

**Fifth Circuit Court of Appeal
State of Louisiana**

No. 26-C-237

ABSOLUTE RESTORATION, LLC

versus

ROSS JAMES, ET AL

IN RE ROSS JAMES, KAITLIN DAUZAT
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT
COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
LAUREN D. ROGERS, DIVISION "E", No. 95,788

TRUE COPY

June 29, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
John J. Molaison, Jr., and Scott U. Schlegel

**WRIT GRANTED IN PART; REMAINING ISSUES
REMANDED TO DISTRICT COURT**

In their writ application, defendants/relators, Ross James and Kaitlin Dauzat, seek review of the district court's April 15, 2026 judgment overruling their exception of prescription. Defendants contend that the district court erred by finding the claims raised by plaintiff, Absolute Restoration, LLC, involved a conventional obligation subject to a ten-year prescriptive period. Instead, they contend that the water mitigation agreement Ms. Dauzat entered into with Absolute is an open account subject to a three-year prescriptive period. Defendants further claim that Absolute failed to introduce competent evidence of any basis to interrupt or suspend the three-year prescriptive period.

For the reasons that follow, we grant defendants' writ application in part and find that this matter involves an open account subject to a three-year prescriptive period. In light of this finding, we reverse the district court's judgment overruling the exception of prescription and remand this matter to the district court to apply the correct prescriptive period and further consider the arguments raised by Absolute regarding the alleged suspension and/or interruption of the applicable prescriptive period.

FACTS AND PROCEDURAL HISTORY

On September 19, 2021, defendant, Kaitlin Dausat, executed a Work Authorization agreement engaging Absolute to perform demolition and mitigation/structure drying services at defendants' residence following Hurricane Ida. The Work Authorization did not include a total cost for the work to be performed. Rather, it stated that the work would be "performed following current Industry standard pricing" and listed the following pricing examples:

Air Mover \$35/Day / Axial Air Mover \$40/Day / Dehumidifier \$145/Day / Air Scrubber \$85/Day / Standard Labor \$60/Hr / AH Labor \$85/Hr / Plumber Labor: Reg \$100/Hr • Min \$175.00 AH \$150/Hr • Min \$350.00 / Emergency Service Charge \$275 Catastrophic/Out of State Mobilization Fee 12 -14% (Emphasis in original).

With respect to payment, the Work Authorization states that "[p]ayment is due within ten (10) days from date of invoice" and that "***[f]inal payment, constituting the entire unpaid balance of the Contract Price, shall be tendered to Absolute Restoration LLC upon 'Substantial Completion' of the Services.***" (Emphasis in original). It further provides that "[a]ccounts are delinquent if not paid in full by the 10th day after the date of invoice has been Issued."

The Work Authorization also contains terms addressing potential payments from defendants' insurer for the damage to their residence. In the Work Authorization, Ms. Dausat authorized Absolute to communicate directly with her

insurer and lending institution regarding her insurance claim and further authorized the insurer to pay Absolute directly for the work covered by the policy. In the event that the insurer paid defendants directly, Ms. Dauzat agreed to pay Absolute immediately upon receipt of the insurance payment. The Work Authorization also explained that Ms. Dauzat was “*personally responsible for any and all deductible, depreciation, or any other charges or costs not covered by Insurance and will pay such amounts directly to Absolute Restoration LLC.*” (Emphasis in original).¹

Absolute alleges that it performed the demolition and mitigation services as agreed upon and that on October 12, 2021, it issued an invoice to defendants in the amount of \$63,084.93. The invoice stated: “Payment is due upon the completion of work.” Absolute contends that defendants paid a \$2,500.00 deposit but made no further payments.

According to the parties, Absolute filed its original petition against defendants on May 14, 2025. In response, defendants filed peremptory exceptions of no right and no cause of action, which resulted in Absolute filing an amended and supplemental petition on January 28, 2026. Defendants then filed a peremptory exception of prescription, arguing Absolute’s claim constituted an action on an open account subject to the three-year prescriptive period pursuant to La. C.C. art. 3494(4), rendering Absolute’s lawsuit untimely.

