

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 1642

PATRICIA MALLET MAYO

VERSUS

SIDNEY RANDALL HUTCHISON AND  
PATRICIA FABRE HUTCHISON

Judgment Rendered: SEP 27 2017

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Appealed from the  
21<sup>st</sup> Judicial District Court  
In and for the Parish of Tangipahoa, Louisiana  
Trial Court Number 2015-0003753

Honorable Brenda Bedsole Ricks, Judge

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Jay M. Simon  
Baton Rouge, Louisiana

Attorney for Appellant  
Plaintiff – Patricia Mallet Mayo

Scott H. Sledge  
Hammond, Louisiana

Attorney for Appellees  
Defendants – Sidney Hutchison and  
Patricia Hutchison

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**BEFORE: McCLENDON, WELCH, AND THERIOT, JJ.**

*MT*

*theriot, J agrees in part, dissents in part with REASONS*

*JEW*

*PMC*

**WELCH, J.**

The plaintiff/appellant, Patricia Mallett Mayo, appeals a judgment sustaining a peremptory exception raising the objection of prescription filed by defendants/appellees, Sidney Randall Hutchison and Patricia Fabre Hutchison. For the reasons that follow, we affirm the judgment of the district court.

**FACTS AND PROCEDURAL BACKGROUND**

This appeal arises out of a suit to enforce a promissory note secured by a mortgage. On June 2, 2005, Patricia Mayo entered into a cash sale with Sidney and Patricia Hutchison wherein Mayo conveyed to the Hutchisons certain immovable property located at the municipal address of 10397 Highway 1063, Independence, Louisiana 70443 (“the property”). In connection with the sale, the Hutchisons obtained a mortgage from Option One Mortgage Corporate (“Option One mortgage”) that covered a majority of the purchase price of the property. The Option One mortgage was filed in the Tangipahoa Parish mortgage records on June 3, 2005.

To make up the deficiency between the price of the property and the sums obtained through the Option One mortgage, the Hutchisons executed a promissory note in favor of Mayo on June 3, 2005. The June 3, 2005 note in the amount of \$26,000.00 was secured by a mortgage on the property (“Hutchison mortgage”). The note was payable in fifty-nine (59) equal monthly payments, beginning on July 2, 2005, with the final installment of principal with accrued interest due on or before June 2, 2010. As discussed below, the Hutchison mortgage was incorrectly filed into the Tangipahoa mortgage records on June 6, 2005. It is undisputed that the Hutchisons never made a single payment on the note.

## **The First Suit - Declaratory Action Filed by Deutsche Bank**

In 2006, without Mayo's knowledge, the Hutchisons refinanced the Option One mortgage with another lender, America's Wholesale Lender ("AWL"). Deutsche Bank National Trust Company ("Deutsche Bank") later became the holder of the AWL mortgage. In September 29, 2014, Deutsche Bank filed a declaratory judgment against Mayo seeking recognition as the first ranking encumbrance against the property ("Deutsche Bank suit").<sup>1</sup> Deutsche Bank specifically alleged that several deficiencies associated with the filing of the Hutchison mortgage, including the misspelling of the Hutchisons' name in the mortgage records and the failure to attach the correct note, which prevented the Hutchison mortgage from encumbering the property and rendered it outside the chain of title.

Mayo answered Deutsche Bank's petition on December 15, 2014. On February 13, 2015, Mayo made her first attempt to secure a judgment to enforce the June 3, 2005 note, by filing a motion for leave of court to file a third party demand on the note against the Hutchisons. Leave of court was granted on February 23, 2015. Mayo requested service of the third party demand on the Hutchisons, which was accomplished on March 3, 2015; however, she failed to serve the Hutchisons with a copy of Deutsche Bank's petition in the principal demand as required by La. C.C.P. art. 1114.<sup>2</sup> Mayo also failed to serve by mail or

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<sup>1</sup> On July 14, 2017, this court issued an interim order directing the Tangipahoa Parish Clerk of Court to supplement the appeal record with the entire suit record from the Deutsche Bank suit - **Deutsche Bank National Trust Company v. Patricia Mallet Mayo, et al.**, Suit No. 2014-0002897, Division "D", 21<sup>st</sup> Judicial District Court, Parish of Tangipahoa. The Deutsche Bank suit record had been offered, filed and introduced as an exhibit during the July 5, 2016 hearing on the exception of prescription at issue in the instant appeal but was inexplicably absent from the record. The notice of supplementation of the record was issued by this court on July 25, 2017.

