KEEPING OUR LEGACY ALIVE, INC.	*	**NO. 2017-CA-1060**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
CENTRAL ST. MATTHEW UNITED CHURCH OF CHRIST	*	**STATE OF LOUISIANA**

*** * * * * * ***

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-04952, DIVISION "E"
Honorable Clare Jupiter, Judge

* * * * * *

JUDGE SANDRA CABRINA JENKINS

* * * * * *

(Court composed of Judge Terri F. Love,
Judge Joy Cossich Lobrano, Judge Sandra Cabrina Jenkins)

LOBRANO, J., CONCURS IN THE RESULT

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AFFIRMED ON OTHER GROUNDS

OCTOBER 31, 2018

Plaintiffs, Keeping Our Legacy Alive, Inc. ("KOLA") and four individual named plaintiffs, appeal the trial court's October 24, 2017 judgment granting the exception of prescription filed by defendant, Central St. Matthew United Church of Christ ("CSM"), and dismissing plaintiffs' original, first amending, and second amending petitions with prejudice. For the following reasons, we find the trial court erred in finding plaintiffs' claims prescribed under La. R.S. 12:208(A)(1) and granting CSM's exception of prescription. However, based on our *de novo* review of the record and in consideration of the arguments raised in this appeal, this Court notices the failure to disclose a right of action to seek the relief prayed for in their petitions and the failure to state a cause of action upon which relief may be granted.[1] Therefore, on exceptions of no right of action and no cause of action raised *sua sponte* by this Court, we find that plaintiffs have no right of action against CSM to invalidate the merger and transfer of title to property and that

[1] "[T]he failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit … may be noticed by either the trial or appellate court on its own motion." La. C.C.P. art. 927(B). "The appellate court shall render any judgment which is just, legal, and proper upon the record on appeal." La. C.C.P. art. 2164.

plaintiffs' petitions fail to state a cause of action upon which relief can be granted for a petitory action. Accordingly, we affirm the dismissal of plaintiffs' petitions with prejudice.

FACTS AND PROCEDURAL HISTORY

In the spring of 2005, Central Congregational United Church ("Central") entered into a rental agreement with St. Matthew United Church of Christ ("St. Matthews") to temporarily hold church services in a chapel at St. Matthew while Central's church building was undergoing repairs. At that time, Central owned the church building at 2401 Bienville Street, as well as several adjacent properties on Bienville Street, North Tonti Street, and Conti Street. St. Matthew owned a church on South Carrolton Avenue.

Until August 29, 2005, when Hurricane Katrina made landfall, the members of Central worshipped as their own congregation in the chapel leased from St. Matthew. But as a result of the impact from Hurricane Katrina, Central's congregation was disbursed and fewer members gathered to worship at the chapel. In October 2005, members of Central began to worship with the congregation of St. Matthew.

In September 2007, Central and St. Matthew entered into a "covenant" agreement to worship together as two congregations. By a second "covenant" agreement, Central and St. Matthew agreed to unify their congregations but maintain separate ownership of church properties.

In January 2010, Central and St. Matthew filed Articles of Incorporation with the Louisiana Secretary of State to create CSM, a nonprofit religious corporation. In October 2014, CSM filed Articles of Merger with the Louisiana Secretary of State to officially unite and merge Central and St. Matthew into the surviving corporation of CSM.

The Articles of Merger included the following provision: [2]

> At and after the Effective Time, all rights and ownership of the assets of St. Matthew and Central Congregational shall vest in CSM as the Surviving Corporation and CSM shall possess all the rights, privileges, immunities, powers and purposes of St. Matthew and Central Congregational, pursuant to La. R.S. 12:246.C and 12: 246.D.

The Articles of Merger listed the assets affected by the merger, including the church building at 2401 Bienville Street.

In December 2015, the Governing Council of CSM voted to sell the Bienville Street property. In January 2016, in response to CSM's vote to sell the property, a group of "pre-Katrina members of Central" organized and filed Articles of Incorporation to create KOLA, for the purpose of preserving the historic legacy and property of Central.