In its opposition to the exception, Absolute argued that its lawsuit alleged a breach of contract claim subject to a ten-year liberative prescriptive period. Absolute alternatively argued that even if the three-year prescriptive period applied, defendants’ obligation to Absolute did not arise until they received payment from their insurer. Absolute asserted that the Work Authorization’s insurance-related provisions created a suspensive condition delaying prescription.

¹ The Work Authorization includes information regarding defendants’ insurance claim and indicates that the deductible for the policy is \$15,500.00.

Absolute further argued that defendants' representations to Absolute prior to the expiration of the prescriptive period constituted acknowledgments that interrupted prescription.

At the hearing held on April 13, 2026, the district court admitted the following exhibits introduced by defendants into evidence: a copy of Absolute's amended and supplemental petition; a copy of the Work Authorization agreement; and an Affidavit of Kaitlin Dautat confirming her signature on the Work Authorization. On behalf of Absolute, the district court admitted an additional copy of the Work Authorization; a copy of defendants' petition for damages against their insurance company and the Louisiana Insurance Guaranty Association;² and a copy of a motion to dismiss filed on November 4, 2024, indicating that defendants' suit against their insurer and LIGA was resolved. Following oral argument, the district court overruled defendants' exception of prescription finding that Absolute's claim was a conventional obligation subject to a ten-year prescriptive period. The court reasoned that because the parties had no expectation of a continuing relationship, the claim was a conventional obligation as opposed to an open account.

On May 27, 2026, defendants filed a timely writ application with this Court.

LAW AND ANALYSIS

The Louisiana Supreme Court has consistently held that the prescriptive period applicable to an action is determined by the character of the action disclosed in the pleadings. *Born v. City of Slidell*, 15-136 (La. 10/14/15), 180 So.3d 1227, 1232. Personal actions are subject to a liberative prescription of ten years, unless otherwise provided by legislation. La. C.C. art. 3499. A breach of contract claim is considered a personal action subject to the ten-year liberative prescriptive

² The petition alleges that defendants' insurer, Americas Insurance Company, was insolvent.

period. *Mollere v. Mollere*, 17-494 (La. App. 5 Cir. 03/28/18), 243 So.3d 1271, 1275. One exception to the ten-year prescriptive period is found in La. C.C. art. 3494(4), which establishes a three-year prescriptive period for actions on an open account.³

In determining whether a contract falls under the open account statute, Louisiana courts have traditionally considered factors such as whether the total cost or price is left open or undetermined; whether other business transactions between the parties existed; whether one party extended a line of credit to another; whether there are running or current dealings; and whether there are expectations of future dealings. *See, e.g., Louisiana Machinery Company, LLC v. Bihm Equipment Co.*, 19-1081 (La. App. 1 Cir. 8/10/21), 329 So.3d 317, 325.

However, in *Frey Plumbing Company, Inc. v. Foster*, 07-1091 (La. 2/26/08), 996 So.2d 969, 972 (per curiam), the Louisiana Supreme Court instructed courts to instead consider the plain and unambiguous language of La. R.S. 9:2781(D) in determining whether a suit involves a claim on open account.⁴ La. R.S. 9:2781(A) provides for the award of attorneys' fees to a plaintiff who prevails on a claim for failure to pay an open account.⁵ Section (D) of this statute explains what the term "open accounts" includes:

D. For the purposes of this Section and Code of Civil Procedure Articles 1702 and 4916, "open account" includes any account for which a part or all of the balance is past due, whether or not the account reflects one or more transactions and whether or not at the time of contracting the parties expected future transactions. "Open account" shall include debts incurred for professional services, including but not limited to legal and medical services. For the

³ La. C.C. art. 3494 provides:

The following actions are subject to a liberative prescription of three years:

* * *

(4) An action on an open account

⁴ In *Frey, supra*, the court considered, and then determined, that a suit to recover an unpaid invoice for plumbing services qualified as an open account thereby allowing the plaintiff to recover attorney's fees under La. R.S. 9:2781.

⁵ Since the open account statute imposes attorneys' fee awards as a penalty, it must be strictly construed. *Louisiana Machinery*, 19-1081 (La. App. 1 Cir. 8/10/21), 329 So.3d 317, 327.

purposes of this Section only, attorney fees shall be paid on open accounts owed to the state.

