Prytania Park Hotel Limited v. General Star Indemnity Company: A Misapplication of Civil Code Article 466

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I. INTRODUCTION

In Louisiana, property is broken down into movables and immovables. According to the Louisiana Civil Code, there are several ways that a movable thing can become an immovable thing. One such way is for that movable to be classified as a component part of an immovable; that movable then takes the status of an immovable. Article 466 of the Civil Code defines when a movable is a component part of an immovable:

Things permanently attached to a building or other construction, such as plumbing, heating, cooling, electrical or other installations, are its component parts.

Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached.

The article, as written, seems to define component parts in the first paragraph. In order to satisfy the requirement of "permanent attachment" in the first paragraph, the movable would have to pass the test outlined in the second paragraph. Read literally, the second paragraph of Article 466 requires that in order for a movable to be considered permanently attached, removal would have to cause substantial damage to either the movable or the immovable to which it is attached. However, if a literal interpretation were proper, hypothetically, what classification would the doors to a home receive? Would they be considered component parts, or would they retain their movable status, surprising every eager purchaser of a home who cannot secure his belongings because he has no door? Giving Article 466 a literal interpretation, the doors could only be considered component parts if the removal of the doors would cause substantial damage to either the doors or the house. Under this civilian interpretation, the doors would certainly be considered movables and not component parts since no damage would result from removing...

3. La. Civ. Code art. 469 provides, "the transfer or encumbrance of an immovable includes its component parts."
5. Id.
6. Id., para. 2.
7. Article 466 would be irrelevant concerning the doors in case of a sale since the Civil Code includes accessories to an immovable with the immovable itself in that scenario. See La. Civ. Code art. 2461. However, in the mortgagee/mortgagor or successorship scenario, there is no such accessory article.
doors from hinges. As a result of this conclusion, courts have historically strayed from this strict and literal interpretation.9

Also, it might not be possible for the doors to attain component part status given a strict interpretation of the first paragraph of Article 466. That first paragraph provides, “Things permanently attached . . . such as plumbing, heating, cooling, electrical or other installations, are . . . component parts.”10 Thus, using a strict interpretation, in order to be considered a component part, the movable must first fit within the list of movables in the first paragraph. The use of the words “such as” indicates that the list is illustrative. Because doors are not listed, they would have to fit in the category of “other installations.” Evoking ejusdem generis, a civilian interpretation method, “other installations” would refer to movables that are in the same class or genre as the listed movables.11 Since doors have nothing in common with plumbing, air conditioning, etc., they would not fit the definition of component parts. As a result of this conclusion, the courts have also rejected the ejusdem generis interpretation of the list of movables in the first paragraph of Article 466.12 Instead, these courts have adopted a test based on contemporary objective standards concerning components of a modern-day building to determine what should or should not be included within the first paragraph of Article 466.13 To apply this test, the court inquires as to whether an ordinary, reasonable person would expect the movable to pass with the immovable in an act of sale.14

This article will analyze the court’s literal interpretation of Article 466 in Prytania Park Hotel Limited v. General Star Indemnity Company. Part II will discuss the facts and holding of the case itself. Part III will discuss the prior statutory law and prior interpretation of Article 466. Part IV will discuss the substantive problems with the interpretation of Article 466. Also, Part V will show the procedural problems with the court’s interpretation of Article 466.

II. THE CASE

A. Facts

The Prytania Park Hotel caught on fire, causing extensive damage to one of its buildings including its contents and attached fixtures.15 The hotel was insured on a policy issued by the defendant, General Star Indemnity (hereafter referred to as

11. Ejusdem generis can be evoked when an illustrative list of things is articulated. It guides the expansion of the list and limits the list to things that are in the same genre or class as the things listed.
12. See cases cited supra note 9.
13. Id. See also Laffleur v. Forest, 213 So. 2d 141 (La. App. 3d Cir. 1968) (an application of this test to Article 467: Immovables by nature (subsequently repealed)).
“General”). The policy covered (1) loss or damage to the building including permanently installed fixtures, machinery at replacement value, and (2) loss or damage to furniture compensable at actual cash value. In hopes of getting full replacement value, the owners of the hotel submitted a building claim including fixtures attached to the walls of the hotel. General paid only part of the building claim, refusing to pay for the fixtures on the wall at replacement value. The owners filed a breach of contract action seeking to recover the portions of their claims that were unpaid. The court held that the fixtures in question fell outside of the realm of the insurance contract. However, the court went on to analyze the facts as if the contract did not exist. It stated that in order for the fixtures in question to be considered “permanent fixtures,” they must be component parts “within the confines of [Art]icle 466.”

B. **Holding, Dicta, Rationale, and Ramifications**

The court held that the fixtures were not covered in the language of the insurance policy. However, in dicta, the court stated that the fixtures in this case were not component parts under Article 466. Specifically, the court gave Article 466 a strict interpretation as discussed previously. As a result, this case establishes only one type of component part. The first paragraph of Article 466, the court ruled, is an illustrative list of the kind of movable things susceptible of being classified as a component part. In analyzing this list, the court ruled that it should not be analyzed by looking to the expectations of society, but should be extended only using the civilian concept of *ejusdem generis*. As a result, the court held that the fixtures in question were not susceptible of ever being component parts since they did not have enough in common with the list expounded in the first paragraph of Article 466.

