

**STATE OF LOUISIANA**  
**COURT OF APPEAL, FIRST CIRCUIT**

CLEM BROWN, III

NO. 2017 CW 0236

VERSUS

C.F. INDUSTRIES, INC.

JUL 10 2017

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In Re: C.F. Industries, Inc. and C.F. Industries Nitrogen, LLC, applying for supervisory writs, 23rd Judicial District Court, Parish of Ascension, No. 111493.

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BEFORE: WHIPPLE, C.J., GUIDRY AND PETTIGREW, JJ.

WRIT DENIED.

JTP  
VGW

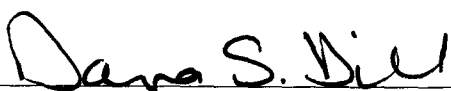
**Guidry, J. dissents** and would grant the writ. The party pleading the exception of prescription bears the burden of proving the claim has prescribed. **Hogg v. Chevron USA, Inc.**, 2009-2632 (La. 7/6/10), 45 So.3d 991, 998. However, if prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show the action has not prescribed. **Williams v. Sewerage & Water Bd. of New Orleans**, 611 So.2d 1383, 1386 (La. 1993). If no evidence is introduced at the hearing on the exception of prescription, the appellate court's role is to determine whether the trial court's ruling was legally correct. **Onstott v. Certified Capital Corp.**, 2005-2548 (La. App. 1st Cir. 11/3/06), 950 So.2d 744, 746. Furthermore, in the absence of evidence, the exception of prescription must be decided on the facts alleged in the petition, which are accepted as true. See **Cichirillo v. Avondale Industries, Inc.**, 2004-2894 (La. 11/29/05), 917 So.2d 424. The allegations in the petition assert that Clem Brown, III was seriously injured on a dock situated on navigable waters. In order for a tort to be cognizable under maritime law, it must satisfy conditions both of location, injury occurring on navigable water, and of connection with maritime activity. **Grubart v. Great Lakes Dredge & Dock Co.**, 513 U.S. 527, 115 S.Ct. 1043, 130 L.Ed.2d 1024 (1995). Piers and docks have consistently been deemed extensions of land. See **Victory Carriers, Inc. v. Law**, 404 U.S. 202, 206-207, 92 S.Ct. 418, 30 L.Ed.2d 383 (1971); **Warmack v. Direct Workforce Inc.**, 2011-0819 (La. App. 4th Cir. 2/29/12), 85 So.3d 805, 810; **Eastwood v. Niblett's Bluff Park Com'n**, 2013-1401 (La. App. 3d Cir. 6/4/14), 2014 WL 2557864. Thus, plaintiffs' allegations as set forth in the petitions, that injury was sustained on a dock, fail to satisfy the location test for a maritime claim. As the second amended petition's claims of loss of consortium were prescribed on their face under Louisiana law, the burden shifted to plaintiffs, to prove that their claims were not prescribed by showing that they were governed by maritime law. As no evidence was introduced into the record, I find that plaintiffs failed to carry their burden. Therefore, I would reverse the trial court's January 18, 2017 judgment denying relator's, C.F. Industries, exception of prescription, and grant same. However, as set forth in La. Code Civ. P. art. 934, I would order the matter remanded

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to allow the Browns an opportunity to amend their petition, if they were able to do so, to remove the grounds of the objection of prescription as to their claims of loss of consortium. **Pence v. Austin**, 2015-1371 (La. App. 1st Cir. 2/26/16), 191 So.3d 608.

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DEPUTY CLERK OF COURT  
FOR THE COURT