On May 23, 2017, KOLA filed a petition against CSM seeking to "declare invalid a purported merger" of Central and St. Matthew, and to enjoin the sale or encumbrance of immovable property purportedly transferred from Central to CSM in the Articles of Merger. The petition alleged that the "purported merger" of Central and St. Matthew was null and void for failure to comply with the required

[2] Plaintiffs' original petition quoted this provision from the Articles of Merger; but the Articles of Merger are not contained within this record, as they were not attached to any pleadings nor introduced and filed into the record.

procedures for the merger of non-profit corporations under La. R.S. 12:243. KOLA's original petition sought a declaratory judgment voiding the Articles of Merger filed and recorded on October 20, 2014, and an injunction on the sale or encumbrance of "any property acquired in the purported merger."

On June 16, 2017, CSM filed peremptory exceptions of prescription and no right of action, arguing KOLA's claim seeking to invalidate the act of merger by CSM was an untimely *ultra vires* action pursuant to La. R.S. 12:208(A)(1), and KOLA had no right of action to bring an action under La. R.S. 12:208(A)(1), because KOLA was not a member of CSM.

On July 27, 2017, KOLA filed a first amending petition wherein it named four additional, individual plaintiffs[3] and alleged that each of the individual plaintiffs was a member of CSM. That same day, plaintiffs also filed an opposition to CSM's peremptory exceptions. Prior to the trial on the peremptory exceptions, CSM filed a reply memorandum stating that the addition of new plaintiffs by the first amending petition rendered its exception of no right of action moot.

On August 11, 2017, the trial court held a hearing on CSM's peremptory exception of prescription. At the conclusion of the hearing, the trial court took the matter under advisement.

On September 28, 2017, prior to the rendition of judgment on CSM's exception of prescription, plaintiffs filed a second amending petition "filed before

[3] The first amending petition added Cherly Cramer, Michael Dejoie, Fay Kaufman, and Karen Lodrig as plaintiffs.

answer served." In this petition, plaintiffs added a new paragraph that reads as follows:

> The purported merger was legally invalid to transfer title to real estate from Central Congregational to CSM for lack of consent and for being signed by no individual with authority to bind Central Congregational, and for other factual reasons asserted in this petition; the invalid transfer is directly challenged in this real action under the Louisiana Civil Code article 422.[4]

The second amending petition also added the following language to the original paragraph 2: "[t]his action is brought by the possessor of the subject property who denies any title asserted by defendants."

On October 24, 2017, the trial court rendered judgment on CSM's exception of prescription, granting CSM's exception of prescription and dismissed plaintiffs' original, first amending, and second amending petitions with prejudice.

This timely appeal followed.

STANDARD OF REVIEW

Prescription is a peremptory exception that must be specially pleaded. La. C.C.P. art. 927; *see* La. C.C. art. 3452 ("Courts may not supply a plea of prescription."). Ordinarily, the party pleading the peremptory exception of prescription bears the burden of proof at the trial of the exception. *Scott v. Zaheri*, 14-0726, p. 7 (La. App. 4 Cir. 12/3/14), 157 So.3d 779, 784-85. "If prescription is evident on the face of the pleadings, however, the burden shifts to the plaintiff to show that the action has not prescribed." *Id*.

[4] In their reply brief, plaintiffs state that the citation to Louisiana Civil Code article 422 was a typographical error, noting that such article does not exist. Plaintiffs do not, however, correct the error with a citation to a proper authority.

