

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 CA 1364

LARRY E. CLARK, PRESIDENT, L & M HAIR CARE PRODUCTS, INC.

VERSUS

LOUISIANA DEPARTMENT OF TRANSPORTATION AND
DEVELOPMENT, SECRETARY, FRANK DENTON AND JAMES M.
DOUSHAY, REAL ESTATE ADMINISTRATOR

Judgment Rendered: MAY - 2 2008

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 425,690

Honorable Janice Clark, Judge

Paula Cobb
Arthur Thomas
Baton Rouge, LA

Counsel for
Plaintiff/Appellant
L & M Hair Care
Products, Inc.

Charles E. Soileau
Rayne, Louisiana

Counsel for
Defendant/Appellee
State of Louisiana
through the Department
of Transportation and
Development

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

A corporate lessee seeks review of the trial court's dismissal of its claim for damages relative to an expropriation proceeding.

FACTS AND PROCEDURAL HISTORY

Larry Clark (Clark), and his wife, Melvenia S. Clark (collectively "Clarks"), owned three lots of land in Shreveport, Louisiana. They leased a building on the property to L & M Hair Care Products, Inc. ("L & M"), which distributed African-American hair care products. L & M is wholly owned by the Clarks, who also operated and managed the business.

In 1986, the State of Louisiana, through the Department of Transportation and Development (DOTD), began expropriation proceedings against the Clarks for the entirety of two lots and half of a remaining lot for the construction of then-proposed Interstate 49. In conjunction with those proceedings, DOTD filed three separate expropriation suits against the Clarks in the First Judicial District Court in Caddo Parish under docket numbers 325,511; 325,512; and 328,772 (collectively "expropriation suits" or "expropriation proceedings").

All three suits were consolidated for trial. Prior to trial on the merits, the parties, through counsel, executed a compromise agreement entitled "Joint Stipulation," wherein ostensibly all issues regarding the expropriation were settled, except the issue of whether the Clarks were entitled to additional compensation for relocation costs because of the alleged uniqueness of the property in connection with the hair care business. Accordingly, the only issue that the trial court had to decide in the expropriation suits was whether the Clarks were entitled to relocation costs to compensate them for any loss to their business due to the expropriation because the alleged unique location of the property was inextricably tied to the business. The trial court determined that there was such a loss to the Clarks and found that the Clarks were owed an additional \$191,781.00 in compensation, plus

other costs. A judgment incorporating this sum was rendered on June 24, 1988, from which judgment the DOTD appealed.

On appeal, the Second Circuit found that the award of relocation costs was made in error, as such sum was properly owed to the Clarks' corporation, L & M, which was a separate juridical person.¹ As L & M was not a party to the proceedings in which the judgment was rendered, the appellate court reversed that portion of the trial court's judgment. See State, Department of Transportation & Development v. Clark, 548 So. 2d 365 (La. App. 2nd Cir.), writ denied, 552 So. 2d 395 (La. 1989).

Thereafter, L & M filed suit against the DOTD on July 5, 1990, under docket number 363,679, seeking recovery of the sums disallowed by the appellate court in the expropriation proceedings instituted by the DOTD. Initially, a summary judgment in favor of L & M was rendered by the trial court and the DOTD appealed, but on appeal, the parties filed a joint motion "to vacate and rescind the trial court judgment and to remand for a trial on the merits," which request was granted by the appellate court. See L & M Hair Care Products, Inc. v. State, Department of Transportation and Development, 23,124 (La. App. 2d Cir. 12/04/91).

On remand to the First Judicial District Court, L & M attempted to assert claims for other alleged pecuniary losses in addition to relocation costs, to which the DOTD excepted based on the objection of res judicata. The trial court considered the evidence presented in support of the exception and found:

It is clear that Mr. Clark had full legal authority to act for L & M

It is clear that Robert LeDoux was the attorney for the Clarks and the corporation. [Louisiana Civil Code articles] 1853 (and comments thereunder), 3000 and 3021, when read together, give Mr.

¹ A juridical person is an entity to which the law attributes personality, such as a corporation or a partnership. The personality of a juridical person is distinct from that of its members. La. C.C. art. 24.

