NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 2006

JANICE M. HORNOT

VERSUS

STEPHEN R. WILSON AND JOHN R. KEOGH

Judgment Rendered: June 8, 2007.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 536,686

Honorable Timothy E. Kelley, Judge Presiding

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and
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Stephen R. Wilson,
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Counsel for Defendants/Appellees,
John R. Keogh and Stephen R. Wilson

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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

CARTER, C. J.

This litigation stems from a 1994 settlement agreement between the law firm of Keogh, Cox & Wilson, certain of its members, and Janice Hornot, an attorney formerly employed with the law firm. Pursuant to the settlement agreement, a sum of money was paid to Hornot. The law firm then issued Hornot a Form 1099 for tax year 1994. Hornot maintains that the law firm's failure to pay applicable taxes on the settlement funds constitutes a breach of the settlement agreement.

On September 28, 2005, Hornot instituted suit against Stephen R. Wilson and John R. Keogh, both members of the law firm and parties to the 1994 settlement agreement, alleging breach of the 1994 contract, as well as alleging causes of action for negligence, fraud, and intentional interference with a contract.[1] The trial court sustained the defendants' peremptory exception raising the objection of prescription and dismissed Hornot's suit.[2] Hornot now appeals contending the trial court denied her an adequate opportunity to present her case, and further erred in holding that the cause of action for breach of contract was prescribed.[3]

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[1] Hornot previously filed suit against the law firm seeking damages relating to the unpaid taxes on the settlement funds. That suit was dismissed as prescribed by judgment dated March 22, 2005. Hornot filed a motion and order for appeal, but the record does not reflect any further action. In arguments before the trial court, defense counsel indicated that Hornot has filed a separate action alleging that the March 2005 judgment is a nullity, having been obtained by fraud and/or ill practices.

[2] Subsequent to rendering the judgment sustaining the peremptory exception raising the objection of prescription, the trial court sanctioned Hornot pursuant to LSA-C.C.P. art. 863. The appeal of the judgment imposing sanction is addressed in the companion case of **Hornot v. Stephen R. Wilson and John R. Keogh**, 06-2382 (La. App. 1 Cir. _____) (unpublished).

[3] Hornot's complaints on appeal are specifically limited to the trial court's ruling on her breach of contract claims.

We find no error in the manner that the trial court conducted the hearing on the exception of prescription. The trial court and Hornot discussed a motion to continue, and the trial court did continue the hearing on a motion for sanctions pursuant to LSA-C.C.P. art. 863, which was also set that date. The trial court engaged in a lengthy colloquy with Hornot, who was representing herself at the hearing, and accepted into evidence all of the parties' exhibits. Hornot did not object or indicate she wished to put on further evidence.[4] Thus, we find no error.

We also find no error in the trial court's ruling on the issue of prescription. A cause of action for breach of contract is subject to a ten-year prescriptive period. LSA-C.C. art. 3499. The payment to Hornot described in the agreement was made by check dated September 1, 1994. If the payment did not comport with the terms of the agreement, then the breach occurred on that date.[5] Thus, this suit, filed September 28, 2005, is prescribed.

Considering the foregoing, the judgment appealed from is affirmed. Costs of this appeal are assessed to Janice M. Hornot. This memorandum opinion is issued in compliance with URCA Rule 2-16.1.B.

AFFIRMED.

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[4] We note that Hornot did request an opportunity to respond to defense counsel's argument. However, we find no error in the trial court's decision to limit the argument of counsel.

[5] On appeal, Hornot advances a *contra non valentem* argument, contending she did not learn of the breach of contract until late 1995, when the law firm sent her a letter indicating they did not and would not pay taxes on the payment under the contract. We find no merit to this argument. A plaintiff is deemed to know what he could have learned by reasonable diligence. **Tramontin v. Tramontin**, 04-2286 (La. App. 1 Cir. 12/22/05), 928 So.2d 29, 32, writ denied, 06-0155 (La. 5/26/06), 930 So.2d 20.