

**CAMBRIE CELESTE LLC
AND CAMBRIE CELESTE
COMMERCIAL TENANT,LLC**

*

NO. 2016-CA-1318

*

COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

**STARBOARD MANAGEMENT,
LLC , F.I.N.S.**

*

STATE OF LOUISIANA

CONSTRUCTION LLC,

* * * * *

CAMBRIE CELESTE

**DEVELOPER, LLC, ROBERT
ARMBRUSTER, AND NICOLE
ARMBRUSTER**

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2012-01997 (F-7), DIVISION "F"
Honorable Christopher J. Bruno, Judge

* * * * *

Judge Terri F. Love

* * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Terri F. Love, Judge Rosemary Ledet, Judge Regina Bartholomew Woods, Judge Terrel J. Broussard, Pro Tempore)

LEDET, J., CONCURRING IN PART WITH REASONS

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**APPEAL DISMISSED IN PART; AFFIRMED IN PART; REVERSED AND
REMANDED IN PART
NOVEMBER 6, 2017**

This appeal arises from an eviction and breach of contract dispute for failure to pay rent. Defendants appeal the trial court’s judgment denying their motion for new trial with respect to the trial court’s ruling that denied their motion for reconsideration of the imposition of sanctions and granted Plaintiffs’ motion for summary judgment. Defendants claim the trial court improperly struck their affirmative defenses and reconventional demand, failed to enforce the settlement agreement, and genuine issues of material fact preclude summary judgment. We find the appeal of the sanctions issue is untimely, subject matter jurisdiction is lacking in order to consider an alleged settlement agreement, and summary judgment is inappropriate as to all defendants except Starboard. Accordingly, we dismiss the appeal in part, affirm in part, and reverse and remand in part.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

In this litigation, Cambrie Celeste, LLC, and Cambrie Celeste Commercial Tenant, LLC (collectively “Plaintiffs”) are companies owned and controlled by Steven Anderson (“Mr. Anderson”), a property developer who specializes in

developing properties using tax credits. Starboard Management, LLC (“Starboard”); F.I.N.S. Construction, LLC; Cambrie Celeste Developer, LLC, are companies owned and controlled by Robert Armbruster (“Mr. Armbruster”), a contractor.

In this case, Plaintiffs sought to enforce alleged lease obligations that they contend Starboard owes pursuant to a March 22, 2010 lease of a building located at 621 Religious Street in New Orleans, Louisiana. Plaintiffs filed a petition for eviction and breach of contract, in March 2012, against Starboard; F.I.N.S. Construction, LLC; Cambrie Celeste Developer, LLC; and Robert and Nicole Armbruster (collectively “Defendants”) for failure to pay rent.

According to Defendants, in 2009, Mr. Anderson, through his companies obtained the property at 621 Religious Street from a real estate company owned by the Armbrusters. Defendants allege that the parties entered into a New Markets Tax Credit (“NMTC”) transaction to obtain a low market loan to refinance the existing debt on the property. Defendants further allege that in order for the NMTC transaction to close, the property had to be leased; therefore, the parties executed a lease agreement in March 2010. As part of the lease agreement, the Armbrusters, F.I.N.S. Construction, LLC, and Cambrie Celeste Developer, LLC, executed a guaranty agreement.¹

Defendants allege that the contract contained a number of one-sided terms that favored Plaintiffs. However, Defendants claim that Mr. Anderson told

¹ Mr. Armbruster signed on behalf of F.I.N.S. Construction, LLC as its “Manager” as well as on behalf of Cambrie Celeste Development, LLC, as its “Sole Member.”

Defendants that the lease would not be enforced by its terms and that the lease existed only to ensure compliance with NMTC regulations. Defendants further claim that the parties later made a separate agreement that reflected their business arrangement.

In March 2012, Plaintiffs filed a petition for eviction and breach of contract against Defendants for failure to pay rent. In June 2012, Defendants filed an exception of prematurity, alleging the matter was subject to arbitration, and an exception of unauthorized use of summary proceedings, claiming the lease was a simulation. Plaintiffs opposed the exception of prematurity stating that the evidence offered did not support Defendants' claim. Plaintiffs also opposed the exception of prematurity on the basis that Defendants submitted no evidence at all to demonstrate that the lease was a simulation. The trial court ultimately denied Defendants' exceptions.