<sup>2</sup> Louisiana Code of Civil Procedure article 1114 provides:

A citation and a certified copy of the third party petition shall be served on the third party defendant in the manner prescribed by Articles 1231 through 1293. Unless previously served on or filed by the third party defendant, certified copies of the following pleadings shall also be served on him in the same manner: the

otherwise a copy of the third party demand on Deutsche Bank as required by La. C.C.P. art. 1312.<sup>3</sup>

At some point after service of the third party demand, a document entitled “Consent Judgment” was signed by counsel for Mayo and both of the Hutchisons. A copy of the undated Consent Judgment document was filed with the district court on April 7, 2015 (“April 7, 2015 consent judgment”). Review of the consent judgment reveals that no signature line was provided for the district court’s signature and the document was never signed by the district court. The April 7, 2015 consent judgment sets forth the parties’ intent to settle the third party demand. Further, the April 7, 2015 consent judgment contains an express acknowledgment by the Hutchisons of their obligations under the June 3, 2005 note, and provides, in pertinent part, as follows:

The parties further agree that Third Party Defendants, Sidney Randall Hutchison and Patricia Fabre Hutchison have consistently acknowledged their obligations under the referenced Note and Mortgage to Third Party Plaintiff, Patricia Mallett Mayo, from the inception of the said Note and Mortgage through the present year and are truly indebted to Third Party Plaintiff Patricia Mallett Mayo for failure to perform under that certain Promissory Note dated and made June 3, 2005...

Finally, the parties requested that a judgment be rendered dismissing the third party demand with prejudice. A written judgment was signed by the trial court on April 13, 2015, in favor of Mayo and against the Hutchisons in the

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petition in the principal demand; the petition in the reconventional demand, if any; and the answers to the principal and reconventional demands filed prior to the issuance of citation in the third party action.

<sup>3</sup> Louisiana Code of Civil Procedure article 1312 provides:

Except as otherwise provided in the second paragraph hereof, every pleading subsequent to the original petition shall be served on the adverse party as provided by Article 1313 or 1314, whichever is applicable.

No service on the adverse party need be made of a motion or petition for an appeal, of a petition for the examination of a judgment debtor, of a petition for the issuance of garnishment interrogatories in the execution of a final judgment, or of any pleading not required by law to be in writing.

amount of \$26,000.00, with 6% interest running from June 2, 2005 until paid, attorney's fees and all costs of the proceeding.<sup>4</sup>

On April 23, 2016, Deutsche Bank filed a "Motion to Set Aside, Strike, Vacate, and Nullify Third Party Demand and Consent Judgment and for Sanctions," wherein Deutsche Bank alleged that Mayo had through ill practices attempted to conceal the third party demand from it. Deutsche Bank asserted that Mayo's attorney did not notify her of the April 7, 2015 consent judgment until April 8, 2015. Deutsche Bank requested the third party demand and the consent judgment be set aside as absolute nullities due to Mayo's failure to properly serve the third party demand on the Hutchisons under La. C.C.P. art. 1114. Additionally, Deutsche Bank asserted grounds for nullification of the consent judgment on the grounds of fraud and ill practices. Mayo filed an opposition to Deutsche Bank's motion and acknowledged the procedural deficiencies in service of the third party demand, but maintained that said deficiencies were the result of inadvertence.

The motion to set aside the consent judgment was never heard. On June 15, 2015, Deutsche Bank and Mayo jointly filed and the district court signed a "Consent Judgment on Motion to Set Aside, Strike, Vacate, and Nullify Third Party Demand and Consent Judgment and For Sanctions" ("June 15, 2015 consent judgment").<sup>5</sup> In the June 15, 2015 consent judgment, the parties agreed to set aside, strike, vacate and nullify the motion for leave, the petition on the third party demand, the April 7, 2015 consent judgment, and the April 13, 2015 judgment, and provided, in pertinent part, as follows:

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<sup>4</sup> The judgment dismissing the third party demand was filed on April 14, 2015 and signed by the district court on April 13, 2015. The inconsistency between the filing date and signing date of the judgment is not explained in the records.

<sup>5</sup> A person with interest may show such nullity in collateral proceedings at any time and before any court, for absolutely null judgments are not subject to the venue and the delay requirements of the action of nullity. **Nethken v. Nethken**, 307 So.2d 563, 565 (La. 1975); **Knight v. Sears, Roebuck & Co.**, 566 So.2d 135, 137 (La. App 1<sup>st</sup> Cir.), writ denied, 571 So. 2d 628 (La. 1990).

