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SUPREME COURT OF LOUISIANA

No. 2006-C-1017

KENDRITH & ONNIE NICHOLS, ET AL.

versus

STATE FARM FIRE & CASUALTY CO.

**ON WRIT OF REVIEW TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF AVOYELLES**

PER CURIAM

WRIT GRANTED; JUDGMENT OF THE COURT OF APPEAL AFFIRMED, IN PART, REVERSED, IN PART, AND RENDERED. In the present case, the Court of Appeal set aside the judgment of the trial court, finding no evidence to support the trial court judgment; notwithstanding, the appellate court remanded the case to the trial court for the taking of evidence “so that the cost of the proposed repairs, salvage value, and actual cash value can be determined.” Kendrith Nichols and Onnie Nichols v. State Farm Fire & Casualty Co., 05-1349, slip op. at 4 (La. App. 3 Cir. 4/5/06).

Louisiana law favors the prompt disposition of cases for the benefit of the litigants who have had their day in the trial court. The protraction of litigation to receive evidence that should have been adduced at the original trial is to be avoided. Texas Pipe Line Co. v. Johnson, 65 So. 2d 884 (La. 1953); Our Lady of the Lake Hospital, Inc. v. Carboline Co., 632 So. 2d 339 (La. App. 1 Cir. 1993), writs denied, 94-0287 (La. 3/25/94), 635 So. 2d 228, and 94-0753 (La. 5/6/94), 637 So. 2d 1052. In the administration of justice, courts of appeal are granted the right to remand a case under certain circumstances for the introduction of additional evidence. Texas Pipe Line Co., 65 So. 2d at 886. Nevertheless, as we stated in Bayou Rapides Lumber

Co. v. Campbell, 41 So. 2d 781, this procedure “is one which must be sparingly exercised.” Id. at 782. This Court is not “disposed to permit litigants to try their cases by piecemeal and continue protracted litigation as to facts that could have been established on the original trial.” Kennebrew v. Louisiana Ice Co., Inc., 43 So. 2d 798, 808 (La. 1949).

In the present case the appellate court erred when it remanded the case without determination of whether the plaintiffs exercised due diligence in obtaining the evidence necessary to support the trial court’s judgment. Love v. AAA Temporaries, Inc., 03-1460 (La. 10/17/03), 858 So. 2d 410; Herbert v. Travelers Indemn. Co., 232 So. 2d 463 (La. 1970). Although State Farm has referenced in its writ application that the evidence in the present case was obtainable with due diligence at the original trial, the plaintiffs concur in the propriety of the remand, relying solely on the broad discretionary power enunciated in LA. CODE CIV. PROC. ANN. art. 2164. The plaintiffs do not make any assertion in their opposition to State Farm’s writ application that the evidence was unobtainable at the time of trial in the district court. Considering the well-established jurisprudence and the facts of the present case, we affirm the appellate court’s reversal of the trial court judgment, in part, but reverse the appellate court’s judgment ordering a remand of this matter.