

**LILLIE M. COTTON AND  
CLARENCE WILLIAMS**

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**NO. 2010-CA-1382**

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**VERSUS**

**COURT OF APPEAL**

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**ROBERT L. WILLIAMS D/B/A  
ROBERT L. WILLIAMS  
CONSTRUCTION**

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**FOURTH CIRCUIT**

**STATE OF LOUISIANA**

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APPEAL FROM  
CIVIL DISTRICT COURT, ORLEANS PARISH  
NO. 2008-7830, DIVISION "G-11"  
HONORABLE ROBIN M. GIARRUSSO, JUDGE

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**JAMES F. MCKAY III  
JUDGE**

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(Court composed of Judge Charles R. Jones, Judge James F. McKay III, Judge Roland L. Belsome)

**BELSOME, J., CONCURS WITH REASONS.**

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**AFFIRMED**

The plaintiff, Clarence Williams, appeals the trial court's maintaining of an exception of prescription filed by the defendant, Assurance Company of America. We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On April 26, 2006, Clarence Williams entered into a contract with Robert Williams, d/b/a Robert Williams Construction, for repair work on his home on Annette Street in New Orleans. Assurance Company of America issued a builder's risk policy, effective March 31, 2006, to Robert Williams Construction for the construction of a new home located at 4826 Annette Street. This policy was cancelled on April 12, 2006, at the request of the insured. Assurance never received any premium for this policy.

It appears that the work done on the property on Annette Street was not satisfactory and was never completed. Therefore, Clarence Williams filed a

petition for rescission of contract, restitution and attorneys' fees against Robert Williams Construction on July 29, 2008.<sup>1</sup> On March 5, 2010, the plaintiff filed a supplemental and amending petition naming Assurance as a defendant. Assurance filed exceptions of prescription and no right of action. The trial court denied the exception of no cause of action but granted the exception of prescription. It is from the granting of this exception that Clarence Williams now appeals.

## **DISCUSSION**

On appeal, the plaintiff raises the following assignment of error: the trial court erred by granting Assurance's exception of prescription because Assurance and Robert Williams Construction are solidary obligors.

“[A] trial court's findings of fact on the issue of prescription are subject to the manifest error-clearly wrong standard of review.” London Towne Condominium Homeowner's Ass'n v. London Towne Co., 2006-401, p.4 (La. 10/17/06), 939 So.2d 1227, 1231. Furthermore, a plaintiff bears the burden of proving that a solidary relationship exists to interrupt or suspend prescription. *See Younger v. Marshall Industries, Inc.*, 618 So.2d 866 (La. 1993).

In the instant case, Assurance issued a builder's risk policy to Robert Williams Construction for the construction of a new home at 4826 Annette Street. The policy had an effective date of March 31, 2006 to March 31, 2007 but was

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<sup>1</sup> Lillie M. Cotton also filed suit against Robert Williams Construction. Her suit has been settled.

cancelled by the insured on April 12, 2006. The plaintiff was not a party to the contract nor was he named as an additional insured.

By Louisiana statute, the standard prescription period for damages to immovable property is one year from the date the owner knew or should have known about the damage, unless extended by law or contract. La. C.C. art. 3493. In the instant case, any alleged property damages would have had to occur within the effective dates of the policy or at the very latest, March 31, 2007. However, the original petition against Robert Williams Construction was not filed until July 29, 2008. Being that the plaintiff was not a party to the contract nor a third party beneficiary, his claim against Assurance is prescribed on its face.

Once it is proven that the prescriptive period elapsed between the time the tort occurred and the filing of suit, the burden shifts to the plaintiff to prove an interruption or suspension of prescription. Strata v. Patin, 545 So.2d 1180, 1189 (La.App. 4 Cir. 6/8/89). The appellant asserts solidary liability in attempt to defeat prescription. However, there are two problems with the plaintiff's assertion. First, the policy at issue is a first-party property policy and does not provide coverage for the liability of Williams Construction. Second, the plaintiffs cannot prove that a solidary relationship existed between the defendants because Assurance was not the insurer during the time period of the alleged damages. Even if the defendants were solidary obligors, the lawsuit filed on March 5, 2010 adding Assurance was untimely because any claims against it had already prescribed at the time the

original petition was filed on July 29, 2008, thus prescription could not be interrupted.

## **CONCLUSION**

For the foregoing reasons, we affirm the trial court's maintaining of the defendant's exception of prescription.

**AFFIRMED**