STATE OF LOUISIANA

COURT OF APPEAL, THIRD CIRCUIT

25-199

CLB THE COMMUNITY BANK

VERSUS

ZACHARY GAGNARD, BRENDA KAY PENNINGTON AND GEICO MARINE INSURANCE COMPANY

****

ON APPEAL FROM THE
CITY COURT OF PINEVILLE
PARISH OF RAPIDES, NO. 2023-CV-000576
HONORABLE GARY K. HAYS, JUDGE

****

JONATHAN W. PERRY
JUDGE

****

Court composed of Jonathan W. Perry, Sharon Darville Wilson, and Ledricka J. Thierry, Judges.

SUMMARY JUDGMENT REVERSED AND SET ASIDE.
PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION GRANTED.

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PERRY, Judge.

In this case, we discuss questions of civil procedure and revisit well-established insurance law. First, we determine whether the casualty insurer's use of the summary judgment motion is the proper vehicle to address the peremptory exception of no right of action. Second, we decide if Louisiana's adoption of the Uniform Commercial Code (UCC) has affected the long-used, simple loss payee clause. For reasons discussed below, we reverse the trial court's summary judgment, address the casualty insurer's peremptory exception of no right of action, and dismiss the bank's petition against the casualty insurer with prejudice.

FACTS AND PROCEDURAL HISTORY

Brenda Pennington ("Pennington") and her grandson, Zachary Gagnard ("Gagnard"), purchased a 2015, twenty-one-foot Phoenix bass boat, a Mercury outboard motor, and a trailer (collectively, "the boat"). In conjunction with their purchase of the boat, Pennington and Gagnard signed a promissory note and security agreement in favor of CLB the Community Bank[1] ("CLB"), and CLB is identified as the lienholder on the certificate of title.

At the time Pennington and Gagnard entered into their loan agreement, CLB required them to provide proof of property and casualty insurance in an amount equal to or greater than the loan amount and to list the bank as a loss payee. Pennington and Gagnard complied with this requirement and continued to obtain insurance for the following years.

[1] The promissory note and security agreement were originally made with the Catahoula LaSalle Bank. CLB the Community Bank is the successor by merger to Catahoula LaSalle Bank. For clarity we simply refer to CLB.

In conformity with that obligation, Pennington and Gagnard are the Named Insureds on a Marine Insurance Policy ("the Policy") issued by GEICO Marine Insurance Company ("GEICO") for the policy period from September 9, 2022, to September 9, 2023, the period pertinent to this litigation. The Policy provides liability and hull and equipment coverage for the boat. The Policy further provides that "In the event of a covered loss, payment will be issued to the **insured** and any loss payee." On the Declaration Page of the Policy, CLB is specified as the loss payee.

During the policy period, Pennington reported that equipment was stolen from the insured boat. After investigating the claim, GEICO determined that the insureds made material misrepresentations in their insurance application to GEICO in both 2021 and 2022. Accordingly, GEICO denied the claim and cancelled the Policy as void *ab initio*. At no time after that adverse decision did Pennington and Gagnard sue GEICO. However, CLB made demand on GEICO to pay for the stolen items. GEICO rejected that demand.

Later, after Pennington and Gagnard stopped making payments on their loan agreement, CLB sued Pennington and Gagnard on the promissory note and security agreement seeking the sequestration of the boat. In that same petition, CLB also sued GEICO, contending that its cancellation of the Policy was unjustified and unreasonable and that its refusal to pay CLB for the stolen property was unreasonable and exposed GEICO to a claim for penalties and attorney fees. Therefore, CLB sought to recover damages to the insured boat from GEICO under the Policy, as well as statutory penalties and attorney fees against GEICO for its alleged arbitrary and capricious failure to pay the claim CLB asserted.

After answering CLB's petition and asserting that CLB had no right of action against it, GEICO filed a motion for summary judgment contending that CLB, as a simple loss payee, had no standing to assert any independent rights under the Policy. GEICO further asserted that CLB's rights as a simple loss payee are derivative of the rights of Pennington and Gagnard, the named insureds under the Policy. Therefore, GEICO urged that CLB had no direct rights against it and that its claims must be dismissed with prejudice.

CLB filed an opposition, citing La.R.S. 10:9-607, to GEICO's motion for summary judgment. In its opposition, CLB argued that it was a secured party entitled to enforce its rights against "any person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party" and to take any proceeds to which the secured party is entitled.[2] CLB further argued that it was an assignee of Pennington and Gagnard and that it had a right to assert this action against GEICO.

