

Judgment rendered May 4, 2005.
Application for rehearing may be filed
within the delay allowed by art. 2166,
La. C.C.P.

No. 39,592-WCA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

RICHARD RAMBIN

Plaintiff-Appellant

versus

SHREVEPORT REFRIGERATION, INC.
and LOUISIANA RETAILERS
ASSOCIATION SELF INSURERS FUND

Defendants-Appellees

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Appealed from the
Office of Workers' Compensation, District 1W
Parish of Caddo, Louisiana
Docket No. 04-00727

Honorable Larry S. Butler, Judge

* * * * *

JOHN S. STEPHENS

Counsel for Appellant

WIENER, WEISS & MADISON
By: Larry Feldman, Jr.
M. Allyn Stroud

Counsel for Appellees

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Before BROWN, CARAWAY & PEATROSS, JJ.

CARAWAY, J., concurs with written reasons.

PEATROSS, J.

Richard D. Rambin (“Mr. Rambin”) was an employee of Shreveport Refrigeration, Inc. on October 30, 1985, when he was involved in an automobile accident while in the scope of his employment. Mr. Rambin filed suit against the tortfeasor and others the following year.¹ Shreveport Refrigeration, Inc. was self-insured for workers’ compensation claims through Louisiana Retailer Association Self Insurers Fund (the two entities are collectively referred to herein as “LRA”). LRA began paying indemnity benefits to Mr. Rambin as a result of his accident. Shortly thereafter, LRA filed a Petition of Intervention in the tort suit asserting a right to have preferential payment out of any settlement or judgment that Mr. Rambin obtained through his suit. During the litigation, the parties entered into a Joint Motion for Partial Dismissal of the tortfeasor’s insurance company, Government Employees Insurance Company, reserving rights against the remaining defendants.

At the time of the accident, employers’ or workers’ compensation insurers were entitled under Louisiana law to a credit for future compensation benefits up to the amount of future lost earnings awarded in a judgment or itemized in a settlement.² The parties to the case settled and signed a Stipulation on March 20, 1989, that stated, *inter alia*:

It is further stipulated and agreed to by and between the parties that [LRA] shall have a credit against future payments of workmen’s compensation benefits for a period of fourteen (14) years. Additionally, RICHARD DILL RAMBIN agrees that he will bear the expenses of the first \$1000.00 in medical

¹ *Richard Dill Rambin, et. ux v. Government Employees Insurance Company, et al*, No. 326,678, First Judicial District Court, Caddo Parish, Louisiana.

² See La. R.S. 23:1102-1103; *Moody v. Arabie*, 498 So. 2d 1081 (La. 1986).

expenses that he might incur in the future as a result of any medical expenses incurred resulting directly from treatment for the injuries sustained in the accident of October 30, 1985. Any future medical expenses in excess of the \$1000.00 aggregate amount shall be at the expense of [LRA].

The amount that LRA had already paid in benefits was \$49,174.09 and the settlement amount attributed to future lost income was \$184,674.08, or approximately 14 years of compensation benefits at a maximum rate of \$254 per week.

On January 30, 2004, Mr. Rambin filed a new petition (Form 1008) against LRA seeking reimbursement of wages, attorney fees and penalties when LRA refused to continue paying benefits after March 20, 2003. LRA responded with an Exception of Prescription stating that they had paid no benefits since the Stipulation was executed. The WCJ sustained the Exception of LRA, dismissing Mr. Rambin's claims with prejudice. From this ruling, Mr. Rambin appeals. For the reasons set forth herein, we reverse and remand.

DISCUSSION

Issue Number One (Verbatim): The Trial Court Erred in Sustaining the Defendant's Exception of Prescription.

Mr. Rambin argues that prescription was interrupted on March 20, 2003, the date of the last credit taken by LRA. Accordingly, he asserts that his Form 1008 was timely filed on January 30, 2004, as that was within the one-year prescriptive period. LRA argues, to the contrary, that the WCJ was correct in finding that Mr. Rambin's claim for workers' compensation benefits had prescribed.

Both parties cite La. R.S. 23:1209(A), which states:

In case of personal injury, including death resulting therefrom, all claims for payments shall be forever barred unless within one year after the accident or death the parties have agreed upon the payments to be made under this Chapter, or unless within one year after the accident a formal claim has been filed Where such payments have been made in any case, the limitation shall not take effect until the expiration of one year from the time of making the last payment, except that in cases of benefits payable pursuant to R.S. 23:1221(3) this limitation shall not take effect until three years from the time of making the last payment of benefits pursuant to R.S. 23:1221(1), (2), (3), or (4). Also, when the injury does not result at the time of, or develop immediately after the accident, the limitation shall not take effect until expiration of one year from the time the injury develops, but in all such cases the claim for payment shall be forever barred unless the proceedings have been begun within two years from the date of the accident.

