NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

RHP 4

FIRST CIRCUIT

2012 CA 0939

JKW

ALLEN D.H. BLANCHARD, RRPT,
d/b/a RADIATION CONSULTING SERVICES

VERSUS

CORS & BASSETT;
SACKS, WESTON, SMOLINKSY, ALBERT & LUBER;
SACKS & SMITH, L.L.C.; AND
THE LAW OFFICES OF STUART H. SMITH

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Docket No. 477,896, Section 24
Honorable R. Michael Caldwell, Judge Presiding

Jerry F. Pepper **Baton Rouge, LA**	**Attorney for** **Plaintiff-Appellant** **Allen D.H. Blanchard, RRPT** **d/b/a Radiation Consulting Services**
Erick Y. Miyagi **John Stewart Tharp** **Taylor, Porter, Brooks & Phillips L.L.P.** **Baton Rouge, LA**	**Attorneys for** **Defendant-Appellee** **Cors & Bassett, L.L.C.**

BEFORE: PARRO, HUGHES,[1] AND WELCH, JJ.

Judgment rendered APR 11 2013

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[1] **Justice Jefferson D. Hughes III is serving as judge ad hoc by special appointment of the Louisiana Supreme Court.**

PARRO, J.

The plaintiff, Allen D.H. Blanchard, RRPT, d/b/a Radiation Consulting Services (Mr. Blanchard), appeals a judgment in favor of a defendant law firm, Cors & Bassett, L.L.C. (Cors & Bassett), dismissing his action on open account, with prejudice. For the following reasons, we affirm the trial court's judgment and issue this opinion in accordance with Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.2(A)(8).

The factual and procedural background of this case is set forth in this court's prior opinion, Allen D.H. Blanchard, RRPT, d/b/a Radiation Consulting Services v. Cors & Bassett, et al., 09-2236 (La. App. 1st Cir. 9/8/10) (unpublished), and will not be repeated in full here. In that opinion, we vacated, in part, a trial court judgment to the extent that it dismissed Mr. Blanchard's claim on open account against Cors & Bassett. We remanded the matter to the trial court: (1) to allow Mr. Blanchard to "amend his pleadings to cause them to conform to the evidence and to raise the issue based on an open account[;]" and (2) to afford Cors & Bassett an "opportunity to file a formal pleading relative to the issue of prescription[.]" Id., 09-2236 at p. 7. After the parties filed such pleadings and a hearing was held, the trial court signed a judgment on October 31, 2011, sustaining Cors & Bassett's peremptory exception pleading the objection of prescription, and dismissing Mr. Blanchard's action on open account, with prejudice. This appeal followed.

DISCUSSION

An action on an open account under LSA-R.S. 9:2781 is subject to liberative prescription of three years. LSA-C.C. art. 3494(4). Pursuant to LSA-C.C. art. 3495, this prescription commences to run from the day payment is exigible; that is, when the debt becomes liquidated and demandable or is judicially enforceable. See Ledoux v. City of Baton Rouge/Parish of East Baton Rouge, 99-2061 (La. 2/29/00), 755 So.2d 877, 879; Reed v. City of Baton Rouge, 04-0866 (La. App. 1st Cir. 5/6/05), 916 So.2d 174, 175; LSA-C.C. art. 3495, Revision Comments - 1983, comment (b); Black's Law Dictionary

(9th ed. 2009). With regard to suits on open account, the three-year prescriptive period found in LSA-C.C. art. 3494 generally runs from the date of the last charge, credit entry, purchase, payment, or similar transaction on the account. See Lopez v. Evans, 07-1243 (La. App. 1st Cir. 6/6/08), 992 So.2d 547, 549, and pertinent cases referenced therein.[2] However, when the open account arrangement between the parties involves the rendition of professional services, as in this case, other considerations may influence the date a debt becomes exigible. See Evans-Graves Engineers, Inc. v. Cunard, 95-1035 (La. App. 1st Cir. 12/15/95), 665 So.2d 794, 796, writ denied, 96-0211 (La. 3/15/96), 669 So.2d 419;[3] see also Mid-South Analytical Labs, Inc. v. Jones, Odom, Spruill & Davis, LLP, 40,089 (La. App. 2nd Cir. 9/23/05), 912 So.2d 101, 106-08, writ denied, 05-2487 (La. 4/17/06), 926 So.2d 513.[4]

