Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-135

LAPALCO VILLAGE JOINT VENTURE

versus

WENDELL PIERCE, TROY A. HENRY, JAMES HATCHETT STERLING FRESH FOODS, LLC AND ASI FEDERAL CREDIT UNION

ON APPEAL THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 747-075, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

June 5, 2026

MARC E. JOHNSON

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Stephen J. Windhorst

APPEAL DISMISSED;
REMANDED

MEJ
FHW

WINDHORST J., AGREES IN PART; DISSENTS IN PART WITH REASONS

SJW

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR DEFENDANT/APPELLANT,
WENDELL PIERCE, TROY A. HENRY AND STERLING FRESH FOODS, LLC

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LAPALCO VILLAGE JOINT VENTURE

Jacob Kansas

JOHNSON, J.

Appellants/Defendants, Wendell Pierce, Troy A. Henry, and Sterling Fresh Foods, LLC, appeal the trial court's judgment that partially granted summary judgment concerning a commercial lease agreement in favor of Appellee/Plaintiff, LaPalco Village Joint Venture, rendered in the 24th Judicial District Court, Division "M". For the following reasons, we dismiss the appeal without prejudice and remand the matter for further proceedings.

FACTS AND PROCEDURAL HISTORY

This is the second appeal concerning the commercial lease agreement at issue. The underlying facts of this matter are recited in *LaPalco Village Joint Venture v. Pierce*, 16-731 (La. App. 5 Cir. 6/15/17), 223 So.3d 691. On July 22, 2025, LaPalco Village Joint Venture (hereinafter referred to as "LaPalco") filed a motion for summary judgment against Wendell Pierce, Troy A. Henry, and Sterling Fresh Foods, LLC ("Sterling Fresh") *in solido*. LaPalco argued it was entitled to summary judgment as a matter of law for damages regarding: the unpaid common area maintenance, taxes, and insurance on the leased premises; the *In Solido* Early Termination Guaranty for the value of the dairy and produce refrigeration unit and freezer unit; 12% conventional interest per annum on all sums due; and reasonable attorney's fees. Defendants opposed the motion, arguing LaPalco violated the terms of the lease through mismanagement of the premises.

On August 28, 2025, the trial court held a hearing on LaPalco's motion for summary judgment. In a written judgment rendered on the same day, the trial court partially granted summary judgment in favor of LaPalco. The judgment stated the following:

> IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment is GRANTED, IN PART.
>
> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that a final judgment is rendered in favor of LaPalco Village Joint

Venture and against Defendants, Wendell Pierce, Troy A. Henry, and Sterling Fresh Foods, LLC, in solido for the following amounts:

1) The unpaid common area maintenance, taxes, and insurance on the leased premises through November 19, 2014, after applying the credit of $5,000, in the amount of $17,220.72.

2) The stipulated damages due under the In Solido Early Termination Guaranty incurred during the second year of the Lease in the amount of $250,000.

3) Twelve (12%) percent per annum interest from November 20, 2014, until paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Motion for Summary Judgment is DENIED, without prejudice, as it relates to the value of the refrigeration and freezer units.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the award for reasonable attorney's fees on all amounts owed is PRETERMITTED pending resolution of the total amount due to Plaintiff.

Defendants filed a joint suspensive appeal of the trial court's judgment on November 25, 2025, which was granted. The instant appeal followed.

LAW AND ANALYSIS

Lack of Appellate Jurisdiction

In this matter, the trial court's August 28, 2025 judgment rendered a summary judgment that adjudicated less than all of LaPalco's claims against Defendants. Although the decree stated it was a final judgment, for the following reasons, we find that the judgment-at-issue is interlocutory.

La. C.C.P. art. 1915[1] provides, in pertinent part,

A. A final judgment may be rendered, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:

***

(3) Grants a motion for summary judgment, as provided by Articles 966 through 969, but not including a summary judgment granted pursuant to Article 966(E).

[1] Acts 2025, No. 250, § 3, became effective on August 1, 2025. Therefore, this version of La. C.C.P. art. 1915 is applicable to this matter.

***

> C. Except as otherwise provided by law, when a court grants a judgment or summary judgment, or sustains an exception in part, as to one or more but fewer than all of the claims, demands, issues, or theories by or against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, that judgment is an interlocutory judgment.

Here, the judgment-at-issue is excepted from Subsection (A)(3), as it grants summary judgment as to one or more but fewer than all of LaPalco's claims, demand, issues, or theories against Defendants. The judgment does not fall within La. C.C.P. art. 1915's exclusive list of partial judgments from which an appeal may be taken. Consequently, Subsection (C) applies, and the judgment is an interlocutory judgment. Furthermore, the 2025 comments to the most recent amendment to Article 1915 confirm the amendment removes the authority of the trial court to designate judgments as final and appealable. Therefore, we find that we lack the appellate jurisdiction to consider the partial summary judgment before us.

The proper vehicle to contest an interlocutory judgment is by application for supervisory writ. *See*, *Short v. Burquera*, 24-407 (La. App. 5 Cir. 10/18/24), 398 So.3d 1224, 1226. It is not this Court's policy to convert jurisdictionally defective appeals into supervisory writ applications. *Id*., citing *In re Medical Review Panel Proceedings of Foster*, 17-653 (La. App. 5 Cir. 3/28/18), 243 So.3d 1282, 1285. However, Defendants are permitted the opportunity to file an application for supervisory writ, should they choose to do so, to review the trial court's partial summary judgment within 30 days of the date this opinion is rendered.

DECREE

Accordingly, pursuant to Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(1), we dismiss the instant appeal without prejudice and remand the matter to the trial court for further proceedings.

