
SUPREME COURT OF LOUISIANA

DOCKET NO: 2020-C-01231

ARNOLD LOWTHER, ET AL
Plaintiffs-Applicants

VERSUS

TOWN OF BASTROP, ET AL
Defendants-Respondents

ON WRIT OF CERTIORARI AND /OR REVIEW
REPLY BRIEF FILED ON BEHALF OF DEFENDANTS- RESPONDENTS, TOWN OF
BASTROP, ET AL

Review the Ruling of
SECOND CIRCUIT COURT OF APPEAL
CIVIL DOCKET NO. CA 20-53586
WILLIAMS, MOORE, AND STONE, JJ - JUDGES

On Appeal from the
4TH JUDICIAL DISTRICT COURT FOR THE PARISH OF MOREHOUSE
CIVIL DOCKET NO. 2008-333
THE HONORABLE JUDGE ROBERT C. JOHNSON, PRESIDING
CIVIL MATTER

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MAY IT PLEASE THE COURT:

Respondent is the municipality, mayor and city council of Applicant firemen who urge this court to uphold Trial Court and Second Circuit's ruling sustaining and affirming respectively an Exception of No Cause of Action filed by Respondents (City of Bastrop, its Mayor and each member of its City Council (collectively referred to as "Respondents" or "City")).

Respondents were cast with a judgment for its payment practices of firemen after pleadings requesting the same. Applicants thereafter filed a Petition for Writ of Mandamus seeking specific relief which has the effect of mandating the Respondents to pay a judgment rendered on May 06, 2019. Respondents in response to the Petition for Writ of Mandamus, filed an Exception of No Cause of Action. The Trial Court Sustained Respondents' exception after reviewing the pleading, accepting the factual allegations as true and noting that the specific relief sought in the Petition for Writ of Mandamus was an order to mandate that Respondents pay the aforementioned judgment. An appeal was taken to the Second Circuit, who after considering the law and argument, affirmed the Trial Court's Ruling. The sole issue before this Court is whether Applicants, judgment creditors, have cause of action for a Writ of Mandamus to compel the Respondents to pay the judgment rendered on May 06, 2019.

I. SUMMARY OF THE ARGUMENT

This case involves the Town of Bastrop's responsibility to pay proper wages to its firemen and ultimately to pay a judgment rendered on their behalf. The matter before this court is the Fourth Judicial District Court and Second Circuit Court of Appeal's ruling and decision on Respondent's Exception of No Cause of Action that was filed in response to Applicant's Petition for Writ of Mandamus. Notably, the trial court sustained the exception thereby dismissing the Petition for Writ of Mandamus with prejudice and the Second Circuit Affirmed the same.

Without question, the courts have consistently recognized that there are two criteria for the issuance of a Writ of Mandamus:

1. the public officer must have a ministerial duty to take the action sought; and
2. relief may not be obtained by ordinary means.

The same are set forth in La. C.C.P. art. 3862.

The Petition for Writ of Mandamus filed on October 16, 2019 and the Amended Petition filed thereafter and the specific relief requested therein did not state a cause of action to which relief could be granted. Said pleadings simply asserted the following to-wit: the proper parties as defendants; procedural history; the core purpose and statutory designation of Writ of Mandamus; a recitation that Defendant/Respondent had a “ministerial duty to pay the City’s firemen in accordance with applicable law”; a representation or conclusion of law that “[t]he previous judgment of this court confirm that the City has failed to comply with this ministerial duty”; a representation that each Defendant/Respondent has a ministerial duty to “direct the City pay its firemen in accordance with applicable law as is set forth in the judgment”; an assertion that the Plaintiffs/Respondents are entitled to a Writ of Mandamus from this court mandating that the City “pay each Plaintiff the amount owed ...to satisfy the judgment”; a representation of the Defendant/Respondent affirmative defenses and their position on the court’s responsibility and Defendant/Respondent’s burden regarding the same; an alternative disposition, for the sake of judicial economy, in the event of a favorable ruling; a representation that the Plaintiffs/Applicants are “entitled to a Writ of Mandamus under La. C.C.P Article 3861, et seq.”; an assertion that the Plaintiffs/Applicants are entitled to a hearing in accordance with La. C.C.P Article 3782 and a prayer requesting an order that Defendant/Respondents “*pay each Plaintiff the amount owed to satisfy the Judgment of May 6, 2019*”. (emphasis added)

With respect to the Amended Petition for Writ of Mandamus, Paragraph 8 was amended to assert that there is a ministerial duty to “pay firemen in accordance with applicable law and/or appropriate funds necessary to pay its firemen as mandated by applicable law”. Paragraph 10 was amended to add an assertion of a ministerial duty to appropriate funds necessary to pay the firemen. Paragraph 11 was amended to assert that Plaintiffs/Applicants are entitled to a Writ of Mandamus directing an appropriation of funds necessary to satisfy and for the specific purpose of paying the City’s firemen as mandated by the May 6, 2019 judgment and applicable law. Paragraph 12 was amended to add an assertion that an appropriation be made only upon presentation of an affirmative defense of inability to pay and be compelled to make such payment and or appropriate funds for the same as a partial satisfaction of the May 6, 2019 judgment. Paragraph 16 was added to assert that Defendants/Respondents have an obligation and statutory ministerial duties to appropriate and pay wages owed as mandated by applicable law. Finally, the prayer reiterates and requests an order

to pay the amount owed to satisfy the May 6, 2019 Judgment and or appropriate funds for the purpose of paying all amounts mandated by the May 6, 2019 Judgment and applicable law.

Applicants are not entitled to a Writ of Mandamus and have not stated a cause of action. “The function of the peremptory exception of no cause of action is to question whether the law extends a remedy to anyone under the factual allegations of the petition.” *Fink v. Bryant*, 01-0987, p. 3 (La.11/29/01), 801 So.2d 346, 348. It is well established that “the peremptory exception of no cause of action is designed to test the legal sufficiency of the petition by determining whether the plaintiff is afforded a remedy in law based on the facts alleged in the pleading.” *Id.*, pp. 348-349. Additionally, it is a well-established principle in the law that no evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. *Id.* The exception is triable on the face of the papers and for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Id.* Because the exception raises a question of law and the trial court's decision is based only on the sufficiency of the petition, the appellate court reviewing the judgment should subject the case to a de novo review. *Id.*

The Trial Court and Second Circuit properly applied the appropriate standard in reaching their decision on the matter. Notably, both the Trial Court and Second Circuit's ruling centered around the specific relief requested in the Petition for Writ of Mandamus, more specifically, Applicants', as a Judgment Creditor's request that the City of Bastrop, a municipality, be mandated to pay a judgment. As stated above, both courts relied on the Separation of Powers Doctrine found in La. Const. Art. II, § 1 and 2. Additionally, both courts recognized the applicability of La. Const. Art. XII, § 10 (C) as the controlling constitutional provision with respect to limitations in suits against political subdivisions. Moreover, both courts further recognized the combined effect of La. Const. Art. XII, § 10 (C) and LSA R.S. 13:5109 (B)(2) with respect to the relief sought by Applicants in these proceedings. Of note, both courts found the analysis in the *Newman Marchive Partnership, Inc. v. City of Shreveport*, 07-1890 (La. 4/8/08), 979 So. 2d 1262 decision to be applicable. In the *Newman* decision, *id.*, this court opined that judgements against political subdivisions of the State may only be paid out of funds specifically appropriated for that purpose and further that under no circumstance shall public property or public funds be subject to seizure. As shown herein and below in the Law and Argument, the Trial Court did not commit error when it sustained Defendants'/Respondents' Exception of No Cause of Action and neither

did the Second Circuit when if Affirmed the same. For these reasons Respondents urge this court to sustain the lower court's rulings.

II. ASSIGNMENTS OF ERROR

1. The Trial Court committed legal error when it improperly sustained Respondents' Exception of No Cause of Action.
2. The Trial Court committed legal error when it failed to recognize that La. Const. Art. XII, § 10 and La. R.S. 13:5109 merely provide the procedural mechanisms for a municipality's payment of a judgment, they do not govern the circumstances when the appropriation itself is a ministerial function, which requires an examination of La. Const. Art. VI § 14(A)(2)(e) and the applicable Revised Statutes.
3. The Trial Court committed legal error when it failed to properly apply the standards for consideration of an exception of no cause of action.
4. The Trial Court committed legal error when it failed to recognize that, under the circumstances presented in this case, La. Const. Art. 6, § 14(A)(2)(e) makes the appropriation itself a ministerial function.
5. The Trial Court committed legal error when it failed to recognize that the statutory mandates to pay firemen (as confirmed by the Trial Court's prior Judgments) are ministerial duties and Appellant-firemen have properly stated a cause of action for a writ of mandamus.
6. The Trial Court committed legal error when it disregarded the numerous cases confirming that civil service employees have a cause of action to request a writ of mandamus if a public body fails to comply with the statutory mandates of Louisiana Civil Service Law.
7. The Trial Court committed legal error by dismissing Applicants' Petition for Writ of Mandamus with prejudice.

