

The Supreme Court of the State of Louisiana

MARY SANDERS

No. 2023-CC-01719

VS.

NEW ORLEANS AVIATION BOARD, ET AL.

IN RE: The City of New Orleans, by and through The New Orleans Aviation Board
- Applicant Defendant; Applying For Supervisory Writ, Parish of Orleans Civil,
Orleans Civil District Court Number(s) 2021-00720, Court of Appeal, Fourth
Circuit, Number(s) 2023-C-0672;

March 19, 2024

Writ application granted. See per curiam.

JLW
SJC
JTG
WJC
JBM

Hughes, J., dissents and would deny.
Griffin, J., dissents and would deny.

Supreme Court of Louisiana
March 19, 2024

Katio Marjanovic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2023-CC-01719

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VS.

NEW ORLEANS AVIATION BOARD, ET AL.

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans Civil

PER CURIAM

On January 25, 2021, plaintiff filed suit against the City of New Orleans, by and through the New Orleans Aviation Board (“City”) and its insurer, Ace Property and Casualty Insurance Company (“Ace”). Plaintiff alleged she was injured on January 26, 2020 when she slipped on a foreign substance in the Louis Armstrong New Orleans International Airport.

The City filed a Declinatory Exception of Insufficiency of Service of Process, asserting that plaintiff failed to request service of the petition within ninety days as required by La. R.S. 13:5107(D). The district court granted the City’s exception on February 17, 2022, dismissing the plaintiff’s claims against the City without prejudice.

On February 15, 2023, plaintiff filed a First Supplemental and Amending Petition for Damages adding the City as a defendant to the original suit that was still pending against Ace. As in the original petition, plaintiff alleged that the City was a joint and solidary obligor with Ace.

The City filed a peremptory exception of prescription, arguing that plaintiff’s claims were prescribed on their face because they were brought over three years after the January 2020 accident. Citing La. R.S. 13:5107(D)(3), the City asserted that because it had been previously dismissed due to insufficient service, the action could not interrupt or suspend the running of prescription against the City.

The district court denied the City's exception. The court of appeal denied the City's application for supervisory writs, with one judge dissenting. The City now seeks review in this court.

Plaintiff argues interruption of prescription is governed by La. Civ. Code articles 1799 and 3503, which provide interruption of prescription against one solidary obligor is effective against all solidary obligors. For purposes of prescription, the City is solidarily liable with its insurer, Ace. *Baker v. Payne and Keller of Louisiana, Inc.*, 390 So.2d 1272 (La. 1980). Therefore, plaintiff takes the position the timely filed suit against Ace serves to interrupt prescription as to the City, notwithstanding the City's prior dismissal without prejudice.

However, the City asserts La. R.S. 13:5107 is the specific statute governing service and interruption of prescription for suits against a political subdivision such as the City. The district court previously found that plaintiff failed to comply with the service requirements and dismissed her claims against the City without prejudice. Subsection (D)(3) of the statute governs interruption of prescription under such circumstances:

When the state, a state agency, or a political subdivision, or any officer or employee thereof, is dismissed as a party pursuant to this Section, the filing of the action, **even as against other defendants, shall not interrupt or suspend the running of prescription as to the state, state agency, or political subdivision, or any officer or employee thereof;** however, the effect of interruption of prescription as to other persons shall continue. [emphasis added]

In *Davis v. State through Louisiana Racing Comm'n*, 2020-01020 (La. 3/13/21), 320 So.3d 1028, we held that the specific provisions of La. R.S. 13:5107(D)(3) controlled over the general codal articles governing interruption of prescription. A plain reading of La. R.S. 13:5107(D)(3) reveals that when, as here, the political subdivision is dismissed as a party, the filing of the suit "even as against other defendants" shall not interrupt or suspend the running of prescription as to the

political subdivision. By use of this language, the legislature unequivocally rejected the idea that the pendency of the suit against other solidarily liable defendants would serve to interrupt prescription as to a political subdivision which had been dismissed due to a plaintiff's failure to properly request service.

Any other interpretation would frustrate the intent of the statute. As we observed in *Davis*, "plaintiff's interpretation would largely eviscerate any consequences for failing to comply with the 90-day service requirement, permitting the plaintiff to make an end-run around the legislative prerogative to require service on the state as set forth in the statute, and render meaningless the purpose of the statute in the Governmental Claims Act." *Id.* at 1035.

Accordingly, we find the district court erred in denying the City's exception of prescription. That judgment must be reversed.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed, and the peremptory exception of prescription filed by the City of New Orleans, by and through the New Orleans Aviation Board, is granted.