Judgment rendered August 26, 2026.
Application for rehearing may be filed
within the delay allowed by Art. 2166,
La. C.C.P.

No. 57,060-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

JASWANT DHILLON AND QUICK TRIP SJ, LLC — Plaintiffs-Appellants

versus

WARRIS SHAHEEN, FAISAL ALI & BEST SMOKE & VAPE SHOP, LLC — Defendants-Appellees

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Ouachita, Louisiana
Trial Court No. 2023-1193

Honorable B. Scott Leehy, Judge

* * * * *

SEDRIC E. BANKS — Counsel for Appellants

BRADLEY MURCHISON KELLY & SHEA, LLC
By: Brittanie W. Carpenter

ADAM J. ROSS

Counsel for Appellees, Faisal Ali, Best Smoke & Vape Shop, LLC, and JA JMart Fuel, LLC

* * * * *

Before PITMAN, STONE, and THOMPSON, JJ.

STONE, J., dissents with written reasons.

THOMPSON, J.

Two business partners operated a convenience store and were equal members and managers of a limited liability company which owned the real estate where the store operated and other assets. The operating agreement provided that any disputes between the partners would be resolved by binding arbitration. Disputes arose when, while one member was out of the country, he alleged the other improperly acted on behalf of the limited liability company and sold the real estate and then inventory of the store without his knowledge or consent, which actions were in violation of the provisions of the limited liability company operating agreement. Litigation ensued between the two partners and ensnared the purchasers of the property and the separate purchasers of the inventory.

The claims between the two partners were stayed and sent to binding arbitration, as per the provisions of the operating agreement. The claims against the various purchasers remained, and it is their disposition that comes before us now. The defendants filed exceptions of no cause and no right of action, prescription, and lack of capacity, which were granted by the trial court, dismissing all claims against them and awarding sanctions. The plaintiff appeals those actions by the trial court. For reasons more fully detailed below, we affirm the trial court's judgment sustaining the defendants' exceptions and dismissing the plaintiffs' claims with prejudice.

FACTS AND PROCEDURAL HISTORY

Jaswant Dhillon ("Dhillon") and Waris Shaheen ("Shaheen") were business partners, including the operation of a convenience store, and were equal members of the Louisiana limited liability company they formed named Quick Trip SJ, LLC[1] ("LLC"). Internally, they agreed to be bound by and executed an operating agreement which included provisions for binding arbitration in the event there was a disagreement between the members. Dhillon alleges that when he was temporarily out of the country, Shaheen forged a company certificate granting himself individual authority, beyond what was established in the operating agreement, to sell the real property and assets of their convenience store for a price below fair market value. Upon learning of these transactions when he returned, Dhillon objected and filed suit against Shaheen and the purchasers.

Dhillon initially filed suit in his personal name and on behalf of the LLC against his business partner, Shaheen, as well as Faisal Ali ("Ali") the purchaser of the real property, and his limited liability company, Best Smoke & Vape Shop, LLC. Later, Dhillon also named one of Ali's other limited liability companies, JA J-Mart Fuel, LLC. Ali and his limited liability companies are hereinafter, when appropriate, collectively referred to as the "Ali Defendants".

Dhillon asserts in effect that by acting in concert with Shaheen, Ali (and the Ali Defendants) have effectively replaced his ownership interest in the LLC. In response to these allegations:

- Shaheen filed a motion to stay the proceedings based on the arbitration clause in the operating agreement, and Dhillon ultimately agreed[2] and stipulated to settle his claims against Shaheen via arbitration, which is ongoing.

- The Ali Defendants filed peremptory exception of no right of action, directing the court to the certificate on which they relied, authorizing Shaheen, as a member of the LLC, to sell its real property. They also raised the dilatory exception of lack of

[1] Formed September 30, 2020
[2] June 17, 2024

capacity for Dhillon to independently file suit on behalf of the LLC.

Dhillon asserts there were ultimately two transactions. The first transaction was when one Ali Defendant (Best Smoke) accepted Shaheen's offer to purchase the real property. This sale was limited to the corporeal immovable property, with no offer to purchase any movables, such as equipment or inventory. The Ali Defendants contacted a law firm, Hudson, Potts, and Bernstein, LLP, to verify that Shaheen had the authority to sell the property, which they advised he did by virtue of a Limited Liability Company Certificate ("Certificate") dated November 3, 2021, and filed in the public records of Ouachita Parish. That sale soon followed.

The second sale was of the store's inventory, which was sold in a separate transaction between two parties who are not parties to this original suit – Cypress Wholesale and Retail, LLC ("Cypress Wholesale"), which was owned by Shaheen, and JA J-Mart Fuel, LLC, which was owned by Ali. It was asserted by Shaheen that the LLC did not own the inventory of the store, but that is owned by Cypress Wholesale. Dhillon added JA J-Mart as a defendant in an amended and supplemental petition[3] two and a half years after first initiating this lawsuit. In response, the Ali Defendants filed[4] multiple exceptions to Dhillon's petition, including peremptory exceptions of no cause of action, no right of action, prescription, and the dilatory exception of lack of capacity. Plaintiffs responded to the exceptions, filing an opposition to exceptions on behalf of only JA J-Mart. Plaintiffs acknowledged in their opposition that Shaheen had been dismissed in the

[3] June 9, 2025
[4] August 6, 2025

present lawsuit and that he was pursuing those claims against Shaheen in arbitration.

Plaintiffs' opposition to the exceptions was directed only at JA J-Mart. Plaintiffs assert that the oppositions it filed were meant to respond to the "mirror exceptions" filed on behalf of both Ali and Best Smoke, and JA J-Mart, by Ali's counsel. A hearing on the exceptions followed.

