

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-445

1068, LLC

versus

JEFFERSON SPRINKLER, INC. AND MAGNOLIA BUILDERS, LLC

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 819-586, DIVISION "F"
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

April 29, 2026

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Marc E. Johnson, and John J. Molaison, Jr.

REVERSED IN PART; AFFIRMED IN PART; REMANDED

SMC

JJM

JOHNSON, J., CONCURS WITH REASONS

MEJ

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JALISA WALKER
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
1068, LLC

Eberhard D. Garrison

COUNSEL FOR DEFENDANT/APPELLANT,
JEFFERSON SPRINKLER, INC.

Thomas J. Cortazzo

CHEHARDY, C.J.

Appellant, Jefferson Sprinkler, Inc. (“Jefferson Sprinkler”), appeals the trial court’s May 14, 2025 judgment, as amended by judgment dated March 2, 2026, granting summary judgment in favor of appellee, 1068, LLC (“1068”), and annulling a default judgment obtained by Jefferson Sprinkler, Inc. on March 16, 2020, against 1068, that was subsequently recorded in the public records of Jefferson Parish. 1068 answers the appeal averring the trial court erred in denying its request for attorney fees. For the reasons that follow, we (1) reverse the trial court’s judgment, as amended on March 2, 2026, in part, insofar as it granted 1068’s motion for summary judgment, which annulled the default judgment obtained against it by Jefferson Sprinkler; (2) affirm the trial court’s judgment, as amended on March 2, 2026, in part, insofar as it denied 1068’s request for attorney fees; and (3) remand the matter for further proceedings consistent with this opinion.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

1068 is the owner of a medical office building located at 1068 Magazine Street in New Orleans, Louisiana. 1068 entered into a construction contract with Magnolia Builders, LLC to renovate 1068’s building. Magnolia Builders subcontracted with Jefferson Sprinkler, Inc. to provide labor and materials in connection with a fire protection system at the premises. Magnolia Builders went out of business prior to completion of the construction project. Jefferson Sprinkler alleges that 1068, as owner of the project, orally agreed to pay to Jefferson Sprinkler all remaining amounts on the subcontract if Jefferson Sprinkler continued and completed its work to the building as outlined in the subcontract. Jefferson Sprinkler did complete the work under the subcontract and 1068 made an initial payment directly to Jefferson Sprinkler in the amount of \$6,376.16, which check was signed by 1068’s owner, Tamer Acikalin. Thereafter, however, 1068

refused to pay the remaining balance of \$6,443.36, claiming that, pursuant to its contract with Magnolia Builders, 1068 paid all money due to Magnolia Builders for the renovation to the property, and there was no enforceable contract between itself and Jefferson Sprinkler. According to 1068, its contract with Magnolia Builders provided that “all payments to the subcontractor [Jefferson Sprinkler] were to be made by the General Contractor [Magnolia Builders]” and “[t]he owner [1068] is not responsible for paying the subcontractor [Jefferson Sprinkler].” 1068 does not dispute that Jefferson Sprinkler completed the fire protection system at the building. Nonetheless, 1068 has refused to pay Jefferson Sprinkler the balance due for the work completed.

On July 31, 2018, Jefferson Sprinkler filed suit against Magnolia Builders and 1068 seeking the balance due of \$6,443.36 (“the underlying action”) for its completion of the fire protection system.¹ In its petition, Jefferson Sprinkler alleged that “1068 LLC, through its authorized agent, agreed to pay Jefferson Sprinkler the balance due.”² When 1068 failed to answer Jefferson Sprinkler’s petition, Jefferson Sprinkler moved for a preliminary default judgment against 1068, which was granted on March 4, 2021. On March 16, 2021, the trial court confirmed the underlying default judgment against 1068, in the amount of \$6,443.36, plus judicial interest from the date of December 17, 2017, until paid, and costs in the amount of \$320.50. A hearing in open court was not held. The judgment stated that “[t]his shall constitute a Final Judgment, and the Court has made an express determination that there is no just reason for delay.” 1068 did not file a motion for new trial or seek an appeal of the default judgment. Instead, once the delays for doing so had elapsed, on July 19, 2021, 1068 instituted a separate

¹ The petition in the underlying action filed in the Twenty-Fourth Judicial District Court, case no. 786-144, is captioned “*Jefferson Sprinkler, Inc. v. Magnolia Builders, LLC and 1068, LLC.*”

² Jefferson Sprinkler’s petition in the underlying action also made unjust enrichment and third-party beneficiary allegations against 1068.

suit—the instant action—to annul the March 16, 2021 default judgment and for the return of a thing not owed (“the nullity action”), based on alleged improper procedure and ill practices.