LeDoux the power and authority to act for and bind the Clarks and L & M to a “Joint Stipulation”.

The Joint Stipulation binds the Clarks and L & M.

In so finding, the trial court maintained the DOTD’s exception and dismissed all the claims asserted by L & M, except the claim for the cost of a replacement facility, by a judgment signed on October 9, 1995. The trial court later issued a second judgment dismissing all of L & M’s claims, with prejudice, on February 4, 1997, when L & M refused to file a pretrial order. That judgment was affirmed on appeal. L & M Products, Inc. v. State, Department of Transportation and Development, 29,998 (La. App. 2d Cir. 12/10/97), 704 So. 2d 415.²

Thereafter, the Clarks and L & M filed several lawsuits in state and federal court seeking additional compensation and damages as a result of the expropriation that occurred in 1986. Among the suits filed is the current matter, which was filed as a petition for a writ of mandamus in the Nineteenth Judicial District Court in East Baton Rouge Parish on March 8, 1996. In the petition, L & M named the DOTD, its secretary, and its real estate administrator as defendants. L & M later amended its petition to add defendants and to seek additional relief, including nullification of the expropriation judgments and judgments rendered in other suits filed by the Clarks and L & M in state and federal courts. Herein, the trial court, by judgments rendered on October 31, 2005 and September 11, 2006, dismissed all of L & M's claims. It is from these two judgments that L & M now appeals.

ASSIGNMENTS OF ERROR

In this appeal, L & M alleges that the trial court erred in sustaining the objection of res judicata by peremptory exception to dismiss its claims against the DOTD in the following respects:

² The foregoing history of the litigation under docket number 363,679 is abbreviated; for a more complete discussion of the procedural history of that litigation, see the cited appellate court opinion.

ASSIGNMENT OF ERROR # 1[:]

The Trial Court erred when, without any intervening cause, it reversed its own prior Judgment signed on 31 October 2005, which in part, denied the Exception of *Res judicata* as to nullity of prior judgments rendered in connection with the 1986 expropriation.

ASSIGNMENT OF ERROR # 2:

The trial court erred when it adopted the Commissioner's Recommendation to hold the October 1995 Judgment and the February 4, 1997 judgments of dismissal with prejudice as "final judgments" relevant to the issue of *res judicata* when the substantive rights were not previously addressed and/or finally resolved.

ASSIGNMENT OF ERROR #3[:]

The trial court erred when it found that the February 4, 1997 Judgment was a "final judgment" as it relates to *res judicata*, when such dismissal was a sanction against L&M, the corporation, for failure to carry out a direct court order issued during a proceeding when L&M had no legal representation and no presence in court.

ASSIGNMENT OF ERROR # 4:

The trial Court erred when it found that the federal judgment in *Clark and L&M v. Pena*, filed in the United States District Court, in the Western District of Louisiana, #96-1360, was a "final judgment" that formed the basis of *res judicata* and precluded any monetary damages stemming from the 1986 expropriation when the dismissal of the case was based on lack of subject matter jurisdiction and there had been no adjudication of the merits.

ASSIGNMENT OF ERROR # 5[:]

The trial court erred when it adopted the Commissioner's Report that the federal case, *Clark et al v. DOTD #98-1753*, formed the basis of *res judicata* as to the federal civil rights claims as made in connection with the expropriation of 1986 since the court had no jurisdiction to hear the matter of expropriation issues or civil rights stemming from expropriation issues[,] both of which are clearly state law matters.

ASSIGNMENT OF ERROR # 6:

The trial court erred when it failed to grant the "exceptional circumstances" exception to the *res judicata* doctrine in relation to the judgments purported to preclude L&M's claims of monetary relief and civil rights violations or find that such rulings were *contra bono mores* and/or unconstitutional.

DISCUSSION

In L & M's first assignment of error, it argues that in the September 11, 2006 judgment, the trial court erroneously dismissed, pursuant to the objection of *res judicata*, the remaining claims asserted by L & M that survived the trial court's October 31, 2005 judgment. We find no merit in the arguments presented. In the

September 11, 2006 judgment, the trial court expressly maintained peremptory exceptions raising the objections of no cause of action and mootness asserted by the DOTD, decreeing:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of defendants and against plaintiff maintaining defendants' Peremptory Exception of Mootness and Peremptory Exception of No Cause of Action and that all of plaintiff's claims remaining after the Judgment of this Court dated October 31, 2005 are hereby dismissed with prejudice.

* * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims of plaintiff are hereby dismissed, with prejudice.

A cause of action, when used in the context of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. Wright v. Louisiana Power & Light, 06-1181, p. 14 (La. 3/9/07), 951 So. 2d 1058, 1068. The function of the peremptory exception of no cause of action is to test the legal sufficiency of the petition, which is done by determining whether the law affords a remedy on the facts alleged in the pleading. Ramey v. DeCaire, 03-1299, p. 7 (La. 3/19/04), 869 So. 2d 114, 118. No evidence may be introduced to support or controvert the exception of no cause of action. La. C.C.P. art. 931. Consequently, a court reviews the petition and accepts well-pleaded allegations of fact as true. The issue at the trial on the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. Johnson v. State, 06-2024, pp. 5-6 (La. App. 1st Cir. 6/8/07), 965 So. 2d 866, 869-870, writ denied, 07-1784 (La. 11/9/07), 967 So. 2d 507.

Louisiana has chosen a system of fact pleading. La. C.C.P. art. 854, Official Revision Comments-1960, comment (a). Therefore, it is not necessary for a plaintiff to plead the theory of his case in the petition. However, the mere conclusions of the plaintiff unsupported by facts do not set forth a cause of action. Wright, 06-1181 at 15, 951 So.2d at 1069. On appeal, the court reviews a

judgment of the trial court pertaining to an exception of no cause of action de novo. The pertinent question is whether, in the light most favorable to plaintiff and with every doubt resolved in plaintiff's behalf, the petition states any valid cause of action for relief. Ramey, 03-1299 at 7-8, 869 So. 2d at 119.

The initial pleading that L & M filed in this suit was a petition for writ of mandamus in which it demanded that the secretary of the DOTD be made to fulfill its ministerial duty to deposit into the registry of the court sums representing the just compensation L & M claimed it was owed pursuant to La. R.S. 48:441-460. By its first amended petition, L & M claimed that it had sustained several itemized tort damages as a result of the DOTD having failed to comply with La. R.S. 48:441-460 in the prior expropriation proceedings initiated by the DOTD. In its second amended petition, L & M added several defendants, comprised mainly of attorneys and law firms and 99 "unknown defendants," and again asserted its entitlement to various itemized tort damages arising from the allegedly unlawful expropriation proceedings initiated by the DOTD. L & M also asserted in the second amended petition certain alleged violations of 42 U.S.C. §§ 1981 and 1983.

L & M then filed an amended petition (its third) to declare the following documents absolutely null: the December 28, 1987 Joint Stipulation filed in the expropriation suits in the First Judicial District Court; the October 9, 1995 Judgment under docket number 363,679 in the First Judicial District Court; the February 4, 1997 Judgment under docket number 363,679 in the First Judicial District Court; and the July 28, 1998 Judgment under docket number 429,240 in the First Judicial District Court. L & M also asserted that the foregoing judgments and a February 20, 1997 judgment issued by the federal district court for the Western District of Louisiana were absolutely null in several motions that it filed in the underlying proceedings. In those motions, L & M outlined the factual allegations on which the claims of absolute nullity were premised.

The only claim remaining at the time the DOTD asserted the objection of no cause of action was L & M's allegation that the foregoing judgments were absolutely null.³ A judgment is an absolute nullity when there is a vice of form. See La. C.C.P. art. 2002, Official Revision Comments-1960, comment (f). The vices of form rendering a judgment absolutely null are listed in La. C.C.P. art. 2002A, which states:

A final judgment shall be annulled if it is rendered:

- (1) Against an incompetent person not represented as required by law.
- (2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid judgment by default has not been taken.
- (3) By a court which does not have jurisdiction over the subject matter of the suit.

A person with interest may show such a nullity in collateral proceedings at any time and before any court, for absolutely null judgments are not subject to the venue and delay requirements of La. C.C.P. art. 2004. Smith v. LeBlanc, 06-0041, p. 6 (La. App. 1st Cir. 8/15/07), 966 So. 2d 66, 71.

L & M alleged the following facts in support of its claim that the foregoing judgments are absolutely null: (1) that the December 28, 1987 Joint Stipulation was absolutely null based on the DOTD's failure to make L & M a party to the expropriation suits, to serve L & M in the expropriation suits and to deposit funds in the registry of the court for the benefit of L & M in the expropriation suits; (2) that the October 9, 1995 Judgment in docket number 363,679 was absolutely null

³ The following decrees were rendered in the trial court's October 31, 2005 judgment:

IT IS ORDERED, that [DOTD's] Exception of Res Judicata as to monetary relief due L & M by mandamus or by claims of civil rights violations, as a result of the 1986 expropriation, is maintained and granted.

IT IS FURTHER ORDERED, that the Exception of Res Judicata, as to the issue of nullity of prior judgments rendered in connection with the 1986 expropriation suit is overruled as no final judgment, dispositive of all claims has been rendered.

“since it was based on the absolutely null stipulation”; (3) that the February 4, 1997 Judgment in docket number 363,679 was absolutely null based on the failure of the DOTD to “strictly comply with the mandatory procedures of statutes 48:441 through 48:460” and the rules of civil procedure and certain local rules regarding service of process.

Based on the allegations presented in L & M’s pleadings, we likewise find that L & M does not state a valid claim for absolute nullity. The facts and conclusions alleged by L & M in its pleadings do not support any of the grounds for a vice of form listed La. C.C. P. art. 2002(A). The Joint Stipulation was not a final judgment, but a compromise agreement that the parties entered into as a result of the pending expropriation suits, so none of the vices apply to that agreement. As for the final judgments to which L & M objects, the pleadings present no factual allegations that L & M was an unrepresented incompetent person or that the issuing court lacked subject matter jurisdiction over the claims presented. Further, L & M was the plaintiff, not the defendant, in the proceedings in which defective service was alleged, so that ground for vice of consent is likewise not established. Thus, we find the exception of no cause of action was properly maintained by the trial court.

In its second and third assignments of error, L & M contends that the trial court erred in finding that the October 9, 1995 and February 4, 1997 judgments rendered under docket number 363,679 in the First Judicial District Court could support a plea of res judicata when the judgments were issued on procedural, rather substantive grounds. We find no merit in this assertion.

Because L & M's petition in docket number 363,679 was filed before January 1, 1991, the preclusive effect of the judgments in that suit is governed by the pre-revision law of res judicata. Before the revision, La. R.S. 13:4231 provided:

The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties, and formed by them against each other in the same quality

L & M asserts that the trial court relied solely on the October 9, 1995 and February 4, 1997 judgments to support its finding of res judicata; however, the October 31, 2005 judgment simply recites that the objection of res judicata was sustained as to L & M's claims for monetary relief by mandamus and for alleged civil rights violations, as a result of the 1986 expropriation. Notably, the court did not identify a particular judgment as barring L & M's claims in the subject suit. Further, we find the exception was properly maintained as to any monetary claims related to the 1986 expropriation proceedings, other than for relocation costs, based on the December 28, 1987 Joint Stipulation. The Joint Stipulation is a compromise agreement, which is defined as "a contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship." La. C.C. art. 3071.⁴ Contained in the Joint Stipulation is a provision declaring "[t]his admission includes, but is not limited to, any claims of economic loss, loss of business, loss of income or expenses involved in moving to another location. Defendants [the Clarks] further agree that this paragraph [applies] not only to them[,] but also to the corporation owned by them, namely L & M Hair Care Products."

