The Supreme Court of the State of Louisiana

LETTIE CARUSO

No.2020-CC-00327

VS.

RODNEY WOOTEN AND ARCH INSURANCE COMPANY

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IN RE: Rodney Wooten, et al. - Applicant Defendant; Arch Insurance Company - Applicant Defendant; Applying For Supervisory Writ, Parish of Calcasieu, 14th Judicial District Court Number(s) 2019-000696, Court of Appeal, Third Circuit, Number(s) CW 19-00746;

_ _ _ _ _ _

June 03, 2020

Writ application granted. See per curiam.

BJJ

JLW

SJC

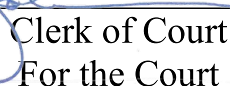
JTG

WJC

JHB

Hughes, J., would deny.

Supreme Court of Louisiana
June 03, 2020



Clerk of Court
For the Court

06/03/20

SUPREME COURT OF LOUISIANA

NO. 2020-CC-0327

LETTIE CARUSO

v.

RODNEY WOOTEN & ARCH INSURANCE COMPANY

ON SUPERVISORY WRIT TO THE FOURTEENTH JUDICIAL DISTRICT COURT, PARISH OF CALCASIEU

PER CURIAM

On March 20, 2017, plaintiff, a Texas resident, was involved in an automobile accident with Rodney Wooten, a Louisiana resident, in Dayton, Texas. Nearly two years later, on February 8, 2019, plaintiff filed the instant suit in Louisiana against Mr. Wooten and his insurer, Arch Insurance Company.[1] In her petition, plaintiff alleged the suit was governed by Texas law, which applied a two-year statute of limitations to such actions.

Defendants filed an exception of prescription, arguing plaintiff's suit was prescribed on its face. The district court denied the exception, and the court of appeal denied writs, with one judge dissenting. Defendants now seek relief in this court.

As a general rule, La. Code Civ. P. art. 3549(B) provides, "[w]hen the substantive law of another state would be applicable to the merits of an action brought in this state, the prescription and peremption law of this state applies. . . ." However, the article provides an exception in subsection B(1) as follows:

> (1) If the action is barred under the law of this state, the action shall be dismissed unless it would not be barred in the state whose law would be applicable to the merits and

[1] Plaintiff later amended her suit to include Mr. Wooten's employer, Performance Contractors, Inc., a Louisiana corporation doing business in Calcasieu Parish.

> maintenance of the action in this state is warranted by compelling considerations of remedial justice.

The first requirement of the exception is satisfied here, as the parties acknowledge this case is governed by Texas law and would be timely under the two-year statute of limitations applicable to such actions under Texas law. Instead, the dispute turns on the second requirement – namely, whether maintenance of the action in this state is warranted by compelling considerations of remedial justice.

Official Revision Comment (f) discusses this requirement as follows:

> The second necessary prerequisite to the application of the exception is that "maintenance of the action in this state is warranted by compelling considerations of remedial justice." This language is borrowed from the 1987 Revision of § 142 of the Restatement, Second, of Conflict of Laws. The examples given by the Restatement are pertinent to the application of this provision and illustrate its exceptional character. **These examples refer to cases where "through no fault of the plaintiff an alternative forum is not available as, for example, where jurisdiction could not be obtained over the defendant in any state other than the forum or where for some reason a judgment obtained in the other state having jurisdiction would be unenforceable in other states . . . also situations where suit in the alternative forum, although not impossible would be extremely inconvenient for the parties."** Restatement (Second) of Conflict of Laws, 1986 Revisions, § 142 comment f (Supp. March 31, 1987). As might be surmised from the initial phrase of the quotation, none of these examples should be seen as requiring the forum to entertain an action solely because it is time-barred in all or most other states. The disapproving reference to *Keeton v. Hustler*, 465 U.S. 770 (1984), as an "egregious example of forum shopping" in the comments to this section of the Restatement leaves little doubt that the plaintiff's own procrastination is not likely to ever make his case compelling enough to reach the threshold of this exception. [emphasis added].

The few reported cases interpreting this requirement of La. Civ. Code art. 3549 have limited its application to situations where facts beyond the plaintiff's control prevented the plaintiff from bringing the suit in another forum. *See McGee v. Arkel*

Int'l, LLC, 671 F.3d 539, 549 (5th Cir. 2012) (finding maintenance of an action in Louisiana which was governed by Iraqi law and timely under that country's law was "warranted by compelling considerations of remedial justice" because of the challenges of bringing it in Iraq); *Smith v. ODECO (UK), Inc.*, 615 So.2d 407, 410 (La. App. 4th Cir.), *writ denied*, 618 So.2d 412 (La. 1993) (explaining "[i]n the absence of an alternative forum in which there is jurisdiction over all defendants, 'compelling considerations of remedial justice' exist which warrant maintenance of this suit in Louisiana.").

In the case before us, plaintiff has not set forth any compelling reasons why she could not have brought her suit in Texas. Plaintiff has not shown any facts which indicate the Texas courts would have lacked jurisdiction over this case.[2] Although she suggests it may have been "extremely inconvenient" for the parties to litigate the matter in Texas, she has produced no support for this assertion, especially in light of the fact plaintiff herself is a Texas resident. Even assuming a Texas forum may have caused some inconvenience to the Louisiana defendants, this impact clearly pales in comparison to the situation in *McGee*, 671 F.3d at 549, where the court explained the alternate forum, Iraq, was a country which "might reasonably be avoided as a desirable forum in which Americans can litigate."

In summary, we find plaintiff failed to establish the "maintenance of the action in this state is warranted by compelling considerations of remedial justice" as

[2] Plaintiff also asserts she would be prejudiced if she was forced to bring her suit in Texas because a direct action against the defendants' insurer would not have been available in Texas. However, our jurisprudence has consistently held "[t]he direct action statute does not create an independent cause of action against the insurer, it merely grants a procedural right of action against the insurer where the plaintiff has a substantive cause of action against the insured." *Descant v. Administrators of Tulane Educ. Fund*, 93-3098 (La. 7/5/94), 639 So.2d 246, 249; *Dumas v. United States Fidelity & Guaranty Co.*, 241 La. 1096, 1117, 134 So.2d 45, 52 (1961); *Ruiz v. Clancy*, 182 La. 935, 950, 162 So. 734, 738 (1935).

required by La. Civ. Code art. 3549(B)(1). Accordingly, the district court erred in overruling defendants' exception of prescription. That judgment must be reversed.

DECREE

For the reasons assigned, the judgment of the district court is reversed. The exception of prescription is sustained, and plaintiff's action is dismissed with prejudice.