

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 1437

EDWIN BEDFORD

VS.

DOLGENCORP, INC., D/B/A DOLLAR GENERAL STORE

JUDGMENT RENDERED: FEBRUARY 9, 2007

ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 2002-12447, DIVISION D
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE PETER J. GARCIA, JUDGE

GARY W. BIZAL
NEW ORLEANS, LA

COUNSEL FOR PLAINTIFF/APPELLANT
EDWIN BEDFORD

FRANCIS R. WHITE, III
COVINGTON, LA

COUNSEL FOR DEFENDANTS/APPELLEES
PATRICK S. BRACKLEY AND
WILLIAM BRACKLEY TRUST

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

Carter, C.J. concurs.

MCDONALD, J.

The plaintiff in this matter, Edwin Bedford (Bedford), appeals a judgment of the Twenty-Second Judicial District Court granting a peremptory exception of prescription on behalf of defendants, Patrick S. Brackley and the William Brackley Trust.¹ For the following reasons, we affirm the judgment.

Bedford owns property in Mandeville, Louisiana from which he conducts an automobile repair service. On June 6, 2001 he sustained extensive flood damage to the property. On May 17, 2002 Bedford filed a petition for damages against Dolgencorp, Inc., D/B/A Dollar General Store (Dolgencorp) alleging that the defendant's construction of a building at 1000 Gerard St., Mandeville, Louisiana resulted in flood damage to his property, clean-up expense, and permanent diminution of the property's value.

Dolgencorp's answer to this petition (filed on behalf of Dolgencorp, Inc. d/b/a Dollar General) asserted, inter alia, that Dollar General Store was not a proper party defendant; that the plaintiff had no cause of action against Dollar General; that neither Dollar General nor any person for whom Dollar General had legal responsibility caused the alleged damage; and admitted that Dollar General was the Lessee of the premises located at 1000 Gerard Street, Mandeville, Louisiana.

Thereafter, on February 26, 2003, Dolgencorp filed a motion for summary judgment, with which was submitted a statement of undisputed material facts. Submitted as facts were that the plaintiff claims damages due to the elevation of Dolgencorp's property; that Dolgencorp is not the owner

¹ A peremptory exception of prescription was also granted on behalf of defendant. Brackley Construction, Inc. An appeal of that judgment was also taken, and decision on that appeal is also rendered today. *Bedford v. Dolgencorp, Inc.*, 2006-0776 (La. 1st Cir. 2/9/07)(unpublished).

of the building at 1000 Gerard Street; that the building at 1000 Gerard Street was not constructed by Dollar General or anyone for whom it had legal responsibility; and that Dollar General is the lessee of the property located at 1000 Gerard Street. The trial court granted Dolgencorp's motion for summary judgment. The judgment was appealed, and affirmed by this court.²

On March 24, 2003, Bedford filed a first supplemental and amended petition naming Patrick S. Brackley and the William Brackley Trust (collectively referred to as Brackley) as additional defendants. Brackley filed a peremptory exception of prescription, which was considered by the trial court in conjunction with an exception of prescription filed on behalf on Brackley Construction, Inc. However, it was later determined that the exception on behalf of the Brackley defendants was not properly before the court. The issues and arguments on behalf of Brackley and on behalf of Brackley Construction are the same. The matter was submitted to the trial court on briefs, and written reasons for judgment were issued finding that the claims had prescribed. Judgment was signed accordingly and was timely appealed.

Bedford maintains in this appeal, as he did in the trial court, that the amended petitions relate back to the filing of the original petition, May 17, 2001, and therefore, the claim has not prescribed. All parties correctly assert that the courts' decisions in this matter are governed by the four factors set forth in *Ray v. Alexandria Mall*, 434 So.2d 1083 (La. 1983) for determination of when an amended petition relates back to the filing of the original petition as provided in La. C.C.P. art. 1153.

² *Bedford v. Dolgencorp, Inc.* 2004 - 0912 (La. App. 1st Cir. 5/6/05), 903 So.2d 21 (Table)(Unpublished).

These factors were evidently evaluated by the trial judge who found that “the evidence is insufficient to find that the movers received notice of the pending lawsuit prior to the running of prescription or, given that lack of notice, that they knew or should have known that but for a mistake [in] concerning the identity of the proper party defendants, the action would have been filed against them.” We have carefully examined the record in this matter, and find no error on the part of the trial court. Therefore, the judgment appealed is affirmed, and this opinion is issued in accordance with Uniform Rules, Courts of Appeal Rule 2-16.1 B. Costs are assessed to Edwin Bedford.

AFFIRMED.