

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-574

CITIBANK, N.A.

VERSUS

RICHARD H. SIMPSON AND CHRISTINE SIMPSON A/K/A CHRISTINE WILLEY SIMPSON

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 833-108, DIVISION "E"
HONORABLE FRANK A. BRINDISI, JUDGE PRESIDING

May 27, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Jude G. Gravois, and John J. Molaison, Jr.

AFFIRMED

JJM
FHW
JGG

TRUE COPY



JALISA WALKER
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
CITIBANK, N.A.

Melissa S. Gutierrez Alonso

COUNSEL FOR DEFENDANT/APPELLANT,
RICHARD SIMPSON

Regel L. Bisso

MOLAISON, J.

In this action to collect on a defaulted mortgage, the appellant seeks review of the trial court's judgment that granted summary judgment in favor of the mortgage holder. For the following reasons, after a *de novo* review, we find no error in the trial court's ruling.

Procedural history

On September 16, 2022, the appellee, Citibank, N.A. ("Citibank"), filed a Petition To Enforce Security Interest By Ordinary Process at the 24th Judicial District Court against the appellant, Richard Simpson,¹ alleging that he had defaulted on a \$247,000.00 home equity line of credit secured by a February 13, 2007 mortgage on property located at 67 Lisa Avenue in Kenner.² Citibank confirmed an *in rem* default judgment against Mr. Simpson on June 26, 2023. Citibank then filed a motion to vacate the judgment after learning that Mrs. Simpson had died. On December 19, 2023, Citibank amended its original petition to reflect that Mr. Simpson was being sued both in his individual capacity as well as an heir of Mrs. Simpson. Mr. Simpson answered the amended petition on February 12, 2024. On October 2, 2024, Citibank filed a motion for summary judgment against Mr. Simpson.³ Mr. Simpson opposed the motion for summary judgment on June 10, 2025. After the court held a trial on the motion on August 21, 2025, the trial court granted Citibank's summary judgment on September 8, 2025. The trial court issued its written reasons on October 1, 2025, and this timely appeal followed.

¹ Mr. Simpson's deceased wife, Christine Simpson, was also named in the original petition.

² Exhibits to the petition included: a copy of the home equity line of credit agreement and disclosure signed by Richard and Christine Simpson dated February 13, 2007; a copy of the home equity line of credit mortgage dated February 13, 2007; a notice of reinscription of mortgage dated August 26, 2022; and an affidavit of military service.

³ Attached to the motion for summary judgment were: Exhibit "A," the original home equity line of credit agreement and disclosure filed of record on 09/16/2022; Exhibit "B," a certified copy of the act of mortgage recorded as Instrument No. 10711166, filed of record on 09/16/2022; Exhibit "C," the Notice of Reinscription of Mortgage recorded as Instrument No. 12243648, filed of record on 09/16/2022; Exhibit "D," the affidavit of Citibank, N.A. establishing the amount due and interest rate; Exhibit "E," a copy of a judgment of Possession in the Succession of Christine Willey Simpson, filed of record on 12/19/2023; and Exhibit "F," an affidavit as to Military Service.

Assignments of error

Mr. Simpson assigns four errors on appeal:⁴

1. The Court erred in granting summary judgment to Citibank, N.A.
2. The Court erred in failing to find a genuine issue of material fact.
3. The Court erred in finding that appellant's affidavit contained no contrary facts but conclusions.
4. The court erred in failing to follow the dictates of CCP Article 966 D and not placing the burden of proof on mover, Citibank.

Law and analysis

Appellate courts review the granting of summary judgment *de novo* using the same criteria governing the trial court's consideration of whether summary judgment is appropriate. *Gutierrez v. State Farm Fire & Cas. Ins. Co.*, 13-341 (La. App. 5 Cir. 10/30/13), 128 So.3d 509, 511. A motion for summary judgment serves as a procedural device that allows the court to avoid a full-scale trial when no genuine issue of material fact exists, and the court favors and designs it to secure the just, speedy, and inexpensive determination of every action. *Village Shopping Ctr. P'ship v. Kimble Dev., LLC*, 18-740 (La. App. 5 Cir. 4/24/19), 271 So.3d 376, 380. La. C.C.P. art. 966(A)(3) provides that "[a]fter 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(D)(1) provides that the mover bears the burden of proof, unless the mover does not bear the burden of proof at trial on the issue before the court. In that case,

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.

⁴ Because the assignments of error are so closely related, they will be considered together.

La. C.C. P. art. 966(D)(1). A fact is material if it potentially insures or precludes recovery, affects a litigant's ultimate success, or determines the outcome of the legal dispute. *Hines v. Garrett*, 04-806 (La. 6/25/04), 876 So.2d 764, 765-66.

