

Louisiana Supreme Court's *Willis-Knighton* Decision Defining Component Parts of an Immovable Will Only Apply Prospectively

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On June 22, 2005, the Louisiana Supreme Court, in a rehearing, held that its prior decision in *Willis-Knighton Medical Center vs. Caddo-Shreveport Sales & Use Tax Commission*, Docket No. 04-C-0473 (La. 04/1/2005), will apply only on a prospective basis. This decision is significant for at least two reasons. First, the court carefully analyzed when one of its decisions will be given prospective effect. Second, by applying its prior decision only on a prospective basis, the court avoided what could have been a significant amount of needless litigation.

In its original opinion, which was rendered on April 1, 2005, the court held that La. Civ. Code art. 466 must not be read to include a "societal expectations" test to determine whether an item of movable property is a component part of an immovable. Under the societal expectations test, the courts would look to whether a person purchasing an immovable would reasonably expect that an item of movable property affixed to the immovable would be transferred with the immovable. In rejecting the societal expectations test, the divided court determined that only things permanently attached to an immovable could be its component parts. A thing is permanently attached to an immovable if its removal would cause substantial damage to either the item of movable property affixed to an immovable or to the immovable property.

Willis-Knighton involved the issue of whether sales tax was owed on repairs to nuclear cameras in a hospital. The taxpayer argued that the nuclear cameras were component parts of the hospital buildings and that the repairs should be treated as nontaxable repairs to an immovable. The most significant holding, however, was the rejection of the societal expectations test.

For many years prior to *Willis-Knighton*, Louisiana courts had applied the societal expectations test to distinguish component parts of immovable property from other movable property. See *Lafleur v. Foret*, 213 So.2d 141 (La. App. 3rd Cir. 1968); *Equibank v. United States, Internal Revenue Service*, 749 F.2d 1176 (5th Cir. 1985); *Showboat Star Partnership, et al. v. Slaughter*, 789 So.2d 554 (La. 2001); *Exxon Corporation v. Foster Wheeler Corporation*, 805 So.2d 432 (La. App. 1st Cir. 2001). The only prior criticism of the societal expectations test was in *Prytania Park Hotel, Ltd. v. Gen. Star Indem. Co.*, 179 F.3d 169 (5th Cir. 1999). In its original opinion in *Willis-Knighton*, the court held that there is no statutory authority to support the societal expectations test as a method to determine the component parts of immovable property, as defined in La. Civ. Code art. 466.

The *Willis-Knighton* decision drew swift and pointed responses. The Louisiana Legislature acted quickly and passed S.B. 196, which passed both houses of the legislature and was sent to the Governor on or about June 17, 2005. This bill revises Civil Code article 466 to make it clear that there are two distinct tests for the classification of things as component parts of a building or other constructions. Things such as plumbing, heating, cooling, electrical or other installations are component parts of an immovable as a mater of law. All other things are considered to be permanently attached and, therefore, component

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parts of a building or other construction under Article 466 if they cannot be removed without substantial damage to themselves or to the immovable. In addition, the new legislation incorporates the so-called societal expectations test into Article 466. The legislation is intended to clarify and re-confirm interpretation of Article 466, including application of the societal expectations test, which prevailed prior to the *Willis-Knighton* decision. The Governor has until early July 2005 to either sign S.B. 196 into law or veto the bill. If she takes no action on S.B. 196 by early July, the bill will automatically become law.

In addition to the legislative reaction, the court granted a rehearing in *Willis-Knighton* solely for the purpose of determining whether the opinion should be given effect only on a prospective basis. Relying on the criteria established in *Lovell v. Lovell*, 378 So.2d 418 (La. 1979), the court held that the decision should be given prospective effect only. In *Lovell v. Lovell*, the court set forth the following criteria for determining whether a judicial decision should be accorded prospective effect only:

- (1) the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed; (2) the merits and demerits must be weighed in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective application will further or retard its operation; and (3) the inequity imposed by retroactive application must be weighed.

The court concluded that the departure from the longstanding societal expectations test likely would undermine important policy objectives in implementing a stable body of Louisiana property law. In addition, the court recognized that its decision would potentially invite protracted litigation over what things did or did not constitute component parts of immovables. In light of these concerns, as well as its recognition that the public did not have adequate notice of the potential demise of the societal expectations test, the court held that its holding in *Willis-Knighton* should apply prospectively only.

The court's decision coupled with the expected enactment of S.B. 196 will provide a deserved level of certainty to taxpayers and property owners. Hopefully, these actions will foreclose a race by state and local taxing authorities to attempt to reap windfall tax collections from unsuspecting taxpayers. For periods prior to April 1, 2005, the date of the original decision in *Willis-Knighton*, and for periods after the effective date of S.B. 196, if it becomes law, taxpayers and property owners can rely on prior interpretations of Article 466, including the societal expectations test. For the short period from April 1, 2005, through the effective date of S.B. 196, if it becomes law, one presumably will be subject to the interpretation of Article 466 as set forth in *Willis-Knighton*. One would hope that taxing authorities would not expend significant resources chasing limited resources for that short period of time, especially in light of the Louisiana Supreme Court's prospective-only ruling and the legislature's quick action. In any event, if Governor Blanco signs S.B. 196 into law, it appears that things will be back to normal in Louisiana at least with respect to the application of Article 466.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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