After hearing oral argument on this matter, the trial court took it under advisement and asked the parties to provide supplemental briefs. Shortly thereafter,

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[2] We note that GEICO responded to CLB's opposition and moved to strike four exhibits attached thereto, contending that they were not properly authenticated. The record is void of any action taken by the trial court on this motion.

We further observe that La.Code Civ.P. art. 966(D)(2) now states that "[a]ny objection to a document shall be raised in a timely filed opposition or reply memorandum." Comment (k)(2015) to La.Code Civ.P. art. 966 states that "[966(D)(2)] changes prior law by specifically removing the motion to strike as a means of raising an objection to a document offered by an adverse party in support of or in opposition to a motion for summary judgment[,] and [this article] does not allow a party to file that motion." The intent of Article 966(D)(2) was to make it mandatory that any objection must be raised in a timely-filed opposition or reply memorandum and not in a motion to strike or other pleading. *See Colson v. Colfax Treating Co., Inc.*, 17-912, 17-913 (La.App. 3 Cir. 4/18/18), 246 So.3d 15. Nevertheless, in GEICO's reply memorandum, it did object to Exhibits 1–4 attached to CLB's Opposition Memorandum as unauthenticated business records, stating that "La.Code Civ.P. arts. 966 and 967 do not permit a party to utilize unsworn and unverified documents as summary judgment evidence."

the trial court granted GEICO's motion for summary judgment, dismissing all claims brought by CLB against GEICO.

This appeal followed.

APPELLANT'S ASSIGNMENT OF ERROR

CLB respectfully represents that the trial court erred as a matter of law when it determined that CLB, as a "secured party" defined by La.R.S. 10:9-102(73), lacked standing to assert a claim authorized by La.R.S. 10:9-203 and 10:9-607(a)(1) to make demand on GEICO for insurance proceeds forming a portion of the collateral assigned to CLB by virtue of the Security Agreement. Therefore, it urges this court to reverse the trial court's summary judgment that dismissed its action against GEICO.

SUMMARY OF APPELLANT'S ARGUMENT

CLB, a secured party pursuant to a Consumer Promissory Note and Security Agreement, as defined by applicable provisions of Chapter 9, Title 10 of Louisiana's version of the UCC, asserts that it has standing to sue on a casualty insurance policy issued by GEICO to CLB's debtors, Pennington and Gagnard. It further contends that the policy its debtors obtained insured CLB's collateral against damage, the "proceeds" of which, as defined in Chapter 9, form a portion of CLB's collateral. CLB further argues that its debtors assigned their rights to CLB by the provisions of the Security Agreement executed by them and that CLB properly perfected that assignment.

SUMMARY OF APPELLEE'S POSITION

GEICO asserts that the trial court correctly granted GEICO's motion for summary judgment. CLB is not a named insured or additional insured entitled to make a claim under the Policy, and CLB does not allege that it is. Rather, CLB is

merely a simple loss payee under the Policy. GEICO points out that Louisiana law is clear that CLB, as a simple loss payee, has no standing to assert any independent rights under the Policy. As a simple loss payee, CLB's rights are derivative of the rights of the named insureds under the Policy, Pennington and Gagnard. CLB, therefore, has no direct rights against GEICO to collect under the Policy. Likewise, CLB has no right to assert a claim against GEICO for penalties and attorney fees under Louisiana's bad faith statutes for GEICO's failure to pay the policy proceeds to either the named insureds or CLB.

In addition, GEICO argues that although CLB timely opposed the motion for summary judgment, the attached exhibits were not properly authenticated. Therefore, GEICO contends that this court cannot consider those attachments on de novo review.

THE PROCEDURAL POSTURE OF THE CASE

When the record was lodged in this court, the trial court judgment simply stated:

> **IT IS ORDERED, ADJUDGED AND DECREED** that judgment be rendered in favor of the defendant, Geico Marine Insurance Company[,] and against the plaintiff, CLB The Community Bank[,] dismissing all claims asserted by the Plaintiff, CLB The Community Bank.

After reviewing the trial court judgment, this court found the judgment was not definite and certain. From a simple reading of the judgment, it could not be determined whether the relief was granted because of sustaining GEICO's assertion of no right of action or whether relief was through the granting of GEICO's motion for summary judgment. Accordingly, we remanded this matter to the trial court to amend the judgment as allowed by La.Code Civ.P. art. 1951 and to supplement the appellate record with the newly signed judgment.

In response to that order, the trial court amended its judgment to read:

> **IT IS ORDERED, ADJUDGED AND DECREED** that the Motion for Summary Judgment be granted in favor of the defendant, Geico Marine Insurance Company[,] and against the plaintiff, CLB The Community Bank[,] dismissing all claims by the Plaintiff, CLB The Community Bank.

