

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-536

DANIEL BOLNER

versus

THOMAS FONTES AND FONTES CAPITAL PARTNERS, LLC

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 821-523, DIVISION "C"
HONORABLE JUNE B. DARENSBURG, JUDGE PRESIDING


May 20, 2026

MARC E. JOHNSON
JUDGE

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

AFFIRMED AS AMENDED

MEJ
FHW
SJW

TRUE COPY

JALISA WALKER
DEPUTY CLERK

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DANIEL BOLNER

Ryan S. McBride

COUNSEL FOR DEFENDANT/APPELLANT,
THOMAS FONTES AND FONTES CAPITAL PARTNERS, LLC

David M. McDonald

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JOHNSON, J.

Appellants/Defendants, Thomas Fontes and Fontes Capital Partners, LLC, appeal the judgment that awarded Appellee/Plaintiff, Daniel Bolner, Jr., \$90,867.93 for the breach of a sale agreement and promissory note rendered in the 24th Judicial District Court, Division “C”. For the following reasons, we affirm the judgment as amended.

FACTS AND PROCEDURAL HISTORY

The facts pertinent to this appeal are as follows:

On March 1, 2018, Thomas Fontes and Fontes Capital Partners, LLC (hereinafter collectively referred to as “Fontes”) entered into a contract of sale and promissory note with Daniel Bolner, Jr. for the sale of Mudbug Plumbing Repair, Inc. (hereinafter referred to “MPR, Inc.”). In the contract of sale and promissory note (hereinafter referred to as “the Agreement”), Fontes agreed to purchase MPR, Inc. and its assets¹ from Mr. Bolner for the purchase price of \$175,000. The Agreement provided that the \$175,000 purchase price would be paid in an initial cash payment of \$40,000. The \$135,000 remaining balance would bear interest at 3.5% per annum and be paid in 59 consecutive monthly installments in the amount of \$2,455.89 due on the first day of each month, with the 60th installment in the amount of the balance due. The Agreement also contained Mr. Bolner’s agreement not to compete anywhere in the United States with the plumbing business that he sold to Fontes for a period of two years from the date of the Agreement.

A few years later, on October 4, 2021, Mr. Bolner filed a petition for breach of contract, injunction, preliminary injunction, permanent injunction, suit on promissory note, and for damages and attorneys’ fees. The petition alleged that Fontes breached the Agreement and defaulted by: (1) failing to pay two

¹ The Agreement provided that the assets consisted of the company’s contents, vehicles, iPad, phone numbers, inventory, and goodwill.

consecutive monthly installments on the Agreement; (2) failing to pay two installments of the sums described in the paragraph entitled “Employment Agreement and Compensation”; and (3) failing to pay the amount described in the paragraph entitled “Two Year Agreement” within 30 days after written notice. It averred that no payments had been made by Fontes since June 1, 2021, and there was an outstanding balance of approximately \$70,000, together with 3.5% interest from April 1, 2018. The petition alleged that Mr. Bolner incurred damages arising from Fontes’ breach of contract, failure to maintain timely payments, property damage, and expenses. It also sought injunctive relief to prevent Fontes from operating MPR, Inc.

In their answer, as a defense, Fontes asserted that Mr. Bolner first breached the Agreement by breaching the non-competition clause. They asserted that, under the indemnity clause in the Agreement, Mr. Bolner’s prior breach extinguished their obligations.

Trial was held on June 11, 2025. At the close of Mr. Bolner’s case, Fontes filed an oral motion for involuntary dismissal, which was denied by the trial court. All the exhibits introduced by the parties were accepted into evidence by the trial court at the end of the trial. The trial court took the matter under advisement and allowed the parties to submit post-trial briefs.

On July 25, 2025, the trial court rendered judgment in favor of Mr. Bolner. The court found that Fontes breached the Agreement by failing to make all the required payments. It further found that Fontes made 27 monthly payments in accordance with the Agreement and owed monthly installments of \$2,455.89 for the remaining 37 months. The trial court awarded Mr. Bolner \$90,867.93 for the remaining aggregate total of the term of the Agreement through June 1, 2025, plus legal interest, attorney’s fees, and costs. The court denied all other relief sought by either of the parties. In its written reasons for judgment, the trial court found that

Mr. Bolner sufficiently proved the existence of Fontes' obligation under the Agreement, and Fontes provided insufficient evidence that the Agreement should not remain in effect. The instant appeal followed.

