Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-141

GADREL, L.L.C.

versus

SILVIO GURDIAN

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 789-058, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING

December 16, 2025

FREDERICKA HOMBERG WICKER

JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and Stephen J. Windhorst

AFFIRMED

FHW
MEJ
SJW

COUNSEL FOR DEFENDANT/APPELLANT,
SILVIO GURDIAN
Andrew J. Walker

COUNSEL FOR PLAINTIFF/APPELLEE,
GADREL, LLC
James E. Uschold
Mark J. Boudreau

WICKER, J.

This appeal arises out a judgment of default. Defendant-Appellant Silvio Gurdian appeals the trial court's September 23, 2024 judgment granting a default judgment to Plaintiff-Appellee Gadrel, LLC and awarding $346,600 in unpaid rents, plus interest. For the following reasons, we affirm the judgment.

BACKGROUND

On September 17, 2015, Plaintiff Gadrel purchased tax sale certificates for two Jefferson Parish four-plex properties owned by Defendant Gurdian located at 4104 and 4116 Delaware Avenue in the City of Kenner (the "property"). Gadrel recorded the certificates on September 21, 2015, initiating the three-year redemption period. The redemption period ended on September 21, 2018.

On October 30, 2018, Plaintiff Gadrel filed suit against Defendant Gurdian to confirm and quiet title pursuant to La. R.S. 47:2266. On September 8, 2022, the trial court awarded judgment to Gadrel, quieting its tax sale title against Defendant Gurdian. This Court affirmed that judgment on October 18, 2023, and the Louisiana Supreme Court denied writs on January 17, 2024.[1] One day later, on January 18, 2024, Gadrel took possession of the property.

While the trial court's September 8, 2022 judgment quieting title was pending on appeal to this Court, Plaintiff Gadrel filed an amended petition seeking to recover rent allegedly collected by Defendant Gurdian after the expiration of the redemption period. The basis of Gadrel's claim was that, under La. R.S. 47:2121(C), ownership of the property passed from Gurdian to Gadrel at the end of the redemption period on September 21, 2018, and that, as owner, it was entitled to all amounts Gurdian collected from then until Gadrel took possession of the property on January 18, 2024 pursuant to La. C.C. arts. 483, 486, and 487. Gadrel alternatively

[1] *See Gadrel, LLC v. Gurdian*, 22-572 (La. App. 5 Cir. 10/18/23), 374 So.3d 197, *writ denied*, 23-1515 (La. 1/17/24), 377 So.3d 244.

asserted a claim for unjust enrichment under La. C.C. art. 2298. Gurdian received service of the amended petition through his then-counsel of record,[2] but failed to file an answer, exception, or request for extension of time. Consequently, Gadrel moved for default judgment against Gurdian under La. C.C.P. art. 1702.

In its memorandum in support of its motion for default judgment, Plaintiff Gadrel argued it would establish a prima facie case of its entitlement to recover unpaid rents against Defendant Gurdian. Previewing its evidence, Gadrel described the testimony it anticipated from three witnesses, relating to the fair market rental rates versus the actual rental rates charged by Gurdian between September 21, 2018 and January 18, 2024. In total, Gadrel sought $346,600 in unpaid rents, plus interest from the due date of each rental payment.[3]

On August 5, 2024, the trial court held a hearing on Plaintiff Gadrel's motion for default judgment. Counsel for Gadrel appeared at the hearing, but neither Defendant Gurdian nor counsel for Gurdian made an appearance. At the end of the first hearing day, the trial court recessed[4] the matter until September 18, 2024. As occurred on the first hearing day, Gurdian again failed to make an appearance on the second hearing day, either personally or through counsel. During the hearing, Gadrel offered additional exhibits in support of its claim, which the trial court admitted into evidence. At the conclusion of the default judgment proceedings, Gadrel asked the trial court to grant judgment in accordance with its motion, with

[2] Almost one year later, on February 21, 2024, Defendant Gurdian's attorney filed a motion to withdraw as his counsel of record, which the trial court granted on April 20, 2024.