The trial court heard arguments on the exceptions[5] and took the matter under advisement before it rendered final judgment,[6] sustained Defendants' exceptions and dismissed Plaintiffs' claims against the Ali Defendants with prejudice. The trial court provided written reasons, adopting the reasons set forth in Ali's counsel's memoranda. This appeal by Shaheen of the dismissal of claims against the Ali Defendants followed, in which he asserts nine assignments of error. Plaintiffs' claims against Shaheen remain viable in the binding arbitration proceedings and are not before this court. The Ali Defendants seek additional sanctions against Plaintiffs.

DISCUSSION

Assignment of Error No. 1: The trial court erred by adopting defendants' memoranda as its reasons for judgment.

Plaintiffs argue that the exceptions filed by Defendants should be denied, because they have successfully stated causes of action and rights of action. Plaintiffs also argue that the trial court failed to conduct an independent review of the record and merely adopted Defendants' memoranda as its reasons for judgment granting the exceptions, dismissing Plaintiffs' claims, and cancelling lis pendens. We disagree.

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[5] August 21, 2025
[6] November 5, 2025

The Ali Defendants' memorandum in support of its peremptory exception of no right of action and dilatory exception of lack of capacity included the applicable facts, law, and jurisprudence. Counsel correctly identified the controlling law and concisely connected each to the facts. We find that the trial court committed no legal error in adopting Defendants' memoranda as its reasons for judgment. Louisiana courts have consistently held that in whichever manner the trial court decides to determine the facts, whether through adoption of briefs or otherwise, the findings of fact should not be disturbed as long as such findings are based on evidence. *Shoreline Gas, Inc. v. Grace Res., Inc.,* 34,517 (La. App. 2 Cir. 4/4/01), 786 So. 2d 137; *Fletcher v Simmons,* 37,758 (La. App. 2 Cir. 10/29/03), 859 So. 2d 292. The record reveals that the trial court's written reasons were based on its independent review of the record in its entirety, the pleadings, and the facts.

Judges are not deprived of the ability to direct the parties to properly written summations of the facts, discussion of the issues, and identification of the controlling law and jurisprudence simply because it was also identified by counsel. The judgment specifically notes as reasons for the judgment: "consideration of the exceptions filed on behalf of the defendants, the supporting and opposing memoranda submitted by the parties, and the oral arguments presented by the parties" as is evidenced below:

> **REASONS FOR JUDGMENT ON JA JMART FUEL, LLC'S PEREMPTORY EXCEPTIONS OF NO CAUSE OF ACTION, NO RIGHT OF ACTION, AND PRESCRIPTION AND DILATORY EXCEPTION OF LACK OF PROCEDURAL CAPACITY**
>
> After consideration of the exceptions filed on behalf of the defendants, the supporting and opposing memoranda submitted by the parties, and the oral arguments presented by the parties, the Court submits its reasons for judgment. For the reasons set forth in Faisal Ali's and Best Smoke & Vape, LLC's Memorandum in Support of Faisal Ali and Best Smoke & Vape Shop, LLC's Peremptory Exception of No Right of Action and Dilatory Exception of Lack of Capacity, which the Court adopts in its entirety as its reasons for judgment, the Court grants these exceptions and dismisses Jaswant Dhillon's and Quick Trip SJ, LLC's (Plaintiffs) Re-Stated Petition and First Amending and Supplemental Petition at cost to Plaintiff's. Plaintiffs filed no opposition to these exceptions.
>
> Additionally, the Court adopts it their entirety, JA JMart's Memorandum in Support of JA JMart Fuel, LLC's Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription and Dilatory Exception of Lack of Capacity as well as its Reply in Support of Defendant's Peremptory Exceptions of No Cause of Action, No Right of Action, and Prescription and Dilatory Exception of Lack of Capacity as its reasons for judgment and grants these exceptions dismissing Jaswant Dhillon's and Quick Trip SJ, LLC's and dismisses Jaswant Dhillon's and Quick Trip SJ, LLC's (Plaintiffs) Re-Stated Petition and First Amending and Supplemental Petition at cost to Plaintiff's.

Accordingly, this assignment of error lacks merit.

<u>Assignment of Error No. 2</u>: The trial court erred in finding that Plaintiffs "had no opposition" to the exceptions.

Plaintiffs argue that the trial court's finding that they did not file an opposition to the exceptions was erroneous. Plaintiffs admit that neither the caption nor the introduction of its opposition properly identifies each Defendant, specifically JA J-Mart, by name. However, Plaintiffs argue that the opposition it did file encompasses the "mirror exceptions" Defendants filed in response to JA J-Mart's addition to the lawsuit.

The record reveals that Plaintiffs failed to timely file any opposition to the Ali Defendants' exceptions, despite the trial court granting Plaintiffs an additional 30 days to do so. The record also shows that the opposition filed only responded to the exceptions filed as defendant, JA J-Mart, who was not properly added to this lawsuit, as will be discussed below. Accordingly, this assignment of error is without merit.

Assignment of Error No. 3: The trial court erred in granting the peremptory exception of no right of action.