3. The Consent Judgment (without date) signed by Sidney Randall Hutchison and Patricia Fabre Hutchison and filed on April 7, 2015, is absolutely null and void and without any legal effect whatsoever and, as such, **Defendant, Patricia Mayo, is prohibited from utilizing same in this proceeding or in any other proceeding against Sidney Randall Hutchison and/or Patricia Fabre Hutchison;**

4. The Judgment entered on the Third Party Demand on April 13, 2015, is hereby set aside, vacate[d], nullified, and stricken from the record of this proceeding;

5. The Clerk of Court shall file a copy of this Consent Judgment in the conveyance and mortgage records of Tangipahoa Parish and cross-reference the same to the Judgment entered on April 13, 2015 and filed as File Number 938555, in MOB 2377, Page 589, and in COB 1379, Page 208, to serve as occasion may require...<sup>6</sup> [Emphasis added.]

### **The Second Suit - Suit on Note Filed by Mayo**

On December 18, 2015, Mayo filed the underlying suit in the instant appeal against the Hutchisons in a second attempt to collect on the note. Mayo's petition set forth the conditions and terms of the note, including the requirement that the final installment was due on June 2, 2010. The petition also alleges that despite repeated acknowledgments of the debt the Hutchisons failed to meet their obligations under the note. The Hutchisons countered with a peremptory exception raising the objection of prescription alleging that Mayo's petition was prescribed on its face under La. C.C. art. 3498. Specifically, the Hutchisons asserted that under the terms of the note the last payment was due on June 2, 2010, thus, the last date to file suit would have been June 2, 2015.

The record indicates that Mayo opposed the Hutchisons' exception and argued that the April 7, 2015 consent judgment between Mayo and the Hutchisons in the Deutsche Bank suit constituted a judicial confession and served as an

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<sup>6</sup> On May 2, 2016, Deutsche Bank and Mayo filed a "Joint Motion For/And Judgment of Dismissal, which the trial court signed the same date dismissing the Deutsche Bank suit with prejudice.

acknowledgement thereby interrupting the running of prescription.<sup>7</sup> Mayo also argued that the filing of the third party demand in the Deutsche Bank suit interrupted prescription under La. C.C. art. 3462.

At the July 5, 2016 hearing on the exception, the Hutchisons filed the suit record from the Deutsche Bank suit into evidence without objection. The Hutchisons argued that the express provisions of the later June 15, 2015 consent judgment nullified the earlier April 7, 2015 consent judgment; therefore, Mayo was estopped from claiming that the April 7, 2015 consent judgment constituted a judicial confession or acknowledgement.

Mayo raised a number of arguments at the hearing. First, Mayo argued that since the inception of the note, based on the Hutchisons' claims that various hardships prevented them from paying on the note, she verbally extended the term of the note. However, no evidence or testimony was presented to support these claims, only the arguments of counsel for Mayo. Second, Mayo argued that despite the fact that the "judgment" obtained by Mayo against the Hutchisons in the Deutsche Bank suit could not be enforced as a money judgment, it could serve as a judicial confession acknowledging the debt. Mayo argued that she dismissed the third party demand in the Deutsche Bank suit with the understanding that she could rely upon the judicial confession of liability by the Hutchisons to file a later suit and collect on the note.

In a judgment signed July 25, 2016, the district court sustained the Hutchisons' exception of prescription.<sup>8</sup> Mayo timely filed the instant devolutive

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<sup>7</sup> The record does not contain a copy of the opposition to the exception of prescription filed by Mayo. An appellant is charged with the responsibility of completeness of the record for appellate review, and the inadequacy of the record is imputable to her. See **Niemann v. Crosby Development Co., LLC**, 2011-1337 (La. App. 1<sup>st</sup> Cir. 5/3/12), 92 So.3d 1039, 1044. Nevertheless, Mayo's arguments in opposition to the exception of prescription can be discerned from the transcript of the hearing on the exception.