A genuine issue is one about which reasonable persons could disagree. If reasonable persons could reach only one conclusion, the court does not need to hold a trial on that issue and should grant summary judgment. *Id.* Any decision about the propriety of granting the motion must reference the substantive law applicable to the case. Only in the context of the applicable substantive law can parties ascertain issues of material fact. *Johnson v. Folse*, 07-1031 (La. App. 5 Cir. 5/27/08), 986 So.2d 110, 114, *writ denied*, 08-1377 (La. 9/26/08), 992 So.2d 991.

Mr. Simpson largely does not dispute the facts upon which Citibank's action relies. He acknowledges that he and his wife borrowed funds from Citibank, resulting in a mortgage on his Kenner property that he ultimately could not pay. At trial and on appeal, however, Mr. Simpson argued that Citibank miscalculated the principal balance that he owes.

Alleged amount owed in default

In its original petition, Citibank demanded the following:

- (a) principal of \$183,120.73 with interest thereon at 3.00% per annum from October 07, 2021, until paid; (b) all expenses incurred in enforcing the home equity line of credit agreement and disclosure and mortgage including reasonable attorney's fees; (c) if/as applicable, such other or additional amounts incurred or advanced for taxes, insurance premiums, special assessments, repairs to and/or maintenance of the property, for the protection, preservation, repair and recovery of the property, for the protection and preservation of the lien of the mortgage, for the protection and preservation of the mortgagee's interest thereunder, and other amounts provided by the mortgage and applicable law, such as late charges, escrow advances for the payment of taxes and insurance, corporate advances, property appraisals, inspection fees, prior attorney fees and expenses, abstract and title charges, NSF charges, attorney fees and expenses, and other charges which plaintiff is permitted to prove by verified petition, verified supplemental petition, or affidavit filed or submitted before distribution by the sheriff of the proceeds of the judicial sale

herein; and (d) all law charges, fees and expenses incurred in connection or relating to this proceeding including without limitation sheriff's commission, sheriff's costs, court costs all as permitted by the home equity line of credit agreement and disclosure or mortgage being enforced by this proceeding and...

Citibank attached as Exhibit "D" to its motion for summary judgment the affidavit of Lauren Benning, a Vice President For Document Execution for Cenlar FSB, the Servicer for Citibank. The affidavit states, in relevant part:

As of August 15, 2024 The following amounts are due and owing under the Home Equity Line of Credit Agreement and Disclosure: (a) principal of \$183,120.73 and deferred principal balance of \$19,589.16 with interest of \$43,205.80 through August 15, 2024 and thereon at variable rates, until paid; (b) the following amounts accrued through August 15, 2004: late charges of \$364.44, property preservation of \$145.00, property-appraisals of \$1,365.00, insurance in the amount of \$41,469.52, and any such additional amounts accruing thereafter through the date of sale; (c) a credit in the amount of (\$1,721.15), (d) all expenses incurred in enforcing the Home Equity Line of Credit Agreement and Disclosure and mortgage including reasonable attorney's fees as provided for by the Home Equity Line of Credit Agreement and Disclosure and mortgage, (e) all law charges, costs, fees and expenses including sheriff's commission.

Opposition to the motion for summary judgment

In his opposition to Citibank's motion, Mr. Simpson offered his own affidavit, in which he argued that genuine issues of material fact remain as to the amounts he owes, which preclude summary judgment:

While in its Motion for Summary Judgment Citibank claims the principal balance owed by Simpson is \$183,120.73, in discovery responses Citibank states that the principal balance is \$202,709.89. Thus, Citibank's own figures contradict themselves and put the principal balance into dispute.

. . .

Simpson does indeed contest many issues of material fact, in addition to the principal balance due. While the dispute as to principal balance alone is sufficient to defeat Citibank's motion, Simpson's affidavit also disputes the amount for insurance. Simpson claims it is \$10,705.00, rather than the \$41,469.52 claimed by Lauren Benning in her affidavit.

. . .

These amounts are speculative in the sense that Citibank seeks monetary damages in its motion, but offers no evidence whatsoever as to what specific amounts are actually being claimed. Citibank cannot

legally claim that it is entitled to "additional amounts", "all expenses", "reasonable attorney's fees" and "all law charges, costs, fees and expenses" without specifying what these amounts are.

On appeal, Mr. Simpson repeats his claims about a contradiction in what the principal balance is; he disputes the amount for insurance, asserting that it is \$10,705.00, rather than \$41,469.52. In addition, Mr. Simpson contends that Citibank has not carried its burden of proof for additional amounts it claims it owes.

Conclusion

While Mr. Simpson contends that a contradiction exists between two amounts that Citibank claims as the principal balance due, we find the record clearly shows that the total balance of \$202,709.89 results from adding the deferred principal balance of \$19,589.16 to \$183,120.73. This assignment lacks merit.