ASSIGNMENTS OF ERROR

On appeal, Fontes allege that the trial court erred by: 1) determining they had not paid the amount due under the Agreement; 2) denying their oral motion for involuntary dismissal; 3) failing to address the competency of the evidence; 4) failing to consider their evidence of payments; 5) finding that Mr. Bolner met his burden of proof; 6) finding that \$90,867.93 was the outstanding obligation; and 7) awarding judicial interest, attorney's fees, and costs.

LAW AND ANALYSIS

Motion for Involuntary Dismissal

Fontes allege that the trial court erred in denying their oral motion for involuntary dismissal at the close of Mr. Bolner's presentation of evidence based upon their contention that Mr. Bolner failed to prove that they did not satisfy their obligations under the Agreement. As a result, they contend they were entitled to judgment as a matter of law at the close of Mr. Bolner's presentation of evidence.

Mr. Bolner argues that his burden of proof was met at trial. He maintains that he introduced the Agreement, corroborating bank records, and a coherent amortization schedule, effectively establishing the *prima facie* case necessary for enforcement of the obligation.

Pursuant to La. C.C.P. art. 1672(B),

In an action tried by the court without a jury, after the plaintiff has completed the presentation of his evidence, any party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal of the action as to him on the ground that upon the facts and law, the plaintiff has shown no right to relief. The court may then determine the facts and render judgment against the plaintiff and in favor of the moving party or may decline to render any judgment until the close of all the evidence.

During a bench trial, after the plaintiff has completed the presentation of his evidence, the appropriate standard in determining whether an involuntary dismissal should be granted is whether the plaintiff has presented sufficient evidence in his case-in-chief to establish his claim by a preponderance of the evidence. *LMB Servs. LLC v. Par. of St. Charles*, 24-46 (La. App. 5 Cir. 11/27/24), 409 So.3d 799, 804-05, writ denied, 24-1581 (La. 2/28/25), 402 So.3d 492, citing *Hardgood v. Sinnott*, 23-168 (La. App. 5 Cir. 11/29/23), 377 So.3d 893, 896. The trial court has much discretion in determining whether to grant a motion for the involuntary dismissal of an action. *Id.* However, in order to prevent the miscarriage of justice, the trial court should not hesitate to reopen a case for the taking of additional evidence, and an appellate court should not hesitate to set aside the trial court's ruling on such matters in the case of a manifest abuse of discretion. *Id.*, citing *Kim v. Kim*, 07-318 (La. App. 5 Cir. 10/30/07), 970 So.2d 1158, 1164.

In the case at bar, the crux of Mr. Bolner's petition arises from his breach of contract claim. Thus, we must evaluate whether Mr. Bolner presented sufficient evidence of his breach of contract claim by a preponderance of the evidence. Under La. C.C. art. 1994, an obligor is liable for damages caused by his failure to perform a conventional obligation. The failure to perform may result from nonperformance, defective performance, or delay in performance. *Sanga v. Perdomo*, 14-609 (La. App. 5 Cir. 12/30/14), 167 So.3d 818, 822, writ not considered, 15-222 (La. 4/17/15), 176 So.3d 1032, and writ denied, 15-222 (La. 6/19/15), 172 So.3d 650. First, a plaintiff must prove that the obligor undertook an obligation to perform. *Id.* When the plaintiff's legal action arises from a written obligation, *prima facie* proof of the obligation is the writing itself, and introduction of the writing into the record is generally required. *Mautner v. Ware*, 19-611 (La. App. 5 Cir. 5/27/20), 296 So.3d 1209, 1214, citing *Champagne v. Manuel*, 03-1147 (La. App. 5 Cir. 12/30/03), 864 So.2d 797, 799-800. Next, a plaintiff must prove

that the obligor failed to perform the obligation. *Sanga, supra*. Finally, the failure to perform must result in damages to the plaintiff.

During Mr. Bolner's presentation of his evidence, Mr. Fontes was called as a witness. When presented with the Agreement, Mr. Fontes acknowledged its terms, specifically the \$175,000 purchase price and the 60 consecutive monthly installments schedule in the amount of \$2,455.89 each. He was then shown QuickBooks spreadsheets from his own records, titled "Mudbugs Plumbing Services Unlimited LLC Transactions by Account" (hereinafter collectively referred to as "the spreadsheet"), listing 42 check and credit card payments in varying amounts to Mr. Bolner from April 4, 2018 through October 13, 2020.² Mr. Fontes testified that the 42 payment entries could have represented different obligations, including payments under a separate lease agreement between the parties or payments toward the Agreement.³ He later stated that he had not been asked to produce any bank or credit card statements to corroborate the values listed on the spreadsheet.

