

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-44

CALVIN SCHNYDER

VERSUS

WHOLE FOOD COMPANY, INC.

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 864-567, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

October 21, 2026

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Scott U. Schlegel

AFFIRMED

FHW
SJW
SUS



COUNSEL FOR PLAINTIFF/APPELLANT,
CALVIN SCHNYDER

Pius A. Obioha
Mari T. Bartholomew
Travis L. Hull

COUNSEL FOR DEFENDANT/APPELLEE,
WHOLE FOOD COMPANY, INC.

Steven F. Griffith, Jr.
Kristen L. Hayes
William E. Wildman, III

WICKER, J.

Plaintiff Calvin Schnyder appeals the trial court's August 21, 2025 judgment sustaining Defendant Whole Food Company, Inc.'s exception of prescription and dismissing Plaintiff's claims with prejudice, as well as the November 4, 2025 judgment denying Plaintiff's motion for new trial and to vacate judgment. For the reasons that follow, we affirm the trial court's judgments.

FACTS AND PROCEDURAL HISTORY

Plaintiff alleges he was injured by an automatic sliding door at Whole Foods located in Metairie, Louisiana. He filed suit on May 6, 2025, claiming that the accident occurred on May 6, 2024. The next month, on June 23, 2025, Defendant filed a peremptory exception of prescription, asserting that the accident had actually occurred on May 3, 2024 instead of May 6, 2024, making Plaintiff's suit untimely because his claims prescribed before he filed suit on May 6, 2025.¹ In support of its exception, Defendant attached three exhibits: (1) a Whole Foods' incident report listing the accident as having happened on May 3, 2024 at 10:39 a.m., which was completed using information supplied by Plaintiff; (2) a May 4, 2024 internal email circulating the incident report to the Whole Foods' store leadership; and (3) a photograph of Plaintiff's injured arm with metadata indicating that the photo was taken on May 3, 2024 at 10:47 a.m. The exception came for hearing before the trial court on August 13, 2025. During the hearing, all of Defendant's exhibits were admitted into evidence *without objection* from Plaintiff.

¹ At the time of Plaintiff's accident in May 2024, the one-year prescriptive period provided under La. C.C. art. 3492 was in effect. Following the accident, Act 2024, No. 423 repealed La. C.C. art. 3492 and replaced it with La. C.C. art. 3493.1, which extended the prescriptive period to two years. The new article, however, did not take effect until July 1, 2024. As a result, Article 3492's one-year prescriptive period applies to this case. Furthermore, because the last day of the period for Plaintiff's claim fell on May 3, 2025—a Saturday—the prescriptive period ran through Monday, May 5, 2025. *See* La. C.C.P. art. 5059A.

Plaintiff opposed Defendant's exception and submitted four exhibits: (1) a September 16, 2024 letter of representation from Plaintiff's counsel to Defendant; (2) the certified mail receipts for that letter; (3) an October 1, 2024 email from Defendant's claims adjuster to Plaintiff's counsel acknowledging receipt of the representation letter; and (4) a December 1, 2024 email from Plaintiff's counsel to his own staff forwarding a message from a third party. Defendant objected only to the admission of Plaintiff's fourth exhibit (the December 1, 2024 email), on the basis that the email was an unrelated third-party communication. During the hearing, the trial court overruled Defendant's objection and admitted all of Plaintiff's exhibits into evidence.

In opposing Defendant's exception, Plaintiff argued that, although he had requested a copy of the incident report, Defendant repeatedly refused to provide it to him. The evidence admitted during the hearing, however, showed that Plaintiff had made only one pre-suit request for the report, seven months before suit was filed. Plaintiff produced no evidence demonstrating that he made any other requests during that time. Moreover, the record contained no evidence showing that Defendant refused to provide Plaintiff a copy of the requested report much less that Defendant repeatedly refused to do so. Further opposing Defendant's exception, Plaintiff also argued that he attempted to confirm the accident date with Defendant in his letter of representation; but the letter admitted into evidence stated only that the accident had occurred "between May 3 and May 6." Nowhere in the letter did Plaintiff request that Defendant confirm the date of loss.