Plaintiffs repeatedly urge that the trial court simply adopted Defendants' memoranda "wholesale" but did not clearly articulate a legal basis for sustaining the exceptions of no right of action and/or no cause of action. Those assertions have been addressed above. The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru S., Inc.*, 616 So. 2d 1234 (La. 1993). No evidence may be introduced at any time to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. An exception of no cause of action is triable on the face of the petition; and, for the purpose of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Indus. Companies, Inc. v. Durbin*, 02-0665 (La. 1/28/03), 837 So. 2d 1207. It should be granted only when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Badeaux v. Sw. Computer Bureau, Inc.*, 05-0612 (La. 3/17/06), 929 So. 2d 1211. If the petition states a cause of action on any ground or portion of the demand, the exception should generally be overruled. *Id*. Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. *Indus. Companies, Inc. v. Durbin, supra.*

In reviewing a trial court's ruling sustaining an exception of no cause of action, the appellate court should conduct a de novo review because the exception raises a question of law, and the trial court's decision is based only on the sufficiency of the petition. *Indus. Companies, Inc. v. Durbin, supra.*; *Nat'l Collegiate Student Loan Tr. 2006-1 v. Huggins*, 55,786 (La. App. 2 Cir. 10/2/24), 399 So. 3d 847.

As a result of the claims against Shaheen being controlled by binding arbitration, the trial court considered only the claims asserted against the Ali Defendants. The Ali Defendants relied on the Certificate in authentic form and filed in the public records of Ouachita Parish to confirm Shaheen had the authority to convey the real property owned by the LLC. It sought out and obtained legal advice on that subject. While Dhillon may pursue any grievances regarding Shaheen's actions against Shaheen, any allegations against the Ali Defendants must be viewed in light of the controlling facts and law.

La. R.S. 12:1318, Voting Rights of Members, provides in pertinent part:

> A. Unless otherwise provided in the articles of organization or a written operating agreement, each member of a limited liability company shall be entitled to cast a single vote on all matters properly brought before the members, and all decisions of the members shall be made by majority vote of the members.

B. Unless otherwise provided in the articles of organization or a written operating agreement, a majority vote of the members shall be required to approve the following matters, whether or not management is vested in one or more managers pursuant to R.S. 12:1312:

(1) The dissolution and winding up of the limited liability company.

(2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company.

(3) The merger or consolidation of the limited liability company.

(4) The incurrence of indebtedness by the limited liability company other than in the ordinary course of its business.

(5) The alienation, lease, or encumbrance of any immovables of the limited liability company.

(6) An amendment to the articles of organization or an operating agreement.

After conducting a de novo review of the record, we find the trial court did not err in granting the peremptory exceptions of no right of action as to the Ali Defendants. Dhillon had no right to file the present lawsuit against the Ali Defendants on behalf of the LLC and had no individual right of action against them. He was not an individual party to the property sale, and he cannot independently assert actions on behalf of the LLC without consent of the majority of the members.

Finally, Plaintiffs failed to assert a right of action against JA J-Mart, because neither Dhillon nor the LLC was a party to the sale of the store's inventory to JA J-Mart, which involved separate entities in a separate transaction. Accordingly, this assignment of error is without merit.

<u>Assignment of Error No. 4</u>: The trial court erred in granting the peremptory exception of no cause of action.

Plaintiffs argue that their petition successfully states claims against the Ali Defendants for actionable misconduct, statutory and codal violations, intentional tort, false representations, silence and inaction, unlawful business practices and conspired wrongdoing resulting in economic harm. A cause of action, when used in the context of the peremptory exception, is defined as the operative facts that give rise to the plaintiff's right to judicially assert the action against the defendant. *Wederstrandt v. Kol*, 22-01570 (La. 6/27/23), 366 So. 3d 47, *reh'g denied*, 22-01570 (La. 9/8/23), 370 So. 3d 457. An exception of no cause of action is utilized to determine the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru, Inc.*, *supra*. No evidence may be introduced to support or controvert the objection that the petition fails to state a cause of action. La. C.C.P. art. 931. Thus, the court reviews the petition and accepts well-pleaded allegations of fact as true; and the issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to the relief sought. *Everything on Wheels Subaru, supra*.

The adjective "well-pleaded" refers to properly pleaded allegations conforming to the system of fact pleading embodied in the Louisiana Code of Civil Procedure. *Wederstrandt, supra*. It does not include allegations deficient in material detail, conclusory factual allegations or allegations of law. *Id.* The burden of demonstrating that the petition states no cause of action is upon the mover. *Id.* A petition should not be dismissed for failure to state a cause of action unless it appears beyond doubt that plaintiff can prove no set of facts in support of any claim which would entitle him to relief. *Succession of Miller*, 56,139 (La. App. 2 Cir. 4/9/25), 409 So. 3d 486, 490-91, *reh'g denied* (May 15, 2025), *writ denied*, 25-00747 (La. 10/1/25), 417 So. 3d 569; *Walker v. Dollar Tree Stores, Inc.*, 53,898 (La. App. 2 Cir. 4/14/21), 316 So. 3d 585. In reviewing a trial court's ruling on an exception of no cause of action, an appellate court applies a de novo standard of review. *Id.*

Plaintiffs' allegations in any of their pleadings fail to assert or allege any facts that establish any cause of action against JA J-Mart. Plaintiffs failed to provide any facts that support a connection between claims originally pleaded against Best Smoke and Ali against JA J-Mart, who was not a party to the property sale. Further, Plaintiffs appear to try to rescind the sale of the inventory to JA J-Mart but cannot state a cause of action against Defendants in this lawsuit because that sale constituted an entirely separate transaction (the inventory, not the property) that also involves distinct parties. We find that the trial court did not err in sustaining the exception of no cause of action. Plaintiffs cannot prove any set of facts in this litigation in support of any claim which would entitle them to the relief they seek against Defendants. Accordingly, this assignment of error is without merit.