Around the time Defendants filed their exceptions in this case, however, the Armbrusters also filed a petition for bankruptcy in the United States Bankruptcy Court relative to another business entity they owned. The Armbrusters obtained a stay of Plaintiffs' eviction suit in this case. In July 2013, the stay was lifted, and Plaintiffs' eviction suit proceeded in the trial court.

On July 17, 2013, Plaintiffs issued interrogatories and requests for production of documents to Starboard. When Starboard failed to produce responses, Plaintiffs filed a motion to compel, and at the August 15, 2013 hearing, the trial court orally granted the motion. The trial court issued a judgment on

September 3, 2013, ordering Starboard to comply with Plaintiffs' discovery requests and awarded Plaintiffs \$750.00 in attorneys' fees. Defendants then filed an answer and a reconventional demand, which alleged that the actions and damages set forth in Plaintiffs' petition were generally false, that they were barred under the law, and that Plaintiffs committed fraud, breach of contract, and "other illegal acts." On September 16, 2013, Plaintiffs filed its first motion for contempt for Starboard's continued refusal to provide discovery or to pay the attorneys' fees as ordered. A contempt hearing was set on the same day as the eviction proceeding in October 2013.

At the eviction proceeding, counsel for Defendants argued that the lease was unenforceable because it was a simulation. However, the trial court noted that Defendants offered no evidence or testimony to support their contention. In its oral reasons for judgment, the trial court determined that a valid lease existed and ordered Starboard evicted from the property. In that Plaintiffs prevailed on the eviction of Starboard, the trial court requested that Plaintiffs withdraw the contempt motion for failure to provide discovery.

Following the summary eviction proceeding, Plaintiffs sought to obtain a judgment in an ordinary proceeding on the damages Defendants allegedly owed for unpaid rent. However, in order for Plaintiffs to proceed on the damages issue, Plaintiffs contended it was essential that they have Defendants' responses to the outstanding discovery. Plaintiffs filed a second motion for contempt in November 2013, but the motion was denied in January 2014 for improper service. Although

the trial court denied the motion, the trial court concluded, in its reasons for judgment, that Plaintiffs repeatedly attempted, via email and letter correspondence, to secure the requested discovery responses without having to file a second motion for contempt. The trial court also found that Defendants' counsel acknowledged receipt of Plaintiffs' correspondence "but did not request additional time nor did counsel indicate that he was having any difficulty in responding to this request."

At that time, Defendants also amended their answer and reconventional demand, re-urging their claim that the lease was a simulation. However, just as they failed to attach supporting evidence to their exception of unauthorized use of summary proceeding, Defendants also failed to attach any evidence to support the claims alleged in their amended answer and reconventional demand.

As of February 2014, Starboard still failed to respond to Plaintiffs' discovery requests, prompting Plaintiffs to file a third motion for contempt. Defendants filed an untimely "Opposition to Motion for Contempt and Incorporated Motion for Leave to File Opposition and Motion for Continuance." Defendants' opposition did not include any of the requested documents Plaintiffs sought in discovery. At the March 14, 2014 contempt hearing, the trial court found Starboard in contempt for failure to comply with its September 2013 order compelling Starboard to comply with Plaintiffs' discovery requests. The trial court dismissed with prejudice Starboard's affirmative defenses and reconventional demand and further ordered Starboard to "produce all documents having any connection to this matter to [Plaintiffs] at [Plaintiffs'] counsel's office (Quinn Law) on or before Monday,

March 24th, 2014.” Additionally, the trial court awarded Plaintiffs attorneys’ fees and costs associated with the filing of the third motion for contempt. The contempt judgment was signed on April 3, 2014, and notice of the signing of the judgment was sent on April 4, 2014.