The *Frey* court overruled prior case law that “imposed any requirements which are inconsistent with the clear language of La. R.S. 9:2781(D).” *Frey*, 996 So.2d at 972. More specifically, the court held that the lower court erred in considering the following factors in determining that the suit on the plumbing contract was not a claim on an open account: 1) the transaction was the first and only transaction between the parties; 2) there was no indication that the parties intended to contract for future services; and 3) the plumbing contract was not one for professional services. *Id.* Louisiana courts, however, continue to consider whether the total cost or price is left open or undetermined in the agreement when considering whether a transaction involves an open account. See *SBL Construction, LLC v. Eymard*, 18-1691 (La. App. 1 Cir. 11/12/19), 289 So.3d 1079, 1084.

Thus, in their writ application, defendants argue that based on the holding in *Frey, supra*, the district court in the present matter erred to the extent it found that the absence of future transactions alone determined that Absolute’s claim was a conventional obligation as opposed to an open account. We agree. Further as in *SBL Construction, supra*, we find that the record in the present matter establishes that the agreement between the parties involves features of an open account.

The *SBL Construction* case involved an agreement to construct a bulkhead on the defendant’s property on a “by-the-foot basis.” The appellate court found that the trial court did not err by finding that the agreement constituted an open account because, even though the parties agreed on the price per foot for the construction of the bulkhead, the court reasoned that the price was open and undetermined as a result of the unknown footage of the bulkhead resulting in the running of a line of credit in favor of the defendant. *Id.* at 1084, fn. 4. An

undetermined total cost is a hallmark of an open account. *Blanchard v. Cors & Bassett, Sacks, Weston, Smolinsky, Albert & Luber*, 09-2236, p. 3 (La. App. 1 Cir. 9/8/10), 2010 WL 3496263.

Similarly, in the present case, the Work Authorization does not contain a total fixed price for the services but instead provides for standard industry time-and-material rates. The total price was open and undetermined because the Work Authorization did not specify the total cost of the equipment or hours of labor the job would require. The terms also establish invoice-based billing after performance. Finally, the Work Authorization involves an agreement to provide services.

Absolute argues in its opposition that it is standard industry practice to bill on a time and material basis because of the lack of time to determine the exact scope and amount of work under exigent circumstances, and that it did not extend a line of credit to defendants. Absolute further urges this Court to rely on our decision in *Paratech, L.L.C. v. Nola Motor Club, LLC*, 17-626 (La. App. 5 Cir. 4/25/18), 395 So.3d 261, 273, to find that the Work Authorization does not involve the hallmarks of an open account because the parties had no expectations of future business dealings. As explained above, however, in *Frey*, 996 So.2d at 972, the Louisiana Supreme Court confirmed that future expected business dealings are not required for a transaction to constitute an open account pursuant to La. R.S. 9:2781(D).

Furthermore, *Paratech* involved unusual circumstances that distinguish it from the present matter. The dispute in *Paratech* arose from last minute information technology (“IT”) services performed for a race car track facility prior to an event. The racetrack facility had previously transacted with the plaintiff, Paratech, L.L.C., by pre-purchasing blocks of credit for IT services. The matter involved work performed outside of normal business practices without a written

agreement regarding the scope of services, leading to claims that the person requesting the disputed services lacked authority to act on behalf of the facility. In addition, unlike the present matter, due to the lack of agreement as to the rates to be charged, this Court resorted to the concepts of equity and usage when reviewing the amounts awarded by the lower court.

Considering the foregoing, we find that the district court erred by finding that the ten-year prescriptive period for conventional obligations or breach of contract claims applied in this matter. Therefore, we grant defendants' writ application in part, find that the district court should apply the three-year prescriptive period applicable to open accounts, and reverse the district court's denial of defendants' exception of prescription based on the ten-year prescriptive period. We further remand this matter to the district court to consider the arguments raised by Absolute regarding the alleged suspension and/or interruption of the applicable prescriptive period.

Gretna, Louisiana, this 29th day of June, 2026.

SUS
FHW
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **06/29/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-237

E-NOTIFIED

29th Judicial District Court (Clerk)
Honorable Lauren D. Rogers (DISTRICT JUDGE)
Michael D. Lane (Respondent) Jeffrey M. Siemssen (Relator)

MAILED

Paul E. Brazil (Relator)
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