

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

KELLI SHOWALTER WIFE OF/AND  
SHANE SHOWALTER

NO. 2019 CW 0914

VERSUS

KPM CONSTRUCTION, L.L.C. AND  
ABC INSURANCE COMPANY

**SEP 30 2019**

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In Re: K M Trucking and Dozer, Inc., applying for supervisory writs, 22nd Judicial District Court, Parish of St. Tammany, No. 201714010.

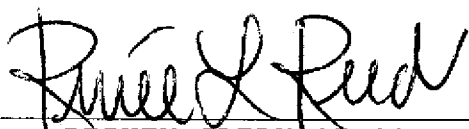
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**BEFORE: McDONALD, THERIOT, AND CHUTZ, JJ.**

**WRIT GRANTED.** The portion of the trial court's June 4, 2019 judgment denying the exception raising the objection of peremption filed by third-party defendant, K M Trucking and Dozer, Inc., is reversed for the reasons set forth by this court in **Stewart v. Continental Casualty Co., Inc.**, 2011-0505 (La. App. 1st Cir. 11/9/11), 79 So.3d 1047, writ denied, 2011-2721 (La. 2/17/12), 82 So.3d 285, "Because the avoidance of the time period interferes with the running of that time period, relation back of a petition adding a new defendant is not permitted where the time period involved is peremptive. Further, because the expiration of a peremptive time period destroys the cause of action, there is nothing for an amended or supplemental petition to relate back to under LSA-C.C.P. art. 1153." See also **Naghi v. Brener**, 2008-2527 (La. 6/26/09), 17 So.3d 919; and **Shields v. Alvin R. Savoie & Associates, Inc.**, 2017-0602 (La. App. 1st Cir. 11/1/17), 233 So.3d 694. The undisputed facts establish that KPM Construction, LLC's amended third-party demand naming K M Trucking and Dozer, Inc. as a third-party defendant was filed after the expiration of the applicable peremptive period. See La. R.S. 9:2772(A)(1)(a) through (c). Therefore, the exception raising the objection of peremption filed by third-party defendant, K M Trucking and Dozer, Inc., is granted, and the claims asserted against it by third-party plaintiff, KPM Construction, LLC, are dismissed with prejudice.

JMM  
MRT  
WRC

COURT OF APPEAL, FIRST CIRCUIT



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