

NOT DESIGNATED FOR PUBLICATION

YOO I. LEE * **NO. 2009-CA-1625**
VERSUS *
JAMES CAHN, ATTORNEY, * **COURT OF APPEAL**
CARYL H. VESY, NEW * **FOURTH CIRCUIT**
ORLEANS 1ST CITY COURT * **STATE OF LOUISIANA**
* * * * *

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2006-8016, DIVISION "G-11"
Honorable Robin M. Giarrusso, Judge

* * * * *

JUDGE PAUL A. BONIN

* * * * *

(Court composed of Judge Michael E. Kirby, Judge David S. Gorbaty, Judge Paul A. Bonin)

Yoo I. Lee
701 Loyola Avenue
New Orleans, LA 70140--9999

IN PROPER PERSON/APPELLANT

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COUNSEL FOR DEFENDANTS/APPELLEES

APRIL 14, 2009

AFFIRMED

Yoo Lee filed a petition to recover damages for injuries sustained by him while renting an apartment from James Cahn. Mr. Cahn and his attorney, Caryl Vesey,¹ excepted to the petition on several peremptory grounds, including the liberative prescription of one year. The trial court rendered judgment sustaining all the exceptions and dismissed Mr. Lee's suit with prejudice. Mr. Lee devolutively appeals. Because we find that more than one year had expired from the time that Mr. Lee occupied the apartment owned by Mr. Cahn until the date he filed suit, and because Mr. Lee has not shown any period of suspension or interruption of the prescriptive period, we affirm the trial court's judgment maintaining the exception of prescription² and its dismissal with prejudice of this lawsuit.

I

On March 2, 2004, Mr. Lee signed a lease for 638 Royal Street, Apartment 403 in the French Quarter of New Orleans. Within two months of the lease signing, Mr. Cahn, the owner, evicted Mr. Lee for failure to pay the \$250 monthly

¹ Although the caption of the petition suggests that Mr. Vesey was named as a party defendant, no specific allegations were made against him other than his status as an attorney for Mr. Cahn. Our disposition includes any claim, if there ever was one, against Mr. Vesey.

² We pretermitted discussion of the remaining peremptory exceptions as this one is dispositive.

rent.³ On August 23, 2006, Mr. Lee, unrepresented by counsel, filed his petition. Because Mr. Lee is not proficient in the English language and he obviously was unassisted in the drafting of his lawsuit, the district court and this court have given his petition an indulgent reading despite its non-compliance with the requirements that its allegations of fact be “simple, concise, and direct.” La. C.C.P. art. 854. While we have had some difficulty in following his essay-styled petition, which is embellished with a photocopy of a magazine article, a disquisition on termites, we understand clearly that he alleges that he encountered termites in his apartment between May 3, 2004, and May 7, 2004, and that the Queen termite ruled and ruined the entire French Quarter from her royal headquarters at the Lee apartment, ravaging property and ruining Mr. Lee’s health.

Mr. Cahn filed the peremptory exceptions of prescription, no right and cause of action, and res judicata. The exceptions noted that the document, given the most liberal and patient scrutiny, failed to set forth a cause of action; Mr. Lee hinted at representing all residents of the Vieux Carre without any formalities attendant upon such class action. Moreover, the claim for tort damages with reference to personal illness and property damage at the apartment would have prescribed one year from the date when Mr. Lee vacated the apartment in late May or early June of 2004.

In response to the exceptions, Mr. Lee filed in the record numerous copies of numerous documents: photocopies of the complaint form to the health department of the City of New Orleans, the magazine article about termites, money order receipts, a blurry photograph with markings and date “April/04” notation; various

³Mr. Lee’s address on a prescription receipt in October 2004 was 743 St. Charles Ave., New Orleans, LA; he moved to Baton Rouge after Hurricane Katrina (August 29, 2005), and a pharmacy receipt lists his address as 10498 Elmgrove Garden Dr., Apt. 24, Baton Rouge, LA.

medical bills for two resin crowns (dental evaluation and work performed in February 2006); Primary Healthcare Network progress notes dated March 9, 2006 referring to a 2002 automobile accident injury; an estimate for chiropractic care by a clinic located in Zachary, Louisiana describing Mr. Lee's initial visit on June 2, 2006; drugstore prescription receipts; a hospital emergency room bill and treatment note for October 10, 2004, for treatment of a puncture wound to Mr. Lee's left buttock sustained by history on October 7, 2004; Mr. Cahn's letter to Mr. Lee demanding payment of rent due; the rental contract; a letter to a judge of the First City Court setting out an incomprehensible litany of complaints; a statement dated October 2006 from a resident assistant at a Baton Rouge trailer park where Mr. Lee lived in a FEMA trailer site; a Baton Rouge walk-in medical clinic bill; and a debt collection letter dated May 22, 2006, for treatment incurred on at the emergency room on October 10, 2004. We itemize the extensive materials made part of the record to show that the trial court had ample evidence, which was supplied by Mr. Lee himself, to support Mr. Cahn's objection on the grounds of prescription. *See* La. C.C.P. art. 931.

On January 19, 2007, the trial court rendered judgment sustaining *inter alia* the exception of prescription. Mr. Lee timely devolutively appealed.⁴ On August 29, 2009, the trial court permitted Mr. Lee to proceed *in forma pauperis* on appeal. *See* La. C.C.P. art. 5181 A.