SUMMARY JUDGMENT AND THE PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION

In *Guidry v. Dufrene*, 96-194, pp. 3–4 (La.App. 1 Cir. 11/8/96), 687 So.2d 1044, 1045–46, the court stated:

> The exception pleading the objection of no right of action questions the plaintiff's standing or interest in the subject matter of the suit. [La.Code Civ.P.] art. 927(5). Specifically, the exception of no right of action is a threshold device that questions whether a remedy afforded by law can be invoked by the plaintiff and determines if the plaintiff has a right or legal interest in the subject matter of the suit. *Pattan v. Fields*, 95–1936 (La.App. 1 Cir. 9/26/95); 669 So.2d 1233, *writs denied*, 95–2382 (La. 9/29/95); 661 So.2d 1341; 95–2381 (La. 9/29/95); 661 So.2d 1342.
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> To assert an action, a plaintiff must have a real and actual interest in the action asserted. [La.Code Civ.P.] art. 681. Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of standing is satisfied if it can be said that the plaintiff has an interest at stake in the litigation which can be legally protected. *Mouton v. Dept. of Wildlife & Fisheries for State of La.,* 95–0101 (La.App. 1 Cir. 6/23/95); 657 So.2d 622, *writs denied,* 95–2161, 95–2164 (La.11/17/95); 663 So.2d 710, 711. When the facts alleged in the petition provide a remedy to someone, but the plaintiff who seeks the relief for himself is not the person in whose favor the law extends the remedy, the proper objection is an exception of no right of action. *Cox Cable New Orleans, Inc. v. City of New Orleans,* 624 So.2d 890 (La.1993).

The record shows that in its answer to CLB's petition, GEICO first filed multiple exceptions, including the peremptory exception of no right of action. Subsequently, GEICO filed a motion for summary judgment. In its motion, GEICO stated:

> The law is clear that CLB, as a simple loss payee, has no standing to assert any independent rights under the GEICO Marine Policy. As a simple loss payee, CLB's rights are derivative of the rights of the named insureds under the Policy, Pennington and Gagnard. CLB, therefore, has no direct rights against GEICO Marine. CLB's claims against GEICO Marine must therefore be dismissed with prejudice.

Accordingly, the trial court proceeded to address this issue and ultimately resolved it using summary judgment procedure.

The use of summary judgment as a vehicle to resolve the peremptory exception of no right of action is improper. *Woodward v. Tadlock*, 621 So.2d 875 (La.App. 3 Cir.), *writ denied*, 629 So.2d 392 (La.1993); Purpose—Exceptions and the motion for summary judgment, 22 La. Civ. L. Treatise, Summary Judgment & Related Termination Motions § 5.5 (2025 ed.); *compare with Schiff v. Pugh*, 17-529 (La.App. 4 Cir. 10/4/17), 228 So.3d 784 (holding that it was inappropriate to convert an exception of no right of action into a motion for summary judgment); *Noble v. Armstrong*, 93-841 (La.App. 5 Cir. 3/16/94), 635 So.2d 1199; *Wells v. St. Tammany Par. Sch. Bd.*, 340 So.2d 1022 (La.App. 1 Cir. 1976); and *B-W Acceptance Corp. v. Clarkson*, 154 So.2d 67 (La.App. 4 Cir. 1963) (holding that a motion for summary judgment cannot be used as a substitute for an exception of no cause of action).[3]

Built into the procedure for raising the peremptory exception of no right of action, and recognized in related jurisprudence, are distinctive elements which differentiate it from the motion for summary judgment. First, the court begins its analysis on an exception of no right of action "with an examination of the pleadings." *Howard v. Adm'rs of Tulane Educ. Fund*, 07-2224, pp. 17–18 (La. 7/1/08), 986

[3] "Although typically asserted through the procedural vehicle of the peremptory exception of prescription, the defense of prescription may also be raised by motion for summary judgment." *Hogg v. Chevron USA, Inc.*, 09-2632, 09-2635, p. 6 (La 7/6/10), 45 So.3d 991, 997 (footnote omitted). Likewise, peremption may also be raised through a motion for summary judgment. *Daxtreme, Inc. v. Lafayette City-Par. Consol. Gov't*, 21-418 (La.App. 3 Cir. 12/15/21), 332 So.3d 1257.

