

No. 42,918-CA

**DISSENT FROM THE DENIAL OF REHEARING
RENDERED ON MAY 30, 2008.**

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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LOUTRE LAND AND TIMBER
COMPANY

Appellee

versus

WILTON A. ROBERTS, EDWARD
ROBERTS, MARK A. ROBERTS
AND TONI L. ROBERTS DASCHKE

Appellants

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Originally appealed from the
Fifth Judicial District Court for the
Parish of Franklin, Louisiana
Trial Court No. 36,820-B

Honorable Glynn D. Roberts, Judge

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KNIGHT LAW FIRM
By: Robert T. Knight

Counsel for Appellants

COTTON, BOLTON, HOYCHICK &
DOUGHTY, L.L.P.
By: John Hoychick, Jr.

Counsel for Appellee

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Before BROWN, PEATROSS, DREW,
MOORE & LOLLEY, JJ.

MOORE, J., dissents from the denial of application for rehearing and
assigns reasons.

MOORE, J, dissents.

I adhere to my original position that summary judgment was proper. Two additional points require further attention. First, I question the plurality's finding that the evidence "raises a genuine issue of fact as to whether the Morgan estate ever intended to convey its possession and rights, and, in fact, ownership, to Plaintiff." In point of fact, the act of sale from the Succession of Marie Wilson Morgan to Loutre Land specifically recited that the executors of the estate:

do sell, bargain, transfer, assign, set over and deliver, with full warranty of title and complete transfer and subrogation of all rights and actions in warranty against all former proprietors of the property herein conveyed, *together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled* [.]

This clearly and emphatically conveyed all prescriptive rights to Loutre Land, to the exclusion of any genuine issue of material fact. With all due respect, the plurality's "finding" is unsupported.

Second, I reiterate that title is not "pivotal" in this case. The evidence shows that Loutre Land or its ancestors in title possessed the disputed property within visible bounds for over 30 years; hence, title is not relevant. La. C.C. art. 794. The concurrence falls into grave error by citing equitable considerations to circumvent this statement of positive law.

I would affirm the judgment of the district court.