The objection of res judicata raised by peremptory exception is ordinarily based upon a final judgment between the parties; however, when parties put an end to a lawsuit by adjusting their differences and entering into a written transaction or compromise, that written instrument has the effect of a thing adjudged between the

⁴ By 2007 La. Acts, No. 138, articles 3071 through 3083 of the Louisiana Civil Code were amended and re-enacted; however, the changes made were mainly interpretative, clarifying the law and did not effect a change in the law. Accordingly, the amended and re-enacted articles are given retroactive effect and reference is made to the amended and re-enacted articles in discussion herein.

parties. Leray v. Nissan Motor Corporation in U.S.A., 05-2051, p. 4 (La. App. 1st Cir. 11/3/06), 950 So. 2d 707, 709-710. As the Joint Stipulation constitutes such an agreement, the document is properly held to bar any subsequent litigation as to the parties and the matters addressed therein. Although L & M was not a party to the litigation that provoked the creation of the Joint Stipulation, it nevertheless, as quoted above, was a party to the Joint Stipulation and as a consequence, L & M is bound by the effects of that agreement, including the effect of res judicata. See Ortego v. State, Department of Transportation and Development, 96-1322, p. 11 (La. 2/25/97), 689 So. 2d 1358, 1366.

Likewise, L & M's argument regarding the February 4, 1997 judgment ignores the effect of that judgment being dismissed with prejudice. The February 4, 1997 judgment addressed L & M's remaining claim for relocation costs that had survived the October 9, 1995 judgment in docket number 363,679. Louisiana Code of Civil Procedure article 1673 provides that a judgment of dismissal with prejudice shall have the effect of a final judgment of absolute dismissal after trial. Given the clear language of Article 1673, there is no requirement that the claims be actually litigated for the doctrine of res judicata to apply. See Leon v. Moore, 98-1792, pp. 5-6 (La. App. 1st Cir. 4/1/99), 731 So. 2d 502, 505, writ denied, 99-1294 (La. 7/2/99), 747 So. 2d 20. Furthermore, once a final judgment becomes final and definitive and acquires the authority of the thing adjudged, no court has jurisdiction, in the sense of power and authority, to modify, revise or reverse the judgment, regardless of the magnitude of the error in the final judgment. Batson v. South Louisiana Medical Center, 06-1998, p. 10 (La. App. 1st Cir. 6/13/07), 965 So. 2d 890, 896, writ denied, 07-1479 (La. 10/5/07), 964 So. 2d 945. Thus, those claims remaining to be adjudged in the proceeding from which the February 4, 1997 judgment stemmed are likewise barred under the principles of res judicata.

As for the additional claims of alleged federal civil rights violations raised by L & M in the instant matter, the record reveals that these claims have also been previously considered and adjudged in the U.S. District Court for the Western District of Louisiana, under Civil Action Number 98-1753. In the March 20, 2000 judgment, the U.S. District Court expressly decreed that "the Motion to Dismiss or for Summary Judgment (Doc. 43) is **GRANTED IN PART** by **DISMISSING** all of Plaintiff's federal law claims for failure to state a claim upon which relief can be granted and as frivolous pursuant to 28 U.S.C. §1915(e)." In rendering this decree, the U.S. District Court adopted the findings of the U.S. Magistrate, who determined:

The bulk of Clark's conspiracy and civil rights-type allegations are directed at the various state court judges who have displeased him by their rulings, but none of the judges is actually named as a defendant in this action. Even if they were defendants, the judges would be entitled to judicial immunity, under both federal and state law, because Clark's claims are directed at acts performed in the course of their judicial functions....

...The pleading goes on to make numerous conclusory allegations that various state-actor and non-state actor defendants and other non-defendants have conspired to repeatedly deny and hinder Plaintiff from receiving the full benefit of his constitutional rights.

* * *

...The law firms and attorney defendants are mentioned on several occasions throughout the pleading, but Plaintiff makes only conclusory allegations that the non-state actors conspired with the state district judges and other defendants.

The frivolous allegations of federal civil rights claims in the third amended petition are reminiscent of those rejected in 98 cv 0217. As in the prior proceeding, the court finds that the federal claims were brought maliciously and in an effort to seek retribution against everyone associated with the expropriation proceedings that did not end in the result hoped by Plaintiff. The federal claims should, accordingly, be dismissed for failure to state a claim upon which relief can be granted and as frivolous pursuant to §1915(e).

Hence, it is clear that L & M's claims of federal civil rights violations have not only been previously presented, but have also been considered and adjudged. Thus, L & M's claims of federal civil rights violations are likewise barred under the principles of res judicata by the March 20, 2000 judgment rendered by the U.S.

District for the Western District of Louisiana under docket number 98-CV-1753. Accordingly, L & M's claims under assignments of error two and three are rejected.

Consideration of L & M's fourth assignment of error is pretermitted based on our resolution of assignments of error two and three. L & M's arguments in support of its fifth assignment of error that the federal district court lacked jurisdiction to adjudicate L & M's federal civil rights claims are without merit. As previously discussed, in its third amended petition under docket number 429,240, L & M and the Clarks asserted claims of civil rights violations premised on federal law, particularly 42 U.S.C. §§ 1981, 1983, 1985 and 1986, and also claimed violation of their rights under the First, Fifth and Fourteenth Amendments of the U.S. Constitution. Those allegations established the grounds for the federal district court to exercise subject matter jurisdiction over the suit pursuant to 28 U.S.C. § 1331, and prompted the parties named as defendants in that suit to seek removal of the suit to federal court. Once the federal district court for the Western District of Louisiana considered and adjudicated those federal claims by a summary ruling requested by the defendants, the court remanded the state law causes of action to the First Judicial District Court in Shreveport. Accordingly, the federal district court in docket number 98-CV-1753 properly held and exercised jurisdiction over the federal law claims asserted by L & M.

In its final assignment of error, despite the long and protracted history of litigation in this matter, L & M contends that the trial court erred in not finding that exceptional circumstances exist that would warrant granting it relief from res judicata of the prior judgments rendered in this longstanding litigation relative to the 1986 expropriation of the Clarks' property. Louisiana Revised Statute 13:4232, which was added by 1990 La. Acts, No. 521, §1, effective January 1, 1991, provides three exceptions to the general principle of res judicata:

A judgment does not bar another action by the plaintiff:

- (1) When exceptional circumstances justify relief from the res judicata effect of the judgment;
- (2) When the judgment dismissed the first action without prejudice; or,
- (3) When the judgment reserved the right of the plaintiff to bring another action.

La. R.S. 13:4232(A).⁵ The exceptions provided by La. R.S. 13:4232 were not in effect at the time L & M filed its first suit back in 1990, and therefore are not applicable to the judgments arising from that suit; however, to the extent the exceptions apply to judgments arising from subsequent litigation, the comments following the text of the statute expressly note that the discretion given courts to grant relief from a judgment on the basis of exceptional circumstances "must be exercised on a case by case basis and such relief should be granted only in truly exceptional cases, otherwise the purpose of res judicata would be defeated." La. R.S. 13:4232, Comment -1990.

In this case, we find no error in the conclusion that granting L & M relief from the res judicata effect of prior judgments is not warranted, especially in light of the fact that in docket number 363,679, L & M had recovered a summary judgment in its favor on the issue of relocation costs, but on appeal, joined with the DOTD seeking to have the judgment in its favor vacated and the case remanded to the trial court for a trial on the merits. The same court that had granted the summary judgment in favor of L & M on the issue of relocation costs later rendered the February 4, 1997 judgment dismissing all of L & M's claims in the proceedings on remand.⁶ Considering that L & M had an opportunity to present its separate claims for compensation and damages relative to the expropriation

⁵ Subsection B was later added to La. R.S. 13:4232 in 1991 to provide for exceptions to the general principle of res judicata in divorce actions.

⁶ See L & M Products, Inc., 29,998, 704 So. 2d 415, for a complete discussion of the events that transpired on remand.

proceedings and had even previously recovered a judgment in its favor on its claim for relocation costs, on our review of the record before us, we find that no exceptional circumstances exist that would warrant granting L & M relief from the res judicata effect of prior judgments addressing the same issues raised in this lawsuit. See Mandalay Oil & Gas, L.L.C. v. Energy Development Corp., 01-0993, p. 22 (La. App. 1st Cir. 8/4/04), 880 So. 2d 129, 144, writ denied, 04-2426 (La. 1/28/05), 893 So. 2d 72.

CONCLUSION

Accordingly, we affirm the judgments appealed. All costs of these proceedings are assessed to the appellant, L & M Hair Care Products, Inc.

AFFIRMED.