

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

SUSAN GIBBENS

CIVIL ACTION

VERSUS

NO. 11-868

CHAMPION INDUSTRIES, INC.

SECTION "C" (4)

ORDER AND REASONS

This matter comes before the Court on motion for partial dismissal and alternatively for partial judgment on the pleadings filed by the defendant, Champion Industries, Inc. ("Champion"). Having considered the record, the memoranda of counsel and the law, the Court has determined that the motion should be granted for the following reasons.

The plaintiff seeks recovery of commissions allegedly owed by the defendant. In this motion, the defendant argues in favor of the application of the prescriptive period set forth in La. Civ. Code art. 3494(1), which provides for a three-year liberative prescriptive period for "[a]n action for the recovery of compensation for services rendered, including payment of salaries, wages, commissions, tuition fees, professional fees, fees and emoluments of public officials, freight, passage, money, lodging and board." Under La Civ. Code art. 3495, "[t]his prescription commences to run from the

day payment is exigible.” The defendant seeks the dismissal of the plaintiff’s claims as they relate to any alleged underpayment that was “exigible” prior to April 15, 2008, with the determination as to the exigibility of any given commission to be determined on motion or at trial.<sup>1</sup> “Instead, Champion merely seeks a ruling that any commissions allegedly owed that were exigible more than three years prior to the filing of this suit are prescribed pursuant to LA. CIV. CODE art. 3494.” Rec. Doc. 31-2 at 2.

The plaintiff’s opposition challenges the date upon which certain underpayments were “exigible” and otherwise relates the ongoing discovery disputes between the parties. Rec. Docs. 28, 38. In all relevant respects, however, the plaintiff presents no relevant argument in opposition to the motion as presented.

Accordingly,

IT IS ORDERED that the motion for partial dismissal and alternatively for partial judgment on the pleadings filed by the defendant, Champion Industries, Inc. is GRANTED. Rec. Doc. 24.

New Orleans, Louisiana, this 30<sup>th</sup> day of July, 2012.

  
HELEN G. BERRIGAN  
UNITED STATES DISTRICT COURT

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<sup>1</sup>The complaint was filed on April 15, 2011.