[3] Although the claim for unpaid rent covers the period between September 21, 2018 and January 18, 2024, Plaintiff Gadrel divided it into two separate claims to account for an increase in the amount of rent collected by Gurdian towards the end of the claims period. The first claim argues damages should be calculated using a rental value of $625 per month, and the second claim uses a rental value of $825 per month, as we discuss in the Analysis section below.

[4] Although the trial court referenced its action at the conclusion of the first hearing day as a continuance, it actually recessed the hearing to the second hearing date.

the exception that Gadrel was now claiming $352,000 in damages instead of the amount originally requested.[5]

On September 23, 2024, the trial court issued a default judgment against Defendant Gurdian on Plaintiff Gadrel's claim for unpaid rents, plus interest. However, the trial court did not award all relief ultimately sought by Gadrel. Specifically, the trial court awarded Gadrel $346,600 in unpaid rent (using $625 and $825 as rental values), which, although aligning with Gadrel's original request, is $5,400 less than Gadrel's ultimate request of $352,000 (using $650 and $850 as rental values).[6] Moreover, the trial court declined to calculate interest as requested by Gadrel (*i.e.,* from the due date of each rent payment), and instead awarded interest from the date of judicial demand. No written reasons for judgment were issued by the trial court.

This appeal followed.

ANALYSIS

Defendant Gurdian asserts that the trial court erred in granting default judgment because Plaintiff Gadrel failed to establish a prima facie case of entitlement to rents. Gurdian argues that Gadrel was not entitled to rent at any time before Gadrel took possession of the property on January 18, 2024; or, in the alternative, that Gadrel was not entitled to rent before the trial court's judgment quieting title on September 8, 2022. Gadrel filed an answer to the appeal, challenging the award of damages as too low and requesting damages for a frivolous appeal.

[5] The record reveals that Plaintiff Gadrel filed a supplemental memo in support of its motion for default judgment, in which Gadrel requested damages using the rental values of $650 and $850, instead of $625 and $825, as we discuss in the Analysis section below.

[6] As we discuss in in the Analysis section below.

Standard of Review

Upon the plaintiff's service of the defendant with a petition for damages, the defendant has, pursuant to La. C.C.P. art. 1001, twenty-one days to answer the petition, file an exception, or seek an extension of time. Specifically, La. C.C.P. art. 1001 provides that:

> A. A defendant shall file his answer within twenty-one days after service of citation upon him, except as otherwise provided by law. If the plaintiff files and serves a discovery request with his petition, the defendant shall file his answer to the petition within thirty days after service of citation and service of discovery request.
>
> B. When an exception is filed prior to answer and is overruled or referred to the merits, or is sustained and an amendment of the petition ordered, the answer shall be filed within fifteen days after the exception is overruled or referred to the merits, or fifteen days after service of the amended petition.
>
> C. The court may grant additional time for answering.

La. C.C.P. art. 1001. Additionally, La. C.C.P. art. 1002 provides further that, "Notwithstanding the provisions of Article 1001, the defendant may file his answer or other pleading at any time prior to the signing of a default judgment against him." La. C.C.P. art. 1002.

Failure to comply with La. C.C.P. arts. 1001–02 exposes the defendant to a judgment of default under La. C.C.P. art. 1702."[7] *Arias v. Stolthaven New Orleans, LLC*, 08-1111 (La. 5/5/09), 9 So.3d 815, 818; *see also Ramos v. Alexander*, 18-355 (La. App. 5 Cir. 12/19/18), 262 So.3d 1000, 1003. On appeal of a default judgment, the appellate court determines only whether the evidence offered in support of the default judgment was sufficient. *Arias*, 9 So.3d at 818 (citation omitted). This determination is a factual one governed by the manifest error—clearly wrong—standard of review, "which precludes the setting aside of a district court's finding of fact unless that finding is clearly wrong in light of the record reviewed in its