III. STATEMENT OF THE CASE

Applicants' **Statement of the Case** is herein adopted save and except any representations found on page 6 of the Applicant's Brief that assert their position with regards to the Second Circuit ruling, failures and/or omissions. Respondents urge this court to uphold the lower court's rulings.

V. LAW AND ARGUMENT

The sole issue before this Court is whether, given the peremptory exception of no cause of action, the law extends a remedy to anyone under the factual allegations of the petition.

Appellant-firemen have failed to state a cause of action and the Trial Court's December 2, 2019 Judgment should be Affirmed.

A. The Trial Court Committed Legal Error when it Failed to Properly Apply the Appropriate Standards for Consideration of an Exception of No Cause of Action.

It is not in dispute that "[T]he peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the petition." *Port City Glass & Paint, Inc. v. Simmie Brooks*, 266 So.3d at 522, see also, *Pesnell v. Sessions*, 51,871 (La. App. 2 Cir. 2/28/18), 246 So.3d 686; *Gipson v. Fortune*, 45,021 (La. App. 2 Cir. 1/27/10), 30 So.3d 1076, writ denied, 10-0432 (La. 4/30/10), 34 So.3d 298. Additionally, it is not in dispute that "[T]he exception is triable on the face of the petition; and, for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true." *Id.* see also, *Fink v. Bryant*, 01-0987 (La. 11/28/01), 801 So.2d 346. [Moreover] "No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action." *Id.* citing. La. C.C.P. art. 931.

Respondents agree with the analysis as stated in *Fink*, supra in and that "[a]n exception of no cause of action should be granted **only** when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief." *Id.* (emphasis added). "Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial." *Id.* citing. *Badeaux v. Southwest Computer Bureau, Inc.*, 05-0612 (La. 3/17/06), 929 So.2d 1211; *Stonecipher v. Caddo Par.*, 51,148 (La. App. 2 Cir. 4/7/17), 219 So.3d 1187, writ denied, 17-0972 (La. 10/9/17), 227 So.3d 830.

Applicants argue, out of context, that the Court failed to apply the appropriate standards and considerations as to whether the law affords a remedy on the facts alleged in the petition before sustaining the exception and dismissing their petition with prejudice. Considering the representations in the record, the following was inserted in Applicants' brief in support of their appeal, to-wit:

BY MR.GREEN: And essentially what - we can go through each paragraph, but essentially the allegations can be summarized as they have a - **defendants have a mandatory obligation, a ministerial duty to pay Bastrop firemen in accordance with Louisiana Civil Service Law.**

BY THE COURT: **They acknowledge that, that's not the question.** The question is whether or not they can be mandamus by a judgment creditor, in this case your clients, the petitioners in this mandamus action, to appropriate funds to pay your clients. That's the question before the court.

BY MR. GREEN: Well, with all due respect, the question that they've conceded is the only question for purposes of an Exception of No Cause.

(R. 133-134, emphasis added).

When taken in context, Applicants argue that all allegations summarized mandate that Respondent, Town of Bastrop, has a mandatory obligation to pay the firemen in accordance with law. Notably, the court in consideration of the allegations in the original and amended petition, asserted that the ultimate question was whether the law affords a remedy on the facts alleged in the petition. Considering the same, the court properly relied on the Louisiana Constitution, the applicable revised statute, La. R.S. 13:5109 and the case law on Mandamus, in contrast to the Applicants' assertion that the court viewed the matter in a vacuum.

The court, in viewing all allegations pled, viewed and considered Louisiana Constitution Article XII, section 10(C) which provides in pertinent part the following:

“§10.Suits Against the State

(C) Limitations; Procedure; Judgments. Notwithstanding Paragraph (A) or (B) or any other provision of this constitution, the legislature by law may limit or provide for the extent of liability of the state, a state agency, or a political subdivision in all cases, including the circumstances giving rise to liability and the kinds and amounts of recoverable damages. It shall provide a procedure for suits against the state, a state agency, or a political subdivision and provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. The legislature may provide that such limitations, procedures, and effects of judgments shall be applicable to existing as well as future claims. *No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered. (emphasis added)*

Amended by Acts 1995, No. 1328, §1, approved Oct. 21, 1995, eff. Nov. 23, 1995.”

