

NOT DESIGNATED FOR PUBLICATION

**DELLAREE JEAN JACKSON
HORN**

*

NO. 2001-CA-2338

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

**ANN DEMONTLUZIN
FARMER**

*

STATE OF LOUISIANA

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-4043, DIVISION "L"
Honorable Rosemary Ledet, Judge**

*** * * * ***

Chief Judge William H. Byrnes III

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(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones, Judge Patricia Rivet Murray)

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AFFIRMED

On March 8, 2000, plaintiff, Dellarree Jean Jackson Horn, filed suit in the Civil district Court for the parish of Orleans against the defendant, Ann deMontluzin Farmer, for misrepresentations causing plaintiff to be deprived of a portion of the proceeds of the sale of a piece of property, which proceeds are apparently related to her claim for the marital portion from the estate of her late husband, Frank Wilson Horn. Plaintiff alleges that she had signed an agreement to sell a piece of succession property for \$55,000.00 based on the representation by the defendant that she would receive a portion of the proceeds of the sale which she did not. Her petition alleges that the cash sale took place on August 31, 1998, but she alleges that she was fraudulently induced to sign the agreement to sell on August 24, 1998. Annexed to the plaintiff's petition is a copy of a letter from the defendant advising her of the offer to purchase the property, but the letter makes no representations concerning possible proceeds that the plaintiff might expect from the sale.

The defendant filed an exception of prescription in Orleans Parish

showing that the plaintiff had filed a similar suit in Jefferson Parish. The Jefferson parish suit had previously been dismissed without prejudice. The trial court granted the defendant's exception of prescription and the plaintiff brought this appeal.

Plaintiff's petition shows on its face that the sale from which she says she was deprived of a portion of the proceeds occurred on August 31, 1998, over one year prior to the filing of the suit in Jefferson Parish, and over two years prior to the filing of the suit in Orleans Parish that is the subject of this appeal. She attended the sale and it is, therefore, at that time at the latest that she had knowledge that she was not to receive any proceeds from the sale, i.e., prescription began to run at the latest on August 31, 1998.

An action for fraud or misrepresentation prescribes in one year. *Simmons v. Templeton*, 97-2349, p. 4, 6 (La.App. 4 Cir. 11/10/98), 723 So.2d 1009, 1012; *Aetna v. Cas. & Sur. V. Stewart Const.*, 2000-1332 (La.App. 5 Cir. 2/28/01), 780 So.2d 1253. Neither the suit in Jefferson nor this one file in Orleans were filed within one year from the date of the commencement of the running of prescription. We find no error in the trial court's granting of the defendant's exception of prescription.

However, the plaintiff's brief concentrates more on her claim for the marital portion than anything else. Her brief argues that it was error for the

trial court to grant the defendant's exception of prescription because this suit was filed within three years of December 29, 1998, which was the date on which plaintiff allegedly sent a letter to Jo Ann Horn claiming her marital portion. Ms. Horn is a daughter of plaintiff's deceased husband and plaintiff's stepdaughter. No copy of the letter was ever introduced into evidence.

There is no merit to this argument. The defendant, Ann deMontluzin Farmer, is referred to in plaintiff's petition as a "REAL ESTATE BROKER.". She is not an heir, legatee or succession representative of the plaintiff's late husband. This Court can notice on its own motion that the plaintiff has no cause of action against the defendant for her marital portion.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED