

Mold Damages/Professional Engineer: Louisiana Appellate Court Addresses Application of Prescription to Negligence Claim



Walter Wright, Jr.

wwright@mwlaw.com

(501) 688.8839

03/19/2019

The Court of Appeal of Louisiana (“Appellate Court”) addressed in a March 14th opinion issues associated with two individuals’ negligence claim against a Professional Engineer and his employer. See *Lauren Pizzolato and John Pizzolato, et al. v. Terry R. Grier, Sr.*, 2019 WL 1198636.

The claims involved alleged personal injuries and property damage arising from long-term exposure to mold and extreme moisture in a home.

Whether mold constitutes a threat to structure occupants can involve difficult questions of causation. This is not a problem limited to mold. Determining what concentrations of a particular environmental contaminant poses a threat to human health can be a complex exercise. Establishment of acceptable mold concentrations or exposure limits is challenging for two reasons. First, there are thousands of different species of mold. Second, each individual’s sensitivity to exposure to mold will vary.

Mold growth occurs through multi-cellular structures known as colony-forming units. The organisms reproduce and spread by airborne dispersal of lightweight spores. The spores will germinate if they have access to a food source. The spores are generally responsible for the health effects associated with mold.

Ten of thousands of species of mold are found throughout our environment. However, there are certain species that receive a substantial amount of attention in the indoor context. These species may be deemed more problematic because of a concern that their presence poses a threat to health or is an indication that conditions are facilitating non-routine mold growth. Species that tend to attract attention in the indoor air context include *Stachybotrys chartarum*, *Penicillium*, and *Aspergillus*.

Lauren Pizzolato and John Pizzolato (“Plaintiffs”) are stated to have hired Terry R. Grier, Sr., (“Defendant”), a Professional Engineer the summer of 2015 to help address a mold and moisture problem in their home. Mr. Grier is stated to have issued a report on July 7, 2015, recommending the installation of dehumidifiers to correct the problem of high humidity conducive to the growth of mold. He is also stated to have advised them to check that their air conditioning was properly functioning and to inspect the house’s slab to determine whether it was soaking up moisture. Other measures were also recommended.

The Plaintiffs are stated to have installed the dehumidifiers.

In August 2015 Mr. Grier was asked to return to the home because while conditions had improved the Plaintiffs still were seeing condensation and thought it “still felt damp.” Mr. Grier issued a second report

and is stated to have indicated patience was necessary because the house was very wet and the dehumidifiers would assist with the issue. Mr. Grier counseled patience.

Plaintiff Mrs. Pizzolato was pregnant during this time and her newborn and four-year-old daughter were stated to have been sick with sinus issues, breathing issues, and were unsure of the cause of such health problems. Further, she indicated that humidity became a concern when they again began using the air conditioner and that mold was found to have significantly spread in the house.

A second opinion was obtained from a representative of Environmental Consultants, LLC. He determined the home was uninhabitable based on a mold spore count.

Plaintiffs filed suit against Defendant Grier along with his employer Environmental Management and Testing, LLC, for alleged personal injuries and property damage from exposure to mold and extreme moisture.

The Defendants filed an Answer denying the allegations and as an exception raised the objection of prescription. This objection was based on the argument that Plaintiffs:

. . . had actual and/or constructive knowledge of their claim prior to April 27, 2016, and, as such, their claims [were] prescribed.

Plaintiffs responded that their claims sounded in contract rather than in tort. If so, a 10-year prescription period applied. They further argued that negligence causing long-term exposures to mold is a continuing tort. As a result, prescription was argued not to have begun to run until they vacated the home in late 2016.

The lower court agreed with the Defendants that prescription applied and dismissed the claims.

The Appellate Court states that a party pleading the exception of prescription bears the burden of proving the claim as prescribed. It notes that the Plaintiffs' Petition names Defendant Grier in his capacity as Professional Engineer stating that they retained him:

. . . to provide professional engineering services on the treatment of Plaintiffs' home. . .

Defendant Grier denied that he performed any professional engineering services but admitted he was a licensed Professional Engineer. The Court also references the signature line of the two reports he submitted which read as follows:

Terry R. Grier, Senior P.E. CIAQP, CIEC, CMC

The Appellate Court holds that the lower court erred in finding that Plaintiffs' claim was subject to a one-year prescriptive period. This was based on the fact that it involved an action against a Professional Engineer. Further, it was not relevant whether the claim was based on tort or breach of contract. Either are subject to a five-year prescriptive period as set forth in the Louisiana statute.

The Appellate Court also noted:

A review of Mr. Grier's reports reveals that the work he performed for plaintiffs included "consultation, planning. . . investigation, evaluation, [and] measuring" as a professional engineer. His final inspection of the premises was on August 11, 2015. Thus, as set forth in LA. R.S. 9:5607(A)(3), plaintiffs had five years from that date to file their claim against Mr. Grier, making their 2017 suit against him timely.

As result, the Appellate Court reverses the lower court and remands the matter for further proceedings.

A copy of the opinion can be found [here](#).