ROBERT NAMER	*	**NO. 2002-C-0740**
VERSUS	*	**COURT OF APPEAL**
JAMES HUEY, INDIVIDUALLY AND AS THE	*	**FOURTH CIRCUIT**
PRESIDENT OF THE ORLEANS LEVEE DISTRICT,	*	**STATE OF LOUISIANA**
GERARD METZGER, GARY G. BENOIT, FRANK MILANESE,	*	
ET AL.	*	

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ON APPLICATION FOR WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-13959, DIVISION "F"
HONORABLE YADA MAGEE, JUDGE

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JUDGE MICHAEL E. KIRBY

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(Court composed of Chief Judge William H. Byrnes III, Judge Joan Bernard Armstrong, Judge Michael E. Kirby)

ROY J. RODNEY, JR.
REGINA HARRIS BARTHOLOMEW
RODNEY, BORDENAVE, BOYKIN & EHRET, APLC
400 POYDRAS STREET, SUITE 2450
NEW ORLEANS, LOUISIANA 70130
COUNSEL FOR RELATORS

ROBERT G. HARVEY, SR.
MARIA DEL CALVO BROCE
2609 CANAL STREET
FIFTH FLOOR

NEW ORLEANS, LOUISIANA 70119
COUNSEL FOR PLAINTIFF/RESPONDENT

STATEMENT OF THE CASE

Plaintiff, a radio talk show host, sued Huey, president of the Board of the Orleans Levee District (OLD); the Board; and lawyers Metzger, Benoit, and Milanese, alleging that they participated in a scheme to close his radio station, end his professional career, and otherwise personally and professionally destroy him because he repeatedly made disparaging remarks about Huey on the show. The petition alleged that the actions included hiring a private investigation firm to research all aspects of plaintiff's past, keeping him under surveillance, secret audio and video taping him and his friends, and surreptitiously interviewing people while masking the true intent of obtaining confidential and proprietary information in order to prove violations of FCC rules. The petition alleged that the actions began with a meeting and subsequent hiring of the p.i. firm February 19, 1997 and continued until the filing of a complaint with the FCC on January 7, 1998. The petition also alleged that the plaintiff did not learn of the investigation until sometime early in 2001 when, in an unrelated suit, the plaintiff attempted to take the deposition of Vincent Bruno, a former employee of the OLD. The defendants filed a motion to quash. The defendants allegedly

told Bruno to "lose" documents pertaining to their hiring of the investigators.

The defendant filed an exception of prescription, arguing that all of the alleged acts occurred in 1997-1998, that the suit was one based in tort because it alleged defamation, invasion of privacy, tortious interference with business relations and constitutional violations under state law, and that accordingly, a one year prescriptive period applied. The plaintiff filed a Pre-Suit Petition for Discovery May 24, 2001 and filed the suit August 27, 2001. The case was removed to federal court September 28, 2001, but then voluntarily remanded to CDC. The exception was heard March 15, 2002, with all parties present. Judgment was signed April 3, 2001. The writ application was filed April 15, 2002.

DISCUSSION AND RECOMMENDATION:

Delictual actions are subject to a liberative prescriptive period of one year which begins to run from the day injury or damage is sustained. La. C.C. article 3492. Prescription is interrupted by the filing of suit in a court of competent jurisdiction. La. C.C. article 3462. When it is clear on the face of a plaintiff's petition that prescription has run, the plaintiff bears the burden of showing why the claim has not prescribed. Lima v. Schmidt, 595

So.2d 624 (La. 1992).

The Supreme Court discussed the application of the doctrine of contra non valentem in Wimberly v. Gatch, 93-2361 (La. 4/11/94), 635 So.2d 206:

> The courts created the doctrine of contra non valentem, as an exception to the general rules of prescription. Hillman v. Akins, 631 So.2d 1 (La.1994); Bouterie v. Crane, supra; Harvey v. Dixie Graphics, Inc., 593 So.2d 351 (La.1992); Plaquemines Parish Com'n Council v. Delta Development Co., Inc., 502 So.2d 1034, 1054 (La.1987). The doctrine is contrary to the express provisions of the Civil Code. See LSA-C.C. art. 3467; Bouterie v. Crane, supra; Plaquemines Parish Com'n Council v. Delta Development Co., Inc., supra. The principles of equity and justice which form the mainstay of the doctrine, however, demand that under certain circumstances, prescription be suspended because plaintiff was effectually prevented from enforcing his rights for reasons external to his own will. Bouterie v. Crane, supra; see Plaquemines Parish Com'n Council v. Delta Development Co., Inc., supra; Corsey v. State, through Dept. of Corrections, 375 So.2d 1319 (La.1979).
>
> Generally, the doctrine of contra non valentem suspends prescription where the circumstances of the case fall into one of the following four categories:
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> 1. Where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action;
> 2. Where there was some condition coupled with a contract or connected with the proceedings which prevented the creditor from suing or acting;
> 3. Where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; and
> 4. Where some cause of action is not known or

