

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2274

LARRY JAMES ALEXANDER  
O/B/O RICHARD LEE MYLES

VERSUS

PERIOD MILLWORKS, LLC, ET AL

Judgment rendered JUN 14 2012

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Appealed from the  
22<sup>nd</sup> Judicial District Court  
in and for the Parish of St. Tammany, Louisiana  
Trial Court No. 2011-14286  
Honorable William J. Crain, Judge

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EDMONDS, THOMAS J.  
EDMONDS, SR., WILLIAM  
SMITH, AND DELTA POWER  
EQUIPMENT CORPORATION

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**BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.**

## **PETTIGREW, J.**

In this case, plaintiff challenges the trial court judgment sustaining the defendants' exception raising the objection of no cause of action and dismissing, with prejudice, his claims against defendants. For the following reasons, we reverse in part, affirm in part, vacate, amend, and remand for further proceedings.

### **FACTS AND PROCEDURAL HISTORY**

On July 29, 2011, plaintiff, Larry James Alexander, filed suit on behalf of his step-brother, Richard Lee Myles, against defendants, Thomas J. Edmonds, Jr., Leah Edmonds (hereinafter sometimes referred to as "Mr. and Mrs. Edmonds"), Thomas J. Edmonds, Sr. ("Thomas"), Period Millworks, LLC ("Millworks"), William Smith, and Delta Power Equipment Corporation ("Delta"), alleging that Mr. Myles was injured while working on the premises of Millworks.<sup>1</sup> According to the petition, Mr. Myles had been performing "odd jobs" at Millworks, such as general maintenance, sweeping, and cleaning, for several months prior to August 6, 2010, the date Mr. Myles was injured. It is asserted in the petition that Millworks and Mr. and Mrs. Edmonds had previously denied that Mr. Myles was an employee of Millworks.

On the day in question, Mr. Myles "was sweeping sawdust from around the lathes as he had done on several prior occasions." At that same time, Thomas was operating a lathe manufactured by Delta and was working on a "special" post. Thomas told Mr. Myles to leave the room while he was working on the "special" post. As he was leaving the room, Mr. Myles heard a loud crack and looked back in the direction of the room. Mr. Myles "was immediately struck in the face by all or a part of the 'special' post which had been on the Delta lathe." Mr. Myles lost consciousness and suffered two seizures before emergency medical services could arrive. Medical personnel were unable to save Mr. Myles' right eye, which had become detached during the incident. Moreover, doctors

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<sup>1</sup> It is alleged in the petition that Mr. and Mrs. Thomas J. Edmonds, Jr. were "members and/or managing members" of Millworks, that Thomas J. Edmonds, Sr. was an employee of Millworks, that William Smith was the owner of the physical property where Millworks was located, and that Delta was the "manufacturer and/or producer of certain machinery" used at Millworks.

were unable to restore sight to his left eye, leaving Mr. Myles completely blind. Following multiple surgical procedures, Mr. Myles was left in a severely debilitating arthritic condition. He required assistance and a wheelchair for mobility and was unable to perform even the most basic functions such as dressing himself or feeding himself.

As a result of the injuries sustained by Mr. Myles, plaintiff filed the instant suit, maintaining that Mr. Myles' condition and injuries were the result of the acts and/or omissions of the defendants.<sup>2</sup> In response to the petition for damages, Mr. and Mrs. Edmonds, Thomas, and Millworks (collectively referred to as "defendants") filed an exception raising the objection of no cause of action. Defendants argued that at the time of the accident, Mr. Myles was an employee of Millworks and was engaged in manual labor. Thus, defendants maintained, the exclusive remedy available was in workers' compensation pursuant to La. R.S. 23:1032, et seq. Defendants further asserted that Mr. and Mrs. Edmonds can have no personal liability as they are protected from such liability by the limited liability company. The exception was heard on September 29, 2011. Following argument, the trial court ruled in favor of defendants, sustaining the exception and denying plaintiff's oral request for leave of court to amend the pleadings. The trial court's judgment sustaining the no cause of action exception and dismissing plaintiff's claims against defendants with prejudice was signed on October 18, 2011.

