

CAI NGO

NO. 25-C-244

VERSUS

FIFTH CIRCUIT

RIDGELAKE PLAZA, LLC

COURT OF APPEAL

STATE OF LOUISIANA



June 18, 2025

Linda Tran
First Deputy Clerk

IN RE DAN ROBIN, SR., DAN ROBIN, JR., CASEY ROBIN, AND DON PAUL ROBIN

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE LEE V. FAULKNER,
JR., DIVISION "P", NUMBER 859-468

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Timothy S. Marcel

WRIT DENIED

The relators, Dan Robin, Sr., Dan Robin, Jr., Casey Robin, and Don Paul Robin, seek review of the trial court's denial of their motion for partial summary judgment. We deny the application for the following reasons.

PROCEDURAL HISTORY

The writ application shows that the plaintiff/respondent in this matter, Cai Ngo, sued Ridgelake Plaza, L.L.C. ("Ridgelake") for breach of contract. Mr. Ngo's petition alleged that on September 1, 2022, he and Ridgelake perfected a Contribution and Joinder Agreement ("the agreement"), which was executed on behalf of Ridgelake by its Manager, Anthony P. Marullo, III. The agreement provided that Mr. Ngo would contribute one million dollars to Ridgelake. Upon Ridgelake's sales of its assets, or a substantial amount of its assets, or the sale of its controlling membership interests, it agreed to return, at a minimum, the amount of Mr. Ngo's contribution. Mr. Ngo's petition alleged that Ridgewood sold a substantial amount of its assets to Causeway Ridge Properties, L.L.C. on November 8, 2023. Ridgewood partially financed the sale, and the parties deposited \$1,446,469.34 from the sale into a third-party escrow account. Mr. Ngo alleges that he made a demand on Ridgewood for the return of his one million dollar contribution on October 29, 2024. Still, the relators all objected to the release of the funds from escrow and denied his demand.

On November 21, 2024, the relators, who collectively owned 50% of Ridgelake's shares, filed a petition for intervention, answered Mr. Ngo's lawsuit, asserted a reconventional demand, and sought declaratory relief. The relators first

denied “the authenticity and validity of the Contribution Agreement.” In addition, they argued that the contribution agreement lacked proper consideration, is “ultra vires,” “squarely violates the Operating Agreement and La. R.S. 12:1324, “was executed without proper authority, to the extent that it is authentic” and “was not consented to or agreed upon by Intervenor, even if it was authentic.” The relators next argued that the terms of the contribution agreement did not supersede Ridgelake’s operating agreement, that provided “distribution[s] shall be made ratably to Members in proportion to their respective Units of Ownership.” Relators concluded that Mr. Ngo’s 20% ownership interest in Ridgelake did not entitle him to one million dollars of the funds held in escrow but to no more than 20% of the escrowed amount.

On January 29, 2025, the relators filed a motion for partial summary judgment on the issue of Mr. Ngo’s right to one million dollars of the escrowed funds. As pleaded in their motion, the relators sought “a judicial declaration that the Robins are entitled to not less their 50% pro-rata share or \$723,234.67 or one-half the escrowed amount, whereas Mr. Ngo would be entitled to at least a 20% share of the escrowed funds or \$289,293.87.” The relators reiterated that Ridgelake’s operating agreement governed the release of escrow funds and that a member could not receive more than their proportional ownership interest. The relators further contended that Mr. Ngo’s contribution agreement could not be valid since it did not amend the operating agreement by a super-majority of the units of Ridgelake’s ownership. The relators asserted that none of them had approved the contribution agreement.

In opposition to the motion for partial summary judgment, Mr. Ngo pointed out that Anthony Marullo executed the Contribution Agreement on behalf of Ridgelake with actual and apparent authority as its manager. Mr. Ngo stated in his affidavit that he intended that one million dollars would be returned to him immediately upon the sale of Ridgelake’s assets. Mr. Ngo also argued that the company should treat the return of his one million dollars not as a distribution among members but as a repayment of his contribution, as outlined in the agreement.

On March 2, 2025, Anthony Marullo filed an opposition to the relators’ motion for a partial summary in his capacity as an intervenor. Mr. Marullo argued that these genuine issues of material facts existed:

. . .

