

NOT DESIGNATED FOR PUBLICATION

DOROTHY GISCLAIR * **NO. 2002-CA-1997**
VERSUS * **COURT OF APPEAL**
IRA WADE RAMERO, * **FOURTH CIRCUIT**
KENNER PLUMBING SUPPLY, * **STATE OF LOUISIANA**
INC., AND TRAVELERS *
PROPERTY CASUALTY *
INSURANCE COMPANY, *
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-12396, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge

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Judge Edwin A. Lombard

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(Court composed of Judge Joan Bernard Armstrong, Judge Dennis R. Bagneris Sr., Judge Edwin A. Lombard)

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AFFIRMED

FACTS AND PROCEDURAL HISTORY

This litigation arises out of a vehicular collision between the plaintiff and defendant's employee, Ira Ramero. The plaintiff filed the petition for damages on August 11, 2000. The alleged accident occurred on August 10, 1999. After suit was filed the defendants filed an exception of prescription. The trial court initially granted the exception of prescription on March 8, 2001. Thereafter, the plaintiff filed a motion for new trial arguing that prescription was interrupted by the defendants' acknowledgment of liability for the plaintiff's injuries. On June 26, 2001, the trial court granted the plaintiff's motion for new trial and overruled the defendants' exception of prescription.

The defendant sought supervisory writ with this Court on July 20, 2001. In turn, the defendants filed supervisory writ application with this Court on July 20, 2001. This Court granted the defendants' writ application and remanded the case to the trial court for an evidentiary hearing on the

issue of whether the defendants acknowledged the plaintiff's claim thereby interrupting prescription. The evidentiary hearing was held on April 12, 2002, with the only witnesses being the people that had previously submitted affidavits on the issue.

The trial court ruled that the plaintiff's claim had prescribed and granted the defendants' exception of prescription. Specifically, the trial court found that the defendants merely made an offer of settlement to the plaintiff and made no admission of liability. Thus, the trial court found no acknowledgment of liability by the defendant that would justify the interruption of prescription. The plaintiff appeals from this judgment.

ASSIGNMENT OF ERROR

The trial court erred in misapplying the law relative to the issue of "acknowledgment of a claim" thereby finding that the defendants did not acknowledge plaintiff's claim.

LAW AND ANALYSIS

The plaintiff contends that prescription was interrupted because of the defendant's acknowledgment of its liability. In support of her argument that the defendant acknowledged liability for her damages, the plaintiff produced correspondence between plaintiff's attorney and defendant's insurance adjusters. The plaintiff also produced an affidavit from plaintiff's attorney

in which he stated that the defendant's insurance adjusters admitted to liability during telephone conversations with him. The defendants produced affidavits from the two insurance adjusters who denied acknowledging liability for the plaintiff's damages.

Delictual actions are subject to a liberative prescription of one year. This prescription begins to run on the day injury or damage is sustained. La. C.C. art. 3492. The burden of proof rests upon the party pleading prescription. However, where the petition shows on its face that the prescriptive period has run, the burden shifts to the plaintiff to prove a suspension or interruption of the prescriptive period. *Trainer v. Aycock Welding Company*, 421 So.2d 416 (La.App. 1st Cir.1982).

Louisiana Civil Code Article 3464 provides that prescription is interrupted when one acknowledges the right of the person against whom he had commenced to prescribe. Prescription for an unliquidated claim for damages in tort may be interrupted by the tacit acknowledgment of the debtor. *Trainer v. Aycock Welding Company, supra*.

Acknowledgment is the recognition of the creditor's right or obligation, and has the legal effect of halting the progression of prescription before its course has run. *Lima v. Schmidt*, 595 So.2d 624 (La.1992). All accrued time is erased and the prescriptive period commences anew from the

last date of an interruption. La. C.C. art. 3466. A tacit acknowledgment occurs when a debtor performs acts of reparation or indemnity, makes an unconditional offer or payment, or lulls the creditor into believing that he will not contest liability. *Waller v. Stuckey*, 613 So.2d 643 (La.App. 2d Cir.1993), *writ denied*, 618 So.2d 409 (La.1993). Conversely, mere settlement offers or conditional payments, humanitarian charitable gestures, and recognition of disputed claims will not constitute acknowledgments.

Lima v. Schmidt, supra; Waller v. Stuckey, supra.

It has long been the public policy of this state that the compromise of disputes are highly favored and promote judicial efficiency. Candid and good faith settlement negotiations should be encouraged between the parties to a dispute. If settlement negotiations which do not result in an oral compromise agreement can constitute an acknowledgment of the disputed indebtedness so as to interrupt prescription, then undoubtedly in the future such negotiations will be less candid and less productive. The law should not be interpreted to place such a chilling effect on settlement negotiations.

Trainer v. Aycock Welding Company, supra.

Louisiana Revised Statute 22:661 provides that no settlement made under a motor vehicle liability insurance policy of a claim against any insured arising from any accident or other event insured against for damage

to or destruction of property owned by another person shall be construed as an admission of liability by the insured, or the insurer's recognition of such liability, with respect to any other claim arising from the same accident or event.

On the trial of a peremptory exception pleaded prior to the trial of the case, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. La. C.C.P. art. 931. When evidence has been introduced, the court is not authorized to accept the plaintiffs' allegations as true. *Schoen v. Walling*, 31,598 (La.App.2d Cir.2/24/99), 728 So.2d 982; *Creighton v. Bryant*, 34,893 (La.App.2d Cir.6/20/01), 793 So.2d 275. When evidence is received on the trial of the peremptory exception, the factual conclusions of the trial court are reviewed by the appellate court under the manifest error-clearly wrong standard. *Creighton v. Bryant, supra*.

Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. If two permissible views of the evidence exist, the fact finder's choice between them cannot be manifestly wrong. When the fact finder's conclusions are based on determinations of the

witnesses' credibility, the manifest error standard requires great deference to the trier of fact, since only the trier of fact observes the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Foster v. Clarendon*, 32,646 (La.App.2d Cir.3/1/00), 753 So.2d 968. If a trier of fact's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse even if convinced that if it had been sitting as trier of fact, it would have weighed the evidence differently. *Stobart v. State, Through Department of Transportation and Development*, 617 So.2d 880 (La.1993).

Under the jurisprudence, when settlement offers are made without an admission of liability, there is no acknowledgment. *See Flowers v. United States Fidelity & Guaranty Company*, 381 So.2d 378 (La.1979); *Waller v. Stuckey, supra*; *Barbarin v. Wal-Mart Stores, Inc.*, 01-669 (La.App. 5th Cir.11/27/01), 804 So.2d 116. However, where there is an admission of liability, there is an acknowledgment. *See Odessa House v. Goss*, 453 So.2d 299 (La.App. 3d Cir.1984).

As stated above, mere settlement negotiations do not constitute an acknowledgment. However, admissions of liability are acknowledgments sufficient to interrupt the running of prescription. In the present case, whether an acknowledgment was made turns upon a credibility

determination by the trial court. The trial court found that Ms. Ott and Ms. Donaldson's communication with the plaintiff was a settlement offer and not an admission of liability. Upon our examination of the record, we do not find that the trial court was clearly wrong or manifestly erroneous in this determination. Accordingly, we affirm the trial court judgment.

For the reasons stated above, we affirm the trial court judgment sustaining an exception of prescription in favor of Kenner Plumbing Supply, Inc. and Traverlers Property Casualty Insurance Company and dismissing the claims of the plaintiff, Dorothy Gisclair. Costs in this court are assessed to the plaintiff.

AFFIRMED