

# Fifth Circuit Court of Appeal State of Louisiana

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No. 26-C-30

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DAVID LAVARINE AND CARLA LAVARINE

*versus*

MAC CONSTRUCTION, LLC AND STEPHEN MCCREADY

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IN RE MAC CONSTRUCTION, LLC AND STEPHEN MCCREADY  
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT  
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE  
STEPHEN C. GREFER, DIVISION "J", No. 818-043

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TRUE COPY

February 09, 2026



LINDA TRAN  
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,  
John J. Molaison, Jr., and Scott U. Schlegel

## WRIT DENIED

The relators, MAC Construction, LLC, and Stephen McCready, seek review of the trial court's denial of their motion for partial summary judgment on whether the plaintiff/respondents may include a personal *in solido* action for contractor fraud against McCready in this civil case. We deny relief for the following reasons.

### *Procedural History*

According to the application, the plaintiffs, David and Carla Lavarine, filed a petition in the 24th Judicial District Court on May 28, 2021, asserting several causes of action related to the construction of the Lavarines' home in Jefferson Parish. Relevant to this writ application are the allegations against the relators for fraud, as outlined in COUNT 2 of the petition. COUNT 2 alleges that McCready is the sole member and qualifying partner of MAC Construction, LLC. The petition also alleges that McCready committed contractor fraud, violating La. R.S. 14:202.1, when he hired unlicensed subcontractors to build the Lavarines' home. The Lavarines argue that by committing a "criminal act," McCready is personally liable *in solido* with MAC Construction. Finally, the Lavarines conclude in their petition that by hiring unlicensed subcontractors, McCready was able to offer a low

bid to build the home, “gaining an unjust advantage over the Lavarines to their detriment.”

The relators filed an answer denying all allegations and asserted several counterclaims. On October 27, 2025, the relators filed a motion for summary judgment seeking to dismiss the Lavarines’ claims. The relators argued in their motion:

The fraud claim against MAC and McCready should be dismissed because it is entirely predicated on the false assertion that MAC was found “guilty” of “contractor fraud.” The plaintiffs wrongly assert that MAC pleaded “guilty” to violating a civil statute and equate this with a finding of guilt under a different criminal statute that has different elements and a different burden of proof. MAC and McCready were never found “guilty” or even prosecuted for "contractor fraud," and the time to press charges has passed. In addition, the Lavarines’ basis for the alleged fraud is that MAC and McCready were able to hire unlicensed subcontractors at less than market rate to the Lavarines’ detriment, but there is no evidence to support that contention. As such, the Lavarines’ fraud claim should be summarily dismissed. Because the claim against McCready is solely tethered to the fraud claim, once the fraud claim is dismissed, McCready should be dismissed from the lawsuit with prejudice.

The trial court denied the motion for summary judgment on December 16, 2025, after a hearing on December 8, 2025. This timely application follows.

### *Standard of Review*

Appellate courts review summary judgments *de novo*, using the same criteria the trial court applies to determine whether summary judgment is appropriate. *Pizani v. Progressive Ins. Co.*, 98-225 (La. App. 5 Cir. 9/16/98), 719 So.2d 1086, 1087. The court must decide a motion for summary judgment by referencing the substantive law that applies to the case. *Muller v. Carrier Corp.*, 07-770 (La. App. 5 Cir. 4/15/08), 984 So.2d 883, 885.

### *Law and Argument*

The relators reassert the claims raised in their motion for summary judgment.

The application shows that Stephen McCready and MAC Construction, LLC admitted to hiring Ortiz Brothers Framing Company, which was not licensed at the time it performed work on the Lavarines’ home. The application also shows that Stephen McCready and MAC Construction knew that Ortiz was unlicensed when they hired Ortiz as a subcontractor. After the Lavarines reported them to the Louisiana State Licensing Board for Contractors for hiring an unlicensed subcontractor, McCready entered a plea of “no contest” and paid a \$500.00 fine, as acknowledged in a letter dated June 11, 2024.

Authorities arrested McCready on August 3, 2021, in Jefferson Parish for contractor fraud, a violation of La. R.S. 14:202.1(C)(4). The application does not indicate the resolution of the arrest.

## *Personal Liability*

La. C.C. art. 1953 defines fraud as “a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.” *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888, 897-98. In *Korrapati v. Augustino Bros. Constr., LLC*, 19-426 (La. App. 5 Cir. 7/31/20), 302 So.3d 147, 154–55, this Court discussed how a contractor could be held individually liable for an act of fraud committed through his company:

The law considers an LLC and the member(s) comprising the LLC, as being wholly separate persons. See La. C.C. art. 24. As a result, La. R.S. 12:1320(B) states that “Except as otherwise specifically set forth in this Chapter, no member, manager, employee, or agent of a limited liability company is liable in such capacity for a debt, obligation, or liability of the limited liability company.”

In narrowly defined circumstances, when individual member(s) of a juridical entity such as an LLC mismanage the entity or otherwise thwart the public policies justifying treating the entity as a separate juridical person, the individual member(s) have been subjected to personal liability for obligations for which the LLC would otherwise be solely liable. *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888, 894-95. A member's protection against personal liability is not unlimited. *Id.* at 897. La. R.S. 12:1320(D) sets forth an exception to the general rule:

Nothing in this Chapter shall be construed as being in derogation of any rights which any person may by law have against a member, manager, employee, or agent of a limited liability company because of any fraud practiced upon him, because of any breach of professional duty or other negligent or wrongful act by such person, or in derogation of any right which the limited liability company may have against any such person because of any fraud practiced upon it by him.

La. R.S. 1320(D) has been interpreted to provide a cause of action against a member, manager, or employee of a limited liability company because of any breach of professional duty, as well as for any fraud or other negligent or wrongful act. *Ogea*, 130 So.3d at 897; *W.J. Spano Co. v. Mitchell*, 05-2115 (La. App. 1 Cir. 9/15/06), 943 So.2d 1131, 1132-33. Because fraud is not defined in La. R.S. 12:1320, the Civil Code provisions on fraud govern. *B & P Rest. Grp., LLC v. Delta Admin. Servs., LLC*, 18-442 (La. App. 5 Cir. 9/4/19), 279 So.3d 492, 500.

In *Priority Hosp. Grp., Inc. v. Manning*, 53,564 (La. App. 2 Cir. 9/23/20), 303 So.3d 1106, 1113, *writ denied*, 20-01238 (La. 1/20/21), 308 So.3d 1160, the Second Circuit observed:

In *Ogea v. Merritt*, the Louisiana Supreme Court found, “With no record evidence of fraud, there is nothing to trigger the fraud exception under La. R.S. 12:1320(D), by which [Defendant] could be held personally liable notwithstanding that he was a member of the LLC.” Therefore, if there are sufficient allegations of fraud, the fraud exception under La. R.S. 12:1320(D) could be triggered and the members could be held liable.

Based on the foregoing, we find that it is generally permissible for a contractor to be named as a defendant who is solidarily liable for damages caused by his alleged fraud while acting through his corporation, provided certain criteria are met.

### *The Lavarines’ Fraud Claim*

In *Chateau Homes by RJM, Inc. v. Aucoin*, 11-1118 (La. App. 5 Cir. 5/31/12), 97 So.3d 398, 404-05, *writ denied*, 12-1526 (La. 10/12/12), 98 So.3d 872, this Court described the components of a fraud claim:

Louisiana jurisprudence indicates that the elements of the tort of fraud are a misrepresentation of material fact made with the intent to deceive when there was reasonable or justifiable reliance by the plaintiff and resulting injury. *Schaumburg v. State Farm Mut. Auto. Ins. Co.*, 421 Fed.Appx. 434, 442 (5th Cir.2011). For purposes of the tort of fraud, the intent to deceive is a specific intent. *Id.*

A court must construe factual inferences reasonably drawn from the evidence in favor of the party opposing a motion for summary judgment, and resolve all doubt in the opponent’s favor. *Willis v. Medders*, 00-2507 (La. 12/8/00), 775 So.2d 1049, 1050; *Montalbano v. Persich*, 18-602 (La. App. 5 Cir. 5/29/19), 274 So.3d 855, 860-61, *writ denied*, 19-1051 (La. 10/1/19), 280 So.3d 161.

As discussed above, the relators knowingly hired an unlicensed framing crew and did not disclose this practice. The Lavarines allege in their petition that the unlicensed framing crew made substantial errors in its work on their home, causing them damages.

### *Conclusion*

The relators argue that McCready should be dismissed as a defendant unless he has been criminally convicted or *if* the Lavarines can prove that McCready misappropriated their funds. As discussed above, fraud does not necessarily consist of a criminal act and does not require a conviction to be named in a civil suit. Also, alleging joint and solidary liability between the relators is permissible. Regarding the fraud allegation, the trial court specifically found that there is a question of material fact as to “whether or not the payment of the unlicensed subcontractor constitutes a misappropriation of the Lavarines’ funds.” After our *de novo* review, we also find there is a question of whether McCready intentionally acted in such a way that piercing the corporate veil is an available remedy. “[A] motion for summary judgment is not suitable for the disposition of cases requiring a judicial determination of subjective facts such as intent, knowledge, motive, malice, or good faith.” *Ballex v. Naccari*, 95-1339 (La. App. 4 Cir. 9/15/95), 663

So.2d 173, 175. There is also the question of whether a fraud was committed at all, which would fall under the ultimate trier of fact's purview. "In determining whether an issue is 'genuine,' courts cannot consider the merits, make credibility determinations, evaluate testimony, or weigh evidence." *Smith v. Our Lady of the Lake Hosp., Inc.*, 93-512 (La.7/5/94), 639 So.2d 730, 751.

For these reasons, and based on the showing made, we deny the relators' writ application.

Gretna, Louisiana, this 9th day of February, 2026.

**JJM**  
**FHW**  
**SUS**

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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CLERK OF COURT

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FIRST DEPUTY CLERK

MELISSA C. LEDET  
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**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 **02/09/2026** 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:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

**CURTIS B. PURSELL**  
CLERK OF COURT

**26-C-30**

**E-NOTIFIED**

24th Judicial District Court (Clerk)  
Honorable Stephen C. Grefer (DISTRICT JUDGE)  
Albert J. Nicaud (Respondent)                      Adrian A. D'Arcy (Relator)  
Andrew G. Vicknair (Relator)                      Margaret N. Davis (Relator)

**MAILED**