On cross-examination, Mr. Fontes was presented with a copy of Mr. Bolner's Metairie Bank statements and the QuickBooks spreadsheet. After comparing the two documents, he testified that there were payments reflected on the spreadsheet that were not reflected on the bank statement. Mr. Fontes further testified that his response to Interrogatory No. 6 propounded by Mr. Bolner, which asked him to identify all payments, listed 38 payments.

Mr. Bolner testified that he understood the terms of the Agreement to provide he would be paid \$2,455.89 by Fontes for a period of 60 months beginning on April 1, 2018 for the remaining amount of the purchase price. When presented

² The spreadsheet was prepared by a bookkeeper employed by Accounting Services Unlimited, a company owned by Mr. Fontes. The exhibit included four pages, which included payment, profit and loss detail entries. The spreadsheet listed a few duplicate payment entries.

³ Mr. Bolner later testified that Mr. Fontes also rented commercial properties—located at 612 Clearview Parkway and 4508-A King Street—from him from 2018 to 2020.

with his Metairie Bank statements, Mr. Bolner testified all the entries reflected in the statement that were not redacted were payments by Fontes. However, it was unclear whether those entries represented payments toward the Agreement or the separate lease agreement. It was Mr. Bolner's opinion that Fontes defaulted on the Agreement.

On cross-examination, Mr. Bolner testified that he notified Mr. Fontes of the default by phone but never provided written notice. Additionally, Mr. Bolner testified that he filed an eviction proceeding against Mr. Fontes on the separate lease agreement; nevertheless, that filing occurred after Mr. Fontes purchased the company. The litigation over the lease resulted in a settlement. Mr. Bolner was then asked to read a section of a "Receipt, Release and Indemnity Agreement,"⁴ stating that he released any claims for damages and breach of contract "arising out of or connected with the lease of 612 Clearview [Parkway] and 4508-A King St." Mr. Bolner was also questioned about his deposition answers concerning whether he received the \$40,000 installment payment or received any payments other than PayPal payments. He acknowledged that he answered he did not recall to the \$40,000 installment payment question and negatively to the other payments question during the deposition. He further acknowledged that he had received Gulf Coast Bank checks from Fontes in the first few months following the sale. Mr. Bolner then rested his case.

Immediately thereafter, Fontes raised an oral motion for involuntary dismissal. They argued that Mr. Bolner failed to carry his burden of proving through competent evidence that the Agreement was not satisfied, and, therefore, the burden had not shifted to them. Fontes contended that Mr. Bolner had been shown to not be a credible witness through his conflicting testimony. The trial

⁴ The "Receipt, Release and Indemnity Agreement" was the settlement agreement between Mr. Bolner and Mr. Fontes for the separate lease litigation.

court denied Fontes' motion.

After reviewing the above-mentioned evidence, we find that Mr. Bolner presented sufficient evidence in his case-in-chief by a preponderance of the evidence to establish his claims based upon a breach of contract. Therefore, we find that the trial court was not manifestly erroneous or clearly wrong in its denial of Fontes' motion for involuntary dismissal. We will now consider whether the trial court's factual findings in favor of Mr. Bolner were manifestly erroneous or clearly wrong.

Findings of the Trial Court⁵

Fontes alleges that the trial court erred in finding Mr. Bolner met his burden of proving they failed to fulfill the Agreement and \$90,867.93 was the outstanding obligation owed to him. They argue that the trial court failed to address the credibility of Mr. Bolner's conflicting testimony and bank records introduced by him in light of the evidence they presented, which they allege clearly showed the inaccuracy of Mr. Bolner's evidence. They specifically assert that the testimonies of Susan Stanich and Mr. Fontes and the credit card, check, and PayPal payments refuted Mr. Bolner's assertions and showed that the Agreement had been paid in full. They further assert Mr. Bolner had knowledge that he had previously signed a waiver of all claims against them regarding the property. Fontes contend their evidence showed it was more probable than not that they had not breached the Agreement and had satisfied the payments due under the Agreement, and they were entitled to judgment in their favor.

Mr. Bolner argues that the trial court was not manifestly erroneous in finding that Fontes failed to pay the Agreement in full. He avers that the court heard the witnesses testify, evaluated the evidence introduced in context, and expressly

⁵ Assignments of Error One, Three, Four, Five, and Six are interrelated and will be addressed jointly.

articulated its reasons for rejecting Fontes' interpretation of the evidence, including its finding that the evidence relied upon by him was not internally inconsistent or implausible. Mr. Bolner contends that the burden then shifted to Fontes to prove payment or extinguishment of the Agreement, and they failed to meet the shifted burden. He notes that Mr. Fontes admitted at trial that Fontes' payment records reflected fewer than 60 payments and included amounts that were not applicable to the Agreement. He maintains that the trial court's rejection of Fontes' "paid in full" narrative reflected its evaluation of whether the evidence presented matched their contractual obligation.

As earlier mentioned, the elements of a breach of contract claim are the existence of a contract, the party's breach of the contract, and resulting damages. *Mautner*, 296 So.3d at 1213-14. At trial, Mr. Bolner introduced the Agreement, which set forth the \$175,000 sale price of MPR, Inc. with a \$40,000 initial payment. The \$135,000 remaining balance bearing interest at a rate of 3.5% per annum was to be paid in 59 consecutive monthly installments on the first day of each month, with the final and 60th installment in the amount of the balance due. Both Mr. Bolner and Mr. Fontes testified to the terms of the Agreement and the payment schedule. Thus, the first element of Mr. Bolner's breach of contract claim was satisfied.

Mr. Bolner testified that Fontes defaulted on the Agreement. He introduced his redacted Metairie Bank statement, which reflected entries from August 5, 2018 through August 3, 2020, attributed to payments from Fontes on the Agreement. Conversely, Mr. Fontes testified that he believed the Agreement was satisfied in full. He introduced a QuickBooks spreadsheet prepared by his company's bookkeeper in support of his position. The spreadsheet reflected payment entries of varying amounts from April 4, 2018 through October 13, 2020, totaling \$103,187.15 debited from the account. Mr. Fontes testified that the entries listed

on the spreadsheet could have been attributed to payments toward the Agreement.

In addition to the spreadsheet, Fontes presented the testimony of Susan Stanich, the General Manager for Account Services Unlimited. She testified that the entries on the spreadsheet did not reflect the same payment amount every time because the spreadsheet also reflected payments for backflow inspections and rent for the commercial properties. She answered in the affirmative when asked if it would be reasonable to assume the entries were for payment on the Agreement, if the entries were not marked for rent or some other purpose. She concluded that the Agreement was fulfilled through the entries shown on the spreadsheet.

In its judgment, the trial court found that Fontes made 27 monthly installment payments in accordance with the Agreement and owed \$2,455.89 for each of the remaining 37 months of installments. In its written reasons for judgment, the trial court found that Mr. Bolner sufficiently proved the existence of the obligation, and Fontes provided insufficient evidence that the Agreement should not remain in effect.

When the trial court's findings are based on determinations regarding the credibility of witnesses, the manifest error standard demands great deference to the factfinder's conclusions, because "only the factfinder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said." *Succession of Ether*, 24-545 (La. App. 5 Cir. 4/30/25), 414 So.3d 40, writ denied, 25-846 (La. 11/5/25), 420 So.3d 35, quoting *Succession of Messina*, 353 So.3d 1009, 1011-12. Where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inference of fact should not be disturbed upon review, even if the appellate court may feel that its own evaluations and inference are as reasonable. *Id.*

Here, Fontes contend that Mr. Bolner's testimony is unreliable due to his conflicting deposition and live testimony answers, particularly the answers to

whether he had other litigation involving Mr. Fontes, how many payments he received, and the methods of payment. Although Mr. Bolner gave live testimony answers that differed from his deposition testimony, he clarified his answers. The trial court ultimately found his testimony to be credible. We will not disturb the trial court's reasonable credibility evaluation of Mr. Bolner's testimony.

Next, Fontes insinuate that Mr. Bolner released any and all claims against them when he signed the "Receipt, Release and Indemnity Agreement." However, the language in that agreement related to claims "arising out of or connected with the *lease of 612 Clearview [Parkway] and 4508-A King St.*" [Emphasis added]. The Agreement contested in this matter does not arise out of the commercial property lease but rather out of the sale of MPR, Inc. Thus, Mr. Bolner's release concerning the lease is inapplicable here.