Generally, a trial court judgment granting a peremptory exception of prescription is reviewed *de novo*, because the peremptory exception raises a purely legal question. *Felix v. Safeway Ins. Co.*, 15-0701, pp. 5-6 (La. App. 4 Cir. 12/16/15), 183 So.3d 627, 631. When evidence is introduced at the trial of the peremptory exception, the reviewing court must determine whether the trial court manifestly erred with its factual conclusions. *Id.*; s*ee* La. C.C.P. art. 931 ("evidence may be introduced to support or controvert any of the objections pleaded [through a peremptory exception], when the grounds thereof do not appear from the petition."). "When no evidence is introduced, 'the judgment is reviewed simply to determine whether the trial court's decision was legally correct.'" *Wells Fargo Financial Louisiana, Inc. v. Galloway*, 17-0413, p. 8 (La. App. 4 Cir. 11/15/17), 231 So.3d 793, 800 (quoting *Arton v. Tedesco*, 14-1281, p. 3 (La. App. 3 Cir. 4/29/15), 176 So.3d 1125, 1128). "Likewise, '[i]n a case involving no dispute regarding material facts, but only the determination of a legal issue, a reviewing court must apply the *de novo* standard of review, under which the trial court's legal conclusions are not entitled to deference." *Felix*, 15-0701, p. 6, 183 So.3d at 631 (quoting *TCC Contractors, Inc. v. Hosp. Serv. Dist. No. 3 of Parish of Lafourche*, 10-0685, p. 8 (La. App. 1 Cir. 12/8/10), 52 So.3d 1103, 1108).

In this case, no evidence was introduced at the trial on the peremptory exception; thus, the *de novo* standard of review applies; and "the exception of prescription must be decided on the facts alleged in the petition, which are

accepted as true." *Denoux v. Vessel Mgmt. Servs., Inc.*, 07-2143, p. 6 (La. 5/21/08), 983 So.2d 84, 88.

DISCUSSION

In this appeal of the trial court's judgment granting CSM's peremptory exception of prescription and dismissing plaintiffs' petitions with prejudice, plaintiffs raise three assignments of error: 1) the trial court erred in failing to recognize that the petition stated a petitory action claiming title; (2) the trial court erred in finding that the petition stated an *ultra vires* claim; and (3) the trial court erred in applying the one year prescriptive period under La. R.S. 12:208(A)(1) to the claims in the petition.

Plaintiffs' principal argument is that their petition sets forth a petitory action, which is imprescriptible, rather than an *ultra vires* action pursuant to La. R.S. 12:208(A), which is subject to a one-year peremptive period. Thus, plaintiffs argue that the trial court erred in granting the peremptory exception of prescription based on an erroneous interpretation of the cause of action stated within the petition.

In response, CSM first argues that this Court should not consider plaintiffs' argument that this action is petitory in nature, because plaintiffs neither pled nor raised any argument regarding a petitory action in the trial court.[5] CSM further argues that plaintiffs' petition does not set forth a petitory action because it fails to

[5] "Generally, issues not raised in the trial court will not be given consideration for the first time on appeal." *Scott*, 14-0726, p. 14, 157 So.3d at 788; *see also*, Rule 1-3, Uniform Rules—Courts of Appeal.

assert a claim of ownership or title to the Bienville Street property formerly owned by Central. Finally, CSM argues that plaintiffs' petition clearly raises an *ultra vires* action under La. R.S. 12:208(A), attacking the validity of the act of merger, and that the trial court correctly found plaintiffs' claim prescribed under La. R.S. 12:208(A)(1) because the petition was filed more than one year after the act of merger.

Since no evidence was introduced at the trial on CSM's peremptory exception of prescription, the exception must be decided on the facts alleged in the petition, which are accepted as true. *See Denoux*, *supra*. In rendering its judgment granting the exception of prescription, the trial court found that plaintiffs' petition raised an *ultra vires* claim under La. R.S. 12:208(A) that was prescribed on its face. Considering the trial court's finding, we begin our *de novo* review by determining whether the allegations in plaintiffs' petition set forth an *ultra vires* claim under La. R.S. 12:208(A).

"Under the *ultra vires* doctrine, a corporation may not act beyond the object for which the corporation was created, as defined by the law or its charter." *Coe v. Society of Louisiana Certified Public Accountants*, 13-892, p. 4, n. 3 (La. App. 5 Cir. 5/14/14), 142 So.3d 88, 89 (citing *Simon v. Sw. Louisiana Elec. Membership Corp.*, 267 So.2d 757, 759 (La. App. 3rd Cir. 1972)). The Louisiana Nonprofit Corporation Law provides the defense of *ultra vires* within La. R.S. 12:208, which provides in pertinent part as follows:

> A. Invalidity of an act of a corporation, or of a conveyance or transfer of movable or immovable property to or by a corporation, by reason

