

JOHN AUSTER	*	NO. 2016-CA-0380
VERSUS	*	COURT OF APPEAL
CITY OF NEW ORLEANS	*	FOURTH CIRCUIT
	*	STATE OF LOUISIANA
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LEDET, J., CONCURS WITH REASONS

Although I agree with the result the majority reaches, I write separately to further articulate my reasoning.

The former employee, John Auster, filed a Motion to Enforce the following two portions of the January 30, 1989 Consent Judgment:

- The City of New Orleans will return to John Auster all sick and annual leave days used by John Auster from April 29, 1987 through the date of this judgment.
- John Auster will continue to accrue sick and annual leave days and will accrue credit for time in service to the City of New Orleans as pertaining to his pension rights as provided by law. This accrual of days shall occur concurrent with receipt of worker's compensation indemnity benefits by John Auster.

As the majority points out, at the September 11, 2015 hearing on the motion to enforce, Mr. Auster conceded that in March 1989 he was paid for the accrued sick and annual leave days from August 28, 1987 to January 30, 1989, the date of the consent judgment. Hence, only the second part of the Consent Judgment is at issue on appeal.

As to the second part, it is necessary to split the analysis of the issue presented into two periods—the period between the date of the Consent Judgment and the date of retirement (the pre-retirement period); and the period between the date of retirement and the filing of the Motion to Enforce (the post-retirement

period). As to the pre-retirement period, the City's position is that the three-year prescription period in La. C.C. art. 3494¹ applies to Mr. Auster's claim for insufficient payment of accrued leave. Thus, the City contends any claim for accrued leave that became eligible when Mr. Auster retired in 1995 was prescribed when the Motion to Enforce was filed in 2015.

The majority finds that the claim for accrued sick and annual leave time for the pre-retirement period prescribed. The majority reasons that Mr. Auster's entitlement to his accrued sick and annual leave time became exigible when he retired in 1995 and that he had three years to file a claim for these benefits. Thus, the majority finds the motion to enforce judgment, filed in 2015, seeking these benefits was prescribed on its face. I agree.

As to the post-retirement period, the majority finds that the Consent Judgment does not provide for the continued accrual of sick and annual leave past the date of retirement. I agree. As the majority notes, "[s]ick and annual leave accrues while an employee is actively employed." The City established that Mr. Auster was no longer employed as of the date of his retirement.

For the above reasons, I respectfully concur.

¹ La. C.C. art. 3494 provides as follows:

The following actions are subject to a liberative prescription of three years:

(1) An action for the recovery of compensation for services rendered, including payment of salaries, wages, commissions, tuition fees, professional fees, fees and emoluments of public officials, freight, passage, money, lodging, and board . . .