Further, the court accepted as true and considering the facts alleged, viewed the applicable statutory authority found in LSA R.S. 13:5109 in pertinent part which provides:

§5109. Authority to compromise; judgment; notice of judgment; payments

B.(1) If a judgment is rendered by a trial or appellate court or the supreme court against the state or a state agency in the amount of five hundred thousand dollars or more, and the attorney general is not an attorney of record in the suit, the clerk of the court shall also mail a notice of judgment to the attorney general, through the

chief of the civil division, in accordance with Code of Civil Procedure Articles 1913, 2166, or 2167, as appropriate.

(2) Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision. (emphasis added)

Additionally, the Trial Court, after viewing the factual allegations and relief sought, considered the applicable jurisprudence that supported its ruling. Notably, in *Hoag et al, vs State of Louisiana, supra*, the court explored whether plaintiffs, a group of Coroners, may utilize the judicial mechanism of a Writ of Mandamus as an alternative means of executing on a judgment against the State of Louisiana. The court in *Hoag* found that there exists a separation of powers found in Louisiana Constitution Article II, §§ 1, 2 and noted “This trichotomous branching of authority furnishes the basis for the existence of an inherent judicial power which the legislative and executive branches cannot abridge. *Singer, Hutner, Levine, etc. v. LSBA*, 378 So. 2d 423 (La.1979); *Saucier v. Hayes Dairy Products*, 373 So. 2d 102, 109, 114 n. 3 (La.1979). Likewise, the judicial branch is prohibited from infringing upon the inherent powers of the legislative and executive branches. *LaBauve v. Louisiana Wildlife and Fisheries Comm'n*, 289 So. 2d 150, 151 (1974).” Similarly, in the matter before this court, Applicants-firemen have acquired a judgment against Respondent-municipality and are attempting to use the Mandamus proceeding as an alternative means to execute a judgment against the Respondents.

Additionally, the court in *Hoag*, reasoned that “when litigants seek to invoke the power of the judiciary to compel another branch of government to perform or act, we must closely and carefully examine whether the action is within the confines of our constitutional authority.” Respondents ask for the same careful constitutional examination in this matter.

Moreover, in addition to the viewing the Constitution, and applicable jurisprudence, the Trial Court considered the will of the legislature as found in R.S. 13:5109(B). Said provision sets forth the procedure for payment of a judgment and provides:

"Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named

political subdivision, if the suit was filed against a political subdivision." [emphasis added]

Applicants cannot simply overlook La. R.S. 13:5109(B). Said provision is a clear expression of legislative intent and provides that judgments rendered against the state, its agencies and political subdivisions and, as in this matter, a municipality, are payable only by specific appropriation made by the legislative branch of the government. As the plaintiffs in *Hoag*, Appellants, rather than using the procedure set forth in La. R.S. 13:5109(B), sought the issuance of a Writ of Mandamus, asking the court to direct the Town of Bastrop to pay each fireman the amount rendered in the judgment. Additionally, the constitutional provision aforementioned asserts that "[N]o judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered". (emphasis added) Moreover, the legislature, in giving effects of judgments, enacted R.S. 13:5109(B) which in pertinent part asserts that "*Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.*" [emphasis added]

It is well settled that Louisiana courts have repeatedly held that judgment creditors cannot mandamus political subdivisions to appropriate funds for payment of a judgment rendered against the respective political subdivisions. See *Jones v. Traylor*, 94-2520 (La.App. 4 Cir. 8/23/95), 660 So. 2d 933; *Landry v. City of Erath*, 93-308 (La.App. 3 Cir. 12/8/93), 628 So. 2d 1178; *State, Dept. of Trans. & Dev. v. Sugarland Ventures, Inc.*, 476 So. 2d 970 (La.App. 1 Cir.1985); *Fontenot v. State, Through Dept. of Highways*, 358 So. 2d 981 (La.App. 1 Cir.1978), *rev'd on other grounds*, 355 So. 2d 1324 (La.1978).

The Trial Court did not commit legal error and it did not fail to properly apply the appropriate standards for consideration of an Exception of No Cause of Action and as such should be sustained.

B. The Trial Court Committed Legal Error when it Failed to Recognize that the Statutory Mandates to appropriate the Funds to Pay Firemen Wages Owed and to Make Such Payment are Ministerial Functions and Applicants Have a Cause of Action for a Writ of Mandamus.