> of the fact that the corporation was without capacity or power to perform such act or to make or receive such conveyance or transfer, may be asserted only:
> (1) In an action by a member of the corporation to set aside such act, conveyance or transfer, brought within one year after the act was done or the conveyance or transfer was consummated, which time limit shall not be subject to suspension on any ground or interruption on any ground other than timely suit;

Plaintiffs argue that their action does not fall within the scope of La. R.S. 12:208(A) because they do not challenge the power or capacity of Central, St. Matthew, or CSM to enter into the merger. At the trial on the exception and in this appeal, plaintiffs concede that each corporation had the corporate power and authority to enter into a merger. Rather, as alleged in Paragraphs 16, 17, and 18 of plaintiffs' petition, plaintiffs challenge the validity and legal effect of the merger and resulting transfer of title to the property to CSM based on CSM's failure to comply with the statutorily required merger procedure set forth in La. R.S. 12:243.[6]

Based on the allegations in plaintiffs' petition, we agree that plaintiffs do not raise an *ultra vires* claim within the scope of La. R.S. 12:208(A). The merger that plaintiffs seek to declare invalid is not "an act of a corporation" as contemplated by La. R.S. 12:208. A merger and the resulting transfer of title to property occur by operation of law upon the agreement, approval, and filing of the joint agreement with the Secretary of State, in accordance with La. R.S. 12:243-246. As explained by the First Circuit in *Haynes v. Louisiana Teachers Ass'n*, 381 So.2d 849 (La. App. 1st Cir. 1980), an action challenging a corporate merger or consolidation is,

[6] In Paragraphs 16 and 17 of their petition, plaintiffs state the relevant requirements of La. R.S. 12:243 which plaintiffs allege "were not accomplished in the purported CSM merger." Paragraph 18 states, "[f]or failure to comply with legal requirements, the purported merger between Central Congregational and St. Matthew which created Central St. Matthew is null and void and of no legal effect, transferring nothing from Central Congregational to CSM."

in fact, an action challenging the incorporation of the merged nonprofit corporation, which may be instituted only by the State in a proceeding to annul, forfeit or vacate a corporation's franchise. *See* La. R.S. 12:205(B).

In *Haynes*, several individual plaintiffs who were voting members of a teaching organization, Louisiana Education Association ("LEA"), filed a petition for declaratory judgment and injunctive relief to block a consolidation of LEA with another teaching organization, Louisiana Teachers Association ("LTA"), to form Louisiana Association of Educators ("LAE"). Plaintiffs filed their petition in December 1977, but no order of injunctive relief was granted, and the officials of the corporations proceeded with consolidation. The consolidation was approved by each association and filed with the Louisiana Secretary of State on January 3, 1978. Subsequently, the trial court granted a motion for summary judgment filed by LAE and dismissed plaintiffs' petition for declaratory judgment. *Id*. at 850. On appeal, plaintiffs argued that there was no proper merger or consolidation of the two teachers' organizations because LAE failed to comply with the procedural requirements within La. R.S. 12:243-246. *Id*. at 850-51. Finding no merit in plaintiffs' argument, the Court reasoned as follows:

> The record reflects that the consolidation agreement and the articles of incorporation have been filed with the Secretary of State of the State of Louisiana, and a certificate of incorporation issued certifying that the LEA and LTA have been consolidated into the LAE. We find the district court correctly ruled that the consolidation was not subject to attack by virtue of LSA-R.S. 12:205 B.
>
> The Nonprofit Corporation Law makes the certificate of incorporation conclusive evidence of due incorporation. The validity of the incorporation of LAE can be directly attacked only by the State in a

> quo warranto proceeding; the incorporation cannot be collaterally attacked.
>
> * * *
>
> In the instant case, the Secretary of State issued a certificate of incorporation to LAE. Therefore, any deficiencies in the procedure leading to the issuance of that certificate cannot be raised by appellants. LSA-R.S. 12:205 B.
>
> Although the appellants' attack purports to be on the consolidation rather than the incorporation of LAE, it amounts to an attack on LAE's incorporation. A consolidation is by definition the formation of a new corporation from two previously existing corporations. LSA-R.S. 12:242. The statutory procedures dealing with consolidation call for the preparation and filing of articles of incorporation for the new corporation. LSA-R.S. 12:244. The consolidation becomes effective when the consolidation agreement and articles of incorporation are recorded by the Secretary of State. LSA-R.S. 12:245 B; and, at that time the two consolidating corporations cease to exist, LSA-R.S. 12:246 B. Thus, the issuance of a certificate of incorporation to the new corporation is the end product of the consolidation procedure. The protection from attack by anyone other than the State that LSA-R.S. 12:205 B gives to the incorporation therefore necessarily applies to the consolidation procedure. The consolidation procedure is the incorporation procedure for the new corporation.

Hayes, 381 So.2d at 851-52.

The reasoning in *Hayes* is directly on point in the instant case. The merger of Central and St. Matthew into CSM became effective on October 20, 2014, when the merger agreement was filed and recorded and the Secretary of State issued a certificate of merger. *See* La. R.S. 12:243(F). As of that effective date, pursuant to La. R.S. 12:246 of Louisiana Nonprofit Corporation Law, the following took effect by operation of law:

> (1) Central and St. Matthew merged into CSM, the designated surviving corporation;
>
> (2) The separate existence of Central and St. Matthew ceased;

> (3) All rights, privileges, and franchises possessed by Central and St. Matthew vested in CSM;
>
> (4) All of the property and assets of whatsoever kind or description owned by Central and St. Matthew transferred to and vested in CSM without further act or deed;
>
> (5) All liabilities of Central and St. Matthew vested in CSM;
>
> (6) The articles of incorporation of CSM were amended to the extent of any changes therein stated in the merger agreement.

See La. R.S. 12:246; *see also* Glenn G. Morris and Wendell H. Holmes, 8 La. Civ. L. Treatise, Business Organizations § 36.4 (2018). Furthermore, the certificate of merger is conclusive evidence of the foregoing, including the transfer of all property owned by Central to CSM as the surviving corporation of the merger. *See* La. R.S. 12:205 B ("The certificate of incorporation shall be conclusive evidence of the fact that the corporation has been duly incorporated, except that in any proceeding brought by the state to annul, forfeit, or vacate a corporation's franchise"); *Haynes*, 381 So.2d at 852 ("[T]he issue of the certificate of incorporation by the Secretary of State prevents private parties from attacking the validity of any incorporation formalities."). Any deficiencies in the procedure leading to the issuance of the certificate of merger cannot be attacked by plaintiffs. *Haynes*, 381 So.2d at 852; *Johnson v. Mount Pilgrim Baptist Church*, 06-1563, *unpub*. (La. App. 1 Cir. 5/4/07), 2007 WL 1300946 (finding plaintiffs had no cause of action for declaratory judgment and injunctive relief seeking to invalidate duly filed and recorded consolidation/merger of churches into nonprofit corporation).

In light of the foregoing law and jurisprudence, and based on our *de novo* review of the facts alleged in plaintiffs' petitions, we find that plaintiffs do not

state an *ultra vires* claim seeking to invalidate "an act of a corporation" as contemplated by La. R.S. 12:208(A); instead, plaintiffs' petition challenges the legal authority—the act of merger—by which CSM claims title to the property formerly owned by Central. Therefore, we agree with plaintiffs that the trial court erred in finding that plaintiffs' claim was prescribed pursuant to La. R.S. 12:208(A)(1).[7]

However, based on our *de novo* review of the allegations and prayer in plaintiffs' petitions, we find no merit to plaintiffs' argument that their petitions state a petitory action that is imprescriptible. In addition, as explained below, our review of plaintiffs' petitions reveals that plaintiffs fail to disclose any cause or right of action to institute a suit to declare null and void the merger and resulting transfer of title to property from Central to CSM.