On April 28, 2014, Plaintiffs filed a fourth motion for contempt after their requests for discovery were continually ignored, in violation of the trial court’s September 2013 and April 2014 orders. Defendants’ current counsel formally enrolled the next day; and, on May 1, 2014, Defendants filed a “Notice of Intent to Take Supervisory Writs/Appeal.” Defendants, however, did not pursue appellate review of the April 2014 contempt judgment at that time.

While Defendants later produced certain documents following the enrollment of new counsel, Plaintiffs alleged that Defendants’ discovery responses remained incomplete. Plaintiffs elected to proceed and filed a motion for summary judgment in November 2014. Plaintiffs later agreed to continue the motion in an effort to reach a settlement agreement in this case as well as in other pending matters between the party principals and their various business entities.

The parties were unable to reach a settlement agreement, and Plaintiffs filed a motion to re-set their motion for summary judgment in May 2016. Instead of filing an opposition to summary judgment, Defendants filed, on May 18, 2016, a “Motion for Reconsideration or, Alternatively, Motion to Reinstate Defenses and Reconventional Demand,” seeking a rehearing on the trial court’s April 4, 2014 judgment striking Defendants’ affirmative defenses and reconventional demand.

Thereafter, on June 23, 2016, Defendants filed an untimely opposition to Plaintiffs' motion for summary judgment. Defendants attached, for the first time, documents and exhibits that Plaintiffs previously requested in discovery but were never provided. A hearing on both motions was held on July 8, 2016. The trial court issued a July 27, 2016 judgment denying Defendants' motion to reconsider as untimely and granted summary judgment in favor of Plaintiffs on the issue of damages for unpaid rent.

In August 2016, Defendants filed a "Motion for New Trial," seeking reconsideration of the trial court's July 27, 2016 judgment that denied their previous motion to reconsider and granted Plaintiffs summary judgment. The trial court denied the motion for new trial on September 21, 2016.

Defendants then filed the instant appeal. Plaintiffs responded by brief and filed a separate motion to dismiss the appeal, alleging certain jurisdictional defects.

JURISDICTION

On appeal, Defendants enumerate four assigned errors including: (1) the trial court improperly struck Defendants' affirmative defenses and reconventional demand; (2) the trial court improperly failed to enforce the settlement agreement; (3) Defendants were not served with Plaintiffs' "[m]otion;" and (4) genuine issues of material fact exist precluding summary judgment.

Plaintiffs contend that despite Defendants' assertion that this Court has jurisdiction to review the trial court's September 21, 2016 judgment, the substance of Defendants' appeal seeks reversal of judgments that are not subject to appellate

review and must be dismissed. Plaintiffs argue that the substance of Defendants’ motion for new trial, like their motion for reconsideration, seeks the trial court’s reconsideration of its April 2014 contempt judgment—a judgment from which Defendants filed a notice of intent but never sought appellate review. Thus, Plaintiffs claim that neither the motion to reconsider nor the motion for new trial, both filed in 2016, can serve to revive a final judgment rendered over two years prior. As to Defendants’ second assignment of error, Plaintiffs maintain that Defendants seek to appeal the denial of a “Motion to Enforce Settlement Agreement” that was not before the trial court in this case. Therefore, it is not a part of the record on appeal, and the assigned error should be dismissed for lack of subject matter jurisdiction.

Pursuant to Rule 1-3 of the Uniform Rules, Courts of Appeal, this Court “will review only issues which were submitted to the trial court and which are contained in specifications or assignments of error, unless the interest of justice clearly requires otherwise.” Likewise, “[e]very pleading must be construed as to do substantial justice [...] Accordingly, courts look beyond mere headings and terminology used on or in pleadings to determine the circumstances and the true nature of the suit.” *Adams v. First Nat. Bank of Commerce*, 93-2346, 94-0486, p. 4 (La. App. 4 Cir. 9/29/94), 644 So.2d 219, 223 (internal citations omitted); *Scullin Individually and on Behalf of Am. Companies v. Prudential Ins. Co. of Am.*, 421 So.2d 470, 472 (La. App. 4th Cir. 1982).

Moreover, La. C.C.P. art. 2164, states that an “appellate court shall render

any judgment which is just, legal, and proper upon the record on appeal.”