So.2d 47, 60. Second, "evidence may be introduced to support or controvert" the peremptory exception of no right of action when the grounds thereof do not appear from the petition. La.Code Civ.P. art. 931. Third, although the appellate court reviews a trial court's decision on an exception of no right of action de novo because it presents a legal question, "[w]hen evidence is introduced in support of or in opposition to the exception, however, a trial court's findings of fact are subject to the manifest error-clearly wrong standard of review." *Guidry v. Ave Maria Rosary & Cenacle, Inc*., 21-507, p. 22 (La.App. 3 Cir. 6/1/22), 341 So.3d 779, 797, quoting *Rain CII Carbon, LLC v. Turner Indus. Grp., LLC*, 19-403, p. 22 (La.App. 3 Cir. 3/18/20), 297 So.3d 797, 813, *writ denied*, 20-774 (La. 10/20/20), 303 So.3d 319. Fourth, "[i]f doubt exists about the appropriateness of an objection of no right of action, it is to be resolved in favor of the plaintiff." *State ex rel. Caldwell v. Molina Healthcare, Inc*., 18-1768, p. 7 (La. 5/8/19), 283 So.3d 472, 477. Fifth, "[f]or purposes of the exception, all well-pleaded facts in the petition must be taken as true." *Miller v. Thibeaux*, 14-1107, p. 6 (La. 1/28/15), 159 So.3d 426, 430. And sixth, under the provisions of La.Code Civ.P. art. 968, the judgment on a motion for summary judgment granted in favor of the movant produces a final judgment "with the same effect as if a trial had been had upon evidence regularly adduced[;]" unlike the provisions of article 968, "the judgment sustaining the exception shall order such amendment within the delay allowed by the court[,]" if "the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition[.]" La.Code Civ.P. art. 934. These differences unique to the peremptory exception of no right of action are significant and conflict with the procedure provided in the motion for summary judgment.

In the present case, because of the differences outlined above, the trial court should have declined to grant GEICO's motion for summary judgment, and it should have proceeded to address GEICO's well-pleaded peremptory exception of no right of action under the provisions outlined in La.Code Civ.P. arts. 927–934. For these reasons, we reverse the judgment of the trial court that granted GEICO's motion for summary judgment.

Now, we turn our attention to GEICO's peremptory exception of no right of action.

PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION

Preliminary matters

Before we address the merits of the peremptory exception of no right of action, we find it necessary to provide a few introductory comments. In *Thompson v. Winn-Dixie Montgomery, Inc.*, 15-477, pp. 11–12 (La. 10/14/15), 181 So.3d 656, 665, the court stated:

> Although the issue of "operational control" was not pled, briefed or argued by any party, it was raised *sua sponte* by the court of appeal in its opinion. La. C.C.P. art. 2164 gives an appellate court authority to "render any judgment which is just, legal, and proper upon the record on appeal." Further, Rule 1.3 of the Uniform Rules of the Courts of Appeal provides the court of appeal "will review only those issues which were submitted to the trial court and which are contained in specification or assignments of error, *unless the interest of justice clearly requires otherwise*." (Emphasis added). However, once a court of appeal decides to review an issue, the better practice is to invite additional briefing from the parties prior to rendering judgment. The court of appeal's failure to give the parties notice of its *sua sponte* determination or to provide them with an opportunity to be heard on the issue of operational control was legal error. *Merrill v. Greyhound Lines, Inc*.[,] 10–2827 (La.4/29/11), 60 So.3d 600, 602; *Wooley v. Lucksinger*, 09–0571 (La.4/1/11), 61 So.3d 507, 564.

Against that backdrop, we note that we did not request further briefing in this matter for the following reasons: (1) GEICO raised the peremptory exception of no right of

action in its answer to CLB's petition; (2) though found procedurally erroneous above, GEICO's motion for summary judgment and CLB's opposition to that motion, focused on CLB's right to sue GEICO and was presented to the trial court; (3) the appellate briefs of GEICO and CLB have fully explored the question of whether CLB had a right to sue GEICO; and (4) at oral argument on September 8, 2025, the parties fully addressed the question of whether CLB had the legal right to directly sue GEICO. Accordingly, we find that the peremptory exception of no right of action is properly before us for de novo review.

In *Leone v. Ware*, 17-638, pp. 2–3 (La.App. 3 Cir. 5/2/18), 246 So.3d 833, 835, we stated:

> A peremptory exception of no right of action poses a question of law and is reviewed de novo. *Washington Mut. Bank v. Monticello*, 07-1018 (La.App. 3 Cir. 2/6/08), 976 So.2d 251, *writ denied*, 08-530 (La. 4/25/08), 978 So.2d 369.
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> . . . .
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> In Louisiana, an exception of no right of action is raised through a peremptory exception pursuant to La.Code Civ.P. art. 927. The exception's function "is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the suit." *Reese v. State Dep't of Pub. Safety & Corrs.*, 03-1615, pp. 2-3 (La. 2/20/04), 866 So.2d 244, 246. The supreme court has noted that . . . an appellate court "should focus on whether the particular plaintiff has a right to bring the suit and is a member of the class of persons that has a legal interest in the subject matter of the litigation, assuming the petition states a valid cause of action for some person." *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10–2267, 10–2272, 10–2275, 10–2279, 10–2289, p. 7 (La. 10/25/11), 79 So.3d 246, 256. The burden of proof rests with the movant. *Montgomery v. Lester*, 16-192 (La.App. 3 Cir. 9/28/16), 201 So.3d 966, *writ denied*, 16-1944 (La. 12/16/16), 212 So.3d 1173. Evidence introduced in support of a peremptory exception is governed by La.Code Civ.P. art. 931[.]

In the present case, one of the issues GEICO raised in reply to CLB's opposition to the motion for summary judgment was that CLB failed to authenticate the documents that established its security interest, namely the promissory note, the

security agreement, and the UCC financing statement. Accordingly, it argued to the trial court and to this court that those documents could not be referenced and that without them, CLB's argument had no support.

Although the lack of authentication of these documents may have been fatal to CLB under the provisions of La.Code Civ.P. art. 966(D)(2),[4] that issue is of no moment when we provide our de novo review on the peremptory exception of no right of action. First, as noted above, all well-pleaded facts in the petition must be taken as true. *Miller*, 159 So.3d 426. Second, "[a] copy of any written instrument that is an exhibit to a pleading is a part thereof." La.Code Civ.P. art. 853; *see also Tremont Lumber Co. v. May*, 143 La. 389, 78 So.2d 650 (1918). As such, attachments to the petition may be considered as a part thereof for the purpose of deciding the exception. *See Dorsey v. Rayville Nursing & Rehab. Ctr., Inc.*, 55,985 (La.App. 2 Cir. 2/26/25), 407 So.3d 873 (holding that attachments to the petition may be considered for purposes of a peremptory exception of no cause of action). Therefore, we find that we may consider the exhibits attached to CLB's petition in assessing whether it has a right of action against GEICO.[5]

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[4] In *First Heritage Credit of Louisiana, LLC v. Griffin*, 23-34, pp. 8–9 (La.App. 3 Cir. 10/18/23), 372 So.3d 456, 462, this court stated:

> While we will consider all documents submitted by either party without objection in our review of the motion for summary judgment, the unsworn or unverified documents submitted by the parties in support of and in opposition to the motion for summary judgment have no evidentiary value. *See Cryer v. Tangi Pines Nursing Ctr*., 17-697 (La.App. 1 Cir. 12/21/17), 240 So.3d 975. "A document that is not an affidavit or sworn to in any way, or is not certified or attached to an affidavit, has no evidentiary value on a motion for summary judgment." *Unifund CCR Partners v. Perkins*, 12-1851, p. 8 (La.App. 1 Cir. 9/25/13), 134 So.3d 626, 632.

That having been said, the record is void of any statement that would indicate the trial court found CLB's attachments had no evidentiary value.

[5] This evidentiary finding exemplifies why the motion for summary judgment is not proper. Clearly, the rules of procedure applicable to the motion for summary judgment directly

Similarly, we observe that in its answer to CLB's petition, GEICO specifically pleaded the language of its insurance policy "as if copied herein in its entirety." Even though it did not attach its insurance policy to its pleading, it did submit it and properly authenticated it as an attachment to its motion for summary judgment, indicating that it was issued to Pennington and Gagnard for the policy period from September 9, 2022, to September 9, 2023.[6] Because evidence may be admitted in consideration of the peremptory exception of no right of action, we find the Policy is evidence that is properly before us.

The Insurance Contract

In *Peterson v. Schimek*, 98-1712, pp. 4–5 (La. 3/2/99), 729 So.2d 1024, 1028–29, the court stated:

> An insurance policy is a conventional obligation that constitutes the law between the insured and insurer, and the agreement governs the nature of their relationship. [La.Civ.Code] art. 1983. As such, courts are guided by certain principles of construction and should interpret insurance policies the same way they do other contracts by using the general rules of contract interpretation as set forth in our Civil Code. *Ledbetter v. Concord Gen. Corp*., 95–0809 (La.1/6/96); 665 So.2d 1166, 1169; *Crabtree v. State Farm Ins. Co*., 93–0509 (La.2/28/94), 632 So.2d 736. . . . The role of the judiciary in interpreting insurance contracts is to ascertain the common intent of the insured and insurer as reflected by the words in the policy. [La.Civ.Code] art. 2045; *Ledbetter*, 665 So.2d at 1169. When the words of an insurance contract are clear and explicit and lead to no absurd consequences, courts must enforce the contract as written and may make no further interpretation in search of the parties' intent. [La.Civ.Code] art. 2046; *Central La. Elec. Co. v. Westinghouse Elec. Corp*., 579 So.2d 981, 985 (La.1991).
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> Words in an insurance contract are to be given their generally prevailing and ordinary meaning, unless they have acquired a technical meaning. [La.Civ.Code] art. 2047; *Schroeder v. Board of Supervisors*

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conflict with the law and jurisprudence on the peremptory exception of no right of action and the way the exception is tested and evaluated.