It is undisputed that a Writ of Mandamus is a writ directing a public officer to perform a ministerial duty required by law. La. C.C.P. arts. 3861 and 3863, and further that said writ shall be issued where the law provides no relief by ordinary means. La. C.C.P. art. 3862. Applicants assert that the core issue for consideration is whether Louisiana Revised Statutes, La. R.S. 33:1969 mandates that the Respondents pay the same base pay to all firemen of the same rank; and further whether La. R.S. 33:1992(A) mandates that the Respondent/City pay a specified minimum salary differential between ranks. These facts are not in dispute, given that the same is the current state of the law. However, it is Respondents' position that the facts alleged in Applicants' original and amended Petition for Mandamus, taken as true, do not afford relief under the law. As prayed for in the Petition for Writ of Mandamus, Applicants relief requested was to order "respondents to pay each plaintiff the amount owed by the City to satisfy the May 6, 2019 Judgment..." In effect, Applicants sought to make the judgment exigible and payable out of the public funds of the municipality without a specific appropriation for the same. Notably, the Revised Statutes provide a guideline for municipalities to follow when paying firemen. However, the allegations and relief requested through the Writ of Mandamus is to order the Respondents to pay the May 6, 2019 Judgment. *As stated in Hoag, supra*

"[T]his Court has routinely held that the only circumstances under which courts may cause a Writ of Mandamus to issue is where the actions sought to be performed by the legislature are purely ministerial in nature. A ministerial duty, the performance of which may be required of the head of a department by judicial process, is one in which nothing is left to discretion. *Felix v. St. Paul Fire and Marine Ins. Co.* 477 So. 2d 676, 682 (La.1985). While we recognize plaintiffs' entitlement to seek to execute on the *Hoag I* judgment, we must consider whether the act of appropriating funds to pay the judgment, as required by La. R.S. 13:5109(B), is a purely ministerial duty for which mandamus would be appropriate."

The allegations asserted and relief requested urge that there is a ministerial obligation to pay firemen in accordance with law and that the firemen are entitled to the payment of the judgment rendered on May 6, 2019 through Mandamus. Applicants' assertion that Respondent should be mandated to pay the May 6, 2019 judgment does not comport with existing law.

As noted above, the Trial Court and Second Circuit considered the allegations and prayers in Applicants' Petition for Writ of Mandamus and while accepting the allegations so asserted as

true, ruled that the Applicants were not entitled to relief under law. As such, Applicants have not stated a cause of action and Respondents urge this court to sustain the trial court's decision.

The Trial Court did not commit legal error when it sustained Respondents Exception of No Cause of Action thereby dismissing Applicants Petition for Writ of Mandamus.as it determined that a ministerial function did not exist and the relief sought was not supported by existing law.

C. The Trial Court Committed Legal Error when it Disregarded Numerous Cases Confirming that Civil Service Employees have a Cause of Action to Request a Writ of Mandamus if a Public Body Fails to Comply with the Statutory Mandates of Louisiana Civil Service Law.

The Trial Court did not commit legal error when it sustained Respondents ' Exception of No Cause of Action.

In the Trial Court and Second Circuit Court of Appeals, the Applicants relied on the Fourth Circuit case of *New Orleans Fire Fighters Pension and Relief Fund v. City of New Orleans* (La. App. 4 Cir. 12/18/13); 131 So.3d 412, writ denied, 135 So.3d 623 (La. 3/21/14). In *New Orleans Fire Fighters Pension and Relief Fund, supra*, the trial court issued a Writ of Mandamus against the City of New Orleans to require the city to pay amounts owed as part of firemen's retirement. *Id.* at 415. Unlike the present case, the plaintiffs in *New Orleans Fire Fighters Pension and Relief Fund, supra* petitioned the court for Mandamus to mandate payment to the pension and relief fund for firemen's retirement through a mandamus proceeding. Applicants in the case before this court chose to seek relief by ordinary means and secured a judgment as a result thereof. In this case before the court, a judgment has been rendered and Applicants' Petition for Writ of Mandamus seeks to require the Trial Court to order payment of the judgment, contrary to the body of law in support of the opposite viewpoint.