[7] The judgment at issue was rendered when the revisions for La. C.C.P. art. 1702 under Act 2023, No. 5, § 1 and Act 2023, No. 7, § 1 were in effect from August 1, 2023, to July 31, 2025. La. C.C.P. art. 1702 has been since been revised in accordance with Act 2025, No. 250 § 3.

entirety." *Hall v. Folger Coffee Co.*, 03-1734 (La. 4/14/04), 874 So.2d 90, 98 (citation omitted); *see also Ramos*, 262 So.3d at 1003 (citing *Arias*).

To confirm a default judgment, the plaintiff must "establish[ ] a prima facie case by competent and admissible evidence that is admitted on the record . . . ." La. C.C.P. art. 1702(A)(1). A prima facie case is established when the plaintiff proves the essential allegations of the petition, with competent evidence, to the same extent as if the allegations had been specifically denied. *Vance v. Int'l House of Pancakes, LLC*, 20-1373 (La. 2/17/21), 310 So.3d 550, 550 (*per curiam*) (citing *Power Mktg. Direct, Inc. v. Foster*, 05-2023 (La. 9/6/06), 938 So.2d 662, 670). In other words, "the plaintiff must present competent evidence that convinces the court that it is probable that he would prevail at trial on the merits." *Ramos*, 262 So.3d at 1003 (quoting *Arias*, 9 So.3d at 820).

A plaintiff seeking to confirm a default must prove both the existence and validity of his claim. *Arias*, 9 So.3d at 820. A default judgment "shall not be different in kind from that demanded in the petition." La. C.C.P. art. 1703. "The amount of damages awarded shall be the amount proven to be properly due as a remedy." *Id.* There is a presumption that a default judgment is supported by sufficient evidence, but this presumption may be rebutted by the record upon which the judgment is rendered. *BridgePoint Healthcare Louisiana, LLC v. St. Theresa Specialty Hosp., LLC*, 21-612 (La. App. 5 Cir. 5/11/22), 342 So.3d 120, 124 (citing *Arias*). However, "a defendant against whom a default judgment is confirmed may not assert an affirmative defense on appeal." *Arias*, 9 So.3d at 820.

In his single assignment of error, Defendant Gurdian asserts that the trial court erred in granting a default judgment awarding $346,600 in rents to Plaintiff Gadrel because Gadrel "failed to establish a prima facie case of legal entitlement to rents, having offered no evidence that it possessed the properties during the rent period, and having claimed rents for a period that occurred mostly before it quieted title and

entirely before it obtained legal possession." Gurdian asserts the issue and question of law for review is whether "a tax sale purchaser can establish a prima facie case for entitlement to rents in a default proceeding where the rents awarded cover a period during which the purchaser had neither legal possession of the property nor, for most of that period, a judgment quieting title."

Despite framing his argument on appeal as a question of fact (or of factual sufficiency), what Defendant Gurdian's argument really comes down to is a question of law: That question is: when is a tax sale purchaser entitled to collect rental income from the property? We will first address and answer Gurdian's question. Thereafter, we will review the sufficiency of the evidence that Plaintiff Gadrel introduced during the two-day default hearing to support the default judgment. And finally, we will discuss the claims asserted by Gadrel in his answer to this appeal.

A tax sale purchaser is entitled to collect rental income following the expiration of the redemption period.