After considering the evidence, the trial court ruled from the bench, as follows:

The Court is also going to grant the Exception of Prescription. The Court finds that the incident occurred on September, I'm sorry, May 3rd, 2024. The suit was filed on May 6th, 2025 and that the matter is prescribed, and grant the Exception of Prescription at this time.

The trial court signed a written judgment on August 21, 2025, dismissing Plaintiff's claims with prejudice. Notice of judgment was issued on August 22, 2025.

Plaintiff timely filed a motion for new trial and to vacate judgment but attached no evidence, stating only that he "intended" to submit exhibits. Defendant opposed the motion, arguing that Plaintiff raised no new grounds warranting relief. On September 23, 2025—one month after filing his motion and one month beyond the seven-day deadline²—Plaintiff filed a supplemental memorandum with new affidavits attached. The first affidavit was from Plaintiff, asserting that his counsel's firm had internet issues more than a year *before the accident*, which prevented him from timely filing suit. Plaintiff also claimed in his affidavit that Defendant repeatedly refused to provide him with a copy of the incident report, and that he now believes that Defendant falsified the report. Plaintiff further stated in his affidavit that, although unsure of the accident date at the time he filed suit, he now recalls the accident "clearly" occurring on May 6, 2024.

The second affidavit submitted by Plaintiff is from his counsel's IT specialist, who attests that the law firm experienced internet service issues of an unspecified nature at an unspecified time. The IT specialist did not specify the nature, circumstances, or causes of the claimed internet service issues, nor did he provide the date or dates when the internet service issues allegedly occurred. Defendant opposed Plaintiff's supplemental filing and affidavits as untimely. Thereafter, Plaintiff filed a reply memorandum and attached thereto an amended affidavit which he states is necessary to correct the date that he had provided in his original affidavit specifying when his counsel's firm allegedly experienced internet service issues that prevented him from timely filing suit from April–May 2024 to May 2025.

² La. C.C.P. art. 1974 provides that: "A party may file a motion for a new trial not later than seven days, exclusive of legal holidays, after the clerk has mailed or delivered in open court, or the sheriff has served, the notice of judgment as required by Article 1913."

During the November 3, 2025 hearing on Plaintiff's motion for new trial, Defendant argued that Plaintiff could not reasonably rely on its claims adjuster's correspondence referencing a May 6 date of loss, because he "[had] to do [his] due diligence . . . Plaintiff was there, he was the one who was injured. He should have known the date." In response, Plaintiff's counsel argued that counsel had acted diligently by requesting the incident report and surveillance footage from Defendant. Thereafter, the following exchange between counsel and the trial court ensued:

MS. BARTHOLOMEW: [A] *part of that due diligence was our letter of representation* where we requested an incident report. *That was our due diligence*, to conform [sic] the date. We requested the surveillance videos and requested a report. If the Defendant knew, and they are so certain in arguing that the [accident] date was May 3, why disclose that date [in] the exception? Two separate correspondence letters byway of email were sent to the Plaintiff's attorney. Both of those letters represented the date of May 6 as the date of loss. The Defendants had the opportunity to provide - -

THE COURT: Let me stop you. Are you referring to your September 16, 2024 letter?

MS. BARTHOLOMEW: Yes.

* * *

THE COURT: [S]o you still had between September, *you still had seven months to file the lawsuit and for some reason somebody waited until May 6. Is that correct?*

MS. BARTHOLOMEW: *That's correct*, Your Honor.

THE COURT: All right. Motion for New Trial and Motion to Vacate are denied . . .

* * *

MS. BARTHOLOMEW: [May] we request written reasons and object for the record?

THE COURT: I don't have to do written reasons on a Motion for New Trial or a Motion to Vacate, but the reasons [are] *there's no sufficient legal grounds to grant the Motion for New Trial or Motion to Vacate*. And my oral reasons will be my written reasons.

(Emphasis added). The trial court did not expressly address Defendant's timeliness objection to Plaintiff's supplemental filing.

A written judgment was signed on November 4, 2025 denying the motion to vacate and for new trial. Plaintiff timely appealed.