⁴ On July 9, 2007, the Clerk of Court filed a rule to show cause why Mr. Lee's appeal should not be dismissed for failure to pay costs.

II

Mr. Lee's action for personal injuries sustained by the alleged fault of Mr. Cahn is "subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained." La. Civil Code art. 3492. "Liberative prescription is a mode of barring actions as a result of inaction for a period of time." La. Civil Code art. 3447. As in this case, "[w]hen a plaintiff's cause of action is prescribed on the face of the petition, the plaintiff bears the burden of proof to rebut the exception of prescription." *Martin v. Mid-South Tank Utilities Co.*, 614 So. 2d 319, 321 (La. App. 4th Cir. 1993); *see also Williams v. Sewerage & Water Board of New Orleans*, 611 So. 2d 1383, 1386 (La. App. 4th Cir. 1993), citing *Lima v. Schmidt*, 595 So. 2d 624, 628 (La. 1992).

In his petition Mr. Lee alleged that he was last injured and sustained damages on May 7, 2004, but the petition was not filed until August 23, 2006. Prescription, of course, is subject to interruption and suspension. *See* La. Civil Code art. 3462 *et seq.* and art. 3467 *et seq.* But Mr. Lee has not established either an interruption or a suspension which tolled the one-year prescriptive period.

The trial court's ruling which found that more than one year had expired between the alleged injury and the date of institution of the lawsuit was not manifestly erroneous and it applied the controlling law correctly. *See Ducote v. Touro Infirmary*, 03-0755, pp. 3-4 (La. App. 4 Cir. 10/22/03), 860 So. 2d 125, 128.

III

For the sake of completeness, we briefly address three grievances which Mr. Lee raises for the first time on appeal, notwithstanding Rule 1-3, Uniform Rules – Court of Appeal, which provides:

The scope of review in all cases within the appellate and supervisory jurisdiction of the Courts of Appeal shall be as provided by LSA-Const. Art. 4, § 10(B), and as otherwise provided by law. *The Courts of Appeal will review only issues which were submitted to the trial court and which are contained in specifications or assignments of error, unless the interest of justice clearly requires otherwise.* (emphasis added.)

See also *Delo Reyes v. Liberty Mutual Fire Ins. Co.*, 08-0769, p. 5 (La. App. 4 Cir. 2/18/09), 9 So. 3d 890, 893 (considering “the facts and circumstances” of the case “in the interest of justice” to allow the parties the right to appeal). First, he complains that he was unlawfully denied legal representation and, second, that he was unlawfully denied an interpreter.⁵ Third, he claims that his rights were violated under the Equal Protection Clause of the Fourteenth Amendment when the district court denied a “show cause” order.

A

Mr. Lee did not move for or request legal representation in the trial court. Moreover, “[t]here is no constitutional *right to counsel* in a *civil* proceeding which does not result in loss of liberty.” *State v. Stafford*, 394 So. 2d 1287, 1289 (La. App. 1 Cir. 1981) (emphasis in original), citing the Sixth Amendment and La. Const. Art. 1, § 13. This grievance is without merit.

B

Louisiana law provides for the services of an interpreter. La. C.C.P. art. Article 192.2 A provides:

If a non-English speaking person who is a principal party in interest or a witness in a proceeding before the court *has requested an interpreter*, a judge shall appoint, after consultation with the non-English speaking person or his attorney, a competent interpreter to

⁵ Generally, a translator is one who translates written works from one language to another; an interpreter is one who translates orally for parties conversing in different language; or a translator is one who explains or expounds. We note that the statute refers to “interpreter.” La. C. C. P. 192.2.

interpret or to translate the proceedings to him and to interpret or translate his testimony. (emphasis added).⁶

Our review of the record shows that Mr. Lee made no request to or motion in the trial court for an interpreter. The trial court has no affirmative duty to appoint an interpreter for a party plaintiff in the absence of a request. *Cf. Herrera v. Cajun Co.*, 06-1627, p. 14 (La. App. 4 Cir. 6/6/07), 960 So. 2d 1161, 1169 (Belsome, J., concurring). This grievance is without merit.

C

On October 5, 2009, Mr. Lee filed a “Motion for Amended Summary Judgment.” The trial court by that date, however, had already signed the order of appeal and was divested of its jurisdiction. *See* La. C.C.P. art. 2008; *Parker v. Chimneywood Homeowners’ Ass’n, Inc.*, 02-2475, pp. 4-5 (La. App. 4 Cir. 12/17/03), 866 So. 2d 289, 292. The trial court properly refused to act on the motion. Accordingly, the trial court did not violate Mr. Lee’s right to due process and equal protection under the law, and this grievance is meritless.

By way of conclusion, we note that the record reveals a patient and considerate processing of Mr. Lee’s claim by the trial judge as well as the opposing party and counsel. Nothing suggests that any advantage was taken of Mr. Lee and, we are confident, had he been represented by counsel or been more proficient in the English language, the result would have been the same as it is today.

⁶ Moreover, the fee of such an interpreter is to be taxed as a cost of court pursuant to La. C. C. P. art. 192.2 B.

DECREE

For the foregoing reasons, we affirm the judgment of the trial court maintaining the exception of prescription and dismissing with prejudice the lawsuit of Yoo Lee against James Cahn and Caryl Vesey. All costs are taxed to Yoo Lee. *See* La. C.C.P. arts. 2164 and 5188.

AFFIRMED