[6] We note that GEICO's answer references Policy No. BSP4348967-02 and the later-authenticated policy is identified as Policy No. BUS6958114-01. Although the policy numbers differ, the named insureds in both were Pennington and Gagnard, the policy period corresponds with the date of the alleged loss, and the boat was identified as the insured property.

> *of La. State Univ*., 591 So.2d 342, 345 (La.1991). Courts lack the authority to alter the terms of insurance contracts under the guise of contractual interpretation when the policy's provisions are couched in unambiguous terms. *Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co*., 93–0911 (La.1/14/94), 630 So.2d at 764. An insurance contract is construed as a whole[,] and each provision in the policy must be interpreted in light of the other provisions so that each is given meaning. One portion of the policy should not be construed separately at the expense of disregarding other provisions. [La.Civ.Code] art. 2050; *Central La. Elec. Co*., 579 So.2d at 985. An insurance contract, however, should not be interpreted in an unreasonable or strained manner under the guise of contractual interpretation to enlarge or to restrict its provisions beyond what is reasonably contemplated by unambiguous terms or achieve an absurd conclusion. *Valentine v. Bonneville Ins. Co*., 96–1382 (La.3/17/97), 691 So.2d 665; *Reynolds v. Select Properties, Ltd*., 93–1480 (La.4/11/94), 634 So.2d 1180, 1183. That is, the rules of construction do not authorize a perversion of the words or the exercise of inventive powers to create an ambiguity where none exists or the making of a new contract when the terms express with sufficient clearness the parties' intent. *Ledbetter*, 665 So.2d at 1169; *Reynolds*, 634 So.2d at 1183. . . . When a contract can be construed from the four corners of the instrument without looking to extrinsic evidence, the question of contractual interpretation is answered as a matter of law. . . . *Brown v. Drillers, Inc*., 93–1019 (La.1/14/94), 630 So.2d 741. With these principles in mind, we now turn to a review of the insurance policy at issue.

Mortgage Clauses

In the present case, GEICO's Policy states:

> This insurance policy is a legal contract between [GEICO] and [Pennington and Gagnard] shown on the Declarations Page. We agree to provide the insurance coverage described in this policy in return for the payment of premium when due, subject to the terms, conditions, exclusions and warranties of this policy. The policy consists of this policy contract, the Declarations Page, and all endorsements.

In *May v. Market Insurance Company*, 387 So.2d 1081 (La.1980), the supreme court reviewed whether a mortgagee-intervenor was entitled to attorney fees from a defendant insurer found to have arbitrarily and capriciously failed to timely pay a claim after receiving proof of loss. In determining whether the intervenor was entitled to attorney fees, the court noted that to do so, the mortgagee

"must be an 'insured' within the meaning of [La.R.S. 22:658, the precursor to La.R.S. 22:1892]." *Id.* at 1083. In its analysis, the court further opined:

> Intervenor's right to the insurance proceeds arises under the mortgage clauses of the several insurance policies. Mortgage clauses fall into two forms, the open or simple mortgage clause and the standard or union mortgage clause. The simple mortgage clause merely provides in effect that the proceeds of the policy shall be paid first to the mortgagee as his interest may appear; but the so-called standard or union mortgage clause is somewhat more specific in that it also provides that the mortgagee shall be protected against loss from any act or neglect of the mortgagor or owner, so that it shall not defeat the insurance so far as the interest of the mortgagee is concerned. Couch on Insurance § 42:648 (2d ed. 1963).

Id. Ultimately, the *May* court determined that the mortgage clause at issue was a standard clause[7] and that Louisiana jurisprudence recognizes that standard mortgage clauses create a separate insurance contract between the mortgagee and the insurer. Thus, the court concluded, the mortgagee-intervenor was an insured within the meaning of the relevant statute and as such entitled to penalties and attorney fees.