Assignment of Error No. 5: The trial court erred in granting the peremptory exception of prescription.

Ordinarily, the party pleading prescription bears the burden of proving that the claim has prescribed; however, when prescription is evident on the face of the pleadings, the burden shifts to the plaintiff to show that the action has not prescribed. *Higgins v. Russell*, 55,624 (La. App. 2 Cir. 5/22/24), 386

So. 3d 1236. When no evidence is submitted at the hearing on the exception, the exception of prescription must be decided upon the facts alleged in the petition with all of the allegations accepted as true. In that case, the reviewing court simply assesses whether the trial court was legally correct in its finding. *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.,* 21-00061 (La. 10/10/21), 333 So. 3d 368; *Gilcrease v. Maximus Operating, LTD.*, 56,300 (La. App. 2 Cir. 10/1/25), 423 So. 3d 246, *writ denied*, 25-01394 (La. 1/21/26), 425 So. 3d 105.

The record shows that Plaintiffs' petition (which is their third in this litigation but is actually entitled "First Amending and Supplemental Restating Petition") was filed *over two years* after initially filing suit. These claims are subject to a one-year prescriptive period, which would have begun on the date of the transaction.

Based on our de novo review of the record, we find the trial court did not err in sustaining the exception of prescription as to JA J-Mart. The one-year prescriptive period for any potential claim against JA J-Mart had prescribed, and the addition of JA J-Mart as a party did not relate back to the initiation of the lawsuit. *See* La. C. C. P. art. 1153. Accordingly, this assignment of error is without merit.

Assignment of Error No. 6: The trial court erred in granting the dilatory exception of lack of procedural capacity.

Plaintiffs argue they are a natural person and a Louisiana LLC, who are both capable of bringing suit, and Defendants present no evidence to the contrary. Defendants assert that the trial court did not err in granting the exception because Dhillon had no capacity to bring this suit on behalf of the LLC.

Lack of procedural capacity is a dilatory exception which tests a party's legal capacity to bring an action or have an action brought against it. *Stonecipher v. Caddo Parish*, 51,148 (La. App. 2 Cir. 4/7/17), 219 So. 3d 1187, *writ denied*, 17-0972 (La. 10/9/17), 227 So. 3d 830. The determination of whether a party has the procedural capacity to sue or be sued involves a question of law, which is reviewed under the de novo standard of review to determine whether the ruling of the trial court was legally correct. *Woodard v. Upp*, 13-0999 (La. App. 1 Cir. 2/18/14), 142 So. 3d 14.

We find the trial court did not err in sustaining the exception of lack of procedural capacity. The record shows that Dhillon did not have the capacity to bring this lawsuit on behalf of the LLC. La. R.S. 12:1318. As discussed herein, the LLC is comprised of only two members, Dhillon and Shaheen. Dhillon clearly did not have a majority vote of both members to bring this action on behalf of the LLC.[7] Neither the LLC's Articles of Organization nor the operating agreement provide any exception to the general rule that decisions made on behalf of the LLC must be made by a majority vote of the members. As Dhillon pursues in arbitration his claims that Shaheen, without a majority vote, could not act alone on behalf of the LLC to sell its assets, Dhillon is likewise confronted with that same mathematical challenge here of not owning a majority of the LLC to bring this action. Accordingly, this assignment of error is without merit.

<u>Assignment of Error No. 7</u>: The trial court abused its discretion by dismissing Plaintiffs' claims with prejudice without allowing amendment.

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[7] Plaintiffs have made no allegation that this suit arises as a derivative action. See La. C.C.P. art. 611 and art. 615.

Plaintiffs argue that dismissal with prejudice is only appropriate when amendment would be futile and that the trial court did not identify any incurable defect in their pleadings.

Defendants argue that the Plaintiffs' claims are blatantly frivolous and not supported by the record and were, therefore, appropriately dismissed. Further, Defendants note that Plaintiffs had a total of 48 days to respond to the exceptions and failed to timely do so. We find that the trial court did not abuse its discretion by dismissing Plaintiffs' claims for the reasons addressed by the other assignments of error. Further, the record shows that Plaintiffs did not request the right to amend and did not oppose the proposed Judgment prepared by Ali's counsel. Accordingly, this assignment of error is without merit.

Assignment of Error No. 8: The trial court erred in dismissing Plaintiff, Quick Trip SJ, LLC's claim against Defendant, Best Smoke & Vape Shop, LLC for lesion beyond moiety.

Plaintiffs argue that the trial court failed to conduct an analysis into its allegations regarding the fair market value of the LLC to support its claims against JA J-Mart of lesion beyond moiety.

Louisiana Civil Code articles 2589 through 2600 govern rescission of a sale for lesion beyond moiety, i.e., when the price paid is less than one half of the fair market value of the immovable. *See* La. C.C. art. 2589.

Plaintiffs' claims related to lesion beyond moiety were only directed to JA J-Mart. Defendants argue that the trial court did not abuse its discretion by dismissing Plaintiffs' claim against JA J-Mart for lesion beyond moiety because JA J-Mart was not a party to the property sale. We agree. The remedy sought by Plaintiffs is strictly limited to the seller of the immovable property, and JA J-Mart was not a party to that sale. The trial court correctly held Plaintiffs have no cause of action against JA J-Mart to rescind the property sale on the grounds of lesion beyond moiety. Accordingly, this assignment of error is without merit.

Assignment of Error No. 9: The trial court erred in ordering lis pendens cancelled.