<sup>8</sup> A rule to show cause was issued by this court on December 27, 2016, noting that the district court's July 25, 2016 judgment appeared to lack decretal language required of an appealable judgment. In response, the district court properly issued an Amended Judgment signed January

appeal. On appeal, Mayo makes two arguments in support of her assertion that the district court erred in sustaining the exception of prescription. First, Mayo asserts that the agreement between the parties memorialized in the April 7, 2015 consent judgment constitutes a judicial confession and is full irrefutable proof of the Hutchisons' obligation under the note. Second, Mayo contends the Hutchisons' admissions of responsibility for the sums due under the note contained in the April 7, 2015 consent judgment constitute an acknowledgement of the debt that serves to interrupt the running of prescription under La. C.C. art. 3464. Relevantly, conspicuously absent from Mayo's arguments in her appellant brief is any acknowledgment of the existence of the later June 15, 2015 consent judgment. For the reasons set forth below, we find no merit in Mayo's arguments.

## LAW

### Prescription

Prescription runs against all persons unless they fall within an exception provided by law. La. C.C. art. 3467. Actions on instruments, whether negotiable or not, and on promissory notes, whether negotiable or not, are subject to a liberative prescription of five years. This prescription commences to run from the day payment is exigible. La. C.C. art. 3498. The five year prescriptive period may be increased either by interruption, which restarts the prescriptive period, or by suspension, which only stops it for the applicable time. La. C.C. arts. 3466 and 3472; **Denham Homes, L.L.C. v. Teche Federal Bank**, 2014-1576 (La. App. 1<sup>st</sup> Cir. 9/18/15), 182 So.3d 108, 115.

Prescription on a promissory note can be interrupted in two instances. First, when the obligee commences action against the obligor, in a court of competent

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23, 2017, clarifying that the Hutchisons' exception of prescription was sustained, all claims in the case were dismissed, and that the judgment was a final judgment.



jurisdiction and venue. La. C.C. art. 3462.<sup>9</sup> Second, La. C.C. art. 3464 provides that prescription is interrupted when one acknowledges the right of the person against whom he had commenced to prescribe. Such an acknowledgment is not subject to any particular formality. **Mallett v. McNeal**, 2005-2289 (La. 10/17/06), 939 So.2d 1254, 1258. It may be written or verbal, express or tacit. *Id.*

Ordinarily, the party pleading the objection of prescription bears the burden of proving the claim has prescribed. **Hogg v. Chevron USA, Inc.**, 2009-2632 (La. 7/6/10), 45 So.3d 991, 998. However, if a petition has prescribed on its face, the burden shifts to the plaintiff to establish that prescription was suspended or interrupted. **Wheat v. Nievar**, 2007-0680 (La. App. 1<sup>st</sup> Cir. 2/8/08), 984 So.2d 773, 775. A district court's findings of fact on the issue of prescription are subject to the manifest error-clearly wrong standard of review. **Marin v. Exxon Mobil Corp.**, 2009-2368 (La. 10/19/10), 48 So.3d 234, 244-245. This includes the factual determination as to the date on which prescription begins to run. **Oracle Oil, LLC v. EPI Consultants, Div. of Cudd Pressure Control, Inc.**, 2011-0151 (La. App. 1<sup>st</sup> Cir. 9/14/11), 77 So.3d 64, 70, writ denied, 2011-2248 (La. 11/23/11), 76 So.3d 1157.

### **Judicial Confession**

A judicial confession is a declaration made by a party in a judicial proceeding. It constitutes full proof against the party who made it, is indivisible, and may be revoked only on the ground of error of fact. La. C.C. art. 1853; **Cichirillo v. Avondale Industries, Inc.**, 2004-2894 (La. 11/29/05), 917 So.2d 424, 428-429. A judicial confession is a party's explicit admission of an adverse factual element and has the effect of waiving evidence as to the subject of the admission of withdrawing the subject matter of the confession from issue. *Id.*, 917

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<sup>9</sup> The plaintiff does not argue on appeal that the note was interrupted by the filing of the third party demand under La. C.C. art. 3462.

So.2d at 429. Relevant to the instant matter is the established rule that a party who has made such an admission in a previous suit is not barred from denying the facts contained in that admission in a subsequent suit, unless the adverse party has been prejudiced by his reliance upon that admission. **Alexis v. Metropolitan Life Ins. Co.**, 604 So. 2d 581, 582 (La. 1992); **Seoggins v. Frederick**, 98-1815, 98-1816, 1998-1814 (La. App. 1<sup>st</sup> Cir. 9/24/99), 744 So.2d 676, 681-682.