"Generally, the appellate court may consider an issue that is raised for the first time on appeal if its resolution is necessary to render a just, legal and proper judgment." *Lonzo v. Lonzo*, 17-0549, p. 9 (La. App. 4 Cir. 11/15/17), 231 So.3d 957, 964 (quoting Roger A. Stetter, LA. PRAC. CIV. APP. § 10:34 (2017)). "[A]n

[7] We also note that the trial court erred in dismissing plaintiffs' second amended petition on the grounds of prescription, because the objection of prescription was not plead as to claims raised in the second amending petition. Plaintiffs filed their second amending petition on September 28, 2017, after the trial on the exception of prescription but prior to the trial court's rendition of judgment. Thus, the second amending petition was not before the trial court at the trial on the peremptory exception of prescription; and CSM did not file any further exceptions prior to the trial court's judgment to address any claim raised by plaintiffs' second amending petition. Consequently, no claim or allegation raised by the second amending petition, including plaintiffs' alleged petitory cause of action, was before the trial court in rendering its judgment on the exception of prescription. Since the trial court was without authority to supply an objection of prescription, the trial court erred in dismissing plaintiffs' second amending petition on the grounds of prescription. *See* La. C.C.P. art. 927(B) ("The court may not supply the objection of prescription, which shall be specially pleaded.").

appellate court … has the constitutional and statutory authority to raise an issue *sua sponte* on appeal when justice requires it to do so." *Id.* In addition, La. C.C.P. art. 2164 provides that "[t]he appellate court shall render any judgment which is just, legal, and proper upon the record on appeal." "As noted in the Official Revision Comments under Art. 2164, the appellate court has 'complete freedom to do justice on the record irrespective of whether a particular legal point or theory was made, argued, or passed on by the court below.'" *Georgia Gulf Corp. v. Board of Ethics for Public Employees*, 96-1907, p. 6 (La. 5/9/97), 694 So.2d 173, 176.

In particular, this Court has the authority to raise the peremptory exceptions of no cause or right of action *sua sponte*: "the failure to disclose a cause of action or a right or interest in the plaintiff to institute the suit … may be noticed by either the trial court or appellate court on its own motion.'" *Durden v. Durden*, 14-1154, p. 13 (La. App. 4 Cir. 4/29/15), 165 So.3d 1131, 1141 (quoting La. C.C.P. art. 927 (B)); *see also Moreno v. Entergy Corp.*, 10-2268, p. 3 (La. 2/18/11), 64 So.3d 761, 762. "An exception of no cause of action tests 'the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading.'" *Durden*, 14-1154, p. 13, 165 So.3d at 1141-42 (quoting *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La. 1993)). The exception of no right of action raises the question of whether the particular plaintiff has a right to bring the suit or an actual interest in the action. *Lonzo*, 17-0549, p. 5,

231 So.3d at 961 (citing *Badeaux v. Southwest Computer Bureau, Inc.*, 15-0612, 05-0719, p. 6 (La. 3/17/06), 929 So.2d 1211, 1216-17).

First, we address plaintiffs' argument on appeal that their petitions sufficiently allege a petitory action. [8] A petitory action is provided for by La. C.C.P. art. 3651, which defines the action as "one brought by a person *who claims the ownership*, but who is not in possession, of immovable property or of a real right therein, against another who is in possession or who claims the ownership thereof adversely, *to obtain judgment recognizing the plaintiff's ownership*." (emphasis added). The plaintiff in a petitory action must prove: (1) that plaintiff acquired ownership from a previous owner or by acquisitive prescription, if the court finds that the defendant is in the possession of the property; or (2) a better title thereto than the defendant, if the court finds that the latter is not in possession thereof. La. C.C.P. art. 3653.

"The allegations and prayer of a plaintiff's petition determine the true nature of the action." *Durden*, 14-1154, p. 19, 165 So.3d at 1145. "In a petitory action, in order for a plaintiff to make out his title, not only must he give a physical description of the property he purports to own and that he has title to it, he must also set forth sufficient facts showing how he acquired title." *Id.*, 14-1154, p. 20,

[8] Plaintiffs arguably raised the issue of a petitory action at the trial on the peremptory exception of prescription when plaintiffs' counsel stated the following:

> It's more in the nature of a – it's almost like a petitory action where we're saying we had title to this property, we are in possession of the property. The documents themselves which purport to transfer title to this property were not properly done. […] But the thrust of this action, although the pleadings say that we challenge the merger, the thrust of this action is to go after anything which purports to transfer the title to the property.