However,

a party’s failure to timely seek the modification or reversal of an underlying judgment is a “jurisdictional defect, in that neither the court of appeal nor any other court has the jurisdictional power and authority to reverse, revise or modify a final judgment after the time” for seeking such modification or reversal has elapsed. [...] [W]hen a party fails to seek timely modification or reversal of an underlying judgment, “the judgment acquires the authority of the thing adjudged, and the court of appeal has no jurisdiction to alter that judgment.”

6126, *L.L.C. v. Strauss*, 13-0853, p. 21-22 (La. App. 4 Cir. 12/4/13), 131 So.3d 92, 105 (quoting *Baton Rouge Bank & Trust Co. v. Coleman*, 582 So.2d 191, 192 (La. 1991)).

Contempt Judgment

By way of the present appeal, Defendants ask this Court to revive consideration of the trial court’s April 2014 judgment, striking its affirmative defenses and reconventional demand. The substance of both the May 2016 motion to reconsider and the August 2016 motion for new trial sought the reversal of the trial court’s earlier contempt judgment. Because a contempt judgment is a final appealable judgment, Plaintiffs contend all delays for reconsideration by the trial court and delays for taking an appeal have prescribed. Defendants aver that the April 2014 judgment is not final and appealable because the judgment imposed sanctions pursuant to La. C.C.P. art. 1471 and fails to meet the requirements of La. C.C.P. art. 1915(B).

All contempt judgments are deemed final judgments, subject to immediate

appeal.² *Stiltner v. Stiltner*, 00-2079, p. 2 (La. App. 4 Cir. 11/08/00), 772 So.2d 909, 910; *Pittman Constr. Co. v. Pittman*, 96-1079, 96-1498, p. 3 (La. App. 4 Cir. 3/12/97), 691 So.2d 268, 270.

The trial court relied on *Stiltner* to conclude that the delays for reconsideration of its previous contempt judgment had prescribed. Defendants argue that reliance on *Stiltner* is misplaced because that case addressed La. C.C.P. art. 1915(A)(6), which makes judgments final and subject to immediate appeal when a court “[i]mposes sanctions or disciplinary action pursuant to [La. C.C.P. arts.] 191, 863, or 864. . . .” Judgments rendered under Article 1915(A)(6) do not require that the trial court to designate the judgment as final for the purpose of an immediate appeal. *See* La. C.C.P. art. 1915, Comment 1999 (“A final judgment under Article 1915(A) is appealable without being so designated. . . .”).

Because the trial court did not issue sanctions pursuant to its inherent powers under Article 191, Defendants claim Article 1915(A)(6) does not apply. They therefore contend that because the judgment lacks an express designation of finality, the judgment is interlocutory and “may be revised at any time prior to” adjudicating “all the claims and the rights and liabilities of all the parties.” La. C.C.P. art. 1915(B)(2). Defendants argue their appeal of the sanctions issue should not be dismissed.

² Before the 1999 amendments to La. C.C.P. art. 1915, courts considered a contempt judgment an interlocutory judgment. *Stiltner*, 00-2079, p. 1, 772 So.2d at 910. However, an exception to the rule was recognized “in cases where the object of the court proceeding is to hold someone in contempt for violating a direct order of the court, in which case, ‘a direct appeal is the most appropriate.’” *Id.*, 00-2079, p. 1-2, 772 So.2d at 910 (quoting *Pittman*, 96-1079, 96-1498, p. 3, 691 So.2d at 269).

La. C.C.P. art. 1471 sanctions are triggered when a party refuses or fails to comply with a discovery order. Even in the absence of such an order, La. C.C.P. art. 191 “authorizes trial courts to impose sanctions for [failing to adhere to discovery rules] since [such failure] clearly interferes with the court’s ability to fairly administer justice.” *Carter v. Hi Nabor Super Mkt., LLC*, 13-0529, p. 7-8 (La. App. 1 Cir. 12/30/14), 168 So.3d 698, 704. Thus, “[a] trial court has the authority to impose sanctions on a party for [. . .] discovery misconduct under both its inherent power to manage its own affairs and the discovery articles provided in the Louisiana Code of Civil Procedure.” *Id.*, 13-0529, p. 7, 168 So.3d at 703. Accordingly, it makes no difference whether the trial court expressly issued sanctions pursuant to La. C.C.P. art. 1471 or La. C.C.P. art. 191 in order to trigger La. C.C.P. art. 1915(A)(6)’s application. *Cf.*, *Robinson v. Harlan*, 12-0363 (La. 4/9/12), 85 So.3d 131 (reinstating appeal after appellate court erroneously held a contempt judgment under Article 1471 is not a final and appealable judgment); *See also In re Jones*, 10-66, p. 4 (La. App. 5 Cir. 11/9/10), 54 So. 3d 54, 58 (finding contempt judgment is final and appealable and relying on *Pittman, supra*). Therefore, we find the April 2014 contempt judgment is a final judgment and subject to immediate appeal under La. C.C.P. art. 1915(A)(6).

We next consider whether Defendants’ rights to appellate review have prescribed. Pursuant to La. C.C.P. art. 5002(A), an appeal may be taken within ten days from the signing of the judgment or from service of the notice of judgment. When a motion for new trial is timely filed, the delay commences on the day after

the motion is denied or from service of the notice of order denying a new trial. La. C.C.P. art. 5002(B). The delay for applying for a new trial is seven days (exclusive of legal holidays) from the day notice is sent or served by the sheriff. La. C.C.P. art. 1974.

The procedural history demonstrates that all delays for the trial court's reconsideration of its April 2014 ruling and the delays for appellate review have prescribed.³ After the trial court orally granted Plaintiffs' third motion for contempt, Defendants noticed their intent to seek this Court's review. On May 1, 2014, Defendants filed a "Notice of Intent to Take Supervisory Writs/Appeal." However, Defendants elected not to pursue appellate review of the judgment, nor did they file a timely motion for new trial. Given Defendants failed to timely seek modification of the trial court's judgment, the judgment became final and non-appealable.

We find no error in the trial court's denial of Defendants' May 2016 motion to reconsider or their August 2016 motion for new trial. Both motions were filed well outside the delays set forth in La. C.C.P. art. 1974, and furthermore, each motion sought reversal of a judgment which became final and non-appealable two years prior. Therefore, this Court has no jurisdictional authority to reverse a final judgment after the delays for seeking reversal have elapsed. Accordingly, Defendants' appeal of the sanctions issue is dismissed as untimely.

³ See La. C.C.P. arts. 2123 and 2087 (delays for suspensive and devolutive appeals).

Enforcement of Settlement Agreement

Plaintiffs also argue this Court lacks subject matter jurisdiction to consider Defendants' claim that the trial court erred when it failed to enforce an alleged settlement agreement. Defendants reference, on appellate review, a judgment which denied a "Motion to Enforce Settlement Agreement." A review of the record demonstrates that no such motion was ever filed, nor did the trial court issue a judgment denying such motion in this case. Plaintiffs contend Defendants "play fast and loose with their wording" to cloud this Court's understanding of the events that transpired, what parties were involved, and in what cases.

The record indicates that Mr. Anderson, the principal of the Plaintiff companies, and the Armbrusters, the principals of the Defendant companies, are also principals of other various entities that conducted business together and which ended in litigation and/or arbitration. One of those disputes, *Community Capital Partners, LLC v. Robert Armbruster, Specialized Response Group, LLC and Bank of New Orleans*, Case No. 2012-6629 c/w 2014-2136 ("Community Capital"), was allotted to the same division and trial judge as the instant matter, but was a completely separate and unrelated case with different parties and issues.

The parties in Community Capital attempted to reach a settlement agreement, although unsuccessfully. Nevertheless, Mr. Armbruster sought to enforce what he believed was a settlement agreement. His request was denied by the arbitration panel, so Mr. Armbruster filed a "Motion to Enforce Settlement" in Community Capital, which was pending before the trial court. The trial court

denied the motion, and Mr. Armbruster sought supervisory review. This Court denied writs on March 9, 2016. However, in the above-captioned matter, the trial court did not consider any motion to enforce settlement or issue a judgment denying the motion.