### **Consent Judgment**

A consent judgment is a bilateral contract between the parties by which the parties adjust their differences by mutual consent, with each party balancing his hope of gain against his fear of loss. **Hebert v. Drewitz**, 2009-0798 (La. App. 1<sup>st</sup> Cir. 10/27/09) 29 So.3d 607, 608. Its binding force arises from the voluntary acquiescence of the parties, rather than the adjudication by the court. Accordingly, unless there is some error of fact or of the principal cause of the agreement, it may not be annulled or rescinded. **Horrigan v. Horrigan**, 2010-1377 (La. App. 1<sup>st</sup> Cir. 6/14/11), 70 So.3d 111, 114-115, writ denied, 2011-1596 (La. 10/7/11), 71 So.3d 325. Further, interpretation of a consent judgment, i.e., a contract between parties, is a determination of the common intent of the parties, and when the words of the contract are clear and explicit and lead to no absurd consequences, the intent of the parties is to be determined by the words of the contract. La. C.C. art. 2045; **Richardson v. Richardson**, 2002-2415 (La. App. 1<sup>st</sup> Cir. 7/9/03), 859 So.2d 81, 84.

### **ANALYSIS**

We first address Mayo's assertion that Hutchisons' admission of liability for the June 3, 2005 note in the April 7, 2015 consent judgment amounts to a judicial confession. As an initial matter, we observe that the April 7, 2015 consent judgment does not appear to constitute a bona fide "consent judgment." Louisiana Code of Civil Procedure article 1911, provides that "[e]xcept as otherwise

provided by law, every final judgment shall be signed by the judge.” Review of the document reveals that although it is entitled “Consent Judgment,” it was not signed by the judge, nor was it presented to the judge for his signature. The true judgment on Mayo’s third party demand against the Hutchisons was the April 13, 2015 judgment containing decretal language awarding Mayo recovery under the note. On this basis, we conclude that the April 7, 2015 consent judgment is more properly classified as a compromise agreement or motion to dismiss that recites the terms of a settlement of the parties.

Nevertheless, regardless of whether or not the April 7, 2015 document qualifies as a consent judgment under La. C.C.P. art. 1911, when *viewed in isolation* the admissions contained in the April 7, 2015 consent judgment would qualify as a judicial confession under La. C.C. art. 1853, because the statements therein constitute an explicit admission of an adverse factual element. See Cichirillo v. Avondale Industries, Inc., 917 So.2d at 429. However, as set forth below, the April 7, 2015 consent judgment cannot be viewed in isolation, and must be read in conjunction with the June 15, 2015 consent judgment nullifying the entire proceedings of the third party demand.

Mayo argues that a judicial confession is absolute and irrevocable, and contends that the Hutchisons’ admission/judicial confession in the April 7, 2015 consent judgment amounts to a “proverbial bell that cannot be un-rung.” Mayo stresses that she is not attempting to enforce the April 13, 2015 judgment rendered on her third party demand, and she contends that she relied to her detriment that the Hutchisons would not contest liability in a later suit based on the admissions made by them in the April 7, 2015 consent judgment.

Mayo’s position is not supported by the law or the record. A party who has made such an admission in a previous suit is not barred from denying the correctness thereof in a subsequent suit, unless the adverse party claiming the

benefit of the judicial confession has relied or acted thereon to his prejudice. **Alexis v. Metropolitan Life Ins. Co.**, 604 So.2d at 582; see also **Howard Trucking Co. v. Stassi**, 474 So.2d 955, 961 (La. App. 5<sup>th</sup> Cir.), writ granted, 478 So.2d 1229 (La. 1985), aff'd, 485 So.2d 915 (La. 1986). Thus, there is no legal basis to support Mayo's assertion that the April 7, 2015 consent judgment is irrefutable evidence of the debt.

Additionally, there is nothing in the record to support or justify Mayo's assertions of reliance on the April 7, 2015 consent judgment and/or the April 13, 2015 judgment dismissing the third party demand as a basis for her belief that the Hutchisons would not contest liability in a later suit. As the Hutchisons point out in their opposition, the purported judicial confession contained in the April 7, 2015 consent judgment cannot be viewed in a vacuum. It is undisputed that the later agreement of the parties contained in the June 15, 2015 consent judgment expressly ordered that Mayo's third party demand in the Deutsche Bank action, including the motion for leave, the third party demand, and the April 13, 2015 judgment, be "set aside, vacated, nullified, and stricken from the record of this proceeding." Relevantly, the June 15, 2015 consent judgment also expressly declares that the April 7, 2015 consent judgment is "absolutely null, and void and without any legal effect whatsoever and, as such, Defendant, Patricia Mayo, is prohibited from utilizing same in this proceeding or in any other proceeding against Sidney Randall Hutchison and/or Patricia Fabre Hutchison."