165 So.3d at 1145-46. A plaintiff's failure to assert title to the property or to allege how he acquired ownership of the property is fatal to plaintiff's ability to properly state a cause of action upon which relief can be granted in a petitory action. *See Durden*, 14-1154, p. 20, 165 So.3d at 1146; *In re Succession of Comeaux*, 04-1335, p. 4 (La. App. 3 Cir. 3/2/05), 896 So.2d 1223, 1226-27.

While plaintiffs concede there is no explicit reference to a petitory action within any of their pleadings, they argue that the language and allegations within their second amending petition reveal the true nature of the action is petitory.[9] We find no merit to this argument. Plaintiffs' petitions fail to allege any claim of ownership or assert any title to the property formerly owned by Central. The petitions state that the property at issue was owned by Central prior to the merger. Plaintiffs—KOLA and four individual members of CSM—do not allege that they held title to or acquired ownership of the property at any time prior to the merger. The original petition acknowledges that the Articles of Merger included a provision vesting all rights of ownership of the assets of Central and St. Matthews in CSM as the surviving corporation, pursuant to La. R.S. 12:246. The second amending petition then alleged that the "purported merger was legally invalid to transfer title to real estate" from Central to CSM; and it stated "[t]his action is brought by the possessor of the subject property who denies any title asserted by [CSM]." These allegations are wholly insufficient to state a petitory action. In

[9] Plaintiffs do not argue that the allegations within their original or first amending petitions are sufficient to state a petitory action; nonetheless, we reviewed the entire pleadings and found no allegations to sufficiently support a petitory action.

addition, plaintiffs do not pray for judgment recognizing their ownership of the property. *See* La. C.C.P. art. 3651; Robert J. Scalise, Jr., A.N. Yiannopoulos, 2 La. Civ. L. Treatise, Property § 11:7 (5th ed. 2018). Therefore, we find the allegations and prayer of plaintiffs' petitions—original, first, and second amending—fail to state a cause of action upon which relief can be granted in a petitory action.

Finally, we find that the allegations in plaintiffs' petitions fail to state any cause or right of action to bring a suit to invalidate the merger and transfer of title of property to CSM. According to the allegations in plaintiffs' petition, the merger itself was legally invalid for failure to comply with the statutory requirements for a merger of nonprofit corporations pursuant to La. R.S. 12:243, and, thus, the merger was not valid to transfer title to property from Central to CSM. However, as plaintiffs acknowledge within their petitions, the Articles of Merger were filed and recorded by the Secretary of State on October 20, 2014. As of that date, Central and St. Matthew ceased to exist and CSM became the surviving corporation. In addition, as discussed earlier in this opinion, pursuant to Louisiana Nonprofit Corporation Law, the legal effect of filing and recording a merger includes the transfer of title to property to the surviving corporation and the amendment of the articles of incorporation of the surviving corporation to reflect all changes and effects of the merger. *See* La. R.S. 12:246 (D), (F). Thus, the certificate of merger is conclusive evidence that the merger has been duly accomplished and that title to property formerly owned by Central transferred to CSM. *See Haynes*, 381 So.2d at 853. Any alleged deficiencies in the procedure leading to the issuance of that

certificate of merger are not subject to collateral attack by plaintiffs. *See Johnson*, *supra*. The validity and effect of the merger and resulting transfer of title to property from Central and CSM can be challenged only in a proceeding brought by the State. *See* La. R.S. 12:205(B). Consequently, plaintiffs have failed to state a cause of action upon which relief may be granted or a right of action to institute this action.

CONCLUSION

Based on our *de novo* review of the facts alleged in plaintiffs' petitions, we find the trial court erred in granting CSM's peremptory exception of prescription pursuant to La. R.S. 12:208(A)(1). However, pursuant to our authority to raise *sua sponte* the peremptory exceptions of no cause or right of action, we find the plaintiffs' petitions fail to state any cause of action upon which relief may be granted for a petitory action or a right of action to invalidate the merger and transfer of title to property to CSM. Accordingly, we affirm the dismissal of plaintiffs' petitions with prejudice.

AFFIRMED ON OTHER GROUNDS