The fact that the same trial judge rendered judgment on a motion to enforce settlement in another unrelated case is irrelevant where the motion to enforce was never filed or made a part of the record herein. Therefore, this Court lacks subject matter jurisdiction to review, within the context of this appeal, the denial of a motion to enforce settlement agreement filed in a separate, unrelated matter. Pursuant to Rule 1-3, Uniform Rules, Courts of Appeal, Defendants' second assignment of error is dismissed.

SUMMARY JUDGMENT

Defendants also assign as error the trial court's granting of summary judgment. Defendants claim they were never served with Plaintiffs' motion and genuine issues of material fact remain, precluding summary judgment.

Proper Service

Defendants argued at the summary judgment hearing that they had not received service of the "motion." The trial court offered counsel for Defendants an opportunity to present argument on the issue; however, Defendants declined, indicating they "[did not] want to deal with that" as they were present for the hearing and "ready to roll." To the extent that Defendants assert on appeal that they did not receive service of the "motion for summary judgment," procedural due

process requires that a party be given adequate notice of the pendency of an action and an opportunity to be heard. Pursuant to La. C.C.P. art. 1313(C), “if a pleading or order sets a court date, then service shall be made either by registered or certified mail or as provided in Article 1314, or by actual delivery by commercial courier.” Therefore, Article 1313(C) requires the mover to provide proper notice of the hearing.

The record reflects that Plaintiffs filed a motion for summary judgment and a separate rule to show cause. The rule to show cause was served upon Defendants, and the Orleans Parish Sheriff’s Office filed a certificate of service into the record. Defendants, through counsel, expressly acknowledged service and later waived formal service when Defendants’ counsel sought to reinstate the original July 8, 2016 hearing date. We find no merit to Defendants’ claim of lack of service.

Issues of Material Fact

With respect to the trial court’s granting of summary judgment, Defendants contend the trial court erred as genuine issues of material fact exist. This Court reviews a ruling on summary judgment *de novo*. *Brunet v. Fullmer*, 00-0644, p. 3 (La. App. 4 Cir. 1/10/01), 777 So.2d 1240, 1241. Appellate courts apply the same standard as the trial court and therefore “[t]o affirm a summary judgment an appellate court must find that reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court.” *Chapital v. Harry Kelleher & Co., Inc.*, 13-1606, p. 5-6 (La. App. 4

Cir. 6/4/14), 144 So.3d 75, 81 (quoting *Mandina, Inc. v. O'Brien*, 13-0085, p. 5 (La. App. 4 Cir. 7/31/13), 156 So.3d 99, 104).

At the hearing on summary judgment, the issue was raised as to whether the trial court's April 2014 contempt judgment applied to Starboard only or whether it also applied to the sureties of Starboard, namely the Armbrusters. Counsel for Defendants asserted, on behalf of the Armbrusters, the invalidity of the lease as a defense. Plaintiffs argued that the Armbrusters are the admitted sureties of Starboard and thus, the law prohibits sureties from raising any defenses that the principal obligor cannot. Accordingly, the Plaintiffs argued that the Armbrusters are prohibited from asserting the same affirmative defenses or reconventional demand that Starboard could have but for the trial court imposing sanctions against Starboard.

The trial court agreed, concluding that the defenses the Armbrusters attempted to raise, in their individual capacity as sureties, were all defenses that could not be considered in light of its April 2014 contempt judgment against Starboard. The trial court declined to consider the Armbrusters' affirmative defense that the lease was a simulation and therefore unenforceable. After considering Plaintiffs' evidence on the damages issue for unpaid rent, the trial court granted summary judgment in favor of the Plaintiffs and against all defendants.