Defendant Gurdian argues that Plaintiff Gadrel was not entitled to rents collected for the period before it obtained physical possession of the property on January 18, 2024; or, in the alternative, that Gadrel was not entitled to rents collected for the period before the trial court's judgment quieting title on September 8, 2022. As it relates to the issue of possession, Gurdian argues that Gadrel was not entitled to recover rent collected before it obtained physical possession of the property on January 18, 2024. For support, Gurdian cites to the Fourth Circuit's decision in *Succession of Caldarera v. Zeno*, 09-1397 (La. App. 4 Cir. 7/16/10), 43 So.3d 1080, *writ denied*, 10-1909 (La. 11/5/10), 50 So.3d 810. In that case, the court denied a tax purchaser's rent claim because the purchaser never took possession of the property, even after the redemption period expired. Gurdian argues that Gadrel admitted under oath that it did not take possession of the properties until January 18, 2024, and offered no evidence of eviction, writ of possession, or lease transfer during

that rent period. Gurdian also argues that he was a good faith possessor of the property and, as a result, he was entitled to enjoy the fruits of the property (*i.e.,* rents) under La. C.C. arts. 486 and 551,[8] to the exclusion of Gadrel.

Plaintiff Gadrel responds that its possession of the property is irrelevant because La. C.C. arts. 486–87 obligate a bad faith possessor to restore fruits to the owner. Gadrel contends that Defendant Gurdian became a bad faith possessor when the redemption period expired and he continued to collect rent despite notice of the tax sale and pending litigation. Gadrel asserts that *Caldarera* is inapplicable because it was decided prior to the 2008 revisions of the tax sales laws, it involved unique facts, and the court expressly stated that its holding was not intended to establish a general principle. 43 So.3d 1080. Gadrel further points to La. R.S. 47:2158.1 for support, which confirms that rent collection is prohibited only during the redemption period, not after.

Even if rent could be claimed prior to possession of the property, Defendant Gurdian asserts that Plaintiff Gadrel's right did not vest until the trial court issued judgment quieting title on September 8, 2022. In support of his position, Gurdian relies on the Louisiana Supreme Court's decision in *Central Properties v. Fairway Gardenhomes, LLC*, which held that a tax sale conveys only a lien with "future rights of ownership after due notice . . . and the expiration of the redemptive period, as well as the filing of a suit to quiet title." 16-1855 (La. 6/27/17), 225 So.3d 441, 449. Gadrel responds that Gurdian's reliance on jurisprudential language cannot override clear statutory authority provided by La. R.S. 47:2121(B)–(C), which states that title passes when the redemption period expires, provided proper notice was given and any nullity rights have terminated. Gadrel emphasizes that under Louisiana's civilian tradition, legislation is the primary source of law and must

[8] La. C.C. art. 486 states: "The fruits of a thing belong to the possessor in good faith." La. C.C. art. 551 defines civil fruits as revenues, such as rent.

prevail over dicta. *Bergeron v. Richardson*, 320 So.3d 1109 (La. 2021) ("When a statute specifically disposes of an issue, resort to jurisprudence is unnecessary."). Gadrel argues that a quiet title action merely "confirms" ownership already vested by statute; it does not transfer title. We agree.

As pointed out by Plaintiff Gadrel, Defendant Gurdian relies on cases inapplicable here either because they were decided prior to the revisions of the tax sales law (like *Caldarera*), or because it is dicta (like *Central Properties*). Current law does not support Gurdian's positions. Under La. R.S. 47:2121(B), "No tax sale shall transfer or terminate the property interest of any person in tax sale property or adjudicated property until that person has been duly notified and both the redemptive period and any right held by that person to assert a payment or redemption nullity under La. R.S. 47:2286 have terminated." Subsection (C)(1) of the same section provides, "If the tax sale property is not redeemed within the redemptive period, then at the termination of the redemptive period, tax sale title transfers to its holder ownership of the tax sale property, free of the ownership and other interests, claims, or encumbrances held by all duly notified persons."

These provisions confirm that title passes when the requirements of that provision are satisfied; it does not require a quiet title action be filed or a judgment quieting title, nor does it make possession of the property a requirement. The statutory language is clear and unambiguous and prevails over jurisprudential dicta. *See Duckworth v. Louisiana Farm Bureau Mut. Ins. Co.*, 11-2835 (La. 11/2/12), 125 So.3d 1057, 1064 ("When a law is clear and unambiguous and its application does not lead to absurd consequences, the law must be applied as written, and no further interpretation may be made in search of the legislative intent."); *Moore v. Gencorp, Inc.*, 633 So.2d 1268,1270 (La. 1994) ("If the intent of the legislature is clear, that is the end of the matter.").