A trial court's findings of fact on the issue of prescription are subject to the manifest error-clearly wrong standard of review. Marin v. Exxon Mobil Corp., 09-2368 (La. 10/19/10), 48 So.3d 234, 244-45; Stobart v. State, Dept. of Transp. and Dev., 617 So.2d 880, 882 (La. 1993). This includes the factual determination as to the date on which prescription begins to run. See Oracle Oil, LLC v. EPI Consultants, Div. of Cudd Pressure Control, Inc., 11-0151 (La. App. 1st Cir. 9/14/11), 77 So.3d 64, 70, writ denied, 11-2248 (La. 11/23/11), 76 So.3d 1157. If the trial court's findings are reasonable in light of the record reviewed in its entirety, an appellate court may not

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[2] Among others, the Lopez opinion references the following cases: Ritchie Grocer Co. v. Dean, 182 La. 518, 522, 162 So. 62, 63 (1935) (prescription did not begin to run on an open account until the date of the last credit entry); Chrysler Financial Co., L.L.C. v. Gene Ducote Automotive, L.L.C., 04-1223 (La. App. 5th Cir. 3/1/05), 900 So.2d 119, 123-124 (prescription began to run from the date of the last charge on the open account); Landreneau v. Duplechin, 595 So.2d 1230, 1232 (La. App. 3rd Cir. 1992) (prescriptive period for an action on open account ran three years after the last payment on the account); and Ford Marketing Corp., Ford Parts Div. v. First Auto Parts, 308 So.2d 799, 801 (La. App. 4th Cir. 1975) (a suit on open account filed more than three years after the last purchase was barred by the three-year prescriptive period).

[3] In Evans-Graves Engineers, Inc., an engineering firm filed suit against an apartment-complex developer for unpaid engineering services. Noting that the engineering firm customarily billed for professional services "at a milestone in the project, such as approval from a regulatory agency, the beginning of construction, financing approval, or when the project is abandoned," this court noted that prescription began to run after the construction project was abandoned and the engineering firm made demand for payment. 665 So.2d at 796.

[4] In Mid-South Analytical Labs, Inc., the appellate court noted that the relationship between a soil testing company and a law firm was not a "typical open account arrangement," because the soil testing company did not regularly bill the law firm, and there was no evidence of any agreement for payment on a periodic, regular basis. Thus, the court found summary judgment was inappropriate, because there were genuine issues of material fact as to when prescription began to accrue. 912 So.2d at 107-08.

reverse those findings even though convinced that, had it been sitting as the trier of fact, it would have weighed the evidence differently. Stobart, 617 So.2d at 882-83.

At the conclusion of the hearing on Cors & Bassett's exception of prescription, the trial court determined that Mr. Blanchard's action on open account had prescribed. The trial court found that, as of April 30, 1997,[5] Mr. Blanchard had notice that: (1) Cors & Bassett would make no further payments to him, and (2) a court order had previously been issued in the underlying litigation requiring that Mr. Blanchard return all soil samples in his possession within thirty days of the date of that order.[6] According to the trial court, even if thirty days from the April 30, 1997 notice were allowed, Mr. Blanchard should have returned the soil samples by May 30, 1997, and that "[c]learly, by May 30th, 1997, Mr. Blanchard was on notice that his services were certainly no longer wanted or going to be paid by Cors & Bassett." Based on these factual findings, the trial court concluded prescription began to run "at the very latest" on May 30, 1997, and that Mr. Blanchard's suit, not filed until November 3, 2000, was prescribed.

After a thorough review of the evidence, applicable law, and the parties' arguments on appeal, we find there was a reasonable factual basis for the trial court's determination that Mr. Blanchard's action on open account against Cors & Bassett was prescribed. The record indisputably demonstrates that the professional services relationship between the parties ended, and thus, Mr. Blanchard's demand for payment became "exigible," more than three years before he filed suit against Cors & Bassett. We specifically find no merit in Mr. Blanchard's arguments that prescription only began to run on February 3, 1998, or that the doctrine of contra non valentum is applicable in this case. Therefore, we conclude the trial court did not err in sustaining Cors & Bassett's exception of prescription and dismissing Mr. Blanchard's suit, with prejudice.

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[5] Mr. Blanchard's attorney made demand for payment to Cors & Bassett by letter dated April 8, 1997. In response, by letter dated April 30, 1997, Cors & Bassett notified Mr. Blanchard's attorney that, "[f]or reasons of which Mr. Blanchard is keenly aware, we are not obligated to pay him further on any invoices."

[6] The court order requiring that Mr. Blanchard return the soil samples is not in the appellate record.

CONCLUSION

For the foregoing reasons, the trial court's October 31, 2011 judgment is affirmed in accordance with Uniform Rules of Louisiana Courts of Appeal, Rule 2-16.2(A)(8). All costs of this appeal are assessed to plaintiff, Allen D.H. Blanchard, RRPT, d/b/a Radiation Consulting Services.

AFFIRMED.