On February 21, 2025, 1068 filed a motion for summary judgment in the nullity action, alleging that Jefferson Sprinkler failed to comply with the procedural requirements of La. C.C.P. arts. 1702³ and 1702.1⁴ for confirming a

³ La. C.C.P. art. 1702, as it existed at the time the underlying action was filed, provided, in pertinent part:

- A. A judgment of default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that it admitted on the record prior to confirmation. ...
- B. (1) When a demand is based upon a conventional obligation, affidavits and exhibits annexed thereto which contain facts sufficient to establish a prima facie case shall be admissible, self-authenticating, and sufficient proof of demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering judgment.

(2) 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 demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entered judgment.

(3) When the sum due is on an open account or a promissory note or other negotiable instrument, an affidavit of correctness thereof shall be prima facie proof. When the demand is based upon a promissory note or other negotiable instrument, no proof of any signature thereon shall be required.
- C. In those proceedings in which the sum due is on an open account ... or other conventional obligation ... a hearing in open court shall not be required unless the judge, in his discretion, directs that such a hearing be held.

⁴ At the time the underlying action was filed, La. C.C.P. art. 1702.1 provided:

- A. When the plaintiff seeks to confirm a preliminary default without appearing for a hearing in open court as provided in Article 1702(B)(1) and (C), along with any proof required by law, he or his attorney shall include an itemized form with a written motion for confirmation of preliminary default and proposed final default judgment for default judgment a certification that the suit is an open account, promissory note, or other negotiable instrument, on a conventional obligation, or on a check dishonored for nonsufficient funds, and that the necessary invoices and affidavit, note and affidavit, or check or certified reproduction thereof are attached. If attorney fees are sought under R.S. 9:2781 or 2782, the attorney shall certify that fact and the fact that the number of days required by R.S. 9:2781(A) or 2782(A), respectively, had elapsed since demand was made upon the defendant.
- B. The certification shall indicate the type of service made on the defendant, the date of service, and the date a preliminary default was entered, and shall also include a certification by the clerk that the record was examined by the clerk, including therein the date of the

default judgment in that it failed to request a hearing in open court,⁵ and failed to present sufficient evidence to create a *prima facie* case to support the judgment in the underlying action, which 1068 averred constituted an ill practice warranting annulment of the judgment under La. C.C.P. art. 2004.⁶ Specifically, 1068 averred that Jefferson Sprinkler failed to present sufficient evidence to establish that a conventional obligation existed between the parties, whereby 1068 agreed to pay for the work completed under Jefferson Sprinkler’s subcontract with Magnolia, to which 1068 was not a party. 1068’s motion for summary judgment came for hearing on April 23, 2025. Finding that Jefferson Sprinkler failed to comply with La. C.C.P. art. 1072.1 in obtaining the default judgment, the trial court granted 1068’s motion for summary judgment, nullifying the March 16, 2020 default judgment rendered in the underlying action. The judgment denied 1068’s request for attorney fees pursuant to La. C.C.P. art. 2004(C). A written judgment to this effect was signed by the trial court on May 14, 2025.

Jefferson Sprinkler timely appealed that judgment.⁷ 1068 has answered the appeal pursuant to La. C.C.P. art. 2133, requesting that the trial court judgment be

examination and a statement that no answer or other pleading has been filed within the time prescribed by law or by the court.

In its motion for confirmation of preliminary default, Jefferson Sprinkler attached the requisite Article 1702.1 certification for default judgment by Jefferson Sprinkler’s counsel attesting that “[t]he claim in this suit against 1068, LLC is on a conventional obligation.”

⁵ According to 1068, Jefferson Sprinkler’s underlying action is based on a delictual action requiring a hearing under Article 1702(B)(2), rather than a conventional obligation under Article 1702(B)(1), which does not. In the nullity action, 1068 averred that, by his certification, counsel for Jefferson Sprinkler “misrepresented” to the trial court that Jefferson Sprinkler’s claim was on a conventional obligation instead of a delictual obligation, which alleged misrepresentation, in part, warranted annulment of the default judgment.

⁶ La. C.C.P. art. 2004(A) provides that “[a] final judgment obtained by fraud or ill practices may be annulled.”