Based on our review of the record, the trial court did not err in ordering that the notice of lis pendens filed by Dhillon be cancelled, because the trial court had properly dismissed Plaintiffs' claims with prejudice. The action, alleging fraud, conversion and Louisiana Unfair Trade Practices Act claims, does not affect the title to the immovable property. The notice of lis pendens was properly removed. La. C.C.P. art. 3751. Accordingly, this assignment of error is without merit.

Request for Additional Sanctions for Frivolous Appeal

The Ali Defendants argue that this appeal is frivolous, and they should be granted sanctions, including attorney fees spent in opposition. Sanctions have already been brought and awarded against Plaintiffs' counsel in this suit by the trial court. We find that this appeal is not frivolous, as Plaintiffs did identify genuine legal questions for multiple parties in complex transactions in their multiple assignments of error. Accordingly, the Ali Defendants' request for added sanctions is denied.

CONCLUSION

For the foregoing reasons, the trial court's judgment sustaining the Defendants' exceptions of no right of action, no cause of action, prescription, and lack of capacity, and dismissing Plaintiffs' claims with prejudice, is affirmed.

Costs of this appeal are assessed to Plaintiffs.

AFFIRMED.

STONE, J., dissenting.

I respectfully dissent from the majority opinion for several reasons. First, when the proceedings were stayed as to Shaheen, the entire action became subject to the mandatory stay of La. R.S. 9:4202. Second, even if the action were not required to be stayed, the trial court and majority err in granting any of the exceptions. Third, I point out what appears to be improper factual premises on which the majority relies in reaching its conclusion.

Mandatory stay

Section 21 of the QT operating agreement[8] sets forth the arbitration agreement; in relevant part, it states:

> *Any dispute, controversy or claim arising out of or in connection with this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration* in the city in which the principal place of business of the Company is then located, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any other time or place or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in a court of competent jurisdiction.

The scope of the arbitration clause (italicized above) includes whether the subject transactions were authorized or apparently authorized and whether Shaheen committed fraud and conspired with Ali to convey assets without authority. That issue is referable to arbitration. The arbitrator's decision of that issue, if in favor of Dhillon, may or may not have res judicata effects binding as to Ali and his companies (i.e., through the doctrine of virtual

[8] R. 26-27.

representation), but it certainly cannot be preclusive *against* Dhillon. An arbitration decision in favor of Shaheen may preclude Dhillon's judicial action against Ali and his companies.

On September 5, 2023, the parties agreed to Shaheen's motion to stay and that the plaintiffs' claims against him be referred to arbitration, but plaintiffs stipulated that they would be allowed to continue their claims against Ali in court. The parties and court contemplated that an order would be signed effectuating the stay, but no such order appears in the record. R. 1. Likewise, there is no dismissal of Shaheen, nor any order staying proceedings.

La. R.S. 9:4202 *mandates* stay of judicial proceedings involving any *issue* referable to arbitration:

> If any suit or proceedings be brought upon *any issue referable to arbitration under an agreement in writing for arbitration*, the court in which suit is pending, upon being satisfied that the issue involved in the suit or proceedings is referable to arbitration under such an agreement, *shall* on application of one of the parties *stay the trial of the action until an arbitration has been had* in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with the arbitration.

By its very terms, this provision does not allow the adjudication of "any issue referable to arbitration" to be bifurcated between the court and the arbitrator, i.e., having the court proceed with the suit (involving the arbitrable issues) as to parties *not* subject to arbitration but referring an issue common to all the parties to the arbitrator as to other parties that *are* subject to arbitration. Rather, upon application of *a* party, the statute mandates that the court "stay the trial of *the action* until an arbitration has been had."[9] The statutory mandate is to stay trial of the entire action, not merely stay trial as to less than all parties on an issue arbitrable between less than all parties. There is no room within the language of La. R.S. 9:4202 for a stay as to one party but not to all. The stipulation to continue the action against Ali and his companies while sending the issue of the validity of the transactions to arbitration violates La. R.S. 9:4202.

A contrary reading of La. R.S. 9:4202 (i.e., allowing piecemeal adjudication) becomes even more untenable in light of related law. La. C.C.P. art. 927(A)(4) provides that nonjoinder of a necessary party (under arts. 641 & 642) is grounds for the grant of a peremptory exception. La. C.C.P. art. 641 mandates joinder as follows:

> A person shall be joined as a party in the action when either:
> (1) In his absence complete relief cannot be accorded among those already parties.
> (2) He claims an interest relating to the subject matter of the action and is so situated that the adjudication of the action in his absence may either:
> (a) As a practical matter, impair or impede his ability to protect that interest.
> (b) Leave any of the persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations.

Plaintiff cannot obtain complete relief without Shaheen, as the latter is: (1) the allegedly self-dealing, unauthorized agent who conspired with Ali and caused QT to sell its assets below market value and remains a 50% owner in QT; and (2) allegedly has an interest in or is employed favorably by the entities through which Ali purchased the QT assets. Furthermore, having

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[9] "A civil action is a demand for the enforcement of a legal right." La. C.C.P. art. 421.

these issues arbitrated as to Shaheen but tried in court as to the Ali defendants could result in inconsistent and contradictory adjudications.

La. C.C.P. art. 642 provides the consequences when a necessary party cannot be joined:

> If a person described in Article 641 cannot be made a party, the court shall determine whether the action should proceed among the parties before it, or should be dismissed. The factors to be considered by the court include:
> (1) To what extent a judgment rendered in the person's absence might be prejudicial to him or those already present.
> (2) The extent to which the prejudice can be lessened or avoided by protective provisions in the judgment, by the shaping of relief, *or by other measures* [i.e., such as a stay pursuant to La. R.S. 9:4202].
> (3) Whether a judgment rendered in the person's absence will be adequate.
> (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Thus, the same conclusion can be reached independently of La. R.S. 9:4202 via La. C.C.P. arts. 641 and 642. As explained above, the inconsistencies that parallel adjudications of the transactional authority, fraud, and conspiracy issues could produce are unacceptable.