The binding force of the June 15, 2015 consent judgment derives from the acquiescence of the parties. Mayo does not acknowledge, much less allege any error of fact as to the principal cause of the June 15, 2015 agreement; therefore, it may not be annulled or rescinded. See **Horrigan v. Horrigan**, 70 So.3d at 115. We can find no authority prohibiting a party from entering into an agreement like that contained in the June 15, 2015 consent judgment. See La. C.C. arts. 7 and

2030. A judgment, whether it results from the assent of the parties or is the result of a judicial determination after a trial on the merits, is and should be accorded sanctity under the law. **Plaquemines Parish Government v. Getty Oil Co.**, 95-2452 (La. 5/21/96), 673 So.2d 1002, 1006.

Alternatively, Mayo contends that even if the statements made by the Hutchisons in the third party action do not constitute a judicial confession establishing liability, the statements in the April 7, 2015 consent judgment constitute an acknowledgment of the debt sufficient to interrupt prescription under La. C.C. 3498. In support, Mayo points to language in the April 7, 2015 consent judgment providing that the Hutchisons “have consistently acknowledged their obligations under the referenced Note and Mortgage to [Mayo], from the inception of the said Note and Mortgage through the present year...” Again Mayo’s arguments ignore the existence of the June 15, 2015 consent judgment, wherein Mayo agreed that she would be prohibited from utilizing the consent judgment in any proceeding against the Hutchisons. We find that Mayo cannot rely upon the pleadings and judgment from the Deutsche Bank suit as evidence of acknowledgement of the debt based on her voluntarily agreeing not to do so in the June 15, 2015 consent judgment.

Further, at the hearing on the exception, counsel for Mayo argued that the Hutchisons had verbally acknowledged the debt in conversations with Mayo over the years; however, there are no affidavits, documents, or other competent evidence in the record to support this contention, and the arguments of counsel are not evidence. See Regan v. Caldwell, 2016-0659 (La. App. 1<sup>st</sup> Cir. 4/7/17), 218 So.3d 121, 128.

We note that amendment of the petition under La. C.C.P. art. 934 would be futile based on the facts presented herein.<sup>10</sup> Based on the above, we cannot say that the district court erred in sustaining the Hutchisons' exception of prescription. Accordingly, we affirm the judgment of the district court.

### **CONCLUSION**

For the reasons set-forth herein, the judgment of the district court dismissing the claims of the plaintiff/appellant, Patricia Mallett Mayo, against defendants/appellees, Sidney Randall Hutchison and Patricia Fabre Hutchison, is affirmed. The costs of this appeal are assessed to the plaintiff/appellant, Patricia Mallett Mayo.

**AFFIRMED.**

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<sup>10</sup> Louisiana Code of Civil Procedure article 934 provides:

When the grounds of the objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order such amendment within the delay allowed by the court. If the grounds of the objection raised through the exception cannot be so removed, or if the plaintiff fails to comply with the order to amend, the action, claim, demand, issue, or theory shall be dismissed.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2016 CA 1642

PATRICIA MALLET MAYO

VERSUS

SIDNEY RANDALL HUTCHINSON AND PATRICIA FABRE  
HUTCHINSON

 THERIOT, J., dissenting in part.

While I agree that the April 7, 2015 consent judgment is an absolute nullity and cannot interrupt prescription, I would remand the instant case to the trial court to give Ms. Mayo the opportunity to amend her petition to cure its defect.

At the hearing on the exception, counsel for Ms. Mayo indicated that there had been a verbal communication by telephone between Ms. Mayo and the Hutchinsons where she allegedly decided to extend the payment obligation in order to give the Hutchinsons an opportunity to make the payments on the note. Understandably, there could be issues with credibility or admissibility of hearsay statements in making that claim, but such a claim could theoretically be sufficient to interrupt prescription. When a court sustains an exception of prescription, it should permit amendment of the plaintiff's pleadings if the new allegations that plaintiff proposes raise the possibility the claim has not prescribed, even if the ultimate outcome of the prescription issue, once the petition is amended, is uncertain. *Wyman v. Dupepe Construction*, 2009-0817 (La. 12/1/09), 24 So.3d 848, 849.

For the foregoing reasons, I would remand to the trial court and allow the plaintiff to amend her petition.