⁷ 1068 argues that the trial court’s summary judgment was a partial summary judgment as there remain other claims pending against Jefferson Sprinkler, Inc.; *i.e.*, for return of a thing not owed. Thus, according to 1068, the proper request for appellate relief was via an application for supervisory writ, not a devolutive appeal. However, courts have recognized that a judgment of nullity is generally final and appealable. *See e.g., Succession of Cazenave*, 02-852 (La. App. 1 Cir. 3/1/23), 362 So.3d 940, 943 n.1, citing *Succession of Theriot*, 08-1233 (La. App. 1 Cir. 12/23/08), 4 So.3d 878, 881-82 and *In re Succession of McLean*, 09-1851 (La. App. 1 Cir. 6/11/10), 2010 WL 2342752, *2 (unpublished) (“A judgment annulling a will is final and appealable although it does not conclude the succession proceeding.”). *See also Phipps v. Shupp*, 17-67 (La. App. 4 Cir. 7/19/17), 224 So.3d 1019, 1021, citing *American Motorists Ins. Co. v. Miller*, 383 So.2d 487 (La. App. 4 Cir. 1980). (“[T]he granting of a nullity action setting aside a previous judgment is final and appealable”); *Williams v. Wendy’s Old*

modified, revised or reversed in part, only insofar as the trial court denied 1068's request for all attorney's fees and costs as expressly provided in La. C.C.P. art. 2004(C), in addition to seeking all fees and costs related to these appellate proceedings pursuant to La. C.C.P. art. 2004(C) and La. C.C.P. art. 2133.

Finding that the March 14, 2025 judgment is deficient, because it lacked the requisite decretal language as required under the version of La. C.C.P. art. 1915(B) in effect at the time this appeal was filed, the matter was remanded to the trial court with an order directing the trial court to amend its May 14, 2025 judgment accordingly. On March 2, 2026, the trial court issued an amended judgment designating the May 14, 2025 judgment "as a final and appealable judgment after an express determination that there is no just reason for delay pursuant to [La. C.C.P. art.] 1915."

ASSIGNMENT OF ERROR

On appeal, Jefferson Sprinkler alleges the trial court erred in granting 1068's motion for summary judgment because its arguments are not a proper basis for annulling a judgment. Specifically, Jefferson Sprinkler contends that, although 1068 accused Jefferson Sprinkler and its counsel of "ill practices" and "misrepresentations" in obtaining the default judgment, it did so solely in order to create a basis for annulling the judgment because the "real argument in support of its summary judgment motion"—that the evidence submitted in the underlying action was insufficient to create a *prima facie* case that a conventional obligation existed—is not a proper basis for annulling a judgment pursuant to La. C.C.P. art. 2004.

Fashion Hamburgers, Inc., 503 So.2d 137, 138 (La. App. 5 Cir. 1987), citing, *Pertuit v. LeBlanc*, 216 So.2d 863 (La. App. 2 Cir. 1968), and *American Motorists Ins. Co. v. Miller*, 383 So.2d 487 (La. App. 4 Cir. 1980) (" . . . where the motion for new trial can be construed as a petition for nullity of judgment, then the judgment is appealable"); and *Levy v. Stelly*, 248 So.2d 845, 846 (La. App. 4 Cir. 1971) ("the summary judgment is a final judgment on the plaintiff's action for nullity of the amended judgment" and while "plaintiff's tort action is still pending, this does not affect the finality of the judgment on the nullity action").

DISCUSSION

Summary Judgment and Standard of Appellate Review

Appellate courts review summary judgments *de novo*, under the same criteria as the district courts to determine whether summary judgment is appropriate. *Neville v. Redmann*, 22-175 (La. App. 5 Cir. 12/31/22), 356 So.3d 568, 575, *writ denied*, 23-126 (La. 4/4/23), 358 So.3d 861, citing, *Lapuyade v. Rawbar, Inc.*, 18-474 (La. App. 5 Cir. 12/27/18), 263 So.3d 508, 511-12, *writ denied*, 19-315 (La. 4/15/19), 267 So.3d 1126. Summary judgment procedure is favored and “is designed to secure the just, speedy, and inexpensive determination of every action . . . and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2). After an opportunity for adequate discovery, a motion for summary judgment “shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.” La. C.C.P. art. 966(A)(3). A genuine issue is one upon which reasonable persons could disagree. If, on the state of the evidence, reasonable persons could reach only one conclusion, there is no need for a trial on that issue and summary judgment is appropriate. *First Bank and Trust v. Proctor’s Cove II, LLC*, 13-802 (La. App. 5 Cir. 9/24/14), 150 So.3d 418, 423, *writ denied*, 14-2336 (La. 1/9/16), 157 So.3d 1110; *Smith v. Our Lady of the Lake Hospital, Inc.*, 93-2512 (La. 7/5/94), 639 So.2d 730, 751. A fact is “material” if it potentially insures or precludes recovery, affects a litigant’s ultimate success, or determines the outcome of a legal dispute. *Proctor’s Cove II*, 150 So.3d at 423.

