

SUPREME COURT OF LOUISIANA

No. 2017-C-694

U.L. COLEMAN III, ET AL.

VERSUS

QUERBES COMPANY NO. 1, ET AL.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
SECOND CIRCUIT, PARISH OF CADDO**

GENOVESE, Justice, would grant in part and deny in part, and assigns the following reasons:

I would grant Plaintiffs' writ application in part. The Second Circuit did not apply the correct standard of review to the exceptions of no cause of action. This Court has explained:

The peremptory exception of no cause of action is designed to test the legal sufficiency of a petition by determining whether a party is afforded a remedy in law based on the facts alleged in the pleading. All well-pleaded allegations of fact are accepted as true and correct, and all doubts are resolved in favor of sufficiency of the petition so as to afford litigants their day in court. The burden of demonstrating that a petition fails to state a cause of action is upon the mover. The sufficiency of a petition subject to an exception of no cause of action is a question of law, and a *de novo* standard is applied to the review of legal questions; this court renders a judgment based on the record without deference to the legal conclusions of the lower courts. *See Foti v. Holliday*, 09-93 (La. 10/30/09), 27 So.3d 813.

Jackson v. City of New Orleans, 12-2742, p. 24 (La. 1/28/14), 144 So.3d 876, 895.

Louisiana Code of Civil Procedure Article 931 provides: "No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action." This Court has recognized the jurisprudential exception to the rule which allows evidence admitted without an objection to enlarge the pleadings. *Emigh v. West Calcasieu Cameron Hosp.*, 13-2985 (La. 7/1/14), 145 So.3d 372; *City of New Orleans v. Bd. of Directors of La. State*

Museum, 98-1170 (La. 3/2/99), 739 So.2d 748. However, contrary to Defendants' contention and the Second Circuit's opinion herein, the standard of review is *de novo*, even where there is an accepted enlargement of the pleadings.

I would deny the writ in part as it pertains to Defendants' exceptions of no rights of action and prescription as the correct standards of review were applied to those exceptions.