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# Louisiana Practice - Application for Supervisory Writs - Effect On Trial Court Proceedings

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teriality or fraud would in that case serve as grounds for avoidance whether the statement were a warranty or a representation. This interpretation is supported by the language of the second sentence of Article 619(B), not found in earlier, similar Louisiana statutes. Such an interpretation would impose the hardship on the insured of allowing the insurer additional grounds for the avoidance of the contract; but the purpose of enacting such a statute is to relax the common law rule.<sup>9</sup> The correct interpretation therefore seems to be that an immaterial misrepresentation, although fraudulent, does not give the insurer the privilege of avoiding the contract.

In the instant case, the insurance company's "practically admitting the absence of fraud" left to be decided only the question of whether or not the insured's statements concerning medical treatment for a heart disease were material. The finding that the insured's false statements were material seems consistent with the Louisiana jurisprudence on that subject;<sup>10</sup> a finding that a false statement is material would seem to give the insurer the privilege of avoiding the contract whether the statement be fraudulent or not.<sup>11</sup>

*Maynard E. Cush*

#### LOUISIANA PRACTICE—APPLICATION FOR SUPERVISORY WRITS—EFFECT ON TRIAL COURT PROCEEDINGS

Plaintiff, seeking review of a ruling made by the trial judge during the course of the trial, invoked the supervisory jurisdic-

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that the fraud complained of had injuriously affected the insurer." *VANCE INSURANCE* 388 (3d ed. 1951).

9. *Hartford Life Ins. Co. v. Stalling*, 110 Tenn. 1, 72 S.W. 960 (1903); *Penn Mut. Life Ins. Co. v. Mechanics' Savings Bank & Trust Co.*, 73 Fed. 653 (6th Cir. 1896); *APPLEMAN, INSURANCE LAW AND PRACTICE* § 7253 (1943).

10. In *Lee v. New York Life Ins. Co.*, 144 La. 445, 80 So. 652 (1919) (insured consulted doctor for a minor ailment and the doctor found on examination the patient had Bright's disease) and *Jefferson Standard Life Ins. Co. v. Stevenson*, 70 F.2d 72 (5th Cir. 1934) (major lung disease), concealment of the consultation was held to be material although the seriousness of the disease had been concealed from the insured.

The insured made statements about receiving medical treatment for the ailments indicated: *Mataya v. Delta Life Ins. Co.*, 71 So.2d 139 (La. App. 1954) (common cold); *Carrroll v. Mutual Life Ins. Co.*, 168 La. 953, 123 So. 638 (1929) (indigestion); *Cunningham v. Penn Mut. Life Ins. Co.*, 152 La. 1023, 95 So. 110 (1922) (nongonorrheal prostatitis); *Goff v. Mutual Life Ins. Co.*, 131 La. 98, 59 So. 28 (1912) (malaria); *Cole v. Mutual Life Ins. Co.*, 129 La. 704, 56 So. 645 (1911) (minor throat ailment). In all these cases the statements were held immaterial.

11. See *Rhodes v. Metropolitan Life Ins. Co.*, 172 F.2d 183 (5th Cir. 1949).

tion of the Supreme Court. The trial judge, interpreting the recent decision of *State ex rel. Marston v. Marston*<sup>1</sup> as leaving him no discretion to proceed with the trial, stayed proceedings pending action on the application for supervisory writs. *Held*, it is within the sound discretion of the trial judge whether trial proceedings should be stayed after notification that a litigant intends to seek review of an adverse ruling under the supervisory jurisdiction of the Supreme Court. *Roumain v. Moody*, 225 La. 187, 72 So.2d 473 (1954).

In *State ex rel. Marston v. Marston*, the defendant's exception of *lis pendens* was overruled by the trial judge. Thereupon the defendant notified the trial judge that she would apply to the Supreme Court for a review of the ruling. The trial judge did not stay proceedings, default judgment was rendered in favor of the plaintiff, and defendant's motion to vacate the judgment was denied. On application for supplemental supervisory writs the Supreme Court held that the notification of intent to apply for supervisory writs served to stay proceedings and therefore the trial judge was powerless to proceed with the case pending action on the application. A note on the *Marston* decision<sup>2</sup> takes the position that the decision cannot be reconciled with prior jurisprudence to the effect that trial court proceedings are suspended only if alternative writs are granted by the Supreme Court together with a stay order served on the trial judge.<sup>3</sup> The note also points out that the *Marston* rule might be employed for purely dilatory purposes. If trial judges were forced to stay proceedings upon nothing more than a notification of intent to apply for writs, they would be unable to prevent vexatious delays resulting from frivolous applications.

In a *per curiam* opinion, the court in the instant case stated that "any language to be found in the *Marston* case to the contrary notwithstanding, in the trial of all cases, whether civil or criminal, it is within the sound discretion of the trial judge to determine whether or not the proceedings during the course of a trial being had before him should be stayed while the litigant complaining of an adverse ruling seeks writs to this court, and that it is also within the sound discretion of the trial judge to determine and fix the time within which such applica-

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1. 223 La. 1046, 67 So.2d 587 (1953).

2. Note, 14 LOUISIANA LAW REVIEW 708 (1954).

3. *First National Bank Bldg. Co. v. Dickson & Denny*, 202 La. 970, 13 So.2d 283 (1943); *Arthur v. Dupuy*, 130 La. 782, 58 So. 570 (1912).

tion should be made, and that it is only when there has been a clear abuse of that discretion that this court will interfere, and, even then, only when it is shown that the abuse of that discretion will result in irreparable injury to the complaining party."<sup>4</sup> The Supreme Court's failure to overrule specifically the *Marston* case raises questions as to its use in the future. The *Marston* and *Roumain* cases may be distinguished in two important respects. First, as the opinion in the *Roumain* case states, the plaintiff had on two occasions caused a stay of trial proceedings by applying for supervisory writs. The employment of purely dilatory tactics was obvious. Second, the *Marston* case involved a ruling made by the trial judge *before* trial, whereas in the *Roumain* case the ruling was made *during* the trial. It is submitted that the holding of the *Roumain* case should not be restricted to its peculiar facts, but should be interpreted so as to prevent the use of the *Marston* rule for delaying the proceedings, either before or after commencement of trial. The trial judge is in the best position to control the proceedings in his court and his discretion should be left unfettered unless clearly abused.

*Neilson Jacobs*

#### MINERAL RIGHTS—REVERSIONARY INTEREST

Plaintiffs appealed from a judgment dismissing their suit to be recognized as owners of a one-fourth mineral interest to which they had purchased the right of reversion. Plaintiffs' vendor had purchased the surface of the land concerned subject to an outstanding one-fourth mineral servitude; he then sold the land, plus a one-half interest in the minerals, to the defendant, reserving in the act of sale a present one-fourth mineral interest and the right of reversion to the outstanding servitude. The act of sale contained the stipulation that the right of reversion should prescribe at the same time as the one-fourth mineral interest reserved with it. Plaintiffs alleged that prescription had run against the outstanding servitude, causing it to vest in them as purchasers of the right of reversion. Defendants argued that it reverted to the land which they now own. *Held*, the reservation of the reversionary interest was an attempt to circumvent the public policy of the state that mineral rights should revert