Mr. Rambin argues that the “parties agreed upon payments to be made” and that LRA was to receive a credit each week for the 14-year period. To the contrary, LRA argues that the Stipulation was not an agreement whereby it would pay Mr. Rambin anything in the future, but, rather, simply recognized LRA’s credit as provided by statute. LRA further points to La. R.S. 23:1209(C), which states that the prescriptive period is one year from the date of the accident or three years from the date of the last payment.

Mr. Rambin cites *Lester v. Southern Cas. Ins. Co.*, 466 So. 2d 25 (La. 1985), wherein the supreme court stated that the provisions of workers’ compensation laws are to be interpreted liberally in favor of the worker in order to effectuate their purpose of relieving workers of the economic burden of work-connected injuries by diffusing the cost on channels of commerce. Similarly, he points to *Millican v. General Motors Corp.*, 34,207 (La. App. 2d Cir. 11/1/00), 771 So. 2d 234, *writ denied*, 01-0001 (La. 3/23/03), 788 So. 2d 426, wherein this court stated that prescription

requirements are to be interpreted liberally in favor of maintaining, rather than barring, the workers' compensation claims.

LRA replies by citing *Jonise v. Bologna Bros.*, 01-3230 (La. 6/21/02), 820 So. 2d 460, stating that, when a suit has prescribed on its face, as it argues is the case here, the claimant has the burden of proving that prescription was suspended or interrupted in some manner. It argues that Mr. Rambin failed to establish any form of suspension or interruption in this case and that the prescriptive periods for his claim have long since expired. LRA states that its credit has "nothing whatsoever to do with the interruption of prescription." It contends that the record does not show any indication that the Stipulation was ambiguous or that another justification exists for considering parol evidence regarding its meaning.

Mr. Rambin further argues that the Stipulation which the parties entered into was a valid contract "to facilitate a resolution of the matter at that time." In support of his argument, he cites *Lawrence v. Terral Seed, Inc.*, 35,019 (La. App. 2d Cir. 9/26/01), 796 So. 2d 115, *writ denied*, 01-3134 (La. 2/11/02), 808 So. 2d 341, wherein this court explained:

A cardinal rule for the interpretation of a contract is determining the common intent of the parties. To determine the parties' intent, courts must first look to the words and provisions of the contract. When they are clear and explicit, no further interpretation may be made in search of the parties' intent. Even when the language of the contract is clear and explicit, courts should refrain from construing the contract in such a manner as to lead to absurd consequences.

The words of a contract must be given their generally prevailing meaning. Words susceptible of different meanings must be interpreted as having the meaning that best conforms to the object of the contract. Each provision in a contract must be interpreted in light of the other provisions so that each is

given the meaning suggested by the contract as a whole. A doubtful provision must be interpreted in light of the nature of the contract, equity, usages, the conduct of the parties before and after the formation of the contract, and of other contracts of a like nature between the same parties. (Citations omitted.)

He asserts that LRA is acting contrary to the intent of the Stipulation of the parties by contending that they have made no payments since March 20, 1989. He points out that, after the Stipulation was executed, LRA received a weekly credit of \$254 for the benefit it would have otherwise been obligated to pay him. The last credit LRA was entitled to take was on March 20, 2003. Mr. Rambin further states that, had he filed a claim before March 20, 2003, LRA would have responded with an exception of prematurity. In addition, he notes that there was “no judicial approved settlement of [his] workers’ compensation claim, as is required by law” and that LRA was in error by believing that any further plea would be prescribed three years after the Stipulation was executed.

LRA responds that no benefits or payments of any sort have been paid since the Stipulation was executed on March 20, 1989; and, therefore, more than three years have passed since the date of the accident and the date of the last payment of indemnity expenses and medical benefits. LRA further alleges that it paid Mr. Rambin \$49,174.07 in workers’ compensation benefits, more than half of which represented medical expenses, and all of which accrued prior to the execution of the Stipulation on March 20, 1989. It argues that nothing has happened since that date (no further payments, agreements, conduct or similar actions) that could be construed as interrupting prescription.

Mr. Rambin further argues that LRA's interpretation of the Stipulation opens the door for potential fraud. Under his theory, employers and workers' compensation insurers could encourage claimants to settle their third-party claims for an amount sufficient to give the obligor a three-year credit, and, when the credit ran out, could assert a defense of prescription. LRA responds that Mr. Rambin was adequately represented by experienced counsel through each stage of this litigation. Accordingly, it argues that, if his counsel intended the Stipulation to function as an interruption of prescription, he could and should have provided as much in the document; however, no such action was taken.

LRA cites La. C.C. art. 3464, stating:

Prescription is interrupted when one acknowledges the right of the person against whom he had commenced to prescribe.

LRA points to *Lima v. Schmidt*, 595 So. 2d 624 (La. 1992), in which the court stated that an acknowledgment is the creditor's right or obligation that halts the progress of prescription before it has run its course. The essence of acknowledgment is not its form, but the debtor's recognition of the creditor's right to the debt claimed by him. *Lima, supra*. LRA further cites *Bolden v. Terrebonne Parish School Board*, 98-1425 (La. App. 1st Cir. 6/25/99), 739 So. 2d 360, for the proposition that, once a claim is settled, even with a reservation of rights for future benefits, prescription begins to run anew from the date of dismissal. In summary, LRA argues that prescription began to run anew on March 20, 1989, the date of the Stipulation; and, if Mr. Rambin wished to establish further action in this

case, he should have done so within the delays set forth in La.

R.S. 23:1209(A) and (C). We disagree.

The case *sub judice* centers around the language in the Stipulation, which states:

It is further stipulated and agreed to by and between the parties that [LRA] *shall have a credit against future payments of workmen's compensation benefits for a period of fourteen (14) years....* (Emphasis ours.)

Similarly, the applicable civil code provision, Article 3464, states that prescription interrupts when one acknowledges the right of the person against whom he had commenced to prescribe.

We conclude that the language of the Stipulation contains an acknowledgment by LRA of Mr. Rambin's right. It follows that, per Civil Code article 3464 and the language in the Stipulation to which the parties agreed, LRA recognized that each weekly credit it took equated to an interruption of prescription, the last of which occurred on March 30, 2003.

The wording of this Stipulation, particularly the wording recognizing a "credit," indicates an acknowledgment of a debt. In order to have a "credit," a debt must exist. Given the language of 23:1209(A) and the requirement that we view workers' compensation rules liberally and in favor of the worker under *Lester, supra*, and, *Millican, supra*, and in the face of the aforementioned jurisprudence, we hold that prescription was interrupted with each applied monthly credit, the last of which was taken on March 20,

2003.³ Accordingly, Mr. Rambin's suit of January 30, 2004, was timely filed.

Furthermore, again, the record indicates that both parties agreed that LRA would not be required to begin payments to Mr. Rambin until the 14-year period expired.⁴ In *Millican, supra*, this court held that one of the

³ We base our finding, in part, on *Rapp v. City of New Orleans*, 98-1714 to 98-1730 (La. App. 4th Cir. 12/29/99) 750 So. 2d 1130, *writ denied*, 00-0353 (La. 4/7/00), 759 So. 2d 761, in which the fourth circuit considered whether or not prescription applied to a workers' compensation claim that was subject to an offset. In its analysis of this issue, the court stated:

...this Court [in an earlier opinion] found that there is a distinction between an offset of benefits and a termination of benefits.

A termination of benefits ordinarily would indicate that the employer had made the determination that the employee had no right of recovery, or that the employer refused to pay benefits regardless of that right. *On the other hand, implicit in the offset is an acknowledgment that benefits are in fact due the employee, but the employer is entitled to credit for payments the employee receives from certain statutorily designated collateral sources. Therefore, the exercise of the right of offset is a tacit acknowledgment of an entitlement to benefits that continues as long as the offset continues.*

Id. at 456. The court further found that, as long as the offset persists, "*this continuing acknowledgment is sufficient to interrupt prescription on the employee's underlying claim for benefits.*" *Id.* This rule has been upheld by the court in *Palisi v. City of New Orleans Fire Dept.*, 95-1455 (La. App. 4th Cir. 3/12/97), 690 So.2d 1018, *writ denied*, 97-0953 (La. 6/20/97), 695 So.2d 1352 and 97-1293 (6/20/97), 695 So. 2d 1363. (Emphasis ours.)

⁴ Both parties cite *Gary v. Camden Fire Ins. Co.*, 96-0055 (La. 7/2/96), 676 So. 2d 553, in which the supreme court considered the issue of "whether or not the payment alone of workers' compensation benefits to an injured employee interrupts prescription with regard to a worker's claim against third-party tortfeasors." The court held that it did not. The plaintiffs in *Gary* argued that La. R.S. 23:1209(A) could be interpreted to mean that payment of benefits by the employer interrupted prescription and was applicable to third-party tortfeasors. In reaching its conclusion, the court gave an analysis of 23:1209 and stated:

La. Rev. Stat. 23:1209 states that claims for workers' compensation benefits are subject to a one-year prescriptive period which commences to run at the time of the accident. *In cases where payments have been made by the employer or its insurer, Section 1209A further provides that the time limit for filing a claim for benefits does not expire until one year after the last payment.* Plaintiffs therefore argue that the payment of benefits by the employer in the present case interrupted prescription and that the interruption is applicable to the third-party tortfeasors because the employer and tortfeasors are solidary obligors. This court does not so construe Section 1209.

Section 1209 speaks to the filing of claims with the Office of Workers' Compensation (OWC) for medical expenses and compensation benefits and provides time periods for the filing of such claims in cases where benefits are not

jurisprudential exceptions to prescriptions in workers' compensation actions is estoppel, if the employee/claimant was "lulled into a false sense of security" by the employer/insurer and, thus, was induced to forego the filing of a claim until after the applicable prescriptive period had tolled. We further stated that it is not necessary for a claimant to prove that he/she was intentionally "lulled into a false sense of security" by the employer/insurer; but, rather, the claimant must establish that words, actions or inaction by the employer/insurer induced him to withhold filing suit. For these reasons, we reverse the trial court's decision.

CONCLUSION

_____ For the reasons set forth herein, the judgment of the trial court sustaining the Exception of Prescription of Defendant/Appellees, Shreveport Refrigeration, Inc. and Louisiana Retailers Association Self Insurers Fund, is reversed and the matter is remanded. Costs of this appeal are assessed to Shreveport Refrigeration, Inc. and Louisiana Retailers Association Self Insurers Fund.

REVERSED AND REMANDED.

voluntarily paid or are prematurely terminated. Section 1209 is applicable therefore to the initiation of workers' compensation claims with the OWC. It does not mention prescriptive periods in tort actions brought by an injured employee against a third-party tortfeasor. (Emphasis ours.)

We note that the case *sub judice* is distinguishable from *Gary, supra*, as here we do not have a unilateral, voluntary payment, but, rather, a payment by the employer via a valid contract (the Stipulation). Accordingly, the issue before this court is whether or not payment of lost wages and medical expenses by the tortfeasor's insurance company interrupts a workers' compensation claim.

CARAWAY, J., concurring.

I respectfully concur in the ruling.

The subject of the disputed provision in the parties' 1989 agreement was the so-called "credit" provided in the Workers' Compensation Act in Section 1103. La. R.S. 23:1103(A)(1). That law specifically addresses how the continuing obligation of the employer is dealt with when the injured employee receives a damage award for future lost wages from a third party tortfeasor. Before the 1989 agreement, this court in *Vallere v. Nicor Exploration Co.*, 512 So. 2d 514, 519 (La. App. 2d Cir. 1987), had explained the "credit," as follows:

Dresser's second assignment of error alleges that the district court erred in failing to award Dresser a credit against future liability for worker's compensation benefits in an amount equal to the excess of the plaintiff's recovery over Dresser's previously paid benefits, plus six percent per annum. Dresser, in raising this issue, relies upon La. R.S. 23:1103 (1958). R.S. 23:1103 provides, in pertinent part,

if the damages are more than sufficient to so reimburse the employer, the excess shall be assessed in favor of the injured employee or his dependent, and upon payment thereof to the employee or his dependent, the compensation due, computed at six percent per annum, shall be satisfied by such payment.

In accordance with the express language of R.S. 23:1103, Dresser is entitled to an equitable credit against liability for future worker's compensation benefits computed at six percent per annum. *Fontenot v. Hanover Insurance Company*, 385 So.2d 238 (La.1980); *Derouselle v. Konecny*, 468 So.2d 1382 (La. App. 1st Cir.1985). Dresser is, therefore, entitled to a credit in the amount of \$69,000.00 plus six percent per annum on the unexhausted balance until the entire credit is so exhausted.

Additionally, the case of *Billeaud v. U.S. Fidelity & Guaranty Co.*, 349 So.2d 1379 (La. App. 3d Cir. 1977), explained:

. . . it is clear that a compensation carrier is entitled to be reimbursed all it has actually paid out to the injured party as of the date the judgment becomes final. We are of the opinion that any excess of the award should be paid to the injured party. Thereafter, the compensation carrier should be given a credit on all sums it may come to owe in the future to, or on behalf of, the injured party up to the extent of payment of the tort recovery to the injured party. Until this excess is exhausted, the carrier should be obligated to make no further compensation payments or medical benefits. After exhaustion of the excess, if further compensation payments or benefits should become due, the carrier should then become obligated to resume payments.

This jurisprudence interprets Section 1103's "credit" in such a manner which recognizes the employer's continuing obligation for benefits that may be extant again after the depletion of the credit (plus 6% per annum).

Therefore, the very definition within the jurisprudence of the way the credit operates precludes the running of prescription until the credit depletes.

The contractual agreement between LRA and Rambin was incidental to their settlement with the tortfeasor. I would base my denial of the exception of prescription on the parties' use of the term "credit" which is defined in Section 1103. While the use of that term may prove to be a two-edged sword for the plaintiff in view of its 6% per annum provision, the operation of the credit as defined by the jurisprudence clearly prevents prescription.