

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

FIREFIGHTERS' RETIREMENT
SYSTEM

NO. 2021 CW 0925

VERSUS

WARREN REED HOLLOWAY

OCTOBER 25, 2021

In Re: Warren Reed Holloway, applying for supervisory writs,
19th Judicial District Court, Parish of East Baton
Rouge, No. 642604.

BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. The portion of the district court's January 21, 2021 judgment denying the peremptory exceptions of prescription filed by the defendant, Warren Reed Holloway, regarding the recovery of overpaid benefits made before September 28, 2005, are reversed. A petition may assert a set of circumstances that give rise to more than one cause of action with different prescriptive periods, and further, when damage is caused by a contractual relationship, it is possible that the petitioner has two remedies, one in tort and one in contract. See **Onstott v. Certified Capital Corp.**, 2005-2548 (La. App. 1st Cir. 11/3/06), 950 So.2d 744, 747; **Boudreaux v. Jeff**, 2003-1932 (La. App. 1st Cir. 9/17/04), 884 So.2d 665, 672. Further, where pleadings reveal a factual connection between the original and amended assertions and contain sufficient allegations that fair notice was given to the adverse party of the relief sought, amendments should be allowed. **Newton v. St. Tammany Fire District No. 12**, 2020-0797 (La. App. 1st Cir. 2/19/21), 2021 WL 650155, *3 (unpublished). The plaintiff, Firefighters' Retirement System, filed its original petition on September 28, 2015, and its amended and supplemental petition was filed in 2020. Therefore, because we find that this matter sounds in both tort and contract, it is subject to a ten-year prescriptive period under La. Civ. Code art. 3499, and the amended and supplemental petition relates back to the original petition. Accordingly, the defendant's exceptions of prescription are granted in part, and any claims by the plaintiff for the recovery of overpaid benefits occurring before September 28, 2005, are prescribed. However, in all other respects, the writ application is denied.

JEW
MRT

McClendon, J., Concur.

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DEPUTY CLERK OF COURT
FOR THE COURT