

SUPREME COURT OF LOUISIANA

No. 95-C-3058

SHIRLEY HARTMANN, WIFE of/and RICHARD P. CARRIERE

Versus

BANK OF LOUISIANA

ON REHEARING

JOHNSON, J., Dissenting

The Carrieres have been attempting since 1989 to collect rents and taxes on this property which is located at 2712 N. Arnoult Road in Metairie, Louisiana. During this entire time, Occhipinti and later BOL has had the use and occupancy of the property and even collected rents. The plaintiffs issued a notice of default to Occhipinti, on June 12, 1989, and when the default was not cured, a notice to vacate the premises was issued on July 7, 1989. The plaintiffs then filed suit to terminate the lease and evict Occhipinti from the premises.

Following the purchase of the "leasehold" by BOL at the Sheriff's sale, the Carrieres added the bank as a defendant in the suit for eviction. In Carriere I, the district court declared the lease terminated and ordered the bank to vacate the premises. The appellate court then reversed, finding the lease to still be in effect, and this court denied writs.

The majority of this court has now told the Carrieres they should not have relied on the "law of the case" principle, but instead were required to file a new lawsuit against the bank to terminate the lease, or issue a demand letter to vacate under civil code article 493. What is a litigant to do if he has a judgment in hand and cannot rely on it?

For these reasons, in addition to those expressed in our original opinion, I

respectfully dissent.