

The Supreme Court of the State of Louisiana

PHYLLIS WILSON

No. 2023-CC-01320

VS.

LOUISIANA CITIZENS
PROPERTY INSURANCE
CORPORATION

IN RE: Louisiana Citizens Property Insurance Corporation - Applicant Defendant;
Applying For Supervisory Writ, Parish of Calcasieu, Lake Charles City Court
Number(s) 23-157 - DIV. B, Court of Appeal, Third Circuit, Number(s) CW 23-
00391;

January 10, 2024

Writ application granted. See per curiam.

PDG

JLW

JDH

SJC

JTG

WJC

JBM

Supreme Court of Louisiana
January 10, 2024



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA**No. 2023-CC-01320****PHYLLIS WILSON****VS.****LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION****On Supervisory Writ to the Lake Charles City Court, Parish of Calcasieu****PER CURIAM**

On January 9, 2023, plaintiff filed the instant suit against her insurer, Louisiana Citizens Property Insurance Corporation (“Citizens”). Plaintiff seeks to recover penalties pursuant to La. R.S. 22:1892 and La. R.S. 22:1973 based on Citizens’ alleged failure to timely tender payments for losses which occurred on August 27, 2020 and October 20, 2020. Citizens filed an exception of prescription, asserting the suit was filed in violation of its policy which provided “[n]o action can be brought unless the policy provisions have been complied with and **the action is started within two years after the date of loss.**” [emphasis added].

The trial court denied the exception, and the court of appeal denied Citizens’ application for writs. Citizens now seeks relief in this court.

In arguing her suit is timely, plaintiff relies on *Smith v. Citadel Ins. Co.*, 2019-00052 (La. 10/22/19), 285 So.3d 1062, for the proposition that an insurer’s bad faith actions constitute a breach of its contractual obligation and is therefore subject to a ten-year prescriptive period. However, *Smith* is factually distinguishable from the instant case because it did not involve an insurance policy which contained a contractual limitation on institution of suits by the insured.

In *Taranto v. Louisiana Citizens Prop. Ins. Corp.*, 2010-0105 (La. 3/15/11), 62 So.3d 721, 728, we recognized that “in the absence of a statutory prohibition, a clause in an insurance policy fixing a reasonable time to institute suit is valid.” There

is no statutory prohibition which would preclude an insurer from adopting a two-year limitation on the institution of a first-party suit based on breach of good faith duties. To the contrary, La. R.S. 22:868(B) expressly provides that no policy “shall contain any condition, stipulation, or agreement limiting right of action against the insurer **to a period of less than twenty-four months** next after the inception of the loss when the claim is a first-party claim” [emphasis added]. The two-year limitation in the Citizens’ policy is consistent with this statute.

Because plaintiff’s suit was filed more than two years from the date of her loss, the claim is prescribed. The lower courts erred in denying Citizens’ exception of prescription.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the trial court is reversed. The exception of prescription is sustained and plaintiff’s suit against Louisiana Citizens Property Insurance Corporation is dismissed with prejudice.