Furthermore, the Louisiana legislature added La. R.S. 47:2158.1 in 2022, by Acts 2022, No. 404§ 1., prohibiting tax sale purchasers from collecting rents before the end of the redemption period, as follows:

> A. A tax debtor who is the owner of and who is residing in the tax sale property shall not be subject to any eviction proceeding or to a writ of possession pursuant to R.S. 47:2158 during the redemptive period.
>
> B. (1) The acquiring person shall not be entitled to or charge any rental or lease payments to the owner or occupants and shall not place any constructions on or make any improvements to the tax sale property during the redemptive period.

La. R.S. 47:2158.1(A)–(B)(1). This provision does not prohibit the collection of rent once the redemption period ends, nor does it prohibit the collection of rent until after a judgment quieting title. Had the legislature intended to prohibit the collection of rent in such instances, it would have included those prohibitions in this provision. It is therefore clear that this new provision was intended to remove uncertainty as to whether a tax sale purchaser could collect rent before the redemption period expired and title passed. Any other outcome here, like requiring possession or quieted title, would only encourage tax sale debtors to prolong litigation to collect rent for themselves and to deprive the purchaser of those amounts for as long as possible.

Here, the redemption period expired on September 21, 2018. At that moment, title passed to Plaintiff Gadrel by operation of law, after which time it was entitled to collect rent. We therefore find no merit in Defendant Gurdian's argument that Gadrel was entitled only to those rents paid after possession, or, in the alternative, after title is quieted.

The evidence submitted by Plaintiff Gadrel at the default judgment hearing was sufficient to establish a prima facie case for unpaid rents against Defendant Gurdian.

Having thoroughly reviewed the evidence introduced by Plaintiff Gadrel during the two-day hearing on its motion for default judgment, we find no merit in Defendant Gurdian's argument that Gadrel failed to establish a prima facie case for

unpaid rents. The trial court heard testimony and received documents into evidence on Gadrel's motion for default on August 5, 2024 and September 18, 2024, during which the testimony, affidavits, pleadings, and exhibits demonstrated that Gadrel was the tax sale purchaser of the property; that Gurdian's deadline to redeem the property expired on September 21, 2018; and that, despite having no further rights to the property, Gurdian nevertheless continued possession of it and collection of its rents for the next five years.

Specifically, Plaintiff Gadrel presented several exhibits in support of its claim, including the tax sale documents, prior ownership records, tenant leases, the expert appraisal reports regarding rental values, the judgment quieting title, the amended petition for damages, proof of service of amended pleadings, discovery requests and responses (or lack thereof), default judgment notices, the affidavit of service by private process server, the bankruptcy court order lifting the stay relating to Defendant Gurdian's bankruptcy case, and copies of all prior notices of default judgment sent to Gurdian—all of which the trial court admitted into evidence.

Plaintiff Gadrel also presented the testimony of three witnesses: Elvis Davis, a longtime tenant of the property; Nathanial Phillips, a representative of Gadrel; and Dina McCarty, an expert appraiser. Mr. Davis's testimony provided context about the property itself and the tenants, the nature and amount of rents paid, and the continued payment of rent to Defendant Gurdian until Gadrel took possession of the property on January 18, 2024. During his testimony, Mr. Davis authenticated a copy of his lease agreement with Gurdian, and the agreement was offered into evidence. Mr. Phillips' testimony provided evidence regarding Gadrel's eventual possession of the property and further context regarding the rental amounts paid by tenants. Ms. McCarty's testimony provided a detailed look into the condition of the property and her expert evaluation into the fair rental rates between September 21, 2018 and January 18, 2024. During her testimony, Ms. McCarty authenticated the property

appraisal reports she prepared while formulating her expert opinions in this matter, and Gadrel offered copies of the reports into evidence.

Mr. Davis, Mr. Phillips, and Ms. McCarty also provided testimony supporting the amounts claimed by Plaintiff Gadrel for its claim of unpaid rents against Defendant Gurdian. Mr. Davis testified that, upon moving to the property in 2008, his rent was between $600–$700 per month. He explained that, following Hurricane Ida in August 2021, Gurdian increased his rent to $750–$800 per month. Mr. Davis also provided the additional context that, because of Hurricane Ida, the tenants did not pay rent to Gurdian for two or three months. Mr. Davis further testified that, since Gadrel took possession of the property, his rent has been $800 per month. Additionally, Mr. Phillips testified that, upon Gadrel taking possession of the property in January 2024, he discovered that the tenants' rents ranged between $800–$900 per month, with the average being $825 per month. Thereafter, he explained, Gadrel leveled the rent among all tenants to $800 per month. Ms. McCarty testified that the fair market rental value for comparable rental properties between September 21, 2018 and January 18, 2024 was about $950–$1335.

Given evidence of fluctuating, yet increasing rent prices between September 21, 2018 and January 18, 2024, as well as the gap in tenant rent payment following Hurricane Ida, Plaintiff Gadrel split its claim for damages into two claims' periods: (1) pre-Hurricane Ida, from September 21, 2018 to August 31, 2021 (35 months total); and (2) post-Hurricane Ida, from November 1, 2021 to December 31, 2023 (25 months total). For the pre-Hurricane Ida period, Gadrel initially claimed the average rental rate was $625 per month per unit, totaling $175,000 in unpaid rent; but after the default judgment hearing, Gadrel claims the evidence shows an average rental rate of $650 per month per unit, totaling $182,000 in unpaid rent. For the post-Hurricane Ida period, Gadrel initially claimed the

average rental rate was $825 per month per unit, totaling $171,600 in unpaid rent; but following the default judgment hearing, Gadrel claims the evidence shows an average rental rate of $850 per month per unit, totaling $170,000 in unpaid rent.[9] The full amount Gadrel initially claimed for unpaid rent was $346,600; but after the default judgment hearing, Gadrel claims a total of $352,000 in unpaid rent.

In light of this evidence, we find no manifest error in the trial court's granting of a default judgment in favor of Plaintiff Gadrel and against Defendant Gurdian.[10]

Gadrel's Answer to the Appeal

Plaintiff Gadrel filed an answer to the appeal, challenging the amount of damages awarded to it by the trial court, as well as the interest calculation. Gadrel also requests damages under La. C.C.P. art. 2164 for filing a frivolous appeal.

1. Rental Amounts Awarded

Plaintiff Gadrel contends that the trial court erred in awarding $346,600 instead of $352,000, arguing the amount awarded is insufficient and contrary to the evidence. In response, Defendant Gurdian reasserts his position that Gadrel is not entitled to recover any rents claimed, although he does not directly address Gadrel's arguments as to the sufficiency of the evidence presented at the default judgment.

Plaintiff Gadrel argues that it presented uncontroverted evidence that the fair rental rate for each claim period was $650 and $850, respectively. It also argues that it presented uncontroverted evidence of the actual rent charged by Defendant Gurdian during the collection period. Gadrel asserts that this evidence was sufficient to make a prima facie showing of its entitlement to those amounts. Gadrel contends

[9] The total is lower than the total for the initial claim because Plaintiff Gadrel subtracted one month from the post-Hurricane Ida claims period in an "abundance of caution."

[10] On appeal, Defendant Gurdian also contests Plaintiff Gadrel's alternative claim for unjust enrichment. Gurdian argues that unjust enrichment cannot sustain the judgment because it is a subsidiary remedy available only when no other legal remedy exists. The trial court's judgment, however, makes no mention of Gadrel's claim for unjust enrichment. We therefore find it unnecessary to address in this appeal.

that the trial court arbitrarily reduced the rental rates from $650 and $850 to $625 and $825, without explanation, and that, as a result, the trial court awarded Gadrel lower than the lowest amount in evidence. Gadrel argues that this "lower-than-the-lowest-amount-in-evidence" award is proof that the trial court rejected the testimony of Gadrel's expert witness regarding fair rental rates. In doing so, Gadrel claims that the trial court committed manifest error.

We disagree. During the default judgment hearing, three witnesses testified about rental rates. Mr. Davis, a property tenant since 2008, testified that his rent was about $600 –$700 per month before Hurricane Ida in August 2021, and about $750–800 per month afterwards. Mr. Phillips, a representative of Plaintiff Gadrel, testified that, upon Gadrel taking possession of the property in January 2024, he discovered that the average rental rate for tenants was $825 per month. He also explained that Gadrel set every tenant's rent to $800 per month. Ms. McCarty, Gadrel's expert appraiser, testified that she calculated the fair market rental rates for the property between September 21, 2018 and January 18, 2024 at $950 to $1335 per month.

Considering this evidence, we find no manifest error in the trial court's award of damages to Plaintiff Gadrel based on the monthly rental rates of $625 and $825. As previously discussed above, Gadrel initially claimed $625 and $825 were the average rental rates for the two claims periods, resulting in a total claim of $346,600 for unpaid rent. Then, following the default judgment hearing, Gadrel asserted in a supplemental memo in support of its motion, that the average rental rates for the two claims periods was $650 and $850, resulting in a total claim of $352,000 for unpaid rent. The evidence in the record is sufficient to support the trial court's finding that the average monthly rental rates were $625 and $825, and that, as a result, Gadrel was entitled to recover $346,600 in unpaid rent.

2. Calculation of Interest

Plaintiff Gadrel contends the trial court erred in awarding interest from the date of judicial demand instead of from the date that each monthly rent payment became due. Gadrel asserts that under La. C.C. art. 486, a possessor in bad faith is bound to restore to the owner the fruits he has gathered or their value, and that Defendant Gurdian became a bad faith possessor on September 21, 2018 when the redemption period expired. Gadrel further asserts that under La. C.C. art. 2000, damages for delay in paying a sum of money are measured by interest from the time the sum is due. Gadrel argues that once Gurdian became a bad faith possessor, it was obligated to reimburse Gadrel for each monthly rent collected thereafter.

Plaintiff Gadrel emphasizes that, under Louisiana law, a bad faith possessor is treated as a trespasser,[11] and that Defendant Gurdian's continued collection of rent after the redemption period expired, "constituted conversions under the law."[12] Gadrel claims that, since Gurdian's actions constituted conversions, then Louisiana law entitles Gadrel to recover damages with interest calculated from the date of each conversion.[13] Gadrel presents this conversion argument for the first time on appeal. Gadrel did not assert a claim for conversion against Gurdian in the petition or amended petition. Although Gadrel asserted below that interest should be calculated

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[11] Citing to *Juneau v. Laborde*, 228 La. 410, 416, 82 So.2d 693, 695 (1955); *Jewell v. De Blanc*, 110 La. 810, 815, 34 So. 787, 789 (1903); *Manson Realty Co. v. Plaisance*, 196 So.2d 555, 557 (La. App. 4th Cir. 1967); *Roy v. Elmer*, 153 So.2d 209, 211 (La. App. 2d Cir.), *writ refused*, 244 La. 904, 154 So. 2d 770 (1963).

[12] Citing to *Quealy v. Paine, Webber, Jackson & Curtis, Inc*., 475 So.2d 756; *Importsales, Inc. v. Lindeman*, 231 La. 663, 668, 92 So.2d 574, 576 (1957); *Dual Drilling Co. v. Mills Equip. Invs., Inc.*, 98-343 (La. 12/1/98), 721 So.2d 853, 857; *New Orleans Jazz & Heritage Found., Inc. v. Kirksey*, 09-1433 (La. App. 4 Cir. 5/26/10), 40 So.3d 394, 405–06, *writ denied*, 10-1475 (La. 10/1/10), 45 So.3d 1100.