The initial burden of proof is on the mover, unless the mover will not bear the burden of proof at trial on the issue before the court on summary judgment. In that instance, the mover need only show the court the absence of factual support for one or more essential elements of the adverse party’s claim. The burden then shifts to the adverse party to produce factual support sufficient to demonstrate the

existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. If the non-moving party fails to produce sufficient factual support in its opposition that proves the existence of a genuine issue of material fact, the motion for summary judgment must be granted. La. C.C.P. art. 966(D)(1) and (3); *Babin v. Winn-Dixie Louisiana, Inc.*, 00-78 (La. 6/30/00), 764 So.2d 37, 40 (*per curiam*). A court's determination of whether a genuine issue of material facts exists requires reference to the applicable substantive law. *Hacienda Holding Co., L.L.C. v. Home Bank*, 20-189 (La. App. 5 Cir. 12/30/20), 309 So.3d 435, 445.

“[T]he court's role is not to evaluate the weight of the evidence or to determine the truth of the matter but instead to determine whether there is a genuine issue of triable fact.” *Prince v. Rouse's Enterprises, LLC*, 20-150 (La. App. 5 Cir. 1/2/20), 305 So.3d 1078, 1082. “Factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing a motion for summary judgment and all doubt must be resolved in the opponent's favor.” *Id.* at 1081, citing *Willis v. Medders*, 00-2507 (La. 12/8/00), 775 So.2d 1049, 1050 (*per curiam*).

In ruling on a motion for summary judgment, “[t]he court shall consider only those documents filed or referenced in support of or in opposition to the motion for summary judgment ...” La. C.C.P. art. 966(D)(2). A summary judgment may be rendered dispositive of a particular issue, theory of recovery, cause of action, or defense, in favor of one or more parties, even though the granting of summary judgment does not dispose of the entire case as to that party or parties. La. C.C.P. art. 966(E).

The issue on summary judgment is whether there remains a genuine issue of material fact, not whether the mover will prevail at trial. The mere belief that the litigant will not prevail on the merits is not sufficient to warrant a summary

judgment and thus deprive the party a trial on the merits. *Boye v. Daiquiris & Creams No. 3, Inc.*, 11-118 (La. App. 5 Cir. 11/15/11), 80 So.3d 505, 507, *writ denied*, 11-2778 (La. 2/17/12), 82 So.3d 290. As the Louisiana Supreme Court discussed in *Smith*, 639 So.2d at 751, summary judgment principles focus on whether reasonable persons could disagree about factual issues, emphasizing the existence of factual disputes rather than predicting trial outcomes. Louisiana courts are expressly prohibited from weighing evidence, making credibility determinations, or considering the merits when ruling on summary judgment motions. *Cemo v. State Farm Mutual Automobile Insurance Company*, 22-226 (La. App. 5 Cir. 2/1/23), 358 So.3d 913, 919, *writ denied*, 23-303 (La. 4/25/23), 359 So.3d 988. In deciding a motion for summary judgment, the court must assume that all affiants are credible. *Hutchison v. Knights of Columbus, Council No. 5747*, 03-1533 (La. 2/20/04), 866 So.2d 228, 234. These restrictions ensure that the summary judgment inquiry remains focused on whether factual disputes exist that require resolution by a trier of fact, rather than allowing judges to predict which party will prevail at trial based on the strength of the evidence. Even though summary judgments are now favored, any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of a trial on the merits. *ASI Federal Credit Union v. Certain Underwriters at Lloyd's of London Syndicate 1414 Subscribing to Policy FINFR15003374*, 18-164, 18-306 (La. App. 5 Cir. 11/7/18), 259 So.3d 552, 559.

Whether 1068's Arguments Constitute a Proper Basis for Annulling Judgment

In support of its motion for summary judgment (and on appeal), 1068 argued the “ill practices” committed by Jefferson Sprinkler in obtaining the default judgment warranting its annulment under La. C.C.P. art. 2004 consisted of: (1) an alleged “misrepresentation” to the trial court by Jefferson Sprinkler and its counsel

that there existed a conventional obligation between Jefferson Sprinkler and 1068, when in fact there was none, and thus, the trial court should have held a hearing in open court prior to confirming the default judgment in accordance with La. C.C.P. art. 1702(B)(2); and (2) Jefferson Sprinkler's failure to present sufficient evidence to establish a *prima facie* case to support the default judgment. Because of the alleged procedural defect (failure to comply with the strict and mandatory requirement of La. C.C.P. art. 1702 by requesting a hearing in open court) and alleged ill practice (insufficient evidence), 1068 contends the trial court properly granted summary judgment annulling Jefferson Sprinkler's March 16, 2020 default judgment under La. C.C.P. art. 2004.⁸