The decretal language of the April 2014 contempt judgment dismissed Starboard's affirmative defenses and reconventional demand and further stated that

“Starboard is prohibited from asserting any further claims or causes of action against the plaintiffs in this matter.” The decretal language only references “Starboard, LLC”⁴ and is therefore only enforceable against Starboard. *See Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll. V. Mid-City Holdings, L.L.C.*, 12-0506, p. 2-3 (La. App. 4 Cir. 10/15/14), 151 So. 3d 908, 910 (determining a final appealable judgment must name the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted or denied); *Input/Output Marine Sys., Inc. v. Wilson Greenbatch Tech., Inc.*, 10-477, p. 12-13 (La. App. 5 Cir. 10/29/10), 52 So. 3d 909, 916.

As discussed above, the trial court’s April 2014 contempt judgment is a final judgment and will not be disturbed. The trial court correctly rejected Starboard’s attempts to demonstrate a genuine issue of material fact by asserting affirmative defenses which the trial court previously struck. Therefore, we affirm the granting of summary judgment as it pertains to Starboard and reverse as to all other defendants.

In that we reverse the trial court’s ruling as to all defendants except Starboard, we find remand necessary. We note, however, that the record demonstrates that the opposition filed by Defendants is untimely pursuant to La. C.C.P. art. 966(B)(2)⁵. It is recognized that it is within the trial court’s discretion whether or not it chooses to consider an untimely filed opposition and supporting

⁴ The April 2014 contempt judgment refers to Starboard as “Starboard, LLC,” whereas the caption of the case, however, refers to Starboard as “Starboard Management, LLC.”

⁵ La. C.C.P. art 966(B)(2) states, “[a]ny opposition to the motion [for summary judgment] and all documents in support of the opposition shall be filed and served in accordance with Article 1313 not less than fifteen days prior to the hearing on the motion.”

affidavit on summary judgment. *Guillory v. Chapman*, 10-1370 (La. 9/24/10), 44 So.3d 272 (reversing appellate court and holding that the trial court did not abuse its discretion by deciding to follow the mandatory language of La. C.C.P. art. 966(B) as to timing); *Buggage v. Volks Constructors*, 06-175, p. 1 (La. 5/5/06), 928 So.2d 536, 536 (“The time limitation established by La. C.C.P. art. 966(B) for the serving of affidavits in opposition to a motion for summary judgment is mandatory; affidavits not timely filed can be ruled inadmissible and properly excluded by the trial court”) (citing *Am. Bank & Trust Co. v. Int'l Dev. Corp., Inc.*, 506 So.2d 1234 (La. App. 1 Cir.1987)); *Phillips v. Lafayette Par. Sch. Bd.*, 10-373, p. 3-4 (La. App. 3 Cir. 12/8/10), 54 So.3d 739, 743.

In this case, the trial court refused to entertain Defendants’ opposition and supporting affidavit as it had previously invoked La. C.C.P. art. 1471 and struck all defenses asserted by the Defendants. While we find the contempt judgment applies only to Starboard, consideration of an untimely filed opposition rests with the discretion of the trial court. Therefore, we remand the matter for the trial court to consider the timeliness of Defendants’ opposition according to La. C.C.P. art. 966(B)(2). If the trial court decides to accept the untimely filing, the trial court is further instructed on remand to conduct an evidentiary hearing on the merits of the motion for summary judgment in line with this opinion.

DECREE

In light of this Court’s discussion, we find Defendants’ motion to reconsider and motion for new trial were filed over two years after the April 2014 judgment

became final and subject to immediate appeal. Defendants' rights to appellate review of the sanctions issue have therefore prescribed and Defendants' appeal on the issue is dismissed. We also find that this Court lacks subject matter jurisdiction to consider, for purposes of this appeal, the denial of a motion to enforce settlement agreement rendered in an unrelated case that involves different parties and legal issues. Finally, we find the contempt judgment applies to Starboard only. Therefore, we affirm the trial court's September 21, 2016 judgment denying Starboard's motion for new trial relating to the trial court's previous ruling that granted Plaintiffs' motion for summary judgment; however, we reverse the trial court's judgment as to all other defendants. Accordingly, we dismiss the appeal in part, affirm in part, and reverse and remand in part.

**APPEAL DISMISSED IN PART; AFFIRMED IN PART; REVERSED AND
REMANDED IN PART.**