LAW AND ANALYSIS

On appeal, Plaintiff presents the following issues for review: (1) Whether the trial court manifestly erred in finding that the accident occurred on May 3, 2024, rather than May 6, 2024; and sustaining Defendant's exception and dismissing Plaintiff's claims with prejudice; (2) Whether *contra non valentem* or equitable estoppel precluded Defendant from relying on the May 3, 2024 accident date to establish prescription, where the petition alleged a May 6, 2024 accident date and was timely on its face; and (3) Whether the trial court abused its discretion in denying Plaintiff's motion to vacate judgment and for a new trial. As further explained below, we find no merit in any of Plaintiff's assignments of error.

Exception of Prescription

The trial court sustained Defendant's exception of prescription and dismissed Plaintiff's claims with prejudice after finding that the subject accident had occurred on May 3, 2024, rather than on May 6, 2024. On appeal, Plaintiff contends that the trial court's finding was manifestly erroneous. We disagree.

Delictual actions arising before July 1, 2024 are subject to a one-year prescriptive period beginning on the date of injury/accident.³ Ordinarily the exceptor bears the burden to prove prescription. When a petition is timely on its face, the exceptor may introduce evidence under La. C.C.P. art. 931 to prove prescription. If the evidence establishes an earlier accident date, the burden shifts to the plaintiff to prove interruption or suspension. *See Wells v. Zadeck*, 11-1232 (La.

³ Act 2024, No. 423 repealed La. C.C. art. 3492, which stated that delictual actions were subject to a liberative prescription of one year, and replaced it with La. C.C. art. 3493.1, which states that delictual actions are subject to a liberative prescription of two years. Article 3493.1 became effective on July 1, 2024. This extended two-year prescriptive period was therefore not in effect at the time of Plaintiff's accident in May 2024. As a result, whether Plaintiff's accident occurred on May 3 or May 6, 2024, Article 3492's one-year prescriptive period applies to this case.

3/30/12), 89 So.3d 1145; *Morice v. Yorkshire Ct. Condo. Ass’n, Inc.*, 23-118 (La. App. 5 Cir. 11/29/23), 377 So.3d 848, *writ denied*, 24-6 (La. 2/27/24), 379 So.3d 1266. When evidence is introduced at a hearing on an exception of prescription, the trial court’s factual findings are reviewed under the manifest error standard. *Morice*, 377 So.3d at 852. The question is whether the trial court’s conclusion is reasonable in light of the record. *See O’Krepki v. O’Krepki*, 25-551 (La. 5/1/26), 432 So.3d 123, 125 (citing *Stobart v. State through Dep’t of Transp. & Dev.*, 617 So.2d 880, 882–83 (La. 1993)).

In the instant case, Defendant introduced contemporaneous documentation showing that the accident occurred on May 3, 2024. Plaintiff conceded the May 3 date in his written opposition and at the hearing, and he did not object to Defendant’s exhibits. The claims correspondence that Plaintiff relies upon was generated months after the accident and merely repeated the date range (May 3–May 6) that Plaintiff himself supplied to Defendant. The trial court’s choice to credit Defendant’s contemporaneous evidence was reasonable and not manifestly erroneous. Because Plaintiff filed suit on May 6, 2025—after prescription had run—the burden shifted to him to prove interruption or suspension. He failed to do so. The trial court therefore correctly sustained the exception and dismissed Plaintiff’s claim.

Contra Non Valentem and Equitable Estoppel

Plaintiff claims that the doctrines of *contra non valentem* and equitable estoppel precluded Defendant from relying on the May 3, 2024 accident date to establish prescription because his petition alleged a May 6, 2024 accident date and was timely on its face. The trial court rejected both claims.

Contra non valentem suspends prescription in four narrow circumstances, including when: (1) a legal cause prevents the courts from acting; (2) a condition attached to the contract or proceedings prevents suit; (3) the defendant engages in conduct that effectually prevents the plaintiff from availing himself of his cause of

action; or (4) the cause of action is not known or reasonably knowable by the plaintiff, even absent inducement by the defendant. *Carter v. Haygood*, 04-646 (La. 1/19/05), 892 So.2d 1261, 1268; *Wells*, 89 So.3d at 1150 (citing Frank L. Maraist and Thomas C. Galligan, Louisiana Tort Law § 10–4(b), 222 (1996)). Plaintiff invokes the third and fourth categories, contending that Defendant prevented him from timely filing suit by its adjuster’s reference to May 6 as the date of loss and by withholding the incident report from Plaintiff.