In contrast, the simple mortgage clause has been explained as follows:

> When the policy contains a "simple" loss-payable clause, as opposed to the present common or standard mortgagee clause, the mortgagee is in effect an agent for collection. That is, a mortgage loss-payable clause, which stipulates for payment to a named mortgagee to the extent of his or her interest in the policy, does not make the mortgagee an assignee of the policy, but merely an appointee to collect the insurance. Consequently, the mortgagee must claim in the right of the insured, and not in his or her own right.

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[7] The standard clause, also called a "New York Standard" or "union mortgage" is usually longer and considerably more favorable to the mortgagee. As stated in 15 La.Civ. L. Treatise, Insurance Law & Practice § 10:22 (4th ed.):

> It also recites that loss, if any, is payable to the mortgagee, but adds that the insurance "shall not be invalidated by any act or neglect of the mortgagor or owner" of the insured property and usually also authorizes subrogation of the insurer to the rights of the mortgagee against the mortgagor/owner once payment is made under the policy, if the policy is void as to the insured.

See e.g., *PVCA, Inc. v. Pac. W. TD Fund, LP*, 23-342 (La.App. 4 Cir. 6/26/23), 382 So.3d 860, *writ denied*, 23-1021 (La. 1/24/24), 377 So.3d 679.

Jordan R. Plitt, et al., 4 Couch on Insurance (3rd Ed.) § 65:22 (2024) (footnotes omitted).

In the present case, when Pennington and Gagnard signed their promissory note, they agreed that they would obtain insurance coverage on the boat and "have the insurance company name [CLB] as loss payee on any insurance policy." Those requirements were repeated in the security agreement. Our review of the Policy shows that GEICO identified CLB as the loss payee on the Declaration Page and further provided in the body of the Policy that "[i]n the event of a covered loss, payment will be issued to [Pennington and Gagnard] and any loss payee."

In *McMahon v. Manufacturers Casualty Insurance Company*, 227 La. 777, 781–83, 80 So.2d 405, 406–07 (1955), the court stated:

> We have had several occasions to interpret and apply the effect of a loss payable clause as is here presented. In the case of *Officer v. American Eagle Fire & Insurance Company*, 175 La. 581, 143 So. 500, 501, in reviewing the legal effect of such a clause, we said:
>
> > 'This policy throughout shows that it was intended to evidence a contract between the insurer and the assured, and not one between the insurer and the mortgagee. The mortgagee was not intended to be and was not made a party to it. He was designated as the payee of a part but not all the proceeds thereof in case of loss or damage. The insurance was made payable to him *only as his interest might appear*. His interest in the policy was not commensurate with the amount of the insurance which exceeded by far the amount originally due him. * * *
> >
> > 'The policy was in no sense a contract between the insurer and the mortgagee. The assured owned the property covered and controlled it. He consented that in case of loss or damage to his property by fire a portion of the proceeds of the policy should be paid by the insurer to the mortgagee, as his interest might appear. This provision in the policy did not constitute the mortgagee 'virtually the assured,' as was held by the Court of Appeal.
> >
> > 'The clause in this policy making the proceeds, if any, payable to the mortgagee, as his interest might appear, is what is generally referred to an [sic] an ordinary

> or open mortgage payable clause, under which the assured mortgagor remains the responsible party, or party in interest, to control the insurance and the adjustment of the loss. *Under policies containing such a clause, the contract remains one exclusively between the insurer and the property owner. The mortgagee is only a conditional appointee of the mortgagor to receive part of the proceeds in case of loss. As such conditional appointee, the mortgagee was entitled to receive so much of any sum that might become due under the policy as did not exceed his interest as mortgagee, and no more*.' (All italics ours.)
>
> In the case of *Brooks v. Liverpool & London & Globe Ins. Co*., 144 So. 788, 789, the Court of Appeal in applying the doctrine announced by us in the [*Officer]* case, supra, and after quoting at length therefrom, said:
>
> > '* * * This loss payable clause did not change the contract as between the insurance company and the insured. Under policies containing such a clause, the contract remains one exclusively between the insurer and the property owner, and therefore *the property owner is the proper party to institute suit under said policies*. * * *' (Italics ours.)

After reviewing GEICO's insurance policy in light of well-established jurisprudence, it is clear that an open or simple mortgage clause was established in favor of CLB.

