

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

DUPLESSIS BUICK-GMC TRUCK, INC.

NO. 2016 CW 0574

VERSUS

MICHAEL CHAUNCEY, DAVID
RICHARD, GRETNA USED CAR
OUTLET, LLC

OCT 06 2016

In Re: Michael Chauncey, applying for supervisory writs, 23rd
Judicial District Court, Parish of Ascension, No. 115093.

BEFORE: GUIDRY, PETTIGREW, McDONALD, McCLENDON AND CRAIN, JJ.

WRIT GRANTED IN PART WITH ORDER; WRIT DENIED IN PART.

Ordinarily, the party pleading the exception of prescription bears the burden of proving the claim has prescribed. However, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show the action has not prescribed. **Carter v. Haygood**, 2004-0646 (La. 1/19/05), 892 So.2d 1261, 1267. We find that plaintiff's tort claims sounding in negligence and fraud against Michael Chauncey are prescribed on their face, as they were asserted more than one year after the date the injury or damages were sustained. See La. Civ. Code art. 3942. We further find that the petition does not allege sufficient facts to establish application of the doctrine of contra non valentem. Therefore, plaintiff has not met its burden of showing that prescription was suspended or interrupted. See **Jordan v. Employee Transfer Corp.**, 509 So.2d 420, 423 (La. 1987); **Williams v. The Library**, 2012-0220 (La. App. 1st Cir. 11/2/12), 111 So.3d 356, 359, writ not considered, 2013-0155 (La. 3/8/13), 109 So.3d 352. Further, the petition does not allege sufficient facts to establish a fiduciary relationship between the parties that would support the application of a ten-year prescriptive period. See La. R.S. 9:3801(2); **Scheffler v. Adams & Reese, LLP**, 2006-1774 (La. 2/22/07), 950 So.2d 641, 47-48. Lastly, defendant did not raise in the district court his claim that the Louisiana Unfair Trade Practices and Consumer Protection Law claims are perempted. As a general rule, appellate courts do not consider contentions raised for the first time on appeal which were not pleaded in the court below and which the trial court did not address. See **Johnson v. State**, 2002-2382 (La. 5/20/03), 851 So.2d 918, 921. Accordingly, the writ is granted and the portion of the district court's April 19, 2016 judgment overruling Michael Chauncey's peremptory exception of prescription is reversed, and the exception of prescription is sustained. This matter is remanded with instructions that the district court allow plaintiff the opportunity to amend its petition in order to attempt to remove the grounds of the objections raised herein. See La. Code Civ. P. art. 934. In all other respects, the writ is denied.

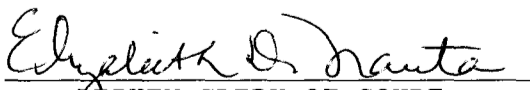
JMG

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WJC

Pettigrew and McClendon, JJ., concur in part and dissent in part and would deny the writ on the showing made.

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DEPUTY CLERK OF COURT
FOR THE COURT