

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 0784

ASAP COURT REPORTING SERVICES, INC.

VERSUS

DANIEL G. ABEL

Judgment Rendered: DEC 28 2012

On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 2011-12757

Honorable Peter J. Garcia, Judge Presiding

Charles M. Hughes, Jr.
Gary L. Hanes
Mandeville, Louisiana

Counsel for Plaintiff/Appellee
ASAP Court Reporting Services, Inc.

Daniel G. Abel
Metairie, Louisiana

Defendant/Appellant
In Proper Person

BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

TMH
Higginbotham, J. concurs.

McCLENDON, J.

Defendant seeks review of a confirmed default judgment entered against him. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On May 13, 2011, ASAP Court Reporting Services, Inc. ("ASAP") filed a suit on open account, naming attorney Daniel G. Abel as a defendant. ASAP alleged that Abel was indebted to it in the amount of \$6,339.40, representing the amount owed for court reporting services it provided to the defendant. In its petition, ASAP alleged that it had previously sent written notice of the amount due, along with demand for payment, via certified mail to defendant's last known address. The notice, which was attached to ASAP's petition, was returned by the U.S. Postal Office marked "refused at front desk." Also attached to the petition was a sworn affidavit from Cindy Smith, ASAP's office manager, attesting to the veracity of the facts plead in the petition. Defendant was personally served with the petition on May 25, 2011.

On June 1, 2011, defendant submitted a facsimile filing to the district court seeking an extension until July 1, 2011 to file responsive pleadings to ASAP's suit on open account. Defendant, however, never filed the original pleading into the record or paid the filing fee for this service.

On August 4, 2011, ASAP filed a Motion for Entry of a Preliminary Default. On August 8, 2011, the district court entered a preliminary default.

On December 15, 2011, ASAP filed a Motion for Confirmation of Default Judgment. ASAP attached the following exhibits to its motion:

- An affidavit from Ms. Smith attesting to and verifying the factual information supportive of the lawsuit along with an invoice detailing the services rendered and amount due;
- Photocopies of the certified mail envelope for the demand letter and related documentation;
- Photocopies of an email exchange between defendant and ASAP's counsel's office in which defendant informally acknowledged receipt of the notice of the amount due and indicated that a formal response would be filed soon;
- A photocopy of defendant's facsimile motion for extension of time;

- Certification of the Clerk of Court that personal service had been effected on defendant, a preliminary default had been entered, and no answer or other opposition was filed on defendant's behalf;
- Record of entry of preliminary default; and
- Photocopies of the certified mail envelope wherein a courtesy copy of the request for preliminary default was mailed to defendant, along with related documentation.

On December 19, 2011, the district court signed a written judgment in conformity with ASAP's prayer for relief. Defendant has filed a devolutive appeal to seek review of the district court's judgment.

DISCUSSION

If a defendant in the principal or incidental demand fails to answer within the time prescribed by law, judgment by default may be entered against him. The judgment may be obtained by oral motion in open court or by written motion mailed to the court, either of which shall be entered in the minutes of the court, but the judgment shall consist merely of an entry in the minutes. LSA-C.C.P. art. 1701A. A judgment of default must be confirmed by proof of the demand sufficient to establish a *prima facie* case. If no answer is filed timely, this confirmation may be made after two days, exclusive of holidays, from the entry of the judgment of default. LSA-C.C.P. art. 1702A.

When the sum due is on an open account, an affidavit of the correctness thereof shall be *prima facie* proof. LSA-C.C.P. art. 1702B(3). In those proceedings in which the sum due is on an open account, a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held. The plaintiff shall submit to the court the proof required by law and the original and not less than one copy of the proposed final judgment. The judge shall, within seventy-two hours of receipt of such submission from the clerk of court, sign the judgment or direct that a hearing be held. The clerk of court shall certify that no answer or other pleading has been filed by the defendant. The minute clerk shall make an entry showing the dates of receipt of proof, review of the record, and rendition of the judgment. A certified copy of

the signed judgment shall be sent to the plaintiff by the clerk of court. LSA-C.C.P. art. 1702C.

Under LSA-C.C.P. art. 1702B(3), the affidavit of correctness refers to the validity of the account, i.e., the "correctness" of the sum due. This provision does away with the necessity of taking testimony in order to establish the validity of the account. The existence of the claim, however, is supported by a statement of the account or invoices. Thus, in order to establish both the existence and the validity of a demand for a sum due on an open account, it is necessary for a plaintiff to present evidence of the account itself and an affidavit, or testimony, attesting to its correctness. **Sessions & Fishman v. Liquid Air Corp.**, 616 So.2d 1254, 1258 (La. 1993). Louisiana courts have consistently interpreted the proof required to confirm a default judgment when the sum was due on an open account as requiring a statement of account or invoices and an affidavit certifying the correctness thereof. **Id.**

We note that ASAP, based on the record before us, met the requirements for entry of a preliminary default judgment and subsequent confirmation of that judgment. On appeal, defendant does not specifically allege that any of the requirements for entry of default judgment were not met. Rather, the defendant alleges that ASAP misled the court by suggesting that there was no communication between the parties and providing material facts in its affidavits that were not true. Defendant contends that the court's confirmation of the default arose from these misrepresentations.

Defendant is attempting to collaterally attack the court's judgment on appeal with claims of misrepresentation in the confirmation proceedings. A collateral attack is defined as an attempt to impeach a decree in a proceeding not instituted for the express purpose of annulling it. **Salles v. Salles**, 04-1449, pp. 7-8 (La.App. 1 Cir. 12/2/05), 928 So.2d 1, 5. "A judgment rendered by a Court of competent jurisdiction imparts absolute verity and has the force of things adjudged, unless and until it is set aside in a direct action of nullity. It cannot be collaterally attacked." **Salles**, 04-1449 at p. 8, 928 So.2d at 5-6.

Accordingly, there being no action for nullity pursuant to LSA-C.C.P. art. 2004, we find no error in the default judgment rendered by the trial court. See Marie v. Doucette, 328 So.2d 805, 808 (La.App. 1 Cir. 1976).

CONCLUSION

For the foregoing reasons, the December 19, 2011 judgment of the trial court is affirmed. Costs of this appeal are assessed to defendant, Daniel G. Abel.

AFFIRMED.