

**GULF PRODUCTION
COMPANY, INC.**

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NO. 2013-CA-0578

VERSUS

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COURT OF APPEAL

**PETROLEUM ENGINEERS,
INC.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
25TH JDC, PARISH OF PLAQUEMINES
NO. 59-781, DIVISION "B"
Honorable Michael D. Clement, Judge

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Judge Roland L. Belsome

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Roland L. Belsome,
Judge Sandra Cabrina Jenkins)

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AFFIRMED

DECEMBER 11, 2013

Gulf Production Company, Inc. is seeking review of the trial court's grant of an exception of prescription in favor of Petroleum Engineers, Inc. resulting in the dismissal of its action. For the reasons that follow, we affirm the trial court's ruling.

Gulf is an oil and gas operator that hired PEI to provide engineering services, equipment and labor for the operation of the ExxonMobil No.2 well in Plaquemines Parish, Louisiana. On June 12, 2011, in the course of operating the well, a drilling pipe became stuck. PEI inserted a product referred to as Pipe Lax into the well in an effort to release the drilling pipe. Ultimately, the well experienced what is referred to as a "blow-out"¹ and became inoperable.

Gulf filed a petition for damages on July 2, 2012, claiming breach of contract. In the petition, Gulf alleged that once the pipe became stuck, PEI inserted the wrong weight of Pipe Lax, which resulted in the well "blow-out". Gulf further alleged that the use of the insufficient Pipe Lax was a breach of the

¹ A "blow-out" describes the uncontrolled release of oil from the well.

contract between Gulf and PEI, as well as a breach of PEI's duty of workmanlike performance under La. C.C. arts. 1994 *et seq* and 2768 *et seq*.²

In response to the petition for damages, PEI filed an exception of prescription claiming that the claim had prescribed, because although the petition was styled as a breach of contract, Gulf's claims sound in tort.³ Therefore, the claim was subject to one year prescriptive period that expired on June 12, 2012. More specifically, PEI challenged Gulf's inability to plead a breach of contract claim by identifying any specific provision in a contract between the parties that had been breached.

In opposition to the exception of prescription, Gulf argued that its verbal agreement with PEI to perform services constituted an oral contract and that the written document that PEI engineers developed describing the specifications for the drilling of the well was incorporated into the oral contract.⁴ Therefore, the "blow-out" of the well was a breach of contract and the lawsuit was subject to a ten-year prescriptive period.

On review, an appellate court should not disturb a trial court's finding of facts supporting prescription unless the trial court is clearly wrong. *Bd. of Commissioners v. Estate of Smith*, 2003-1949, 2003-1950, p.6 (La. App. 4 Cir. 9/2/04), 881 So.2d 811, 815, *citing In re Medical Review Proceedings of Ivon*, 2001-1296 (La. App. 4 Cir. 3/13/02), 813 So.2d 532.

² The articles cited in the petition provide for general duties owed by an obligor.

³ As provided for in La. C.C. art. 3499, the prescriptive period for a contractual claim is ten years, while La. C.C. art. 2492 provides for a one year prescriptive period for delictual actions.

⁴ As part of PEI's services, engineers produce a "Drilling Program" for each individual well. It is an unsigned document. The document provides specifications for the well and standard operating procedures, but does not incorporate any emergency provisions.

In this case, there was no written contract, and even if an oral contract existed for services, Gulf is still required to plead a breach of a specific provision of the alleged contract that resulted in damages. By Gulf's own account of the events surrounding the "blow-out", a pipe became stuck; PEI called to inform Gulf of the situation; and PEI discussed using a 12.1 Pipe Lax pill in the well to free the pipe. Gulf maintains that PEI used an 8.2 Pipe Lax pill rather than a 12.1 Pipe Lax pill, and the well "blew-out". The record is void of any emergency procedure provisions that could be construed as a contractual obligation that was breached by PEI in using the 8.2 Pipe Lax pill.

The correct prescriptive period to be applied in any action depends upon the nature of the action; it is the nature of the duty breached that should determine whether an action is in tort or in contract. *Roger v. Dufrene*, 613 So.2d 947, 948 (La. 1993). The fundamental distinction between "damages *ex contractu*" and "damages *ex delicto*" is that the former flows from the breach of a special obligation contractually assumed by the obligor, whereas the latter flow from the violation of a general duty owed to all persons.

The law is clear that Gulf cannot state a cause of action in the petition by simply asserting legal or factual conclusions without setting forth facts that support those conclusions. *Bibbins v. City of New Orleans*, 02-1510, p.5 (La.App. 4 Cir. 5/21/03), 848 So.2d 686, 691. In order for Gulf to assert a valid cause of action for breach of contract, it must allege a breach of a specific provision of the contract. *Bergeron v. Pan American Assur. Co.*, 98-2421, p. 14 (La.App. 4 Cir. 4/7/99), 731 So.2d 1037, 1045. *See also Louque v. Allstate Ins. Co.*, 314 F.3d 776, 782 (5th Cir. 2002). Consequently, even if there is a breach of duty arising out of a contractual relationship, but without an expressed promise in the contract, the action is *ex*

delicto. Raymond v. Orleans Parish School Bd., 03-0560, p. 7 (La. App. 4 Cir. 9/3/03), 856 So.2d 27, 32; *Nicholson & Loup, Inc. v. Carl E. Woodward, Inc.*, 596 So.2d 374 (La.App. 4 Cir. 1992); *Sterling v. Urban Property Co.*, 562 So.2d 1120 (La. App. 4 Cir.1990).

Accordingly, in the absence of a direct breach of a contractual provision, we cannot find that the trial court erred when it determined that Gulf Production Company, Inc.'s claims are based in tort, and thus subject to a one year prescriptive period. For these reasons we find no error in the trial court's ruling, and therefore affirm the granting of Petroleum Engineers, Inc.'s exception of prescription.

AFFIRMED