The trial court should have stayed the entire proceeding upon Shaheen's application. Instead, the trial court proceeded to adjudicate the Ali defendants' exceptions, and dismissed plaintiff's claims against the Ali defendants with prejudice. Thus, if the plaintiff prevails in arbitration on his theory of lack of authority and further on his theories of forgery, fraud, and conspiracy between Ali and Shaheen, the plaintiff will nonetheless be precluded by res judicata from recovery against Ali and his companies — that is, unless this court vacates the dismissal, enters a stay pursuant to La. R.S. 9:4202, and pretermits the assignments of error raised.

Setting aside the fact that the majority errs in not following La. R.S. 9:4202 and La. C.C.P. arts. 641 and 642, I also dissent from the majority's decision regarding assignments of error nos. 3, 4, 5, 6, and 9.

No right of action and lack of procedural capacity

The Ali defendants assert: (1) plaintiff has no authority to bring this action on behalf of QT because Shaheen, the other 50% owner, did not vote for it to do so; and (2) plaintiff lacks procedural capacity to file suit on behalf of QT.[10] As the exceptors, the Ali defendants have the burden of proving that Dhillon has no right to enforce QT's cause of action. *Louisiana Shrimp Ass'n v. Wayne Estay & Wayne Estay Shrimp Co*., 05-29 (La. App. 5 Cir. 5/31/05), 905 So. 2d 431, 434.

In granting these exceptions, the majority does not mention or address the plaintiff's strongest argument in opposition to these exceptions i.e., that this is a *derivative* action whereby a member of an LLC can file suit in his own name to enforce the LLC's rights when the LLC itself refuses to do so. La. C.C.P. art 611(A); *see also, Parker v. Paladin Contractors, LLC,* 20-0492 (La. App. 4 Cir. 3/3/21), 314 So. 3d 1128. This position is well argued in the plaintiff's appellate brief. Furthermore, the majority conflates the exception of no cause of action with that of no right of action. This conflation is evidenced by the fact that, *in addressing the assignment of error concerning the exceptions of no **right** of action*, the majority opinion extensively recites the law concerning exceptions of no *cause* of action but

[10] "The objection of lack of procedural capacity challenges the authority of the plaintiff to institute the suit, despite the fact that he or she is the owner of the right which is asserted." The dilatory exception, 1 La. Civ. L. Treatise, Civil Procedure § 6:6 (2d ed.)

is completely silent as to the law concerning the exception of no *right* of action.

Regardless, the majority's conclusion regarding the exception of no right of action is incompatible with the *applicable* law. La. C.C.P. art. 611(A) establishes the derivative action: "When a corporation or unincorporated association refuses to enforce a right of the corporation or unincorporated association, ***a*** shareholder, partner, or ***member*** thereof may bring a derivative action to enforce the right on behalf of the corporation or unincorporated association."[11] (For purposes of a derivative action, "[a] limited liability company shall be treated as an unincorporated association under [La. C.C.P. arts. 611– 617] of the Louisiana Code of Civil Procedure").[12]

However, La. C.C.P. arts. 611– 617 do not contain a list of what a plaintiff in a derivative action that is *not* also a class action must plead. The pleading requirements for bringing a derivative *class* action are set forth in La. C.C.P. art. 615. Strictly speaking, these requirements do not apply to Dhillon's claims because this is not a class action. Nonetheless, La. C.C.P. art. 615 is the closest authority on point and is analogically correct for this case and should be analogically applied. The petition must: (1) allege that plaintiff was a member at the time of the transaction of which he complains;

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[11] "When it is not impracticable for all of …members of a…unincorporated association to join or to be joined as parties to a derivative action to enforce a right of the …unincorporated association which it refuses to enforce…all of the…members who refuse or fail to join as plaintiffs in such an action shall be joined as defendants." La. C.C.P. art. 616.

[12] That series of articles is located in a chapter entitled "Class and Derivative Actions."

(2) allege efforts made to have the LLC enforce its own rights, or the reason for not making such efforts; (3) join as defendants the LLC and the obligor against whom the obligation is sought to be enforced; (4) pray for judgment in favor of the LLC; and (5) be verified by affidavit of plaintiff or his counsel. Concerning element (2), there are exceptions applicable here. *Hirsch v. Cahn Elec. Co.*, 29,327 (La. App. 2 Cir. 5/9/97), 694 So. 2d 636, 641, *writ denied*, 97-1561 (La. 10/3/97), 701 So. 2d 200, held:

> Often in a derivative action were [sic] the corporation is closely held, the second requirement, demand upon the corporation, will be dismissed if the futility of the corporate actors compliance is obvious. **"[C]ourts have unanimously held that in such a case the demand is futile since it is unreasonable to think that a man will vote to bring suit against himself."** *See, Smith v. Wembley Industries, Inc.,* 490 So.2d 1107 (La.App. 4 Cir.1986) *citing* Note, 73 Harv.L.Rev. 729, 753 (1960). (Emphasis in original.)

Id. Further yet, this requirement is legally inapplicable where the other member is allegedly "involved in the self-dealing and mismanagement that is the subject of the suit." *Smith v. Wembley Indus., Inc.*, *supra.*

The pleading requirements for a derivative action are substantially satisfied. Regarding element (1), the petition alleges that Dhillon was a member of QT at the time of the sales of the real estate and inventory. (Paragraph 1 of original petition.)

