Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-188

RIVER REGION FEDERAL CREDIT UNION

versus

PRINCE PROPERTIES, LLC, CHRISTINA P. GARY, AND MICHAEL D. GARY

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
PARISH OF ST. JAMES, STATE OF LOUISIANA
NO. 41,959, DIVISION "D"
HONORABLE STEVEN C. TUREAU, JUDGE PRESIDING

November 25, 2026

SCOTT U. SCHLEGEL

JUDGE

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Scott U. Schlegel

AFFIRMED

SUS
SMC
FHW

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
RIVER REGION FCU
Wilbur W. Reynaud

COUNSEL FOR DEFENDANT/APPELLANT,
PRINCE PROPERTIES, LLC REPRESENTED BY ITS MANAGER, CHRISTINA PRINCE GARY, CHRISTINA P. GARY, AND MICHAEL D. GARY
Robert R. Faucheux, Jr.

SCHLEGEL, J.

Defendants-Appellants, Prince Properties, LLC, Christina P. Gary, and Michael D. Gary, appeal the trial court's October 31, 2025 judgment granted in favor of plaintiff-appellee, River Region Federal Credit Union, in the amount of $78,717.63, with legal interest from the date of judicial demand. Defendants contend that the trial court erred by rendering judgment in favor of River Region because its claims against them are prescribed. For the reasons explained more fully below, we affirm the trial court's judgment.

PROCEDURAL HISTORY AND FACTS

On December 4, 2023, River Region filed a petition entitled "Suit on a Promissory Note" against defendants. In the petition, River Region alleged that on June 1, 2017, defendants executed a dation en paiement transferring several lots to River Region in order to avoid foreclosure on "a promissory note and collateral mortgage originally dated September 22, 2014, which was in default."[1] River Region alleged that defendants owed it $260,717.53. River Region agreed to attempt to sell the lots at a fair market price and to apply the sales proceeds, less any necessary expenses to prepare the lots for sale, against the balance owed by defendants. River Region also agreed that it would not charge interest on the balance owed by defendants until it sold all of the lots.

River Region alleged in its petition that it sold the lots for a total of $163,500.00, with the last lot sold on February 7, 2022. It further alleged that it was entitled to deduct expenses, including $9,410.00 for realtor fees and taxes, as well as $29,832.07 incurred for property maintenance, appraisals, surveys, and costs to construct a bus turnaround required by St. James Parish prior to approving River Region's request to sell the lots to the general public. After deducting these

[1] A dation en paiement is a contract whereby an obligor gives a thing to the obligee, who accepts it in payment of a debt. La. C.C. art. 2655; *Dunaway v. Spain*, 493 So.2d 577, 579 (La. 1986).

expenses from sales proceeds, River Region alleged that defendants owed it a balance of $136,549.00.[2]

On December 22, 2023, defendants filed an answer to the lawsuit and alleged that River Region "breached its fiduciary responsibility" by waiting over two and a half years to start selling the lots and "by not selling the lots for fair market value and the agreed upon sales price." Defendants also alleged that River Region incurred unnecessary expenses.

Following a status conference in July 2024, the trial court set the matter for a judge trial on February 11, 2025. On January 13, 2025, the trial date was continued to April 14, 2025. One week prior to trial on April 7, 2025, defendants filed an exception of prescription alleging that pursuant to La. C.C. art. 3498, River Region's suit was prescribed because more than five years had elapsed between the time that the final note was due and when River Region demanded payment.[3] Defendants argued that they signed several notes in favor of River Region, beginning on November 28, 2011 and ending with the final note signed on June 1, 2017. Defendants alleged that the due date on the final note was January 1, 2018, and that River Region did not send a demand letter for the balance due until September 19, 2023, more than five years later.

However, the trial court did not set the exception of prescription for hearing. Instead, on April 9, 2025, it denied the show cause order finding that the exception was "untimely filed per [the] pre-trial order."[4] The parties appeared for the bench trial on April 14, 2025. Prior to trial, defendants attempted to argue their exception

[2] Based on the loan balance, sale amounts and expenses alleged by River Region in its petition, the balance due should have been calculated at $136,459.60.

[3] La. C.C. art. 3498 provides that "[a]ctions on instruments, whether negotiable or not, and on promissory notes, whether negotiable or not, are subject to a liberative prescription of five years. This prescription commences to run from the day payment is exigible."

[4] Though defendants do not raise this as an issue on appeal, we recognize that a party can raise a peremptory exception at any stage of the proceeding in the trial court prior to a submission of the case for a decision. *See* La. C.C.P. art. 928(B).

of prescription, but the trial court declined to hear additional arguments, stating that it had "already denied prescription."

The parties also agreed to admit the Dation agreement and a June 1, 2017 promissory note as joint exhibits. The Dation stated that defendants owed a delinquent balance of $260,717.53, and that the loan was "secured by the Collateral Mortgage Note and Collateral Mortgage in the amount of $300,000.00 dated May 11, 2009."[5] The Dation further provided that in order to stop the accrual of interest on the debt and to reimburse River Region for the indebtedness due, defendants agreed to transfer six lots (3-B, 5-B, 6-B, 7-B, 8-B, 9-B) of a "family subdivision of Tract B of the Morgan Roussel Tract" pursuant to "Articles 2655 et sec. (sic), of the Louisiana Civil Code."[6] The Dation further stated that the parties were aware the lots were only "approved for sale as a family subdivision." However, once River Region obtained ownership, it would be able to sell the lots to the general public as a creditor. On December 12, 2017, defendants executed a Correction of Dation that amended the description of the property conveyed to River Region to include only five lots (3-B, 5-B, 6-B, 7-B-1, 9-B).

In exchange for transferring ownership of the lots, River Region agreed to "attempt to sell the lots listed above at a fair market price and apply the sale proceeds, less any necessary expenses incurred in preparing the lots for sale, against the indebtedness listed above." The Dation also provided that "[n]o interest will be added to the present indebtedness or any additional expenses incurred by [River Region] from this date forward." However, the Dation provided that defendants would remain liable to River Region for any outstanding balance that was not satisfied by the sales proceeds. Ms. Gary also executed a

[5] The parties did not introduce the underlying loan documents into evidence.

[6] Articles 2655 through 2659 of the Louisiana Civil Code contain the provisions governing dations en paiement or "giving in payment."

promissory note in the amount of $260,717.53 on June 1, 2017. The note indicated that final payment was due on January 1, 2018, and was made part of the Dation by paraphing it "'Ne Varietur' for identification with the Dation."

Trial Testimony

Only one witness testified at trial – Gigi Coneglio, the Chief Executive Officer of River Region. Ms. Coneglio explained that after the property securing the loan was subdivided and designated as a family subdivision, Ms. Gary was unable to sell the lots. She was unable to make timely payments, and the loan went into default. Ms. Gary then approached Ms. Coneglio to inquire about whether River Region would accept a dation of the property securing the loan. Ms. Coneglio explained that River Region had never previously entered into a dation agreement. However, after contacting legal counsel and obtaining approval from the board of directors, River Region agreed to move forward with the dation to help defendants sell the property securing the loan.

Ms. Coneglio further explained that after the parties entered into the Dation, River Region had to obtain permission from St. James Parish to sell the lots to the general public. In order to obtain Parish approval, River Region had to construct a bus turnaround on the property and also had to give the Parish a right of way. After obtaining the necessary approvals, however, River Region was initially unable to sell the lots because they were overgrown and flooded. Ms. Coneglio explained that they contacted a realtor and River Region was finally able to start selling the lots in 2021. She testified on direct examination that River Region sold nine lots in 2021 and 2022 for a total of $163,500.00, as follows:[7]

4/20/21	Lots 3 and 9	$35,000.00
5/5/21	Lot 4	$18,000.00

[7] At some point, River Region subdivided the lots into nine lots.

5/5/21	Lots 5 and 6	$37,500.00
5/18/21	Lot 7	$17,000.00
6/18/21	Lot 8	$20,000.00
2/7/22	Lots 1 and 2	$36,000.00

Ms. Coneglio further testified that River Region deducted realtor fees in the amount of $9,410.00 and taxes in the amount of $89.23 from the sales proceeds, leaving net sales proceeds in the amount of $154,000.70.[8] River Region also incurred expenses to put in the bus turnaround and for property maintenance, as well as to obtain surveys and appraisals, totaling $29,832.07. According to Ms. Coneglio, River Region added these expenses to the loan balance, which increased the amount owed to $296,549.70.[9] After deducting the net sales proceeds from this balance, Ms. Coneglio stated that the amount owed by defendants was $136,549.00.[10]

On cross-examination, Ms. Coneglio acknowledged that prior to the sale of the nine subdivided lots in 2021 and 2022, River Region sold one of the original five lots (3-B) for $24,000.00 on January 31, 2020. She also agreed that this amount was not included in the $163,500.00 sales figure she testified to on direct examination.[11] When asked to confirm that defendants did not make any payments on the loan after they executed the Dation, Ms. Coneglio agreed that defendants did not make any payments, but further explained that River Region applied the proceeds for the lot sale to the balance owed by defendants after each sale.[12]

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[8] The correct calculation based on the numbers provided by River Region is $154,000.77 ($163,500.00 – $9,410.00 – $89.23).

[9] The correct calculation based on the numbers provided by River Region is $290,549.60 ($260,717.53 + $29,832.07).

[10] The exact calculation should be $136,548.83 ($290,549.60 - $154,000.77).

[11] With the additional sale in 2020, the sale proceeds totaled $187,500.00.

[12] Defense counsel also cross-examined Ms. Coneglio regarding a May 6, 2020 appraisal entered into evidence as Defense Exhibit 2. This appraisal was completed after River Region sold Lot 3-B on January 31, 2020, and it recommended sub-dividing the four remaining lots into five lots. The appraisal valued

Following Ms. Coneglio's testimony, the trial court awarded $82,717.63 to River Region. The trial court explained that it calculated this amount by adding $24,000.00 for the 2020 sale of lot 3-B to the amount of the sales proceeds, and by excluding $29,832.07 in expenses that River Region added to the loan balance. The trial court explained that it deducted these expenses due to the conflicting language regarding defendants' liability for expenses contained in the Dation. On May 6, 2025, the trial court signed a written judgment in favor of River Region and against defendants in the amount of $82,717.63, together with legal interest from the date of judicial demand.

Defendants filed a motion for new trial arguing that the trial court erred by entering judgment in favor of River Region because "prescription had run on the Note." They also asked the trial court to deduct the $9,410.00 real estate commission that River Region deducted from the sales proceeds from the judgment. Defendants later filed an amended motion for new trial, seeking to have the taxes deducted from the sales proceeds also deducted from the judgment amount. The motion was set for hearing on October 14, 2025, and following a conference in the trial court's chambers, the parties agreed to reduce to the amount of the judgment by $4,000.00. On October 31, 2025, the trial court signed a consent judgment reducing the award in favor of River Region to $78,717.63.

On January 5, 2026, defendants filed a motion for devolutive appeal, which the trial court granted on January 13, 2026.

LAW AND DISCUSSION

Defendants did not provide assignments of error or a list of issues presented for review in their appellant brief as required by Uniform Rules – Courts of

each lot at $35,000.00 for a total of $175,000.00. However, as mentioned above, River Region eventually subdivided the four remaining lots into nine lots, which were smaller in size and thus, likely would have appraised for less than $35,000.00 each at the time of the 2020 appraisal. Ms. Coneglio testified that River Region had difficulty selling the lots and eventually sold them for the best prices they could obtain.

Appeal, Rule 2-12.4(A)(5) and (6). Defendants did, however, mention several potential issues in the "Statement of the Case" and "Summary of Argument" sections of their appellate brief, including that River Region's claim arising from the June 1, 2017 promissory note prescribed; River Region failed to sell the lots at the fair market/appraised value; and that the Dation released defendants from the entire balance they owed to River Region. However, the only issue that defendants briefed, and mentioned as grounds to reverse the trial court's judgment in their conclusion, is the prescription issue.

Under the Uniform Rules – Courts of Appeal, appellate review is limited to issues properly raised and briefed. *See* Uniform Rules – Courts of Appeal, Rule 1-3; Rule 2-12.4(B)(4). This Court has consistently held that an assigned error or issue that is not briefed is abandoned. *Juarez v. AJ Lazo Constr., LLC*, 22-575 (La. App. 5 Cir. 9/20/23), 370 So.3d 1280, 1292 n.4; *Succession of Carpenter*, 22-192 (La. App. 5 Cir. 2/1/23), 358 So.3d 874, 880 n.2. Due to defendants' failure to adequately brief any other issues, the only issue this Court will address on appeal is whether the trial court erred by denying defendants' exception of prescription.[13]

With respect to prescription, defendants argue that pursuant to La. C.C. art. 3498, actions on promissory notes are subject to a liberative prescription of five years, which commences to run from the day payment is exigible. Thus, if a promissory note is payable at a definite time, the five-year prescriptive period begins on the due date stated in the note. Defendants argue that prescription began to run on January 1, 2018, the date final payment was due on the June 1, 2017

[13] Defendants also attach several documents to their appellant brief which were not introduced into evidence at trial. An appellate court must render judgment upon the record on appeal, which is sent by the trial court and includes the pleadings, court minutes, transcript, evidence, judgments, and other rulings, unless otherwise designated. La. C.C.P. art. 2164; *Loya v. Loya*, 17-555 (La. App. 5 Cir. 2/21/18), 239 So.3d 1048, 1054. Appellate briefs and their attachments are not part of the record on appeal, and an appellate court has no authority to consider facts referred to therein, including exhibits attached to the brief, if those facts are not in the record. *Id.* An appellate court cannot review evidence outside the record and cannot receive new evidence. *Id.*

promissory note, and River Region did not make a demand for payment prior to the expiration of the five-year prescriptive period. Defendants further argue that the burden shifted to River Region to prove that prescription was suspended or interrupted at some time after that date but failed to do so. Defendants further contend that River Region's sale of the lots it owned did not serve as an acknowledgment by defendants that would serve to interrupt prescription.

In response, River Region contends that prescription was interrupted each time that it applied the proceeds from the sale of a lot to the balance owed by defendants. River Region contends that it agreed to help defendants by entering into the Dation and accepting ownership of the lots because as a creditor, it could sell the lots to the general public. River Region argues that defendants agreed to this arrangement in the Dation, and the payments applied to the loan balance from 2020 to 2022 were made on their behalf and served to interrupt the prescriptive period.

Actions on promissory notes, whether negotiable or not, are subject to a liberative prescription of five years under Louisiana law. La. C.C. art. 3498. This prescriptive period commences to run from the day payment is exigible — that is, from the date the obligation becomes due and payable. *Lucky Coin Mach. Co. v. J.O.D. Inc.*, 14-562 (La. App. 5 Cir. 12/23/14), 166 So.3d 998, 1001.

Louisiana Civil Code article 3464 provides the general rule for interruption by acknowledgment: prescription is interrupted when one acknowledges the right of the person against whom he had commenced to prescribe. An acknowledgment involves an admission of liability, either through an express recognition of a debt owed or through the actions of the debtor that constitute a tacit acknowledgment. *Patterson v. Waste Connections of Louisiana, Inc*., 24-536 (La. App. 5 Cir. 3/31/25), 411 So.3d 104, 107-08, *writ denied*, 25-536 (La. 9/10/25), 415 So.3d 1277; *Perez v. Sholar*, 22-169 (La. App. 5 Cir. 12/14/22), 362 So.3d 874, 879, *writ*

denied, 23-188 (La. 4/12/23), 359 So.3d 25. An acknowledgment sufficient to interrupt prescription may be made verbally, in writing, or by partial payment, or it may be implicit or inferred from the facts and circumstances. *Patterson*, *supra*; *Perez*, *supra*. To find a tacit acknowledgment, it is necessary to determine that the alleged facts imply a definite admission of liability. *Id*.

The most common form of acknowledgment in the promissory note context is a partial payment of principal or interest by the debtor, which courts have consistently held to be an acknowledgment of debt which interrupts prescription. *Sec. Nat. Partners, Ltd. P'ship v. Baxley*, 37,747 (La. App. 2 Cir. 10/29/03), 859 So.2d 890, 895, *superseded by statute on other grounds*. Under La. C.C. art. 3466, if prescription is interrupted, all time that has previously run is erased and prescription commences anew from the last day of interruption.

According to the evidence presented, the loan at issue became delinquent due to the family subdivision restrictions encumbering the property. Ms. Gary inquired about a dation, and River Region agreed to accept ownership of the lots because it would be able to sell them to the general public. In the Dation, defendants agreed that River Region would apply the proceeds received from the sale of the lots to the loan balance and defendants would remain responsible for any outstanding balance due after River Region sold all of the lots. Further, defendants acknowledged that River Region was acting on their behalf under the Dation based on the assertion in their answer that River Region breached a fiduciary duty by failing to sell the property in a timely manner and by failing to sell it for fair market value. Defendants cannot now argue that payments made towards the balance they owed and pursuant to the terms of the Dation that they requested do not serve as an acknowledgment that interrupts prescription on the debt they owed. Thus, we find that River Region's claims against defendants were not prescribed.

CONCLUSION

Accordingly, we affirm the trial court's October 31, 2025 judgment granted in favor of plaintiff-appellee, River Region Federal Credit Union, and against defendants, Prince Properties, LLC, Christina P. Gary, and Michael D. Gary, in the amount of $78,717.63, with legal interest from the date of judicial demand.

AFFIRMED

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISON, 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 **NOVEMBER 25, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-CA-188

E-NOTIFIED
23RD JUDICIAL DISTRICT COURT (CLERK)
HONORABLE STEVEN C. TUREAU (DISTRICT JUDGE)
WILBUR W. REYNAUD (APPELLEE)
ROBERT R. FAUCHEUX, JR. (APPELLANT)

MAILED