[13] Citing to *Hitt v. Herndon*, 166 La. 497, 511, 117 So. 568, 573 (1927); *Reynolds v. Reiss*, 145 La. 155, 161, 81 So. 884; *Farrar v. Whaley*, 16-790 (La. App. 3 Cir. 2/1/17), 211 So.3d 449, 461, *writ denied*, 17-409 (La. 4/13/17), 218 So.3d 626; *Holland v. First Nat. Bank of Crowley*, 398 So.2d 186, 190 (La. App. 3 Cir. 1981); *Disimone v. Bryant*, 120 So.2d 113, 114 (La. App. Orleans 1960).

from the date each rent payment became due, this is the first time Gadrel asserts the theory of conversion as the basis for its interest calculation.

A default judgment "shall not be different in kind from that demanded in the petition [and] the amount of damages awarded shall be the amount proven to be properly due as a remedy." La. C.C.P. art. 1703. Gadrel did not assert a claim for conversion against Gurdian in its amended petition. Moreover, a review of the hearing transcript reveals that while Gadrel objected to the interest calculation included in the trial court's draft judgment, it did not file supplemental briefing on the issue, although the trial court specifically gave it time to do so. We therefore find Plaintiff Gadrel waived the issue.

3. Frivolous Appeal

Plaintiff Gadrel requests damages and attorney's fees for a frivolous appeal under La. C.C.P. art. 2164, asserting that Defendant Gurdian's appeal lacks any legal or factual basis. Gadrel argues that the judgment was supported by a prima facie case and that Gurdian's reliance on dicta is improper. Gurdian responds that his appeal is not frivolous because it raises legitimate legal questions about entitlement to rents, possession, and title confirmation.

Under both La. C.C.P. art. 2164 and U.R.C.A. Rule 2-19, an appellate court may award damages for a frivolous appeal. *Haydel v. Mollere*, 24-566 (La. App. 5 Cir. 4/23/25), 414 So.3d 1, 9–10. However, the Louisiana Supreme Court has explained that damages are not allowed unless the appeal is "unquestionably frivolous[.]" *Hampton v. Greenfield*, 618 So.2d 859, 862 (La. 1993). Damages for a frivolous appeal are permitted only when "it is obvious that the appeal was taken solely for delay or that counsel is not sincere in the view of the law he advocates even though the court is of the opinion that such view is not meritorious." *In re Succession of Ackel*, 20-187, (La. App. 5 Cir. 12/23/20), 309 So.3d 849, 856, *writ denied*, 21-47 (La. 3/2/21), 311 So.3d 1052 (quoting *Hampton*). La. C.C.P. art. 2164

is penal in nature and must be strictly construed. *Haydel*, 414 So.3d at 10 (citing *Alombro v. Alfortish*, 02-1081 (La. App. 5 Cir. 4/29/03), 845 So.2d 1162, 1170, *writ denied*, 03-1947 (La. 10/31/03), 857 So.2d 486).

Upon review, we do not find that Defendant Gurdian's appeal rises to the level of "unquestionably frivolous." Thus, we decline to award Plaintiff Gadrel the requested damages.

DECREE

For the foregoing reasons, we affirm the trial court's September 23, 2024 judgment granting Plaintiff Gadrel's motion for default judgment against Defendant Gurdian and awarding Gadrel $346,600 in unpaid rent, plus interest from the date of judicial demand.

AFFIRMED

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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 **DECEMBER 16, 2025** 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

25-CA-141

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)
ANDREW J. WALKER (APPELLANT)
JAMES E. USCHOLD (APPELLEE)
MARK J. BOUDREAU (APPELLEE)

MAILED
KATHERINE R. MIRE (APPELLANT)
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