- Which monies contributed to the entity are creditor loans which should be paid in full and priority to the members' rights to return of capital contributions;
- Which monies contributed to the entity are creditor loans which should be paid in full and priority to the members' right to distribution of company assets after a distribution event, under Section 12 of the operating agreement;
- As the loans and capital contributions of members far exceed the total amount of monies held in escrow, in what priority should loans be paid, and how should members' capital contributions be subordinated below loans that are due and owing per the operating agreement and agreements made by Ridgelake Plaza, L.L.C. to other entities to secure that financing and loans.

The relators' motion for partial summary judgment was heard on May 1, 2025, and taken under advisement on that date. On May 2, 2025, the trial denied the motion. The timely writ application followed.

LAW AND ANALYSIS

A court shall grant a motion for summary judgment if the motion, memorandum, and supporting documents show that there is no genuine issue regarding material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The mover's burden on the motion is to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense if the mover does not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment. La. C.C.P. art. 966(D)(1). The adverse party then has to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id.*

Appellate courts review the grant or denial of a motion for summary judgment *de novo*, using the same criteria applied by the trial court, to determine whether any genuine issue of material fact exists and whether the mover is entitled to judgment as a matter of law. *Simon v. State Farm Mut. Auto. Ins. Co.*, 16-46 (La. App. 5 Cir. 9/8/16), 201 So.3d 1007, 1009.

Genuine issues of material fact

Our review of the application and its exhibits show that several issues of fact exist which preclude the granting of a partial summary judgment at this early stage of the proceeding.

As stated above, the record shows that the relators question the authenticity of Mr. Ngo's contribution agreement. A resolution of the authenticity of the contribution agreement is necessary, as it forms the basis of Mr. Ngo's claim. To the extent that Mr. Ngo's credibility is being called into question by the relators, we agree with the Fourth Circuit's observations in *New Orleans Priv. Patrol Serv., Inc. v. Corp. Connection, Inc.*, 17-746 (La. App. 4 Cir. 3/21/18), 239 So.3d 480, 485:

The Louisiana Supreme Court has pronounced that "[a] trial judge cannot make credibility determinations on a motion for summary judgment." *Hutchinson v. Knights of Columbus, Council No. 5747*, 2003-1533, p. 8 (La. 2/20/04), 866 So.2d 228, 234. This Court echoed the Supreme Court's sentiment in *Williams v. Metro Home Health Care Agency, Inc.*, 2002-0534, p. 3 (La. App. 4 Cir. 5/8/02), 817 So.2d 1224, 1227, and stated that "[m]aking an evaluation of credibility has no place in determining summary judgment; it is not the trial court's function on motion for summary judgment to determine or even inquire into the merits of the issues raised." *Id.* (citing *Rapp v. City of New Orleans*, 1995-1638 (La. App. 4 Cir. 9/18/96), 681 So.2d 433).

Alternatively, the relators assert that Ridgelake's sole Manager, Anthony P. Marullo, III, lacked the authority to enter into the contribution agreement with Mr. Ngo. The resolution of this issue, under the facts presented, precludes summary

judgment. *Banc One Leasing Corp. v. Scat Recycling, L.L.C.*, 04-896 (La. App. 5 Cir. 12/14/04), 892 So.2d 98, 102, *writ denied*, 05-0127 (La. 3/24/05), 896 So.2d 1037.

Summary judgment is rarely appropriate for determining matters based on subjective facts, such as intent, motive, malice, knowledge, or good faith. *Chevis v. Rivera*, 21-0124 (La. App. 1 Cir. 9/24/21), 329 So.3d 831, 838, *writ denied*, 21-01546 (La. 12/21/21), 330 So.3d 317. Here, assuming that the contribution agreement is authentic and valid, the next question becomes: what effect does the agreement have between the parties? It appears that a disagreement exists about whether Mr. Ngo's contribution should be classified as a corporation debt or as an amount subject to distribution based on the respective shares held in Ridgelake's ownership. As Mr. Marullo points out, Section 12.2.2 of Ridgelake's operating agreement states that the company must pay all creditors in full before distributing any funds to its members in the event of a liquidation. It remains unclear in the application whether Mr. Ngo's funds were contributed as a member or loaned, similar to a creditor.

CONCLUSION

For these reasons, and on the showing made, we deny the writ application.
Gretna, Louisiana, this 18th day of June, 2025.

JJM
FHW
TSM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

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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 **06/18/2025** 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

25-C-244

E-NOTIFIED

24th Judicial District Court (Clerk)
Hon. Lee V. Faulkner, Jr. (DISTRICT JUDGE)
Robert J. Ellis, Jr. (Respondent)

James M. Garner (Relator)
Ryan O. Luminais (Relator)

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