NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1144

RICHARD D. SUDDUTH

VERSUS

THE BOARD OF SUPERVISORS FOR THE UNIVERSITY OF LOUISIANA SYSTEM, THE UNIVERSITY OF LOUISIANA AT LAFAYETTE

Judgment Rendered: December 22, 2010

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On Appeal from the 19th Judicial District Court
In and for the Parish of East Baton Rouge
Docket No. 511,926, Division F, Section 22
Honorable Timothy E. Kelley, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Guidry, J. concurs.

HUGHES, J.

This is an appeal from a judgment of the district court granting defendants'/appellees' exception raising the objection of prescription and dismissing plaintiff's/appellant's suit, with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

By letter dated March 12, 1999, Richard D. Sudduth was offered the position of Senior Plastics Researcher at the University of Southwestern Louisiana (the university) on a "Tenure Track." The policies and procedures of the university define a tenure-track appointment as:

> Tenure-track appointments are for regular full-time faculty with academic rank of Assistant Professor or higher. These appointments require faculty members to serve a probationary period of employment before a consideration for tenure is made. **Tenure-track appointments shall not create any manner of legal right, interest, or expectancy of renewal** or any other type of appointment, and shall be subject to annual renewal by the University. (Emphasis added.)

Mr. Sudduth accepted the offer by letter dated April 5, 1999. Thereafter, Mr. Sudduth's "appointment form," dated April 12, 1999, provided that Mr. Sudduth's tenure probationary period was to be seven years, with a mandatory review in the fall of the sixth year.

Mr. Sudduth began his employment on May 17, 1999 and on September 29, 2000, Mr. Sudduth was given written notice that the 2000-2001 academic year would be a terminal appointment with the university and his last day of employment would be May 12, 2001.

On September 19, 2003, Mr. Sudduth filed a petition for damages alleging that he was wrongfully terminated and was entitled to damages. Defendants filed a motion for summary judgment and also pled the exceptions of no cause of action and prescription. The trial court initially allowed Mr. Sudduth to amend his

petition, but ultimately dismissed his claims, with prejudice, as prescribed. This appeal followed.

LAW AND ANALYSIS

The trial court sustained the university's exception raising the objection of prescription. Normally, the exceptor bears the burden of proof regarding his exception; however, if the exception of prescription is raised and prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show suspension, interruption, or renunciation. **SS v. State ex rel. Dept. of Social Services**, 2002-0831 (La. 12/4/02), 831 So.2d 926, 931 (*citing* **Lima v. Schmidt**, 595 So.2d 624, 628 (La. 1992)). That proof must be clear, specific, and positive. **Unlimited Horizons, L.L.C. v. Parish of East Baton Rouge**, 99-0889 (La. App. 1st Cir. 5/12/00), 761 So.2d 753.

A claim for wrongful discharge or termination is a delictual action subject to the one-year prescriptive period provided for in LSA-C.C. art. 3492. This prescriptive period commences to run from the day injury or damage is sustained. LSA-C.C. art. 3492.

In this case, while the date of notice of termination or actual termination were not included in Mr. Sudduth's original or amended petitions, the relevant dates was contained in the affidavits and other evidence submitted by the defendants in connection with the motion for summary judgment. As such, while it may not have been clear on the face of the pleadings that Mr. Sudduth's claim was prescribed, the evidence submitted shifted the burden to Mr. Sudduth to prove that prescription had been interrupted or suspended. Specifically, the evidence showed that Mr. Sudduth was given written notice on September 29, 2000 and his last day of employment with the university was May 12, 2001. Mr. Sudduth did not file suit for damages arising from his termination until September 19, 2003. As

such, prescription seemed evident and the burden shifted to Mr. Sudduth to prove otherwise.

Mr. Sudduth claims that prescription was suspended under the theory of *contra non valentum*. *Contra non valentem* is a judicially-created doctrine which has been applied to prevent the running of prescription in four distinct situations:

> (1) where there was some legal cause which prevented the courts or their officers from taking cognizance of or acting on the plaintiff's action;
>
> (2) where there was some condition coupled with the contract or connected with the proceedings which prevented the creditor from suing or acting;
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> (3) where the debtor himself has done some act effectually to prevent the creditor from availing himself of his cause of action; and
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> (4) where the cause of action is not known or reasonably knowable by the plaintiff, even though his ignorance is not induced by the defendant.

Plaquemines Parish Commission Council v. Delta Development Co., Inc., 502 So.2d 1034, 1054-56 (La. 1987); **Corsey v. State Dept. of Corrections,** 375 So.2d 1319, 1321-22 (La. 1979).

Mr. Sudduth does not dispute that the first three situations are not applicable to this case. We therefore only address whether prescription was prevented from running on Mr. Sudduth's cause of action due to the fact that the cause of action was not known and could not have been reasonably knowable by Mr. Sudduth. It appears that Mr. Sudduth assumes that the university was required to show cause for his discharge. However, unless specifically contracted otherwise, LSA-C.C. article 2747[1] sets forth Louisiana's default "at will" employment policy. Generally, an employer is free to dismiss an employee at any time, for any reason, without liability and vice versa. See LSA-C.C. art. 2747; **Sanchez v. Georgia**

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[1] Article 2747 states:

> A man is at liberty to dismiss a hired servant attached to his person or family, without assigning any reason for so doing. The servant is also free to depart without assigning any cause.

Gulf Corporation, 2002-0904 (La. App. 1st Cir. 11/12/03), 860 So.2d 277, 280, writ denied, 2004-0185 (La. 4/2/04), 869 So.2d 877.

The evidence clearly establishes that Mr. Sudduth was an "at will" employee, albeit on a "tenure track." As such, the university was free to discharge Mr. Sudduth at any time. While the law does provide a few exceptions to that general rule *(i.e.*, an employee cannot be terminated because of his race, sex, or religious beliefs), Mr. Sudduth does not allege that his termination was based upon any of those discriminatory grounds. See 42 U.S.C. 2000(e); 42 U.S.C. 1981; LSA-R.S. 23:301, *et seq.* Absent any alleged discrimination, the university's reason for terminating Mr. Sudduth's employment is of no consequence. Moreover, the offer and acceptance of employment clearly indicates that while Mr. Sudduth was on a tenure track, he did not have "any manner of legal right, interest, or expectancy of renewal" and was required to complete a seven-year probationary period with a mandatory review in the sixth year before he would be considered for tenure. Until then, he remained an "at will" employee. Mr. Sudduth's claims for wrongful termination on May 12, 2001 were clearly prescribed at the time he filed his petition on September 19, 2003. We find no error in the trial court's judgment dismissing his claims.

CONCLUSION

For the reasons assigned herein, the judgment of the district court is affirmed. Costs of this appeal are assessed against plaintiff/appellant, Richard Sudduth.

AFFIRMED.