

The Supreme Court of the State of Louisiana

**PRECEPT CREDIT OPPORTUNITIES FUND,
LP**

No.2020-CC-00818

VS.

TERINA L. WALKER, ET AL.

IN RE: Terina L. Walker - Applicant Defendant; Applying For Writ Of Certiorari,
Parish of Orleans Civil, Orleans Civil District Court Number(s) 2018-11660, Court
of Appeal, Fourth Circuit, Number(s) 2020-C-0131;

November 18, 2020

Writ application granted. See per curiam.

JTG

BJJ

WJC

SJC

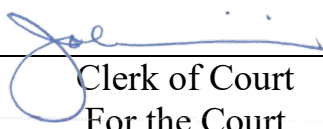
Weimer, J., would grant and docket.

Hughes, J., would deny.

Crichton, J., additionally concurs and assigns reasons.

Boddie, J., would deny.

Supreme Court of Louisiana
November 18, 2020


Clerk of Court
For the Court

11/18/20

SUPREME COURT OF LOUISIANA

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On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans

PER CURIAM

We granted this writ to determine whether the court of appeal erred in reversing the trial court's grant of defendant Terina Walker's motion for new trial. For the reasons that follow, we find that the trial court did not abuse its discretion in granting the motion for new trial, as plaintiff's counsel failure to notify defendant of the entry of preliminary default under the uncontested facts of this case constitutes an "ill practice" sufficient to justify nullification of the default judgment previously entered against her pursuant to La. C.C.P. art. 2004.

On December 11, 2018, defendant was served with the petition in this suit, which sought confirmation of plaintiff's tax sale title and ownership of defendant's home. In January 2019, defendant's counsel sent an email to plaintiff's counsel requesting an extension until February 15, 2019, to file responsive pleadings, to which plaintiff's counsel agreed. Although defendant did not subsequently file pleadings, the parties engaged in discovery, with plaintiff's counsel providing discovery responses in May 2019. Plaintiff later retained new counsel, who moved for an entry of preliminary default against defendant on October 2, 2019. The following day, the trial court entered a preliminary default against defendant. Plaintiff subsequently filed a motion to confirm default judgment, which the trial court granted on October 22, 2019.

On October 31, 2019, defendant filed a motion for new trial, arguing that her counsel had been engaging in discovery with plaintiff's counsel, that she had not been advised that plaintiff had retained new counsel, and that her counsel was not given notice of the motion for or entry of preliminary default. After a hearing, the trial court granted defendant's motion for new trial "in the interest of justice," finding "that there was a discussion between prior counsel and mover and that there was, in my opinion, an agreement to withhold any further action until such time as the parties could get together." Plaintiff appealed, and the court of appeal reversed the trial court, holding that the trial court abused its discretion in granting the motion for new trial. We disagree.

We find that the trial court did not abuse its discretion in setting aside the default judgment and granting a new trial in this case. Rather, the uncontested facts support the trial court's finding that the plaintiff's failure to notify the defendant of its entry of preliminary default in this case constitutes "ill practices," which is a valid basis for nullification of the default judgment under La. C.C.P. art. 2004. *Russell v. Illinois Central Gulf R.R.*, 96-2649 (La.1/10/97), 686 So.2d 817. Although the court of appeal correctly notes that the article which provides the procedure for confirmation of preliminary default, La. C.C.P. art. 1702, only requires notice of the entry of preliminary default in cases where a party has "made an appearance of record," this provision does not preclude a finding of ill practices where counsel for one party, through its actions and communications, lulls the other into believing that no such appearance is necessary, and then fails to provide notice of entry of default judgment. Having found a basis for nullifying the default judgment, we find no error by the trial court in vacating that judgment and granting the defendant's motion for new trial. Accordingly, we reverse the court of appeal's decision and reinstate the judgment of the trial court.