

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

VICKI L. PINERO, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

JACKSON HEWITT TAX SERVICE
INC.; JACKSON HEWITT INC.; and,
CRESCENT CITY TAX SERVICE, INC.
d/b/a JACKSON HEWITT TAX
SERVICE,

Defendants.

CASE NO.: 08-3535

SECTION R

**JUDGE
SARAH VANCE**

**MAGISTRATE JUDGE
DANIEL E. KNOWLES**

**JACKSON HEWITT TAX SERVICE INC.'S AND JACKSON HEWITT INC.'S
MEMORANDUM IN OPPOSITION TO PLAINTIFF VICKI L. PINERO'S *EX PARTE*
MOTION FOR LEAVE TO FILE A REPLY TO DOCUMENT NO. 105**

At the April 1, 2009 hearing before this Court on Plaintiff's Rule 15(a) Motion ("Motion"), Plaintiff, for the first time, requested leave to file supplemental briefing on the issue of what appropriate peremptive or prescriptive period applied to her proposed new Count 10, entitled "Violation of LA Loan Broker Statute." In response, this Court's Honor's April 2, 2009 minute order directed that Plaintiff file a supplemental brief on that narrow issue by April 6, 2009. *See* Docket Entry No. 98. Your Honor also directed that Jackson Hewitt file its reply to this memorandum by April 8, 2008, and ordered that the Motion would then be deemed fully submitted on that day. *Id.* Plaintiff's latest *ex parte* filing, on April 9, 2009, after the Motion already had been fully submitted per this Court's order, merely continues Plaintiff's pattern of disregard for this Court's directives.¹ Jackson Hewitt is therefore constrained to file an opposition to her *ex parte* request.

¹ *See* Jackson Hewitt's Memorandum in Opposition to Plaintiff's *Ex Parte* Motion for Leave to Amend Document No. 77, Docket Entry No. 104 (discussing Plaintiff's non-compliance with the Court's Orders).

Plaintiff now seeks leave to file a five-page reply to Jackson Hewitt's supplemental memorandum, notwithstanding the fact that Plaintiff has already filed the following in support of her Rule 15(a) Motion:

- 1) a 12-page initial memorandum;
- 2) a 17-page reply memorandum; and
- 3) a 14-page supplemental memorandum.

Jackson Hewitt respectfully requests that this Court deny Plaintiff's *ex parte* request. Plaintiff has had ample opportunity to be heard on this point, and this *ex parte* filing, after the Motion has been fully submitted, is merely the latest in a string of attempts to present arguments and filings to this Court in a manner that denies Jackson Hewitt a full, fair, and reasonable opportunity to be heard.² The Court should therefore disregard and strike Plaintiff's reply to Jackson Hewitt's supplemental memorandum.

DATED: April 10, 2008

By /s/ Veronica D. Gray

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² As a practical matter, Plaintiff's reply memorandum is a red herring. Plaintiff cannot dispute that "delictual actions" remain subject to a prescriptive period of one year under Louisiana Civil Code Article 3492, nor that the distinction between delictual actions, or "quasi-offense" actions, and contractual, or "quasi-contractual actions", has long been a part of Louisiana's jurisprudence and remains so today, as indicated by cases well beyond 1995 using the same analysis. *See, e.g., Dela Vergne v. Dela Vergne*, 745 So.2d 1271, 1275 (La. Ct. App. 1999) (citing to *Aetna Life and Cas. Co. v. Dotson*, 346 So.2d 762 (La. Ct. App. 1977), and holding that "if a cause of action is considered to be a delictual action, i.e., an 'offense' or tort, under LSA-C.C. art. 3492 it cannot also be considered an LSA-C.C. art. 3499 personal action because LSA-C.C. art. 3499 does not apply where the legislature has provided another prescriptive period.") Indeed, Plaintiff's own repeated citation to older case law, including cases from as far back as 1848, demonstrates that Plaintiff does not, in fact, contend that the standard for what qualifies as delictual somehow changed in 1995, despite the fact that the language of Article 3492 did not. *See, e.g.,* Plaintiff's Supplemental Memorandum in Support of the Motion for Leave to File a Third Amended Complaint at 5-9. Accordingly, the analysis of whether a claim is *ex delicto* or *ex contractu* remains the same under Louisiana Law today as it was prior to 1995.

AND

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on the 10th day of April, 2009, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system and U.S. Mail to counsel of record for Plaintiffs. A copy of this filing will also be sent via electronic mail and U.S. mail to counsel for Crescent City Tax Service, Inc.

/s/ Veronica D. Gray