In contrast, Jefferson Sprinkler argues that 1068's motion for summary judgment should not have been granted because it was inappropriate and ill based. In particular, Jefferson Sprinkler argues that 1068 has made the allegations of improper procedure, misrepresentations, and ill practices solely for purposes of attempting to fall within the narrow provisions of La. C.C.P. art. 2004, which establishes the grounds for nullifying a judgment. Rather than "ill practices" or "misrepresentations," Jefferson Sprinkler contends the real basis of 1068's claim is that Jefferson Sprinkler allegedly failed to submit sufficient evidence to establish a *prima facie* case as to the existence of a conventional obligation between Jefferson Sprinkler and 1068, and therefore, the trial court did not have an adequate basis for granting the default judgment.⁹ Specifically, 1068 alleged that Jefferson Sprinkler failed to provide evidence of anyone acting as an agent for 1068 entering into an agreement, written or oral, to pay the alleged remaining balance due to Jefferson

⁸ In granting 1068, LLC's motion for summary judgment, the trial court found that Jefferson Sprinkler failed to comply with La. C.C.P. art. 1702.1, but did not state "how" Jefferson Sprinkler failed to comply even when pressed by counsel.

⁹ At the April 23, 2025 hearing on 1068's motion for summary judgment, it began its argument by stating: "The basis of this motion is . . . Jefferson Sprinkler's failure to submit *prima facie* evidence of a conventional obligation between it and 1068."

Sprinkler *by Magnolia*, as the general contractor, for the work indisputably completed by Jefferson Sprinkler at 1068 Magazine Street. Jefferson Sprinkler argues, however, that even if this were accurate, failure to establish a *prima facie* case or the alleged procedural defect in failing to hold a hearing, do not constitute “ill practices” upon which a nullity action can be based under the circumstances of this case. In short, Jefferson Sprinkler contends that these arguments are not a proper basis for a nullity action, but rather, should have been brought in defense of the underlying action, or made the basis of a timely filed appeal of the default judgment.

Louisiana Code of Civil Procedure Article 1702 establishes the procedural requirements for obtaining default judgments in Louisiana. It requires that plaintiffs establish a *prima facie* case by competent and admissible evidence that is admitted on the record. La. C.C.P. art. 1702(A)(1). When a demand is based on a conventional obligation, affidavits and exhibits containing facts sufficient to establish a *prima facie* case are admissible, self-authenticating, and sufficient proof of the demand. The court may, under the circumstances of the case, require additional evidence in the form of oral testimony before entering a default judgment. La. C.C.P. art. 1702(B)(1). When a demand is based on a delictual obligation, the plaintiff must provide testimony with corroborating evidence, which may be by affidavits and exhibits containing facts sufficient to establish a *prima facie* case, shall be admissible, self-authenticating, and sufficient proof of the demand, though the court may require additional oral testimony under the circumstances of the case. La. C.C.P. art. 1702(B)(2). In certain cases, involving open accounts, promissory notes, or other conventional obligations, a hearing in open court is not required unless the judge directs otherwise. La. C.C.P. art. 1702(C).

1068 argues the trial court erred in confirming the default judgment because Jefferson Sprinkler's claim is based on a delictual obligation, which requires the taking of testimony in open court under La. C.C.P. art. 1702(B)(2), not a conventional obligation as alleged—but purportedly not established by sufficient evidence—by Jefferson Sprinkler. According to 1068, Jefferson Sprinkler's failure to submit sufficient evidence to establish a *prima facie* case of the existence of a conventional obligation, and the trial court's failure to hold a confirmation hearing, constitute procedural defects and/or ill practices warranting annulment of the default judgment. To the contrary, Jefferson Sprinkler maintains that the obligation sued upon is a conventional obligation, based upon an oral agreement by 1068 to pay the balance due, and that the trial court properly confirmed the default judgment on the affidavits and certification Jefferson Sprinkler provided in accordance with La. C.C.P. arts. 1702(B)(1) and 1702.1. Additionally, as previously stated, Jefferson Sprinkler maintains that failure to hold a confirmation hearing and insufficiency of evidence are not a proper basis for a nullity action.