Regarding element (2), the fact that plaintiff sued Shaheen over this sale is sufficient (to satisfy La. C.C.P. art. 615(2)), especially given that this is not a class action, and QT is a two-member LLC, not a publicly held corporation. Moreover, pursuant to *Hirsch, supra,* and *Smith*, *supra*, the Ali defendants' argument that Dhillon lacks authority to cause QT to sue likewise disproves or waives their contention that plaintiff failed to satisfy that requirement to "[a]llege with particularity the efforts of the plaintiff to secure from…[the other member], the enforcement of the right and the reasons for his failure to secure such enforcement, *or the reason for not making such an effort to secure enforcement of the right*."

Regarding element (3), Dhillon named QT as a co-plaintiff, not a defendant (preamble to original petition). That is the only "deficiency" in his allegations, and at least on these facts it is a mere technicality that does not militate against plaintiff's derivative right of action and, regardless, certainly could be cured by amendment.

Regarding elements (4) and (5), Dhillon prays for judgment in favor of QT and his petition is verified. These pleading requirements are straightforwardly met *in toto*. Thus, even though Shaheen opposes the suit in his capacity as 50% owner of QT, the exceptions of no *right* of action and lack of procedural capacity cannot defeat or retard Dhillon's *derivative* action, whereby a member of an LLC can file suit in his own name to enforce the LLC's rights when the LLC itself refuses to do so.

Nonetheless, in explaining why it grants the exception of no right of action, the majority, after citing operating agreement provisions and the law of no cause of action, merely offers:

> After conducting a de novo review of the record, we find the trial court did not err in granting the peremptory exceptions of no right of action as to the Ali Defendants. Dhillon had no right to file the present lawsuit against the Ali Defendants on behalf of the LLC and had no individual right of action against them. He was not an individual party to the property sale, and he cannot independently assert actions on behalf of the LLC without consent of the majority of the members.
>
> Finally, Plaintiffs failed to assert a right of action against JA J-Mart, because neither Dhillon nor the LLC was a party to the sale of the store's inventory to JA J-Mart,

which involved separate entities in a separate transaction. Accordingly, this assignment of error is without merit.

Essentially, the Ali defendants contended at oral argument that Dhillon has no right of action because he did not use the magic label "derivative action" in his pleadings. This contention is frivolous because: (1) Louisiana retains a system of fact pleading,[13] and the plaintiff has pled all the facts necessary for a derivative action, La. C.C.P. art 615; (2) "[n]o technical forms of pleading are required," La. C.C.P. art. 854; and (3) "[e]very pleading shall be so construed as to do substantial justice," La. C.C.P. art. 865.

The Ali defendants' assertion that Dhillon lacks procedural capacity rests entirely on the false presupposition that Dhillon has no right to bring a derivative action. Clearly, as a natural non-interdicted adult person and member of QT (at all relevant times), Dhillon does have capacity to bring a derivative action.

Assuming arguendo that the trial court needed not stay the proceeding pending arbitration, it nonetheless erred in granting these exceptions as to the Ali defendants, as does the majority.

No cause of action

JA JMart argues that Dhillon fails to state a cause of action regarding the inventory because he does not explicitly allege that QT owned/owns the Fuller store inventory. The majority opinion refers to this movable property as the Fuller "store's inventory." Dhillon's petition refers to the inventory as "the Fuller store inventory" — which, grammatically, asserts that the

[13] A party need not plead law or evidence, but only the material facts on which the cause of action is based.

Fuller store and thus QT were in a rightful possession relation to the inventory. This is sufficient to constitute an allegation that QT owned the movables sold or at least had a contractual right to possess and sell them in its operation. There is a cause of action against a transferee who receives via an unauthorized transfer of the transferor company's assets, whatever it is labeled and whatever theories of liability are asserted.

Furthermore, Shaheen and Ali's interposition of Cypress Wholesale, LLC, which Shaheen solely owned and controlled, between QT and JA JMart does not and cannot shield JA JMart from suit in its capacity as unlawful transferee of the Fuller store's inventory. This is explained more fully below in the discussion of the exception of prescription.

Prescription

JA JMart, which (like Best Smoke) is solely owned and controlled by Faisal Ali, pretends that plaintiff needs relation back to avoid prescription as to JA JMart. However, there is clearly a contractual note in the plaintiff's cacophony of theories — i.e., rescission on the ground that QT did not authorize the inventory sale, and therefore, the sale was invalid. This amounts to a vice or lack of consent — and valid consent is an element essential to all contracts. Contractual actions are subject to a 10-year prescriptive period. La. C.C.P. art. 3499; *Moore v. City of Monroe*, 49,207 (La. App. 2 Cir. 8/13/14), 147 So. 3d 288, *writ denied,* 14-1935 (La. 11/21/14), 160 So. 3d 973. Quasi-contractual actions, such as unjust enrichment, are also subject to a 10-year prescriptive period. *Fluid Disposal Specialties, Inc. v. UniFirst Corp.,* 53,014 (La. App. 2 Cir. 9/25/19), 316 So. 3d 1222, *aff'd on reh'g,* 53,014 (La. App. 2 Cir. 6/3/20), 316 So. 3d 1252. It has not been 10 years since the inventory sale.

Furthermore, although fraud *is* a tort action as to defendants not privy to the contract in question, prescription still has not run as to JA JMart because it is allegedly a coconspirator in the overall scheme, including the real property transaction. Conspirators are liable *in solido*, and interruption of prescription against one solidary obligor is interruption of prescription as to *all* solidary obligors. La. C.C. arts. 2324(A), 3503.