The court interpreted the second paragraph of Article 466 as the actual test as to whether a movable satisfies the definition of permanent attachment as required in the first paragraph. The fixtures, the court asserted for arguments sake, would not have passed the test of paragraph two of the article, assuming that the fixtures were even susceptible of component part status. The court reasoned, “A straightforward reading of Article 466 requires that the permanence of any movable’s installation in ‘a building or other construction’ meet the definition of ‘permanently attached’ in the article’s second paragraph.”

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16. Id.
17. The actual fixtures in this case are irrelevant for the purposes of this casenote. The court may have arrived at the proper conclusion in this case; however, it is the reasoning and interpretation of Article 466 that is flawed and the focus of this note.
19. Id. at 178.
20. This case could have been and in fact was decided without analyzing Article 466.
22. Id.
23. Id. at 179 (emphasis added).
The holding of the court here limits the application of Article 466. In order for a movable to ever become a component part, it must be "sufficiently similar to the four identified by name in Article 466's illustrative list." Once that movable satisfies the first paragraph of Article 466, then it must satisfy the test set up in paragraph two of the article to become a component part. As will be seen below, this interpretation represents a break from the interpretations of previous courts. Before an analysis of this holding and interpretation, it would be helpful to look at the statutory law in existence prior to the enactment of Article 466 as well as the jurisprudence concerning component parts that has evolved since the enactment.

III. PRIOR LAW AND JURISPRUDENCE

A. Prior Statutory Law

Prior to the enactment of Article 466 in 1978, Civil Code articles 467 and 469 governed movables becoming immovables as component parts. These articles set up two separate and distinct ways that a movable would become an immovable as a component part. The first of these ways was if the movable fell within the text of Article 467, Immovable by Nature. Article 467 read as follows:

Wire screens, water pipes, gas pipes, sewerage pipes, heating pipes, radiators, electric wires, electric and gas lighting fixtures, bathtubs, lavatories, closets, sinks, gasplants, meters and electric light plants, heating plants and furnaces, when actually connected with or attached to the building by the owner for the use or convenience of the building are immovable by nature. The list in Article 467 was illustrative and was applied by the courts analogously. Thus, under this article, when any movable, either found in the list or analogous to a movable in the list, was attached to a building by the owner for the use or convenience of the building, that movable became an immovable by nature. A second way that a movable would become a component part and thus become an immovable is if it fell within the purview of Article 469. This article provided:

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24. Id. The court is citing a sliver of text from a law review article written by Professor Symeon Symeonides, Developments in Business Law, 1984-1985, Property, 46 La. L. Rev. 655 (1986).
25. Prytania, 179 F. 3d at 179. The test requires that the removal of the movable would cause substantial damage to either the movable or the immovable to which it is attached.
29. Id. The court is citing a sliver of text from a law review article written by Professor Symeon Symeonides, Developments in Business Law, 1984-1985, Property, 46 La. L. Rev. 655 (1986).
30. See Holicer Gas Co. v. Wilson, 45 So. 2d 96 (La. App. 2d Cir. 1950); Scott v. Brennan, 161 La. 1017, 109 So. 822 (La. 1926); the analogous interpretation included things such as air conditioners and water heaters.
31. Wallfisch, supra note 28, at 442.
32. Id.
The owner is supposed to have attached to his tenement or building forever such movables as are affixed to the same with plaster, or mortar, or such as cannot be taken off without being broken or injured, or without breaking or injuring the part of the building to which they are attached.\textsuperscript{33}

A careful reading of Article 469 shows that it differed from Article 467 as far as attachment was concerned. Article 467 did not make mention of the permanence of the attachment of the movable to the building. However, Article 469 does seem to contemplate a "much closer degree of attachment to, or incorporation into" the immovable.\textsuperscript{34}

In 1978, the legislature decided to enact current Article 466, thus eliminating the need for Articles 467 and 469. This enactment was intended to simplify the law concerning component parts\textsuperscript{35} and also abolish the category of immovables by destination.\textsuperscript{36}

\textbf{B. Jurisprudential Interpretation of Current Article 466}

\textit{1. Federal Fifth Circuit Court of Appeals}

The leading case\textsuperscript{37} interpreting current Civil Code article 466 is \textit{Equibank v. U.S. Internal Revenue Service}.\textsuperscript{38} In \textit{Equibank}, the court held that chandeliers attached to the ceiling of a home were component parts within the meaning of Article 466.\textsuperscript{39} In that case, chandeliers had been wired to the home which was mortgaged in favor of the bank. When the owners of the home failed to pay federal taxes, the IRS took possession of the residence, including the chandeliers.\textsuperscript{40} The court found that the two paragraphs of Article 466 are to be read independently of

