

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-476

IDELL WOODS ARNAUD, ET UX.

versus

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF
CHILDREN AND FAMILY SERVICES, ET AL.

IN RE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
FRANK A. BRINDISI, DIVISION "E", No. 872,741

TRUE COPY

October 13, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Scott U. Schlegel

WRIT DENIED

The relator, the Louisiana Department of Environmental Quality (LDEQ), seeks review of the trial court's September 8, 2026 judgment denying its exception of no cause of action. We deny this writ application for the following reasons.

On February 5, 2026, the plaintiffs, Idell and Lester Arnaud, filed suit against several defendants, including LDEQ, alleging that Idell contracted lung cancer because of her exposure to hazardous conditions at her workplace located in the Harvey State Office Building (Harvey Building). The plaintiffs allege that LDEQ is "responsible for environmental regulation, testing, oversight, and remediation of hazardous substances within the State of Louisiana." They further allege that the Harvey Building sustained hurricane damage in August 2021 and

that asbestos was detected in the standing water on the first floor of the building. According to the plaintiffs, the defendants, including LDEQ, failed to warn, remediate, and remove the employees from this exposure, and the defendants excluded Idell from any meetings or communications regarding the environmental hazards in the building. The defendants later relocated employees to a different office building, which the plaintiffs allege acknowledges that the Harvey Building was unsafe. The plaintiffs additionally allege that the defendants, including LDEQ, failed to properly inspect and remediate asbestos hazards, failed to warn employees of known dangers, allowed continued occupancy of an unsafe building, failed to implement adequate environmental controls, and concealed or delayed disclosure of hazardous conditions. The plaintiffs contend that the defendants' acts and omissions were the legal and proximate cause of their damages.

The plaintiffs further allege that the Harvey Building was a "sick building," meaning "a structure in which occupants experience acute or chronic health effects linked to time spent in the building, without a single immediately identifiable cause, but associated with environmental contamination, inadequate remediation, and unsafe indoor conditions." Plaintiffs claim the water intrusion, flooding, and moisture retention in the Harvey Building created conditions "conducive to the release and spread of hazardous substances, including asbestos fibers, mold, and other airborne contaminants." They allege Idell inhaled these contaminants. They allege the defendants, including LDEQ, failed to "properly contain, remediate, or abate these hazardous conditions and failed to implement adequate engineering controls, air monitoring, or clearance testing prior to allowing continued occupancy." They claim the repeated and prolonged inhalation exposure to toxic substances resulted in "respiratory symptoms, pulmonary abnormalities, and serious disease."

LDEQ filed exceptions of vagueness and failure to state a cause of action. The September 8, 2026 judgment denied both exceptions. In this writ application, LDEQ addresses only the exception of no cause of action.

The purpose of the peremptory exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy for the facts alleged in the petition. *5301 Jefferson Hwy, L.L.C. v. A. Maloney Moving & Storage, Inc.*, 23-211 (La. App. 5 Cir. 5/29/24), 392 So.3d 337, 348.

The exception raises a question of law, and the appellate court conducts a *de novo* review of a trial court's ruling based solely on the sufficiency of the petition. *Id.*

This exception is triable on the face of the pleadings, and we must accept the well-pleaded facts in the petition as true to resolve issues raised by the exception. *Par. of Jefferson v. Bankers Ins. Co.*, 11-590 (La. App. 5 Cir. 2/28/12), 88 So.3d 1082, 1085, *writ denied*, 12-691 (La. 5/4/12), 88 So.3d 466. Parties cannot introduce evidence to support or controvert an exception of no cause of action. *Id.* A plaintiff need not plead the theory of recovery in his petition; however, mere conclusions unsupported by facts will not set forth a cause of action. *Id.*

A court can consider only the petition, any amendments to the petition, and any documents attached to the petition in deciding an exception of no cause of action. *Welch v. United Med. Healthwest-New Orleans, L.L.C.*, 21-684 (La. App. 5 Cir. 8/24/22), 348 So.3d 216, 221. The question is whether, on the face of the petition, accepting all allegations as true, the petition states a valid cause of action for relief. *Am. Rebel Arms, L.L.C. v. New Orleans Hamburger & Seafood Co.*, 15-599 (La. App. 5 Cir. 2/24/16), 186 So.3d 1220, 1222. We do not consider the likelihood that the plaintiff will prevail at trial or that the defendant has a valid defense. *5301 Jefferson Hwy, L.L.C.*, 392 So.3d at 349. The trial of the exception is solely on the face of the pleadings, and the court may not go beyond the petition

to the case's merits. *Wood v. Omni Bancshares, Inc.*, 10-216 c/w 10-567 (La. App. 5 Cir. 4/26/11), 69 So.3d 475, 480.

In ruling on an exception of no cause of action, the pertinent inquiry is whether, when viewed in the light most favorable to the plaintiff and with every doubt resolved in favor of the plaintiff, the petition states any valid cause of action for relief. *Terrebonne Par. Consol. Gov't v. Duval, Funderburk, Sundbery, Richard & Watkins, APLC*, 21-0578 (La. App. 1 Cir. 2/18/22), 340 So.3d 1099, 1105, *writ denied*, 22-470 (La. 5/10/22), 3337 So.3d 910. We must give every reasonable interpretation to the language in the petition to maintain its sufficiency and allow the plaintiff to present evidence at trial. *Id.*

In its exception, LDEQ admits that it is the primary state agency concerned with environmental protection and regulation. The exception focuses primarily on the allegations concerning mold, with LDEQ arguing "the regulation of mold growth within a building and the impact on employees within the building is not something that DEQ regulates or has authority over." LDEQ further argues that to "maintain an action against DEQ based on allegations of mold growth within a building where Mrs. Arnaud worked, Plaintiffs need to plead sufficient facts to establish a duty on the part of DEQ to her." LDEQ admits that it does "regulate some aspects of asbestos in indoor air." LDEQ concludes that it has no "duty in tort to a third party allegedly injured by someone DEQ regulated."

On *de novo* review, we find that LDEQ's arguments addressing the merits of the allegations are misplaced. Because the exception of no cause of action raises a question of law based solely on the sufficiency of the petition, an exception of no cause of action should be granted only when it appears the petitioner cannot prove any set of facts which would entitle him to relief. Whether the plaintiff can successfully prove that the defendant is liable under the applicable laws in the case is a matter of proof that goes to the merits of the plaintiffs' claims. *State ex rel.*

Tureau v. BEPCO, L.P., 21-0856 (La. 10/21/22), 351 So.3d 297, 310-11. The merits of a claim are to be determined after findings of fact, upon a motion for summary judgment, or a trial on the merits; the plaintiff's ability to prevail on the merits, or whether the defendant has a valid defense are not appropriate considerations on an exception of no cause of action. *Id.*

Gretna, Louisiana, this 13th day of October, 2026.

JJM
MEJ
SUS

SUSAN M. CHEARDY
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



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETN, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/13/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-476

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Frank A. Brindisi (DISTRICT JUDGE)
Kathy A. Rito (Respondent)
Stephen L. Miles (Respondent)

Elizabeth B. Murrill (Relator)
Sidney W. Degan, III (Respondent)
Suzette P. Bagneris (Respondent)
Patrick B. McIntire (Relator)
Keith A. Kornman (Respondent)
Daniel J. Phillips (Relator)
Michael P. Ciaccio (Respondent)

MAILED

Thomas A. Porteous (Respondent)
Attorney at Law
1100 Poydras Street
Suite 3300
New Orleans, LA 70163

Bobby J. Delise (Respondent)
Jeannette M. Delise Spegele (Respondent)
Attorney at Law
5190 Canal Boulevard
Suite 103
New Orleans, LA 70124

Emile A. Bagneris, III (Respondent)
Attorney at Law
1929 Jackson Avenue
New Orleans, LA 70113

Lezly L. Petrovich (Respondent)
Attorney at Law
Aaron & Gianna
400 Poydras Street
Suite 2600
New Orleans, LA 70130

Jena W. Smith (Respondent)
Attorney at Law
400 Poydras Street
Suite 2600
New Orleans, LA 70130