Additionally, on these alleged facts, because the "Ali defendants" (as the majority has appropriately labeled them) JA JMart and Best Smoke are both solely owned by Ali, the distinction between the three collapses for purposes of their alleged fraudulent dealings and intentions.[14] Louisiana law does not allow Ali to play such "Wizard of Oz" type games, but treats him and his LLCs as one unit:

> The ***"single business enterprise" doctrine*** is a theory for imposing liability where two or more business entities act as one. Generally, under the doctrine, when corporations integrate their resources in operations to achieve a common business purpose, each business may be held liable for wrongful acts done in pursuit of that purpose. *Brown v. ANA Ins. Grp.,* 07–2116 (La. 10/14/08), 994 So. 2d 1265, citing, *Green v. Champion Ins. Co.,* 577 So. 2d 249 (La. App. 1st Cir.1991), *writ denied,* 580 So. 2d 668 (La. 1991)…*Coleman v. Burgundy Oaks, L.L.C.,* 46,314 (La. App. 2 Cir. 6/8/11), 71 So. 3d 352.

"Where two or more corporations operate a single business, the courts have been unwilling to allow affiliated corporations that are not directly involved to escape liability simply because of the business fragmentation." *Green, supra; Town of Haynesville, Inc. v. Entergy Corp.,* 42,019 (La. App. 2 Cir. 5/2/07), 956 So.2d 192, *writ denied,* 07–1172 (La. 9/21/07), 964 So. 2d 334;

14 This principle is recognized by the U.S. Tax Code, which classifies a single-member LLC as a "disregarded entity." 26 U.S.C. § 7701(a); 26 CFR § 301.7701-2(c)(2)(i).

Volentine v. Raeford Farms of Louisiana, LLC, 50,698 (La. App. 2 Cir. 8/15/16), 201 So. 3d 325, 355, *writ denied*, 16-1924 (La. 12/16/16), 212 So. 3d 1171, and *writ denied*, 16-1925 (La. 12/16/16), 212 So. 3d 1171. The supplemental and amending petition alleges that the sales (of the movable and immovable assets) took place on the same day, and that the movables were not physically moved — but functionally became the inventory for the new operator of the Fuller store, i.e., Best Smoke and JA JMart. As to the Fuller store, the "Ali defendants" must be treated as a single business enterprise for purposes of these exceptions because, economically, they are a single unit.

The same principles require us to disregard Cypress Wholesale, LLC, which is solely owned by Shaheen and was apparently used as a device in an attempt to circumvent contractual privity between QT and JA JMart.

Improper factfinding

The majority opinion seemingly makes findings of fact rejecting Dhillon's allegations and crediting Ali's allegations; it states:

> As a result of the claims against Shaheen being controlled by binding arbitration, the trial court considered only the claims asserted against the Ali Defendants. The Ali Defendants relied on the Certificate *in authentic form* and filed in the public records of Ouachita parish to confirm Shaheen had the authority to convey the real property owned by the LLC. It sought out and obtained legal advice on that subject. While Dhillon may pursue any grievances regarding Shaheen's actions against Shaheen, *any allegations against the Ali Defendants must be viewed in light of the* ***controlling facts*** *and law.* (Emphasis added.)

It must be noted that Dhillon explicitly alleges that the Certificate of Authority (R. 29) on which the transactions rely was forged (original petition paragraph 8), and he alleged with particularity circumstances that would indicate Ali *knew* Dhillon was 50% owner of QT *and refused to sell the property* (original petition, paragraph 10). Together with the rest of the allegations, these allegations establish a cause of action for fraud and conspiracy against Ali. The majority does not mention the allegations of paragraph 10 in its rendition of the facts.

The majority also states that the certificate relied upon was in "authentic form" — by which it apparently means in the form of an authentic act under La. C.C. art. 1833, which states: "An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed." There are no witnesses undersigned to the certificate of authority (R. 29), and therefore, the certificate is not an authentic act. Thus, as a mere act under private signature, the burden of proving the authenticity of the certificate of authority is on the defendants. La. C.C. art. 1838. The trial court did not hold a jury trial (which Dhillon requested) or otherwise adjudicate the issue of forgery and certainly made no finding that Dhillon's purported signature on the certificate was in fact authentic. Yet it seems that the majority, in labeling the certificate as in "authentic form" perhaps takes the authenticity of the signature as a "controlling fact."

Finally, the majority opinion's language above appears to indicate that it, in granting the exceptions, placed weight on the alleged fact that the certificate of authority was filed in the public records and that Ali alleged the fact that Ali relied on advice of counsel regarding Shaheen's authority to unilaterally divest QT of the Fuller store and its assets. These are not "controlling facts" at this point in the proceedings as no such factfinding could validly have occurred yet. Recordation of an act in the public records does not and cannot validate it. That is because the public records doctrine, where applicable, only operates to deny effectiveness to rights, as against third parties, created by unrecorded acts. La. C.C. art. 3338. Moreover, whether Ali reasonably relied on these things is *irrelevant* to the exceptions of no right of action, no cause of action, lack of procedural capacity, and prescription and is not before this court. Those alleged facts are relevant to the *factual question* of Ali's state of mind and knowledge at the time of the transaction; this is clearly not a matter to be adjudicated at this stage of proceedings.

CONCLUSION

For these reasons the judgment of the trial court should be reversed and vacated and the proceedings should be stayed pending arbitration.