\begin{itemize}
\item \textsuperscript{33} La. Civ. Code art. 469 (as it appeared prior to 1978 La. Acts, No. 728).
\item \textsuperscript{34} Symeonides, \textit{supra} note 24, at 655.
\item \textsuperscript{36} La. Civ. Code art. 468 (as it appeared prior to 1978 La. Acts No. 728) provided:
\begin{quote}
Things which the owner of a tract of land has placed upon it for its service and improvement are immovable by destination. Thus the following things are immovable by destination when they have been placed by the owner for the service and improvement of a tract of land, to wit: Cattle intended for cultivation. Implements of husbandry. Seeds, plants, fodder, and manure. Pigeons in a pigeon house. Beehives. Mills, kettles, alembics, vats, and other machinery made use of in carrying on the plantation works. The utensils necessary for working cotton, and sawmills, taffia distilleries, sugar refineries and other manufactures. All such movables as the owner has attached permanently to the tenement or to the building, are likewise immovable by destination.
\end{quote}
\item \textsuperscript{37} The reason that this case is considered the leading case is probably because two of the three judges deciding the case, namely Rubin and Politz, are arguably two of the best judges Louisiana has produced.
\item \textsuperscript{38} 749 F.2d 1176 (5th Cir. 1985).
\item \textsuperscript{39} Id.
\item \textsuperscript{40} Equibank had a mortgage over the residence while the IRS had secured a lien on the contents. Thus, if the chandeliers were considered component parts, they would belong to the bank. However, if the chandeliers are not considered component parts, they would be covered by the IRS lien.
\end{itemize}
each other. In coming to this conclusion, the court relied on Professor Yiannopoulos' testimony that the two paragraphs of Article 466 delineated two separate and distinct categories of component parts. The court appointed Yiannopoulos in order to assist in interpreting the language of the article. He asserted that the first paragraph defines component parts as a matter of law, meaning that removability is immaterial. The second paragraph defines component parts as a matter of fact, meaning that a movable will only be considered a component part if it meets the test of permanent attachment in the second paragraph of Article 466. The court also adopted Professor Yiannopoulos' position that movables fitting into the first paragraph of component parts (as a matter of law) were to be determined based on "what ideas prevail in society today with respect to an ordinary buyer of ordinary prudence."

Because Equibank was a Fifth Circuit federal decision, subsequent panels of the Fifth Circuit are bound by that holding since "the Fifth Circuit is a strict stare decisis court." In U.S. Environmental Protection Agency v. New Orleans Public Service, Inc., decided two years after Equibank, the Fifth Circuit again held that Article 466 should be interpreted treating each paragraph of Article 466 independently. Specifically, the court held that electrical transformers attached to a brewery were component parts of the brewery. The Fifth Circuit had another chance to discuss Article 466 in Coulter v. Texaco. In Coulter, the court again applied the rationale and holding from Equibank.

2. Louisiana State Courts

In Louisiana, state courts are not bound by stare decisis. Therefore, Louisiana's case law is properly regarded as "secondary information." As a result, in Louisiana, "the judge is guided much more by doctrine, as expounded in legal treatises by legal scholars, than the decisions of colleagues. However, even though the Louisiana state courts are not bound by stare decisis, and even though state courts are not bound by federal interpretations of state law, Louisiana courts

41. Equibank, 749 F.2d at 1178.
42. Id. Professor Yiannopoulos points out that the second paragraph of La. Civ. Code art. 466 covers items other than those listed in the first paragraph.
43. Id.
44. Id.
45. Id. at 1179.
46. FDIC v. Abraham, 137 F.3d 264, 268 (5th Cir. 1998).
47. 826 F.2d 361 (5th Cir. 1987).
48. Id.
49. Id. at 369.
50. 117 F.3d 909 (5th Cir. 1997).
51. Id. It is interesting to note that Judge Weiner wrote the opinion in Coulter advocating the holding and test set up in Equibank. Two years later in the case at hand in this article, Judge Weiner completely abandoned not only Equibank, but also his own decision two years earlier.
53. Id.
have nonetheless applied the rationale and interpretation of Article 466 as expounded in Equibank.

The first circuit addressed the interpretation of Article 466 in American Bank & Trust Co. v. Shel-Boze, Inc.54 In that case, the court held that electrical paraphernalia and carpeting are considered component parts as a matter of law under the Equibank holding.55 By ruling that the carpeting and electrical paraphernalia were component parts as a matter of law (fit within the first paragraph of Article 466), the court basically held that an ordinary prudent person purchasing a home would expect that the home come with the carpeting and the fixtures. Thus, the first circuit is not only an advocate of the interpretation of Article 466 as creating two independent types of component parts but also an advocate of the "societal expectations" test.

The second circuit also interpreted Article 466 in Hyman v. Ross,56 fully adopting the Equibank court’s interpretation of Article 466.57 Specifically, the court held that air conditioning and heating units were component parts as a matter of law since heating and air conditioning are specifically listed in the first paragraph of Article 466.58 The third circuit also adopted the Equibank interpretation in Lakeside National Bank of Lake Charles v. Moreaux.59 In that case, the court held that a septic tank and underground air conditioning lines were component parts based on societal expectations.60 Similarly, the fourth circuit interpreted Article 466 in In re Chase Manhattan Leasing Corp.61 In Chase, a new scoreboard was added to the Louisiana Superdome. Since the Superdome is state owned, the scoreboard would be exempt from ad valorem taxes if it became part of the Superdome as a component part. The court held that the scoreboard was in fact a component part of the Superdome exempt from ad valorem taxes.62 The court did not expressly adopt the holding in Equibank.63 However, the court’s language suggests that the fourth circuit has also interpreted Article 466 as creating two independent types of component parts. The court held, "a thing is a component part if either of the paragraphs of Louisiana Civil Code article 466 are satisfied."64 Since the scoreboard was considered an electrical installation, it was a component part in accord with the first paragraph of Article 466.65

As can be seen from this language, a movable becomes a component part of an immovable in either of two ways: first, if it satisfies the first paragraph of Article 466 (as a matter of law); or second, if it satisfies the test in the second

54. 527 So. 2d 1052 (La. App. 1st Cir. 1988).
55. Id.
56. 643 So. 2d 256 (La. App. 2d Cir. 1994).
57. Id.
58. Id. at 261.
60. Id.
61. 626 So. 2d 433 (La. App. 4th Cir. 1993).
62. Id.
63. Id.
64. Id. at 434.
65. Id.
paragraph of Article 466 (as a matter of fact). Seeing that both the federal Fifth Circuit and Louisiana state courts have unanimously held that current Article 466 is comprised of two separate and independent types of component parts, one must wonder why the court in Prytania decided to abandon these previous holdings. As will be shown below, the decision expounded by the court is neither substantively correct nor procedurally permissible.

IV. SUBSTANTIVE ANALYSIS

A. The Prytania Court's Interpretation of Article 466 is Erroneous—The Case-in-Chief

The court's main reasoning is that “the unambiguous wording of the revised version of [Article 466] mandates a “straightforward reading of [Article 466]." Accordingly, this straightforward reading “requires that the permanence of any movable’s installation in a building or other construction meet the definition of permanently attached in the article’s second paragraph.”

1. Internal Cognitive Dissonance

Civil Code article 9 provides, “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature." In order for the court to have reached the conclusion that Article 466 must be given a straightforward interpretation, it must have made two assumptions. The first assumption is that the wording of the article is unambiguous. The second assumption is that the application of Article 466 (with a literal interpretation) does not in fact lead to absurd consequences. The court in this case does not address either one of these two prerequisites for giving Article 466 a literal interpretation. What the court fails to address is that the application of Article 466, given a straightforward interpretation, is both ambiguous and can lead to absurd consequences.

The first paragraph of Article 466 provides, “Things permanently attached to a building . . . such as plumbing, heating, cooling, electrical or other installations, are its component parts.” The use of the words “such as” modifies the words “things permanently attached.” Therefore, anything listed after the words “such as” are necessarily “things permanently attached” and thus, are component parts. However, the court in Prytania is forcing an interpretation that requires that the things listed in the first paragraph also pass the test set up in the second paragraph in order to become a component part. The fact that some courts

67. Id. at 179.
70. Prytania, 179 F. 3d at 179.
have interpreted this language one way while this court interprets it another demonstrates that the wording of Article 466 is far from being clear and unambiguous.

This requirement that things listed in the first paragraph (already shown to be "permanently attached") must also pass the test in the second paragraph to be considered permanently attached also leads to absurd consequences. For instance, what would the court say about a hot water heater? According to the court, the first question to be asked is whether the thing falls within the enumerated list in the first paragraph of Article 466. The answer to this question is obviously yes, since both plumbing and heating installations are covered. However, even though the first paragraph is satisfied, the Prytania court requires that the hot water heater also pass the second paragraph’s test. In order for it to be considered a component part of the immovable, removal of the heater would have to cause substantial damage to either the immovable or the heater itself. In modern society, water heaters are removed, interchanged and disposed of on a regular basis without causing any damage to either the immovable to which it was attached or to the heater itself. Therefore, according to the Prytania court’s interpretation and rationale, a hot water heater would not be considered a component part. Proponents of the court’s interpretation may argue that this discussion is irrelevant since accessories pass with the sale of an immovable and the water heater therefore would not be removable. However, this is the case with a sale only. The result from the previous example would still exist in the case of mortgages and successorships.

More disturbingly, under the court’s rationale, movables that pass the test in the second paragraph of Article 466 will not be considered component parts, even though they fit the definition of permanently attached, if they do not fall within the list in the first paragraph. For instance, assume that a mortgage was taken out on the owner’s home. The owner had custom-made cabinets and shelving installed in his home using both bolts and cement. Removal of the cabinets and shelving would destroy the cabinets since the cement would break the back paneling off of the cabinets and rip paint and plaster from the walls. If the bank were to foreclose, could the homeowner remove the cabinets? How would the court treat the cabinets and shelving?

The second paragraph provides that things are considered permanently attached if removal would cause substantial damage to either the movable or to the immovable to which it is attached. Here, the test is satisfied. Removal of the

72. The water heater example may not be dire. However, consider the same result with such modern conveniences as toilets, doors, windows, etc.
74. This is even more of a problem since the court also held that the “societal expectations” test should not be used to determine what types of things fit within the first paragraph. Instead, the court narrowed the possible movables within the first paragraph list by asserting that the list is simply illustrative. “Other installations” is to be determined using the civilian interpretation method of ejusdem generis.
cabinets would destroy them. Therefore, the cabinets are considered “permanently attached.” The first paragraph of Article 466 states that things permanently attached to an immovable are its component parts.\textsuperscript{76} Thus, it would seem that the cabinets would be considered component parts. However, the \textit{Prytania} court’s interpretation requires that the movable fit within the list expounded in the first paragraph. In this instance, the cabinets would not fit within the list since they are not in the same class as the listed movables. As a result, using the \textit{Prytania} court’s interpretation of Article 466, the cabinets and shelving would not be considered component parts of the home.

As can be seen from the previous two examples, the interpretation of Article 466 as presented by the \textit{Prytania} court can lead to absurd consequences. It is distressing that the court never discussed the implications of this interpretation outside of this specific case. Article 9 of the Civil Code asserts that a literal interpretation should be given when the application does not lead to absurd consequences.\textsuperscript{77} In this case, the assumption that the application would not lead to absurd consequences was incorrect. As a result, the literal interpretation that the \textit{Prytania} court gave Article 466 was also incorrect.

\section{The History and Source of Article 466}

The court in \textit{Prytania} came to the conclusion that Article 466 creates only one type of component part without giving any mention of the history and source of Article 466. However, it seems as if the court made this conclusion based on the notion that prior Article 467 (immovables by nature) was “suppressed.”\textsuperscript{78} If old Article 467 was suppressed, then it would make perfect sense for the court to come to the conclusion that the content of Article 467 is not embodied in the first paragraph of Article 466. Whether or not old Article 467 was completely suppressed is important because if it was not, then it would be embodied in the first paragraph of Article 466 as a separate type of component part (an “immovable by nature”). This result would necessarily show that Article 466 is composed of two different types of component parts rather than just one.

The comments to current Article 466 do say that Article 467 has been suppressed.\textsuperscript{79} However, immediately after this statement, the comment goes on to say that “unity of ownership” and “use or convenience” are no longer required.\textsuperscript{80} This statement seems to assert that Article 467 was repealed only as to “unity of ownership” and “use or convenience.” The fact that nothing about the other content of Article 467 is mentioned in the comments supports this proposition. Legal doctrine tends to support this point as well. Professor Yiannopoulos, the author of the aforementioned comments and official reporter on the revisions, states, “Revised [A]rticle 466 creates a substantive change in the law by

\textsuperscript{76} See La. Civ. Code art. 466, 1st para.
\textsuperscript{77} La. Civ. Code art. 9.
\textsuperscript{78} La. Civ. Code art. 466, cmt. (d).
\textsuperscript{79} Id.
\textsuperscript{80} Id.
eliminating the ‘use or convenience of the building’ test for component parts as well as the ‘unity of ownership’ requirement.181 This seems to say that the only substantive change in the law is that there is “no unity of ownership” or “use or convenience” requirement. As a result, the remainder of prior Article 467 would remain substantively correct and present in Article 466.

Professor Symeon Symeonides wrote similar support for this proposition. He posits, “The first paragraph of current Article 466 can be traced to, and was intended to replace, former Article 467.”82 He goes on to assert, “The substantive change was to eliminate the requirement of ‘unity of ownership,’ that is, the requirement that the attachment be made by the owner of the building.”83 Symeonides also argues that the similarity between the first paragraph of current Article 466 and prior Article 467 are just too close to be ignored.84 Article 466 lists things such as “plumbing, heating, cooling, electric”85 while prior Article 467 lists things such as “water pipes . . . heating pipes . . . [and] electric and gas lighting fixtures.”86 As can be seen, both lists contemplate plumbing, heating, and electric. Thus, the change to the list from old Article 467 to current Article 466 can be and should be explained as purely cosmetic and not a substantive change.87

3. Statutory Indicators

Legal doctrine in Louisiana unanimously supports the proposition that Article 466 is actually made up of two separate and distinct types of component parts. In addition, language in other statutes tends to support this argument. Louisiana Revised Statutes 9:5357 provides that when a mortgaged movable becomes a component part of an immovable, the movable remains a movable as far as the mortgage upon it is concerned and will not pass with the sale of the immovable “to which it has been actually or fictitiously attached.”88 There is some question as to what “actually or fictitiously” means. However, it does seem to convey that there are two different types of attachment as opposed to just the one that the Prytania court posits. Prior to the revisions in 1978, 9:5357 required that the immovable be attached as either an immovable by nature or by destination.89 Immovables by nature were such items “that were actually connected . . . to the building.”90 When the revisions were made in 1978 and the classifications immovable by nature and immovable by destination were omitted from the code, they were also omitted from 9:5357.91 However, when these classifications were omitted, the language

82. See Symeonides, supra note 24, at 687.
83. Id. at 688.
84. Id.
87. See Symeonides, supra note 24, at 688.
89. See Liquid Carbonic Corp. v. Leger, 169 So. 170 (La. App. 1st Cir. 1936).
90. See Wallfisch, supra note 28, at 441 (emphasis added).
"actually or fictitiously attached" remained in the statute. The fact that those words remained in the statute leads to the conclusion that even after the removal of prior Article 467 (immovable by nature), actual attachment still exists, and the content of prior Article 467 still remains in the first paragraph of Article 466.

One possible problem with the argument that prior Article 467 is still embodied in the first paragraph of Article 466 is the use of the word "permanently attached" in both paragraphs of Article 466.92 Prior Article 467 simply required that the listed movables be "connected or attached."93 Current Article 466 uses the words "permanently attached" in the first paragraph. Professor Symeonides has expounded perhaps the best explanation for the use of "permanently attached" in both paragraphs of 466. He asserts, "The word permanent in that [first] paragraph is intended to have a temporal rather than a physical connotation, i.e., permanent as opposed to temporary, not permanent as opposed to loose attachment."94 This explanation is consistent with the plain meaning of the word "permanent." It is defined as "lasting or meant to last indefinitely."95 If something is "lasting or meant to last," it either cannot be removed or is not intended to be removed. This definition shows that the word permanent has both a temporal meaning and a physical meaning as Symeonides suggests, as opposed to just a physical connotation as the Prytania court suggests.

Another indication that Article 466 is made up of two completely independent types of component parts is contained in Civil Code article 468 concerning deimmobilization of component parts.96 That article provides in pertinent part:

The owner may deimmobilize the component parts of an immovable by an act translative of ownership and delivery to acquirers in good faith. In the absence of rights of third persons, the owner may deimmobilize things by detachment or removal.97

The fact that the article provides two ways to deimmobilize suggests that there might be two different types of attachment as opposed to the one type of attachment that the Prytania court suggests. The court asserts that permanent attachment only occurs when removal of the movable substantially damages either the immovable or the component part itself.98 Moreover, the second paragraph of Article 466 itself contemplates removal. It provides, "Things are considered permanently attached if they cannot be removed without substantial damage."99 Thus, it is obvious that the second paragraph of Article 466 contemplates removal. The Prytania court asserted that the only way for a movable to become a component part is to satisfy this second paragraph. The problem, then, is that the holding of the Prytania court

94. See Symeonides, supra note 24, at 688.
97. Id.
98. Prytania, 179 F. 3d at 179.
is inconsistent with Article 468 and its interpretation. Article 468 contemplates a different kind of component part—one that can be deimmobilized by simple detachment as opposed to removal. Removal suggests more of an effort than a simple detachment. Article 468 seems more consistent with the interpretation of Article 466 given by the legal scholars such as Yiannopoulos and Symeonides. Removal would refer to the second paragraph of Article 466 (component parts as a matter of fact), while detachment would refer to the first paragraph (component parts as a matter of law).

B. Support for Professor Yiannopoulos' Position—The Rebuttal

1. Interpretation of Article 466

The Prytania court’s main argument for a strict interpretation of Article 466 in deviation from past interpretations is that the interpretation offered by Yiannopoulos was “launched . . . from the forehead of an expert” on the stand in the Equibank case. This statement is without merit. A rebuttal of this argument and another indication that Article 466 is in fact composed of both prior Articles 467 and 469, rather than just old Article 469, is contained in Table 5 of the Civil Code entitled, “Concordance for the 1976–1994 Revision.” This table shows the origin of the current articles. When one looks up Article 466, it can be seen that Article 466 is made up of old Articles 467, 468, and 469, and not just Article 469. It might be argued that this derivation table only shows where the general subject matter of the prior articles is now contained; however, this would be incorrect. In the introduction to the table, the author wrote, “There is no concordance for provisions of the Louisiana Civil Code that are no longer in force.” This language means that if a particular code article from the Code of 1870 is no longer in force in any respect, then it will not be included in the table. In addition, there are some articles that are listed as being in existence in 1870 with no corresponding article in the current code. This fact supports the argument that the table cannot possibly be dealing with only general subject matter. If it were dealing with only general subject matter, each article from the Code of 1870 would have some corresponding article in the present code since general subject matter does not normally disappear from a civil system. In this case, old Article 467 is included in the table. As a result, it must be inferred that old Article 467 is still in existence in some respect (more than just generally) within Article 466.

2. Societal Expectations Test

Regardless of whether the Prytania court was correct in interpreting Article 466 as creating one type of component part, the court attacked the societal

100. *Prytania*, 179 F. 3d at 180.
102. *Id.*, Introduction.
expectations test as to what belongs in the list in the first paragraph of Article 466.103 As stated previously, "[T]he societal expectations canon . . . was launched-full grown from the forehead of an expert witness [Professor Yiannopoulos] who testified for the IRS during the trial of that case."104 The court went on to claim, "The pedigree of the Professor’s ‘societal expectations’ canon is murky at best."105 The court was not only incorrect in its assertion that there is no support for Yiannopoulos’ testimony that Article 466 is actually composed of two different types of component parts, but also incorrect in thinking that the societal expectations test simply jumped from the forehead of Professor Yiannopoulos while on the stand in *Equibank*. In fact, Professor Yiannopoulos’ societal expectations test was mentioned in his Exposé des Motifs (the introduction) to the 1978 revised version of the property articles in the Civil Code. He states that “prevailing ideas in society” and “lay notions” are often useful in classifying things as immovables.106 The court disregards this statement as a “vague allusion.”107 However, this is no vague allusion. Professor Yiannopoulos was more likely than not writing based on the assumption that Article 466 is composed of both Articles 467 and 469. Under this assumption, the Professor was using prior jurisprudential interpretation of Article 467 and the methods of other civilian systems in coming to the educated conclusion that the views of society should be used in determining what will constitute a component part.

The key case in deciding the scope of prior Article 467 was *Lafleur v. Foret*.108 In *Lafleur*, the court held that window air conditioning units did not fall within Article 467 and thus remained movables.109 In that case, the units were connected to the building by screws attached to racks installed on the windowsills. Since window units were not listed in prior Article 467, the court looked to the prevailing views of society to determine whether the units were considered component parts. The *Lafleur* case was decided in 1968, seventeen years before the *Prytania* court stated that the societal expectations test “was launched—full grown from the forehead” of Professor Yiannopoulos.110 As can be seen, the societal expectations test was expounded well before Yiannopoulos took the stand in *Equibank*.

Moreover, Yiannopoulos seems to have advocated the “societal expectations” test in an attempt to show that Louisiana’s developments, especially the early amendment of old Article 467, were consistent with the developments in European systems.111 In his 1962 law review article entitled, “*Movables & Immovables in Louisiana and Comparative Law,*” the Professor cites that both the Greek and

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103. See *Prytania*, 179 F. 3d at 182, nn.34-35.
104. Id. at 180.
105. Id. at 181, n.34.
107. *Prytania*, 179 F.3d at 181, n.34.
108. 213 So. 2d 141 (La. App. 3d Cir. 1968).
109. Id.
110. *Prytania*, 179 F. 3d at 180.
German civil codes create two separate and distinct types of component parts.\textsuperscript{112} He wrote that historically within the Greek system, the line of demarcation between the two types was drawn based on the prevailing views of society.\textsuperscript{113} This test based on the views of society was historically advocated in Louisiana well before the decision in \textit{Lafleur}. This was evidenced by the 1946 decision of \textit{Kelieher v. Gravois}.\textsuperscript{114} That court stated:

Act No. 51 of 1912, which amended Article 467 . . . no doubt evidences an intention of the Legislature to extend and broaden the category of things which . . . become immovables by nature . . . [t]he things listed in the act of 1912 are merely illustrative and not restrictive. The Venetian blinds are not so universally recognized . . . as to justify the conclusion that [they should be classified as immovables].\textsuperscript{115}

The language of this decision supports Yiannopoulos' "societal expectations" test which he asserted on the stand in \textit{Equibank}. It shows that the theme running throughout the amendments made to these articles has been to expand the types of movables that become immovable based on what is "universally recognized" as things that should transfer with the immovable. \textit{Ejusdem generis} should not be used to determine what fits within the list. Instead, the view of society should be used. Therefore, for the court to assert that the societal expectations test had no basis in history was completely erroneous.

\section*{V. PROCEDURAL PROBLEMS}

\subsection*{A. The Erie Doctrine}

As discussed previously, the \textit{Prytania} court was substantively incorrect in holding that Article 466 is composed of only one type of component part. In addition, the court did not have the procedural authority to decide the way that it did. The problem arises when a federal court, such as the court in this case, must decide whether to use federal or state law.\textsuperscript{116} This problem was addressed in the case of \textit{Erie Railroad Co. v. Tompkins}.\textsuperscript{117} The \textit{Erie} doctrine held that a federal court sitting in diversity jurisdiction must apply state law.\textsuperscript{118} This doctrine was refined in 1945 in \textit{Guaranty Trust Co. of New York v. York}.\textsuperscript{119} That court held:

\begin{quote}
[\textit{W}here a federal court is exercising jurisdiction solely because of the diversity of citizenship of the parties, the outcome of the litigation in the federal court should be substantially the same, so far as legal rules
\end{quote}

\begin{itemize}
\item \textsuperscript{112} \textit{Id.}
\item \textsuperscript{113} \textit{Id.}
\item \textsuperscript{114} 26 So. 2d 304 (La. App. Orl. 1946).
\item \textsuperscript{115} \textit{Id.} at 307-08.
\item \textsuperscript{116} Charles Allen Wright, Federal Courts (3d ed. 1976).
\item \textsuperscript{117} \textit{Erie Railroad Co. v. Tompkins}, 304 U.S. 64, 58 S. Ct. 817 (1938).
\item \textsuperscript{118} \textit{Id.}
\item \textsuperscript{119} 326 U.S. 99, 65 S.Ct. 1464 (1945).
\end{itemize}
determine the outcome of litigation, as it would be if tried in a State
court.\textsuperscript{120}

The Fifth Circuit itself addressed the \textit{Erie} doctrine in \textit{Lamarque v. Massachusetts
Indemnity and Life Insurance Co.}\textsuperscript{121} The court, citing \textit{Brumley Estate v. Iowa Beef
Processors},\textsuperscript{122} asserted, "Federal courts sitting in diversity in \textit{this Circuit}
are obliged to apply the latest and most authoritative expression of state
law applicable to the facts of a case."\textsuperscript{123}

Through the years the words have changed some, but the \textit{Erie}
doctrine has
remained, in substance, the same. "A federal court sitting in diversity jurisdiction
and called upon in that role to apply state law is absolutely bound by a current
interpretation of that law formulated by the state's highest tribunal."\textsuperscript{124} The highest
tribunal in Louisiana is the Louisiana Supreme Court. The supreme court has not
ruled on the interpretation of Article 466. Therefore, the appropriate question is
what a federal court should do when the highest tribunal has not ruled.

This issue was addressed in \textit{F.D.I.C. v. Abraham}.\textsuperscript{125} That court, interestingly
led by Judge Wiener, held as follows:

\begin{quote}
When a state's highest court has not spoken on an issue, our task is to
determine as best we can how that court would rule if the issue were
before it. In so doing, we are \textit{bound} by an intermediate state appellate
court decision only when we "remain unconvinced 'by other . . . data that
the highest court of the state would decide otherwise.'"\textsuperscript{126}
\end{quote}

Basically, the court is bound by state appellate court decisions unless the supreme
court would decide otherwise. It is highly doubtful that the supreme court would
decide differently than previous courts' interpretations of Article 466, since every
circuit in Louisiana has taken the interpretation given Article 466 by Professor
Yiannopoulos. It is highly unlikely that the Louisiana Supreme Court would stray
from these decisions. Therefore, the \textit{Prytania} court, headed by Wiener, should
have been bound to the state appellate courts according to the language that Wiener
himself posited in \textit{Abraham}.

