

**RICHARD W. LANCASTER**

\*

**NO. 2002-CA-0129**

**VERSUS**

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**COURT OF APPEAL**

**SYLVIA DELUNA**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 99-1463, DIVISION "C"  
Honorable Roland L. Belsome, Judge

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**JOAN BERNARD ARMSTRONG**

**JUDGE**

\*\*\*\*\*

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G. Waltzer, and Judge Dennis R. Bagneris, Sr.)

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**REVERSED AND REMANDED.**

Plaintiff/Appellant Richard W. Lancaster appeals the trial court's granting of defendant/appellee Slyvia Deluna's exception of prescription and the subsequent dismissal of his lawsuit.

**FACTS AND PROCEDURAL HISTORY**

On January 28, 1999, Lancaster filed this action against Deluna alleging that she had tortiously converted his personal property following the termination of their romantic relationship in August of 1996. Deluna excepted to the petition on the grounds of prescription, asserting that more than one year had elapsed between the time Lancaster became aware of his cause of action and the date suit was filed. Lancaster opposed the exception arguing that, although Deluna had consistently rebuffed his efforts to retrieve his property since their break-up because the proposed times for the exchange of the property were inconvenient, it was not until February of 1998 that he was informed by Deluna that she would never permit him to retrieve his property. Thus, he argued that the filing of the instant lawsuit in January of 1999 was timely and that Deluna's exception should be

overruled.

Following a hearing, the trial court sustained the exception of prescription and dismissed Lancaster's action. No reasons for judgment were provided by the trial court, and in the transcript from the August 31, 2001 hearing on Deluna's exception, the trial judge simply stated that he was going to grant the exception and let the Fourth Circuit take it from there. This timely appeal followed.

### DISCUSSION

In his sole assignment of error, Lancaster asserts that the trial court erred as a matter of law by granting Deluna's exception of prescription because she submitted no evidence in support of her exception and because his verified petition states as fact that he learned of his cause of action less than one year before the filing of this lawsuit.

Conversion is an act in derogation of the possessory rights of another. Any wrongful exercise of assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion. Whitley v. Manning, 92-177, 623 So. 2d 100, 102 (La. App. 1 Cir. 1993).

For there to be a conversion, there must be some repudiation of the owner's right to his property or some exercise of dominion over his property

inconsistent with his rights of ownership. Its essence is not the acquisition of property by another, but a wrongful deprivation of the property to its owner. Quealy v. Paine, Webber, Jackson & Curtis, Inc., 2303, 464 So. 2d 930 (La. App. 4 Cir. 1985).

Both parties agree that conversion is a tort governed by the one-year prescriptive period set forth in La. C.C. art. 3492. See Dixon v. Roque, 86-228, 503 So. 2d 659 (La. App. 3 Cir. 1987). They disagree, however, on which of them had the initial burden of proof with regard to defendant's exception of prescription. The linchpin to that determination turns on whether Lancaster's petition has prescribed on its face.

In the memorandum in support of her exception of prescription that Deluna filed in the trial court, she assumed for the purpose of the exception, while albeit vehemently denying the same, that the allegations contained in Lancaster's petition were true. She then claimed that Lancaster's suit was prescribed on its face because he waited over two and one half years from the time he moved out of her house before filing the instant suit.

We disagree. Assuming that **all** of the allegations in Lancaster's petition are true, no conversion took place until February of 1998 when Deluna informed him that she would **never** allow him to retrieve his property from her residence. The mere fact that his property remained in

Deluna's house, after he was asked to leave the residence, does not dictate that his property was converted as of that time. Because the petition asserts that Lancaster was not deprived of his ownership rights in his property until February of 1998, his suit, which was filed in January of 1999, had not facially prescribed. As a result, the burden was on Deluna as the proponent of the exception of prescription to prove it. David v. Meek, 97-0523, p. 4 (La. App. 1 Cir. 4/8/98), 710 So. 2d 1160, 1162.

As Deluna presented no evidence in support of her exception, she failed to meet her burden of proving that Lancaster's suit against her had prescribed. Accordingly, the trial court erred in granting her exception of prescription.

#### CONCLUSION

For the foregoing reasons, the judgment of the trial court is reversed and this matter is remanded for further proceedings consistent with this opinion.

**REVERSED AND REMANDED.**