Although CLB does not dispute the foregoing analysis, it points out that even if an insurer may limit its insured rights, it cannot do so in conflict with statutory provisions or public policy. *See e.g.*, *Bonin v. Westport Ins. Corp.*, 05-886 (La. 5/17/06), 930 So.2d 906; and *Carbon v. Allstate Ins. Co.*, 97-3085 (La. 10/29/98), 719 So.2d 437. Relying on the provisions of Chapter 9, Title 10 of the Louisiana Revised Statutes, CLB asserts that: (1) it is a secured party [La.R.S. 10:9-102(73) and (74)]; and (2) by having perfected a timely filed UCC-1 financing statement, it holds a valid Louisiana security interest in the boat. It further asserts: (a) GEICO holds collateral, i.e., proceeds in the form of insurance payments under the Policy

on the boat (La.R.S. 10:9-203 and 10:9-607); and (b) CLB has the right to enforce claims against GEICO for those proceeds of the collateral to which it is entitled [La.R.S. 10:9-607(a)]. Accordingly, it argues that GEICO's insurance policy conflicts with the statutory law embodied in Chapter 9, Title 10 of the Louisiana Revised Statutes. Therefore, CLB contends that as a secured party it has a right of action against GEICO.

To support its argument, CLB relies on two cases that address various provisions of Chapter 9, Title 10 of the Louisiana Revised Statutes: *Finova Capital Corporation v. IT Corporation*, 33,994 (La.App. 2 Cir. 12/15/00), 774 So.2d 1129, and *M & M Financial Services, Inc. v. Hayes*, 14-1690 (La.App. 1 Cir. 6/5/15), 174 So.3d 1172. In its brief, CLB synopsizes these cases as follows:

> Two recent cases, one in the First Circuit and one in the Second Circuit, make it clear that a secured party or mortgagee has no standing to assert a claim against a third party tortfeasor or his liability insurer for damage to the collateral, but does recognize the security interest of the secured party in the policy proceeds from a policy purchased by the debtor insuring the damaged collateral.

Even though CLB observes that almost all the jurisprudence on open or simple mortgage clauses predates Louisiana's adoption of Chapter 9, Title 10, it has not cited any jurisprudence to support its assertion that Louisiana's modified adoption of the UCC has affected the well-established law regarding open or simple mortgage clauses. More specifically, CLB fails to show how this purported conflict can exist when it, as the lender/mortgagee, required that it be listed as a loss payee.

Stated simply, GEICO's insurance policy is a conventional obligation that constituted the law between it and the insureds, Pennington and Gagnard. It was this insurance agreement that established the nature of the legal relationship between Pennington and Gagnard and GEICO. That policy of insurance was negotiated, and

a premium was set. Moreover, as required by CLB, the Policy also recognized it as a simple loss payee. Had CLB wanted otherwise, it could have required that its interest as a mortgagee be further protected with the inclusion of a longer, more favorable standard clause. *See e.g. May v. Market Insurance Company*, 387 So.2d 1081; and *PVCA, Inc*, 382 So.3d 860. The inclusion of such a clause would have created a separate insurance contract between the mortgagee and the insurer. With the absence of such a separate contract, CLB's rights are those of a simple payee, the designation it requested.

Lastly, CLB contends that Pennington and Gagnard provisionally assigned their rights in the security agreement they granted, to wit:

> **14. REMEDIES**. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any of or more of the following:
>
> . . . .
>
> **C. Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

In conformity with that provision, CLB argues that it has the right to sue GEICO.

In contrast, GEICO asserts that its insurance policy with Pennington and Gagnard provides that "[t]he rights and duties under this policy may not be transferred or assigned without **our** written consent." Having found no record evidence that GEICO provided written consent to any assignment by Pennington and Gagnard, we further find no merit to CLB's contention that it was acting as an assignee when it sued GEICO.

On de novo review and after considering the pleadings, the evidence, the argument of counsel, and the law, we find that CLB, a simple loss payee, does not have an independent right of action against GEICO. Therefore, we grant GEICO's

peremptory exception of no right of action and dismiss CLB's petition against GEICO with prejudice.[8]

DECREE

For the foregoing reasons, we reverse the trial court judgment that dismissed CLB's claims against GEICO on summary judgment and set it aside. We further grant GEICO's peremptory exception of no right of action and dismiss CLB's claims against GEICO with prejudice. Costs of this appeal are assessed to CLB.

SUMMARY JUDGMENT REVERSED AND SET ASIDE. PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION GRANTED.

[8] Although La.Code Civ.P. art. 934 allows the court to order an amendment of the pleadings if the grounds of the objection pleaded by the peremptory exception can be removed, we find that such an opportunity to amend is not proper because the grounds of this objection cannot be removed. "[T]he right to amend is not so absolute as to permit the same when such amendment would constitute a vain and useless act." *Sanders v. Gore*, 95-660, p. 12 (La.App. 3 Cir. 7/10/96), 676 So.2d 866, 873, *writ denied*, 96-2072 (La. 11/15/96), 682 So.2d 762. In the present case, allowing CLB to amend its pleadings would be a vain and useless act.