A final judgment obtained by fraud or ill practices may be annulled for a vice of substance in accordance with La. C.C.P. art. 2004(A). A trial court has discretion in deciding whether a judgment should be annulled due to fraud or ill practices, to which discretion a reviewing court will defer. *Libertas Tax Fund I, LLC v. Taylor*, 21-550 (La. App. 4 Cir. 6/16/22), 342 So.3d 1083, 1088, *writ denied*, 22-1093 (La. 10/18/22), 348 So.3d 729. The party seeking annulment of a judgment based upon La. C.C.P. art. 2004 bears the burden of demonstrating how he was excused or prevented from asserting his claims or defenses. *Id.*

The criteria for determining whether a judgment has been obtained by fraud or ill practice, such that it may be annulled, include: (1) whether the circumstances under which the judgment was rendered show that the litigant seeking relief was deprived of some legal right, and (2) whether the enforcement of the judgment

would be unconscionable or inequitable. La. C.C.P. art. 2004(A); *Yellowbird Investments*, 46,977 (La. App. 2 Cir. 3/14/12), 87 So.3d 970, 974, *writ not considered*, 12-866 (La. 6/1/12), 90 So.3d 422. Article 2004 is not limited to cases of actual fraud or intentional wrongdoing, but is sufficiently broad to encompass all situations wherein a judgment is rendered through some improper practice or procedure that operates, even innocently, to deprive the party cast in judgment of some legal right, and where the enforcement of the judgment would be unconscionable or inequitable. *Libertas Tax Fund*, 342 So.3d at 1089.

A nullity action is not a substitute for a motion for new trial or an appeal from a default judgment. *West v. Melancon*, 05-1183 (La. App. 4 Cir. 4/26/06), 929 So.2d 809, 811, *writ not considered*, 06-1830 (La. 10/27/06), 939 So.2d 1269. Additionally, a nullity action is not the solution to legal rights lost through a litigant's neglect or failure to act. *Payne v. Glass*, 41,232 (La. App. 2 Cir. 8/23/06), 939 So.2d 526, 530. In the absence of a valid reason for defendant's failure to defend the original suit in which the default judgment has been taken, a defendant cannot maintain an action for nullity of the judgment based on fraud or ill practices that could have been pleaded in the original suit. *Libertas Tax Fund*, 342 So.3d at 1089.

In support of its motion for summary judgment, 1068 essentially relies on three cases. After reviewing those cases, we have determined that 1068's reliance is misplaced. First, 1068 relies on *ASI Federal Credit Union v. Leotran Armed Security, LLC*, 18-341 (La. App. 5 Cir. 11/7/18), 259 So.3d 1141, wherein the trial court confirmed a default judgment on a delictual obligation without holding a hearing pursuant to La. C.C.P. art. 1702.1. The insurer filed a petition for intervention seeking to have the default judgment set aside on the basis that it was "procedurally and substantively improperly obtained," and moved for a new trial with respect to the default judgment, which the trial court denied. *Id.* at 1145. On

appeal of the default judgment, this Court held that “the requirements of La. C.C.P. art. 1702.1 are mandatory and that a plaintiff’s failure to strictly comply with these requirements is fatal to the plaintiff’s [default] judgment.” *Id.* at 1152. However, this Court’s remedy in that case was vacation of the judgment and remand, **not annulment**. There was no discussion by this Court that the failure to hold an evidentiary hearing constituted an “ill practice,” which would warrant annulment of the judgment. At best, this case suggests that, had 1068 timely filed a *motion for new trial* or *appealed* the default judgment in the instant case, it *may* have been entitled to having Jefferson Sprinkler’s default judgment obtained in the underlying case vacated or set aside.¹⁰ This case, however, does not support 1068’s contention that failure to hold hearing prior to confirming a default judgment constitutes an ill practice or a procedural defect that warrants *annulment* of the judgment.

Next, 1068 relies on *Precept Credit Opportunities Fund, L.P. v. Brown*, 20-114 (La. App. 4 Cir. 7/22/20), 364 So.3d 291, to support its contention that the trial court’s granting of summary judgment annulling the default judgment was proper. There, Precept Credit Opportunities Fund, a tax sale purchaser, filed a petition to quiet title, claiming it was the sole owner of a certain piece of real property based on acquiring tax sale title to the property. After the record owner of the property failed to timely answer or file responsive pleadings to the petition, Precept Credit

¹⁰ A conventional obligation is “an obligation that results from actual agreement of the parties.” *W.H. Cary, Sr., Estate, L.L.C. v. Duhon*, 10-1526 (La. App. 3 Cir. 5/25/11), 64 So.3d 922, 925. A delictual obligation is an obligation constituting a tort. *Id.* In the underlying case, Jefferson Sprinkler alleged in its petition that its claim against 1068 is based on a conventional obligation; *i.e.*, 1068’s agreement to pay the balance due. Jefferson Sprinkler included a copy of a check endorsed by the owner of 1068 evidencing partial payment for the work Jefferson Sprinkler completed on 1068’s building. While a confirmation hearing is required to confirm a default judgment when the demand is in tort under La. C.C.P. art. 1702(B)(2), as in the *ASI Federal Credit Union* case relied on by 1068, La. C.C.P. art. 1702(B)(1) permits confirmation of a default judgment without holding a hearing in open court when the demand is based on a conventional obligation, unless the trial court chooses to exercise its discretion and require the testimony of live witnesses. Here, Jefferson Sprinkler’s written motion for confirmation of the default judgment included the requisite certification pursuant to Article 1702.1 for confirming a default judgment on a conventional obligation, thus, under the circumstances only affidavit evidence was required. See *Youngblood v. Southern Air, Inc.*, 46,183 (La. App. 2 Cir. 3/2/11), 58 So.3d 1020, 1023-24.