It is from this judgment that plaintiff appeals, assigning the following specifications of error for our review:

- A. The District Court erred in maintaining an exception of no cause of action as to [Mr. and Mrs. Edmonds] on the basis of their immunity as members of a limited liability company.
- B. The District Court erred in maintaining an exception of no cause of action as to [Millworks] and [Thomas] on the basis of workers' compensation immunity.
- C. Pursuant to Louisiana Code of Civil Procedure article 934, the District Court erred in failing to allow any amendment of the *Petition for Damages* to remedy the basis of the objection.

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<sup>2</sup> Plaintiff notes in his brief to this court that since the lodging of the record on appeal, Mr. Myles has succumbed to his injuries and passed away. Plaintiff further indicates that should this court find error in the trial court's judgment and remand the matter, a wrongful death and survival action will be substituted for the original claims.

## DISCUSSION

The objection that a petition fails to state a cause of action is properly raised by the peremptory exception. La. Code Civ. P. art. 927(A)(5). The purpose of the peremptory exception raising the objection of no cause of action is to test the legal sufficiency of a pleading by determining whether the law affords a remedy on the facts alleged in the pleading. **Ourso v. Wal-Mart Stores, Inc.**, 2008-0780, pp. 3-4 (La. App. 1 Cir. 11/14/08), 998 So.2d 295, 298, writ denied, 2008-2885 (La. 2/6/09), 999 So.2d 785.

Generally, no evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. Code Civ. P. art. 931. The exception is triable on the face of the pleadings, and, for the purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. **Ourso**, 2008-0780 at 4, 998 So.2d at 298. The court must determine if the law affords plaintiff a remedy under those facts. **Stroscher v. Stroscher**, 2001-2769, p. 3 (La. App. 1 Cir. 2/14/03), 845 So.2d 518, 523. Any doubts are resolved in favor of the sufficiency of the petition. *Id.*

If the allegations of the petition state a cause of action as to any part of the demand, the exception must be overruled. A petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim that would entitle him to relief. **Pelts & Skins, L.L.C. v. Louisiana Dept. of Wildlife and Fisheries**, 2005-0952, p. 8 (La. App. 1 Cir. 6/21/06), 938 So.2d 1047, 1053, writ denied, 2006-1821 (La. 10/27/06), 939 So.2d 1281. An exception of no cause of action is likely to be granted only in the unusual case in which the plaintiff includes allegations that show on the face of the petition that there is some insurmountable bar to relief. Thus, dismissal is justified only when the allegations of the petition itself clearly show that the plaintiff does not have a cause of action or when its allegations show the existence of an affirmative defense that appears clearly on the face of the pleadings. **Lyons v. Terrebonne Parish**

**Consol. Government**, 2010-2258, p. 6 (La. App. 1 Cir. 6/10/11), 68 So.3d 1180, 1183.

The burden of demonstrating that a petition fails to state a cause of action is upon the mover. **Foti v. Holliday**, 2009-0093, p. 6 (La. 10/30/09), 27 So.3d 813, 817. In reviewing a district court's ruling sustaining an exception of no cause of action, appellate courts conduct a *de novo* review, because the exception raises a question of law, and the district court's decision is based only on the sufficiency of the petition. **Torbert Land Co., L.L.C. v. Montgomery**, 2009-1955, p. 4 (La. App. 1 Cir. 7/9/10), 42 So.3d 1132, 1135, writ denied, 2010-2009 (La. 12/17/10), 51 So.3d 16.

In the present case, plaintiff argues the petition states a valid cause of action against Millworks based on the allegations that Millworks had denied that Mr. Myles was an employee of Millworks, that Mr. Myles had been performing odd jobs at Millworks for several months prior to the accident, and that Mr. Myles was paid an hourly rate of between \$8-10 by check issued by Mrs. Edmonds. Plaintiff notes that defendants' argument on the no cause of action exception that Mr. Myles was an employee of Millworks was in direct conflict with the facts pled in the petition and that, accepting the well-pleaded facts in the petition as true, "the exception should have been denied and seen as what it truly was, a motion for summary judgment raising a potential affirmative defense and a disputed issue of material fact." We agree.

Considering the alleged facts of the petition, and accepting them as true, we find plaintiff has stated facts sufficient to support a negligence cause of action against Millworks and Thomas. Thus, we reverse that portion of the trial court's October 18, 2011 judgment that sustained the exception raising the objection of no cause of action as to Millworks and Thomas and vacate the dismissal of plaintiff's action against Millworks and Thomas.

With regard to plaintiff's claims against Mr. and Mrs. Edmonds, we find the facts in the petition insufficient to support a cause of action against them personally at this time. However, at the conclusion of the argument before the trial court below, counsel

for plaintiff requested leave to amend the petition. His request was denied by the trial court. Louisiana Code of Civil Procedure article 934 provides:

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception *shall* order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed. [Emphasis added.]

If a petition's allegations are merely conclusory and fail to specify the acts that establish a cause of action, then the trial court should permit the plaintiff the opportunity to amend the petition. **Badeaux v. Southwest Computer Bureau, Inc.**, 2005-0612, p. 11 (La. 3/17/06), 929 So.2d 1211, 1219. The decision to allow amendment of a pleading to cure the grounds for a peremptory exception is within the discretion of the trial court. **Pearl River Basin Land and Development Co., L.L.C. v. State ex rel. Governor's Office of Homeland Sec. and Emergency Preparedness**, 2009-0084, p. 7 (La. App. 1 Cir. 10/27/09), 29 So.3d 589, 594. In this case, we are not prepared to find as a matter of law that the basis for defendants' objections to plaintiff's petition cannot be removed by amendment of the petition. Therefore, while we agree that the factual allegations are presently insufficient to state a cause of action against Mr. and Mrs. Edmonds personally, we conclude that the trial court committed an abuse of its discretion and legal error in failing to allow plaintiff to amend his petition to remove the grounds of the objection and will allow amendment of plaintiff's petition in accordance with Article 934. See **Ramey v. DeCaire**, 2003-1299, pp. 9-10 (La. 3/19/04), 869 So.2d 114, 119-120. Thus, we affirm the trial court's October 18, 2011 judgment insofar as it sustained the exception raising the objection of no cause of action filed by Mr. and Mrs. Edmonds, but vacate the dismissal of plaintiff's action against Mr. and Mrs. Edmonds. We reverse the trial court's denial of plaintiff's request for leave of court to amend the pleadings and amend the judgment in part to provide that the trial court allow the plaintiff a reasonable period of time within which to amend his petition to state a cause of action against Mr. and Mrs. Edmonds, in default of which his action

shall be dismissed as against Mr. and Mrs. Edmonds. The matter is remanded to the trial court for further proceedings consistent with the views expressed herein.

### **CONCLUSION**

For the above and foregoing reasons, we reverse that portion of the trial court's October 18, 2011 judgment that sustained the exception raising the objection of no cause of action as to Period Millworks, LLC and Thomas J. Edmonds, Sr., and vacate the dismissal of plaintiff's action against Period Millworks, LLC and Thomas J. Edmonds, Sr. We affirm that portion of the judgment that sustained the no cause of action exception filed by Thomas J. Edmonds, Jr., and Leah Edmonds, but vacate the dismissal of plaintiff's action against Mr. and Mrs. Edmonds. We reverse the trial court's denial of plaintiff's request for leave of court to amend the pleadings and amend the judgment in part to provide that the trial court allow the plaintiff a reasonable period of time within which to amend his petition to state a cause of action against Mr. and Mrs. Edmonds. The matter is remanded to the trial court for further proceedings. All costs associated with this appeal are assessed equally between the parties.

**REVERSED IN PART AND VACATED; AFFIRMED IN PART AND VACATED;  
AMENDED AND REMANDED FOR FURTHER PROCEEDINGS.**