The third category requires conduct amounting to concealment, misrepresentation, fraud, or ill practices that actually prevented timely suit, coupled with reasonable inaction by the plaintiff. *Marin v. Exxon Mobil Corp.*, 09-2368 (La. 10/19/10), 48 So.3d 234, 252. Under the fourth category, a plaintiff is deemed to know what reasonable diligence would reveal. *Jenkins v. Starns*, 11-1170 (La. 1/24/12), 85 So.3d 612, 623. *Contra non valentem* is an exceptional remedy applied sparingly and will not suspend prescription where the plaintiff’s ignorance results from his own willfulness or neglect. The record does not support Plaintiff’s argument under either category.

Here, the adjuster’s correspondence to Plaintiff did not identify a new date of loss or purport to establish a date of loss as a matter of fact; it merely referenced a date that fell within the range that Plaintiff himself had previously provided as the date of his loss. There is no evidence that Plaintiff asked the adjuster for confirmation of the accident date nor is there any evidence that Defendant or its adjuster concealed the date or affirmatively misrepresented the date. Plaintiff personally experienced the accident and supplied the information used to create the May 3 incident report. That Defendant did not respond to Plaintiff’s single pre-suit production request does not constitute concealment, misrepresentation, fraud, or ill practices. Plaintiff had the means to discover the accident date through reasonable diligence, yet he did not. The trial court therefore correctly rejected Plaintiff’s claim

of *contra non valentem*. See *Gibson v. Jalou Cash's, LLC*, 19-1308 (La. App. 1 Cir. 7/17/20), 308 So.3d 1188 (holding that the defendant did nothing to prevent suit where its later date-of-loss letters merely reiterated the erroneous date first supplied by the plaintiff's own counsel, and the plaintiff—who knew of his injury when it occurred—failed to establish any basis to suspend prescription).

Equitable estoppel, also known as detrimental reliance, is likewise an exceptional remedy that applies only upon proof of an affirmative representation, reasonable reliance, and a detrimental change in position. La. C.C. art. 1967; *Luther v. IOM Co. LLC*, 13-353 (La. 10/15/13), 130 So.3d 817, 825. One indispensable element of estoppel is deceit, and estoppel cannot be invoked where the plaintiff had the means to discover the truth. See *Victor v. Meydrich's Venice Gardens Super Mkt.*, 344 So.2d 56, 58 (La. App. 4 Cir. 1977) (holding that a plaintiff who sues after prescription has run cannot defeat the exception by blaming the defendant for his own lack of knowledge of the accident date when the plaintiff personally experienced the accident). Here, to invoke the doctrine of equitable estoppel, Plaintiff was required to show that Defendant affirmatively represented that the accident occurred on May 6, 2024, that Plaintiff reasonably relied on that representation, and that such reliance caused him to file suit outside the prescriptive period.

Plaintiff argues Defendant represented May 6 as the accident date. The record shows no affirmative misrepresentation. Plaintiff personally experienced the accident and in his initial correspondence to Defendant's adjuster, identified the date of loss as having been sometime between May 3 and May 6. Moreover, the record contains no evidence of concealment, fraud, or affirmative misrepresentation by Defendant that would have reasonably prevented Plaintiff from timely filing suit. Plaintiff offered no explanation for how he lacked personal knowledge of the date of an accident in which he was directly involved, nor how he could have been

deceived by Defendant, who was not present at the incident and whose knowledge of the accident date was derived from Plaintiff. Furthermore, Plaintiff offered no explanation for how he was misled by the adjuster's reference to May 6 as the date of loss when he himself provided that the date of loss occurred sometime between May 3 and May 6. Under these circumstances, the trial court correctly rejected Plaintiff's claim of equitable estoppel.

Motion for New Trial and to Vacate

Following the trial court's judgment sustaining Defendant's exception and dismissing Plaintiff's claim with prejudice, Plaintiff filed a motion for new trial and to vacate judgment, which the trial court denied. Plaintiff asserts that the trial court abused its discretion in denying his motion. We disagree.