Opportunities Fund confirmed a default judgment, without a hearing in open court, quieting its tax title to the property. The record owner filed a motion for new trial, which the trial court denied. Subsequently, the record owner appealed the default judgment on grounds that the trial court failed to hold an evidentiary hearing on the motion to confirm the default, and Precept Credit Opportunities Fund's failure to offer competent evidence sufficient to support the confirmation of a default judgment quieting its title to the real property at issue. We find this case is inapposite to the instant one. *Precept Credit Opportunities Fund* involved a deprivation of property rights, not a conventional obligation as alleged herein, and further did not involve a petition for annulment of the default judgment, but rather, a motion for new trial and an appeal of the default judgment. Moreover, the appellate court agreed that, under the circumstances presented, the remedy for failing to hold a confirmation hearing with live testimony and submission of evidence was vacation of the default judgment and remand, not annulment. In this regard, there was absolutely no discussion or finding by the appellate court that the trial court's failure to hold a confirmation hearing, or Precept Credit Opportunities Fund's failure to submit evidence sufficient to make a *prima facie* case, constituted an "ill practice" or procedural defect warranting an *annulment* of the judgment.

Lastly, 1068 relies on *Mooring Financial Corp. 401(K) Profit Sharing Plan v. Mitchell*, 08-1250 (La. App. 4 Cir. 6/10/09), 15 So.3d 311, a suit brought by a tax sale purchaser to quiet title against the record owner of real property. The record owner appealed a default judgment entered against her and her mortgage company, PM Properties, LLC, on grounds that the trial court erred (1) in confirming a default judgment when the preliminary default against the non-resident PM Properties was not properly obtained under La. R.S. 13:3205; (2) in failing to hold an evidentiary hearing pursuant to La. C.C.P. art. 1702.1; and (3) in confirming a default judgment without competent evidence proving a *prima facie*

case. The court determined that because Mooring obtained the default judgment by “ill-practice,” as it failed to comply with the procedure for obtaining a default judgment (*i.e.*, the preliminary default against the non-resident mortgage company was not proper), the default judgment was a relatively null judgment. The “ill practice” at issue, which rendered the default judgment a relative nullity, was determined by the court to be Mooring’s failure to wait the requisite thirty days after the filing in the record of the affidavit evidencing long arm service on the non-resident mortgage company before confirming the preliminary default against it. *Id.* at 317. Additionally, the court held that the record owner could not collaterally attack the relatively null default judgment, but rather, had to pursue a nullity action in a separate suit in her own right. Having made that determination, the appellate court actually pretermitted the last two grounds for the record owner’s appeal; that is, the court made no mention or finding as to whether failing to hold a confirmation hearing and/or failing to present sufficient evidence to establish a *prima facie* case constituted an “improper procedure or ill practice” warranting an annulment of judgment—both of which grounds form the basis of 1068’s petition to annul the default judgment obtained against it by Jefferson Sprinkler.

We find that both *ASI Federal Credit Union* and *Precept Credit Opportunities Fund* actually support Jefferson Sprinkler’s contention that actions for nullity cannot be substituted for a defense on the merits or for a timely appeal. In short, the failure to present sufficient proof is not an issue for a nullity action; rather, a failure of proof must be raised in a motion for new trial or an appeal. *See Yellowbird Investments*, 87 So.3d 970 at 974. We further find that *Mooring Financial* is not persuasive as it pretermitted resolution of the issues presented by the instant case.

In *National Income Realty Trust v. Paddie*, 98-2063 (La. 7/2/96), 737 So.2d 1270, 1271, the Louisiana Supreme Court definitively established that “the failure to establish a *prima facie* case required by La. C.C.P. art. 1702 is not a vice of form. ... A failure of proof must be raised in a motion for new trial or by appeal, not by an action for nullity.” The Court emphasized that allowing such challenges would undermine judgment finality, stating that “[u]nder NIRT’s theory, any default judgment, though procedurally proper on its face, could be attacked at any time, based on the failure to present sufficient proof. The resulting uncertainty would make it virtually impossible to rely on a final judgment obtained by default.” *Id.* at 1072.

Louisiana courts distinguish between procedural defects that can be challenged through annulment and substantive evidentiary challenges that must follow appellate procedures. In *Adcock v. Ewing*, 45,949 (La. App. 2 Cir. 2/26/11), 57 So.3d 434, the court held that “sufficiency of evidence/failure to establish a *prima facie* case in confirming a default is not a valid basis to nullify a judgment.” Similarly, in *First Lake Properties, Inc. v. Smith*, 09-973 (La. App. 5 Cir. 4/27/10), 40 So.3d 215, while the appellant alleged some fraud or ill practices, this Court found that he failed to point to any action that would have prevented him from asserting any defenses to the default judgment. *Id.* at 218. This Court emphasized that “[t]he action for nullity based on fraud or ill practices is not intended as a substitute for an appeal or as a second chance to prove a claim which was previously denied for failure of proof. The purpose of a nullity action is to prevent injustice which cannot be corrected through new trials and appeals. The proper procedure to remedy a failure of proof is through a motion for new trial and/or an appeal.” *Id.*

Similarly, failing to request a hearing generally does not automatically constitute an ill practice warranting annulment under Article 2004. In *ASI Federal*

Credit Union, relied upon by 1068 in support of its motion for summary judgment, this Court treated the failure to hold a hearing as a procedural defect rather than an ill practice. While this Court vacated the judgment in *ASI Federal Credit Union* because confirmation of the default without holding the required hearing for a delictual obligation was “procedurally defective,” we made no mention of annulment under Article 2004. *See ASI Federal Credit Union*, 259 So.3d 1141. Failure to establish a *prima facie* case or hold a required hearing are considered substantive evidentiary defects that must be challenged through a timely appeal or motion for new trial, not nullity actions. Article 2004 annulment actions are reserved for cases involving ill practices or procedural conduct that deprives parties of legal rights and makes enforcement unconscionable, not for mere technical violations such as a failure to present sufficient evidence to prove a *prima facie* case. Moreover, defendants—like 1068—who fail to participate in proceedings cannot claim deprivation of legal rights from procedural defects.

Following this Court’s *de novo* review, we find that there remain genuine issues of material fact precluding summary judgment in this case, including, but not necessarily limited to: (1) whether Jefferson Sprinkler’s demand against 1068 is conventional or delictual in nature (the former of which would have obviated the need for a confirmation hearing or the taking of testimony to confirm the default judgment); (2) assuming the demand is delictual in nature, whether 1068 was deprived of a legal right, which, under the circumstances may have resulted in a procedural defect warranting annulment of the default judgment due to the trial court’s failure to hold a confirmation hearing; (3) whether 1068 was prevented from having an opportunity to appear and assert defenses or whether 1068’s legal rights were lost due to its negligence or failure to act; and (4) whether enforcement of the default judgment against 1068 would be inequitable or unconscionable under the circumstances.

For these reasons, finding that genuine issues of material fact remain, we conclude the trial court erred in granting 1068's motion for summary judgment and for annulling the default judgment. Consequently, we reverse the trial court's May 14, 2025 judgment, as amended on March 2, 2026, in part, insofar as it granted summary judgment in favor of 1068, annulling the default judgment obtained against it by Jefferson Sprinkler. Finding that 1068 is not entitled to attorney fees pursuant to La. C.C.P. art 2004(C), we affirm the May 14, 2025 judgment, as amended on March 2, 2026, in part, insofar as it denied 1068's request for attorney fees. We further deny 1068's request for all fees and costs related to these appellate proceedings pursuant to La. C.C.P. art. 2004(C) and La. C.C.P. art. 2133. We remand the matter to the trial court for further proceedings.

REVERSED IN PART; AFFIRMED IN PART; REMANDED

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-445

1068, LLC

versus

JEFFERSON SPRINKLER, INC. AND MAGNOLIA BUILDERS, LLC

JOHNSON, J., CONCURS WITH REASONS

I, respectfully, concur in the result of reversal of the trial court's summary judgment in favor of 1068, LLC that annulled the March 16, 2020 default judgment and affirmance of the denial of 1068, LLC's request for attorney's fees. I find that the check presented by Jefferson Sprinkler, Inc., showing a payment made by 1068, LLC, is sufficient to preclude summary judgment. Therefore, I agree that genuine issues of material fact remain regarding whether ill practices were used by Jefferson Sprinkler, Inc. in obtaining the underlying default judgment, and the matter should be remanded for further proceedings.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
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STEPHEN J. WINDHORST
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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 29, 2026** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

A handwritten signature in blue ink that reads "Curtis B. Pursell".

CURTIS B. PURSELL
CLERK OF COURT

25-CA-445

E-NOTIFIED

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

EBERHARD D. GARRISON (APPELLEE)

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