APPEAL DISMISSED; REMANDED

Fifth Circuit Court of Appeal
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WINDHORST J., AGREES IN PART; DISSENTS IN PART WITH REASONS

I agree with the majority opinion that this court lacks appellate jurisdiction to review the trial court's August 28, 2025 granting in part and denying in part plaintiff's motion for summary judgment because that judgment is an interlocutory judgment. I therefore also agree this appeal should be dismissed without prejudice. However, I disagree with the majority's decision to grant appellants 30 days to seek supervisory review of this judgment for the following reasons.

The 30-day period for defendants/appellants to file a notice of intent to apply for a supervisory writ expired in late September 2025, along with the limit for the return date. La. U.R.C.A. Rule 4–3. In addition, appellants filed their motion for suspensive appeal on October 12, 2025, more than 30 days from the date of the August 28, 2025 judgment. The second paragraph of Rule 4–3 allows for an extension of that 30-day limit **if, *and only if,*** a motion for extension is filed ***within*** the original 30-day period. That time limit is also long passed. Appellants have not filed a notice of intent to apply for writs, a request for a return date, or a motion for

extension within which to apply for writs. Thus, pursuant to Rule 4–3, "an application not filed in the Court of Appeal within the time so fixed or extended ***shall not be considered***, in the ***absence of a showing*** that the delay in filing was not due to the applicant's fault." [Emphasis added.] Appellants here do not present any circumstances that indicate the failure to timely file a writ application was not due to their fault, nor is it apparent on the face of the record. Thus, the majority's unilateral grant of this extension is in direct violation of Rule 4–3.

La. C.C.P. art. 1915 C (amended effective 08/01/2025[1]) provides that when a court grants a summary judgment as to one or more but fewer than all of the claims, that judgment is an interlocutory judgment, which has always been the law. Because the judgment in this case only granted summary judgment as to some of plaintiff's claims, it is a *partial, interlocutory judgment*, over which there is no appellate jurisdiction. Thus, this matter was clearly, and moreover, *obviously* not appealable.

Granting appellants another 30 days to file a writ application undermines the purpose of the rules governing the time period allowed for filing a writ application. It is also grossly unfair to the other party. This grant of a 30-day period to file a writ application amounts to a 10-month extension—clearly prohibited by Rule 4–3—which will now delay trial court proceedings about a year.

Moreover, it grants an unfair advantage to defendants/appellants, who were at fault, and to the prejudice of plaintiff/appellee who was free from fault. When the time for applying for writs expired, plaintiff/appellee had a right to proceed as though the matter was law of the case without the further delay and expense on the same issue being revived for an extra year of consideration, all without any showing whatsoever that the missed 30-day deadline was not the fault of the would-be

[1] Neither party requested, not did the trial court make, an "express determination that there was no just cause for delay" and that the judgment was appealable. Thus, the 2025 amendment to La. C.C.P. art. 1915 caused no confusion and played no part in this.

applicant, as required by Rule 4–3. Making this worse is that the majority's unilateral decision is without any input or response from the adversely affected opponent party. As previously stated by this court, we cannot and should not baselessly disregard the time limits of Rule 4–3. Innovative Hist. Renovation, LLC v. Associated Hous. Contractors, LLC, 25-399 (La. App. 5 Cir. 12/23/25), 428 So.3d 992, 996.

An additional factor in this case which was not present is Innovative Renovation, *supra*, is that appellant therein (the would-be relator) filed its notice of appeal promptly after the adverse trial court ruling, well within the time for notice of intent to apply for supervisory review. The present case is worse because the notice of appeal was not filed until October 12, 2025, long after the expiration of time to give notice of intent to apply for a writ. The majority's ruling here encourages a party which has negligently missed the 30-day limit to file a notice of appeal with hope of resetting the time for a writ application at their opponents' expense. I do **not** suspect or imply that appellants herein did any such thing; I am merely noting the practical effect of the majority's ruling in this case, which encourages a party to file an appeal in the absence of appellate jurisdiction to restore the party's ability to file a writ application which had been lost.

The majority's position relies primarily on Short v. Burquera, 24-407 (La. App. 5 Cir. 10/18/24), 398 So.3d 1224, 1226, in which this court granted the appellant time to file an application for supervisory review of a judgment that was not appealable. The decision and facts in Short were dramatically different from this case. Short involved child custody matters, which often lead to uncertainty regarding whether a judgment is appealable or reviewable only by writ application. The court recognized that there was some ambiguity in the judgment's title or other

phrasing which may have caused uncertainty.[2] Further, the appeal delay in child custody matters is a maximum of 30 days, the same delay as for a writ application. Undoubtedly cognizant of these factors, the appellant in Short filed a timely appeal, but included a request to be allowed to file or have his review considered as a writ application. Thus, appellant in Short raised several factors which showed why the appellant was not at fault or negligent in not filing for an application for supervisory review, thereby satisfying the requirement for exception to Rule 4–3. Short is a precedent which shows the error of the majority in this case. Short is illustrative of the conditions which must be met to satisfy the free-from-fault requirement for exception to the 30-day limit of Rule 4–3, which are conspicuously absent herein. The present case bears little similarity to the factors taken into consideration in the Short case, and those which follow it.

Considering the foregoing, I would not grant appellants additional time to seek review by an application for a supervisory writ. Appellants will have the opportunity to seek review of the August 28, 2025 judgment on a future appeal.

[2] The Court in Short stated, "A review of the judgment, however, leads to the conclusion that the trial court's judgment, *regardless of how it was titled*, is an interim judgment and thus, interlocutory in nature." [Emphasis added.]

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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 **JUNE 05, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-CA-135

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
JACOB KANSAS (APPELLEE) RANDY G. MCKEE (APPELLANT)

MAILED