A motion for new trial must be filed within seven days of notice of judgment, exclusive of legal holidays. La. C.C.P. art. 1974. Under La. C.C.P. art. 1972, a new trial is mandatory only when: (1) the verdict or the judgment appears clearly contrary to the law and the evidence; (2) the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial; or (3) the jury was bribed or has behaved improperly so that impartial justice has not been done. A motion for new trial based on newly discovered evidence must be verified by affidavit and show that the evidence could not, with due diligence, have been obtained before or during the trial. La. C.C.P. art. 1975; *Burns v. Sedgwick Claims Mgmt. Servs., Inc.*, 14-421 (La. App. 5 Cir. 11/25/14), 165 So.3d 147, 154–55. Additionally, the trial court has the discretion to grant a new trial “in any case if there is good ground therefor, except as otherwise provided by law.” La. C.C.P. art. 1973. A trial court's ruling on a motion for new trial is reviewed for abuse of discretion.

Plaintiff first argued that the judgment was clearly contrary to the law and evidence, because the trial court found that the accident had occurred on May 3

when, according to Plaintiff, the only information available to him regarding the accident date was the adjuster's correspondence referencing May 6 as the date of loss. Relying on that correspondence, Plaintiff alleged in his petition that the accident occurred on May 6, rendering the petition timely on its face. Plaintiff contends that Defendant later produced records establishing that the accident actually occurred on May 3, 2024, only after suit was filed, and that this evidence was insufficient to support Defendant's exception of prescription. Although Plaintiff did not seriously dispute that May 3, 2024 was the actual date of the accident in his opposition to Defendant's exception, he maintains that the inconsistency between the adjuster's correspondence and Defendant's later produced records prevented Defendant from meeting its burden of proof on the exception of prescription. However, Plaintiff failed to show the trial court erred in finding the accident occurred on May 3 because he did not meaningfully dispute that fact during the exception proceedings.

Plaintiff next argued that newly discovered evidence warranted a new trial. This argument fails procedurally and substantively. Plaintiff's motion was not verified by affidavit as required under La. C.C.P. art. 1975. Although the motion stated that Plaintiff intended to submit affidavits and supporting exhibits, those materials were not filed until more than a month later, well outside the delay for seeking a new trial. Even if timely filed though, the affidavits did not present newly discovered evidence. The facts recited therein, including counsel's alleged internet service issues and Plaintiff's claims regarding the accident date, were matters known or readily discoverable before the hearing on the exception. Plaintiff therefore failed to demonstrate that the evidence was new, material, or unavailable despite the exercise of reasonable diligence.

Finally, Plaintiff argued that a new trial should have been granted under La. C.C.P. art. 1973 because he relied in good faith on Defendant's reference to May 6

as the date of loss, and chalked up his delay in filing his petition for damages to excusable neglect. The record does not support this contention. Plaintiff presented no evidence that Defendant or its adjuster concealed information or made any affirmative misrepresentation regarding the accident date. Plaintiff offered no explanation for how he lacked personal knowledge of the date of an accident in which he was directly involved, nor how he could have been deceived by Defendant, who was not present at the incident and whose knowledge of the date came from Plaintiff. Further, Plaintiff offered no explanation for how he was misled by the adjuster's reference to May 6 as the date of loss when he himself reported that the accident had occurred sometime between May 3 and May 6. Under these circumstances, the trial court reasonably rejected Plaintiff's claim that his reliance on the adjuster's use of May 6 constituted good grounds for a new trial.

Accordingly, we find no abuse of discretion in the trial court's denial of the motion for new trial.

CONCLUSION

For the foregoing reasons, we affirm the trial court's judgments.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
OCTOBER 21, 2026 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-CA-44

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)
PIUS A. OBIOHA (APPELLANT)
MARI T. BARTHOLOMEW (APPELLANT)
TRAVIS L. HULL (APPELLANT)

KRISTEN L. HAYES (APPELLEE)
WILLIAM E. WILDMAN, III (APPELLEE)

STEVEN F. GRIFFITH, JR. (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED