

**ROBERT ANDREW SCHIFF,
ET AL.**

VERSUS

LIDIA POLLARD

* **NO. 2015-CA-0340**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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LANDRIEU, J., CONCURS WITH REASONS

I concur in the result reached by the majority but write separately to point out the inconsistencies in the jurisprudence (both among the circuits and within certain circuits) regarding whether the time limitation for bringing an action for nullity pursuant to La. C.C.P. art. 2004 is prescriptive or preemptive. See, e.g.: *In re Succession of Bernat*, 2013-0277 (La. App. 3 Cir. 10/9/130, 123 So.3d 1277; *Smith v. Smith*, 47,376 (La. App. 2 Cir. 8/22/12), 104 So.3d 512; *Dunker v. New Orleans Baptist Theological Seminary*, 422 So.2d 1310 (5th Cir. 1982); *Barber v. Testa*, 331 So.2d 139 (La. App. 3rd Cir. 1976); *Martin v. White*, 219 So.2d 219 (La. App. 1st Cir. 1969). However, when directly addressing the issue, this court has held that the time limitation in Article 2004 is one of preemption, as the majority here so finds. See *Azar-O'Bannon v. Azar*, 2000-0101 (La. App. 4 Cir. 9/27/00), 770 So.2d 458; *Davis v. Sewerage and Water Board of New Orleans*, 469 So.2d 1144 (La. App. 4th Cir. 1995); but see *Haney v. Davis*, 2006-1058 (La. App. 4 Cir. 2/14/07), 952 So.2d 804 (wherein this court referred to the time period as one of prescription in *dicta*).

There is also inconsistency in the jurisprudence as to whether the relation back theory expressed in La. C.C.P. art. 1153 is applicable to a period of preemption. See, e.g., *Boes Iron Works, Inc. v. M.D. Descant, Inc.*, 2014-0270

(La. App. 1 Cir. 9/19/14), 154 So.3d 555 (holding that because a cause of action no longer exists after the termination of a preemptive period, there is nothing to which an amended petition filed after the preemptive period has expired can relate back) and *International River Center v. Beck*, 95-1396 (La. App. 4 Cir. 4/10/96), 672 So.2d 1160 (in which this court held that an action in nullity is subject to a preemptive period and that the relation back theory is applicable). The result reached by the majority is consistent with this court's precedent.