There is no dispute that firemen's wages, hours, working conditions, pension, retirement benefits and vacation or sick leave benefits are protected. Notably the Louisiana Constitution, La. Const. Art. VI, § 14(A)(2)(e), allows for increased expenditures on a governing authority to pay the same even without a dedicated funding source. However, we urge the court not to lose sight of the allegations and relief sought in the current petition for Writ of Mandamus. The Trial Court distinguished *New Orleans Fire Fighters, supra* as being persuasive and not controlling on the court. (R. 102-103). The rationale used by the Trial Court in sustaining Respondents' exception recognizes the current Petition for Mandamus request that a judgment be rendered "ordering

Defendants [Respondents] to pay each plaintiff [Appellant] the amount owed by the City to satisfy the May 6, 2019 Judgment, representing the back pay and wages due each..." Notably, there is not one case mentioned, argued or briefed that stands for the proposition that a municipality is mandated to pay a judgment under these facts and circumstances. . On the contrary, this Court *in The Newman Marchive Partnership, Inc., v City of Shreveport*, No. 07-C-1890 (La. 4/08108) 979 So. 2d 1262 interpreted *Hoag, supra* noted

"that Louisiana courts have repeatedly held that judgment creditors cannot compel political subdivisions to appropriate funds for the payment of a judgment rendered against that subdivision through a Writ of Mandamus. 2004-0857, pp. 5-6, 889 So.2d at 1023 (citing *Jones v. Traylor*, 94-2520 (La.App. 4 Cir. 8/23/95), 660 So.2d 933; *Landry v. City of Erath*, 628 So.2d 1178 (La.App. 3 Cir.1993); *Dep't of Transp. & Dev. v. Sugarland Ventures, Inc.*, 476 So.2d 970 (La.App. 1 Cir.1985); *Fontenot v. State*, 358 So.2d 981 (La.App. 1 Cir. 1978), rev'd on other grounds, 355 So.2d 1324 (La.1978)). The *Hoag* court observed that mandamus "is an extraordinary remedy, to be applied where ordinary means fail to afford adequate relief," and that "the only circumstances under which courts may cause a Writ of Mandamus to issue is where the actions sought to be performed by the legislature are purely ministerial in nature." Id. at p. 6, 889 So.2d at 1023 (citing La. Code Civ. Proc. art. 3863 et seq.). We further stated that a "ministerial duty" is one in which "no element of discretion is left to the public officer," in other words, "a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law." Id. at p. 7, 889 So.2d at 1024 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992); *Felix v. St. Paul Fire & Marine Ins. Co.*, 477 So.2d 676, 682 (La.1985); further citations omitted). In light of this standard, we concluded that the very act of appropriating funds is discretionary, making a Writ of Mandamus in this context an "impermissible usurpation of legislative power by the judiciary." Id. at pp. 7-8, 889 So.2d at 1024-25.

Moreover, Applicants cite as authority *Parish of St. Charles v. R.H. Creager, Inc.*, 10-180 (La. App. 5 Cir. 12/14/10); 55 So.3d 884, writ denied, 60 So.3d 1250 (La. 4/1/11) as persuasive authority for the issuance of a Writ of Mandamus. However, the Creager case involved an expropriation of private property for public use. The court examined La Constitution Article 1 section 4 and 5 and determined that Mandamus was appropriate under the fact of that case. The above cited provisions provide in pertinent part the following:

§4. Right to Property

Section 4.(A) Every person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property. This right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.

(B)(1) Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation paid to the owner or into court for his benefit.

(5) In every expropriation or action to take property pursuant to the provisions of this Section, a party has the right to trial by jury to determine whether the compensation is just, and the owner shall be compensated to the full extent of his loss. Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation.

Further the court determined that Expropriation laws are special and exceptional in nature and must be strictly construed citing *Exxon Mobile Pipeline v Union Pacific R.R. Co.* 09-1629 (La. 3/16/10), 35 So 3rd 192 as authority for the same. The court further found that the wording of the expropriation laws and the constitution made payment of a just compensation mandatory and not discretionary. Such is not the case before this court as the same is factually and legally distinguishable to the case before the Fifth Circuit. Additionally, Applicants argue in their brief that *Ricca v City of Baton Rouge*, 450 So.2d 1032 (La. App. 1 Cir. 1984) is also persuasive authority for the issuance of a writ of mandamus. Contrary to this case before this court, the *Ricca* decision addresses a Mandamus request that urged a mandate to reinstate a civil service employee with back pay. Unlike the case at bar, said case does not seek a Mandamus as an alternative means to execute a judgment. As such it, likewise, is distinguishable from the case before this court. Moreover, Applicants seek to convince this court that a cause of action exist for mandamus by asserting that *Lyons v Bossier Parish Police Jury*, 262 So.2d. 838 (La. App. 2 Cir. (1972)), *State v Rapides Parish Schoolboard*, 227 La 290 (La 1955), and *State v City of Alexandria* 12 So.2d 25 (La. App. 2 Cir.1943) respectively as controlling and persuasive authority for the proposition that Mandamus is appropriate under these circumstances and as such a cause of action exist. However, all of these decisions pre-date Louisiana Constitution Article XII § 10 and La. R.S. 13:5109 which provides for the remedy in suit against the state, agencies and political subdivisions. Further, Applicants, in brief, assert that *Jazz Casino Co L.L.C v Bridges* 16-1663 (La5/3/17) 223 So 3d 488 as persuasive authority for the proposition that a party is entitled to mandamus even after a money judgment has been rendered, if that judgment represents a statutory mandate. However, in the *Jazz* decision. this court examined and analyzed a tax overpayment issue and the duty of the tax collector, state agency, to make a refund. In that case, which is distinguishable from the case before this court, there was a statutory scheme as anticipated in La. Const Art XII section 10 and R.S. 13:5109(B) that set forth the procedure and the effect of a judgment against the Department of Revenue. In *Jazz* it was opined that the legislature has set procedures and given effect to a

judgment against state, agency and/or political subdivision, in the above referenced statutory scheme. Moreover, this court noted that the legislature provided, via statutes, for the payment and collection of taxes as well as a complete and adequate remedy for the prompt recovery of an illegal tax and or the overpayment of taxes. Additionally, within the context of RS 47:1621 et seq , there is a specific provision that makes mandamus a remedy to enforce the duty imposed of the Department of Revenue to refund and illegal tax or an overpayment; to compel enforcement of a judgment. Accordingly, as determined in *Jazz*, the legislature, because of the statutory scheme in RS 47: 1621 et seq has afforded the judiciary the authority to issue a mandamus in tax overpayment matters. Such is not the case before this court.

D. The Trial Court erred in its Analysis because the Authority it Relies on Does Not Support a Determination that the Petition Does Not State a Cause of Action.

The Trial Court did not commit error when it sustained Respondents' Exception of No Cause of Action. The court relied on *Newman Marchive Partnership, Inc. v. City of Shreveport*, 07-1890 (La. 4/8/08); 979 So.2d 1262, citing. Louisiana Constitution Article XII, Section 10 (C) and La. R.S. 13:5109(B)(3). As stated in Applicants' brief, the Trial Court stated that:

The court feels that this [*Newman Marchive* case] is not only applicable, that it's controlling and dispositive of the issue herein presented and therefore the court grants the defendants peremptory exception of no cause of - of action. That's the court's ruling on the exception of no cause of action. (R. 114-115).

The court properly considered the facts and allegations and the relief sought and ruled appropriately in sustaining the Exception of No Cause of Action..

E. The May 6, 2019 Judgment Does Not Impact Appellant-firemen's Ability to Obtain or Assert a Cause of Action for a Writ of Mandamus.

The May 6, 2019 Judgment does in fact impact Applicants' ability to obtain or assert a cause of action for a Writ of Mandamus. Once a judgment is rendered, the court is generally without authority to issue a Writ of Mandamus directing Respondent-municipality to appropriate funds to pay the same, save and except a judgment deemed to be a ministerial function. That would be tantamount to a seizure of public funds. The court in *Hoag*, supra stated the following:

La. R.S. 13:5109(B) sets forth the sole means by which a judgment against the state may be paid. Funds to satisfy a judgment against the state must be appropriated by the legislature before the treasurer is authorized to release the funds. By filing for mandamus, plaintiffs fail to recognize the critical element necessary for the issuance of mandamus, namely, that the public official to whom the writ is directed may exercise no element of discretion when complying. Ministerial duties are duties in which no element of discretion is left to the public officer. See *Felix v. St. Paul Fire and Marine Ins. Co.* 477 So.2d 676, 682 (La.1985); *State ex rel. Hutton v. City of Baton Rouge*, 217 La. 857, 47 So.2d 665 (1950); *Blanchard v. Brown*, 388 So.2d 865 (La.App. 1 Cir.), writ denied, 386 So.2d 919 (La.1980). A ministerial duty is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law. *Franklin v. Massachusetts*, 505 U.S. 788, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992); 505 U.S. 788, 112 S.Ct. 2767, 120 L.Ed.2d 636 (1992) citing *State of Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 18 L.Ed. 437 (1866). If a public officer is vested with any element of discretion, mandamus will not lie. *Vogt v. Board of Comm'rs of the Orleans Levee District*, 2001-0089 (La.App. 4 Cir. 3/27/02), 814 So.2d 648. The very act of appropriating funds is, by its nature, discretionary and specifically granted to the legislature by the constitution.

The act of appropriating funds is granted to the legislature by La. Const. art. III, § 16. This Court has consistently recognized the legislature's absolute control over the finances of the state, except as limited by the constitution. *Louisiana Public Facilities Authority v. Foster*, 2001-0009 (La.9/18/01), 795 So.2d 288. The Louisiana Constitution grants sole authority to the legislature to control the funds of this state and to appropriate funds within its control. The act of (paying a judgment) which plaintiffs seek court intervention to accomplish, is not ministerial because, by its very nature, the act of appropriation is discretionary. In fact, the act of appropriating funds is an integral discretionary function of the legislative branch of our government. The Louisiana Constitution delineates the parameters of each branch of government. Admittedly, there is some inevitable overlap of the functions and each branch of government must strive to maintain the separation of powers by not encroaching upon the power of the others. Consequently, the inherent powers of the judiciary should be used sparingly and only to the extent necessary to insure judicial independence and integrity. This court in *Konrad v. Jefferson Parish Council*, 520 So.2d 393, 397 (La.1988). recognize that the plaintiffs in that case were entitled to payment of the judgment. This court further asserted that a

“ Writ of Mandamus directing the legislature to appropriate funds is an impermissible usurpation of legislative power by the judiciary. So finding, we are compelled to exercise judicial restraint and refrain from encroaching upon the constitutional delegation of power to the legislative branch by compelling it to appropriate funds to pay the *Hoag I* judgment. Thus, this Court finds that the courts of this state are without authority to issue a Writ of Mandamus directing the legislature to appropriate funds, a legislative action which is within its discretionary province and constitutional authority.” Id.

The Trial Court committed no legal error by dismissing Appellant-Firemen's Petition for Writ of Mandamus with prejudice.

F. The Appropriateness of a Writ of Mandamus Should be Determined after a Trial on the Merits where the Trial Court will have an Opportunity to Admit and Weigh Evidence and Consider the Merits of the Request and the Affirmative Defenses asserted by Respondents.

The Trial Court is not obligated nor mandated to hold a matter over for a trial on the merits, if after accepting the allegations in the petition as true, a determination is made that the law affords no relief. The Trial Court did not improperly weigh the merits without conducting a trial or admitting any evidence. The Trial Court, as stated above, accepted the facts and allegations as true and sustained the Exception of No Cause of Action after determining that the relief sought was not supported in the law.

IX. CONCLUSION

Respondents' Exception of No Cause of Action was properly sustained and should be affirmed by this Court.

Respectfully submitted,
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ET AL, RESPONDENTS

V. CERTIFICATION AND VERIFICATION AFFIDAVIT

In compliance with Louisiana Supreme Court Rules, Rule X, Counsel for Respondent, submits the following certification and verification affidavit:

STATE OF LOUISIANA

PARISH OF OUACHITA

J RODNEY PIERRE, Attorney for the Town of Bastrop, Defendant/Respondents appeared before me, the undersigned Notary Public, and verified that all of the allegations appearing in the Reply Brief to the Application for Supervisory Writ, Writ of Certiorari and/or Review are true and correct, and certified that he has electronically mailed or mailed a paper copy of this opposition/reply brief to the parties listed below depositing same with the U.S. postal Service, postage prepaid and properly addressed, this ____ day of March, 2021.

Hon. Robert C. Johnson
4th Judicial District Court
Morehouse Parish, Louisiana
Morehouse Parish Courthouse
100 East Madison
Bastrop, LA 71220

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Court of Appeal, Second Circuit
Clerk of Court
430 Fannin Street
Shreveport, LA 71101

And who hereby certifies the following:

I hereby verify that there are no attachments required with this brief.

Monroe, Louisiana, this 12th day of March, 2021.

/s/ J. Rodney Pierre
J. Rodney Pierre, (#20327)

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY,
This ____ day of March, 2021

/s/ Elizabeth G. Pierre
-NOTARY PUBLIC-
ID # 50231