

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-30636 c/w No. 94-30665  
Summary Calendar

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THE TRAVELERS INSURANCE COMPANY,  
Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC.,  
Defendant-Appellant.

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c/w No. 94-30639  
THE TRAVELERS INSURANCE COMPANY,  
Plaintiff-Appellee,

VERSUS

ST. JUDE HOSPITAL, ET AL.,  
Defendants,

ST. JUDE MEDICAL OFFICE BUILDING  
LIMITED PARTNERSHIP and KROWN DRUGS, INC.,  
Defendants-Appellants.

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ST JUDE HOSPITAL, ET AL.,  
Plaintiffs,

ST. JUDE MEDICAL OFFICE BUILDING  
LIMITED PARTNERSHIP,  
Plaintiff-Appellant,

VERSUS

THE TRAVELERS INSURANCE COMPANY, ET AL.,  
Defendants,

THE TRAVELERS INSURANCE COMPANY,  
Defendant-Appellee.

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Appeals from the United States District Court  
for the Eastern District of Louisiana  
(CA-93-173-I & CA-90-1983-I c.w 90-12601-I)

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(May 24, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

This is a consolidation of several appeals from a series of orders allowing Travelers Insurance Company to execute upon a money judgment against St. Jude's Hospital property. St. Jude mortgaged its hospital to Lifemark Hospitals, Inc. in 1983. Lifemark failed to timely reinscribe its mortgage in 1993 as required by law to preserve its rank. Meanwhile Travelers recorded a judgment against St. Jude thereby obtaining a judicial mortgage on the hospital.

In the various orders appealed, Travelers' judicial mortgage was recognized as superior in rank to the collateral mortgage of Lifemark, the court fixed the amount due by St. Jude, a writ of fieri facias issued to enforce Traveler's judgment, the court denied St. Jude's motion to vacate the writ and to enjoin the U.S. Marshal from executing the writ, the Marshal seized and sold the hospital, and the court confirmed the Marshal's sale. We affirm in part and dismiss as moot in part.

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

## I.

We first address St. Jude's motion to vacate the writ and to enjoin the Marshal from executing the writ and the order confirming the sale. The orders denying the motion to vacate writ and to enjoin the Marshal were issued October 21, a few days before the Marshal's sale on October 28, 1994. St Jude took no action to stay the sale and did not seek a suspensive appeal.

We hold that both the appeal of the orders denying vacation of the writ of fifa and denying an injunction against execution of the writ as well as the appeal of the confirmation order are moot. See In re Manges (Manges v. Seattle First Nat'l Bank), 29 F.3d 1034, 1042 (5th Cir. 1994) (fact that "centerpiece" of litigation has been irreversibly sold to third parties weighs heavily in favor of a finding of mootness). The Marshal sold the hospital to Lifemark, the second mortgagee and successful bidder, on October 28 pursuant to the writ. In connection with the seizure and sale, Travelers received from Lifemark satisfaction of its judicial mortgage. The court then entered an order confirming transfer of title. The appeals pertaining to the writ, auction, and confirmation of sale are moot.

## II.

St. Jude's motion to rank mortgages sought to have Lifemark's collateral mortgage declared superior to Travelers' judicial mortgage. St. Jude complains that the judgment Travelers filed in the mortgage records could not have created a judicial mortgage because it lacked a principal amount. Travelers filed in the

mortgage records on August 13, 1993 a copy of an August 12, 1993 Amended Judgment which referred to indebtedness owed under a 1992 Amended Judgment. A few days later Travelers filed another copy of the August 12, 1993 Amended Judgment, this time attaching a copy of the referenced 1992 Amended Judgment and thereby providing a principal amount of the judgment debt. We agree with the district court that, by attaching the 1992 Amended Judgment to the 1993 Amended Judgment, it became possible for a third party to obtain from the mortgage records the amount of the debt secured by the recordation.

Lifemark ultimately reinscribed its collateral mortgage on April 11, 1994. Because of the failure of Lifemark to reinscribe its collateral mortgage until after Travelers had obtained its judicial mortgage, the court appropriately determined that Lifemark's mortgage was primed by the Travelers' mortgage. See American Nat'l Ins. Co. v. Heller Financial, Inc., 989 F.2d 854, 856 (5th Cir. 1993) (recognizing that a mortgage not timely reinscribed cannot maintain its superior position).

St. Jude also contends that the recorded judgment did not specify an amount for attorneys' fees or costs and was therefore not actually final. Under Federal Rule 58, a creditor may obtain entry of a money judgment without delaying for taxing of costs. In April 1994 this Court awarded appellate costs and remanded for a fee award. In October 1994, before the Marshal's sale, the district court determined a reasonable fee. On November 3, 1994 the court entered its Second Amended Judgment nunc pro tunc as of

October 20, 1994 fixing the amount of the judgment against St. Jude at \$7,784,385.75 to include appellate costs and the fee award. Though attorneys' fees and costs had not been awarded when the Travelers recorded its judgment, the fees and costs eventually awarded were properly included in the judgment nunc pro tunc.

We affirm the order denying St. Jude's motion to rank mortgages.

### III.

St. Jude also contends that the district court overstated interest in the 1994 Second Amended Judgment, by applying the contractual rate in violation of the law-of-the-case doctrine. According to St. Jude, an earlier opinion of this Court approved prejudgment interest at the much lower judicial rate by leaving undisturbed a district court ruling restricting interest to the judicial rate. We disagree with this interpretation of our earlier decision.

In discussing prejudgment interest relating to the lease obligations, this Court generally agreed with Travelers and approved 100% liability of St. Jude as solidary co-obligor with Krown on the contractual rate of interest. Travelers Ins. Co. v. St. Jude Hosp., No. 92-9579, slip op. at 6-9 (5th Cir. Apr. 20, 1994) ("Travelers II"). On the LEI lease, the panel was bound by Travelers I, a still earlier appeal in this case, requiring the judicial rate of prejudgment interest, but not so regarding the Krown lease:

[I]n the issue of pre-judgment interest a dichotomy resulting from differences in the two different lease

forms )) LEI and Krown )) is produced . . . . Travelers I contains a direct finding and holding on pre-judgment interest [which] is applicable only to LEI lease provisions.

. . . [W]e are constrained by the law of the case doctrine to conclude today that pre-judgment interest . . . under the LEI leases should have been calculated in accordance with article 2924 of the Louisiana Civil Code [*i.e.*, the judicial rate]. . . .

Not so, however, for calculating pre-judgment interest [under] the Krown lease . . . . We therefore leave undisturbed the findings and holdings of the district court concerning pre-judgment interest on all portions of the judgment rendered in favor of Travelers other than the portion thereof attributable to the LEI leases. These unaffected portions include, without limitation, awards arising from or connected with the Krown lease.

Travelers II at 7-9 (footnotes omitted).

We note a discrepancy in Travelers II when we delve into that "undisturbed" ruling, which is the district court's 1992 Amended Judgment. The district court had found St. Jude solidarily liable for the Krown lease debt, principal and interest, "except that St. Jude . . . shall be solidarily liable with Krown . . . for interest accruing on the principal amount only to the extent of the applicable judicial rate [for prejudgment interest]." 1992 Am. J. at 2 (emphasis added). So "leaving undisturbed" this ruling (holding St. Jude liable for only the judicial rate on the Krown obligation) is incongruent with adopting Travelers' position on the Krown prejudgment interest obligation (advocating the contractual rate).

We resolve this discrepancy by interpreting Travelers II to mean that Travelers is entitled to the contract rate of prejudgment interest regarding the Krown lease obligations. Travelers II explicitly embraced Travelers' position. See Travelers II at 6-7

(noting Travelers' position that defendants are liable for "all unpaid rent and interest at the contract rate" and concluding that "Travelers is correct"). We find this expression by the panel more compelling than its reference to "leaving undisturbed" a ruling alluded to but not expressly explained. Thus the district court correctly observed that this Court had approved Travelers' entitlement to collect the contract rate of interest on the Krown lease. See Order & Reasons of Oct. 21, 1994 at 4-5.

#### IV.

The judgment of the district court is affirmed in part, regarding the order denying St. Jude's motion to rank and the Second Amended Judgment fixing the amount of the indebtedness of St. Jude. We dismiss as moot the appeals taken from the order denying St. Jude's motion to vacate writ and to enjoin the Marshal from executing the writ and from the order confirming the sale.

AFFIRMED in part, DISMISSED in part as moot.