Additionally, Fontes argue that credit card, check, and PayPal payments refuted Mr. Bolner's claims. A court of appeal may not set aside a trial court or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." *Renton Properties, LLC v. 213 Upland, LLC*, 23-479 (La. App. 5 Cir. 12/27/24), 410 So.3d 922, writ denied, 25-240 (La. 5/29/25), 409 So.3d 754 and 25-281 (La. 5/29/25), 410 So.3d 150. To reverse a fact-finder's determination, the appellate court must find from the record that a reasonable factual basis does not exist for the finding of the trial court, and that the record establishes that the finding is clearly wrong. *Id.*

The record reflects the spreadsheet as the only documentary proof of Fontes' payments; no bank, credit card statements, or PayPal records were introduced to identify or corroborate the spreadsheet entries. Further, there was no testimony that the spreadsheet entries were made at the time of or simultaneously with the alleged contract payments, or that the spreadsheet was a document maintained in the ordinary course of Fontes' business, rather than a document prepared later for

the purpose of litigation. Mr. Fontes testified that he had not prepared the spreadsheet, and the spreadsheet contained entries that could represent lease payments or payments on the Agreement. Ms. Stanich testified as to her personal knowledge that payments were made to Mr. Bolner, which were reflected on the spreadsheet. However, she also testified that she did not prepare the spreadsheet and could not attest to its veracity. The person who prepared the spreadsheet was not called to testify. Therefore, upon review of the evidence before us, we cannot find that the trial court was clearly wrong in finding Fontes' evidence insufficient to prove it fulfilled the Agreement.

On the other hand, Mr. Bolner presented his Metairie Bank statements illustrating the payments he received from Fontes. Mr. Bolner's evidence showed that Fontes did not fulfill the 60 monthly installment payments set forth in the Agreement. The second element of Mr. Bolner's breach of contract claim was satisfied.

Mr. Bolner claimed that he incurred damages from Fontes' breach of the Agreement. As noted earlier, Mr. Bolner's bank statement showed that he did not receive 60 monthly installment payments from Fontes. The third element of Mr. Bolner's breach of contract was satisfied. The trial court awarded Mr. Bolner \$90,867.93 for the outstanding balance owed by Fontes. The trial court found that Fontes owed the remaining 37 months of installments. While we agree that Mr. Bolner is entitled to damages, we find that the trial court erred in awarding him \$2,455.89 for 37 months. The Agreement provided for 60 monthly installments of \$2,455.89. The trial court found that Fontes paid 27 monthly payments in accordance with the Agreement, leaving only 33 monthly payments remaining. Therefore, we amend the damages award to reflect an award of \$2,455.89 for the remaining 33 months of the Agreement, totaling an aggregate amount of \$81,044.37 plus accrued legal interest, attorney's fees, and costs in an amount

deemed reasonable by the trial court.

Judicial Interest, Attorney's Fees, and Costs

Fontes alleged that the trial court erred in awarding judicial interest, attorney's fees, and costs to Mr. Bolner as an assignment of error. However, they failed to brief this assignment of error. All assignments of error must be briefed, and the appellate court may consider as abandoned any assigned error that has not been briefed. Uniform Rules—Courts of Appeal, Rule 2-12.4(B)(4); *Riley v. Hollander*, 19-520 (La. App. 5 Cir. 5/28/20), 296 So.3d 1248, 1258, *writ denied*, 20-833 (La. 10/14/20), 302 So.3d 1123. Accordingly, we find that Fontes abandoned this assignment of error due to their failure to brief the basis for the alleged error and, therefore, decline to consider the merits of this assignment.

DECREE

For the foregoing reasons, we amend the trial court's award damages to \$81,044.37 plus accrued legal interest, attorney's fees, and costs in an amount deemed reasonable by the trial court. We affirm the trial court's judgment as amended. Thomas Fontes and Fontes Capital Partners, LLC are assessed the costs of this appeal.

AFFIRMED AS AMENDED

SUSAN M. CHEHARDY
CHIEF JUDGE

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



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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 **MAY 20, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

25-CA-536

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE JUNE B. DARENSBURG (DISTRICT JUDGE)

RYAN S. MCBRIDE (APPELLEE)

DAVID M. MCDONALD (APPELLANT)

MARK R. LADD (APPELLANT)

MAILED

NO ATTORNEYS WERE MAILED