

SUPREME COURT OF LOUISIANA

No. 98-C-1805

DANATUS NORMAN KING

Versus

PHELPS DUNBAR, L.L.P., DANNY SHAW, HARRY ROSENBERG
AND ROY CHEATWOOD

LEMMON, J., Concurring

The prescription issue in this case is controlled by the decision in Bustamento v. Tucker, 607 So. 2d 532 (La. 1992). In Bustamento, in which continuous sexual harassment of the plaintiff by a co-employee over a period of time allegedly caused a hostile work environment, this court held that “when the acts or conduct are continuous on an almost daily basis, by the same actor, of the same nature, and the conduct becomes tortious and actionable because of its continuous, cumulative, synergistic nature, then prescription does not commence until the last act occurs or the conduct is abated.”¹ Id. at 542.

In the present case, plaintiff in his pleadings alleged a continuous course of conduct by agents of his employer which continued and cumulated over a period of time that lasted until his resignation. Plaintiff’s cause of action, under Bustamento, clearly was not prescribed on the face of the pleadings, and defendant had the burden of proving its exception of prescription. Defendant did not meet its burden on the trial

¹A tort committed by a continuous course of conduct over a period of time is distinguishable from several separate torts committed over a period of time. In the latter case, prescription generally begins to run from the commission of each separate tort, and only those separate torts which are committed within one year of filing of suit are not prescribed.

of the exception,² but possibly may do so at the trial on the merits, at which time it may reurge its exception.

²Because the exception and the merits are so factually intertwined, the exception probably should have been referred to the merits.