

The Supreme Court of the State of Louisiana

DEMECIA KING

No. 2021-C-01897

VS.

TOWN OF CLARKS AND MAYOR CHAD  
COATES AND BOARD OF ALDERMAN,  
CHRISSY JOLLY, SHAWN GUINN, JASON  
MORRIS, MARGIE FISHER, PATSY FISHER IN  
THEIR OFFICIAL CAPACITY AND XYZ  
INSURANCE COMPANY

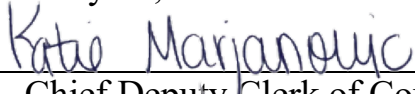
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IN RE: Demecia King - Applicant Plaintiff; Applying For Writ Of Certiorari, Parish  
of Caldwell, 37th Judicial District Court Number(s) 28,642, Court of Appeal,  
Second Circuit, Number(s) 53,987-CW;

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February 22, 2022

Writ application granted. See per curiam.

JDH  
JLW  
SJC  
JTG  
WJC  
JBM  
PDG

Supreme Court of Louisiana  
February 22, 2022

  
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Chief Deputy Clerk of Court  
For the Court

**SUPREME COURT OF LOUISIANA**

**No. 2021-C-01897**

**DEMECIA KING**

**VS.**

**TOWN OF CLARKS AND MAYOR CHAD COATES AND BOARD OF  
ALDERMAN, CHRISSY JOLLY, SHAWN GUINN, JASON MORRIS,  
MARGIE FISHER, PATSY FISHER IN THEIR OFFICIAL CAPACITY  
AND XYZ INSURANCE COMPANY**

**On Writ of Certiorari to the Court of Appeal, Second Circuit,  
Parish of Caldwell**



**PER CURIAM**

In a petition filed in August of 2016, the applicant, Demecia King, alleges that, in November of 2015, and again in March of 2016, her home was damaged when it was flooded by water from a nearby manhole. Thus, the petition was not prescribed on its face. Respondents filed a motion for summary judgment raising the defense of prescription. Specifically, respondents alleged that King's petition was filed almost four years after she became aware of earlier flooding, and that her claims were therefore prescribed. In support of their motion, respondents attached King's deposition, wherein she acknowledged that she had experienced other, prior flooding events, and testified that the flooding was the same each time there was a significant rainfall.

A motion for summary judgment is a procedural device used when there is no genuine issue of material fact for all or part of the relief prayed for by a litigant. LSA-C.C.P. art. 966(B)(2). As such, a motion for summary judgment should only be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to any material fact and the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(A)(3). A genuine issue is one about which reasonable persons could disagree. **Hines v. Garrett**, 04-0806 (La. 6/25/04), 876

So.2d 764, rehearing denied, 04-0806 (La. 9/24/04), 882 So.2d 1134. Only if reasonable persons could reach only one conclusion is summary judgment on that issue appropriate. A fact is “material” if it is one that would matter at a trial on the merits. **Suire v. Lafayette City–Parish Consol. Gov't**, 04–1459, 04–1460, 04–1466 (La. 4/12/05), 907 So.2d 37.

The burden of proof on a motion for summary judgment rests with the mover. If the mover will not bear the burden of proof at trial on the issue, however, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense. In such instance, the mover need only point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden then shifts to the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact, or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1).

It is not the function of the trial court on a motion for summary judgment to determine, or even inquire into, the merits of issues raised, or to weigh conflicting evidence of material fact. Rather, the court must view the record and all reasonable inferences to be drawn from it in the light most favorable to the nonmoving party. **Hines v. Garrett**, 876 So. 2d 764. Specifically, any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of trial on the merits. **Suire**, 907 So.2d 37. As such, this court has previously noted that, “[s]ummary judgment is seldom appropriate for determinations based on subjective facts, such as motive, intent, good faith, knowledge, and malice.” **Smith v. Our Lady of the Lake Hosp., Inc.**, 93–2512 (La. 7/5/94), 639 So.2d 730, 751; See also LSA-C.C.P. art. 966 and **Harrison v. Parker**, 31,844 (La. App. 2 Cir. 5/5/99), 737 So.2d 160.

The burden of proof is on the party pleading prescription. Only if prescription is evident on the face of the petition does the burden shift to the plaintiff to show that the action has not prescribed. **Carter v. Haygood**, 2004-0646 (La. 1/19/05), 892 So. 2d 1261, 1267. “Although typically asserted through the procedural vehicle of the peremptory exception, the defense of prescription may also be raised by motion for summary judgment.” **Hogg v. Chevron USA, Inc.**, 09-2632, 09-2635 (La. 7/6/10), 45 So.3d 991. “When prescription is raised by motion for summary judgment, review is *de novo*, using the same criteria used by the district court in determining whether summary judgment is appropriate. **Id.** In **Trahan v. BP America Production Company**, 2016-267 (La. App. 3 Cir. 12/7/16), 209 So.3d 166, the Third Circuit, quoting its prior decision in **Labbe Service Garage, Inc. v. LBM Distributors, Inc.**, 94-1043 (La. App. 3 Cir. 2/1/95), 650 So.2d 824, noted that:

[T]he filing of a motion for summary judgment based on the plea of prescription practically subjects the movers to a higher burden of proof than if the movers had filed only the peremptory exception of prescription. The burden of proof on the movers for summary judgment ... is particularly exacting in that they are required to prove, based solely on documentary evidence and without the benefit of testimony at a hearing, that there is no genuine material factual issue in dispute regarding the day upon which plaintiff acquired or should have acquired knowledge of the damage. On the other hand, pleading prescription alone subjects the exceptor to proving, by a preponderance of the evidence, that the plaintiff's claim has prescribed...At a hearing on the exception of prescription, the parties are allowed to call witnesses to testify and the factfinder is allowed to weigh credibility. On summary judgment, this is prohibited. See also, **Hogg**, 45 So.3d 991.

Respondents were therefore required to establish that no genuine issues of material fact were in dispute as to whether, in 2012, King was put on notice of the flooding that damaged her home in November of 2015 and March of 2016. It is noted, however, that for this argument to be successful, the court must also find that no disputed genuine issues of material fact exist as to whether all of the flooding events from 2012 to 2016 shared the same exact cause.

The only evidence the respondents presented to support their motion for summary judgment was King's deposition testimony. Specifically, wherein she described the floods as being the same type of overflow situation every time there was a heavy rainfall, respondents urged that all of the floods resulted from only one cause. Respondents alleged that King's claims for damages resulting from the November 2015 flood and the March 2016 flood had prescribed, since prescription began to run in 2012, when the first flooding event occurred.

As noted by the court of appeal, other evidence offered by King established that numerous repairs were made to the sewage system in 2016. The evidence further established that the town's sewage pump was damaged as the result of an areawide flood in March of 2016. For the damage caused by the flood, the town received a FEMA grant and used the money to replace the system's motor. Although the court of appeal correctly recognized that, if the record reflects that the floods experienced by the homeowner have different causes, each flood would be its own separate cause of action with a separate prescriptive period, and further properly acknowledged that, "these events may have precipitated a new source for the flooding to King's home and, thus, begun the running of prescription on a new cause of action," it nevertheless found in respondents' favor. However, because the evidence offered in support of and against the motion for summary judgment clearly reveals the presence of genuine issues of material fact, the court of appeal's judgment is erroneous and must be reversed. The trial court's judgment denying respondents' motion for summary judgment is reinstated, and this matter is remanded for further proceedings.

**REVERSED and REMANDED.**