

**MARIE GALATAS, MELVA
PRATTS, THEDORA
HERRING, ROSEMARY
GRUNEWALD, MARTHA
DIAZ, PATRICIA CORMAN,
EMMA J. WILLIAMS**

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NO. 2004-CA-0751

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COURT OF APPEAL

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

VERSUS

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WALLACE C. DRENNAN, INC.

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2003-12055, DIVISION "M-7"
Honorable Sheryl Howard, Judge Pro Tempore**

Judge Dennis R. Bagneris, Sr.

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris Sr., and Judge Edwin A. Lombard)

Marie Galatas
720 General Taylor Street
New Orleans, LA 70115

IN PROPER PERSON, PLAINTIFF/APPELLEE

Richard S. Vale
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COUNSEL FOR DEFENDANT/APPELLANT

REVERSED AND REMANDED

The appellant, Wallace C. Drennan, appeals the default judgment cast against him and in favor of the appellees, Marie Galatas, et al. We reverse the judgment of the district court and remand this case for a proper proceeding in accordance with the law.

The appellees are a group of people who refer to themselves as the Almonaster Avenue Damages Recovery Association. One representative appellee, filed a Petition for Damages, in proper person, in Civil District Court for the Parish Orleans on August 11, 2003. The petition alleges that numerous houses owned by the members of the association were damaged during a street improvement project initiated by the appellant, Mr. Drennan. The Petition named Mr. Drennan as the sole defendant, however the body of the document refers to “Wallace C. Drennan and subcontractors”. Service was personally rendered upon Mr. Drennan on November 6, 2003. The appellees filed a Motion for Default Judgment on January 22, 2004 that was signed on February 12, 2004. The judgment is in favor of the appellees and against Mr. Drennan but states no specific monetary amount. The default judgment is the subject of the instant appeal.

In his first assignment of error, Mr. Drennan argues that the district

court erred in granting a default judgment against him when the appellees failed to introduce any evidence to support the judgment. Secondly, that the confirmation of the default judgment is not valid because the preliminary default is taken against a non-party, but the final default names Mr. Drennan. Thirdly, the judgment was in error because Marie Galatas, who is not a licensed attorney, obtained it, and lastly, a default judgment is not valid when the plaintiff fails to follow Uniform District Court Rule 9.19.

This Court however, finds that the sole issue on appeal is whether the district court erred by confirming a default judgment in favor of the appellees without introducing evidence to support the judgment.

In reviewing a default judgment, an appellate court is restricted solely to determining whether the record contains sufficient evidence to support a prima facie case. *Gresham v. Production Management, Inc.*, 2002-1228 (La. App. 4 Cir. 2/11/04) 868 So.2d 171; *Mossy Motors, Inc. v. Cameras America*, 2002-1536, p.3 (La. App. 4 Cir. 6/25/03) 851 So.2d 336, 339; *Brasseaux v. Allstate Insurance Company*, 97-0526 (La. App. 1 Cir. 4/8/98), 710 So.2d 826. Pursuant to La. C.C.P. art. 1702(A), a default judgment must be supported with proof sufficient to establish a prima facie case. When a demand is based upon a delictual obligation, the testimony of the plaintiff with corroborating evidence, which may be by affidavits and

exhibits annexed thereto which contain facts sufficient to establish a prima facie case, shall be admissible, self-authenticating, and sufficient proof of such demand. *Id.*

A judgment by default shall not be different in kind from that demanded in the petition. The amount of damages awarded shall be the amount proven to be properly due as a remedy. La. C.C.P. art. 1703.

The record reveals that the appellees filed suit against Mr. Drennan on August 11, 2003. Mr. Drennan was personally served on November 6, 2003. The Appellants motioned the district court to enter a default judgment due to Mr. Drennan's failure to answer. The default judgment was confirmed by the district court on February 12, 2004, reading in pertinent part as follows:

...the Court considering the law and the evidence to be in favor of the plaintiffs, for the reasons orally assigned.

IT IS ORDERED, ADJUDGED AND DECREED, that the default herein entered on Wallace Drennan, Inc. be now confirmed and made final...

Thereafter, Mr. Drennan motioned the district court for a written narrative of facts pursuant to LSA C.C. P. art. 2131 and subsequently adopted the following "Order and Narrative of Facts" in an effort to secure this appeal:

1. No witnesses testified at the confirmation of default hearing in this matter that resulted in the signing of the judgment dated February 12, 2004.
2. None of the Plaintiffs testified, nor was the

testimony of any other witness submitted.

3. No evidence of any type was submitted at the confirmation of default hearing, which resulted in the judgment that was signed February 12, 2004. The district court judge signed the narratives on April 1, 2004. The record contains a letter from the appellees stating, “Testimony was presented in person by [one defendant]...and in the form of the original suit Narrative, agreed to and signed by all the plaintiffs.”

We find that the record is devoid of oral testimony and evidence that supports the confirmation of a default judgment against Mr. Drennan. The record does not contain affidavits or exhibits to support a prima facie case against Mr. Drennan. In *Gresham* this Court affirmed the judgment of the district court awarding the defendant \$500,000 in general damages per a default judgment. We stated, “We reiterate, in the absence of both a transcript of the testimony at the default hearing and a note of evidence, the presumption that the judgment was rendered upon sufficient evidence and is correct applies in this case. Nothing in the record indicates otherwise.” *Id* at 179.

While we follow the law of the case, the facts in *Gresham* are distinguishable from the instant case. We cannot reach the presumption that the district court was correct in casting Mr. Drennan in judgment when the record does not contain any evidence in support of a money judgment.

Further, the narrative signed by the district court judge plainly states that there was no evidence or testimony presented at the confirmation of the default; an obvious error under La. C.C.P. art. 1702. Lastly, the judgment appealed is defective because it simply states that there be judgment entered against Mr. Drennan with no monetary amount stated, hence, another error.

We are of the opinion that Mr. Drennan has overcome the presumption that sufficient evidence was introduced to cast him in judgment. In order to obtain a reversal of a default judgment appealed from, or to obtain a remand, where the record does not contain a transcript of the confirmation hearing, the defendant must overcome the presumption that the judgment was rendered upon sufficient evidence and is correct. When the judgment recites that the plaintiff has produced due proof in support of his demand and that the law and evidence favor the plaintiff and are against the defendant, the presumption exists that the judgment was rendered upon sufficient evidence and that it is correct. *Gresham v. Production Management, Inc.*, 2002-1228 (La. App. 4 Cir. 2/11/04) 868 So.2d 171; *Ascension Builders, supra*; *Massey v. Consumer's Ice Co. of Shreveport*, 223 La. 731, 66 So.2d 789 (La. 1953).

Decree

For the reasons stated herein, we reverse the judgment of the district

court and remand this case for a proper proceeding.

REVERSED AND REMANDED