. Rawbar, Inc.*, 18-474 (La. App. 5 Cir. 12/27/18), 263 So.3d 508, 511, *writ denied*, 19-315 (La. 4/15/19), 267 So.3d 1126. Therefore, appellate courts must ask the same questions as the district court: whether there is any genuine issue of material fact, and whether mover is entitled to judgment as a matter of law. *Id*. at 512.

Bella's motion for summary judgment and the attachments thereto established that Mr. Chauvin is prohibited from testifying at the trial of this matter, and is prohibited from introducing any additional documents or other evidence responsive to Bella's discovery requests that were not produced to Bella on or before January 21, 2026 to support his claims against Bella and his defenses in this proceeding. Accordingly, the burden shifted to Mr. Chauvin to produce factual support for the allegations made in his reconventional demand against Bella.

The only documents that may be filed or referenced in support of or in opposition to a motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, certified copies of public documents or public records, certified copies of insurance policies, authentic acts, private acts duly acknowledged, promissory notes and assignments thereof, written stipulations, and admissions. La. C.C.P. art. 966(A)(4)(a).

The requirement of La. C.C.P. art. 967 that "affidavits shall be made on personal knowledge" has been strictly enforced; it is insufficient for an affiant to merely declare that he has "personal knowledge" of a certain fact. The affidavit must affirmatively establish that the affiant is competent to testify to the matters stated by a factual averment showing how he came by such knowledge. *Asi Fed. Credit Union v. Certain Underwriters at Lloyd's of London Syndicate 1414 Subscribing to Pol'y FINFR1503374*, 18-164, (La. App. 5 Cir. 11/7/18), 259 So.3d 552, 560, citing *Midland Funding, LLC v. Trahan,* 12-562 (La. App. 5 Cir. 2/21/13), 110 So.3d 1154, 1157. "Personal

knowledge" means something the witness actually saw or heard, as distinguished from what he learned from some other source. *Id.* The purpose of the "personal knowledge" requirement is to limit the affidavit to facts which the affiant saw, heard, or perceived with his own senses. *Id.* Portions of affidavits not based on personal knowledge of the affiant should not be considered by the trial court in deciding a motion for summary judgment. *Id.*

The court shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment, but shall not consider any document that is excluded pursuant to a timely-filed objection. Any objection to a document shall be raised in a timely-filed opposition or reply memorandum. The court shall consider all objections prior to rendering judgment. The court shall specifically state on the record or in writing whether the court sustains or overrules the objections raised. La. C.C.P. art. 966(D)(2).

Upon *de novo* review, we conclude that the trial court erred in failing to rule on Bella's timely objection to Mr. Chauvin's affidavit (and its attachments) that was attached to his opposition to Bella's motion for summary judgment. Bella's objection to the affidavit has merit. Mr. Chauvin's affidavit contained his testimony that would be inadmissible at the trial of this matter as a result of the discovery sanctions issued against him. Furthermore, Mr. Chauvin also attests therein to matters not within his personal knowledge. We thus conclude that under the particular facts and circumstances of this case, Mr. Chauvin's affidavit is not competent or admissible evidence in opposition to Bella's motion for summary judgment and should not have been considered by the trial court in assessing the merits of Bella's motion for summary judgment.

Without the affidavit, and its attachments, we conclude that Mr. Chauvin did not meet his burden of proof to produce factual support sufficient to establish the existence of a genuine issue of material fact regarding his reconventional demand against Bella or that Bella is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1).

Accordingly, the trial court erred in denying Bella's motion for summary judgment.

CONCLUSION AND DECREE

For the foregoing reasons, this writ application is granted, the judgment denying Bella & Associates, LLC's motion for summary judgment as to Mr. Chauvin's reconventional demand against Bella is reversed, Bella's motion for summary judgment as to Mr. Chauvin's reconventional demand against Bella is granted, Mr. Chauvin's reconventional demand against Bella is dismissed with prejudice, and the matter is remanded to the trial court for further proceedings.

WRIT GRANTED; JUDGMENT REVERSED; SUMMARY JUDGMENT GRANTED; RECONVENTIONAL DEMAND DISMISSED; MATTER REMANDED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES

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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 **NOVEMBER 4, 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

26-C-453

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE ELLEN SHIRER KOVACH (DISTRICT JUDGE)
ALBERT J. NICAUD (RELATOR)
SHERMIN S. KHAN (RESPONDENT)
BRET D. GUEPET, JR. (RELATOR)
ELEANOR L. SCHUTTE (RELATOR)

MAILED
NO ATTORNEYS WERE MAILED