Mr. Simpson also argues that Citibank cannot claim additional monetary damages in its motion without proving specific amounts.⁵ However, the Louisiana Legislature provides for this practice under the recently enacted La. C.C.P. art. 3721(B), which reads:

B. In any ordinary or executory proceeding to enforce a promissory note or other debt instrument combined with a mortgage or other security device, the judgment or order of executory process granted may include any amounts which accrue after the rendition of the judgment or order, including until the collateral is sold by judicial process pursuant to the provisions of the promissory note, debt interest, or security device, including, without limitation, obligations to reimburse advances for taxes and insurance, inspection or other fees provided for by contract, reasonable attorney fees, and court costs. The provisions of this Article shall be enforceable notwithstanding any other provision of law requiring that a judgment or order specify a definite amount.

⁵ We note that the case relied upon to support this conclusion, *Sec. Nat. Partners, Ltd. P'ship v. Baxley*, 37,747 (La. App. 2 Cir. 10/29/03), 859 So.2d 890, was decided well before the enactment of La. C.C.P. art. 3721(B), which became effective on August 1, 2025.

Accordingly, we find no error in the trial court's judgment that awarded Citibank:

(d) all expenses incurred in enforcing the Home Equity Line of Credit Agreement and Disclosure and mortgage including reasonable attorney's fees as provided for by the Home Equity Line of Credit Agreement and Disclosure and mortgage, (e) all law charges, costs, fees and expenses including sheriff's commission.

Finally, we will address Mr. Simpson's claim that a genuine issue of material fact exists regarding the amount of insurance policy premiums that Mr. Simpson owes to Citibank. As noted above, the affidavit of Lauren Benning sets forth the various amounts that Mr. Simpson owes on this note, including \$41,469.52 for insurance premiums, based upon her personal knowledge and belief and upon her review of Citibank's business records. On the affidavit alone, Citibank bore its burden of proof regarding the premiums. *See Wells Fargo Home Mortg. v. Celestin*, 08-691 (La. App. 5 Cir. 1/27/09), 8 So.3d 634, 639.

In his affidavit opposing the motion for summary judgment, Mr. Simpson contends that as the owner of an insurance agency, he has "expertise in the area of homeowners and flood insurance policies." He next states that he reviewed the affidavit of Lauren Benning and disagreed with her calculations. Referring to a few documents that he included as an exhibit to his opposition, Mr. Simpson concludes that "[t]hrough his own calculations, [he] attests that the actual amount owed for insurance is \$10,705.00, not the \$41,469.52 alleged by Citibank." The affidavit does not provide a full mathematical explanation for how Mr. Simpson arrived at the \$10,705.00 amount.

As part of his opposition to Citibank's motion, Mr. Simpson attached a copy of its responses to his interrogatories. In interrogatory number 6, Mr. Simpson requested that Citibank "[i]dentify each policy of insurance which you force placed or otherwise acquired..." In turn, Citibank attached copies of "lender placed policies" to its answer. A document titled "Payoff balance" indicates that the amount for "Taxes and/or Insurance" good through May 20, 2025, was

\$47,449.52.⁶ Exhibit “C” consists of several cancellation notices from American Security Insurance Company for the property at 67 Lisa Avenue. The first references a policy that American Security Insurance Company issued on October 26, 2019, through October 26, 2020, for a total premium amount of \$3,176.00. A second cancellation notice refers to a policy with American Security Insurance Company in effect from October 26, 2020, through October 26, 2021, for a total premium of \$3,142.00. A cancellation for a third policy refers to an American Security Insurance Company policy that lasted from October 26, 2021, through October 26, 2022, for a premium cost of \$2,838.00. We note that none of the American documents have authentication. We have consistently held that exhibits, which parties file as unsworn and unauthenticated attachments to an opposition to a motion for summary judgment, do not serve as permissible supporting documents in opposition to the motion for summary judgment. *Thibodeaux v. Allstate Ins. Co.*, 19-458 (La. App. 5 Cir. 3/20/20), 293 So.3d 797, 803, *writ denied sub nom. Thibodeaux v. Allstate Ins. Co.*, 20-515 (La. 6/22/20), 297 So.3d 762.

In *Larson v. XYZ Insurance Co.*, 16-745 (La. 5/3/17), 226 So.3d 412, 416-17, the Louisiana Supreme Court opined:

When a motion for summary judgment is made and supported as provided in La. C.C.P. art. 967, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in La. C.C.P. art. 967, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be rendered against him. La. C.C.P. art. 967(B); *see also Dejoie v. Medley*, 2008-2223 (La. 5/5/09), 9 So.3d 826, 832.

Based on our *de novo* review of the record regarding the issue of insurance premiums, we find that the summary judgment is appropriate. Based on the evidence, we find that Mr. Simpson did not establish that a genuine issue of fact

⁶ This document is identified in the record as “Exhibit B.”

exists after Citibank established the amount of insurance premiums due through Lauren Benning's affidavit.

Decree

For the reasons stated, we affirm the trial court's order granting summary judgment in favor of Citibank.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, 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 **MAY 27, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-574

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE FRANK A. BRINDISI (DISTRICT JUDGE)

ASHLEY E. MORRIS (APPELLEE)

MELISSA S. GUTIERREZ ALONSO
(APPELLEE)

REGEL L. BISSO (APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED