

NUMBER 03-1665 consolidated with 03-1612

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

REGIONS BANK

Plaintiff - Appellee

Versus

NORRIS RADER OF LAFAYETTE, INC., ET AL.

Defendants - Appellants

On appeal from the Sixteenth Judicial District Court [No. 98747], for the Parish of Iberia, State of Louisiana; the Honorable Paul J. DeMahy, District Judge, presiding.

Woodard, J., concurring.

I agree that we should grant the Raders' motion to remand the instant matter to the trial court for determinations concerning the sale of a litigious right. However, I do not agree with the majority view that we can maintain the appeal on our docket as I do not find that *Clement* governs this issue. Rather, I believe the *Clement* court was trying to accommodate special circumstances which are not present in the instant case.

Importantly, the *Clement* court recognized that a party may exert the privilege of 2652 "in the lower court or on appeal, *provided it will end the litigation.*"<sup>1</sup> The *Clement* court allowed remand even though it only ended the litigation for one party. However, there were additional parties to the appeal whose rights were not affected by the other party's sale/redemption of a litigious right. The *Clement* court recognized that those additional parties, who were not affected by the sale and therefore gained no benefit from the remand, would suffer by losing their preference on the appellate

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<sup>1</sup>*Clement*, 116 So.2d at 271.

docket. This is what distinguishes Clement from the instant case and makes Clement inapplicable since we have no additional parties to consider in our case.