> reasonably knowable by the plaintiff, even though his ignorance is not induced by the defendant.
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> Rajnowski v. St. Patrick's Hospital, 564 So.2d 671, 674 (La.1990); Whitnell v. Menville, 540 So.2d 304 (La.1989); Plaquemines Parish Com'n Council v. Delta Development Co., Inc., supra; Corsey v. State, through Dept. of Corrections, 375 So.2d at 1321-1322; but see Bouterie v. Crane, supra [Bouterie's claim did not squarely fit into any of these 4 categories but was closely analogous to the second category; therefore, prescription was suspended. (FN11)].

The first two categories of the doctrine are not relevant to this case and, therefore, are not further discussed. The third and fourth categories are both relevant. The third category applies to cases where defendant engages in conduct which prevents the plaintiff from availing himself of his judicial remedies. Corsey v. State, through Dept. of Corrections, supra; Whitnell v. Menville, supra; Plaquemines Parish Com'n Council v. Delta Development Co., Inc., supra. The cause of action accrued, but plaintiff was prevented from enforcing it by some reason external to his own will. Corsey v. State, through Dept. of Corrections, supra. The fourth category, commonly known as the discovery rule, provides that prescription commences on the date the injured party discovers or should have discovered the facts upon which his cause of action is based. Griffin v. Kinberger, 507 So.2d 821 (La.1987); Lott v. Haley, 370 So.2d 521 (La.1979). Hence, prescription

does not accrue as it does not run against one who is ignorant of the facts upon which his cause of action is based, as long as such ignorance is not willful, negligent or unreasonable. In Re Medical Review Panel of Howard, 573 So.2d 472 (La.1991); Young v. Clement, 367 So.2d 828 (La.1979).

> The doctrine of contra non valentem distinguishes between personal disabilities of the plaintiff (which do not prevent prescription from running) and an inability to bring suit for some cause foreign to the person of the plaintiff (which suspends its running). Id. The equitable doctrine is, in part, but an application of the long-established principle of law that one should not be able to take advantage of one's own wrongful act. Nathan v. Carter, 372 So.2d 560 (La.1979).

Wimberly, 635 So.2d at 211-212.

In this case, the plaintiff argued contra non valentem in opposition to the exception. The relators argued that the doctrine cannot be applied because the plaintiff specifically set out in his petition, paragraph twelve, that authorities raided his workplace, that he suffered abrupt and unusual interruptions with his business, and sustained interference with personal associates' relations, all acts occurring during 1997 and 1998. The relators argued that because the plaintiff was aware of these alleged tortious events, they were obviously not concealed so as to prevent the plaintiff from timely instituting suit against the defendants.

Plaintiff produced a deposition of Bruno stating that he did not inform

the plaintiff of the surveillance until 2001, an affidavit of the private investigator stating that his findings were to be reported to Vincent Magri and that he did not know the investigation was requested by the OLD, a press release issued August 17, 2001 by the seven members of the OLD board stating that they had no knowledge of the hiring of a private investigator, and a statement by Huey in Gambit September 11, 2001 that he was not aware that the investigation had gone beyond researching court documents and newspaper stories. Thus, although the plaintiff might have been aware of some of the disruptions in his life, he has produced evidence that he did not know the defendants to be the persons causing the disruptions until 2001. At this point in the case, the plaintiff has produced enough evidence to defeat the exception of prescription, based on the doctrine of contra non valentem, because he has shown that the defendants concealed their actions form him and that he could not have reasonably known of the actions. Indeed, the very basis of the suit is that the defendants were "secretive" and "concealed" their actions.

For the above and foreoing reasons the writ is denied on the grounds that the trial court did not err.

WRIT DENIED.