Why did the court in \textit{Prytania} disregard the previous decisions of the state
appellate courts? As previously discussed, Louisiana state appellate courts have
unanimously adopted the \textit{Equibank} interpretation of Article 466.\textsuperscript{127} The only
possible explanation is that the court in \textit{Prytania} simply disregarded a procedural

\begin{footnotes}
\item[120] id.
\item[121] 794 F.2d 194 (5th Cir. 1986).
\item[122] 704 F.2d 1351, 1360 (5th Cir. 1983).
\item[123] id. (emphasis added).
\item[124] Duigle v. Maine Medical Ctr., Inc., 14 F.3d 684, 689 (1st Cir. 1994).
\item[125] 137 F.3d 264 (5th Cir. 1998).
\item[126] id. at 268 (internal citations omitted, emphasis added).
\item[127] see \textit{American Bank \\& Trust Co. v. Shel-Boze, Inc.}, 527 So. 2d 1052 (La. App. 1st Cir. 1988);
Moreaux}, 576 So. 2d 1094 (La. App. 3d Cir. 1991); \textit{In re Chase Manhattan Leasing Corp.}, 626 So. 2d
433 (La. App. 4th Cir. 1993).
\end{footnotes}
rule that it was required by the Supreme Court of the United States to follow. As a result, the court did not have the authority to give Article 466 a new interpretation.

B. Panel Decisions

Not only did the court in Prytania not have the authority to disregard Louisiana state court interpretations of Civil Code article 466, but it also lacked the procedural authority to disregard prior Fifth Circuit decisions interpreting that article. As stated previously in the case of Moll v. Brown and Root, Inc., “The Fifth Circuit is ‘a strict stare decisis court’ . . . [the] court is bound by the Fifth Circuit’s interpretations of Article 466 absent an intervening change in state law.”

The Fifth Circuit itself expounded this point in 1995 in Floors Unlimited, Inc. v. Fieldcrest Cannon, Inc. That court held:

[U]nder the stare decisis rule of this circuit, which provides that one panel cannot overturn the decision of a prior panel in the absence of en banc reconsideration or a superseding Supreme Court decision. . . . [However, as a corollary of this rule] [I]n diversity cases we must follow subsequent state court decisions that are clearly contrary to one of our prior decisions.

In short, the Fifth Circuit must follow the prior panel decisions of the circuit unless a state court has re-examined the issue in question and decided to the contrary of prior Fifth Circuit decisions. The state courts have not reversed their earlier interpretations of Article 466. Therefore, the Fifth Circuit in Prytania, according to the stare decisis rule set forth in both Floors Unlimited and Moll, did not have the authority to decide the case the way that it did.

This conclusion begs the question why Judge Wiener and the court in Prytania decided to abandon the interpretation given Article 466 by the Equibank court. Interestingly, Judge Wiener led a decision just three months after the Prytania decision which outlined this rule quite well. That court held:

One panel of the Court of Appeals cannot disregard, much less overrule, the decision of a prior panel, even on decisions involving interpretation of state law. Only supervening contrary decisions of the state’s highest court or the supervening enactment of a controlling statute will render [Court of Appeals] decisions clearly wrong and thus no longer precedential.

129. 55 F.3d 181 (5th Cir. 1995).
130. id. at 185.
VI. CONCLUSION

The court's decision in Prytania is troubling. Although, component parts of immovables are a small part of the law, the court's dicta can create many problems.132 The main problem with the holding is ascertaining what interpretation is controlling. The impact of multiple interpretations may seem minuscule. However, to an unsuspecting, deeply indebted buyer, having to purchase a water heater or light fixtures in addition to the home itself may be a burden too heavy to carry.

The court was substantively and procedurally erroneous in its decision. Interpreting Article 466 in a way that produces only one type of component part when removal would cause damage to either the movable or the immovable produces absurd consequences. Movable listed in the first paragraph as component parts would not pass, in some circumstances, the test the court says is the only way for a movable to become a component part. In addition, history dictates that the first paragraph of Article 466 is derived from prior Article 467 creating component parts by nature or as a matter of law. Moreover, the Civil Code itself contains several statutory indications that there are two types of component parts rather than just one as the court suggests.

Also, the court lacked the procedural authority to deviate from prior interpretations of Article 466. According to the Erie doctrine, the court was supposed to apply the interpretation Article 466 received from Louisiana's highest tribunal. In this case, the court should have followed the Louisiana appellate courts and applied the interpretation from Equibank. In addition, the court in this case did not have the authority to break from prior Fifth Circuit panel decisions interpreting the article. The question then becomes, what should be done to fix the problem?

One suggestion was expounded by Symeon Symeonides. He argues that it would simply take a rewriting of the second paragraph of Article 466. The second paragraph as it is written now provides, "Things are considered permanently attached if they cannot be removed without substantial damage to themselves or to the immovable to which they are attached."

Symeonides suggests that this paragraph be rewritten to read, "Things permanently attached to a building or other construction so that they cannot be removed without substantial damage to themselves or to the thing to which they are attached, are likewise its component parts." He argues that this change will show what constitutes permanent attachment with respect to things other than those covered by the first paragraph.136

132. Although the interpretation that the court gave Article 466 was strictly dictum, it still needs to be addressed in this paper. The court gives extensive attention to the interpretation of Article 466. On first reading, it can be quite difficult to see that the court's language was strictly dictum. It would be easy for a lower court to adopt this interpretation thinking it is the law.

133. See Symeonides, supra note 24, at 689.


135. See Symeonides, supra note 24, at 689.

136. Id.
This suggestion is a good one and would ensure that all courts would interpret the article the way that it should be interpreted. However, is this really necessary? This type of a change would not be necessary if courts would simply follow the procedural rules that currently exist. Before Prytania was decided, Article 466 was being interpreted in the proper manner. The Prytania court, following the Erie doctrine and the panel decisions of prior Fifth Circuit decisions, was required to continue interpreting Article 466 in the same manner. However, because the court found it necessary to re-interpret the article, safeguards such as the one suggested by Symeonides are indeed necessary.

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